

Tax Short Cuts

Current tax information for Austria from EY

Kick-off for the Global Minimum Taxation in Austria

Content

01 Kick-off for the Global Minimum Taxation in Austria

The long-awaited draft bill on the implementation of the global minimum taxation in Austria has been published on 3 October 2023. According to the draft, the new regulations to ensure minimum taxation for multinational groups (MNE groups) and large-scale domestic groups are to enter into force mainly on 1 January 2024. The draft is mostly in line with the EU Directive. One thing is clear: it is going to be a challenge. But there also are simplification and transitional rules.

The new Austrian Minimum Taxation Act - 83 new sections Austria is tackling the implementation of the Directive on the introduction of a global minimum taxation, which was agreed by the EU finance ministers in December 2022. On 3 October 2023, the draft bill for a new law was published, the Austrian Minimum Taxation Act (Mindestbesteuerungsgesetz - MinBestG), summarizing the complex rules in 83 sections.

From 2024 onwards, the MinBestG is intended to ensure that a top-up tax is levied on large groups with consolidated annual revenues of at least EUR 750 million per year if the activities of this group in a country are subject to an effective income tax rate of less than 15 percent.

Key points of the Austrian draft bill

The draft bill is for the most part in line with the EU Directive of 15 December 2022 and the OECD Model GloBE (Global Anti-Base Erosion) Rules. Austria has also considered the safe harbours proposed by the OECD in the draft, as well as the other OECD documents, such as in particular the two Agreed Administrative Guidances of the Inclusive Framework.

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The following key points should be highlighted from the draft bill:

- Implementation of an income inclusion rule (IIR; "Primär-Ergänzungssteuer, PES"), an undertaxed profit rule (UTPR; "Sekundär-Ergänzungssteuer, SES"), and regulations regarding the domestic top-up tax ("nationale Ergänzungssteuer, NES").
- Implementation of the temporary CbCR safe harbours proposed by the OECD, which provide relief for the first three fiscal years. There are three tests envisaged (de minimis test, effective tax rate test, routine profits test), which can be determined in a simplified manner on the basis of data from a qualified country-by-country report (CbCR) and financial data. If a country fulfils one of these three tests, a top-up tax of zero is to be assessed for the first years and the complex full GloBE calculations are not to be performed for companies in these countries. However, compliance and reporting obligations already exist for those countries in the first years.
- Safe harbour for non-material (non-consolidated) companies, according to which simplified calculations can be made on the basis of existing CbCR data.
- Implementation of a permanent safe harbour for qualified domestic top-up tax (NES safe harbour). If a country is low-taxed and has introduced a qualified domestic top-up tax, the IIR at the level of the parent company is set at zero in Austria, irrespective of the top-up tax amount abroad. As a result, no GloBE calculations for IIR purposes have to be made in Austria for countries with a recognized domestic top-up tax. As a result, the local tax authorities remain the primary contact.
- Implementation of various regulations from the Agreed Administrative Guidance of the Inclusive Framework dated 2 February 2023 and 17 July 2023, in particular options regarding shareholdings.

Administration & compliance obligations

Each constituent entity located in Austria shall file a top-up tax information return with the Tax Office for Large Enterprises. The constituent entities located in Austria may jointly transfer the obligation to file the top-up tax information return to another constituent entity of the same group located in Austria.

If a top-up tax information return has been filed by the ultimate parent company or a designated reporting entity in its respective tax jurisdiction, neither the constituent entity located in Austria nor the designated local entity located in Austria is required to file the top-up tax information return. In this case, the Tax Office for Large Enterprises must be notified, which entity will file the top-up tax information return and the tax jurisdiction in which it is located.

The top-up tax information return must be submitted to the tax office no later than 18 months after the first year in which the group falls within the scope of minimum taxation (transition year), and thereafter 15 months after the end of the fiscal year.

The minimum tax is levied by means of a preliminary tax return and self-calculation with the Tax Office for Large Enterprises. The tax payment is due 24 months after the end of the fiscal year. The company liable to pay the tax

is to be determined by the ultimate parent company itself. Any compensation for corporate law purposes for tax payments made is tax neutral.

Penalties for infringement

According to the draft bill, the intentional violation of the obligation to file the top-up tax information return shall be punishable with a fine of up to EUR 100,000. A grossly negligent violation is to be punished with a fine of up to EUR 50,000.

Entry into force of the Austrian Minimum Taxation

As specified by the EU, the minimum taxation should be applied for the first time for fiscal years beginning after 30 December 2023. The UTPR should be applied one year later for the first time for fiscal years beginning after 30 December 2024.

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