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In brief

Adoption of Pillar Two rules in the Greek tax legislation

L. 5100/2024 adopted by the Greek Parliament incorporated into the Greek legislation the EU Council Directive 2022/2523 on ensuring a global minimum level of taxation for multinational groups and large-scale domestic groups in the Union, known as Pillar Two.

In detail

Overview

The EU Directive -known as the EU Pillar Two Directive - introduces as Union law the rules set out by the Organization for Economic Cooperation and Development (OECD), aiming at implementing a global minimum level of taxation.

The Law closely follows the provisions of the EU Pillar Two Directive.

In particular, it introduces two interlocked taxing mechanisms, the **Income Inclusion Rule (IIR)** and the **Undertaxed Profits Rule (UTPR)**, together referred to as the 'GloBE rules' through which an additional amount of tax (a 'top-up tax') should be collected each time that the effective tax rate of a multinational group (MNE) or a large-scale domestic group in a given jurisdiction is below 15%.

Further to the above, the Law introduces the framework for the adoption of a **Domestic Minimum Top-up Tax (DMTT)**, which is intended to be "Qualified" under the Pillar Two rules.

Additionally, the following safe harbor rules are adopted: the **QDMTT safe harbor**, the **CbCR transitional safe harbors** and the **UTPR transitional safe harbor**. The enactment of the CbCR and the UTPR Safe Harbors is subject to the issuance of a Ministerial Decision that will determine the date of their entry into force.

The Law explicitly stipulates that the Safe Harbors will be interpreted according to the OECD Model Rules. However, it is not specified whether Tax Administration is bound by the OECD Administrative Guidance when interpreting the rest of the provisions or whether, on a case-by-case basis, a mechanism will be established to incorporate them into the domestic law.

As a final remark, the Law has transposed solely the elections provided in the EU Directive, without any reference to the elections provided in the OECD Administrative Guidance.

Scope

The scope of application includes all constituent entities located in Greece that are members of an MNE group or of a large-scale domestic group, which has at least an annual consolidated revenue of EUR 750 000 000, in its ultimate parent entity's consolidated financial statements, in at least two of the four fiscal years immediately preceding the tested fiscal year.



Certain entities are excluded from the rules, such as governmental entities, non-profit organizations, pension funds, investment funds and real estate investment vehicles, that are ultimate parent entities.

Observation: In scope Groups should determine which entities are in scope, including entities which may currently not be part of the financial consolidation, or which may require a specific treatment under the Pillar Two rules, such as flow-through entities, minority-owned constituent entities (entities which are consolidated line-by-line in which the groups hold a direct or indirect ownership of less than 30%), Joint Ventures and others.

Computation of the qualifying income or loss

Regarding the calculation of the qualifying income or loss of a constituent entity, the respective provisions of the EU Pillar Two Directive are repeated almost verbatim. The starting point is the financial accounting net income or loss as per the accounting standard used for group consolidation purposes, before any consolidation adjustments for eliminating intra-group transactions. The financial accounting net income or loss is adjusted with certain additions and reductions. An exclusion from the qualifying income computation is provided with regards to certain income under conditions i.e., dividend income, equity gains or losses, international shipping income etc.

It should be also noted that the substance carve-out rule is adopted, i.e. the amount of Globe Income which is exempt from the imposition of additional top up tax and is calculated on a predetermined ratio of the value of tangible assets and payroll costs incurred in each jurisdiction by the Group.

Observation: The definition of excluded dividends and capital gains for Pillar Two purposes is wider than the Greek participation exemption regime, which applies only to EU subsidiaries, under certain conditions (i.e. at least 10% participation held for at least 24 months, etc.).

Computation of the adjusted covered taxes

Adjusted covered taxes are also used in the effective tax rate computation. The starting point for the calculation of adjusted covered taxes is the accrued current tax expense as presented in the financial accounts and this amount is further adjusted after certain additions and reductions in current and deferred tax.

Observation: The Law does not specify which Greek taxes fall under the covered tax definition.

Computation of the effective tax rate (ETR)

The effective tax rate of an MNE group or of a large-scale domestic group shall be computed, for each fiscal year and for each jurisdiction by dividing the adjusted covered taxes of the constituent entities in the jurisdiction with the total net qualifying income of the constituent entities. If the ETR is less than 15% then a top – up tax liability would arise for the specific jurisdiction.



Taxing Mechanisms

The three taxing mechanisms introduced are the following:

- **Domestic top up tax (DMTT)**

Greek constituent entities will pay a top up tax to reach 15% effective tax rate, if their aggregate effective tax rate is below 15% (**applicable to financial years starting on 31 December 2023**). The Greek DMTT is intended to be Qualified for Pillar 2 purposes (QDMTT).

