



Explanatory Statement

Taxation Administration (Exemptions from Requirement to Lodge Australian IIR/UTPR tax return and Australian DMT tax return) Determination 2025

General outline of instrument

1. This legislative instrument is made under subsections 127-35(5) and 127-45(5) in Schedule 1 to the *Taxation Administration Act 1953* (the Act).
2. The Australian government enacted a global and domestic minimum tax in December 2024. It is applicable to large multinational enterprise groups. In-scope groups are subject to new reporting obligations under this tax. These obligations include a requirement for group members to lodge new tax returns in which they report their global and domestic minimum tax liabilities.
3. This instrument reduces compliance costs for multinational enterprise groups by exempting global and domestic minimum tax return lodgments which the Commissioner considers to be unnecessary because they could only ever disclose a nil liability.
4. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Date of effect

5. This instrument commences on the day after it is registered on the Federal Register of Legislation.

Glossary

6. This Explanatory Statement uses the following expressions.

Table 1: Explanation of terms

Expression	Meaning or Expansion
Act	<i>Taxation Administration Act 1953</i>
Australian DMT tax	Means tax payable under section 8 of the Minimum Tax Act. DMT is short for Domestic Minimum Top-up.
Consequential Act	<i>Treasury Laws Amendment (Multinational—Global and Domestic Minimum Tax) (Consequential) Act 2024</i>
Entity	Entity as defined by subsections 13(1) and 13(2) of the Minimum Tax Act
FANIL	Financial Accounting Net Income or Loss
Foreign lodgment notification	A notice required under paragraph 127-20(2)(b) in Schedule 1 to the Act
GIR	GloBE Information Return, required under Subdivision 127-A in Schedule 1 to the Act and has the meaning given by section 127-5.

Expression	Meaning or Expansion
GloBE	Global Anti-Base Erosion
GloBE Joint Venture	GloBE Joint Venture of an Applicable MNE Group
GloBE JV Subsidiary	GloBE JV Subsidiary of a GloBE Joint Venture
GloBE UPE	GloBE Ultimate Parent Entity of an Applicable MNE Group
IIR	Income Inclusion Rule
Imposition Act	<i>Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Act 2024</i>
Inclusive Framework	OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting
IPE	Intermediate Parent Entity
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
LTCE	Low-Taxed Constituent Entity
Minimum Tax Act	<i>Taxation (Multinational—Global and Domestic Minimum Tax) Act 2024</i>
Minimum Tax law	Minimum Tax law has the meaning given by section 995-1 of the <i>ITAA 1997</i> . Minimum Tax law includes the Imposition Act, Minimum Tax Act and Consequential Act as well as related Regulations and Legislative Instruments.
Minimum Tax Rules	<i>Taxation (Multinational—Global and Domestic Minimum Tax) Rules 2024</i>
MNE	Multinational enterprise
POPE	Partially-Owned Parent Entity
QDMTT	Qualified Domestic Minimum Top-up Tax
QIIR	Qualified IIR
QUTPR	Qualified UTPR
Two-Pillar Solution	OECD (2021), Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, 8 October 2021
UTPR	Undertaxed Profits Rule

Background

7. On 8 October 2021, Australia and 135 other members of the Inclusive Framework agreed to the Two-Pillar Solution to address challenges of taxing multinational enterprises in a digitalised and globalised world economy.

8. In December 2024, the Australian government enacted legislation that implemented a key aspect of Pillar Two of the Two-Pillar solution, the GloBE Rules. The GloBE Rules have been adopted by jurisdictions under a common approach to implement a global minimum tax of 15% for certain MNE Groups with annual revenue of at least 750 million Euros.

9. Australia has implemented:
- (a) a global minimum tax, which consists of two interlocking rules:
 - the IIR, which applies a top-up tax (Australian IIR tax) on Parent Entities located in Australia if the MNE Group's effective tax rate in another jurisdiction is below 15%
 - the UTPR, which acts as a backstop rule by applying a top-up tax (Australian UTPR tax) on Constituent Entities located in Australia if the MNE Group's effective tax rate in another jurisdiction is below 15% and where the profit is not brought into charge under an IIR
 - (b) 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 (Australian DMT tax) over any low-taxed profits in Australia.
10. Australian DMT tax and Australian IIR tax apply for Fiscal Years beginning on or after 1 January 2024. Australian UTPR tax applies for Fiscal Years beginning on or after 1 January 2025.
11. The global and domestic minimum tax applies to Applicable MNE Groups. An *Applicable MNE Group* is an MNE Group that satisfies a revenue threshold test for a Fiscal Year. That test is satisfied where the MNE Group has an annual revenue of 750 million Euros or more for at least 2 of the 4 immediately preceding Fiscal Years.¹
12. An *MNE Group* consists of a Group that includes at least one Entity or Permanent Establishment that is not located in the jurisdiction of the Ultimate Parent Entity of the Group.² A *Group*, broadly, refers to the Ultimate Parent Entity and all those Entities related through ownership or control with the Ultimate Parent Entity, whose assets, liabilities, income, expenses and cashflows are consolidated in the financial statements of the Ultimate Parent Entity, or are excluded from the Ultimate Parent Entity's Consolidated Financial Statements due to the Entity's size, being immaterial or being held for sale.³ Each of these Entities is referred to as a *Group Entity* and provided the Entity is not an Excluded Entity, it is a *Constituent Entity* of the MNE Group.
13. An *Entity* is 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, subject to certain exclusions.⁴
14. The concept of *Parent Entity* of an MNE Group includes the Ultimate Parent Entity (where it is a Constituent Entity), as well as certain Constituent Entities that hold Ownership Interests in other Constituent Entities (Intermediate Parent Entities and Partially-Owned Parent Entities).⁵
15. The global and domestic minimum tax can also apply in respect of GloBE Joint Ventures and GloBE JV Subsidiaries of an Applicable MNE Group. Broadly, a *GloBE Joint Venture* is an Entity in which the Ultimate Parent Entity of an Applicable MNE Group holds at least 50% of the Ownership Interests and the financial results of the Entity are reported under the equity method in the Consolidated Financial Statements of the Ultimate Parent Entity.⁶ A *GloBE JV Subsidiary* is an Entity whose assets, liabilities, income, expenses and cash flows are consolidated by a GloBE Joint Venture, or a GloBE Permanent Establishment of a GloBE Joint Venture.⁷ GloBE Joint Ventures and GloBE JV Subsidiaries of an Applicable MNE Group are not Group Entities of that Applicable MNE Group. However, they may be treated as Group Entities of a separate Applicable MNE Group for certain purposes.

