Tax Policy Alert

OECD publishes Pillar Two GloBE administrative guidance package

17 January 2025

In brief

What happened?

The OECD on 15 January released additional Pillar Two Administrative Guidance on the Global Anti-Base Erosion (GloBE) Model Rules and several related documents aimed at streamlining the administration of the global minimum tax. This includes guidance on transition rules on deferred tax assets (Article 9.1 Model Rules), a list of countries that have (temporary) 'qualified' Pillar Two rules, an updated GloBE Information Return (GIR) and related Commentary, an updated XML Schema, and a Multilateral Competent Authority Agreement (MCAA) to facilitate central filing and exchange of the GIR.

Why is it relevant?

The guidance aims to clarify the application of the GloBE Model Rules and standardize the collection and dissemination of GIR data by and between implementing jurisdictions. For many businesses, the guidance on Article 9.1 will be the most impactful. Its measures will need to be considered when calculating GloBE effective tax rates (ETR) or determining safe harbours. The 9.1 guidance may also significantly alter the Adjusted Covered Tax input, directly impacting the ETR and the amount of Top-up Tax payable.

Actions to consider

All in-scope groups should consider how this package will impact their GloBE calculations, data management, reporting and payment strategies.

In detail

Administrative Guidance on Article 9.1 of the GloBE Model Rules

The OECD released its fifth batch of substantive Administrative Guidance, covering the transition rules of Article 9.1 of the GloBE Model Rules. The guidance relates to deferred tax assets (DTAs) arising from government arrangements with taxpayers, elections or amendments to prior year tax impacts, and attributes related to the introduction of new corporate income taxes.

To prevent distortions when an MNE group is first subject to the GloBE rules, the Article 9.1 transition rules allow DTAs, including DTAs resulting from prior year losses, to be used in the calculation of the effective tax rate (ETR). MNE groups are to measure deferred tax assets or liabilities using the lower of the minimum rate of 15% or the relevant domestic tax rate and only if they “reflect or disclose” the DTAs in their financial accounts.

The transition rules under Article 9.1.2 and Article 9.1.3 contain exclusions or limitations to the general rules about the use of DTAs in ETR computations. These limitations are designed to prevent outcomes that the Inclusive Framework (IF) has deemed not to be in line with the policy objectives of the rules. These transition rules govern certain events or transactions that occur after 30 November 2021 but before the commencement of the Transition Year (i.e. the first year to which the GloBE Model Rules apply).

The purpose of the Administrative Guidance is to neutralize, in part, identified situations where, after 30 November 2021 but before an Income Inclusion Rule (IIR) or Qualified Domestic Minimum Top-up Tax (QDMTT) comes into effect with respect to the taxpayer, some MNE groups have reflected deferred tax assets in respect of benefits such as certain tax credits or basis step-ups. Some MNE groups in receipt of these benefits have recorded them as DTAs in the financial accounts and may intend to take such amounts into account under the Article 9.1 transition rules. Absent this guidance, the utilization of those DTAs could effectively shelter all or a portion of an MNE group’s future low-taxed income from the GloBE Model Rules.

The guidance reduces the beneficial outcomes associated with utilizing the affected pre-GloBE DTAs by excluding them from the ETR computation. It provides a ‘Grace Period’ in which a portion of the affected deferred tax amount can be included in the total deferred tax adjustment amount when calculating either the GloBE ETR or the Simplified Covered Taxes under the transitional country-by-country reporting safe harbour (such period being either two years or three years, depending on the type of benefit). However, the total deferred tax expense attributable to the reversal of such deferred tax asset in the Grace Period cannot exceed 20% of the amount of the DTA originally recorded (the cap). The grace period does not apply to relevant arrangements that arise after 18 November 2024.

In practice, this will mean that certain deferred tax assets may be of limited benefit from a GloBE perspective as a result of these rules. Indeed, the usage under GloBE is basically limited to two years (i.e. Fiscal Years 2024 and 2025) in most cases and is capped at 20% of the originally recorded deferred tax asset (at the lower of the Minimum Rate of 15% or the applicable domestic tax rate).

Per the guidance, an MNE group will generally be precluded from electing to apply the QDMTT safe harbour in respect of a QDMTT jurisdiction that has provided such benefits but does not exclude those tax attributes from Article 9.1 computations.

