



Tax Alert

Australia passes Bills to implement global and domestic minimum tax legislation

At a glance

- ▶ Legislation passed to implement:
 - ▶ An Income Inclusion Rule (IIR) applying with retrospective effect to years starting from 1 January 2024
 - ▶ An Undertaxed Profits Rule (UTPR) applying to years starting from 1 January 2025
 - ▶ A Domestic Minimum Tax (DMT) applying with retrospective effect to years starting from 1 January 2024
- ▶ The Australian Taxation Office (ATO) has formed a special purpose working group to discuss and seek feedback on the administrative aspects of the implementation of the Pillar Two measures.
- ▶ In-scope groups need to prepare the financial reporting and compliance obligations that will be required under Australia's new global minimum tax.
- ▶ How EY can help.

The Australian Parliament has passed legislation to implement Pillar Two of the OECD/G20 Two-Pillar solution in domestic law, including a 15 per cent global minimum tax and domestic minimum tax (DMT). This reflects a significant milestone in Australia's implementation of the OECD's Pillar Two global minimum tax solution. In-scope groups need to prepare for the financial reporting and compliance obligations that will be required as a result of this new law.

This follows the release of Exposure Drafts (EDs) for public consultation in March 2024 and the introduction of the Bills into Parliament in July 2024. The legislation is now awaiting Royal Assent.

The primary legislation consists of three Bills:

- ▶ Taxation (Multinational - Global and Domestic Minimum Tax) Bill 2024 (Assessment Bill)
- ▶ Treasury Laws Amendment (Multinational - Global and Domestic Minimum Tax) (Consequential) Bill 2024 (Consequential Bill)
- ▶ Taxation (Multinational - Global and Domestic Minimum Tax) Imposition Bill 2024 (Imposition Bill)

The Assessment Bill includes the key aspects of the global and domestic minimum taxes, including the imposition of top-up tax through an Income Inclusion Rule (IIR) and a DMT applying to fiscal years starting from 1 January 2024 and an Undertaxed Profits Rule (UTPR), applying to fiscal years starting from 1 January 2025. The IIR and DMT have retrospective commencement for fiscal years starting on or after 1 January 2024. The retrospective commencement from 1 January 2024 is in line with that stipulated by the OECD.

The Consequential Bill contains consequential and miscellaneous provisions to facilitate the administration of the top-up tax, including the preparation of new returns that are required to be filed in Australia by in-scope multinational enterprise groups (MNE Groups).

The majority of Australia's Pillar Two rules are contained in the subordinate legislation. The subordinate legislation, in the form of Rules, comprise the key operative aspects in line with the OECD's Model Rules, including Transitional Country by Country Reporting (CbCR) Safe Harbours. The Rules are a legislative instrument that is required to be executed by the Minister, which may occur prior to 31 December 2024, and will be tabled in Parliament when it next sits in 2025. The Rules will also have retrospective commencement to fiscal years starting on or after from 1 January 2024.

Australia's Pillar Two rules apply to MNE Groups with consolidated annual revenue of at least EUR 750 million in at least two of the four fiscal years immediately preceding the test year, which is in line with the OECD Model Rules.

Amendments for Securitisation Vehicles

Prior to the Bills passing the Senate, a minor amendment was made to include a definition of Securitisation Entity. The amendment states that Securitisation Entity has the meaning given by the Rules. Furthermore, the Consequential Bill was also amended to ensure joint and several liability to top-up tax of other group entities does not extend to securitisation entities.

These amendments were required to align with the OECD Administrative Guidance released in June 2024 such that Australia's DMT can achieve qualified status through the self-certification process and the peer review process by Inclusive Framework members. No other substantive amendments were made to the Bills by the Senate.

As a result of these Government amendments, the Bills were referred back to the House of Representatives after passing the Senate. The amended Bills were passed by the House on 27 November 2024.

Financial reporting implications

In June 2023, the Australian Accounting Standards Board issued AASB 2023-2 *Amendments to Australian Accounting Standards - International Tax Reform - Pillar Two Model Rules* (the Amendments). The Amendments introduce a mandatory temporary exception to the accounting for deferred taxes arising from Pillar Two and requires disclosures about an entity's exposure to income taxes arising from Pillar Two, including separate disclosure of its current tax expense (income) related to Pillar Two income taxes in periods when Pillar Two legislation is effective.

In-scope groups need to prepare for the financial reporting obligations that will be required under Pillar Two. This should include undertaking a detailed assessment of the potential impact of Pillar Two to determine what disclosures will need to be made for full year or interim reporting at 31 December 2024.

ATO consultation and administration

The Australian Taxation Office (ATO) has formed a special purpose working group to discuss and seek feedback on the administrative aspects of the implementation of the Pillar Two measures. To date, the following matters have been discussed during meetings of the working group:

- ▶ Overview on the new administrative obligations, including lodgement obligations, record keeping requirements, penalties, liability and payment, interest, assessments, objections and review rights.
- ▶ Feedback on forms currently under development, including the GloBE Information Return (GIR), Foreign lodgement notification, Australian IIR / UTPR Tax Return (AIUTR) and Domestic Minimum Tax Return (DMTR).
- ▶ Instances that require specific forms be completed where the top-up tax liability is nil, along with aspects of the new lodgement obligations that would benefit from ATO guidance.
- ▶ The definitions and key terms used to establish whether entities are within scope such as Group Entity, Constituent Entity, Ultimate Parent Entity, Permanent Establishment and Joint Venture.
- ▶ The definitions for terms related to Excluded Entities, including Pension Fund, Pension Service Entity, Investment Fund, Real Estate Investment Vehicle, Government Entity and Non-profit Organisation.
- ▶ The interaction of Pillar Two with existing Australian domestic tax laws in relation to hybrid mismatch rules, foreign hybrid rules, foreign income tax offsets (FITOs), controlled foreign entities, franking credits and tax treaties.
- ▶ Timing issues for claiming a FITO in income tax returns for foreign qualified domestic minimum top-up tax (QDMTT) paid at a later point in time, along with practical issues of claiming the appropriate amount of a FITO for foreign QDMTT paid in respect of attributed foreign income of a controlled foreign company (CFC) or a permanent establishment (PE).

The outcomes and next steps for the special purpose working group are:

- ▶ Conducting a broader session on the Pillar Two impacts for joint operations and joint ventures.
- ▶ Compiling a key issue register to highlight feedback provided by the working group members and the actions taken as part of the implementation of this measure.
- ▶ Conducting future sessions, subject to the release of subordinate legislation.

The passing of the Pillar Two legislation represents a significant milestone in Australia's implementation of the OECD's Pillar Two global minimum tax solution. This gives Australian-based MNE Groups and foreign groups with a presence in Australia certainty to move forward with their Pillar Two impact assessments and implementation projects to meet the new financial reporting and compliance obligations.

How EY can help

Our EY Team of BEPS advisors can support you with:

- ▶ Understanding the financial reporting for full year or interim financial statements.
- ▶ Preparing for the new compliance obligations, including the preparation and filing of the GloBE Information Return, foreign lodgement notification, Australian IIR / UTPR Tax Return and Domestic Minimum Tax Return.
- ▶ Current-state assessment of data availability, systems and processes and assistance with software implementation and process redesign.
- ▶ Providing technical advice on the Pillar Two rules and the interaction of Pillar Two with Australia's local tax rules.
- ▶ Training for your internal tax teams and other key stakeholders.
- ▶ Considering any other implications for your commercial arrangements.

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