Tax & Incentives Key Topics in Poland Autumn 2024

Global Minimum Tax

BEPS 2.0 | Pillar Two — Timeline

Poland

OECD/EU

2021 | 2022 | 2023 | 2024 | 2025 | 2026-2030

2021年10月
Agreement at OECD/G20 IF level

End of 2021
Release of OECD GloBE Model Rules & EU Directive

March 2022
Commentary on GloBE rules

End of 2022
EU Pillar 2 Directive adopted
Release of the GloBE Implementation Framework components (e.g. transitional safe harbors and penalty relief)

Feb 2, 2023
Release of Administrative Guidance

July 17, 2023
Release of GloBE Information Return (GIR),
Release of additional Administrative Guidance (including QDMTT and UTPR Safe Harbour)

October 3, 2023
Release of STTR MLI

Later in 2023
Release of further OECD guidance

Jan, 2024
IIR targeted to be in effect

Apr 25, 2024
Release of draft law for public consultation

Jan, 2025
UTPR targeted to be in effect

Jan, 2025
IIR, UTPR and QDMTT to be in effect with
- Qualified net income and qualified net losses
- Adjusted qualified taxes

Dec 31, 2029
Optional EU deferral to apply IIR and UTPR

Global minimum tax (Pillar II)

What is global minimum tax (Pillar II)?

An obligation to pay a top-up tax, so that the group's effective tax rate(ETR) is not lower than 15%.

How to calculate ETR?

Adjusted Covered Taxes

1) **Current Tax Expenses**
2) +/- Adjustment of temporary differences
3) +/- Distribution of CFC, distribution tax
4) +/- Adjustments after filing

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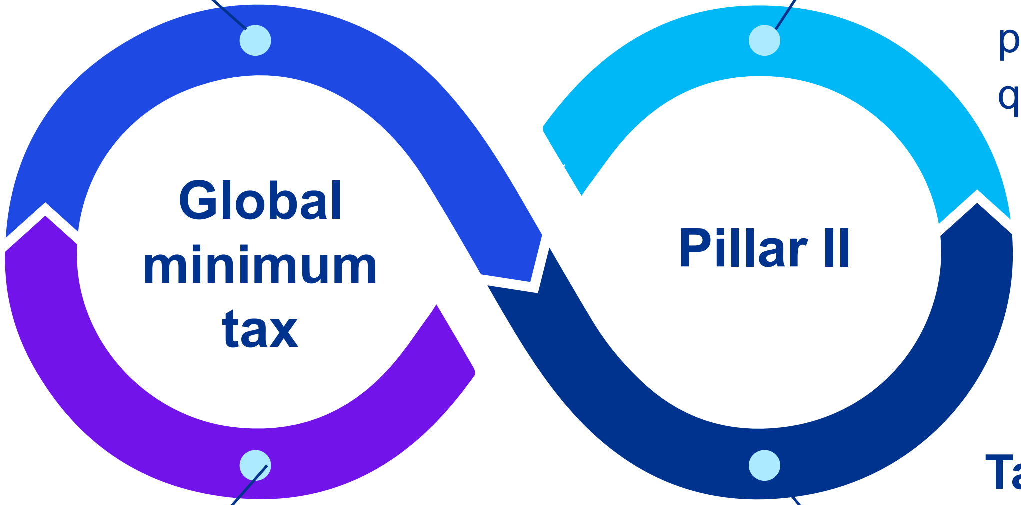
Net GloBE Income

1) **Net Profits or Losses**
2) +/- Adjustments under GloBE Rules
3) +/- Allocations to permanent establishments, flow-through entities, etc



To whom the tax applies?

Group of entities with a total annual revenue of at least EUR 750 million in at least two of the four taxable years immediately preceding the tax year in question.

Tax collection mechanisms

- **Income Inclusion Rule** (IIR)
- **Undertaxed Payments Rule** (UTPR)
- **Qualified Domestic Minimum Top-up Tax (QDMTT)**