Observation: *The guidance notes that the OECD continues to work on additional guidance on the types of ‘related benefits’ provided by jurisdictions that will be treated as refunds of tax and thus reduce a taxpayer's effective tax rate. The guidance also states that a monitoring process that is “designed to facilitate a coordinated and robust approach that protects the integrity of the Model Rules” will be established to coordinate assessments on whether a jurisdiction is providing related benefits, including through non-tax bodies such as investment promotion agencies. The guidance is thus unambiguously clear that the OECD intends to “monitor” any and all forms of potential “related benefits”, including tax credits but also non-tax government grants and also including benefits provided at the subnational level. The determination of whether any such government action is acceptable is based on whether the action is consistent with protecting the “integrity of the Model Rules,” a standard which is both amorphous and subject to varying interpretations over time*.

Observation: *The guidance on Article 9.1 in many instances may lead to an additional tax burden for MNEs compared to the original Model Rules that were the basis for domestic implementation by countries and the EU Pillar Two Directive. The application of the guidance to the simplified adjusted covered tax calculation (for the CbCR safe harbour simplified ETR test) should be considered by taxpayers involved in such government arrangements who have already assessed their CbCR safe harbour positions, should those calculations change.*

It will be important to understand if and how countries will incorporate this guidance in their domestic tax systems. Many constitutions say that taxes can only be levied when they have a basis in the law. Therefore, a mere implementation via administrative practices might not provide for a sufficient basis. From an EU perspective further analysis will be required to assess whether this guidance is fully compatible with the Directive itself and how EU Member States will implement the guidance.

The guidance also states that deferred tax assets from losses arising more than five fiscal years prior to the effective date of a newly enacted corporate income tax must be excluded under Article 9.1.2.

Central Record of Pillar Two legislation with transitional-qualified status

The guidance released on 15 January 2025 includes the so-called "Central Record" of countries' IIR and DMTT legislation with transitional qualified status and an accompanying Q&A document on the transitional qualification mechanism (which relies on a self-certification process). It currently includes the IIRs of 27 jurisdictions and DMTTs of 28 jurisdictions.

Qualifying IIRs		
Australia	France	Luxembourg
Austria	Germany	Netherlands
Belgium	Greece	Norway
Bulgaria	Hungary	Romania
Canada	Ireland	Slovenia
Croatia	Italy	Sweden
Czechia	Japan	Turkey
Denmark	Korea	UK
Finland	Liechtenstein	Vietnam

QDMTTs		
Australia	France	Romania
Austria	Germany	Slovak Republic
Barbados	Greece	Slovenia
Belgium	Hungary	Sweden
Bulgaria	Ireland	Switzerland
Canada	Italy	Turkey
Croatia	Liechtenstein	UK
Czechia	Luxembourg	Vietnam
Denmark	Netherlands	
Finland	Norway	

Once confirmed, the transitional-qualified status is expected to apply from the effective date of the legislation assessed. Transitional-qualification status ends once a full legislative review is completed, which is expected to start no later than two years after the effective date of the legislation. A loss of transitional-qualified status will not be retrospective (e.g., if the full legislative review concludes that the legislation is not qualified).

Observation*: There are over twenty countries with either draft or final legislation that are not included in the Central Record. However, the fact that a country's legislation is not included does not mean that the legislation is* *not qualified; rather it means that, as of 15 January 2025, the process provided for under the transitional qualification mechanism has not yet been initiated or completed for that country's legislation.*

The Central Record also indicates whether a DMTT is a "Conditional DMTT" for 2024, which is defined as a DMTT that only applies to a constituent entity when the MNE Group is subject to the GloBE Model Rules in another jurisdiction for 2024 (note that a Conditional DMTT is not qualified if it is conditional in any other year). Barbados is the only country listed as having this type of defensive measure, which applies where a group's income is subject to an IIR or a UTPR in another jurisdiction.

The OECD plans on updating the Central Record on a regular basis following a country's self-certification and subsequent approval by IF members (on a consensus-minus-one basis).

