KPMG Meijburg & Co Tax & Legal

## Bill on Minimum Profit Tax Act 2024 (Pillar 2) presented to Lower House of Parliament

On May 31, 2023 the bill on the Minimum Profit Tax Act 2024 was presented to the Lower House of Parliament. The Netherlands is thus the first EU Member State to have submitted a bill to transpose EU Directive 2022/253 of December 14, 2022 into national legislation. The directive is based on the OECD's Pillar Two GloBE Model Rules published at the end of 2021.

An internet consultation on an earlier draft bill was launched in October 2022. In response to the reactions to the internet consultation and several discussions regarding the internet consultation, a number of changes were made to the text of the bill and to the explanatory notes.

### The bill

The objective of the bill has not changed compared to the proposal that was launched for internet consultation. Multinational and national groups with a turnover of EUR 750 million or more according to the consolidated financial statements of the ultimate parent company should effectively pay 15% tax per jurisdiction on any profit realized in that jurisdiction. To achieve that objective, the bill contains three types of taxes:

- A Qualifying Domestic Minimum Top-up Tax ('QDMTT') – introducing a domestic minimum tax intended to be consistent with the OECD Model Rules and EU Directive, which allows the Netherlands to tax any Top-up Tax from any Dutch low-taxed entities.
- An Income Inclusion Rule ('IIR') – introducing a Top-up Tax at the parent level on a jurisdictional basis if an entity (or entities) is (or are) not subject to a jurisdictional effective tax rate of 15% within that jurisdiction.
- An Undertaxed Profits Rule ('UTPR') – introducing a backstop if not all Top-up Tax is captured under the IIR, including Top-up Tax relating to the Ultimate Parent Entity ('UPE') and group entities in the UPE jurisdiction if not captured under a qualifying QDMTT or IIR by the UPE jurisdiction. The UTPR is determined on the basis of an inclusion rather than being collected through a denial of deduction.

The text of the bill and the Explanatory Memorandum show that consideration has been given to the OECD's Administrative Guidelines on the interpretation and application of the OECD Model Rules, as published in February 2023. The most important changes made to the bill as a result of these guidelines are addressed in more detail below.

### What stands out in the bill

- Firstly, the Transitional Safe Harbour Rules have been added to the bill. The Transitional Safe Harbour Rules are based on the Safe Harbours and Penalty Relief publication published by the OECD on December 15, 2022. At first glance the Dutch legislative text seems to align with the provisions in that document. The group entity of a multinational group responsible for filing the information return can opt to apply the Transitional Safe Harbour Rules.

- In addition to the Transitional CbCR Safe Harbour, the bill also contains provisions for a Permanent Safe Harbour. The rules will be elaborated by or pursuant to an Order in Council, after agreement has been reached within the Inclusive Framework of the OECD.

- The Explanatory Memorandum also notes that the Netherlands will take account of the Transitional Penalty Regime and will be reticent in imposing penalties in the transition period. It should be noted that this will not apply in cases of fraud and deliberate intent, nor will it apply to default penalties relevant for the filing of the self-assessment Top-up Tax return and the payment of any Top-up Tax due.

- In line with the Administrative Guidelines, the bill contains several additional provisions compared to the proposal launched for internet consultation in October 2022. These provisions may affect the determination of the qualifying income or loss of a group entity, and include:

  - a provision that adjusts the GloBE Income of a constituent entity for creditor exposure benefits. This is a concession that can, for example, remove any adverse effects of the Dutch exemption for debt relief income tax when calculating the GloBE Income and the effective tax rate.

  - An option to, under certain conditions, not exclude equity gains or losses on shareholdings in a specific jurisdiction for the purposes of calculating the GloBE Income. Based on this option, the adverse effect on the effective tax burden under the new rules of the Dutch liquidation loss regime could be mitigated.

- In line with the Administrative Guidelines, the bill contains the option of qualifying the US GILTI regime as a CFC regime, and that the tax levied under this regime may, subject to conditions, be allocated to the foreign group entities to which the tax relates, as a result of which the effective tax rate of those entities may increase.

**When will the new taxes take effect?**

The bill is expected to be enacted ultimately on December 31, 2023, whereby the Qualified Domestic Top-up Tax and the Income Inclusion Rule will take effect for reporting years commencing on or after December 31, 2023, and thus will effectively apply for the first time to reporting years as of 2024.

The Undertaxed Profit Rule will take effect a year later, for reporting years commencing on or after December 31, 2024 and thus effectively apply for the first time as of 2025.

The bill includes an exception for the effective date of the Undertaxed Profit Rule. If a Dutch group entity is held by an ultimate parent entity established in an EU Member State that has opted to defer the application of the Income Inclusion Rule and the Undertaxed Profit Rule, then the Netherlands will apply the Undertaxed Profit Rule one year earlier. In that case, the Undertaxed Profit Rule will already effectively apply as of the 2024.

The GloBE Information Return must be filed within 18 months of the first reporting year. The self-assessment Top-up Tax return and the payment of any Top-up Tax due must be filed and paid within 20 months of the first reporting year. With regard to the second reporting year and subsequent years, the GloBE Information Return must be filed within 15 months of the reporting year and the self-assessment Top-up Tax return and the payment of any Top-up Tax due must be filed and paid within 17 months of the reporting year. Assuming the 2024 calendar year is the first reporting year, then the GloBE Information Return must be filed by June 30, 2026 at the latest, with August 31, 2026 being the deadline for the filing of the tax return and payment of any self-assessment top-up tax.

**Comments KPMG Meijburg & Co**

The bill aligns with the EU Directive, and in this respect is also largely similar to the OECD GloBE Model Rules. Although it appears from the text of the bill and the Explanatory Memorandum that the latest available publications from the OECD, such as the Administrative Guidelines, have been considered, there are still many points that need to be fleshed out in more detail, as well as areas where further clarification is required during the legislative process.

For multinational groups or national groups, it is important that they do not delay in assessing the impact of the new rules. Although the period within which the GloBE Information Return must be submitted is long, the closing of the 2023 financial year and the preparation of the annual accounts may already require you to include certain explanations about the impact of the new rules. For groups that prepare their financial statements under IFRS, the International Accounting Standards Board ('IASB') has also recently amended IAS 12, 'Income Taxes'. For an explanation of this change, we refer to our website and a comprehensive talkbook that addresses these changes.

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