

PILLAR II – GLOBAL MINIMUM TOP-UP TAX

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1. LEGISLATION AND DEFINITIONS

- The OCDE initiative against Base Erosion and Profit Shifting (BEPS) aims to limit profit shifting by multinational enterprises to low-tax jurisdictions. This work resulted in the publication of the OCDE Model Rules (Pillar Two), issued on 14 December 2021.
- Under the Multilateral Competent Authority Agreement on the Exchange of Information for Pillar II, the GloBE Information Return (GIR) was approved. The EU Directive 2022/2523 and Spanish Act 7/2024 extend the obligation to file informative returns under the Top-Up Tax, effectively creating additional GloBE-related reporting obligations.
- The EU Directive 2022/2523 of 15 December 2022 establishes a global minimum taxation framework for multinational Enterprise groups and large-scale domestic groups within the EU. It introduces a Top-Up Tax through two inter-locking rules designed to ensure that income earned by such groups is effectively taxed at a effective minimum rate of 15%.
- The Directive establishes two rules: the Income Inclusion Rule (IIR) and the Undertaxed Payments Rule (UTPR). It also grants Member States the option to apply a Qualified Domestic Minimum Top-Up Tax (QDMTT) to entities located in their territory.

1. LEGISLATION AND DEFINITIONS

- Publication in the Spanish Official Gazette (BOE) of Law 7/2024, of 20 December, which transposes Directive 2022/2523 and incorporates into Spanish domestic law a Top-Up Tax applicable to multinational and large-scale domestic groups.
- Publication of Royal Decree 252/2025, of 1 April, approving the Regulation of the Top-Up Tax aimed to ensure a global minimum level of taxation for multinational groups and large-scale domestic groups.
- Ministerial Order HAC/1198/2025, regulates Forms 240, 241 and 242 corresponding respectively to the communication of the declaring entity, informative return, and the self-assessment (top-up tax return).

1. LEGISLATION AND DEFINITIONS

DEFINITIONS: these are standalone, autonomous definitions that must be applied for the interpretation of the Top-Up Tax.

- **Constituent Entity:** any entity or permanent establishment forming part of a multinational group or a large-scale domestic group.
- **Main Entity:** an entity that includes, in its financial statements, the accounting results of a permanent establishment.
- **Ultimate Parent Entity (UPE):**
 - An entity that directly or indirectly holds a controlling interest in any other entity and is not itself owned, directly or indirectly, by another entity that holds control or a controlling interest over it;
 - The principal entity of a group.
- **Intermediate Parent Entity (IPE):** a Constituent Entity that directly or indirectly holds an interest in another Constituent Entity of the same multinational group or large-scale domestic group, and which cannot be regarded as a UPE, a Partially Owned Parent Entity, a permanent establishment, an investment entity, or an insurance investment entity.
- **Partially Owned Parent Entity (POPE):** a Constituent Entity that directly or indirectly holds an interest in another Constituent Entity of the group, where more than 20% of its profit entitlements are held, directly or indirectly, by one or more persons that are not Constituent Entities of such group, and which does not qualify as a UPE, a permanent establishment, an investment entity, or an insurance investment entity.

1. LEGISLATION AND DEFINITIONS

DEFINITIONS:

- **Adjusted Admitted Income or Loss:** the accounting profit or loss of the Constituent Entities adjusted in accordance with the Top-Up Tax rules (e.g., excluded dividends, excluded capital gains or losses, non-deductible expenses relating to illegal payments, fines and penalties, accrued pension expenses, etc).
- **Material Competitive Distortion:** a situation in which the aggregated variation in income or expenses exceeds EUR 75 million in a fiscal year, compared to the amount that would have been determined by applying the relevant principle, procedure, or international financial reporting standards.
- **Adjusted Covered Taxes:** The Corporate Income Tax expense recorded in the profit and loss account, plus adjustments (e.g., recasting deferred tax income and expenses and tax loss carried forward at 15%, certain refundable credits, etc.).
- **Top-Up Tax:** the difference between the Effective Tax Rate (ETR) and the global minimum rate of 15%. It is a variable rate applied to ensure the minimum effective taxation of 15%.
- **Substance-Based Income Exclusion:** the amount resulting from applying 5% of payroll costs and the value of tangible assets located in a jurisdiction. However, until 2032, the transitional percentages set out in the Second Transitional Provision apply. These excluded amounts reduce the net admitted income for purposes of computing the Effective Tax Rate.

2. GENERAL ASPECTS

1. WHO IS SUBJECT TO THE TAX?

The Top-Up Tax applies to any **Constituent Entity located in Spain** that forms part of a **multinational group or a large-scale domestic group**. It is a jurisdictional tax, meaning that it is globally calculated for all constituent entities located in Spain.

The tax is applicable to multinational or large-scale domestic groups whose consolidated revenue exceeds **EUR 750 million** in at least 2 of the 4 fiscal years preceding the relevant fiscal year. Therefore, for fiscal year 2024, the group's revenue must be reviewed for fiscal years 2020 to 2023.

The analysis must be based on the consolidated financial statements of the Ultimate Parent Entity (UPE).

2. GENERAL ASPECTS

1. WHO DOES THE TAX APPLY TO?

- Domestic Top-Up Tax taxpayers: **Spanish Constituent Entities** when the jurisdictional Effective Tax Rate (ETR) of the group in Spain is **below 15%**.
- Primary Top-Up Tax taxpayers (Income Inclusion Rule –IIR): entities resident in Spain to the extent they hold interests in **non-resident Constituent Entities** whose income has been taxed at an effective rate **below 15%**. This includes:
 - The Ultimate Parent Entity (UPE) located in Spain.
 - An Intermediate Parent Entity (IPE) in Spain when the UPE is located in a third-country jurisdiction or in an EU Member State but is excluded, unless:
 - The UPE is subject to a Top-Up Tax under an eligible IIR; or
 - Another Intermediate Parent Entity holds, directly or indirectly, a controlling interest over the Spanish IPE and is subject to an eligible IIR.
 - A Partially Owned Parent Entity (POPE) located in Spain, unless another POPE holds, directly or indirectly, all the participations with respect to the Spanish entity and is subject to an eligible IIR.

2. GENERAL ASPECTS

- Secondary Top-Up Tax taxpayers (UTPR): **Spanish Constituent Entities** are liable for the portion of the Secondary Top-Up Tax attributable to low-taxed income earned by **non-resident Constituent Entities**, where the Ultimate Parent Entity (UPE) is located in a jurisdiction that does not apply a Top-Up Tax.

2. WHAT TYPES OF TOP-UP TAX REGIMES EXIST?

- a) Qualified Domestic Top-Up Tax (QDMTT): applies at the jurisdictional level (Spain) and is calculated for **all Spanish-resident Constituent Entities**.
- b) Primary Top-Up Tax (Income Inclusion Rule – IIR): applies to the **Ultimate Parent Entity or Intermediate Parent Entities resident in Spain**, with respect to the income obtained by the Constituent Entities they hold that are non-resident in Spain. The tax is calculated in proportion to the ownership interest held by the parent entity.
- c) Secondary Top-Up Tax (Undertaxed Payments Rule– UTPR): applies to **Spanish Constituent Entities** of a multinational group where the relevant income is not subject to a domestic Top-Up Tax or a Primary Top-Up Tax (IIR) in another jurisdiction. However, the regulation provides for a transitional safe harbour for financial years prior to 2026, under which the Secondary Top-Up Tax is 0 if the UPE is subject to a nominal rate of at least 20%.

3. ENTRY INTO FORCE

The Top-Up Tax applies to fiscal years beginning on or after 1 January 2024, with the existence of transitional safe harbours until 2026.

3. CALCULATION METHODS

The Top-Up Tax is calculated at jurisdictional level, aggregating the figures of all Constituent Entities **resident in Spain**. The computation must rely on the financial accounting standards used to prepare the consolidated financial statements of the Ultimate Parent Entity (UPE).

1. CALCULATION METHOD FOR FISCAL YEARS 2024 AND 2025

- a) This methodology may be applied for fiscal years **2024, 2025 and 2026**, when the group files a **Country-by-Country Report (CbC)**.
- b) The Top-Up Tax will not be required during this period if **any** of the following conditions is met:
 - i. De minimis test: If the group's gross revenue in Spain is **below EUR 10MM** and its profit before tax is **equal to or below EUR 1MM**.
 - ii. Simplified Effective Tax Rate (ETR): If Corporate Income Tax Expense/Profit Before Tax (as derived from the CbC) is greater than **15%** (2024), **16%** (2025) y **17%** (2026).
 - iii. Substance-based exclusion test: If the profit before tax in a given jurisdiction is less than or equal to the substance-based income exclusion (Payroll costs + tangible assets X coefficients applicable for 2024, 2025 y 2026).

3. CALCULATION METHODS

2. CALCULATION METHOD FOR FISCAL YEARS STARTING ON OR AFTER 2026 (or earlier, if the transitional method does not apply)

- a) The Top-Up Tax will be required when the jurisdictional Effective Tax Rate (ETR) of all Constituent Entities located in Spain is below the minimum rate of **15%**.
- b) ETR (for all Constituent Entities in Spain) = **Adjusted Covered Taxes/ Net Admitted Income**, rounded to four decimal places.
 - i. Net Admitted Income: Accounting profit +/- adjustments (e.g., net tax expense adjustment, excluded dividends, excluded capital gains or losses, non-admissible expenses, etc.).
 - ii. Adjusted Covered Taxes: Corporate Income Tax expenses as recorded in P&L +/- corrections (e.g., recasting deferred taxes and tax loss carried forward at 15% admissible refundable tax credits, deferred expense or income linked to tax credits, etc.)
- c) If the **ETR < 15%**, a Top-Up Tax will be computed for the difference.
- d) The Top-Up Tax rate will be applied to the **amount of the Admitted Gain and Losses adjusted by the substance-based income exclusion**, resulting in the Top-Up Tax payable in the jurisdiction.

