



KPMG Poland Tax update seminar

Warsaw, July 3rd, 2024

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Agenda of the seminar

Agenda of the meeting

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01

**Minimum income
tax under the Polish
CIT Act**

Minimum tax in CIT



On **01 January 2022**, a new levy, i.e., **minimum income tax**, was introduced into the Polish regulatory framework.



It applies to CIT payers being companies, partnerships and tax groups with a registered office or place of management within the territory of the Republic of Poland **reporting losses or low profitability**.

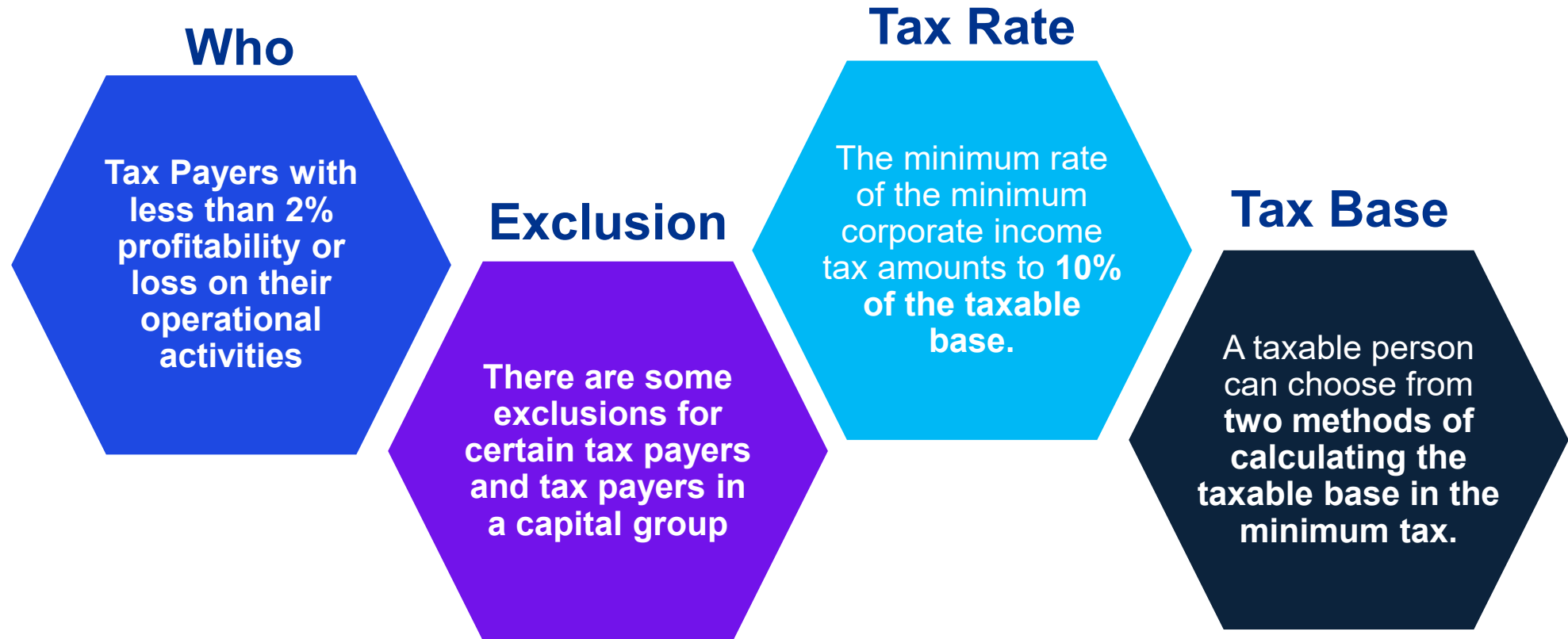


The amending act introduced an exemption from the minimum income tax **for two years, i.e., from 01 January 2022 to 31 December 2023**.



On 01 January 2024, the **two-year suspension period** ceased to apply.