¹ Section 12 of the Minimum Tax Act.

² Subsection 14(1) of the Minimum Tax Act.

³ Subsection 14(2) and section 17 of the Minimum Tax Act. See also section 18 of the Minimum Tax Act.

⁴ Section 13 of the Minimum Tax Act.

⁵ See section 10-5 of the Minimum Tax Rules and subsection 13(3) of the Minimum Tax Act.

⁶ Section 26 of the Minimum Tax Act.

⁷ Subsections 27(2) and (3) of the Minimum Tax Act.

16. Further information on Australia's implementation of the GloBE Rules and their operation can be found in the explanatory material for the Minimum Tax law (which is available on www.legislation.gov.au) and in guidance material that is available on the ATO website (www.ato.gov.au).

17. There are 4 lodgment obligations in respect of the global and domestic minimum tax in the Act:

- (a) the GIR – an OECD standardised form that provides each jurisdiction's tax authority with the information required to calculate an entity's tax liability for that jurisdiction (see section 127-5 in Schedule 1 to the Act)
- (c) the foreign lodgment notification – which notifies the Commissioner that a foreign entity has lodged the GIR on behalf of Australian Group Entities and the jurisdiction in which this lodgment was made (see subsection 127-20(2) in Schedule 1 to the Act)
- (d) the Australian IIR/UTPR tax return – an Australian-specific tax return for assessing Australian IIR tax and Australian UTPR tax (see section 127-35 in Schedule 1 to the Act)
- (e) the Australian DMT tax return – an Australian-specific tax return for assessing Australian DMT tax (see section 127-45 in Schedule 1 to the Act).

18. The due date for these lodgment obligations is aligned, being 18 months after the end of the Applicable MNE Group's GloBE Transition Year and 15 months after the end of subsequent Fiscal Years.⁸ However, the earliest lodgment due date for an Australian DMT tax return or an Australian IIR/UTPR tax return is 30 June 2026.⁹

Effect of instrument

19. A Group Entity of an Applicable MNE Group for a Fiscal Year is required to give the Commissioner an Australian IIR/UTPR tax return for the Fiscal Year if the Group Entity has an Australian IIR/UTPR tax amount, including a nil amount.¹⁰ However, this return need not be lodged in circumstances set out in a relevant determination made by the Commissioner.¹¹

20. A Group Entity of an Applicable MNE Group for a Fiscal Year is required to give the Commissioner an Australian DMT tax return for the Fiscal Year if the Group Entity has an Australian DMT tax amount, including a nil amount.¹² This requirement to lodge an Australian DMT tax return also applies to GloBE Joint Ventures and GloBE JV Subsidiaries.¹³ These entities are treated as Group Entities of a separate Applicable MNE Group for that purpose.

21. An Australian DMT tax return need not be lodged in circumstances set out in a relevant determination made by the Commissioner.¹⁴

22. The requirement to give the Commissioner an Australian IIR/UTPR tax return and Australian DMT tax return could apply to all Group Entities of an Applicable MNE Group, including where an Australian top-up tax liability could never arise.¹⁵

23. This instrument specifies circumstances in which a Group Entity of an Applicable MNE Group need not lodge an Australian IIR/UTPR tax return for a Fiscal Year.¹⁶ It also specifies circumstances

⁸ See section 127-60 and paragraph 127-30(1)(a) in Schedule 1 to the Act.

⁹ Schedule 1, item 69 of the Consequential Act.

¹⁰ Subsection 127-35(2) in Schedule 1 to the Act.

¹¹ Subsections 127-35(4) and (5) in Schedule 1 to the Act.

¹² Subsection 127-45(2) in Schedule 1 to the Act.

¹³ Subsection 127-55(2) in Schedule 1 to the Act.

¹⁴ Subsection 127-45(5) in Schedule 1 to the Act.

¹⁵ Subsections 127-35(2) and 127-45(2) in Schedule 1 to the Act.

¹⁶ Subsection 127-35(2) in Schedule 1 to the Act.

in which a Group Entity, GloBE Joint Venture or GloBE JV Subsidiary need not lodge an Australian DMT tax return for a Fiscal Year.¹⁷

24. The Commissioner does not have the ability to exempt lodgment of the GIR or foreign lodgment notification.

Exemptions from the requirement to lodge an Australian DMT tax return

25. Sections 6, 7, 8, 9 and 10 of this instrument specify circumstances in which a Group Entity, GloBE Joint Venture or GloBE JV Subsidiary of a GloBE Joint Venture of an Applicable MNE Group is exempt from lodging an Australian DMT tax return for a Fiscal Year.

