

## Implementation of OECD Pillar Two is progressing



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After years of intensive negotiations, 136 member jurisdictions of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (“IF”) reached a historic agreement on October 8 2021 on a two-pillar solution to reform the international tax framework in response to the challenges arising from the digitalization of the economy.

While Pillar One aims to ensure a fairer allocation of profits and taxing rights among the jurisdictions concerning the largest multinational enterprises (“MNEs”) with a yearly turnover exceeding EUR 20 billion, Pillar Two aims to reduce corporate tax competition among countries by introducing a global minimum corporate income tax rate of 15% to MNEs with consolidated revenue of at least EUR 750 million.



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In the meantime, many jurisdictions have initiated legislative measures in order to adopt the so-called global anti-base erosion rules on Pillar Two (“GloBE rules”). We herewith summarize the standings of the legislative processes of the GloBE rules of some of the largest economies.

### **Tight implementation timeline set forth under the patronage of the OECD**

On December 20 2021, the OECD released the model rules, which are designed as a template for jurisdictions to adopt the GloBE rules into their domestic law. This release was followed by the publication of the accompanying commentary to the model rules on March 14 2022, which provides further guidance on the interpretation of the model rules. Work is still in progress by the OECD with regard to the Implementation Framework that will facilitate the coordination and administration of the GloBE rules which is expected to be published by the end of 2022. The aim of the OECD initially was that jurisdictions start applying the major part of the GloBE rules to their MNEs starting already by 2023. This timeline set by the OECD for implementing the GloBE rules was very ambitious and, as we will see in the following, very difficult to realize.

## **Unsuccessful struggle for unanimity in the EU**

On December 22 2021, shortly after the OECD released the model rules, the European Commission proposed a directive containing rules to ensure a minimum taxation level for large groups operating in the EU. These rules are generally consistent with the OECD GloBE rules, except for certain adjustments to ensure compliance with EU law. This EU directive requires unanimous agreement by the 27 EU member states in order for them to come into effect. The initial plan was to apply the main part of these rules by January 1 2023, as set forth by the OECD. However, until today no unanimous agreement could be reached by the 27 EU member states and a few compromises have been made to the proposed directive since its release, including a delay of the application starting date to December 31 2023. After Poland dropped its initial reservations against the proposed directive during the ECOFIN meeting of June 17 2022, Hungary now is objecting the directive because of the challenges the EU is facing with regard to the war in the Ukraine and due to the current economic uncertainties. At the October 4 2022 ECOFIN meeting the topic was not debated and it therefore remains open if an unanimous agreement can be reached.

Despite the ongoing disagreement within the EU, the governments of France, Germany, Italy, Spain and the Netherlands issued a joint statement on September 9 2022 reaffirming their commitment to swiftly implement the GloBE rules by their own in 2023 should no unanimity be reached within the next weeks.

## **The United Kingdom's legislative process is well advanced**

The UK is one of several jurisdictions that is well advanced in its legislative process on implementing the GloBE rules. On July 20 2022 the UK government published draft legislation on the GloBE rules together with detailed explanatory notes which shall apply to MNEs for accounting periods beginning on or after December 31 2023. The UK government invited stakeholders to comment on the draft rules by 14 September 2022.

## **Switzerland is also on track with its legislative process**

Switzerland also supports the Pillar Two project and on March 11 2022 the Federal Council opened a public consultation on the amendment of the Constitution in order to create the legal basis for implementing the GloBE rules in Switzerland as per January 1 2024 based on a temporary ordinance. A necessary public vote on the amendment of the Constitution is expected to take place in June 2023. The temporary ordinance shall apply to MNEs located in Switzerland until a proper amendment to the tax code can be designed and implemented, which may take several years. On August 17 2022 the Federal Council then opened a public consultation on the draft temporary ordinance containing material aspects of the rules to be implemented. The consultation period runs until November 17 2022. A public consultation will be opened on a second draft ordinance regarding procedural aspects once the OECD has published its Implementation Framework on the coordination and administration of the GloBE rules.

## The compatibility of the U.S. tax system with Pillar Two remains unclear

Implementation of the GloBE rules in the U.S. remains difficult, considering that the proposed changes to the global intangible low-taxed income rules ("GILTI") were left out of the recently enacted Inflation Reduction Act which will apply to financial years beginning on or after December 31 2022. While the Inflation Reduction Act does include a new 15% corporate alternative minimum tax (so called book minimum tax – "BMT") on adjusted financial statement income for certain large corporations, it currently appears rather unlikely that the BMT will qualify as an income inclusion rule or qualified domestic minimum top-up tax under Pillar Two due to various discrepancies between the U.S. and the OECD rules. However, the BMT may qualify as an Adjusted Covered Tax under Pillar Two but at this point it is also not clear whether the BMT is pushed down to the U.S. controlled foreign corporation or not when determining the adjusted covered taxes per MNE under the GloBE rules.

### Going forward

There are still many uncertainties with regard to the implementation of the GloBE rules and it is likely that jurisdictions will interpret the rules differently. Nevertheless, at this point it must be expected that jurisdictions will implement the GloBE rules and that they will be implemented soon. Considering that the legislative processes of many jurisdictions with regard to the implementation of the GloBE rules are already well advanced, the Pillar Two noose is slowly but surely starting to tighten the tax agenda of MNEs, tax authorities and tax consultants globally and by now at the latest affected MNEs need to address this issue.

We will keep you informed of further developments.

Tax Partner AG  
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