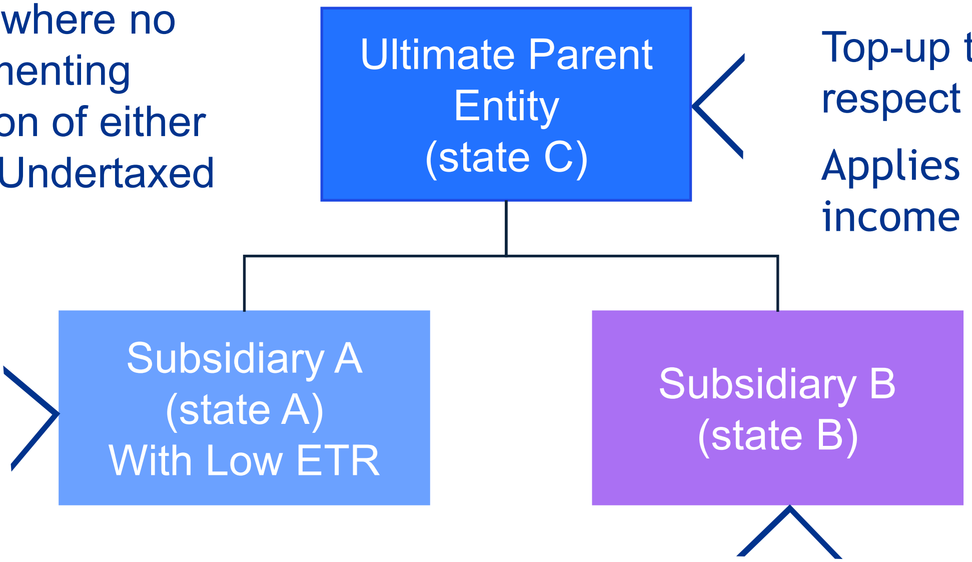
Assumptions to GloBE mechanism

Top-up tax is either collected by the low-tax jurisdiction itself (1), under Qualified Domestic Minimum Top-up Tax (QDMTT), or where no QDMTT applies, by another implementing jurisdiction (2) through the imposition of either Income Inclusion Rule (IIR), or (3) Undertaxed Payments Rule (UTPR).

2. Income Inclusion Rule (IIR)

Top-up tax imposed on parent entity with respect to low taxed income of Subsidiary A

Applies if QDMTT was not applied in low income tax jurisdiction



1. Qualified Domestic Minimum Top-up Tax (QDMTT)

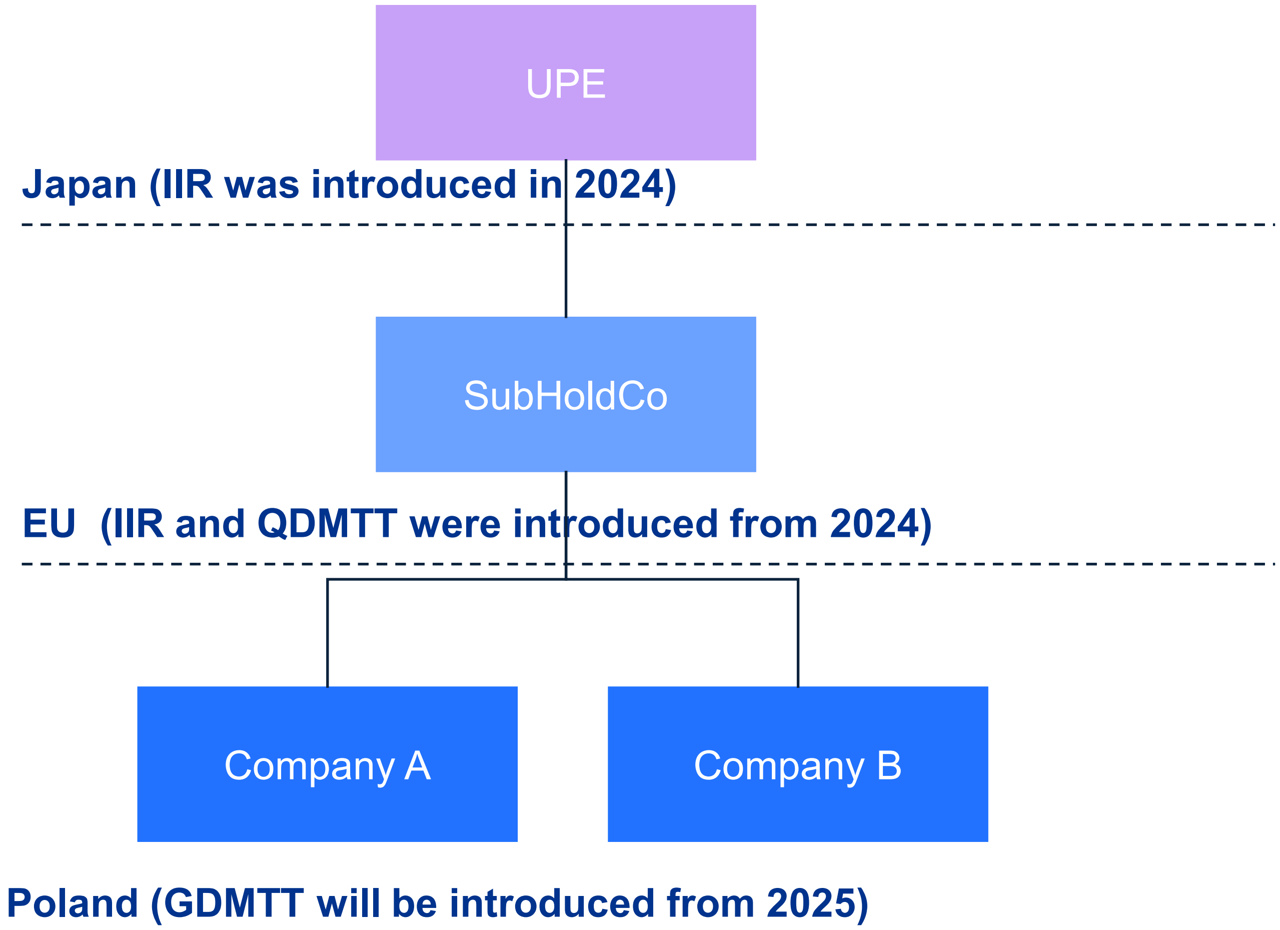
Low income tax jurisdiction should apply QDMTT first.

