Multinationals

Detailed information about multinationals and international tax for businesses.

Base Erosion and Profit Shifting

How the OECD and Australia address base erosion and profit shifting, a tax avoidance strategy used by multinationals.

Hybrid mismatch rules

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International Compliance Assurance Programme (ICAP)

The ATO is participating in ICAP launched by the Organisation for Economic Co-operation and Development (OECD).

International related party dealings statistics 2021–22

This annual overview provides key statistics on international related party dealings (IRPDs) for 2021–22.

International related party dealings statistics 2020-21

This annual overview provides key statistics on international related party dealings (IRPDs).

International related party dealings statistics 2019–20

This annual overview provides key statistics on international related party dealings (IRPDs).

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Base erosion and profit shifting

How the OECD and Australia address base erosion and profit shifting, a tax avoidance strategy used by multinationals.

Last updated 21 June 2022

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Inclusive framework

More information

What is base erosion and profit shifting

Base erosion and profit shifting (BEPS) refers to the tax planning strategies used by multinational companies to exploit gaps and differences between tax rules of different jurisdictions internationally. This is done to artificially shift profits to low or no-tax jurisdictions where there is little or no economic activity.

The Organisation for Economic Co-operation and Development (OECD) conservatively estimates the annual revenue loss due to BEPS at $100 to $240 billion USD.

Effects of base erosion and profit shifting

BEPS results in tax not being paid in the jurisdiction where economic activity occurs – eroding revenue bases of countries and undermining the fairness and integrity of their tax systems. Although some schemes are illegal, most aren't.

Businesses that operate across borders may use BEPS strategies to gain a competitive advantage over others that operate at a domestic level. Additionally, when taxpayers see multinational enterprises legally avoiding income tax, it weakens voluntary compliance by all taxpayers.

The OECD BEPS Action Plan

Due to rising government and community concern about BEPS strategies, G20 finance ministers asked the OECD to develop an action plan addressing BEPS issues in a coordinated and comprehensive manner. This resulted in the release of the OECD BEPS 15 Action Plan in mid-2013:

- **Action 1:** Address the tax challenges of the digital economy
- **Action 2:** Neutralise the effects of hybrid mismatch arrangements
- **Action 3:** Strengthen controlled foreign company (CFC) rules
- **Action 4:** Limit base erosion involving interest deductions and other financial payments

- **Action 5:** Counter harmful tax practices more effectively, taking into account transparency and substance
- **Action 6:** Prevent treaty abuse
- **Action 7:** Prevent the artificial avoidance of the permanent establishment status
- **Actions 8–10:** Assure that transfer pricing outcomes are in line with value creation
- **Action 11:** Establish methodologies to collect and analyse data on BEPS and the actions to address it
- **Action 12:** Require taxpayers to disclose their aggressive tax planning arrangements
- **Action 13:** Re-examine transfer pricing documentation
- **Action 14:** Make dispute resolution mechanisms more effective
- **Action 15:** Develop a multilateral instrument to modify bilateral tax treaties

The ensuing work by the OECD G20 Project involving over 60 countries culminated in the October 2015 release of the BEPS final package – 13 reports covering the 15 actions.

Australia's implementation of the BEPS package

Australia is committed to acting to address BEPS risks and has implemented recommendations from BEPS Actions 2, 5, 6, 8–10, 13, 14 and 15.

The legislation to give effect to BEPS Action 2, *Treasury Laws Amendment (Tax Integrity and Other Measures No. 2) Act 2018*, received Royal Assent on 24 August 2018. Schedules 1 and 2 introduced new Division 832 of the ITAA 1997 and the necessary amendments to give effect to the OECD Hybrid Mismatch rules. The rules apply to certain payments after 1 January 2019 and income years commencing on or after 1 January 2019.

Australia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) on 7 June 2017 (BEPS Action 15) and it entered into force on 1 January 2019. It is expected the MLI will modify 35 of Australia's tax treaties to implement integrity provisions to protect those treaties from being exploited and to improve tax treaty related dispute resolutions mechanisms. Australia has also agreed to mandatory arbitration in relation to tax treaty related disputes.

In October 2018, we updated our mutual agreement procedures (MAP) guidance to implement recommendations in BEPS Action 14. Taxation Ruling TR 2000/16 *Income tax: international transfer pricing and profit reallocation adjustments, relief from double taxation and the Mutual Agreement Procedure* was withdrawn.

An updated **PCG 2017/2** *Simplified transfer pricing record keeping options* was released on 9 January 2019 which implements BEPS Actions 8–10 transfer pricing simplification recommendation for low value-adding intragroup services.

We have fully implemented Country-by-Country (CbC) Reporting (BEPS Action 13), including from June 2018, the exchange of CbC reports with partner jurisdictions via the OECD Common Transmission System (CTS).

As part of the MLI, Australia adopted the principal purposes test in Article 7 to prevent treaty abuse and deny treaty benefits in certain circumstances (BEPS Action 6). An updated **PS LA 2020/2** *Administering general anti-abuse rules, such as a principal or main purposes test, included in any of Australia's tax treaties,* released on 1 October 2020, provides guidance on the administrative process of applying a principal or main purposes test in Australia's tax treaties.

Inclusive framework

The OECD established the inclusive framework on BEPS implementation in December 2015. Aims of the inclusive framework include monitoring implementation of BEPS measures, in particular the minimum standard recommendations for Actions 5, 6, 13 and 14. The OECD has undertaken annual reviews of the implementation of the minimum standards.

The inclusive framework will also support the development of toolkits for low-capacity developing countries. Australia is one of over 140 members of the inclusive framework.

More information

Australia's current work on implementing the BEPS package

- Hybrid mismatch rules (BEPS Action 2)
- Automatic exchange of information on cross-border arrangements (BEPS Action 5)
- Country-by-country reporting (BEPS Action 13)
- Mutual agreement procedure (BEPS Action 14)
- Multilateral Instrument (MLI) (BEPS Action 15)

OECD information

- OECD BEPS
- BEPS Actions
- Background Brief: Inclusive Framework on BEPS (PDF, 205KB)

QC 52546

Hybrid mismatch rules

How hybrid mismatch rules work and when they apply.

