

# OECD releases further Pillar Two administrative guidance and updated Pillar One timeline under BEPS 2.0

17 January 2024  
Issue 1

---

## In brief

The OECD/G20 Inclusive Framework on BEPS (IF) released the following documents under Base Erosion and Profit Shifting (BEPS) 2.0 on 18 December 2023:

- (1) the third set of administrative guidance (Guidance) on the global anti-base erosion (GloBE) rules under Pillar Two; and
- (2) an updated timeline for Amount A of Pillar One<sup>1</sup>.

This news flash provides an overview of the above documents and our observations thereon. For a detailed discussion, please refer to the *PwC Global Tax Policy Alert*<sup>2</sup>.

---

## In detail

### The Guidance

The Guidance provides further clarification on the operation of the GloBE rules before they come into effect in some jurisdictions in 2024. Along with the first two sets of administrative guidance published in February and July 2023, the Guidance will be incorporated into a revised version of the GloBE commentary in 2024, thereby replacing the original commentary issued in March 2022. The salient points of the Guidance are set out below.

#### Further guidance on the transitional CbCR safe harbour

The transitional CbCR safe harbour allows multinational enterprise (MNE) groups to use data from their country-by-country reports (CbCRs) to determine their effective tax rates (ETR) for a limited period, subject to certain conditions and tests.

The Guidance provides further clarification on the design and operation of the safe harbour. The key clarifications are summarised below:

- Constituent entities (CEs), stand-alone 'Joint Ventures' (JVs) and JV groups located in the same jurisdiction are treated as being in separate tested jurisdictions<sup>3</sup>. For example, an MNE group with ten CEs, two stand-alone JVs and two JV groups located in the same jurisdiction will have five tested jurisdictions for the purposes of the safe harbour.
- The data used to perform the safe harbour computations for an entity must come from the same qualified financial statements (FS). Furthermore, the data of entities in the same tested jurisdiction must come from the same type of qualified FS, except that data of non-material CEs (NMCEs) and permanent establishments (PEs) can come from any data source specifically permitted in the GloBE

commentary or the administrative guidance<sup>4</sup>. On the other hand, the data of entities in different tested jurisdictions may come from different sources of qualified FS.

- A qualified CbCR is determined on a jurisdiction-by-jurisdiction basis rather than globally, hence failing the ‘qualifying’ criteria for a jurisdiction will not preclude the whole MNE group from applying the safe harbour.
- Qualified FS can include separate FS of a CE if these FS are prepared in accordance with an acceptable financial accounting standard (a white list of acceptable accounting standards) or an authorised financial accounting standard (a set of generally acceptable accounting principles permitted by an authorised accounting body in the jurisdiction where the CE is located). There is no requirement that these FS were prepared for local statutory reporting purposes or any other regulatory reporting purposes.
- Except where an adjustment is explicitly required in the GloBE commentary or the administrative guidance, an MNE group is not allowed to adjust the data drawn from qualified FS when performing the safe harbour computations, regardless of whether such adjustments are intended to make the CbCR data more consistent with the GloBE rules.
- An in-scope MNE group that is not required to file CbCR<sup>5</sup> is still eligible for the safe harbour if it completes the relevant section of the GloBE information return using the data from qualified FS as if the MNE group were required to file a CbCR.
- If qualified FS are not available for a PE, an MNE group may use the separate FS prepared for the PE for financial reporting, regulatory, tax reporting or internal management control purposes.
- Under the simplified ETR test, adjustments to prior-year income tax expenses (i.e. adjustments to bring the amount reported for a prior year's income tax expense in line with the final amount of the expense, sometimes referred to as a ‘return to provision’) should be included in the income tax expense, unless these adjustments relate to uncertain tax positions. Furthermore, the income tax expense in the jurisdiction in which the PE is located (PE jurisdiction) on the PE's income must be allocated exclusively to the PE jurisdiction<sup>6</sup>.
- Under the routine profits test, an MNE group should calculate its substance-based income exclusion (SBIE) amount using the same percentage as that applicable under the GloBE rules, taking into account the transitional rates<sup>7</sup>.
- An anti-avoidance measure is in place for hybrid arbitrage arrangements entered into after 15 December 2022 (i.e. the release date of the original safe harbour guidance). The Guidance defines a ‘hybrid arbitrage arrangement’ as an arrangement that is:
  - (i) a deduction / non-inclusion arrangement;
  - (ii) a duplicate loss arrangement; or
  - (iii) a duplicate tax recognition arrangement.