- **Income Inclusion Rule (IIR)**

Greek ultimate and intermediary parent entities will pay top up tax with respect to Greek and foreign Group constituent entities that were taxed below 15% effective rate at their jurisdictional level (**applicable to financial years starting on 31 December 2023**).

- **Undertaxed Profits Rule (UTPR)**

The said backstop mechanism is activated in case the Group's parent company does not apply the Income Inclusion Rule, leading to the application of top up tax to the Group's entities located in Greece and in other UTPR jurisdictions. UTPR top-up taxes will be calculated based on an allocation ratio looking at the number of employees and tangible assets present in jurisdictions that have adopted the UTPR rule (**applicable to financial years starting on 31 December 2024**).

If the ultimate parent entity of an MNE is located in Member States, which have made the election not to apply the IIR and the UTPR for six consecutive fiscal years starting from 31 December 2023, the constituent entities of that MNE located in Greece are subject to the UTPR for the financial years starting on **31 December 2023**. The EU Members States that have made such an election are Estonia, Latvia, Malta, Lithuania and Slovakia.

Introduction of safe harbors

The Safe Harbor Rules introduced are the following:

- **Country-by-Country Report (CbCR) transitional safe harbor rules applicable for the first three financial years**

Zero top up tax may arise, if any of the tests below is met:

- De minimis test (less than EUR 10 million turnover and EUR 1 million profit in aggregate for the entities in a jurisdiction) or
- Simplified Effective Tax Rate (calculated using financial accounts and CbCR data) is at least 15% in FY 24 16% in 2025 and 17% in 2026 or
- Routine profit test (in order to satisfy the criteria of this test, profit before tax as per qualified CbCR should not exceed the substance based carve out, calculated as per the GlobE rules).



- **UTPR transitional safe harbor applicable to financial years starting before 31/12/2025 and ending before 31/12/2026**

Where the ultimate parent entity of an MNE group is established in a third country that does not apply a qualifying IIR, or where the ultimate parent entity of an MNE group is an excluded entity, the constituent entities established in Greece are subject to top up tax based on the UTPR but the top up tax of the constituent entities in the jurisdiction of the ultimate parent entity is deemed to be zero, if the nominal tax rate applicable is equal to or higher than 20%.

- **QDMTT safe harbor**

Regarding Groups with Greek parent entities, when a domestic top up tax is levied on the Group's foreign constituent entities and is deemed to be "qualified" domestic top up tax, following the OECD's evaluation process, no additional calculation of top up tax is required for the Group in respect of the specific jurisdictions.

Exemptions in terms of the MNE's initial phase of international activity

The top up tax due by an ultimate parent entity located in Greece or by an intermediary parent entity located in Greece, provided that its ultimate parent entity is an excluded entity, shall be reduced to zero: (a) in the first five years of the initial phase of the international activity of the MNE group; (b) in the first five years, starting from the first day of the fiscal year in which the large-scale domestic group falls within the scope of rules for the first time.

In addition to the above, where the ultimate parent entity of an MNE group is located in a third country jurisdiction, the top-up tax due by a constituent entity located in Greece shall be reduced to zero in the first five years of the initial phase of the international activity of that MNE group.

Penalties

The Law does not provide for penalties in case of non-compliance with its rules.

The takeaway

Pillar Two rules are relevant for all constituent entities located in Greece that are part of an in-scope Group.

The main challenges arising from the implementation of Pillar Two framework include the acquiring of all the data points necessary to compute the necessary calculations, many of which may not currently exist (or are not easily accessible) along with the operationalization of certain compliance and reporting obligations. To cope with these challenges, the allocation of the appropriate resources will be also needed.

In order for the constituent entities falling under the scope of Pillar Two rules to be prepared to comply with the new rules, a detailed assessment is recommended, which indicatively may involve the following tasks:

- Analyze the Group's legal structure, identify and characterize the constituent entities for Pillar Two purposes.
- Review of the CbCR and detect any amendments necessary so as to be considered as a "Qualified CbCR" for the purposes of Pillar Two Safe Harbor calculations.
- Identify the key risk tax jurisdictions which are not within scope for Transitional Safe Harbors and conduct an initial high-level impact assessment based on projections for FY 2024-2026.



- Perform a Data gap analysis. PwC Data Input Catalogue is a structured approach of all data points required for Pillar Two compliance which can facilitate the Group to get prepared in terms of data gathering and level of readiness, if detailed calculations for Pillar Two purposes are required.
- Perform preliminary Pillar Two detailed calculations for the high-risk jurisdictions, which will not fall within safe harbor rules.
- Monitor the adoption status of QDMTT in the tax jurisdictions in which the Group operates.

Let's talk!

For a deeper discussion of how the Pillar Two rules might affect your business, please contact:

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