OECD/G20 BASE EROSION AND PROFIT SHIFTING PROJECT

Minimum Tax Implementation Handbook (Pillar Two)

Inclusive Framework on BEPS

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BETTER POLICIES FOR BETTER LIVES

OECD/G20 Base Erosion and Profit Shifting Project

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Preface

Digitalisation and globalisation have transformed the global economy: spurring innovation, improving access to capital, goods and services, boosting more inclusive and sustainable growth and enhancing well-being. At the same time, the breadth and speed of these changes have created challenges in many areas, including taxation. One of these challenges has been the ability of large multinational groups to leverage the benefits of globalisation to structure their global operations in a way that allows them to shift profit and achieve effective tax rates on some or all of their income that are much lower than those paid by small or medium sized businesses or workers that do not have access to the same structuring opportunities. These developments have also put pressure on countries to lower their corporate income tax rates and/or offer incentives to compete for capital and investment, creating a collective action problem that has led to the so-called race to the bottom. And this comes at a time, where budgets in many countries around the world are already stretched in the wake of the public spending to address covid and the challenges raised by higher energy and interest costs.

Building on the BEPS Actions, the global minimum tax was developed by the Inclusive Framework to address these remaining challenges. The rules ensure that large multinational enterprises pay a minimum level of tax on their income in each jurisdiction where they operate, thereby reducing the incentive for profit shifting and placing a floor under tax competition, bringing an end to the race to the bottom on corporate tax rates. Inclusive Framework members have achieved this outcome through agreement on a co-ordinated rule set that imposes a minimum level of taxation on multinationals without giving rise to double taxation.

While the rules of the global minimum tax are necessarily rather technical, there is also a need for a higher level, straight-forward entry point into the overall design and operation of the rules as well as a starting point for considering implementation options. This is what the Implementation Handbook is intended to provide. It has been prepared for use by tax policy officials, administration officials and other stakeholders to give them an overall understanding of the rules and their expected impact.

I would like to thank the Indian Presidency of the G20 for inviting the Secretariat to prepare this Handbook. It supports the extensive work the Secretariat is already doing, in collaboration with other international organisations and institutional partners, to facilitate implementation of the global minimum tax. I hope that users will find it a valuable tool as they engage with stakeholders and consider moving forward on the global minimum tax.

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Introduction

1. In October 2021, over 135 jurisdictions joined a two-pillar solution to reform the international taxation rules and ensure that multinational enterprises pay a fair share of tax wherever they operate and generate profits.[1] The global minimum tax, together with the Subject to Tax Rule (STTR) constitute the second pillar of the Two-Pillar Solution for addressing the tax challenges arising from the globalisation and digitalisation of the economy.[2] The STTR is a treaty-based rule that allows source jurisdictions to ”tax back” where certain defined categories of cross-border intra-group covered income are subject to nominal corporate income tax rates below 9%.[3] The global minimum tax, which is the focus of this Implementation Handbook, is based on the Global Anti-Base Erosion (GloBE) Model Rules that a jurisdiction can introduce to impose a top-up tax on the low-taxed income of in-scope taxpayers up to 15%.

2. The GloBE rules introduced in domestic law are designed to work together with those of other jurisdictions to create a co-ordinated and comprehensive system of minimum taxation that ensures large multinational enterprise groups (MNE Groups) pay a minimum level of tax on their income in respect of every jurisdiction where they operate. These rules require in-scope Groups to calculate their income, and the taxes on that income, on a jurisdictional basis. Where this calculation results in an effective tax rate (ETR) that is below 15%, the rules require the MNE Group to pay a top-up tax that will bring the total amount of tax on the MNE Group’s excess profits in that low-tax jurisdiction up to the 15% rate.

3. This top-up tax is either collected by the low-tax jurisdiction itself, under a so called Qualified Domestic Minimum Top-up Tax (QDMTT), or, where no QDMTT applies, by another implementing jurisdiction through the imposition of either:

a. an Income Inclusion Rule (IIR) which imposes top-up tax on a parent entity in respect of the low-taxed income of a constituent entity; or
b. a UTPR which denies deductions or requires an equivalent adjustment in a subsidiary jurisdiction in order to produce an equivalent incremental increase on the taxes paid by the MNE Group.

4. The GloBE Model Rules set out the detailed terms of the global minimum tax. They are complemented by a Commentary and Administrative Guidance that is incorporated into the Commentary from time to time.[4] The GloBE rules are drafted in the form of a legislative template which an implementing jurisdiction can introduce into domestic law. The rules define the MNE Groups within the scope of the rules and the methodology to be applied in calculating their jurisdictional ETR and any resulting top-up taxes. The rules are designed to accommodate a diverse range of MNE Groups and different tax systems,

[1] https://www.oecd.org/tax/beps/outcome-statement-on-the-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2023.htm.

[2] https://doi.org/10.1787/782bac33-en.

[3] https://doi.org/10.1787/9afd6856-en.

[4] https://doi.org/10.1787/1e0e9cd8-en, www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two.pdf.

including different tax consolidation, income allocation and entity classification rules that may not be equally relevant for all jurisdictions. The core provisions of the rules are supplemented with more detailed rules that address the treatment of particular structures, transactions and tax regimes, where again the relevance of these aspects will depend on the circumstances of an implementing jurisdiction.

5. The GloBE rules operate as a common approach. This means that members of the Inclusive Framework on BEPS (Inclusive Framework) have decided that it is not necessary for jurisdictions to adopt the GloBE rules but have agreed, that if a jurisdiction chooses to do so, it must implement them in a way that is consistent with the outcomes provided under the GloBE rules including the agreed rule order. Consistent domestic implementation of parallel rules will result in transparent and predictable outcomes across jurisdictions, with resulting benefits for taxpayers and tax administrations alike. As jurisdictions move forward with the implementation, they will ensure that their domestic rules are implemented and administered in line with the common approach by providing mutual assistance and reviewing each other's implementation of the GloBE rules.

6. Since the approval and public release of the GloBE Model Rules by the Inclusive Framework, many jurisdictions have taken steps towards the implementation of these rules into their domestic law, with the global minimum tax starting to apply from the beginning of 2024 with the introduction of the IIRs. Many jurisdictions have also announced plans to introduce QDMTT. The UTPR is not expected to take effect before 2025.[5]

7. The purpose of this Implementation Handbook is to supplement the GloBE rules. It is not intended as additional detailed guidance material but rather seeks to present the core elements of the rules in a manner that provides a high-level entry point into the overall design and operation of the rules. It has been prepared for use by tax policy officials, administration officials and other stakeholders to give them an overall understanding of the GloBE rules and their expected impact. It is limited to the GloBE rules and does not address the STTR.

8. The Implementation Handbook is divided into two chapters:

- The first chapter provides an overview of the global minimum tax. It provides a starting point for the reader to obtain a broad understanding of the scope, design and operation of the rules. This overview is drafted in plain language, with a view of making the content of the GloBE rules as accessible as possible.
- The second chapter sets out the considerations to be taken into account in assessing implementation options.

9. The publication of this Implementation Handbook responds to the request from the Indian G20 Presidency and was prepared for their Finance Ministers and Central Bank Governors meeting in October 2023. The Implementation Handbook may undergo occasional updates. The Implementation Handbook supplements a variety of other resources and programmes that have been developed to assist jurisdictions with the implementation of the GloBE rules as summarised below:

- In October 2022 the OECD issued a report on the Tax Incentives and the Global Minimum Corporate Tax.[6] Other international organisations have issued analysis and guidance to countries seeking to implement the GloBE rules, including the International Monetary Fund,[7] the World Bank

[5] However, under the Transitional UTPR Safe Harbour, the UTPR shall not apply before 2026 in respect of the Ultimate Parent Entity (UPE) jurisdiction if it has a corporate income tax rate of at least 20%.

[6] https://doi.org/10.1787/25d30b96-en.

[7] https://www.imf.org/-/media/Files/Publications/PP/2023/English/PPEA2023001.ashx.

Group[8] and the International Institute for Sustainable Development.[9] The Platform for Collaboration on Tax (PCT), a space where the IMF, OECD, UN and WBG come together to share plans and engage on collaborative projects, has committed to update the Toolkit on tax incentives[10] first published in 2015, to reflect the impact of Pillar Two on developing countries. The African Tax Administration Forum (ATAF) has also made a key contribution including guidance on the implementation of a Domestic Minimum Top-Up Tax. Their publication sets out Suggested Approaches to Drafting Domestic Minimum Top Up Tax Legislation,[11] a toolkit to assist African and other developing countries in enacting a domestic top up tax.

- As part of its global relations programme, the OECD is continuing to expand the range of learning formats and tools addressing aspects of the Two-Pillar Solution. This includes a series of webinars[12] on different aspects of the rules, e-learning modules[13] and live Q&A sessions.[14] This material is available on a dedicated GloBE e-learning module that has been made available to tax administrations and policy officials on the Knowledge Sharing Platform.
- The Forum of Tax Administration[15] Capacity Building Network launched a 'Knowledge Sharing Network'[16] on implementation of the Two-Pillar Solution. The aim of the Knowledge Sharing Network (KSN) is to facilitate 'quick answers to quick questions', and high-level conversations between different tax administrations about how they have approached particular administrative issues relating to the implementation of both Pillars, focussing initially on issues related to the GloBE rules.
- Targeted support to countries is being integrated into existing OECD bilateral programmes on BEPS. This includes ad hoc technical or informational sessions as well as building in material on the global minimum tax into induction programmes and other training events. In 2022, the Inclusive Framework Secretariat established a series of pilot programmes aimed at helping developing countries proactively consider their policy choices. Nine developing countries are participating: Egypt, Georgia, Jamaica, Peru, Malaysia, Namibia, Nigeria, Senegal and Thailand. The insights gained from the pilot programmes will be fed into ongoing support to be provided to a broader set of Inclusive Framework members in the future. This work, coupled with the more formal training and guidance discussed above, is useful where countries are in the process of understanding the rules.
- In addition, Tax Inspectors Without Borders (TIWB) has agreed to support developing countries' efforts to implement the global minimum tax. TIWB is a joint initiative of the OECD and the United Nations Development Programme (UNDP) supporting countries in building tax audit capacity. TIWB Programmes complement the broader efforts of the international community to strengthen co-operation on tax matters and contribute to the domestic resource mobilisation efforts of

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[8] https://documents1.worldbank.org/curated/en/099500009232217975/pdf/P169976034c92506a0a1190bc5e3a05e3ed.pdf.

