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Tax Alert – Canada

Canada's Global Minimum Tax Act substantively enacted as part of Bill C-69

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

On 19 June 2024, Bill C-69, *Budget Implementation Act, 2024, No. 1*, received third reading in the House of Commons and became substantively enacted for Canadian financial reporting purposes.¹ Among other measures, Bill C-69 includes a revised version of Canada's *Global Minimum Tax Act* (GMTA), which was previously released for public comment on 4 August 2023.

The proposed GMTA implements into Canadian domestic law the global minimum tax under Pillar Two as developed by the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework on Base Erosion and Profit Shifting (the Inclusive Framework).

More specifically, the proposed GMTA is intended to implement the income inclusion rule (IIR) and the domestic minimum top-up tax (DMTT) rules that form part of the Model Rules for the Global Minimum Tax (GloBE Rules) that were released by the OECD on 20 December 2021.²

To a large extent, the draft legislative proposals in Bill C-69 (the Revised GMTA Proposal) align with the earlier legislative proposals released in August 2023 (the Initial GMTA Proposal).³ The following summary will focus on certain key differences contained in the Revised GMTA Proposal.

¹ For more information on the income tax measures contained in Bill C-69, refer to [EY Tax Alert 2024 Issue No. 27](#).

² See the [GloBE Rules](#).

³ For more information, refer to [EY Tax Alert 2023 Issue No. 35](#).

Background

Canada is one of 147 members of the Inclusive Framework that have endorsed a two-pillar plan for international tax reform agreed to on 8 October 2021. Pillar One involves the introduction of rules to create new taxing rights in favour of jurisdictions into which goods and services are sold, while Pillar Two involves the introduction of a global minimum tax requirement set at a 15% effective tax rate.

The GloBE Rules apply to Constituent Entities that are members of a Multinational Enterprise (MNE) Group that has annual revenue of €750 million or more in the Consolidated Financial Statements of the Ultimate Parent Entity (UPE) in at least two of the four fiscal years immediately preceding the tested “fiscal year”.

On 4 August 2023, the Department of Finance released for consultation the Initial GMTA Proposal to implement the GloBE Rules, with effect in general for fiscal years of MNEs that begin on or after 31 December 2023. The Initial GMTA Proposal contained concepts included in the GloBE Rules, as well as some elements of the first guidance that was released by the OECD.

The Revised GMTA Proposal has been slightly updated and now also includes concepts included in the second and third rounds of additional guidance released by the OECD.⁴ Since the fourth set of additional OECD guidance was just recently released by the OECD on 17 June 2024, it has not been considered in the Revised GMTA Proposal and may even require the GMTA to be further amended in the future.

The Revised GMTA Proposal generally follows the GloBE Rules with some expected deviations.

Framework

The framework of the Revised GMTA Proposal is as follows:

Part 1 - Interpretation and Application (sections 1 to 13)

- ▶ Definitions contained in subsection 2(1)

Part 2 - Global Minimum Tax (sections 14 to 49)

- ▶ Division 1 - Liability for Tax (sections 14 to 15)
- ▶ Division 2 - Computation of GloBE Income or Loss (sections 16 to 21)
- ▶ Division 3 - Computation of Adjusted Covered Taxes (sections 22 to 28)

⁴ For more information, refer to [OECD/G20 Inclusive Framework releases additional Administrative Guidance on Pillar Two GloBE Rules: Detailed review \(ey.com\)](#) and [OECD/G20 Inclusive Framework releases additional Administrative Guidance on Pillar Two GloBE Rules and update on Pillar One Amount A timeline | EY - Global](#).

- ▶ Division 4 - Computation of Effective Tax Rate and Top-up Amount (sections 29 to 37)
- ▶ Division 5 - Reorganizations and Asset Transfers (sections 38 to 39)
- ▶ Division 6 - Multi-parented MNE Groups (section 40)
- ▶ Division 7 - Elections in relation to Investment Entities (sections 41 to 42)
- ▶ Division 8 - Safe Harbours (sections 43 to 47)
- ▶ Division 9 - Transition Rules (sections 48 to 49)

Part 3 - Domestic Minimum Top-up Tax (sections 50 to 53)

Part 4 - Anti-avoidance (section 54)

Part 5 - General Provisions, Administration and Enforcement (sections 55 to 135)

