

Global minimum taxation for companies – implementation of Pillar Two in Germany

Information current at 21 December 2023

Brief overview of the OECD's two-pillar solution

In July 2021, no fewer than 138 countries agreed on the “two-pillar solution”, an approach initiated by the G20 and the OECD covering wide-ranging reform of international corporate taxation for large multinational enterprises. The aim is to give market jurisdictions a greater share in the profits of the world's 100 largest corporations by partially reallocating taxing rights. In addition, a global effective minimum tax rate of 15% is to be introduced:

Pillar One

The OECD's Pillar One focuses on the allocation of international taxing rights for multinational enterprises. New nexus rules aim to reallocate taxing rights from the domicile for tax purposes to the market jurisdiction in which a corporation generates its profits, regardless of whether firms have a physical presence there. The reallocation of taxing rights affects global companies in all sectors, but in particular large digital corporations with annual turnover of \geq EUR 20 billion and profitability of $>$ 10%. Pillar One is to be implemented through a Multilateral Convention, which is currently still being negotiated and is expected to enter into force in 2024.

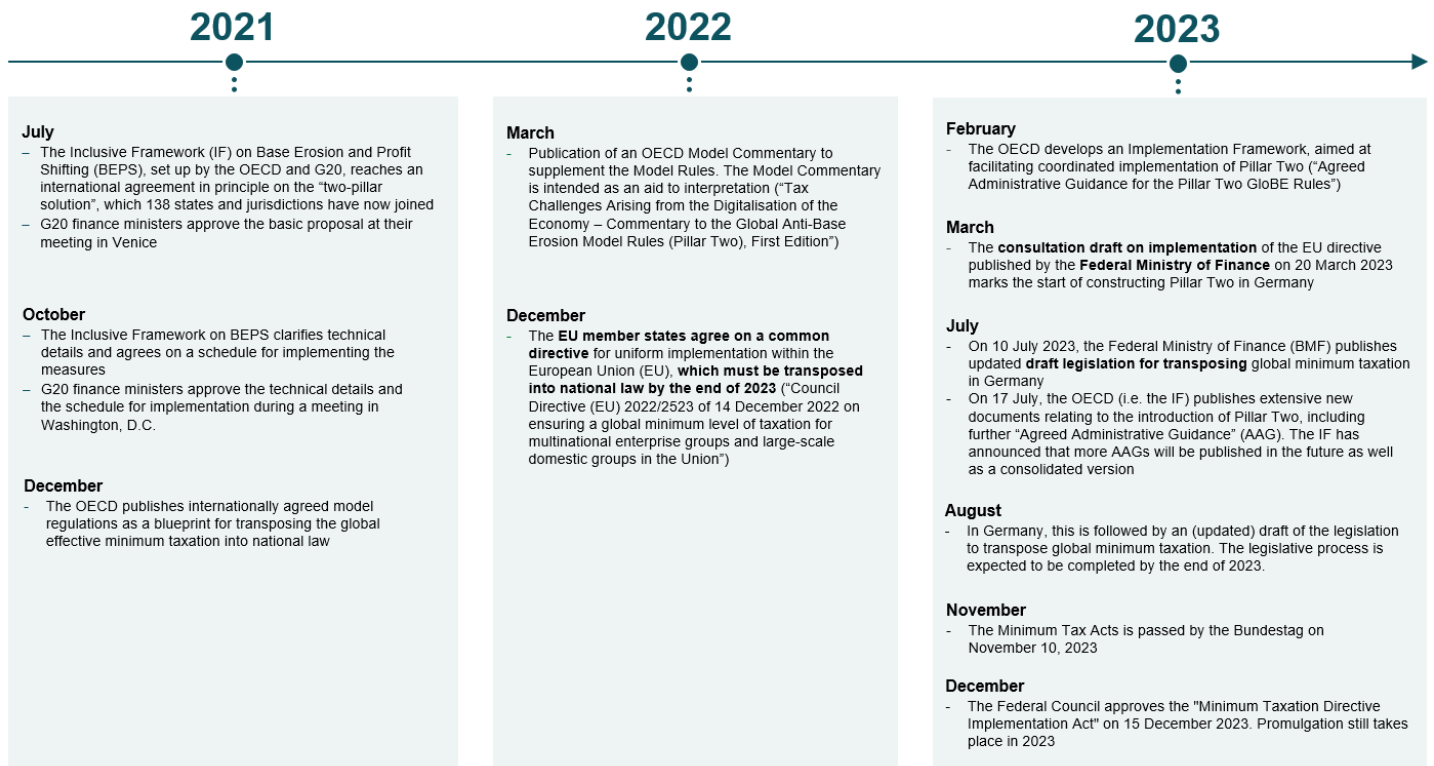
Pillar Two

The OECD's Pillar Two provides for the introduction of a global effective minimum tax rate of 15%. The international community's aim here is to reduce international tax competition between countries and to counteract the shifting of corporate profits to low-tax countries, which results in erosion of the revenue base in the affected countries. It covers all international companies and large-scale domestic groups with minimum consolidated turnover of EUR 750 million.

