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Consultation opens on New Zealand's potential implementation of the OECD's global minimum tax rate

Fundamental changes to the international tax framework for New Zealand multinationals potentially becoming reality – and soon

Inland Revenue has opened the floor for public consultation on **if, when and how** New Zealand should adopt a new international tax framework to impose a global minimum effective tax rate of 15% on large multinational enterprises (MNEs).

Specifically, an officials' issues paper has been released seeking comments on whether New Zealand should adopt what is known internationally as the Pillar Two Global Anti-Base Erosion (GloBE) rules and how those rules should be implemented if New Zealand does decide to adopt them.

In this Tax Tips Alert we provide a high level overview of the GloBE rules, the officials' issues paper and the potential impacts for New Zealand MNEs.

Summary of Pillar Two and the GloBE rules

These rules are part of a two-pillar solution that aims to reshape the international tax landscape and ensure that large MNEs pay a 'fair' level of tax where they operate and earn profits, while looking to add certainty and stability to the international tax system through a global minimum tax rate.

In short, Pillar One reallocates profits of MNEs that meet a €20 billion group revenue threshold toward customer jurisdictions where physical presence is not already established, whilst Pillar Two looks at implementing a global minimum tax rate of 15% in each jurisdiction for MNEs with group revenues greater than €750 million. Our Tax Tips Alert from September 2021 includes further detail on the key components of the two-pillar framework, the relevant thresholds, and expected New Zealand impact.

Pillar Two includes the 'GloBE' rules which are a set of two interlocking rules that could result in a minimum effective tax rate of 15% being paid in each country that an MNE operates. As a result of the way the rules are written, a parent entity could end up paying a "top-up" amount of tax for a low tax subsidiary in another jurisdiction or vice versa. The rules are complex to apply and mean that companies based in countries with high headline corporate tax rates can still fall short of the 15% effective tax rate, so modelling will be essential to understand the potential impact.

Officials' issues paper

The Officials' issues paper asks for comment on many fundamental questions including;

Should New Zealand adopt the GloBE rules?

It has not yet been decided whether the GloBE rules should be adopted in New Zealand. However, officials are leaning toward recommending adoption in New Zealand if a 'critical mass' of other jurisdictions also adopt the rules.

The GloBE rules have been designed in such a way that, if a 'critical mass' of jurisdictions adopt the rules, they will effectively apply to MNEs regardless of whether a specific jurisdiction has adopted the rules. Accordingly, where a 'critical mass' of countries have adopted the rules, the compliance costs for MNEs and tax competitiveness for New Zealand is expected to remain the same regardless of whether New Zealand adopts the rules.

What constitutes a 'critical mass' of countries has not yet been defined and is a point that the issues paper seeks input on. In our view, this threshold may be met if and when our key trading partners adopt the rules.

It is important to note that of the estimated 1,500 multinational groups that are expected to fall within the scope of the rules globally, only 20-25 are headquartered in New Zealand. The impact on the New Zealand tax base is expected to be modest and enactment of the rules locally is not expected to result in significant additional tax revenues for New Zealand.

How should New Zealand adopt the rules?

The GloBE Rules were developed by the OECD Inclusive Framework and endorsed by New Zealand alongside over 130 other jurisdictions. The effectiveness of the rules depends on a high degree of consistency in their domestic implementation and therefore members of the Inclusive Framework (including New Zealand) have agreed that, if adopted, the GloBE rules must be implemented in line with the globally developed and agreed Model Rules.

As a result, the issues paper contains minimal consultation on the rules themselves. There will be some consultation on the practicalities of the rules from a New Zealand perspective. However, the issues paper is largely focused on how the GloBE rules should be incorporated into domestic legislation and the administration of the rules if a decision is made to adopt them.

When should New Zealand adopt the rules?