Minimum tax - Overview



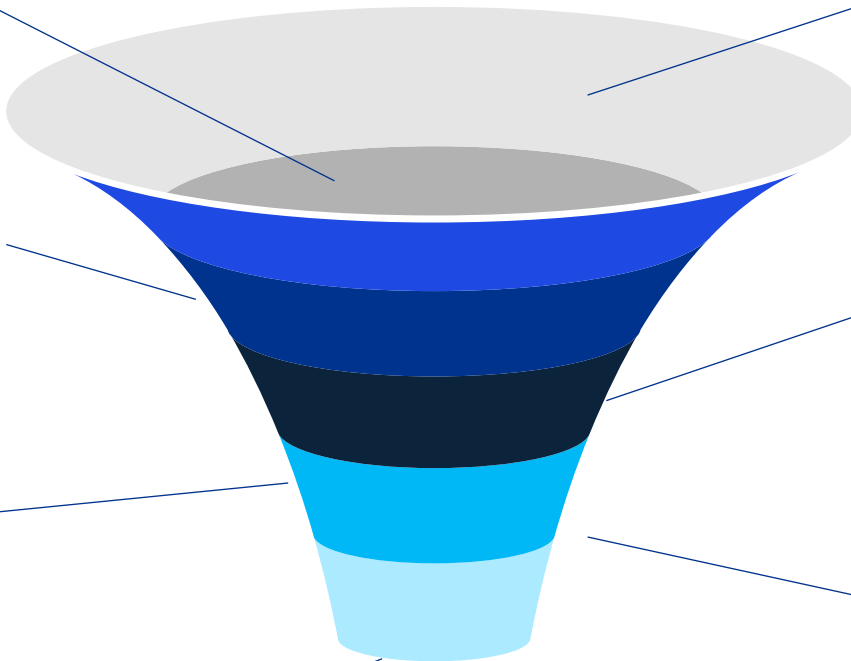
Minimum tax in CIT – objective exemption

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

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



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

factoring receivables

Taxable persons outside the taxation scope

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

- 
- 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.
 - 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.
 - 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;**

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.

Minimum tax in CIT

- Taxable persons have to assess whether they are subject to the minimum tax.
- The tax is **payable with the annual tax return for FY2024**.
- The amount of the payable minimum income tax is **deducted from the tax calculated in line with general principles**, due for the same year.
- The deduction is made via tax return for the **subsequent 3 taxable years** immediately following the year for which the minimum income tax was due.

Taxable persons in numbers



Data on the **largest CIT payers of 2022** can prove useful to better illustrate the scale of application of the new levy. This group covers ca. **4,000 entities**. Based solely on financial data (i.e. without taking into account statutory exclusions), it follows that if **such results were to be repeated in 2024**:



nearly 670 entities would be classified as minimum tax payers due to not exceeding the minimum share of income in revenues (2%);



approximately **320 taxable persons** would be classified as minimum tax payers due to the reported tax loss.

Nearly every fourth large taxable person

will be subject to minimum tax, extrapolating data to 2024.

02

Withholding tax (WHT)

Pay-and-refund WHT collection regime



New WHT collection rules were initially introduced in 2019 and have been subsequently suspended until end of 2021.

Pay-and-refund mechanism applies to interest, royalties and dividends made towards related parties.

Requirement of due care introduced along with pay-and-refund mechanism, develops along with practice of tax authorities.

Payments for intangible services (e.g. advisory, or management services) are out of scope of the pay-and-refund mechanism.

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 care and beneficial ownership

Most Major Criteria of BENEFICIAL OWNER in Recent Tax Practice

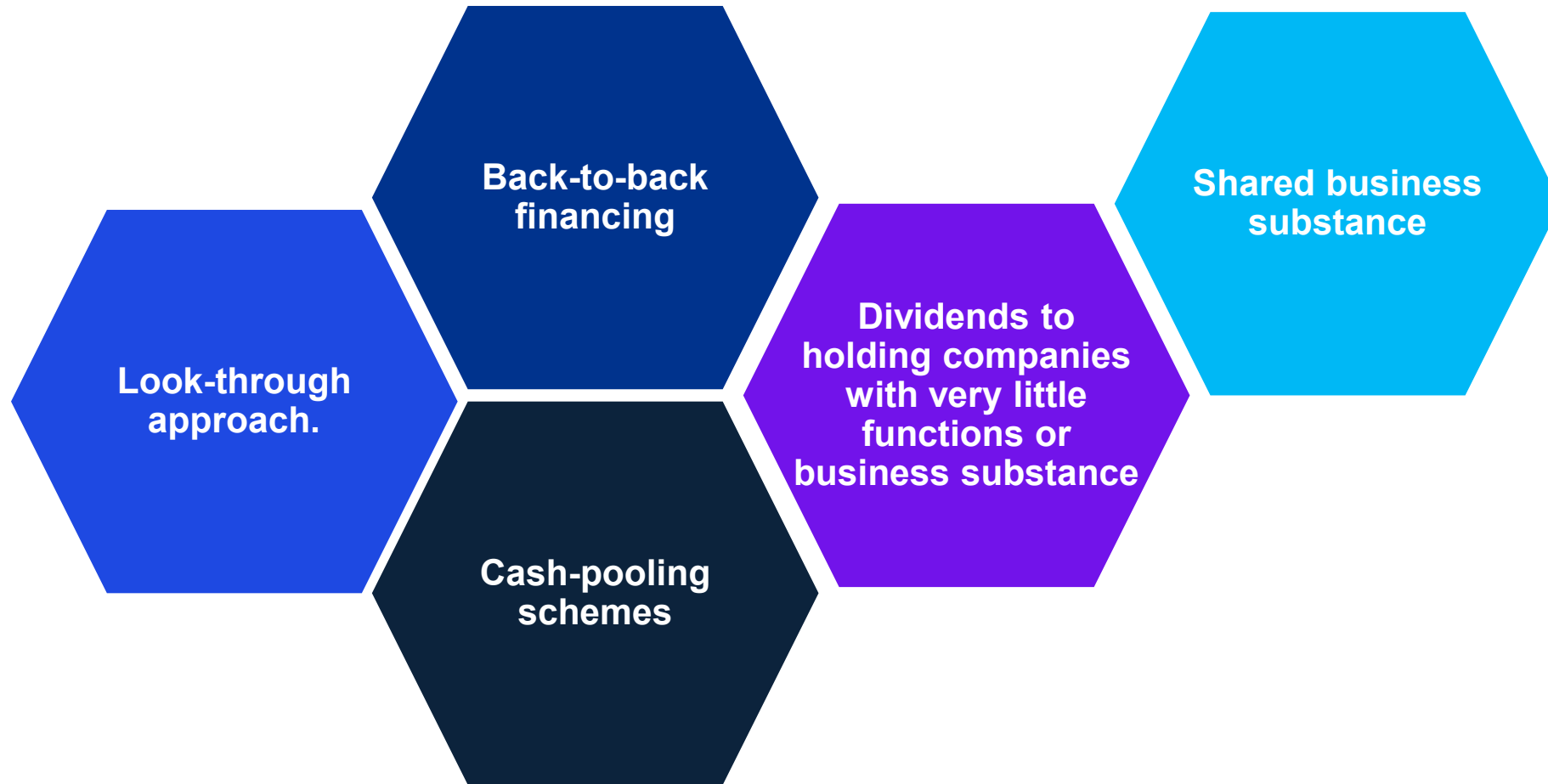
is not an intermediary, representative, trustee or any other entity obliged to transfer all or any part of the remuneration to another entity