[9] https://www.iisd.org/system/files/2023-06/guide-developing-countries-adapt-global-minimum-tax-final_0.pdf.

[10] https://www.tax-platform.org/sites/pct/files/publications/100756-Tax-incentives-Main-report-options-PUBLIC_0.pdf.

[11] https://events.ataftax.org/index.php?page=documents&func=view&document_id=207.

[12] https://www.oecd.org/tax/tax-global/training-two-pillar-solution.htm.

[13] https://www.oecd.org/tax/tax-global/self-paced-training.htm.

[14] https://www.oecd.org/ctp/tax-global/global-relations-calendar-of-events.htm.

[15] https://www.oecd.org/tax/forum-on-tax-administration/.

[16] https://www.oecd.org/tax/administration/oecd-forum-on-tax-administration-launches-peer-to-peer-support-for-developing-countries-on-the-implementation-of-the-two-pillar-solution.htm.

developing countries. This support will include analysing the impact of the GloBE rules as well as drafting guidance, law and regulations to implement the global minimum tax into domestic law. Once the rules are introduced TIWB could provide further assistance in conducting risk assessment and helping with the administration of the rules in practice.

1 Overview of the GloBE rules

10. The GloBE rules apply to internationally operating MNE groups with annual revenues at or above EUR 750 million.[17] Restricting the global minimum tax to large international operating MNE Groups above the EUR 750 million threshold strikes a balance between preserving the overall impact and revenue benefits of the global minimum tax, while minimising compliance and administration costs. The revenue threshold used for determining the scope of the global minimum tax is broadly equivalent to that used for Country-by-Country Reporting (CbCR) under BEPS Action 13. This also means that tax policy makers can use CbCR filings as a starting point for assessing the potential impact of the GloBE rules in their jurisdiction.

11. If an MNE Group is within the scope of the rules, it must calculate its effective ETR to determine whether it is at, below or above the minimum rate of 15%. This ETR calculation is done on a jurisdictional basis. The starting point for this calculation is the financial accounts of each local constituent entity of the MNE Group which are used in the preparation of the MNE Group's consolidated financial statements. The use of consolidated financial accounting systems and standards simplifies compliance for MNE Groups by building on existing systems and improves administration by leveraging existing financial statement audit processes and ensures that the standard used in preparing the accounts is the same across all jurisdictions. While the starting point for the calculation of income is the financial accounts, certain adjustments are then made to better align the income or loss of the local constituent entity with the local tax base and to ensure a correct allocation of income between jurisdictions. Financial accounts also serve as a starting point for quantifying the taxes incurred on the income derived in each jurisdiction.

12. Together, the adjusted income and taxes are used to calculate the effective tax rate (ETR) of a Group in that jurisdiction. Where this calculation results in an ETR that is below 15%, the MNE Group is required to pay a top-up tax, to bring the total amount of tax in that low-tax jurisdiction up to the 15% rate. The top-up tax is only computed in relation to the low-tax income of a jurisdiction after applying a "substance-based income exclusion". The policy rationale behind the exclusion, which uses payroll and tangible assets as indicators of substantive activities, is to exclude from the GloBE rules a fixed return from the substantive activities that an MNE Group undertakes within a jurisdiction. Excluding a fixed return from substantive activities focuses global minimum tax on "excess income", such as intangible-related income, which is more susceptible to BEPS risks.

13. The resulting top-up tax is collected under three types of provisions: the QDMTT, the IIR and the UTPR. These provisions are applied in accordance with an agreed rule order that is embedded in the design of the GloBE rules and operates as follows:

a. **The low-tax income is first subject to tax in the local jurisdiction.** As a starting point, the additional tax payable may be collected through the imposition of a QDMTT which allows the jurisdiction where the low-tax profits have arisen to impose an additional amount of tax on the MNE Group's excess profits in order to bring the ETR on those profits up to the 15% minimum rate.

b. **Secondary taxing rights are allocated to the parent jurisdiction.** If the low-tax jurisdiction does not have a QDMTT, the obligation to pay the top-up tax will generally be imposed on the Ultimate

[17] An implementing jurisdiction may choose to apply the IIR, UTPR and the QDMTT also to purely domestic Groups and the QDMTT to Groups with a lower revenue than EUR 750 million.

Parent Entity (UPE) of the MNE Group under a Qualified IIR. If the UPE is located in a jurisdiction that has not implemented a Qualified IIR, then the GloBE rules generally provide that the top-up tax will be levied on the next highest entity in the ownership chain that is located in a jurisdiction with a Qualified IIR.

c. **As a back-up to the IIR, residual taxing rights are allocated to other implementing jurisdictions.** Where the IIR cannot be applied to a jurisdiction's low-tax income, the top-up tax is collected by all jurisdictions that have implemented a UTPR, often referred as the Under Taxed Profits Rule. The total amount of top-up tax as calculated under the GloBE rules is allocated among jurisdictions by reference to a substance-based allocation key. On such an allocated part, each jurisdiction collects the top-up tax by applying the UTPR as a denial of deduction under its existing corporate income tax, or through an equivalent mechanism.

14. The GloBE rules therefore preserve the local jurisdiction's primary taxing rights over its own income. As a starting point, any covered taxes levied by the local jurisdiction on the domestic income of its taxpayers is taken into account in calculating the MNE Group's jurisdictional ETR. Furthermore, the GloBE rules also provide the local jurisdiction with an additional mechanism for protecting its domestic tax base through the implementation of the QDMTT. The QDMTT allows the jurisdiction to apply a top-up tax to the local excess profits of the MNE Group where those profits are subject to an overall ETR that is below 15%. The imposition of this additional tax will not alter the overall after-tax cost of the investment for the MNE Group because the MNE Group would simply have been subject to the same tax liability in another jurisdiction pursuant to an IIR or UTPR.

1.1. Structure of the GloBE Model Rules

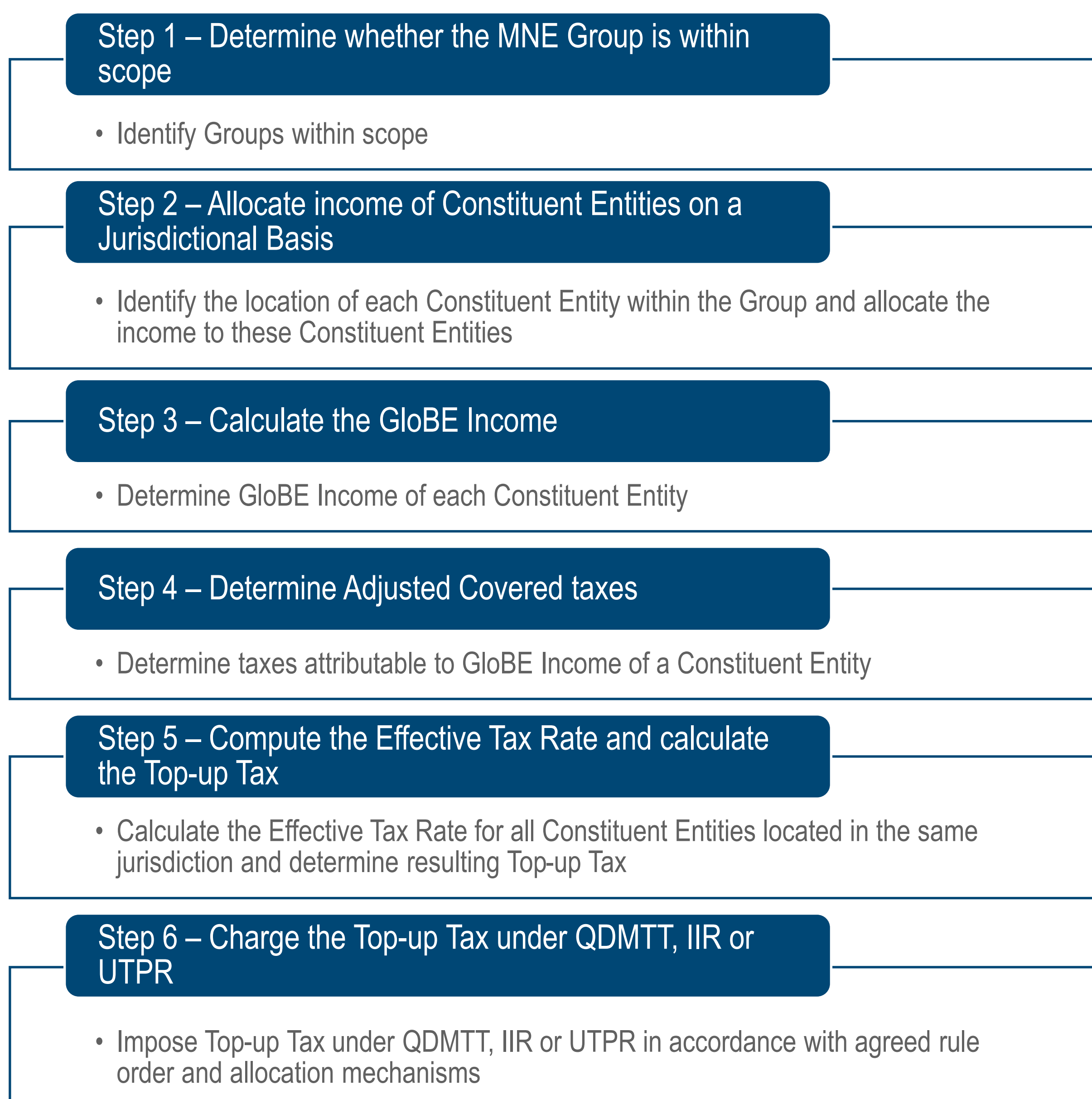
15. The GloBE Model Rules serve as a template that can be used as a basis for domestic legislation either by incorporating them directly or by reference into domestic law. The rules are divided into 10 chapters. Chapters 1-5 (and the definitions set out in Chapter 10) contain the core provisions of the rules that define the MNE Groups within scope, the mechanism for calculating the ETR and any resulting top-up tax liability. These core provisions are fundamental to understanding how the rules work and in identifying instances where top-up tax may arise.

16. The remainder of the topics covered in Chapters 6-9 of the GloBE Model Rules are more technical or administrative in nature. Chapter 6 deals with adjustments that need to be made in respect of mergers and acquisitions and certain corporate structures. Chapter 7 deals with the application of the rules to certain non-standard corporate tax regimes. Chapter 8 sets out the return and filing obligations and Chapter 9 provides for transitional relief for MNE Groups entering the global minimum tax. While it is important that a jurisdiction implementing these rules understands how the provisions in Chapters 6-9 work, a detailed appreciation of these rules is not essential in order to assess the likely overall impact of the GloBE rules. Accordingly, this Implementation Handbook only summarises the core provisions.

