

## **EU reaches agreement on Pillar 2**

On December 12, 2022 the EU Council announced that EU Member States had reached an agreement to implement the minimum tax component (Pillar Two) of OECD's global international tax reform initiative. According to an EU Council press release, the Committee of Permanent Representatives garnered the required unanimous support and the Ambassadors of EU Member States advised the Council to adopt the Pillar Two directive. A written procedure for the formal adoption will now be launched which is currently expected to be finalized as early as on December 14. This is a significant development as the EU is considered a first mover. Other countries are now likely to follow, possibly including the UK, the UAE, Singapore, Hong Kong, etc. The Pillar Two directive must have been transposed into the Member States' national law by December 31, 2023.

Almost a year ago, on December 22, 2021, the European Commission presented a proposal for a directive aiming to implement OECD Pillar 2 rules in a way which is consistent and compatible with EU law. In this respect, reference is made to our previous memorandum on the release of the OECD GloBE Model Rules and the proposed EU Directive in December 2021 and our memorandum regarding the internet consultation on the Netherlands legislative proposal from October this year. The text of the proposed Directive on which agreement was reached on December 12 is the compromise version that was published on November 25, which slightly differs from the version that was published last year.

Whereas the OECD Pillar 2 rules apply to international groups that meet the annual threshold of EUR 750 million of consolidated revenue, the Directive also applies to EU-based large-scale domestic groups that meet the annual threshold of at least EUR 750 million of consolidated revenue.

Similar to the OECD Pillar 2 rules, the EU Directive provides for an Income Inclusion Rule ('IIR') and an Undertaxed Profits Rule ('UTPR') in respect of constituent group entities located in a jurisdiction that is considered a low-tax jurisdiction because the effective tax rate of the constituent entities of a group located in that jurisdiction is below 15%, calculated on a jurisdictional basis.

What is different from the OECD rules is that, if the ultimate parent entity ('UPE') is located in a Member State that is a low-tax jurisdiction because the effective tax rate of the constituent entities in that Member State is below 15%, the UPE will be subject to IIR top-up tax in respect of itself and all constituent entities located in that Member State.

The Directive gives EU Member States the option to introduce a Qualifying Domestic Minimum Top-Up Tax ('QDMTT'). Some Member States, including the Netherlands, have already indicated that they will exercise this option.

### **Effective date**

The Directive must have been implemented in national law of the EU Member States by December 31, 2023. The IIR and the QDMTT in general will apply in respect of fiscal

years beginning from December 31, 2023. The UTPR in general will apply in respect of fiscal years beginning from December 31, 2024.

However, subject to certain conditions, in some situations top-up tax that would be due either on the basis of the IIR or the UTPR will be reduced to zero in the first five years of the initial phase of international activity of the group or in the first five years for large-scale domestic groups in scope of the Directive.

The Directive does not provide for a similar rule regarding the QDMTT. Whether Member States will introduce a similar rule in respect of a QDMTT will be up to them. In addition, Member States in which no more than 12 UPEs of groups in scope of the Directive are located may elect not to apply the IIR and the UTPR for six consecutive fiscal years beginning from December 31, 2023.

### **Comments by KPMG Meijburg & Co**

The EU agreement to implement a minimum tax is a very important development because it is now clear that the Pillar 2 rules will become a reality within the EU as well as in other jurisdictions around the world.

Although some important aspects remain unclear at this stage, e.g. the interaction with the US tax regime, potential safe harbours, etc., it is now of the essence to look into the impact of these new rules, to explore whether and to what extent the global minimum effective taxation rules could lead to top-up tax being due and which reporting obligations may exist. Our specialists would be happy to help you map out your situation. We will of course keep you up to date on any related developments.

KPMG Meijburg & Co  
December 13, 2022

*The information contained in this memorandum is of a general nature and does not address the specific circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.*