



# TaxNewsFlash

Canada

## OECD Offers More Guidance on Pillar Two Tax Rules

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Canadian large multinationals may want to review the Organization for Economic Cooperation and Development's (OECD) new administrative guidance on Pillar Two's "global anti-base erosion" (GloBE) rules. This new release, which was issued on February 2, 2023, provides additional guidance on the categories of Scope (Article 1 of the GloBE model rules), Income & Taxes (largely Articles 3 & 4), Qualified Domestic Minimum Top-up Taxes (Article 10), operation and transitional elements of the GloBE rules, as well as guidance on how to recognize the U.S. global intangible low-taxed income (GILTI) under these rules. The OECD advises that the guidance is intended to help jurisdictions, (including Canada) to implement the GloBE rules in their domestic legislation as part of its two-pillar solution to address the tax challenges from digitalization of the economy.

As worldwide implementation of these rules is intended to be effective as early as 2024, multinational enterprises (MNEs) should prepare for these upcoming changes by continuing to monitor developments and the timing of legislative proposals in different jurisdictions. In addition, affected MNEs should model the potential impacts of these complex changes and assess the potential financial reporting impact.

### Background

Generally, the OECD/G20 Inclusive Framework contemplates tax proposals under two specific "pillars". Pillar One focuses on the allocation of taxing rights, including nexus issues. MNEs with global revenue above €20 billion and profit before tax above 10% of revenue will be covered by the new rules under this Pillar, with 25% of profit above the 10% threshold (i.e., Amount A) to be reallocated to market jurisdictions. Pillar One also outlines a proposed approach to mandatory binding dispute prevention and resolution for Amount A. Pillar One also contemplates simplifying the application of the arm's length

principle to in-country baseline marketing and distribution activities (Amount B), which would have a broader scope and would not be subject to the revenue and profitability thresholds applicable to Amount A.

Pillar Two focuses on ensuring large MNEs pay a minimum rate of tax. As part of this pillar, the OECD/G20 Inclusive Framework released model global minimum tax rules in December 2021. The release of the model rules followed the agreement of over 135 countries, including Canada, on several key aspects of the two-pillar framework, in a statement on October 8, 2021. Under these rules, MNEs with revenue above €750 million will be subject to a minimum 15% tax rate under Pillar Two. Since the release of the GloBE model rules, the OECD has also released additional guidance and launched several public consultations on various aspects of the implementation of the rules.

For details, see *TaxNewsFlash-Canada* 2022-56, "[OECD Asks for More Feedback on Pillar One and Two Specifics](#)", *TaxNewsFlash-Canada* 2022-12, "[OECD Offers Guidance on Global Minimum Tax Rules](#)", *TaxNewsFlash-Canada* 2021-63, "[OECD Releases Model Global Minimum Tax Rules](#)", *TaxNewsFlash-Canada* 2021-48, "[OECD Clarifies Global Minimum Tax Plan for 2023](#)" and *TaxNewsFlash-Canada* 2021-47, "[OECD Moves Forward with 15% Global Minimum Tax for 2023](#)".

### Pillar Two administrative guidance

The OECD advises that this new administrative guidance is intended to facilitate coordinated outcomes and provide greater certainty for businesses. Specifically, this guidance covers:

- The treatment of GILTI under the GloBE rules
- The design of qualified domestic minimum top-up taxes
- The scope, operation and transitional elements of the GloBE rules to help Inclusive Framework members to reflect this guidance in their domestic legislation in a coordinated manner
- Certain technical issues, such as the determination of top-up tax in a jurisdiction in a period where the jurisdiction has no GloBE income, and the treatment of debt forgiveness and certain tax credit equity structures.

The OECD advises that this guidance, along with its other recent publications on Pillar Two, finalizes the implementation framework for the OECD's two-pillar solution.

### Next steps

The OECD says it intends to incorporate this administrative guidance into a revised version of its commentary that will be released later in 2023. The OECD also advises that the Inclusive Framework will continue to release administrative guidance on the GloBE rules,

and expects to finalize the model provision for the subject-to-tax rule and the related multilateral instrument to assist in its implementation.

#### **KPMG observations**

Finance may turn to the OECD's new guidance as it continues work to enact the Pillar Two rules in Canada. Although Finance has not yet released draft legislation to implement the Pillar Two model rules, it launched a public consultation in 2022 on how the model GloBE rules and domestic minimum top-up tax could be implemented in Canada. KPMG in Canada made a submission to Finance as part of this consultation that included a discussion on the potential impact of these rules on the business community, as well as other related technical analysis. Following this consultation, Canada reaffirmed its commitment to enact Pillar Two in Canada (see *TaxNewsFlash-Canada* 2022-48 "[Highlights of the 2022 Federal Fall Economic Update](#)").

Large multinational companies should consider whether they may be affected by the OECD's two-pillar approach. In particular, given the complexity of these rules and the ambitious timeline for implementation, MNEs should monitor developments and use appropriate assessment tools to model impacts and evaluate interdependencies to prevent double taxation or other inadvertent effects. As part of this assessment, MNEs will need to understand the relevant timelines and requirements of the various legislative and parliamentary processes in different jurisdictions and track when domestic laws will come into effect. MNEs should also consider how these new measures may interact with other international tax proposals in Canada such as new anti-hybrid rules and interest deductibility limitations.

For further details, see a report published by KPMG's member firm in the U.S., "[OECD: Administrative guidance for implementation of Pillar Two global minimum tax rules](#)".

#### **We can help**

Your KPMG adviser can help you assess the effect of the OECD's proposals on your business and provide guidance on how this might impact you going forward. For more information, contact your KPMG adviser, or one of the following:

Sharon Szeto  
GTA International Corporate Tax  
T: 416-777-3231  
E: [sszeto@kpmg.ca](mailto:sszeto@kpmg.ca)

Demet Tepe  
National Leader Transfer Pricing  
T: 514-840-5767  
E: [dtepe@kpmg.ca](mailto:dtepe@kpmg.ca)

Brian Ernewein  
National Tax  
T: 416-228-6575  
E: [bernewein@kpmg.ca](mailto:bernewein@kpmg.ca)

[kpmg.ca](http://kpmg.ca)



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