1.2. Core provisions (Chapters 1-5)

17. The core provisions setting out the scope and operation of the rules are set out in Chapters 1-5 of the GloBE Model Rules. These provisions include all the basic steps that an MNE Group must go through in order to calculate its top-up tax liability. These steps can be illustrated as follows and are explained in further detail below.

Figure 1.1. Core provisions of the GloBE rules

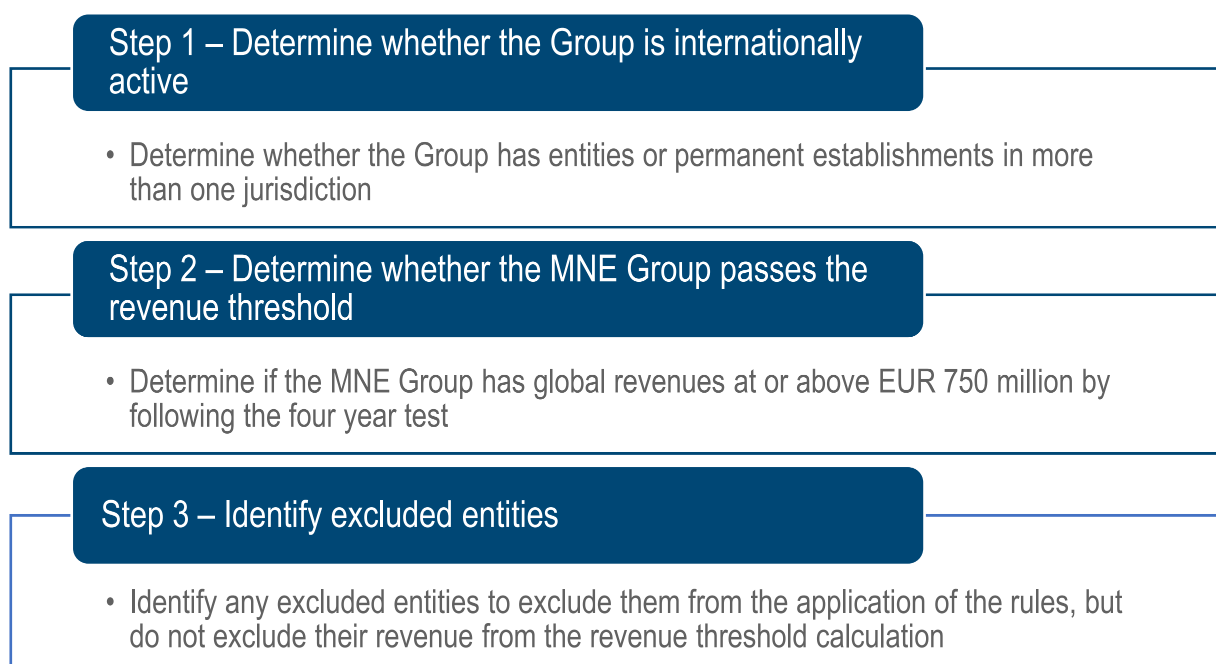


1.3. Explanation of core provisions

1.3.1. Step 1 – Determine whether the MNE Group is within scope

18. The GloBE rules only apply to internationally operating groups with consolidated revenues that meet the revenue threshold of EUR 750 million. The Inclusive Framework chose to limit the application of the GloBE rules to international groups with revenues at or above EUR 750 million in order to limit the compliance costs associated with the introduction of the global minimum tax while maximising its effectiveness, given that, at this threshold level, the rules still capture a very large part of overall corporate profits.[18] At a more granular level, the determination of in-scope Groups can be done following the three steps illustrated in the diagram below.

Figure 1.2. Determination of MNE Groups within scope



MNE Group test

19. The first step is to determine whether the Constituent Entity is a member of an internationally operating group. Two entities will generally be treated as a member of the same Group where they are both under the common control of a UPE that is (or would be) required to include those entities in its consolidated financial statements. A Group will be internationally operating when it has entities or operations in more than one jurisdiction (i.e. an MNE Group). The use of the accounting consolidation test to define the scope of a Group follows the approach taken in CbCR. A consolidation test provides a relatively stable and consistent standard that leverages existing accounting practices as an easy way of determining when a Group, and which entities of that Group, are in scope.

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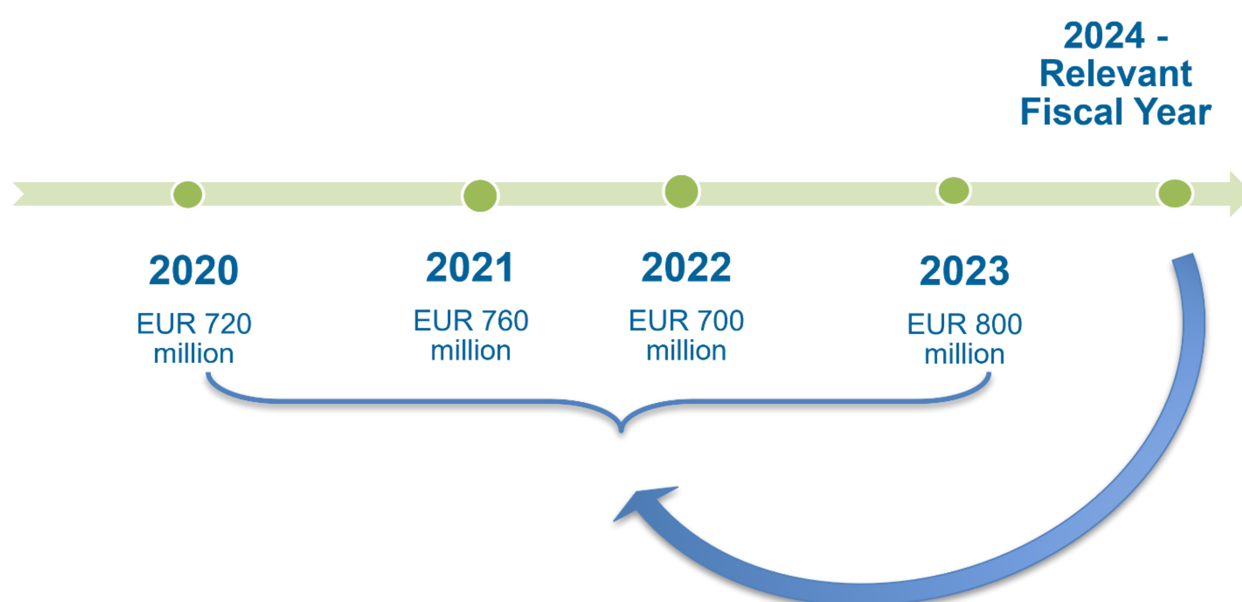
[18] The OECD estimates that approximately 90% of corporate revenues are controlled by MNE Groups that exceed the EUR 750 million threshold.

20. The requirement to be a member of a Group means that the GloBE rules cannot apply to standalone entities that do not consolidate with any other entity. Importantly, however, the GloBE rules also apply to an internationally operating entity that has a Permanent Establishment (PE) in another jurisdiction as the main entity. Without this rule a large domestic entity might seek to establish branches rather than subsidiaries in a foreign jurisdiction simply to avoid being caught by the rules.

Revenue threshold test

21. The MNE Group must also meet the revenue threshold before the GloBE rules apply. The revenue threshold applies to the revenue that is reported in the Consolidated Financial Statements of the MNE Group and the threshold amount is the same as the one used for CbCR (EUR 750 million). However, unlike CbCR which is based on an annual calculation, the revenue threshold for the global minimum tax is based on a four-year test. This test is intended to provide for more stable and predictable outcomes, in particular for MNE Groups with annual revenues close to the threshold. It looks at whether the MNE Group has EUR 750 million or more of revenue in two of the four fiscal years immediately preceding the fiscal year being tested. The consolidated revenue for the current year is not factored in the four-year calculation. This ensures that an MNE Group knows, at or soon after the beginning of the tested fiscal year whether it will be in scope of the GloBE rules in that year. The four-year test is illustrated in the example below.

Figure 1.3. Example: Revenue threshold test



22. As shown in Figure 1.3., the revenue threshold test looks to the previous four years when assessing whether an MNE Group is within scope. In this instance, the consolidated revenues were above the threshold of EUR 750 million in two out of four prior years, i.e. in 2021 and in 2023. Even though the MNE Group did not have more than EUR 750 million of consolidated revenues in all years, it meets the threshold test. The consolidated revenues in the Relevant Fiscal Year are not taken into account in applying the test, so that the MNE Group will be able to determine whether it is in scope at the beginning of the Relevant Fiscal Year.

