

Foreword

In 2021 the members of the Inclusive Framework established by the Organisation for Economic Cooperation and Development (OECD) reached a political agreement on the reform of the international tax system (the Inclusive Framework Agreement). This reform provides for a two-pillar solution. Pillar One involves amending the rules on taxable presence and profit allocation. These changes will make it possible, under certain conditions, to also levy tax on a multinational in countries in which it has customers but does not have a physical presence. The taxable profit in those countries will be higher as a result of the changes. Pillar Two involves measures to ensure that multinationals pay a minimum level of tax on income. On 20 December 2021 the Inclusive Framework published its model rules, which members can use to implement Pillar Two in their national legislation.¹ In order to ensure that the members states of the European Union (EU) implement the Pillar Two measures in a uniform manner (thereby establishing a level playing field) and to guarantee compatibility with EU law, the European Commission has published a proposal for a directive on ensuring a global minimum level of taxation for multinational groups and large-scale domestic groups in the EU.² The proposed directive, published on 22 December 2021, sets out model rules for EU member states. Its legal basis is Article 115 of the Treaty on the Functioning of the European Union (TFEU), which enables the EU to issue directives for the approximation of laws, regulations or administrative provisions of the member states that directly affect the establishment or functioning of the internal market. In order to issue such directives, unanimity is required and the EU's consultation procedure must be followed.

The draft legislative bill that the Dutch government is now presenting for online consultation intends to implement the proposed directive on the basis of the compromise text of 16 June 2022 (proposed directive).³ At the time of the start of this online consultation, agreement has not yet been reached at EU level on the compromise text. The Netherlands is committed to achieving that goal. On 9 September 2022 the Netherlands, France, Germany, Italy and Spain issued a joint statement,⁴ emphasising the willingness of EU member states to reach an agreement. The statement also reaffirms that the Netherlands is committed to ensuring timely implementation of the directive. The draft legislative bill which is now being presented for consultation is intended to serve as the basis for the final version of the legislative bill. The Dutch government will continue to closely monitor developments within the EU.

As a result of this online consultation and the developments described above, it is possible that the legislative bill ultimately presented to the Dutch Parliament will differ in certain respects from the current draft legislative bill. The speed at which the draft legislative bill has been produced, as well as the scope and complexity of the proposals, may result in technical improvements to certain provisions of the draft legislative bill in due course. Nevertheless, the decision has been made to proceed with the consultation rather than wait, since it is likely that the final version of the directive – based largely on the OECD model rules – will be almost identical to the compromise text of 16 June 2022, which has been approved by all but one EU member state. This is because the proposed directive is based on rules which have already been agreed upon within the Inclusive Framework and the policy space in respect of these rules is extremely limited. This online consultation is therefore largely of a technical nature. In addition, launching the consultation at this stage has the potential to improve the quality of the definitive Dutch legislation, as there will be time to take account of responses in drafting the final version of the legislative bill. The scope for holding an online consultation could be jeopardised if it takes a long time to reach agreement on the directive or if the consultation were to be postponed until all the technical improvements have been incorporated in the draft legislative bill. Given these considerations, the decision has been made to launch the online consultation on the draft legislative bill as of now.

¹ <https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm>.

² Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union, 22 December 2021, COM(2021) 823. https://eur-lex.europa.eu/resource.html?uri=cellar:fa5dbfaf-633f-11ec-9136-01aa75ed71a1.0001.02/DOC_1&format=PDF.

³ <https://data.consilium.europa.eu/doc/document/ST-8779-2022-INIT/en/pdf>.

⁴ <https://open.overheid.nl/repository/ronl-16caa49431a1e83f4dff84dd1be976c361ebbaee/1/pdf/bijlage-bij-brief-gezamenlijke-verklaring-pijler-2.pdf>.