

# Chapter 5.5: De Minimis Exclusion

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## Learning Objective

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After completing this chapter, you will be able to apply the De Minimis Exclusion to eliminate Top-Up Tax liability for jurisdictions with minimal operations, calculate the three-year average thresholds, and determine which jurisdictions qualify for exclusion.

## Key References

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**OECD GloBE Model Rules:** - Article 5.5.1 — De Minimis Exclusion criteria (revenue and income thresholds) - Article 5.5.2 — Excluded years from averaging calculation - Article 5.5.3 — Currency conversion for thresholds

**OECD Commentary:** - Chapter 5, paragraphs 146-162 — De Minimis Exclusion methodology

**Administrative Guidance:** - December 2023: Transitional CbCR Safe Harbour De Minimis Test (simplified single-year test)

## 1. The De Minimis Exclusion Purpose

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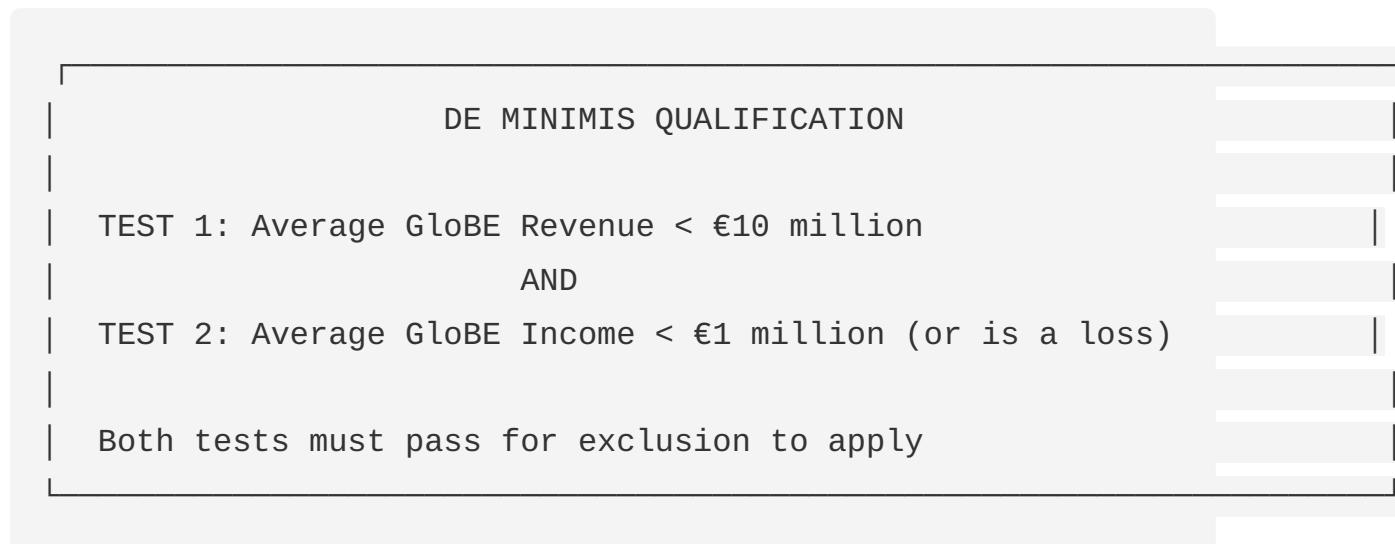
The De Minimis Exclusion provides **compliance relief** for jurisdictions with minimal operations. If a jurisdiction meets both thresholds, the MNE Group:

- Does **not** need to calculate Adjusted Covered Taxes for that jurisdiction
- Does **not** need to calculate ETR for that jurisdiction
- Does **not** have any Top-Up Tax liability for that jurisdiction

**Result:** GloBE Income and Top-Up Tax for the jurisdiction are **deemed to be zero**.

## 2. Qualification Criteria (Article 5.5.1)

A jurisdiction qualifies for the De Minimis Exclusion if **both** thresholds are met:



