

OECD Publishes Pillar Two Global Minimum Tax Safe Harbor, Benefitting MNE Groups With Ultimate Parent Entities Located in the U.S.

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Executive Summary

- **What's new:** The OECD has released administrative guidance introducing a number of safe harbor exclusions from the Pillar Two Global Anti-Base Erosion Model Rules.
- **Why it matters:** One of the safe harbors will exclude groups whose Ultimate Parent Entity is located in qualifying jurisdictions from the application of the Income Inclusion Rule and the Undertaxed Profits Rule. This will be particularly beneficial for MNE groups whose Ultimate Parent Entity is located in the U.S.
- **What to do next:** Companies will closely follow national developments relating to the implementation of the safe harbor. The OECD has also committed to undertake a stocktake to be concluded by 2029, which may result in future changes to the Side-by-Side system.

On January 5, 2026, the Organisation for Economic Co-operation and Development (OECD) released a long-awaited package of administrative guidance which introduces a number of new safe harbors within the Pillar Two Global Anti-Base Erosion (GloBE) Model Rules (GloBE Rules), providing significant relief for multinational enterprise (MNE) groups — particularly those whose Ultimate Parent Entity (UPE) is located in the U.S.

The announcement by the OECD after months of negotiations represents the final codification of June 2025's G7 agreement to a Side-by-Side (SbS) system intended to take U.S.-parented groups outside the scope of the GloBE Rules through recognition of the U.S.'s existing domestic and Controlled Foreign Company (CFC) rules for Pillar Two purposes. The package is now part of the Inclusive Framework's Commentary to the GloBE Rules and the safe harbors will require implementation by the jurisdictions that have already implemented the GloBE Rules.

While the focus is largely on the SbS safe harbor, the package includes a number of additional safe harbors that are intended to simplify compliance for MNE groups remaining within scope of the GloBE Rules. The effectiveness of these safe harbors remains to be seen; the OECD has also committed to a work program of more simplification efforts later this year, although the scope and goals of the program are unspecified.

The SbS Safe Harbor

The cornerstone of the package, and impetus for its negotiation and release, is the SbS safe harbor.

Under the SbS safe harbor, MNE groups whose UPE is located in jurisdictions with a Qualified SbS Regime may elect for their top-up tax to be deemed zero for Income Inclusion Rule (IIR) and Undertaxed Profits Rule (UTPR) purposes, covering all constituent entities, joint ventures and subsidiaries in any jurisdictions.

The meaning of “parented” in the June 2025's G7 announcement had been the subject of much speculation in the lead-up to the release of the administrative guidance. The published wording brings within scope of the SbS safe harbor any MNE groups whose UPE is located in a jurisdiction with a Qualified SbS Regime, applying the GloBE Rules to determine that location. With no further restrictions applicable at the level of the MNE Group, and adopting the original Pillar Two scope of what entities can be UPEs,

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groups with both corporate and pass-through UPEs appear to be covered by the safe harbor, provided those UPEs are located in a jurisdiction with a Qualified SbS Regime.

The guidance lists the eligibility criteria for jurisdictions to qualify for the SbS safe harbor; in particular, jurisdictions must have:

- A domestic corporate income tax rate of at least 20%.
- A Qualified Domestic Minimum Top-Up Tax (QDMTT) or alternative minimum tax at a nominal rate of at least 15%.
- No material risk of an effective tax rate below 15% for in-scope MNE groups on their domestic and worldwide profits.
- Comprehensive foreign income taxation.
- Substantial Base Erosion and Profit Shifting (BEPS) risk mitigation mechanisms.

Additionally, having a Qualified SbS Regime requires allowing foreign tax credit for QDMTTs on the same terms as any other foreign creditable tax.

Notably, as of January 5, 2026, the U.S. is the only country identified and formally published by the OECD as meeting the eligibility criteria. It seems apparent that no other jurisdiction currently qualifies for the SbS safe harbor; it remains to be seen whether any other jurisdiction will attempt to qualify moving forward. This results in groups with UPEs located in the U.S., irrespective of their U.S. taxable profile, being excluded from the Global Minimum Tax rules without further enquiry.

Not the End of the Story

The OECD has committed to undertake a stocktake moving forward to ensure that risks that might be identified regarding the level playing field or BEPS are addressed. The process is intended to be evidence-based and objective, to be agreed and concluded by 2029.

That stocktake will evaluate data on the effect of the Global Minimum Tax (GMT) and the SbS system (including implementation of QDMTTs) and will assess any unintended effects of the measures (e.g., competitive imbalances between MNE groups, increase in inversions, material increase in profits located in low-tax jurisdictions without a QDMTT). Based on the findings of this review, the OECD has committed to take action if any significant risks to fair competition or BEPS are identified.

It is therefore clear that the SbS safe harbor as currently announced is not necessarily the end of the story; we can expect the potential for future changes in how the SbS system works and its interaction

with the GloBE Rules. However, the possibility of the U.S. being removed from the published list of compliant jurisdictions now appears very low.

Impact on Qualified Domestic Minimum Top-Up Taxes (QDMTTs)

The SbS safe harbor will not affect the continued application of QDMTTs, which will continue to apply to the foreign operations of MNE groups whose UPE is located in jurisdictions with a Qualified SbS Regime in accordance with the GloBE Rules.

In particular, the OECD states that the qualifying status of domestic minimum top-up taxes (DMTTs) will continue to depend on their application to all MNE groups in a consistent and non-discriminatory manner, regardless of the application of the SbS safe harbor to a group. Jurisdictions would risk losing the qualifying status of their DMTTs if they were to selectively turn off their QDMTTs in respect of MNE groups that qualify for the SbS safe harbor.

These elements of the SbS safe harbor reflect the OECD's stated aim to encourage adoption of a coordinated GMT through the implementation of QDMTTs, and reinforce the OECD's commitment to ongoing monitoring and peer review of QDMTTs and other elements of the GMT system.

Implementation and Compliance Details Remain to Be Ironed Out

The OECD announcement represents significant news in the world of Pillar Two. U.S.-parented groups will be particularly pleased that the long-promised SbS safe harbor has materialized and is intended to take effect, through national legislation, retrospectively from 1 January 2026.

However, there are a number of details still to be ironed out.

First, the timing of domestic implementation remains uncertain and there may be jurisdictions that do not enact the SbS safe harbor until later in 2026, or even 2027. Some jurisdictions, such as Switzerland, also have difficulties with publishing retrospective legislation. The U.K. government announced on January 7, 2026, that the SbS safe harbor would be included in the next Finance Bill, applying to accounting periods starting on or after January 1, 2026.

Second, group entities of MNE groups located in UTPR and IIR jurisdictions will need to file an election for the SbS safe harbor to apply. The election will be included in the GloBE Information Return (GIR) of the relevant Filing Constituent Entity in each jurisdiction, but the format, deadlines for filing and other administrative requirements have not yet been confirmed.

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Third, MNE groups that qualify for the SbS safe harbor will continue to be required to file their GIRs. While the OECD acknowledges that such groups may not be required to complete certain fields in the return, the OECD has not yet published a revised GIR, so the precise extent of the remaining compliance burden is still unclear.

What's Next

The OECD announcement represents a significant shift in the scope of the global minimum tax project. MNE groups within scope of the GloBE Rules will be following these developments closely, particularly focusing on implementation and compliance requirements.

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