

LT in Focus

Tax & Legal



[Pillar 2 at a glance](#)

[What is the Russian counterpart of Pillar 2?](#)

[Who will be affected by the new rules?](#)

[What is the tax recalculation procedure?](#)

[Will grandfathering clauses help?](#)

[What's next?](#)

Russian counterpart of Pillar 2

Since 2022, Russia has stayed away from integrating Pillar 2 rules or their analogues into its legislative framework.

Meanwhile, many countries have already enforced Pillar 2.

For MNE groups with a presence in Russia and a low effective rate (e.g., due to the use of exemptions), this poses the risk of additional foreign taxes.

Earlier this year, the Russian Ministry of Finance made it clear that it would not allow taxes from the Russian perimeter to be paid in foreign jurisdictions.

This can be avoided by “bringing” the Russian income tax to 15%, where the effective rate is lower.

Relevant [draft](#) tax amendments to the Russian Tax Code have already been posted on the Federal Portal of Draft Regulations.

Read on for a detailed overview of the proposed changes.

Pillar 2 at a glance

The concept of Pillar 2 rules that are now in effect in many countries is relatively straightforward — a globally consistent 15% minimum tax regime.

MNE groups with an effective tax rate below the minimum of 15% in any particular jurisdiction are required to pay top-up tax to bridge the gap.

It should be noted that according to the “original” Pillar 2 framework, an effective tax rate is considered by jurisdiction, rather than by company.

Thus, top-up tax may not apply where some MNE group members are subject to less than a 15 percent ETR and others are subject to the ETR of more than 15%.

There are two mechanisms for collecting tax:

- An Income Inclusion Rule (IIR), which imposes top-up tax on the ultimate parent entity (if the IIR is inapplicable at the ultimate parent entity’s level, the payment obligation is allocated to a sub-holding company).
- An Undertaxed Payment Rule (UTPR), which requires the allocation of the liability to pay top-up tax among other MNE group companies in the event that, for example, the IIR is inapplicable at the level of the parent/sub-holding company.

The jurisdictions may also introduce qualified domestic minimum top-up tax (QDMTT) – in case the ETR of MNE group in such jurisdiction will be less than 15% the

jurisdiction will collect top-up tax by itself.

The indicators required to calculate top-up tax are based on financial statements including multiple adjustments.

There is also a number of transitional period provisions (e.g., a special **exception during the transitional period**, the applicability of which is defined using country-by-country reporting (CbCR), allows recognizing **zero top-up tax for 2024-2026**).

What is the Russian counterpart of Pillar 2?

The bill does not suggest adapting the “original” Pillar 2 rules.

The idea behind the underlying amendments is quite

simple: each MNE group member has to calculate its effective income tax rate. If the rate is less than 15%, its income will be taxed at a tax rate of 15%.

Therefore, there will be no “domestic” tax analogue in Russia in accordance with QDMTT rules.

The prevention of top-up tax payments for the Russian perimeter to foreign countries will be achieved through an increase in the income tax rate for certain MNE group members and a correspondent growth of the effective income tax rate for the Russian part of MNE groups.

Who will be affected by the new rules?

The new rules will apply when **all** of the following conditions are met:

- The MNE group's parent company is located abroad.

MNE Group

The MNE group (determined according to the rules provided for CbCR) meets the following criteria:

In this case, the new rules address the issue of tax "leakage" only for groups with foreign holding companies, while the payment of top-up tax abroad may still be relevant for groups with Russian parent companies, if the groups' structure includes subsidiaries in the countries applying the UTPR.

- The MNE group's parent and/or intermediate holding companies are tax residents of the countries whose laws provide for minimum effective taxation rules in accordance with the OECD Model Rules establishing a global minimum level of taxation for MNE groups or the MNE group includes at least one member that is a resident of the country whose laws provide for extraterritorial taxation rules in accordance with the OECD Model Rules establishing a global minimum level of taxation for MNE groups (the relevant lists of the countries are to be approved by the Russian Ministry of Finance).
- Income (revenue) of the MNE group according to its consolidated financial statements for each of the two financial years preceding the current tax period exceeds or may exceed the ruble equivalent of EUR 750 million (if the parent of the group does not prepare consolidated financial statements or does not submit them to the tax authorities [as part of TP control](#), the data from separate financial statements of the MNE group members prepared in accordance with local standards should be used).

It should be noted that the new rules do not provide for any additional reporting requirements. All the necessary calculations are likely to be included in the standard income tax return.

