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QC 76121

Base erosion and profit shifting

How the OECD and Australia address base erosion and profit shifting, a tax avoidance strategy used by multinationals.

Last updated 21 June 2022

What is base erosion and profit shifting

Base erosion and profit shifting (BEPS) refers to the tax planning strategies used by multinational companies to exploit gaps and differences between tax rules of different jurisdictions internationally. This is done to artificially shift profits to low or no-tax jurisdictions where there is little or no economic activity.

The Organisation for Economic Co-operation and Development (OECD) conservatively estimates the annual revenue loss due to BEPS at $100 to $240 billion USD.

Effects of base erosion and profit shifting

BEPS results in tax not being paid in the jurisdiction where economic activity occurs – eroding revenue bases of countries and undermining

the fairness and integrity of their tax systems. Although some schemes are illegal, most aren't.

Businesses that operate across borders may use BEPS strategies to gain a competitive advantage over others that operate at a domestic level. Additionally, when taxpayers see multinational enterprises legally avoiding income tax, it weakens voluntary compliance by all taxpayers.

The OECD BEPS Action Plan

Due to rising government and community concern about BEPS strategies, G20 finance ministers asked the OECD to develop an action plan addressing BEPS issues in a coordinated and comprehensive manner. This resulted in the release of the OECD BEPS 15 Action Plan in mid-2013:

- **Action 1:** Address the tax challenges of the digital economy
- **Action 2:** Neutralise the effects of hybrid mismatch arrangements
- **Action 3:** Strengthen controlled foreign company (CFC) rules
- **Action 4:** Limit base erosion involving interest deductions and other financial payments
- **Action 5:** Counter harmful tax practices more effectively, taking into account transparency and substance
- **Action 6:** Prevent treaty abuse
- **Action 7:** Prevent the artificial avoidance of the permanent establishment status
- **Actions 8–10:** Assure that transfer pricing outcomes are in line with value creation
- **Action 11:** Establish methodologies to collect and analyse data on BEPS and the actions to address it
- **Action 12:** Require taxpayers to disclose their aggressive tax planning arrangements
- **Action 13:** Re-examine transfer pricing documentation
- **Action 14:** Make dispute resolution mechanisms more effective
- **Action 15:** Develop a multilateral instrument to modify bilateral tax treaties

The ensuing work by the OECD G20 Project involving over 60 countries culminated in the October 2015 release of the BEPS final package – 13 reports covering the 15 actions.

Australia's implementation of the BEPS package

Australia is committed to acting to address BEPS risks and has implemented recommendations from BEPS Actions 2, 5, 6, 8–10, 13, 14 and 15.

The legislation to give effect to BEPS Action 2, *Treasury Laws Amendment (Tax Integrity and Other Measures No. 2) Act 2018,* received Royal Assent on 24 August 2018. Schedules 1 and 2 introduced new Division 832 of the ITAA 1997 and the necessary amendments to give effect to the OECD Hybrid Mismatch rules. The rules apply to certain payments after 1 January 2019 and income years commencing on or after 1 January 2019.

Australia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) on 7 June 2017 (BEPS Action 15) and it entered into force on 1 January 2019. It is expected the MLI will modify 35 of Australia's tax treaties to implement integrity provisions to protect those treaties from being exploited and to improve tax treaty related dispute resolutions mechanisms. Australia has also agreed to mandatory arbitration in relation to tax treaty related disputes.

In October 2018, we updated our mutual agreement procedures (MAP) guidance to implement recommendations in BEPS Action 14. Taxation Ruling TR 2000/16 *Income tax: international transfer pricing and profit reallocation adjustments, relief from double taxation and the Mutual Agreement Procedure* was withdrawn.

An updated PCG 2017/2 *Simplified transfer pricing record keeping options* was released on 9 January 2019 which implements BEPS Actions 8–10 transfer pricing simplification recommendation for low value-adding intragroup services.

We have fully implemented Country-by-Country (CbC) Reporting (BEPS Action 13), including from June 2018, the exchange of CbC reports with partner jurisdictions via the OECD Common Transmission System (CTS).

As part of the MLI, Australia adopted the principal purposes test in Article 7 to prevent treaty abuse and deny treaty benefits in certain circumstances (BEPS Action 6). An updated **PS LA 2020/2** *Administering general anti-abuse rules, such as a principal or main purposes test, included in any of Australia's tax treaties,* released on 1 October 2020, provides guidance on the administrative process of applying a principal or main purposes test in Australia's tax treaties.

Inclusive framework

The OECD established the inclusive framework on BEPS implementation in December 2015. Aims of the inclusive framework include monitoring implementation of BEPS measures, in particular the minimum standard recommendations for Actions 5, 6, 13 and 14. The OECD has undertaken annual reviews of the implementation of the minimum standards.

The inclusive framework will also support the development of toolkits for low-capacity developing countries. Australia is one of over 140 members of the inclusive framework.

More information

Australia's current work on implementing the BEPS package

- Hybrid mismatch rules (BEPS Action 2)
- Automatic exchange of information on cross-border arrangements (BEPS Action 5)
- Country-by-country reporting (BEPS Action 13)
- Mutual agreement procedure (BEPS Action 14)
- Multilateral Instrument (MLI) (BEPS Action 15)

OECD information

- OECD BEPS
- BEPS Actions
- Background Brief: Inclusive Framework on BEPS (PDF, 205KB)

QC 52546

Hybrid mismatch rules

How hybrid mismatch rules work and when they apply.

Last updated 3 July 2024

Why we have hybrid mismatch rules

Australia's hybrid mismatch rules largely follow The Organisation for Economic Cooperation and Development (OECD) hybrid mismatch and branch mismatch rules from Action Item 2 of the OECD Base Erosion and Profit Shifting (BEPS) action plan.

The ATO, in consultation with the Board of Taxation, designed and implemented hybrid mismatch rules to prevent multinational companies from gaining an unfair competitive advantage by avoiding income tax or obtaining double tax benefits through hybrid mismatch arrangements.

Hybrid mismatch arrangements exploit differences in the tax treatment of an entity or instrument under the laws of 2 or more tax jurisdictions. This has an overall negative impact on competition, efficiency, transparency and fairness.

What the rules apply to

The rules apply to payments that give rise to hybrid mismatch outcomes which can be summarised as:

- deduction or non-inclusion mismatches (D/NI) where a payment is deductible in one jurisdiction and non-assessable in the other jurisdiction
- deduction or deduction mismatches (D/D) where the one payment qualifies for a tax deduction in 2 jurisdictions
- imported hybrid mismatches where receipts are sheltered from tax directly or indirectly by hybrid outcomes in a group of entities or a chain of transactions.

These rules operate in Australia to neutralise hybrid mismatches by cancelling deductions or including amounts in assessable income.

The rules also contain a targeted integrity provision that applies to certain deductible interest payments, or payments under a derivative, made to an interposed foreign entity where the rate of foreign income tax on the payment is 10% or less.

Subject to some exceptions, the rules apply to certain payments after 1 January 2019, and to income years commencing on or after 1 January 2019. Limited transitional arrangements – impacting frankable distributions – apply for Additional Tier 1 regulatory capital issued by banks or insurance companies.

In addition, the imported mismatch rules will only apply in respect of 'structured arrangements' for income years commencing on or after 1 January 2019. The complete imported mismatch rule will be delayed to income years starting on or after 1 January 2020. This aligns with the EU introduction of the hybrid mismatch rules.

Who the rules apply to

The rules apply to payments between:

- related parties
- members of a control group
- parties under a structured arrangement.

Unlike the diverted profits tax or multinational anti-avoidance law measures, the hybrid mismatch rules do not have a de minimis or materiality threshold.

Clarifying the operation of hybrid mismatch rules

Australia's hybrid mismatch rules have been updated with a number of technical amendments in order to clarify and improve the rules' operation.

In the 2019–20 Budget on 2 April 2019, the government announced the measure Tax Integrity – clarifying the operation of the hybrid mismatch rules. Subsequently, the government handed down the 2019–20 Mid-Year Economic and Fiscal Outlook (MYEFO) on 16 December 2019 and

announced Tax integrity – improving the operation of the hybrid mismatch rules. These measures announced a number of minor technical amendments to Australia's hybrid mismatch rules to clarify and improve their operation.

On 3 September 2020 the Treasury Laws Amendment (2020 Measures No.2) Act 2020, which fully implemented the above measures and some additional changes, received royal assent.

The amendments:

- clarify the operation of the hybrid mismatch rules for trusts and partnerships
- clarify the circumstances in which an entity is a deducting hybrid
- clarify the operation of the dual inclusion income rule by:
  - deeming certain types of foreign sourced income to be subject to Australian income tax in determining if that income is dual inclusion income
  - removing the need for non-corporate entities to reduce their dual inclusion income where they have a foreign income tax offset
  - clarifying the operation of the dual inclusion income on-payment rule
  - expanding the definition of dual inclusion income group such that, if in a country 2 or more entities share the same multiple liable entities (and those alone), then those entities are members of a dual inclusion income group in that country.
- amend the definition of 'foreign hybrid mismatch rules' so that it refers to a foreign law corresponding to any of Subdivisions 832-C to 832-H of the Income Tax Assessment Act 1997 (ITAA 1997) and clarify the operation of provisions that have regard to the operation of corresponding foreign hybrid mismatch rules
- clarify that, for the purpose of applying the hybrid mismatch rules, foreign income tax does not include foreign municipal or State taxes (except in considering the application of the integrity rule)
- clarify that the hybrid mismatch rules apply to multiple entry consolidated (MEC) groups in the same way as they apply to consolidated groups

- ensure that the integrity rule can apply appropriately to financing arrangements that have been designed to circumvent the operation of the hybrid mismatch rules
- allow franking benefits on franked distributions made on certain Additional Tier 1 (AT1) capital instruments that would otherwise be denied.

For further information on these amendments and their specific administrative treatment, refer to **Franked distributions on AT1 capital instruments**.

Application dates for the amendments

The amendments will apply to income years starting on or after 1 January 2019, except for amendments:

- to the integrity rule (other than the state and municipal taxes changes), which will apply to income years starting on or after 2 April 2019
- to the definition of 'foreign hybrid mismatch rules', which will apply to income years starting on or after 1 January 2020.

Administering amendments to the hybrid mismatch rules

As a number of the changes have retrospective effect, taxpayers will need to either:

- decide to comply with the law (pre-amendments), or
- 'anticipate' the amendments (now enacted law) for the purposes of their income tax return lodgments.

We won't apply our resources to checking whether these self-assessments are correct (in accordance with the law (pre-amendments)), but taxpayers will need to review their lodged returns now that the proposed amendments have been enacted.

