KPMG Meijburg & Co Tax & Legal

## Dutch Tax Authorities publish Q&A document on Minimum Tax Act 2024

On September 2, 2025, the Dutch Tax Authorities published the long-awaited Question & Answer (Q&A) document regarding the Minimum Tax Act 2024 (Wmb 2024). This Q&A document provides important clarifications on the application of the minimum tax rules (Pillar 2/GloBE) in the Netherlands and is intended to offer taxpayers practical guidance for implementing this complex legislation. Other relevant sources of interpretation include amongst others the consolidated OECD Commentary, parliamentary documents and tax policy statements.

The Q&A document serves as a guideline and may be instructive for the interpretation of laws and regulations. The Dutch Tax Authorities have indicated that the document is dynamic and will be updated periodically based on experience in practice and international developments. No rights can be derived from the Q&A document. If you are seeking advanced certainty for your specific situation, it is possible to submit a request for a ruling ('vooroverleg') with the Dutch Tax Authorities.

In this news item, we have highlighted a number of topics. In the coming weeks, we will address further topics in a series of news updates.

The full Q&A document can be found on the website of the Dutch Tax Authorities or directly via this **link**. Note that currently, there is no English document available.

### Distinction between IFRS and IFRS-EU: Article 1.2, paragraph 1, Wmb 2024 / 10.1.1. OECD Model Rules (MR)

The Dutch Tax Authorities clarify that, for the purposes of the Wmb 2024, both the application of Book 2, Title 9 of the Dutch Civil Code ('Dutch GAAP') and the International Financial Reporting Standards as endorsed by the European Union, commonly referred to as 'IFRS-EU', are considered local accounting standards. These standards may differ from IFRS as established by the International Accounting Standards Board (IASB), which does not qualify as a local accounting standard.

### Domestic Minimum Top-Up Taxes – application of the local accounting standard: Article 3.2, paragraph 3, juncto 8.13, paragraphs 3 and 4 Wmb 2024 / OECD administrative guidance 17 July, 2023 (several examples)

The aforementioned distinction between IFRS-EU and IFRS is important for determining the financial reporting standard used for calculating the domestic minimum top-up tax in the Netherlands, particularly when the ultimate parent entity is established outside the European Union. The following can be derived from the answers to the four questions described in this context:

- According to the Dutch Tax Authorities, it cannot occur that financial accounts have to be prepared according to a specific local financial reporting standard solely to meet obligations for calculating the domestic top-up tax.
- When group companies established in the Netherlands have financial accounts based on Dutch GAAP (for example, for local financial statement filing purposes), as well as accounts based on IFRS or IFRS-EU (for consolidation purposes), the domestic top-up tax is calculated based on Dutch GAAP. This is because all group companies have reporting in a uniform standard.

- When some of the group companies established in the Netherlands file separate financial statements in accordance with IFRS-EU and others in accordance with Dutch GAAP, the requirement that not all group companies have financial accounts based on the local reporting standard is met. According to the Dutch Tax Authorities, this is viewed from the perspective of both local standards: for all entities together, there is no reporting available in a uniform standard. Therefore, the domestic top-up tax is calculated based on the standard applied by the ultimate parent entity for its consolidated financial statements. In this context, the distinction between IFRS-EU and IFRS is relevant: if the ultimate parent entity located outside the European Union reports under IFRS, then not all group companies have financial accounts based on (uniform) IFRS-EU (the local financial reporting standard) available for the consolidated financial statements.
- When, for a single Dutch group entity, only financial accounts based on IFRS-EU are available, while all other Dutch group entities have financial accounts both based on IFRS-EU (for example, for consolidation purposes) and Dutch GAAP, the domestic top-up tax must be calculated based on IFRS-EU. This follows from the included tie-breaker for reporting years from 2025 onwards, according to which the domestic top-up tax must be calculated using the local financial reporting standard that is available for each group entity established in the Netherlands. The distinction between IFRS and IFRS-EU is therefore relevant here as well. For the 2024 reporting year, the Dutch Tax Authorities state that, according to OECD guidelines, in order to benefit from the qualifying domestic top-up tax safe harbor in the aforementioned situation, the domestic top-up tax must be calculated based on IFRS (EU) as well.

