



HM Treasury



HM Revenue  
& Customs

# OECD Pillar 2

## Consultation on implementation

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January 2022





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# Foreword

In October 2021, over 130 countries in the OECD Inclusive Framework reached a historic agreement on a [two-pillar solution](#) to reform the international tax framework in response to the challenges of digitalisation. This is a landmark multilateral achievement and builds upon the deals brokered in June 2021 by the G7, led by the UK under its Presidency, and the G20 in July.

The advent of both digitalisation and globalisation has reinvented how businesses around the world operate commercially and generate value, and in recognition of that, the agreement will modernise the framework that determines where multinational profit is subject to tax.

The agreement will also build on the achievements of the Base Erosion and Profit Shifting (BEPS) project in tackling the variety of opportunities for multinational tax planning, through requiring multinational groups to pay a minimum level of tax (15%) in each jurisdiction in which they operate.

With political agreement reached internationally by over 130 jurisdictions, the OECD process is now focussed on implementation, in line with the [implementation plan](#) and timetable outlined in October. This timeline set out an aim for countries to introduce the Pillar 2 rules into their domestic law in 2022, ahead of implementation in 2023.

This consultation represents the next important step in the implementation of the OECD agreed Pillar 2 framework within the UK. With the policy, design framework and detailed provisions of the Pillar 2 rules already having been agreed at international level, this consultation will specifically seek input on UK application of the Model Rules as well as on a series of wider implementation questions.

The government recognises the considerable process and compliance impacts these changes will bring to multinationals and is therefore consulting on implementation to ensure that this process can be as smooth as possible for all those businesses affected.

# Chapter 1

## Introduction

### Overview

- 1.1 There are two Pillars to the OECD agreement.
- 1.2 Pillar 1 involves a partial reallocation of taxing rights over the profits of the largest and most profitable multinational businesses to the jurisdictions where consumers are located. So, it is about where they pay tax.
- 1.3 This will resolve the government's longstanding concerns that the international corporate tax framework has not kept pace with the digital economy and how highly digitalised businesses generate value from the active interaction with their users.
- 1.4 Pillar 2 is not focused on the allocation of taxing rights, but on ensuring that multinationals pay a minimum rate of tax in every jurisdiction they operate in, through a framework of rules known as the Globe rules. So, it is about how much tax they pay.
- 1.5 This will build on the success of the OECD's Base Erosion Profit Shifting (BEPS) project and help tackle the remaining opportunities for profit shifting and aggressive tax planning by multinationals.
- 1.6 It will also place a floor on tax competition between jurisdictions, ensuring the sustainability of Corporation Tax as a major source of government revenues, while leaving appropriate flexibility for countries to use corporation tax as a policy lever for supporting business investment and innovation.
- 1.7 The October statement agreed at the OECD set out an implementation table under which implementing jurisdictions would introduce the Pillar 2 rules into domestic legislation in 2022 to take effect from 2023.
- 1.8 Continuing its track record of leadership on international tax reform, the government is consulting on how the Pillar 2 rules should be implemented in the UK.



