EDITORIAL

The EC Proposal of Directive on a Minimum Level of Taxation in Light of Pillar Two: Some Preliminary Comments

1 Introduction

The Proposal for a Directive on ensuring a global minimum level of taxation for multinational groups in the European Union (EU) (hereinafter, the Proposal) was published on 22 December 2021.[1] It adheres to the Pillar Two implementation plan included in the 8 October 2021 Inclusive Framework (IF) statement [2] and the model rules published on 20 December 2021.[3] Whereas Pillar Two and its model rules are not binding ('they have the status of a common approach'[4]), the EU opts for a binding instrument.

Thus, if the Proposal is approved, the EU Member States mutually agree to ensure a minimum level of corporate income taxation in the EU territory. This minimum level of taxation will be applicable to cross-border and domestic situations and cover within its scope: Multinationals (MNEs) that meet the EUR 750 million threshold of combined group turnover in at least two of the last four consecutive fiscal years based on consolidated financial statements and as determined under Base Erosion and Profit Shifting (BEPS) Action 13;[5] and large-scale groups (that meet the same threshold).[6]

The Proposal is justified as a necessary move to apply Pillar Two in the Union based on the fact that 'the European Union with a Single Market is a closely integrated economy'[7] and that the model rules are not binding which would create the risk of their divergent application within the Union.[8] By selecting this path, the approval of the directive is a priority for the Union since national implementation provisions for the Global Anti-Base Erosion Rules, known as the GloBE Model Rules, should be in force on 1 January 2023.[9]

2 The Unexpected International Impulse for Tax Rate Harmonization

The GloBE Model Rules are an opportunity – an impulse – for the European Union to begin coordinating tax rates in corporate income tax among its Member States and to proceed further, in the near future, in the direction of harmonizing those rates. The coordination of tax rates at an international level is a very recent and unexpected development as the following facts illustrate. In 1998, the international fight against aggressive tax competition was related to transparency and not to harmonization of tax rates;[10] the EU

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1 European Commission, Proposal for a Council Directive on Ensuring a Global Minimum Level of Taxation for Multinational Groups in the Union, Brussels, 22 Dec. 2021, COM(2021) 823 Final, https://ec.europa.eu/taxation_customs/system/files/2021-12/COM_2021_823_1_EN_ACT_part1_v11.pdf (accessed 4 Feb. 2022).

2 The Proposal builds on the OECD/G20 Base Erosion and Profit Shifting Project, *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy* 4 (8 Oct. 2021, https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf.). (accessed 4 Feb. 2022).

3 OECD, *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS* OECD, Paris (2021), https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-theeconomy-global-anti-base-erosion-model-rules-pillar-two.htm. (accessed 4 Feb. 2022).

4 OECD/G20 Base Erosion and Profit Shifting Project, *Statement on a Two-Pillar … supra* n. 2., at 3: Inclusive framework (IF) members, however, cannot oppose the application of the GloBE rules applied by other IF members 'including agreement as to rule order and the application of any agreed safe harbours': Idem.

5 According to OECD/G20 Base Erosion and Profit Shifting Project, *Statement on a Two-Pillar … supra* n. 2., at 4, countries are free to apply the IIR to MNEs headquartered in their country even if they do not meet the threshold. European Commission, Proposal for a Council Directive, *supra* n. 1, at 7.

6 European Commission, Proposal for a Council Directive, *supra* n. 1, at 3.

7 *Ibid.,* at 1.

8 *Ibid.*, at p. 3.

9 OECD/G20 Base Erosion and Profit Shifting Project, *Statement on a Two-Pillar … supra* n. 2, at 5; European Commission, Proposal for a Council Directive, *supra* n. 1, Art. 55.

10 OECD, *Harmful Tax Competition, An Emerging Global Issue* (1998), https://www.oecd-ilibrary.org/docserver/9789264162945-en.pdf?expires=1643110319&id=id&accname=ocid54022976&checksum=971FE807B3A762D4DB9AD8BD1B4AA3E0; (accessed 4 Feb. 2022). A. P. Dourado, *International Standards, Base Erosion and Developing Countries*, in *Tax Design Issues Worldwide*, 179–182 (G. M. M. Michielsen & V. Thurony eds i, Kluwer 2015).

rules for harmful tax competition, focusing on 'ring-fenced advantages' and targeting non-residents, fostered a generalized decrease in tax rates in the EU Member States;[11] attempts have twice been made to harmonize the corporate income tax base by apportionment, and harmonization of tax rates was never at stake because it was held as fully unrealistic;[12] and the objective of BEPS 1.0[13] and the Anti-Tax Avoidance Directive (ATAD)[14] was to coordinate tax bases by reducing cross-border disparities and introducing anti-abuse rules.[15] By approving the global intangible low-taxed income (GILTI)[16] and fostering Pillar Two, the United States changed its previous international policy against the coordination of minimum tax rates and contributed to promoting harmonization of tax rates in the EU.

