

OECD releases guidance relating to Pillar Two GloBE and Pillar One Amount B

19 June 2024

In brief

What happened?

The OECD/G20 Inclusive Framework on BEPS (IF) [published](#) the fourth set of [Administrative Guidance](#) (the guidance) on the Global Anti-Base Erosion Model Rules ([GloBE rules](#)) of Pillar Two on 17 June 2024, intending to clarify the operation of the GloBE rules. The guidance will be incorporated into the [Commentary](#) to the GloBE rules, which was updated in [April 2024](#) to reflect the previous sets of Administrative Guidance. While elements of the guidance are undoubtedly helpful, in many cases that is vitiated by a corresponding increase in complexity.

Two separate Pillar Two FAQ documents accompanied the guidance - one [general FAQ](#) covering a range of topics, and another focused on the peer review mechanisms for determining the [qualification status](#) of countries' GloBE rules.

Also on 17 June, the OECD released [supplementary guidance on Amount B of Pillar One](#) (the supplementary guidance) that includes definitions of 'qualifying jurisdictions' to apply the operating expense cross-check and data-availability mechanism. The supplementary guidance also includes a list of 'Covered Jurisdictions' (previously referred to as 'Low-Capacity Jurisdictions') within scope of the political commitment on Amount B.

Why is it relevant?

This package of GloBE guidance sheds light on some areas where businesses and tax authorities have previously sought clarification and simplification: deferred tax liability (DTL) recapture, divergences between GloBE and accounting carrying values, allocation of cross-border current taxes, allocation of cross-border deferred taxes, allocation of profits and taxes in structures including flow-through entities, and treatment of securitisation vehicles. Further guidance is promised, however likely not until the end of this year at the earliest. Topics that may be included in future guidance include rules on dispute resolution and a possible extension of the Transitional CbCR Safe Harbor hybrid arbitrage rules to the full version of the GloBE Rules. One or more permanent safe harbours would also be welcome, if not necessarily indicated.

Actions to consider

The guidance reaffirms the need for advance planning around data identification, classification and utilisation for GloBE purposes. It is advisable for businesses to factor in the processes outlined in this guidance in the expectation that jurisdictions will apply these rules both to IIR and domestic minimum top-up taxes. Understanding how the GloBE peer review process will work is helpful, but it seems there is little businesses can do to influence this. Finally, the Amount B clarifications in the supplementary guidance are helpful for the first phase of implementation, but businesses should monitor which countries decide to adopt it and whether their domestic legislation and administrative practices reduce its significance.

In detail

Pillar Two GloBE Administrative Guidance

DTL recapture

Section 1 outlines methods for identifying and tracking categories of DTLs that are subject to recapture under the GloBE rules (if they do not reverse within five fiscal years), and how to apply different methodologies for determining the recapture and/or subsequent reversal of DTLs. The guidance clarifies that in-scope businesses can track DTLs on an 'Aggregate DTL Category' basis combining general ledger or balance sheet accounts, rather than tracking item-by-item or on a single general ledger (GL) account (with the flexibility for certain balances to be tracked individually). The guidance also allows first-in-first-out (FIFO) recognition of assets in such categories where conditions are met.

Observation: The FIFO approach should prove helpful for some businesses, as should the simplification in respect of DTLs that unwind within a five-year period. Businesses should consider the exclusions for Aggregate DTL categories relating to GL accounts that only deliver deferred tax assets (DTAs), common amortisable and non-amortizable intangibles, related-party balances and others.

Divergences between GloBE and accounting carrying values

Section 2 confirms how to determine and adjust DTAs and DTLs for GloBE purposes when the rules result in divergences between GloBE and accounting carrying values of assets and liabilities, and how to treat intragroup transactions accounted for at cost by the acquiring entity. Tracking GloBE DTLs and DTAs will be required in addition to the ongoing tracking of attributes for financial accounting purposes.

Observation: The guidance clarifies how attributes should be determined for certain transactions, business reorganisations and intragroup transfers of assets (including dealing with US GAAP 'common control' rules). It also confirms that the majority of the Model Rules only apply from the Transition Year forward. Unfortunately, the requirement for US GAAP taxpayers (and other cost-basis reporters) to monitor/keep a completely new set of 'GloBE books' and track GloBE basis/hypothetical GAAP recovery period will be a massive compliance burden going forward. Any tax amortisation going forward also will likely cause DTL recapture issues on trademarks, goodwill, etc.

Allocation of cross-border current taxes

Section 3 describes a four-step process for allocating current taxes of a parent entity to its permanent establishments (PEs) when the domestic tax regime permits cross-crediting of taxes. These principles explicitly apply to allocations related to PEs, tax transparent/hybrid entities, CFC taxes (excluding blended CFC taxes), and taxes on distributions.

Observation: The guidance on the allocation of cross-border current taxes notes that further work needs to be done on the interaction with subsequent adjustments and the interaction with post-filing adjustments and tax rate changes of the GloBE rules. The adjustment for expense apportionment also is still unclear, but generally the guidance seems to imply that there will be less tax allocated to foreign branches and for high-taxed branches with solely expense apportionment cost there will not be any allocation.