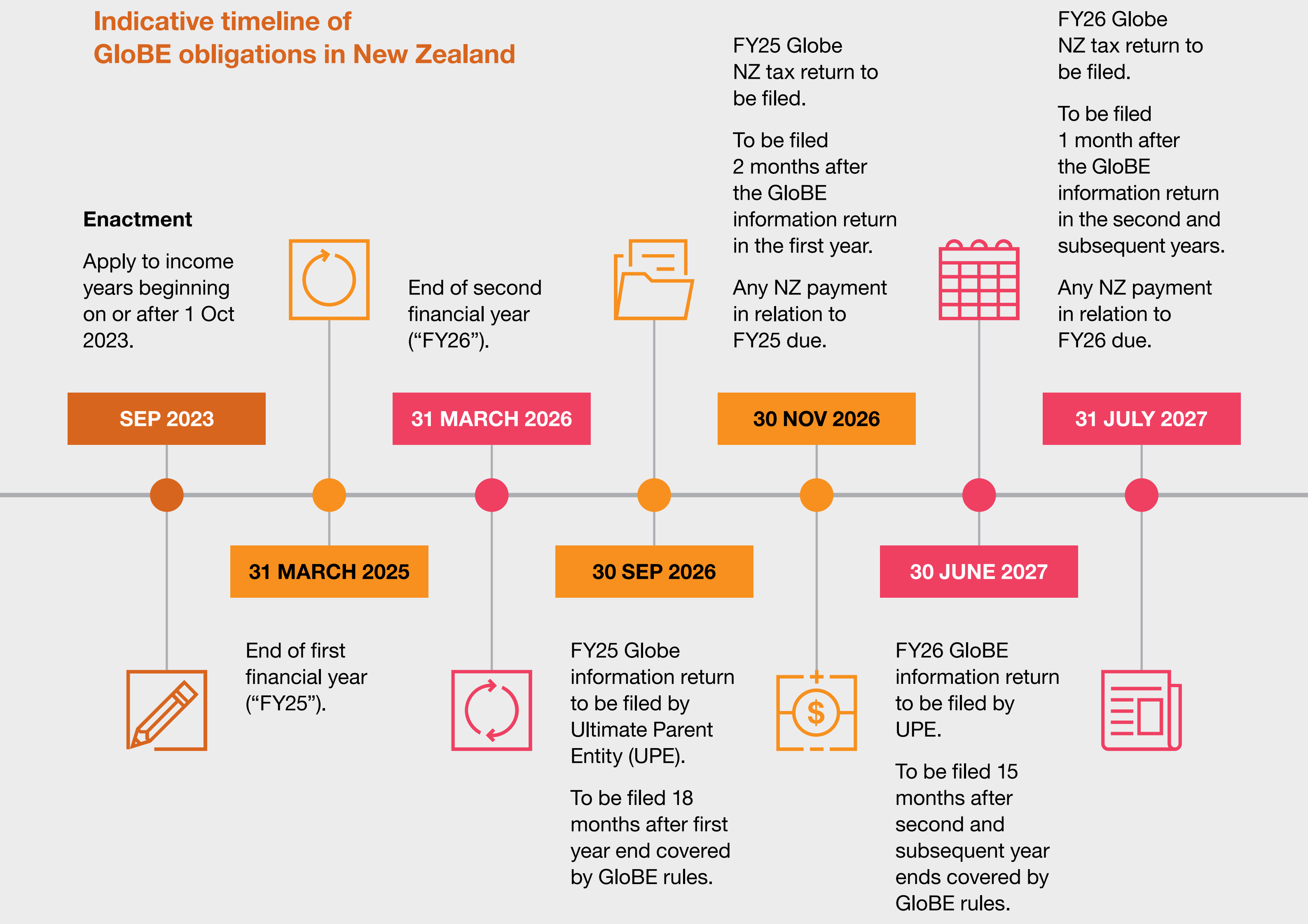
The timing of implementation of the GloBE rules in New Zealand is a key point for consultation. The OECD has set an ambitious timeline for countries starting to adopt the GloBE rules on 1 January 2023. However, the implementation framework to achieve this and some key simplification measures are still being developed.

As noted above, the issues paper suggests that New Zealand should implement the rules once there is a critical mass of other countries doing so. While a number of jurisdictions have planned to follow the OECD's proposed timeline, some are facing setbacks. For example, the European Union has not yet been able to agree on the draft directive to implement the GloBE rules (with the draft currently considering 31 December 2023 as an implementation date) and the United States would still need to amend its current GILTI regime. On the other hand, Australia is still pushing toward implementing the rules from 1 January 2023. In our view, it remains unclear at this stage when a critical mass will be achieved and from which financial year MNEs may be impacted.

The issues paper includes indicative timeframes to illustrate potential filing requirements in New Zealand if legislation to implement the GloBE rules was passed in September 2023 (with the rules applying to income years beginning on or after 1 October 2023). It has not been confirmed if or when the legislation would be introduced to parliament or enacted and the dates will likely be subject to change. However it is relevant to note that the first GloBE filing obligation would not arise until 18 months after the first year end covered by the rules as shown in the indicative timeline below.

This timeline is for illustrative purposes only and it should be noted that New Zealand is due to hold a general election in September 2023 which may cut across this timeline.

Indicative timeline of GloBE obligations in New Zealand



Note
- Example of standard New Zealand balance date of 31 March
- Rules could potentially be adopted and apply from 2023 and therefore dates shown above would be brought forward a year

Where to from here?

Discussions around implementation globally continue to be politically intense and there are still important issues yet to be agreed by the Inclusive Framework including the implementation framework, simplification measures, and the content of the GloBE information return.

It is likely that New Zealand will implement the rule set if a critical mass of other jurisdictions adopt the rules. However, the timing of adoption remains unclear. If adopted, it is unlikely that New Zealand's position would deviate significantly from the model rules, but there are still important points to work through in terms of what domestic implementation could look like.

PwC New Zealand will be making a submission on the issues paper, so if you are interested in making a contribution or would like to discuss what the rules mean for your business, please get in touch.

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