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The release of the "Side-by-Side" Package by OECD/G20 Inclusive Framework

On 5 January, the OECD published the "Global Anti-Base Erosion Model Rules (Pillar Two), Side-by-Side Package" (the "Package"), as agreed by members of the Inclusive Framework on BEPS. The Package is intended to respond to U.S. concerns relating to the global minimum tax (Pillar Two) while safeguarding the overall coherence and integrity of the system. Its content was also presented during a webcast of the OECD Secretariat on 13 January 2026.

The Package introduces a **Side-by-Side Safe Harbor**, which applies where the ultimate parent entity (UPE) of an MNE Group is located in a jurisdiction with both an "eligible domestic tax regime" and an "eligible worldwide tax regime". The Safe Harbor neutralizes any Income Inclusion Rule (IIR) and Undertaxed Profit Rule (UTPR) top-up tax for fiscal years beginning on or after 1 January 2026.

In addition, an **UPE Safe Harbor** shields domestic profits in qualified UPE jurisdictions from the application of any UTPR, replacing the transitional UTPR safe harbor as from 1 January 2026, with eligibility tied to the existence of an "eligible domestic tax system".

Neither the Side-by-Side Safe Harbor nor the UPE Safe Harbor prevent the application of qualified domestic minimum top-up taxes (**QDMTTs**), which continue to operate for all MNE Groups, without pushdown of CFC or other owner-level taxes, preserving the domestic minimum tax priority.

The package substantially changes the rules in relation to tax incentives. With the introduction of a new **Substance-Based Tax Incentives (SBTI) Safe Harbor**, additional relief is provided for substance-based incentives that meet certain conditions, overcoming the existing guidance on Qualified Refundable Tax Credits (QRTCs) and Marketable Transferrable Tax Credits (MTTCs) and with potentially more favorable effects.

A **permanent Simplified ETR Safe Harbor** is introduced, together with the extension of the Transitional CbCR Safe Harbor by one year, and the outline of a work program on further simplifications.

Additional details and our initial observations are provided below.

I The Side-by-Side System

a. *Side-by-Side Safe Harbor*

The Side-by-Side Safe Harbor allows an MNE Group with its UPE in a jurisdiction with a Qualified SbS Regime to benefit from zero top-up tax under both the IIR and UTPR, beginning with fiscal years starting on or after 1 January 2026.

A jurisdiction has a **Qualified SbS Regime** if the following conditions are jointly met:

1) it has an “eligible domestic tax system”;
2) it has an “eligible worldwide tax system”;
3) it provides a foreign tax credit for Qualified Domestic Top-up Taxes (QDMTTs) on the same terms as other creditable covered taxes; and
4) it enacted those regimes by 1 January 2026 (or a later date per specified procedures).

An “**eligible domestic tax system**” requires:

a) at least a 20% statutory nominal corporate income tax (CIT) rate after preferential and sub-national adjustments,
b) a QDMTT or a corporate alternative minimum tax based on financial statement income with a nominal rate of at least 15% applicable to a substantial portion of in-scope MNE income, and
c) no material risk that in-scope UPE-headquartered MNEs will face an effective rate on domestic profits below 15%.

An “**eligible worldwide tax system**” requires the existence of a comprehensive regime which:

a) taxes all resident corporations on foreign income, covering both active and passive income from branches and CFCs whether distributed or not, save from limited exclusions consistent with minimum tax policy,
b) incorporates substantial unilateral BEPS risk mitigation and,
c) present no material risk that in-scope MNEs will face an effective tax rate on foreign profits below 15% after factoring in incentives aligned with GloBE treatment.

The Side-by-Side Safe Harbor will not affect the application of the IIR or the UTPR with respect to any MNE Group with its UPE located in a jurisdiction which does not have a Qualified SbS Regime. For example, an MNE Group with its UPE located in a jurisdiction which does not have a Qualified SbS Regime is not eligible to elect the SbS Safe Harbour, and both the IIR and UTPR will continue to apply to all of its operations, irrespective of whether such MNE Group has constituent entities other than the UPE (including intermediate parent entities) located in jurisdictions that have a Qualified SbS Regime.

Where the Inclusive Framework determines that a jurisdiction has a Qualified SbS Regime, such jurisdiction will be listed on a central record maintained by the OECD. **The United States is currently the only jurisdiction listed in the OECD’s updated central record** of legislations with transitional qualified status that has a qualified side-by-side regime. Upon request by a member jurisdiction, the Inclusive Framework will assess a jurisdiction’s preexisting tax regime against the eligibility criteria for a Qualified SbS Regime by the end of the first half of 2026. In addition, the Inclusive Framework will assess the eligibility as a Qualified SbS Jurisdiction of any other Inclusive Framework jurisdiction once that jurisdiction initiates such a request to the Inclusive Framework in 2027 or 2028.

A jurisdiction listed on the central record is required to notify the Inclusive Framework if it materially amends its Qualified SbS Regime, within three months of the relevant change. Subsequently, the Inclusive Framework will consider the best path forward. For these purposes, an amendment is material if it could reasonably be expected to impact an Inclusive Framework determination of eligibility as a Qualified SbS Regime (*e.g.*, a material change could include a reduction in the corporate tax rate, the repeal of a CFC Tax Regime or the introduction of a new income exclusion, exemption or preferential regime). Conversely, a jurisdiction is not required to notify the Inclusive Framework if it implements an amendment related to an aspect of a Qualified SbS Regime that was not taken into account in establishing that there was no material risk that in-scope MNE Groups headquartered in the jurisdiction would be subject to an effective tax rate below 15% on the profits of their domestic or foreign operations. Nevertheless, a jurisdiction is still required to notify the Inclusive Framework if it has materially expanded the availability of a tax incentive or preferential regime.

b. UPE Safe Harbor

The Package replaces the Transitional UTPR Safe Harbor (which was set to expire in any case) with a permanent UPE Safe Harbor, applicable in relation to fiscal years starting on or after 1 January 2026. Under the UPE Safe Harbor, the top-up tax for the UPE jurisdiction is deemed to be zero for UTPR purposes for fiscal years in which the UPE is located in a jurisdiction with a Qualified UPE Regime.

A Qualified UPE Regime requires an eligible domestic tax system, as defined for purposes of the Side-by-Side Safe Harbor, enacted and in effect as of 1 January 2026. The Inclusive Framework will, upon request, assess member jurisdictions' preexisting regimes against the Qualified UPE Regime criteria by the end of the first half of 2026, and qualifying jurisdictions will be listed in the central record. This may be relevant in particular for China. The rules governing the notification of material changes to a Qualified SbS Regime apply equally for the purposes of the UPE Safe Harbour.

c. Effective date

The Side-by-Side Safe Harbour and the UPE Safe Harbor do not affect Fiscal Years commencing before 1 January 2026, namely tax periods 2024 and 2025, for which the ordinary GloBE rules and temporary Safe Harbors would continue to apply. The Side-by-Side Safe Harbour and the UPE Safe Harbor are instead applicable for **Fiscal Years commencing on or after 1 January 2026**, or a later year as listed in the Central Record. Where a jurisdiction adopts the safe harbors after 1 January 2026, it is expected to do so with retrospective effect taking into account the fact that it is an election which is wholly relieving for taxpayers.

If a jurisdiction is unable to adopt the safe harbor from 1 January 2026 due to constitutional grounds or other superior law, that jurisdiction must implement the safe harbours from the earliest practical date. In such a case, each UTPR Jurisdiction (including those that have adopted the safe harbours) would be taken into account in applying the UTPR allocation formula under Article 2.6.1 of the GloBE Rules, with the consequence that a jurisdiction that has not yet adopted the safe harbours would not be allocated more than its UTPR percentage of the UTPR top-up tax amount.

d. QDMTT priority

The Side-by-Side Safe System does not affect the application of QDMTTs, that will continue to apply, including in relation to the foreign operations of MNE Groups headquartered in a jurisdiction with a Qualified SbS Regime. QDMTTs will be calculated without taking into account taxes imposed on foreign permanent establishments or controlled foreign companies. Any QDMTT will be creditable under the global minimum tax and any Qualified SbS Regime or Qualified UPE Regime. Accordingly, a jurisdiction cannot allow an MNE Group to apply the Side-by-Side Safe Harbour and the UPE Safe Harbor for the purposes of the QDMTT.

II Substance-Based Tax Incentive Safe Harbor

The SBTI Safe Harbor preserves certain substance-connected tax incentives from the application of the minimum tax. Under the SBTI Safe Harbor, MNE Groups may treat Qualified Tax Incentives (QTIs) as additions to Covered Taxes for the Constituent Entities in the relevant jurisdiction, with the consequence that the top-up tax corresponding to the QTI is deemed zero.

QTIs are either a) expenditure-based, or b) production-based incentives that are generally available to taxpayers and that meet certain conditions. In particular:

- ***Expenditure-based tax incentive*** refers to tax relief calculated directly on a portion of certain qualifying expenditures incurred by the taxpayer. Tax incentives that exempt a certain amount of income from taxation could also be treated as a QTI expenditure-based tax incentive, provided that the exempted income is calculated directly by reference to qualifying expenditures. However, expenditure-based tax incentives are not considered QTIs if, together with any other incentives on the same expenditure, they provide a tax benefit exceeding the underlying cost. For these purposes, the value of the tax benefit is defined as the maximum amount by which the taxpayer's tax liability may be reduced as a result of the incentive. Accordingly, in the case of a tax credit, the value corresponds to the amount of the credit, whereas for incentives provided in the form of a super-deduction, enhanced allowance, or exemption, the value of the tax benefit is determined by multiplying the amount of the additional deduction or excluded income by the applicable statutory tax rate.
- ***Production-based tax incentive*** refers to tax relief based on the amount of production or reduction in industrial byproducts during the production by the taxpayer. The definition is, however, subject to a number of limitations intended to ensure that production-based tax incentives are eligible only where the tax incentive is directly linked to the level of activity carried out in the relevant jurisdiction. They must be (i) calculated based on the volume (not the value) of production, (ii) related to the production of tangible property (including manufacturing, electricity generation, and processing activities like extraction and refining), and (iii) based on units of production generated within the jurisdiction.

The QTI definition requires that the incentive is calculated based on expenditure that has been incurred or output that has been produced by the time that the amount of the incentive is determined. It therefore excludes incentives from being eligible when the amount of the incentive is calculated in respect or expenditures or production that had already been made before the incentive was in effect or on the basis of a commitment to future expenditure or production when no actual expenditure has been incurred or units have been produced when the amount of the incentive is determined.

Unlike QRTCs and MTTCs, QTIs are not included in GloBE Income and hence in principle the treatment as a QTI is more beneficial – in terms of ETR - to an MNE Group than the treatment as QRTCs and/or MTTCs.

A Substance Cap limits the allowance for QTIs for tax year to the greater of 5.5% of payroll costs or depreciation of tangible assets. Provided the MNE Group makes a five-year election, the cap can be replaced with 1% of the carrying value of eligible tangible assets located in the jurisdiction (excluding land and other non-depreciable assets). If the MNE Group revokes an election to apply the second method, then the assets for which carrying value was previously included in calculating the Substance Cap must be excluded from the calculation of the depreciation and depletion expense.

An MNE Group can make an Annual Election to treat certain QRTCs or MTTCs as QTI. In such cases, the QRTC or MTTC is first excluded from GloBE Income and treated as a reduction to Adjusted Covered Taxes and is subsequently added back to increase the Adjusted Covered Taxes. The Substance Cap applies to the total adjustment for QTIs. The election can be made for some QRTCs or MTTCs and not others and can also be made for only part of the income of a QRTC or MTTC.

The Inclusive Framework is developing further guidance on the identification of benefits that are related to the implementation of the global minimum tax (Related Benefits). This guidance will be supported by an ongoing monitoring process to ensure a co-ordinated assessment of whether benefits are Related Benefits.

III Simplified ETR Safe Harbor

The permanent Simplified ETR Safe Harbor applies from fiscal years commencing on or after 31 December 2026, with an option for jurisdictions to apply it from 31 December 2025 under certain conditions. Under the Simplified ETR Safe Harbor, where the Simplified ETR for a Tested Jurisdiction is at least 15% (the minimum rate) or there is a simplified loss, an MNE Group may elect to deem the top-up tax for that jurisdiction to be zero for that fiscal year.

The Simplified ETR is determined by reference to simplified income and simplified covered taxes, calculated using reporting package data on a jurisdictional basis, with a combination of mandatory and elective adjustments. Separate computations are required for joint ventures, minority-owned entities, and sub-groups.

Simplified income is derived from the aggregate jurisdictional profit before tax, adjusted to reflect, *inter alia*, the exclusion of qualifying dividends and excluded equity gains or losses, the add-back of policy-disallowed expenses (including fines and penalties of EUR 250,000 or more), sector-specific adjustments applicable to certain financial services and shipping entities; and conditional adjustments for equity-accounted items. In line with the Transitional CbCR Safe Harbour, the Simplified ETR Safe Harbor also allows for simplifications to the jurisdictional income calculation in the case of mergers and acquisitions.[1]

Simplified covered taxes are based on the current and deferred tax expense of constituent entities located in the tested jurisdiction, subject to several adjustments. These include, *inter alia*, the exclusion of non-covered taxes, the removal of taxes attributable to amounts excluded from simplified income, adjustments for uncertain tax positions, the exclusion of current tax amounts not expected to be paid within three years, and a series of deferred tax–specific simplifications (including the exclusion of deferred tax expense movements related to deferred tax liabilities that would otherwise be subject to tracking under the Pillar Two recapture rule, a simplified mechanism for recalculating deferred tax expense at the 15% rate, simplified

[1] The treatment of purchase price allocation (PPA) effects arising from M&A transactions departs materially from the full GloBE mechanics by allowing, subject to strict conditions, a broad reliance on financial accounting outcomes. As a general rule, Chapter 6 of the GloBE Rules (Corporate Restructurings and Holding Structures) continues to apply; however, the Safe Harbour allows removing the requirement to exclude PPA accounting adjustments from the financial accounts when the MNE Group's financial accounts include both income and deferred taxes in relation to these items, provided that (i) the tax basis of the acquired assets and liabilities (other than goodwill) remains unchanged as a result of the transaction, and (ii) the related deferred tax assets or liabilities are recognised at a rate equal to or exceeding the minimum rate. By contrast, goodwill and other intangibles with indefinite lives are subject to heightened integrity safeguards: any goodwill impairment or amortisation must be added back to simplified income where no corresponding deferred tax liability exists, or where such liability is recorded below the minimum rate, with any related deferred tax reversals excluded from simplified taxes.

treatment of deferred tax asset arising in simplified loss years, and the disregard of accounting valuation allowances and recognition adjustments). Subject to prescribed conditions, taxpayers may also elect to benefit from the treatment of qualified refundable tax credits (QRTCs), marketable transferable tax credits (MTTCs), and the newly introduced substance-based tax incentive safe harbor (QTIs). Post–year-end adjustments to income or covered taxes are generally reflected in the simplified income or taxes of the fiscal year in which they accrue; however, a 12 month post-closing net reduction in tax may be excluded from the covered taxes, provided that its inclusion would reduce the relevant Simplified ETR below the Minimum Rate and, following the adjustment, either the prior year's Simplified ETR or its GloBE ETR remains at or above the Minimum Rate.

Certain jurisdictions have adopted the local financial accounting standard rule for purposes of the QDMTT and would therefore by default require the Simplified ETR calculations to be made in accordance with the local financial accounting standard under the same conditions as the full QDMTT calculations, rather than data derived from the group's consolidated financial statements. Where such jurisdictions permit taxpayers to elect to use consolidated financial statements, that election must be made consistently across all jurisdictions in which it is available and must be applied on a continuing basis in subsequent years for purposes of the calculation.

The Simplified ETR Safe Harbor also incorporates:

- **specific transfer pricing provisions**, including an election allowing calculations to rely on arm's length pricing reflected in local tax returns, consistent with applicable transfer pricing policies;
- **a simplified framework for allocating cross-border income and taxes**, broadly aligned with the approach adopted under QDMTTs, pursuant to which taxes allocable from a Main Entity to a permanent establishment or from a Constituent Entity owner to a subsidiary are generally excluded from the Simplified ETR Safe Harbour computation. Against this baseline, the guidance introduces two elective alternatives: first, a PE Simplification Election, allowing income and related taxes attributable to a permanent establishment to be recognised at the level of the Main Entity for jurisdictional ETR purposes; and second, a five-year election permitting certain taxes that would otherwise be excluded to be allocated to Constituent Entities located in non-QDMTT Tested Jurisdictions and included in the ETR computation of those jurisdictions.
- **targeted rules** addressing tax-neutral ultimate parent entities, tax-transparent entities, stateless entities, and investment entities; and
- **integrity provisions** requiring further adjustments where necessary to ensure outcomes consistent with four core principles: matching intragroup income and expenses; full allocation of income to a tested jurisdiction; prevention of multiple deductions of the same expenses or losses; and the recognition of tax amounts only once and in a single jurisdiction.

Eligibility is tested annually and re-entry requires two years without a top-up tax liability after falling out of the safe harbor, which can potentially be satisfied also via other safe harbors.

IV Extension of the Transitional CbCR Safe Harbor

The Transitional CbCR Safe Harbor is extended for one additional year. For 2026 and 2027 the Simplified ETR threshold under that transitional safe harbor must be at least 17%. The extension may benefit groups relying on the transitional safe harbor's routine profits or de minimis tests, as those options are not currently included in the new permanent Simplified ETR Safe Harbor.

V Work programme for additional simplification

The Inclusive Framework will continue the ongoing work on a routine profits test and a de minimis test expected to conclude by June 2026. The Inclusive Framework is also pursuing further simplification of Pillar Two for groups that temporarily fall out of the new safe harbor and exploring integration of the simplified calculations in the Simplified ETR Safe Harbour into the design of the ordinary GloBE Rules.

Further work will also be carried out to streamline reporting obligations. This work will consider adaptations to the GloBE Information Return (GIR), the GIR XML Schema and the related validation rules to apply the agreed safe harbours. To support a co-ordinated implementation of such reporting obligations and prevent issues that might arise in the exchange of GIR information, this strand of work will be concluded in the first half of 2026, allowing jurisdictions to adopt the relevant changes to the GIR in time for the Fiscal Years for which the agreed safe harbours apply.

VI Stocktaking by 2029

The Package is underpinned by a formal commitment of the Inclusive Framework to safeguard the integrity of the global minimum tax and to mitigate any risks arising from its interaction with the Side-by-Side system. To this end, the Inclusive Framework will undertake an evidence-based analysis, to be concluded by 2029, assessing the combined operation of the global minimum tax and the Side-by-Side system, including the extent of QDMTT implementation across jurisdictions. The stock take will examine potential unintended effects, such as emerging competitive imbalances between MNE Groups and adverse behavioral responses, including profit-shifting strategies, inversions, or a material concentration of profits in low-tax jurisdictions lacking QDMTTs.

Based on the outcomes of this exercise, the Inclusive Framework commits to take corrective action where substantial level-playing-field or BEPS risks are identified, with measures calibrated to the nature and materiality of the risks and designed to preserve the core policy objectives of both the global minimum tax and the Side-by-Side framework. The process will also serve as a basis to identify further opportunities for alignment and simplification.

VII Initial remarks

The Package shows that consensus was indeed found at multilateral level on the measures contained therein. It introduces several novelties into the GloBE Rules, effectively granting the U.S. with the exemption from the IIR and UTPR of its headquartered groups. The "old" rules remain fully applicable for FYs 2024 and 2025, and where jurisdictions are unable to implement the "new" rules from 1 January 2026, the IIR or UTPR may still (partially) apply during 2026. This means that, in principle, there should be no accounting impact for FY 2024 or FY 2025.

The multilateral bet appears now to be on QDMTTs and their widespread adoption to ensure a level playing field. This strategic pivot emphasizes domestic tax collection as the primary mechanism for enforcing the global minimum tax. Time will tell whether jurisdictions will feel compelled to introduce or maintain such rules, particularly if there is no prospect of a UTPR applying to certain MNE Groups, which lessens the incentive for jurisdictions to prevent "leaving tax money on the table" for other countries to collect. The success of this approach hinges on near-universal QDMTT adoption; otherwise, gaps could emerge, potentially creating competitive distortions between MNEs subject to a QDMTT and those operating in jurisdictions without one.

The Simplified ETR Safe Harbour is intended to reduce compliance obligations once the Transitional CbCR Safe Harbour expires. However, its design raises questions about its effectiveness as a simplification measure. Given the number of mandatory and optional adjustments required, the safe harbour resembles more of an alternative route for GloBE calculations than a genuine simplification. This alternative framework appears designed to address some of the practical challenges and complexities created by the ordinary GloBE rules, rather than providing a straightforward compliance relief.

Importantly, the Substance-based Tax Incentives Safe Harbour provides a substantial change in approach regarding the treatment of tax incentives under the GloBE rules. It departs from the previous treatment based on accounting standards and replacing it with a defined tax policy choice to safeguard tax incentives with certain features. It will be interesting to see how the provided cap(s) unfold in practice and which impact they will have on calculations, as well as on the modernization of countries' incentives policies.

While the U.S. is already considered an eligible jurisdiction for the Side-by-Side Safe Harbour by the Inclusive Framework, other jurisdictions could theoretically also qualify, subject to a request for assessment of their tax systems. It will therefore be important to monitor whether jurisdictions introduce eligible domestic and/or worldwide tax systems in the coming years and how they will be assessed. In that context, it is worth noting that the definitions of "eligible domestic tax system" and of "eligible worldwide tax system" appear to contain distinct elements of subjectivity, for example in relation to the assessment of the requirement of a "below-15% ETR material risk" or the existence of anti-BEPS measures.

Local and group-level filing obligations under the GloBE rules remain largely unchanged. This includes the requirement for Multinational Enterprise (MNE) Groups to prepare and submit detailed GloBE Information Returns (GIR), typically in a standardized XML format, to tax authorities. However, a key simplification has been introduced for MNE Groups operating within a Qualifying Side-by-Side Regime. These groups will be permitted to submit a "simplified" GIR. This simplified version is expected to require less granular data reporting compared to the standard GIR. The OECD anticipates that the XML schema for this simplified GIR will be available from the first half of 2026. From a practical standpoint, while the simplified GIR aims to reduce compliance burdens, MNEs will still need to undertake additional work to adapt their existing data collection processes and systems to align with the new reporting format once it is released.

Finally, the introduction of the new safe harbors has sparked debate on whether the current EU legal framework can accommodate these changes without a formal amendment to the EU Minimum Tax Directive. On 12 January 2026 the European Commission published a notice acknowledging the release of the OECD's administrative guidance. The Commission confirmed that the new safe harbors can be applied by Member States by relying on Article 32 of the EU Minimum Tax Directive, which allows for the use of OECD guidance to ensure uniform application. While this indicates no current intention to amend the Directive itself, it is important to note that amendments to domestic Pillar Two legislation within each Member State may still be necessary to implement these new rules and their related compliance obligations effectively. In any case, amendments to domestic laws implementing the Directive may well have public finance effects. Moreover, there may be additional difficulties in bringing the Substance-Based Tax Incentives Safe Harbor within the scope of Article 32, given that such a safe harbor may not result in the Top-up Tax due by a group in a jurisdiction being deemed to be zero.

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