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 **genuine** 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 care in WHT settlements.
- When assessing, whether due care 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 care 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.

Cases of special attention



03

Global minimum tax

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?

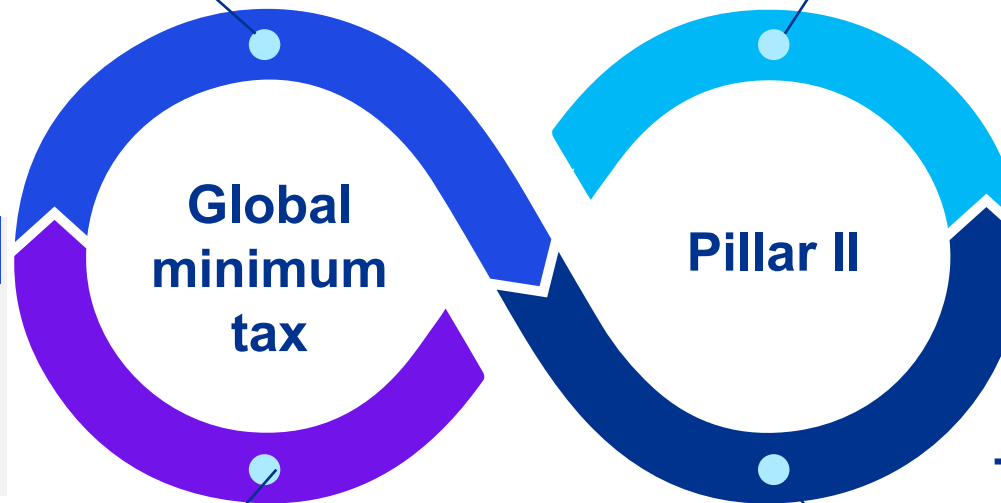
Adjusted Covered Taxes

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



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

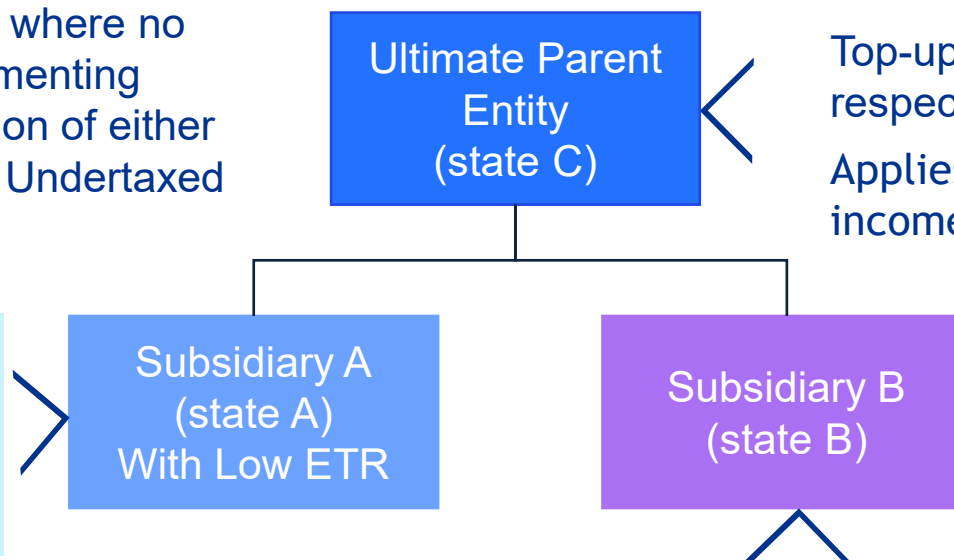
- Income Inclusion Rule (IIR)
- Undertaxed Payments Rule (UTPR)
- Qualified Domestic Minimum Top-up Tax (QDMTT)

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).