Taxpayers should refer to **Administrative treatment of retrospective legislation** for further information and practical guidance on our administrative approach to law change proposals with retrospective effect.

Taxpayers should also refer to **Lodgment and payment obligations and related interest and penalties**, which sets out our administrative approach to lodgment and payment obligations and related charging of interest and penalties where taxpayers may be affected by the introduction of a new tax measure.

For further information about how we administer retrospective changes refer to **Law Administration Practice Statement PS LA 2007/11** to explore its applications and provisions.

Franked distributions on Additional Tier1 capital instruments

Where franked distributions made on AT1 capital instruments give rise to a foreign income tax deduction, the retrospective changes ensure:

- franking benefits on those distributions continue to be allowed (assuming relevant requirements are satisfied, such as the holding period rule, the related payments rule and the dividend washing integrity rule)
- an amount equal to the amount of the foreign income tax deduction is included in the assessable income of the entity that makes the distribution.

We will continue to work with issuers of AT1 instruments to identify when franked distributions give rise to foreign income tax deductions on these capital instruments, to ensure correct application of the new law.

For investors in AT1 capital instruments, your ability to claim franking benefits attached to franked distributions that are paid on these capital instruments, won't be impacted by a foreign income tax deduction that arises for that distribution.

Legislation and supporting material

The hybrid mismatch rules received royal assent on 24 August 2018 (as contained in Schedule 1 and 2 of Treasury Laws Amendment (Tax Integrity and Other Measures No. 2) Act 2018.

The amending legislation clarifying the operation of the hybrid mismatch rules received royal assent on 3 September 2020 (as

contained in Schedule 1 of The Treasury Laws Amendment (2020 Measures No. 2) Act 2020).

Law companion rulings

The following Law Companion Rulings (LCRs) have been released so far:

- On 13 January 2021 we finalised Law Companion Ruling **LCR 2021/1** OECD hybrid mismatch rules – targeted integrity rule. This outlines the ATOs interpretation of the hybrid mismatch targeted integrity rule set out in subdivision 832-J of the Income Tax Assessment Act 1997. The finalised version incorporates feedback received on the 2 previous drafts and addresses changes introduced as part of the amending legislation.
- On 24 July 2019 we finalised Law Companion Ruling **LCR 2019/3** OECD hybrid mismatch rules – concept of structured arrangement. This outlines the ATOs view of the law about the phrases 'structured arrangement' and 'party to the structured arrangement' set out in section 832-210 of the Income Tax Assessment Act 1997.

Taxation determinations

To date, the following Taxation Determinations (TDs) have been released.

On 29 June 2022 we published Taxation Determination **TD 2022/9** Income tax: is section 951A of the US Internal Revenue Code a provision of a law of a foreign country that corresponds to section 456 or 457 of the Income Tax Assessment Act 1936 for the purpose of subsection 832-130(5) of the Income Tax Assessment Act 1997? This TD explains the ATO's view that section 951A of the US Internal Revenue Code, known as the global intangible low-taxed income 'GILTI' regime, doesn't correspond to section 456 or 457 of the Income Tax Assessment Act 1936 (the operative provisions of Australia's controlled foreign companies regime). Rather, section 951A and other related provisions of the US Internal Revenue Code are widely considered to be a US 'minimum tax regime' for which there is no equivalent in Australia.

On 3 July 2024 we published Taxation Determination **TD 2024/4** Income tax: hybrid mismatch rules – application of certain aspects of the 'liable entity' and 'hybrid payer' definitions. This TD explains the ATO's view that hypothetical income or profits within the tax base of a

country can be used to identify a ‘liable entity’ or entities in the country for the purpose of section 832-325, and a ‘non-including country’ for the purpose of subsection 832-320(3) of the ‘hybrid payer’ definition can be a jurisdiction other than the country where the payee of the relevant payment is located or resides.

Practical compliance guidelines

To date, the following Practical Compliance Guidelines (PCGs) have been released.

PCG 2021/5

On 16 December 2021 we finalised Practical Compliance Guideline PCG 2021/5 Imported hybrid mismatch rule - ATO's compliance approach. This contains practical guidance on the ATO's assessment of the relative levels of tax compliance risk associated with hybrid mismatches addressed by Subdivision 832-H of the ITAA 1997 (the imported mismatch rule).

PCG 2019/6

On 24 July 2019 we finalised Practical Compliance Guideline PCG 2019/6 OECD hybrid mismatch rules – concept of structured arrangement. It contains practical guidance for taxpayers when assessing the risk of the newly legislated hybrid mismatch rules applying to their circumstances – in particular with relation to the concept of 'structured arrangement' in section 832-210 of the ITAA 1997.

This PCG should be read in conjunction with LCR 2019/3.

PCG2018/7

On 25 October 2018, we finalised PCG 2018/7 Part IVA of the Income Tax Assessment Act 1936 and restructures of hybrid mismatch arrangements to help clients wishing to eliminate hybrid tax outcomes that would otherwise fall foul of the newly legislated hybrid mismatch rules.

This PCG will help clients manage their compliance risk by outlining straightforward (low risk) restructuring to which we will not seek to apply Part IVA. The PCG also encourages early engagement with us by those taxpayers whose arrangements fall outside the low-risk parameters outlined in the PCG.

Clients potentially affected by the rules and considering restructuring should refer to this PCG to understand our compliance approach.

Payments within United States (US) consolidated groups

All references are to the Income Tax Assessment Act 1997, unless otherwise stated.

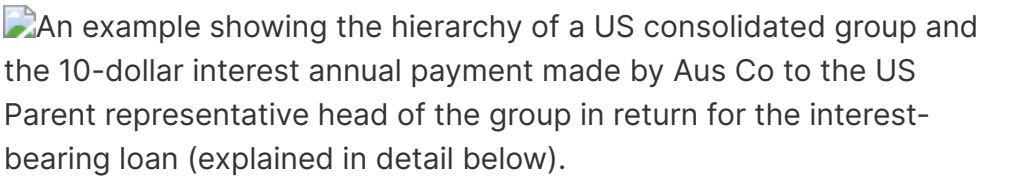
We have been asked whether an intercompany payment between members of a US consolidated group can be regarded as 'subject to foreign income tax' in the US in a foreign tax period under subsection 832-130(1).

To the extent an intercompany payment is included as gross income in the calculation of the recipient member's 'separate taxable income' for US federal income tax purposes for the foreign tax period, the intercompany payment can be regarded as 'subject to foreign income tax' in the US under subsection 832-130(1).

The calculation of the 'separate taxable income' of a member of a US consolidated group for US federal income tax purposes is addressed by the US federal tax regulations, and is subject to certain modifications, including modifications for transactions between members of a US consolidated group.

You must also consider the effect of subsections 832-130(3) and (4) however, in ultimately determining whether an intercompany payment can be regarded as 'subject to foreign income tax' in the US.

The following example illustrates our view.


An example showing the hierarchy of a US consolidated group and the 10-dollar interest annual payment made by Aus Co to the US Parent representative head of the group in return for the interest-bearing loan (explained in detail below).

US Parent, US Sub 1 and US Sub 2 are each US resident corporations that file on a consolidated group basis for US federal income tax purposes. US Parent is the representative head of the group that files the consolidated return as agent for the group members. A 'check-the-box' election has been made to treat Aus Co as a 'disregarded entity' of US Sub 1 for US federal income tax purposes.

US Parent made a $100 interest-bearing loan to Aus Co in Year 1, in return for payment of $10 of interest annually by Aus Co at the end of each year, and repayment of $100 at the end of Year 5. For US federal income tax purposes, US Sub 1 is treated as the borrower in respect of the loan and the related interest expense of Aus Co is treated as an expense of US Sub 1.

If the full $10 of interest income received by US Parent in a foreign tax period is included as gross income in the calculation of US Parent's 'separate taxable income' for the foreign tax period, the full $10 of interest income can be regarded as 'subject to foreign income tax' in the US under subsection 832-130(1).

For example, the full $10 of interest income received by US Parent may be included as gross income in the calculation of US Parent's 'separate taxable income' if no amount of the $10 of interest income is required to be redetermined or adjusted in accordance with any US federal income tax law or regulation.

This outcome is notwithstanding that for US federal income tax purposes:

- US Sub 1 may be entitled to deduct the full $10 of corresponding interest expense in calculating its 'separate taxable income' for the same foreign tax period; and
- US Parent's and US Sub 1's 'separate taxable incomes' are combined in calculating the consolidated taxable income of the US consolidated group for the foreign tax period.

Subject to the operation of subsection 832-130(3), the $10 interest payment won't give rise to a deduction/non-inclusion mismatch under section 832-105. However, the interest payment will instead give rise to a deduction/deduction mismatch under subsection 832-110(1) if US Sub 1 is entitled to deduct all or part of the interest payment in working out its 'separate taxable income'.

When we engage with you, we will likely request copies of relevant parts of the US consolidated tax return and relevant supporting documents as evidence of the extent to which an intercompany payment has been included in a recipient member's 'separate taxable income' in a foreign tax period.

Media releases

- Treasurer's media release – Making sure multinationals pay their fair share: Addressing hybrid loopholes, 7 March 2018
- Treasurer's media release – Turnbull Government clampdown on multinational tax avoidance hits hybrids, 24 November 2017
- Joint media release – A new Tax Avoidance Taskforce, 3 May 2016

Contact us

If you have any questions or would like to contact us, email us at **hybridmismatches@ato.gov.au**.

QC 61035

International Compliance Assurance Programme (ICAP)

The ATO is participating in ICAP launched by the Organisation for Economic Co-operation and Development (OECD).

Last updated 31 August 2021

ICAP is a voluntary risk assessment and assurance programme to facilitate open and co-operative multilateral engagements between multinational enterprise (MNE) groups willing to engage actively and transparently with tax administrations in jurisdictions where they have activities.

By co-ordinating conversations between an MNE group and multiple tax administrations, ICAP supports the effective use of transfer pricing documentation, including the MNE group's country-by-country (CBC) report, as part of a multilateral risk assessment process. Where an area is identified as needing further attention, work conducted in ICAP can improve the efficiency of compliance action taken outside the programme, if needed.

The OECD has noted that the key benefits of ICAP include:

- targeted and consistent interpretation and use of CBC reports
- better use of resources for tax administrations and MNEs
- a co-ordinated and transparent approach to engagement
- faster multilateral tax certainty
- fewer disputes entering into a mutual agreement procedures (MAP).

More information about ICAP, including a handbook for the multilateral risk assessments and a list of the participating tax administrations, can be found on the OECD website.

ICAP complements the ATO's Top 100 risk categorisation approach and Top 1,000 tax performance program, as well as other initiatives, such as our advance pricing arrangement and advice and guidance programs to provide tax certainty to MNEs.

