Transfer Pricing Developments in Africa

2024 KPMG Africa Tax Summit

Johannesburg

—

16 April 2024

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Agenda

01

Welcome

Introduction

KPMG Africa

Welcome

With you today

Rules of engagement

02

Africa TP Developments

Africa Transfer Pricing Focus

1 Transfer Pricing Controversy in Africa

2 Transfer Pricing Dispute Resolution

3 OECD Base Erosion and Profit Shifting Initiative — BEPS 2.0

03

BEPS Pillar One and Pillar Two

1 | Overview

Overview — BEPS 2.0

BEPS 2.0	Description of Element	Status
Pillar 1 — Amount A	Reallocation of 25% of profits above 10% for MNEs above €20b (exclude ENR & Banks)	Expect completion in March and signing mid-year, but US agreement unlikely. Future uncertain.
Pillar 1 — Amount B	TP guidance on basic marketing and distribution activities with prescribed mark-ups.	Release expected by end of January. Unsure whether mandatory, safe-harbour, or voluntary
Pillar 2 — GloBE	15% minimum tax for MNEs with revenue greater than €750m in 2 of past 4 years	24 jurisdictions legislated — 2024 with UTPR 2025 ZW (QDMTT-24), MU QDMTT?), ZA (IIR& UTPR?)
Pillar 2 — STTR	Bring rates to 9% for certain intra-group payments such as interest, royalties and service fees	MLI released & open but detailed process for treaty change — likely application first 2026 to 2027
DST — Holdback	Holdback DSTs unless more than 30 countries with 60% of in scope MNEs signed up on P1	Holdback agreement expired on 31 Dec 2023 and no new agreement entered into.

2 | GloBE rules: overview

GloBE Rules in a nutshell

Pillar 2 — GloBE Rules: Levy of Top-up Tax

Qualified Domestic Minimum Top-up Tax ('QDMTT') regime

As from 1 January 2024

- Low Tax Jurisdictions to levy the Top-up Tax due themselves.
- Results in separate GloBE Tax Return(s)

1

Income Inclusion Rule ('IIR')

As from 1 January 2024

- Imposes Top-up Tax on one or more Parent Entities of an MNE group in respect of Constituent Entities in Low Tax Jurisdictions, unless these Jurisdictions have a Qualified Domestic Minimum Top-up Tax regime.

2

Undertaxed Profits Rule ('UTPR')

As from 1 January 2025

- 'Back-stop' — if not all Top-up Tax is levied under IIR/QDMTT
- Regardless of UPE's ownership in Low-Taxed Constituent Entity, reduction for Top-up Tax levied under IIR
- Levy of Top-up Tax via denial of tax deductions, equivalent adjustments or as a separate tax
- TUTPR Safe Harbour

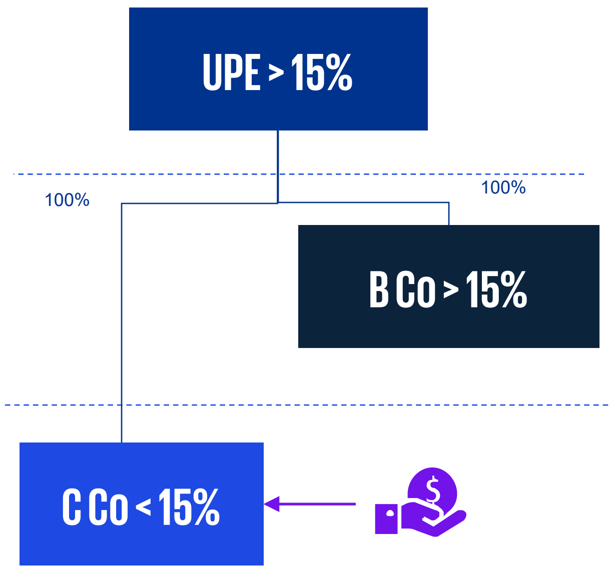
3

Pillar 2 — GloBE Rules: Overview of top-up tax collection mechanisms

The Model Rules contain different operating mechanics for collecting the top-up tax for low-taxed Constituent Entities, which follow a clear rule order:

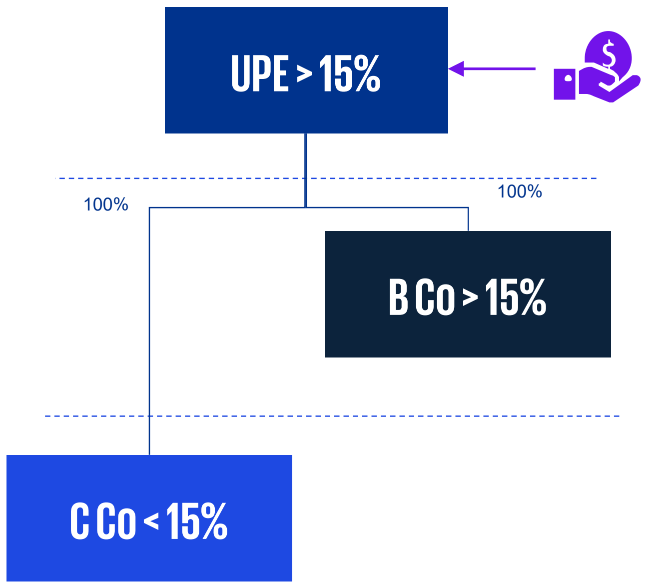
Low-taxed
High-taxed

1) (Optional) QDMTT



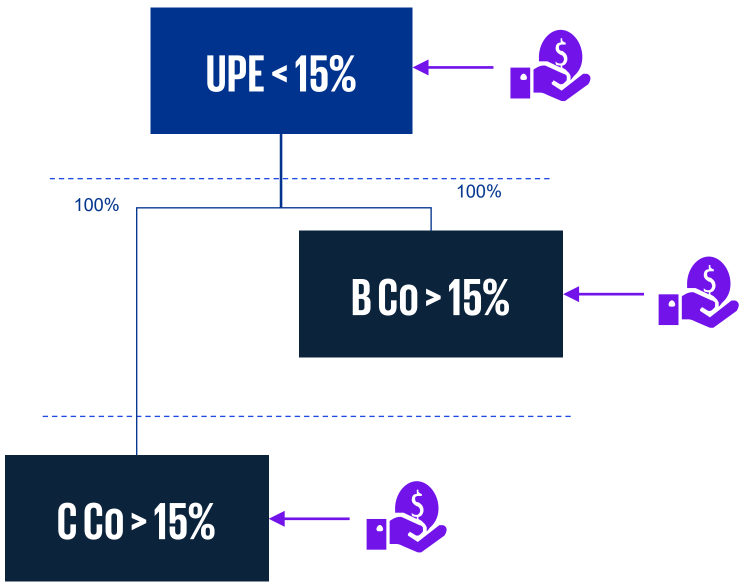
Top-up tax on low-taxed C Co — collected by C Co

2) IIR



Top-up tax on low-taxed C Co — collected by UPE

3) UTPR



Top-up tax on low-taxed UPE — collected by UTPR jurisdictions A, B and C

SA — Implementing the global minimum corporate tax

Forecasted R8bn in corporate tax revenue in 2026/27

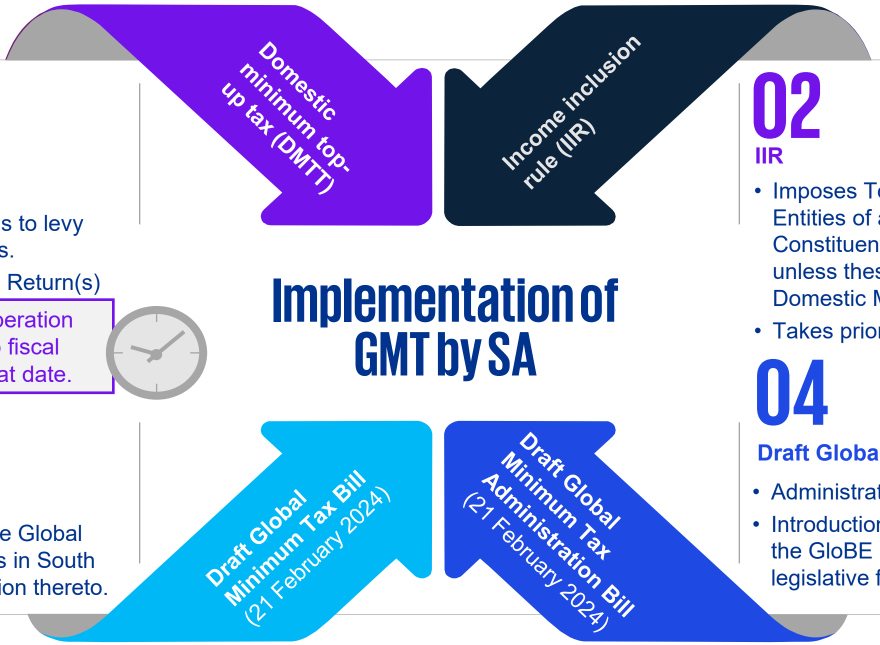
Due date for public comment 31 March 2024

01
DMTT
- Priority over IIR
- Allows for Low Tax Jurisdictions to levy the Top-up Tax due themselves.
- Results in separate GloBE Tax Return(s)

Deemed to have come into operation on 1 January 2024. Applies to fiscal years beginning on or after that date.

