Tax Alert

ATO Pillar Two website updates

22 May 2025

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At a glance

- The ATO have updated their website guidance on administration of Australia's Pillar Two global and domestic minimum tax rules.
- Australia's Pillar Two rules are in force and have retrospective application to fiscal years starting on or after 1 January 2024.
- The ATO updates include guidance on lodging, paying and record keeping requirements for Pillar Two, and how Australia's corporate tax system interacts with Pillar Two.
- In-scope groups need to prepare for the financial reporting and compliance obligations that will be required under the new domestic and global minimum tax.

On 16 May 2025, the Australian Taxation Office (ATO) updated its online guidance regarding the Pillar Two global and domestic minimum taxes. This Tax Alert outlines the key updates to the ATO guidance, as well as the relevance of these updates to the compliance obligations arising from Australia's Pillar Two rules.

The ATO has the role of administering and ensuring compliance with the Pillar Two rules, whilst Treasury is responsible for the design and development of the legislation, as well as making updates to maintain alignment with the OECD Model Rules.

The ATO has enhanced several online resources to provide insights into various administrative issues. Whilst this guidance does not form part of the formal legislative framework, it provides detailed information on how the ATO will administer the Pillar Two rules including potential amendments to the legislation, issuance of Private Binding Rulings, lodgement and record keeping requirements and the interaction with Australia's existing corporate tax framework.

The Australian Pillar Two rules apply to multinational enterprise groups (MNE Groups) with annual revenue of EUR 750 million or more in the Consolidated Financial Statements of the Ultimate Parent Entity (UPE) in at least 2 of the 4 fiscal years preceding the test year, consistent with the OECD Model Rules.

Implications for taxpayers

The new guidance published by the ATO marks a significant step forward in the implementation of the compliance framework for Pillar Two. Australian-based and global groups with a presence in Australia need to act now to understand the impact of Pillar Two on their organisation and prepare for the new lodgment, payment, and record-keeping requirements, given the significant penalties for non-compliance.

Australia's Pillar Two rules include:

- A domestic minimum tax (DMT) with retrospective application to fiscal years starting on or after 1 January 2024.
- A global minimum tax by imposing top-up tax through an Income Inclusion Rule (IIR) with retrospective application to fiscal years starting on or after 1 January 2024.
- An Undertaxed Profits Rule (UTPR), applying to fiscal years starting on or after 1 January 2025.

The OECD published new Consolidated Commentary to the Model Rules on 9 May 2025 incorporating various aspects of the Agreed Administrative Guidance approved by the Inclusive Framework before the end of March 2025. However, certain parts of this Consolidated Commentary and the Agreed Administrative Guidance are yet to be incorporated in the Australian Pillar Two rules. It is expected that this should be incorporated into the Rules in due course.

Administering potential amendments

Australia's Pillar Two rules have been included in the OECD Central Record of Legislation of having qualified transitional status for IIR, Qualified Domestic Minimum Top-up Tax (QDMTT) and QDMTT Safe Harbour purposes.

In accordance with the ATO guidance, Australia is dedicated to implementing both global and domestic minimum tax measures in accordance with the OECD Model Rules to preserve its qualified status. This requires maintaining alignment with OECD materials, including future publications, and resolving any inconsistencies between Australia's Pillar Two rules and these materials.

The ATO confirms that any future amendments to address any inconsistencies will be a policy decision of the Treasury, with expectations that such changes may generally have retrospective application to uphold qualification. The ATO will apply its usual practical guidance for the administrative treatment of retrospective legislation for taxpayers that anticipate legislative amendments to address these inconsistencies. 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.

The ATO will not advise taxpayers to self-assess by anticipating law change to address inconsistencies. However, if taxpayers choose to do so, the ATO will not direct 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.

In respect of anticipated legislative amendments, the related guidance on lodgment and payment obligations will apply in relation to interest and penalties for taxpayers that anticipate legislative amendments.

Engaging with ATO for advice

Private ruling applications can be sought by taxpayers with respect to Pillar Two. The Commissioner may decline to provide a private ruling in certain scenarios, including where:

- The OECD/G20 Inclusive Framework has published new Administrative Guidance which Australia is planning on incorporating into domestic law but has not yet done so.
- The OECD/G20 Inclusive Framework has identified an issue which requires Administrative Guidance or is drafting Administrative Guidance on an 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 Pillar Two rules.

Taxpayers are invited to contact the ATO via a dedicated email address (Pillar2Project@ato.gov.au) to facilitate preliminary discussions regarding the most appropriate form of advice before formally requesting a private ruling. In some cases, a taxpayer seeking a private ruling might be re-directed to seek an alternative form of resolution however guidance on when such re-direction might be appropriate is not included on the updated website. Taxpayers may also direct questions regarding the administration or operation of Australia's Pillar Two rules to the same email address.

