

1. How will the global minimum tax rules ensure that MNEs pay a minimum level of tax on the income they earn in each jurisdiction?

Countries that choose to introduce the Global Anti-Base Erosion (GloBE) rules have agreed to do so in a consistent and co-ordinated way. The inter-locking nature of the GloBE rules means that their adoption by a critical mass of jurisdictions will be sufficient to ensure that MNEs are required to pay the minimum level of tax on their profits arising in each jurisdiction where they operate. The GloBE rules incorporate an agreed rule order together with backstop or secondary rules that apply if a country where an MNE is based does not apply the primary rule. For instance, if the country where the MNE is headquartered does not subject the ultimate parent entity of the MNE group to the primary income inclusion rule (or “IIR”), another parent entity in the group, further down in the ownership chain, must apply the IIR under the agreed rule order. If even this does not result in the income of the MNE Group being subject to tax at the 15% minimum tax rate, the further backstop of the “UTPR” kicks in, which ensures the payment of the minimum tax through a denial of deduction or similar mechanism in all the countries where the MNE has a presence. The interlocking nature of these rules therefore ensures that top-up tax will be collected in jurisdictions that have introduced the GloBE rules even where the MNE operates in or through other jurisdictions that have not implemented the rules.

While countries are not required to adopt the GloBE rules, jurisdictions that adopt the GloBE rules will apply an effective tax rate test using a common tax base and a common definition of covered taxes to determine whether an MNE is subject to an effective tax rate below the agreed minimum rate of 15% in any jurisdiction where it operates. Having a common, consistent effective tax rate test as the foundation of the global minimum tax rules ensures a level playing field and puts a floor under tax competition.

2. What are the benefits of the global minimum tax rules for Inclusive Framework members and what will be the impact on developing countries?

With a minimum effective tax rate of 15%, the GloBE rules are expected to generate around USD 150 billion in additional global tax revenues per year. This includes not only the revenues expected from the application of the rules themselves, but also additional corporate income tax revenues expected from the resulting reduction in profit shifting activity as a consequence of introducing the rules. A jurisdictional effective tax rate of 15% is a big step up from the historically often very low rates on foreign source income of MNEs.

The GloBE rules acknowledge the calls from developing countries for more transparent, mechanical, predictable rules to level the playing field and reduce the incentive for MNEs to shift profits out of developing countries. The GloBE rules are expected to reduce pressure on governments to offer wasteful tax incentives and tax holidays, while still providing a carve-out for certain income that arises from real substance. In addition to this, developing countries are expected to be able to further protect their tax base through the application of a treaty based Subject to Tax Rule (STTR) which will allow countries to retain their taxing right, which they may have otherwise ceded under a tax treaty, on certain payments made to related parties abroad which often pose BEPS risks, such as interest and royalties.

3. Are countries required to adopt the global minimum tax rules, what happens if they don't?

The GloBE rules are not mandatory but have been agreed as a “common approach”. This means that jurisdictions are not required to adopt the GloBE rules, but if they choose to do so, they agree to implement and administer them in a way that is consistent with the agreed outcomes set out under those rules. Even if they do not implement the rules, agreement on a common approach means that one jurisdiction accepts the application of the GloBE Rules by another in respect of MNEs operating in its jurisdiction.

4. Has the Inclusive Framework consulted with business and other stakeholders on the design of the global minimum tax rules?

There have been public consultations on both Pillars One and Two since the launch of the digital economy project in 2019. An initial public consultation on the key aspects of Pillar Two took place in March 2019 following the release of a policy note by the Inclusive Framework members in January 2019. A second public consultation took place in December 2019 after the release of the Programme of Work in May 2019. This second consultation focused on the design of the tax base and the use of financial accounts. The Blueprint on Pillar Two, which was developed following this consultation, addressed all the key technical aspects of the design of the GloBE rules. The Blueprint was released in October 2020, and a third public consultation took place in January 2021 to discuss the Blueprint. The input provided by stakeholders on the blueprint informed the discussions that were held throughout this year in developing the GloBE Model Rules.

In addition to these consultations, there has been direct consultation with stakeholders, including civil society, in relation to particular aspects of the design of the rules. Also, the work has benefitted from ongoing input and engagement with a Business Advisory Group set up by the OECD's Business and Industry Advisory Committee (BIAC).

5. Which MNEs are in scope of the global minimum tax rules?

The GloBE Model Rules will apply to MNEs that have consolidated revenues of EUR 750 million in at least two out of the last four years. This revenue threshold is broadly similar to that used for Country-by-Country Reporting (CbCR purposes), and is estimated to cover over 90% of the global corporate income tax base. Government entities, international organisations, non-profit organisations, pension funds or investment funds that are ultimate parent entities of an MNE Group (and certain holding vehicles of such entities) are excluded entities that are not subject to the GloBE rules, but this exclusion does not affect the MNE Group owned by such entities, which will remain in scope of the GloBE rules if the group as a whole otherwise meets the consolidated revenue threshold.

