

Global minimum top-up tax under BEPS 2.0

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Are disclosures in 2022 necessary before tax laws are changed?

Highlights

- **New global minimum top-up tax – Imminent changes to tax laws across the globe**
- **Investors want to know how companies will be affected**
- **Focus on qualitative disclosures**
- **Actions for management to take now**

To address concerns about uneven profit distribution and the tax challenges of the digitalisation of the economy, various agreements have been reached globally, including an agreement by over 135 jurisdictions to introduce a global minimum tax rate of 15 percent ('GloBE')¹.

These jurisdictions are expected to use the Organisation for Economic Co-operation and Development's (OECD) draft legislative framework and detailed guidance² to amend their local tax laws.

Once changes to local tax laws are enacted or substantively enacted, companies may be subject to the top-up tax.

In the meantime – i.e. before the local tax laws are amended – is the OECD's detailed guidance sufficient for companies to estimate the potential impact of GloBE? And, if so, should they provide related disclosures in their 2022 interim and annual financial statements?

"Investors may be expecting disclosures about the potential impacts before the changes to tax laws are finalised. Therefore, as well as closely monitoring developments in their local jurisdiction, companies will also need to engage with the users of their financial statements to determine the appropriate level of disclosures."

New global minimum top-up tax

The GloBE rules apply to multinational groups that have consolidated revenues of EUR 750 million or more in at least two out of the last four years. Multinational groups in the scope of the rules will be required to calculate their GloBE effective tax rate for each jurisdiction where they operate. If the blended GloBE effective tax rate for all companies in a specific jurisdiction is below the 15 percent minimum rate, then they will be liable to pay a top-up tax for the difference. In many cases, the group company liable for the top-up tax (e.g. the ultimate parent company) will differ from the group company that triggered it (e.g. a company located in a low-tax jurisdiction or a company benefiting from government subsidies reducing its effective tax rate under 15 percent).

1. GloBE – global anti-base erosion proposal.

2. The OECD released its draft legislative framework in December 2021, followed by detailed guidance in March 2022.

Applying the rules and determining the impact may be challenging for many multinational groups. Further, it may be unclear how the top-up tax will be accounted for under IAS 12 *Income Taxes* and discussions within the accounting profession are ongoing.

Investors want to know how companies will be affected

No countries have finalised changes to their tax laws at the date of this article – i.e. no changes have been enacted or substantively enacted. However, the release of the OECD's detailed guidance has raised questions about whether companies can estimate the potential impacts and whether they need to provide disclosures in their 2022 interim and annual financial statements.

Previously, countries had a degree of flexibility when adopting global tax agreements, but the new global minimum top-up tax under BEPS³ 2.0 may differ. Local tax authorities are expected to implement the rules based on the global guidance.

Investors expect companies to assess the potential impacts before changes to the respective tax laws are finalised. They also want to know how companies will be affected and may expect relevant information in companies' financial statements. Therefore, companies need to consider the disclosure implications now – i.e. before the local tax laws are enacted or substantively enacted.

IFRS[®] Accounting Standards do not require disclosure of possible future changes to tax laws unless they have been announced. However, paragraph 17(c) of IAS 1 *Presentation of Financial Statements* includes overarching requirements to provide additional disclosures when necessary to enable users to understand the impact of particular transactions, other events and conditions on the company's financial position and performance. These overarching requirements apply for both interim and annual financial statements.

Therefore, if companies expect GloBE to affect them and that information is relevant to the users of financial statements, then they should consider providing qualitative disclosures, where possible.

Focus on qualitative disclosures

Governments in different jurisdictions may be at different stages in implementing the new rules. As a result, companies may also be at different stages in their GloBE journey – some may already be modelling their effective tax rates with tax specialists; others may still be exploring the rules. Companies need to consider their specific circumstances and their users' expectations to determine the appropriate level of disclosures.

The quantitative impact may not yet be known or reasonably estimable at present; however, companies may need to provide qualitative disclosures. Qualitative disclosures may include the following information about the group.

- Those operations in low-tax jurisdictions with an effective tax rate lower than 15 percent.
- Those operations in jurisdictions where the government provides support through tax incentives, tax exemptions or additional tax deductions, resulting in an effective tax rate lower than 15 percent.
- Information about expected enactment of tax laws and their effective dates.
- Information about management's assessment of the possible impacts, indicating that they are not yet known or reasonably estimable.

3. BEPS – base erosion and profit shifting.

Actions for management to take now

- Determine whether the group may potentially be subject to the top-up tax.
- Consider whether group companies operate in low-tax jurisdictions or jurisdictions where they benefit from tax incentives, tax exemptions or significant tax deductions that may result in a low effective tax rate.
- Engage with tax specialists now to help with the impact assessments.
- Closely monitor the progress of GloBE rules implementation into relevant jurisdictions' tax laws.
- Engage with users now to determine the appropriate level of disclosures for both the 2022 interim and annual financial statements.

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