For more information about the ATO's involvement in ICAP email **internationalrelations@ato.gov.au**. Australian multinationals that wish to discuss possible participation in ICAP should contact us via this email address.

QC 55206

MLI Article 4(1) administrative approach

Australia-New Zealand joint administrative approach for non-individual dual residents impacted by MLI Article 4(1).

Last updated 16 November 2022

Australia and New Zealand administrative approach

Australia and New Zealand are signatories to the Multilateral Convention(1) (MLI) and have both deposited their instruments of ratification with the OECD. This reinforces the commitment of Australia

and New Zealand to addressing base erosion and profit shifting (BEPS) risks and ensuring a better functioning international tax system.

In recognition of the Single Economic Market agenda between Australia and New Zealand, which seeks to create a seamless trans-Tasman business environment, and the fact that our respective tax systems and administrations are comparable and both countries are committed to adopting measures to address BEPS risks, this joint approach represents a measured risk-based approach that seeks to provide certainty and minimise compliance costs for taxpayers. It is envisaged that this approach will only be implemented between Australia and New Zealand at this stage.

For taxpayers who satisfy all of the eligibility criteria outlined below for the relevant year, the Australian Taxation Office (ATO) and New Zealand Inland Revenue (IR) jointly determine that:

- Where an eligible taxpayer reasonably self-determines its place of effective management (PoEM) to be located in Australia, it will be deemed to be a resident of Australia for the purposes of the *Convention between Australia and New Zealand for the avoidance of double taxation with respect to taxes on income and fringe benefits and the prevention of fiscal evasion* (Australia-New Zealand treaty).
- Where an eligible taxpayer reasonably self-determines its PoEM to be located in New Zealand, it will be deemed to be a resident of New Zealand for the purposes of the Australia-New Zealand treaty.

This determination is made for the purposes of the Australia-New Zealand treaty as modified by Article 4(1) of the MLI.

Where an eligible taxpayer reasonably self-determines its PoEM to be located in New Zealand and it is deemed to be a resident of New Zealand for the purposes of the Australia-New Zealand treaty, the taxpayer will also be a prescribed dual resident under the definition in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).

This approach is designed to reduce the compliance burden and costs for lower materiality taxpayers as they are able to assess their eligibility based on readily available information. It also allows the ATO and IR to focus compliance resources on arrangements that could have material revenue consequences and/or pose higher risk of non-compliance with the tax laws.

Where the taxpayer is uncertain as to whether they satisfy the eligibility criteria or uncertain as to the self-determination of PoEM, we encourage the taxpayer to engage with either competent authority about their circumstances. If the taxpayer does not meet the eligibility criteria, then an application will need to be **lodged**.

The ATO and IR will monitor the operation of this administrative approach to ensure it remains fit for purpose.

Eligibility criteria

Structure

1. The taxpayer is an ordinary company[(2)] incorporated under either the *Corporations Act 2001* in the case of Australia or the *Companies Act 1993* in the case of New Zealand.
2. The taxpayer has reasonably self-determined its place of effective management to be solely in either Australia or New Zealand for the purposes of the Australia-New Zealand treaty.

Financials

3. The taxpayer's group[(3)] annual accounting income[(4)] is less than AUD $250 million or NZD $260 million based on prepared financial statements for the most recent reporting period[(5)].
4. The taxpayer's gross passive[(6)] income is less than 20% of its total assessable income for the most recent income tax year.
5. The total value of intangible assets[(7)] (other than goodwill) held by the taxpayer is less than 20% of the value of its total assets based on prepared financial statements for the most recent reporting period.

Compliance activities

6. The taxpayer or any member of the group[(8)] is currently **not**, and has **not** been in the last 5 years, subject to any compliance activity[(9)] undertaken by either the ATO or IR which relates to the determination of residency for taxation purposes.
7. The taxpayer or any member of the group[(10)] is currently **not** engaged in an objection[(11)], challenge[(12)], settlement procedure or litigation in either Australia or New Zealand in relation to a dispute

with either the ATO or IR.

Where the taxpayer has only failed criterion 7 (that is, the taxpayer meets all other criteria), we encourage the taxpayer to contact either competent authority to discuss their particular facts and circumstances prior to lodging an application for a competent authority determination.

The administrative approach will only be valid if the taxpayer satisfies all of the following conditions on an on-going basis:

8. Upon being notified by either the ATO or IR of a new compliance activity[(13)], the taxpayer notifies the ATO or IR that it has been eligible for the dual resident administrative approach and the jurisdiction of residence for the purposes of the Australia-New Zealand treaty has been determined under this approach.
9. The taxpayer or any member of the taxpayer group[(14)] has **not** entered into, or carried out:
    - a tax avoidance scheme whose outcome depends, in whole or part, on the location of its residence
    - a tax avoidance scheme affecting the location of its central management and control, including previous or subsequent 'migration' of residency
    - arrangements to conceal ultimate beneficial or economic ownership
    - arrangements involving abuse of board processes (including backdating of documents) or the board not truly executing its functions, or
    - arrangements under which any benefits under the Australia-New Zealand treaty would be potentially denied under the conditions of the Principal Purpose Test in paragraph 1 of MLI Article 7.

Taxpayer obligations

Where there is a material change, the taxpayer is required to re-assess their eligibility and approach either competent authority if the practical administrative approach no longer applies to their circumstances.

Where the taxpayer has assessed their circumstances and eligibility to apply the practical administrative approach, they are still required to meet the general record-keeping requirements under domestic law(15). This includes supporting documentation that must be clearly identifiable for each relevant year for which they have determined their residency for the purposes of the Australia-New Zealand treaty under this approach.

Review of agreement

The ATO and IR will generally not seek to review a taxpayer's self-determined PoEM as long as all material facts and circumstances remain the same. The ATO and IR reserve the right to review the outcome of a taxpayer's self-determined PoEM especially in instances where the ATO or IR is of the opinion that any anti-avoidance rules may apply.

In most circumstances, the tax law puts a time limit on the period in which the ATO or IR can amend a tax assessment. These time limits provide certainty and finality for both the taxpayer and the Commissioner. Generally the period of review of a taxpayer's assessment is 4 years. However, in a case where the ATO or the IR forms an opinion of fraud or evasion, there is no time limit for amending an assessment.

When a review concludes, the outcome will be communicated in writing, generally within 7 days of a decision. If the outcome of the review results in the reversal of a taxpayer's self-determined position the result will be retrospectively applied from the later of:

- the date of the MLI (1 January 2019)
- the date of the change in a taxpayer's circumstances that resulted in the determination ceasing to be correct.

[1] *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*.

2 Ordinary company takes its meaning from plain English that is, an entity that is not a trust, partnership, cooperative, or other like vehicle. For the purposes of assessing this criterion, 'ordinary company' does not include an entity acting in the capacity of a trustee.

3 For the purposes of assessing this criterion, 'group' consists of an ultimate Australian or New Zealand parent together with all the entities (including any

offshore subsidiaries) it is required by the Australian Accounting Standard AASB 10 Consolidated Financial Statements or the New Zealand Accounting Standard equivalent NZ IFRS 10 to include in its consolidated financial statements (or would be required to consolidate if it had been required to prepare consolidated financial statements). If there are 2 or more entry points into Australia that are under the control of the same offshore ultimate parent, for the purposes of assessing this criterion, 'group' includes all relevant Australian top-tier parent entities and their subsidiaries as required by AASB 10 to be included in their respective consolidated financial statements (or would be required to be consolidated if the entities had been required to prepare consolidated financial statements). If there are 2 or more entry points into New Zealand that are under the control of the same offshore ultimate parent, for the purposes of assessing this criterion, 'group' includes all relevant New Zealand top-tier parent entities and their subsidiaries as required by NZ IFRS 10 to be included in their respective consolidated financial statements (or would be required to be consolidated if the entities had been required to prepare consolidated financial statements).

4 Income includes revenue, gains from investment activities and other inflows that go to the determination of the profit or loss in accordance with the Australian Accounting Standard AASB 101 Presentation of Financial Statements or with the New Zealand Accounting Standard equivalent NZ IAS 1. For the avoidance of doubt, if the Australian or New Zealand parent is within a larger global group, criterion 3 refers to the consolidated annual accounting income of the ultimate Australian or New Zealand parent (for multiple entry groups, it will be the sum of the consolidated annual accounting income of the relevant top-tier parent entities (refer to note 3)).

5 If the taxpayer starts or ceases a business part way through a reporting period, a reasonable estimate of what their annual accounting income would have been if the entity had carried on the business for the entire reporting period should be used.

6 For the purposes of assessing this criterion, 'passive income' is any of the following as defined in section 23AB of the Income Tax Rates Act 1986, dividends other than non-portfolio dividends, franking credits on such dividends, non-share dividends, interest income (some exceptions apply), royalties, rent, gains on qualifying securities, net capital gains and income from trusts or partnerships, to the extent it is referable (either directly or indirectly) to an amount that is otherwise base rate entity passive income.

7 'Intangible asset' is as defined under the Australian Accounting Standard AASB 138 Intangible Assets and under the New Zealand Accounting Standard NZ IAS 38 Intangible Assets.

8 Determined under the same definition contained in note 3.

9 This includes any risk review, audit or any other compliance activity carried out by the ATO or IR and notified to the taxpayer.

10 Determined under the same definition contained in note 3.

11 An objection lodged by a taxpayer against an assessment under section 175A of ITAA 1936 is a formal avenue of dispute resolution which attracts appeal rights. This is in contrast to a request for amendment of an assessment under section 170 of the ITAA 1936 to correct a mistake or omission where there is no dispute about the facts or the law.

12 The challenge process in Part 8A of the Tax Administration Act 1994 (TAA) is a formal avenue of dispute resolution which attracts appeal rights. This is in contrast to a request for amendment of an assessment under section 113 of the TAA to correct a mistake or omission where there is no dispute about the facts or law.

13 This includes any risk review, audit or any other compliance activity carried out by the ATO or IR and notified to the taxpayer.

14 Determined under the same definition contained in note 3.

15 Section 262A of the ITAA 1936 or section 22 of the TAA.

QC 59062

Global and domestic minimum tax

The implementation of Pillar Two of the OECD/G20 Two-Pillar Solution for multinational businesses in Australia.

Last updated 22 July 2025

Pillar Two implementation in Australia

Australia has implemented the Global Anti-Base Erosion Model Rules (GloBE Rules) by introducing a global and domestic minimum tax.

