

Tax Alert

January 2022



OECD Release of GloBE Model Legislation

At 11:00 CET, the Organisation for Economic Cooperation and Development (OECD) finally released the long awaited model legislation for the proposed Global Anti-Base Erosion (GloBE) rules. The rules may be accessed here <https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm>. The Commentary to these rules has not been released at this time however and this is now likely to be released after the OECD return from their holiday break in January 2022 (release likely February 2022). The Subject to Tax Rule has also not been released at this time.

KPMG is currently preparing a detailed overview of these rules, as well as comments on the model legislation and this will be available shortly. In the meantime, we wanted to highlight a few key observations on the model legislation for your general awareness.

For any materials relating to BEPS 2.0, please visit KPMG Asia Pacific Tax & Legal Centre: <https://home.kpmg/xx/en/home/services/tax/regional-tax-centers/asia-pacific-tax-centre.html>

GloBE Model Legislation

The GloBE rules are designed to ensure that MNEs pay a minimum level tax on income arising in each jurisdiction where they operate. The global minimum tax rate is set at 15% and an amount of “top up tax” is calculated to the extent the tax burden in a jurisdiction falls under this rate. Two mutually reinforcing sets of rules, referred to as the Income Inclusion Rule (IIR) and the undertaxed payments rule (UTPR), impose this top up tax, and model provisions for these are set out in the new document. Under the so-called “common approach”, these model tax rules are intended to be adopted (without modification) into domestic law by those Inclusive Framework (IF) members that wish to adopt them. The IF target is that adopting members should introduce them into domestic law in 2022 for application from 2023. We understand that these rules should be considered as final, though when the Commentary is released this may nuance some of the meanings.

If these rules are not adopted by an IF member, that jurisdiction will not benefit from additional tax collection via the top-up tax. However the GloBE rules will apply to MNE constituent entities (i.e. group companies, partnerships, etc.) located in non-adopting jurisdictions by IF members who do adopt the rules. That is to say, the impact of these rules is not limited to IF member jurisdictions who adopt these rules.

IF members who intend to adopt these GloBE rules will now need to align their domestic tax legislation to ensure there are no inconsistencies or conflicts between the GloBE rules and existing (or proposed) domestic tax legislation. Needless to say, each member of the IF has a choice on whether to adopt these rules, but we note that most of the IF members, including Vietnam, approved the broad design of these rules in October 2021.

A few preliminary observations on the GloBE rules:

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- The model legislation departs in a number of areas from the OECD’s October 2020 blueprint;
- The rules applying to the composition of an MNE Group have been simplified in some respects, but made more complex in other ways;
- The orphan entity rule has been dropped;
- The UTPR is not limited to related party transactions, and now applies to all tax deductible payments;

- The allocation methodology for the UTPR has also changed; and
- Co-existence of the GloBE rules with any domestic legislation in an IF member (that achieves the same policy outcomes), has been addressed via a defined ‘Qualified IIR’ rule.

With these and other changes in mind, taxpayers will need to review this model legislation and identify the impact of these rules on their respective business activities.

Other rules

The OECD have also announced on their website:

“In early 2022, the OECD will release the Commentary relating to the model rules and address co-existence with the US Global Intangible Low-Taxed Income (GILTI) rules. This will be followed by the development of an implementation framework focused on administrative, compliance and co-ordination issues relating to Pillar Two. The Inclusive Framework is also developing the model provision for a Subject to Tax Rule, together with a multilateral instrument for its implementation, to be released in the early part of 2022. A public consultation event on the implementation framework will be held in February and on the Subject to Tax Rule in March”.

In the meantime, please contact us for further insight and details:

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