## Implementation and next steps

- 1.9 In line with the October statement, the focus of the OECD process is now on the implementation of the two-pillar solution, as outlined in the detailed implementation plan.
- 1.10 On Pillar 1, work is progressing in the OECD on finalising the detailed framework for reallocating taxing rights. As per the agreement, the aim is to introduce Pillar 1 through a multilateral convention that will be available for signature in 2022, with the aim of the rules becoming effective in 2023.
- 1.11 On Pillar 2, the OECD has now finalised the Pillar 2 technical design and has published model legislation (Model Rules).
- 1.12 The next stage is for countries to introduce domestic legislation to give effect to the agreed rules.
- 1.13 The October statement set out an aim for jurisdictions to legislate these rules in 2022, with effect from 2023.
- 1.14 To meet this timetable, the government is now consulting on how the Pillar 2 Model Rules should be translated into UK domestic legislation.
- 1.15 The government anticipates that the parts of this legislation relating to the Income Inclusion Rule (IIR) would be included in Finance Bill 2022-23 and would have effect from 1 April 2023.
- 1.16 This consultation also invites views on the UK implementation of the Undertaxed Profits Rule (UTPR) and on introducing a domestic minimum tax in the UK to complement Pillar 2.
- 1.17 The government anticipates that both the UTPR and the domestic minimum tax would be introduced from 1 April 2024 at the earliest.
- 1.18 Work is ongoing in the OECD to finalise and agree the commentary to the Model Rules. It is anticipated this will be published in the first quarter of 2022.
- 1.19 There will also be further work in the OECD to agree an implementation framework which is designed to facilitate the effective implementation of the rules. This work is expected to be completed by the end of 2022.
- 1.20 The government recognises the Model Rules are complex and whilst the Commentary would have helped in explaining and clarifying the detail, it considers it is preferable to consult now so as to give businesses as much time as possible to consider these concepts.
- 1.21 An open consultation on the Model Rules is essential to ensuring the UK legislation works as intended. The timelines and commitments made in the October statement mean the government is consulting

now in order to ensure respondent's views can be effectively taken into account in the UK implementation. Respondents are encouraged to engage as early as possible.

- 1.22 Given the scale of the changes that Pillar 2 will introduce, in combination with the evolving nature of the OECD implementation framework, the government will continue to take into account the progress on outstanding work by the OECD and other implementing jurisdictions.

## The purpose of the consultation

- 1.23 This consultation seeks views on the implementation and administration of the Pillar 2 Model Rules within the UK.
- 1.24 This includes:
- How the Model Rules are translated into UK law
  - Administration of the Globe Rules
  - Implementation issues to be addressed in the Implementation Framework
- 1.25 The Model Rules themselves have been finalised at international level following the OECD consultation process and negotiations between the Inclusive Framework members who have made a political commitment to follow the Model Rules.
- 1.26 Therefore, this consultation is not in relation to the policy rationale of the rules or the majority of the design features themselves, it is rather about their application and implementation within the UK.
- 1.27 The consultation also asks for views on:
- The introduction of a UK domestic minimum tax (DMT)
  - Wider reforms to existing UK BEPS measures
- 1.28 The consultation does not seek specific views on Pillar 1, in recognition of the ongoing discussions on the Pillar 1 framework at the level of the OECD Inclusive Framework. The government will nonetheless be engaging with stakeholders on the detailed design of the Pillar 1 regime over the coming months to inform the provisions of the multilateral convention and to subsequently inform the domestic legislation required to give effect to that in the UK.
- 1.29 The government welcomes comments on this consultation by Monday 4<sup>th</sup> April 2022. In line with the tax policy making process, the government expects to publish draft legislation in Summer 2022.

1.30 Responses should be sent to:  
PillarTwoConsultation@hmtreasury.gov.uk

# Chapter 2

## Pillar 2 overview

### Pillar 2

- 2.1 The policy objectives for Pillar 2 are:
- To reduce the incentive to shift profits to low or no tax jurisdictions
  - To place a floor on tax competition between jurisdictions, ensuring the sustainability of Corporation Tax as a major source of government revenues, while leaving appropriate flexibility for countries to use corporation tax as a policy lever for supporting business investment and innovation
- 2.2 These objectives will be achieved through a framework of rules that will require multinational enterprises (MNEs) to pay a minimum 15% level of corporation tax on profit in each jurisdiction in which they operate.
- 2.3 Under these rules, an adjusted accounting measure of profit will need to be calculated for a group's total operations in each jurisdiction.
- 2.4 Where the tax paid by the group on profit in a jurisdiction falls below the minimum 15% level, the rules will then require countries to impose top-up taxes on certain entities within the group in order to bring the overall taxation of jurisdictional profit up to the minimum level.
- 2.5 The rules include a detailed framework for determining where any required top-up tax should be imposed within the group, to ensure appropriate coordination between different jurisdictions and to prevent MNEs from restructuring outside of the rules.
- 2.6 Pillar 2 also includes a treaty-based rule, the Subject to Tax Rule (STTR), which is designed to allow jurisdictions to impose a top-up withholding tax on certain types of outbound payments that are made between related parties and are taxed at a nominal rate of less than 9%.
- 2.7 As set out in the political agreement, countries will only be required to introduce this rule in their treaties with developing IF members when requested to do so and only then if they apply nominal tax rates below 9% to covered payments.