Observation: *The OECD's global minimum tax rules contain several mechanisms to levy Top-up Tax on the profits of a Low-taxed Constituent Entity. Besides the IIR and the Undertaxed Profits Rule (UTPR), countries have the option to introduce a QDMTT. Recognition of qualified status is important for determining the order in which global minimum tax rules apply. In terms of rule order, QDMTTs apply before qualified IIRs and the UTPR is applied last as the so-called "backstop" rule. The application of a QDMTT (meeting the terms of the QDMTT safe harbour) limits the need for an ultimate or intermediate parent entity from having to apply an IIR, thereby cutting down on the administrative burden.*

Updated GloBE Information Return (GIR)

The GIR sets out a standardized information return meant to facilitate compliance with and administration of the GloBE Model Rules. The GIR was first released by the IF in July 2023. The updated GIR incorporates clarifications on how to complete the GIR and reflects the Administrative Guidance released in December 2023 (e.g., simplified calculation safe harbour for non-material constituent entities) and June 2024 (e.g., tracking DTLs on an aggregate basis). The updated version also includes a new template that could be used to notify jurisdictions that they will receive the GIR through exchange of information (Annex B).

In addition, the OECD released updated administrative guidance on Article 8.1.4 and 8.1.5 of the GloBE Model Rules on how to complete certain sections of the GIR. In particular, the guidance includes an explicit requirement (subject to several exceptions) for MNE groups to complete the GIR based on the GloBE Model Rules and Commentary (rather than the relevant country's legislation) to ensure that "the data points in the GIR are completed based on a single basis" - i.e., a single source of information. If there are differences in the local legislation and the Model Rules, the guidance requires MNE groups to report the impact of those differences in the GIR. In these situations, the guidance notes that some tax administrations may require further information about these specific differences to perform an effective risk assessment or evaluate the correctness of a Top-up Tax liability according to their legislation.

Observation*: Requiring taxpayers to complete the GIR based on the GloBE Model Rules and then report any differences in a local country's legislation adds more complexity to an already challenging compliance task. The guidance rightly notes that some countries will have constitutional/administrative law constraints on accepting data that does not correspond to their domestic legislation (tax sovereignty) and that in such circumstances, countries can collect further information through an additional domestic filing requirement – which, again, will compound compliance burdens.*

Model Competent Authority Agreement (MCAA) and updated GIR XML Schema and User Guide

To help support the central filing and exchange of the GIR, the IF also released a GIR MCAA and related Commentary. The MCAA details the automatic exchange of GIR information (within three months after the filing deadline) based on Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters (Convention). The MCAA is intended to be a “Qualifying Competent Authority Agreement” (QCAA) as defined in the Model Rules and applies to jurisdictions that have implemented a QDMTT, IIR, or UTPR. If all jurisdictions where an MNE group operates have a QCAA with the jurisdiction of the UPE or designated filing entity, central filing would allow the MNE group to file the GIR with one tax administration, which then shares the information with other jurisdictions.

The MCAA includes:

- a declaration for competent authorities to sign to become a signatory of the MCAA;
- a preamble that explains the purpose of the MCCA and addresses confidentiality, data protection, and infrastructure; and
- nine sections detailing provisions such as definitions, information exchange protocols, compliance, enforcement, and confidentiality safeguards.

The IF also released an updated GIR XML Schema and User Guide, which are designed to facilitate the exchanges of GIR information between tax administrations.

Observation*: In the news release, the OECD mentioned that further work will be undertaken on a common approach towards data consistency and quality in the form of “validation rules” to be applied to the GIR information prior to filing and exchange. It’s not clear what new obligations this will bring, but it doesn’t appear likely that this will be a simplification measure.*

Let’s talk

For a deeper discussion of how the Pillar Two global minimum tax rules might affect your business, please contact:

Tax policy leadership

Will Morris, *United States*
+1 (202) 213 2372
william.h.morris@pwc.com

Edwin Visser, *Netherlands*
+31 (0) 88 7923 611
edwin.visser@pwc.com

Tax policy contributors

Phil Greenfield, *United Kingdom*
+44 (0) 7973 414 521
philip.greenfield@pwc.com

Stewart Brant, *United States*
+1 (415) 328 7455
stewart.brant@pwc.com

Chloe Fox, *Ireland*
+353 (0) 87 7211 577
chloe.fox@pwc.com

Pillar Two specialists

Philip Ramstetter, *United States*
+1 (513) 254 6201
philip.s.ramstetter@pwc.com

Steven Kohart, *United States*
+1(203) 517 6174
steven.p.kohart@pwc.com