Last updated 3 July 2024

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Why we have hybrid mismatch rules

Australia's hybrid mismatch rules largely follow The Organisation for Economic Cooperation and Development (OECD) hybrid mismatch and branch mismatch rules from Action Item 2 of the OECD Base Erosion and Profit Shifting (BEPS) action plan.

The ATO, in consultation with the Board of Taxation, designed and implemented hybrid mismatch rules to prevent multinational companies from gaining an unfair competitive advantage by avoiding income tax or obtaining double tax benefits through hybrid mismatch arrangements.

Hybrid mismatch arrangements exploit differences in the tax treatment of an entity or instrument under the laws of 2 or more tax jurisdictions. This has an overall negative impact on competition, efficiency, transparency and fairness.

What the rules apply to

The rules apply to payments that give rise to hybrid mismatch outcomes which can be summarised as:

- deduction or non-inclusion mismatches (D/NI) where a payment is deductible in one jurisdiction and non-assessable in the other jurisdiction
- deduction or deduction mismatches (D/D) where the one payment qualifies for a tax deduction in 2 jurisdictions
- imported hybrid mismatches where receipts are sheltered from tax directly or indirectly by hybrid outcomes in a group of entities or a chain of transactions.

These rules operate in Australia to neutralise hybrid mismatches by cancelling deductions or including amounts in assessable income.

The rules also contain a targeted integrity provision that applies to certain deductible interest payments, or payments under a derivative, made to an interposed foreign entity where the rate of foreign income tax on the payment is 10% or less.

Subject to some exceptions, the rules apply to certain payments after 1 January 2019, and to income years commencing on or after 1 January 2019. Limited transitional arrangements – impacting frankable distributions – apply for Additional Tier 1 regulatory capital issued by banks or insurance companies.

In addition, the imported mismatch rules will only apply in respect of 'structured arrangements' for income years commencing on or after 1 January 2019. The complete imported mismatch rule will be delayed to income years starting on or after 1 January 2020. This aligns with the EU introduction of the hybrid mismatch rules.

Who the rules apply to

The rules apply to payments between:

- related parties
- members of a control group
- parties under a structured arrangement.

Unlike the diverted profits tax or multinational anti-avoidance law measures, the hybrid mismatch rules do not have a *de minimis* or materiality threshold.

Clarifying the operation of hybrid mismatch rules

Australia's hybrid mismatch rules have been updated with a number of technical amendments in order to clarify and improve the rules' operation.

In the 2019–20 Budget on 2 April 2019, the government announced the measure Tax Integrity – clarifying the operation of the hybrid mismatch rules. Subsequently, the government handed down the 2019–20 Mid-Year Economic and Fiscal Outlook (MYEFO) on 16 December 2019 and announced Tax integrity – improving the operation of the hybrid mismatch rules. These measures announced a number of minor technical amendments to Australia's hybrid mismatch rules to clarify and improve their operation.

On 3 September 2020 the [Treasury Laws Amendment (2020 Measures No.2) Act 2020]() , which fully implemented the above measures and some additional changes, received royal assent.

The amendments:

- clarify the operation of the hybrid mismatch rules for trusts and partnerships
- clarify the circumstances in which an entity is a deducting hybrid
- clarify the operation of the dual inclusion income rule by:
  - deeming certain types of foreign sourced income to be subject to Australian income tax in determining if that income is dual inclusion income
  - removing the need for non-corporate entities to reduce their dual inclusion income where they have a foreign income tax offset
  - clarifying the operation of the dual inclusion income on-payment rule
  - expanding the definition of dual inclusion income group such that, if in a country 2 or more entities share the same multiple liable entities (and those alone), then those entities are members of a dual inclusion income group in that country.
- amend the definition of 'foreign hybrid mismatch rules' so that it refers to a foreign law corresponding to any of *Subdivisions 832-C to 832-H* of the *Income Tax Assessment Act 1997* (ITAA 1997*)* and clarify the operation of provisions that have regard to the operation of corresponding foreign hybrid mismatch rules
- clarify that, for the purpose of applying the hybrid mismatch rules, foreign income tax does not include foreign municipal or State taxes (except in considering the application of the integrity rule)
- clarify that the hybrid mismatch rules apply to multiple entry consolidated (MEC) groups in the same way as they apply to consolidated groups
- ensure that the integrity rule can apply appropriately to financing arrangements that have been designed to circumvent the operation of the hybrid mismatch rules

- allow franking benefits on franked distributions made on certain Additional Tier 1 (AT1) capital instruments that would otherwise be denied.

For further information on these amendments and their specific administrative treatment, refer to Franked distributions on AT1 capital instruments.

Application dates for the amendments

The amendments will apply to income years starting on or after 1 January 2019, except for amendments:

- to the integrity rule (other than the state and municipal taxes changes), which will apply to income years starting on or after 2 April 2019
- to the definition of 'foreign hybrid mismatch rules', which will apply to income years starting on or after 1 January 2020.

Administering amendments to the hybrid mismatch rules

As a number of the changes have retrospective effect, taxpayers will need to either:

- decide to comply with the law (pre-amendments), or
- 'anticipate' the amendments (now enacted law) for the purposes of their income tax return lodgments.

We won't apply our resources to checking whether these self-assessments are correct (in accordance with the law (pre-amendments)), but taxpayers will need to review their lodged returns now that the proposed amendments have been enacted.

Taxpayers should refer to **Administrative treatment of retrospective legislation** for further information and practical guidance on our administrative approach to law change proposals with retrospective effect.

Taxpayers should also refer to **Lodgment and payment obligations and related interest and penalties**, which sets out our administrative approach to lodgment and payment obligations and related charging of interest and penalties where taxpayers may be affected by the introduction of a new tax measure.

For further information about how we administer retrospective changes refer to **Law Administration Practice Statement PS LA 2007/11** to explore its applications and provisions.

Franked distributions on Additional Tier1 capital instruments

Where franked distributions made on AT1 capital instruments give rise to a foreign income tax deduction, the retrospective changes ensure:

- franking benefits on those distributions continue to be allowed (assuming relevant requirements are satisfied, such as the holding period rule, the related payments rule and the dividend washing integrity rule)
- an amount equal to the amount of the foreign income tax deduction is included in the assessable income of the entity that makes the distribution.