The GloBE Rules provide for a coordinated system of taxation intended to ensure multinational enterprise groups (MNE groups) are subject to a global minimum tax rate of 15% in each of the jurisdictions where

they operate. They are a key part of the Organisation for Economic Co-operation and Development (OECD)/G20 Two-Pillar Solution, to address the tax challenges arising from the digitalisation of the economy.

On 10 December 2024, primary legislation that implements the framework of the GloBE Rules in Australia received royal assent. The primary legislation also makes consequential amendments. These amendments include provisions necessary for the administration of top-up tax within the existing tax administration framework, consistent with the GloBE Rules.

On 23 December 2024, subordinate legislation containing the detailed computational rules was registered as a legislative instrument. This means the subordinate legislation is now in force, noting it is subject to the standard parliamentary process for legislative instruments, including a disallowance period.

The global and domestic minimum tax comprises of:

- a global minimum tax which consists of 2 interlocking rules
  - the **Income Inclusion Rule** (IIR) – acts as the primary rule which broadly allows Australia to apply a top-up tax on multinational parent entities located in Australia if the group's effective tax rate in another jurisdiction is below 15%
  - the **Undertaxed Profits Rule** (UTPR) – acts as a backstop rule which allows Australia to apply a top-up tax on constituent entities located in Australia if the group's effective tax rate in another jurisdiction is below 15% and where the profit is not brought into charge under an IIR
- a **domestic minimum tax**, which operates consistently with the GloBE Rules and provides Australia the ability to claim primary rights to impose top-up tax over any low-taxed profits in Australia, in priority over the IIR and UTPR.

The IIR and the domestic minimum tax will apply to fiscal years starting on or after 1 January 2024. The UTPR will apply to fiscal years starting on or after 1 January 2025.

The primary legislation can be found here:

- Taxation (Multinational–Global and Domestic Minimum Tax) Act 2024

- Taxation (Multinational–Global and Domestic Minimum Tax) Imposition Act 2024
- Treasury Laws Amendment (Multinational–Global and Domestic Minimum Tax) (Consequential) Act 2024

The subordinate legislation can be found here:

- Federal Register of Legislation – Taxation (Multinational–Global and Domestic Minimum Tax) Rules 2024

ATO guidance

We are currently considering the need for guidance products to support the new measure, along with whether there is a need to update existing guidance. See **Advice under development – international issues** for more information.

As part of ongoing ATO **consultation**, we have been seeking feedback on guidance that will most usefully support implementation of the new measure. We will continue to seek feedback as Australia's implementation of Pillar Two progresses.

You can also **contact us** if you have any feedback on priority issues for public advice and guidance.

Administering potential amendments

The Australian global and domestic minimum tax must be applied consistently with the GloBE Rules for Australia to achieve qualification status. This requires maintaining consistent outcomes set out in specific OECD materials, including future publications and how and in what timeframe a jurisdiction addresses identified inconsistencies with its law. These OECD materials are the GloBE Model Rules, Commentary, and agreed Administrative Guidance.

An inconsistency may arise when Australia has yet to implement agreed Administrative Guidance or there has been a minor drafting oversight in the Australian law compared to OECD materials. Any potential amendment to Australian law to address inconsistencies remains a policy decision as a matter for the government and future governments.

As explained in the Explanatory Memorandum, the primary legislation includes a rule making power so that future OECD materials

can be incorporated efficiently and in a timely manner. This can apply retrospectively to maintain Australia's qualification.

While any decision regarding amendments is a matter for government, we expect future amendments to address inconsistencies may generally have retrospective application where relevant to maintain qualification.

We will apply our usual practical guidance for the **administrative treatment of retrospective legislation** for taxpayers that anticipate legislative amendments to address these inconsistencies, whether or not there has been a separate formal announcement.

- Taxpayers can self-assess based on the existing law. Where the amendment to address the inconsistency would increase liabilities, taxpayers will need to amend their returns and pay the increased liability if the law is ultimately changed retrospectively.
- We will not advise taxpayers to self-assess by anticipating law change to address inconsistencies. However if taxpayers choose to do so, we will not direct our compliance resources to checking whether self-assessments comply with existing law (pre-amendments), in respect of the anticipated law change. Where taxpayers anticipate a change, they should internally document the inconsistency identified between the Australian law and the OECD materials.

Taxpayers should also refer to our related guidance on **Lodgment and payment obligations and related interest and penalties**, which we will apply in relation to interest and penalties for taxpayers that anticipate legislative amendments to address inconsistencies.

If you identify any inconsistencies between Australian law and the OECD materials, share them with us or Treasury. We may also be able to confirm whether we consider the identified provision is inconsistent with the OECD materials. Contact us to discuss any inconsistencies at **Pillar2Project@ato.gov.au**.

Engaging with us for advice

Contact us about Pillar Two

You can direct questions about our administration or operation of the Australian global and domestic minimum tax to **Pillar2Project@ato.gov.au**.

Private ruling applications

Taxpayers can apply for a private ruling regarding the application of a relevant provision of a tax law relating to the global and domestic minimum tax.

The Commissioner of Taxation may decline to provide a ruling in respect of the global or domestic minimum tax in certain circumstances.

The Explanatory Memorandum to the primary legislation provides some examples of situations where the Commissioner may determine it is unreasonable to provide a private ruling, including where:

- the OECD Inclusive Framework has published new Administrative Guidance which Australia is planning on incorporating into domestic law but has not yet done so
- the OECD Inclusive Framework has identified an issue which requires Administrative Guidance, or is drafting Administrative Guidance on a GloBE or domestic minimum tax issue, and has yet to publish an agreed version of that Administrative Guidance
- issuing a ruling would require assumptions to be made on how other jurisdictions apply their respective domestic rules implementing the GloBE Rules and domestic minimum tax.

We have released for consultation a draft update to Taxation Ruling **TR 2006/11DC** *Private Rulings*.

If you are considering applying for a private ruling, before submitting a private ruling or early engagement application contact us at **Pillar2Project@ato.gov.au**. This will allow us to facilitate preliminary discussions, where we will work with you to identify and clarify the issues and determine the most appropriate form of advice.

OECD guidance materials

OECD guidance materials are intended to promote a consistent and common interpretation of the GloBE Rules to provide certainty for MNE groups and to facilitate coordinated outcomes under the rules.

OECD guidance materials released to date include:

- Model GloBE Rules (20 December 2021)

- Consolidated Commentary to the GloBE Rules (9 May 2025), supplemented by Administrative Guidance that provides further clarification on:
  - The scope of the GloBE Rules, issues relating to the income and taxes calculation, issues related to insurance companies, the transition rules and the design of the Qualified Domestic Minimum Top-up Tax (QDMTT) – Agreed Administrative Guidance (2 February 2023) (PDF, 1.2MB)
  - Currency conversion rules, tax credits, the Substance-based Income Exclusion, the design of QDMTT and the QDMTT and transitional UTPR safe harbours – Agreed Administrative Guidance (17 July 2023) (PDF, 1.1MB)
  - Purchase price accounting adjustments, the Transitional CBC Reporting Safe Harbour, consolidated revenue threshold, mismatches in Fiscal Years, allocation of Blended Controlled Foreign Corporation Tax Regime, transitional filing for short reporting fiscal years, and NMCE simplified calculation safe harbour – Agreed Administrative Guidance (18 December 2023) (PDF, 478KB)
  - The recapture rule applicable to deferred tax liabilities, divergences between GloBE and accounting carrying values, cross-border allocation of current and deferred taxes, allocation of profits and taxes in certain structures involving Flow-through Entities, and the treatment of securitisation vehicles – Agreed Administrative Guidance (17 June 2024) (PDF, 3MB)
  - The qualified status of jurisdictions' legislation – Administrative Guidance, Legislation with Transitional Qualified Status (15 January 2025) (PDF, 500KB)
  - The basis to complete the GIR – Administrative Guidance on Article 8.1.4 and 8.1.5 (15 January 2025) (PDF, 390KB)
  - The treatment of certain deferred tax assets – Administrative Guidance on Article 9.1 (15 January 2024) (PDF, 427KB)
- GloBE Information Return (January 2025 update to version released July 2023)
- Safe Harbours and Penalty Relief (20 December 2022) (PDF, 460KB)

- Illustrative Examples (25 April 2024) (PDF, 2.6MB)

More information

For more information, see:

- International community strikes a ground-breaking tax deal for the digital age
- Global agreement on corporate taxation: addressing the tax challenges arising from the digitalisation of the economy

When and how the Pillar Two rules apply

Work out how the Pillar Two global and domestic minimum tax rules work and when and who they apply to.

Lodging, paying and other obligations for Pillar Two

Pillar Two obligations, including returns, payment and key dates.

Pillar Two interactions with other provisions

Pillar Two interactions with Australia's existing corporate tax system.

QC 102592

When and how the Pillar Two rules apply

Work out how the Pillar Two global and domestic minimum tax rules work and when and who they apply to.

Last updated 16 May 2025

The Australian Pillar Two rules

The Australian global and domestic minimum tax implements the Global Anti-Base Erosion Model Rules (GloBE Rules) through primary and subordinate legislation, referred to together as the Minimum Tax law.

The primary legislation includes the:

- *Taxation (Multinational—Global and Domestic Minimum Tax) Act 2024* (Minimum Tax Act)
- *Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Act 2024* (Minimum Tax Imposition Act)
- *Treasury Laws Amendment (Multinational—Global and Domestic Minimum Tax) (Consequential) Act 2024* (Minimum Tax Consequential Act)

The subordinate legislation includes the:

- *Federal Register of Legislation – Taxation (Multinational–Global and Domestic Minimum Tax) Rules 2024* (Australian Minimum Tax Rules)

The Minimum Tax law is to be interpreted in a manner consistent with specific Organisation for Economic Co-operation and Development (OECD) guidance materials for GloBE. Such materials include the GloBE Model Rules, commentary, and agreed administrative guidance.

When the rules apply

The primary legislation provides that the:

- Income Inclusion Rule (IIR) and the domestic minimum tax apply to fiscal years starting on or after 1 January 2024.
- Undertaxed Profits Rule (UTPR) applies to fiscal years starting on or after 1 January 2025.

Who the rules apply to

The Australian global and domestic minimum tax applies to constituent entities that are members of a multinational enterprise group (MNE group) with annual revenue of 750 million Euros or more in the consolidated financial statements of the ultimate parent entity (UPE).

Broadly, constituent entities are members of an MNE group which are not classified as excluded entities under the Minimum Tax law. An MNE group is a group, in most cases determined under accounting consolidation principles, for which there is at least one entity or permanent establishment that is not located in the jurisdiction of the UPE.

- An entity means any legal person (other than a natural person) or an arrangement that is required to prepare separate financial accounts, such as a partnership or trust.
- The primary legislation defines the term permanent establishment for the purposes of the Australian global and domestic minimum tax (explained further below).