Excluded Entities

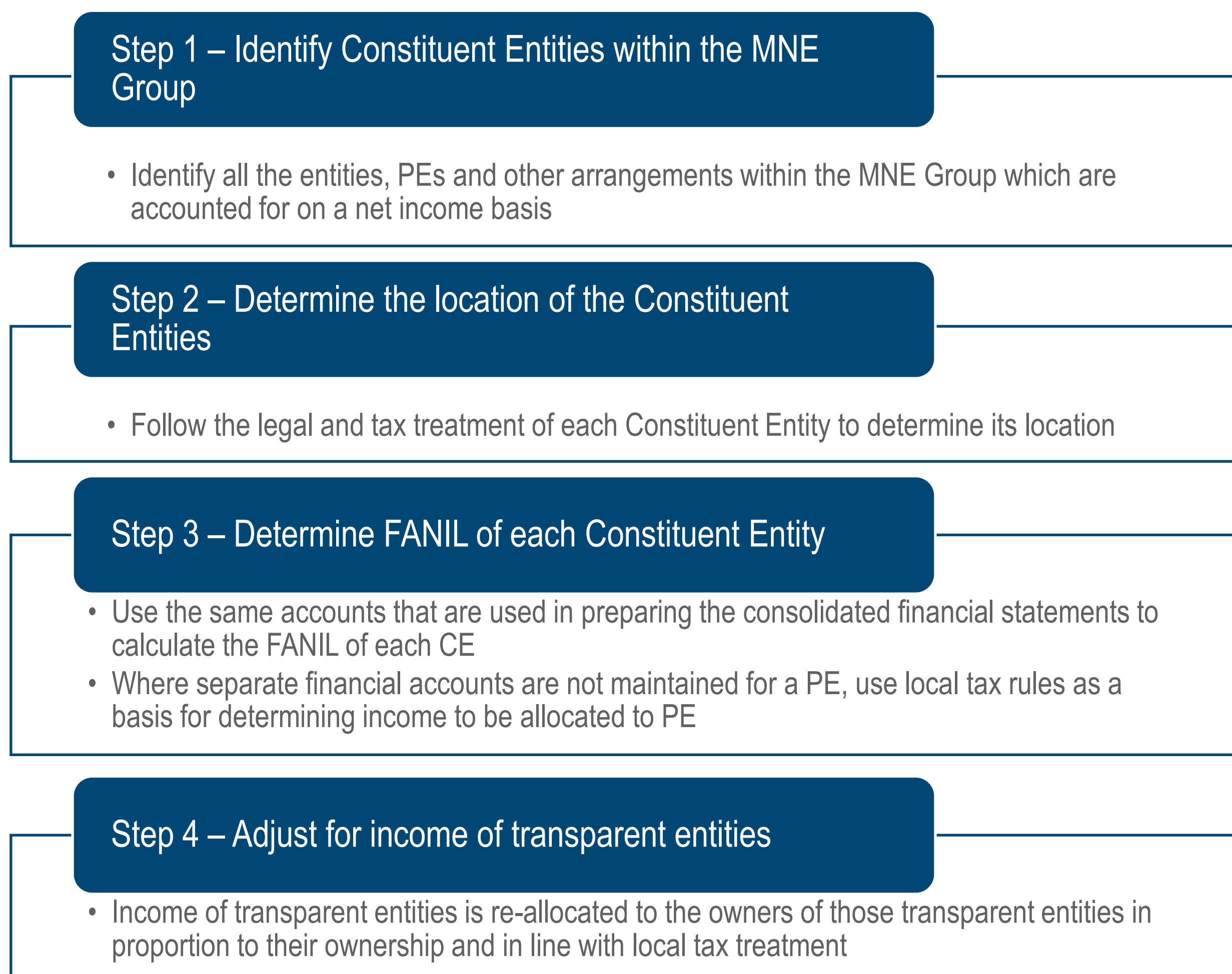
23. An MNE Group is made up of entities that are required to consolidate their financial accounts, and those entities are generally the ones that are subject to the GloBE rules. Certain entities, such as governmental organisations and investment funds, are not required to consolidate for financial reporting purposes and will therefore not be within the scope of the GloBE rules. In some cases, however, these entities may be required to consolidate with their controlled subsidiaries under the applicable accounting standard. In order to prevent these entities from becoming subject to the GloBE rules simply due to their accounting treatment, the GloBE rules further provide for a specific exclusion for these entities such that they are not subject to the operative provisions of the GloBE rules.

24. Therefore, the rules on Excluded Entities only deal with entities included within the consolidated group. There are three categories of Excluded Entities. The first category comprises entities that carry out activities in the public interest such as governmental and non-profit organisations and the second category are tax neutral investment vehicles, such as pension and investment funds. In addition, and in order to avoid creating distortions in the way these excluded entities are structured for corporate purposes, the Excluded Entity definition also extends to a third category that is made up of certain asset-holding companies controlled by excluded entities. While Excluded Entities are not subject to the operative provisions of the GloBE rules, they are still members of an MNE Group and therefore their revenue is taken into account for purposes of assessing whether the MNE Group meets the revenue threshold of EUR 750 million. This ensures consistency with the threshold for reporting under CbCR and avoids requiring additional rules to address the treatment of revenues attributable to transactions between the Excluded Entity and the rest of the Group (including possible anti-avoidance rules to protect against fragmentation).

1.3.2. Step 2 – Allocate income of Constituent Entities on a jurisdictional basis

25. Once it has been identified that an MNE Group is within scope of the GloBE rules, the next step is for the MNE Group to determine the location and income of each Constituent Entity. Each Constituent Entity is identified as having a location based on its local tax treatment. The starting point for calculating a Constituent Entity's income is the Financial Accounting Net Income or Loss (often abbreviated as FANIL) as shown in the financial accounts that are used to prepare the MNE Group's consolidated financial statements. Where a Constituent Entity is tax transparent for local tax purposes then a portion of its income may be treated as flowing through a group entity, in line with how it is treated for tax purposes. A breakdown of the steps that an MNE Group might follow to determine the FANIL and location of each Constituent Entity is set out below.

Figure 1.4. Allocation of income of Constituent Entities on a jurisdictional basis



26. As noted in the figure above, the first step in allocating income on a jurisdictional basis is to identify the Constituent Entities within the MNE Group. Each entity within the Group will be a separate Constituent Entity. However, a separate Constituent Entity is also created when a PE is formed or the members of the Group enter into an arrangement that requires a separate set of accounts to be prepared on a net income basis.

27. Each Constituent Entity is treated as having a location. This location is usually based on where the Constituent Entity is liable for income tax under domestic law on the basis of its residence, place of incorporation, or a similar factor. Certain Constituent Entities (such as entities that are treated as flow-throughs for tax purposes) may not be liable for tax anywhere and may be treated as "Stateless Entities".

28. The MNE Group then determines the FANIL of each Constituent Entity. The basis for this determination is the financial accounts that are used for the preparation of the MNE Group's Consolidated Financial Statements. However, the GloBE rules provide for a simplification in relying on acceptable or authorized financial accounting standard where it is not reasonably practicable to use the financial accounting standard used for preparation of the Consolidated Financial Statements. All these financial accounts, regardless under which standard they are prepared, will show the bottom-line net income or loss of the Constituent Entity before making any consolidation adjustments that would eliminate income or expense attributable to intra-group transactions. Requiring the use of the financial accounts that are used in preparing the Consolidated Financial Statements ensures that a single standard is used across all

jurisdictions. It also results in a compliance simplification and may provide additional integrity to the rules if the Consolidated Financial Statements are subject to audit.

29. Financial accounting information may not always be separately maintained in respect of the PE. In case they are not prepared, accounts or reports will need to be prepared to compute the amount that would have been reflected in the financial accounts. In many cases, however, separate accounts may be maintained either for management purposes or to comply with local tax rules. Given that the GloBE rules primarily rely on accounting information rather than management accounts or local tax information, income or loss needs to be properly allocated between the main entity and the PE.

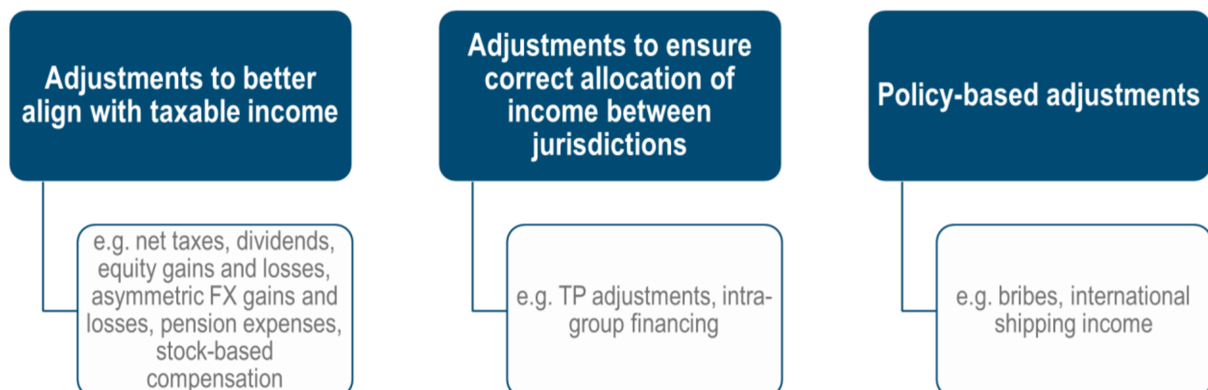
30. In certain cases, some or all of the income or losses of a flow through entity are recognised for tax purposes in the hands of another Constituent Entity owner. In this case, the GloBE rules follow the local tax treatment by treating the corresponding amount of income or loss as passing through to the Constituent Entity owner. In this way the GloBE rules respect the entity classification rules under local law while ensuring the correct computation of the GloBE Income or Loss, the ETR and any top-up tax.

31. The Inclusive Framework has also agreed administrative guidance and simplifications especially for the early years so as to provide transitional relief in respect of compliance obligations, by limiting the circumstances in which an MNE Group will be required to undertake GloBE calculations to a small number of jurisdictions which are identified on the basis of information that is already available (e.g. CbC reports). These design features offer flexibility with respect to use of financial accounts, currency conversion, use of aggregated data and other elements that ensure the simplification of the rules without undermining their effectiveness.

1.3.3. Step 3 – Calculate the GloBE Income

32. In the third step, the GloBE Income or Loss of each Constituent Entity is determined by making certain adjustments to its the FANIL in order to arrive at a determination of its GloBE Income (or Loss). The adjustments made to convert FANIL to GloBE Income are intended to better align the tax base for the global minimum tax with those that are typically applied for local tax purposes. The full list of adjustments is set out in Article 3.2. of the Model Rules. The adjustments fall into three basic types as illustrated in the diagram below.

Figure 1.5. Types of adjustments to the FANIL



Adjustments to better align with taxable income

33. Most of the adjustments made to FANIL are designed to adjust the Constituent Entity's income for common differences between financial accounting and taxable income in order to reflect intended policy outcomes. Many jurisdictions, for example, exempt (or provide other relief) for intra-group dividends or have special rules for calculating the deduction attributable to stock-based compensation. The GloBE rules contain similar adjustments in order to preserve the policy choices inherent in these adjustments to taxable income that are common across jurisdictions (avoiding double taxation and providing a full deduction for employment expenses).

Adjustments to ensure correct allocation of income between jurisdictions

34. These adjustments address misallocation of income among entities located in different jurisdictions. For example, cross-border intra-group transactions must be computed at an arm's length price in the computation of GloBE Income or Loss. The rationale of this adjustment is to protect the integrity of jurisdictional blending. Mispricing cross-border transactions between Constituent Entities distorts the computation of GloBE Income or Loss in both jurisdictions. With respect to intra-group financing arrangements, an anti-abuse provision aims to neutralise certain intra-group transactions which are designed to avoid potential top-up tax under the GloBE rules.