We will continue to work with issuers of AT1 instruments to identify when franked distributions give rise to foreign income tax deductions on these capital instruments, to ensure correct application of the new law.

For investors in AT1 capital instruments, your ability to claim franking benefits attached to franked distributions that are paid on these capital instruments, won't be impacted by a foreign income tax deduction that arises for that distribution.

Legislation and supporting material

The hybrid mismatch rules received royal assent on 24 August 2018 (as contained in Schedule 1 and 2 of Treasury Laws Amendment (Tax Integrity and Other Measures No. 2) Act 2018.

The amending legislation clarifying the operation of the hybrid mismatch rules received royal assent on 3 September 2020 (as contained in Schedule 1 of The Treasury Laws Amendment (2020 Measures No. 2) Act 2020).

Law companion rulings

The following Law Companion Rulings (LCRs) have been released so far:

- On 13 January 2021 we finalised Law Companion Ruling **LCR 2021/1** *OECD hybrid mismatch rules – targeted integrity rule.* This outlines the ATOs interpretation of the hybrid mismatch targeted integrity rule set out in subdivision 832-J of the *Income Tax Assessment Act 1997*. The finalised version incorporates feedback received on the 2 previous drafts and addresses changes introduced as part of the amending legislation.
- On 24 July 2019 we finalised Law Companion Ruling **LCR 2019/3** *OECD hybrid mismatch rules – concept of structured arrangement*. This outlines the ATOs view of the law about the phrases 'structured arrangement' and 'party to the structured arrangement' set out in section 832-210 of the *Income Tax Assessment Act 1997*.

Taxation determinations

To date, the following Taxation Determinations (TDs) have been released.

On 29 June 2022 we published Taxation Determination **TD 2022/9** *Income tax: is section 951A of the US Internal Revenue Code a provision of a law of a foreign country that corresponds to section 456 or 457 of the Income Tax Assessment Act 1936 for the purpose of subsection 832-130(5) of the Income Tax Assessment Act 1997?* This TD explains the ATO's view that section 951A of the US Internal Revenue Code, known as the global intangible low-taxed income 'GILTI' regime, doesn't correspond to section 456 or 457 of the *Income Tax Assessment Act 1936* (the operative provisions of Australia’s controlled foreign companies regime). Rather, section 951A and other related provisions of the US Internal Revenue Code are widely considered to be a US ‘minimum tax regime’ for which there is no equivalent in Australia.

On 3 July 2024 we published Taxation Determination **TD 2024/4** *Income tax: hybrid mismatch rules – application of certain aspects of the ‘liable entity’ and ‘hybrid payer’ definitions*. This TD explains the ATO's view that hypothetical income or profits within the tax base of a country can be used to identify a ‘liable entity’ or entities in the country for the purpose of section 832-325, and a ‘non-including country’ for the purpose of subsection 832-320(3) of the ‘hybrid payer’ definition can be a jurisdiction other than the country where the payee of the relevant payment is located or resides.

Practical compliance guidelines

To date, the following Practical Compliance Guidelines (PCGs) have been released.

PCG 2021/5

On 16 December 2021 we finalised Practical Compliance Guideline **PCG 2021/5** *Imported hybrid mismatch rule - ATO's compliance approach*. This contains practical guidance on the ATO's assessment of the relative levels of tax compliance risk associated with hybrid mismatches addressed by Subdivision 832-H of the ITAA 1997 (the imported mismatch rule).

PCG 2019/6

On 24 July 2019 we finalised Practical Compliance Guideline **PCG 2019/6** *OECD hybrid mismatch rules – concept of structured arrangement*. It contains practical guidance for taxpayers when assessing the risk of the newly legislated hybrid mismatch rules applying to their circumstances – in particular with relation to the concept of 'structured arrangement' in section 832-210 of the ITAA 1997.

This PCG should be read in conjunction with **LCR 2019/3**.

PCG2018/7

On 25 October 2018, we finalised **PCG 2018/7** *Part IVA of the Income Tax Assessment Act 1936 and restructures of hybrid mismatch arrangements* to help clients wishing to eliminate hybrid tax outcomes that would otherwise fall foul of the newly legislated hybrid mismatch rules.

This PCG will help clients manage their compliance risk by outlining straightforward (low risk) restructuring to which we will not seek to apply Part IVA. The PCG also encourages early engagement with us by those taxpayers whose arrangements fall outside the low-risk parameters outlined in the PCG.

Clients potentially affected by the rules and considering restructuring should refer to this PCG to understand our compliance approach.

Payments within United States (US) consolidated groups

All references are to the *Income Tax Assessment Act 1997*, unless otherwise stated.

We have been asked whether an intercompany payment between members of a US consolidated group can be regarded as ‘subject to foreign income tax’ in the US in a foreign tax period under subsection 832-130(1).

To the extent an intercompany payment is included as gross income in the calculation of the recipient member’s ‘separate taxable income’ for US federal income tax purposes for the foreign tax period, the intercompany payment can be regarded as ‘subject to foreign income tax’ in the US under subsection 832-130(1).

The calculation of the ‘separate taxable income’ of a member of a US consolidated group for US federal income tax purposes is addressed by the US federal tax regulations, and is subject to certain modifications, including modifications for transactions between members of a US consolidated group.

You must also consider the effect of subsections 832-130(3) and (4) however, in ultimately determining whether an intercompany payment can be regarded as ‘subject to foreign income tax’ in the US.

The following example illustrates our view.

An example showing the hierarchy of a US consolidated group and the 10-dollar interest annual payment made by Aus Co to the US Parent representative head of the group in return for the interest-bearing loan (explained in detail below).

US Parent, US Sub 1 and US Sub 2 are each US resident corporations that file on a consolidated group basis for US federal income tax purposes. US Parent is the representative head of the group that files the consolidated return as agent for the group members. A ‘check-the-box’ election has been made to treat Aus Co as a ‘disregarded entity’ of US Sub 1 for US federal income tax purposes.

US Parent made a $100 interest-bearing loan to Aus Co in Year 1, in return for payment of $10 of interest annually by Aus Co at the end of each year, and repayment of $100 at the end of Year 5. For US federal income tax purposes, US Sub 1 is treated as the borrower in respect of the loan and the related interest expense of Aus Co is treated as an expense of US Sub 1.

