

# OECD releases additional Pillar Two guidance under BEPS 2.0

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Issue 1

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## In brief

On 15 January 2025, the Organisation for Economic Co-operation and Development (OECD) released additional publications on the global anti-base erosion (GloBE) rules under Pillar Two of Base Erosion and Profit Shifting (BEPS) 2.0. The publications include<sup>1</sup>:

- administrative guidance on:
  - (i) the transition rules regarding the treatment of certain deferred tax assets; and
  - (ii) the list of jurisdictions that have obtained a transitional qualified status for their domestic GloBE legislation (together with an updated question-and-answer (Q&A) document on the qualification mechanism); and
- four documents related to the GloBE information return (GIR):
  - (i) an updated GIR template and accompanying commentary;
  - (ii) administrative guidance on how to complete the GIR;
  - (iii) a multilateral competent authority agreement (MCAA) to facilitate central filing and exchange of the GIR; and
  - (iv) an updated GIR XML schema and user guide.

This news flash provides an overview of these documents.

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## In detail

### Administrative guidance on the transition rules regarding the treatment of deferred tax assets

Article 9.1 of the GloBE model rules sets out how the deferred tax accounting attributes, such as deferred tax assets (DTAs) included in the financial accounts of the constituent entities (CEs), may be utilised in calculating the jurisdictional effective tax rate (ETR) in the transition year (i.e. the first year that a multinational enterprise (MNE) group comes within the scope of the GloBE rules) and subsequent years. Subject to specific exclusions and limitations, when the pre-GloBE DTAs reverse during an accounting period, a deferred tax expense arises, increasing the jurisdictional ETR for that period.

The latest guidance released on 15 January 2025 notes that some governments have provided tax benefits (e.g. tax credits or basis step-ups) to MNE groups before the GloBE rules or the domestic minimum top-up tax (DMTT) came into effect, and the DTAs generated therefrom can effectively shelter all or part of the MNE group's future low-taxed income from the GloBE rules upon reversal.

The guidance notes that the transition rules are not intended for such purposes, and seeks to neutralise part of the deferred tax expenses arising from these benefits using the following mechanism:

- The DTAs (Affected DTAs) arising from the following arrangements (and also deferred tax liabilities (DTLs) for arrangements described in (iii)) will be excluded from the GloBE ETR computation and the simplified ETR computation under the transitional country-by-country reporting safe harbour (TCSH):

- (i) governmental arrangements that (1) were concluded or amended after 30 November 2021 and (2) provide specific tax benefits that do not arise independently of the arrangement;
  - (ii) elections or choices exercised or changed by MNE groups after 30 November 2021 that retroactively change the tax treatment of transactions; or
  - (iii) differences between tax and accounting carrying values due to a new corporate income tax law that was enacted after 30 November 2021 and before the transition year.
- As an exception, part of the deferred tax expenses attributable to the reversal of the Affected DTAs during a ‘grace period’ (as set out in the table below) can be included in the calculation of the GloBE ETR and the simplified ETR under the TCSH. However, the total amount included cannot exceed 20% of the original Affected DTAs (recorded at the lower of the minimum rate of 15% or the applicable domestic tax rate). The grace period will not apply to arrangements that occur after 18 November 2024.

Affected DTAs under:	Grace period
Arrangements described in (i) or (ii) above	Fiscal years: (i) beginning on/after 1 January 2024 and before 1 January 2026; and (ii) ending on/before 30 June 2027
Arrangements described in (iii) above	Fiscal years: (i) beginning on/after 1 January 2025 and before 1 January 2027; and (ii) ending on/before 30 June 2028

- If a qualified DMTT (QDMTT) jurisdiction allows taking into account the deferred tax expenses associated with Affected DTAs generated under the abovementioned arrangements for the full GloBE calculation or the simplified ETR calculation under the TCSH for QDMTT purposes without neutralising the benefits based on the guidance, the MNE groups that have received such benefits will be subject to the switch-off rule. As a result, the MNE groups will be prevented from applying the QDMTT safe harbour in relation to its CEs in that jurisdiction and will be required to switch to the credit method to relieve the double taxation in respect of the QDMTT liability.

