Euro Tax Flash from KPMG's EU Tax Centre

KPMG responds to European Commission public consultation on Minimum Tax Directive proposal

BEPS 2.0 – Pillar Two – GloBE Rules – Minimum Tax – EU implementation – Unanimity

On March 7, 2022, KPMG[1] member firms in the EU submitted a response to the European Commission's (EC's) public consultation on the proposed EU Directive on a minimum level of taxation.

KPMG supports the EC's efforts in ensuring a harmonized implementation in the EU of the OECD GloBE Model Rules under Pillar Two, while safeguarding compliance with EU law. We believe that the proposed Directive is a strong first attempt at achieving these aims. We have highlighted a number of areas where we believe additional clarifications and alignment with the OECD Model Rules and related upcoming Commentary could contribute to the functioning of the Directive and a consistent implementation across the EU, while enhancing legal certainty for taxpayers.

Background

On December 22, 2021, the European Commission published a proposed EU Directive to incorporate the OECD Pillar Two rules into EU law. The rules generally mirror the OECD Model Rules released on December 20, 2021 but have a broader scope that includes large-scale purely domestic groups. The proposed Directive also clarifies the interaction between the Pillar Two income inclusion rule (IIR) and existing EU legislation on controlled foreign companies (CFCs). For more information on the proposed EU Directive, please refer to Euro Tax Flash 463.

The proposed Directive is open for public consultation. The deadline for providing comments is April 6, 2022.

[1] This comment paper is produced on behalf of KPMG member firms located in the EU forming part of KPMG's Europe, the Middle East & Africa (EMA) region. Throughout this submission, "we", "KPMG", "us" and "our" refer to the network of independent member firms operating in the EU.

KPMG’s contribution

We note the challenges, for EU Member States and in-scope groups alike, in becoming ready for implementation of an EU minimum tax within the envisaged timelines and the need for proportionality when determining penalties for non-compliance with the proposed rules. It is widely recognized that the implementation of the OECD Model Rules will represent a significant administrative burden for in-scope groups. The scale of this challenge will depend on the level of sophistication of finance systems, capacity of in-house tax and finance teams and the number of jurisdictions in which a group operates, but also on the extent of guidance available on the interpretation of the rules and the timeline for implementation. Currently, the Directive envisages the IIR provisions becoming effective on January 1, 2023.

We recognize that there is transitional relief for filing obligations. However, in our view, an effective adoption of the new OECD Model Rules will still be particularly challenging for many MNE groups. We believe that this challenge may be further exacerbated by a lack of legal certainty and inconsistent implementation and interpretation of the rules across the EU.

We have therefore attempted to highlight areas where:

- we believe there is a need for further alignment of the legal text and definitions in the proposed EU Directive with the OECD Model Rules, and
- the mechanisms proposed in the draft EU Directive lead to different results than those which would be obtained by applying the GloBE Model Rules – for example, when allocating and providing credit for top up tax.

We also note the need to ensure tax certainty for taxpayers and suggest as one possible solution the addition of a clear indication that Member States should rely on the OECD Commentary to the GloBE Model Rules and the related Implementation Framework that is currently being developed by the OECD, insofar as these are in compliance with EU law. Such a reference would aid in ensuring consistency with the OECD Model Rules, as well as the consistent application of the rules by Member States.

We have also noted open questions regarding the application of the rules to large-scale domestic groups, in particular with regard to transitional arrangements and reporting requirements.

Next steps

The French Presidency of the Council of the EU have previously stated that the adoption of the minimum tax Directive is a priority for their tenure and that every effort will be made towards the aim of reaching political agreement within the Council during the ECOFIN meeting on March 15, 2022. It remains to be seen if concerns raised by some Member States with regard to, for example, the implementation timeline or the adoption of the GloBE rules independent of Pillar One, will be sufficiently addressed to achieve the unanimity required for adoption.
Should you have any queries, please do not hesitate to contact KPMG’s EU Tax Centre, or, as appropriate, your local KPMG tax advisor.

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