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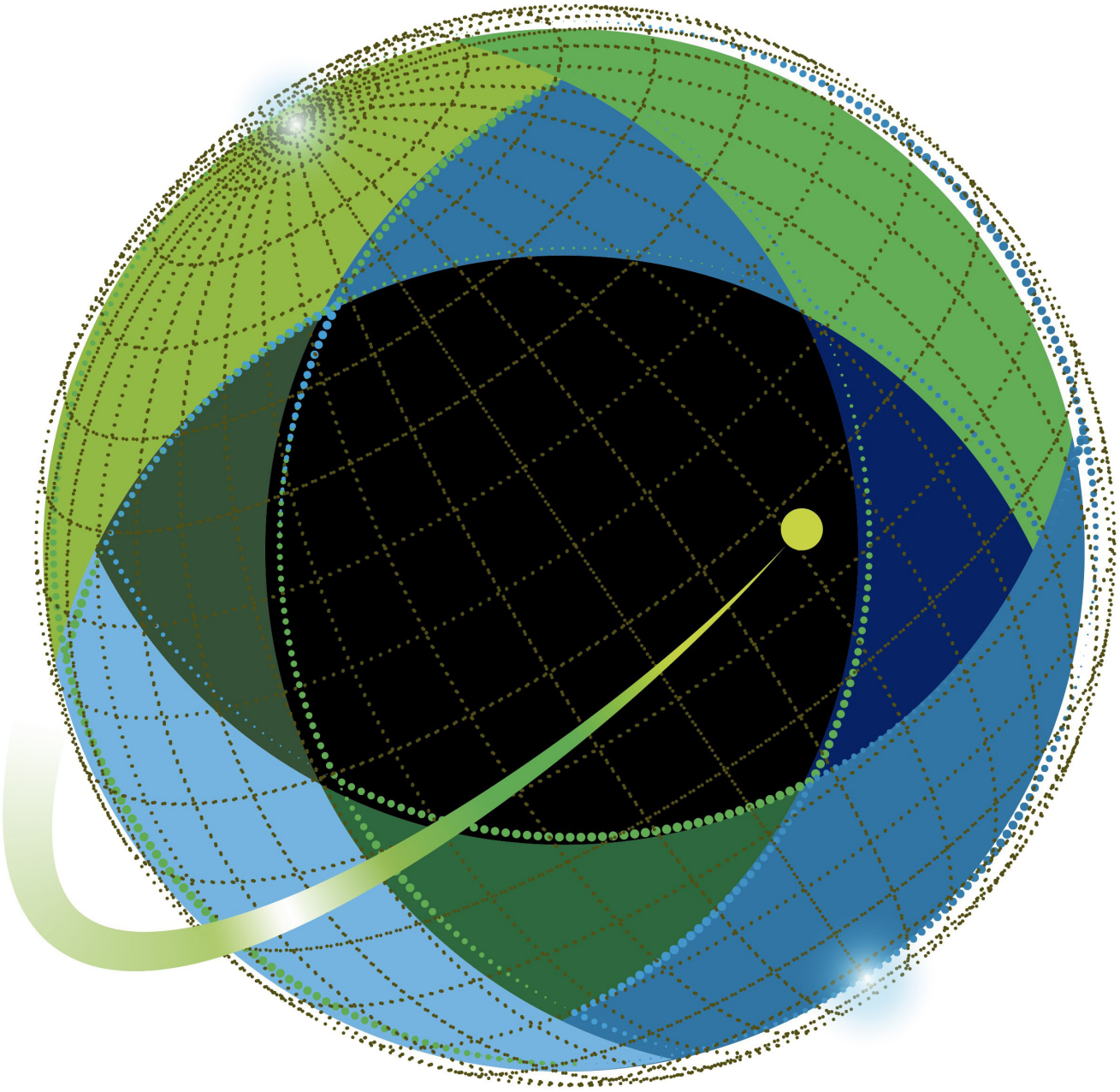

Tax Insights

Pillar Two in Australia: from policy to practice

Latest ATO guidance

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Latest ATO guidance

The Australian Taxation Office (ATO) on 17 December 2025 presented taxpayers with some welcome new guidance. The guidance covers some of the practical issues raised by stakeholders to date and provides much needed instruction as the first lodgement season for Pillar Two rapidly approaches. This article summarises the new guidance and also provides a recap of what has been released to date. Subsequent to the release of this ATO guidance the OECD has released further guidance on the "side-by-side" system, permanent safe harbors, and qualifying tax incentives which are summarised in our separate article here.