If the MNE group's annual revenue, as shown in the UPEs consolidated financial statements, meets or exceeds the revenue threshold in at least 2 of the 4 fiscal years preceding the test year, then the MNE group is in-scope.

The domestic minimum tax broadly applies to Australian constituent entities in MNE groups to which the global minimum tax applies.

Entities excluded from the rules

Certain entities of an MNE group are excluded from the operation of the Australian global and domestic minimum tax (known as GloBE excluded entities).

Some examples of excluded entities include government entities, international organisations, non-profit organisations, certain service entities and pension funds, as well as UPEs which are either an investment fund or a real estate investment fund.

The definition for GloBE excluded entities in the Minimum Tax law is based on the GloBE Rules. A subsidiary of a GloBE excluded entity is not automatically excluded and should be evaluated in its own respect.

Records must be kept that explain their determination as being an excluded entity.

Consequence of being a GloBE excluded entity

Broadly, if an entity in a MNE group is a GloBE excluded entity then it will:

- not have an obligation to lodge returns for the purposes of the Australian global and domestic minimum tax
- not be liable to top-up tax, since IIR, UTPR and the domestic minimum tax do not apply.

Where an MNE group is composed entirely of GloBE excluded entities, the group is excluded from the operation of the Australian global and domestic minimum tax completely.

Where an MNE group is not wholly comprised of GloBE excluded entities, some obligations may still apply in respect to excluded entities. For example:

- revenue of GloBE excluded entities is included in ascertaining whether the 750 million Euro revenue threshold has been satisfied
- certain disclosures in respect of GloBE excluded entities that are within a MNE group may be required in the GloBE Information Return.

How the rules apply

The Australian global and domestic minimum tax is applied to an entity with an IIR, DMT or UTPR top-up tax amount. Broadly, the top-up tax amount is calculated via the following steps:

1. **Calculate the effective tax rate (ETR) of a jurisdiction:** The net income of each constituent entity located in the jurisdiction is determined, followed by the taxes attributable to the net income (subject to reporting simplifications). The ETR is determined by dividing the total taxes by the total net income. The mechanisms for calculating net income and attributable taxes are located in the Australian Minimum Tax Rules and refers to financial accounting data with GloBE specific adjustments.
2. **Calculate the top-up tax for the jurisdiction:** MNE groups with an ETR in a jurisdiction below 15% are charged top-up tax relating to the jurisdiction. The tax charged is based on the difference between the 15% minimum rate and the ETR in the jurisdiction. While this is

the base case, there are other situations in which top-up tax may arise under the Australian Minimum Tax Rules.

3. **Determine the top-up tax liability for the entity:** The jurisdiction's top-up tax is allocated among the relevant entities, determined by mechanisms located in the Australian Minimum Tax Rules. If the MNE group's ETR in Australia is below 15%, constituent entities located in Australia will be allocated and liable for a domestic top-up tax amount. If the MNE group's ETR in a foreign jurisdiction is below 15%, an IIR or UTPR top-up tax amount may be imposed on constituent entities located in Australia, depending on the MNE group's structure and ordering rules located in the Australian Minimum Tax Rules. In some situations, stateless constituent entities with an ETR below 15% can also be allocated domestic top-up tax amounts.

Further detail can also be found in the OECD's Pillar Two Model Rules Fact Sheets (PDF, 170KB).

Top-up tax can also be applied to an MNE group in respect to joint ventures.

Special rules apply when calculating the top-up tax amounts for certain entities, groups, and arrangements. These rules are intended to cater for different tax regimes and holding structures and can classify entities based on various characteristics, including how they might be treated for tax or accounting purposes.

These special rules can apply to entities, groups and arrangements such as a GloBE permanent establishment, flow-through entity, GloBE JV or GloBE JV subsidiary, GloBE investment entity, minority-owned entity and multi-parented group. They may adjust:

- The jurisdiction the constituent entity is treated as being located in, or whether it is considered stateless.
  - Stateless entities are effectively each treated as being located in a separate fictional jurisdiction for the purposes of calculating top-up tax.
- Whether the ETR is calculated on a standalone basis separate from other constituent entities.
- The income and taxes attributed to a certain jurisdiction.
- Which entity is allocated and liable for the top-up tax.

Multinationals must thoroughly evaluate how their entities are treated in each jurisdiction when determining how the rules apply.

Location

Each constituent entity is treated as being in one jurisdiction only for a fiscal year, including where it changes its location. There are rules in Division 4 of Part 5 of the Minimum Tax Act to determine the location of entities and GloBE permanent establishments.

Where an entity changes its location, it is taken to be located in the jurisdiction in which it was located at the start of the fiscal year.

Most entities will be treated as being located in Australia if considered an **Australian resident for tax purposes**. If not an Australian resident, the location is generally the place of management or place of creation. Specifically, where an entity that is not a flow-through entity, is an Australian resident under section 6 of the *Income Tax Assessment Act 1936*, and is not, for the purposes of a **tax treaty**, deemed a resident solely of a foreign country under the treaty's tie-breaker rules, it is treated as being located in Australia.

Different rules may apply if the entity is considered a GloBE permanent establishment, fiscally transparent, or is dual located.

Dual located entities

If an entity is considered to be located in more than one jurisdiction (that is, dual located), section 10-60 of the Australian Minimum Tax Rules contains its own tie-breaker rules to determine location.

Where a tax treaty between the relevant jurisdictions contains a residency tie-breaker rule, and that rule deems an entity to be resident only of one of the jurisdictions for the purposes of the treaty, the entity will be located in that jurisdiction.

In other cases, the rules deem location broadly based on the amount of taxes paid or tangible fixed assets and payroll expenditure in each jurisdiction, or otherwise where the entity was created if the entity is the UPE.

Dual located parent entities

An override to the tie-breaker rules may apply if the overseas jurisdiction does not apply the IIR and the relevant entity is a parent entity.

Specifically, if an Australian resident parent entity is considered dual located, and section 10-60 of the Australian Minimum Tax Rules deems it as located in a jurisdiction that has not implemented the IIR, section 10-65 deems the parent entity as being located in Australia where Australia is not restricted from taxing the parent entity under the relevant tax treaty.

GloBE permanent establishments

The application of the rules to permanent establishments depends on whether the arrangement meets the definition of a GloBE permanent establishment. This concept is defined differently to how a permanent establishment is defined in other legislation, such as the *Income Tax Assessment Act 1997*.

GloBE permanent establishments are treated as constituent entities and subject to top-up tax. Any liabilities and obligations are placed on the main entity. A main entity:

- is the entity that includes the financial accounting net income or loss of the GloBE permanent establishment in its financial accounts, and
- must be located in a separate jurisdiction.

Section 19 of the Minimum Tax Act defines a GloBE permanent establishment to include the following simplified scenarios:

1. Where an entity has a place of business in a jurisdiction, that constitutes a **permanent establishment** in accordance with an applicable tax treaty, if the income attributable to it is taxed by that jurisdiction in accordance with a provision similar to Article 7 of the OECD Model Tax Convention.
2. Where there is no tax treaty, but the entity has a place of business in a jurisdiction and the income attributable to that place of business is taxed under the local income tax laws on a net basis similar to how its residents are taxed.
3. Where a jurisdiction has no corporate income tax system, but the entity has a place of business in the jurisdiction that would have been treated as a permanent establishment under the OECD Model Tax Convention and had the right to tax in accordance with Article 7 of that Convention.

4. Where scenarios 1–3 do not apply, a place of business through which an entity's operations are conducted outside the jurisdiction in which the entity is located, if the income attributable to it is exempt from taxation in the entity's jurisdiction.

Any top-up tax that would otherwise be allocated to a permanent establishment is imposed on the main entity. The allocation of income and taxes between the main entity and permanent establishment depends on the scenario type of the GloBE permanent establishment. For scenarios 1–3, it follows the attribution of income and expenses under the tax treaty, local tax laws where the permanent establishment is located, or the amounts that would have been attributed in accordance with Article 7 under the OECD Model Tax Convention.

The location of the GloBE permanent establishments falling under scenario 1–3 is where the place of business was determined to be. A GloBE permanent establishment falling under scenario 4 is considered stateless.

Flow-through entities

Broadly, under Chapter 10 of the Australian Minimum Tax Rules, an entity is a flow-through entity to the extent that it is fiscally transparent with respect to its income, expenditure, profit or loss in the jurisdiction the entity was created. A constituent entity is treated as fiscally transparent when the income, expenditure, profit or loss of that entity is treated as if it were derived or incurred by the direct owner in proportion to its ownership interest.

The Australian Minimum Tax Rules also have different classifications of an entity depending on whether it is fiscally transparent in its creation jurisdiction, its owner's jurisdiction or both. Flow-through entities will be a:

- Tax transparent entity if its owners treat it as fiscally transparent.
- Reverse hybrid entity if the owners treat it as opaque.

These classifications impact the allocation of income and taxes between the constituent entity and its owners, noting there are special rules that apply to flow-through entities that are UPEs.

A flow-through entity that is a UPE or required to apply a qualified IIR will be treated as located where it was created. A flow-through entity

that is neither a UPE nor required to apply a qualified IIR will be considered stateless.

GloBE joint ventures

Accounting joint ventures ordinarily are not considered constituent entities as their accounting results are not consolidated on a line-by-line basis in the consolidated financial statements of the UPE.

However, the Australian global and domestic minimum tax may still apply to certain joint ventures, provided it does not fall within an exclusion. The application of the rules to joint ventures depends on whether the arrangement meets the definition in section 26 of the Minimum Tax Act, referred to here as a GloBE JV. This section requires that:

1. the entity's financial results are reported under the equity method in the consolidated financial statements of the UPE of the MNE group for the fiscal year, and
2. the UPE's ownership interest percentage in the entity is at least 50%.

Subsidiaries consolidated for accounting purposes by the GloBE JV on a line-by-line basis may also be in scope and are referred to as GloBE JV subsidiaries.

Broadly, top-up tax for these entities is calculated separately from the MNE group, where the GloBE JV and GloBE JV subsidiaries are treated as constituent entities of a separate deemed group, and the GloBE JV as the UPE. In regard to which entity is allocated and liable for top-up tax:

- IIR and UTPR tax in respect of a GloBE JV or GloBE JV subsidiary is imposed on the MNE group that holds the 50% ownership interest in the GloBE JV.
- Domestic minimum tax is imposed directly on the GloBE JVs and GloBE JV subsidiaries.

Incorporated and unincorporated entities such as companies and partnerships may be considered GloBE JVs or GloBE JV subsidiaries.