**Our observations:** *The guidance on Article 9.1 in many instances may lead to an additional tax burden for MNE groups compared to the original model rules that were the basis for domestic implementation by jurisdictions. In particular, MNE groups that were involved in such governmental arrangements and have already assessed their TCSH positions based on the original rules should carefully assess the implications of the guidance.*

*It will be important to understand if and how jurisdictions will incorporate this guidance in their domestic tax systems. Regarding Hong Kong, the bill seeking to implement the GloBE model rules and the Hong Kong domestic minimum top-up tax (HKMTT) was gazetted on 27 December 2024 and is under scrutiny by the Legislative Council (Bill)<sup>2</sup>. In view of the implications of the guidance, it is expected that Hong Kong will introduce committee stage amendments to the Bill to incorporate the guidance.*

*Nonetheless, the aforementioned new rules are unlikely to impact the full GloBE calculation for Hong Kong, as the Hong Kong Government has not provided the benefits described in arrangements (i) and (ii), and arrangement (iii) is not applicable.*

Additionally, the guidance introduces a separate rule requiring DTAs from losses arising more than five fiscal years prior to the effective date of a newly enacted corporate income tax to be excluded from the GloBE ETR computations.

The guidance also notes that the OECD is developing additional guidance on the following aspects:

- identifying benefits provided by jurisdictions (e.g. tax credits and government grants) that should be treated as tax refunds that reduce an MNE group’s jurisdictional ETR;
- the treatment of benefits offered by a jurisdiction that has implemented a QDMTT; and
- identifying benefits that are related to a jurisdiction’s GloBE or DMTT rules and how they impact the qualified status of the rules. This will be supplemented by an ongoing monitoring process, which will cover benefits provided by any part of the government, including through investment promotion agencies or subnational government authorities.

**Our observations:** *The determination of whether a tax or non-tax benefit provided by a jurisdiction is acceptable is based on whether it is consistent with protecting the integrity of the GloBE rules, a standard which is subject to varying interpretations over time.*

### Domestic GloBE legislation with transitional qualified status

For the purposes of applying the GloBE rules according to the agreed rule order, it is important to determine whether the domestic GloBE legislation implemented in a jurisdiction is qualified. The qualification mechanism is conducted via a peer review process, which includes a full legislative review and ongoing monitoring. However, since it will not be possible to conduct and finalise a full legislative review in the short term for each jurisdiction implementing the GloBE rules in 2024, a simplified transitional mechanism was developed to allow jurisdictions to temporarily self-certify the qualified status of their GloBE legislation<sup>3</sup>.

On 15 January 2025, the OECD released the central record of legislation with transitional qualified status and an updated Q&A document on the qualification mechanism. The central record mainly sets out:

- (i) the jurisdictions whose income inclusion rule (IIR) and/or DMTT rules have obtained a transitional qualified status; and
- (ii) whether the QDMTTs of the jurisdictions are eligible for the QDMTT safe harbour on a transitional basis.

As of 13 January 2025, the central record includes the IIRs of 27 jurisdictions and the DMTTs of 28 jurisdictions. The transitional qualified status is expected to apply from the effective date of the legislation until the completion of the full legislative review (which is expected to start within two years after the effective date of the legislation). If the legislation is considered not qualified under the full legislative review, the loss of the qualified status will not be retrospective.

The central record will be updated regularly and in a timely manner. The OECD notes that the fact that a jurisdiction's legislation is not included in the central record does not mean that the legislation is not qualified; rather it means that the relevant transitional qualification process has not yet been initiated or completed as at the date of publication.

**Our observations:** *Understandably, Hong Kong's legislation is not yet included in the current central record as the Bill was only published in late December 2024 and is still under deliberation with potential amendments. Its inclusion is however expected after the Bill is passed in final form. Meanwhile, there are over 20 other jurisdictions whose draft or final legislation is not yet included in the central record. MNE groups should closely monitor any subsequent updates.*

### Documents related to the GIR

#### Updated GIR template and accompanying commentary

The GIR template and the accompanying commentary were first released in July 2023, setting out a standardised information return meant to facilitate compliance with and administration of the GloBE rules. The updated version released on 15 January 2025 incorporates clarifications on how to complete the GIR and reflects the administrative guidance released in December 2023 (e.g. the simplified calculations safe harbour for non-material constituent entities) and June 2024 (e.g. tracking DTLs on an aggregate basis). The document also includes two new annexes setting out:

- (i) a new template that can be used to notify jurisdictions that they will receive the GIR through exchange of information (i.e. Annex B); and
- (ii) the transitional penalty relief under the GloBE and QDMTT rules (i.e. Annex C).

