



Tax Insights

Pillar Two primary legislation – Bills introduced

On 4 July 2024, Australia made a further step towards the implementation of Pillar Two, introducing the following Bills into Parliament with accompanying Explanatory Memorandum:

- [Taxation \(Multinational-Global and Domestic Minimum Tax\) Bill 2024](#);
- [Taxation \(Multinational-Global and Domestic Minimum Tax\) Imposition Bill 2024](#);
- [Treasury Laws Amendment \(Multinational-Global and Domestic Minimum Tax\) \(Consequential\) Bill 2024](#); and
- The [Explanatory Memorandum](#) for the above three Bills.

The media release announcing the introduction, highlights the Government's commitment to "improve tax transparency and integrity" and reinforces the Australian start date of 1 January 2024. The rules apply to multinational groups that have a global turnover of at least 750 million Euro (approximately AUD 1.2 billion) and impose a 15% global minimum tax that is worked out on a jurisdictional basis. Many in-scope multinational groups will already be keenly aware of the compliance obligations associated with these rules.

In summary, the Bills have not significantly changed from the Exposure Drafts that were released in March for consultation. The main points of difference and our key observations that are relevant for Australian taxpayers regarding the primary legislation are set out in the table below (this is not intended to be read as an exhaustive comparison of the changes).

A final version of the Rules, referred to as the subordinate legislation, has not yet been released. These Rules, which were released in Exposure Draft form in March and contain the substantive computational rules to work out the Pillar Two implications, are to be introduced by way of legislative instrument and are expected to be released once the primary legislation has been enacted. The timing of enactment of the full suite of legislation is therefore as yet unknown, but subject to the Government’s priorities, Royal Assent may be achievable before year end. This important aspect is being closely monitored by those with Pillar Two financial reporting obligations in the second half of this year.

The Explanatory Memorandum has also been expanded since the Exposure Draft release. It now contains detail on the impact analysis undertaken for Pillars One and Two and contains helpful conversion tables of the legislation to the OECD Model Rules and Commentary, including guidance. Since the Pillar Two rules follow a globally consistent model these conversion tables which cross-reference in both directions will be extremely helpful in navigating the legislation and assisting in interpretation.

Refer to our previous [Tax Insights article](#) for more detail surrounding the rules and the prior Exposure Drafts.

Issue	Exposure Draft	Bills
<p>Tax consolidated groups and multiple entry consolidated (MEC) groups</p>	<p>The Exposure Draft Consequential bill contained the concept of a ‘GloBE consolidated group’ and provision for top-up tax to be payable (under the income inclusion rule (IIR) for foreign jurisdictions or the domestic minimum tax (DMT) for Australian entities) by head companies of a tax consolidated group.</p> <p>The Exposure Draft did not provide specific rules for MEC groups.</p>	<p>This provision has been removed and replaced with a provision that all Group Entities will be jointly and severally liable for any top-up tax. An exception to this rule applies to Group Entities that are prohibited from incurring a liability according to the effect of an Australian law (e.g., company in liquidation).</p> <p><i>Deloitte observation: Group Entities may need to amend or consider tax sharing and funding arrangements between Group Entities (which may extend beyond tax consolidated groups).</i></p>
<p>Filing obligations</p>	<p>Three new tax returns were introduced – the GloBE Information Return (GIR), the Australian GloBE Tax Return and the DMT Return.</p> <p>The GIR is a standardised return for information gathering consistent with the OECD Pillar Two Rules. The Australian GloBE Tax Return and DMT Return are supplementary returns required to assess and collect GloBE Top-up Tax and DMT Top-up Tax respectively and include a requirement for nil returns.</p> <p>A Designated Filing Entity and a Designated Local Entity can discharge the filing obligations on behalf of other group members. In the case of a foreign headquartered Australian taxpayer the filing of a GIR with a foreign tax authority can discharge the obligation in Australia if the country where it is filed has a Qualified Competent Authority Agreement with Australia.</p>	<p>These are substantially the same with the Australian GloBE Return renamed the Australian IIR/undertaxed profits rule (UTPR) Tax Return.</p> <p>The timing for lodgement remains the same – 18 months after year end for the first year of application and thereafter 15 months after year end. The payment of any top-up tax is due on the same date.</p> <p><i>Deloitte observation: It is unclear whether a Designated Local Entity may file the DMT Return on behalf of its Australian Group Entities on a consolidated or aggregate basis. Provision is allowed for the Commissioner to specify circumstances when an Entity is not required to lodge and we hope to see further administrative guidance in this area develop to allow a streamlined filing for Australian tax consolidated groups.</i></p>