### 2.1 The Two Thresholds

Test	Threshold	What It Measures
Revenue Test	Average GloBE Revenue < €10 million	Size of operations
Profit Test	Average GloBE Income < €1 million	Profitability of operations

### 2.2 Critical Points

- Both tests must be met** — Passing only one test does not qualify
- Loss qualifies for Test 2** — If Average GloBE Income is a loss, Test 2 is passed
- GloBE amounts used** — Not local GAAP or CbCR figures (except under Safe Harbour)
- Annual election** — Must be elected each year; not automatic

### 3. Three-Year Averaging (Article 5.5.1 and 5.5.2)

The De Minimis thresholds use a **three-year average** of the current fiscal year and the two preceding fiscal years:

$$\text{Average GloBE Revenue} = \frac{\text{FY-2} + \text{FY-1} + \text{FY (Current)}}{3}$$

$$\text{Average GloBE Income} = \frac{\text{FY-2} + \text{FY-1} + \text{FY (Current)}}{3}$$

#### 3.1 Example: Three-Year Calculation

**Jurisdiction:** Luxembourg (small service entity)

Fiscal Year	GloBE Revenue	GloBE Income
FY 2023	€7,800,000	€450,000
FY 2024	€8,200,000	€680,000
FY 2025 (Current)	€9,100,000	€820,000
<b>Total</b>	<b>€25,100,000</b>	<b>€1,950,000</b>

**Average Calculation:**

Test	Calculation	Result	Threshold	Pass?
Revenue	€25,100,000 ÷ 3	€8,366,667	< €10 million	✓ Yes
Income	€1,950,000 ÷ 3	€650,000	< €1 million	✓ Yes

**Result:** Luxembourg qualifies for De Minimis Exclusion in FY 2025.

## 4. Excluded Years (Article 5.5.2)

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Certain years are **excluded** from the averaging calculation:

Excluded Year Scenario	Treatment
No Constituent Entities in jurisdiction	Year excluded from average
Only <b>dormant</b> Constituent Entities	Year excluded from average
No Constituent Entity with GloBE Income or Loss	Year excluded from average
Pre-GloBE implementation year	Year excluded from average

### 4.1 Effect of Excluded Years

If a year is excluded, the average is calculated over fewer years:

**Scenario:** Entity established in FY 2024 (no operations in FY 2022 or FY 2023)

Fiscal Year	Included?	GloBE Revenue	GloBE Income
FY 2023	No (no CE)	—	—
FY 2024	Yes	€4,500,000	€320,000
FY 2025 (Current)	Yes	€6,200,000	€580,000
<b>Total</b>		<b>€10,700,000</b>	<b>€900,000</b>

**Average (2 years):**

Test	Calculation	Result	Threshold	Pass?
Revenue	€10,700,000 ÷ 2	€5,350,000	< €10 million	✓ Yes

Test	Calculation	Result	Threshold	Pass?
Income	$\text{€900,000} \div 2$	€450,000	< €1 million	✓ Yes

**Result:** De Minimis applies with two-year average.

## 4.2 First Year of Operations

If the current fiscal year is the **first year** with Constituent Entities: - Only the current year's figures are used - No averaging required

## 5. Currency Conversion (Article 5.5.3)

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The €10 million and €1 million thresholds are in **euros**. If the MNE Group's Consolidated Financial Statements use a different presentation currency:

Convert thresholds using:

- Average exchange rate for December of the calendar year
- Immediately preceding the start of the MNE Group's Fiscal Year

### 5.1 Example: USD-Reporting Group

**MNE Group FY:** January 1, 2025 – December 31, 2025 **Presentation currency:**

**USD December 2024 average EUR/USD rate:** 1.08

Threshold (EUR)	Converted (USD)
€10 million	$\text{€10M} \times 1.08 = \$10.8 \text{ million}$
€1 million	$\text{€1M} \times 1.08 = \$1.08 \text{ million}$

## 6. Entities Excluded from De Minimis (Article 5.5.1)

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The De Minimis Exclusion does **not** apply to:

Entity Type	Treatment
<b>Stateless Constituent Entities</b>	Never qualify for De Minimis; excluded from threshold calculations
<b>Investment Constituent Entities</b>	Never qualify for De Minimis; excluded from threshold calculations