**Our observations:** *The OECD notes that the use of the notification template in Annex B is a best practice, and jurisdictions are free to collect less information or simplify the notification process as they see fit. In the case of Hong Kong, while the sample notification form is not yet released, it was proposed that each Hong Kong CE will be required to file a top-up tax notification (subject to the designation of one of these CEs to file the notification for the group) within six months after the end of the relevant fiscal year. It remains to be seen whether Hong Kong will fine-tune the notification requirement in light of the latest guidance from the OECD.*

*The transitional penalty relief set out in Annex C is similar to that released by the OECD in December 2022, except that Annex C also applies to jurisdictions that have only implemented a QDMTT and not the GloBE rules (QDMTT-only Jurisdictions). For Hong Kong, the government has indicated that the Inland Revenue Department will set out in its guidance the factors mentioned in the OECD's guidance on transitional penalty relief when considering whether to take penal action against breaches of GloBE or HKMTT rules during the initial transition years.*

## Further administrative guidance on the GIR

The OECD also released administrative guidance on Articles 8.1.4 and 8.1.5 of the GloBE model rules on how to complete the GIR. In particular, the guidance includes an explicit requirement for MNE groups to complete the GIR using a single basis or single source of information, namely the GloBE model rules and commentary. However, this general rule does not apply to an MNE group in respect of a jurisdiction or subgroup if:

- (i) the MNE group is eligible for the QDMTT safe harbour and is not subject to the switch-off rule in respect of the jurisdiction or subgroup; or
- (ii) only one jurisdiction has taxing rights under the GloBE rules in respect of that jurisdiction or subgroup.

Where these exceptions apply, the detailed computations for that jurisdiction or subgroup must be completed based on the domestic legislation of the QDMTT safe harbour jurisdiction or the jurisdiction that has taxing rights.

When multiple jurisdictions have taxing rights, MNE groups are required to identify and separately disclose specific data points calculated according to the relevant local legislation of each jurisdiction with taxing rights, should they differ from the GloBE model rules and commentary. These data points encompass the jurisdictional ETR, total adjusted covered taxes, total top-up tax amounts etc. Additionally, both the jurisdictional computations and the safe harbour information must be reported if there is a discrepancy between the GloBE model rules and the relevant local legislation regarding the applicability of a safe harbour to a jurisdiction.

If jurisdictions require further information about these differences to evaluate the correctness of the reported top-up tax liability, they should send a follow-up information request to the MNE group instead of imposing additional local filing requirements, unless the jurisdictions have constitutional or administrative law constraints on accepting data that do not correspond to their domestic legislation.

**Our observations:** *Requiring MNE groups to complete the GIR based on the GloBE model rules and then report any differences in the local legislation of a jurisdiction adds more complexity to an already challenging compliance task. The compliance burden of MNE groups will be further compounded if they need to entertain information requests from or meet additional local filing requirements in multiple jurisdictions.*

## GIR MCAA

To support the central filing and exchange of the GIR, the OECD also released a GIR MCAA and the related commentary. The MCAA is intended to be a 'qualifying competent authority agreement' (QCAA) as defined in the GloBE model rules and provides for the automatic exchange of GIR information between competent authorities, which should generally be conducted within six months (for the first reporting year) and three months (for subsequent reporting years) after the GIR filing deadline. If all jurisdictions where an MNE group operates have a QCAA with the jurisdiction of the ultimate parent entity (UPE) or designated filing entity (DFE), central filing will allow the MNE group to file the GIR with one tax administration (i.e. GIR filing jurisdiction), which will then share 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 MCAA and addresses confidentiality, data protection and infrastructure; and
- nine sections detailing provisions such as definitions, information exchange protocols, compliance, enforcement and confidentiality safeguards.