**Treatment of changes to earn-out obligations after acquisition / disposal: Article 6.2, paragraph 2, subparagraph c Wmb 2024**

The Q&A document discusses the possible application of the regime for Excluded Equity Gain or Loss as referred to in Article 6.2, paragraph 2, subparagraph c, Wmb 2024 (Article 16(1)(c) of the EU Pillar 2 Directive and Article 3.2.1 MR). Pursuant to these provisions, among other things, gains and losses from a change in the fair value or a disposal of an Ownership Interest in a Constituent Entity that does not qualify as a so-called Portfolio Shareholding are, in principle, not included in the GloBE Income or Loss. A Portfolio Shareholding is defined as an Ownership Interests in an Entity that are held by the MNE Group and that carry rights to less than 10% of the profits, capital, reserves, or voting rights of that Entity at the date of the distribution or disposition. The following situations are discussed in more details:

1. An Ownership Interest, not being a Portfolio Shareholding, is acquired, in connection with which the acquirer has entered into a conditional earn-out obligation. The question assumes that at the time of acquisition it was assessed as '*more likely than not*' that the obligation would have to be paid, that the obligation was recognized in the financial statements under IFRS, and that the Ownership Interest is accounted for at fair value. At some point, the obligation is released, for example because a condition agreed upon in the earn-out (such as exceeding a certain EBITDA threshold) is not met. The release is recognized in

the income statement. The question is what impact this release has on the amount of GloBE Income or Loss.

According to the answer, in this situation the regime for Excluded Equity Gain or Loss applies to the release of the obligation. The rationale is that, as a result of the release of the obligation, the fair value of the Ownership Interest in the financial statements changes as referred to in Article 6.2, paragraph 2, subparagraph c, first, Wmb 2024 (Article 16(1)(c)(i) Pillar 2 Directive and Article 3.2.1(c) MR). The release is therefore eliminated when calculating the amount of GloBE Income or Loss.

2. An Ownership Interest, not being a Portfolio Shareholding, is disposed of, in connection with which the seller obtains an earn-out receivable. At some point, this receivable lapses, for example because a condition agreed upon in the earn-out is not met. The lapse of the receivable is recognized in the financial accounts. The question is whether the loss can be taken into account in determining the amount of GloBE Income or Loss.

   According to the answer, in this situation there is an Excluded Equity Loss. The disposal of the Ownership Interest in the Constituent Entity, in connection with which the earn-out receivable was agreed, qualifies as the disposal of an Ownership Interest as referred to in Article 6.2, paragraph 2, subparagraph c, third, Wmb 2024 (Article 16(1)(c)(iii) EU Pillar 2 Directive and Article 3.2.1(c) MR). The loss resulting from the lapse of the earn-out receivable must be considered as a loss arising from the disposal of an Ownership Interest as referred to in that provision, because the result on the receivable is directly related to the disposal of the Ownership Interest. The exempt result under that provision in respect of the disposal would have been lower if the earn-out receivable had not been recognized. The loss on the receivable can therefore not be taken into account in determining the amount of GloBE Income or Loss.

For the sake of completeness, it is noted in the answers to both situations that, subject to conditions, it is possible to opt not to exclude Capital Gains or Losses. We refer to Article 6.2, paragraph 2, subparagraph c, first, final part and Article 6.2, paragraph 3, Wmb 2024 in conjunction with Article 2 of the Implementation Decree Wmb 2024.

It is not clear whether these answers have been coordinated with the OECD. Nor is it known whether these answers are shared by the tax authorities of other jurisdictions that have introduced Pillar 2 measures. It should be noted that the scope of the term 'earn-out' is narrower than the regime of Article 13(6) Dutch Corporate Income Tax Act 1969, under which the participation exemption also applies to adjustments to the price at which a participation is disposed of or acquired. Finally, it is important to note that the conditions for the application of the participation exemption and the regime for Excluded Capital Gains or Losses with respect to entities are not identical.

**Adjustments to tax expenses relating to prior years ('prior year adjustments')**

The Q&A document addresses, in several Q&As, the impact of adjustments to tax expenses relating to prior years ('prior year adjustments'). Article 7.6 Wmb 2024 (Article 25(1) EU Pillar 2 Directive and Article 4.6.1 MR) sets out how to deal with adjustments to the relevant taxes after filing the GloBE Information Return ('GIR'). Article 7.6 Wmb 2024 provides that if a Constituent Entity adjusts its liability for Covered Taxes for a previous Fiscal Year recorded in the financial accounts, this adjustment shall, in principle, be treated as an adjustment to the Covered Taxes in the Fiscal Year in which the adjustment is made. This applies both to situations where there is an increase in relevant Covered Taxes and to immaterial decreases (less than €1 million) in Covered Taxes (the latter being an option). Among others, the following questions are addressed:

1. How should adjustments to Covered Taxes be handled before the GIR is filed? For example, if in Fiscal Year 2025 an adjustment is booked to Covered Taxes that relates to Fiscal Year 2024.

   The answer is that this question is still under consideration by the OECD, and it is expected that additional Administrative Guidance will follow.

2. How should tax benefits relating to a pre-GloBE Fiscal Year be handled, for example a tax benefit relating to fiscal year 2023 but recognized in 2024?

   Although neither Article 7.6 Wmb 2024 nor Article 7.2 Wmb 2024 provide guidance on this, the answer indicates that it would not be in line with the purpose and intent of the Pillar 2 regime to retroactively include taxation of pre-GloBE Fiscal Years in the amount of Covered Taxes. For this reason, the benefit from the adjusted Covered Taxes may be eliminated in 2024. However, how to deal with tax expenses relating to a pre-Pillar 2 fiscal year is not addressed in this context.