Careful consideration of the treatment of the joint arrangement for accounting purposes and whether the arrangement meets definition of GloBE JV is needed to determine the arrangement's obligations under Pillar Two. This is due in part because not all entities that are classified

as joint ventures per the accounting standards will be GloBE JV or GloBE JV subsidiaries and vice versa.

For completeness, entities that are accounting joint operations (which are treated differently to accounting joint ventures under accounting standards) could still be constituent entities of the MNE group. For a joint operation to be a constituent entity, the portion of assets, income, expenses, and liabilities belonging to the joint operator that is a member of the MNE group must be included on a line-by-line basis in the consolidated financial statements of the UPE. In such cases, the top-up tax calculations in respect of the joint operation will be based on the amounts included in the consolidated financial statements.

Our web guidance in respect of JVs may be further updated in light of external Pillar Two consultation undertaken.

Safe harbours

The Minimum Tax law reflects the safe harbours developed by the OECD. Broadly, there are 4 safe harbours available.

1. **Transitional country-by-country (CBC) reporting safe harbour**

The transitional CBC reporting safe harbour allows an MNE group to use CBC reporting and financial accounting data as the basis for the safe harbour calculation. Thereby eliminating the need to undertake detailed GloBE calculations.

This safe harbour applies to fiscal years beginning on or before 31 December 2026 but not including a fiscal year that ends after 30 June 2028. An MNE group may elect to use the safe harbour if it can demonstrate, based on their Qualified CBC Reports and Qualified Financial Statements, that it meets one of the following tests for a jurisdiction:

- de minimis test
- simplified effective tax rate test, or
- routine profits test.

The effect of applying this safe harbour is that the MNE group's jurisdictional top-up tax for that jurisdiction for the fiscal year is taken to be zero.

2. **Qualified Domestic Minimum Top-Up Tax (QDMTT) safe harbour**

An MNE group may elect to apply the permanent QDMTT safe harbour. The permanent QDMTT safe harbour reduces the top-up tax of a jurisdiction to zero. This is for the purpose of applying an IIR or UTPR in Australia in respect of the jurisdiction, where that jurisdiction applies a QDMTT that has QDMTT safe harbour status. This provides a practical compliance solution to avoid needing to carry out both QDMTT and IIR or UTPR calculations in respect of a jurisdiction.

3. **Non-Material Constituent Entity (NMCE) simplified calculations safe harbour**

MNE groups may elect to use the simplified calculations safe harbour, which includes a simplified method in determining the GloBE income or loss, GloBE revenue and adjusted covered taxes of a NMCE.

This permanent safe harbour allows MNE groups to use these simplified calculations for NMCEs in determining whether the de minimis test, routine profits test or effective tax rate test has been met for a jurisdiction under the safe harbour.

Broadly, an NMCE is a constituent entity that has not been consolidated in the UPE's consolidated financial statements solely due to size or materiality.

Where an MNE group meets one of the simplified calculations safe harbour tests, the top-up tax for the jurisdiction is taken to be zero, with some limited exceptions. Simplified calculations are currently only available for NMCEs. Constituent entities other than NMCEs have to apply the usual GloBE computational rules as part of the simplified calculations safe harbour.

4. **Transitional UTPR safe harbour**

The transitional UTPR safe harbour allows an MNE to reduce their UTPR top-up tax amount in respect of the UPE jurisdiction (only) to nil during the transitional period, if the UPE jurisdiction has a nominal corporate income tax rate of at least 20%. This safe harbour applies to fiscal years beginning on or before 31 December 2025 and ending before 31 December 2026.

The consolidated commentary provides further information on the safe harbours available and applicable tests where relevant. For details, download the OECD Commentary to the GloBE Rules and refer to Annex A – Safe Harbours: Global Anti-Base Erosion Rules (Pillar Two).

The Australian Minimum Tax Rules also include its own de minimis exclusion in Part 5-5 that can apply for particular jurisdictions.

Additional simplifications

To ensure qualification of Australia's global and domestic minimum tax, we are unable to provide concessions, simplifications or safe harbours that are inconsistent with the outcomes provided for in the GloBE Model Rules and administrative guidance.

More information

For more information, see:

- OECD GloBE Rules
  - Safe Harbours and Penalty Relief (20 December 2022) (PDF, 460KB)
  - Illustrative Examples (25 April 2024) (PDF, 1.88MB)
  - Agreed Administrative Guidance (2 February 2023) (PDF, 1.24MB)
  - Agreed Administrative Guidance (17 July 2023) (PDF, 1.05MB)
  - Agreed Administrative Guidance (18 December 2023) (PDF, 478KB)
  - Agreed Administrative Guidance (17 June 2024) (PDF, 3MB)
  - Administrative Guidance, Legislation with Transitional Qualified Status (15 January 2025) (PDF, 469KB)
  - Administrative Guidance on Article 8.1.4 and 8.1.5 (15 January 2025) (PDF, 390KB)
  - Administrative Guidance on Article 9.1 (15 January 2024) (PDF, 427KB)
  - Pillar Two Model Rules Fact Sheets (PDF, 170KB)

QC 103566

Lodging, paying and other obligations for Pillar Two

Pillar Two obligations, including returns, payment and key dates.

Last updated 28 August 2025

Lodgments

New lodgment requirements

Four new lodgment requirements are introduced as part of the Australian global and domestic minimum tax, consistent with the Global Anti-Base Erosion Model Rules (GloBE Rules). These are:

1. GloBE Information Return (GIR)
2. Foreign lodgment notification
3. Australian IIR/UTPR Tax Return (AIUTR)
4. Australian DMT Tax Return (DMTR).

We are currently developing forms for the foreign lodgment notification, the AIUTR and the DMTR. We anticipate that the foreign lodgment notification, AIUTR and DMTR will be combined in one form.

The forms are being developed in consultation with external stakeholders through the **Pillar Two Global and Domestic Minimum Tax Working Group** and Digital Service Provider Working Group. These products will be available to taxpayers via Online services for business, Online services for agents and some business software providers in advance of the first lodgments, due by 30 June 2026.

GIR and foreign lodgment notification

The GIR is an information return:

- developed by the Organisation for Economic Co-operation and Development (OECD) Inclusive Framework
- containing data to enable tax administrators to assess a multinational enterprise groups' (MNE groups) compliance with the

GloBE Rules.

Under Subdivision 127-A in Schedule 1 to the *Taxation Administration Act 1953* (TAA), the default requirement is for each Australian group entity in an MNE group to lodge a GIR. Broadly, a group entity is an entity or arrangement that, through relationships of ownership or control, have their assets, liabilities, income, expenses and cash flows included in the consolidated financial statements of the ultimate parent entity (UPE).

Consistent with the GloBE Rules, Subdivision 127-A in Schedule 1 to the TAA provides the ability for group entities to nominate another entity in the MNE group to lodge one single GIR on their behalf. This can comprise of:

- a designated local entity (DLE) lodging with the ATO
- a foreign UPE or a designated filing entity (DFE) lodging with a foreign government agency.

When lodging the GIR with a foreign government agency and not locally with the ATO, to effectively fulfill each Australian group entity's GIR lodgment obligation:

- The GIR must be lodged on time in that foreign jurisdiction (if not met, the group will still have Australian filing obligations).
- Notification must be given to the Commissioner of Taxation by either each Australian group entity itself or the nominated DLE by lodging a foreign lodgment notification form, which we are currently developing.
- The foreign government agency that the GIR is lodged with must have a Qualifying Competent Authority Agreement (QCAA) with Australia. The GIR will then be exchanged with the ATO as per the QCAA and in line with the dissemination approach agreed by the OECD Inclusive Framework.
  - If the GIR is lodged with a foreign government agency but it's not exchanged with the ATO within the time period specified in the QCAA, the ATO may by written notice require that the GIR be locally lodged with the ATO.
  - We will provide details on our website of any QCAAs that Australia enters into with foreign jurisdictions.

An Australian group entity is required to give a GIR to the Commissioner even if the amount of Australian IIR/UTPR tax or Australian DMT tax is nil.

There is also still an obligation to lodge the AIUTR and DMTR even if the GIR has been lodged overseas.

AIUTR and DMTR

The AIUTR and DMTR are Australian domestic tax returns. They are currently being developed to enable the triggering of Australia's domestic assessment and pay provisions. The GIR is an information only return and does not result in a top-up tax assessment.

The AIUTR is for the global minimum tax, while the DMTR is for the domestic minimum tax.

Under Subdivision 127-A in Schedule 1 to the TAA, each group entity:

- is required to lodge an AIUTR where they have an Australian IIR/UTPR tax amount (including a nil amount)
- is required to lodge a DMTR where they have an Australian DMT tax amount (including a nil amount).

Entities have the option to nominate the DLE appointed to lodge the GIR to also file the AIUTR and DMTR on their behalf. An entity's lodgment obligation will be fulfilled where the DLE lodges by the respective lodgment due date.

Note: Excluded entities don't have an obligation to lodge the AIUTR or DMTR, nor do they have an obligation to lodge the GIR and foreign lodgment notification form.

Example 1: Australian headquartered group does not nominate a DLE

Paddington MNE group is an Australian headquartered MNE group which is in scope of Pillar Two. The Australian entities have not nominated a DLE and have not lodged the GIR overseas through a DFE.

As a result, each Australian entity is required to lodge the GIR. In addition, each Australian entity is required to lodge the AIUTR and DMTR with the ATO (subject to any applicable exemptions for the AIUTR and DMTR).

Generally, we anticipate that where there is an Australia UPE, the GIR will be lodged in Australia.

Example 2: Australian headquartered group nominates DLE

Assume the same facts as Example 1 except that Herbert Limited has been appointed to be the DLE for GIR, AIUTR and DMTR purposes in respect to the Paddington MNE group.

As the DLE, Herbert Limited lodges the GIR, AIUTR and DMTR on behalf of all Australian entities that have a lodgment obligation. The effect is that each group entity that has a lodgment obligation is taken to have lodged at the time the DLE lodges the returns.

Each group entity that has a lodgment obligation is taken to have satisfied their lodgment obligations on time if Herbert Limited lodges the GIR and the AIUTR and DMTR electronically, in the approved form and by the due date.

Example 3: foreign headquartered group

Archie Enterprises is the UPE of a foreign headquartered applicable MNE group with Australian operations.

The MNE group nominates Archie Enterprises to file the GIR with a foreign revenue agency on behalf of the group. Australia has an applicable QCAA with that foreign jurisdiction. All Australian group entities are discharged of their obligation to lodge the GIR with the Commissioner if Archie Enterprises lodges the GIR with their foreign revenue agency by the due date.