The MCAA adopts the dissemination approach. Under this approach, the 'general section' of the GIR, containing general information on the MNE group as a whole, will be provided to:

- (i) jurisdictions that have implemented an IIR and/or an undertaxed profits rule (UTPR) (Implementing Jurisdictions) where the UPE or CEs are located; and
- (ii) QDMTT-only Jurisdictions where:
  - (a) the CEs are located;
  - (b) a joint venture (JV) or a member of a JV group is located (if the QDMTT is imposed on JVs in the jurisdiction); or
  - (c) the QDMTT is imposed on a stateless CE or a stateless JV of the MNE group.

However, the high-level summary of the GloBE information in section 1.4 of the GIR will not be provided to the QDMTT-only Jurisdictions mentioned above.

In contrast, the 'jurisdictional section', which contains information on the detailed application of the GloBE rules and the QDMTT for a jurisdiction, will be provided to jurisdictions that have a taxing right for that particular jurisdiction either under the GloBE rules or a QDMTT. Notwithstanding the foregoing, the Implementing Jurisdiction in which the UPE is located will be provided with all jurisdictional sections. Furthermore, UTPR jurisdictions with a zero UTPR percentage will receive only the portion of the GIR that details the attribution of UTPR top-up tax for that jurisdiction.

The OECD also released an updated GIR XML schema and user guide, which are designed to facilitate the exchange of GIR information between tax administrations.

**Our observations:** *It is expected that Hong Kong will enter into the MCAA, as the Bill proposes that HKCEs will be relieved from filing the GIR information if such information is filed by an MNE group's UPE or DFE in a jurisdiction with a qualified IIR, qualified UTPR or QDMTT, which can exchange GIR information with Hong Kong under a QCAA.*

*The MCAA commentary indicates that jurisdictions can exchange information on a non-reciprocal basis if they are willing to do so. Furthermore, the GIR filing jurisdiction is not required to have implemented the GloBE rules or QDMTT, provided that certain conditions are met (e.g. the jurisdiction must have a legal and operational framework for domestic filing of GIRs).*

*In-scope MNE groups should therefore continue to monitor whether they will be able to centrally file their GIR in their respective UPE or DFE jurisdictions.*

*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 is not clear what new obligations this will bring, but it does not appear likely that this will be a simplification measure.*

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## The takeaway

All in-scope MNE groups should consider how the latest guidance from the OECD will impact their GloBE calculations, data management, reporting and payment strategies. They should also closely monitor any legislative amendments that jurisdictions may introduce into their domestic GloBE legislation to incorporate these changes.

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## Endnotes

1. The publications can be accessed via these links:
  - <https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/administrative-guidance-article-9-1-globe-rules-pillar-two-january-2025.pdf>
  - <https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/administrative-guidance-globe-rules-pillar-two-central-record-legislation-transitional-qualified-status.pdf>
  - <https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/qualified-status-under-the-global-minimum-tax-questions-and-answers.pdf>
  - [https://www.oecd.org/en/publications/2025/01/tax-challenges-arising-from-the-digitalisation-of-the-economy-globe-information-return-january-2025\\_b03274ed.html](https://www.oecd.org/en/publications/2025/01/tax-challenges-arising-from-the-digitalisation-of-the-economy-globe-information-return-january-2025_b03274ed.html)
  - <https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/administrative-guidance-article-8-1-4-article-8-1-5-globe-rules-pillar-two-january-2025.pdf>
  - <https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/multilateral-competent-authority-agreement-exchange-of-globe-information.pdf>
  - [https://www.oecd.org/en/publications/2025/01/globe-information-return-pillar-two-xml-schema\\_3980638f.html](https://www.oecd.org/en/publications/2025/01/globe-information-return-pillar-two-xml-schema_3980638f.html)
2. For a discussion of the Bill, please refer to our previous news flash which can be accessed via this link: <https://www.pwchk.com/en/services/tax/publications/hongkongtax-news-dec2024-21.html>
3. For a discussion of the simplified qualification mechanism, please refer to our previous news flash which can be accessed via this link: <https://www.pwchk.com/en/tax/publications/intl-tax-newsflash-jul2024-2.pdf>

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## Let's talk

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For a deeper discussion of how this impacts your business, please contact:

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