When performing its safe harbour calculations, a tested jurisdiction must:

- (1) exclude from its profit or loss before tax (PBT) any expense or loss arising from a deduction / non-inclusion arrangement or duplicate loss arrangement; and
- (2) exclude from its income tax expense any amount arising from a duplicate tax recognition arrangement.

The Guidance generally provides that eligibility for the safe harbour should be determined based on the assumption that each party to a hybrid arbitrage arrangement has treated the transaction in the same way. Accordingly, the safe harbour will not be available to the extent that inconsistent treatment of a hybrid arbitrage arrangement would otherwise result in a jurisdiction qualifying for the safe harbour.

If a jurisdiction is unable to apply the above guidance by reference to transactions entered into after 15 December 2022 based on constitutional grounds or other superior law, that jurisdiction can adopt the above guidance as if references to ‘15 December 2022’ were replaced with ‘18 December 2023’.

There is also a statement that further guidance ‘will be provided to address hybrid arbitrage arrangements, including those addressed in this Guidance, that may otherwise affect the application of the GloBE rules outside the context of the transitional CbCR safe harbour.’

**Our observations:** *While there are several welcoming clarifications, the Guidance also introduces new adjustments that MNE groups will need to make in their safe harbour assessments (e.g. the new rules counteracting hybrid arbitrage*

*arrangements). This could be challenging coming so close to year-end for those groups grappling with IAS 12 disclosure. Businesses should carefully consider the impact of this broad anti-arbitrage guidance on the expected CbCR safe harbour outcomes. In addition, as noted above, the anti-arbitrage rules would impact not only new arrangements but also pre-existing arrangements that have been modified since 15 December 2022.*

### **Purchase price accounting (PPA) adjustments in qualified FS**

The Guidance clarifies that CEs may use financial accounts that include the effect of PPA adjustments in the computation of PBT for transitional CbCR safe harbour purposes if certain conditions are met.

### **Application of the GloBE rules**

#### Definition of 'revenue' for purposes of the EUR750 million threshold

The Guidance provides the following clarifications to address the potential issues arising from the different ways of presenting revenue items under different accounting standards:

- Similar to the CbCR revenue threshold, the GloBE revenue threshold is applied based on the annual revenue taken from the MNE group's consolidated profit and loss statement.
- 'Revenue' includes the inflow of economic benefits arising from delivering or producing goods, rendering services, or other ordinary activities of the MNE group. It should be determined in line with the relevant accounting standard, which may allow for netting for discounts, returns and allowances, but in any event before deducting cost of sales and other operating expenses.

For example, a manufacturing company has generated ancillary interest income outside its ordinary activities. The amount is recorded as 'interest income' in the MNE group's consolidated profit and loss statement and is presented below 'cost of goods sold' and 'selling, general and administrative expenses'. In this case, the interest income should not be included in the MNE group's revenue for the purposes of the GloBE revenue threshold.

- 'Revenue' also includes net gains from investments (whether realised or unrealised) and income or gains separately presented as extraordinary or non-recurring items.
- For financial entities, which may not record gross amounts from certain transactions in their FS with respect to certain items, the item(s) considered similar to revenue under the ultimate parent entity's (UPE) financial accounting standards should be used in the context of financial activities.

#### Mismatch between the fiscal years of the UPE and another CE

The fiscal year for GloBE purposes is generally the accounting period used by the UPE in preparing its consolidated FS. If the fiscal year of a CE is different from that of the UPE, the Guidance clarifies that the MNE group should prepare the GloBE computations based on the method used to address the discrepancy when preparing its consolidated FS.

In the following situations, the GloBE computations for the relevant entities must be based on the accounting period that ends during the UPE's fiscal year:

- (1) The CE has a fiscal year different from that of the UPE and is not included in the MNE group's consolidated FS (e.g. based on materiality grounds); or
- (2) The financial accounts of a JV or JV group are maintained on a fiscal year different from that of the UPE.