New ATO web guidance

The ATO guidance relates to Australia's domestic Pillar Two legislation, the Taxation (Multinational—Global and Domestic Minimum Tax) Act 2024 and the Taxation (Multinational—Global and Domestic Minimum Tax) Rules 2024 ("the rules") on their global and domestic minimum tax (**GMT** and **DMT**) website. The update of existing web guidance revolves around the "When and how the Pillar Two rules apply" and "Lodging, paying and other obligations for Pillar Two" sections. The key issues covered include:

- Pillar Two interactions with consolidation—importantly clarifies how to compute top-up tax for tax consolidated groups (**TCGs**) making the election to apply consolidated accounting treatment;
- Prior period adjustments;
- Misaligned fiscal years;
- Joint arrangements classifications; and
- Global Anti-Base Erosion joint ventures (**GloBE JVs**)—importantly confirms that part 7-1 applies to flow through GloBE JVs as a deemed ultimate parent entity (**UPE**).

ATO Practical Compliance Guideline 2025/4

The ATO published Practical Compliance Guideline (PCG) 2025/4, Global and domestic minimum tax lodgement obligations—Transitional approach (PCG 2025/4) on 26 November 2025. PCG 2025/4 broadly sets out the Commissioner of Taxation's approach to the enforcement of penalties during the transition period when multinational enterprise (**MNE**) groups phase into the rules, which could be summarised by stating that MNE group should take "reasonable measures" to comply with Australia's GMT and DMT obligations to avoid penalties.

ATO sample forms

Sample forms of the combined GMT and DMT return (**CGDMTR**) are now available in the "Lodging, paying and other obligations for Pillar Two" section of the ATO's web guidance. The release of the official forms is expected in the first quarter of 2026. It is apparent when looking at the two sample forms of a group entity as well as a designated local entity (**DLE**) that the ATO has committed to avoid duplication of information, which the ATO would already be receiving through the GloBE information return (**GIR**).

Legislative Instrument 2025/28

Treasury released the Legislative Instrument (LI) 2025/28 Taxation Administration (Exemptions from Requirement to Lodge Australian IIR/UTPR tax return and Australian DMT tax return) Determination 2025 ("the determination") on 22 December 2025. The determination sets out specific circumstances under which GMT and DMT compliance obligations of certain group entities arising under the Taxation Administration Act (TAA) 1953 (i.e., the Australian income inclusion rule (**IIR**)/undertaxed profits rule (**UTPR**) tax return and Australian DMT tax return lodgment obligations) are discharged.

New ATO web guidance: Specific issues for Pillar Two

Misaligned fiscal years

The fiscal year for Pillar Two purposes aligns with the financial year of the consolidated financial statements of the UPE of the MNE group. Group entities may retain a different financial year to the fiscal year. The web guidance acknowledges that different accounting conventions are used by MNE groups when preparing the consolidated financial statements for such group entities, the main ones being:

i. The inclusion of full year group entities' results for the accounting period that ends within the UPE's fiscal year (which would include income or expenses attributable to a period before the UPE's fiscal year commences); and

ii. A segregation and combination of group entities' results to match the UPE's fiscal year (combining parts of two group entities' two accounting periods).

The web guidance clarifies that for group entities that have a different accounting period to the UPE, any top-up tax computations should be based on whichever method the MNE group employs in preparing its consolidated financial statements. To the extent not included in these consolidated financial statements, the top-up tax computations should be based on the financial period that ends in the fiscal year (of the UPE).

Deloitte Australia's observations

The ATO web guidance articulates administrative guidance earlier released by the OECD in December 2023. Misaligned fiscal years should be given special consideration in the context of JVs. For example, two non-Australian headquartered MNE groups each have a December year end fiscal year and together hold a 50/50 JV in Australia (which in turn is not consolidated in either of their consolidated financial statements, but equity accounted). The Australian JV prepares consolidated financial statements with a June year end. The first Pillar Two year for both MNE groups is the financial period commencing 1 January 2024 and ending 31 December 2024. However, the Australian DMT computations should be based on the financial period commencing 1 July 2023 and ending on 30 June 2024 (with lodgement deadlines still based on the UPE's fiscal year).

