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The Netherlands publishes draft bill to implement Pillar Two rules

On October 24, 2022, the Netherlands published the draft bill on Pillar Two called 'Minimum Tax Rate Act 2024' (news item). This draft bill is open for public consultation until December 5, 2022. Although a bit later than anticipated, the Netherlands is still the first EU country with draft legislation. The draft bill aligns with the latest compromise text of the proposed EU Directive and is largely similar to the OECD Global Anti-Base Erosion ('GloBE') Model rules.

What happened before

In a previous Newsflash, we already discussed in more detail the GloBE Model Rules, known as Pillar Two. Pillar Two is an initiative of the OECD to ensure that multinational groups will be subject to a global minimum 15% corporate income tax rate. Following the OECD's Inclusive Framework, over 135 countries committed to implement the Pillar Two rules.

During December 2021, the European Commission published a proposed Directive to implement Pillar Two in the EU. In June 2022, all Member States but one (i.e., Hungary) voted in favor of the proposed Directive. Because direct tax measures still require unanimous voting, no political agreement has therefore been reached yet in the EU.

The Netherlands also published a joint statement with France, Germany, Spain and Italy on 22 September 2022, confirming that these five countries intend to swiftly implement the GloBE Model Rules.

On October 13, 2022, The Dutch State Secretary for tax affairs - Marnix van Rij - explicitly stated before the European Parliament' subcommittee on fiscal affairs that the worst for the EU is to start implementing Pillar Two in the 27 Member States on a unilateral basis. It is not yet clear whether the EU Member States will be able to reach consensus on the Directive in the coming months. An alternative could be that the EU Directive will be adopted on the basis of 'enhanced cooperation', for which a minimum of nine EU Member States is required.

Draft bill

In brief, Pillar Two ensures that multinational groups with a turnover of at least €750 million are effectively taxed at a rate of 15% or more on their profits. The draft bill contains a Qualifying Domestic Minimum Top-up Tax ('QDMTT'), an Undertaxed Profits Rule ('UTPR') and an Income Inclusion Rule ('IIR'). This is fully in line with the OECD's GloBE Model Rules and the draft EU Directive (as said, the Netherlands choses to align closely with the text of the EU Directive).

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The Netherlands has chosen to implement the Pillar Two rules in a separate act, not being part of the Corporate Income Tax Act 1969. This because the Pillar Two effective tax rate is based on IFRS rules and not on Dutch tax standards. It therefore does not fit in the current framework, according to the Dutch legislator.

The Pillar Two rules are implemented as a withholding tax and it is therefore up to the tax payer to calculate and remit the tax due by self-assessment in an 'information Pillar Two return'. By designing the act in this way, the Dutch tax authorities can impose an additional tax assessment (in Dutch: 'naheffingsaanslag') without a new fact.

Based on the draft bill the rules for the QDMTT and the IIR should become effective for financial years starting on or after December 31, 2023 and the UTPR one year later, i.e. on or after December 31, 2024. The information Pillar Two return is required within fifteen months after the end of the financial year, with the actual tax filing being due two months later. An additional three months are provided for the first financial year. For more details on the application of the rules, we refer to our previous Newsflash.

Next steps

The Netherlands will collect and review input on the internet consultation after December 5, 2022. This because the Netherlands strives for a thorough legislative procedure by listening to stakeholders. The most important next step, however, is for the EU Member States is to reach political agreement in the Ecofin. Upon agreement, the proposed Directive can be adopted and implemented in domestic legislation of the EU Member States.

Take away

With the publication of the draft bill, the Netherlands still aims to introduce the Pillar Two rules in line with the latest OECD time path.

Whether this is realistic remains to be seen in the coming months. Although some aspects are not covered by the draft bill (such as potential safe harbors and dispute resolution mechanisms), it is important to assess the impact of these new rules on your organization. Our Pillar Two specialists are happy to assist.

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