

THE GLOBAL MINIMUM TAX – A CHALLENGE FOR GROUPS OF ENTERPRISES

Long thought impossible, a breakthrough was achieved in 2021 when almost 140 countries agreed to introduce a global minimum tax. The basic principles developed by the OECD and the G20 are now to be quickly implemented into EU law and applied consistently in the EU. The new rules could become a big challenge for a large number of group enterprises.

MAIN FEATURES OF THE PLANNED MINIMUM TAX

In line with OECD requirements, a new EU directive, which is currently available in a revised draft version dated March 28, 2022, contains regulations for implementing the global minimum tax to ensure corporate profits will be taxed at an effective rate of at least 15%. The directive applies to groups of multinational enterprises (MNEs) and large-scale domestic groups that have a combined annual group turnover of at least EUR 750 million based on consolidated financial statements in at least two of the four preceding fiscal years.

Technically, the global minimum tax is implemented by means of a top-up tax at the level of the parent company of the group. This affects profits of group companies resident in tax jurisdictions with an effective tax burden below the minimum tax rate. This is to be achieved through an additional tax levied as the difference between a minimum tax rate of 15% and the lower effective tax rate. In this way, the tax burden is to be pushed up to the minimum tax level.

FURTHER LEGISLATIVE STEPS

The directive is planned to be finalized within the first half of 2022. The EU member states will then have to transpose the directive into their national law. In Germany, for example, this will require an implementation law to incorporate the global minimum tax rules into existing tax legislation. The respective national legislative procedures are to be completed by 31 December 2023.

In the EU the global minimum tax rules shall generally be applicable as of 2024.

APPLICATION CASE

A typical application case of the global minimum tax rules could be as follows: A group parent company based in Germany holds 100% of the shares in subsidiaries in France, Ireland, Austria and Switzerland (Canton Zug).

Under the global minimum tax a parent company must examine whether the profits of the group companies in the respective jurisdictions were subject to an effective tax rate of at least 15%. The effective tax rate as defined under the directive is determined by qualifying tax expenses (so-called adjusted covered taxes) divided by qualifying profits. For this purpose, the respective profit of the individual subsidiary according to group accounting standards before consolidation has to be modified by certain add-backs and deductions as determined in the directive. Both qualifying tax expenses and modifications to accounting profits of the individual subsidiary cannot simply be taken from the

consolidated financial statements. In a first step a company will analyze which taxes are to be included and, if necessary, how they are to be adjusted.

Regarding the subsidiaries in Ireland and Switzerland in particular, a top-up tax could apply due to the low corporate tax rates there. However, the examination of the effective tax rate is by no means limited to these two countries in our example. Rather, the examination cannot be waived even if the nominal tax rate of the respective state is significantly higher than the minimum tax rate of 15%, as in France and Austria in the example given. An exemption for „nominal“ high tax countries is not provided for in the draft directive, meaning that the German group parent company would have to query and check data from all subsidiaries. It should also be noted that, in particular due to the various modifications of the qualifying profits compared to the respective tax base, the effective tax rate of 15% or less may result even in traditional high tax countries.

In addition, the group parent company (and, if applicable, the subsidiaries) would be required to file a tax return by 30 June 2025. In principle, the filing deadline is 15 months after the end of the fiscal year, but this is to be extended to 18 months for the first year of application.

APPLICATION ALSO IN INBOUND CASES

German companies that belong to an international group with a foreign group parent company may also be affected by the planned new regulations. If, for example, the shares in the German subsidiary are held

entirely by a parent company domiciled in a third country with no applicable global minimum tax or equivalent regulations, the German group company may be obliged to levy the top-up tax with regard to its downstream group companies. This would be the case, for example, if the group parent company is resident in the USA, as it can currently be assumed that the existing GILTI system in the USA may not be regarded as equivalent to the global minimum tax regulations.

The German group company would have to check whether the profits of its downstream group companies in Germany and abroad are subject to an effective tax rate of at least 15% and would have to comply with corresponding declaration obligations.

PRACTICAL CHALLENGES

Irrespective of a potentially higher tax burden within the group a significantly higher compliance effort is to be expected. It will be necessary to request a large amount of data from the subsidiaries in order to calculate the effective tax rate under the global minimum tax rules. Not all of this data is readily available from the annual financial statement data submitted by the

subsidiaries for the purposes of the consolidated financial statements. Furthermore, any additional tax burden due to the global minimum tax may also have effects on the financial statements.

Particularly in the first year of application, affected groups will face the challenge of adapting their work processes at an early stage so that data determination and data processing can be carried out in good time before the end of the declaration period. This will mean that existing IT systems for corporate reporting should at least be supplemented with the new required information and that processes should be adapted and linked in a meaningful way.

Even though the national regulations to implement the global minimum tax are not yet determined, affected groups of companies are advised to deal with the future challenges in a timely manner. Sound knowledge of the substantive legal requirements of the global minimum tax and IT-supported know-how for process-related implementation should be closely interlinked. We at Ebner Stolz support you with our experts in international tax law and group accounting as well as in the area of tax technology.

ANSPRECHPARTNER



The contact persons at Ebner Stolz you are familiar with will be happy to answer any questions you may have about the global minimum tax. In addition, you are also welcome to contact our experts in international tax law.

Publisher

Ebner Stolz Mönning Bachem
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Law current as of 14 April 2022

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