Deloitte.

January 2025
United Kingdom

OECD Pillar Two – qualified countries and further guidance

On 15 January 2025, the G20/OECD Inclusive Framework ('OECD Inclusive Framework') published a compilation of Pillar Two-related documents including a **central record of countries' domestic Pillar Two legislation with transitional qualified status**. **Further administrative guidance** has also been released in respect of **deferred tax assets arising from tax benefits provided by governments**.

The Pillar Two global minimum tax rules ('model rules') have been agreed by more than 140 members of the OECD Inclusive Framework. Countries are in the process of implementing rules in local legislation, which began to apply from January 2024. The Pillar Two rules apply to large multinational groups with annual consolidated group revenue of **at least €750 million**, and result in 'top-up' tax amounts to bring the overall tax on profits in each country where a group operates up to a 15% minimum effective tax rate. The key components are: **qualified domestic minimum top-up taxes** (**QDMTT**) which allow countries to charge any top-up taxes due in respect of local profits; the **income inclusion rule** (**IIR**) under which parent company countries apply the top-up tax rules on a top-down basis; and the **undertaxed profits rule** (**UTPR**) which will apply as a secondary (backstop) rule where the other rules have not been fully applied.

Where a **permanent QDMTT safe harbour** applies, a business will be able to elect to prepare a single QDMTT computation for a country, and no additional top-up tax will arise in other countries under the IIR or UTPR. For the QDMTT safe harbour to apply, the domestic minimum tax must not only be 'qualified', but the domestic legislation must also meet an additional set of QDMTT safe harbour standards. (It is therefore theoretically possible that a country could introduce rules that are a 'qualified' QDMTT but do not qualify for the QDMTT safe harbour).

Deloitte comments

The Pillar Two rules have a set order of application, giving priority taxing rights to specific countries. The 'qualified' status of local countries' rules is therefore a key component in determining where any top-up tax is payable, and also has implications for compliance. It's helpful that the OECD Inclusive Framework has set out the initial (transitional) list of countries with qualifying regimes, starting with countries that have implemented rules to apply in 2024. The list is not complete, and it is expected that more countries (such as Spain) will be added as their legislation takes shape. The transitional qualified status for countries will remain in place unless and until it is superseded or removed after a full Peer Review process. If it is removed, it will cease to apply prospectively for accounting periods beginning after the removal, rather than retrospectively. This means that December year end groups, for example, can rely on countries' published qualifying status for 2024 and 2025 at least.

The administrative guidance published alongside the qualifying status lists targets specific government arrangements, such as those that give rise to a step-up in basis, entered into by governments with businesses in anticipation of the Pillar Two rules. A government arrangement includes rulings, agreements etc that are specifically entered into with an individual business – and does not include a general change in law that applies to all businesses. As such, this measure is targeted at particular arrangements and groups should be able to easily identify whether they need to adjust their deferred tax accordingly in both the country-by-country transitional safe harbour and full Pillar two calculations. As a result of what is clearly political compromise, there is a 'grace period' during which a limited amount of the benefit of in-scope governmental arrangements entered into before 18 November 2024 may nonetheless be preserved.

In addition, the guidance sets out that where a country has introduced a new corporate tax regime in anticipation of Pillar Two (such as Bermuda), deferred tax assets relating to losses can be taken into account for Pillar Two purposes (in the same way as losses in countries with existing corporate tax regimes) where the losses arose in the 5-year period before the start of the new corporate tax regime. This is a helpful clarification for groups which have incurred economic losses, in particular as it covers the COVID period.

Transitional qualified status under Pillar Two

The OECD Inclusive Framework has published a **central record of legislation with transitional qualified status** which sets out lists of countries whose local implementation of the Pillar Two global minimum tax rules has been assessed as 'qualified'. The lists cover countries' implementation of the **domestic minimum top-up tax rule** and **income inclusion rule**, as well as assessing whether a country's qualified domestic minimum top-up tax satisfies the additional criteria for the **QDMTT Safe Harbour** to apply.