6. Is the minimum tax rate of 15% high enough?

The GloBE rules are based on an effective tax rate. While headline corporate income tax rates are higher than 15% in many jurisdictions, MNEs often have an effective tax rate on that income that is significantly lower than the headline rate as a result of deductions, exclusions and credits provided under local law. Furthermore the exemptions (or indefinite deferral) provided to firms for

foreign income, combined with the ability of MNEs to structure their offshore arrangements in a way that limits their exposure to foreign taxes, means that an MNE's effective tax rate on foreign income can be much lower than 15% and may even be close to zero in some cases. The GloBE rules will ensure that foreign income will be taxed at an effective rate of at least 15%, restoring a level playing field and eliminating the need for countries to offer very low tax rates in order to compete for inbound investment.

7. What role does the substance carve-out play in the global minimum tax calculation? What is the likely impact on investment incentives?

The substance carve-out excludes from the GloBE tax base a certain amount of income calculated by reference to a fixed return on assets and payroll expenses in each jurisdiction. The amount of this substance-based income exclusion is equal to the sum of (i) 5% of the carrying value of tangible assets located in the jurisdiction and (ii) 5% of the payroll costs for employees that perform activities in the jurisdiction. The GloBE rules also provide for a 10-year transition period in recognition of the potential impact of the GloBE rules on existing incentives and existing investment. The Transition Period starts with a 10% carve-out for payroll costs and 8% carve-out for tangible assets, with these carve-out percentages declining to 5% over time.

A substance carve-out based on assets and payroll costs allows a jurisdiction to continue to offer tax incentives that reduce taxes on routine returns from investment in substantive activities, without triggering additional GloBE top-up tax. Given the carve-out covers investment in both tangible assets and payroll it will have broad application to a wide range of different industries.

8. Are there mechanisms to address timing differences?

Income or loss may be recognised in a different year for financial accounting and tax. Given that the GloBE rules rely on the financial accounts for calculating the tax base, special rules are needed to adjust for fluctuations in the effective tax rate that are attributable to these timing differences. MNEs already use deferred tax accounting principles to track differences between financial accounting and local tax in the timing in the recognition of income and expenses. The GloBE rules leverage these deferred tax accounting mechanisms to adjust for timing differences under GloBE.

When an item of income is recognised for GloBE purposes before it is recognised for local tax purposes, credit is given at the minimum rate for the tax that will be paid in the future with respect to such income (i.e., a deferred tax liability). Because credit is given for tax to be paid in the future, the timing difference does not give rise to minimum tax. The GloBE deferred tax accounting mechanism incorporates a number of limitations on the use of deferred tax accounting that are designed to protect the integrity of the outcomes under the GloBE rules.

9. What are the limitations and adjustments on the use of deferred tax accounting?

The application of the deferred tax accounting approach under the GloBE rules incorporates a number of safeguards designed to ensure that this approach neutralises only temporary differences between tax and book, and that credit is only given for tax that will be paid within an appropriate time frame. The deferred tax accounting approach under the GloBE rules starts with

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the total amount of deferred tax adjustments for the year as reported in the financial accounts of the group entity and then makes three key adjustments:

- It removes deferred tax items that reflect management's views on future outcomes (such as changes in valuation of tax losses and uncertain tax positions);
- It excludes deferred tax on items that are not included within the GloBE tax base – this includes requiring an immediate adjustment for tax losses that result from non-economic deductions.
- It caps the accrued deferred tax assets and liabilities at the minimum rate in order to ensure a credit for deferred taxes only provides shelter for the corresponding timing difference and cannot be used to generate extra credit under the rules;

Further the deferred tax accounting approach incorporates a recapture rule that limits allowable timing differences under this approach to five years. This recapture rule requires a deferred tax liability to be reversed to the extent it is not paid within five years from when it was originally creditable under GloBE. The five-year recapture rule does not apply to certain deferred tax liabilities that relate to particular long-term items recognised as requiring an exception on policy grounds. Items that are not subject to the five year recapture rule include cost recovery allowances on tangible assets, R&D expenses and fair value accounting on unrealised gains.

Finally the GloBE rules also incorporate an alternative mechanism, primarily intended for MNEs that incur losses in low tax jurisdictions, that allows for a carry-forward of those losses in the form of a deemed tax asset that is priced at the minimum rate.

10. Do the global minimum tax rules provide any allowance for losses incurred in a period prior to the introduction of the rules?

The GloBE rules provide a transition rule to take into account losses that have been incurred prior to the effective date of the rules. To the extent MNEs have tax attributes resulting from tax losses reflected in their financial accounts, such attributes may generally be carried-forward into the global minimum tax regime and may be used in future years to offset income. This ensures that inappropriate outcomes do not occur whereby minimum tax is charged simply because a MNE is using an attribute that arose as a result of a tax loss prior to the effective date of the global minimum tax rules.