03
Draft Global Minimum Tax Bill

The Bill proposes to introduce the Global Anti-Base Erosion (GloBE) Rules in South Africa and the provisions in relation thereto.



02
IIR
- Imposes Top-up Tax on one or more Parent Entities of an MNE group in respect of Constituent Entities in Low Tax Jurisdictions, unless these Jurisdictions have a Qualified Domestic Minimum Top-up Tax regime.
- Takes priority over UTPR

04
Draft Global Minimum Tax Administration Bill
- Administrative aspects of the proposed tax.
- Introduction of the administrative provisions of the GloBE Model Rules in SA within the existing legislative framework provided by the TAA.

The top-up tax will be levied and collected for benefit of the National Revenue Fund

The purpose of implementing the GloBE Model Rules in South Africa is to enable South Africa to impose a multinational top-up tax at a rate of 15% on the excess profits of in-scope MNE Groups. The tax is designed to follow the GloBE Model Rules and Commentary and to be co-ordinated with the same tax in other jurisdictions with effect from 1 January 2024

(Draft Explanatory Memorandum on the Global Minimum Tax Bill, 2024 dated 21 February 2024)

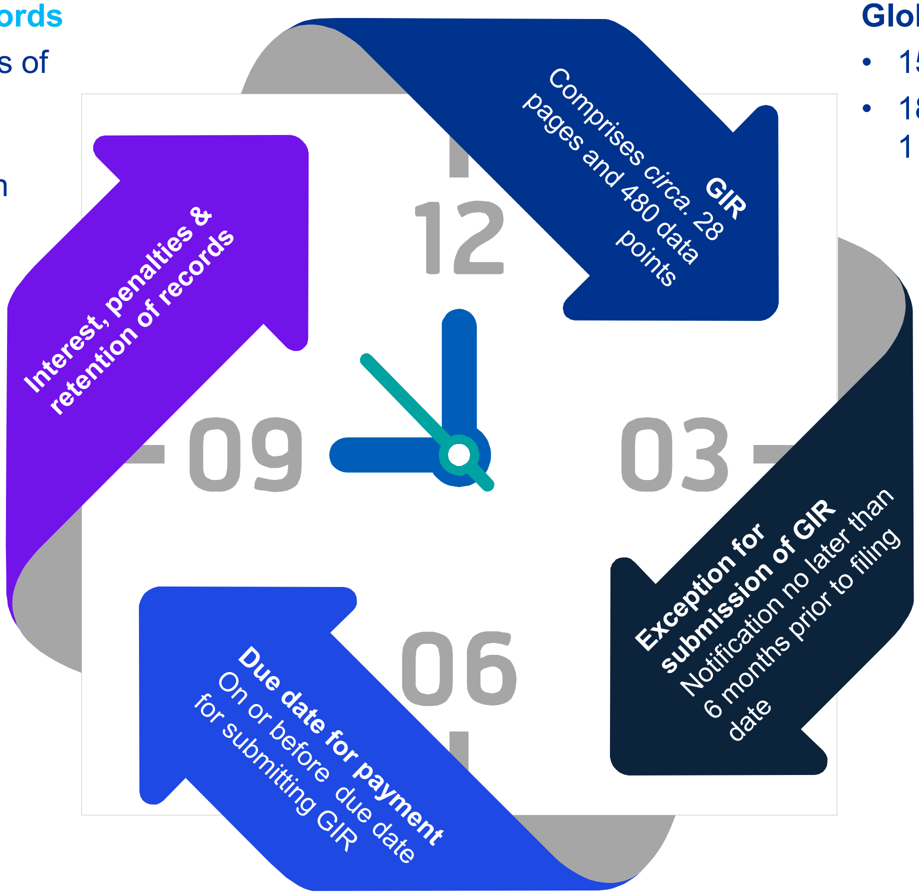
South Africa BEPS P2 Compliance — Returns and timing thereof

Interest, penalties and retention of records

- Interest will be levied i.t.o the provisions of Chapter 12 of the TAA
- Fixed amount administrative non-compliance penalty of R50 000 (section 210 and 211 of TAA)
- Retention of documents: 6 years

GloBE Information Return (GIR)

- 15 months after end of FY
- 18 months (for first FY commencing on or after 1 January 2024 but before 1 January 2025)



Exception for GIR provided under an automatic exchange of information agreement

Provided that the Commissioner was notified by either the UPE or designated filing entity

Payment of top-up tax and refunds

- Designated Local Entity or Designated Filing Entity may pay Top-Up Tax on behalf of all Domestic CEs
- Draft Global Minimum Tax Administration Bill makes provision for refunds in certain circumstances

Subject to tax rule (STTR)

01 Treaty based rule

Treaty based rule (publication released on July 17, 2023)

- Intra-group interest;
- Royalties
- Financial guarantee or other financing fees,
- Service fees;
- Insurance and re-insurance, etc.

02 Exclusions

Certain Exclusions

- Materiality threshold;
- Mark-up threshold e.g., payments for certain covered income that are below cost + 8.5% mark up;
- Payment to an unconnected entity (control).

03 Trigger

Trigger

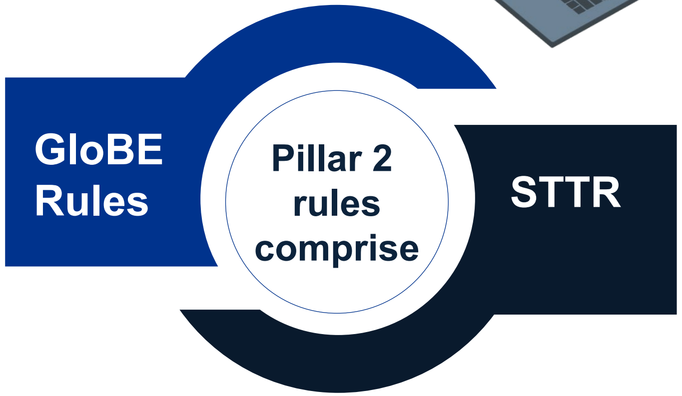
- Covered income is subject to a corporate rate < 9%
- STTR allows paying jurisdiction to tax the income at a rate up to the difference between 9% and the nominal corporate income tax rate.

04 Mechanism & rollout

Mechanism and rollout

- Post year-end charge (not a real time WHT) to "top-up" to 9%
- The rule requires a tax treaty override via MLI. Domestic law changes may also be needed.
- MLI published to amend tax treaties opened for signature from 2 October 2023

STTR filings — separate to GIR filing



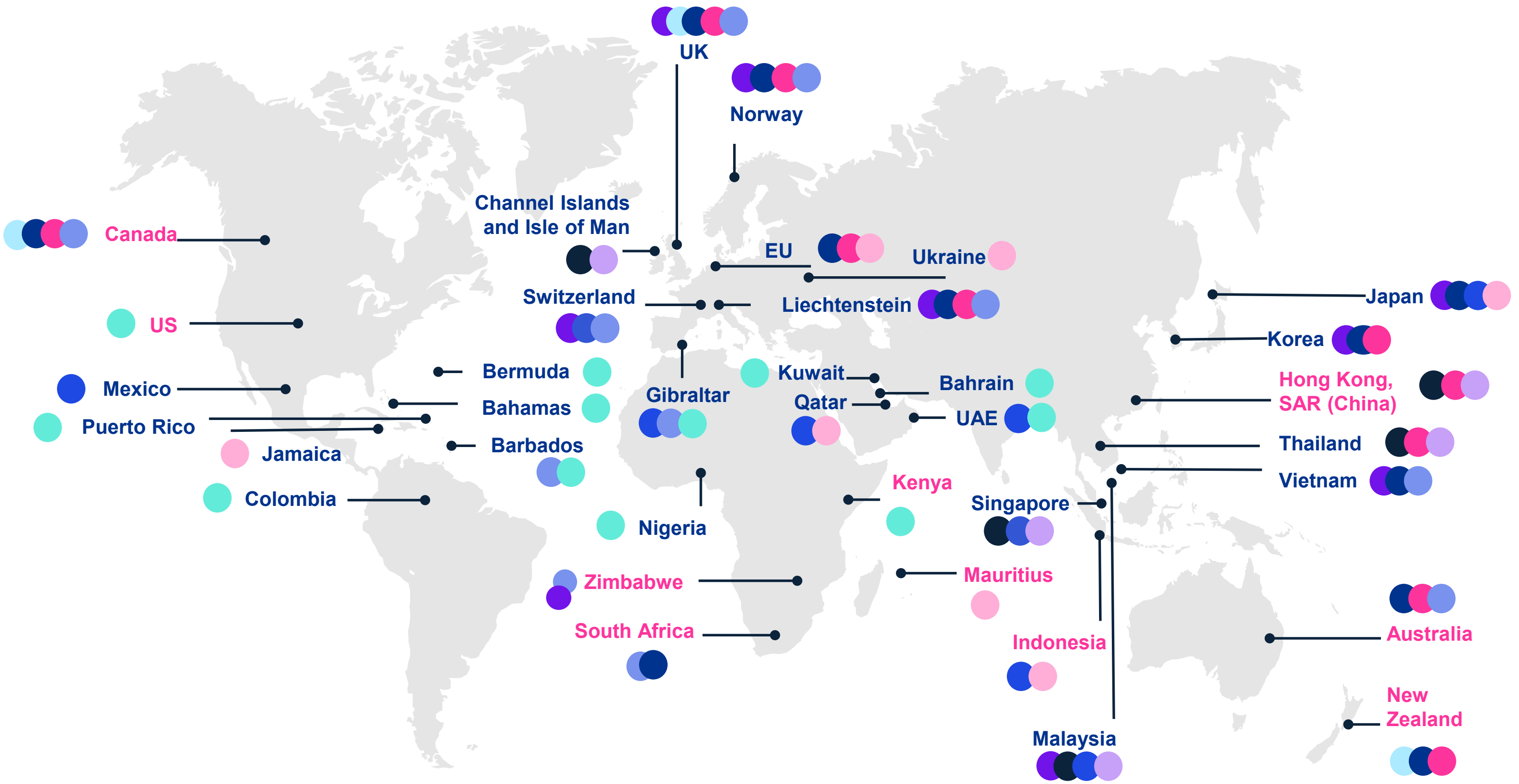
Practical application example:

