



TaxNewsFlash

Canada

OECD Issues Additional Tax Guidance on Pillar Two Rules

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Large multinationals (MNEs) 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 guidance, which was issued on December 18, 2023, clarifies the application of certain rules, including the transitional country-by-country reporting (CbCR) safe harbour, among others. This guidance is intended to help Canada and other jurisdictions 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. Note that these rules affect not only MNEs headquartered in Canada, but also Canadian entities of foreign-based MNEs.

MNEs should review this guidance as they prepare for upcoming tax obligations and financial statement disclosures under Canada's proposed Pillar Two tax rules, which have not yet been enacted, as well as under the Pillar Two rules in other jurisdictions in which they operate. These rules are intended to ensure that MNEs pay a minimum 15% rate of tax in each jurisdiction where they have operations, effective for fiscal years beginning on or after December 31, 2023. Affected MNEs that are not eligible for the transitional CbCR safe harbour may have to perform detailed calculations to assess potential exposure to additional taxes. KPMG has developed global technology modeling, data gap analysis, and compliance tools to help MNEs efficiently analyze their structures and prepare for the new Pillar Two regime.

Background

Generally, the OECD/G20 Inclusive Framework contemplates tax proposals under two specific "pillars". Pillar Two focuses on ensuring large MNEs pay a minimum rate of tax. As part of this pillar, the OECD/G20 Inclusive Framework released the "global anti-base

erosion” (GloBE) model rules in 2021 that would apply to MNEs with consolidated revenue equal to or greater than €750 million in at least two of the last four years. Since the release of the GloBE model rules, the OECD/G20 Inclusive Framework has also released additional guidance and launched several public consultations on various aspects of the rules and their implementation.

To enact the Pillar Two rules in Canada, Finance released proposed legislation for the new *Global Minimum Tax Act* (GMTA) on August 4, 2023. Canada’s approach to implementing Pillar Two generally aligns with the OECD’s approach and includes an Income Inclusion Rule (IIR) and a domestic top-up tax that are intended to apply to fiscal years of a qualifying MNE group that begin on or after December 31, 2023, which is consistent with most other countries. Although Finance’s draft legislation does not include the Undertaxed Profits Rule (UTPR), there is a placeholder for that rule included in the GMTA. Finance previously noted that the UTPR is intended to apply for fiscal years of MNEs that begin on or after December 31, 2024 (i.e., one year later than the IIR and the domestic top-up tax). Note that, according to the draft legislation, the GMTA should generally be interpreted consistently with the OECD’s GloBE model rules, commentary and related administrative guidance, which the OECD may publish from time to time. Finance requested comments on the draft GMTA by September 29, 2023. Finance has not released subsequent draft legislation for these rules to date.

For further details on Canada’s proposed implementation of Pillar Two, see *TaxNewsFlash-Canada* 2023-31, “[Multinationals — Act Now to Meet Pillar Two Obligations](#)”.

Pillar Two administrative guidance

The OECD’s new guidance largely discusses the application of the transitional CbCR safe harbour, which was introduced in guidance released in December 2022. The safe harbour generally relieves eligible MNE groups from having to both complete a full GloBE computation and pay a top-up tax for jurisdictions. MNEs may qualify for this relief where they are eligible for one of the following safe harbour tests:

- De minimis test
- Simplified effective tax rate (ETR) test
- Routine profits test.

Significantly, the guidance also adopts, and in some respects extends, GloBE rules that address hybrid arbitrage arrangements. The guidance also describes a mechanism for allocating taxes arising in a blended controlled foreign corporation (CFC) tax regime when some of the jurisdictions an MNE operates in are eligible for the safe harbour.

KPMG observations

It is important for MNEs to review this guidance, since affected MNEs that are not eligible for the transitional CbCR safe harbour may have to perform detailed calculations to assess potential exposure to additional taxes. In particular, MNEs will have to take this guidance into account when determining amounts such as revenue, income and covered taxes. In particular, an MNE entity's effective tax rate for GloBE purposes may be significantly affected by the rules relating to hybrid arbitrage arrangements, which may in turn affect the entitlement of all entities in the same jurisdiction to rely on the safe harbour rules.

OECD next steps

The OECD Inclusive Framework also indicated that it will release further administrative guidance on the GloBE rules as required and continue to consider measures to simplify compliance. The OECD notes that it expects to release additional guidance on the deferred tax liability recapture rules and the allocation of deferred taxes relating to cross-border taxes in the first half of 2024.

For further details and preliminary observations on the OECD's new guidance, see reports published by KPMG Global, "[Agreed Administrative Guidance on the GloBE Model Rules \(Pillar Two\)](#)", and KPMG's member firm in the U.S., "[KPMG report: New administrative guidance on Pillar Two](#)".

We can help

Your KPMG adviser can help you assess the effect of the GloBE rules 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:

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