The Pillar Two global minimum tax rules incorporate an **agreed rule order**, which prevents a country from levying top-up tax in respect of low tax profits where those profits have already been subject to top-up tax under **'qualified' rules** in another country.

Countries with a qualified IIR, QDMTT, and QDMTT safe harbour status

The central record sets out 28 countries whose domestic minimum top-up taxes are qualified (i.e. are QDMTTs) and 27 countries whose income inclusion rules are qualified. All of the QDMTTs are also considered to have met the additional standards to qualify for QDMTT safe harbour status.

Countries with a **qualified IIR, QDMTT, and meeting the QDMTT safe harbour standards**: *Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czechia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Norway, Romania, Slovenia, Sweden, Turkey, United Kingdom,* and *Vietnam*.

Countries with a **qualified IIR only**: *Japan* and *South Korea.* Neither Japan nor South Korea have enacted a domestic minimum top-up tax.

Countries with a **QDMTT meeting the QDMTT safe harbour standards only**: *Barbados, Slovak Republic and Switzerland.* Neither Barbados nor the Slovak Republic have enacted an IIR, whilst Switzerland's IIR is effective from 2025.

Barbados has been given 'conditional QDMTT status'. Conditional QDMTT status applies where an enacted domestic top-up tax applies to a local entity only if the group is subject to Pillar Two rules in another country. The OECD Inclusive Framework has agreed that a conditional QDMTT is qualified for 2024 under certain circumstances, including that the tax will not be conditional in any other year.

The lists of qualified rules produced by the OECD Inclusive Framework have been prepared in accordance with an initial **simplified transitional qualification mechanism**, based on **self-certification by an implementing country**. Implementing countries have provided the OECD Inclusive Framework with information on the main features of their (draft or enacted) legislation for consideration by other OECD Inclusive Framework countries. If a country is not included in the central record, then it does not necessarily mean that their legislation is not qualified, but rather, at 15 January 2025, the process for qualification had not yet been initiated or completed for that legislation.

The consolidated commentary to the model rules will be updated to include the central record as an annex. The central record will be updated on a regular basis and in a timely manner, after a self-certification has been submitted to the OECD Inclusive Framework. The transitional qualification mechanism is a simplified procedure to assess initial qualifying status, pending the development of a full legislative review and ongoing monitoring process.

Administrative Guidance on deferred tax assets arising from tax benefits provided by governments

The model rules include transition rules that allow deferred tax assets and liabilities that arose before the group came within scope of Pillar Two (e.g. in relation to prior year losses) to be taken into account in the Pillar Two ETR calculations (Article 9.1 – 'Tax attributes upon transition').

The model rules exclude or limit the deferred tax assets that can be included in the Pillar Two calculations in certain circumstances. For example, deferred tax assets generated after 30

November 2021 and associated with items excluded from the computation of GloBE income or loss (i.e., tax base) are excluded, including deferred tax assets associated with non-economic expenses or losses (e.g. where depreciation deductions in excess of an asset's costs result in a local tax loss).

The latest guidance clarifies that, where a deferred tax asset arose after 30 November 2021, and it is attributable to one of the following types of **governmental arrangements** then any expenses arising from the **reversal of the deferred tax asset will be excluded** from both **Pillar Two ETR calculations** and **Transitional CbC Safe Harbour calculations** (subject to a 'Grace Period' rule):

(a) a **governmental arrangement** (including any agreement, ruling, decree, or grant) concluded (or amended) after 30 November 2021 that **conferred a tax benefit to a business**, such as an entitlement to a tax credit or other tax relief (e.g. a tax basis step-up) that **did not arise independently of the arrangement**;

(b) an **election** exercised by a business after 30 November 2021 that **retroactively changed the tax treatment of a transaction** in a tax year for which a tax assessment was already made/a tax return already filed; or

(c) a **difference between the tax basis and the accounting carrying value of an asset or liability** that was established following the introduction of a **new corporate income tax** after 30 November 2021 (where no corporate tax regime existed previously in the country).

