

Pillar Two

Transitional Safe Harbours

At a glance...

Recent OECD/G20 IF guidance* contains following **three non-cumulative tests** [which we ranked from requiring the least data sources and data adjustments to the most] in order for a Tested Jurisdiction of Constituent Entities to be eligible for named **Transitional CbCR Safe Harbour** so that a **zero Top-Up Tax** is deemed to apply without full GloBE.

De Minimis test

IF
AND (CbCR Total Revenue < EUR 10m;
CbCR Profit (Loss) before Income Tax < EUR 1m)
THEN Transitional CbCR Safe Harbour eligible **END**
ELSE Go to ETR test

- Based on current year Qualifying CbCR
- Total Revenue as-is
- P(L) before Tax as-is, but adjusted for Net Unrealized Fair Value Loss (>€50m)
- Specific exclusion for entities held for sale
- Specific data source rules for JV(subs)

ETR test

IF
Test $ETR_N \geq \text{Transition Rate (TR)}$
WHERE $N = \text{OR}(2023; 2024)$; $TR = 15\%$
 $N = 2025$; $TR = 16\%$
 $N = 2026$; $TR = 17\%$
THEN Transitional CbCR Safe Harbour eligible **END**
ELSE Go to Routine Profits test

- Income tax expense for nominator as per Qualified Financial Statements (not CbCR), and (only) excluding taxes that are not Covered Taxes under GloBE rules and Uncertain Tax Positions
- In denominator, same P(L) before Tax as for de minimis test (CbCR, adjusted)

Routine Profits test

IF
CbCR Profit (Loss) before Income Tax \leq
GloBE Substance-Based Income Exclusion (SBIE)
THEN Transitional CbCR Safe Harbour eligible **END**
ELSE Full GloBE rules apply **END**

- Same P(L) before Tax as for de minimis test (CbCR, adjusted)
- SBIE as per complete GloBE rules (art. 5.3) - i.e. sum of payroll carve-out and tangible asset carve-out as per the GloBE rules, including all specific considerations

Qualified CbCR

prepared and filed on basis of Qualified Financial Statements

Qualified Financial Statements

- accounts used to prepare consolidated financial statements of the UPE (Ultimate Parent Entity)
- separate financial statements of each Constituent Entity when Acceptable/Authorised Financial Accounting Standard
- for non-material Constituent Entity (not in conso, line-by-line), its financial accounts used for preparing CbCR

Transition Period

Until Fiscal Year beginning on or before 31/12/2026 but not including a Fiscal Year that ends after 30/6/2028

Exclusions

Stateless, certain Flow-through, certain Multi-Parent Groups, ... + "once out, always out" principle applies!

* OECD (Paris 2022), Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two), OECD/ G20 Inclusive Framework on BEPS, OECD, Paris. Published 20 December 2022. www.oecd.org/tax/beeps/safe-harbours-andpenalty-relief-global-anti-base-erosion-rules-pillar-two.pdf

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