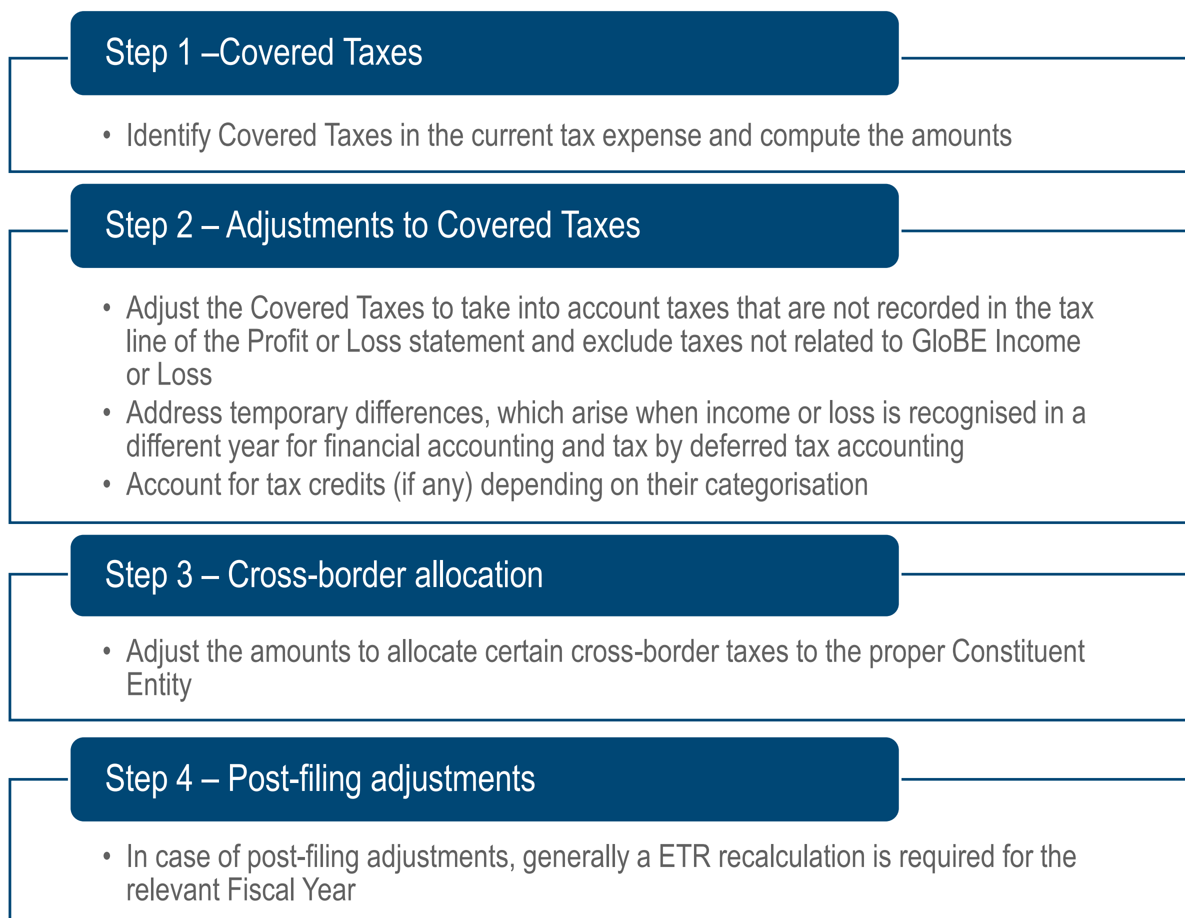
Other policy based adjustments

35. Under the GloBE rules, illegal payments are not allowed as an expense in the computation of the GloBE Income or Loss (payments of fines and penalties are allowed up to a maximum amount of EUR 50,000). Disallowance of these expenses is part of the fight against corruption and prevents the public from sharing the economic burden of the expenditure through decreased tax revenues.

1.3.4. Step 4 – Determine Adjusted Covered Taxes

36. Once the GloBE Income or Loss for each Constituent Entity has been calculated then it is necessary to calculate the taxes associated with that income. Just as the starting point for calculating GloBE Income or Loss is the FANIL, as determined in accordance with standards used for consolidated financial reporting, the starting point for calculating covered taxes is the current tax expense as shown in those financial accounts, which includes deferred tax adjustments and the tax benefit of any losses. The step-by-step approach to arrive at Adjusted Covered Taxes is described in the figure below.

Figure 1.6. Determination of Covered Taxes



Covered Taxes

37. The starting point is the Constituent Entity's current tax expense accrued for Financial Accounting Net Income or Loss in the Fiscal Year with respect to Covered Taxes as reported in the financial accounts. The Covered Taxes include income taxes, defined in a way to provide consistent and flexible recognition across a wide range of tax systems, but does not include non-income based taxes such as indirect taxes, payroll and property taxes. The income taxes will generally include all of the taxes imposed locally on a Constituent Entity's income but may also include foreign taxes such as foreign withholding and Controlled Foreign Corporation (CFC) taxes or taxes imposed by the main entity jurisdiction on the income of a PE in another jurisdiction.

Adjustments to Covered Taxes

38. Building on the concept of Covered Taxes, a number of adjustments have to be made to arrive at Adjusted Covered Taxes. First, it is necessary to remove any taxes which are contained in the current tax expense, but are not Covered Taxes. These adjustments include a mechanism to take into account taxes of a Constituent Entity that are not recorded in the tax line of the profit and loss statement and to exclude taxes that are not related to GloBE Income or Loss, for instance taxes on excluded dividends or excluded equity gains.

39. In addition to tax liabilities that accrue during a fiscal year, the financial accounts recognise another type of tax liability: a deferred tax expense. The deferred tax expense in the financial accounts is a financial

accounting adjustment that is designed to take account of differences between the recognition in the timing of receipts and expenses for tax and financial reporting purposes as well as the impact of the utilisation of tax losses. The fact that the GloBE rules take into account movements in deferred tax assets and liabilities recorded in the financial accounts, allows the rules to accommodate these timing differences without giving rise to additional top-up tax. Certain adjustments are made to the existing deferred tax accounts to protect the integrity of the GloBE rules. For example, the credit for deferred tax liabilities is capped at the minimum rate in order to prevent any excess tax sheltering unrelated income. The rules also include a recapture mechanism that adjusts for certain deferred tax liabilities that have not reversed (i.e. the tax has not actually been paid) within five years. Tax credits that are treated as a reduction in covered taxes are generally taken into account in the year such credits are used. On the other hand, qualified refundable tax credits, which must be refunded within four years, are treated as income in the year the entitlement to the credit accrues.

Cross-border allocation

40. Further adjustments are made to allocate certain cross-border taxes to the proper Constituent Entity, such as taxes imposed under a CFC regime, distribution taxes, withholding tax on dividends paid, and tax in respect of a PE, Tax Transparent Entity, or a Hybrid Entity.

Post-filing adjustments

41. To the extent there are changes in tax liability after filing, additions or reductions to taxes are identified and allocated to a particular jurisdiction and time period. Sometimes such adjustments are a result of an audit or a transfer pricing adjustment. In other instances, taxes accrued are not actually paid. As the current tax expense is based upon an accruals methodology and not applied on a “cash basis” (it recognises taxes before they are sent to the tax administration) there needs to be a mechanism to address cases where the taxes are not, in fact, paid.

1.3.5. Step 5 – Compute the ETR and calculate the top-up tax

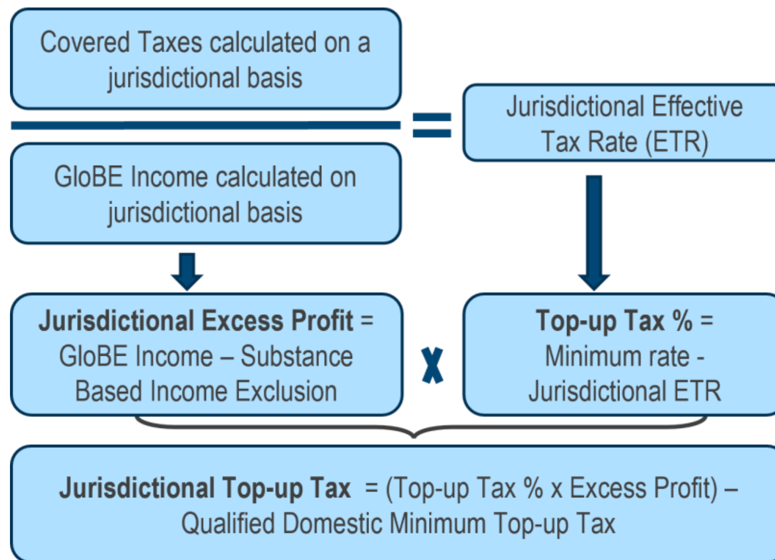
Computation of the ETR

42. The GloBE Income or Loss and Covered Taxes of each Constituent Entity located in the same jurisdiction are added together to compute the jurisdictional effective tax rate (ETR). However, a simplified methodology for calculating the ETR may be available under a safe harbour (e.g. CbCR transitional safe harbour). In addition, when the MNE Group has limited operations in a jurisdiction, the calculation of the ETR is not required. This exclusion applies for jurisdictions where an MNE Group’s revenue and income is below the de minimis threshold (EUR 10 million and EUR 1 million, respectively).

Computation of the top-up tax

43. The top-up tax percentage due is the difference between the 15% minimum rate and the ETR in the jurisdiction. That top-up tax percentage is then applied to the GloBE Income or Loss in the jurisdiction, after deducting a substance-based income exclusion. The substance-based income exclusion is calculated based on a percentage of the tangible assets and payroll expenses. It is the portion of the income exceeding the substance carveout (the excess profit) that is subject to the top-up tax which brings the MNE Group’s total tax on its excess profits up to the 15% rate. An illustration of the formula for calculating jurisdictional top-up tax is set out below.

Figure 1.7. Computation of the ETR and calculation of the top-up tax



44. Once the top-up tax is calculated, it is allocated to each constituent entity in the low-tax jurisdiction which has GloBE Income for the Fiscal Year and in proportion to such income.

1.3.6. Step 6 – Charge the Top-Up tax under the QDMTT, IIR or UTPR

45. A liability for top-up tax for a member of an in-scope MNE Group arises under three types of provisions: the QDMTT, the IIR and the UTPR.

QDMTT

46. The GloBE rules contemplate the possibility that jurisdictions introduce their own domestic minimum top-up tax based on the GloBE mechanics. If a jurisdiction has a domestic minimum tax that is consistent with the GloBE rules and is thus considered a “Qualified” Domestic Minimum Top-up (QDMTT), such domestic tax offsets the top-up tax liability on this income under the GloBE rules. The QDMTT reinforces a jurisdiction’s primary right of taxation over its own income.