26. The circumstances are broadly categorised as follows:

- (a) certain Group Entities that are subsidiary members of consolidated groups and MEC groups (section 6)
- (b) certain GloBE Joint Ventures and GloBE JV Subsidiaries (section 7)
- (c) certain Group Entities that are not GloBE located in Australia (section 8)
- (d) certain GloBE Securitisation Entities (section 9)
- (e) certain Group Entities that are Flow-through Entities (section 10).

27. Where the circumstances covered by one exemption category do not apply to an Entity, it may still be exempt from lodging an Australian DMT tax return for a Fiscal Year if its circumstances are covered by another exemption category for that Fiscal Year.

28. GloBE Excluded Entities are expressly excluded from top-up tax calculations under the global and domestic minimum tax. These entities do not have an obligation to lodge an Australian DMT tax return.¹⁸

29. An Entity that is exempted from the obligation to lodge an Australian DMT tax return for a Fiscal Year under either section 6, 7, 8, 9, or 10 of this instrument may still be required to lodge an Australian IIR/UTPR tax return for that Fiscal Year, unless exempted under section 11 of this instrument. Additionally, the Entity would still need to comply with its GIR and foreign lodgment notification obligations.

30. Whether an Entity is eligible for an exemption under this instrument is to be considered in respect of a particular Fiscal Year. For example, where circumstances set out in this instrument for an exemption to lodge an Australian DMT tax return for Fiscal Year 2024 apply to a Group Entity, it can access the exemption for that Fiscal Year. However, it will need to re-test whether it is still eligible for an exemption in respect of its lodgment obligation for Fiscal Year 2025 if its circumstances change.

31. In some situations, an Entity could have separate lodgment obligations in respect of different Applicable MNE Groups for a Fiscal Year. This instrument is to be applied separately in respect of each of the Entity's lodgment obligations.

Example 1

XYZ Co, a Group Entity of AAA Applicable MNE Group (AAA Group) is acquired by, and becomes a Group Entity of BBB Applicable MNE Group (BBB Group) during the Fiscal Year. XYZ Co will, prima facie, have two Australian DMT tax return obligations in this scenario, one in respect of each Applicable MNE Group. If XYZ Co is exempt from the obligation to lodge an Australian DMT tax return under section 6 of this instrument in respect of its capacity as a Group Entity of AAA Group for the Fiscal Year, it will be exempt from lodging that return. However, it will need to separately

¹⁷ Subsections 127-45(2) and 127-55(2) in Schedule 1 to the Act.

¹⁸ Section 127-80 in Schedule 1 to the Act.

ascertain whether it is eligible for an exemption (under any provisions of this instrument) in respect of its lodgment obligation as Group Entity of BBB Group. Accordingly, it may be possible for XYZ Co to be exempt from lodging an Australian DMT tax return in respect of AAA Group but not in respect of BBB Group. This same principle applies in respect of ascertaining XYZ Co's Australian IIR/UTPR tax return obligations.

Section 6 – exemption for certain subsidiary members of consolidated groups and MEC groups

32. The Minimum Tax Rules deem the Domestic Top-up Tax Amount for a Fiscal Year for a Constituent Entity of an MNE Group that is a subsidiary member of a consolidated group or MEC group to be zero.¹⁹ Instead, this amount is allocated to the Constituent Entity that is the head company of the consolidated group²⁰, and it is the head company that is liable for that amount. This means that such subsidiary members will not have a Domestic Top-up Tax Amount and so there is no need for a return with a zero amount to be lodged by them. Section 6 of this instrument therefore exempts a Group Entity of an Applicable MNE Group from the requirement to lodge an Australian DMT tax return for a Fiscal Year if it is a subsidiary member of a consolidated group or MEC group to which subsection 2-40(2) of the Minimum Tax Rules applies for the Fiscal Year.

33. Table 2 provides examples of the application of section 6 in joining and leaving scenarios involving one or more Applicable MNE Groups.

Examples for section 6

Note: these examples assume that the head company of the consolidated group or MEC group is a Constituent Entity.

Table 2: Examples for section 6

Is a Group Entity exempt from the requirement to lodge an Australian DMT tax return for a fiscal year where it is a:	Exemption under Section 6
Subsidiary member of a consolidated group, or MEC group, of an Applicable MNE Group for the entirety of the Fiscal Year.	Yes
Subsidiary member of a consolidated group, or MEC group, of an Applicable MNE Group and it was incorporated or created during the Fiscal Year.	Yes
Subsidiary member of a consolidated group, or MEC group, of an Applicable MNE Group and it ceased to exist during the Fiscal Year.	Yes
Subsidiary member of a consolidated group, or MEC group, of an Applicable MNE Group that leaves to join, as a subsidiary member, another consolidated group, or MEC group, within the <i>same</i> Applicable MNE Group during the Fiscal Year.	Yes
Subsidiary member of a consolidated group, or MEC group, of an Applicable MNE Group that leaves to join, as a subsidiary member, another consolidated group, or MEC group, of a <i>different</i> Applicable MNE Group during the Fiscal Year.* <i>Prima facie</i> , the Entity has separate Australian DMT tax return obligations in respect of its capacities as Group Entity of each Applicable MNE Group. *The outcomes in this example apply whether or not the Fiscal Years are the same for both Applicable MNE Groups	Yes – exemption applies to both lodgment requirements
Subsidiary member of a consolidated group, or MEC group, of an Applicable MNE Group that leaves that consolidated group, or MEC group, but remains a Group Entity within the <i>same</i> Applicable MNE Group during the Fiscal Year	Yes

¹⁹ Subsection 2-40(2) of the Minimum Tax Rules.

