

Tax Newsflash

Romania Obtains Status as a Jurisdiction with Qualified Legislation under Global Minimum Tax Rules (OECD Pillar Two)

On 17 January 2025, the Organization for Economic Co-operation and Development (OECD) issued a series of documents in relation to the application of rules implementing the global minimum tax (Pillar Two or GloBE rules). These were particularly focused on compliance and reporting requirements. In the same set of documents, the provisions of the Inclusive Framework (OECD legislation implementing the minimum tax rules) were updated with a list of jurisdictions that have achieved the status of qualified legislation as a result of the national application of Pillar Two rules.

Following the evaluation process, on 13 January 2025, Romania was recognized as a jurisdiction with qualified legislation in relation to the Income Inclusion Rule (IIR) and was also recognized as falling under the QDMTT safe harbor protection regime. Below, we detail the practical effect of this process for large groups applying Pillar Two rules in Romania starting from 1 January 2024.

General Framework

By joining the Inclusive Framework, signatory states have committed to implementing the global minimum tax rules by means of a consistent and homogeneous approach.

Hence, if a multinational or large national group (with a consolidated turnover exceeding 750 million euros) calculates an effective tax rate of less than 15% in a certain jurisdiction, that jurisdiction is considered under-taxed from the perspective of Pillar Two rules, and an additional top-up tax must be calculated for the under-taxed jurisdiction up to the 15% difference.

OECD legislation provides three methods by which this top-up tax can be allocated to a particular jurisdiction, in the following order of application:

1. Qualified Domestic Minimum Top-Up Tax (QDMTT) - applied as a priority; the calculated top-up tax is declared and paid to the tax administration of the under-taxed jurisdiction.
2. Income Inclusion Rule (IIR) - applied for any top-up tax related to an under-taxed jurisdiction that was not collected through QDMTT. This rule is applied as a priority to the ultimate parent entity (UPE) of the large group, and subsequently, the obligation is transferred to the intermediate parent entities (IPE) in the ownership chain.
3. Undertaxed Profits Rule (UTPR) - this rule is applied to any constituent entity within the group of companies, provided that the under-taxed jurisdictions do not apply an IIR regime.

In principle, for a jurisdiction's legislation to achieve qualified status, the rules implemented at national level need to follow the principles of GloBE rules and produce a similar effect as that obtained by applying the rules set out by the OECD – generally, not resulting in a tax lower than what would have been obtained by applying GloBE rules.

Furthermore, the OECD has introduced an additional simplification measure through the application of the QDMTT safe harbor regime. In other words, if a jurisdiction falls under the QDMTT safe harbor regime, the GloBE rules (IIR and UTPR rules) are deactivated in other jurisdictions where the group of companies has a presence.

Under a QDMTT safe harbor system, any top-up tax calculated through QDMTT will be deducted from the top-up tax calculated through GloBE rules, with the difference to be paid according to IIR and UTPR in other relevant jurisdictions where the group of companies has a presence. In practical terms, the QDMTT safe harbor reduces administrative costs at the level of a group of companies applying Pillar Two rules, requiring only a single calculation of the top-up tax for an under-taxed jurisdiction.

Central Registry of Jurisdictions with Qualified Legislation Status from the Perspective of Pillar Two

The status of qualified legislation from the perspective of Pillar Two rules is obtained through a common peer review process conducted in two stages. Initially, a jurisdiction self-certifies its status as a qualified legislation for a transitional period of 12 months from the implementation of the legislation, during which other member jurisdictions of the Inclusive Framework can express observations/objections. It was agreed that a common peer review process is preferred over each jurisdiction having to conduct its own verification of another jurisdiction's legislation.

The second stage consists of a complete legislative review and continuous monitoring of legislation by member jurisdictions of the Inclusive Framework, a process that must be initiated within 2 years of the implementation of the legislation.

Thus, following the transitional common peer review process, a Central Registry of jurisdictions with qualified legislation status was created on 13 January 2025. Romania is part of the series of jurisdictions recognized as having a qualified system in relation to IIR rules and the QDMTT safe harbor.

In practical terms, large groups of companies with a parent company in another jurisdiction and presence in Romania will carry out a single calculation of the national top-up tax, without the need for an additional calculation at the level of the ultimate parent company/intermediate parent companies. Any top-up tax calculated in Romania through QDMTT is considered final and will be declared and paid to the National Agency for Fiscal Administration (ANAF).

Alternatively, large groups with their ultimate parent company in Romania will need to verify whether the jurisdictions where the group has a presence fall under the QDMTT safe harbor regime, to determine accurately the requirements for calculating and declaring the top-up tax for under-taxed jurisdictions within the group.

KPMG Comments

Obtaining the status of qualified legislation regarding IIR and fitting into the QDMTT safe harbor regime represents a significant simplification for large corporate groups, given that the new rules imposed by the OECD are highly complex.

- At the same time, the status of qualified legislation provides certification that the national implementation of the Pillar Two rules has been carried out in accordance with the principles outlined by the OECD.
- There are certain jurisdictions that have implemented a top-up tax (DMTT) but have not obtained the status of qualified legislation (such as Poland, Portugal, Spain). In most of these cases, the legislation was implemented in the latter part of 2024, and it is possible that the transitional evaluation process was not complete at the time of the publication of the list in the Central Register.
- The Central Register will be continuously updated as jurisdictions submit self-certification of domestic legislation to the members of the Inclusive Framework and as the transitional evaluation process is completed.

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