IIR

47. If the jurisdiction where the low-taxed Constituent Entity is located does not have a QDMTT, the jurisdiction where the UPE of such entity is located might collect the top-up tax under the IIR. Under the IIR, the minimum tax is paid at the level of the parent entity, in proportion to its ownership interests in those entities that have been allocated top-up tax. Generally, the IIR is applied at the level of the UPE but may apply further down in the ownership chain if the UPE is not subject to an IIR. Rules also provide the IIR to be applied by an intermediate parent entity in which there is a significant minority interest, to minimise leakage of top-up tax on low-taxed income. As mentioned above, in the computation of the top-up tax any QDMTT paid in another jurisdiction shall be deducted, and in the case of the QDMTT Safe harbour reduced to zero and thus eliminated.

UTPR

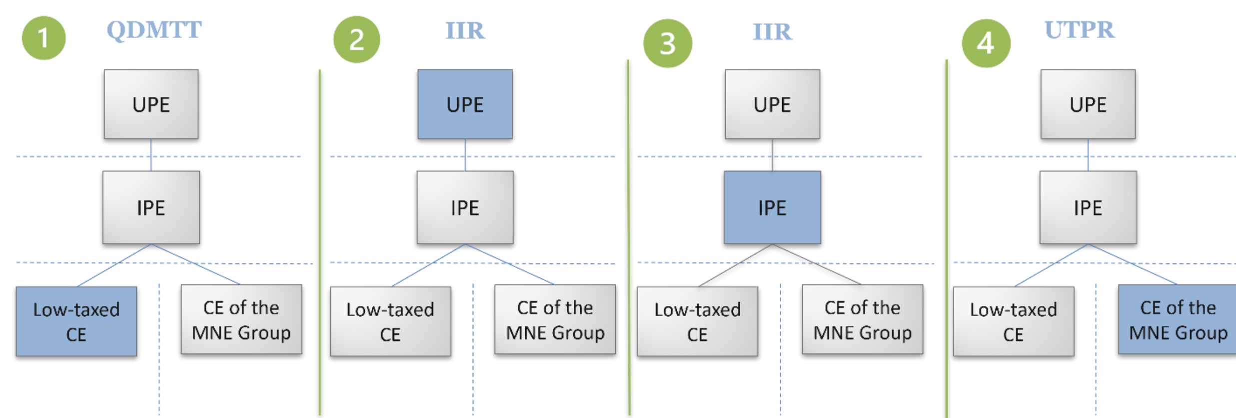
48. The GloBE rules also contain a backstop that ensures the minimum tax is paid where an entity with low-taxed income is held through a chain of ownership that does not result in the low-taxed income being brought into charge under an IIR. This backstop is the UTPR and may apply, for example, in respect

of low tax income arising in the UPE jurisdiction (if any). This rule works by requiring a payment of tax by resident entities within the jurisdiction applying the rule (which increases the tax at the level of the entities). This payment of tax may arise through a denial of a deduction for expenses, or through some other mechanism. The payment is an amount sufficient to result in the group entities paying their share of the top-up tax remaining after the IIR. The share of the top-up tax allocated to entities in a jurisdiction is calculated based on a formula, in proportion to the relative share of tangible assets and employees in that jurisdiction. This helps to ensure the rule is administrable, but also attaches the adjustment to entities that are most likely to have the capacity to pay the required amount of top-up tax.

49. The same basic calculations to determine the jurisdictional ETR and the jurisdictional amount of top-up tax are applied, irrespective of whether the top-up tax is being charged under the IIR or the UTPR, to ensure co-ordinated outcomes. However, given that there will typically be subsidiaries in several different jurisdictions, the UTPR requires a higher level of administrative co-operation, which underlines the importance of the standardised information reporting requirements and coordinated compliance mechanisms. It is also one of the reasons the UTPR is a backstop rather than the primary rule.

50. A simplified illustration of the agreed rule order is set out below.

Figure 1.8. Agreed rule order



51. As set out in the above diagram, the low-taxed jurisdiction has the primary right to collect top-up tax under the QDMTT (1). If the low-taxed jurisdiction does not have a QDMTT then the jurisdiction where the UPE is located can apply the IIR in respect of the income of the low-taxed Constituent Entity (2). If the UPE is located in a jurisdiction that has not implemented a Qualified IIR, then the top-up tax will be levied on the next entity in the ownership chain that is located in a jurisdiction with an IIR following a top-down approach (i.e. intermediate parent entity (IPE)) (3). Where a Qualified IIR does not apply, the top-up tax is collected by the jurisdictions that have implemented a UTPR (4). The amount of tax to be collected under the UTPR in each given jurisdiction is allocated by reference to a substance-based allocation key.

2 Implementation considerations

52. Following the endorsement by the Inclusive Framework of the statement on a two-pillar solution to address the tax challenges arising from the digitalisation of the economy, the Inclusive Framework released the GloBE Model Rules in December 2021. The GloBE Model Rules serve as a template that can be used as a basis for domestic legislation. They are supported by a Commentary and Administrative Guidance which provides further detail on the interpretation and intended operation of the rules including with respect to specific issues raised by stakeholders.

53. The global minimum tax has the status of a common approach. This means that while countries are not required to adopt the rules, in the event they choose to do so, they agree to implement and administer them in a way that is consistent with the model rules agreed by the Inclusive Framework. Under the common approach, Inclusive Framework members accept that each member can apply the GloBE rules to an MNE Group's operations in their jurisdiction including agreement as to rule order and the application of any agreed safe harbours. The outcomes of the common approach create the framework for a set of interlocking domestic rules that apply a global minimum tax to in-scope MNE Groups in a coordinated manner.

54. Many jurisdictions have already taken steps to implement the common approach by translating all or some of the GloBE rules into their domestic law. Others are in an earlier stage of the process. Based upon the experience of jurisdictions which are further advanced in the process, governments generally proceed through two basic stages:

a. Decide: In consultation with stakeholders, tax policy makers assess whether top-up tax is likely to arise under the GloBE rules by reference to either the domestic or foreign operations of MNE Groups operating in the jurisdiction and whether to adopt changes to their domestic law including adoption of all or part of the GloBE rules.

b. Implement: A jurisdiction that decides to introduce all or part of the global minimum tax will then need to consider various practical and legal issues that inform the drafting of any domestic rules, ensure that its rules align with those agreed by the Inclusive Framework and are applied consistently in accordance with the common approach.

2.1. Decide – Impact assessment and reform options

55. A jurisdiction that chooses to undertake an impact assessment of the GloBE rules may find it easier to separate this assessment into a separate analysis of MNE Groups' domestic and foreign operations. The Inclusive Framework Secretariat has provided all member jurisdictions with assessments of the potential revenue gains for jurisdictions from implementation of the GloBE rules, which can be used as a starting point for this assessment.

2.1.1. Domestic operations

What are the domestic profits of in-scope MNE Groups?

56. The first step in assessing whether top-up tax is likely to arise with respect to MNE Groups' domestic operations in a jurisdiction is to determine the number of in-scope MNE Groups (i.e. MNE Groups with revenue of EUR 750 million or more) with operations in that jurisdiction and the income of those operations. When making this assessment, a number of jurisdictions have found that they do not collect sufficiently detailed or comprehensive data to be able to accurately identify all domestic operations of large MNE Groups operating in their jurisdiction. In these cases, the Inclusive Framework Secretariat is available to assist countries in preparing these assessments using centralised and aggregated CbCR data that is publicly available to make an approximate determination of the number of MNE Groups with operations in the jurisdiction and the total amount of income and taxes paid by those MNE Groups. While this aggregated data does not provide specific information that would allow a tax policy official to undertake a detailed assessment of the likely MNE Groups and that could be subject to top-up tax it may provide a broad indication of the amount of revenue that may be within scope of the rules. This information could then be supplemented with information from local tax, corporate or other regulatory filings in the jurisdiction. Where some firms do not file tax returns, then financial statements or other information can be used to assess profits. In some cases, a local subsidiary may be required to provide additional information as part of its tax filings or other regulatory filings, such as transactions with associated parties including as part of its transfer pricing documentation, which may provide the jurisdiction with information on whether this local subsidiary forms part of a larger MNE Group.

Do MNE Groups have in-scope excess profits?

57. The jurisdiction does not need to consider the position of large MNE Groups with only a small presence within its jurisdiction. This is because the GloBE rules do not apply to an MNE Group unless the MNE Group has more than EUR 10 million of revenue or EUR 1 million of profit in the jurisdiction. Furthermore, the GloBE rules only apply top-up tax on *excess* profit arising within a jurisdiction. Accordingly, even if an MNE Group has low-tax profit its operations may not be impacted by the global minimum tax if has sufficient payroll costs and tangible assets in the jurisdiction. In many cases, the domestic tax system may have deliberately provided tax incentives to encourage investment in tangible assets and job creation. Even though such incentives may produce a low tax outcome, this may not trigger any top-up tax under the global minimum tax if the MNE Group has sufficient investments in the jurisdiction to rely on the shelter provide by the substance-based income exclusion.

Are there any low-taxed domestic profits?

58. Once a jurisdiction has determined the amount of domestic excess profits generated by in-scope MNE Groups, the next step is to assess whether these profits can be expected to be low-tax. In order to make this determination it is necessary to look at both the prevailing tax rate in the jurisdiction and the tax base in order to determine whether a low tax rate, tax base adjustment or a combination of these could result in MNE Groups having low-tax profit within the jurisdiction. If the jurisdiction offers preferential rates or base modifications, the terms under which those preferences are granted may indicate whether they are likely to be available to larger MNE Groups (given the nature of their operations in the jurisdiction) or whether they are subject to limitations, which could mean that they are unlikely to have a material impact on an MNE Group's domestic ETR.

Tax rate

59. The obvious starting point for determining the expected tax rate on an MNE Group's domestic operations is the statutory rate on corporate income tax. This will include income taxes imposed at the

national and sub-national level. Where a jurisdiction's statutory corporate income tax is set at a rate below 15%, the GloBE rules will almost always result in the imposition of top-up tax on the domestic profits of the MNE Group. Most jurisdictions, however, have general statutory rates that are above 15%. ETRs below 15% will generally be as a result of tax preferences provided under local law or tax rates below 15% for particular types of income. If a jurisdiction has special categories of income subject to a rate below 15%, there is a risk that MNEs operating in the jurisdiction have low-tax profits.