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

Low income tax jurisdiction should apply QDMTT first.



2. Income Inclusion Rule (IIR)

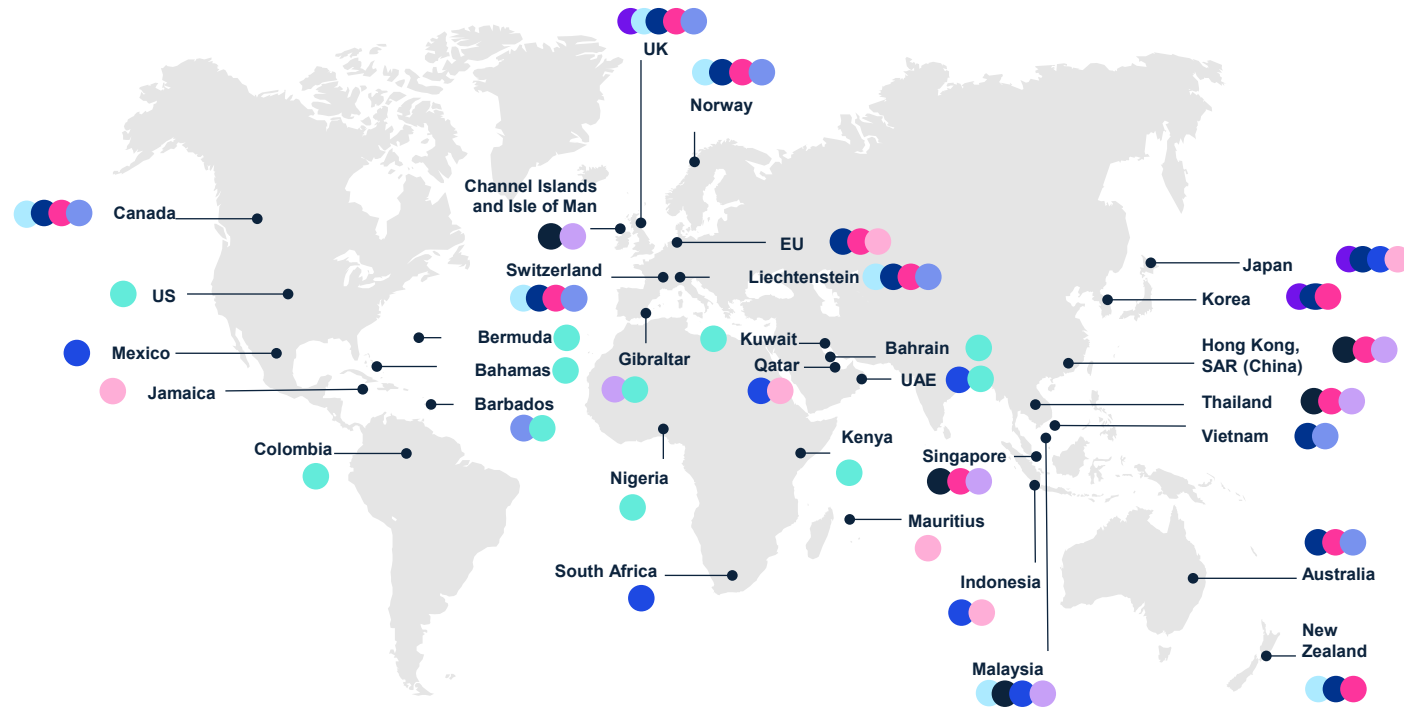
Top-up tax imposed on parent entity with respect to low taxed income of Subsidiary A
Applies if QDMTT was not applied in low income tax jurisdiction

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.