- 2.8 This rule requires the development of a model treaty provision that continues to be discussed in the OECD Inclusive Framework. It is therefore outside of the scope of this consultation.

## Summary of the Pillar 2 framework

- 2.9 There is a complete and coherent framework in the Model Rules. This section summarises the basic steps involved in calculating the ETR and top up tax payable for an in-scope multinational group, and then determining how that top up will be charged.
- Step 1: Determine the entities that a group has in a particular jurisdiction.
  - Step 2: Determine the profits of those entities.
  - Step 3: Determine the taxes that relate to those profits (including those which relate to timing differences).
  - Step 4: Aggregate the profits and taxes found in Steps 2 and 3.
  - Step 5: Calculate the group's ETR in that jurisdiction by dividing the aggregate taxes by the aggregate profits.
  - Step 6: If the ETR in Step 5 is less than 15%, calculate the group's 'top-up percentage' for the jurisdiction which is 15% less the jurisdictional ETR.
  - Step 7: Calculate the jurisdictional top up tax by taking the profit calculated in Step 2, deducting a 5% return on the tangible assets and payroll expenses in that jurisdiction, and then multiplying that amount by the 'top-up percentage' in Step 6.
  - Step 8: Attribute that jurisdictional top up tax to the group's individual entities in that jurisdiction based on their relative contribution to total profit.
  - Step 9: The top up tax attributed to an entity is first charged under the Income Inclusion Rule (IIR) which charges this tax on the entity's parent entity.
    - The IIR is charged on a top-down basis which means the ultimate parent will generally be charged the top up when it is located in a jurisdiction that has introduced Pillar 2.
    - This means the IIR will only be charged at an intermediate parent level if the ultimate parent entity is not subject to Pillar 2 (or if the low-taxed entity is more than 20% owned by minority investors). These parents will be charged a top up based on their ownership share in the low-taxed entity.

- Step 10: Any remaining top up not collected under the IIR will be charged upon other group entities under the Undertaxed Profits Rule (UTPR). The total amount to be collected from group entities in a jurisdiction under the UTPR will be based on the tangible assets and employees of those entities as a proportion of tangible assets and employees in all jurisdictions that have implemented the UTPR.
- 2.10 While this is a complex framework, in most cases the government expects the top up tax attributable to UK groups' foreign low-taxed entities to be exclusively charged on the ultimate parent entity and thus collected in the UK.
- 2.11 In other words, by introducing an IIR in the UK, UK headquartered groups will not be subject to the UTPR in respect of their foreign profits and will only be subjected to the IIR at the level of foreign intermediate parent entities in relatively limited situations where those entities are partially owned by third parties.

## How Pillar 2 will be introduced in the UK

- 2.12 The following chapters provide a more detailed explanation of how the Model Rules operate. However, this section briefly summarises how the government expects this to translate for MNE groups that operate in the UK and are subject to the UK's Pillar 2 legislation.

