KPMG Meijburg & Co Tax & Legal

Internet consultation on legislative proposal to implement Pillar 2 in the Netherlands

On Monday, October 24, 2022 the Dutch Ministry of Finance launched an internet consultation on the legislative proposal for the Minimum Taxation Act 2024 (Pillar 2). This consultation can be seen in light of the statement released by the Dutch government on September 9, 2022, in which the Netherlands indicated that it, together with France, Germany, Spain and Italy, was ready to implement the global minimum effective corporate taxation in 2023, as well as in the context of the comments made by Deputy Finance Minister Van Rij during the Parliamentary Debate on the Budget on October 6, 2022.

Global minimum effective taxation

The European Commission published a proposal for an EU Directive on December 22, 2021 to incorporate the OECD Global Anti-Base Erosion ('GloBE') Model Rules, also known as Pillar 2, into EU law. This proposal has since been amended by several Presidency compromise solutions.

The EU proposal aims to ensure a global minimum effective taxation of 15% for entities resident in a Member State and for non-EU resident entities of an EU-parented entity whose consolidated group revenue exceeds EUR 750 million in at least two of the last four consecutive fiscal years. Unlike the OECD GloBE Model Rules, the EU proposal also applies to large-scale domestic groups. For further details on the proposal, reference is made to our previous memorandum on the release of the OECD GloBE Model Rules and the proposed EU Directive.

Internet consultation

In the internet consultation process, input is invited on the legislative proposal (70 pages) and the explanatory notes (267 pages), which go more in-depth on the legislative proposal.

What is included in the legislative proposal

The legislative proposal introduces the three key components of the GloBE Model Rules:

- The Qualifying Domestic Minimum Top-up Tax ('QDMTT') – introducing a domestic minimum tax intended to be consistent with the GloBE Model Rules and proposed EU Directive, which allows the Netherlands to tax any Top-up Tax from any Dutch low-taxed entities.
- The Income Inclusion Rule ('IIR') – introducing a Top-up Tax at parent level on a jurisdictional basis if an entity (or entities) is (or are) not subject to a jurisdictional effective tax rate of 15% within that jurisdiction.
- The Undertaxed Profits Rule ('UTPR') – introducing a backstop if not all Top-up Tax is captured under the IIR, including Top-up Tax relating to the Ultimate Parent Entity ('UPE') and group entities in the UPE jurisdiction if not captured under a qualifying QDMTT or IIR by the UPE jurisdiction. The UTPR is determined on the basis of an inclusion rather than being collected through a denial of deduction.

The explanatory notes show that, by introducing these components, the goal is full alignment with the EU Directive, as per the latest compromise text, and the OECD GloBE Model Rules. The Netherlands will not extend or significantly deviate from the EU Directive.

The tax will take the form of a separate levy (i.e. it will not be part of the corporate income tax charge, but come on top of it) and be imposed in a separate act (in Dutch: *Wet minimumbelasting 2024*). The tax will be levied as a tax on the basis of a self-assessment, in the form of a Top-up Tax Information Return (under the OECD GloBE Model Rules dubbed 'GloBE Information Return').

The implementation of the legislative proposal is foreseen at December 31, 2023, with the QDMTT and the IIR becoming effective for financial years starting on or after December 31, 2023 and the UTPR set to become effective one year later, i.e. on or after December 31, 2024. As regards the UTPR, we would note that, under the proposed EU Directive, some Member States may opt to defer the implementation of the IIR and the QDMTT until financial years starting on or after December 31, 2029. If the UPE of a Dutch group company is a resident of an EU Member State that has opted for this deferral, the Netherlands can apply the UTPR to the low-taxed income of that group, including the group's UPE.

The legislative proposal provides for the possibility of imposing additional ex-officio tax assessments, including the option of charging interest and penalties, subject to conditions.

What is not included in the legislative proposal
Given ongoing developments at both OECD and EU level, e.g. in respect of the Implementation Framework, further aspects of the legislative proposal are expected to cover topics as:

- Possible safe harbours for groups to reduce compliance costs;
- The administrative framework for the exchange of Top-up Tax Information Returns;
- Dispute resolution mechanisms.

Further guidance is also expected on a variety of issues and questions that were raised as part of the OECD public consultation meeting on April 25, 2022. Also, the introduction of a model provision to introduce a Subject to Tax Rule together with a multilateral instrument is expected.

Follow-up
The consultation process will span six weeks and any input is to be submitted to the Dutch Ministry of Finance via the following weblink: Overheid.nl | Consultatie Conceptwetsvoorstel Wet minimumbelasting 2024 (Pijler 2), reageren (internetconsultatie.nl) by December 5, 2022 at the latest. The Dutch government will consider its options based on the response received and then pass the proposal on to the Lower House of Parliament, probably in the spring of 2023.

International developments
The Economic and Financial Affairs Council of the European Union ('ECOFIN') has not yet reached political agreement on the proposed EU Directive, following a veto of the proposal by Hungary on June 17, 2022. In a joint statement released by the Netherlands, France, Germany, Spain and Italy on September 9, 2022, the Netherlands reaffirmed its intention to swiftly implement the global minimum effective corporate taxation. At present, it is not yet clear whether the EU Member States will be able to reach consensus on the adoption of the EU Directive in the upcoming months.

If Hungary or other EU Member States continue to veto the initiative in upcoming ECOFIN meetings, one possible solution could be for the proposal to be adopted under the "enhanced cooperation" procedure, in which process a minimum of nine EU Member States can choose to forge ahead. Alternatively, the EU Member States may seek to proceed unilaterally. By launching the internet consultation process, the Netherlands is showing its commitment to implementing the global minimum effective corporate taxation with a strong preference for an EU harmonized legal basis in the form of an EU Directive.

We are seeing developments outside the EU as well. Various countries have released consultation notes, as Australia did most recently, and implementation legislation has been drafted in the United Kingdom and South Korea. It appears that South Korea will adopt the legislation in December 2022, which triggers important questions about how to deal with (substantively) enacted legislation for the purposes of the year-end accounting of MNEs.

Comments by KPMG Meijburg & Co
The legislative proposal aligns with the proposed EU Directive; in this respect, it is largely similar to the OECD GloBE Model rules. The legislative proposal reflects the QDMTT, IIR and UTPR provisions and is intended to be effective from financial years starting on or after December 31, 2023 (QDMTT and IIR) and on or after December 31, 2024 (UTPR).

Although many aspects remain unclear at this stage, e.g. regarding potential safe harbours, it is important to look into the impact of these new rules and explore whether and to what extent the global minimum effective taxation rules could lead to Top-up Tax being due. Our specialists would be happy to help you map out your situation.

We will of course keep you up to date on any development in the new legislation.

KPMG Meijburg & Co
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