IoMCo invoicing SACo for intra-group service fees

IoM tax rate below 9%, therefore could trigger STTR of 9% - 0% = 9%

3 | GloBE Rules: State of play

Pillar Two — Global overview | State of play



Legend

- Legislation passed/approved
- Draft legislation released
- IIR (2024)
- IIR (2025)
- UTPR (2025)
- Intention to apply IIR/UTPR (timing uncertain or deferred)
- DMTT (2024)
- DMTT (2025)
- Intention/option to apply DMTT (timing uncertain)
- Other related legislation/announcement

Pillar Two — Global overview | State of play per geographic area

Africa
Legislation passed/approved: 1
Draft legislation: 1
DMTT/IIR 2024: 1
DMTT/IIR 2025: 0
UTPR 2025: 0
Intention (timing uncertain): 1
Other legislation: 2


Africa


Europe & UK

Europe & UK
Legislation passed/approved: 23
Draft legislation: 6
DMTT/IIR 2024: 25
DMTT/IIR 2025: 5
UTPR 2025: 21
Intention (timing uncertain): 8
Other legislation: 1


Asia & Middle East

Americas & Canada
Legislation passed/approved: 0
Draft legislation: 1
DMTT/IIR 2024: 2
DMTT/IIR 2025: 0
UTPR 2025: 1
Intention (timing uncertain): 1
Other legislation: 6


Americas & Canada


Australia & New Zealand

Australia & New Zealand
Legislation passed/approved: 0
Draft legislation: 1
DMTT/IIR 2024: 2
DMTT/IIR 2025: 0
UTPR 2025: 2
Intention (timing uncertain): 0
Other legislation: 0

Asia
Legislation passed/approved: 4
Draft legislation: 1
DMTT/IIR 2024: 4
DMTT/IIR 2025: 4
UTPR 2025: 3
Intention (timing uncertain): 5
Other legislation: 2

Pillar Two — Global overview (continued)

Legislation passed/approved

- Austria (Dec 2023)
- Belgium (Dec 2023)
- Bulgaria (Dec 2023)
- Croatia (Dec 2023)
- Czech Republic (Dec 2023)
- Denmark (Dec 2023)
- EU Directive (Dec 2022)
- Finland (Dec 2023)
- France (Dec 2023)
- Germany (Dec 2023)
- Hungary (Nov 2023)
- Ireland (Dec 2023)
- Italy (Dec 2023)
- Japan — IIR (March 2023)
- Korea (Dec 2022)
- Liechtenstein (Dec 2023)
- Luxembourg (Dec 2023)
- Malaysia (Dec 2023)
- Malta (Feb 2024)
- Netherlands (Dec 2023)
- Norway (Jan 2024)
- Romania (Dec 2023)
- Slovakia (Dec 2023)
- Slovenia (Dec 2023)
- Sweden (Dec 2023)
- Switzerland — DMTT (Dec 2023)
- United Kingdom (June 2023)
- Vietnam (Dec 2023)
- Zimbabwe (Dec 2023)

Draft legislation

- Canada (Aug 2023)
- Cyprus (Oct 2023)
- Estonia (Dec 2023)
- Greece (Feb 2024)
- Latvia (Dec 2023)
- Lithuania (Oct 2023)
- New Zealand (May 2023)
- Qatar (Feb 2024)
- South Africa (Feb 2024)
- Spain (Dec 2023)

* Option to defer implementation to 31 December 2029 in case of max. 12 UPEs

DMTT (2024)

- Austria
- Australia
- Barbados
- Belgium
- Bulgaria
- Canada
- Croatia
- Czech Republic
- Denmark
- Finland
- France
- Germany
- Gibraltar
- Greece
- Hungary
- Ireland
- Italy
- Liechtenstein
- Luxembourg
- Netherlands
- Norway
- Qatar (?)
- Romania
- Slovakia
- Slovenia
- South Africa
- Spain
- Sweden
- Switzerland
- United Kingdom
- Vietnam
- Zimbabwe

DMTT (2025)

- Cyprus
- Guernsey
- Isle of Man
- Jersey
- Hong Kong (SAR), China
- Lithuania
- Malaysia
- Singapore
- Thailand

Intention to apply DMTT (timing uncertain)

- Bahamas
- EU (optional)
- Indonesia
- Jamaica
- Japan
- Mauritius
- Ukraine

Intention to apply IIR and UTPR (timing uncertain or deferred)

- Estonia (deferral/2030)
- Gibraltar
- Indonesia
- Japan (UTPR)
- Latvia (deferral/2030)
- Lithuania (deferral)
- Malaysia (UTPR)
- Malta (deferral/2030)
- Mexico
- Singapore (UTPR)
- Slovakia (deferral)
- Switzerland
- UAE

IIR (2024)

- Austria
- Australia
- Belgium
- Bulgaria
- Canada
- Croatia
- Cyprus
- Czech Republic
- Denmark
- EU*
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Japan
- Korea
- Liechtenstein
- Luxembourg
- Netherlands
- New Zealand
- Norway
- Romania
- Slovenia
- Spain
- South Africa
- Sweden
- United Kingdom
- Vietnam

IIR (2025)

- Guernsey
- Hong Kong (SAR), China
- Isle of Man
- Jersey
- Malaysia
- Singapore
- Thailand

UTPR (2025)

- Austria
- Australia
- Belgium
- Bulgaria
- Canada
- Croatia
- Cyprus
- Denmark
- EU*
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Luxembourg
- Hong Kong (SAR), China
- Korea
- Liechtenstein (?)
- Netherlands
- New Zealand
- Norway (?)
- Romania
- Slovenia
- Spain
- Sweden
- Thailand
- United Kingdom

Pillar Two — Global overview | interesting developments

Other related announcements

Bahrain	Considering the introduction of a CIT as part of its commitment to the OECD minimum tax
Barbados	Plans to introduce a 9% CIT rate
Bermuda	CIT (15%) introduced in response to the OECD Pillar Two initiative
Colombia	2022 tax reform — 15 percent minimum tax
Curacao	Policy measures to address impact of Pillar Two under consideration
Gibraltar	Policy measures to address impact of Pillar Two under consideration
Isle of Man	Temporary increase of CIT rate to 15% in relation to certain P2 impacted businesses
Kenya	Plans to review DST and to adopt two-pillar solution
Kuwait	Plans to introduce business profit tax at a rate of 15%
Nigeria	Policy measures to address impact of Pillar Two under consideration
Puerto Rico	Draft legislation aiming to introduce an election to pay 15% minimum tax
UAE	New corporate tax 9%
US	Corporate alternative minimum tax enacted 15% (not Pillar 2 compliant)
US	Republican Committee introduced two bills with UTPR defensive measure