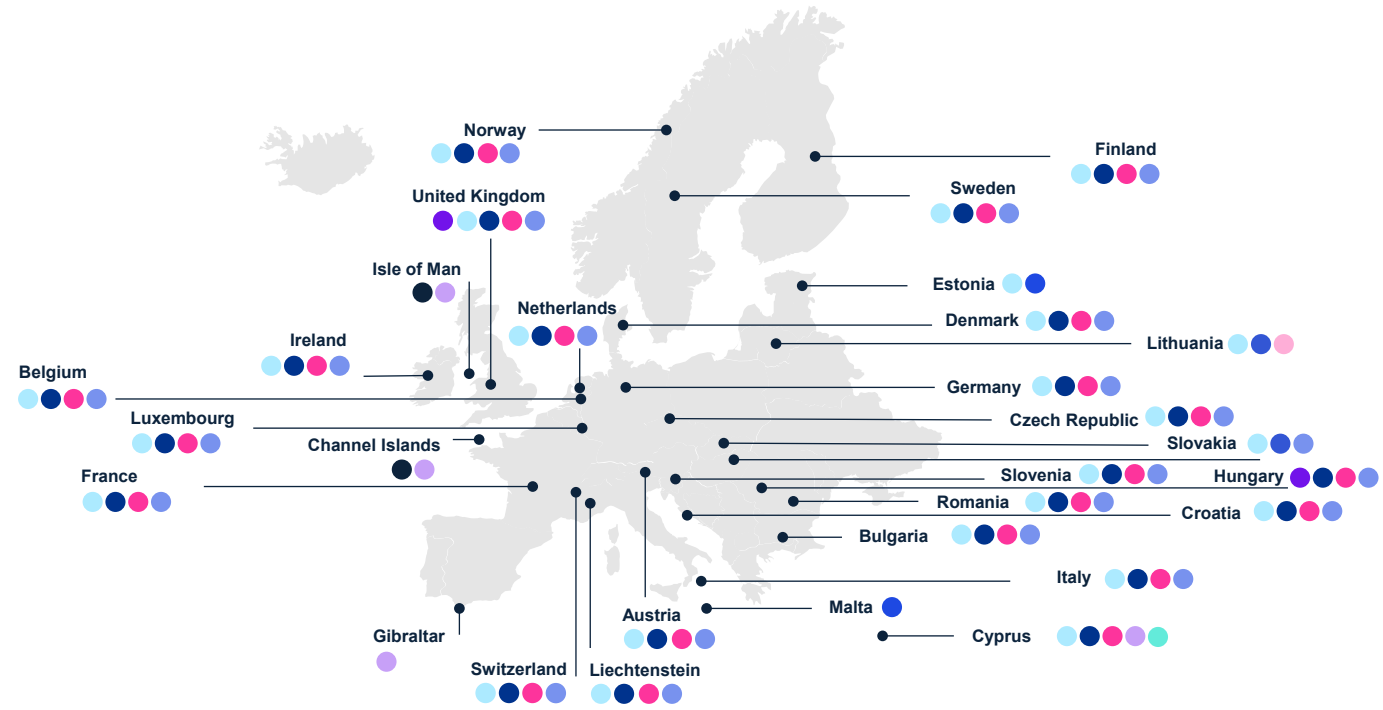
BEPS Pillar 2.0 – Global overview



Legend

- Legislation passed/approved
- Draft legislation released
- IIR (2024)
- IIR (2025)
- UTPR (2025)
- Intention to apply IIR/UTPR (timing uncertain or deferred)
- DMTT (2024)
- Intention/option to apply DMTT (timing uncertain)
- DMTT (2025)
- Other related legislation/announcement