It is necessary to wait and see whether this international momentum will make its way in the EU, that Member States will be convinced that a floor on tax competition is advantageous to each and all of them, and that the obstacle of the unanimity rule will be overcome in the approval of directives.

The Explanatory Memorandum of the Proposal of Directive refers to the 'interests of all Member States in order to ensure that corporations pay their fair share of tax on profits generated by their activities in the EU' and a floor on excessive tax competition between jurisdictions.[17] However, the substance-based income exclusion grounded on payroll costs and tangible assets (Article 27)[18] introduces an inadequate element of abuse in the purpose of minimum taxation. Payroll costs and tangible assets suggest a relationship with *genuine activities,* which would not be the object of aggressive tax planning (and abuse). Thus, they could be excluded from Pillar Two measures. It can be argued that this carve-out goes back to the negotiations of Pillar Two, and is a concession to Member States traditionally attracting brick and mortar activities, and aiming to remain competitive. Nevertheless, the carve-out may bring difficulties in the interpretation of the future Directive in light of the fundamental freedoms by the Court of Justice of the European Union (CJEU). In other words: Is the regime about minimum taxation or antiabuse rules? In the latter case, irrebutable presumptions cannot be used, and, for example, automatic application of the income inclusion rule (IIR) to the covered entities could be challenged.

3 The Core of the OECD GoBE Model Rules

The objective of the Proposal is to enact rules that adhere as closely as possible to the OECD GloBE Model Rules on Pillar Two.[19] The core of the Model Rules is directed at minimum taxation of the constituent entities of the MNE group at an Effective tax rated (ETR) of 15% in each of the jurisdictions in which they operate, and the same core rules are adopted in the Proposal.[20]

Successful coordination depends on the adoption of the same method by joining IF countries for computation of the effective tax rates on a jurisdictional basis: 'common definition of covered taxes and the tax base determined by reference to financial accounting income'.[21] Computation begins with the financial accounting net income or loss which is defined as the net income or loss determined for each constituent entity of the group for the fiscal year (before any

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[11] A. P. Dourado, *Aggressive Tax Planning and Harmful Tax Competition,* in *Research Handbook on European Tax Law,* 405–407 (C.HJI Panayi, W. Haslehner & E. Traversa eds, Elgar 2020).

[12] Proposal for a COUNCIL DIRECTIVE on a Common Consolidated Corporate Tax Base (CCCTB), Brussels, 16 Mar. 2011 COM(2011) 121 final 2011/0058 (CNS), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011PC0121&from=en: (accessed 4 Feb. 2022). 'There is no intention to extend harmonisation to the rates. Each Member State will be applying its own rate to its share of the tax base of taxpayers'., at 6; Proposal for a COUNCIL DIRECTIVE on a Common Corporate Tax Base, Strasbourg, 25 Oct. 2016 COM(2016) 685 final 2016/0337 (CNS), https://ec.europa.eu/taxation_customs/system/files/2016-10/com_2016_685_en.pdf: 'The envisaged measures are both suitable and necessary for achieving the desired end. They do not go further than harmonising the corporate tax base, which is a prerequisite for curbing identified obstacles that distort the internal market. Furthermore, the re-launched CCCTB does not restrict Member States' sovereignty to determine their desired amount of tax revenues in order to meet their budgetary policy targets. In this regard, it does not affect Member States' right to set their own corporate tax rates'., at 5. *See*, however, the reference to the decrease in corporate income tax rates in the EU in: Commission of the European Communites, *Report of the Committee of Independent Experts on Company Taxation,* Mar.. 1992, C:/Users/Utilizador/Desktop/RUDINGgp_eudor_WEP_C17492798ENC_002-pdf.en.pdf, e.g., at 153-160.

