

Minimum level of taxation for multinational groups

2021/0433(CNS) - 22/12/2022 - Final act

PURPOSE: to create a common framework for a global minimum level of taxation within the Union on the basis of the common approach contained in the OECD Model Rules.

LEGISLATIVE ACT: Council Directive (EU) 2022/2523 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.

CONTENT: the Directive aims to implement at EU level the minimum tax component, known as Pillar 2, of the OECD's international tax reform.

As a reminder, the reform of international corporate tax rules consists of two pillars:

- **Pillar 1** covers the new system of allocating taxing rights over the largest multinationals to jurisdictions where profits are earned. The key element of this pillar will be a multilateral convention. Technical work on the details thereof is ongoing in the Inclusive Framework;

- **Pillar 2** contains rules aimed at reducing the opportunities for base erosion and profit shifting, to ensure that the largest multinational groups of companies pay a minimum rate of corporate tax.

The Directive concerning Pillar 2 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 new rules will reduce the risk of tax base erosion and profit shifting and ensure that the largest multinational groups pay the agreed global minimum rate of corporate tax.

The Directive applies to constituent entities located in a Member State that are members of a **multinational enterprise (MNE) group or of a large-scale domestic group** which has an annual revenue of **EUR 750 million** or more, including the revenue of the excluded entities, in its ultimate parent entity's consolidated financial statements in at least two of the four fiscal years immediately preceding the tested fiscal year

This Directive does not apply to governmental entities, international organisations, a non-profit organisations, pension funds, investment funds that are an ultimate parent entity or a real estate investment vehicle that is an ultimate parent entity.

This Directive establishes common measures for the minimum effective taxation of multinational enterprise (MNE) groups and large-scale domestic groups in the form of:

- **an income inclusion rule (IIR)** in accordance with which a parent entity of an MNE group or of a large-scale domestic group computes and pays its allocable share of top-up tax in respect of the low-taxed constituent entities of the group; and

- **an undertaxed profit rule (UTPR)** in accordance with which a constituent entity of an MNE group has an additional cash tax expense equal to its share of top-up tax that was not charged under the IIR in respect of the low-taxed constituent entities of the group.

Member States may elect to apply a qualified domestic top-up tax in accordance with which top-up tax shall be computed and paid on the excess profit of all the low-taxed constituent entities located in their jurisdiction pursuant to this Directive.

Member States will lay down the rules on **penalties** applicable to infringements of national provisions adopted pursuant to this Directive, including those pertaining to the obligation of a constituent entity to file and pay its share of top-up tax or to have an additional cash tax expense, and will take all measures necessary to ensure that they are implemented.

TRANSPOSITION: no later than 31.12.2023. Member States will apply the provisions necessary to comply with the Directive in respect of tax years beginning on or after 31 December 2023.