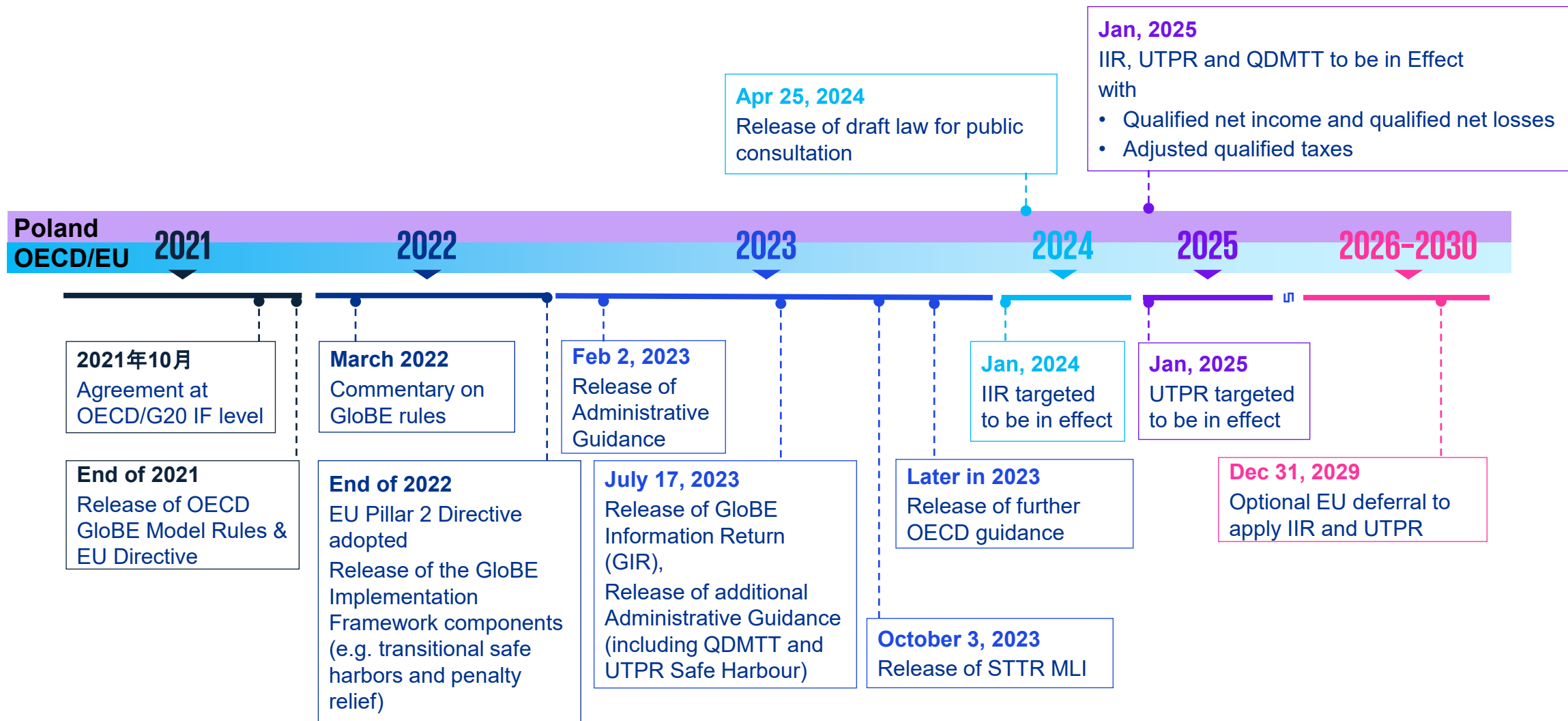
BEPS Pillar 2.0 — Europe



Legend

- Legislation passed/approved
- Draft legislation released
- IIR (2024)
- IIR (2025)
- UTPR (2025)
- Intention to apply IIR/UTPR (timing uncertain or deferred)
- DMTT (2024)
- DMTT (2025)
- Intention/option to apply DMTT (timing uncertain)
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BEPS 2.0 | Pillar Two – Timeline



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.

Applicability of top-up tax

Threshold of consolidated revenues

- Top-up taxation will apply to international and Polish capital groups, including entities held only partially, if such groups:
 - exist for at least 4 years,
 - derived at least **EUR 750 million of consolidated revenues** in lieu of Polish or International Accounting Standards (IAS), including revenues derived from entities excluded for top-up taxation purposes (e.g. pension funds, certain types of investment funds).
- Taxes will be applied top-to-bottom i.e. UPE will be taxed first on the basis of IIR, and UTPR will be applied to qualified net income of constituent entities from low tax jurisdictions, where QDMTT was applied earlier.
- Top-up tax will be applied, **if effective tax rate (ETR) of international (MNE) group would not exceed minimum rate of 15%**.
- Unlike application of top-up taxes, determining applicability of taxes will require collecting relevant financial information from bottom-to-top including all data required to establish:
 - qualifying net income (QNI) in particular jurisdictions,
 - ETR in particular jurisdictions (e.g. covered adjusted taxes).
- ETR should be computed at the level of given tax jurisdiction (not at the level of particular constituent entity) based on the following formula:

$$ETR = \frac{\text{total adjusted covered taxes in given tax jurisdiction}}{\text{qualifying net income in given tax jurisdiction}}$$

Adjusted covered taxes

- Total adjusted covered taxes in given tax jurisdiction include current income taxes adjusted with:
 - (+) qualifying taxes deducted as costs,
 - (+) tax loss recognized as deferred tax asset,
 - (+) qualifying taxes paid on uncertain tax positions,
 - (+) deductions or refunds on qualifying refundable tax reliefs or qualifying disposable tax reliefs.
 - (-) current income tax related to: excluded income, uncertain tax positions, or income tax not payable within 3 years in given jurisdiction,
 - (+) deduction or refund related to non-qualifying refundable reliefs, as well as deductions or refunds of qualifying taxes, if recorded as decreasing current income tax,
 - (+/-) adjustments related to qualifying interest and qualifying indirect tax assets,
 - benefits from settlements of profits or losses,
 - (+) increases related to total adjustment of deferred tax,
 - qualifying taxes included in equity or other aggregate income with respect to profits or income subject to qualifying taxes in jurisdictions other than Poland.

Applicability of top-up tax

Qualifying net income (QNI)

- QNI in given tax jurisdiction covers sum of net income and losses of constituent entities of particular tax jurisdiction, established in compliance with acceptable financial accounting standards (e.g. IAS) for consolidation purposes.
- QNI (QNL) of constituent entity is net income (loss) of this entity, adjusted for purposes of taxation.
- Starting point should be financial accounts used for consolidation purposes (pre-consolidation), subject to series of adjustments:
 - net taxes expenses;
 - excluded dividends;
 - excluded equity gains or losses;
 - included revaluation method gains or losses;
 - gains or losses from the disposal of assets and liabilities;
 - foreign currency gains or losses;
 - disallowed expenses;
 - prior period errors and changes in accounting principles; and
 - accrued pension expenses.
- If QNI is established based on other accounting standard, it should be adjusted to remove significant differences (> EUR 75 million).