[13] OECD (2013), Action Plan on Base Erosion and Profit Shifting, OECD Publishing, http://dx.doi.org/10.1787/9789264202719-en, e.g., at 15. (accessed 4 Feb. 2022).

[14] Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, OJ L 193, 19 July 2016, at 1–14, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L1164&from=EN. Reference to rates is only made in the Preamble, *supra* n. 12, at. 4, in relation to Controlled-foreign-company rules: 'It should be acceptable that, in transposing CFC rules into their national law, Member States use white, grey or black lists of third countries, which are compiled on the basis of certain criteria set out in this Directive and may include the corporate tax rate level, or use white lists of Member States compiled on that basis'.

[15] A. P. Dourado, *Aggressive Tax Planning in EU Law and in the Light of BEPS: The EC Recommendation on Aggressive Tax Planning and BEPS Actions 2 and 6*, 43(1) Intertax 42 et seq. (2015).

[16] M. C. Bennet, *Contemplating a Multilateral Convention to Implement OECD Pillars 1 and 2,* 102 Tax notes International 1458 (14 June 2021); R. S. Avi-Yonah, *The Ingenious Biden Tax Plan*, 102 Tax Notes International 205–208 (12 Apr. 2021).

[17] European Commission, Proposal for a Council Directive, *supra* n. 1, at 1.

[18] This results from the OECD/G20 Base Erosion and Profit Shifting Project, *Statement on a Two-Pillar … supra* n. 2, at 4; and OECD, … *Global Anti-Base Erosion Model Rules (Pillar Two), supra* n. 3, Art. 5.3.

[19] European Commission, Proposal for a Council Directive, *supra* n. 1, at 3.

[20] *Ibid.,* at 9–10.

[21] OECD/G20 Base Erosion and Profit Shifting Project, *Statement on a Two-Pillar … supra* n. 2, at 4.

consolidation adjustments eliminating intra-group transactions) (qualifying income[22]), in preparing consolidated financial statements of the ultimate parent entity (See Article 14 (2)).

The adoption of financial accounting standards for computation of the effective tax rates aims at coordinating the maximum number of jurisdictions at a worldwide level. It allows for assessment and comparison of the ETR, taking into account that the MNEs in the scope of the model rules and the Proposal already apply the financial accounting standards.

However, this option implies the reform of corporate income tax, and complexity in the recapture of tax bases of the constituent entities.[23] It further raises the question of whether, in the future, tax planning by MNEs will shift towards manipulation of financial accounting net income or loss and the consolidated financial statements in order to avoid application of the GloBE rules. In contrast, it can be contended that it brings administrative simplification and not complexity to the addressed large-scale groups, and that any manipulation will only lead to temporary differences that will not be very relevant in the mid or long run. Nevertheless, due to the fact that accounting standards are, by definition, vague and may lead to indeterminacy, there will be at least some difficulty from the tax authorities in verifying the tax base.

MNE, group, constituent entities, and an effective tax rate determined by accepted financial accounts in a jurisdiction are central and interrelated concepts in the scope and purpose of the model rules. These concepts are defined by the latter[24] and have the same meaning in the Proposal.

Nevertheless, the minimum ETR of 15% is neither being imposed by Pillar Two to individual jurisdictions subscribing the common approach nor by EU tax law to its Member States. The adopted legal solution is one of mutual surveillance and reaction: in the event that the ETR applied by one jurisdiction is below the agreed minimum, the ETR is guaranteed by a compensatory tax applied by another jurisdiction to a constituent entity of the same group located in the latter jurisdiction. The regime works as a recapture of missing tax bases,[25] and is in this manner a complement to BEPS 1.0, even if it does not operate via anti-abuse rules.

This legal solution affords some margin of freedom to tax competition by implicitly assuming that a number of capital importing countries – source jurisdictions – still want to engage in that competition in order to attract investments by MNEs. The purpose is therefore to tax the MNE at the minimum ETR of 15%, even if some jurisdictions will not do it in respect of constituent entities of the MNE group located in their jurisdictions.

This is so, because the regime allows for a lower ETR for some constituent of the entities in a group: what matters is the ETR on a jurisdictional basis.

Another way of interpreting this regime is to expect that the compensatory tax will contribute to raising effective tax rates in the jurisdictions in which constituent entities are located. However, in order for this expectation to be achieved, all jurisdictions would need to adhere to the model rules. Thus, as long as some jurisdictions do not subscribe to the common agreement, it is expected that some investments will move towards those jurisdictions. This movement will operate in a similar manner to the hidden wealth in non-cooperative jurisdictions, and it may be difficult to assess how much tax revenue is forfeited in the EU Member States, if the Proposal is approved, and in the jurisdictions that subscribe the common agreement.

Taxing the MNE at the minimum ETR of 15% if one jurisdiction does not comply with it requires a rule order. First, it is foreseen that the coordinated system can be implemented by the application of an income inclusion rule (IIR) at the level of the ultimate parent entity (UPE), an intermediate parent entity (IPE), or a partially owned parent entity (POPE)[26] that owns an ownership interest in a low-taxed constituent entity.[27]

The system relies on a bottom up approach in which the POPEs and IPEs are acknowledged even if the focus is

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[22] European Commission, Proposal for a Council Directive, *supra* n. 1, at 8 and Ch. III, Arts 14–18.

[23] Criticizing the complexity of the system: M. de Wilde, *Is there a leak in the OECD's Global Minimum Tax Proposal (GloBE, Pillar Two)?,* Kluwer International Tax Blog (1 Mar. 2021), http://kluwertaxblog.com/2021/03/01/is-there-a-leak-in-the-oecds-global-minimum-tax-proposals-globe-pillar-two/. (accessed 4 Feb. 2022).

[24] MNE groups are defined in Art. 1.2.1 of the Model Rules (OECD, *Global Anti-Base Erosion Model Rules (Pillar Two), supra* n. 3) as any group including at least one entity or permanent establishment i.e., not located in the jurisdiction of the ultimate parent entity. In turn, Art. 1.2.2 defines a group as 'a collection of Entities that are related through ownership or control such that the assets, liabilities, income, expenses and cash flows of those Entities: a) are included in the Consolidated Financial Statements of the Ultimate Parent Entity; or b) are excluded from the Consolidated Financial Statements of the Ultimate Parent Entity solely on size or materiality grounds, or on the grounds that the Entity is held for sale.' According to Art. 1.3., a constituent entity is: a) any entity i.e., included in a group; and b) any permanent establishment of a main entity i.e., within para. a). On computation of GloBE income or loss and effective tax rate, *see* Ch 3 and 5.

[25] C. Brokelind, *An Overview of Legal Issues Arising from the Implementation in the European Union of the OECD's Pillar One and Pillar Two Blueprint*, 75 (5) Bull. Intl. Taxn. 217 (2021).

[26] Article 2.1. Application of the IIR A Constituent Entity, i.e., the Ultimate Parent Entity of an MNE Group, located in [insert name of implementing-jurisdiction] that owns (directly or indirectly) an Ownership Interest in a Low Taxed Constituent Entity at any time during the Fiscal Year shall pay a tax in an amount equal to its Allocable Share of the Top-Up Tax of that Low-Taxed Constituent Entity for the Fiscal Year.

[27] Article 2.1. Application of the IIR A Constituent Entity, i.e., the Ultimate Parent Entity of an MNE Group, located in [insert name of implementing-jurisdiction] that owns (directly or indirectly) an Ownership Interest in a Low Taxed Constituent Entity at any time during the Fiscal Year shall pay a tax in an amount equal to its Allocable Share of the Top-Up Tax of that Low-Taxed Constituent Entity for the Fiscal Year.

the UPE. Covering the IPEs and POPEs allows preventing the circumvention of the IIR by locating the UPE in a jurisdiction without a qualifying IIR. This compensatory tax (IIR) can either be interpreted as a second-best solution (because it is not possible to force jurisdictions to apply a minimum ETR) or as a solution in the interest of some states, mainly the OECD States, since they will be granted priority in receiving the tax revenue.[28]

Minimum taxation of the MNE group is to be achieved via a coordinated system because UPEs could relocate to low-tax jurisdictions or not applying the IIR. Thus, and as a second rule order, if the parent jurisdiction does not apply a qualifying IIR or is a low-tax jurisdiction, based on the ETR of all constituent entities,[29] an undertaxed payment rule (UTPR) will be applied at the level of the constituent entities in the source states. It is not relevant if they are subsidiaries or permanent establishments.