However, a '**Grace Period**' rule is available to businesses for a limited period and **permits a capped amount of an excluded deferred tax asset** to be included in the **ETR calculation** and **Transitional CbC Safe Harbour calculation**. The Grace Period allows expenses attributable to the reversal of an excluded deferred tax asset arising from (a), (b) and (c) to be included in either calculation, **subject to a cumulative maximum of 20%** of the excluded deferred tax asset (subject to the 15% deferred tax asset recast rule if applicable). For (a) and (b), the Grace Period is available for deferred tax asset reversal expenses for two years, e.g. for December year ends in 2024 and 2025. For (c), the Grace Period applies for two years from 2025, e.g. for December year ends in 2025 and 2026. The Grace Period rule is not available for any deferred tax assets under (a), (b) or (c) where the arrangement/election/enactment occurred after 18 November 2024. The guidance provides two numerical examples illustrating the calculation of the maximum deferred tax asset reversal amounts available in 2024, 2025 and 2026 under the rule.

A separate rule applies to **deferred tax assets in respect of tax losses arising from a newly-enacted corporate income tax regime**. Deferred tax expenses attributable to the reversal of deferred tax assets on any **tax losses that arose more than five years preceding** the effective date of **a newly-enacted corporate income tax** will be **excluded from the Pillar Two ETR calculations**. Tax losses that arose within the five years preceding enactment will not be subject to these exclusions (and so will be subject to the same treatment as tax losses arising in countries with pre-existing corporate income taxes).

Interaction with qualified status

As a transitional measure, where a country with a self-certified QDMTT does not apply this guidance, then the QDMTT safe harbour 'switch-off' rule will apply, such that other Pillar Two implementing countries can deny the effect of tax expenses arising from excluded deferred tax assets.

Other clarifications

The guidance includes a number of clarifications to be made to the OECD Inclusive Framework's commentary on Article 9.1 ('Tax attributes upon transition'). For example, deferred tax assets not recognised/disclosed due to insufficient future taxable income may be taken into account, but this does not extend to deferred tax assets that cannot be recognised/disclosed at all under the relevant accounting standard.

Further work

The OECD Inclusive Framework is currently developing guidance on how to identify any benefits provided by a country (e.g. government grants and credits calculated by reference to income or tax) that must be treated for the purposes of Pillar Two ETR calculations under the model rules as a refund of tax that reduces a country's Adjusted Covered Taxes.

Further guidance will also be developed on how to identify and monitor any 'related benefits' provided by governments. The guidance will also consider how such benefits affect the qualified status of a country's rules.

Next steps

A **full peer review process** for determining the qualified status of a country's IIR, QDMTT and UTPR will be introduced. This will involve both **a full legislative review** of whether local legislation achieves **outcomes consistent** with the model rules, and **ongoing monitoring** to ensure that a country's **rules are in practice applied and administered consistently** with the model rules. Any loss of transitional qualified status as a result of a Peer Review will not be retrospective but will only apply for accounting periods beginning on or after the Peer Review.

Alison Lobb
Tel: +44 20 7007 0497
Email: alobb@deloitte.co.uk

Jo Pleasant
Tel: +44 20 7007 3409
Email: jmpleasant@deloitte.co.uk

Matthew Jones
Tel: +44 118 322 2318
Email: mnjones@deloitte.co.uk

Ed Wright
Tel: +44 20 7007 0601
Email: edwright@deloitte.co.uk

Kate Ramm
Tel: +44 20 7007 2366
Email: karamm@deloitte.co.uk

Lisa Shipley
Tel: +44 20 7007 1343
Email: lshipley@deloitte.co.uk