



# Tax Alert

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## Pillar Two Rules on Domestic Minimum Top-up Tax

Global Minimum Tax (GMT) also referred to as Pillar Two minimum top-up tax, is a series of rules endorsed by the OECD/G20/Inclusive Framework (IF) member countries on Base Erosion and Profit Shifting (BEPS) to address tax challenges of digitalisation of the economy and tax competition.

### Kenya Adopts OECD Global Minimum Tax

Kenya adopted Global Minimum Top-up Tax (GMTT) which seeks to ensure that top-up tax on low-taxed profits of Multinational Enterprises (MNEs) Groups operating in Kenya are imposed and collected in Kenya.

In this alert, we address some of the most frequently asked questions regarding the implementation of the Global Minimum Top-up Tax in Kenya.

#### 1. What is Global Minimum Tax (Pillar 2)?

Global Minimum Tax (GMT), also referred to as the Pillar Two minimum top-up tax, is a set of rules endorsed by the OECD/G20 Inclusive Framework (IF) member countries on Base Erosion and Profit Shifting (BEPS). The objective is to reform the international corporate tax framework by ensuring that MNEs pay a minimum level of tax on their income in every jurisdiction where they operate in.

These rules address tax challenges arising from the digitalization of the economy and harmful tax competition.

#### 2. When did Kenya adopt the minimum top-up tax?

Minimum Top-up tax was introduced through the Tax Laws Amendment Act, 2024 which took effect on 27th December 2024. However, based on the draft regulations issued on 3rd November 2025, the law applies to years of income beginning on or after 1 January 2025.

### 3. Which Kenyan businesses are in scope for the Minimum Top-up Tax?

All Covered Persons - defined to include a resident person or a person with a permanent establishment (PE) in Kenya who is a member of a multinational group, with a consolidated annual turnover of EUR 750 million or more in at least 2 of the 4 years preceding the tested year.

### 4. When is minimum top-up tax due for payment?

The Finance Act, 2025 requires that the minimum top-up tax be paid by the end of the fourth month following the close of the tested year of income. This timeline aligns with the due date for the final corporate income tax payment. The first minimum top-up tax is payable by 30 April 2026.

### 5. What are the OECD Rules on GMT?

To achieve the Global Minimum Tax, the agreed minimum effective tax rate is 15 percent. This is to be implemented through the rules namely: -

- i. Domestic Minimum Top-up Tax (DMTT):** A domestic law provision that grants the jurisdiction where low-taxed profits arise the primary right to impose a top-up tax on the excess profits of a constituent entity (CE), ensuring that the minimum effective tax rate (ETR) of 15% is achieved.
- ii. Income Inclusion Rule (IIR):** Grants secondary taxing rights to the Ultimate Parent Entity (UPE) when the local jurisdiction does not impose or fails to apply a Domestic Minimum Top-up Tax (DMTT) to collect the required top-up tax.
- iii. Under-Taxed Profits Rule (UTPR):** If the UPE's country does not apply the IIR, then other countries where the group operates can collect the top-up tax instead.

- iv. The Subject to Tax Rule ("STTR")** is a treaty-based rule that allows a source jurisdiction, usually a developing economy, to impose an additional tax of up to 9% on certain related-party payments that are taxed below 9% in the recipient jurisdiction. Currently, this is not operational in Kenya since there is no treaty that has incorporated this rule.

The GloBE Rules are simply top-up tax collection mechanisms.

### 6. Which GloBE Rule has Kenya adopted?

Kenya adopted the DMTT.

The adoption of DMTT by Kenya stops other jurisdictions from collecting top-up taxes arising in Kenya through the application of IIR and UTPR.

### 7. How is Combined Effective Tax Rate (ETR) calculated?

Once it is determined that an MNE Group is in scope for the GMT, the combined effective tax rate (ETR) is calculated for each CE with reference to the below formula.

$$\frac{\text{Adjusted Covered Taxes}}{\text{(GloBE) Net Income or Loss}} \times 100$$

The computation of adjusted covered taxes and net income or loss is explained in the OECD model rules and Kenya's (draft) Income Tax (minimum top up tax) Regulations, 2025.

Where the computed ETR is below the 15% threshold, a covered person is required to pay top-up tax to reach the 15% minimum.



## 8. What happens when two or more covered persons are members of the same group in Kenya?

This leads to jurisdictional blending, which involves calculating a single Effective Tax Rate (ETR) for all covered persons within the same group in Kenya. When two or more covered persons belong to the same group, their net incomes and covered taxes are combined to determine one ETR.

If the combined ETR falls below 15%, a minimum top-up tax becomes payable. This tax is then allocated among the covered persons in proportion to the net income attributable to each.

Alternatively, the computed tax may be paid by any of the CE's as deemed appropriate by the group.

Where the group ETR is more than 15%, no single CE is expected to pay top up tax irrespective of its ETR.

## 9. Kenya's corporate tax rate of 30% is higher than the global minimum rate of 15%, is a covered person still required to calculate ETR?

