

Minimum level of taxation for multinational groups

2021/0433(CNS) - 19/05/2022 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 503 votes to 46, with 48 abstentions, following a special legislative procedure (consultation), a legislative resolution on the proposal for a Council directive on ensuring a global minimum level of taxation for multinational groups in the Union.

The aim of the Directive is to transpose into EU law the reform of the rules on international corporate taxation that was agreed by the OECD and the G20 in December 2021. It sets out the method for calculating the effective tax rate by jurisdiction and includes clear and legally binding rules that will ensure that large groups operating in the EU pay a **minimum rate of 15%** for each jurisdiction in which they operate.

The Directive will apply to any large group, both domestic and international, including the financial sector, with combined financial revenues of at least EUR 750 million a year in its consolidated financial statements in at least two of the last four consecutive fiscal years.

Parliament approved the main elements of the Commission's proposal, including maintain the proposed timetable and the deadline of 31 December 2022 for implementation, to allow for rapid implementation of the legislation.

However, Members made some changes to the Commission's proposal.

Location of a constituent entity

An amendment clarifies that a constituent entity other than a flow-through entity should be deemed to be located in the jurisdiction where it is considered as resident for tax purposes based on its place of effective management, namely the place where key management and commercial decisions that are necessary for the conduct of business are taken, place of creation or similar criteria that reflect real economic activities in accordance with this Directive and the GloBE Model Rules.

Anti-avoidance rules

Members wanted to reduce some of the exemptions proposed by the Commission, and to limit the possibility of abuse by including a specific article that includes rules to combat tax avoidance schemes.

For the purposes of calculating the top-up tax, Member States should disregard any arrangement or series of arrangements which, having been put in place for the essential purpose of obtaining a tax advantage that defeats the object or purpose of this Directive, is not genuine, having regard to all relevant facts and circumstances.

An arrangement or a series of arrangements that is disregarded under the Directive should be treated, for the purpose of calculating the tax base, by reference to its economic substance.

The Commission is empowered to adopt delegated acts in order to lay down more detailed rules against tax avoidance, in particular to take into account future modifications of the GloBE Model Rules.

Reporting obligations

Where no constituent entity has been appointed by other constituent entities of the MNE group, the designated local entity in charge of filing the top-up tax information shall be the largest entity of the MNE group located in the same Member State in terms of annual revenues for the last two consecutive years.

Review clause

Members introduced a review clause in order to guarantee that the application of this Directive is subject to proper evaluation five years after its entry into force. That review should:

- assess and reconsider progress in the global implementation of the OECD agreement/GloBE Model Rules, as well as certain exemptions and derogations, in particular as regards distribution tax systems and substance-based income exclusion;
- assess the relevance of the threshold for MNE Group and large-scale domestic firms in scope and the impact on tax revenues on developing countries.

As part of the review, modifications to the GloBE Model Rules could also be integrated into Union law if necessary.

Monitoring by the Code of Conduct Group (Business Taxation)

While leaving Member States some flexibility in the technical implementation of the domestic top-up tax, the Council's Code of Conduct Group (business taxation) should carefully monitor the application of that tax. The Commission should provide assistance in that regard.

The Council's Code of Conduct Group (business taxation) should continuously monitor the development of the accounting standards and their application for minimum tax purposes. If necessary, it should make proposals to adjust the profit determination rules.

Transitional rules

The Directive would also give large-scale domestic groups a transitional period of three years (instead of five) during which their low-taxed domestic activities would be excluded from the rules.