## 6.1 Treatment of Excluded Entities

When calculating whether a jurisdiction qualifies: - **Remove** revenue and income of Stateless Entities - **Remove** revenue and income of Investment Entities - Calculate thresholds using **remaining** Constituent Entities only

**Example:** Jurisdiction with mixed entities

Entity	Type	GloBE Revenue	GloBE Income
OpCo A	Operating	€6,500,000	€480,000
InvestCo	Investment	€3,200,000	€2,100,000
<b>For De Minimis Test</b>		<b>€6,500,000</b>	<b>€480,000</b>

**Result:** InvestCo excluded from calculation; jurisdiction may still qualify on OpCo A's figures.

## 7. Annual Election Requirement

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The De Minimis Exclusion is an **annual election** (*Article 5.5.1*):

- Must be **actively elected** each fiscal year
- Jurisdiction may qualify in one year but not the next
- Election is made jurisdiction-by-jurisdiction
- No binding effect on future years

## 7.1 Year-by-Year Assessment

Fiscal Year	Avg Revenue	Avg Income	Qualifies?	Election Made?
FY 2024	€7.2M	€0.6M	Yes	Yes
FY 2025	€9.8M	€1.3M	No (income)	N/A
FY 2026	€11.5M	€0.8M	No (revenue)	N/A
FY 2027	€8.9M	€0.7M	Yes	Yes

**Practical implication:** Monitor thresholds annually; eligibility can change.

## 8. Transitional CbCR Safe Harbour De Minimis Test

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A **simplified version** of the De Minimis test is available under the Transitional CbCR Safe Harbour:

### 8.1 Simplified Test (Transition Period Only)

Feature	Standard De Minimis	Transitional Safe Harbour
Data source	GloBE amounts	CbCR data
Averaging period	3-year average	Current year only
Revenue threshold	€10 million	€10 million
Income threshold	€1 million	€1 million
Available until	Permanent	

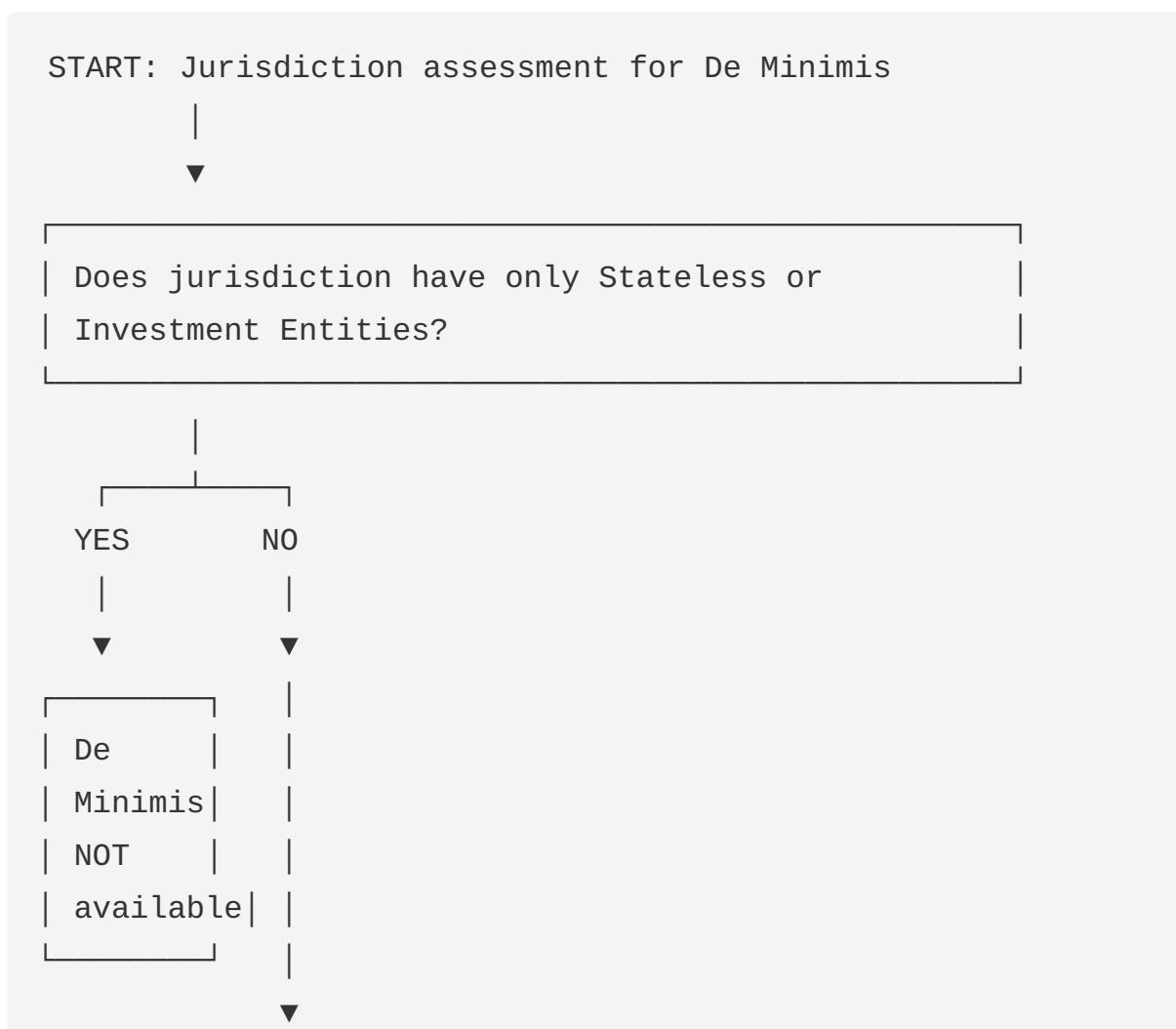
Feature	Standard De Minimis	Transitional Safe Harbour
		FY starting on or before 31 Dec 2026