If the full $10 of interest income received by US Parent in a foreign tax period is included as gross income in the calculation of US Parent's 'separate taxable income' for the foreign tax period, the full $10 of interest income can be regarded as 'subject to foreign income tax' in the US under subsection 832-130(1).

For example, the full $10 of interest income received by US Parent may be included as gross income in the calculation of US Parent's 'separate taxable income' if no amount of the $10 of interest income is required to be redetermined or adjusted in accordance with any US federal income tax law or regulation.

This outcome is notwithstanding that for US federal income tax purposes:

- US Sub 1 may be entitled to deduct the full $10 of corresponding interest expense in calculating its 'separate taxable income' for the same foreign tax period; and
- US Parent's and US Sub 1's 'separate taxable incomes' are combined in calculating the consolidated taxable income of the US consolidated group for the foreign tax period.

Subject to the operation of subsection 832-130(3), the $10 interest payment won't give rise to a deduction/non-inclusion mismatch under section 832-105. However, the interest payment will instead give rise to a deduction/deduction mismatch under subsection 832-110(1) if US Sub 1 is entitled to deduct all or part of the interest payment in working out its 'separate taxable income'.

When we engage with you, we will likely request copies of relevant parts of the US consolidated tax return and relevant supporting documents as evidence of the extent to which an intercompany payment has been included in a recipient member's 'separate taxable income' in a foreign tax period.

Media releases

- Treasurer's media release – Making sure multinationals pay their fair share: Addressing hybrid loopholes, 7 March 2018

- Treasurer's media release – Turnbull Government clampdown on multinational tax avoidance hits hybrids, 24 November 2017
- Joint media release – A new Tax Avoidance Taskforce, 3 May 2016

Contact us

If you have any questions or would like to contact us, email us at hybridmismatches@ato.gov.au.

QC 61035

International Compliance Assurance Programme (ICAP)

The ATO is participating in ICAP launched by the Organisation for Economic Co-operation and Development (OECD).

Last updated 31 August 2021

ICAP is a voluntary risk assessment and assurance programme to facilitate open and co-operative multilateral engagements between multinational enterprise (MNE) groups willing to engage actively and transparently with tax administrations in jurisdictions where they have activities.

By co-ordinating conversations between an MNE group and multiple tax administrations, ICAP supports the effective use of transfer pricing documentation, including the MNE group's country-by-country (CBC) report, as part of a multilateral risk assessment process. Where an area is identified as needing further attention, work conducted in ICAP can improve the efficiency of compliance action taken outside the programme, if needed.

The OECD has noted that the key benefits of ICAP include:

- targeted and consistent interpretation and use of CBC reports
- better use of resources for tax administrations and MNEs
- a co-ordinated and transparent approach to engagement
- faster multilateral tax certainty
- fewer disputes entering into a mutual agreement procedures (MAP).

More information about ICAP, including a handbook for the multilateral risk assessments and a list of the participating tax administrations, can be found on the OECD website.

ICAP complements the ATO's Top 100 risk categorisation approach and Top 1,000 tax performance program, as well as other initiatives, such as our advance pricing arrangement and advice and guidance programs to provide tax certainty to MNEs.

For more information about the ATO's involvement in ICAP email **internationalrelations@ato.gov.au**. Australian multinationals that wish to discuss possible participation in ICAP should contact us via this email address.

QC 55206

MLI Article 4(1) administrative approach

Australia-New Zealand joint administrative approach for non-individual dual residents impacted by MLI Article 4(1).

Last updated 16 November 2022

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Australia and New Zealand administrative approach

Australia and New Zealand are signatories to the Multilateral Convention[1] (MLI) and have both deposited their instruments of ratification with the OECD. This reinforces the commitment of Australia and New Zealand to addressing base erosion and profit shifting (BEPS) risks and ensuring a better functioning international tax system.

In recognition of the Single Economic Market agenda between Australia and New Zealand, which seeks to create a seamless trans-Tasman business environment, and the fact that our respective tax systems and administrations are comparable and both countries are committed to adopting measures to address BEPS risks, this joint approach represents a measured risk-based approach that seeks to provide certainty and minimise compliance costs for taxpayers. It is envisaged that this approach will only be implemented between Australia and New Zealand at this stage.

For taxpayers who satisfy all of the eligibility criteria outlined below for the relevant year, the Australian Taxation Office (ATO) and New Zealand Inland Revenue (IR) jointly determine that:

- Where an eligible taxpayer reasonably self-determines its place of effective management (PoEM) to be located in Australia, it will be deemed to be a resident of Australia for the purposes of the *Convention between Australia and New Zealand for the avoidance of double taxation with respect to taxes on income and fringe benefits and the prevention of fiscal evasion* (Australia-New Zealand treaty).
- Where an eligible taxpayer reasonably self-determines its PoEM to be located in New Zealand, it will be deemed to be a resident of New Zealand for the purposes of the Australia-New Zealand treaty.

This determination is made for the purposes of the Australia-New Zealand treaty as modified by Article 4(1) of the MLI.

Where an eligible taxpayer reasonably self-determines its PoEM to be located in New Zealand and it is deemed to be a resident of New Zealand for the purposes of the Australia-New Zealand treaty, the taxpayer will also be a prescribed dual resident under the definition in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).

This approach is designed to reduce the compliance burden and costs for lower materiality taxpayers as they are able to assess their eligibility based on readily available information. It also allows the ATO and IR to focus compliance resources on arrangements that could have material revenue consequences and/or pose higher risk of non-compliance with the tax laws.

Where the taxpayer is uncertain as to whether they satisfy the eligibility criteria or uncertain as to the self-determination of PoEM, we encourage the taxpayer to engage with either competent authority about their circumstances. If the taxpayer does not meet the eligibility criteria, then an application will need to be lodged.

The ATO and IR will monitor the operation of this administrative approach to ensure it remains fit for purpose.

Eligibility criteria

Structure

1. The taxpayer is an ordinary company[(2)] incorporated under either the *Corporations Act 2001* in the case of Australia or the *Companies Act 1993* in the case of New Zealand.
2. The taxpayer has reasonably self-determined its place of effective management to be solely in either Australia or New Zealand for the purposes of the Australia-New Zealand treaty.

