Tax Insights

ATO releases first Pillar Two guidance – take 'reasonable measures' to comply

On 16 July 2025 the Australian Taxation Office (ATO) released draft guidance – Practical Compliance Guideline 2025/D3 regarding Global and domestic minimum tax lodgment obligations – transitional approach – the first administrative guidance released on the new Pillar Two rules that were introduced in Australia in 2024. This guidance has been released to set out the Commissioner's approach to the enforcement of penalties during the transition period, which covers the first 3 years of operative effect of the Pillar Two rules in Australia starting from income years beginning from 1 January 2024. Consultation closes 29 August 2025. Refer to our previous publication for background on the development of the Pillar Two legislation in Australia here.

This guidance comes shortly after the recent G7 announcement regarding the proposed 'side by side' solution under which US parented groups would be exempt from the Income Inclusion Rule and Undertaxed Profits Rule (but not Qualified Domestic Minimum Top-up Taxes) in recognition of the existing US minimum tax rules. The G7 announcement sets out a broad set of principles which will guide the negotiation for the side by side system and, as a result, there is little detail on how the system may work in practice. As of today, the Australian Pillar Two rules remain in force and therefore all groups (including US parented groups) continue to be subject to the Australian legislation and associated guidance.

The guidance is welcome confirmation that the ATO will adhere to the OECD's guidance on transitional penalty relief and provide for a 'soft landing' for taxpayers that are implementing changes in their systems and processes to begin to comply with the complex new rule set of Pillar Two. However, taxpayers that believed this might lead to a blanket penalty concession would be mistaken and this guidance makes it clear that the ATO expects taxpayers, both foreign

headquartered and Australian multinational groups (MNEs), to take 'reasonable measures' to comply and that penalty relief will not be afforded in situations where groups cannot provide sufficient supporting information to explain delays or mistakes made in meeting their Pillar Two obligations. This is a timely reminder of the purpose of the transitional period to allow taxpayers adequate time to update systems and processes to be able to retrieve and collate the necessary data and perform calculations under the Pillar Two rules. A strong governance structure is imperative to supporting these system changes as Pillar Two imposes a challenging and evolving framework of new cross-jurisdictional tax laws.

The guidance also contains some indication of the yet to be released Australian Pillar Two forms and clarifies that the rule for designating a single filing entity on behalf of the Australian group is a 'one in, all in' election.

The Commissioner simultaneously released TR 2006/011/DC1 setting out updates to the private rulings guidance as it relates to Pillar Two matters.

Returns due in Australia

There are four returns requiring lodgment by Australian entities that are in-scope of Pillar Two (including GloBE JVs and JV subsidiaries):

- The GloBE Information Return (GIR) – a standardised OECD form with information about the group that is required to calculate the liability
- The Foreign Notification Form (FNF) – annual notification that notifies the Commissioner if a foreign entity has lodged the GIR on behalf of an Australian entity and the relevant jurisdiction
- The Australian IIR/UTPR return (AIUTR) – basis of assessment of the income inclusion rule (IIR) and undertaxed profits tax (UTPR) top-up tax due
- The Australian DMT tax return (DMTR) – basis of assessment for the Australian domestic minimum tax (DMT).

The FNF, AIUTR and DMTR will be combined into a single filing referred to as the Combined Global and Domestic Minimum Tax Return (CGDMTR), which is due on the last day of the 18th month after the first year end, and thereafter the last day of the month of the 15th month after year end. The guidance confirms that the Commissioner does not have discretion to defer the lodgment date of the GIR.

The guidance also confirms that where a foreign entity lodges the GIR on behalf of an Australian entity – which will most likely be the case for foreign headquartered Australian entities – the GIR must be lodged by the Australian due date in the foreign jurisdiction to discharge the Australian obligations. The GIR may then be exchanged according to a Qualified Competent Authority Agreement, which is currently under development at the OECD level. If a foreign government has not exchanged the GIR in the prescribed timeframe the guidance confirms that the Commissioner will generally seek it from the foreign government agency in the first instance, and only after that would the Commissioner seek to obtain the GIR locally. An Australian entity will have 21 days to produce the GIR upon request in this circumstance.

