The relationship between CbC Reporting and the transitional safe harbour of the Global Minimum Tax

Imola Boróka Vasas
Pillar 2 Specialist

National Tax and Customs Administration

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What is CbC Reporting?

- Under BEPS Action 13, MNEs file an annual country-by-country report (CbC report) including information on their activities, returns and tax paid in each jurisdiction in which they do business

What is the transitional CbCR Safe Harbour of Global Minimum Tax?

- A temporal measure that would effectively exclude an MNE’s operations in certain lower-risk jurisdictions from the scope of GloBE in the initial years;
- The safe harbour would allow an MNE to avoid undertaking detailed GloBE calculations in respect of a jurisdiction if it can demonstrate, based on its qualifying CbC Report and financial accounting data, that in that jurisdiction it meets one of the three tests; the de minimis test, the ETR test, or the routine profits test.

What is the SCOPE of CbCR and Global Minimum Tax?

- A CbC report must be filed by all MNEs with group revenues in excess of **EUR 750 million** (or equivalent in another currency)
- The GloBE Rules will apply to the Constituent Entities of an MNE Group with consolidated revenues of at least **EUR 750 million** in at least two of the four prior Fiscal Years.

Overlap between CbC Reporting and Global Minimum Tax

- The transitional CbCR Safe Harbour relies on CbCR data for calculating an MNE’s revenue and income on a jurisdictional basis.
- Because the GLOBE Rules and the rules for CbCR have a similar scope it is expected that MNEs that are subject to the GloBE Rules will generally already be collecting CbCR information.
- The Rules for identifying Constituent Entities and allocating income to a jurisdiction under CbCR are broadly in line with those in the GloBE Rules.
- CbCR serves as a proxy for excluding the low-risk jurisdictions from the information collection and compliance requirements of the GLOBE Rules.

Transitional CbCR Safe Harbour RULE

During the Transition Period, the Top-up Tax in a jurisdiction for a Fiscal Year shall be deemed to be zero where it meets one of the following tests:

a. De Minimis Test - the MNE Group reports Total Revenue of less than EUR 10 million and Profit (Loss) before Income Tax of less than EUR 1 million in such jurisdiction on its Qualified CbC Report for the Fiscal Year; or

b. ETR Test - the MNE Group has a Simplified ETR that is **equal to or greater than** the Transition Rate in such jurisdiction for the Fiscal Year; or

c. Routine profits Test - the MNE Group's Profit (Loss) before Income Tax in such jurisdiction is equal to or less than the Substance-based Income Exclusion amount, for constituent entities resident in that jurisdiction under the CbCR, as calculated under the GloBE Rules.

Transitional CbCR Safe Harbour RULE

Simplified Covered Taxes is a jurisdiction’s income tax expense as reported on the MNE Group’s Qualified Financial Statements, after eliminating any taxes that are not Covered Taxes and uncertain tax positions reported in the MNE Group’s Qualified Financial Statements.

Simplified ETR is calculated by dividing the jurisdiction’s Simplified Covered Taxes by its Profit (Loss) before Income Tax as reported on the MNE Group’s Qualified CbC Report.

Transition Period covers all of the Fiscal Years beginning on or before 31/12/2026 but not including a Fiscal Year that ends after 30/6/2028.

Transition Rate means:

a. 15% for Fiscal Years beginning in 2023 and 2024;

b. 16% for Fiscal Years beginning in 2025; and

c. 17% for Fiscal Years beginning in 2026.

Source of Information

Qualified CbC Report means a Country-by-Country Report prepared and filed using Qualified Financial Statements.

Total Revenue means an MNE Group's Total Revenues in a jurisdiction as reported on its Qualified CbC Report.

Profit (Loss) before Income Tax means an MNE Group's Profit (Loss) before Income Tax in a jurisdiction as reported on its Qualified CbC Report.