Financials

3. The taxpayer's group[(3)] annual accounting income[(4)] is less than AUD $250 million or NZD $260 million based on prepared financial statements for the most recent reporting period[(5)].
4. The taxpayer's gross passive[(6)] income is less than 20% of its total assessable income for the most recent income tax year.
5. The total value of intangible assets[(7)] (other than goodwill) held by the taxpayer is less than 20% of the value of its total assets based on prepared financial statements for the most recent reporting period.

Compliance activities

6. The taxpayer or any member of the group[(8)] is currently **not**, and has **not** been in the last 5 years, subject to any compliance activity[(9)] undertaken by either the ATO or IR which relates to the determination of residency for taxation purposes.

7. The taxpayer or any member of the group[(10)] is currently **not** engaged in an objection[(11)], challenge[(12)], settlement procedure or litigation in either Australia or New Zealand in relation to a dispute with either the ATO or IR.

   Where the taxpayer has only failed criterion 7 (that is, the taxpayer meets all other criteria), we encourage the taxpayer to contact either competent authority to discuss their particular facts and circumstances prior to lodging an application for a competent authority determination.

The administrative approach will only be valid if the taxpayer satisfies all of the following conditions on an on-going basis:

8. Upon being notified by either the ATO or IR of a new compliance activity[(13)], the taxpayer notifies the ATO or IR that it has been eligible for the dual resident administrative approach and the jurisdiction of residence for the purposes of the Australia-New Zealand treaty has been determined under this approach.

9. The taxpayer or any member of the taxpayer group[(14)] has **not** entered into, or carried out:

   - a tax avoidance scheme whose outcome depends, in whole or part, on the location of its residence
   - a tax avoidance scheme affecting the location of its central management and control, including previous or subsequent 'migration' of residency
   - arrangements to conceal ultimate beneficial or economic ownership
   - arrangements involving abuse of board processes (including backdating of documents) or the board not truly executing its functions, or
   - arrangements under which any benefits under the Australia-New Zealand treaty would be potentially denied under the conditions of the Principal Purpose Test in paragraph 1 of MLI Article 7.

Taxpayer obligations

Where there is a material change, the taxpayer is required to re-assess their eligibility and approach either competent authority if the practical administrative approach no longer applies to their circumstances.

Where the taxpayer has assessed their circumstances and eligibility to apply the practical administrative approach, they are still required to meet the general record-keeping requirements under domestic law[15]. This includes supporting documentation that must be clearly identifiable for each relevant year for which they have determined their residency for the purposes of the Australia-New Zealand treaty under this approach.

Review of agreement

The ATO and IR will generally not seek to review a taxpayer's self-determined PoEM as long as all material facts and circumstances remain the same. The ATO and IR reserve the right to review the outcome of a taxpayer's self-determined PoEM especially in instances where the ATO or IR is of the opinion that any anti-avoidance rules may apply.

In most circumstances, the tax law puts a time limit on the period in which the ATO or IR can amend a tax assessment. These time limits provide certainty and finality for both the taxpayer and the Commissioner. Generally the period of review of a taxpayer's assessment is 4 years. However, in a case where the ATO or the IR forms an opinion of fraud or evasion, there is no time limit for amending an assessment.

When a review concludes, the outcome will be communicated in writing, generally within 7 days of a decision. If the outcome of the review results in the reversal of a taxpayer's self-determined position the result will be retrospectively applied from the later of:

- the date of the MLI (1 January 2019)
- the date of the change in a taxpayer's circumstances that resulted in the determination ceasing to be correct.

[1] *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*.

2 Ordinary company takes its meaning from plain English that is, an entity that is not a trust, partnership, cooperative, or other like vehicle. For the purposes of assessing this criterion, ‘ordinary company’ does not include an entity acting in the capacity of a trustee.

3 For the purposes of assessing this criterion, 'group' consists of an ultimate Australian or New Zealand parent together with all the entities (including any offshore subsidiaries) it is required by the Australian Accounting Standard AASB 10 Consolidated Financial Statements or the New Zealand Accounting Standard equivalent NZ IFRS 10 to include in its consolidated financial statements (or would be required to consolidate if it had been required to prepare consolidated financial statements). If there are 2 or more entry points into Australia that are under the control of the same offshore ultimate parent, for the purposes of assessing this criterion, 'group' includes all relevant Australian top-tier parent entities and their subsidiaries as required by AASB 10 to be included in their respective consolidated financial statements (or would be required to be consolidated if the entities had been required to prepare consolidated financial statements). If there are 2 or more entry points into New Zealand that are under the control of the same offshore ultimate parent, for the purposes of assessing this criterion, 'group' includes all relevant New Zealand top-tier parent entities and their subsidiaries as required by NZ IFRS 10 to be included in their respective consolidated financial statements (or would be required to be consolidated if the entities had been required to prepare consolidated financial statements).

4 Income includes revenue, gains from investment activities and other inflows that go to the determination of the profit or loss in accordance with the Australian Accounting Standard AASB 101 Presentation of Financial Statements or with the New Zealand Accounting Standard equivalent NZ IAS 1. For the avoidance of doubt, if the Australian or New Zealand parent is within a larger global group, criterion 3 refers to the consolidated annual accounting income of the ultimate Australian or New Zealand parent (for multiple entry groups, it will be the sum of the consolidated annual accounting income of the relevant top-tier parent entities (refer to note 3)).

5 If the taxpayer starts or ceases a business part way through a reporting period, a reasonable estimate of what their annual accounting income would have been if the entity had carried on the business for the entire reporting period should be used.

6 For the purposes of assessing this criterion, 'passive income' is any of the following as defined in section 23AB of the Income Tax Rates Act 1986, dividends other than non-portfolio dividends, franking credits on such dividends, non-share dividends, interest income (some exceptions apply), royalties, rent, gains on qualifying securities, net capital gains and income from trusts or partnerships, to the extent it is referable (either directly or indirectly) to an amount that is otherwise base rate entity passive income.

