



C/2023/1536

12.12.2023

Commission Notice

Election to delay application of the IIR and UTPR under Article 50 of the Pillar Two Directive

(C/2023/1536)

1. General remarks

Article 56 of Council Directive (EU) 2022/2523 ⁽¹⁾ (hereinafter: the Pillar Two Directive) requires Member States of the European Union (EU) to bring into force the laws, regulations, and administrative provisions necessary to comply with the Pillar Two Directive by 31 December 2023. They shall immediately communicate the text of those measures to the Commission. They shall apply those measures in respect of the fiscal years beginning from 31 December 2023.

However, Article 50(1) of the Pillar Two Directive provides for an election to delay the application of the Income Inclusion Rule (IIR) and the Undertaxed Profits Rule (UTPR) that can be made by Member States, 'in which no more than twelve ultimate parent entities of groups within the scope of this Directive are located' for six consecutive fiscal years beginning from 31 December 2023. Member States that make such election must notify the Commission by 31 December 2023.

2. The scope of obligation to transpose the Pillar 2 Directive in case of the election

The derogation provided for in Article 50(1) of the Pillar Two Directive constitutes a temporary exception to the obligations provided in Chapter II 'IIR and UTPR' (i.e. Articles 5 to 14 of the Pillar Two Directive). Article 50(1) of the Pillar Two Directive thus allows these Member States not to apply the IIR and the UTPR for six consecutive fiscal years as from 31 December 2023.

The mere fact that certain Member States may use the election ought not distort the operation of the Pillar Two system within the EU and elsewhere. For that reason, a Member State making the election must nevertheless transpose all the other relevant Pillar Two Directive provisions so as to enable taxpayers and other Member States and jurisdictions to properly apply the system.

It is particularly important to highlight that the election does not result in a waiver of the top-up tax liability of the group in other Member States or third countries. It merely authorises those Member States that have opted for the derogation not to apply the IIR and the UTPR for six consecutive fiscal years beginning from 31 December 2023.

It follows that the Member States that make the election must enact provisions that:

- Oblige the domestic ultimate parent entities to:
 - nominate a designated filing entity in another Member State or a third country,
 - identify the domestic constituent entities of the group that are subject to the Pillar Two Directive and their functions within the system (such as being an intermediate parent entity (IPE), a permanent establishment, a transparent company or a joint venture),
 - process and transfer all the information submitted by the local constituent entities to the designated filing entity (see below);
- Oblige the local constituent entities to:
 - provide the information that is necessary to compute the top-up tax of each constituent entity, also considering any specific adjustments (especially deferred taxes),
 - provide the information that is necessary to compute the effective tax rate for each jurisdiction.

⁽¹⁾ 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 Union (OJ L 328, 22.12.2022, p. 1).

However, in case a Member State that intends to elect the option of Article 50 of the Pillar Two Directive would like to introduce a Qualified Domestic (Minimum) Top-Up Tax (QD(M)TT), the scope of necessary transposition would be broader. In such cases, it appears that only the provisions imposing the IIR and UTPR on the local constituent entities (i.e. Chapter II of the Pillar Two Directive) would need not be implemented.

3. Member States that made the election and notified it to the Commission

As at 12 December 2023 the following Member States notified the Commission of their intention to elect for a delayed application of the IIR and UTPR in accordance with Article 50 of the Pillar Two Directive, having declared that no more than twelve ultimate parent entities of groups within the scope of this Directive are located in their territories.

- Estonia,
 - Latvia,
 - Lithuania,
 - Malta,
 - Slovakia.
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