4 | What does this mean for an MNE Group with a UPE in Africa

Example: MNE Group with UPE in Africa

SA UPE

IIR: 2024

DMTT: 2024

UTPR: N/A

CIT: SEZs, super-deductions for R&D, other incentives

Mauritius

IIR: N/A

DMTT: Timing uncertain

UTPR: N/A

CIT 15% + deemed foreign tax credit regime

Cayman Islands

No CIT

IIR: No status available

DMTT: No status available

UTPR: No status available

Zimbabwe

IIR: N/A

DMTT: 2024

UTPR: N/A

CIT 25% + various incentives + SEZs

Ghana

IIR: No status available

DMTT: No status available

UTPR: No status available

CIT 25% + sector specific + location incentives

Chile

IIR: No status available

DMTT: No status available

UTPR: No status available

CIT 27% (R&D incentives)

Brazil

IIR: No status available

DMTT: No status available

UTPR: No status available

CIT 15% plus surtax of 10%

5 | Disclosures

Pillar 2 — GloBE Rules
Disclosures before and after top-up tax applies

Pre-regime disclosures (AFS)

(Substantively) enacted but before effective

Disclosure objective — known or info that can be reasonably estimated to assist users of the financial statements to better understand the group's exposure to income taxes arising from the GMT reform

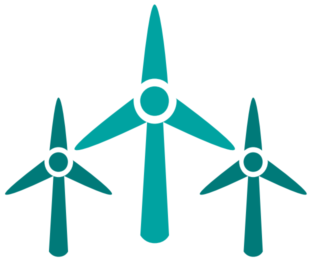
Qualitative information How MNE Group affected by GMT and in which jurisdictions material exposure arises (i.e. where TuT is triggered and where it will need to be paid)

Quantitative information proportion of profits that may be subject to TuT and average ETR applicable to those profits, or how the average ETR would have changed if GMT legislation had been effective

Exceptions apply where information is not known, cannot be reasonably estimated at the reporting date or a material exposure is not anticipated

After tax law is effective (AFS_

Current tax expense related to top-up tax



ESG Reporting

Include GMT disclosures in ESG reporting for tax transparency & governance purposes

(e.g., effect on **True Value** for ESG purposes)

15 June 2023 Pillar 2 laws are enacted (substantively enacted)

30 June 2023 Interim reporting date

31 July 2023 Local endorsement of amendments to IAS 12

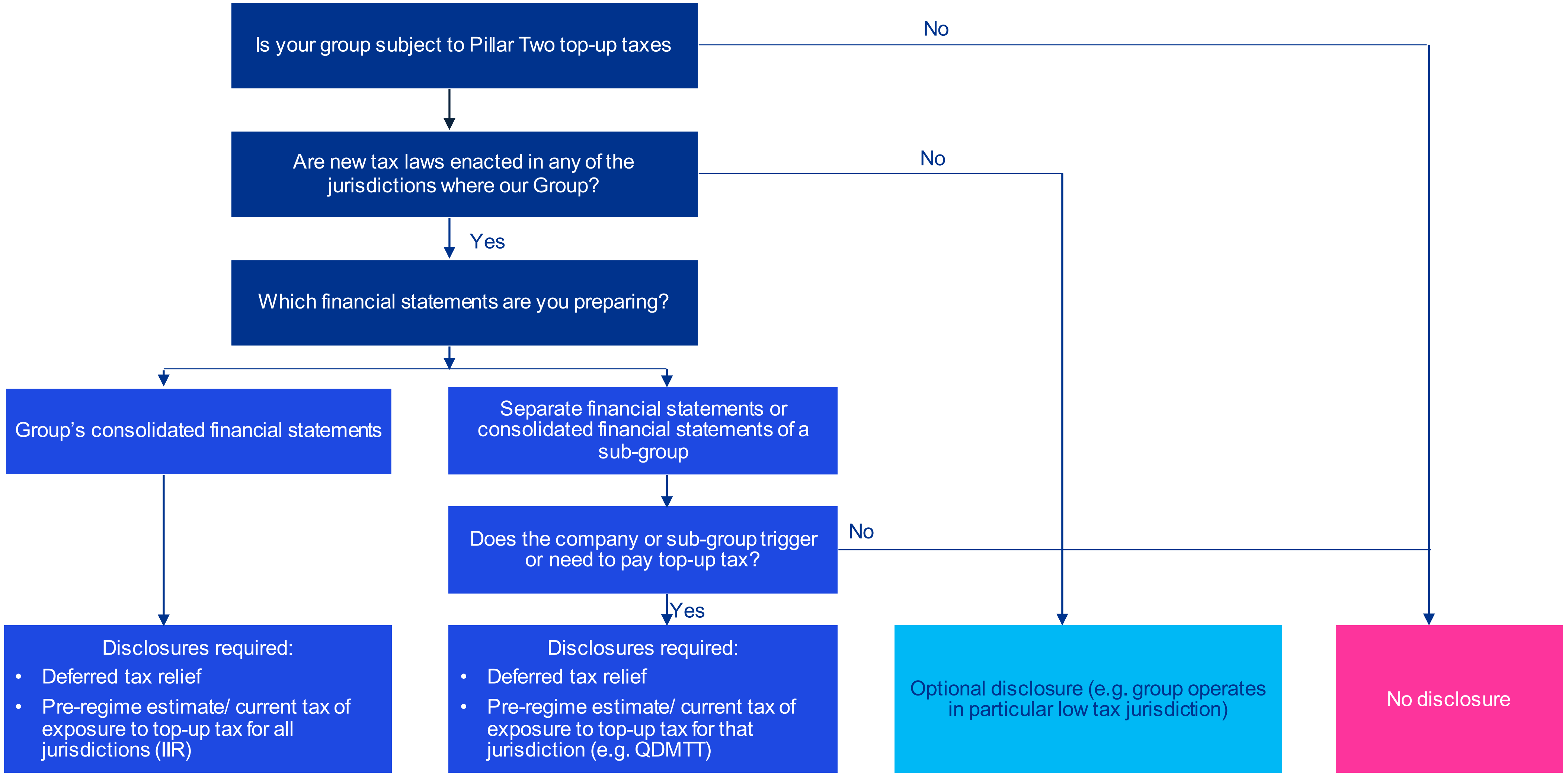
31 December 2023 Y/E reporting date — **Specific statements on Pillar 2 impact in financial statements**

1 January 2024 Pillar 2 rules effective

1st Quarter 2024 — **(Simplified) consideration of Pillar 2 in the quarterly financial statements**

31 December 2024 — **First full recognition of Pillar 2 in the financial statements**

Pillar 2 — AFS disclosure decision tree

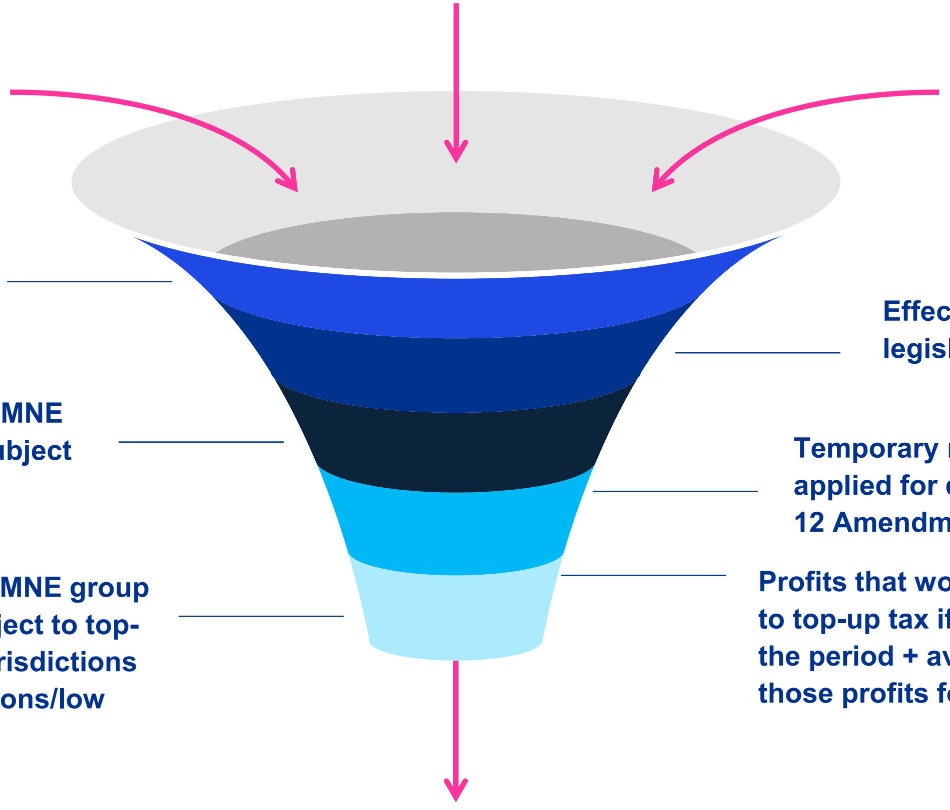


Accounting Disclosures — evolving challenges

Evolving challenges

- Disclosures may move between entities as GMT laws are enacted
- May have mix of pre-regime and current tax in consolidated accounts

Typical disclosures to be included in AFS



6 | Amount B

Overview of Amount B

On February 19, 2024, the OECD/G20 Inclusive Framework released a new report on Amount B. The release is a consensus document (though with a number of reservations from India) and contemplates Amount B coming into effect beginning in 2025. A further release is expected in March 2024.