The regulations are accompanied by extensive reporting and information requirements. To comply with these obligations, the companies concerned must above all introduce new processes for tax compliance and accounting, so that they can obtain the necessary data promptly and analyse it.

Focus topic: Global minimum taxation under Pillar Two

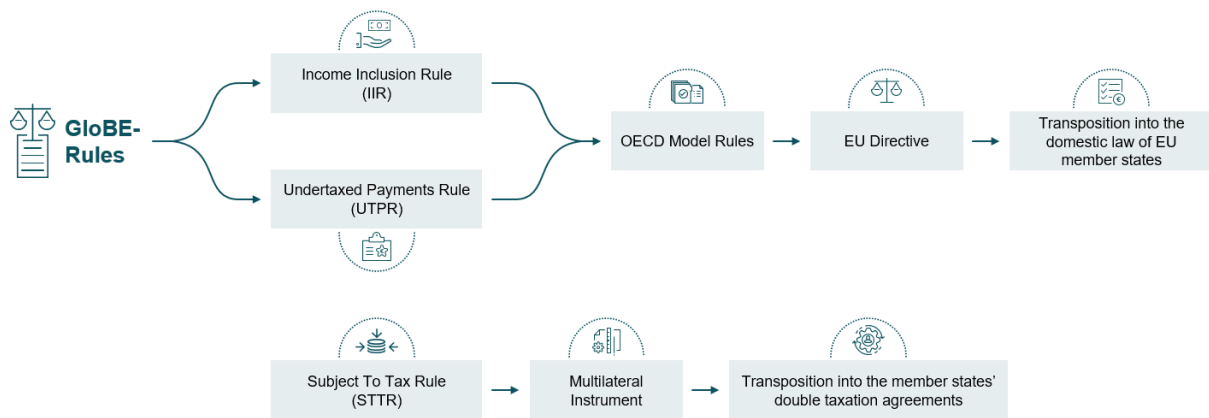
Key stages in the introduction of global minimum taxation



Rules and tools in the context of Pillar Two

Pillar Two consists of the Global Anti-Base Erosion Rules (**GloBE Rules**), which are sub-divided into an Income Inclusion Rule (**IIR**) and an Undertaxed Payments Rule (**UTPR**). The IIR is intended as a primary tool to achieve minimum taxation by imposing top-up tax on a parent entity. In contrast, the UTPR is only applied as a supplementary measure, by compensating for minimum taxation through denying deductions for payments within the group or comparable mechanisms. It is also possible to levy a Qualifying Domestic Minimum Top-Up Tax (**QDMTT**). This is a national supplementary tax levied on companies domiciled in a particular tax jurisdiction, enabling the minimum level of taxation to be achieved for that jurisdiction. There is also a Subject To Tax Rule (**STTR**) for certain related party payments subject to tax below a minimum rate.

While the GloBE Rules will be transposed into the law of the participating states by the respective **national lawmaker**, the STTR, which is based on double taxation law, will be implemented by means of a **Multilateral Instrument (MLI)**, to be ratified accordingly by the member states.