²⁰ Subsection 2-40(4) of the Minimum Tax Rules.

<p>Subsidiary member of a consolidated group, or MEC group, of an Applicable MNE Group that leaves that Applicable MNE Group to become a Group Entity within a <i>different</i> Applicable MNE Group during the Fiscal Year. It is not a subsidiary member of a consolidated group, or MEC group, in respect of that second Applicable MNE Group.</p> <p><i>Prima facie</i>, the Entity has separate Australian DMT tax return obligations in respect of its capacities as Group Entity of each Applicable MNE Group.</p> <p>*The outcomes in this example apply whether or not the Fiscal Years are the same for both Applicable MNE Groups</p>	<p>Exempt in respect of the first Applicable MNE Group</p> <p>Not exempt under section 6 in respect of the second Applicable MNE Group</p>
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Section 7 – exemption for certain GloBE Joint Ventures and GloBE JV Subsidiaries

34. A GloBE Joint Venture or a GloBE JV Subsidiary will be exempt from the requirement to lodge an Australian DMT tax return for a Fiscal Year if paragraph 7(a) or paragraph 7(b) of this instrument apply to it for that Fiscal Year.

35. For similar reasons to section 6 of this instrument, if a GloBE Joint Venture or a GloBE JV Subsidiary is a subsidiary member of a consolidated group or a MEC group and its Domestic Top-up Tax Amount is allocated to a head company, then there is no need for a return from the GloBE Joint Venture or a GloBE JV Subsidiary.

36. Under paragraph 7(a), a GloBE Joint Venture or a GloBE JV Subsidiary of an Applicable MNE Group need not lodge an Australian DMT tax return for a Fiscal Year if it is a subsidiary member of a consolidated group or a MEC group to which subsection 2-40(2) of the Minimum Tax Rules applies in respect of that Fiscal Year.

37. Only certain Entities can have an Australian DMT tax liability greater than zero under Australia's domestic minimum tax. These include Entities that are GloBE located in Australia, or that are a Flow-through Entity created in Australia, or that are a GloBE Main Entity in respect of an Australian GloBE Permanent Establishment. If an Entity is not one of these, then there is no need for it to lodge a return with a zero amount.

38. Relevantly, under paragraph 7(b) a GloBE Joint Venture or GloBE JV Subsidiary is exempt from the requirement to lodge an Australian DMT tax return for a Fiscal Year if all of the following apply to it for the Fiscal Year:

- (a) it is not GloBE located in Australia
- (b) it is not a Flow-through Entity created in Australia
- (c) it is not a GloBE Main Entity in respect of a GloBE Permanent Establishment that is GloBE located in Australia
- (d) it is not a GloBE Main Entity in respect of a GloBE Permanent Establishment in relation to which paragraph 19(1)(d) of the Minimum Tax Act applies, and that is a place of business (including a deemed place of business) in Australia.

39. For an exemption to apply, all of these circumstances must be met. For example, if a GloBE Joint Venture is not GloBE located in Australia but it *is* a Flow-through Entity created in Australia, it would not be exempt from lodging an Australian DMT tax return for the Fiscal Year.

40. This exemption is intended to cover foreign GloBE Joint Ventures and GloBE JV Subsidiaries that could never have an Australian DMT tax amount greater than zero for the Fiscal Year.

Section 8 – exemption for certain Group Entities that are not GloBE located in Australia

41. The rationale for section 8 of this instrument is similar to that for paragraph 7(b). Only Group Entities that are GloBE located in Australia, or that are a Flow-through Entity created in Australia, or that are a GloBE Main Entity in respect of an Australian Permanent Establishment can have an Australian DMT tax liability greater than zero.

42. Accordingly, subsection 8(1) of this instrument exempts a Group Entity of an Applicable MNE Group from the requirement to lodge an Australian DMT tax return for a Fiscal Year if the Group Entity is not GloBE located in Australia for the Fiscal Year. In other words, it applies to a Group Entity that is GloBE located in a foreign jurisdiction or that is a Stateless Constituent Entity. Except in certain circumstances, these Entities will not have an Australian DMT tax amount greater than zero and so there is no need for a return with a zero amount to be lodged by them.

43. Under subsection 8(2) of this instrument, the exemption in subsection 8(1) of this instrument does not apply to a Group Entity that is, for a Fiscal Year, one of the following:

- (a) a Flow-through Entity that was created in Australia and which is a Stateless Constituent Entity under subsection 41(3) of the Minimum Tax Act
- (b) a GloBE Main Entity in respect of a GloBE Permanent Establishment that is GloBE located in Australia
- (c) a GloBE Main Entity in respect of a GloBE Permanent Establishment to which paragraph 19(1)(d) of the Minimum Tax Act applies and that is a place of business (including a deemed place of business) in Australia.

44. A Group Entity to which subsection 8(2) of this instrument applies is carved out from the exemption in subsection 8(1) of this instrument, as they could have an Australian DMT tax amount greater than zero, even if the Group Entity is not GloBE located in Australia.²¹

Example 2

A GloBE UPE that is GloBE located in a foreign jurisdiction may have subsidiaries GloBE located in Australia. The GloBE UPE itself would be exempt from lodging an Australian DMT tax return under subsection 8(1). However, if the GloBE UPE was also a GloBE Main Entity in respect of a GloBE Permanent Establishment that is GloBE located in Australia, then that exemption would not apply.

