



OECD releases additional Pillar Two documents to address consistency of rule application and reporting

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Issue 2

In brief

The OECD released the following additional Pillar Two documents on 11 September 2026¹:

- (1) administrative guidance on certain conditional taxes and issues with respect to fiscal-period mismatches under qualified domestic minimum top-up taxes (QDMTTs);
- (2) a revised GloBE information return (GIR); and
- (3) a framework for the full legislative review of jurisdictions' Pillar Two rules.

This news flash provides an overview of these documents and our observations thereon.

In detail

Further administrative guidance

Explicitly conditional taxes

The guidance addresses 'explicitly conditional taxes', which are designed to apply to a taxpayer of a multinational enterprise (MNE) group that is subject to a qualified income inclusion rule (IIR) or qualified undertaxed profits rule (UTPR) elsewhere and is not eligible for the side-by-side (SbS) safe harbour.

They also cover taxes that are turned off because a taxpayer is not subject to a qualified IIR or qualified UTPR or applies the SbS safe harbour. Such explicitly covered taxes are generally not covered taxes, and a domestic minimum top-up tax (DMTT) that is an explicitly conditional tax generally cannot qualify as a QDMTT. However, a limited exception applies to certain conditional DMTTs enacted before 30 November 2024 that cease to be conditional for fiscal years beginning on or after 1 January 2025.

A separate, severable surcharge is treated independently from the underlying tax. Accordingly, where a surcharge is imposed at a distinct rate on the same base, the surcharge does not affect the generally applicable underlying tax, which remains a covered tax. By contrast, where the conditional feature is not imposed as a separate, severable levy or surcharge, the tax as a whole is treated as an explicitly conditional tax.

Our observations

One of the original premises of Pillar Two was that the OECD was indifferent as to which jurisdiction collected the 15% if the floor was met somewhere in respect of each jurisdiction of operation via regular tax, QDMTT, IIR or UTPR. This guidance qualifies that position by excluding from covered taxes an income tax that has, in fact, been assessed and paid, but in a form that the administrative guidance does not recognise. This apparently reflects the way the GloBE rules have developed over time, including concerns that jurisdictions might otherwise adopt conditional taxes that favour US MNE groups and thereby undermine the Pillar Two framework.

Groups operating in jurisdictions with taxes linked to foreign IIR or UTPR exposure should consider whether those taxes are expected to be recognised as covered taxes and included in the GloBE effective tax rate (ETR).

The OECD central record of legislation with transitional qualified status already recognises the 2024 conditional DMTTs of the Bahamas and Barbados as qualified. The latest guidance confirms this position for those limited 2024 regimes that become non-conditional from 2025. For in-scope MNE groups with constituent entities (CEs) in these jurisdictions, this provides welcome clarity and assurance. In Hong Kong, as no conditional taxes have been enacted under its GloBE and Hong Kong minimum top-up tax (HKMTT) rules, the risk of disqualification would not appear to arise under the current legislative framework.

Fiscal-period mismatches under QDMTTs

The guidance clarifies that, under the local financial accounting standard (LFAS) rule of the QDMTT safe harbour, a CE is required to use the accounting standard adopted by the ultimate parent entity (UPE) where the fiscal period of the CE's accounts is different from that used for it in preparing the consolidated financial statements (CFS).

However, this rule is subject to the following two exceptions, in which case the QDMTT shall be computed under the LFAS provided that other relevant requirements under the LFAS rule are met:

- **Restructuring exception:** Where the CE became, or ceased to be, a CE during the fiscal period, or the immediately preceding fiscal period as a result of an acquisition, disposition, dissolution, merger, or similar restructuring, or
- **Required QDMTT Fiscal Period exception:** Where a QDMTT jurisdiction opts to require CEs located in the jurisdiction to use a fiscal period for QDMTT purposes determined under the QDMTT legislation (Required QDMTT Fiscal Period).

Where the Required QDMTT Fiscal Period differs from the fiscal period used for the CE in preparing the CFS, the QDMTT safe harbour applies to the UPE's fiscal year only if all Required QDMTT Fiscal Periods that begin or end in the UPE's fiscal year qualify for the QDMTT safe harbour. A transitional exception applies for a UPE fiscal year beginning on 31 December 2023 or in 2024 (i.e. a UPE's 2024 fiscal year). Under this exception, the QDMTT safe harbour applies to the UPE's entire fiscal year as long as it applies to any Required QDMTT Fiscal Period beginning on 31 December 2023 or in 2024.

If the QDMTT safe harbour does not apply to all Required QDMTT Fiscal Periods that begin and all such periods that end in the UPE's fiscal year, the jurisdictional top-up tax will be reduced by the QDMTT attributable to that fiscal year, determined by reference to income arising during each month in the period, or if that is not reasonably practicable, allocated evenly based on the number of months. A number of worked examples in the guidance illustrate the intended application.

Our observations

Hong Kong adopts the LFAS rule under its HKMTT legislation, and the guidance provides welcome clarity on when LFAS should be used to compute a CE's HKMTT where its fiscal year end differs from the UPE's. In particular, it clarifies that a CE need not use the UPE's accounting standard if the fiscal period of the CE's financial accounts is the same as the fiscal period used for that CE in the preparation of the CFS, regardless of whether that period aligns with the UPE's fiscal year.