Effective rate

The ratio of an aggregate profit tax amount calculated by a member of the MNE group for the tax period without taking the new rules into account (net of tax on income from equity participation) to the total of the

member's profits (other than income from equity participation) and losses, as determined in accordance with Chapter 25 of the Russian Tax Code, is less than 0.15.

In other words, the amendments suggest that each MNE group member should be tested for effective rate purposes separately, rather than at the level of all Russian members of the MNE group.

This distinction is a key difference from the "original" Pillar 2 rules.

Thus, in a situation where the effective tax rate for the Russian perimeter of the group is greater than 15% (i.e. no top-up tax is required to be paid abroad), however, the effective tax rate of one of the members is less than 15%, the member will have to “top up” its tax to 15%.

It is also worth mentioning that the current wording implies that both the taxpayers entitled to exemptions (IT companies, parties to special investment contracts, agreements on the encouragement and protection of investments (AEPI), special economic zones, advanced development territories, regional investment projects, etc.) and those who apply a “five-year” benefit on share/stock disposal may be subject to top-up tax.

What is the tax recalculation procedure?

If the above conditions are met, the MNE group member will pay a 15% tax (5% to the federal budget and 10% to the regional budget) instead of the “traditional” income tax.

The tax base will be determined by aggregating profits (other than income from equity participation) and losses calculated in accordance with Chapter 25 of the

Russian Tax Code for the reporting tax period.

Income tax advance payments made within the period in accordance with the “traditional” rules will be taken into account in calculating the total tax amount payable.

Will grandfathering clauses help?

Grandfathering clauses (for parties to special investment contracts, AEPI, residents of advanced development territories, Free port Vladivostok, special economic zones, International holding companies) **will**

not apply to the new taxation rules for MNE group members, including those who obtained preferential status before the amendments.

What’s next?

We believe that in the new reality, it is impossible to fully adapt Pillar 2 rules and/or introduce “domestic” tax that would be accepted abroad for calculating top-up tax.

Therefore, the Russian Ministry of Finance decided to trend towards adjusting the Russian income tax rate.

However, the proposed version is overly simplified and does not take into account a number of key concepts of the “original” Pillar 2 rules:

- The effective rate test will not be territorial (for the Russian perimeter) but individual. In fact, this may result in a situation where, even if top-up tax is not payable abroad, MNE group members with income

tax benefits will be “fined” for just being members of the MNE group.

- The base is determined under tax accounting rules, while the calculation of top-up tax in accordance with Pillar 2 rules is based on financial statements. Therefore, we cannot fully rule out the payment of top-up tax both in Russia and abroad.
- Transitional rules that can be used to exempt MNE groups from top-up tax in accordance with Pillar 2 rules are not taken into account.

We believe that the bill is likely to be revised.

We will keep you posted of further developments.

At the same time, it appears reasonable for foreign and Russian MNE groups to preliminary assess the applicability of Pillar 2 rules, as well as a potential tax effect of their application at any level of the group.

Our team members have extensive practical experience in implementing similar projects, including:

- Assessing the applicability of Pillar 2 rules to a group, including liabilities to pay top-up tax for IIR and UTPR purposes*
- Assessing the applicability of exemption from top-up tax during the transitional period (Transitional CBCR Safe Harbors)*
- Developing methodologies and calculating the effective tax rate and top-up tax in accordance with Model Rules*
- Analyzing local laws of the jurisdictions using their own qualified domestic minimum top-up tax and their impact on MNE groups' liabilities under Pillar 2*
- Developing templates for calculating the effective rate and top-up tax and assessing the applicability of exemption from top-up tax during the transitional period*
- Other advisory services with respect to Pillar 2*

We are willing to provide you with our professional support in navigating complex Pillar 2 issues.

Sincerely,

Business Solutions and Technologies Group Team

Contacts

Tax & Legal



Elena Solovyeva
Partner
esolovyova@delret.ru



Natalia Kuznetsova
Partner
nkuznetsova@delret.ru



Yulia Krylova
Director
ykrylova@delret.ru



Natalia Ivantsova
Director
nivantsova@delret.ru



Ekaterina Sivenkova
Director
esivenkova@delret.ru



[Join us
on social media](#)

delret.ru

This communication contains general information only and none of the companies operating under the Business Solutions and Technologies brand (Business Solutions and Technologies Group, delret.ru/about) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in Business Solutions and Technologies Group shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

ООО "BST Consulting"