## 8.2 When to Use Transitional Test

The Transitional CbCR Safe Harbour De Minimis Test is advantageous when: - CbCR data is readily available - GloBE Income calculations are burdensome for small jurisdictions - The jurisdiction would clearly pass the CbCR-based thresholds

**Example:** Use CbCR Revenue (€6.5M) and CbCR Profit Before Tax (€0.4M) instead of calculating GloBE amounts.

## 9. Decision Flowchart: De Minimis Qualification



Gather 3-year GloBE Revenue and Income  
(current year + 2 preceding years)



Exclude any years with:  
- No Constituent Entities  
- Only dormant entities  
- No GloBE Income or Loss

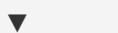
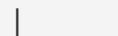


Calculate Average GloBE Revenue  
= Sum of Revenue ÷ Number of included years



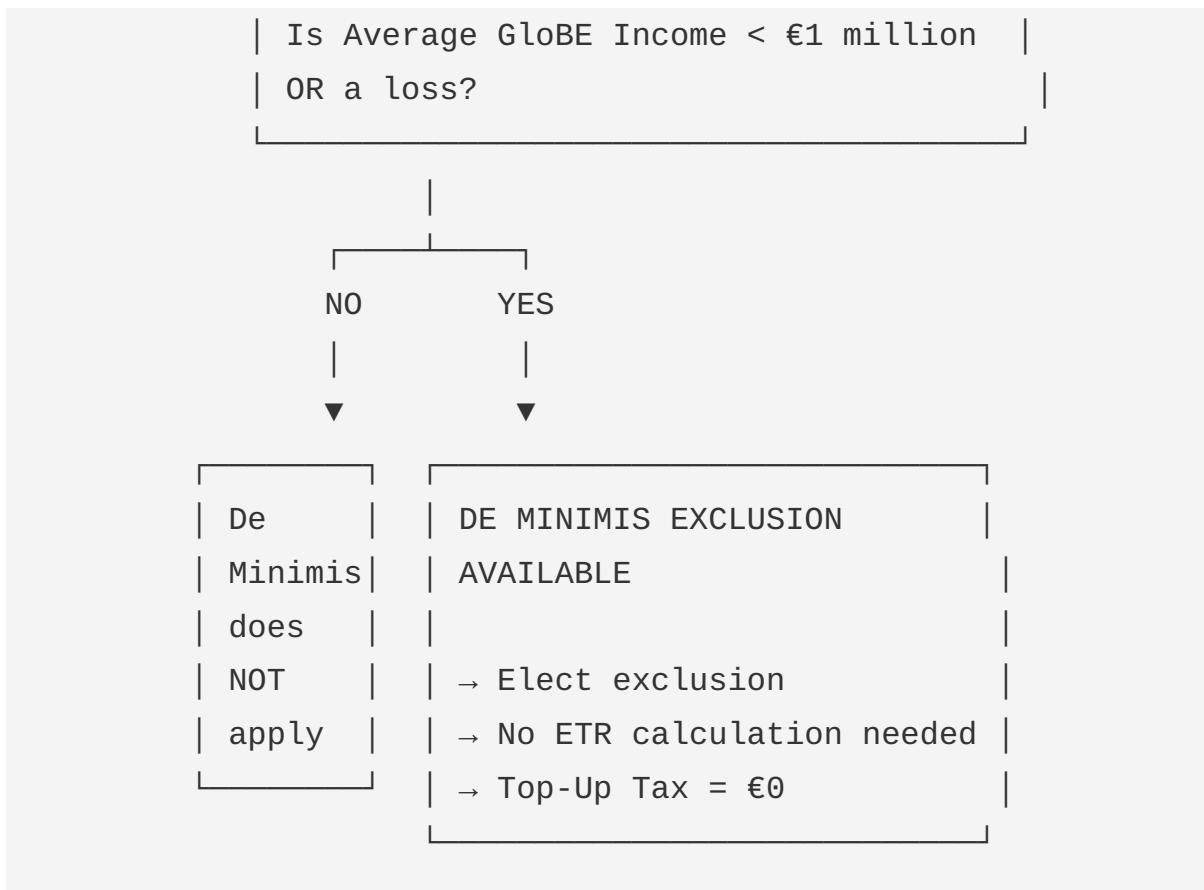
Is Average GloBE Revenue < €10 million?

NO                  YES



De Minimis does NOT apply | Calculate Average GloBE Income  
| = Sum of Income ÷ Number of included years





## 10. Stratos Worked Example: De Minimis Assessment

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Stratos Group has operations in multiple jurisdictions. Let's assess each for De Minimis eligibility.