It is understood that the Hong Kong Government is drafting legislation to incorporate the SbS package, and consideration may also need to be given to amending the HKMTT legislation so that the ordinance is consistent with this latest OECD interpretation. In anticipation of such changes, taxpayers may wish to review the examples included in the guidance and assess whether the QDMTT safe harbour would continue to be available in their circumstances, assuming Hong Kong adopts an approach consistent with the OECD interpretation.

Revised GIR

The revised GIR incorporates changes to the GloBE rules arising from the SbS package published in January 2026, which introduced four new safe harbours, namely the SbS, UPE, simplified ETR, and substance-based tax incentive (SBTI) safe harbours. Accordingly, it generally applies to fiscal years commencing on or after 31 December 2025.

For qualifying US-parented groups applying the SbS safe harbour, certain reporting for the IIR and UTPR is reduced, while QDMTT reporting generally remains. Use of the SBTI safe harbour does not eliminate all jurisdictional reporting even where top-up tax is reduced to zero.

The revised GIR also includes certain explanatory clarifications that are unrelated to the SBS package. These clarify how some data points already included in the previous GIR should be completed when preparing GIRs for fiscal years commencing before 31 December 2025.

An updated XML schema is expected to be released soon and shall be used after a cut-off date to be determined by the OECD.

Our observations

The GIR also adds reporting on qualified tax incentives and other 'benefits'. The OECD is developing guidance on 'related benefits' and a separate monitoring process. Until that process is established, stakeholders may provide input on benefits through the legislative review.

Framework for full legislative review of Pillar Two rules

The full legislative review moves beyond the transitional qualification process, which relied largely on self-certification. Jurisdictions currently listed in the OECD central record of legislation with transitional qualified status, including Hong Kong, remain subject to review.

The newly released document sets out the peer review framework that Inclusive Framework members will apply to assess IIRs, UTPRs, DMTTs and QDMTT safe harbour eligibility against the GloBE rules and applicable guidance. The review process will also examine whether local GIR and routine tax-return requirements seek information beyond the agreed framework. Other Inclusive Framework jurisdictions, taxpayers and stakeholders may identify potential inconsistencies. These may result in recommendations or monitoring, while significant unresolved inconsistencies ultimately could lead to prospective loss of qualified status.

A jurisdiction is generally expected to initiate the full legislative review within two years after the effective date of the legislation. Where legislation is enacted after its effective date, the full legislative review would be expected to be initiated within two years after the enactment date, provided that the enactment occurs within two years from the effective date. For legislation that took effect on or before 1 April 2025, the deadline is extended to three years. The Inclusive Framework can also approve extension of the deadline on a case-by-case basis. The document also notes that the full legislative review of the UTPR shall not be initiated before 1 January 2028.

Our observations

Businesses will have a formal opportunity to identify domestic implementation differences that could affect their Pillar Two positions. Transitional qualified status therefore should not be viewed as the final assessment of a jurisdiction's rules. Hong Kong has already obtained transitional qualified status for its IIR, HKMTT and QDMTT safe harbour, and confirmation of that status through the full legislative review will be important given the potential compliance and administrative benefits for in-scope MNE groups.

The takeaway

The latest guidance is a welcome development, offering further clarity on several technical issues. MNE groups should assess how these new OECD documents affect their Pillar Two exposure and reporting obligations, including any continuing requirements in QDMTT jurisdictions, and prepare for the forthcoming XML schema. Businesses should also monitor the legislative reviews of the Pillar Two rules in jurisdictions where they have a presence, and consider providing stakeholder input where domestic rules differ from the GloBE framework.

Endnotes

1. The documents can be accessed via the links below:

<https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/administrative-guidance-on-the-global-anti-base-erosion-model-rules-pillar-two-september-2026.pdf>

https://www.oecd.org/en/publications/2026/09/tax-challenges-arising-from-the-digitalisation-of-the-economy-globe-information-return-september-2026_16d0f09e.html

<https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/terms-of-reference-and-assessment-methodology-for-the-full-legislative-review.pdf>

Let's talk

For a deeper discussion of how this impacts your business, please contact:

PwC's BEPS 2.0 Pillar Two Team based in Hong Kong

Jesse Kavanagh

+852 2289 1100

jesse.kavanagh@hk.pwc.com

Flora Chan

+852 2289 6903

flora.fhl.chan@hk.pwc.com

Ingrid Lau

+852 2289 3649

ingrid.il.lau@hk.pwc.com

PwC's Corporate Tax Leaders based in Hong Kong

Rex Ho

+852 2289 3026

rex.ho@hk.pwc.com

Vanessa Chan

+852 2289 1804

vanessa.ps.chan@hk.pwc.com

Cecilia Lee

+852 2289 5690

cecilia.sk.lee@hk.pwc.com

Jenny Tsao

+852 2289 3617

jenny.np.tsao@hk.pwc.com

Agnes Wong

+852 2289 3816

agnes.hy.wong@hk.pwc.com

Kenneth Wong

+852 2289 3822

kenneth.wong@hk.pwc.com

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For more information, please contact:

Long Ma

+86 (10) 6533 3103

long.ma@cn.pwc.com

Charles Chan

+852 2289 3651

charles.c.chan@hk.pwc.com

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