Section 9 – exemption for certain GloBE Securitisation Entities

45. The Minimum Tax Rules contain special rules for GloBE Securitisation Entities.²² The default position is that a GloBE Securitisation Entity cannot have an Australian DMT tax liability greater than zero. This is due to provisions which ensure that a GloBE Securitisation Entity cannot be allocated any Top-up Tax.²³ In these cases, there is no need for a GloBE Securitisation Entity to lodge a return.

46. In that regard, section 9 of this instrument exempts a GloBE Securitisation Entity from the requirement to lodge an Australian DMT tax return for a Fiscal Year. This exemption applies to Group Entities, GloBE Joint Ventures and GloBE JV Subsidiaries of GloBE Joint Ventures of Applicable MNE Groups if they are a GloBE Securitisation Entity.

47. The default position under the Minimum Tax Rules does not apply if the only Constituent Entities of the MNE Group that are GloBE located in Australia are GloBE Securitisation Entities.²⁴ In that case, GloBE Securitisation Entities can be allocated Top-up Tax and can have an Australian DMT tax amount greater than zero.

48. The requirement in section 9 of this instrument for the Group Entity be a GloBE Securitisation Entity 'to which subsection 2-35(3) of the Minimum Tax Rules applies', ensures that the lodgment exemption does not apply in these circumstances.

²¹ Section 2-25 of the Minimum Tax Rules.

²² The term 'GloBE Securitisation Entity' is defined in subsection 995-1(1) of the ITAA 1997 to mean a Securitisation Entity (within the meaning of the Minimum Tax Act). An Entity is a 'Securitisation Entity' for a period if it meets the conditions in subsection 820-39(3) of the ITAA 1997 throughout the period.

²³ Subsection 2-35(3) of the Minimum Tax Rules.

²⁴ Subsection 2-35(4) of the Minimum Tax Rules.

Section 10 – exemption for certain Flow-through Entities

49. Except in certain circumstances, an Entity that is a Flow-through Entity cannot have an Australian DMT tax liability greater than zero under the Minimum Tax Rules. This is because of rules which allocate the FANIL of a Flow-through Entity to its owners, or any applicable Permanent Establishment.²⁵

50. Therefore, section 10 of this instrument exempts Group Entities of Applicable MNE Groups that are Flow-through Entities from the requirement to lodge an Australian DMT tax return, except in cases where the Flow-through Entity could have an Australian DMT tax amount greater than zero.

51. This exemption is available to a Group Entity where all of the circumstances in paragraphs (a) to (c) apply to it for the Fiscal Year, provided it is not excluded by subsection 10(2) of this instrument.

52. Under paragraph 10(1)(a), the Group Entity must be a Flow-through Entity for the Fiscal Year, but not any of the following:

- (a) a Reverse Hybrid Entity that is created in Australia
- (b) a GloBE Main Entity in respect of a GloBE Permanent Establishment that is GloBE located in Australia
- (c) a GloBE Main Entity in respect of a GloBE Permanent Establishment to which paragraph 19(1)(d) of the Minimum Tax Act applies and that is a place of business (including a deemed place of business) in Australia
- (d) a GloBE UPE that is GloBE located in Australia (pursuant to subsection 41(2) of the Minimum Tax Act, a Flow-through Entity created in Australia that is a GloBE UPE is GloBE located in Australia).

53. These Group Entities are excluded from the exemption because they may have an Australian DMT tax amount greater than zero. Reverse Hybrid Entities and GloBE UPEs can have an Australian DMT tax amount greater than zero because their FANIL cannot be allocated to, or reduced on account of, their owners.²⁶ In the case of Flow-through Entities that are the GloBE Main Entity of an Australian Permanent Establishment, this is because they are liable for any Domestic Top-up Tax Amounts allocated to the Permanent Establishment.²⁷

54. Paragraph 10(1)(b) of this instrument requires that the Group Entity's FANIL must have been reduced to zero by applying the method outlined in subsection 3-255(1) of the Minimum Tax Rules, or would have been reduced to zero if that subsection had applied to the Group Entity for the Fiscal Year.

55. Subsection 3-255(1) of the Minimum Tax Rules sets out how to deal with the FANIL of Flow-through Entities. To the extent a Group Entity's FANIL has been reduced to zero under that provision, it would not be expected to have an Australian DMT tax amount greater than zero. The words 'or would have been reduced to zero if that subsection had applied to the Group Entity for the Fiscal Year' are intended to cover situations where the Group Entity has not had to apply that subsection because, for example, it benefits from a safe harbour in respect of that Fiscal Year that does not require application of that provision.

56. A Group Entity that is only *partially* a Flow-through Entity for a Fiscal Year would not be expected to be covered by paragraph 10(1)(b) of this instrument if its FANIL is not reduced to zero.²⁸ In that case, the exemption in section 10 would not apply.

²⁵ Section 3-255 of the Minimum Tax Rules.

²⁶ Subparagraphs 3-255(1)(d)(i) and (iii), and subsection 3-255(2), of the Minimum Tax Rules.

²⁷ Subsection 2-25(4) of the Minimum Tax Rules.

²⁸ Under subsection 3-255(1) of the Minimum Tax Rules.

57. Paragraph 10(1)(c) of this instrument requires that the Group Entity does not have a Domestic Top-up Tax Amount greater than zero for the Fiscal Year. This ensures that, in any unforeseen residual cases where the Group Entity does have such an amount, it must lodge an Australian DMT tax return.

