

# Euro Tax Flash from KPMG's EU Tax Centre

## Proposal to incorporate the GloBE Information Return into EU law and related exchange of information under the EU Minimum Tax Directive

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### Key Summary:

On October 28, 2024, the European Commission adopted a proposal for an extension of the Directive on Administrative Cooperation (DAC) to establish a framework for the exchange of Pillar Two information between Member States (DAC9).

The DAC9 proposal also introduces a new Annex to the DAC with a standard template, based on the OECD's GloBE Information Return (as published in July 2023), which in-scope groups must use to file Top-up Tax Information Returns.



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## Proposal to extend the scope of the DAC: Exchange of information under the EU Minimum Tax Directive (DAC9)

On October 28, 2024, the European Commission adopted a [proposal](#) to extend the scope of the Directive on Administrative Cooperation (DAC) to establish a framework for the exchange of information under the EU Minimum Tax Directive (DAC9). The DAC9 proposal also introduces a standard template, in line with the template developed by the OECD's GloBE Information Return (GIR), to ensure that all multinational enterprises (MNEs) and large-scale domestic groups (LSDGs) provide the information in the same format, making it easier for tax authorities to assess the information and exchange it with other jurisdictions.

### Background

As previously reported, the EU Minimum Tax Directive (2022/2523) entered into force on December 23, 2022, and required Member States to transpose the rules into domestic law by December 31, 2023.

Member States were generally required to start applying:

- the Income Inclusion Rule (IIR) for fiscal years beginning on or after December 31, 2023, and
- the Undertaxed Profits Rule (UTPR) for fiscal years beginning on or after December 31, 2024.

The Directive allows Member States to defer the application of the IIR and the UTPR up to December 31, 2029, where a maximum number 12 of ultimate parent entities (UPE) are based in that EU Member State. It is important to keep in mind that Member States that do not defer the application for the charging provisions will be required to apply the UTPR with respect to constituent entities resident in deferring EU jurisdictions.

In addition, the EU Directive provides the option for Member States to implement a qualified domestic top-up tax (QDMTT), without specifying an application date.

Following the entry into force of the EU Minimum Tax Directive, the Inclusive Framework published a number of additional rules and clarifications that supplement the OECD GloBE Model Rules. As part of this ongoing effort, the OECD published a standard template for the GIR in July 2023, which in-scope groups under the Pillar Two rules will use to meet their filing obligations (for more information, please refer to this [KPMG report](#) on the GIR). The aim of the DAC9 proposal is to transpose the GIR developed by the OECD into EU law by designating the GIR as the Top-up tax information return envisaged in Article 44 of the EU Minimum Tax Directive and to implement a framework to facilitate the exchange of Top-up tax information returns between EU Member States. It should be noted that the GIR published by the OECD in July 2023 may still undergo some changes as a result of future administrative guidance. These changes would be reflected in the Top-up tax information return via Commission delegated acts.

### Proposed changes under DAC9

The proposal is split into two parts. It first provides for an extension to the DAC to introduce a framework for the exchange of information of Top-up tax information returns, and the second part is the introduction of a new Annex to the DAC with the standard form to be used for reporting and exchange of information.

#### Introduction of a new exchange of information framework

The DAC9 proposal introduces a new Article 8ae, which provides for the framework for the exchange of Top-up tax information returns filed by in-scope groups with tax administration in an EU Member State.

Article 44 of the EU Minimum Tax Directive sets out the filing requirements for entities in scope of the EU Minimum Tax Directive. As a general rule, it provides that each constituent entity located in an EU Member State shall file a Top-up tax information return with its tax administration. Tax administrations would then use these Top-up tax information returns to perform an appropriate risk assessment, to evaluate the correctness of the tax liability and to generally monitor whether MNEs and LSDGs correctly apply the rules of the EU Minimum Tax Directive.

However, a derogation from this general rule is available (Article 44(3)), whereby Constituent Entities based in an EU Member State are exempt from their filing obligations where two conditions are met:

- 1) the UPE of the group, or a designated entity, files the Top-up tax return on behalf of the MNE group, and

- 2) the relevant tax authority with which the return was filed has an exchange framework or an international agreement in place to exchange the return with other jurisdictions.

The purpose of the DAC9 proposal is to introduce such an exchange framework between Member States, therefore allowing MNEs to switch from local to central filing in the EU, where the EU UPE or designated filing entity files on behalf of the group in an EU Member State. In that case, the EU Minimum Tax Directive (Article 44 (4)), still requires each constituent entity in the Member State or the designated local entity on its behalf, to notify its tax administration of the identity of the entity that is filing the Top-up tax information return, as well as the jurisdiction in which it is located. The framework only covers the exchange between Member States. For the exchange of information with third countries, Member States will have to sign appropriate international agreements with those jurisdictions.

