BEPS 2.0 Pillar 2 – Overview of rules and implementation status

In October 2021, the Inclusive Framework, established by members of the Organisation for Economic Co-operation and Development ("OECD") and the G20 countries, reached an agreement on a Two-Pillar Solution to address the tax challenges arising from the digitalisation of the economy (Pillar 1 and Pillar 2). The Inclusive Framework brings together over 140 countries and jurisdictions, including Kazakhstan.

Pillar 1 applies to multinational enterprises with global turnover above EUR 20 billion and profitability above 10%. As a result, Pillar 1 may impact a limited number of enterprises.

At the same time, Pillar 2, consisting of a set of rules, targets a broader range of entities. In this regard, we provide a brief overview of Pillar 2 rules and their potential impact on businesses in Kazakhstan.

Overview of Pillar 2 Rules

Pillar 2 rules apply to multinational enterprises with annual consolidated revenue of EUR 750 million or more ("MNE groups").

In general, Pillar 2 rules are aimed at neutralizing the impact of aggressive tax planning taking place in the context of digitalization and globalization of the economy and ensuring that MNE groups pay a fair share of tax wherever they operate and generate profits, while also reducing tax competition among countries.

More specifically, Pillar 2 rules introduce additional taxation on the profits of in-scope MNE groups in cases where the effective tax rate ("ETR") in the jurisdictions where they operate falls below 15%.

When do Pillar 2 rules come into effect?

Pillar 2 rules are expected to take effect from 2024, except for certain provisions that are expected to be enforced starting from 2025 (depending on each jurisdiction).

Currently, Pillar 2 rules have been incorporated into legislation or are in the draft/discussion stage in a number of OECD countries (e.g. South Korea, Singapore, the United Kingdom, the Netherlands, etc.). In most of these countries, the rules are expected to come into force starting from January 1, 2024.

However, it's important to note that Pillar 2 rules include several exceptions that allow MNE groups to be exempt from potential tax implications, even when the ETR in jurisdictions is less than 15%.

Status of implementation of the rules in Kazakhstan

In order to apply Pillar 2 rules, they need to be implemented into national legislation. Kazakhstan, as a member of the Inclusive Framework, has agreed to the Two-Pillar Solution to address challenges related to the digitization of the economy. However, Kazakhstan has not yet implemented Pillar 2 rules into its legislation.

Despite this, profits of companies in Kazakhstan that are constituent entities of MNE groups could potentially be subject to taxation in jurisdictions where other group companies (parent company, subsidiaries, branches, etc.) are located and where Pillar 2 rules are already in effect. This situation may occur when these companies generate profits in Kazakhstan but have not paid the minimum tax of 15%.

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If you are interested in additional information, please contact us.

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Who may Pillar 2 rules apply to in Kazakhstan?

Pillar 2 rules potentially apply to all companies in Kazakhstan that are constituent entities of MNE groups with annual revenue of EUR 750 million or more. This is particularly relevant if these companies are utilizing tax incentives that directly impact the calculation of ETR.

In addition to the tax implications, these companies are also subject to requirements regarding the calculation of ETR and the submission of relevant reporting.

What steps should companies take?

The calculation of the taxable base for the purpose of determining the ETR under Pillar 2 rules is based on financial statement data. It's important to note that the calculation process is technically complex and requires several adjustments as specified by the rules.

Pillar 2 rules require MNE groups to file a GloBE Information Report (“GIR”) and relevant tax returns to the tax authorities of the countries where they are located. The process of preparing the GIR may be time-consuming and require significant effort, as it involves collecting a large amount of information from various sources.

Given the above, companies should prepare in advance for the entry into force of Pillar 2 rules and consider, among other things, the following:

- Modeling the financial implications of Pillar 2 rules
- Business restructuring to optimize the consequences of Pillar 2 rules
- Assessing the need/possibility of revising provisions of investment and other agreements offering a preferential tax regime
- Assessing readiness/ability to collect the data required for calculations under Pillar 2.

We continue to monitor the changes related to the implementation of Pillar 2 rules and would be glad to discuss the potential impact of such changes on your business.

If you are interested in additional information, please contact us.