Qualified Financial Statements means:
a. the accounts used to prepare the Consolidated Financial Statements of the UPE;
b. separate financial statements of each Constituent Entity provided they are prepared in accordance with either an Acceptable Financial Accounting Standard or an Authorised Financial Accounting Standard if the information contained in such statements is maintained based on that accounting standard and it is reliable; **or**
c. in the case of a Constituent Entity that is not included in an MNE Group's Consolidated Financial Statements on a line-by-line basis solely due to size or materiality grounds, **the financial accounts of that Constituent Entity that are used for preparation of the MNE Group's CbC Report.**

Source of Information- Profit (Loss) and Revenue in CbC Report

Overview of allocation of income, taxes and business activities by tax jurisdiction

Name of the MNE group: Fiscal year concerned: Currency used:											
Tax Jurisdiction	Revenues			Profit (Loss) Before Income Tax	Income Tax Paid (on cash basis)	Income Tax Accrued – Current Year	Stated capital	Accumulated earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							

Source of Information - Covered Taxes

- The measure of taxes chosen for the purpose of the safe harbour is **income tax expense as recorded in a Constituent Entity's financial accounts**
  - **Provided that the Constituent Entity's income is included in the CbC Report**, but does not include taxes that are not convered taxes as described in Article 4.2.2. of the Model Rules.
- The jurisdiction's simplified covered taxes is the aggregate simplified covered taxes of the Constituent Entities resident in that jurisdiction for CbCR purposes.
- The income tax expense for the Simplified ETR calculation means including deferred taxes in the ETR numerator.
- Removing of uncertain tax positions from the income tax expense

Simplified ETR Test

$$\text{Simplified ETR} = \frac{\text{Jurisdiction's simplified covered taxes}}{\text{Jurisdiction's Profit before tax (CbCR)}}$$

Transition Rate means:

a. 15% for Fiscal Years beginning in 2023 and 2024;

b. 16% for Fiscal Years beginning in 2025; and

c. 17% for Fiscal Years beginning in 2026.

Example for simplified ETR Test	data in million EUR
2024. Fiscal Year	
Simplified Covered Taxes	0,33
Profit Before Taxation, as per CbC Report	2,5
Simplified ETR, min.15%	**13,2%**
2025. Fiscal Year	
Simplified Covered Taxes	0,3
Profit Before Taxation, as per CbC Report	1,8
Simplified ETR, min. 16%	**16,6667%**
2026. Fiscal Year	
Simplified Covered Taxes	0,3
Profit Before Taxation, as per CbC Report	1,7
Simplified ETR, min. 17%	**17,6471%**

Example for Simplified ETR Test - continued

2024. Fiscal Year	
Simplified ETR transition rate: 15%	**13,2%**
2025. Fiscal Year	
Simplified ETR transition rate: 16%	**16,6667%**
2026. Fiscal Year	
Simplified ETR transition rate: 17%	**17,6471%**
CbCR Safe harbour does not apply due to the „Once out always out approach"(provided that the other two test do not work either), even though the test is positive for 2025 and 2026.	

Simplified ETR Test does not apply for computing GloBE Tax Liability

- CbC Report must not be used to compute a GloBE tax liability, if the transitional safe harbour does not apply;

- FANIL – Financial Accounting net Income or Loss

FANIL $\xrightarrow{\text{Adjustments}}$ **GLOBE Income**

ETR calculation for GloBE Tax Liability

- The **ETR** for a jurisdiction is equal to the sum of the **Adjusted Covered Taxes** of each Constituent Entity located in the jurisdiction for the Fiscal Year divided by the **Net GloBE Income** of the jurisdiction.
- An ETR is not computed for a jurisdiction that has a Net GloBE Loss for the Fiscal Year.
- The Net GloBE Income or Loss of a jurisdiction is determined by aggregating all of the GloBE Income or Loss of all Constituent Entities located in the same jurisdiction
- The taxes and income attributable to Ownership Interests held by persons that are not Group Entities are taken into account in the ETR calculation.

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Thank you for your attention!