



Tax Tips Alert November 2019

- OECD seeks comments on global minimum tax design
- Inland Revenue issues Multinational Enterprise Compliance Focus guide

OECD seeks comments on global minimum tax design

The OECD has published a [Public consultation document: Global Anti-Base Erosion Proposal \("GloBE Proposal"\)](#) seeking input on the introduction of common global minimum tax rules. These would operate through top up taxes and other defensive measures where a multinational group's overall income is not subject to sufficiently high levels of tax.

The GloBE Proposal is the second part of the OECD's efforts to develop a two-pronged solution to "Addressing the Tax Challenges of the Digitalisation of the Economy". The Programme of Work is divided into two pillars:

- Pillar One – more income will be taxed in the markets, i.e. where the customers are (as discussed in our [October Tax Tips Alert](#))
- Pillar Two – a multinational group will be subject to a global minimum effective tax rate.

These changes represent a structural change to the current corporate international tax system. It has the potential to affect many international businesses, regardless of industry. The changes are expected to progress quickly, with a high level agreement expected in January 2020, and agreement on more detailed rules by the end of 2020 for implementation in 2021 and beyond.

The GloBE Proposal

The Proposal envisions minimum tax rules that would apply to large international businesses in all sectors (subject to potential carve-outs) - extending well beyond the so-called 'digital economy'. It is acknowledged by all parties that the proposed rules are complex. Consequently, we expect the related compliance burden and administrative costs faced by businesses to be significant.

The GloBE Proposal has the following four components:

1. an "income inclusion" rule that would seek to top up the foreign tax paid by a business' overseas branch or a controlled entity to a minimum rate;
2. an "undertaxed payments" rule that would deny tax deductions or impose withholding tax on a payment to a related party if that payment was not subject to an agreed minimum tax rate;
3. a "switch-over" rule to be introduced into tax treaties to allow residence countries to top up taxes on income attributable to a permanent establishment (PE) or derived from immovable property (which is not part of PE) subject to an effective rate below the minimum rate; and
4. a "subject to tax" rule that would complement the undertaxed payment rule by subjecting a payment to withholding or other taxes at source and adjusting eligibility for treaty benefits on certain items of income where the payment is not subject to tax at a minimum rate.

These rules would be implemented by way of changes to both domestic law and tax treaties. They would also need to incorporate a co-ordination or ordering rule to avoid the risk of double taxation that might otherwise arise where more than one jurisdiction sought to apply these rules to the same structure or arrangement.





The GloBE Proposal is primarily focused on the development of the income inclusion rule and does not address all of the Pillar Two components. Comment has been requested on specific technical design aspects. Where comments are made on the other components of the GloBE Proposal, they are limited to enquiries on whether different approaches would need to be taken in relation to them. A clearer outline of the rules needs to emerge in order to be able to benefit from public consultation.

The actual fixed rate of tax to be applied under the GloBE Proposal will be discussed in future consultation once other key design elements of the proposal are more developed. Among other issues, we expect significant work will be required to get consensus on the rate of tax to which profits in scope must be topped up.

Key takeaway

As detailed above, the impact of the GloBE Proposal goes far beyond highly digitalised businesses and seeks to address more fundamental concerns that the BEPS Project did not provide an adequate solution to the risks of activities and profits being moved to low or no tax jurisdictions. Like Pillar One, the GloBE Proposal represents a substantial change to the international tax architecture.

Levels of enthusiasm for the GloBE Proposal appear to be mixed among the Inclusive Framework's member countries but there is fairly broad political support for the wider package.

While work on each of the Pillars is ongoing, it is expected that Pillar One and Pillar Two would be agreed together. There is significant complexity in each of the Pillar One and Pillar Two proposals, and in their interaction with each other. Taxpayers will want to analyse the potential impact on their businesses in terms of both prospective tax liabilities and increased compliance and filing burdens.

Timeframe

The GloBE Proposal is open for stakeholders to provide written comments to the OECD until 2 December 2019. A public consultation meeting will then take place on 9 December 2019. The OECD will seek political agreement among the members of the Inclusive Framework on the basic architecture of the proposed changes in January 2020 so that more detailed technical work on the mechanics of both Pillars can take place throughout 2020.

Our Global colleagues provide further detail on the GloBE Proposal and the related key technical issues in this [Tax Policy Alert](#).

Please get in touch if you would like to discuss what the rules proposed by the OECD mean for your business!



Inland Revenue issues Multinational Enterprise Compliance Focus guide

Inland Revenue have issued their [2019 Multinational Enterprise Compliance Focus](#) ("MECF") guide providing a comprehensive outline of the international tax measures that have recently been implemented along with setting out its programme of work to ensure compliance with these. Inland Revenue also hosted sessions in Wellington and Auckland to launch the MECF.

The guide clearly outlines complex issues whilst still being comprehensive and useful - we would recommend sharing the guide outside of your tax teams (as well as within) to provide a snapshot of Inland Revenue's focus areas.

Key messages

The document provides a useful summary of all the recent changes in the international tax space. Key messages throughout the guide and emphasised in the launch sessions include:

- a continued focus on a range of international tax issues, including transfer pricing and restricted transfer pricing, hybrids and thin capitalisation;
- a list of risk factors ("You Do The Math") which are likely to prompt further scrutiny from Inland Revenue;
- post-BEPS "Top 10" recommended actions for taxpayers;
- checklists for corporate tax governance and transfer pricing documentation;
- increasing exchange of information between governments, including sharing tax rulings, Country by Country Reporting and other information;
- a clear desire to see taxpayers being proactive in seeking agreements in advance with Inland Revenue;
- an emphasis on pragmatic and proportionate solutions with a focus on reducing compliance costs for both the taxpayer and Inland Revenue;
- a strong focus on Inland Revenue's relationships with significant enterprises.

Current and future campaigns

Inland Revenue emphasised a continued goal to be transparent with their work programme. As part of this they highlighted the following current and future campaigns:

- Transfer Pricing (Distributors): Questionnaires have been sent to 375 in scope taxpayers
- Losses: Questionnaires expected to be issued (Quarter 1, 2020)
- Royalties: Questions to be included in the annual International Questionnaire (Quarter 2, 2020)
- Debt: Questionnaires expected to be issued (Quarter 3, 2020)

Inland Revenue did acknowledge that for some taxpayers this could mean that they receive four separate questionnaires in a twelve month period. They are looking to streamline the process through leveraging earlier questionnaire responses where possible.

The MECF covers a large number of different areas within the international tax area, most of which are becoming increasingly complicated and clearly a hot topic for Inland Revenue. Please get in touch if you would like to discuss how any of these impact your business.





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