11. What are the expected administrative and compliance costs resulting from the introduction of the global minimum tax rules?

The GloBE rules have been designed with the objective of minimising cost and complexity for both tax authorities and taxpayers within the context of the tax policy objectives of Pillar Two. The drive for simplicity has informed a number of design choices including:

- The use of Country-by-Country reporting (CbCR) style thresholds and definitions for determining scope.
- The reliance on entity level financial information and the use of parent financial accounting standards, with essentially no book-to-book and limited book-to-tax adjustments.

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- Use of deferred tax accounting to address timing differences, including transitional rules based on existing tax accounting.
- A de minimis exclusion for operations in a jurisdiction that are below EUR 1 million in income and EUR 10 million in revenues.
- The use of the IIR as the primary rule with the UTPR acting as a backstop, which is largely driven by simplicity and lower compliance costs.
- The use of bright line and mechanical tests such as those used for the substance based carve-out and the allocation key for the UTPR.

In addition, the forthcoming Implementation Framework will include additional administrative guidance with respect to filing obligations. Safe harbours may be developed to help mitigate compliance burdens for MNEs.

12. How do the rules ensure that there are co-ordinated outcomes and avoid the risk of over-taxation?

The GloBE rules are a co-ordinated system of interlocking rules that are intended to be adopted by jurisdictions in the form of a common approach. However, not all countries can apply their rules at the same time with respect to the same item of low-taxed income. To eliminate the risk of over-taxation under the GloBE rules, priority rules apply which ensure that the global minimum tax rules are deactivated in situations where the low-taxed income is already subject to the minimum tax somewhere else. In addition, the GloBE rules ensure that all of the jurisdictions that are implementing the rules have the same starting point about both the rules and their interpretation. The Inclusive Framework will also ensure that the rules actually operate in a co-ordinated manner as countries move into the implementation phase. The work on addressing co-ordination will form part of the GloBE Implementation Framework, which may include multilateral reviews that assess whether the GloBE rules implemented in a jurisdiction are consistent with the Model GloBE Rules.

13. Do these rules require countries to introduce top-up taxes on their own taxpayers?

Countries that adopt the GloBE rules are not required to introduce domestic top-up taxes on their own resident taxpayers, but may choose to do so. To the extent a country chooses to implement a qualified domestic minimum tax, such tax will reduce the amount of top-up tax that may otherwise be applicable under the GloBE rules and payable in another jurisdiction. For example, if top-up tax of 100 is due with respect to a jurisdiction under the GloBE rules, but such jurisdiction imposes its own qualified domestic minimum tax of 100, there will be no incremental top-up tax due under the GloBE rules. This crediting of a qualified domestic minimum top-up tax against a top-up tax liability under the GloBE preserves the primary taxing rights for the jurisdiction where the income arises.

14. Do the global minimum tax rules apply on top of other rules, like CFC rules? Won't that lead to double taxation?

Because the GloBE rules operate as a minimum tax, the rules are complimentary to existing corporate tax rules, such as Controlled Foreign Company (CFC) regimes. Taxes paid on income arising in a jurisdiction, including under CFC regimes, is taken into account for purposes of

computing the effective tax rate in a jurisdiction. To the extent tax is paid at or above the minimum rate as a result of existing rules, including CFC rules, no additional tax is due under Pillar Two.

15. How is the GILTI co-existence referred to in the Inclusive Framework October Statement intended to be achieved?

GILTI co-existence will be considered in the new year. Changes to the GILTI rules as the result of US legislation, such as the Build Back Better Act, will be incorporated into this process to the extent those changes are enacted.

16. What are the next steps under Pillar Two?

Commentary to the GloBE rules will be released in early 2022 and will provide guidance on the interpretation of the global minimum tax rules.

Stakeholder input will also be sought in the development of the GloBE Implementation Framework that will facilitate the co-ordination and administration of the global minimum tax rules. As provided in the detailed implementation plan attached to the statement released in October 2021, this work will focus on agreed administrative procedures (e.g. detailed filing obligations, multilateral review processes) and the possible use of safe-harbours to facilitate both compliance by MNEs and administration by tax authorities. The work on the Implementation Framework will be finalised by the end of 2022.

Furthermore, a model treaty provision to give effect to the Subject To Tax Rule (“STTR”) under Pillar Two will be developed and the model treaty provision will be supplemented by commentary that explains the purpose and the operation of the STTR. A multilateral instrument will be developed by the IF by mid-2022 to facilitate the swift and consistent implementation of the STTR in relevant bilateral treaties.

Public consultations will be held on the Implementation Framework in February and on the STTR in March 2022.