Prior period adjustments

Also known as return to provision, true-ups/true-downs, or prior year adjustments (**PYAs**), prior period adjustments booked in the financial statements interact with the adjusted covered taxes component of the effective tax rate (**ETR**) computation. Broadly, a PYA increase in the amount of covered taxes of a group entity should be reflected in the current year's adjusted covered taxes. A PYA decrease in the amount of covered taxes of a group entity that is immaterial (i.e., less then EUR 1 million) can upon election also be included in the current year computations.

However, a PYA decrease in the amount of covered taxes of a group entity exceeding EUR 1 million needs to be reflected in the financial year to which the adjustment relates—triggering a recomputation of that year's ETR.

Section 4-140 of the rules prescribes this operation. There has been an international debate with respect to the operation as well as the scope of operation of article 4.6, the equivalent provision in the OECD model rules. The OECD commentary in relation to this article suggests that it "governs adjustments to amounts of covered taxes incurred with respect to a jurisdiction after the GloBE Information Return for the period has been filed." For example, a (material) PYA decrease in the amount of covered taxes of a group entity that is recorded in fiscal year 2025, but relates to fiscal year 2024, does not seem to be covered if the OECD commentary is taken strictly, given the GIR is only filed in mid-fiscal year 2026 (and thus after the PYA). Neither section 4-140 of the rules nor the related explanatory memorandum contains an explicit reference to the GIR lodgement.

The ATO web guidance further clarifies how section 4-140 of the rules is intended to operate through a numerical example. This numerical example confirms that whether the GIR has been lodged is deemed irrelevant for section 4-140 of the rules to apply. Further, where a (material) PYA decrease in the amount of covered taxes of a group entity relates to a "pre-GloBE" fiscal year (i.e., a fiscal year to which the Pillar Two rules do not apply), the recomputation of the pre-GloBE fiscal year's ETR does not occur. Lastly, it is clarified that section 4-140 of the rules is intended to apply equally to current and deferred taxes.

Deloitte Australia's observations

The ATO web guidance is a welcome clarification relating to the application of article 4.6 of the OECD model rules. It means that refunds and downward adjustments made in GloBE year that relate to pre-Pillar Two income years should not give rise to top-up tax. With this guidance the ATO follows other foreign tax authorities in Ireland, the Netherlands, and the United Kingdom in relation to article 4.6.

New ATO web guidance: Pillar Two—Specific issues for consolidation

The ATO has now released a comprehensive section of web guidance that aims to address lodgement — computation as well as reporting specifics—for Australian TCGs as per section 703-5 of the Income Tax Assessment Act 1997 (ITAA 1997) and for Australian multiple entry consolidated (**MEC**) groups as per section 719-5 of the ITAA 1997.

TCG lodgements

The web guidance clarifies that the option to appoint a DLE (for an Australian GIR, Australian foreign notification form lodgement, Australian IIR/UTPR tax return, and Australian DMT tax return) is also open to TCGs, but notes that the determination in many circumstances already discharges members of a TCG from any obligations to lodge, as the Australian Pillar Two obligations by default reside with the head company of the TCG. A separate DLE designation could still be required for Australian constituent entities (**CEs**) not included in the TCG.

Within a TCG, any DMT top-up tax amount or UTPR top-up tax amount is allocated to the head company of the TCG by virtue of the rules. Generally, any IIR top-up tax amount as a result of Australian CEs having taxing rights over foreign low-taxed constituent entities (**LTCEs**) would generally sit at the head company of the TCG. An example where this would not be the case is if an Australian headquartered MNE group of which the UPE is also the head company of the TCG has a foreign undertaxed JV located in a jurisdiction without any domestic Pillar Two rules—a TCG subsidiary entity would be allocated a positive IIR top-up tax amount as it directly holds the ownership interest in this JV.

Lastly, the web guidance contains five practical examples for situations commonly observed with taxpayers to illustrate how the determination should be applied, being:

i. Joining a TCG;

ii. Leaving a TCG and joining another TCG;

iii. Leaving a TCG and joining another MNE group with a different fiscal year;

iv. Breaking away from a TCG and remaining in the same MNE group; and

v. Joining a TCG while in the same MNE group.

Deloitte Australia's observations

The determination discharging members of Australian TCGs from various obligations is a helpful concession for Australian taxpayers. However, it should be noted that the obligation to file the GIR and/or foreign lodgement notification (**FLN**) still resides with every individual CE. Practically, this seems to imply that a DLE designation in TCG context will remain required, albeit for a smaller number of obligations.