58. Finally, the lodgment exemption in subsection 10(1) will not apply where the Group Entity would have been the GloBE Ultimate Parent Entity of the Applicable MNE Group if any Controlling Interest in the Group Entity held by a GloBE Excluded Entity had been disregarded.²⁹ This reflects the possibility that FANIL may be allocated to that Group Entity and that it could have an Australian DMT tax liability greater than zero in such a scenario.³⁰

59. Trusts and partnerships created in Australia and that are treated as Flow-through Entities for the Fiscal Year may benefit from the exemption in subsection 10(1) of this instrument, subject to the satisfaction of these conditions. This exemption may also apply to other unincorporated Group Entities that are neither trusts nor partnerships, but which fall within paragraph (b) of the definition of 'Entity' in subsection 13(1) of the Minimum Tax Act, where they are treated as Flow-through Entities for the Fiscal Year.

60. The exemption in section 10 of this instrument is not available to GloBE Joint Ventures and GloBE JV Subsidiaries of an Applicable MNE Group.

Exemptions from requirement to lodge Australian IIR/UTPR tax return

61. The requirement to lodge an Australian IIR/UTPR tax return only applies to Group Entities.³¹ Unlike the case of Australian DMT tax returns, Australian IIR/UTPR tax return lodgment obligations are not extended to GloBE Joint Ventures and GloBE JV Subsidiaries.

62. Australian IIR tax is imposed on certain Parent Entities of Applicable MNE Groups in respect of undertaxed profits of the MNE Group.

63. Generally, the IIR applies to Parent Entities closest to the top of the corporate structure (the top-down approach) and in respect of Constituent Entities, GloBE Joint Ventures or GloBE JV Subsidiaries that are subject to a jurisdictional effective tax rate below 15 percent for the Fiscal Year.

64. Where a QIIR does not apply in respect of the undertaxed Constituent Entity, GloBE Joint Venture or GloBE JV Subsidiary, the top-up tax may be collected by jurisdictions that have implemented a QUTPR. The UTPR serves as a backstop to the IIR. The total amount of top-up tax is allocated among jurisdictions by reference to a substance-based allocation key. This substance-based allocation key is based on the net book value of tangible assets held, and the number of employees employed by all the Constituent Entities that are GloBE located in the QUTPR jurisdictions. Under Australia's UTPR, any Total UTPR Top-up Tax Amount that is allocated to Australia is distributed to certain Constituent Entities of the Applicable MNE Group that are GloBE located in Australia, also by reference to a substance-based allocation key.

Section 11 – exemption for certain Group Entities from lodgment of Australian IIR/UTPR tax return

65. Given the Australian IIR/UTPR tax return covers both Australian IIR tax and Australian UTPR tax liabilities, Group Entities will only be exempt from lodging an Australian IIR/UTPR tax return for a Fiscal Year under specific circumstances in which neither of these liabilities could arise.

66. In that regard, the exemption will only apply if both circumstances set out in paragraphs 11(1)(a) and paragraph 11(1)(b) of this instrument apply to the Group Entity for the Fiscal Year. If

²⁹ Subsection 10(2) of this instrument.

³⁰ Subparagraph 3-255(1)(d)(ii) of the Minimum Tax Rules.

³¹ Subsection 127-35(2) in Schedule 1 to the Act.

only one but not both of those paragraphs applies, the Group Entity is not exempt from the requirement to lodge an Australian IIR/UTPR tax return.

Circumstances relating to the IIR

67. The purpose of paragraph 11(1)(a) of this instrument is to identify Group Entities that cannot have an Australian IIR tax liability greater than zero. For paragraph 11(1)(a) to apply, a Group Entity must be covered by one of its three subparagraphs.

68. Only Parent Entities that are GloBE located in Australia can have an Australian IIR tax liability greater than zero. Accordingly, subparagraph 11(1)(a)(i) of this instrument applies to Group Entities who are *not* Parent Entities GloBE located in Australia for the Fiscal Year. This covers Parent Entities that are Stateless Constituent Entities and Parent Entities that are GloBE located in a foreign jurisdiction. It also covers a Group Entity that is GloBE located in Australia for the Fiscal Year but is not itself a Parent Entity.

69. A Parent Entity that is GloBE located in Australia can only have an Australian IIR tax liability greater than zero where it has an Ownership Interest in a Constituent Entity, GloBE Joint Venture or GloBE JV Subsidiary which is not GloBE located in Australia. Subparagraph 11(1)(a)(ii) of this instrument therefore applies where a Group Entity is a Parent Entity that is GloBE located in Australia but where it only holds Ownership Interests in Constituent Entities, GloBE Joint Ventures or GloBE JV Subsidiaries that *are* GloBE located in Australia. These Parent Entities cannot have an Australian IIR tax liability greater than zero.

70. A Parent Entity that is GloBE located in Australia cannot have an Australian IIR tax liability greater than zero if a higher-tier Parent Entity is required to apply a QIIR. For example, this may occur where an Intermediate Parent Entity that is GloBE located in Australia is controlled by another Intermediate Parent Entity, or the UPE of the Applicable MNE Group, that is itself required to apply a QIIR for the Fiscal Year, whether or not that other Parent Entity is GloBE located in Australia.³² It may also occur where a POPE that is GloBE located in Australia is wholly owned by another POPE of the Applicable MNE Group that is required to apply a QIIR.³³ Subparagraph 11(1)(a)(iii) of this instrument covers these cases.

Circumstances relating to the UTPR

71. In addition to paragraph 11(1)(a) of this instrument, one of the circumstances set out in paragraph 11(1)(b) of this instrument must also apply for the Group Entity to be eligible for an exemption from lodgment of the Australian IIR/UTPR tax return.