Tax base

60. For jurisdictions with tax rates above 15%, there may also be low-taxed profit due to tax credits or differences between the domestic tax base and the global minimum tax base. Differences between the applicable tax bases are most likely to give rise to low-taxed profit where the local tax system excludes special categories of income (including capital gains and exempt income) or provides a taxpayer with deductions in excess of their economic expenditure.

61. Low-tax profit is unlikely to arise as a result of tax regimes which only give taxpayers a deduction earlier than they would otherwise (for example, accelerated depreciation or immediate expensing). This is because the GloBE rules do not generally treat timing differences as producing low-tax income. Timing differences may be a cause of low-tax income where there is a timing difference of more than five years in respect of expenses related to intangible assets.

62. In most cases, adjustments to the tax base that may trigger ETRs below 15% will be easy to spot as they will be deliberate features of the tax system such as tax incentives. For a broader discussion, see a discussion of the GloBE rules and their impact on tax incentives set out in greater detail in the OECD Report Tax Incentives and the Global Minimum Corporate Tax[19] and the World Bank Group report on implementing the global minimum tax.[20]

Reform options

63. Once a jurisdiction has made an assessment of the amount of profits derived by in-scope MNE Groups within its jurisdiction and the portion of those profits that might be subject to tax at an ETR below 15% for GloBE purposes, it will then proceed to consider what changes (if any) are required to its tax system in light of the GloBE rules.

64. If a jurisdiction's domestic corporate tax system has a relatively high rate and broad tax base and offers few (if any) tax preferences to in-scope MNE Groups then a jurisdiction may decide that it does not wish to take any further action with respect to its domestic tax regime on the grounds that any domestic low-tax profits are likely to be limited, or only available to out-of-scope taxpayers. Such a jurisdiction may, however, continue to benefit from the implementation of the global minimum tax by others through reduced pressure on tax competition and profit shifting even if it does not take any actions itself.

65. If a jurisdiction determines that it is likely to have low-tax excess profit in the jurisdiction, it may consider making targeted changes to its domestic law that reduce the benefit of tax incentives and that are designed to have the effect of pushing the ETR above 15%. Depending on the jurisdiction's circumstances, it could consider making targeted changes to particular aspects of its tax law or undertake broader reforms to its tax base and rate including, for instance, through a general minimum corporate income tax. These changes may have broader effects and also increase the ETR for out-of-scope taxpayers.

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[19] https://doi.org/10.1787/25d30b96-en.

[20] https://documents1.worldbank.org/curated/en/099500009232217975/pdf/P169976034c92506a0a1190bc5e3a05e3ed.pdf.

QDMTT

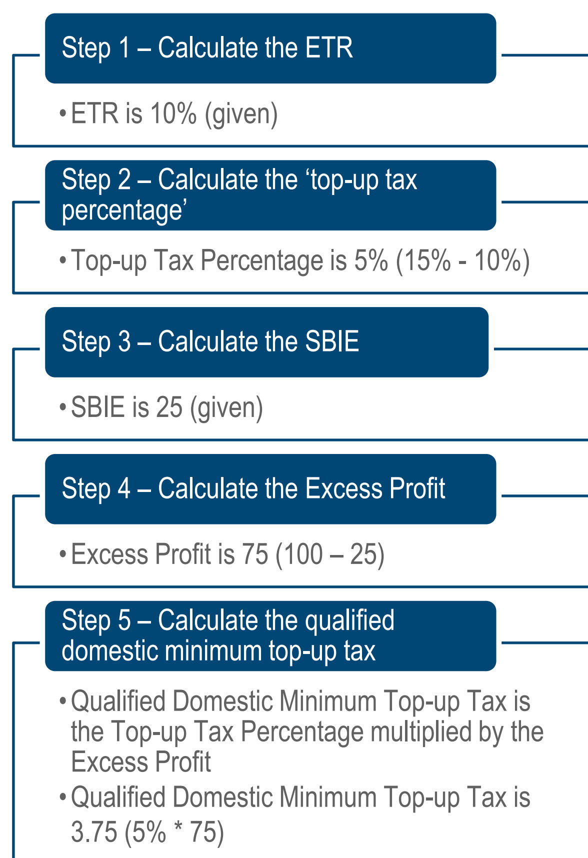
66. Jurisdictions may consider adopting a QDMTT either as a complement, or an alternative, to making other amendments to its domestic tax regime. However, a QDMTT may not singlehandedly meet the policy objectives of a jurisdiction which considers its tax incentives to be inefficient and in need of reform. Failure to reform ineffective tax incentives could lead to additional administrative costs for governments to maintain such incentives while also adding to the complexity of the investment environment for investors, who may be left with a menu of tax incentives that may not actually provide any tax benefits.

67. A QDMTT allows a jurisdiction to levy a top-up tax with respect to excess profits only, i.e. after deducting the substance-based income exclusion and by using the same tax base as the GloBE rules. Other minimum corporate income taxes will be treated as Covered Taxes under the GloBE rules. The example below explains the difference in treatment between a qualified and non-qualified minimum tax and demonstrates how a QDMTT can discharge the top-up tax liability with a lower amount of total tax than a non-qualified minimum tax.

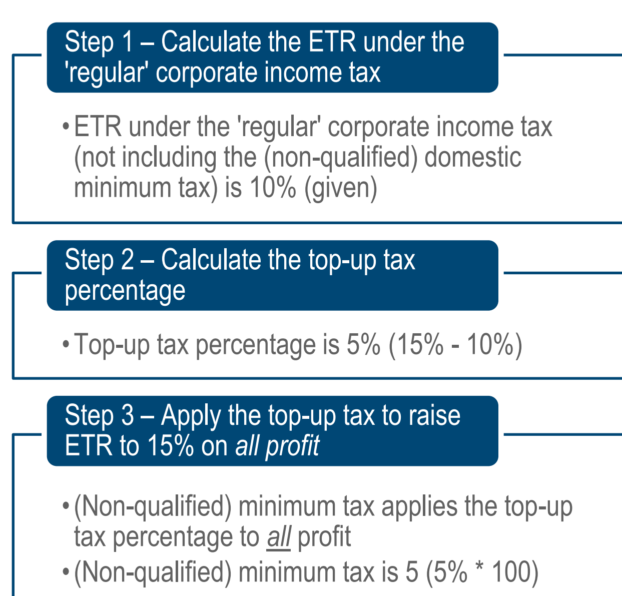
68. For the purposes of this example, a taxpayer has taxable income of 100 arising in a jurisdiction with a 10% effective tax rate and an SBIE of 25. The top-up tax due under the GloBE rules is 3.75. Alternatively, the jurisdiction may decide to implement a (non-qualified) minimum tax and ensure a 15% effective tax rate in the jurisdiction. If it does so (and assuming there are no relevant differences in the tax base), it would impose a tax of 5, which would be treated as a covered tax and eliminate any tax liability under the GloBE rules.

Figure 2.1. Numerical Example - tax imposed under a QDMTT or a (non-qualified) domestic minimum tax

Qualified Domestic Minimum Top-up Tax



Other (non-qualified) minimum tax



69. As shown in the example above, under a QDMTT, an additional tax liability of 3.75 discharges all tax liabilities under the GloBE rules. However, with a non-qualified minimum tax, an additional tax liability of 5 is required to prevent a tax liability arising under the GloBE rules. This is because when the substance-based income exclusion is not sufficient to prevent a GloBE liability from arising, a non-qualified domestic minimum tax can only reduce the top-up tax to zero under the GloBE rules if it raises the ETR for the jurisdiction to 15%. In this example, an additional 5 in tax is required to raise the ETR for the jurisdiction to 15%.

70. The Inclusive Framework designed the QDMTT so that each jurisdiction could collect the top-up tax with respect to income arising in their own jurisdiction in a simple and cost-effective manner. A QDMTT does not affect the competitive position of a jurisdiction. Because the QDMTT uses the same calculation mechanics as the GloBE rules, the introduction of a QDMTT generally does not increase the tax cost for an in-scope MNE Group, it merely alters the jurisdiction to which any top-up tax would be paid. Therefore, a jurisdiction can introduce a QDMTT without impacting on its ability to compete for foreign investment from in-scope MNE Groups. From a rule design perspective, there is limited additional work required to implement a QDMTT due to the joint efforts to design the rules and align their application through the Inclusive Framework. The QDMTT is likely to have low administration costs because jurisdictions would benefit from the common design of the GloBE Information Return and mechanisms for exchange of that return. Furthermore, each jurisdiction can place some reliance on the fact that for each MNE Group there may be a number of jurisdictions interested in ensuring MNE Group's overall compliance with the global minimum tax rules. Similarly, a QDMTT that is aligned with the GloBE calculation does not impose any significant additional cost on business as the MNE Group will already need to perform the calculation under another jurisdiction's IIR or UTPR.

71. The QDMTT offers some flexibility to implementing jurisdictions. For instance, it need not be limited to MNE Groups that exceed the EUR 750 million revenue threshold. Equally, the QDMTT could apply with no substance-based income or de minimis exclusion, such that it would impose a 15% top-up tax on the whole amount of profits of local Constituent Entities. This flexibility may be of particular interest to implementing jurisdictions which are host to more limited MNE operations.

2.1.2. Foreign operations

72. After assessing the impact of the GloBE rules on the domestic operations of in-scope MNE Groups, a jurisdiction may also wish to undertake a further assessment of the impact of the GloBE rules on the foreign operations of those MNE Groups that have a presence in their jurisdiction.

73. If the jurisdiction is the headquarter jurisdiction for in-scope MNE Groups, a jurisdiction may wish consider adopting an IIR. In addition to raising revenue, this rule will ensure that MNE Groups headquartered in that jurisdiction are not subject to the UTPR in respect of its foreign operations and thus may provide compliance and simplification benefits for taxpayers. Jurisdictions that do not have any in-scope MNE Groups headquartered in their jurisdiction may consider adopting the IIR so as to remain attractive as a headquarter jurisdiction to future in-scope MNE Groups. The jurisdiction may also consider adopting an IIR which would apply to MNE Groups below the EUR 750 million threshold.

74. Jurisdictions without many ultimate parent entities of in-scope MNE Groups may still consider adopting the UTPR. The UTPR is the 'backstop' tax for the global minimum tax rules. To the extent that the MNE Group has not paid the minimum tax under a QDMTT or IIR, the remaining top-up tax will be divided between the jurisdictions which have adopted the UTPR in proportion to the amount of substance in each jurisdiction. Accordingly, by adopting the UTPR the jurisdiction will assist in achieving the Inclusive Framework's objective of ensuring that all MNE Groups pay a minimum tax of 15% in each jurisdiction in which they operate.