Uniform transposition of GloBE Rules in the single market by way of a EU directive

When the OECD initially published the **Model Rules** for uniform transposition of GloBE Rules in the participating states on 20 December 2021, the European Commission presented a **draft directive** on 22 December 2021 aimed at ensuring harmonised transposition of the GloBE Rules within the EU. The directive was adopted by the EU in December 2022 ([Council Directive \[EU\] 2022/2523 of 14.12.2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union \("Minimum Taxation Directive"\)](#)). The directive requires all member states, including Germany, to transpose the rules into domestic law by 31 December 2023. The content largely follows the OECD's Model Rules, but also includes **some adjustments** to ensure compliance with European law.

The Model Rules have been given the status of a common approach by the OECD, i.e. participating states are not required to adopt the rules. If they choose to do so, however, they must adhere to the stipulations of the IF. At all events, states are required to accept application of the rules by other member states. Unlike the OECD Model Rules, the GloBE Rules in the EU directive are not designed as a common approach. Instead, the directive stipulates **mandatory transposition** of the GloBE Rules within the single market by EU member states. The directive also goes beyond the Model Rules in that **purely national corporations** will fall within its scope. The directive's requirements are binding on the German legislator, which must transpose them into national law.

The directive stipulates that member states must transpose it by 31 December 2023, with most of the provisions applicable from 1 January 2024.

Transposition of global minimum taxation in Germany

The arrangements for a global minimum tax have high priority for the German legislature. As a result, the legislative process currently under way is being driven forward at pace, with completion expected in the second half of 2023.

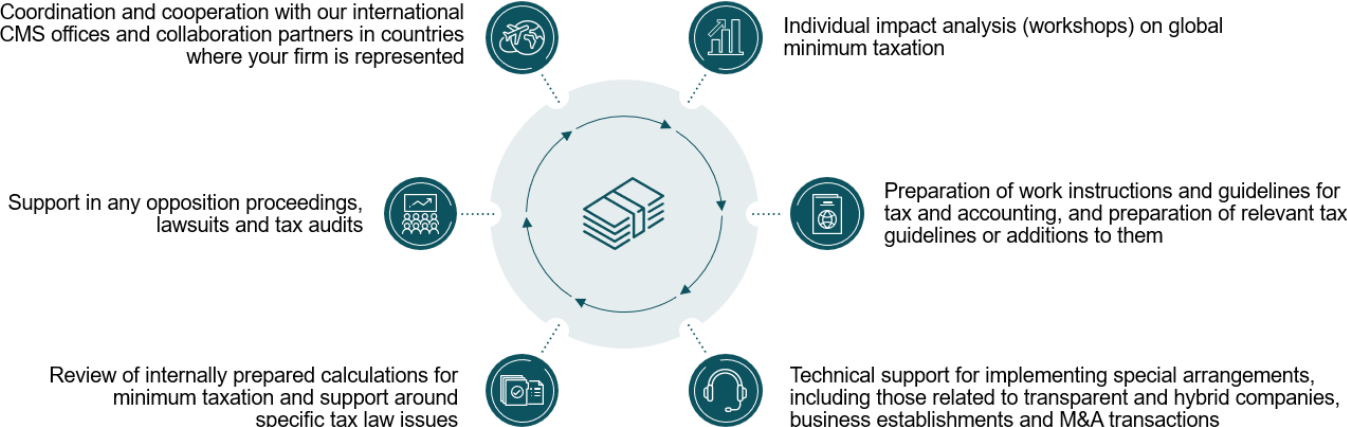
Overview:

- 20.03.2023: The Federal Ministry of Finance (BMF) presented a **consultation draft of a Minimum Tax Act (MinStG) to transpose the directive** and gave industry bodies an opportunity to comment on it.
- 10.07.2023: The BMF sent an updated **draft bill** (as at 7.7.2023) to the industry bodies. This initiated the formal legislative process, with numerous (detailed) amendments compared to the consultation draft.
- 16.08.2023: The German federal cabinet adopted **draft legislation for a Minimum Taxation Directive Implementation Act (MinBestRL-UmsG)**, which was amended once again compared to the draft bill.
- 29.09.2023: The German Federal Council (Bundesrat) issued its opinion on the draft law.
- 10.11.2023: The German Federal Parliament (Bundestag) passes the amended "Minimum Taxation Directive Implementation Act".
- The Federal Council approves the "Minimum Taxation Directive Implementation Act" on 15 December 2023. Promulgation still takes place in 2023.

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