

## GloBE Act in the final legislative stage

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**The Polish Parliament enacted the Act of 6 November 2024 on the top-up tax of constituent entities of multinational and domestic groups. The Act is awaiting the signature of the President of Poland.**

The Act of 6 November 2024 on the top-up tax of constituent entities of multinational and domestic groups [here: **the GloBE Act**] implements into the Polish legal system the requirements of Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union [**the Directive**]. The Directive should have been implemented into the domestic legal systems of the EU Member States effectively from 1 January 2024. Poland (as well as only Spain, Portugal and Cyprus) failed to implement the Directive in time, and therefore the provisions of the GloBE Act should be effective, in principle, from 1 January 2025.

Under the GloBE Act, entities belonging to multinational and domestic groups – with consolidated revenues exceeding €750 million in at least 2 of the 4 years preceding the tax year – will be required to calculate an effective tax rate [ETR], report a range of data and possibly pay a top-up tax, most often in their country of residence.

### The course of the legislative process in the Polish Parliament

The GloBE Act draft was submitted to the Sejm (Lower House of the Polish Parliament) on 25 September 2024. The first reading of the said draft took place on 10 October, and as a result the draft was directed to the Public Finance Committee [PFC]. On 17 October, the PFC requested the Polish Parliament to enact the GloBE Act.

The second reading of the draft took place on 6 November 2024. As a result, the draft returned to the PFC – further amendments were proposed during the work in the PFC.

The third reading of the draft took place also on 6 November 2024. The bill was mainly supported by the deputies supporting Polish Government. Then, the GloBE Act was forwarded to the Speaker of the Senate (Upper House of the Polish Parliament) and the President of Poland. The Senate did not bring amendments to the GloBE Act – consequently (on 7 November 2024) this Act was sent to the Polish President for signature.

The Polish President may (i) sign the GloBE Act, (ii) apply to the Constitutional Tribunal for verifying the compliance of the Act with the Polish Constitution or (iii) refer the Act back to the Sejm for reconsideration.

The text of the GloBE Act can be found at this [link](#).

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## Selected aspects of the GloBE Act

### 1) Three new GloBE taxes and GloBE taxpayers

The GloBE Act introduces three new taxes:

1. global top-up tax,
2. domestic top-up tax,
3. top-up tax on undertaxed profits.

The taxpayers of the global top-up tax will be, in general, the Polish ultimate parent entities of the multinational enterprises group.

The taxpayers of the domestic top-up tax will, in turn, in principle be the Polish constituent entities of an multinational enterprises group / domestic group.

The taxpayers of the top-up tax on undertaxed profits will be the Polish constituent entities of the multinational enterprises group – provided that in the jurisdiction of the ultimate parent entity, in principle, the *Income Inclusion Rule (IIR)* does not apply.

### 2) The three principles of GloBE

Having the status of a taxpayer for any of the three GloBE taxes the certain entity should consider the basic principles governing the GloBE system, i.e.

- a) (qualified) *Income Inclusion Rule (IIR)*,
- b) (qualified) *Undertaxed Profits Rule (UTPR)*,
- c) (Qualified) *Domestic Minimum Top-Up Tax (QDMTT)*.

A description of the various GloBE rules will be the subject of a separate discussion, although the key rule from the point of view of the GloBE regime (referred to in practice as the 'basic rule') is the IIR, according to which, in general, the top-up tax will be paid in the state of residence of the parent entity regardless of whether it is due from the constituent entities or from the parent entity itself.

### 3) ETR – GloBE effective tax rate

Polish entities belonging to the above-mentioned groups (subject to the GloBE) will face the challenge of properly calculating the ETR (*effective tax rate*). Depending on the situation, this challenge may be very time consuming (when a so-called full ETR calculation will be necessary) – in certain situations (and only for 2024-2026), it may also be possible to calculate a so-called simplified ETR (under the Transitional CbCR safe harbour).

### 4) GloBE top-up tax to be paid

The ETR of less than 15% may give rise to the payment of a top-up tax, especially if the constituent entity making the calculation is a company benefiting from various tax preferences, including tax reliefs or reduced CIT rates.

The calculation of the GloBE top-up tax will be positively influenced by having an appropriate so-called substance-based income exclusion, i.e. the sum of the calculated exemptions for all constituent entities located in a given jurisdiction:

- a) certain payroll costs and
- b) property, plant and equipment.

Constituent entities that employ, among other things, employees and have certain assets are – from the GloBE's point of view – in a more favourable situation than entities that do not have sufficient substance used in their business activities.

## **5) GloBE reporting**

The provisions of the GloBE Act also stipulate the need to perform various reports. Polish constituent entities may, in particular, be required to submit information on top-up tax – in this respect, however, it will be possible to appoint another entity (provided that the relevant requirements are met).

The deadline for the submission of this information will – in principle – be 15 months counted from the end of the tax year in question (18 months – for the first year for which a group comes within the scope of the GloBE requirements).

Taxpayers of the said taxes (as provided for in the GloBE Act) will also – in principle – be required to file returns on the amount of top-up tax due and to pay this tax. The filing of these returns will, as a general rule, occur by the end of the 18th month following the end of the relevant tax year (21st month – in the case of the first year for which a group comes within the scope of the GloBE requirements). In this case, it will also be possible for one constituent entity of the same group that is a taxpayer of the same tax to choose to fulfil the said obligations (filing of returns, payment of tax) – provided that the obligations apply to at least two such entities in Poland.

## **6) Possible application of the GloBE regulations from 1 January 2024**

As mentioned above, in general the GloBE Act enters into force on 1 January 2025. Nevertheless, this Act provides for the possibility of filing, between 1 March 2026 and 30 May 2026, a declaration of election to apply the provisions of the GloBE Act in respect of the tax year commencing from 1 January 2024. As a consequence of such an election (importantly, voluntary but irrevocable), the constituent entities of the group will be obliged to apply the key requirements under the GloBE Act retroactively, i.e. from 1 January 2024.

The use of the choice to apply the GloBE rules from 1 January 2024 onwards should be preceded by a thorough analysis made both from the perspective of Polish constituent entities of multinational enterprises groups and parent entities for such groups (including when these entities are located in Poland).

## **7) Opinions (including protective) on GloBE top-up taxation**

The GloBE Act introduces the possibility of applying to:

- Director of National Fiscal Information – with a request for an opinion on top-up tax, and
- Head of the National Tax Administration – with a request for a protective opinion on top-up tax.

While the aforementioned institutions could be useful from the point of view of entities having doubts about their obligations under the GloBE Act in Poland, the disadvantage of this solution remains the amount of fees for issuing the aforementioned opinions and the long waiting time for their issuance.

In the case of both opinions, the amount of fees required to be paid by the interested parties reaches PLN 65 000.

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