Optional implementation

Amount B is optional for jurisdictions, who have the option to implement it as a taxpayer safe harbour or mandatory rule that in-scope distributors would be required to apply.

Wholesale distribution of tangible goods

Amount B is focused on the wholesale distribution of tangible goods and so excludes the distribution of services, non-tangible goods, commodities and retail sales above a de minimis amount.

New approach to pricing

Standardized pricing matrix based on operating asset and operating expense intensity and three industry categories that sets a standardized return for in-scope distribution activities.

Will it simplify your transfer pricing?

Jury remains out. Uncertainty around which jurisdictions will implement Amount B and whether its application will be respect create a real risk of more, not less complexity.

Application of the simplified and streamlined approach

The application of Amount B involves a 4-step process:

01 Application of scope criteria

The multi-factor scope criteria are applied to each distributor in a group and include quantitative and qualitative steps

02 Determination of the most appropriate method (i.e., internal CUP override)

There is an override to Amount B in situations where internal CUPs exist — but it is not necessary to prove the Amount B approach is the most appropriate method

03 Determination of the return with the simplified and streamlined approach

There is a standardised pricing matrix, an operating expense cross-check and an uplift for qualifying jurisdictions with limited data availability

04 Documentation

There is no simplification to existing requirements. Groups will need to specify when they are applying Amount B. Likely many taxpayers will be required to prepare two sets of documentation — based on Amount B and current benchmarking.

New items and outstanding issues

01

Optional implementation

Jurisdictions will not be required to implement Amount B. US Treasury has stated they are continuing to push for mandatory implementation.

02

Safe harbour or mandatory

Jurisdictions that implement Amount B could do so as a taxpayer safe harbour or mandatory rules. Expectation that jurisdictions are more likely to adopt as a mandatory rule.

03

Non-binding on non-implementing jurisdictions

Amount B is not binding on non-implementing jurisdictions and cannot be raised in MAP, with an exception for low-capacity jurisdictions (“LCJs”).

04

Application by LCJs will be respected

The application of Amount B by LCJs will be respected by other jurisdictions, subject to domestic legislations and administrative practices.

05

Optional qualitative scoping criterion

The OECD is continuing to develop an optional qualitative scoping criterion that is not included in the February Report and will be covered in a further release in March.

06

Draft competent authority agreements

The OECD is working on competent authority agreements through which jurisdictions could embed Amount B in their bilateral tax treaties.

Implementation matrix — simple

Amount B applies in scenario (1) and (2), potentially applies in (3) and does not apply in (4) and (5)

	Distributor Jurisdiction	Counterparty Jurisdiction	Approach to benchmarking
1.	Implements as taxpayer safe harbor/mandatory (non-LCJ)	Implements as taxpayer safe harbor/mandatory	• Application of Amount B should be respected • Complexity where jurisdictions adopted different approaches (e.g. OES threshold/optional qualitative criterion) leading to asymmetry
2.	Implements (LCJ)	Does not implement	• Application of Amount B should be respected, subject to domestic legislation and administrative practices in the counterparty jurisdiction
3.	Implements as mandatory (non-LCJ)	Does not implement	• Benchmarking must be prepared for counterparty, risk that mandatory application of Amount B results in double taxation that must be resolved through MAP (if available)
4.	Implements as taxpayer safe harbor (non-LCJ)	Does not implement	• Benchmarking must be prepared for counterparty, limited benefit to applying Amount B as a safe harbor
5.	Does not implement	Does not implement	• No change to current practice.

Implementation matrix — detailed

The following table depicts the simplest compliance outcomes in different implementation scenarios.

This assumes that the relevant distribution entity is in scope for both Amount B with and without the (as yet undefined) optional qualitative filter ("Amount B+"). If the transaction is in scope of the former but not the latter, this further increases complexity. The table also does not consider the treatment of LCJs.

		Counterparty Jurisdiction				
		1. No Amount B	2. Mandatory Amount B+	3. Mandatory Amount B	4. Safe Harbor Amount B+	5. Safe Harbor Amount B
Residence Jurisdiction	1. No Amount B	Benchmarking	Benchmarking + Amount B+	Benchmarking + Amount B	Benchmarking	Benchmarking
	2. Mandatory Amount B+	Benchmarking + Amount B+	Amount B+	Amount B+	Amount B+	Amount B+
	3. Mandatory Amount B	Benchmarking + Amount B	Amount B+	Amount B	Amount B+	Amount B
	4. Safe Harbor Amount B+	Benchmarking	Amount B+	Amount B+	Amount B+	Amount B+
	5. Safe Harbor Amount B	Benchmarking	Amount B+	Amount B	Amount B+	Amount B

Key				
	Benchmarking/transfer pricing documentation unchanged	Application of Amount B and benchmarking creates risk of double taxation	Application of Amount B+ applies over Amount B	Application of Amount B

Implication for application of the ALP

01 Approximation of the ALP

Report states that Amount B is an "approximation of the ALP", rather than "is the ALP"

02 Not applicable in non-implementing jurisdiction

Report is clear that businesses cannot apply Amount B in non-implementing jurisdictions

03 Not a new floor or ceiling

Report states that Amount B is not a new floor or ceiling, and is not relevant for the pricing of transactions that are out of scope

04 But is a new framework

OECD has approved an approach to pricing marketing and distribution activities that tax administrations have worked on for 3 years.

05 Monitor practical application

Tax administration practice does not always follow OECD guidance and best practice

Country responses

The countries/regional tax bodies highlighted below have made public statements on their position on Amount B. It is important to consider the approach adopted by both sides of a transaction.

US

Continues to support the mandatory implementation of Amount B

IN

Reservations to Amount B report, including importance of qualitative scoping criterion, lack of definition of LCJs/qualifying jurisdiction, exclusion of goodwill from operating expenses.

ATAF

African Tax Administration Forum is supportive of Amount B and working with members on implementation.

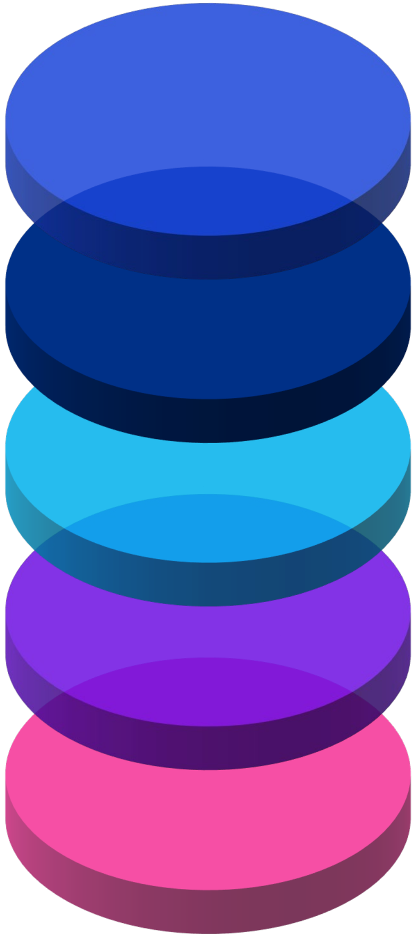
NZ

Do not intended to implement Amount B, see report.

Application of the scope criteria

	In-scope	Out-of-scope
1. Distributors, sales agents and commissionaire that perform wholesale distribution	• Distributors, sales agents and commissionaires • De minimis retail sales less than 20% of net revenue on 3-year weighted average basis	• Marketing and sales support providers • Entities with non-de minimis retail sales • Royalties/IP payments
2. Economically relevant characteristics that mean a one-sided method can be applied	• Transactions where it can be demonstrated that a one-sided pricing method should be applied (i.e., the TNMM)	• Other transactions, e.g., those involving unique and valuable contributions or the assumption of economically significant risks
3. Tested party must not incur operating expenses less than 3% or more than 20-30% of net revenue	• Lower bound is a mandatory limit • Threshold applied based on weighted average from prior 3 years	• Upper bound is set by each jurisdiction — creating the potential for inconsistent application of Amount B
4. Excludes the distribution of non-tangible goods, services, and commodities	• Distribution of tangible goods	• Clarification of exclusion for non-tangible goods and services • Commodities exclusion intended to be broadly drawn
5. Excludes non-distribution activities that cannot be reliably segmented	• Non-distribution activities that can be reliably segmented (no longer subject to “administrative guardrail”)	• Activities that can’t be reliably segmented, including bundled distribution of goods and services

Operating expense intensity threshold



01 **Optional upper bound**

Jurisdictions could adopt different upper bound threshold resulting in the asymmetric application of Amount B

02 **Treatment of pass-through expenses**

Pass-through expenses are notionally excluded, but no additional guidance on how to identify these expenses

03 **Upper bound can be meaningful**

In sectors with material marketing expenses, e.g. pharma, consumer products, real risk this threshold applies

04 **Lower bound less impactful**

Less likely that the lower bound will result in a significant number of distributors being excluded from scope.

