

Spain Implements OECD Pillar Two Global Minimum Tax Rules

KEY POINTS

Spain has enacted a 15% global minimum tax for large multinational groups with revenues above EUR 750 million. The Law implements a top-up tax for large multinational and domestic groups in Spain. The Law closely follows the configuration of the global minimum tax defined in the EU Pillar Two Directive and the OECD Model Rules.

Overview of the Legislation

On December 21, 2024, Spain published Law 7/2024 in the Official State Gazette, implementing the OECD Pillar Two global minimum tax framework. This law transposes the EU Pillar Two Directive and introduces key measures to ensure a minimum effective tax rate for large multinational and domestic groups. This law incorporates a supplementary tax (top-up tax), applicable to large groups with presence in Spain and a consolidated turnover exceeding 750 million euros in at least two of the four financial years prior to the reference year, to reach the minimum taxation threshold of 15% in all cases.

Key Provisions

The new rules require the parent entity of a multinational group to pay a top-up tax if the effective tax rate (ETR) of its subsidiaries in any jurisdiction falls below 15%. The top-up tax amounts to the difference between 15% and the ETR. The law includes specific rules to calculate the ETR in terms of taxes and net profits considered.

1. Income Inclusion Rule (IIR):

This method will be applied by the ultimate or intermediate parent companies of groups resident in Spain with respect to the income obtained by the constituent entities in which they participate, which are located in other jurisdictions. This method contemplates rules for the elimination of double taxation when such constituent entities have been subject to a domestic supplementary tax. The IIR is effective for fiscal years starting on or after 31 December 2023.

2. Undertaxed Profits Rule (UTPR):

The UTPR acts as a secondary mechanism, reallocating low-taxed profits to jurisdictions enforcing the rule when the IIR does not fully address the tax gap, ensuring that no group's profits escape the minimum taxation threshold. This closing rule means that Spanish-based subsidiaries of multinational groups have to collect top-up tax from their parent companies or other constituent entities of the group on income obtained outside Spain. Effective for fiscal years starting on or after December 31, 2024, the UTPR is applied on a proportional basis among jurisdictions where the group operates.

3. Qualified Domestic Minimum Top-Up Tax (QDMTT):

Ensures domestic profits are taxed at a minimum rate of 15% and reduces the need for foreign jurisdictions to apply the IIR or UTPR on Spanish entities. The QDMTT is calculated in line with OECD standards to meet qualification criteria. The QDMTT is effective for fiscal years starting on or after 31 December 2023.

Obligations and reporting

The law establishes the obligation to file an informative return for all entities based in Spain that are part of a group subject to the new top-up tax rule, unless the ultimate parent of the group resides in Spain or when the multinational group complies with the obligation to file the information return in another jurisdiction with an information exchange agreement with Spain. Reports should include detailed calculations of income, adjustments, and effective tax rates for each jurisdiction.

This informative return, pending to be approved, **must be filed during the 15th month after the year's closing**. However, for the transitory period (2024 to 2026) the informative return must be filed during the 18th month following the end of the first tax period to which the top-up tax rule applies.

An exemption from top-up tax for the first 5 tax periods is provided for both domestic groups and groups that are in the initial phase of their international activity if certain requirements and thresholds apply.

There is a specific penalty regime based on the infringement of the reporting obligations with penalties that could amount to a maximum of 1% of the net turnover of the group of entities.

There are special regimes for business restructurings, insurance investment companies, minority-owned constituent entity.

Safe Harbors

Reporting requirements are simplified for fiscal years through December 31, 2026, and no top-up tax is levied if the Group files Country-by-Country Reporting (CbCR) and any of the following thresholds apply:

- **Minimis thresholds:** revenue below 10 million Euro and profit before taxes is 1 million Euro or less.
- **The effective tax rate (ETR) test:** the ETR equals or exceeds the agreed rates (15%, 16% or 17% for 2024, 2025 or 2026 respectively).
- **Substance-based exclusion test:** no excess profits remain after excluding routine profits.

The permanent safe harbor rule reduces the top-up tax to zero for a jurisdiction that has levied a QDMTT meeting certain conditions.

Implications for Businesses

This new rule will have a significant impact in both Spanish multinational groups and multinational groups with affiliates in Spain. For that reason, it is highly recommended to pay attention to the following during the transitory period:

- Spanish parent entities of multinational groups must comply retroactively for fiscal years starting on or after January 1, 2024.
- Companies with operations in low-tax jurisdictions may face additional top-up taxes.
- Groups must adapt their accounting systems to meet disclosure requirements under the OECD and EU frameworks. Significant adjustments to accounting and tax reporting systems are needed to capture jurisdictional-level data. Training for finance and tax teams is essential to meet the technical demands of compliance.
- Monitoring accounting and reporting systems, as well as IT is key to ensure that the required information for the different calculations can be obtained. This includes preparing reconciliations between financial accounting and taxable income at the jurisdictional level. Companies must establish internal controls to ensure the accuracy of data reported.
- For Spanish multinational groups it is important monitoring the application of the IIR with respect to subsidiaries resident in countries where this rule has not been implemented.
- For Spanish subsidiaries of multinational groups resident in countries where this rule has not been implemented it is important to monitor the potential application of the UTPR. This is especially important for subsidiaries of US Groups (US has not implemented this rule yet).

RSM specialists will be happy to support your business in the implementation of these rules, sharing their expertise and tools.

For more information, please contact your RSM Tax Specialist.