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Pillar 2 Tax Services for Funds

Pillar 2 introduces Model Rules that address the tax challenges of the digitalisation of the economy. Whilst they are primarily designed to ensure that large multinational enterprises (MNEs) pay a minimum level of tax on the income arising in each jurisdiction where they operate, it is essential to monitor the impact of the rules on investment fund structures.

The Model Rules were developed by the OECD, agreed by 137 member jurisdictions of the OECD/G20 Inclusive Framework on BEPS and endorsed by the G20 finance ministers and leaders.

Building on the Model Rules, the EU adopted Council Directive (EU) 2022/2523 (Pillar 2 Directive). The Luxembourg law of 22 December 2023 (Law) implements the Pillar 2 Directive.

The rules target MNEs to ensure they are subject to a global minimum effective taxation rate of 15%.

The Law implements the following in Luxembourg:

- An income inclusion rule (IIR);
- An undertaxed profit rule (UTPR);
- A qualified domestic minimum top-up tax (QDMTT) rule.

Fund industry is impacted

1. General Partner

Check if GP required to prepare consolidated financial statements which report annual consolidated revenue of at least EUR 750,000,000.

2. Limited Partner

Check if LP required to prepare consolidated financial statements which include the fund investment on a line-by-line basis or under the equity method and report annual consolidated revenue of at least EUR 750,000,000.

3. Fund

Check if Fund prepares consolidated financial statements, is being consolidated, or at a portfolio/asset level a consolidation occurs on a line-by-line basis, with reporting of annual consolidated revenue of at least EUR 750,000,000.

4. Joint Ventures and Affiliates

Check if the Fund or a group entity is consolidated based on the equity method and the MNE's ultimate parent entity (UPE) holds a 50% or more ownership interest directly or indirectly. Check if JV holds JV affiliates.

Who is excluded?

- Pension funds, investment entities and real estate investment vehicles that are UPEs.
- Government entities, international organisations and non-profit organisations.
- Certain other entities owned by these excluded entities that hold assets or invest funds and/or carry out ancillary activities, or that mostly derive excluded income.

Timeline - when does Pillar 2 apply?

The regime applies from the 2024 tax year, except for the provisions on the UTPR, which applies from the 2025 tax year (unless the UPE is located in a jurisdiction that has opted for deferred application of the IIR and UTPR).

Luxembourg entities within the scope of the rules are required to:

- **Register** with the Luxembourg Direct Tax Authorities;
- **File** an information return and a top-up tax return within 15 months after the last day of the reporting fiscal year (18 months for the transition year), and
- **Pay** the top-up tax within one month.

What are the penalties?

There are penalties of up to EUR 5,000 per constituent entity for non-compliance with the registration requirements. In addition, there is a penalty of up to EUR 250,000 per constituent entity for non-compliance with the information requirements.

Key questions to consider

- Is my Luxembourg Fund or its subsidiaries subject to any consolidation requirements for accounting purposes, or is my Luxembourg Fund a constituent entity that is included in the consolidated financial statements of a UPE?
- Does my group include joint ventures and joint venture affiliates?
- Is the EUR 750,000,000 threshold met?
- Does my group qualify for any safe harbour or exclusion?
- If my group is within the scope of Pillar 2, do I have to pay a top-up tax? If so, in which jurisdiction and which entity has to pay?
- Will I manage all registration and reporting requirements myself or will I outsource this to my (local) tax advisors?

How can Arendt help?

There are many challenges and opportunities under Pillar 2. We strongly recommend talking to an Arendt tax lawyer to fully understand your situation and how it will impact your operations. We can then provide in-depth advice and practical solutions tailored to you:

- **Training and upskilling** your staff on Pillar 2.
- **Identifying** in-scope structures and defining compliance requirements.
- **Providing accounting opinions** on consolidation requirements under Lux GAAP and IFRS.
- **Delivering tailored advice** on strategic approaches.
- **Working with your teams** (and external advisors) **to prepare, review and file** the information and top-up tax returns.



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