05 **Could change year on year**

Averaging reduces this risk, but still possible entities could move in and out of scope

The tested party in the qualifying transaction must not incur **annual operating expenses* lower than 3%** or greater than an **upper bound of between 20% and 30%** of the tested party's annual net revenues.

* Test applied on an annual basis but based on weighted average from 3 prior years

Segmentation of non-distribution activities

01

Segmentation an option

- Multifunction entities, e.g., manufacturer-distributors, can be included in Amount B if the non-distribution activities can be reliably segmented and excluded.
- List of activities that are specifically excluded: manufacturing, R&D, procurement, financing, and retail.
- Distribution of bundles products and services (e.g., sale of product and provision of financing) that can't be unbundled are also excluded.

02

Consider reviewing approach

- Approach to segmentation is a potential way to get into, or get out of scope of Amount B.
- Segmentation could come under additional scrutiny in situations where tax authorities seek to prevent a business accessing Amount B.

03

And the balance sheet…

- Necessary to segment the balance sheet to separate operating assets associated with distribution and non-distribution activities.
- A potentially challenging exercise that it is unlikely many (if any) businesses have undertaken previously.

Implications for excluded distributors

There are some specific exclusions from Amount B

Digital Goods and Services

Despite previous discussion about the potential inclusion of digital goods, digital goods and services have been excluded. There was no rationale for this exclusion.

Services

Services are excluded, including where the provision of goods and services is bundled (e.g. a good with an installations service) and can't be unbundled.

Financial Services

It has always been likely that financial services would be excluded. This was stated explicitly in the July Consultation Document.

Commodities

The commodities exclusion is relatively broad, covering oil and gas, other extractive materials (i.e., metals) and agriculture. But with limits on the processing activities performed.

Four-step pricing methodology

The application of the Amount B pricing methodology involves a 4-step process assuming no internal CUP.

01 Pricing matrix

The pricing matrix delivers return on sales ("ROS") results between 0.5% and 5.5% based on OES, OAS, and industry.

02 Administrative range to reduce operational complexity

Amount B allows for results within 0.5% above or below the number prescribed by the matrix.

03 Operating expense cross-check

The result of step 2 is subject to a corroborative check using return on operating expenses as a cap or collar.

04 Data availability mechanism (uplift)

Some yet-to-be-determined jurisdictions will benefit from a net risk adjustment based on their sovereign credit rating. Importantly, this applies after the corroborative mechanism.

Pricing matrix — Returns

The table below shows the standardized pricing matrix included in the Report. The pricing matrix sets a return on sales ("ROS") that is used to test the return allocated to an in-scope tested party.

Factor Intensity			Industry Grouping		
Category	OAS	OES	1	2	3
[A]	> 45%	Any Level	**3.50%**	**5.00%**	**5.50%**
[B]	30 - 44.99%	Any Level	**3.00%**	**3.75%**	**4.50%**
[C]	15 - 29.99%	Any Level	**2.50%**	**3.00%**	**4.50%**
[D]	< 15%	>= 10%	**1.75%**	**2.00%**	**3.00%**
[E]		< 10%	**1.50%**	**1.75%**	**2.25%**

Note: **Blue highlighting** indicates results lower than those provided in the July 2023 consultation document; **pink highlighting** indicates higher results.

Application of matrix

The pricing matrix is applied using a three-step approach:

- **Step 1:** Determine the industry group of the tested party.
- **Step 2:** Determine the factor intensity classification of the tested party using a three-year weighted average.
- **Step 3:** Identify and apply the arm's length range to test the return of the tested party.

Range-based approach with +/- 0.5% allowance to ease operational transfer pricing ("OTP") challenges.

Pricing matrix — Industry categories

The table below shows the industry groupings for the pricing matrix included in the OECD's Amount B Report. Special rules apply for distributors that sell goods in more than one category.

Industry group	Observed impact on return	Category of good
1	Statistically lower returns	Perishable foods, grocery, household consumables, construction materials and supplies, plumbing supplies and metal.
2	No statistical relationship to returns	IT hardware and components, electrical components and consumables, ***animal feeds, agricultural supplies, alcohol and tobacco, pet foods***, clothing footwear and other apparel, plastics and chemicals, lubricants, dyes, ***pharmaceuticals,*** cosmetics, health and wellbeing products, home appliances, consumer electronics, furniture, home and office supplies, printed matter, ***paper and packaging***, jewellery, textiles hides and furs, new and ***used domestic vehicles, vehicle parts and supplies,*** mixed products and products and components not listed in group 1 or 3.
3	Statistically higher returns	Medical machinery, industrial machinery including industrial and agricultural vehicles, industrial tools, industrial components miscellaneous supplies.

* The OECD grouped products distributed by companies into three industry groupings based on observed statistically significant differences in levels of return between the industry categories. From the July 2023 consultation, the categories highlighted in **purple** have moved from Group 1 to Group 2, and those in **light blue** from Group 3 to Group 2.

Pricing matrix — Factor intensity

01

Operating Expense Intensity (OES)

- Relevant for distributors with OAS < 15%, and determines whether a distributor is in factor intensity category D or E.
- Operating expenses exclude cost of goods sold, pass-through costs appropriately excluded under the accurate delineation of the transaction and costs related to financing, investment activities, income taxes and exceptional items.
- Ratio determined based on weighted average from 3 prior years, so can be determined with prior year data (though data that may not be available at the start of the fiscal year).
- Must be based on an acceptable accounting standard which is either a permitted basis of preparing financial statements in a jurisdiction or specifically permitted for Amount B (unlikely to include U.S. GAAP outside the U.S.).

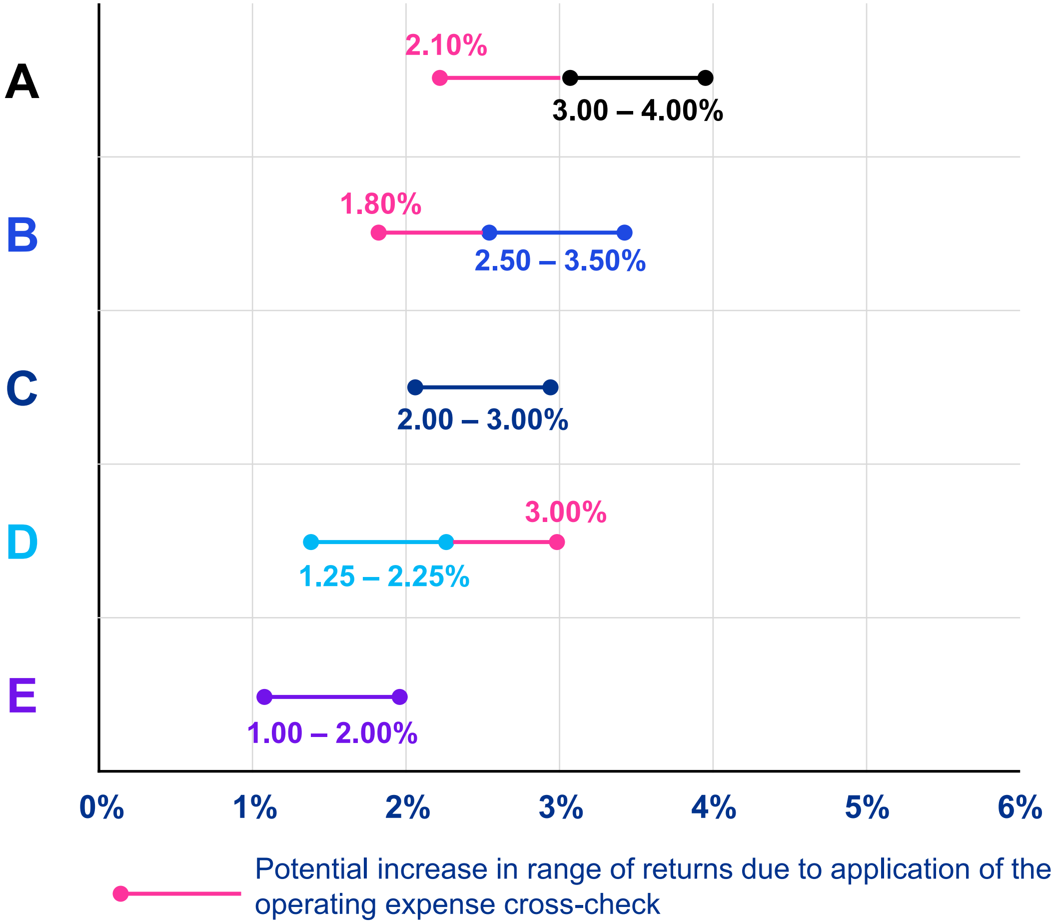
02

Operating Asset Intensity (OAS)

- Net operating assets refers to the tangible and intangible fixed assets plus working capital calculated on based on weighted average from 3 prior years (using starting and closing asset balances).
- Tangible fixed assets include property, plant, and equipment net of accumulated depreciation, plus land plus net capital leases.
- Intangible fixed assets include all intangible fixed assets, net of accumulated amortization, but excluding goodwill.
- Working capital is the sum of stock plus debtors less creditors (with adjustment where account payable days exceed 90 days).
- India considers that goodwill should be included.