Issue	Exposure Draft	Bills
Permanent establishments and Joint Ventures	The DMT and associated filing obligations apply to 'Australian located' permanent establishments and Pillar Two joint ventures	<p>Further explanation is contained in the Explanatory Memorandum to provide clarity that the rules and the filing obligations for the GIR, Australian IIR/UTPR Return and DMT Return apply to the Main Entity of a PE and to the JV/JV group.</p> <p><i>Deloitte observation: The imposition of the DMT on JVs may bring Australian taxpayers in scope who would not otherwise meet the 750 million Euro thresholds or have a global presence. Close consideration of ownership structures and scope of a Pillar Two group is a must.</i></p>
Penalties	The Exposure Drafts contained consultation questions regarding the applicability of failure to lodge penalties in certain circumstances.	<p>Failure to lodge penalties may apply including in instances where a GIR is not lodged with a foreign government agency in the required time.</p> <p>False and misleading statements penalties are doubled in line with SGE penalties.</p> <p><i>Deloitte observation: This underscores how important it will be for Australian subsidiaries of foreign multinationals to be co-ordinated with their head office or central Pillar Two teams. Since the Australian DMT (per the Exposure Draft) will be based on local financial statements there is likely to be some degree of Australian oversight and/or modification required for DMT purposes even where a group undertakes a centralised Pillar Two operational model.</i></p>
Foreign hybrid, hybrid mismatch, controlled foreign company and foreign income tax offset rules	<p>The proposed approach in the Treasury consultation paper was to exclude global minimum taxes from being taken into account for the purposes of the rules in Division 830 and 832.</p> <p>Credits and section 393 deductions were anticipated to be granted only for foreign domestic minimum taxes (not IIR or UTPR).</p>	<p>The Treasury proposed amendments have been included in the Bill.</p> <p><i>Deloitte observation: Foreign headquartered Australian subsidiaries will need to continue to monitor the foreign tax implications with the global group from a hybrid mismatch as well as Pillar Two perspective. The application of the targeted integrity rule in particular could give rise to potential double taxation that foreign multinationals must be mindful of.</i></p>

Issue	Exposure Draft	Bills
<p>Incorporation of OECD guidance</p>	<p>The Exposure Drafts included reference a list of OECD guidance and the Assessment Bill, including the Rules made for the purposes of provisions are to be interpreted in a manner consistent with that guidance.</p>	<p>This approach to interpretation remains consistent.</p> <p>The list of OECD guidance has been updated to include the Administrative Guidance released in June 2024.</p> <p><i>Deloitte observation: Whilst this ambulatory approach to interpretation is the best way to mitigate the risks of discrepancies arising from different jurisdictions applying the model rules differently, taxpayers should still focus on the heightened risks of international tax controversy in the post Pillar Two environment.</i></p>

Next steps

The OECD Pillar Two Rules are a major new taxing right applicable to entities operating in Australia and should be carefully considered by both Australian and foreign headquartered multinational enterprise groups with a presence in Australia.

As the Rules will apply to income years commencing on or after 1 January 2024, Australian taxpayers should ensure they understand their future compliance requirements including their financial reporting obligations and assess the impact of the rules in Australia.

Deloitte has a multi-disciplinary approach to bring together experts in international tax, tax technology and global compliance to help plan for this new environment. Please reach out to your Deloitte team to find out how we can assist.

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