3. How should the €1 million threshold be determined: in total or broken down by prior Fiscal Year?

   According to the answer, the effect of these adjustments should be assessed per specific prior Fiscal Year. As an example, a situation is mentioned where there is a net benefit of €700,000, consisting of a €1,500,000 benefit relating to 2024 and an €800,000 expense for 2025. Both Fiscal Years must be assessed separately, which leads to the conclusion that the benefit must be allocated to 2024 and the expense to the Fiscal Year in which the adjustment is booked. Hence, the taxpayer can not opt to choose for either amount.

4. How should the term "Covered Taxes" in Article 7.6(1) Wmb 2024 be interpreted?

   Referring to the Consolidated Commentary to the MR published in 2025, the answer states that the term 'prior year adjustments' covers both current and deferred tax, whether or not recalculated at a maximum of 15 percent. This clarifies that adjustments relating to temporary differences, which result in a net benefit due to the recalculation to 15%, can also lead to an adjustment for a prior Fiscal Year.

**Transitional rule regarding deferred tax assets**

Article 14.1 Wmb 2024 (Article 47 EU Pillar 2 Directive and Articles 9.1.1, 9.1.2, and 9.1.3 MR) contains transitional rules concerning the ability to import deferred tax assets and liabilities into the regime of Wmb 2024 when that regime becomes applicable to a Group or Constituent Entity. The main rule is set out in Article 14.1, paragraph 1, Wmb 2024 (Article 47(2) Pillar 2 Directive and Article 9.1.1 MR). In principle, and subject to conditions, deferred tax assets and liabilities that are reflected or disclosed in the financial accounts are carried over into the Wmb 2024 regime. Article 14.1, paragraphs 2 and 3, Wmb 2024 set out several important exceptions to this main rule.

The Q&A document discusses the content of Article 14.1 Wmb 2024 in detail. We focus here on one specific question regarding the scope of Article 14.1, paragraph 2, Wmb 2024. According to this provision, deferred tax assets relating to items that, pursuant to Chapter 6 Wmb 2024, are not taken into account in the calculation of GloBE Income or Loss, are not eligible for the regime of Article 14.1, paragraph 1, Wmb 2024. As a result, they cannot be imported into the Wmb 2024 regime or comparable foreign Pillar 2 regimes if those deferred tax assets have arisen as a result of a transaction that took place after 30 November 2021. The following question is addressed:

1. Does Article 14.1, paragraph 2, Wmb 2024 apply to all deferred tax assets, or only to deferred tax assets relating to a permanent difference that has caused a GloBE Loss? And can the application of Article 14.1, paragraph 2, Wmb 2024 be avoided by demonstrating that a transaction was entered into in the ordinary course of business, and not with the aim of avoiding (potential) Top-up Tax as a result of the announced Pillar 2 legislation?

   According to the answer, Article 14.1, paragraph 2, Wmb 2024 should be interpreted broadly. It is not only an anti-abuse provision, but also ensures symmetry between the numerator and denominator of the fraction used to calculate the effective tax rate for the purposes of Wmb 2024. The restriction on recognizing a deferred tax asset at the start of the Transition Year therefore also applies to deferred tax assets relating to transactions that took place after 30 November 2021 in the ordinary course of business, and that are related to an income item excluded from GloBE Income or Loss as referred to in Chapter 6 Wmb 2024. There is no provision for a rebuttal or counter-evidence that no abuse is present. The answer also indicates that the rule of Article 14.1, paragraph 2, Wmb 2024 may apply to deductible liquidation losses as referred to in the participation exemption, which, pursuant to Article 6.2(c) Wmb 2024, cannot be taken into account. This is somewhat remarkable, since Article 2 of the Implementation Decree Wmb 2024 provides that, under certain conditions, liquidation losses may still be taken into account in determining GloBE Income or Loss under the Wmb 2024 regime. Apparently, liquidation losses falling within the scope of Article 14.1, paragraph 2, Wmb 2024 cannot benefit from this relief under the Implementation Decree. The answer also refers to the Administrative Guidance published by the OECD in January 2025, which shows that the rule of Article 9.1.2 of the MR—and consequently also Article 14.1, paragraph 2, Wmb 2024—should be interpreted broadly. The essence of this guidance can also be found in paragraphs 8.3 through 8.7 of the Consolidated Commentary on Article 9.1.2 of the MR (pp. 257 and 258). Apparently, the Dutch Tax Authorities do not consider it necessary to amend the text of Article 14.1, paragraph 2, Wmb 2024 to take into account the OECD's clarification of the scope of this provision.

**Questions?**

Do you have questions about the application of the Wmb 2024 or the implications of the Q&A document for your organization? Or do you have a specific question you would like to submit to the tax authorities? Please contact your regular advisor at Meijburg & Co or one of our Pillar 2 specialists. We are happy to assist you.

KPMG Meijburg & Co
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