4. FORMAL OBLIGATIONS

1. TOP-UP TAX RETURN (FORM 242)

- The Top-Up Tax must be assessed and paid through a single self-assessment return filed in Spain by **one Constituent Entity**. If there is only one constituent entity within the multinational group resident in Spain, that entity shall be the taxpayer and shall be required to submit the Top-Up Tax return; if there is more than one constituent entity of the same group resident in Spain, it shall act as the substitute taxpayer for all other Spanish Constituent Entities.
- This filing entity will be the **Ultimate Parent Entity (UPE)**, if resident in Spain; or otherwise, the **Spanish Constituent Entity** with the highest net asset value.
- A payment relief **during the first 5 fiscal years** applies both to domestic groups and to groups in the initial phase of their international activity.
- Filing and payment deadlines:
 - i. Transitional period (first application of the Top-Up Tax): 25 calendar days following the **18th month after** the end of the first fiscal year in which the Top-Up Tax applies. Therefore, for fiscal year 2024, the filing period is 1 July to 27 July 2026.
 - ii. Subsequent fiscal years: 25 calendar days following the **15th month after** the end of the fiscal year.

4. FORMAL OBLIGATIONS

2. INFORMATIVE RETURN (FORM 241)

- There is an obligation to file an **informative return** for all Constituent Entities located in Spain.
- The informative return does not need to be filed in the following cases:
 - i. When it has already been filed by the **Ultimate Parent Entity resident in Spain**, or in a jurisdiction that has an admissible Competent Authority Agreement in force with Spain.
 - ii. When a **local entity**, different from the Ultimate Parent Entity, **has been designated** to file the informative return on behalf the group.
 - iii. When a **Constituent Entity located in another jurisdiction**, other than the Ultimate Parent Entity, **has been designated** to file the informative return and that jurisdiction has an admissible Competent Authority Agreement in force with Spain.
- Filing deadlines:
 - i. Transitional period (first application of the Top-Up Tax): before the last day of the **18th month following** the end of the first fiscal year in which the Top-Up Tax is applicable. Therefore, for fiscal year 2024, the deadline is between the 30 April and 30 June 2026.
 - ii. Subsequent fiscal years: before the last day of the **15th month following** the end of the fiscal year.

4. FORMAL OBLIGATIONS

2. INFORMATIVE RETURN (FORM 241)

- Penalties:

- i. Failure to file within the statutore deadline: serious infringement, subject to a fixed pecuniary penalty of **EUR 10,000 euros for each item or set of items** that should have been included in the informative return.
 - i. Maximum: 1% of the Net Turnover of all entities forming part of the multinational group or large-scale domestic group, including excluded entities, as reflected in the consolidated financial statements of the Ultimate Parent Entity for the fiscal year.
 - ii. Reduction of 50% applies when the return is filed late without prior request from the Spanish Tax Authorities.
- ii. Incomplete, inaccurate, or false filing: serious infringement, subject to a fixed penalty of **EUR 10,000 euros for each item or set of items** that should have been included in the informative return.
 - i. Maximum: 1% of the Net Turnover of all entities forming part of the multinational group or large-scale domestic group, including excluded entities, as reflected in the consolidated financial statements of the Ultimate Parent Entity for the fiscal year.
 - ii. Complementary or substitute return filed prior request imply the imposition of the penalty only to the portion of the return submitted out of the deadline.

4. FORMAL OBLIGATIONS

3. COMMUNICATION OF THE FILING CONSTITUENT ENTITY (FORM 240)

- There is an obligation to file a **communication** identifying the Constituent Entity designated to file the Top-Up Tax informative return (form 241).
- The entities required to submit this communication are Spanish-resident Constituent Entities forming part of a multinational group or a large-scale domestic group, with respect to:
 - i. The **Ultimate Parent Entity**, obliged to file the informative return; or,
 - ii. The **entity designated** to file the informative return on behalf of the group.
- A single communication may be submitted including the information corresponding to all Spanish Constituent Entities forming part of the multinational or large-scale domestic group.
- Filing deadlines:
 - i. Transitional period(first application of the Top-Up Tax): for fiscal year 2024, Form 240 must be filed **between 30 April and 30 June 2026**.
 - ii. Subsequent fiscal years: it must be filed within the **3 months preceding** the deadline for submitting the informative return.

4. FORMAL OBLIGATIONS

3. COMMUNICATION OF THE FILING CONSTITUENT ENTITY (FORM 240)

- Penalties:
 - i. Failure to file within the statutore deadline: serious infringement, subject to a fixed pecuniary penalty of **EUR 10,000 euros**.

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