75. Where a jurisdiction decides to proceed with the introduction of some parts or all of the global minimum tax rules, it may also consider whether there are any existing rules that may become duplicative and that could be eliminated or adapted.

2.2. Implement – Legislating for consistent and co-ordinated outcomes

76. There are a number of practical and legal issues that a jurisdiction will wish to take into consideration if it decides to introduce all or part of the global minimum tax into domestic law.

2.2.1. Legislative technique

Direct incorporation or incorporation by reference

77. The GloBE rules can be incorporated into domestic law in a number of ways. Some jurisdictions may opt for incorporating the substance of the Model Rules in their domestic legislation. This is the case, for instance, of the legislation adopted by countries like Japan and the United Kingdom.[21] ATAF describes this option as the 'full form legislation' approach to adopting a QDMTT.[22] Transcribing the Model Rules into statute requires adapting both the structure and language of the Model Rules in order to bring it into line with the standards used in drafting domestic legislation while at the same time ensuring that such translation is consistent with the Model Rules and Commentary.

78. Some jurisdictions, like Liechtenstein and New Zealand, are pursuing a different approach to legislative implementation that consists of adopting the rules by cross-referencing to the Model Rules.[23] ATAF describes this option as the 'reference approach' to adopting a QDMTT.[24] Under this approach, the legislation incorporates the Model Rules and Commentary into domestic law by reference. The jurisdictions that adopted this approach consider this as in line with their sovereignty. If the legislation is enacted, it is a decision freely made by the Parliament, and it can be undone at any time. This approach ensures consistency with the Model Rules and may reduce the demand on the jurisdiction's legislative resources.

Introduce the Model Rules through a combination of primary and secondary legislation

79. Another approach would be to adopt the core provisions of the GloBE rules in primary legislation and provide for the remainder of the provisions to be introduced through secondary legislation or guidance.

[21] The primary domestic legislation enacted by Japan is available in Japanese at https://www.mof.go.jp/about_mof/bills/211diet/st050203h.pdf, accessed 24 September 2023.

The legislation enacted by the United Kingdom can be found in Part 3 of the document available in English at https://www.legislation.gov.uk/ukpga/2023/30/enacted, accessed 24 September 2023.

[22] ATAF (2023), *ATAF Suggested Approaches to Drafting Domestic Minimum Top-Up Tax Legislation*, https://events.ataftax.org/index.php?page=documents&func=view&document_id=207, pages 87-151.

[23] Liechtenstein's draft legislation can be found in German as from page 79 of the document available at https://www.llv.li/serviceportal2/amtsstellen/stabstelle-regierungskanzlei/bua_065_2023_bua-globe-gesetz-sowie-anpassung-steuergesetz.pdf, accessed 24 September 2023.

New Zealand's draft legislation can be found in English in Subpart HP of the document available at https://www.legislation.govt.nz/bill/government/2023/0255/8.0/whole.html#LMS844308, accessed 24 September 2023.

[24] ATAF (2023), *ATAF Suggested Approaches to Drafting Domestic Minimum Top-Up Tax Legislation*, https://events.ataftax.org/index.php?page=documents&func=view&document_id=207, pages 76-86.

A simplified version of the Model Rules could focus on defining the taxpayers within scope and the key operative aspects of the rules such as the ETR calculations and the charging mechanism and could also include the necessary administrative provisions dealing with filing and payment obligations. The remainder of the rules, such as the definitions and the treatment of particular corporate structures, would be left to secondary legislation or regulations. Such secondary legislation or regulations could either itself set out the substantive rules and definitions or incorporate them by reference to the Model Rules or Commentary. ATAF describes this option as the 'skeleton legislation and detailed regulations' approach to adopting a QDMTT.[25] This technique may, in particular, be efficient for incorporating possible future guidance.

80. In order to introduce parts of the rules through secondary legislation, the implementing jurisdiction may consider an approach that grants the authority to the Ministry of Finance, tax administration or other appropriate authority to release further regulations to provide for further details in the application and interpretation of the domestic minimum tax rules. This approach may speed up the implementation process and also make it easier for the jurisdiction to ensure that its rules provide for outcomes that are consistent and co-ordinated with those of other jurisdictions. Giving the Ministry of Finance the authority to clarify and provide further detail on the operation of the rules through regulations or guidance may also make it easier for the primary legislation to be recognised as meeting the requirements of the common approach.

2.2.2. Ensure consistency

Applying Agreed Administrative Guidance and Safe Harbours

81. The Commentary to the Model Rules plays a key role as a driver of consistency in both the implementation and application of the GloBE rules. The Commentary was released in March 2022 and will be updated over time as the Inclusive Framework agrees further Administrative Guidance.[26] When considering how to implement the GloBE rules into domestic law, jurisdictions will therefore wish to ensure that they can continue to apply their domestic legislation in line with the Commentary as updated by Administrative Guidance. Similarly, the GloBE rules also provide Inclusive Framework members with the ability to agree safe harbours. These safe harbours would allow an MNE Group that meets their requirements to avoid the ETR and Top-up Tax calculation in respect of its operations that are likely to be taxable at or above the Minimum Rate of 15%. The consistent application of agreed safe harbours will reduce unnecessary compliance and administration costs while providing for improved tax certainty and transparency under the GloBE rules.

82. Because the Commentary clarifies the Model Rules, it is important that jurisdictions are able to apply their domestic rules consistently with the agreed outcomes under the Commentary. Jurisdictions may be able to include an interpretive clause which provides that the domestic rules are to be interpreted in light of the current version of the Commentary. Another approach would be to allow for the incorporation of the Commentary, Administrative Guidance and safe harbours directly into the jurisdiction's domestic law with effect from a given timeframe after their publication by the Inclusive Framework.

Giving effect to qualified rule status

83. The agreed rule order provided in the Model Rules ensures that the minimum tax is applied effectively and comprehensively while avoiding the risk of double or over-taxation. The Model Rules give effect to rule order by modifying the application of the rules in one jurisdiction (e.g. by deactivating a jurisdiction's rules) where there is an applicable "qualified" rule in another jurisdiction. For instance, a

[25] ATAF (2023), *ATAF Suggested Approaches to Drafting Domestic Minimum Top-Up Tax Legislation*, https://events.ataftax.org/index.php?page=documents&func=view&document_id=207, pages 8-74.

[26] The Commentary has already been updated under Administrative Guidance released in February and July 2023.

Qualified IIR would usually not apply at the level of an intermediate parent entity if a Qualified IIR is already applicable at the level of the ultimate parent entity. The application of the agreed rule order is illustrated in Section 1.3.6 of the Implementation Handbook.

84. In order to give effect to the rule order, implementing jurisdictions need to identify the rules that are considered as "qualified". To facilitate a consistent approach to determining whether the rules implemented by other jurisdictions are "qualified", the Inclusive Framework has agreed to develop a process for reviewing each jurisdiction's GloBE legislation. A common peer review process is more efficient than each jurisdiction undertaking its own review of every other jurisdiction's rules and ensures consistency in the outcomes. In addition, a common peer review process is expected to provide greater certainty to the implementing jurisdictions and to MNE Groups which are in a position to anticipate in which jurisdictions they will be required to apply the rules.

85. In approaching the question of qualified rule status, a transitional approach will be used based on a self-certification that will facilitate the consistent recognition of the qualified status of jurisdictions' rules on a temporary basis pending a more detailed review. In any case, changes to the domestic legislation could potentially affect its qualified status and therefore would also be reviewed by the Inclusive Framework over time.

Administration

86. The Inclusive Framework has developed (and will continue to develop) further tools to facilitate a coordinated administration of the rules. In particular, the Inclusive Framework released the standardised GloBE Information Return (GIR) in July 2023. The Inclusive Framework has also agreed on a dissemination approach which ensures that implementing jurisdictions can collect or access the information they need depending on their specific situation in relation to each MNE Group that is subject to the rules in their jurisdiction.

87. Implementing jurisdictions will be able to use the standardised GIR to access the information they need to perform an appropriate risk assessment and to verify the calculation of an MNE Group's tax liability. In order to collect such information, the default mechanism provided under the rules is for local filing, which ensures that every implementing jurisdiction can access the relevant information. However, the rules also provide for the possibility to file the information in a single jurisdiction that would then exchange the information with others. The central filing would deactivate the need to file the GIR locally where the information is instead made available through exchange of information mechanisms.

88. The Inclusive Framework is currently developing the exchange agreements and IT-tools to facilitate the central filing of the information by MNE Groups. This work covers the development of a Multilateral Competent Authority Agreement (MCAA) which jurisdictions will use to exchange the relevant sections of the GIR with identified recipient jurisdictions on an automatic basis. Such an agreement would be based on the Convention on Mutual Administrative Assistance in Tax Matters. As an alternative, jurisdictions may also conclude a bilateral Competent Authority Agreement that is based on the Convention, a Tax Information Exchange Agreement, a Tax Treaty with a provision equivalent to Article 26 of the OECD Model Tax Convention or any other international agreement that allows automatic exchange of information. In addition, the Inclusive Framework is advancing work on an XML schema that will facilitate the efficient exchange of the GIR information between Competent Authorities on the basis of a single IT-format.

89. Finally, further work is underway on exploring improvements to tax certainty and more generally co-ordinated compliance approaches including at the risk assessment stage. Practical guidance on issues of tax administration may be included in future updates of this Implementation Handbook or other materials.

OECD/G20 BASE EROSION AND PROFIT SHIFTING PROJECT

Minimum Tax Implementation Handbook (Pillar Two)

Inclusive Framework on BEPS

A key part of the OECD/G20 BEPS Project is addressing the tax challenges arising from the digitalisation and globalisation of the economy. The global minimum tax, together with the Subject to Tax Rule, constitutes the second pillar of the Two-Pillar Solution developed to address those challenges. The minimum tax will ensure large multinational enterprises pay a minimum level of tax on the income arising in each of the jurisdictions where they operate. The minimum tax is based on an agreed set of Model Rules, that are designed to be implemented into domestic law as part of a common approach. This Implementation Handbook on the minimum tax provides an overview of the key provisions of the rules and the considerations to be taken into account by tax policy and administration officials and other stakeholders in assessing their implementation options. This Implementation Handbook was prepared under the Indian Presidency of the G20 and is not intended to modify the application or interpretation of any aspect of the Model Rules, the Commentary or the Agreed Administrative Guidance.

For more information: