



# Introduction of the Pillar Two Global Minimum Tax Rules

In October 2021, members of the OECD/G20 Inclusive Framework on BEPS agreed to a two-pillar solution to address the tax challenges arising from the digitalization of the economy. The second pillar of such solution (“Pillar Two”) introduces certain Global anti-Base Erosion Rules (“GloBE rules”), which is intended to ensure that in-scope multinational enterprises (“MNEs”) pay a minimum effective tax rate (“ETR”) of 15% in the jurisdictions in which they operate, and if such ETR falls short of 15%, the shortfall is further taxed by using an (1) Income Inclusion Rule (“IIR”) and/or (2) an Undertaxed Payment Rule (“UTPR”).

Currently, many countries have started domestic legislative procedures to implement the Pillar Two GloBE rules in their domestic tax laws. On December 31, 2022, Korea enacted new Global Minimum Tax Rules, and the rules are included in the Adjustment of International Taxes Act in the newly established Section 5 (Articles 60 ~ 86), thereby making Korea the first country to codify the GloBE rules into domestic legislation. These rules are effective for fiscal years beginning on or after January 1, 2024.

## Scope and calculation of ETR

**Scope:** The rules apply to MNEs with annual consolidated revenue of EUR 750 million (approx. KRW 1.1 trillion) or more in at least two of the four fiscal years immediately preceding the tested fiscal year.

**Calculation of ETR:** The ETR is calculated by dividing the total adjusted tax expenses of all the MNEs’ constituent entities (“CEs”) located in the same country by their total adjusted net income (“GloBE income”). The tax expense and net income amounts are based on those recognized on the CEs’ financial statements. If the ETR is lower than 15% in the jurisdiction, the shortfall is calculated (“Top-Up Tax”) and paid by other CEs within the MNE group.

**De minimis exclusion:** when the average GloBE revenue and GloBE income or loss in the jurisdiction are below EUR 10 million and the average sales are below EUR 1 million, the Top-Up Tax of each CE is considered to be nil.

**Excluded entities:** (1) Governmental Entity, International Organization, Non-profit Organization, and Pension Fund, (2) investment fund and real estate investment vehicle that are the UPE and (iii) entities directly or indirectly owned by (1) or (2).

**Jurisdiction of each CE:** The jurisdiction of each CE is where it is a tax resident or has effective management. For a flow-through entity, its jurisdiction is where it is established.

## Paying Top-Up Tax

### Income Inclusion Rule (IIR)

Pursuant to the IIR, the Ultimate Parent Entity (“UPE”)

is primarily liable for the Top-Up Tax of all low-taxed CEs (“LTCEs”). If IIR does not apply in the jurisdiction of the UPE (e.g., the jurisdiction has not adopted the GloBE Rules, etc.), the Top-Up Tax is imposed on the next intermediate parent entity (“PE”) which is required to pay the Top-Up Tax in its jurisdiction (“top-down approach”).

### Undertaxed Payment Rule (UTPR)

The UTPR is applied in cases where the UPE or other PEs are located in jurisdictions that have not implemented the IIR, and under this rule, the other CEs in the MNE group are required to remit their allocable portions of the Top-Up Tax to their respective relevant tax authorities. According, under the UTPR, to the extent that the Top-up Tax attributable to a LTCE in the MNE group is not fully paid by a UPE or PE in the group (e.g., due to being located in a low-tax jurisdiction, or one that has not yet implemented the GloBe rules), a Korean CE would be responsible for paying an allocable portion of such Top-up Tax along with other CEs in the MNE group that has adopted the UTPR.

Korean CE’s allocable portion of the Top-up Tax is as follows:

$$\begin{aligned} &\text{Top-up Tax of LTCEs unpaid by UPE/PEs} \times \left( \frac{\# \text{ of employees of Korean CE}}{\# \text{ of employees of all CEs with UTPR}} \times 50\% \right) \\ &+ \left( \frac{\text{NBV of tangible assets of Korean CE}}{\text{NBV of tangible assets of all CEs with UTPR}} \times 50\% \right) \end{aligned}$$

### Filing and Payment

GloBE Information Return filing and Top-up Tax payment: The due date for the return and the Top-Up Tax payment is 15 months (18 months in the case of the first year of application) from the last day of the fiscal year.

### What to prepare

Due to the Pillar Two Global Minimum Tax Rules, additional Korean tax burdens may be incurred by Korean MNEs (through the IIR) and foreign MNEs that have either

subsidiaries or permanent establishments in Korea (through the UTPR) if they have LTCEs in their MNE group. For the latter case in particular, foreign MNEs whose parent entities are in countries that have not yet implemented the GloBE rules may need to pay significant taxes to Korean tax authorities via the application of the Korean UTPR. In this regard, not only is it important to monitor further legislative activity in Korea (i.e., Enforcement Decrees laying out detailed rules, such as safe harbor rules, have not yet been introduced), it is also important to closely monitor the global progress in adoption of the GloBE rules.



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