

Government Details Amendments to Global Minimum Taxation Bill Sent to Parliament

22 November 2023

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The Luxembourg Government sent amendments to a draft bill for the implementation of the Minimum Taxation Directive (2022/2523) (Directive) to the Chamber of Representatives (*chambre de députés*). The most important details are summarized below.

Qualified Domestic Minimum Top-Up Tax (QDMTT)

The amendments introduce the QDMTT safe harbour. If a foreign jurisdiction adopts a QDMTT meeting July OECD standards, the group can choose to apply the safe harbour, avoiding the need to conduct an extra GloBE calculation alongside the required QDMTT calculation mandated by local law.

However, this election does not apply to entities (i) with separately computed effective tax rates and (ii) which are subject to additional restrictions regarding the application of the QDMTT of that jurisdiction.

If all Luxembourg constituent entities align their financial year with the consolidated accounts, the GloBE profit or loss under the QDMTT will follow Luxembourg GAAP rules, provided those entities in Luxembourg adhere to this financial accounting standard. In the case when some group companies apply Luxembourg GAAP and others IFRS for accounting purposes, they must compute the QDMTT under IFRS. When group companies have different financial years, they must apply the consolidation accounting standard. Also, QDMTT will exclude Investment Entities and Insurance Investment Entities from its scope.

Adjustments to Determine the GloBE Income or Loss

Grand-ducal regulations will specify the conditions for considering negotiable and transferable tax credits as income in calculating the GloBE income or loss of a constituent entity. Luxembourg currently does not have such credits, but the change may be relevant in assessing the effective tax rate in foreign jurisdictions, especially if a Luxembourg entity serves as the ultimate parent entity (UPE) of the group.

The OECD guidance will govern the tax qualification of a financial instrument issued by one constituent entity and held by another within the same MNE or large-scale domestic group. If there are differences in qualification, the classification of the issuing entity will take precedence.

To reduce mismatches between the domestic participation exemption regime and the GloBE participation exemption rules, a constituent entity's GloBE Income or Loss, through an Equity Investment Inclusion Election (EIIE), can now incorporate otherwise exempt equity gains or losses, provided they are

part of the domestic tax base of that constituent entity. The same rules will apply to covered taxes on such equity gains or losses.

Next to the EIIE, there will be an option to include all dividends on portfolio shareholdings (i.e. interests of less than 10%), irrespective of the holding period, in the GloBE base.

Finally, the amendments introduce the OECD guidance on certain hedging results related to exempt participations. Those results will, under certain conditions, qualify as an excluded equity gain or loss.

Adjusted Covered Taxes

In the event of a GloBE loss, taxpayers have the option to defer the imposition of the top-up tax to subsequent years when a net GloBE income is realized.

Transitional UTPR Safe Harbour

A transitional UTPR Safe Harbour will be in place, meaning that the top-up tax for low-taxed entities in the UPE jurisdiction is deemed to be nil if the UPE jurisdiction maintains a nominal corporate income tax rate of 20%. This Safe Harbour is applicable for years commencing on or before the conclusion of 2025 and concluding before 31 December 2026.

Permanent Safe Harbour

Luxembourg will introduce permanent safe harbours once they are agreed upon at the OECD level.

GILTI Tax

Luxembourg will introduce a transitional solution to allocate GILTI amongst non-U.S. constituent entities.

Substance-Based Income Exclusion

MNE groups will have the option to apply the substance-based income exclusion to only a portion of the expenditure on eligible tangible fixed assets and payroll costs.

For previous reporting, see [Government Submits Draft Bill on Implementing Pillar Two Rules to Parliament \(7 August 2023\)](#) and [Council of Ministers Adopts Draft Bill to Implement Pillar Two Rules \(31 July 2023\)](#).

The [amending bill and explanatory memorandum](#) were published on the website of the parliament on 13 November 2023 (as PDF and in French only).