### 10.1 Jurisdiction Assessment Table

Jurisdiction	3-Year Avg Revenue	3-Year Avg Income	Revenue < €10M?	Income < €1M?	Qualifies?
Germany	€85,000,000	€9,200,000	No	No	No
Singapore	€18,500,000	€3,800,000	No	No	No
Ireland	€52,000,000	€14,200,000	No	No	No

Jurisdiction	3-Year Avg Revenue	3-Year Avg Income	Revenue < €10M?	Income < €1M?	Qualifies?
Luxembourg	€8,500,000	€620,000	Yes	Yes	Yes

## 10.2 Luxembourg Detailed Analysis

Stratos Luxembourg S.à r.l. provides intra-group treasury services.

### Three-Year Data:

Fiscal Year	GloBE Revenue	GloBE Income
FY 2023	€7,900,000	€580,000
FY 2024	€8,400,000	€650,000
FY 2025 (Current)	€9,200,000	€630,000
<b>Total</b>	<b>€25,500,000</b>	<b>€1,860,000</b>

### Average Calculation:

Test	Calculation	Result	Threshold	Pass?
Revenue	€25,500,000 ÷ 3	€8,500,000	< €10 million	✓ Yes
Income	€1,860,000 ÷ 3	€620,000	< €1 million	✓ Yes

**Result:** Luxembourg qualifies for De Minimis Exclusion.

## 10.3 Luxembourg Preliminary ETR (Before De Minimis)

If De Minimis were **not** elected:

Item	Amount
GloBE Income (FY 2025)	€630,000
Adjusted Covered Taxes	€55,000
ETR	8.73%
Top-Up Tax %	6.27%
Top-Up Tax	~€39,500

**With De Minimis Election:** - No ETR calculation required - No Top-Up Tax liability - Administrative burden eliminated

#### 10.4 Updated Stratos Top-Up Tax Summary

Jurisdiction	ETR	Top-Up Tax %	Top-Up Tax	De Minimis?	Final Liability
Germany	23.00%	—	€0	No	€0
Singapore	9.81%	5.19%	€197,498	No	€197,498 (IIR)
Ireland	11.80%	3.20%	€426,394	No	€0 (QDMTT offset)
Luxembourg	N/A	N/A	N/A	Yes	€0
<b>Total</b>					<b>€197,498</b>

## 11. Common Pitfalls

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### 11.1 Pitfall 1: Using CbCR Data Without Safe Harbour Election

**Error:** Using CbCR revenue and profit figures for De Minimis without formally electing the Transitional Safe Harbour.

**Correct approach:** Use GloBE Revenue and GloBE Income for standard De Minimis test. Only use CbCR data if electing the Transitional Safe Harbour De Minimis Test.

### 11.2 Pitfall 2: Forgetting Three-Year Averaging

**Error:** Using current year figures only for the standard De Minimis test.

**Correct approach:** Calculate three-year averages (unless years are excluded per Article 5.5.2).

### 11.3 Pitfall 3: Including Investment Entities

**Error:** Including Investment Entity revenue and income when calculating jurisdiction totals.

**Correct approach:** Exclude Stateless and Investment Entities from De Minimis threshold calculations.

### 11.4 Pitfall 4: Assuming De Minimis is Automatic

**Error:** Assuming the exclusion applies automatically if thresholds are met.

**Correct approach:** The De Minimis Exclusion must be **actively elected** each year.

### 11.5 Pitfall 5: Failing to Monitor Year-on-Year

**Error:** Assuming qualification in one year guarantees qualification in future years.

**Correct approach:** Reassess annually; growing operations may exceed thresholds.

## 12. De Minimis Assessment Checklist

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Use this checklist to assess each jurisdiction:

### DE MINIMIS QUALIFICATION CHECKLIST

Jurisdiction: \_\_\_\_\_

Fiscal Year: \_\_\_\_\_

- Step 1: Exclude Ineligible Entities
  - Identify any Stateless Constituent Entities → Exclude
  - Identify any Investment Entities → Exclude
  - Remaining entities: \_\_\_\_\_
- Step 2: Determine Averaging Period
  - Current fiscal year: FY \_\_\_\_\_
  - Two preceding years: FY \_\_\_\_\_ and FY \_\_\_\_\_
  - Exclude years with no CEs or only dormant CEs
  - Years included in average: \_\_\_\_\_ years
- Step 3: Calculate Average GloBE Revenue
  - FY-2 Revenue: €\_\_\_\_\_
  - FY-1 Revenue: €\_\_\_\_\_
  - FY Revenue: €\_\_\_\_\_
  - Total Revenue: €\_\_\_\_\_
  - Average Revenue: €\_\_\_\_\_ (Total ÷ years)
  - Is Average < €10 million? YES / NO

If NO → De Minimis does NOT apply. STOP.

- Step 4: Calculate Average GloBE Income
  - FY-2 Income: €\_\_\_\_\_
  - FY-1 Income: €\_\_\_\_\_
  - FY Income: €\_\_\_\_\_
  - Total Income: €\_\_\_\_\_
  - Average Income: €\_\_\_\_\_ (Total ÷ years)

- Is Average < €1 million OR a loss? YES / NO

If NO → De Minimis does NOT apply. STOP.

Step 5: Election

- Both thresholds met? YES / NO
- Election made for this fiscal year? YES / NO
- Document election in GIR filing

RESULT:

- De Minimis Exclusion APPLIES – No ETR or Top-Up Tax calculation required
- De Minimis Exclusion does NOT apply – Proceed with full GloBE calculation