#### Mismatch between the fiscal year and the tax year of a CE

Where a CE has a fiscal year different from its tax year, the adjusted covered taxes should be determined based on the method used in the consolidated FS (or other applicable FS). A similar approach should be taken in determining the adjusted covered taxes of a JV or JV group that has a tax year different from its fiscal year.

### **Filing and notification obligations**

For the transition year (i.e. the first fiscal year that an MNE group comes within the scope of the GloBE rules), the GloBE rules extend the filing and notification deadline to 18 months (instead of the standard 15 months) after the end of the

reporting fiscal year. The Guidance provides that the due date for filing and notification obligations for any fiscal year shall not be before 30 June 2026. This relief is intended to address situations where the MNE group has a short reporting period in the transition year, which would otherwise accelerate the filing and notification deadline and impose additional burdens on the MNE group and tax administrations.

### **Simplified calculations safe harbour for NMCEs**

The Guidance further clarifies the simplified income, revenue and tax calculations for NMCEs as part of the framework of the simplified calculations safe harbour. The simplified calculations safe harbour allows MNE groups to avoid making certain complex GloBE calculations in situations where the calculation can be simplified without affecting the GloBE outcomes or otherwise undermining the GloBE rules. The simplified calculations safe harbour for NMCEs is an annual election and is made for each NMCE individually.

### **Timeline update for Pillar One**

The OECD also published a brief statement on the same date regarding the Multilateral Convention to Implement Amount A of Pillar One (MLC). The statement notes that 'members of the Inclusive Framework reaffirm their commitment to achieve a consensus-based solution and to finalise the text of the MLC by the end of March 2024, with a view to hold[ing] a signing ceremony by the end of June 2024'. In addition to recognising that work to resolve the outstanding issues on the text of the MLC will go on into 2024, the IF statement mentions that this includes work to extend the standstill on digital services taxes (DSTs) and other relevant similar measures (which was set to expire at the end of 2023).

---

### **The takeaway**

With the GloBE rules taking effect in some jurisdictions from 1 January 2024, the Guidance provides important clarification as regards the interpretation and application of the GloBE rules, as well as new rules related to the eligibility for the transitional CbCR safe harbour, which would assist in-scope MNE groups with the transition into the GloBE rules.

The OECD further indicates that the IF will produce further administrative guidance on an ongoing basis. The next batch is expected to be released in the first half of 2024 and will include guidance on the application of deferred tax liability recapture rules. However, no details were released regarding the peer review mechanism to determine rule qualification status. Affected taxpayers should closely monitor ongoing developments with respect to the administrative guidance to identify items that are relevant to their circumstances.

While there are uncertainties as to whether a global agreement can be reached on Pillar One, companies should continue to monitor the development in this space, in particular the adoption of DSTs by additional jurisdictions.

---

### **Endnotes**

1. The documents can be accessed via these links:  
<https://www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two-december-2023.pdf>  
<https://www.oecd.org/tax/beps/update-pillar-one-timeline-beps-inclusive-framework-december-2023.pdf>
2. The *PwC Global Tax Policy Alert* can be accessed via this link:  
<https://www.pwc.com/gx/en/tax/newsletters/tax-policy-bulletin/assets/pwc-oecd-releases-further-pillar-two-globe-administrative-guidance.pdf>
3. 'Joint Venture' is defined in the model GloBE rules to mean an entity whose financial results are reported under the equity method in the UPE's consolidated FS provided that the UPE holds directly or indirectly at least 50% of its ownership interests.
4. An NMCE is an entity, including its PEs, that is not consolidated on a line-by-line basis in the UPE's consolidated FS solely on size or materiality grounds and is considered a CE in accordance with Article 1.2.2 of the GloBE rules.
5. This is possible, for instance, for a Hong Kong-headquartered MNE group as the threshold for GloBE purposes is currently proposed to be EUR750 million (subject to final legislation), while that for CbCR purposes is HK\$6.8 billion.
6. Under the simplified ETR test, the top-up tax is deemed zero if the simplified ETR (as defined) in the tested jurisdiction is equal to or greater than the transition rate. The transition rate ranges from 15% to 17%, depending on the fiscal year concerned.
7. Under the routine profits test, the top-up tax is deemed zero if the PBT from the CbCR is smaller than or equal to the SBIE calculated according to the GloBE rules. If the MNE group has zero CbCR profit or a CbCR loss before income tax in that jurisdiction, it will always meet this test and it will not be necessary to calculate the jurisdiction's SBIE.

