

Draft bill on global minimum tax (Pillar Two) published

Global minimum income tax

This is a solution where the largest multinationals will each year be verified whether they meet the requirement for minimum effective income taxation at the rate of 15% (so-called effective tax rate). If the effective level of income taxation for a particular multinational group, in a particular jurisdiction, is below 15%, an appropriate top-up tax will be imposed on that group.

Pillar Two is addressed to entities that belong to groups whose consolidated global revenues exceed EUR 750 million per year in at least two of the last four tax years directly prior to the analyzed tax year.

In accordance with Council Directive (EU) 2022/2523, the said regulations apply not only to multinational groups, but also to large domestic groups - i.e. those of which all component entities are located in the same Member State.

Under the above directive, global minimum tax is to be based on three types of top-up tax:

1. global top-up tax (IIR),
2. domestic top-up tax (QDMTT),
3. undertaxed profits tax (UTPR).

Polish lawmakers have chosen to enact all three top-up tax types in the draft bill. Presented below is a general outline of the different types of top-up tax based on the published draft.

It should be noted that due to the introduction of a domestic top-up tax, no global top-up tax is calculated for a domestic group. Thus the ultimate parent of a domestic group does not calculate global top-up tax on that group's entities, as those entities are subject to taxation with domestic top-up tax.

Published on 25 April 2024 was the long-awaited draft bill on top-up taxation of multinational and domestic group components, which is to implement into the Polish legal system Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union as part of so-called Pillar Two.



Top-up tax on undertaxed profits

The final taxation mechanism will be the top-up tax on undertaxed profits - UTPR (under-taxed profit rule), which will be a “back-up mechanism” for the IIR. The undertaxed profits tax will be imposed on component entities of multinational groups located in the territory of Poland. Where several component entities of such a multinational group are located in the territory of Poland, each one of those entities will be taxable with UTPR. The tax will be updated when taxation under the IIR does not lead to the taxation with top-up tax of all parent entities. This will occur in cases when the ultimate parent entity:

- is located in another state which does not apply IIR, or
- is located in another state which is a low-income state, and the entity is not subject to IIR, or
- is an exempt entity.

The tax will be calculated in two stages. First it will be necessary to determine the total UTPR tax on all low-taxed component entities of the multinational group, and then calculate the share of the tax for Poland based on the number of employees and the value of assets of the component entities located in the territory of Poland.

Global top-up tax

In accordance with the draft bill, the main rule of minimum taxation is to be the income inclusion rule - IIR. Under the IIR, ultimate parent entities will pay top-up tax in respect of their low-taxed component entities located in other states. Parent entities taxable under the IIR will pay tax to their own tax authorities. Articles 12-15 of the draft bill regulate in detail the calculation stages of the global top-up tax. The process is a multi-stage one and requires the determination of a jurisdictional global top-up tax for the given state, a separate global top-up tax corresponding to the low-taxed component entity and an interest-based global top-up tax resulting from the parent entity's allocatable share.

Domestic top-up tax

As could have been expected, the lawmakers took the opportunity to introduce a domestic top-up tax (QDMTT, qualified domestic minimum top-up tax). The tax will be collected by the Polish tax administration from component entities located in the territory of Poland. Taxable with the domestic top-up tax will therefore be low-taxed component entities of multinational groups or groups located in the territory of Poland, with the parent entity's share being immaterial. The essence of introducing this regulation is the fact that the parent entities of multinationals are often located in other states, which prevents Polish tax authorities from collecting taxes. Domestic top-up tax will be deductible from qualified foreign top-up tax collected under the IIR by the tax administration in the state of the parent entity on the condition that Polish regulations are recognized as qualified by the OECD from the perspective of that state.

Other regulations

The following sections regulate matters associated with the calculation of the qualified income (loss) for component entities (which may be of significance from an accounting perspective), adjusted qualified taxes subject to consideration in the calculation of the effective tax rate, as well as the rules and conditions for the calculation of the substance-based income exclusion.

The substance-based income exclusion is calculated by determining the excess profit in order to calculate the jurisdictional global top-up tax. Excess profit is the difference between the jurisdictional qualified net income and the substance-based income exclusion. To put it simply, such an exclusion will be the sum of the amounts of payrolls and property, plant and equipment for each component entity. If the substance-based income exclusion exceeds the jurisdictional net income for the tax year, there will be no excess profit and therefore no obligation to deduct global top-up tax for that year. It should also be noted that the draft provides for the introduction of special safeguards for taxable persons regarding this matter. These are an opinion on top-up taxation, which will constitute an interpretation of tax regulations on top-up taxation, as well as a protective opinion on top-up taxation in the context of the anti-avoidance clause (GAAR). Thus the ability to issue a general interpretation and a protective opinion on top-up taxation as part of an 'ordinary' proceeding has been eliminated.

The fee for the issue of a protective opinion is to amount to PLN 100 thousand, whereas for an interpretation the initial fee is to amount to PLN 25 thousand and the main fee to PLN 75 thousand.



How can we help?

Although the bill is to go into effect as of 1 January 2025, given the wide scope of the regulation now is the time to make the appropriate preparations to adapt your firm's organizational system to adequately collect, verify and report the data covered by the scope of the global minimum tax.

Taxable persons can also choose to be taxed with the global minimum tax retroactively as of 1 January 2024. This is because most EU countries have already implemented Directive 2022/2523 and apply IIR for the tax year beginning after 31 December 2023. Choosing retroactive taxation will enable the payment of the domestic top-up tax in Poland by component entities located in Poland.

It needs to also be emphasized that the global minimum tax discussed above is a different institution than the "Polish" minimum tax regulated in Article 24ca of the CIT Act. At this point it is not clear what the fate of our domestic regulation will be - whether it will be amended or left as is.

Following the publication of a draft of specific Pillar II regulations, BDO can offer support with the following:

- verification of potential taxability with global top-up tax,
- advisory on the verification and collection of data covered by the scope of top-up tax and the related reporting obligations,
- preparation of calculations (simulations) of hypothetical top-up tax based on historical or projected financial data.

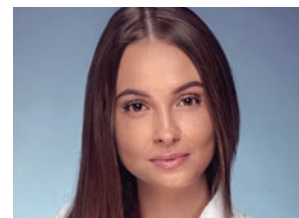
BDO will continue to share with you its knowledge of the global top-up tax and information on any changes made to the above-described draft bill.



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