No additional simplifications

The Australian Pillar Two rules currently provide for all the Safe Harbours that are included in the OECD Model Rules, namely the Transitional Country-by-Country Reporting (CbCR) Safe Harbour, the QDMTT Safe Harbour and the Transitional UTPR Safe Harbour. However, to maintain qualification, no further concessions, simplifications, or safe harbours will be provided if these are inconsistent with the OECD Model Rules.

Lodgments

The ATO is working on the design of the Australian DMT Return, the Australian IIR/UTPR Return (AIUTR) and the foreign lodgment notification form in respect of the GloBE Information Return (GIR) in consultation with external stakeholders through the Pillar Two Global and Domestic Minimum Tax Working Group and Digital Service Provider Working Group.

The ATO intends for the DMTR, the AIUTR and the foreign lodgment notification form to be combined into a single return. The forms are expected to be available in advance of first lodgments, due by 30 June 2026 for MNE Groups with a 31 December 2024 year end.

The default requirement is that each Australian group entity of an MNE Group must lodge a GIR, AIUTR and DMTR.

For GloBE permanent establishments located in Australia, all lodgment and payment obligations are placed on its main entity (head office).

GloBE Joint Ventures (GloBE JVs) and GloBE JV subsidiaries are not required to separately lodge the GIR or the AIUTR. However, GloBE JVs and GloBE JV subsidiaries of applicable MNE groups are required to lodge a DMTR. In this regard, the ATO guidance states that 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.

A Designated Local Entity (DLE) can be nominated to lodge the returns which will discharge the lodgment obligations for other Australian group entities. A DLE is a group entity of the MNE group that is located in Australia and appointed by every other Australian entity of the MNE Group to give to the Commissioner the GIR or foreign lodgment notification as relevant.

For Australian headquartered MNE Groups, the GIR lodgment obligation for all Australian group entities will be discharged by the DLE lodging the GIR with the ATO.

For foreign parented MNE Groups with Australian group entities, each of those entities will have an obligation to give a foreign lodgment notification to the Commissioner, unless a DLE is nominated to do so on their behalf. Where a foreign lodgment notification is given, the GIR must be lodged with a foreign government agency that has a Qualifying Competent Authority Agreement (QCAA) with Australia. Importantly, the ATO may require that a GIR is lodged locally with the ATO if it has been lodged with a foreign government agency but not exchanged with the ATO within the time period specified in the QCAA. The ATO will provide details of any QCAAs that Australia enters into with other jurisdictions on their website.

A DLE can also be appointed to lodge the AIUTR and DMTR on behalf of other Australian group entities with obligations to lodge such returns. The lodgment obligation for an Australian group entity will be discharged by the DLE lodging the AIUTR and/or DMTR with the ATO.

Whilst the ATO guidance does not explicitly state that a DLE can lodge a single AIUTR and DMTR covering all Australian group entities, this appears to be the likely position when read in conjunction with the specific language used in the Pillar Two rules themselves. The ATO is expected to confirm this position in due course.

The existing penalty regime will apply to all lodgment and payment obligations that arise under Australia's Pillar Two rules. It is therefore important that care is taken to identify and properly fulfill the lodgment obligations for all Australian group entities.

Legislative instrument

The ATO are currently undertaking work to develop a legislative instrument (LI) that exempts group entities from the requirement to lodge an AIUTR and a DMTR. It is noted that the LI will be limited to AIUTR and DMTR lodgments and that the Commissioner does not have the ability to exempt entities from lodging the GIR or foreign notification form.

The ATO have welcomed views on the types of scenarios, circumstances or classes of entities that should be considered for exemption from the requirement to lodge an AIUTR and DMTR under the LI, which may be provided to Pillar2Project@ato.gov.au.

Liability

The ATO has confirmed that liability for Top-up Tax arises on the due date of the return, typically 15 months after the 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 or Multiple Entry Consolidated (MEC) Group, the Head Entity is allocated the Top-up Tax amounts relating to DMT and UTPR tax.

Under the Australian Pillar Two Rules, all group entities within the MNE Group are jointly and severally liable for Top-up Tax, as well as related interest charges and penalties. The joint and several liability in case of GloBE JVs and GloBE JV subsidiaries generally extends to each of these entities and the group entities of the MNE Group that have direct ownership interest in the JV. There are also special rules that apply for trusts, partnerships and other unincorporated entities.

Penalties

The existing penalty provisions apply to the new lodgment obligations and any Top-up Tax liability arising under Australia's Pillar Two rules. Base penalty amounts are multiplied by 500 to be aligned with the administrative penalties that apply to Significant Global Entities (SGEs).

Administrative penalties apply to each return not lodged. As the default requirement is that lodgment obligations arise for all Australian group entities for the GIR, AIUTR and DMTR, it is imperative that DLE nominations are made and foreign lodgment notifications are provided correctly.