Under Article 5.3 of the model GloBE rules, the net GloBE income shall be reduced by the SBIE to determine the excess profit for purposes of computing the top-up tax in a jurisdiction. The SBIE is the sum of the payroll carve-out and the tangible asset carve-out for each CE (except for investment entities) in that jurisdiction.

---

## Let's talk

---

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

### PwC's Corporate Tax Leaders based in Hong Kong

Charles Lee  
+852 2289 8899  
[charles.lee@cn.pwc.com](mailto:charles.lee@cn.pwc.com)

Jeremy Ngai  
+852 2289 5616  
[jeremy.cm.ngai@hk.pwc.com](mailto:jeremy.cm.ngai@hk.pwc.com)

Jeremy Choi  
+852 2289 3608  
[jeremy.choi@hk.pwc.com](mailto:jeremy.choi@hk.pwc.com)

Rex Ho  
+852 2289 3026  
[rex.ho@hk.pwc.com](mailto:rex.ho@hk.pwc.com)

Cecilia Lee  
+852 2289 5690  
[cecilia.sk.lee@hk.pwc.com](mailto:cecilia.sk.lee@hk.pwc.com)

Jenny Tsao  
+852 2289 3617  
[jenny.np.tsao@hk.pwc.com](mailto:jenny.np.tsao@hk.pwc.com)

Kenneth Wong  
+852 2289 3822  
[kenneth.wong@hk.pwc.com](mailto:kenneth.wong@hk.pwc.com)

### PwC's BEPS 2.0 Pillar Two team based in Hong Kong

Jesse Kavanagh  
+852 2289 1100  
[jesse.kavanagh@hk.pwc.com](mailto:jesse.kavanagh@hk.pwc.com)

Flora Chan  
+852 2289 6903  
[flora.fhl.chan@hk.pwc.com](mailto:flora.fhl.chan@hk.pwc.com)

Ivan Lam  
+852 2289 3057  
[ivan.wm.lam@hk.pwc.com](mailto:ivan.wm.lam@hk.pwc.com)



## One-stop tax information platform of Shui Jie 3.0 version Your exclusive tax think tank



- For Android users, please scan the QR code to access to Tencent App store
- Shui Jie web portal - <https://shuijie.pwconsultantssz.com>

The information contained in this publication is for general guidance on matters of interest only and is not meant to be comprehensive. The application and impact of laws can vary widely based on the specific facts involved. Before taking any action, please ensure that you obtain advice specific to your circumstances from your usual PwC's client service team or your other tax advisers. The materials contained in this publication were assembled on 17 January 2024 and were based on the law enforceable and information available at that time.

This News Flash is issued by **PwC's National Tax Policy Services** in Chinese mainland and Hong Kong, which comprises a team of experienced professionals dedicated to monitoring, studying and analysing the existing and evolving policies in taxation and other business regulations in Chinese mainland, Hong Kong, Singapore and Taiwan. They support PwC's partners and staff in their provision of quality professional services to businesses and maintain thought-leadership by sharing knowledge with the relevant tax and other regulatory authorities, academies, business communities, professionals and other interested parties.

For more information, please contact:

Long Ma  
+86 (10) 6533 3103  
[long.ma@cn.pwc.com](mailto:long.ma@cn.pwc.com)

Charles Chan  
+852 2289 3651  
[charles.c.chan@hk.pwc.com](mailto:charles.c.chan@hk.pwc.com)

Please visit PwC's websites at <http://www.pwccn.com> (China Home) or <http://www.pwchk.com> (Hong Kong Home) for practical insights and professional solutions to current and emerging business issues.

# [www.pwchk.com](http://www.pwchk.com)

© 2024 PricewaterhouseCoopers Ltd. All rights reserved. PwC refers to the Hong Kong member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details.