

Chapter 5.5: De Minimis Exclusion

Learning Objective

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

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

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:

DE MINIMIS QUALIFICATION

TEST 1: Average GloBE Revenue < €10 million

AND

TEST 2: Average GloBE Income < €1 million (or is a loss)

Both tests must pass for exclusion to apply

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
Total	€25,100,000	€1,950,000

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)

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

Excluded Year Scenario	Treatment
No Constituent Entities in jurisdiction	Year excluded from average
Only dormant 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
Total		€10,700,000	€900,000

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	€900,000 ÷ 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)

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	€10M × 1.08 = \$10.8 million
€1 million	€1M × 1.08 = \$1.08 million

6. Entities Excluded from De Minimis (Article 5.5.1)

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

Entity Type	Treatment
Stateless Constituent Entities	Never qualify for De Minimis; excluded from threshold calculations
Investment Constituent Entities	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
For De Minimis Test		€6,500,000	€480,000

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

7. Annual Election Requirement

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

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	

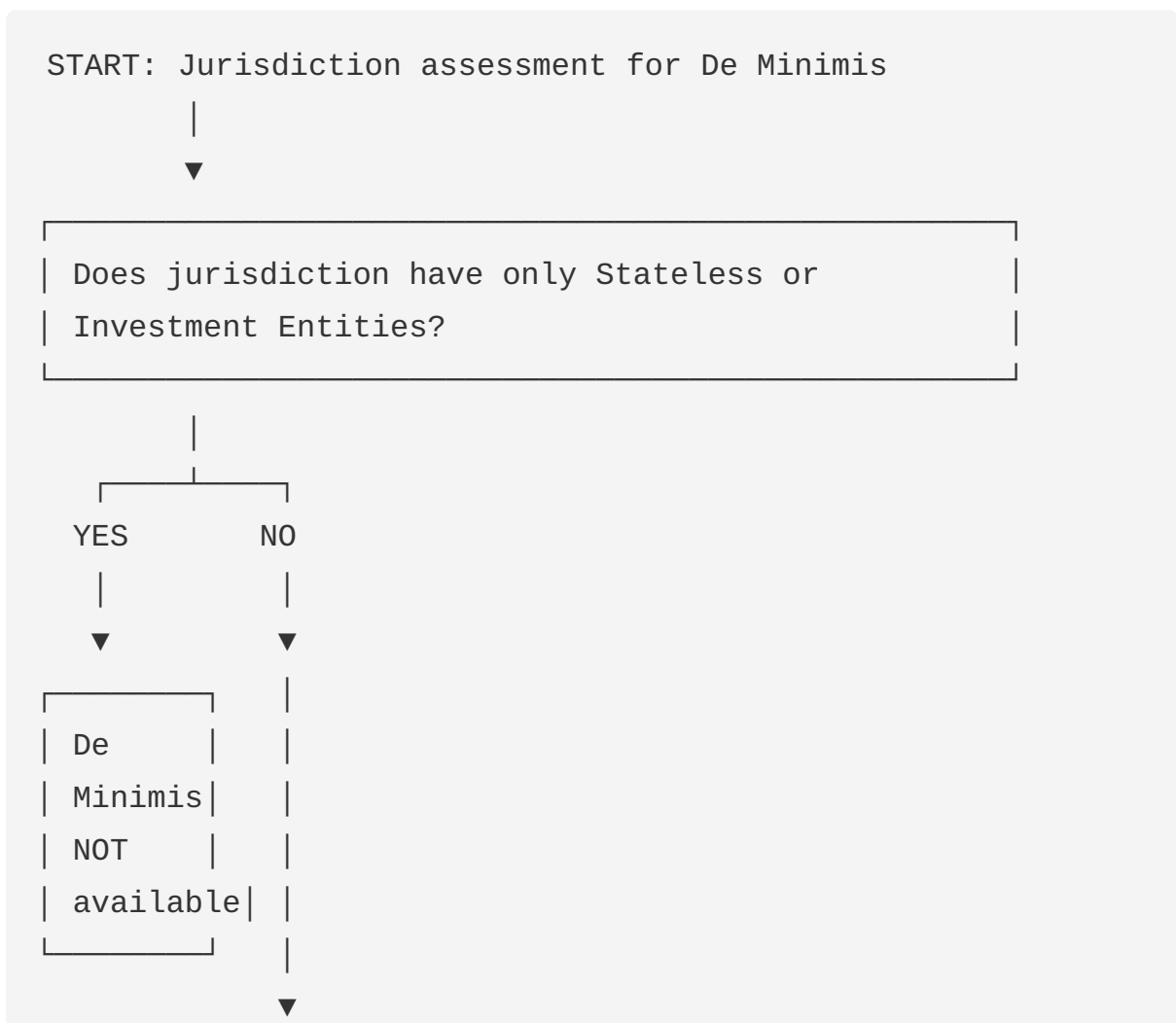
Feature	Standard De Minimis	Transitional Safe Harbour
		FY starting on or before 31 Dec 2026