All in-scope Australian entities have an obligation to file the GIR and CGDMTR, including Pillar Two JVs and JV subsidiaries, including a nil return. However, the entities may nominate a single Designated Local Entity (DLE) to lodge on behalf of all Australian entities in the group. If nominated this must be the same entity for each of the GIR and the CGDMTR and this is described as a 'one-in, all in' rule. There is no reference in the guidance to tax consolidated groups' requirements to file, although it is noted that the legislation allows for the Commissioner to make a determination by legislative instrument specifying circumstances in which group entities are not required to lodge. It should be clarified by the ATO if this is anticipated as this could be especially relevant to groups that have multiple Australian tax consolidated groups or JVs in Australia.

Lastly, it should be noted that the complete GIR must be filed for all in-scope MNE groups but, per OECD guidance on the GIR, each jurisdiction should generally expect to receive only the sections relevant to the entities over which it has a taxing right. Since the latest G7 announcement for a "side-by-side system" with the US rules, it remains unknown if US

headquartered groups will still be required to lodge a full GIR, and what the implications of this might be for other foreign headquartered entities whose parent is located in a non-implementing Pillar Two jurisdiction.

Transitional relief – ATO approach overview

The existing penalty regime will apply to the Pillar Two obligations including:

- Failure to lodge (FTL), which can apply regardless of whether a DLE has been appointed or if the GIR is lodged in a foreign jurisdiction;
- False and misleading statements and taking a position that is not reasonably arguable; and
- Failure to keep records.

The penalties will align with those for Significant Global Entities, being 500 times the base penalty for FTL and double penalties for false and misleading statements of not reasonably arguable positions.

Consistent with the OECD guidance, the Commissioner will provide a 'soft landing' approach during the transition period where he is likely to remit penalties where an entity can demonstrate it has acted in good faith and taken reasonable measures to comply with the new laws. There will not be a blanket concession for groups in the transition period and this guidance makes it clear that the onus is on the Australian in-scope entities to comply.

What constitutes reasonable measures

The guidance describes taking reasonable measures as including, but not being limited to:

- Undertaking steps to prepare lodgment of returns in a timely manner
- Maintaining adequate records of positions being taken
- Proactively engaging with the ATO where delays in lodging are anticipated
- Remedying mistakes or errors in a timely manner, including proactively contacting the ATO when the MNE Group identifies errors which require amendments to the GIR and CGDMTR.

Evidence of these actions will be important and the guidance also sets out some examples that the ATO expects to observe, in the case of both Australian and foreign headquartered MNE groups:

- Internal policy documents
- Documented plan for implementation that includes funding and resourcing needs
- Senior level approval being sought for the implementation plan
- New process documentation
- Gap analysis
- External advice, where required
- Modifications to roles and responsibilities
- Internal control testing plans
- Evidence offshore information has been sought
- Records of positions.

The spotlight on the governance and controls aspects surrounding Pillar Two will not come as a shock to Australian taxpayers that have become accustomed to greater transparency and reporting obligations over the past few years. However, many may not have begun a detailed implementation plan, perhaps expecting that the transitional safe harbours available during the transition period affords time to delay. This guidance should focus the attention of stakeholders that there are a significant number of steps that are necessary to establish a compliant Pillar Two system, particularly regarding the data and filings strategy.

Delays and remission of penalties

The ATO confirms that its existing practice statement regarding lodgment obligations, deferrals and penalties in PS LA 2011/15 applies to the administration of the Minimum Tax. However, this guidance builds on that practice statement and sets out specific considerations for the administration of the Minimum Tax during the transition period.

Failure to lodge penalties

Acknowledging that the Minimum Tax is newly enacted legislation that requires updates to reporting systems, the ATO states that full penalty remission will be granted where taxpayers proactively engage with the ATO and provide evidence that they have taken "reasonable measures" to lodge the GIR and CGDMTR (which is further expanded on in the examples – see below).

On the other hand, the ATO expects to impose penalties where there is a failure to undertake reasonable measures including in cases of avoidance, fraud, evasion, or where there has been a "poor" compliance history. For Significant Global Entities the failure to lodge penalty starts at $165,000.

