

Pillar 2: New rules for MNE's applicable as of 1/1/2024

At the end of 2021, the OECD established guidelines to implement a historic reform of the international tax system. These rules ensure that multinational enterprises (MNEs) will be subject to a minimum tax rate of 15%. These rules are associated with the BEPS project and were detailed in the reports entitled "Pillar 1" and "Pillar 2" aimed at resolving the tax challenges raised by the digitization and globalization of the economy.

The GloBe rules (Global Anti-Base Erosion) of Pillar 2 imposes a worldwide minimum tax of 15% for MNEs with more than EUR 750 million in sales. They ensure that these companies pay this tax on profits in each jurisdiction where they operate, and introduce a "top-up tax" if the local rate is below 15%.

To ensure consistent application of the Pillar 2 principles across Europe, an European Directive, published on December 14, 2022, sets out the rules governing entities within the European Union that are part of a multinational group. The Belgian government has opted for a faithful transposition of the directive, with the preliminary draft adopting almost verbatim the terminology of the Dutch and French versions of the directive.

To determine the additional tax levy, the effective tax burden at jurisdiction level is calculated and compared with the minimum rate of 15%.

On the one hand, the Directive allows member states to introduce a supplementary tax to achieve this rate. On the other hand, if a member state has not opted for this, two related rules - the IIR (Income Inclusion Rule) and the UTPR (Undertaxed Profit Rule) will be used to collect the additional tax.

The IIR, the main rule, obliges the parent company of a multinational to pay its share of tax for the low-taxed entities of the group, whether these entities are established inside or outside the Union. Whereas UTPR acts as a safety net to collect the residual amount of tax at the level of the entities concerned.

Pillar 2 rules are due to come into force on January 1, 2024. Member States have until December 31, 2023 to adapt their national legislation. Belgium is still busy to implement the rules in a separate tax law.

Do not hesitate to contact us if you would have any questions.

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