



Introduction of a Global Minimum Tax in Liechtenstein – In scope: Operating Companies and Asset Structures –

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As a member of the OECD/G20 Inclusive Framework on BEPS, Liechtenstein has clearly committed itself to the global minimum tax (of effectively 15%) and will implement it on time by application on January 1st, 2024. It should not go unnoticed that, contrary to the original focus of the OECD/G20's efforts to counteract profit shifting of large operating groups, asset structures such as foundations, family offices and trusts (reg.) may also fall in the scope of the global minimum tax level. Not only due to its timely entry into force there is an urgent need for action in certain cases. If necessary, we will be happy to advise on the entire subject area.

In addition to a precise structural analysis, an analysis of certain sales figures over a multi-year observation period may sometimes be required to determine whether a group or asset structure is in the scope.

Background

In October 2021, 135 member states of the OECD/G20 Inclusive Framework on BEPS, of which Liechtenstein is a member, agreed to a so-called two-pillar solution. The first pillar (Pillar 1) fundamentally realigns the taxation of highly profitable large corporations by creating a new, non-physical nexus for taxation and redistributing taxing rights on residual profit (part of profit exceeding a 10% return on sales) to market states. The second pillar (Pillar 2) includes the introduction of a global minimum tax (GloBE - Global Anti-Base Erosion rules) for international companies and corporations, which is to serve as a minimum level for international tax competition between jurisdictions.

With the adoption of the consultation report on the introduction of a global minimum tax by the Liechtenstein government, the legislative process for the national implementation of the GloBE rules began in Liechtenstein on 29 March 2023, too. The regulations are scheduled to come into force on January 1st, 2024, in line with the

harmonized procedure of the EU. Specific sub-regulations that comply with European and international provisions are also to be applicable as of January 1st, 2025.

General scope of application

According to OECD specifications, all domestic business units of a multinational group of companies are subject to the global minimum tax, if their ultimate parent entity achieves an annual turnover of at least EUR 750 million in its consolidated financial statements in at least two of four financial years (2020-2023) immediately preceding the audited financial year (2024 for the first time). It should be noted that a business unit (parent company) with permanent establishments in other tax jurisdictions also qualifies as a multinational enterprise group. Furthermore, the scope of application is not necessarily congruent with that of country-by-country reporting.

Turnover limit

According to OECD requirements, **all income generated, including all financial and investment income, is considered relevant turnover**. It should also be noted that the turnover threshold must be based on the entire consolidated group turnover. It is not permissible to exclude turnover parts that are attributable to minority owners of the group, nor is it permissible to exclude business units that are not (would not be) consolidated for reasons of materiality.

Accounting standards

The OECD has approved certain accounting standards worldwide for the purpose of consolidation. These include the US GAAP, the IFRS, and the Liechtenstein PGR [Persons and Companies Act]. However, only those under the accepted accounting standards are permitted that are available under national law in the tax jurisdiction of the ultimate parent entity. For Liechtenstein, these are the IFRS in addition to the PGR. At the same time, this also means that if a domestic business unit has

an ultimate parent entity abroad, the domestic entity must report according to the ultimate parent entity's accounting standards for global minimum tax purposes.

Consolidation requirement

The duty to consolidate is determined by the permissible and accepted accounting standards, which is supplemented by a fiction in the OECD specifications. The fiction applies in all cases in which the ultimate parent entity would not be automatically required to consolidate, e.g., because a consolidation requirement for its legal form is not provided for in the PGR. Thus, the consolidation fiction particularly applies to legal entities such as establishments, foundations, trust reg. and trusts. However, non-profit organizations are excluded from the scope of application. For the consolidation fiction, the question is whether this ultimate parent entity would be required to consolidate if there was a consolidation requirement for it in general. Accordingly, it does not matter whether consolidated financial statements have already been prepared in the past.

Taxation instruments

If the scope applies, the effective minimum tax level is to be achieved primarily by means of two instruments: these are referred to as the Income Inclusion Rule (IIR) and Undertaxed Payments Rule (UTPR), with the UTPR being more of an Undertaxed Profit Rule. The IIR basically follows the functional principle of CFC [Controlled Foreign Companies] taxation, according to which the parent company is taxed additionally until the profits of the low-taxed subsidiary reach the minimum tax level. If a group entity cannot be covered by the IIR (e.g., because the state of domicile of the parent company has not implemented an IIR), the UTPR (from January 1st, 2025) ensures that the minimum tax level is reached. The UTPR conceptually follows the same system as the IIR, but in the opposite direction. The subsidiary must levy an additional tax until the profits of the low-taxed parent company reach the effective minimum tax level.

In addition to these two instruments, Liechtenstein introduces a national top-up tax (Liechtenstein Qualified Domestic Minimum Top-up Tax [QDMTT]). Since the nominal income tax burden is currently 12.5%, the tax jurisdictions of foreign parent companies or foreign subsidiaries would each be entitled to levy the difference to the effective minimum tax level in relation to Liechtenstein business entities (by means of the IIR or UTPR). The introduction of a national top-up tax thus prevents access to the Liechtenstein tax base. Since Liechtenstein itself ensures the minimum tax level, foreign countries are cut off from access to the Liechtenstein tax base, since neither the IIR nor the UTPR are applicable.

Calculation of the top-up tax

The calculation of the IIR and UTPR top-up tax as well as the calculation of the Liechtenstein top-up tax is carried out according to a relatively complex calculation method based on provisions of commercial law and independent of the regulations of the Tax Act (SteG).

Large domestic groups

In accordance with the harmonized approach of the EU, so-called large domestic groups (groups whose business units incl. permanent establishments are located exclusively in Liechtenstein) should also be subject to the global minimum tax in Liechtenstein. This avoids any risk of discrimination between cross-border and domestic settings. The background to these considerations is likely to be that taxation instruments directed exclusively against foreign business units violate the freedom of establishment and the justification of such a violation has so far only been recognized by the ECJ for "artificial constructions", which, however, do not exist in the present case (ECJ, Cases C-196/04 and C-484/19).

Transitional provisions

The OECD regulations as well as the supplementary regulations of the EU do not provide for any real transitional provisions. The regulations apply from January 1st, 2024. Nevertheless, there are reliefs for certain groups. If a multinational group of entities is in the initial phase of its international activities (including less than five foreign business units), the Liechtenstein top-up tax is reduced to zero for five years. A similar regulation also applies to large domestic groups, according to which the Liechtenstein top-up tax is set at zero within the first five years after the turnover threshold has been exceeded.

Recommendation for action

Due to the complexity of the structures typically affected, the short period time remaining until January 1st, 2024, and the preparatory measures that may still have to be taken until then, urgent action is needed.

In any case, clarity should be established immediately as to whether a structure falls within the scope of the global minimum tax or not.

If you would like advice or require further information, please contact our specialists directly:



Sascha Bonderer
lic.oec. HSG
Swiss Certified Accountant
Mail: sascha.bonderer@confida.li
Tel: +423 235 84 15



Dr Florian Kloster, LL.M.
Tax Advisor (Germany)
Mail: florian.kloster@confida.li
Tel: +423 235 84 01



Elia Sozzi
Swiss Certified Fiduciary
Mail: elia.sozzi@confida.li
Phone: +423 235 84 14



Mag. Iryna Gartlacher, M.Sc., LL.M.
Mail: iryna.gartlacher@confida.li
Phone: +423 235 84 |

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