



Charting course for Pillar Two – Navigating the dynamic Safe Harbours

For the vast majority of MNE Groups in scope of Pillar Two, the Safe Harbours released by the OECD are the first point on the horizon. To what extent do these Safe Harbours influence your MNE Group’s Pillar Two course?

Introduction

Given the implementation of local Pillar Two legislation per January 2024 in many jurisdictions, a comprehensive Pillar Two strategy is becoming a necessity to ensure the overall tax, finance, and accounting function is in control. Pillar Two may bring additional tax in case the ETR falls short of the 15% Minimum Rate within a jurisdiction, and will in any case bring additional compliance requirements regardless of the ETR.

Although the first Pillar Two specific tax returns are to be filed as of mid-2026, MNE Groups will already be required to disclose on Pillar Two in their FY23 financial statements and report as of FY24.

Transitioning into Pillar Two

For the first FYs in which MNE Groups transition into this additional layer of taxation and compliance, the rules provide the option to make use of ‘transitional’ Safe Harbours (‘SHs’). These aim to significantly ease the compliance burden with respect to jurisdictions that

have a ‘low-risk profile’ when it comes to under-taxation by allowing the use of alternative simplified calculation methodologies using existing data sources.

The vast majority of MNE Groups in scope of Pillar Two rely largely on the transitional SH revolving around the existing Country-by-Country Reports (‘CbCR’) for their short-term Pillar Two strategy. This renewed role for CbCR, in combination with the OECD’s additional requirements with respect to CbCR for SH application, require MNE Groups to strategically (re)assess their CbCR data, process and quality.

Depending on the MNE Group’s specific profile, other SHs might also prove to be pivotal in their Pillar Two strategy.

Safe Harbours – smooth sailing?

Although mostly meant to simplify calculations, avoid duplicate efforts and ease the overall compliance burden, there are some attention points to keep

in mind when navigating the various transitional and permanent SHs.

Transitional CbCR SH

The transitional CbCR SH combines revenue and PBT data from the CbCR with total tax expenses found in the financial statements to perform certain tests, namely: (i) the de minimis test; (ii) the simplified ETR test; and (iii) the routine profits test. When at least one of these tests is met for a jurisdiction, the Top-up Tax is deemed to be zero. This SH requires annual testing and is applicable for FYs beginning on or before 31 December 2026, but not including a FY that ends after 30 June 2028 (approximately three years). Where a jurisdiction meets none of these tests, the jurisdiction may no longer apply this SH in that year and any other following year(s) (the ‘once-out-always-out’ principle).

‘Qualified’ CbCR and requirements

A first attention point is that the CbCR needs to be ‘qualified’ before it can be used for SH purposes. Key is consistency

in the financial statements underlying the CbCR as well as the treatment of revenue and expense items in the CbCR itself. The rules also prescribe more specific requirements. For instance, purchase price accounting ('PPA') adjustments can only be included in the CbCR if these were also included in the CbCR prior to FY23. Applying (common) post-year end adjustments – such as transfer pricing adjustments – to the financial statements used for the CbCR are in certain circumstances not permitted and will disqualify the CbCR for SH purposes. Furthermore, even if the CbCR is considered 'qualified', the latest OECD guidance prescribes mandatory adjustments in the SH calculation itself for items such as intra-group financing arrangements under certain circumstances. Hence, what seemed to be relatively 'plug-and-play' might require more detailed analysis than initially expected.

“While the CbCR transitional SH is key in most MNE Groups' short-term Pillar Two strategy, its simplified calculations may actually produce unexpected outcomes.”

External influences and predictability

It is also important to stress that – since this SH makes use of simplified calculations – certain adjustments that would have been made under a full GloBE-calculation are not made for these simplified calculations. An example could be a rate change subsequently impacting the reported deferred tax positions. This is an externally driven occurrence which can significantly impact the outcome of the simplified ETR test. Hence, managing larger deferred positions becomes increasingly important under Pillar Two.

Lastly, the in-year testing under the transitional CbCR SH means an MNE Group may only know with certainty if it meets one of the tests for a jurisdiction once the FY has already concluded. The current SH-based analyses which are performed in light of the FY23 financial statement disclosures are generally using historical data, meaning consideration should be given to material one-off items as well as the overall predictability for future years.

Permanent QDMTT SH

The introduction of the Qualified Domestic Minimum Top-up Taxes ('QDMTTs') essentially resulted in the

initially centralized rule design becoming more localized. Considering the QDMTT implementing jurisdictions might require a computation similar to the GloBE-calculation for their resident Constituent Entities, the OECD has introduced a permanent QDMTT SH. The Top-up Tax for a jurisdiction is deemed to be zero for the Constituent Entities located in a jurisdiction which implements a QDMTT that meets the required criteria (qualified QDMTT). This also means no GloBE-calculation will be required in the GloBE Information Return ('GIR') for such a jurisdiction.

Monitoring local QDMTT designs

It will be important for MNE Groups to actively monitor if, when and how local QDMTTs are implemented. Does the local QDMTT qualify for the permanent SH? Are the calculations based on UPE GAAP and/or local GAAP? And does using a different GAAP for this calculation result in a different ETR under the QDMTT? The Netherlands for example prescribes local GAAP (i.e., IFRS or Dutch GAAP) as the required accounting standard. However, if certain requirements are not met, UPE GAAP must be applied as mandatory standard. Hence, active tracking of local developments and requirements is key. What results is an intricate mix of centralized and localized elements to be navigated, both in the technical rules and in the required data and calculations.

Transitional UTPR SH

Another transitional SH can be applied by UPEs located in non-Pillar Two implementing jurisdictions that have a statutory CIT rate of at least 20%. Under this SH, potential Top-up Tax calculated for a UPE jurisdiction under the UTPR is deemed to be zero for FYs that begin on or before 31 December 2025 and end before 31 December 2026. If an MNE Group qualifies for more than one (transitional) SH, it may elect a SH of its choice. However, electing to apply the transitional UTPR SH means losing the benefit of a potential future transitional CbCR SH application as a result of the 'once-out-always-out' principle. Thus, even when the UTPR SH would be available, MNEs may still also want to assess the applicability of the transitional CbCR SH.

Other Permanent SHs

The last category of SHs which have been announced to date are permanent SHs prescribing so-called 'simplified calculations'. In relation to Non-Material

Constituent Entities ('NMCEs'), these SH have already been released in full detail and essentially allow an MNE Group to exclude operating jurisdictions with limited revenue and profit from the GloBE-calculation. For other entities, further details have yet to be released by the OECD around its exact application. It is recommended to closely monitor this category of SHs to see how these might impact the MNE Group's long-term strategy.

Deloitte offerings

Deloitte can help MNE Groups navigate these choppy waters and chart course to Pillar Two readiness. We assist in determining to what extent the SHs can effectively be used and incorporating these into the broader Pillar Two strategy. In a multidisciplinary approach, we provide – amongst others – the following services:

- Technology driven co- and out-sourcing solutions with respect to the CbCR SH analysis and compiling the CbCR itself to ensure MNEs have a robust CbCR process in place.
- Tax technical advisory services ensuring transactions, restructurings, (re)financing and other significant business events are accompanied by fitting Pillar Two analysis in the context of SH application. This analysis might have a different outcome than under a full GloBE-calculation.
- Combined tax technical, tax accounting and audit advisory guidance for MNE Groups' strategy on GAAP usage (and policy choices within GAAPs) in light of expected SH application: this is where commercial reporting objectives, local CIT considerations and the outcome under Pillar Two meet and a balanced approach is required.

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