

Lower house of parliament approves legislation to implement EU Pillar Two directive

Approval of upper house of parliament expected in mid-December 2023

On 10 November 2023, the German lower house of parliament approved legislation on the domestic implementation of Council Directive ([EU 2022/2523](#)) on ensuring a global minimum level of taxation for multinational enterprise (MNE) groups and large-scale domestic groups (the "Pillar Two directive"). The legislation still has to be approved by the upper house of parliament; the approval is expected to take place in mid-December 2023 (likely on 15 December 2023), so that the law can enter into force for fiscal years that start after 30 December 2023, as planned.

The approved version of the legislation on the domestic implementation of the Pillar Two directive (the "Pillar Two implementation law") is mostly based on the draft version that was published by the government on 17 August 2023 (see [GTLN dated 08/22/23](#)). However, in addition, the approved version of the Pillar Two implementation law includes several amendments resulting from administrative guidance on the global anti-base erosion model rules, which was issued by the OECD in [February 2023](#) and in [July 2023](#):

- Additional provisions are included regarding the treatment of tax credits (transferable tax credits and timing considerations), as provided in the July guidance from the OECD.
- A simplified calculations (permanent) safe harbor is included, as provided in the OECD guidance. The simplified calculations safe harbor may be applied based on a routine profits test, a de minimis test, or an effective rate test.
- The safe harbor rule that will be available in the case of a qualified domestic minimum top-up tax ("QDMTT safe harbor") is updated to reflect the July guidance from the OECD.
- The transitional safe harbor rules that may apply for purposes of the undertaxed profits rule ("UTPR safe harbor"), as provided in the July guidance from the OECD, are incorporated into the German Pillar Two rules. Under the transitional UTPR safe harbor, the UTPR top-up tax amount calculated for the relevant jurisdiction of the ultimate parent entity (UPE) would be deemed to be zero if the UPE jurisdiction has a corporate income tax with a rate of at least 20%.
- An additional provision regarding foreign exchange conversion for Pillar Two purposes is included.

The Pillar Two implementation law now consists of 101 sections (compared to 96 sections in the draft version that was originally approved by the government).

In addition to the implementation of the Pillar Two directive, the law includes certain changes to the German GAAP rules resulting from the introduction of the Pillar Two rules. These changes are in line with the draft law published by the government in August. The approved law also includes the reduced threshold of 15% for the application of the German royalty barrier rule and the reduced threshold of 15% for the application of the German controlled foreign company rules, in line with the draft law.

It is expected that the upper house of parliament will approve the implementation of the Pillar Two rules into German domestic law, without any further changes, in mid-December 2023.

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