72. Subparagraph 11(1)(b)(i) of this instrument applies in cases where the Minimum Tax Rules deem the UTPR Top-up Tax Amount for a Fiscal Year for a Constituent Entity of an MNE Group that is a subsidiary member of a consolidated group or MEC group to be zero.³⁴ This amount is allocated to the Constituent Entity that is the head company of the consolidated group³⁵, and it is the head company that is liable for that amount. This means that such subsidiary members will not have an Australian UTPR tax liability and so there is no need for a return with a zero amount to be lodged by them.

73. A Group Entity can only have an Australian UTPR tax liability greater than zero if it is GloBE located in Australia, or, if it is not GloBE located in Australia, it is a GloBE Main Entity in respect of a GloBE Permanent Establishment that is GloBE located in Australia.³⁶ Subparagraph 11(1)(b)(ii) of this instrument therefore applies if a Group Entity is *not* GloBE located in Australia and it is not a GloBE Main Entity in respect of a GloBE Permanent Establishment that is GloBE located in Australia. There is no need for a return in such situations.

³² Paragraph 2-5(5)(a) of the Minimum Tax Rules.

³³ Paragraph 2-5(5)(b) of the Minimum Tax Rules.

³⁴ Subsection 2-50(2) of the Minimum Tax Rules.

³⁵ Subsection 2-50(4) of the Minimum Tax Rules.

³⁶ Section 2-45 of the Minimum Tax Rules.

74. GloBE Investment Entities and Insurance Investment Entities cannot have an Australian UTPR tax liability greater than zero because these Entities cannot be distributed an amount of Total UTPR Top-up Tax Amount.³⁷ In recognition of this, subparagraph 11(1)(b)(iii) of this instrument applies to a Group Entity that is a GloBE Investment Entity or Insurance Investment Entity.

75. Similar to the position for Australian DMT tax, the default position under the Minimum Tax Rules is that a GloBE Securitisation Entity cannot have an Australian UTPR tax liability greater than zero. This is due to provisions which ensure that a GloBE Securitisation Entity cannot be distributed an amount of Total UTPR Top-up Tax Amount.³⁸ Subparagraph 11(1)(b)(iv) of this instrument applies to GloBE Securitisation Entities in these cases, as there is no need for a return.

76. However, this default position does not apply in certain scenarios, including where the only Constituent Entities of the MNE Group that are located in Australia are GloBE Securitisation Entities.³⁹ In those cases, GloBE Securitisation Entities could be distributed an amount of any Total UTPR Top-up Tax Amount that is allocated to Australia, and could have an Australian DMT tax amount greater than zero. Subparagraph 11(1)(b)(iv) does not cover GloBE Securitisation Entities in these instances.

77. Subparagraph 11(1)(b)(v) will apply if any of the circumstances specified in subsection 11(2) apply in respect of the Applicable MNE Group for the Fiscal Year.

78. In broad terms, these circumstances are where the Group Entity could never have an Australian UTPR Top-Up Tax Amount greater than zero due to:

- (a) the application of one or more QIIRs switching off Australia's UTPR taxing rights (paragraph 11(2)(a)), or
- (b) the application of one or more QIIRs switching off Australia's UTPR taxing rights, in combination with the Applicable MNE Group's eligibility for the Transitional UTPR Safe Harbour to the jurisdiction of the GloBE UPE (paragraph 11(2)(b)).

79. Certain assumptions are made, in subsection 11(3), that affect the circumstances in subsection 11(2).

Circumstances specified in subsection 11(2)

80. As the UTPR functions as a backstop to the IIR, Australia's UTPR taxing rights over an Applicable MNE Group's undertaxed profits can be switched off where a QIIR applies to them. Relevantly, section 2-55 of the Minimum Tax Rules is the provision that can apply to reduce Australia's UTPR taxing rights over the Top-up Tax of a particular LTCE, Joint Venture or JV Subsidiary because of the application of a QIIR, and in some cases to zero.

81. In addition, Australia's UTPR does not apply in circumstances where Australia's domestic minimum tax applies.

82. Where all of the Applicable MNE Group's profits are covered by one or more QIIRs, or by a combination of QIIRs and Australia's domestic minimum tax, Australia could not have any UTPR taxing rights. There is no need for a return merely to show a nil amount in such cases.

83. Paragraph 11(2)(a) has been drafted with these principles in mind. It will apply where the Total UTPR Top-up Tax Amount of the Applicable MNE Group would be reduced to zero for the Fiscal Year under section 2-55 of the Minimum Tax Rules if the assumptions in subsection 11(3) were made.

84. Paragraph 11(2)(a) requires an Applicable MNE Group to consider a hypothetical based on the assumptions in subsection 11(3). The first assumption is that each Constituent Entity, GloBE Joint Venture and GloBE JV Subsidiary of the Applicable MNE Group, other than a Constituent

³⁷ Subsection 2-85(2) of the Minimum Tax Rules.

³⁸ Paragraph 2-85(2)(c) of the Minimum Tax Rules.

³⁹ Subsection 2-85(3) of the Minimum Tax Rules.

Entity, GloBE Joint Venture or GloBE JV Subsidiary to which Australia's domestic minimum tax would apply, has an amount of Top-up Tax for the Fiscal Year greater than zero before any adjustments under section 2-55 of the Minimum Tax Rules are made. The second and third assumptions in paragraph 11(3)(b) and (c) of this instrument facilitate the making of the hypothetical under section 2-55.

85. In other words, an Applicable MNE Group needs to test whether Australia's UTPR taxing rights would have been wholly extinguished under section 2-55 in a hypothetical where all Constituent Entities, GloBE Joint Ventures and GloBE JV Subsidiaries of the Applicable MNE Group had a positive amount of Top-up Tax, but excluding those to which Australia's domestic minimum tax already applies.