3. Undertaxed Payments Rule (UTPR)

Where the IIR cannot be applied to a jurisdiction's low-tax income, the top-up tax is collected by all jurisdictions that have implemented UTPR.

The total amount of top-up tax as calculated under the GloBE rules is allocated among jurisdictions by reference to a substance-based allocation key.

Example 1



Compliance for Japanese IIR

- Japanese UPE makes de minimis test seeing their CbCR report calculating average of revenue and net profit of constitute entities in Poland.
- Japanese UPE makes simplified judicial ETR test seeing current tax expenses and defered tax expanses, unqualifying tax expenses, provision for uncertain tax position in the Polish sub’s financial statement and other documents.
- Japanese UPE makes calculation of the amount of Substance based income according to GloBE rule.
- If Poland are not excluded through those processes, Polish subsidiaries will be involved in full-fledged procedure for Japanese IIR.
- QDMTT should be applied as of 2025, but voluntarily may be applied as of 2024.

Key transitional safe harbour rules

01

De minimis test

CbCR Revenue of less than €10 million and Simplified GloBE Income of less than €1 million for the taxable year (i.e. no 3-year average applies).

02

Simplified ETR test

Simplified ETR calculation for a jurisdiction by referring to the Simplified Covered Taxes divided by the Simplified GloBE Income. The applicable minimum rates are **15**% (2023 and 2024), **16**% (2025) and **17**% for taxable years beginning in 2026.

03

Routine profits test

The amount of the Substance-based Income Exclusion is greater than the Simplified GloBE Income. No simplified determination of the substance factors (payroll and tangible assets) is applicable.

* Where one of the three alternative tests is met and only for FYs beginning on or before 31 December 2026 (no inclusion of FYs that end after 30 June 2028). If applicable, the jurisdictional Top-up Tax is deemed to be zero.

Minimum income tax under the Polish CIT Act

Minimum tax - Overview

Who

Tax Payers with less than 2% profitability or loss on their operational activities

Exclusion

There are some exclusions for certain tax payers and tax payers in a capital group

Tax Rate

The minimum rate of the minimum corporate income tax amounts to **10% of the taxable base.**

Tax Base

A taxable person can choose from **two methods of calculating the taxable base in the minimum tax.**

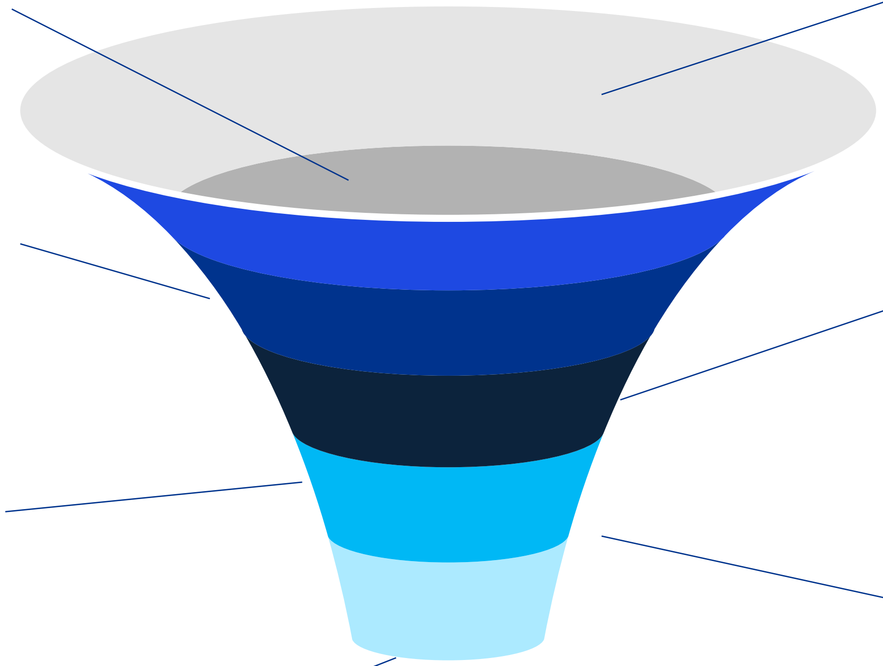
Minimum tax in CIT – objective exemption