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:

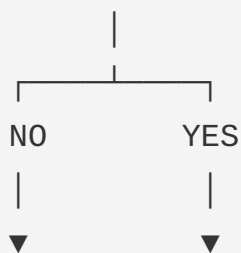
- No Constituent Entities
- Only dormant entities
- No GloBE Income or Loss



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



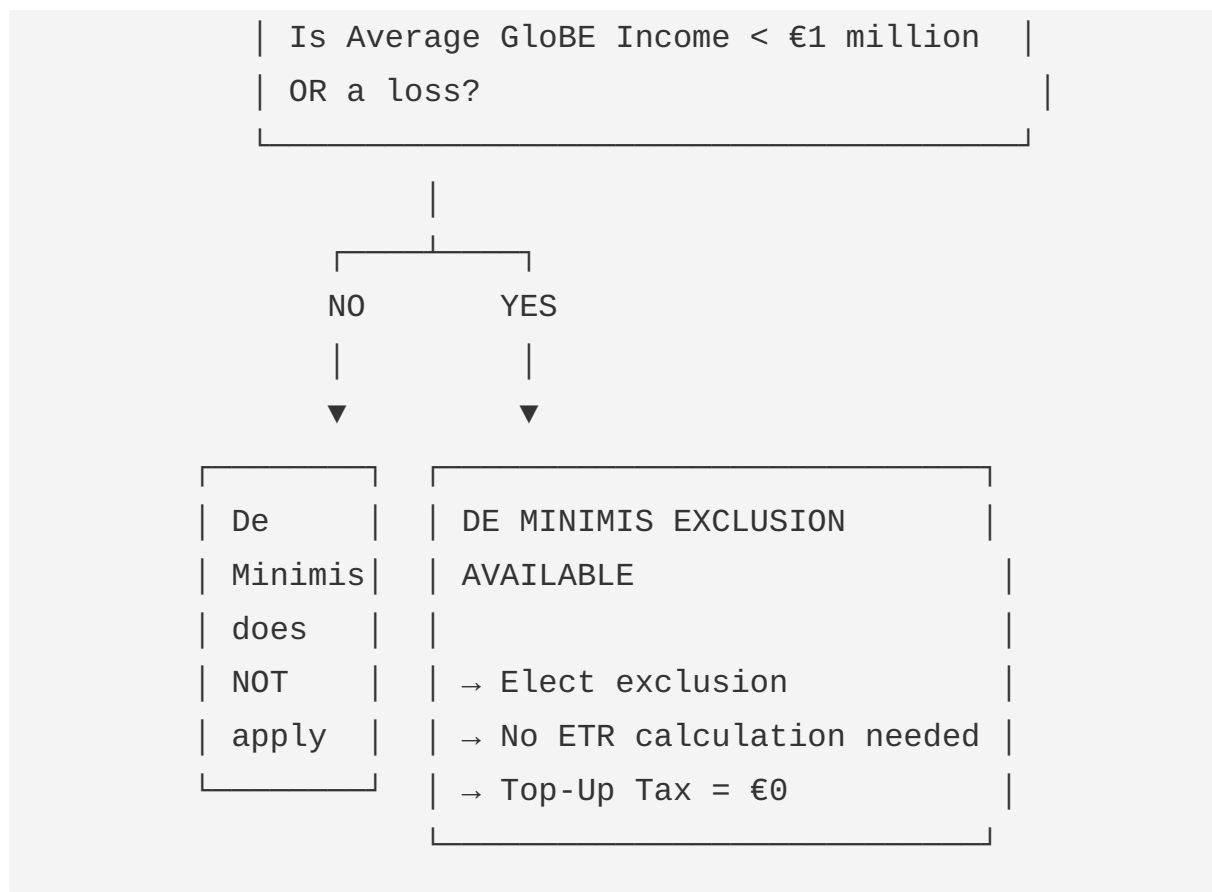
Is Average GloBE Revenue < €10 million?



De
Minimis
does
NOT
apply

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





10. Stratos Worked Example: De Minimis Assessment

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
Total	€25,500,000	€1,860,000

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
Total					€197,498

11. Common Pitfalls

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

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