



Tax Alert

Australian 15% global and domestic minimum taxes draft law released

At a glance

- ▶ Treasury has released draft legislation for consultation to implement global and domestic minimum taxes, including:
 - ▶ An Income Inclusion Rule (IIR) applying to years starting from 1 January 2024
 - ▶ An Undertaxed Profits Rule (UTPR) applying to years starting from 1 January 2025
 - ▶ A domestic minimum tax applying to years starting from 1 January 2024.
- ▶ In-scope MNEs will be required to lodge three new returns in an approved form to the ATO:
 - ▶ A GloBE Information Return
 - ▶ An Australian GloBE Tax Return
 - ▶ A DMT Return
- ▶ How EY can help

On 21 March 2024, the Australian Treasury released Exposure Draft (ED) [primary legislation](#) and [subordinate legislation](#), in the form of Rules, for Australia's proposed adoption of the Organisation for Economic Co-operation and Development (OECD) Global Anti-Base Erosion (GloBE) Pillar Two global and domestic minimum tax rules, for consultation.

The ED primary legislation outlines the key aspects of the global and domestic minimum taxes, including the imposition of top-up tax, through an Income Inclusion Rule (IIR), an Undertaxed Profits Rule (UTPR) and a Domestic Minimum Tax (DMT).

The proposed Rules are in line with the OECD's Model Rules and outline the key aspects of the computation of GloBE income and top-up tax, including Transitional Country by Country Reporting (CbCR) Safe Harbours.

Treasury also released a discussion paper on the interaction of global and domestic minimum taxes with certain existing income tax laws.

Submissions on the primary legislation and discussion paper are due by 16 April 2024, and submissions on the subordinate legislation are due by 16 May 2024.

The release of the drafts will allow Australian based and global groups with a presence in Australia to progress their Pillar Two implementation projects including to address the technical impact of the rules as well as the organisation's data and systems readiness to comply with and report on the rules.

Key features of the Exposure Draft legislation

Overview

Consistent with the Government's announcement in the May 2023-24 Budget, the ED primary legislation proposes to implement:

- ▶ A global minimum tax by imposing top-up tax through an IIR, applying to fiscal years commencing on or after 1 January 2024.
- ▶ An UTPR, applying to fiscal years commencing on or after 1 January 2025.
- ▶ A DMT applying to fiscal years commencing on or after 1 January 2024.

The ED Assessment Bill sets out the necessary framework for the Rules and the ED Imposition Bill will impose top-up tax in respect of the IIR, UTPR and DMT. The ED Consequential Amendment Bill contains consequential and miscellaneous provisions to facilitate the administration of the top-up tax, including the preparation of three new returns for filing in Australia for in-scope MNE Groups.

The three bills are accompanied by the ED Rules which propose to implement the domestic framework for the calculations required to determine the top-up tax liability. The Rules are intended to be consistent with the OECD's Model Rules, Commentary and Administrative Guidance.

We set out below a summary of the key features of the proposals and the administrative requirements.

IIR, UTPR and DMT charging rules

- ▶ The IIR applies by imposing the top-up tax amount on the applicable Parent Entity generally closest the top of the corporate structure (the 'top-down' approach). The IIR considers any low taxed constituent entities subject to an effective tax rate (ETR) below the 15% minimum tax rate in that jurisdiction and imposes a top-up tax on the ultimate parent entity, in proportion to their ownership of the constituent entity.
- ▶ The UTPR serves as a backstop to the IIR and permits other jurisdictions to impose top-up tax (by denying deductions or an equivalent adjustment) on certain low taxed constituent entities in the MNE Group which are resident in foreign jurisdictions and are not subject to top-up tax under an IIR.
- ▶ The DMT applies to Australian operations that are part of a MNE Group. The DMT imposes the top-up tax on Australian entities that are subject to an ETR below the 15% minimum tax rate. The DMT requires the use of Australian financial statements and AUD currency in most cases, which is a divergence from Model Rules that require parent entity consolidated financial statement and reporting currency, potentially creating an additional compliance burden for Australian subsidiaries.

Applicable MNE Groups

The global and domestic minimum taxes apply to multinational (MNE) groups, with consolidated annual revenue of at least EUR 750 million in at least 2 of the 4 Fiscal Years immediately preceding the test year.

- ▶ An MNE Group is a group with an Ultimate Parent Entity (UPE) (head entity) and a Constituent Entity (entity controlled by the UPE) located in a different jurisdiction.
- ▶ The revenue threshold is listed in EUR to avoid annual rebasing calculations and to minimise the difference between the Australian threshold and the thresholds set by other jurisdictions.
- ▶ Consistent with the OECD Model Rules, only limited exemptions to the Rules will apply. These are all specifically defined under the Rules and include Investment Funds and Real Estate Investment Vehicles that are a UPE, Pension

Funds (which was not extended to specifically reference Australian complying superannuation funds being in scope), Governmental Entities, International Organisations, Non-profit Organisations and income associated with international shipping.

The Rules

The ED Rules are largely in line with the OECD's Model Rules.