However, all Australian entities are still required to lodge the AIUTR and DMTR (subject to any applicable exemptions) and give a completed foreign lodgment notification to the ATO. In this

circumstance, a nominated DLE can lodge the AIUTR, DMTR and foreign lodgment notification on behalf of the Australian entities.

Legislative instrument

Entities may be exempt from certain lodgment aspects of the Australian global and domestic minimum tax in certain circumstances.

Specifically, subsections 127-35(5) and 127-45(5) in Schedule 1 to the TAA allow the Commissioner to, by way of a legislative instrument, make a determination specifying circumstances in which a group entity need not lodge an AIUTR and DMTR for a fiscal year, respectively.

The Commissioner cannot exempt entities from lodging the GIR or foreign lodgment notification.

Draft LI 2025/D17

We have published draft legislative Instrument **LI 2025/D17** *Taxation Administration (Exemptions from Requirement to Lodge Australian IIR/UTPR tax return and Australian DMT tax return) Determination 2025* and the accompanying draft **explanatory statement**.

Under the draft legislative instrument, entities that may be exempt from lodging a DMTR for a fiscal year include:

- certain subsidiary members of tax consolidated groups or multiple entry consolidated (MEC) groups
- entities that are not GloBE located in Australia, other than a stateless constituent entity created in Australia or a main entity of an Australian GloBE permanent establishment
- certain GloBE securitisation entities
- certain flow-through entities that cannot have an Australian DMT tax liability.

Given the AIUTR covers both Australian IIR tax and Australian UTPR tax liabilities, entities will only be exempt from lodging an AIUTR for a fiscal year under specific circumstances in which these liabilities will always be nil.

The draft legislative instrument sets out 2 circumstances that must both be met for a fiscal year before the exemption will apply:

1. Entities that may fall within the first circumstance include:
    - entities that are not parent entities, or which are parent entities but which are not GloBE located in Australia
    - parent entities that are GloBE located in Australia but which only hold direct and indirect ownership interests in other group entities or GloBE joint ventures that are themselves GloBE located in Australia
    - parent entities that are GloBE located in Australia but which cannot have an Australian IIR tax liability greater than zero because a higher-tier parent entity is required to apply a qualified income inclusion rule.
2. These entities must also be covered by the second circumstance in order to benefit from the exemption. Entities that may do so include:
    - certain subsidiary members of consolidated groups and MEC groups
    - entities that are not GloBE located in Australia, other than a main entity of an Australian permanent establishment
    - entities that would have an Australian UTPR tax liability of nil due to the application of one or more qualified income inclusion rules or in combination with the group's eligibility for the transitional UTPR safe harbour
    - certain GloBE investment entities, insurance investment entities and GloBE securitisation entities.

Entities may be exempt from the requirement to lodge one or both of AIUTR and DMTR for a fiscal year depending on their circumstances.

Lodgment due dates

The GIR, foreign lodgment notification, AIUTR and DMTR are required to be lodged:

- 18 months after the end of the first fiscal year, and
- 15 months after the end of the subsequent fiscal years.

The Commissioner has the ability to extend the lodgment deadline for the AIUTR and DMTR, but not the GIR or the foreign lodgment notification.

Lodgment due dates for the first fiscal year

Year-end date	Lodgment due date
Fiscal years ending before 31 December 2024 (fiscal years less than 12 months)	30 June 2026
31 December 2024	30 June 2026
31 January 2025	31 July 2026
28 February 2025	31 August 2026
31 March 2025	30 September 2026
30 April 2025	31 October 2026
31 May 2025	30 November 2026
30 June 2025	31 December 2026
31 July 2025	31 January 2027
31 August 2025	28 February 2027
30 September 2025	31 March 2027
31 October 2025	30 April 2027
30 November 2025	31 May 2027

Obligations and liabilities for specific entity types

GloBE permanent establishments

For GloBE permanent establishments located in Australia, all lodgment and payment obligations are placed on its main entity. The main entity is required to give the Commissioner a GIR, AIUTR, and DMTR in

respect of the GloBE permanent establishment. The GIR and foreign lodgment notification requirements apply to the main entity as if it were located in Australia.

GloBE joint ventures

GloBE joint ventures (JVs) and GloBE JV subsidiaries are not required to separately lodge the GIR or the AIUTR. However, disclosure requirements regarding GloBE JVs and GloBE JV subsidiaries are required in the GIR for applicable MNE groups that hold ownership in GloBE JVs. GloBE JVs and GloBE JV subsidiaries of applicable MNE groups are also required to lodge the Australian DMTR under section 127-55 in Schedule 1 to the TAA.

Extended application to unincorporated entity types

Targeted rules accommodate different entity types to ensure obligations and liabilities imposed can be administered effectively.

For trusts, partnerships and other unincorporated entities, Subdivision 128-B in Schedule 1 to the TAA extends the entities to which obligations and liabilities in respect of the Australian global and domestic minimum tax apply.

Extended application under the TAA

Entity type	Entity subtype	Entity that obligation, offences and joint and several liability is applied to	Provisio
Trusts	n/a	The trustees, regardless of whether the trustee is a member of the applicable MNE group	128-15
GloBE partnerships	Not a GloBE JV or GloBE JV subsidiary	The partners, regardless of whether the partner is a	128-20

		member of the applicable MNE group.	
GloBE partnership	Unincorporated GloBE JV	Each partner of the unincorporated JV that is a group entity of the applicable MNE group.	128-25
GloBE partnership	Unincorporated GloBE JV subsidiary	Each partner that is the GloBE JV, or another GloBE JV subsidiary, or a group entity of the applicable MNE group.	128-25
Not trust or GloBE partnership	Unincorporated GloBE JV	Each group entity of the applicable MNE group that holds a direct ownership interest in the GloBE JV.	128-25
Not trust or GloBE partnership	Unincorporated GloBE JV subsidiary	The GloBE JV and each group entity of the applicable MNE group that holds a direct ownership interest in the GloBE JV.	128-25
Not trust or GloBE partnership	Unincorporated group entities	Each group entity of the applicable MNE group to which a portion of the unincorporated	128-25

		group entity's assets, income, expenses, cashflows and liabilities belong, or that is a member of the management committee of the unincorporated group entity.	

Note: Both columns under entity type (entity type and entity subtype) must be met for the relevant provision to apply.

Generally, any entity listed above that the extended application applies to can discharge the obligation or liability.

Liability

Top-up tax liabilities

Global and domestic minimum tax is payable by entities that have a top-up tax amount for the fiscal year:

- The global minimum tax brings the total effective tax in another jurisdiction up to 15% by charging:
  - Australian IIR tax equal to the sum of its IIR top-up tax amounts
  - Australian UTPR tax equal to the sum of its UTPR top-up tax amounts.
- The domestic minimum tax brings the total effective tax in Australia up to 15% by charging:
  - Australian DMT tax equal to the sum of its domestic top-up tax amounts.

An entity becomes liable for top-up tax on the same day the return that gives rise to the assessment is due, generally 15 months after fiscal year end and 18 months after the first fiscal year end. Shortfall interest charge, general interest charge and penalties can also apply. Where an Australian group entity is a member of a tax consolidated

group, the head entity is allocated the top-up tax amounts for the purposes of liabilities for DMT and UTPR tax.

The *Multinational – Global and Domestic Minimum Tax Rules 2024* and associated Explanatory Statement (PDF, 1.3MB) detail the mechanisms for allocating and computing top-up tax amounts.

Joint and several liability

All group entities of the MNE group become jointly and severally liable to pay top-up tax, meaning the ATO can collect global or domestic minimum tax amounts or related charges from any group entity in the MNE group. Generally, any group entity can discharge the liability on behalf of all group entities in the group.

Specifically, section 128-5 in Schedule 1 to the TAA provides that if an amount is payable by a group entity of an applicable MNE group, that group entity and each other group entity of that group is jointly and severally liable to pay that amount. An amount includes top-up tax, general interest charge, shortfall interest charge, and penalties.

Additional joint and several liability rules apply to GloBE JVs of an applicable MNE group. Where GloBE JVs and GloBE JV subsidiaries are liable to pay top-up tax, each of these entities and the group entities of the MNE group that have direct ownership interest in the JV are jointly and severally liable to pay the amount.

There are exceptions to this. Joint and several liability does not apply:

- to entities that meet the conditions in subsection 820-39(3) of the *Income Tax Assessment Act 1997*, or
- where Australian law prohibits the entity from entering into an arrangement under which it becomes subject to such a liability.

Period of review

4-year period of review

A 4-year period of review applies where we may amend global and domestic minimum tax assessments. This period of review may be extended or refreshed. After the period of review ends, an amendment will only be made by us in limited circumstances:

- For assessments of Australian IIR/UTPR tax, the 4-year period starts on the later of:
  - the day the GIR is given to the Commissioner
  - the day the AIUTR is given to the Commissioner.
- For assessments of Australian DMT tax, the 4-year period starts on the later of:
  - the day the GIR is given to the Commissioner
  - the day the DMTR is given to the Commissioner.

When is the GIR given to the Commissioner

The GIR is generally considered given to the Commissioner:

- if lodged in Australia, on the date it is lodged
- if lodged on-time with a foreign government agency in accordance with section 127-20 in Schedule 1 to the TAA, on the date it is given to the foreign government agency.

The foreign government agency that the GIR is lodged with must have a QCAA with Australia.

Penalties

What administrative penalties can apply

The existing uniform penalty provisions contained in Schedule 1 to the TAA apply, with base penalty amounts similar to those imposed for **significant global entities**. This means, for example:

- penalties for failure to lodge on time, which can apply to entities that do not lodge an approved form by the due date. The base penalty amount is multiplied by 500
- penalties for false and misleading statements or for taking a position that is not reasonably arguable. The base penalty amount is doubled.

In addition, an administrative penalty can apply for failing to keep records about the global and domestic minimum tax.

OECD guidance on penalties

The OECD has released guidance on transitional penalty relief, which outlines that administrators should consider providing a soft landing for MNE groups during a transition period.

This includes recommending administrators consider not applying penalties or sanctions in connection with the filing of the GIR during the transition period where an MNE group has taken 'reasonable measures' to ensure the correct application of the GloBE Rules. 'Reasonable measures' is not defined and should be understood in light of each jurisdiction's existing rules and practices.

ATO guidance on penalties

We have published Draft Practical Compliance Guideline PCG 2025/D3 *Global and domestic minimum tax lodgment obligations – transitional approach*. The draft outlines:

- our proposed approach to the enforcement of penalties during a transition period, and
- expectations in respect of lodgment obligations for the global and domestic minimum tax.