7 'Intangible asset' is as defined under the Australian Accounting Standard AASB 138 Intangible Assets and under the New Zealand Accounting Standard NZ IAS 38 Intangible Assets.

8 Determined under the same definition contained in note 3.

9 This includes any risk review, audit or any other compliance activity carried out by the ATO or IR and notified to the taxpayer.

10 Determined under the same definition contained in note 3.

11 An objection lodged by a taxpayer against an assessment under section 175A of ITAA 1936 is a formal avenue of dispute resolution which attracts appeal rights. This is in contrast to a request for amendment of an assessment under section 170 of the ITAA 1936 to correct a mistake or omission where there is no dispute about the facts or the law.

12 The challenge process in Part 8A of the Tax Administration Act 1994 (TAA) is a formal avenue of dispute resolution which attracts appeal rights. This is in contrast to a request for amendment of an assessment under section 113 of the TAA to correct a mistake or omission where there is no dispute about the facts or law.

13 This includes any risk review, audit or any other compliance activity carried out by the ATO or IR and notified to the taxpayer.

14 Determined under the same definition contained in note 3.

15 Section 262A of the ITAA 1936 or section 22 of the TAA.

QC 59062

Global and domestic minimum tax

The implementation of the OECD/G20 Two Pillar Solution for multinational businesses in Australia.

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Global Anti-Base Erosion Model Rules

The Global Anti-Base Erosion Model Rules (GloBE Rules) are a key element of the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework's Two-Pillar Solution to address the tax challenges arising from the digitalisation of the economy. The rules aim to set a minimum on tax rates to discourage large multinational enterprise groups (MNE Groups) from moving their profits to countries where they pay less tax.

The GloBE Rules:

- provide for a co-ordinated system of taxation intended to ensure large MNE Groups are subject to a global minimum tax rate of 15% in each of the jurisdictions where they operate

- are model rules developed by the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting to inform the design of domestic legislation
- consist of 2 interlocking rules
  - The **Income Inclusion Rule** (IIR) – acts as the primary rule which allows jurisdictions to apply a top-up tax on multinational parent entities located in a jurisdiction if the group's effective tax rate in another jurisdiction is below 15%
  - The **Undertaxed Profits Rule** (UTPR) – acts as a backstop rule which allows jurisdictions to apply a top-up tax on constituent entities located in a jurisdiction if the group's effective tax rate in another jurisdiction is below 15% and where the profit is not brought into charge under an IIR.
- provide the option for jurisdictions to implement a domestic minimum tax, giving a jurisdiction the option to claim primary rights to impose top-up tax over any low-taxed profits in that jurisdiction in priority over the IIR and UTPR.

Pillar Two implementation in Australia

On 9 May 2023, as part of the 2023–24 Budget, the government announced it will implement key aspects of Pillar Two of the OECD/G20 Two-Pillar Solution to address the tax challenges arising from the digitalisation of the economy. The government has proposed changes to **implement a global minimum tax and a domestic minimum tax**.

Status of ATO implementation

Although the measure is not yet law, we are taking steps to progress this before it becomes law. This includes designing domestic returns and developing the systems required to administer the measure in advance of the first lodgments, due by 30 June 2026.

We've also conducted early public **consultation** to:

- provide preliminary education and awareness about the Budget announced Pillar Two GloBE measures
- seek feedback on administrative, compliance and systems' impacts associated with the implementation of the new global and domestic

minimum tax.

From 1 February 2024, we have held a total of 25 consultation meetings with MNE Groups, industry groups, advisers and digital service providers (DSPs).

Consultations with DSPs are continuing and we are currently considering future ATO-led consultations.

Key consultation feedback and findings

The overarching theme from consultations so far includes the:

- varying degrees of readiness for when the rules start
- significant compliance challenges the GloBE Rules pose
- potential technical difficulties in capturing the data points the GloBE Information Return (GIR) requires.

Capturing data points for the GIR

The feedback received so far indicates that for many MNE Groups:

- the data points needed for the GIR are extensive and may require system changes or manual interventions
- given the system updates needed, one key challenge for businesses is the amount of time and resources required to set up their systems to meet their obligations.

Australian specific administration and interpretation issues

Stakeholders raised a variety of topics about our administration and interpretation of the GloBE Rules, when enacted, including:

- potential application of administrative penalties
- safe harbours, with several consultees indicated there will likely be significant reliance on safe harbours, developed by the OECD/G20 Inclusive Framework on BEPS
- interpretation questions relating to potential Australian income tax regime interactions.

In some instances, there was a misconception we will be able to provide further concessions and simplifications beyond the

OECD/G20’s GloBE Rules to reduce compliance costs. It was communicated to consultees that, to ensure qualified status, we are unable to provide administrative concessions or simplifications that are inconsistent with those provided for in the OECD/G20's GloBE Rules, Commentary and Administrative Guidance.

With the release of the draft legislation, we propose to carry out further public consultation in due course. Several consultees indicated they were seeking to review the legislation and Explanatory Memorandum before identifying potential topics in respect of our administration and technical interpretation.

Support from advisers

Several advisers:

- have built internal capability for this new measure
- are advising clients in advance of
  - the start date of impact assessments
  - understanding data needs for the GIR.

Even though there are certain third-party tools on the market to assist with core and safe harbour calculations, select large advisory firms are developing their own in-house modelling tools to gather data points and establish a rules database.

Support and assistance to comply with the new rules

We will likely need to assist in-scope MNEs with meeting future obligations, including:

- guidance on our client engagement approach and Australian specific administration and interpretation issues
- application and administration of any associated penalties
- a dedicated contact to assist with queries.

Contact us about Pillar Two

You can direct questions about our administration of the global and domestic minimum tax to Pillar2Project@ato.gov.au.

Primary legislation

The following information is based on the primary legislation introduced to parliament. The aim is to provide information on the key features of the new measure.

The Australian Parliament will consider the primary legislation and may propose changes. We administer the laws as enacted by the parliament.

The majority of the GloBE rules will be contained in subordinate legislation, to be made after enactment of the primary legislation.