- ▶ Definitions applying to this Part are contained in subsection 55(1)
- ▶ Division 1 - Duties of Minister (sections 56 to 59)
- ▶ Division 2 - Returns (sections 60 to 63)
- ▶ Division 3 - Payments (sections 64 to 70)
- ▶ Division 4 - Interest (sections 71 to 72)
- ▶ Division 5 - Administrative Charge Under the Financial Administration Act (section 73)
- ▶ Division 6 - Refunds (sections 74 to 79)
- ▶ Division 7 - Records and Information (sections 80 to 81)
- ▶ Division 8 - Assessments (sections 82 to 86)
- ▶ Division 9 - Objections to Assessment (sections 87 to 88)
- ▶ Division 10 - Appeal (sections 89 to 97)
- ▶ Division 11 - Penalties (sections 98 to 105)
- ▶ Division 12 - Offences and Punishment (sections 106 to 115)
- ▶ Division 13 - Inspections (sections 116 to 122)
- ▶ Division 14 - Confidentiality of Information (section 123)
- ▶ Division 15 - Collection (sections 124 to 134)
- ▶ Division 16 - Evidence and Procedure (sections 135 to 137)

Part 6 - Regulations (sections 138 to 141)

As detailed below, we have summarized certain changes that represent a material deviation from the Initial GMTA Proposal.

Note that the placeholder relating to the Undertaxed Profits Rule (UTPR) that was included in the draft GMTA released on 4 August 2023 has been removed.

Financial accounting income

Specific rules apply for the purposes of determining the financial accounting income of a flow-through entity. Broadly speaking, the flow-through entity's net income or loss is excluded from its own financial accounting or loss and allocated to its owners based on their "ownership interest".

The Revised GMTA Proposal clarifies the meaning of "ownership interest" in subsection 17(7) to now refer solely to an interest that carries rights to profits, rather than the broader definition in Article 10.1 of the GloBE Rules, which includes any equity interest with rights to the profits, capital or reserves of an entity.

Marketable transferable tax credits

Subsection 18(16) of the Revised GMTA Proposal introduces the concept of marketable transferable tax credits, both from the perspective of entities generating the credits and from entities purchasing such credits. The rules are intended to be beneficial and allow for both sellers and purchasers of such credits to get favourable Pillar Two treatment for the credits as increases to GloBE income instead of reductions in covered taxes, as intended by the OECD in its administrative guidance.

It should be reiterated that any tax credit, other than a qualified refundable tax credit or a marketable transferable tax credit, should not be treated as GloBE income but should instead generally be treated as a reduction to covered taxes.

International shipping net income or loss exclusion

The Revised GMTA Proposal does not include any changes to the GloBE Rules that apply to international shipping income. However, it should be noted that Bill C-69 proposed changes to the Canadian tax rules in subsection 81(1) of the *Income Tax Act* to exempt from tax the income of Canadian resident corporations earning income from international shipping where certain conditions are met.

The change aligns the Canadian income tax legislation for shipping companies with the OECD's favourable regime that applies to international shipping under the GloBE Rules.

Passive income

Subsections 24(4) and (5) of the proposed GMTA limit the amount of covered taxes relating to controlled foreign companies and hybrid entities pertaining to the entity's "passive income" that can be allocated to 15%.

The term "passive income" was not defined in the Initial GMTA Proposal, but the Revised GMTA Proposal provides the following definition for passive income, which is consistent with Article 10.1.1 of the GloBE Rules:

- (a) A dividend or dividend equivalent;
- (b) Interest or an interest equivalent;
- (c) Rent;
- (d) A royalty;
- (e) An annuity; or
- (f) A net gain from property of a type that produces income described in any of paragraphs (a) to (e).

Qualified flow-through tax benefits

Section 28 of the Initial GMTA Proposal already included the concept of qualified flow-through tax benefits. The Revised GMTA Proposal now also recognizes the proportional amortization method used by some groups for financial accounting purposes and allows for an alternative timing rule to permit for adjusted covered taxes to mirror the accounting treatment around recognition of the credit.

The Revised GMTA Proposal also allows for an irrevocable election for qualified flow-through ownership interest to utilize the proportional amortization method even where such method has not been applied for normal financial reporting purposes. These adjustments are in line with the OECD's July 2023 administrative guidance with respect to the proportional amortization method.⁵

⁵ For more information, refer to [OECD/G20 Inclusive Framework releases additional Administrative Guidance on Pillar Two GloBE Rules and update on Pillar One Amount A timeline | EY - Global](#).

Subsection 28(4) has been added in the Revised GMTA Proposal in order to deem certain investments accounted for as debt to be ownership interests where the investment is treated as an equity interest under tax legislation of the constituent entity and would be treated as equity under the authorized financial accounting standard of the jurisdiction in which the particular tax transparent entity operates. In essence, this rule is intended to allow for groups using International Financial Reporting Standards (IFRS) to fit within the definition of ownership interest even where IFRS would conclude that the investment is a debt investment. This relieving guidance mirrors the OECD's July 2023 administrative guidance and is intended to benefit tax equity partners of tax equity partnerships in countries such as the United States.