Operating expense cross-check — Industry Group 1

Industry Group 1: Acceptable range of returns by Factor Intensity, including Operating Expense Cross-Check



Operating expense cross-check

The operating expense cross-check has four steps:

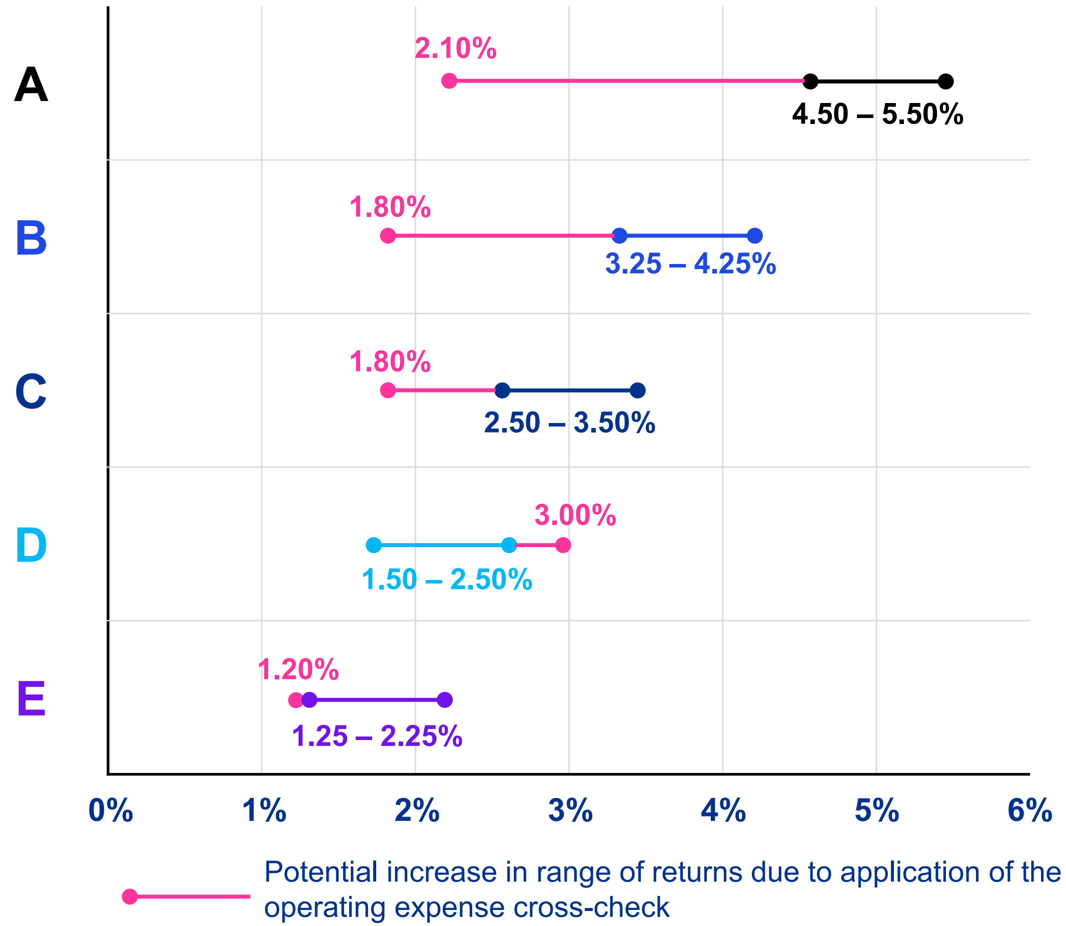
1. Determine an entity's return under the pricing matrix;
2. Determine the return on operating expense (i.e., EBIT/OpEx) cap-and-collar range provided by the OECD;
3. Compare the equivalent return on operating expenses to the ROS established in step 1 to the cap-and-collar in step 2; and
4. Adjust the return established in step 1 to the cap or collar, where step 3 shows standard return is above the cap (a downward adjustment) or below the collar (an upward adjustment).

Industry Group 1

- The diagram (left) shows when the operating expense cross-check could lead to an adjustment in the range of returns that are acceptable under Amount B.
- The ranges (left) do not include potential uplift via data availability mechanism (see subsequent slides).

Operating expense cross-check — Industry Group 2

Industry Group 2: Acceptable range of returns by Factor Intensity, including Operating Expense Cross-Check

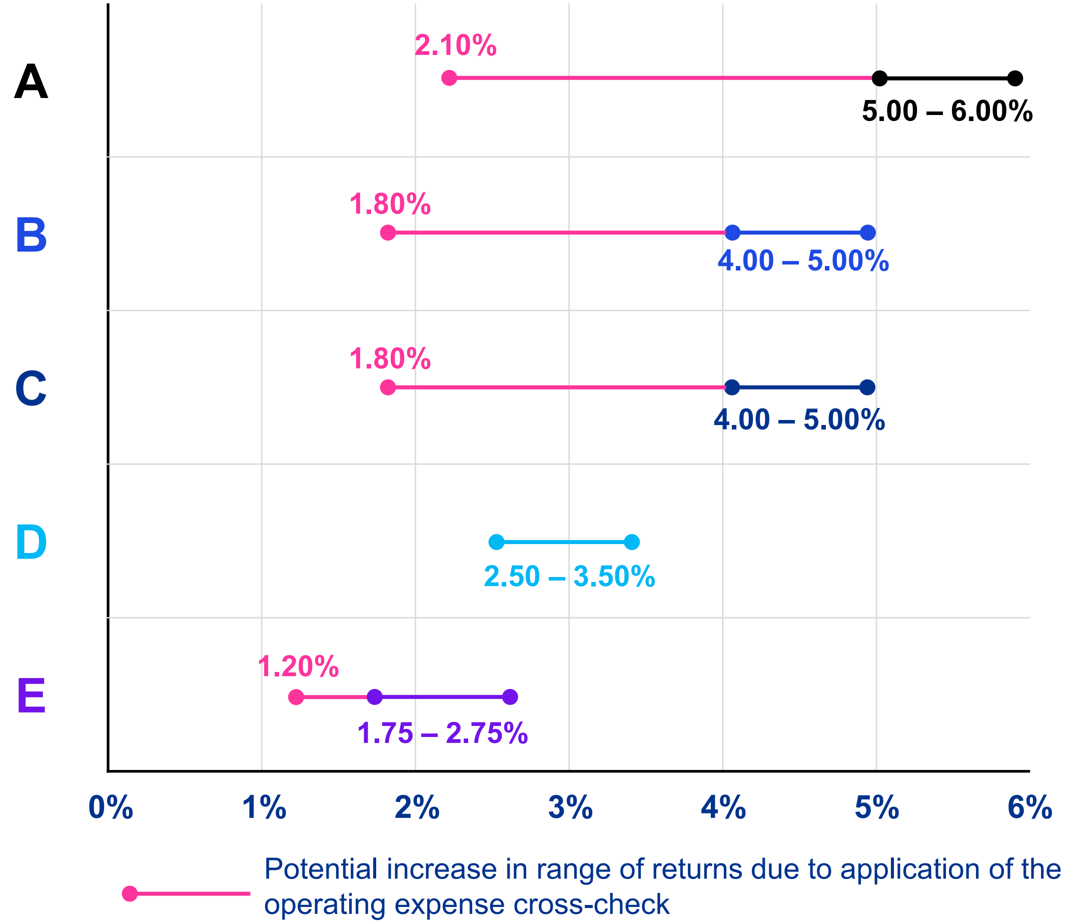


Industry Group 2

- The diagram (left) shows when the operating expense cross-check could lead to an adjustment in the range of returns that are acceptable under Amount B.
- Counterintuitively the cap establishes a lower return and the collar a higher ceiling.
- The cap has a more material impact on entities in factor intensity A, B and C, where the higher return is driven by an entity's OAS (not OES).
- The collar only applies in factor intensity category D.
- The ranges (left) do not include potential uplift via data availability mechanism (see subsequent slides).

Operating expense cross-check — Industry Group 3

Industry Group 3: Acceptable range of returns by Factor Intensity, including Operating Expense Cross-Check



Industry Group 3

- The diagram (left) shows when the operating expense cross-check could lead to an adjustment in the range of returns that are acceptable under Amount B.
- The impact of the cap is greater than industry group 1 and 2, as the returns provided by the matrix are higher.
- The ranges (left) do not include potential uplift via data availability mechanism (see subsequent slides).