For the purpose of calculating the loss and the share of income in revenues, the following is <u>not taken into account</u>:

the costs of acquisition, production or improvement of fixed assets **(e.g., depreciation write-offs)**

costs of use of fixed assets under lease contracts, where depreciation write-offs are made by the asset users **(financial leasing)**

20% of tax-deductible costs on account of remuneration, social security contributions and contributions to Employee Capital Plans, i.e., **employee costs**



factoring receivables

increase in tax-deductible costs of purchasing electricity, heat or line gas (assessment of cost increase should be made on an annual basis)

the amount of excise duty included in the price of excise goods purchased and sold by a taxable person trading in these goods

excise duty amounts, **retail sales** tax, **gambling tax**, **fuel surcharge**, and **emission fee** paid

Taxable persons outside the taxation scope

Provisions on minimum tax are not applicable, among others, to taxable persons:

Minimum tax (exclusions)

- starting their business in the year of commencement of business and for consecutive years immediately following that taxable year
- being **small taxable persons**
- **whose shareholders or partners are only natural persons** and who do not hold:
  - more than 5% of shares in the share capital of another company or all rights and obligations in an unincorporated entity,
  - other property rights of a founder or beneficiary to receive performances from a foundation, trust or other entity or legal relationship of a fiduciary nature, or similar rights.
- the revenue of the taxable persons in a given taxable year **was at least 30% lower than the revenue earned in the previous taxable year;**
- being **financial enterprises**
- **belonging to a group of at least two member companies,** where one of the companies has a direct 75% share in the nominal capital, share capital or equity of other companies within the group where:
  - the tax year covers the same period for all the member companies and
  - the share of the total income of the companies in their total revenue calculated for the given tax year exceeds 2%, while when determining the conditions *referred to in point a and b, all group companies that are taxable* persons referred to in Article 3(1), or belonging to a tax group are taken into account.

Minimum tax - taxable base

Taxable base

The taxable base of the minimum tax is the **total of**:

1.5% of revenue from a source of revenue other than capital gains earned in the given taxable year;

debt financing costs incurred for the benefit of related entities, exceeding 30% of tax-EBITDA;

costs of intangible services incurred directly or indirectly for related or tax haven entities or costs of purchase of certain intangible rights or services, in the part in which their value exceeds PLN 3 million and 5% of tax EBIDTA.

OR

The amount corresponding to 3% of the revenue from sources other than capital gains earned in the given taxable year.

Withholding Tax

Pay-and-refund WHT collection regime

Relief at source < PLN 2 million	• Annual threshold of PLN 2 million applies separately to each related party. • Subject to WHT are all types of effective settlement, including off-sets and interest compounding. • Aggregate distribution of interest, royalties or dividends up to PLN 2 million annually may benefit from reduced treaty rates or WHT exemptions, based on beneficial owners' status of recipient and up-to-date certificate of fiscal residence.
Pay & refund > PLN 2 million	• Excess payments of interest, royalties or dividends over the threshold should be subject to Polish WHT at respective domestic rate (20% interest & royalties / 19% dividends). • Threshold does not apply to payments covered with: ✓WHT clearance opinions, or ✓management's statements filed to the tax office in due course.

Possible options if the mechanism should be applied

<Option 1> Refund Application

Claims are usually considered within 6 months, with possibility of extending proceedings for up to 6 month.

<Option 2> WHT Clearance Opinion

WHT clearance opinion is usually issued within 6 months from application, based on application supplemented with source information and evidence confirming recipient's beneficial ownership, i.a. contractual framework (interest/royalties), financial statements, information about employment, transfer pricing documentation. Validity period of a clearance opinion is up to 3 years.

<Option 3> Management Statement

Management statement confirms that WHT remitter (payee) conducted required analysis and acting with due care, did not identify any arguments contradicting beneficial ownership. Statement should be submitted to tax office by end of 2nd month following date, when aggregate payments exceeded PLN 2 million threshold, but treaty benefits or WHT exemptions were applied.