Excluded dividends

- Adjustment requires disregarding dividends and other payments received or accrued with respect of ownership shares, excluding ownership interest:
 - in constituent entities held by other constituent entities of MNE Group which confer rights to less than 10% of the profits, capital, reserves or voting rights of that unit date of distribution or accrual of profits or disposal of those shares (portfolio investment), and
 - which constitute economic property for the constituent entity receiving or accruing this dividend or other payment in its books for an uninterrupted period of less than 12 months as of the date of receipt or accrual of this dividend or other payment.

Excluded capital gains (losses)

- Adjustment requires disregarding profits and losses included in net qualifying income (loss), resulting from:
 - from changes in the fair value of ownership interests, except for a portfolio investment, or
 - from ownership shares that are accounted for in accordance with the equity method, or
 - from the sale of ownership shares, except for the sale of a portfolio investment.

Applicability of top-up tax

Included revaluation method gains or losses

- The adjustment requires including net profit (loss), appropriately increased (reduced) by qualifying taxes related to the profit (loss), arising as a result of applying the revaluation method to fixed assets.

Gains or losses on the disposal of assets and liabilities

- The adjustment requires disregarding gains (losses) on the disposal of assets and liabilities excluded as part of a reorganization that meets the following conditions:
 - remuneration:
 - for the disposal of assets and liabilities constitute, in whole or in significant part, shares in the capital of the component entity acquiring the assets and liabilities or such shares in a person closely related to such entity or
 - received in connection with the liquidation of shares in the capital of the liquidated entity
 - unless the lack of consideration on disposal is due to the fact that the issue of the share in the capital would not have economic significance;
 - profit (loss) is not subject, in whole or in part, to income tax
 - in accordance with the tax regulations of the country in which the component entity acquiring the assets is located.

Disallowed expenses

- Adjustment requires disregarding expenses, including accruals:
 - arising from activities that, under the laws of the country of location of the constituent entity or the country of location of UPE, cannot be the subject to legally effective contract, as well as bribes and hidden commissions,
 - for fines and penalties determined under the regulations of the country where constituent unit is located, the amount of which equals at least EUR 50,000.

Previous period errors

- The adjustment includes value of the change in the equity of constituent unit at the beginning of the tax year attributable to the correction of error made in determining net accounting income (loss) in the previous tax year or years, if this error had an impact on revenues or expenses or similar entries. included in the calculation of qualifying net income (loss) in that previous taxable year or years.

Changes in accounting principles

- The adjustment includes value of the change in the equity of constituent entity at the beginning of the tax year resulting from a change in the accounting principles or policy of the constituent entity, if it had an impact on the revenues, costs or similar entries included in the calculation of qualifying net income (loss).

Applicability of top-up tax

Accrued pension costs

- Adjustment includes difference determined for a given tax year between the amount of costs related to pension liabilities included in net income (loss) and the amount of contributions paid to the pension fund.

Intra-group financial arrangements

- Adjustment requires disregarding costs or similar deductions resulting from intra-group financial agreements.

The arm's length principle

- Adjustment includes:
 - value of transactions between the group's components, which were recognized in net income (loss) in the same amount and in accordance with the arm's length principle;
 - value of the transaction to the amount consistent with the arm's length principle, in the case of transactions that were not included in the net income (loss) in the same amount and in the value consistent with the arm's length principle.

Top-up Tax calculation for Japanese subsidiaries in Poland

National top-up tax (equivalent to QDMTT)

- Applies to low tax constituent entities, if located in Poland. May also apply to stateless low tax constituent entities, if established in Poland (including PEs herein).
- Prior to calculation of national top-up tax, it is necessary to assess if Poland is low tax jurisdiction.
- Each Polish constituent entity should calculate its adjusted covered taxes and QNI. Total amounts of adjusted covered taxes and QNI will be used for calculation of jurisdictional ETR:

$$ETR = \frac{\text{total adjusted covered taxes in given tax jurisdiction}}{\text{qualifying net income in given tax jurisdiction}}$$

- Second step assumes calculation of jurisdictional top-up tax based on the following formula:

$$\text{Jurisdictional Top – up Tax} =$$

$$= [\text{individual top – up tax rate} \times \text{excess profit}] + \text{additional top – up tax}$$

where:

- individual top-up tax rate = minimum tax rate (15%) – ETR,
- excess profit = jurisdictional QNI – substance based income exclusion,
- additional top-up tax = total of excess jurisdictional top-up tax

- Substance based income exclusion:

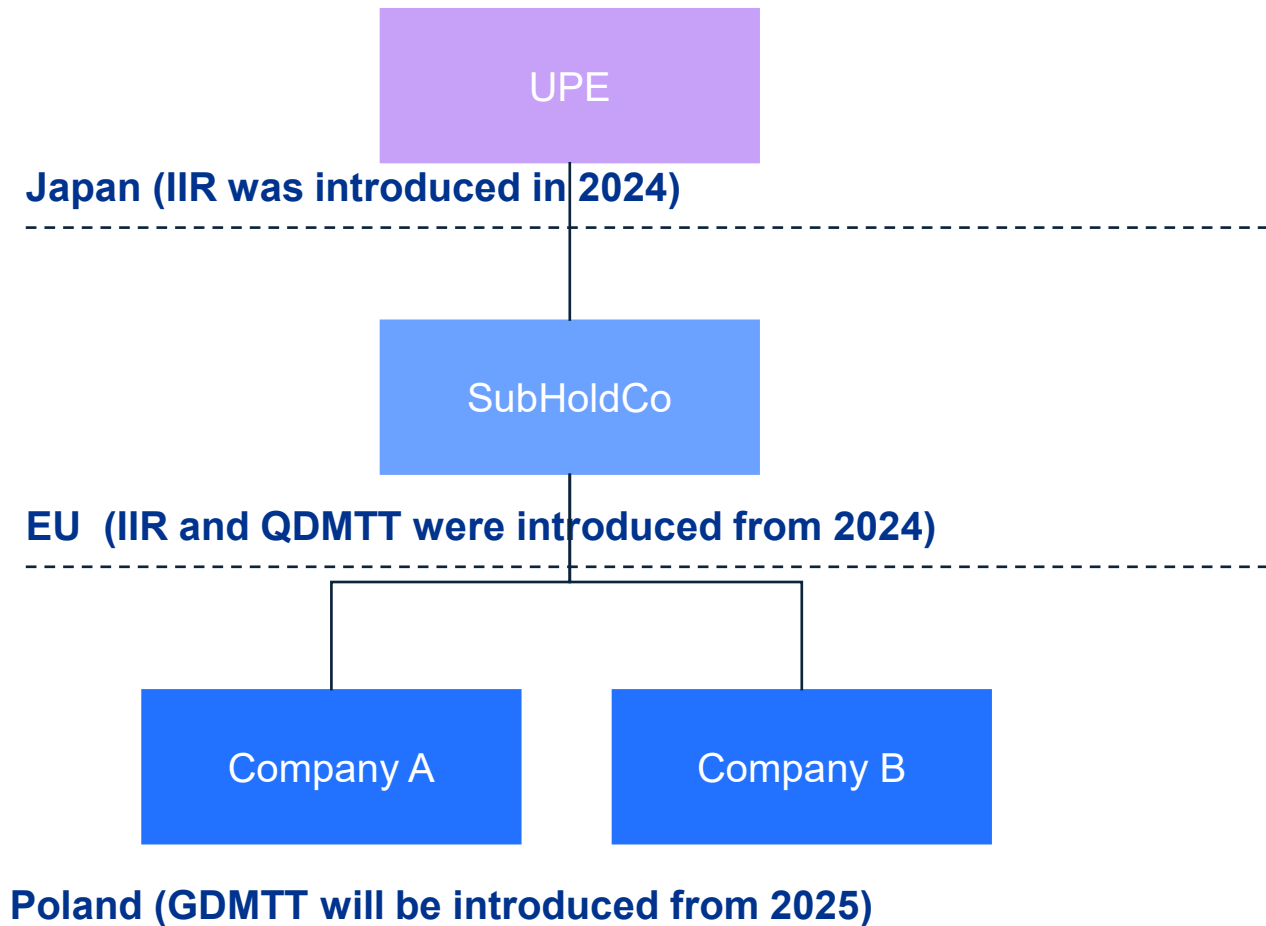
$$\text{Substance Based Income Exclusion} = \\ = 5\% \text{ of qualifying employment costs} + 5\% \text{ of net book value of fixed assets}$$

- Formula of national top-up tax:

$$\text{National Top – up Tax} = \\ = \frac{\text{jurisdictional national top – up tax} \times \text{qualifying net income of taxpayer}}{\text{total qualifying income of all taxpayers}}$$

- National top-up tax does not apply to entities declaring qualifying net loss.
- Determining qualifying net income (loss) or qualifying taxes is based on accounts kept in accordance with Polish accounting provisions or IAS. All Polish constituent entities subject to national top-up tax should apply the same fiscal year as UPE.
- Each entity will declare the top-up tax in their return within 15 months after the end of relevant financial year. However, for FY2025 reporting will be due until end of 18 month following end of the financial year.

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.



04

Q&A



Thank you for the meeting



Masashi Nomura

Director, Japanese Desk

M: +48 604 496 342

E: mnomura1@kpmg.pl



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