

# Tax Agenda Bulgaria

July 2023



No.	Fact	Action
1	<p><b>Minimum taxation under Pillar 2 rules</b></p> <p>In December 2022, Council Directive (EU) 2022/2523 on ensuring a global minimum level of taxation for multinational enterprise (MNE) groups and large-scale domestic groups in the Union (the "Directive") was adopted aiming to ensure a minimum taxation of 15% for large corporations. While some Member States have already submitted draft legislative acts for public discussion, Bulgaria has not yet released any draft or official comments from the competent bodies. As a country with a flat 10% corporate income tax rate, the rules may have a significant impact on the tax landscape in Bulgaria.</p>	<p>The options for Bulgaria ahead basically come down to: (i) collecting 15% tax only from the large MNEs present in Bulgaria (i.e., applying the domestic top-up option); (ii) changing the base rate of corporation tax from 10% to 15% or higher; (iii) postponing the introduction of the rules with six years envisaged for jurisdictions with less than 12 large headquartered ultimate parent entities; and (iv) leaving things as they stand, thus allowing the Member States of the headquartered MNEs to collect the difference in the rates of taxation of their Bulgarian activities.</p>
2	<p><b>Bulgaria ratified the Multilateral Instrument (MLI) to modify its existing tax treaties</b></p> <p>Bulgaria deposited its instrument of ratification for the MLI Convention in September 2022 and the latter has entered into force on 1 January 2023. The country elected to affect a significant part of its treaty network under the MLI and it has made use of several of the optional provisions. Some of the notable amendments concern the right to tax capital gains on transfer of shares in real estate rich Bulgarian entities by their foreign holding vehicles, as well as a number of measures tackling artificial avoidance of permanent establishments.</p>	<p>The ratification of the MLI could have a direct impact on exit plans in the real estate industry, as well as any foreign entities that sell goods on the Bulgarian market without being established through a local branch or a related distribution entity.</p> <p>Furthermore, foreign tax residents claiming tax relief would likely have to evidence that they have not put in place an arrangement or transaction with the main objective of obtaining tax benefits under the treaty.</p>



Use text boxes above the timeline to plan your actions for coming months

- Compliance
- Risk management
- Cash-flow and ETR impact

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3	<p><b>Excess profits tax introduced for 2022 and 2023</b></p> <p>In December 2022, Bulgaria implemented the windfall tax (solidarity contribution) enacted in EU Regulation 2022/1854 for companies active in the field of natural gas, coal and oil. Bulgaria has elected to apply the windfall tax for fiscal years 2022 and 2023. The solidarity contribution may also be paid in advance instalments, and it shall be a deductible expense for corporate income tax purposes. The tax applies on excess profits which are subject to 33% tax.</p>	<p>Companies should assess whether they are in scope of the described rules and the impact the latter may have on their operations.</p>
4	<p><b>Notional interest income may not benefit from WHT exemption</b></p> <p>In January 2023, the Supreme Administrative Court issued a judgment, where it did not provide for WHT relief under any of the EU Directives with respect to notional interest assessed by the tax administration on an initially non-interest bearing debt. The judgment follows the interpretation provided under the Court of Justice of the EU's ruling on the same case (C-257/20) under which it was settled that EU Directives do not prevent the application of withholding tax on notional interest.</p>	<p>Leveraged taxpayers should assess their arrangements on debt in light of this case law.</p>
5	<p><b>Bulgarian court practice disallows favorable TP adjustment in an assessment notice</b></p> <p>In April 2022, the Supreme Administrative Court issued its judgment where it denied a TP adjustment for tax years where the taxpayer had generated profits exceeding the interquartile range. Under the same assessment notice the court accepted the tax administration's approach to assess additional corporate tax for tax years where the taxpayer had achieved profit results below the interquartile range.</p>	<p>Taxpayers should review whether their actual financial results adhere to the relevant benchmark interquartile range and make appropriate adjustments, if necessary.</p>
6	<p><b>Introduction of DAC7 in Bulgaria</b></p> <p>Adopted changes in December 2022 to the Tax and Social Security Procedure Code transposing the rules of the Directive (2021/514) have introduced the automatic exchange of information for both EU and non-EU digital platform operators. This may have an impact on digital platforms, the rental of real estate, rental of any means of transport, the provision of personal services and the sale of goods. The first reporting obligations would be for the period 2023 with report submissions by January 2024.</p>	<p>Latest initiatives on administrative cooperation on tax matters impose reporting obligations for taxable persons, therefore it is paramount for the concerned companies to consider their readiness and resources to comply with reporting obligations.</p>
7	<p><b>Distribution of advance (interim) dividends</b></p> <p>Historically in Bulgaria, the distribution of interim dividends (i.e., dividend distribution prior to year-end, based on current year profit) has been contested by the tax authorities and treated as hidden profit distribution. In a recent non-binding ruling issued by the Bulgarian tax administration on the topic from 9 June 2022, the tax authorities have acknowledged that distribution of dividends in advance could be tax compliant under certain conditions.</p>	<p>Although the tax ruling is non-binding it could provide a source of guidance as it also refers to a certain court practice and its interpretation is expected to be followed by the tax administration.</p>

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8	<p><b>Treatment of debt financing instrument income</b></p> <p>In a recent judgment from May 2023, the Supreme Administrative Court adjudicated in favor of the foreign taxpayer who attempted to obtain WHT relief on income accrued under a debt financing instrument. The tax administration had regarded the income as interest and imposed WHT on such income disputing the foreign taxpayer was not the beneficial owner. The court ruled in favor of the taxpayer reviewing the beneficial ownership criteria, but also recharacterizing the income as such from capital gains.</p>	<p>Taxpayers who have obtained financing through debt financing instruments should carefully review the correct characterization of income.</p>
9	<p><b>Introduction of VAT bad-debt relief</b></p> <p>From 1 January 2023, a right to adjust the tax base in case of total or partial non-payment of the supply (the so-called bad debt relief) was introduced in Bulgaria. This will allow a supplier who has not received payment from his customer to refund the tax charged and paid into the budget for the supplied good or service. The new provisions regulate the rules for documenting the adjustment of the tax base, the conditions for such adjustment, exceptions, as well as the procedure for adjusting the tax credit deducted by the recipient, etc.</p>	<p>The new rules will allow consumer facing businesses to obtain VAT relief for bad debt with relation to their taxable supplies. Nevertheless, the procedure and requirements in obtaining this tax relief require certain reporting formalities, which should be adhered to. Businesses should assess whether they meet the criteria and whether they have the necessary internal procedures which would allow them to be eligible for this relief.</p>
10	<p><b>Specific documentary amendments to export requirements for VAT</b></p> <p>Special rules have been introduced from 1 January 2023 for the declaration of export of goods by a supplier not established in the EU.</p>	<p>Taxpayers should review their current export arrangements and update their internal document gathering procedures, where needed.</p>

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