As a further concession during the transition period, the ATO will also:

- Generally remit all failure to lodge penalties for both lodgement deferrals and suspension of lodgment enforcement actions where the obligations are fulfilled prior to the suspension lapsing; and
- Apply one failure to lodge penalty for an MNE Group in respect of the lodgment of each of the CGDMTR and GIR, respectively (as opposed to imposing a penalty on each entity within the MNE group).

Lodgment deferrals

In relation to requests for lodgment deferrals and suspension of lodgment deferral actions, the ATO does not have the discretion to grant lodgment deferrals of the GIR or FNF, although they may suspend lodgment deferral actions in certain circumstances. Where such a deferral is granted, this does not automatically defer the due date for payment of the relevant liability (which must be requested separately).

With each passing year the ATO expect that they will grant shorter extension periods for lodgment as taxpayers have better systems and knowledge in place.

Examples

The guidance provides six examples setting out some basic case studies of situations where penalties can expect to remitted and those where penalties would not expect to be remitted. Whilst these examples are helpful, taxpayers will observe that there is much grey area between the examples and the spectre of significant penalties should encourage those who have yet to begin their Pillar Two implementation in earnest to start to focus on the compliance that lays ahead.

Example description	Key factors	Outcome
1. First year – no penalty imposed DLE contacts the ATO 30 days prior to lodgment due date to advise that the group's recent IT system upgrade has identified "technical issues" causing delays in lodgment. DLE requests a 51 day lodgment extension, suspension of lodgment enforcement actions, and remission of penalties.	• The purpose of the IT upgrade was to meet the group's Minimum Tax reporting requirements. • Evidence was provided by DLE to the ATO at time of making request for extension. • Lodgment is ultimately made within the 51 day extension time limit.	No penalties in respect of the AIUTR or DMTR since they were lodged within the deferred due date. Penalties for late GIR lodgment remitted in full because it was lodged prior to suspension period lapsing
2. Second year – no penalty imposed DLE from Example 1 is preparing for its second year lodgements due on 31 March 2027. In February 2027 it becomes apparent that there will be a delay in lodgment due to "unforeseen complexity" in obtaining and analysing data to correctly report certain adjustments in the GIR. DLE contacts the ATO on 1 March 2027 to request lodgment deferral of CGDMTR, suspension of lodgment enforcement actions for GIR (both for approximately one month), and remission of penalties.	• Group had "appropriate systems" in place for lodgment. • The unforeseen complexity in obtaining and analysing the data was a new issue, i.e. it did not arise in year 1. • Evidence was provided to the ATO at time of making request for extension demonstrating its reasonable measures to ensure compliance. • Lodgment is made by DLE within the extended time limit granted by the ATO.	Extension of time to lodge by approximately one month is granted. No failure to lodge penalties for AIUTR or DMTR because they were lodged before the deferred due date. The ATO will consider remission of failure to lodge penalties for GIR because DLE contacted the ATO prior to the due date, GIR was lodged before suspension lapsed, and DLE provided evidence to show it had taken reasonable measures to lodge on time and that the delay was due to unforeseen circumstances.
3. Failure to take reasonable measures – penalty imposed UPE does not devote resources to considering whether its group's in-scope entities have Minimum Tax lodgement obligations until "shortly" before the first lodgement date. The DLE requests a 3 month extension to lodge the AIUTR and DMTR and a 3 month suspension of lodgement enforcement action for the GIR.	• DLE cannot explain and demonstrate how the group took reasonable measures to comply with its obligations. • DLE cannot provide any supporting information to explain the basis for the 3 month extension nor the steps it would d be taking during that period.	A 3 month lodgment deferral is "highly unlikely". The delay in considering the Minimum Tax obligations indicates that reasonable measures were not undertaken by the group. Therefore, the ATO may not grant the lodgement deferral or suspension of enforcement action. Failure to lodge penalties may apply.