## UK Income Inclusion Rule

- 2.13 The rule ordering in the Model Rules means that the UK's IIR would apply at different points in the group structure depending on the particular circumstances of the group.
- 2.14 The IIR will only apply to MNEs whose consolidated annual revenues are greater than €750m.
- 2.15 It will apply to all such MNEs which are headquartered in the UK, with the UK IIR applied to the ultimate parent entity of the group.
- 2.16 The UK IIR will also then apply to UK intermediate parent entities of foreign headquartered groups where those entities are more than 20% owned by minority investors or are controlled by parent entities that are not located in a jurisdiction that has introduced Pillar 2.
- 2.17 The UK IIR will impose a top up tax on these parent entities based on their interests in overseas subsidiaries and branches which are located in jurisdictions in which the MNE has an overall ETR in the jurisdiction below 15%.

## UK UTPR

- 2.18 The UK UTPR would also only apply to groups with revenue of more than €750m.
- 2.19 It would be limited to the UK entities of groups which are headquartered outside the UK.
- 2.20 It would only then apply in relation to the group's overseas profits when:
- the MNE's ultimate parent entity is not subject to an IIR
  - there are low-taxed entities within a group for which a top up tax is due, and
  - this top up tax has not been fully collected or charged under the IIR in other jurisdictions
- 2.21 It could also apply to the extent there are low-taxed profits in the jurisdiction in which the foreign headquartered group is parented.
- 2.22 The top up tax payable in the UK would be calculated by multiplying the remaining top up due for a low-tax jurisdiction by the ratio of the MNE's tangible assets and employees in the UK over the MNE's tangible assets and employees in other jurisdictions with a UTPR.
- 2.23 The top up tax will be given effect through a denial of deduction or an equivalent adjustment.

# Chapter 3

## Common approach

### The common approach

- 3.1 One of the most important aspects of Pillar 2 is the status of the rules.
- 3.2 The Inclusive Framework have agreed that the Globe rules are subject to a common approach.
- 3.3 This means that jurisdictions that choose to implement the Globe rules must implement them consistently and in line with the intended outcomes of the Pillar 2 agreement.
- 3.4 There are very good reasons for this.
- 3.5 The Pillar 2 agreement was reached after extensive negotiations and consultation with businesses and other stakeholders and represents a compromise agreed between over 130 jurisdictions. Consequently, it is important that jurisdictions respect the nature of the Pillar 2 agreement.
- 3.6 The effectiveness of the Globe rules also depends on a high degree of consistency in the implementation in different jurisdictions.
- 3.7 For example, there would be a high risk of double taxation or double non-taxation if implementing jurisdictions adopted different rules to measure the level of taxation and top ups required in each jurisdiction. Similarly, there would be significant double taxation and disputes between jurisdictions and taxpayers if some countries do not respect the agreed rule order.
- 3.8 The government therefore will implement the Pillar 2 rules in the UK as closely to the OECD Model Rules as possible.
- 3.9 There may be limited areas where the rules need to be adapted, for example to reflect concepts in UK law, but the general approach will be to follow the agreed OECD Model Rules where possible. If changes are required, these will respect the intended outcomes agreed in the OECD.
- 3.10 This means the government cannot make significant changes to the policy design agreed in the OECD. This consultation therefore does not generally invite views on the policy decisions that have already



been made but is instead focused on how this policy design should be implemented in the UK and reflected in UK domestic legislation.

**Questions:**

Do you see any strong reason why UK legislation should not follow the OECD Model Rules as closely as possible to ensure consistency bearing in mind the limited flexibility permitted by the common approach?

Do respondents have any views on how the common approach can be more effectively achieved at a global level?

# Chapter 4

## Scope

### Overview

4.1 This chapter sets out the intended scope of Pillar 2, which is covered in Chapter 1 of the Model Rules.

### The threshold

4.2 Pillar 2 is designed to apply to large MNEs. This recognises these businesses have greater international scale and are therefore likely to derive greater benefits from the low-tax outcomes that Pillar 2 is intended to limit.

4.3 The rules achieve this through the consolidated revenue threshold, which ensures businesses are only within scope of the Globe rules when they operate in more than one jurisdiction, and when the revenue in their consolidated financial statements is greater than €750m in at least 2 of the previous four Fiscal Years.