86. The assumptions in subsection 11(3) ensure that paragraph 11(2)(a) only applies when the Group Entity could never have a UTPR Top-up Tax Amount greater than zero for the Fiscal Year based on the structure of the Applicable MNE Group, and not, for example, just based on jurisdictional effective tax rates of jurisdictions being above the 15% minimum rate or by application of a safe harbour. The overall consequence is that where Australia has UTPR taxing rights that are applicable in respect of a Constituent Entity, GloBE Joint Venture and GloBE JV Subsidiary in a given jurisdiction, an Australian IIR/UTPR tax return should be lodged (even if the actual liability amount is zero).

87. An example of an Applicable MNE Group that could be covered by paragraph 11(2)(a) for a Fiscal Year is one in which the GloBE UPE is GloBE located in a jurisdiction in which it is required to apply a QIIR, where that QIIR applies both to Constituent Entities, GloBE Joint Ventures and GloBE JV Subsidiaries located in the GloBE UPE jurisdiction (including the GloBE UPE itself) and to those that are not. Another example of an Applicable MNE Group that could be covered by that paragraph is one in which the GloBE UPE is GloBE located in Australia.

88. Paragraph 11(2)(b) operates similarly to paragraph 11(2)(a) but in circumstances where the GloBE UPE jurisdiction benefits, or could benefit, from the Transitional UTPR Safe Harbour.

89. Under the Minimum Tax Rules, a Filing Constituent Entity can make a Transitional UTPR Safe Harbour election in respect of the jurisdiction in which the GloBE UPE is located, if that jurisdiction has a corporate tax rate that applies at a rate of at least 20%.⁴⁰ The election can only be made for Fiscal Years starting on or before 31 December 2025 and ending before 31 December 2026, and which no not exceed 12 months. If the Transitional UTPR Safe Harbour applies, Australia's UTPR taxing rights are effectively switched off in respect of each LTCE, Joint Venture or JV Subsidiary that is GloBE located in the GloBE UPE jurisdiction.

90. Where the Applicable MNE Group's profits are covered by the Transitional UTPR Safe Harbour (in respect of the GloBE UPE jurisdiction) and one or more QIIRs (in respect of profits outside the that jurisdiction), Australia could not have any UTPR taxing rights. There is similarly no need for a return to show a nil amount in such cases.

91. Paragraph 11(2)(b) applies where the Filing Constituent Entity has made, or could have made, a Transitional UTPR Safe Harbour election and the following amounts would be reduced to zero under section 2-55 of the Minimum Tax Rules if the assumptions subsection 11(3) of this instrument were made:

- (a) the Top-up Tax of each LTCE of the Applicable MNE Group, other than a Constituent Entity that is GloBE located in the GloBE UPE jurisdiction; and
- (b) the GloBE UPE's Allocable Share of the Top-up Tax of each GloBE Joint Venture, and of each of its GloBE JV Subsidiaries, of the Applicable MNE Group, other than a GloBE Joint Venture or GloBE JV Subsidiary that is GloBE located in the GloBE UPE jurisdiction.

⁴⁰ Subsection 8-225(2) of the Minimum Tax Rules.

92. As with paragraph 11(2)(a), paragraph 11(2)(b) requires the Applicable MNE Group to consider a hypothetical. However, in this hypothetical, Constituent Entities, GloBE Joint Ventures and GloBE JV Subsidiaries located in the GloBE UPE jurisdiction are excluded from consideration. Australia could never have UTPR taxing rights over those Entities for the Fiscal Year due to the operation of the Transitional UTPR Safe Harbour.

93. The words 'or could have made' an election, cater for situations where an Applicable MNE Group satisfies the conditions to make the Transitional UTPR Safe Harbour election for the Fiscal Year, but does not actually do so because the GloBE UPE jurisdiction already benefits from another safe harbour that prevents Australia's UTPR from applying.

94. An example of an Applicable MNE Group that could be covered by paragraph 11(2)(b) for a Fiscal Year is one for which a Transitional UTPR Safe Harbour election has been made, or could have been made, and the GloBE UPE is required to apply a QIIR in respect of Constituent Entities, GloBE Joint Ventures and GloBE JV Subsidiaries that are not located in the GloBE UPE jurisdiction.

Compliance cost assessment

95. To be advised.

Consultation

96. Subsection 17(1) of the *Legislation Act 2003* requires that the Commissioner be satisfied that appropriate and reasonably practicable consultation has been undertaken before they make a determination.

97. As part of the consultation process, you are invited to comment on the draft determination and its accompanying draft explanatory statement.

Please forward your comments to the contact officer by the due date.

Due date:	24 September 2025
Contact officer:	Maria Spivak
Email:	maria.spivak@ato.gov.au
Phone:	(03) 9285 1861

Statement of compatibility with human rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Taxation Administration (Exemptions from Requirement to Lodge Australian IIR/UTPR tax return and Australian DMT tax return) Determination 2025

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

This instrument sets out the circumstances in which a group entity of certain multinational groups need not lodge certain Australia tax returns required under the Global Anti-Base Erosion (GloBE) Rules (part of the OECD's Pillar Two framework). The relevant Australian tax returns are known as the Australian IIR/UTPR tax return (required by Subsection 127-35(2) in Schedule 1 to the *Taxation Administration Act 1953*) and the Australian DMT tax return (required by Subsection 127-45(2) in Schedule 1 to the *Taxation Administration Act 1953*).

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms. It sets out the circumstances in which certain entities are exempt from lodging an Australian IIR/UTPR or Australian DMT tax return.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.