For the primary legislation introduced to parliament, see:

- Taxation (Multinational—Global and Domestic Minimum Tax) Bill 2024 – Parliament of Australia (aph.gov.au)
- Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Bill 2024 – Parliament of Australia (aph.gov.au)
- Treasury Laws Amendment (Multinational—Global and Domestic Minimum Tax) (Consequential) Bill 2024 – Parliament of Australia (aph.gov.au)

When and who the GloBE rules apply to

Dates when the rules apply

It is expected that:

- IIR and the domestic minimum tax will apply to fiscal years starting on or after 1 January 2024.
- UTPR will apply to fiscal years starting on or after 1 January 2025.

Who the rules apply to

The global minimum tax under the GloBE Rules applies to constituent entities that are members of MNE Groups which have annual revenue exceeding 750 million Euros in the consolidated financial statements of the ultimate parent entity (UPE).

Broadly, constituent entities are entities of MNE Groups which are not classified as excluded entities under the GloBE Rules. An MNE Group is a group, in most cases determined under accounting consolidation principles, for which there is at least one entity or permanent establishment in a jurisdiction that is not the jurisdiction of the UPE.

If the UPE's annual revenue in at least 2 of the 4 fiscal years preceding the test year meet or exceed the threshold, then the MNE Group is in-scope.

The domestic minimum tax broadly applies to Australian constituent entities in MNE Groups to which the GloBE rules apply to.

Excluded entities

Certain entities of an MNE Group are excluded from the operation of the GloBE Rules (known as excluded entities).

Examples of excluded entities include government entities, international organisations, non-profit organisations and pension funds, as well as UPEs which are either an investment fund or a real estate investment fund. The definitions for excluded entities in the primary legislation are based on the GloBE Rules.

We are currently considering the ATO and Treasury consultation feedback received to date about requests for further clarity on the various excluded entity definitions, and the need for ATO guidance on this subject will be explored in future consultation.

OECD safe harbours

What safe harbours are available under the OECD model rules

Broadly, there are 4 safe harbours available.

1. **Transitional country-by-country (CBC) reporting safe harbour**

The transitional CBC reporting safe harbour allows an MNE to use existing CBC reporting and financial accounting data as the basis for the safe harbour calculation, eliminating the need to undertake detailed GloBE calculations.

This safe harbour applies to fiscal years beginning on or before 31 December 2026 but not including a fiscal year that ends after 30 June 2028. An MNE may elect to use the safe harbour if it can demonstrate, based on their Qualified CBC Reports and Qualified Financial Statements, that it meets either the:

- de minimis test
- simplified effective tax rate test or
- routine profits test.

The effect of applying this safe harbour is that the jurisdictional top-up tax is taken to be zero.

2. **Qualified Domestic Minimum Top-Up Tax (QDMTT) safe harbour**

An MNE Group may elect to apply the permanent QDMTT safe harbour. The permanent QDMTT safe harbour reduces the top-up tax of a jurisdiction to zero. This is for the purpose of applying an IIR or UTPR to the jurisdiction, where that jurisdiction applies a QDMTT that has QDMTT safe harbour status. This provides a practical compliance solution to avoid needing to carry out both QDMTT and GloBE calculations in respect of a jurisdiction.

3. **Non-Material Constituent Entity (NMCE) simplified calculations safe harbour**

MNE Groups may elect to use the NMCE simplified calculations safe harbour, which includes a simplified method in determining the GloBE income or loss, GloBE revenue and adjusted covered taxes of a NMCE.

This permanent safe harbour allows MNE Groups to use these simplified calculations for NMCEs in determining whether the de minimis test, routine profits test or effective tax rate test has been met for a jurisdiction under the safe harbour.

Broadly, an NMCE is a constituent entity that has not been consolidated in the UPE's consolidated financial statements solely due to size or materiality.

Where an MNE Group meets one of the simplified calculations safe harbour tests, the top-up tax for the jurisdiction is taken to be zero, with some limited exceptions.

4. **Transitional UTPR safe harbour**

The transitional UTPR safe harbour allows an MNE to reduce their UTPR top-up tax amount for the UTPR jurisdiction (only) to nil during the transitional period, if the UPE jurisdiction has a nominal corporate income tax rate of at least 20%. This safe harbour applies to fiscal years beginning on or before 31 December 2025 and ending before 31 December 2026.

The consolidated commentary provides further information on the safe harbours available and applicable tests where relevant. For details, download the OECD Commentary to the GloBE Rules and refer to Annex A – Safe Harbours: Global Anti-Base Erosion Rules (Pillar Two).

Additional simplifications

To ensure qualification of Australia's IIR/UTPR and domestic minimum tax, we are unable to provide concessions, simplifications or safe harbours that are inconsistent with the outcomes provided for in the OECD model rules and Administrative Guidance.

Lodgment obligations

Lodgment forms

It is expected that 4 new obligations will be introduced which entities may be required to lodge:

1. GloBE Information Return (GIR)
2. Foreign lodgment notification
3. Australian IIR/UTPR Tax Return (AIUTR)
4. Domestic Minimum Tax Return (DMTR).

We are currently developing forms for the foreign lodgment notification, the AIUTR and the DMTR. It is expected that these forms will be subject to future consultation and will be available to taxpayers in advance of the first lodgments, due by 30 June 2026.

GIR and foreign lodgment notification

The GIR is an information return containing data to enable tax administrators to assess an MNE's compliance with the GloBE Rules.

Under the primary legislation, each Australian group entity in a MNE Group is required to lodge a GIR by default. Consistent with the GloBE Rules, the primary legislation provides the ability for the group entity to nominate another entity in the MNE Group to lodge the GIR on their behalf. This comprises a designated local entity lodging to the ATO or a foreign entity lodging the GIR to a foreign government agency.

A group entity is required to lodge a foreign lodgment notification, which we are currently developing, where they have nominated a foreign entity to lodge the GIR on their behalf to a foreign government agency.

AIUTR and DMTR

The AIUTR and DMTR are Australian domestic tax returns, which are currently developing to enable the triggering of Australia's domestic assessment and pay provisions, as the GIR is an information only return.

The AIUTR is for the global minimum tax, while the DMTR is for the domestic minimum tax.

Under the primary legislation, each Australian group entity:

- is required to lodge an AIUTR where they have an Australian IIR/UTPR tax amount (including a nil amount)
- in an MNE Group is required to lodge a DMTR where they have an Australian domestic minimum tax amount (including a nil amount).

