January '26 OECD Pillar Two guidance package released

On Monday the 5th of January, the OECD / Inclusive Framework has issued a new batch of guidance that impacts the operation of the Global Minimum Tax / Pillar Two. We have listed an overview of initial key items in the below.

The guidance contains four sub-items that update the operations of the rules, by introducing four new Safe Harbours and extending the operation of one other. These changes are the introduction of a 'Side-by-Side Safe Harbour' & 'UPE Safe Harbour', the introduction of a 'Simplified ETR Safe Harbour', an extension of the Transitional CbCR Safe Harbour and the introduction of a 'Substance-based Tax Incentive Safe Harbour'.

- The Side-by-Side Safe Harbour can be elected by groups of which the ultimate parent is subjected to sufficiently equivalent minimum taxation rules in its own jurisdiction on foreign and domestic group profits. A central record is maintained by the OECD / IF which shows that currently (only) the United States of America is eligible for this treatment, and only for reporting years starting on or after January 1st, 2026. Next to the Side-by-Side Safe Harbour, a UPE Safe Harbour is introduced for groups of which the ultimate parent is subjected to adequate taxation in its own state on domestic (but not foreign) group profits. The central record does not yet contain a listing of the jurisdictions that are eligible for this safe harbour. Where the Side-by-Side Safe Harbour turns off the effects of an income inclusion rule (IIR) and an undertaxed profits rule (UTPR), the UPE Safe Harbour only turns off the effects of the UTPR and only with regards to the UPE jurisdiction. Under both safe harbours, local qualified domestic minimum top-up taxes (QDMTTs) remain in place.

- The Simplified ETR Safe Harbour is intended to function as replacement of the Transitional CbCR Safe Harbour. It is envisaged to operate for reporting periods starting on or after December 31st, 2026, although as an exception and under specific circumstances, it may already apply one year earlier. The safe harbour holds somewhere in the middle between the full GloBE calculations and the (lighter) Transitional CbCR Safe Harbour calculation. Although likely helpful in many instances, our initial take is that it trends more towards the former in terms of complexity level, as the new safe harbour contains a considerably large amount of adjustments that are not required under the latter and also introduces complexities of its own. This is also witnessed by the fact that the guidance spans 67 pages (more than 2 / 3rds of the total new guidance).

- The operation of the Transitional CbCR Safe Harbour is extended with one year. This means that the safe harbour can be elected for reporting years ultimately beginning on or before December 31st, 2027 but not including a reporting year that ends after June 30th, 2029.

- A Substance-based Tax Incentive Safe Harbour is introduced which allows to treat a portion of a tax credit as 'good' Pillar Two credit, which may mitigate the negative impact on the ETR that such a credit may hold for commercial reporting purposes and Pillar Two purposes before this guidance was issued. The safe harbour focuses on expenditure and substance-based tax credits, and is also limited by proxy's relating to these (i.e. payroll expenses, depreciation on assets, tangible asset value except for land and non-depreciable assets).

We also note that possibly certain elements of this new guidance might require transposition into the Dutch Pillar Two rules in order to be effective. We will follow up in due course once we've digested the contents of the new guidance further.