

Belgian Constitutional Court refers case to CJEU on validity of EU Global Minimum Tax UTPR provisions

18 July 2025

In brief

What happened?

The Belgian Constitutional Court issued a decision on 17 July 2025 regarding the constitutionality of Articles 35 and 36 of the Belgian Act of 19 December 2023. These articles implement the Undertaxed Profits Rule (UTPR) as part of Belgium's transposition of the EU's Global Minimum Tax directive. In line with the directive, the UTPR would be imposed on the Belgian entity of a group if the top-up tax were not (fully) imposed under a QDMTT or IIR. The Court did not rule on the merits of the constitutional challenge, but has instead referred the question of the validity of the UTPR provisions under the directive to the Court of Justice of the European Union (CJEU).

Why is it relevant?

It will still take some months for the CJEU to take a decision on this case. However if the CJEU determines that the UTPR provisions in the EU Global Minimum Tax directive are not compatible with the EU Fundamental Freedoms, the EU Charter, the principle of legal certainty or fiscal territoriality, then this would impact the UTPR of EU Member States. Furthermore, this could then have broader implications for Pillar Two globally with the impact on the operation of the UTPR as a backstop to Pillar Two.

The possibility that the UTPR could be invalidated EU-wide may also have an impact on the political discourse on the Global Minimum Tax and will likely feed into the ongoing discussion with respect to the recent G7 agreement as well.

Actions to consider

The referral to the CJEU means that we will probably not have a final decision from the CJEU on this matter for potentially 12-24 months. However, it is possible that there will be an outcome to this case prior to the date when the first UTPR filings are due. In the meantime, businesses will need to continue to progress with compliance with the EU Global Minimum Tax directive as it stands.

In detail

The non-profit organization, "American Free Enterprise Chamber of Commerce" (Amfree) lodged an appeal on 27 June 2023 for annulment with the Constitutional Court against articles 35 and 36 of the Belgian Pillar Two law.

The Court posed the following pre-judicial question to the CJEU (unofficial translation):

“Do Articles 12 to 14 of 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"—insofar as these provisions require Member States to subject group entities established in the Union that are part of an MNE group to a UTPR top-up tax, thereby making those entities liable for undertaxed profits realised by other group entities in another jurisdiction, and without making any distinction based on the financial capacity of those liable group entities—violate Articles 15, 16, 17, 20 and 21 of the Charter of Fundamental Rights of the European Union, Articles 49 and 56 of the Treaty on the Functioning of the European Union, the principle of legal certainty, and the principle of fiscal territoriality?”

In simpler terms, the Belgian Constitutional Court has asked the CJEU to determine whether the UTPR provisions of the Pillar Two Directive violate –

- The EU fundamental freedoms such as the freedom of establishment and the freedom to provide services
- The EU fundamental rights such as the right to property and the freedom to conduct business
- The principle of fiscal territoriality recognised in the case law of the Court of Justice of the European Union and in customary international law.

Conclusion

It is hard to predict when the CJEU will decide on the case. Given the complexity of the pre-judicial question, we expect the CJEU to request the advocate-general to advise. The pre-judicial question is raised while there seems to be political momentum to consider amending elements of Pillar Two (qualifying tax credits, permanent safe harbours) and to accept that the US international tax system can work side by side to the Pillar Two system. However, unless and until there are legally binding changes to the Pillar Two system reflected in jurisdictions' laws (including possibly a decision of the CJEU that invalidates portions of the Pillar Two Directive), taxpayers will need to continue preparing for compliance with the law as it currently stands.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

Global Tax Policy

Will Morris, United States
+1 (202) 213 2372
william.h.morris@pwc.com

Edwin Visser, *Netherlands*
+31 (0) 88 7923 611
edwin.visser@pwc.com

Phil Greenfield, *UK*
+44 (0) 7973 414 521
philip.greenfield@pwc.com

Nangel Kwong, *Ireland*
+353 87 280 8575
nangel.kwong@pwc.com

Jean-Philippe Van West, *Belgium*
+32 479 53 11 86
jean-philippe.van.west@pwc.com

Pieter Dere, *Belgium*
+32 498 489 511
pieter.dere@pwc.com

© 2025 PwC. All rights reserved. PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.

This content is for general information purposes only and should not be used as a substitute for consultation with professional advisors.