In case the statement was proved to be incorrect, management may be held responsible under provisions of Polish Penal Fiscal Code.

Due diligence and beneficial ownership

Most Major Criteria of BENEFICIAL OWNER in Recent Tax Practice

is not an intermediary, representative, trustee or any other entity obliged to transfer all or any part of the remuneration to another entity	receives income for its own benefit, including deciding independently about its purpose and bears the economic risk related to the loss of this income or any part of it	conducts **actual** economic activity in country of tax residence; nature and scale of aforementioned activity should be taken into consideration with respect to receivables paid by Polish WHT remitter

- Lack of clear rules of exercising due diligence in WHT settlements.
- When assessing, whether due diligence was exercised, the nature and scale of activities carried out by the WHT remitter and the relationship with taxpayer should be taken into consideration.
- Obligation of exercising due diligence covers:
  ✓ identification of payments subject to WHT,
  ✓ determining relevant WHT rate,
  ✓ conducting analysis and collecting evidence confirming tax residence and beneficial ownership status of payments' recipients.

Others

Obligations for CIT taxpayers - CIT JPK

- As of January 1, 2025, an obligation will be introduced to keep accounting books exclusively in electronic form and to send the structured information contained therein to the tax authorities annually - by means of the CIT JPK structure.
- CIT JPKs will be sent without prior request from tax authorities.
- Taxpayers will be required to implement new IT solutions and reconstruct their general ledger and subsidiary ledgers in a way that will enable them to comply with JPK CIT transmission.

Who should prepare？

- tax years beginning after **December 31, 2024** – for CIT taxpayers in which the value of revenue earned in the previous tax year or fiscal year, respectively, exceeded the equivalent of EUR 50 million;

Tax saving oportunities

- Important note: some of the reliefs cannot be applied to income already exempt under the PIZ / SEZ reliefs.
- Additionally if the profits are kept in the Company (rather than paid out) there is a possibility to account for additional tax deductible costs (under certain conditions).
- There is also a possibility to apply 50% deduction in personal income tax with regard to some innovative employee salaries (in practice it means that the employees receive bigger salary without an additional cost for the Company) – this can be applied together with other reliefs or PIZ/SEZ.

Prior to the start of investment

Available grants and subsidies

It is worth exploring the possibility of taking advantage of various types of **grants and subsidies.** In this context, it should be noted that, among other things, the schedule for the **European Funds for the Modern Economy program** was published on 20 January 2023. The calls for the first applications for support and funding for innovative enterprises opened on 20 February 2023.

Polish Investment Zone

Once certain conditions are met, investors throughout Poland can apply for **support in the form of, among other things, income tax exemption.**

After the start of the investment

Possible reliefs

The potential applicability of publicly available tax reliefs, :

- **R&D and IP BOX reliefs**
- **relief for innovative employees**
- **robotization relief**
- **prototype relief**
- **sponsorship relief**

Proper settlements for investments

The preparation and implementation of **an optimal settlement of the investment**, in terms of accounting, CIT, depreciation, reliefs, but also from the perspective of property tax, has an impact on future tax settlements.

European Funds for a Modern Economy

Priority I - SMART Pathway

Within the framework of the program, support in the form of grants is granted for conducting industrial research and experimental development work, leading to the development of a product or process innovation at least on a national scale.

- R&D
- Implementation of innovations
- R&D infrastructure
- Digitization
- Greening of enterprises
- Competencies
- Internationalization

The maximum funding level for large enterprises in the **R&D module** is:

- **65%** - industrial research
- **40%** - experimental development work.

The program has a modular structure and consists of mandatory and optional modules. **For a large entrepreneur, the mandatory module is R&D.**

Planned recruitment:

June 2024 - October 2024

Call budget: PLN 890 million

Green Loan

What does the funding apply to?

Within the framework of the measure, entrepreneurs will be able to make investments in broadly understood energy efficiency, related to energy saving, including thermal modernization of buildings, as well as changing the sources of energy used to more environmentally friendly ones and replacing equipment, installations or process lines with more energy-efficient ones.

Greening of enterprises

Micro-, small- and medium-sized entrepreneurs (SMEs) and small mid-cap and mid-cap companies (up to 3000 employees) operating in the Republic of Poland.

Maximum subsidy amount

From 15% to 80%, depending on the type of expenditure, the size of the enterprise and the location of the investment.

The maximum value of eligible expenses is €50 million

Planned recruitment:

Second call: 17.10.2024 - 30.12.2024

Thank you!

KPMG in Poland