Lastly, subsection 28(5) of the Revised GMTA Proposal introduces a new anti-avoidance rule that deems certain ownership interests to not be qualified flow-through ownership interests under certain conditions where there does not appear to be a true economic investment in the entity.

Elections in relation to investment entities

The taxable distribution method election in subsection 42(2) of the Revised GMTA Proposal now explicitly includes insurance investment entities – aligning with developments in OECD guidance.

The taxable distribution method reduces the exposure to top-up tax to the extent that the investment entity makes distributions of its income within a four-year period that the distributions are taxable in the hands of the recipients at or above the minimum rate.

Safe harbours

Given the significant OECD developments on safe harbours that have occurred since the Initial GMTA Proposal was released last August, the Revised GMTA Proposal includes significant revisions to the rules in sections 43 to 47 to align the Canadian Pillar Two regime with the most recent OECD developments.

The Revised GMTA Proposal now includes the permanent qualified domestic minimum top-up tax safe harbour and the simplified calculations safe harbour in respect of non-material constituent entities (NMCE).

A qualified domestic minimum top-up tax (QDMTT) is a domestic minimum tax imposed by a jurisdiction on those constituent entities of an MNE Group that are resident or whose activities constitute a permanent establishment in that jurisdiction. Where an MNE Group qualifies for the QDMTT safe harbour in a particular jurisdiction, only a QDMTT liability would be due, and the top-up tax payable under the GloBE Rules will be deemed to be nil – effectively replacing the QDMTT credit regime by an exemption regime.

An NMCE means a particular constituent entity or a permanent establishment of a particular constituent entity that is not consolidated on a line-by-line basis in the UPE's consolidated financial statements solely on the basis of its size or materiality, provided certain conditions are met.

The primary entity responsible for filing within an MNE group can choose to apply a simplified reporting method for an NMCE for a fiscal year. In essence, it allows for a streamlined approach to determine the income, revenue and tax balances for smaller entities within a larger MNE group based on their proportional contribution to the group's overall results in a specific jurisdiction.

The Revised GMTA Proposal also includes the temporary safe harbours in respect of the three-year transitional country-by-country reporting safe harbour period, as well as the recently released anti-hybrid rules (see subsection 47(14) of the Revised GMTA Proposal).⁶

Transition rules

Limited modifications have been introduced to align the draft GMTA with the additional OECD guidance.

In particular, the Revised GMTA Proposal includes, in subparagraph 48(1)(a)(ii), additional guidance with respect to the transition rules relating to tax credits, ensuring that deferred tax assets (DTA) attributable to tax credit carryforwards are taken into account in computing adjusted covered taxes for purposes of calculating the effective tax rate, and that the limitation of subparagraph 25(2)(a)(iii) of the draft GMTA relating to taking into account deferred tax expenses relating to tax credits (Article 4.4.1(e) of the GloBE Rules) does not apply to these DTAs.

Domestic minimum top-up tax

There are limited changes to the DMTT in Part 4 of the Revised GMTA Proposal. Notably, the determination of covered taxes in the domestic top-up tax amount calculation in section 52 is expanded to address temporary differences in situations where the Canadian DMTT rules in Part 4 apply before the MNE group is subject to an IIR or UTPR in any jurisdiction around the world.

⁶ For more guidance on the OECD rules, to which the GMTA aligns, see https://www.ey.com/en_gl/tax-alerts/oced-g20-inclusive-framework-releases-additional-administrative-0.

Administrative matters

Part 5 of the Revised GMTA Proposal provides a framework for administration and enforcement. Part 5 addresses returns, payments of tax, interest, refunds, record retention, assessments, objections to assessments, appeals, penalties, offences and punishment, inspections and collection, among other topics.

In large measure, the provisions in this part are modelled after similar provisions in the *Income Tax Act*, although with certain notable differences. Part 5 of the Revised GMTA Proposal remains generally aligned with the Initial GMTA Proposal.

While the ranges of penalty are quite broad, it should be noted that the Revised GMTA Proposal also includes imprisonment for different offences, including failure to file, keep records, pay and even comply with any provision of the GMTA (see sections 106 to 113 of the Revised GMTA Proposal).

What's next

The Revised GMTA Proposal will now continue to advance in the legislative process and is expected to receive Royal Assent later this month.

Given the recent OECD Guidance release – and the fact that further guidance is anticipated – we should expect the GMTA to be itself amended in the future to remain aligned to the global framework.

Learn more

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