We have also published minor updates to existing ATO guidance products relating to the administration of penalties for the global and domestic minimum tax, including to:

- MT 2008/1 *Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard*
- MT 2008/2 *Shortfall penalties: administrative penalty for taking a position that is not reasonably arguable*
- MT 2012/3 *Administrative penalties: voluntary disclosures*
- PS LA 2005/2 *Penalty for failure to keep or retain records*
- PS LA 2011/15 *Lodgment obligations, due dates and deferrals*
- PS LA 2011/19 *Administration of the penalty for failure to lodge on time*
- PS LA 2012/4 *Administration of the false or misleading statement penalty – where there is no shortfall amount*
- PS LA 2012/5 *Administration of the false or misleading statement penalty – where there is a shortfall amount*.

Record keeping

The legislation inserts Subdivision 382-C in Schedule 1 to the TAA which provides record keeping requirements on the Australian global and domestic minimum tax.

Broadly, the provision requires an Australian group entity, as well as GloBE JVs and GloBE JV subsidiaries, of an MNE group, to keep records that fully explain whether it has complied with the global and domestic minimum tax legislation. This includes, but is not limited to, all records that explain and show the basis of every disclosure in the GIR, AIUTR and DMTR lodged or exchanged with the Commissioner.

Excluded entities, which may not have an obligation to lodge, are still required to keep records relating to their status as an excluded entity.

Records must be kept in writing in English, or in a format that is readily accessible and convertible to English and must enable the entity's liability to top-up tax to be readily determined.

Records must be kept until either:

- the end of 8 years after those records were prepared or obtained
- 8 years after the completion of the transactions or acts to which those records relate
- the end of the period of review for an assessment to which those records relate (if extended), whichever is the later.

Australian record keeping requirements for the GIR

As part of the requirement to keep records that fully explain whether you have complied with the global and domestic minimum tax legislation, you are required to keep records that support the disclosures in the GIR. This is notwithstanding that the UPE or DFE of the MNE group may lodge the GIR with a foreign government agency.

The records required to be kept are dependent on the information required to be provided under the dissemination approach, agreed upon by the OECD Inclusive Framework. The dissemination approach sets out which sections of the GIR are to be distributed to each country based on the MNE group's structure and the requirements of the rule order. More specifically, the UPE country receives the complete GIR, countries with taxing rights receive the detailed calculations for those jurisdictions in which it has taxing rights in

relation to, and all countries receive the corporate structure. Based on this, the ATO should receive:

- general information, such as the group's corporate structure and summary information
- detailed top-up tax computations for those jurisdictions in respect of which Australia has taxing rights (including computations in relation to Australia itself)
- detailed sections relating to safe harbours and exclusions where Australia has taxing rights (including Australia itself)
- the whole GIR where there is an Australian UPE
- computations for Australian DMT tax.

Broadly, this means records must be kept for all disclosures in the GIR in relation to overseas jurisdictions where Australia has taxing rights.

Where there is a foreign UPE and Australia does not have taxing rights for an overseas jurisdiction, records must be kept that support that Australian constituent entity has no IIR/UTPR taxing rights as per the agreed rule order. Records must still be kept for all detailed disclosures in the GIR in relation to Australia itself.

Records must also be kept in relation to the MNE group structure regardless of whether Australia has taxing rights over a foreign jurisdiction.

Where there is an Australian UPE, records must be kept for all disclosures in the GIR.

More information

For more information, see:

- OECD GloBE Rules
- GloBE Information Return (January 2025) – update to version released July 2023
- GloBE Information Return (Pillar Two) XML Schema
- GloBE Information Return (Pillar Two) Status Message XML Schema (PDF, 2.2MB)

QC 103565

Pillar Two interactions with other provisions

Pillar Two interactions with Australia's existing corporate tax system.

Last updated 16 May 2025

Interaction with other provisions

Australia's implementation of the Global Anti-Base Erosion Model Rules (GloBE Rules) includes consequential amendments to Australia's income tax law to clarify its interaction with Pillar Two. The amendments are included in the Multinational—Global and Domestic Minimum Tax (Consequential) Act 2024.

In particular, the Consequential Act includes amendments to specific Australian cross-border tax provisions. These include rules concerning foreign income tax offsets, controlled foreign companies, hybrid mismatches and foreign hybrids.

Foreign income tax offset rules

Australia's foreign income tax offset (FITO) rules do not provide a foreign tax credit for taxes paid under a foreign income inclusion rule (IIR) and foreign undertaxed profits rule (UTPR).

However, to the extent you satisfy the usual eligibility criteria and integrity rules, a FITO may be claimed in respect of foreign domestic minimum top-up tax (DMT) paid on income included in your Australian assessable income.

The amount of the FITO allowed in respect of foreign DMT taxes is subject to an additional safeguard.

New FITO integrity rule for foreign DMT taxes

The amount of DMT tax which an entity is treated as having paid is reduced by:

- the amount of a refundable tax credit that is refunded to an entity because the credit exceeds income tax liability
- consideration received for the transfer of a transferable tax credit to which an entity was entitled in respect of a foreign income tax of that jurisdiction
- cash or cash equivalent amounts recognised as government grants under *International Accounting Standard 20* (or a comparable accounting standard applicable under a foreign law)
- a benefit of a kind specified by the Minister in respect of a specified jurisdiction.

This new integrity rule complements the existing FITO integrity rule. The existing rule reduces the amount of foreign income tax that an entity is considered to have paid:

- to the extent it is entitled to refunds of the foreign income tax, or
- by any other benefits worked out by reference to the amount of foreign income tax.

Example: New FITO integrity rule for foreign DMT

Entity A (a constituent entity located in unlisted country Jurisdiction A) is a Controlled Foreign Company (CFC), wholly owned by Aus Co, which is part of the same multinational enterprise group (MNE group).

Jurisdiction A has a corporate tax rate of 10% and has enacted a Qualified Domestic Minimum Top-up Tax.

Entity A receives a $6 grant from the government of Jurisdiction A (recognised as a government grant under an applicable accounting standard).

Entity A derived $85 of attributable income, which is wholly attributable to Aus Co. In arriving at the $85 of attributable income, a notional deduction of $10 for corporate income tax and $5 for a foreign DMT tax paid in Jurisdiction A is claimed.

Assuming other relevant conditions in the FITO rules are satisfied, the amount of FITO that could have been available for

Aus Co would have been $15 (the combination of $10 CIT and $5 DMT), disregarding the new integrity rule.

However, under the new integrity rule, the FITO is reduced by the government grant ($6), capped at the amount of foreign DMT tax paid ($5).

Therefore, the FITO allowed is $15 - $5 = $10.

Controlled foreign company rules

The CFC rules work to attribute foreign income earned by a foreign company back to Australia in certain circumstances. The interactions between the CFC rules and Pillar Two are such that:

- Tax imposed under CFC tax regimes (including Australia) are taken into account when calculating the effective tax rate of a jurisdiction for Pillar Two purposes.
- Foreign DMT, IIR or UTPR taxes are excluded from the meaning of 'subject to tax' for CFCs and transferor trusts located in a listed jurisdiction under section 324 of the *Income Tax Assessment Act 1936* (ITAA 1936). This will also impact whether certain income is considered eligible designated concession income (EDCI) and therefore taxed in Australia.
- Taxpayers are precluded from notionally deducting foreign IIR tax and foreign UTPR tax in calculating attributable income under section 393 of the ITAA 1936.
- A notionally allowable deduction may be available for payments of foreign DMT tax.

Australia's Qualified Domestic Minimum Tax (QDMT) is given priority in its application to Australian income and does not take into account taxes imposed under other CFC tax regimes.

Example: Eligible designated concessional income

Australian Entity A Co is an attributable taxpayer in respect of B Co, which is located in an overseas listed country. The listed country has implemented the IIR, UTPR and DMT.

The listed country applies a QDMT, which includes an item of income from B Co in its Effective Tax Rate (ETR) calculation. This income is otherwise exempt for corporate income tax purposes in the listed country.

In determining whether the item of income has been subject to tax in a listed country, the taxpayer is required to disregard any imposition of GloBE taxes (IIR, UTPR and DMT). The item is still considered as EDCI.

The taxpayer is also entitled to a notional deduction for any foreign DMT paid in respect of the EDCI included in its notional assessable income.

Hybrid mismatch rules

The operation of Australia's hybrid mismatch rules broadly continues to operate unaffected by the Australian global and domestic minimum tax.

Foreign DMT, IIR or UTPR and other foreign minimum taxes are disregarded when determining if an amount of income is subject to foreign income tax per the hybrid mismatch rules under section 832-130 of the *Income Tax Assessment Act 1997*. This ensures that a hybrid mismatch can be identified irrespective of whether a jurisdiction has implemented an IIR, UTPR or DMT.

The disregarding of such taxes also applies in the context of Australia's targeted integrity rule in Subdivision 832-J. Specifically, a foreign GloBE tax does not impact whether a payment of interest or an amount under a derivative financial arrangement is subject to foreign income tax at a rate of 10% or less. However, the application of foreign IIR, UTPR and DMT taxes may still be a relevant factor under the principal purpose test in determining whether it is reasonable to conclude that an entity entered a scheme with the requisite purpose.

Foreign hybrid rules

Similarly, Australia's foreign hybrid rules broadly continues to operate unaffected by the Pillar Two regime.

Australia’s foreign hybrid rules ensure that an entity that qualifies as a ‘foreign hybrid’ is treated as a partnership (rather than a company) for Australian tax purposes.

One of the requirements for entities to be treated as foreign hybrids is that no foreign income tax is imposed on the entity itself. References to 'foreign income tax' do not include foreign IIR, UTPR and DMT taxes and other foreign minimum taxes, ensuring that the foreign hybrid rules are not impacted by a foreign jurisdiction's decision to impose such taxes at the level of the foreign hybrid entity.

Example: Foreign hybrid limited partnership

Polar LLP is located in Jurisdiction A. AusCo, located in Australia, is a limited partner of Polar LLP. Under the corporate income tax regime of Jurisdiction A, Polar LLP is treated as fiscally transparent, and the imposition of taxes are on partners of Polar LLP of which AusCo is one.

Assuming all other relevant conditions are met under Australia’s foreign hybrid rules, Polar LLP is treated as a fiscally transparent partnership for Australian tax purposes. One of the requirements to be met is that foreign income tax is imposed on the partners of Polar LLP (including AusCo) and not on Polar LLP itself.

Jurisdiction A implements a IIR, UTPR and DMT, and legislates for these GloBE and DMT related liabilities to be imposed on limited partnerships (such as Polar LLP) instead of on its partners.

AusCo is required to disregard the imposition of those taxes on the partnership and will continue to treat Polar LLP as a foreign hybrid limited partnership under Division 830.

More information

For more information, see:

- **Foreign income tax paid by a controlled foreign company**

- Hybrid mismatch rules

QC 104816

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