#### Use of a dissemination approach for the exchange of information

The proposal includes a dissemination approach for the exchange of information to ensure that Member States only receive the information they need based on their role in the MNE group, as provided by the OECD framework. The following approach is proposed:

- the Member State of the UPE receives the full Top-up tax information return;
- all Implementing Member States receive the full general section of the Top-up tax information return;
- QDTT-only Member States, where constituent entities of the MNE are located, receive the general section of the Top-up tax information return, with the exception of the high-level summary information section;
- Member States with taxing rights under the EU Minimum Tax Directive (IIR or UTPR) receive specific jurisdictional sections. UTPR jurisdictions with a UTPR percentage of zero should only be provided with the parts of Top-up tax information return that contains information on the attribution of Top-up tax under the UTPR in respect of that jurisdiction, and the Implementing Member State in which the UPE is located shall be provided with all jurisdictional sections.

#### Timing considerations

Under the EU Minimum Tax Directive (Article 44(7)), the filing of Top-up tax information returns should be done no later than 15 months after the last day of the reporting fiscal year, with the exception of the first year a group enters into scope, where the filing deadline would be no later than 18 months after the last day of the reporting fiscal year (Article 51).

The relevant sections of the Top-up tax information return should be exchanged with the appropriate Member States as soon as possible, and no later than three months after the reporting fiscal year's filing deadline. For the first reporting year, however, an extended deadline of six months from the filing date will apply. The proposal also provides that any Top-up tax information returns received after the filing deadline must also be exchanged as soon as possible and within three months of receipt.

The proposal provides a possibility for the competent authority to enquire about a Top-up tax information return that was notified by a local constituent entity to have been filed centrally in another Member State, but which has not been exchanged. The competent authority of the Member State of the filing entity can then verify if the report has been filed and enquire about the expected date of filing if this has not already been done. In cases where the Top-up tax information return has not been received within three months of the new expected filing date, local filing requirements may be imposed on the constituent entities of the MNE, but not before the abovementioned deadline has passed.

If upon receipt and verification, competent authorities believe that corrections are needed, they should notify the other receiving competent authorities in other Member States and take appropriate steps to obtain a corrected Top-up tax information return and exchange it with the relevant authorities of Member States.

For those Member States that have opted to defer the application of the IIR and the UTPR up to December 31, 2029, as per Article 50(1) of the EU Minimum Tax Directive, the provisions of this DAC9 proposal will apply beginning with the first fiscal year following the end of that deferral period.

#### New annex on filing rules and form for Top-up tax information return

The proposal also introduces a new [Annex VII](#) to the DAC, consisting of three sections. The first section includes relevant definitions, the second provides information on the filing rules, and the third includes the standard form for the Top-up tax information return. As per the explanatory memorandum, the return is fully in line with the GIR but includes certain minor modifications to align the reporting form with the requirements under the EU Minimum Tax Directive.

## Penalties

The proposal leaves it to the Member States to introduce penalties for failing to comply with the requirements of national legislation implementing DAC9. However, penalties must be effective, proportionate and dissuasive.

## Next steps

As is the case for all other amendments to the DAC, the legal basis for the DAC9 proposal is formed of Articles 113 and 115 of the Treaty on the Functioning of the European Union (TFEU), meaning that the Directive requires unanimous approval in the Council. In addition, the Council would only be allowed to adopt the text once the Parliament and any relevant Committees have given their (non-binding) opinions. Where the Directive is approved in the Council, it would enter into force on the twentieth day following that of its publication in the Official Journal of the EU.

Once adopted, EU Member States would be required to transpose the Directive into domestic legislation by December 31, 2025, with the first exchange of information taking place at the latest six months after the filing of the first Top-up tax information return. For calendar year taxpayers, the first exchange would take place after their first filing deadline on June 30, 2026, and exchanges would be made by December 31, 2026, at the latest.

For Member States that have opted to defer the implementation of the IIR and UTPR according to Article 50(1) of the EU Minimum Tax Directive, the transposition deadline would be the day before the end of the deferral period.

As for the other DACs, the proposal also indicates that the communication of information between the competent authorities of Member States should take place using a standard computerized form. This form would be developed by the Commission by means of implementing acts.

The European Commission has not yet opened a public consultation on the proposal.

# ETC Comment

## KPMG observations:

The DAC9 proposal establishes a framework for the exchange of Top-up tax information returns, which serve as the equivalent of the Global Information Return (GIR) under the OECD Pillar Two Framework. In the related press release, the Commission emphasizes that this proposal would significantly simplify the filing process and reduce the administrative burden for MNE groups. According to the Explanatory memorandum to DAC9, the proposal contributes to the Commission's efforts to rationalize and simplify reporting requirements for business, with the aim of reducing this burden by 25 percent, in line with the EC's commitments as laid down in its Communication to the European Parliament and the Council, on the "Long-term competitiveness of the EU: looking beyond 2030" (COM/2023/168 final).