Top-up tax for TCGs

In respect of the top-up tax computation for TCGs, the web guidance explains the operation of section 3-200 of the rules, which is an elective provision for TCGs that allows intercompany transactions within the TCG to be disallowed for when computing the ETR (effectively aligning GloBE treatment with that for local income taxes) and applies for five fiscal years. It is specifically noted that the election by itself does not change the requirement for the top-up tax computation to be prepared on an entity-by-entity basis for all members of the TCG.

The Australian DMT top-up tax obligation rests with the head company of the Australian TCG with respect to all members of a TCG through a mechanism of first allocating top-up tax to each individual Australian CE, followed by a reduction to nil of the top-up tax of the members of the TCG and a corresponding increase of top-up tax at the level of the head company of the TCG (the "bottom-up" approach). Broadly, the web guidance indicates that the ATO does not intend to devote compliance resources to reviewing allocations of Australian DMT top-up tax in a TCG context provided the total Australian DMT top-up tax amount aligns with the bottom-up approach as set out previously. A similar position on not dedicating any compliance resources seems to apply to any aggregate Australian UTPR top-up tax amount in a TCG context, because, for example, the MNE group system only allows the computation of the substance-based income exclusion amount on an aggregate basis.

Deloitte Australia's observations

The ATO web guidance strikes a balance between providing clarity and further certainty for taxpayers through offering a practical approach (which does not result in jeopardising the integrity of the Pillar Two rules), while "not going as far" as legislating these concessions absent any specific OECD guidance. This practical approach signals that the ATO is making an effort to work alongside the Australian taxpayer in preparation for the upcoming compliance obligations.

Reporting for TCGs

The election in section 3-200 of the rules should be considered in conjunction with the aggregated reporting election (**ARE**) and/or the transitional simplified reporting election (**TSRE**). For jurisdictions that do not satisfy any of the safe harbor provisions, a full GloBE/DMT computation is required on an entity-by-entity basis. The ARE and TSRE are reporting concessions, which if elected into, no longer require an MNE group to include such granular entity-by-entity reporting for the respective jurisdiction in the GIR.

There are several conditions to be eligible for the ARE, which effectively allows for the TCG to report as if it were a single CE:

i. Taxable profits and losses of the consolidated entities are aggregated for the purpose of calculating a single tax liability;

ii. The members of the TCG are all wholly owned by the head company;

iii. The members of the TCG are GloBE entities located in the same jurisdiction; and

iv. Section 3-200 of the rules has been elected.

The ARE is not available for Australian MEC groups (as these do not satisfy condition (ii)), for CEs joining or leaving the MNE group, or for specific CEs that by default require stand-alone ETR computations (regardless of whether they are included in an eligible TCG).

The TSRE is a transitional provision (for fiscal years beginning on or before 31 December 2028) which allows an MNE group to report its GloBE/DMT computations for entities in the same GloBE jurisdiction in an aggregated manner in the GIR. The TSRE is a broader concession than the ARE in terms of scope, as it is not limited to certain types of TCGs and open to all CEs in the respective jurisdiction. The TSRE is only available if there is no need to have an allocation of top-up tax to individual CEs, for example, if there is a nil amount of top-up tax in a jurisdiction, the positive top-up tax amount rests solely with the head company of the TCG, or a positive top-up tax amount in respect of a jurisdiction without a QDMTT flows up into a single CE with all IIR taxing rights. Even if the TSRE is elected, certain aspects of the GloBE/DMT computation would still need to be reported on an entity-by-entity basis.

Deloitte Australia's observations

MNE groups conducting their operations in Australia through a single TCG may—in a non- or post-transitional safe harbor scenario—use the section 3-200 election in combination with the ARE to streamline computations and reporting. For entities joining and leaving the TCG throughout the year, or (limited) operations conducted outside this TCG, layering the TSRE on top of these elections could be possible in a DMT nil amount scenario. Although all of these elections are intended as simplifications, the sheer number of elections in combination with the interaction with, for example, the determination, could mean a rather complex assessment of the international group structure is required when mapping eligibility.

Updated ATO web guidance: When and how the Pillar Two rules apply

Joint arrangements

The web guidance already contained a broad explanation of certain categories of group entities that could be seen as "more complex," such as the GloBE permanent establishment, dual located entities, and flow-through entities. This has been expanded to also include so-called "joint arrangements," an accounting concept in which two or more parties have joint control.

The Australian Pillar Two Act contains a broad entity concept, a definition that is met through:

i. A legal personality; or

ii. Having an arrangement that is required to prepare separate financial accounts (with partnerships and trusts mentioned as examples).

