International taxation developments | Implementation of Pillar Two in Greece

Law 5100/2024 transposes into Greek legislation the Pillar Two and EU Minimum Tax Directive rules imposing a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups

At a glance

Law 5100/2024 that came into force on 5 April 2024, transposes into Greek law Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the EU ("Directive"). The Directive had converted into EU law the Pillar Two Global Anti-Base Erosion Rules (GloBE) developed by the OECD as part of addressing the tax challenges arising from the digitalisation of the economy in the context of the OECD/G20 Base Erosion and Profit Shifting Project (BEPS).

The Greek law follows almost identically the contents of the Directive, introducing two interlocked rules, the Income Inclusion Rule (IIR) and the Undertaxed Profit Rule (UTPR), designed to bring the effective tax rate of in-scope groups up to the agreed minimum level of tax of 15% through imposition of a, so called, top-up tax. In addition, as per an available election under the Directive, the law introduces a domestic top-up tax, generally aimed at jurisdictions benefiting from the top-up tax revenues collected on the low-taxed constituent entities located in their territories (if any).

The law is applicable to constituent entities located in Greece that are members of a multinational enterprise group (MNE) or of a large-scale domestic group which, in its ultimate parent entity's consolidated financial statements, has an annual revenue of Euro 750,000,000 or more in at least two of the four fiscal years immediately preceding the tested fiscal year. Governmental entities, international and non-profit organisations, pension funds and certain investment entities as defined in the law are excluded from the scope. Their revenues are how-

ever included for purposes of calculating the Euro 750 million annual threshold.

The law adopts certain safe harbours introduced through OECD's Administrative Guidance on Pillar Two aimed as per the Directive at ensuring that there can be an election for the top-up tax due by a group in a jurisdiction to be deemed to be zero for a fiscal year if the effective level of taxation of the constituent entities located in that jurisdiction fulfils the conditions of a qualifying international agreement on safe harbours.

The law transposes in line with the Directive detailed rules regarding the computation of the effective tax rate and the top-up tax, the computation for such purposes of the qualifying income or loss and of the adjusted covered taxes as well as special rules for corporate restructuring and holding structures, rules regarding tax neutrality and distribution regimes as well as the administrative provisions and transition rules including filing obligations.

It is to be noted that there is no provision in the law in relation to applicable penalties for infringements and, except as regards the interpretation of safe harbours, there is no reference for application of the administrative guidance developed in the OECD's GloBE Implementation Framework.

The Independent Authority for Public Revenues has notified the provisions of the new law (through Guidance O.3018/2024) without providing for the time being any further guidance.

The IIR and UTPR rules

The IIR and the UTPR are in principle applied as follows. The ultimate parent entity or intermediate entity located in Greece of an MNE or a large-scale domestic group is subject in Greece to top-up tax under the IIR in respect of its low-taxed constituent entities that are located in another jurisdiction or that are stateless.

The UTPR on the other hand is designed as a backstop to the IIR through reallocation of any residual amount of top-up tax in cases where the entire amount of top-up tax relating to low-taxed entities could not be collected by parent entities through the application of the IIR. Under the UTPR, constituent entities of an MNE group located in Greece are subject in Greece to the relevant top-up tax which is allocated to Greece in proportion to a formula based on number of employees and tangible assets. This happens where the ultimate parent entity of the MNE group (i) is an excluded entity or (ii) is located in a third-country jurisdiction that does not apply an IIR that is assessed at OECD level as being equivalent to the relevant OECD rules ("qualified IIR") or (iii) is located in a low-tax third country jurisdiction and is not subject to a qualified IIR in respect of itself and its low-taxed constituent entities in that jurisdiction.

Computation of top-up tax

Top-up tax under the Directive and the Greek transposing law is computed at a percentage (top-up tax percentage) which is the difference between the minimum tax rate of 15% and the effective tax rate of all the constituent entities of an in-scope group located in Greece. The effective tax rate is computed by dividing the sum of taxes recorded in the financial accounts of all the constituent entities in Greece, as further specified

and subject to adjustments provided for in the law, with the net qualifying income or loss of such constituent entities which is arrived at following certain adjustments generally intended to better align the relevant tax base with the base which is applied for local tax purposes.

The top-up tax percentage is then applied on the net qualifying income or loss after such net qualifying income or loss being reduced by a, so called, substance-based income exclusion, i.e. a carve-out based on the costs associated with employees and the value of tangible assets in Greece.

Domestic top-up tax

The Greek law introduces a domestic top-up tax which is applicable to entities and permanent establishments within the law's scope that are members of an MNE group or of a large-scale domestic group and are located in Greece, as well as joint ventures and relevant affiliates located in Greece, minority-owned constituent entities located in Greece and certain other entities as further defined in the law. The domestic top-up tax is computed in the same manner as the Directive's total jurisdictional top-up tax and by applying the same rules and safe harbours with certain exceptions set in the law, including that Greek accounting standards or IFRS, as the case may be, applicable to stand-alone financial statements can be used for the computation of the excess profits over which the top-up tax percentage is levied, under conditions further specified in the law.

Application date and safe harbours

The IIR and domestic top-up tax will apply to fiscal years beginning on or after 31 December 2023. The UTPR will apply in principle to fiscal years beginning on or after 31 December 2024.