Data availability mechanism (uplift)

The data availability mechanism is effectively an uplift to the Amount B returns in the pricing matrix, after the application of the operating expense cross-check mechanism, for certain qualifying jurisdictions.

- Qualifying jurisdictions are not defined but refer to jurisdictions with a sovereign credit rating at BBB+ or below and for which there is little or no data in the global dataset developed by the OECD to set the Amount B returns.

Adjusted return on sales = Return on sales + (Net Risk Adjustment x Operating Asset Intensity)

- Return on sales is the return on sales established from the pricing matrix after the application of the operating expense cross-check mechanism.
- Net risk adjustment is determined based on the net risk adjustment table, with the adjustment varying from 0.3% for jurisdiction with a BBB- credit rating to 8.6% for CCC-.
- Using operating asset intensity means the adjustment will be more limited for entities with lower operating asset intensity (see next slide).

Data availability mechanism (uplift) (cont.)

The table below shows a selection of jurisdictions with GDP above USD 100bn and a sovereign credit rating below BBB-. It computes the data availability mechanism (uplift) for entities with OAS of 10%, 25%, 50% and 85% (the maximum OAS to which the adjustment applies).

	Jurisdiction	Sovereign credit rating	Net risk adjustment (%)	OAS			
				10%	25%	50%	85%
1.	Argentina	CCC-	8.6%	0.9%	2.2%	4.3%	7.3%
2.	Bangladesh	BB-	1.8%	0.2%	0.5%	0.9%	1.5%
3.	Brazil	BB	1.2%	0.1%	0.3%	0.6%	1.0%
4.	Colombia	BB+	0.7%	0.1%	0.2%	0.4%	0.6%
5.	Dominican Republic	BB	1.2%	0.1%	0.3%	0.6%	1.0%
6.	Ecuador	B-	4.9%	0.5%	1.2%	2.5%	4.2%
7.	Egypt	B-	4.9%	0.5%	1.2%	2.5%	4.2%
8.	Greece	BBB-	0.3%	0.0%	0.1%	0.2%	0.3%
9.	Hungary	BBB-	0.3%	0.0%	0.1%	0.2%	0.3%
10.	India	BBB-	0.3%	0.0%	0.1%	0.2%	0.3%
11.	Kenya	B	3.8%	0.4%	1.0%	1.9%	3.2%
12.	Morocco	BB+	0.7%	0.1%	0.2%	0.4%	0.6%
13.	Nigeria	B-	4.9%	0.5%	1.2%	2.5%	4.2%
14.	Pakistan	CCC+	5.9%	0.6%	1.5%	3.0%	5.0%
15.	Romania	BBB-	0.3%	0.0%	0.1%	0.2%	0.3%
16.	South Africa	BB-	1.8%	0.2%	0.5%	0.9%	1.5%
17.	Thailand	BBB+	0.0%	0.0%	0.0%	0.0%	0.0%
18.	Türkiye	B	3.8%	0.4%	1.0%	1.9%	3.2%
19.	Ukraine	CCC	7.5%	0.8%	1.9%	3.8%	6.4%
20.	Vietnam	BB+	0.7%	0.1%	0.2%	0.4%	0.6%

Documentation and transitional issues

01

Documentation

- Amount B was seen as an opportunity to simplify transfer pricing documentation requirements — but this isn't addressed in the report.
- Report identifies items in the local file that could support the application of Amount B, but notes that additional financial data (e.g., on net operating assets) may be required.
- Option for tax administrations to require taxpayers to establish a written intragroup contract consistent with Amount B but no requirement to adopt this approach or commitment not to challenge the contract.
- When taxpayers apply Amount B there is a requirement that they include this in their local file, or other documentation, and consent to it applying for 3 years.

02

Transitional issues

- Recognition that groups are free to reorganize their distribution business models as they see fit, but that tax administrations have a right to determine the tax consequences.
- Specific concern highlighted about distributors being restructured to access Amount B — particularly in situations where there are built in losses from prior years.

OECD benchmarking strategy

The table below outlines the steps taken by the OECD in their benchmarking search. This search was performed using the Orbis database from Bureau van Dijk ("BvD").

	Steps	Description
Database filtering	1.	Active companies
	2.	Companies with primary NACE codes 45 — Wholesale and retail trade and repair of motor vehicles and motorcycles and 46 -Wholesale trade except of motor vehicles and motorcycles
	3.	Companies with consolidated accounts, or unconsolidated only where the company is known to own less than 50% of any subsidiaries
	4.	Companies with no shareholders with ownership of more than 50% of the shares of the company
	5.	Companies with operating revenue and EBIT data available for 2017, 2018 and 2019
	6.	Companies with operating revenue average of at least EUR 2 million for 5 years (2015-2019)
	7.	Companies with a website address
	8.	Companies with business overview information available in the database
	9.	Exclude companies with a research and development to sales ratio of more than 3%

OECD benchmarking strategy (cont.)

The table below outlines the steps taken by the OECD in their benchmarking search. This search was performed using the Orbis database from Bureau van Dijk (“BvD”).

	Steps	Description
Manual review	10.	Exclude companies with the following terms in their business overview: “design and manufactur”, “financ”, “insurance”, “manufacture “, “research”, “software d” and “system integrat”.
	11.	Exclude all companies that do not describe wholesale distribution as their main activity.
	12.	Exclude companies which describe any development, research or manufacturing activity, or more than minority or ancillary levels of additional activities such as retail, repairs and maintenance, and other services.
Quantitative review	13	Exclude companies reporting a 5-year weighted average of intangible fixed assets to sales higher than 1%.
	14.	Exclude companies reporting a 5-year weighted average of R&D over sales of more than 0% (n.b., this largely duplicates a step applied in the database filtering stage).
	15.	Exclude companies reporting losses in 3 or more out of 5 years as persistent loss makers.
	16.	Exclude companies that would have been eligible for the commodities exclusion (e.g., distributing oil and gas)

Tax certainty

01 No new comprehensive approach to tax certainty

For Amount B to provide certainty it must provide practical certainty to business. The best way to achieve this would have been through a comprehensive approach to certainty, equivalent to an APA. This is not addressed in the report.

02 Existing APAs will be respected and still potential for new APAs

APAs are and will remain the best way to achieve binding certainty. Existing APAs will be respected. Bilateral/Multilateral APAs could be used to get certainty on outcomes that vary from the Amount B pricing matrix.

03 ICAP could support advance certainty & MAP resolve disputes

ICAP could potentially be used to achieve advance certainty on Amount B, i.e., have its applications blessed by relevant tax administrations. The report notes that MAP will be used to resolve disputes around the application of Amount B.

04 Impact of new competent authority agreement uncertain

The Inclusive Framework is developing model competent authority agreements that could be used to embedded Amount B in existing bilateral tax treaties. This would increase certainty regarding its application.

Interaction with customs duty

In some jurisdictions the greatest risks businesses face is disputes over customs duty — not transfer pricing, due to high customs rates

The risks associated with transfer pricing disputes may just be the tip of the iceberg

01 Issue was raised

The issue of the interaction between Amount B and customs duty was raised with the OECD — who lacked the authority to address it

02 Document out of scope

There are numerous ways that distributors could fall out-of-scope of Amount B — this should be documented carefully when distributors have returns above the matrix

03 Risk greatest with mandatory application governed by CAA

The risk is greatest where Amount B is mandatory in a jurisdiction and there is a competent authority agreement covering its application

What steps are businesses taking?

Getting ready for Amount B

What's the impact?
Review the impact for 5-10 pilot jurisdictions

1. Modelling for pilot jurisdictions

2. Review existing transfer pricing policies

Where am I today?
Compare the pricing matrix to current policy

Additional data requirements
Identify potential pain points and restructuring opportunities

3. Review operating expense/assets of distributors

4. Review existing transfer pricing documentation

Documentation isn't going way
Getting it right remains important

When is action required?

July 2023
Second public consultation released

Feb 2024
Pillar One — Amount B Report

March 2024
OECD update expected, incl. Amount A

Jan 2025
Amount B could apply for fiscal years beginning on or after Jan 1, 2025

Jan 2026
Feasible that many jurisdictions would struggle to adopt Amount B before Jan 2026

Expect announcements on the adoption of Amount B throughout the next two years

Responses	2024 / 2025
1. Preliminary assessment/scope review	Identify distributors that are potentially in-scope/compare existing transfer pricing policy to Amount B returns
2. Assessment for pilot entities/jurisdictions	Undertake assessment for 5-10 pilot entities/jurisdictions focusing on key jurisdictions/entities
3. Consider OTP implications	Narrow target range could place pressure on OTP
4. Develop tools to support compliance	If required
5. Monitor developments	Country implementation and further technical developments

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