The UTPR operates as a backstop rule[30] by denying a deduction or requiring an equivalent adjustment under domestic law. This is valid unless the UPE's ownership interests are held by one or more parent entities that are required to apply a qualified IIR in the jurisdiction where they are located with respect to that low-taxed constituent entity for the fiscal year.[31] The IIR and the UTPR are known as the GloBE rules[32] and are two interlocking domestic rules. They will apply to achieve the minimum rate that was not originally imposed in another jurisdiction to a constituent entity of the same group.

Besides the IIR and the UTPR, model rules recommend a subject to tax rule (STTR) to developing jurisdictions and to be included in tax treaties. This is a switch-over rule that allows these jurisdictions to impose limited source taxation on intra-group cross-border payments subject to tax below the minimum ETR. The STTR is creditable under the GloBE rules,-[33] but the fact that it will fall on gross income will raise objections from the MNEs covered.

4 How the Proposal Follows the GloBE Model Rules

The IIR and the UTPR are included in the Proposal, even though there are some adjustments. The Union is treated as a single jurisdiction, and most probably because of that, Article 1 (subject-matter) a) states that the IIR shall be paid by the parent entity of an MNE. There is not a substantial difference from the model rules in this respect. Reference is not made to the UPE in Article 1 because it is assumed that the latter may be located outside the EU territory, and minimum taxation is to be achieved within the EU. Such a reference is then made in Chapter II that is dedicated to the IIR and the UTPR.

In the Proposal, the IIR is also to be paid by large-scale domestic groups (Article 1 a) second part and Article 5, paragraph 2). This expanded scope is required by the fundamental freedoms (specifically, the freedom of establishment) and the non-discrimination principle in the Treaty on the Functioning of the European Union (TFEU).[34] The explanatory memorandum seems to justify this as something objectionable that must be endured in order to achieve a particular outcome, i.e., a necessary evil ('limited to the essential minimum'[35]), possibly thinking of any disadvantageous effects to the competitiveness and growth of Member States' domestic groups.

The rule order for the application of the IIR rule in the EU is similar to the rule order in the model rules: The UPE if it is located in the EU; in the event that the UPE is not located in the EU, the POPE or the IPE in the EU if the third country jurisdiction does not apply an IIR.

When the primary taxing right lies with the Member State of a POPE, there will be a bottom-up method for identifying the POPE that is liable to tax in a similar methodology to the controlled-foreign-companies regimes: 'the other POPES up to the UPE will also be subject to the IIR but with a right to receive a credit for top-up tax due by another POPE lower in the chain'.[36] This seems to be different from the model rules (See

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[28] Y. Brauner, *Agreement? What Agreement? The 8 Oct. 2021, OECD Statement in Perspective*, 50 (1) Intertax, 2–6 (2022).

[29] European Commission, Proposal for a Council Directive, *supra* n. 1, Explanatory Memorandum, no 5.

[30] *Ibid.*, Explanatory Memorandum, no 1, at 1.

[31] *Ibid.*, at 16.

[32] *Ibid.*, Explanatory Memorandum, no 5.

[33] OECD/G20 Base Erosion and Profit Shifting Project, *Statement on a Two-Pillar … supra* n. 2., at 3; *Ibid.*, Explanatory Memorandum, ns 1 and 5, at 1 and 5.

[34] *See* HU: ECJ, 3 Mar. 2020, Case C-75/18, Vodafone Magyarország Mobil Távközlési Zrt. *v.* Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága, ECLI:EU:C:2020:139; HU: ECJ, 3 Mar. 2020, Case C-323/18, Tesco-Global Áruházak Zrt. *v.* Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága, ECLI:EU:C:2020:140. Confirmed by: PL: ECJ, 16 Mar. 2021, Case C-562/19 P, European Commission *v.* Republic of Poland, Hungary, ECLI:EU:C:2021:201, Case Law IBFD; HU: ECJ, 16 Mar. 2021, Case C-596/19 P, European Commission *v.* Hungary, Republic of Poland, ECLI:EU:C:2021:202, Case Law IBFD. A. P. Dourado, *Taxing Consumer-Facing Business as a Regulatory Currency*, 13(4) WTJ 554–556 (2021); On the compatibility of a minimum tax level in the EU and the fundamental freedoms, *see* C. Brokelind, *An Overview of Legal Issues … , supra* n. 25, at 217–218.