Entities have the option to nominate the designated local entity to file on their behalf. The constituent entity’s lodgment obligation will be fulfilled where the designated local entity lodges by the respective lodgment due date.

Note: Excluded entities don't have an obligation to lodge the AUITR or DMTR, nor do they have an obligation to lodge the GIR and foreign lodgment notification form.

Lodgment due dates

The GIR, where the GIR is being lodged in Australia, foreign notification form, AIUTR and DMTR are required to be lodged 18 months after the end of the first fiscal year and 15 months after the end of the subsequent fiscal years.

Under the primary legislation we will have the ability to extend the lodgment deadline for the AIUTR and DMTR, but not the GIR or the foreign notification form.

Lodgment due dates for the first fiscal year

Year-end date	Lodgment due date
Fiscal years ending before 31 December 2024 (fiscal years less than 12 months)	30 June 2026
31 December 2024	30 June 2026
31 January 2025	31 July 2026
28 February 2025	31 August 2026
31 March 2025	30 September 2026
30 April 2025	31 October 2026
31 May 2025	30 November 2026
30 June 2025	31 December 2026
31 July 2025	31 January 2027
31 August 2025	28 February 2027
30 September 2025	31 March 2027
31 October 2025	30 April 2027
30 November 2025	31 May 2027

Record keeping

Keeping records on global and domestic minimum tax

The draft legislation inserts a new provision in the *Taxation Administration Act 1953* which provides record keeping requirements on the global and domestic minimum tax.

Broadly, the provision requires a group entity, as well as joint ventures and joint venture subsidiaries, to keep records that fully explain whether it has complied with the global and domestic minimum tax legislation. This includes, but is not limited to, all records that explain and show the basis of every disclosure in the GIR lodged or exchanged with the Commissioner.

Records must be kept in writing in English, or in a format that is readily accessible and convertible to English and must enable the entity's liability to top-up tax to be readily determined.

Excluded entities, which may not have an obligation to lodge, are still required to keep records relating to their status as an excluded entity.

Records must be kept until either:

- the end of 8 years after those records were prepared or obtained
- 8 years after the completion of the transactions or acts to which those records relate
- the end of the period of review for an assessment to which those records relate (if extended), whichever is the later.

Penalties

What administrative penalties can apply

The existing uniform penalty provisions contained in Schedule 1 of the *Taxation Administration Act 1953* apply, with base penalty amounts similar to those imposed for **significant global entities**. This means, for example:

- penalties for failure to lodge on time, which can apply to entities that do not lodge an approved form by the due date. The base penalty amount is multiplied by 500.
- penalties for false and misleading statements or for taking a position that is not reasonably arguable. The base penalty amount is multiplied by 2 times the base penalty amount.

In addition, an administrative penalty can apply for failing to keep records about the minimum tax law.

OECD guidance on penalties

The OECD has released guidance on transitional penalty relief, which outlines that administrators should consider providing a soft landing for MNE Groups during a transition period.

This includes recommending administrators consider not applying penalties or sanctions in connection with the filing of the GIR during the transition period where an MNE group has taken 'reasonable measures' to ensure the correct application of the GloBE Rules. 'Reasonable measures' is not defined and should be understood in light of each jurisdiction's existing rules and practices.

ATO guidance on penalties

We are currently considering consultation feedback received to date about the application of penalties to the global and domestic minimum tax. The need for updated guidance will be explored in future consultation.

Guidance

ATO guidance

We are currently considering the need for guidance products to support the new measure, along with whether there is a need to update existing guidance.

As part of future consultation, we will seek feedback on guidance that will most usefully support implementation of the new measure.

Private ruling applications

Under the primary legislation, taxpayers can apply for a private ruling involving the application of a relevant provision of a tax law relating to the global and domestic minimum tax.

However, we can't consider private ruling applications until the law is enacted. This means we can't consider private ruling applications on issues relating to the primary legislation or subordinate legislation until such legislation comes into force.

The primary legislation also introduces new circumstances in which the Commissioner may decline to provide a ruling in respect of the global or domestic minimum tax.

The explanatory memorandum provides some examples of situations where the Commissioner may determine it is unreasonable to provide a private ruling, including where:

- the OECD Inclusive Framework has published new Administrative Guidance which Australia is planning on incorporating into domestic law but has not yet done so, or
- the OECD Inclusive Framework has identified an issue which requires Administrative Guidance, or is drafting Administrative Guidance on a global or domestic minimum tax issue, and has yet to publish an agreed version of that Administrative Guidance, or
- issuing a ruling would require assumptions to be made on how other jurisdictions apply their respective domestic rules relating to the global or domestic minimum tax.

To provide effective public advice and guidance at the right time, we are interested in understanding what issues taxpayers are likely to seek a private ruling on. Feedback can be provided to the Pillars mailbox at, **Pillar2Project@ato.gov.au**. We will also look to seek feedback on this topic in our future consultations.

OECD guidance materials

OECD guidance materials are intended to promote a consistent and common interpretation of the GloBE Rules to provide certainty for MNE Groups and to facilitate coordinated outcomes under the rules.

OECD guidance materials released to date include:

- Model GloBE Rules (20 December 2021)
- Commentary to the GloBE Rules (25 April 2024)
- Agreed Administrative Guidance (2 February 2023) (PDF 1.24MB)
- Agreed Administrative Guidance (17 July 2023) (PDF 1.05MB)
- Agreed Administrative Guidance (18 December 2023) (PDF 478KB)
- Agreed Administrative Guidance (17 June 2024) (PDF 3MB)
- Safe Harbours and Penalty Relief (20 December 2022) (PDF 460KB)

- Illustrative Examples (25 April 2024) (PDF 1.88MB)

More information

For more information, see:

- International community strikes a ground-breaking tax deal for the digital age | OECD
- Global agreement on corporate taxation: addressing the tax challenges arising from the digitalisation of the economy | Treasury.gov.au
- Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two) | OECD
- Implementation of a global minimum tax and a domestic minimum tax | Australian Taxation Office (ato.gov.au)
- Australia's adoption of the Implementation of a global minimum tax and a domestic minimum tax – working group | ATO Software developers

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