Allocation of cross-border deferred taxes

Section 4 extends the Substitute Loss Carry-forward DTA rules to hybrid/PEs/reverse hybrid (not just CFC) regimes. It sets out a five-step process for this allocation. Amounts relating to a Blended CFC Tax Regime, such as US GILTI, are not allocable under this rule.

Observation: An MNE Group can make a five-year election with respect to constituent entities located in a jurisdiction to disregard them from this process instead. Further consideration is being given to the effectiveness of the Substitute Loss Carry-forward provisions and the position where a loss in one PE is effectively offset against the results of another PE.

Allocation of profits and taxes in structures including flow-through entities

Section 5 provides guidance on how to allocate profits and taxes between constituent entities in structures including flow-through entities, and how to address potential double counting or non-counting of income or taxes in such structures. The guidance concludes that the status of a flow-through entity as a tax transparent entity or reverse hybrid entity generally should be determined by reference to the tax law of the constituent entity-owner closest to that flow-through entity in the ownership chain that is not itself a flow-through entity (the 'reference entity'). Tax havens generally cannot be viewed as flow-through nor see another entity as flow-through.

Observation: This provides very useful clarification on the definition of 'owner.' The definition of a hybrid entity has also been extended to entities that are not fiscally transparent and located in havens (i.e., zero CIT jurisdictions).

Treatment of securitisation vehicles

Section 6 provides guidance on how to determine whether a securitisation vehicle is a constituent entity for GloBE purposes, and how to apply the GloBE rules to securitisation vehicles that are constituent entities, taking into account the special features of their income, expenses, and taxes.

Observation: The guidance states that jurisdictions adopting QDMTTs are not required to impose Top-up Tax liabilities on securitisation vehicles but may do so. Both approaches still meet the Consistency Standard for the purposes of the QDMTT Safe Harbour.

FAQs on Qualification Status under the GloBE Rules

The FAQ on [rule qualification status](#) explains the main features of a 'Transitional Qualification Mechanism,' whereby countries initially self-certify the qualification status of their legislation (including draft legislation). The transitional mechanism does not, however, give countries carte blanche to certify the status of their rules because the approach enables other IF members to have a say before the OECD publishes a list of countries with qualified rules. The FAQ states that implementing jurisdictions are required to recognise the transitional qualified status of other implementing jurisdictions' legislation and will rely on the outcomes of the process for the application of the rule order. A 'full legislative review' via a peer review mechanism is expected to start within two years after the effective date of the legislation. If, for example, the full legislative review determines that a country's rules are not

qualified, the loss of the transitional qualified status will not be retrospective. Ongoing monitoring will also form part of the peer review process.

Supplementary elements relating to the report on Amount B of Pillar One

Amount B aims to simplify the application of the arm's length principle for basic marketing and distribution activities, with a focus on low-capacity countries. Pending design completion, the IF released a [report](#) on 19 February 2024, allowing jurisdictions to begin implementation by 1 January 2025. The June 2024 supplementary guidance on Amount B first includes a definition and list of countries that are '[Covered Jurisdictions](#)' (formerly referred to as 'Low-Capacity Jurisdictions'). This is important because, under the IF political commitment, jurisdictions ostensibly agreed to respect a transfer pricing outcome determined under Amount B if the adopting jurisdiction is a Covered Jurisdiction. Second, the supplementary guidance defines and includes the list of '[Qualifying Jurisdictions](#)' for which a higher set of cap rates would apply in relation to the 'operating expense cross-check' intended as a guardrail for the result determined using the return on sales (as per Section 5.2 of the Amount B report). Third, the guidance separately provides a third list of jurisdictions that can apply an upward adjustment based on a country's sovereign credit rating to the base pricing matrix due to limited availability of data (as per Section 5.3 of the Amount B report).

These respective definitions and lists of countries are now incorporated into the Amount B guidance in the Annex to Chapter IV of the OECD Transfer Pricing Guidelines. The definitions and lists of countries will be reviewed every five years. According to the OECD press release, further work on the Pillar One package, including Amount B, is ongoing.

Observation: Defining 'qualifying jurisdictions' for purposes of the operating expense cap using World Bank country classifications includes India, Brazil and Colombia, which have voiced reservations to the Amount B report. These countries will benefit from higher operating expense cap rates and potentially higher returns, possibly alleviating concerns with other aspects of the approach (including the need for optional qualitative scoping criteria).

Let's talk

With the second quarter of 2024 almost behind us, Pillar Two is now in effect in 37 jurisdictions. In-scope businesses are required to estimate and disclose Pillar Two impacts for interim and annual reporting periods. PwC has released three regional Pillar Two Guides (for [US MNEs](#), [EMEA MNEs](#), and [Asia-Pacific MNEs](#)) as a practical reference to help companies navigate Pillar Two. For a deeper discussion of how Pillar Two might affect your business, please contact:

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