- ▶ They include key operative aspects of the OECD's Model Rules, including on computation of GloBE income and top-up tax, details on the application of the rules to investment and tax transparent entities and transitional provisions for applicable MNE Groups.
- ▶ The Rules are triggered by the threshold of the ETR for each country in which the MNE Group operates. Broadly, the ETR for all entities of the MNE Group is determined on a jurisdictional basis by dividing the Adjusted Covered Taxes of the entities in the respective jurisdiction by their GloBE Income. If the ETR is below the global minimum tax rate of 15% in a jurisdiction, the MNE Group is subject to a top-up tax and this tax could be collected under an IIR, UTPR or DMT.
- ▶ The Rules also operate to ensure that future administrative guidance released by the OECD can be incorporated in a timely and efficient manner, through the Minister's Regulation-making power.

Safe harbour rules

Safe harbour rules are included in the Rules to aid the administrative burden in computing the complex top-up tax calculations by deeming top-up tax for a jurisdiction to be zero for a fiscal year if certain conditions are met.

- ▶ The Transitional CbCR Safe Harbour is designed to provide transitional relief for MNE Groups in the initial years and operates through the use of information contained in an MNE's Qualified CbC Report and Qualified Financial Statements.
- ▶ The Rules also provide for a permanent simplified calculations safe harbour (which is generally yet to be agreed at the OECD level) and a QDMTT safe harbour.

Availability of franking credits on top-up tax

The payment of top-up tax under a DMT will give rise to franking credits, however, top-up tax under the global minimum tax rules, including under the IIR and UTPR, is an international form of tax and will not give rise to franking credits.

Returns

The ED legislation proposes to introduce three new returns for in-scope MNEs to complete and submit to the Australian Taxation Office (ATO).

- ▶ A GloBE Information Return - this return is a standardised return and is consistent with the GloBE Rules. The GloBE Information Return may be lodged overseas and then exchanged with the Commissioner.
- ▶ An Australian GloBE Tax Return - this return contains information for the purposes of administering the GloBE Rules to assess and collect IIR and UTPR top-up tax.
- ▶ A DMT Return - this return contains information for the purpose of administering the GloBE Rules to assess and collect Domestic top-up tax.

These returns must be completed and submitted to the ATO in an approved form.

The Australian GloBE Tax Return and the DMT Return are required to be lodged within the time that is specified for the lodgement of the GloBE Information Return. Lodgement must be completed within 15 months after the end of every Fiscal Year, except for the first Fiscal Year of implementation, called the transition year, where returns must be completed within 18 months of the end of the Fiscal Year.

The Commissioner does not have discretion to defer lodgement of the GloBE Information Return, but may defer lodgement of the Australian GloBE Tax Return and the DMT Return.

Administrative penalties apply to the applicable MNE Group in respect of false and misleading statements about GloBE top-up tax or domestic top-up tax liabilities or for failing to lodge a return.

We note that in the transition year, the ED indicates that the ATO should consider not applying penalties or sanctions in connection with the filing of the GloBE Information Return, where an MNE Group has taken 'reasonable measures' to ensure the correct application of the rules.

Record keeping

The ED legislation requires entities to keep records that are necessary for the collection and recovery of GloBE top-up tax and Domestic top-up tax.

- ▶ Entities are required to keep records that fully explain whether the entity of an Applicable MNE Group has complied with the legislation.
- ▶ Record-keeping requirements apply to entities located in Australia notwithstanding that the GloBE Information Return may be lodged overseas and then exchanged with the Commissioner.

Australian law interaction discussion paper

- ▶ The ED primary and secondary legislation closely aligns to the OECD model rules and there is little consideration given to Australian specific issues.
- ▶ Treasury is also consulting on a Discussion Paper to assist stakeholders in providing feedback on interactions between the ED primary legislation and existing income tax laws.
- ▶ The discussion paper seeks feedback on the hybrid mismatch rules, the foreign hybrid entity rules, controlled foreign company rules and foreign income tax offsets.
- ▶ Some areas in which the ED and accompanying explanatory materials are silent and where further guidance and/or law development would be welcome include Australian tax consolidation issues with respect to M&A transactions, treatment of Australian Research & Development incentives and unique Australian entities such as Managed Investment Trusts and future Intangibles law and interaction with foreign GloBE Rules.

Financial reporting implications

- ▶ Amendments have been made to existing tax accounting standards (IFRS IAS 12/ AASB 112 and AASB 1060) requiring new financial reporting disclosures in respect of Pillar Two, including for periods in which Pillar Two legislation is enacted, or substantively enacted but not yet in effect.
- ▶ Although ED legislation has now been released in Australia, this does not amount to 'substantive enactment' of the legislation necessary for covered groups to report under the standards. The Bills must be passed by both Houses of Parliament, before they can be considered 'substantively enacted'.

How EY can help

EY's integrated team of local and international tax, tax compliance, and tax technology professionals can assist you with:

- ▶ Navigating the complexities of the proposed new global and domestic minimum tax regime.
- ▶ Conducting data readiness and rule impact assessments.
- ▶ Meeting your tax compliance obligations under the rules.
- ▶ Considering any other implications for your commercial arrangements.

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