

Tax Agenda Bulgaria

November 2023



No.	Fact	Action
1	<p>Minimum taxation under Pillar 2 rules</p> <p>On 26 September 2023, Bulgaria published its discussion draft proposal on an amendment of its Corporate Income Tax Act (CITA), aimed at transposing EU Directive 2022/2523 of 14 December 2022 (The Directive). The Directive is a result of the OECD's BEPS Initiative for the introduction of a global minimum tax rate of 15% for multinational enterprise groups (MNE) and large-scale domestic groups. The proposal envisages the introduction of a national top-up tax (domestic top-up tax) from 1 January 2024 aiming to bridge the gap between the current corporate tax rate of 10% in Bulgaria and the 15% effective tax rate agreed upon on the OECD level.</p> <p>Tax returns for the new top-up tax will be administered via a declaration submitted to the National Revenue Agency for each constituent entity. These returns must be filed within 15 months of the last day of the tax period and within 18 months with respect to the transitional period. The proposal envisions significant penalties for non-performance of administrative obligations by taxpayers.</p>	<p>This new tax regime would have wide-ranging consequences which taxpayers will need to take into account and prepare for. As the new proposal goes through the legislative process and ultimately becomes enacted into law, it is important for companies to consider the potential impact of the new rules on their business and internal procedures.</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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2	<p>Bulgaria ratified the Multilateral Instrument (MLI) to modify its existing tax treaties</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>
3	<p>Excess profits tax introduced for 2022 and 2023</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>Notional interest income may not benefit from WHT exemption</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>Bulgarian court practice disallows favorable TP adjustment in an assessment notice</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>Introduction of DAC7 in Bulgaria</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>Distribution of advance (interim) dividends</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>Treatment of debt financing instrument income</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>Introduction of VAT bad-debt relief</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>Proposed amendment affecting the tax regime applicable to banks</p> <p>On 26 September 2023, the Bulgarian Ministry of Finance proposed an amendment to the tax regime applicable to financing institutions, including banks. Currently, fair value gains and losses recorded by financing institutions related to financial assets are recognized for tax purposes, unlike for other taxpayers where the taxable event follows the realization principle. The proposal aims to remove the described regime for financial institutions and apply the realization principle to all taxpayers.</p>	<p>If enacted, this amendment would have a significant impact to the tax positions of financial institutions in Bulgaria. Furthermore, banks would also need to apply the transitional rules aiming to manage double taxation or double deductions where a fair value gain or loss has already been recorded in a previous year.</p>
11	<p>Introduction of public CbC reporting in Bulgaria</p> <p>On 19 September 2023, the Bulgarian Ministry of Finance published for public consultation a legislative proposal for the transposition of Directive (EU) 2021/2101, providing for the introduction of the new public Country-by-Country (CbC) reporting requirements in Bulgaria (The Public CbcR Directive). The Public CbcR Directive is aimed at increasing tax transparency requiring multinational groups and large domestic groups to disclose certain information on their corporate income tax status.</p> <p>The new rules require standalone entities and ultimate parent entities of MNE groups with consolidated revenues of no less than EUR 750 million in each of the last two consecutive fiscal years to issue an annual report disclosing information on the income taxes accrued and paid by group entities. Where the ultimate parent entity of the group is situated in a third state and upon certain conditions Bulgarian subsidiaries or branches may need to adhere to the disclosure obligation. The disclosure obligation comprises of an annual report which must include revenue streams, pre-tax profits, tax accrued, paid and other.</p>	<p>Entities in Bulgaria obligated to prepare a Public CbcR Report must file the relevant report with the Commercial Register and Register of Non-Profit Legal Persons within 12 months after the end of the respective reporting period. Entities which fail to meet this obligation may be subject to significant sanctions.</p> <p>The rules are envisaged to apply as of 1 January 2025 and the first public CbC report would cover the reporting period related to 2024.</p>

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