Whereas the nominal corporate tax rate for Kenya is 30%, Kenyan entities with accelerated capital deductions (investment allowances) that cause an entity to have a taxable loss position (depending on the treatment of the Deferred Tax Liability or Asset as per the Globe Rules) and those under preferential tax regimes such as the SEZ or EPZ etc. are likely to have lower than 15% ETR.

It is therefore critical for all Covered Persons to work out the minimum top-up tax simulations.

## 10. How is top-up tax calculated?

Top-up tax is calculated using the following formula:

### **Top-up Tax Payable =**

Top-up Tax Percentage Rate x Excess Profits + any other tax adjustments as per draft regulation 12.

### **Where:**

#### **1. Top-up Tax Percentage Rate =**

Global Minimum Rate (15%) – Combined Effective Tax Rate (ETR)

#### **2. Excess Profit =**

Net (GloBE) Income – [Substance Based Income Exclusion (SBIE)

SBIE = {9.6% of employee costs + 7.6% of NBV of Tangible assets}

## **11. What is the significance of SBIE?**

The percentage of employee costs and NBV of tangible assets in the excess profit formula represents the (SBIE). The adjustment for SBIE shields genuine, on-the-ground activities from excessive taxation. Tangible assets and payroll are considered less mobile, making them reliable indicators of real substance. This ensures the GloBE rules focus on taxing excess income—usually linked to intangibles, which pose a higher BEPS risk.

Note that tangible assets in the excess profit formula exclude those held for sale, investment, or lease.

## **12. Which Kenyan businesses are exempted from minimum tax?**

The GloBE Rules specify certain types of entities that, although they form part of an in-scope multinational enterprise (MNE), are excluded from the operative provisions of the GloBE Rules.

These are divided into three main categories:

- i. Entities engaged in the public interest activities such as governmental and not-for-profit organisations.
- ii. Tax neutral entities such as investment funds and pension funds.
- iii. Asset-holding entities controlled by excluded entities.

The Kenya provision on minimum top-up tax lists the following as excluded entities:

- public entity not engaged in business;
- persons whose income is exempt from tax under paragraph 10 of the First Schedule of the ITA;
- pension fund and its assets;
- real estate investment vehicle that is an ultimate parent entity;
- investment fund that is an ultimate parent entity;
- sovereign wealth fund;
- non-operating investment holding company; and
- intergovernmental or supranational organization including, a wholly owned agency or organ of the intergovernmental or supranational organization

When determining whether an entity is exempt under the above list, the entity should be classified into one of the three main categories of excluded entities as defined under the GloBE Rules.

### 13. Does Kenyan legislation include provisions for the Transitional CbCR Safe Harbour?

Transitional Country-by-Country Reporting (CbCR) Safe Harbour is a temporary simplification rule under Pillar 2 that allows a jurisdiction's top-up tax to be deemed zero if it meets certain tests based on CbCR data, without requiring full GloBE calculations.

The primary purpose of the Transitional CbCR Safe Harbour is to ease the initial compliance burden on MNEs by reducing the need for complex, data-intensive GloBE calculations in the early years of Pillar 2 implementation.

Based on the draft regulations, CbCR Safe Harbour rules are applicable (upon election) using the Simplified ETR and Routine Profits tests. The provision will cease to be applicable to the years of income commencing on or after 1 July 2028.

### 14. What are the reporting requirements for pillar 2 in Kenya?

Document/Return	Due date
Notification to the commissioner	(a) within sixty days from date of publication of the Regulations; or (b) within six months from the first day of the year of income for any subsequent years.
Top-up tax return	By the last day of the sixth month following the end of the year of income.
GloBE information return (GIR)	(a) Within eighteen months after the end of the first year of income in which the covered person becomes subject to MTT; and (b) Within fifteen months after the end of the subsequent years of income.

**Note:** GIR filing is not required if the ultimate parent or designated filing entity is in a jurisdiction with a qualifying competent authority agreement with Kenya on exchange of information.





### **15. Are there non-compliance penalties?**

There are no specific penalties provided for in the regulations. However, the regulations provides that any person who fails to comply with the minimum top-up tax legislation will be subject to the penalties under the Tax Procedures Act.

### **Data Requirement for Pillar Two Compliance**

One of the key challenges many covered persons are likely to face is that the data required for DMTT will not be sourced from a single location, such as financial statements from the finance department.

Instead, this data is often spread across multiple systems—ERP, consolidation platforms, tax provision and compliance systems, HR systems, sales systems, and other sub-ledgers—and owned by different teams within a Constituent Entity (CE) or Multinational Enterprise (MNE) group.

For example:

- a. HR systems for payroll costs
- b. ERP systems and Fixed Asset Registers for tangible asset NBV
- c. Finance/Controllershship for net income or loss

### **Conclusion**

In-scope MNEs should assess how Pillar Two will impact them, using historical data or forecasts. Leveraging technology-enabled solutions—such as PwC’s Pillar Two Engine, can help streamline compliance and align reporting processes with regulatory requirements.

Please feel free to contact your usual PwC contact or any of our experts listed herein should you wish to discuss and assess your Pillar Two circumstances.



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