The web guidance specifically mentions that joint arrangements that are both unincorporated and not required to produce any separate financial accounts would not constitute an entity from an Australian Pillar Two perspective. Furthermore, the web guidance clarifies that—after it has been determined whether a joint arrangement would constitute an entity—a subsequent classification (e.g., into CE or GloBE JV) of the class of group entity would be required to determine its Pillar Two profile.

Deloitte Australia's observations

The OECD model rules contain a slightly different definition of entity, as an arrangement that "prepares" separate financial accounts (instead of "would be required to prepare") would already satisfy the entity definition. The ATO web guidance does not address this point. As a result, non-Australian headquartered MNE groups with unincorporated joint arrangements in Australia may be confronted by a mismatch in terms of determining whether the unincorporated joint arrangement constitutes an entity under (OECD model rules-based) domestic Pillar Two rules in the UPE jurisdiction versus a similar assessment under the Australian Pillar Two rules for Australian DMT purposes.

GloBE JVs

A second category of entity type on which web guidance has been released is that of the GloBE JV. JV groups are commonly perceived as a complex area of the Pillar Two rules. The majority of the web guidance is replication of how a GloBE JV is defined (i.e., at least 50% of the ownership interest in the entity is held by the UPE and the consolidated financial statements of the UPE record the entity as an equity accounted investment), how a JV subsidiary is defined (i.e., an entity that is (or would have been) consolidated on a line-by-line basis in the consolidated financial statements of the JV), and how the majority of Pillar Two rules should apply separately to a JV group (and not blended with other members of the MNE group). Specific GloBE JV exclusions that have been legislated through the JV definition in the Australian Pillar Two rules are also mentioned.

Deloitte Australia's observations

The ATO web guidance confirms that the part 7-1 rules, about reducing GloBE income by amounts that are attributable to directly taxable owners or excluded entities, apply to flow through GloBE JVs. This is important guidance for equity accounted funds and trusts that can find themselves within scope of the Pillar Two regime depending on their investor profile.

Updated ATO web guidance: Lodging, paying, and other obligations under Pillar Two

Nomination of a DLE

The web guidance now also contains a section around the nomination of a DLE, which then lodges the GIR or the Australian FLN on behalf of Australian group entities, and can also lodge the Australian IIR/UTPR tax return and Australian DMT tax return on behalf of the Australian group entities (i.e., the CGDMTR). No specific form and/or registration is required for nomination, rather, the nomination is done directly within the relevant section of the GIR and the CGDMTR.

One of the examples includes an Australian headquartered MNE group of which the UPE is also the head of an Australian TCG for income tax purposes, of which Australian entities that are members of the TCG are by default discharged of their Australian IIR/UTPR tax return and Australian DMT tax return obligations under the determination. Any Australian entities that are not members of such TCGs can still use the DLE appointment (through appointing the UPE) to streamline lodgement.

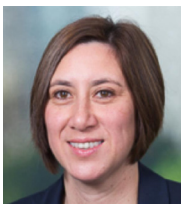
Obligations and liabilities for specific entity types

Additional web guidance on both GloBE JVs as well as joint operations is provided, largely summarising the additional compliance exemption set out in the legislative instrument. A helpful clarification is provided in the context of GloBE JVs that are 50/50 held by two MNE groups, and as such, qualify as GloBE JVs for each of these MNE groups separately. The web guidance states that only one DLE appointment can be made—essentially avoiding "double reporting" of the GloBE JV in the CGDMTR. It should be noted that such double reporting would still occur within the GIR, in which both MNE groups should fully disclose the respective entity details, transitional safe harbor status, and potentially the full GloBE/QDMTT computation.

Deloitte Australia's observations

The ATO web guidance (as well as the determination) expands on compliance obligations for specific entity types. One area in which additional guidance is particularly welcome is that of CEs leaving one MNE group during the fiscal year and joining another MNE group. Such CEs will be included in the GIR of both MNE groups, albeit only for the period that they were part of the respective MNE group. It was not apparently clear whether these CEs have "double" DMT obligations (per MNE group) and requires the lodgement of two forms, or whether this a central filing is sufficient. It should be noted that the released ATO sample forms do not contain any sections that seem to facilitate disclosing more than one UPE/MNE group in a single fiscal year (which may also change as a result of becoming part of another MNE group). The new ATO web guidance titled *Pillar Two—specific issues for consolidation* confirms that separate lodgement obligations arise relating to each of these periods.

Contacts



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