In accordance with the Greek law, a filing constituent entity can elect to benefit from one or more of the following safe harbours which relate to its minimum level of taxation and which are to be interpreted in accordance with the OECD's Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two). It is to be noted that, as per the Greek law, the Minister of National Economy and Finance is authorised to issue a decision setting the date of entry into force of the transitional CbCR and UTPR Safe Harbours described below.

The transitional CbCR Safe Harbour

Under the transitional CbCR Safe Harbour, which relies on CbCR data as the basis for calculating an MNE's revenue and income on a jurisdictional basis, the top-up tax for a jurisdiction is deemed to be zero for a transitional period which includes the fiscal years beginning on or before 31 December 2026 and ending before 1 July 2028, if the relevant jurisdiction passes at least one of the following tests:

a) de minimis test, met if the MNE Group reports on its qualified CbC Report for the fiscal year, for all the constituent entities resident in the relevant jurisdiction, total revenue of less than Euro 10 million and income of less than Euro 1 million or a loss;

b) simplified effective tax rate test, met if the MNE Group has a simplified effective tax rate, i.e. a rate computed on the basis of the taxes booked in the financial statements used for drafting the

CbC Report, that is equal to or greater than the transition rate in such jurisdiction for the fiscal year, the transition rate being 15% for the fiscal years beginning before 1 January 2025, 16% for the fiscal years beginning within the year 2025 and 17% for the fiscal years beginning within the year 2026; or

c) routine profits test, met if the MNE Group reports on its qualified CbC Report for the fiscal year profit or loss in such jurisdiction which is equal to or less than the Directive's substance-based income exclusion amount, for constituent entities resident in that jurisdiction under the CbCR.

The transitional CbCR Safe Harbour if elected shall be applicable as of the fiscal year of the relevant election.

The transitional UTPR Safe Harbour

Under the transitional UTPR Safe Harbour, the UTPR top-up tax computed for the low-taxed constituent entities located in the jurisdiction of the ultimate parent entity is deemed to be zero for a transitional period which includes the fiscal years, not exceeding 12 months, beginning before 31 December 2025 and ending before 31 December 2026, if the statutory corporate income tax rate in that jurisdiction is at least 20%.

The transitional UTPR Safe Harbour if elected shall be applicable for the above transitional period.

The Domestic Minimum Top-Up Tax Safe Harbour

Under the Domestic Minimum top-up tax Safe Harbour, a domestic Greek parent entity shall not compute top-up tax for a certain jurisdiction, if the domestic minimum top-up tax of such jurisdiction is determined as qualified in accordance with a relevant OECD's peer review process.

The Domestic Minimum Top-Up Tax Safe Harbour if elected shall be applicable as of the fiscal year of the relevant election.

It is to be noted that a filing constituent entity cannot elect to benefit from both the transitional CbCR Safe Harbour and the transitional UTPR Safe Harbour for the same jurisdiction and same fiscal year.

Top-up tax information return

The Directive and the new law provide for the filing of a top-up tax information return for showing among others how the top-up tax has been calculated in every jurisdiction. A constituent entity located in Greece may not have an obligation to file a top-up tax information return however,, if such return has been filed by an entity located in another jurisdiction if fulfilling the specifications set in the law. The Greek tax administration must be notified of the identity of such entity and jurisdiction.

The law grants an authorisation to the Governor of the Independent Authority for Public Revenues to issue a decision regarding the contents, filing and all other details in relation to the top-up tax information return (where applicable), a decision which can also determine the procedure for notifying to the tax administration the data of the entities which are

liable to render domestic top-up tax, applicable elections and any other implementation details.

It is to be noted that the law specifies that the notification to the tax administration of the data of the entities which are liable to render domestic top-up tax is filed within the same deadlines (set also in the Directive) for filing the top-up tax information return and any relevant notifications by the relevant entity, namely no later than 15 months after the last day of the reporting fiscal year or no later than 18 months for the first fiscal year in which an MNE group or a large-scale domestic group falls within the scope of the law.

Constituent entity top-up tax return

The law provides that the liable constituent entities shall report electronically to the Greek tax administration the data on the basis of which the IIR, UTPR and domestic top-up tax are computed (constituent entity top-up tax return). Such return is filed up to the last business day of the month following the month of filing of the top-up tax information return. The tax, if any, is paid in a lump sum until the last business day of the month following the month of filing of the constituent entity top-up tax return. In addition, the Governor is granted an authorisation to issue a decision in relation to the contents, filing, documentation and all other details in relation to such tax return.

Contact us

Maria Zoupa
Partner | Head of Corporate Tax
m.zoupa@zeya.com

Daphne Cozonis
Partner
d.cozonis@zeya.com

Diana Tsourapa
Partner
d.tsourapa@zeya.com

Georgia Voutsa
Partner
g.voutsa@zeya.com

Ioanna Tapeinou
Senior Associate
i.tapeinou@zeya.com

Established in 1893, Zepos & Yannopoulos is one of the leading and largest Law firms in Greece providing comprehensive legal and tax services to companies conducting business in Greece.

280 Kifissias Ave., 152 32 Halandri, Athens, Greece
newsletters@zeya.com
Tel.: (+30) 210 696.70.00 | Fax: (+30) 210 699.46.40

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