



Pillar 2 – Top-up Tax Act

Tax alert

forv/s
mazars

Tax alert: Top-up Tax Act – What is its subject and to whom does it apply?

The Council Directive (EU) 2022/2523 of 15 December 2022 sets out rules for ensuring a minimum global level of taxation for large multinational enterprise groups and large domestic groups operating within the EU (“Directive”), also known as Pillar 2. This Directive was transposed into Slovak legislation through the adopted Act No. 507/2023 Coll. on the Top-up Tax to ensure a minimum level of taxation of multinational enterprise groups and large domestic groups (hereinafter referred to as the “Top-up Tax Act”), as amended, which became effective from 31 December 2023.

What is the subject of the Top-up Tax Act?

The subject matter of the Top-up Tax Act is to ensure a minimum level of taxation for constituent entities which are members of multinational enterprise groups and large-scale domestic groups located in the territory of the Slovak Republic.

The Top-up Tax Act regulates the method of calculation, payment, and collection of the top-up tax, as well as related reporting and filing obligations towards the Slovak tax authorities.

Who is affected by the Top-up Tax Act?

This Act applies to:

- **Constituent entities of a multinational enterprise group or a large domestic group located in the Slovak Republic**, provided that the consolidated revenues of such a group in the consolidated financial statements of the ultimate parent entity reach or exceed
- **EUR 750 million** in at least **two of the four fiscal years** immediately preceding the analysed fiscal year; and
- **Joint ventures** and joint venture affiliates established in the Slovak Republic.

The entities that are excluded from the scope of the Top-up Tax Act are in general carrying out the activities in the public interest and do not carry out business activities (e.g. governmental entities, international organisations, non-profit organisations,

pension and investment funds or real estate investment vehicle that is an ultimate parent entity).

When will the top-up tax apply?

If the effective taxation of the income of qualified entities located in the Slovak Republic **is lower than 15%, the minimum taxation** of these entities will be ensured by collection of the top-up tax.

The Top-up Tax Act precisely sets out the methodology for calculation of the effective tax rate for the purpose of assessing the liability to the Top-up Tax, taking into account the ratio of adjusted covered taxes to the net qualifying income or loss of the constituent entities.

Qualifying income or qualifying loss refers to the profit or loss of the constituent entity from financial accounting for the relevant fiscal period, determined according to the accounting standard used in the preparation of the consolidated financial statements of the ultimate parent entity, prior to consolidation adjustments eliminating intra-group transactions.

The computation of the effective tax rate for the purpose of assessing the level of taxation of the relevant entities, as well as the top-up tax itself, is quite complicated and will include several variables and exceptions specified by the Top-up Tax Act.

Tax period

The tax period for the top-up tax will be the fiscal year (accounting period) for which the ultimate parent entity of a multinational enterprise group or a large-scale domestic group prepares its consolidated financial statements, or alternatively, the calendar year.

Related obligations and deadlines

The taxpayer will be obliged to file with the Tax Authorities by electronic means:

1. Notification containing information necessary for determining the top-up tax, using a form that will be published on the website of the Financial Directorate of the Slovak Republic. This notification will include, e.g. the following details:

- The name, address of the registered seat, company registration number, tax identification number, type of taxpayer, and its position within the group,
- Information regarding the corporate structure of the group, including controlling interests,
- Data necessary for the computation of the effective tax rate in the Slovak Republic for all constituent entities that are part of the same group or joint venture group, and the top-up tax liability of each constituent entity or group entity,
- On decisions made by the reporting entity pursuant to this Top-up Tax Act.

2. Tax return

The deadline for submitting the Notification and the Tax Return will be **until 15 months** following the end of the relevant tax period. If the tax period is a transition year, this deadline will be extended by three full calendar months, i.e., to 18 months. The top-up tax will be payable within the same deadline.

The deadline for filing the Notification and the Tax Return, as well as deadline for paying of the top-up tax, cannot be extended nor can it's late submission be excused.

If the taxpayer is subject to the top-up tax, the first taxable period will be the year 2024, with the deadline for filing the Notification and Tax return stipulated until the end of June 2026.

Safe Harbours – Exemptions from taxation

The reporting entity may decide that the top-up tax of the constituent entities for the Slovak Republic is considered to be zero for the relevant accounting period, provided the conditions defined in the exemptions are met.

The Slovak Republic has implemented the following exemptions from taxation by the top-up tax:

- **De Minimis Exclusion** – it may be applied if:
 - a. The average eligible revenues of all constituent entities for the relevant fiscal period are less than EUR 10 million and
 - b. The average eligible income/loss of all constituent entities represents a loss or is less than EUR 1 million.
- **Exemption based on transitional Country-by-Country Reporting – Safe Harbour (DAC4/CbCR report)** – it applies if at least one of the following three conditions is met:
 - a. The total amount of revenues of the constituent entities reported in the qualified Country-by-Country Report of the multinational enterprise group for the relevant accounting period is less than EUR 10 million, and the total amount of profit or loss before tax of the constituent entities reported in this report is less than EUR 1 million; or
 - b. The simplified effective tax rate of the constituent entities for the accounting period is equal to or greater than the transitional tax rate (15% for 2024, 16% for 2025, and 17% for 2026); or
 - c. The amount of profit or loss before tax of the constituent entities reported in the qualified Country-by-Country Report is equal to or less than the amount of excluded income based on substance, calculated for the constituent entities (the Substance-Based Income Exclusion amount “SBIE”).

This exemption is valid for a transitional period from 31 December 2023 to 31 December 2026.

- **Exemption based on simplified calculations – Simplified Calculations Safe Harbour (effective from 31 December 2024)** – this represents the transposition of the so-called permanent safe harbour and it is the alternative to the exemption based on the qualified Country-by-Country Report, which is a “limited safe harbour”.

It may be applied if at least one of the following conditions is met:

- a. The average eligible revenues of the constituent entities are less than EUR 10 million and the average eligible income or average eligible loss of the constituent entities is less than EUR 1 million (de minimis test),
- b. The effective tax rate of the constituent entities is greater than 15%; or
- c. The net eligible income of the constituent entities is equal to or less than the amount of SBIE calculated for the constituent entities (so-called routine profit test).

Assessing whether your Company is subject to the Top-up tax legislation, as well as the calculation the top-up tax itself, is a highly complex and time-consuming process. As well as consideration of the potential application of exemptions from the top-up tax calculation.

Should you require any assistance, we would be pleased to offer our support in ensuring compliance with these new obligations.

Contact

Kvetoslava Čavajdová

Partner, Tax

kvetoslava.cavajdova@forvismazars.com

Ivana Bošková

Senior Manager, Tax

ivana.boskova@forvismazars.com

Forvis Mazars

SKY PARK OFFICES 1

Bottova 2A

811 09 Bratislava

Offices: Bratislava, Košice, Nitra, Považská Bystrica

Forvis Mazars Group SC is an independent member of Forvis Mazars Global, a leading professional services network. Operating as an internationally integrated partnership in over 100 countries and territories, Forvis Mazars Group specialises in audit, tax, outsourcing and advisory services. The partnership draws on the expertise and cultural understanding of over 40,000 professionals across the globe to assist clients of all sizes at every stage in their development. Forvis Mazars in Slovakia is part of Forvis Mazars Group SC

Visit www.forvismazars.com/sk to learn more.