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NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
No. prev. doc.:	15294/21 - COM (2021) 823 final
Subject:	Directive on ensuring a global minimum level of taxation for multinational groups in the Union – Policy debate

I. Key developments and state of play

1. On 8 October, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) reached agreement on a reform of the international rules on the taxation of the profits of multinational enterprises. All EU Member States that are members of the Inclusive Framework have joined the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy. In its conclusions of 27 November 2020, the Council expressed its continued support for the work of the Inclusive Framework¹.
2. As public feedback shows, this agreement, which brings together 137 countries and jurisdictions, is a major step towards an efficient and fair system for taxing profits.

¹ ST 13350/20.

3. The minimum effective tax rate ('Pillar Two') is based primarily on two rules to be applied in domestic law ('GloBE rules'): (i) an Income Inclusion Rule (IIR), which imposes top-up tax on a parent entity in respect of the low-taxed income of a constituent entity; and (ii) an Undertaxed Payment Rule (UTPR), which allows an entity making an intra-group payment to an entity whose low-tax income is not subject to tax under an IIR to deny a deduction of that payment or require an equivalent adjustment.
4. These rules impose a top-up tax up to the minimum level, using an effective tax-rate test that is calculated on a jurisdictional basis and that uses a common definition of covered taxes and a tax base determined by reference to financial accounting income. They apply to multinational enterprises with a turnover of at least EUR 750 million in their financial accounts. The minimum tax rate, for both the IIR and the UTPR, is 15 %.
5. The GloBE rules provide for exceptions based on a formulaic substance carve-out that excludes an amount of income corresponding to a fixed percentage (5 %) of the carrying value of tangible assets and payroll. For the first 10 years, a transitional rule provides that this substance-based exclusion will start at 8 % of the carrying value of tangible assets and 10 % of payroll. For tangible assets, the rate will then decrease annually by 0.2 % for the first five years and by 0.4 % for the remaining period. For payroll, the rate will decrease annually by 0.2 % for the first five years and by 0.8 % for the remaining period.
6. The GloBE rules also provide for a *de minimis* exclusion for jurisdictions in which the multinational enterprise has a turnover of less than EUR 10 million and profits of less than EUR 1 million.

7. According to the October Statement of the OECD/G20 Inclusive Framework, Pillar Two should be brought into law in 2022, to be effective in 2023, with the UTPR coming into effect in 2024.
8. On 14 December 2021 the OECD/G20 Inclusive Framework adopted model rules giving effect to the Statement of October 2021 on the principles of the GloBE rules and setting out their mechanisms. They were published on 20 December.

II. Aim of the proposal for a Directive

9. In order to ensure that the implementation of the GloBE rules is consistent and compatible with EU law, on 22 December 2021 the European Commission presented a proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union².
10. This proposal for a Directive contains the rules on the basis of which Member States will apply a top-up tax in respect of the low-taxed income of a constituent entity. The proposal includes an adjustment to the OECD Model Rules, justified by the need to comply with EU primary law: whereas the OECD Model Rules require the IIR to be applied only to foreign entities, i.e. those established in a different jurisdiction from that of the group's headquarters, it is necessary for the IIR to also apply to domestic entities in order for the Directive to comply with the freedom of establishment.

² ST 15294/21.

11. All of the other features of the OECD agreement (scope, rates, exclusions, etc.) are unchanged. As provided for in the OECD Model Rules, the proposal for a Directive will allow Member States to opt to levy a domestic top-up tax on their low-taxed resident entities. Member States that choose this option will have to calculate the domestic top-up tax in accordance with the GloBE rules as set out in the Directive. The top-up tax due locally will be deducted at the level of the group's parent entity, which will remain responsible for calculating the top-up tax for the group as a whole.
12. The proposal establishes 31 December 2022 as the deadline for transposition of the Directive, so that the national legislation transposing the Directive takes effect in accordance with the implementation timetable adopted by the OECD/G20 Inclusive Framework on BEPS (2023).
13. In addition to the need to adjust the scope of the IIR in order to comply with EU primary law, the adoption of this Directive will pursue a second objective. It will ensure, over time, a high level of coordination of the national laws of the Member States implementing the Pillar Two, and will provide greater legal certainty and stability, thus avoiding a situation in which multinational companies operating in the single market would have to deal with divergent laws. Moreover, the entry into force of the Pillar Two across the EU on a single date, in line with the implementation timetable set by the OECD, will send a strong signal of Member States' commitment to preventing a 'race to the bottom' in corporate taxation.

III. Next steps

14. The French Presidency intends to devote all necessary resources to the technical examination of the proposal; the early months of the semester in the tax field will therefore be devoted mainly to this issue. The examination of this text at the level of the Working Party on Tax Questions started on 4 January (at expert level), and was followed by an exchange of views in the Working Party on Tax Questions (High Level) on 6 January 2022. These discussions showed that delegations agree on according high priority to this file, while attaching particular importance to the timetable for adoption and transposition of the new rules.
15. Once the technical work on the drafting of the Directive has been completed, it will be submitted to the Council (ECOFIN) for political agreement, in order to allow sufficient time for the national Parliaments to adopt the necessary domestic legislation for its transposition. Ministers will be kept informed in the Council (ECOFIN) of the progress made at technical level.
16. In order to provide political guidance for further technical examination of the text, the Permanent Representatives Committee is asked to suggest that the Council hold an exchange of views on the following issues:
 - a) Do you agree with the objective of transposing, in a way that is consistent and compatible with EU law, the rules resulting from the international agreement on the Pillar 2?
 - b) Do you agree that the technical examination of this text should be completed as a matter of priority, in order to reach an agreement as soon as possible to take account of the necessary transposition deadlines?