The OECD has released guidance on transitional penalty relief, including not applying penalties in connection with the filing of the GIR, where an MNE Group has taken reasonable measures to ensure the correct application of the rules. The OECD guidance refers principally to each jurisdiction's existing rules and practice for an understanding of what constitutes 'reasonable measures'. The ATO has not yet provided guidance on what, if any, transitional penalty relief will be provided, or on what it considers 'reasonable measures'.

Record keeping

Specific record keeping requirements in respect of the Australian Pillar Two rules have been inserted in the *Taxation Administration Act 1953*.

Australian group entities, as well as JVs and GloBE JV subsidiaries, are required to keep records that fully explain whether it has complied with the Pillar Two Rules. This includes, but is not limited to, all records that explain and show the basis of every disclosure in the GIR, AIUTR and DMTR. 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.

The ATO have provided guidance on record keeping requirements for the GIR. In respect of the GIR, the records required to be kept are determined by the sections of the GIR that are distributed to each country based on the MNE Group's structure and the requirements of the rule order (under the dissemination approach agreed upon by the OECD/G20 Inclusive Framework):

- The UPE country receives the complete GIR.
- Countries with taxing rights receive the detailed calculations for those jurisdictions in which it has taxing rights.
- All countries receive the corporate structure.

This broadly gives rise to the following record keeping requirements for different MNE group profiles:

- Australian outbound MNE Groups (Australian UPE): records must be kept for all disclosures in the GIR.
- Australian inbound MNE Groups (foreign UPE) where Australia has taxing rights: records must be kept for all disclosures in the GIR in relation to those jurisdictions where Australia has taxing rights.
- Australian inbound MNE Groups (foreign UPE) where Australia does not have taxing rights: records must be kept which support that Australian CEs do not have IIR/UTPR taxing rights as per the agreed rule order. The record keeping requirements may be reduced in cases where taxing rights do not arise due to the application of a safe harbour in a foreign jurisdiction (for example), but otherwise this will generally entail the same record keeping requirements as cases where Australia does have taxing rights to demonstrate that no top-up tax arises in the relevant foreign jurisdictions.

For completeness, records must be kept in relation to the MNE Group structure regardless of whether Australia has taxing rights over a foreign jurisdiction.

Pillar Two interactions with Australia's existing corporate tax system

As set out in our previous Tax Alerts, Australia's implementation of the Pillar Two rules includes consequential amendments to Australia's income tax law to clarify its interaction with Pillar Two. The amendments are included in the Consequential Act. These include rules concerning foreign income tax offsets (FITOs), controlled foreign companies (CFCs), hybrid mismatches and foreign hybrids.

An Australian FITO may be claimed in respect of foreign DMT taxes (but not in respect of taxes paid under a foreign IIR or UTPR). However, to address scenarios where other jurisdictions might seek to undermine the Pillar Two rules, safeguards apply such that the amount of DMT tax which an entity is treated as having paid is reduced in specified scenarios. The ATO website confirms that this safeguard is intended to align with the existing FITO integrity rules and a practical example is provided where foreign DMT taxes will not give rise to FITO to the extent that a corresponding grant is given by the foreign government that imposes the DMT.

In respect of the interaction with CFC rules, Australia's DMT is given priority in its application to Australian income and does not take into account taxes imposed under other CFC tax regimes. Under Australia's CFC rules, foreign DMT, IIR or UTPR taxes are excluded from the meaning of 'subject to tax' for CFC purposes. This will also impact whether certain income is considered eligible designated concession income (EDCI). Taxpayers are precluded from notionally deducting foreign IIR tax and foreign UTPR tax in calculating attributable income. However, a notional allowable deduction may be available for payments of foreign DMT tax.

Australia's hybrid mismatch rules broadly continue 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. The disregarding of such taxes also applies in the context of Australia's targeted integrity rule. 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.

Similarly, Australia's foreign hybrid rules broadly continue to operate unaffected by Pillar Two, in that 'foreign income tax' for those purposes does not include foreign IIR, UTPR and DMT taxes and other foreign minimum taxes.

How EY can help

Our EY Team of BEPS Pillar Two advisors can support you with:

- Preparing for the new compliance obligations, including the preparation and filing of the GloBE Information Return, foreign lodgement notification, Australian IIR / UTPR Tax Return and DMT Returns.
- Understanding the financial reporting implications for local or group financial statements.
- Providing technical advice on the Pillar Two rules and the interaction of Pillar Two with Australia's local tax rules.
- Obtaining Private Binding Rulings from the ATO on Pillar Two matters.
- Training for your internal tax teams and other key stakeholders.
- Current-state assessment of data availability, systems and processes and assistance with software implementation and process redesign.
- Considering the Pillar Two implications for your commercial arrangements, transactions and M&A activity.

For more information please contact your usual EY advisor or:

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