It's important to keep in mind that the DAC9 proposal does not address any other form of local filing requirements beyond the Top-up tax information return. In the explanatory notes, the Commission makes the point that jurisdictions should generally refrain from requiring the reporting of additional data points beyond the Top-up tax information return as part of their routine tax return and payment requirements. Some countries are already in the process of requiring local tax returns. For example, Germany has launched a public consultation earlier this year on a local minimum tax return (for more information, please refer to E-News [Issue 196](#)). Also, the OECD Inclusive Framework, in its July 2023 Administrative Guidance on QDMTT design and implementation, specifies that QDMTT jurisdictions are not required to use the GIR for purposes of the QDMTT information collection. Jurisdictions may therefore require QDMTT information in a different format than the GIR – this is for example the case in Belgium, where a public consultation on a draft Pillar Two return was launched in October 2024 (for more information, please refer to the [report](#) prepared by KPMG in Belgium). These local QDMTT information returns do not necessarily follow a standard form and are not covered by the DAC9 proposal. Therefore, MNEs and LSDGs should carefully monitor potential additional local filing requirements they may be subject to.

It is furthermore important to note that the proposal does not address exchanges with non-EU jurisdictions. The expectation is that Top-up tax information returns filed by in-scope groups outside of the European Union (i.e., by a non-EU UPE or designated filing entity) will be shared with other relevant tax authorities (including in EU Member States) based on exchange relationships activated through the OECD inclusive Framework. The mechanisms provided for under DAC9 will not be relevant in such situations.

By implementing the Top-up tax information return in line with the GIR (as published in July 2023), Member States would be required to report on certain data points that are not part of the EU Minimum Tax Directive, but that have been introduced at a later stage as part of the additional clarifications and rules. This would be in line with the Commission's view, which was confirmed on several occasions that the Safe Harbour rules and the Administrative Guidance agreed by the OECD/G20 Inclusive Framework subsequent to the adoption of the EU Minimum Tax Directive are compatible with the EU implementation of the rules. In addition, the explanatory notes to the proposed Directive provide that the GIR filing instructions (as published in July 2023) are considered a useful source of interpretation for MNEs to file the Top-up tax information return.

Finally, it should also be noted that the Top-up tax information return may still be subject to change due to the ongoing work and release of additional Administrative Guidance at OECD level. Therefore, the explanatory notes clarify that the Top-up tax information return can be amended any time by the Commission through delegated acts to reflect future updates agreed at international level.

## State of Play:

As reported previously, all Member States were required to transpose the rules into domestic law by December 31, 2023, and apply the Income Inclusion Rule (IIR) for fiscal years beginning on or after December 31, 2023, and the Undertaxed Profits Rule (UTPR) for fiscal years beginning on or after December 31, 2024.

The Directive allows Member States to defer the application of the IIR and the UTPR up to December 31, 2029, where a maximum number of 12 UPEs are based in that EU Member State. It is important to keep in mind that Member States that do not defer the application for the charging provisions will be required to apply the UTPR with respect to

constituent entities resident in deferring jurisdictions. Five jurisdictions, Estonia, Malta, Latvia, Lithuania, and Slovakia have opted for the deferral. For Slovakia, the deferral applies to IIR and UTPR only. Lithuania issued draft legislation to implement IIR, UTPR, and a domestic top-up tax (DMTT) as from 2025.

The EU Directive provides the option for Member States to implement a DMTT without specifying an application date. All Member States have opted to implement such a DMTT as from 2024, with the exception of Poland, which currently proposes that DMTT as from 2025 (with an option for groups to apply the rules retroactively as from 2024), and Estonia, Malta, Latvia and Lithuania that have opted for the deferral.

Four Member States, Cyprus, Poland, Portugal, and Spain are still in the process of transposing the EU Minimum Tax Directive into domestic legislation. They were referred to the CJEU on October 3, 2024. For previous coverage, please refer to E-News [Issue 201](#)).

- In Cyprus, a bill was submitted to the Parliament in October 2024. According to the bill, IIR would take effect from 2024 and UTPR and DMTT would apply as from 2025.
- In Poland, draft legislation was submitted to the lower house of Parliament in September 2024. The IIR and DMTT would apply for financial years starting on or after December 31, 2024, meaning that the timeline is deferred by one year compared to the EU Directive requirements. However, Poland included an option for a taxpayer to make an election to apply the rules earlier, from January 1, 2024.
- In Portugal, draft legislation was approved by the Parliament in October 2024. As a final legislative step, the bill needs to be published in the Official Gazette.
- Spain published a revised version of the draft law in June 2024 that provides for the application of the IIR and DMTT for financial years starting on or after December 31, 2023, and the UTPR for financial years starting on or after December 31, 2024.

Should you have any queries, please do not hesitate to contact KPMG's EU Tax Centre, or, as appropriate, your local KPMG tax advisor.

## Additional relevant links

- [KPMG's Pillar Two implementation tracker](#)
- [Euro Tax Flash 534: EU direct tax initiatives: 2024 mid-year state of play](#)
- [Euro Tax Flash 533: EU Pillar Two FAQs](#)
- [KPMG's observations regarding the GloBE Implementation Framework, GloBE Information Return and Administrative Guidance releases](#)

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