		The ATO will continue to only apply one failure to lodge penalty in respect of the CGDMTR and one for the GIR (as opposed to failure to lodge penalties for each entity in the group).
4. Delayed lodgement with demonstrated reasonable measures – no failure to lodge penalty Group has lodged its GIR and CGDMTR for its first two years on time. During year 3, the group acquires another MNE group. The integration of the IT systems and tax governance frameworks result in relays in the preparation of the GIR and CGDMTR for year 3. In the month before the due date for lodgment, the DLE contacts the ATO to request a one-month delay in lodgement. The GIR will be lodged overseas in a jurisdiction with which Australia has a Qualifying Competent Authority Agreement.	• The DLE proactively engaged with the ATO prior to the due date • Lodgement of GIR after the time limit was beyond the group's control. • Group had undertaken reasonable measures to prepare GIR on time but the acquisition had caused unforeseen delays. • Group has a compliance history demonstrating it had taken reasonable measures to comply with Minimum Tax obligations. • Group lodged GIR in foreign jurisdiction before suspension lapsed and the CGDMTR by deferred lodgment date.	The ATO will grant request for suspension of lodgment enforcement action for the GIR and a lodgment deferral for the CGDMTR for one month. No failure to lodge penalty is imposed because the CGDMTR is lodged by the deferred due date. The delay in lodging the GIR in the foreign jurisdiction means that all group entities will fail to lodge the GIR with the ATO by the due date. Whilst the ATO does not have the discretion to extend the due date of the GIR, the ATO will not request the group to separately lodge the GIR in Australia and will suspend lodgment enforcement action for one month. Failure to lodge penalty would "likely" be remitted in full.
5. ATO identifies mistakes resulting in a shortfall – no penalty imposed The ATO identifies errors made in a group's GIR and CGDMTR which understate the Australian Minimum Tax liability.	• The group demonstrates to the ATO that it undertook reasonable steps to prepare the GIR and CGDMTR by reviewing OECD and ATO materials to attempt to arrive at the correct interpretation of the rules. • The group also demonstrates that the shortfall is attributable to uncertainty over aspects of the law and the group's position was based on a reasonable interpretation.	No penalties imposed by the ATO, as the conduct of the group meets the ATO's expectations of what a similarly resourced taxpayer would do in the same circumstances.

6. ATO identifies mistakes resulting in a shortfall – penalty imposed The ATO identifies errors made in a group's GIR and CGDMTR which understate the Australian Minimum Tax liability.	• The ATO finds evidence showing a "gross indifference" to the application of the Minimum Tax. For example, the group cannot provide working papers or other objective evidence/authority to support statements made in the GIR and CGDMTR. • The ATO also finds evidence that the amount of tax at risk was such that a reasonable person would have taken appropriate steps to ensure the correct tax treatment was adopted.	Penalties imposed, as the conduct of the group falls short of what the ATO expect a similarly resourced taxpayer would do in the same circumstances.

Tax Ruling 2006/11DC

TR 2006/11DC is a draft consolidation outlining proposed changes to TR 2006/11 *Private Rulings*. The draft has been updated to cover the Minimum Tax rules and is now released for consultation.

The key change is to set out the circumstances where the Commissioner may decline to issue a private ruling in relation to Minimum Tax, including where:

- The OECD Inclusive Framework has published guidance on the matter which the Australian government is planning on incorporating into domestic law but has not yet done so;
- The matter relates to an issue that the Inclusive Framework has identified as requiring guidance, or for which guidance is being drafted; or
- Where the issuing of a ruling would require the Commissioner to consider how other jurisdictions apply their domestic tax law.

Although not specific to the Minimum Tax, the draft consolidation has also been updated to clarify that, where the correctness of a private ruling would depend on assumptions regarding the application of financial accounting standards, the Commissioner may decline to rule.

Next steps

The Pillar Two Rules are a major new taxing right applicable to entities operating in Australia that are part of a multinational group with global turnover of Euro 750m and above and must be closely considered by both Australian and foreign headquartered MNE groups with a presence in Australia. Wholly domestic joint ventures that have at least 50% ownership by an in-scope taxpayer may also be impacted.

As the Rules apply to income years commencing on or after 1 January 2024, Australian taxpayers must ensure they understand their compliance requirements including their financial reporting obligations and assess the impact of the rules in Australia and this draft guidance underscores the need to be amply prepared.

Comments on the draft guidance are due by 29 August 2025.

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