[35] European Commission, Proposal for a Council Directive, *supra* n. 1, Explanatory Memorandum, at 3. *See*: L. de Broe & M. Massant, Are the OECD/G20 Pillar Two GloBE-Rules Compliant with the Fundamental Freedoms?, 30(3) EC Tax Rev. 86-98 (2021).

[36] *Ibid.*, Explanatory Memorandum, Ch. II, at 8. *See also* at 5–6.

Articles 2.1.5 and 2.1.4) according to which only the 'ultimate' POPE applies the top-up tax.

The IIR at the level of a parent entity implies computing and collecting its allocable share of top-up tax in respect of the low-constituent entities of the group. Additionally, differently from the model rules, the IIR is binding when a parent entity is located in the Union. There is no need for a UTPR within the EU because the IIR is binding and, therefore, the UTPR is to be applicable only by a Member State in relation to third countries.

A number of policy and drafting options in the Proposal raise our attention:

1) All definitions broadly corresponding to those in the model rules are an unnecessary duplication that leads to complexity. Furthermore, using different words from those in the model rules to define the same concept may bring ambiguity. For example, Article 3, paragraph 3 a) refers to 'acceptable accounting framework', a concept that is neither defined in the Proposal nor in the model rules. In contrast, 'acceptable financial accounting standard' is defined in n. 22.[37]

   Even if the model rules are not binding, they are an interpretive element by the CJEU in the same manner as the OECD Model Convention Commentaries. Moreover, the model rules can be easily updated; the same is not true with the Directive. There is a risk in the future of incompatibility between the Directive and the model rules.
2) The definition of 'low-tax jurisdiction' may create confusion regarding the criteria adopted in the EU black-list. It would be clearer to replace the term 'jurisdiction' with 'situation' since it refers to the MNE group being submitted to an ETR that is lower than the minimum tax rate.
3) In the Proposal of Directive (Article 1), there is no reference to the consolidated financial statements of the (UPE) but instead to the consolidated financial statements of the constituent entities. This is because the EU will operate as one jurisdiction with its own rules, and the UPE may be situated outside the EU territory.
4) Some exclusions may lead to tax planning and abuse: for example, an investment entity that is an ultimate parent entity and a real estate investment vehicle that is an ultimate parent entity are excluded from the scope of the GloBE rules and the Proposal. This is probably because an investment entity is not usually a UPE and is often submitted to a look-through tax regime. However, this exclusion may lead to the creation of investment entities and real estate investment vehicles as UPEs.
5) There is an election to apply a 'qualified domestic top-up tax' (DMTT) granting primacy to the Member State where constituent entities of an MNE group are located, and the amount of any top-up tax due by the parent entity is reduced up to zero (Article 10 paragraphs 1 and 2). The DMTT is handled in the definitions (Article 3 (13) and Article 26), however, it would be clearer if it were included in Article 1 together with the IIR and the UTPR.[38]
6) POPEs are defined as being more than 20% owed by interested holders outside the MNE group and are obligated to apply the IIR up to their allocable share of the top up tax. The 20% threshold was agreed at the OECD level and introduces one more threshold in the EU direct tax instruments that is different from those applicable in the Parent-subsidiary Directive[39] and in the Interest and Royalties Directive.[40]

Implementation of the model rules in the EU requires one single regime. However, duplication of provisions and concepts is neither necessary nor advisable. The model rules and the Proposal will not eliminate international tax competition as long as some third country jurisdictions do not subscribe to the common agreement. It is dubious that these jurisdictions will adhere to Pillar Two and minimum taxation in the future.

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[37] *See also* IFRS 10, Commission Regulation (EC) 1126/2008, 3 Nov. 2008, adopting certain international accounting standards in accordance with Regulation (EC) n. 1606/2002 of the European Parliament and the Council, OJ L 320, 29 Nov. 2008, as amended, http://data.europa.eu/eli/reg/2008/1126/2022-01-01. (accessed 4 Feb. 2022).

[38] European Commission, *Proposal for a Council Directive, supra* n. 1, at n. 9, at 15, and Art. 6 para. 3 b).

[39] COUNCIL DIRECTIVE 2011/96/EU of 30 Nov. 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (recast) (OJ L 345, 29 Dec. 2011, at 8), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02011L0096-20150217&from=EN. (accessed 4 Feb. 2022).

[40] COUNCIL DIRECTIVE 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L157, 26 June 2003, at 49).