4.4 For this purpose, the Fiscal Year refers to the period covered by the consolidated financial statements.

4.5 There are also rules to address situations where the group does not prepare consolidated financial statements. Broadly, these rules work by identifying the ultimate parent entity and then hypothesising what the group's consolidated revenues would be if that entity prepared consolidated financial statements.

4.6 These rules are similar to the rules in Country-by-Country Reporting (CbCR) and in practice will mean MNEs are only within scope of the Globe when they are in the CbCR population.

4.7 Finally, the Model Rules also set out how the threshold should be calculated in special circumstances, including when there is a merger or demerger and when the group is multi-parented.

### Applying the IIR to smaller groups

4.8 While the Model rules only apply to groups that meet the revenue threshold, the Inclusive Framework statement does permit jurisdictions to apply the IIR to smaller groups that are headquartered in their jurisdiction.

- 4.9 In such cases, the ultimate parent entity would be charged the top up tax in relation to any foreign low-taxed constituent entities. However, these profits could not be subject to a UTPR or an IIR in another jurisdiction.
- 4.10 While the statement does not prevent jurisdictions applying the IIR to sub-€750m groups headquartered in their jurisdiction, the €750m threshold reflected a wide view among many countries that a relatively high threshold was necessary to ensure Pillar 2 was proportionate.
- 4.11 The government shares this view and does not propose to apply the IIR to smaller UK headquartered groups.
- 4.12 This first reflects that these groups are less likely to have substantial overseas operations and are therefore less likely to pose the risks that Pillar 2 is designed to protect against.
- 4.13 Second it reflects that, as these groups would also not be subject to an IIR or UTPR in another jurisdiction, introducing the IIR to these groups could damage the UK's attractiveness as a parent location for limited gains.
- 4.14 Finally it reflects that smaller groups could incur substantial compliance and administrative costs complying with the Globe rules.
- 4.15 While this may also be true for groups above the threshold, the government anticipates that smaller groups may be less able to absorb these costs. They will also not have developed systems for CbCR, which underpins several areas of the Globe rules (e.g. the calculation of the substance based carve-out).

#### Questions:

**Do respondents have any comments on the calculation of the €750m consolidated revenue threshold?**

**Do respondents agree the IIR should only apply to groups that meet this threshold?**

### **The MNE Group**

- 4.16 The Model Rules rely on accounting principles to define the scope of the MNE Group.
- 4.17 Broadly, the group is comprised of the entities that are included in the consolidated financial statements of the Ultimate Parent Entity (UPE). The group therefore consists of the entities which the UPE controls under the principles of the UPE's accounting standards.

- 4.18 There is an exception for this where the accounting standards treat an entity as being held for sale or where an entity is excluded from the consolidated financial statements on materiality grounds. These entities are also included in the group for the purposes of the Globe rules.
- 4.19 These rules mean that associate entities and other minority interests will not be included in the group. This recognises that the MNE does not control these entities and would therefore have significant challenges with obtaining the information needed to calculate the Effective Tax Rate (ETR) of these entities. However, there are special rules that ensure Joint Ventures are within the scope of Pillar 2 when the MNE has at least 50% of the ownership interests in the Joint Venture.
- 4.20 A group then meets the definition of an MNE group when it has entities (including permanent establishments) in more than one jurisdiction (i.e. in a different jurisdiction to the jurisdiction of the UPE).

## Constituent entities

- 4.21 The concept of a Constituent Entity is fundamental to the structure of the Model Rules. This is because the calculation of the ETR for a jurisdiction is based on the income and covered taxes of each constituent entity in that jurisdiction.
- 4.22 The definition of a constituent entity generally follows the definition of the group. Each entity within the group is treated as a constituent entity. However, there is an exception for permanent establishments, which are treated as a separate constituent entity to the entity to which they belong.
- 4.23 This means a company with two permanent establishments would be treated as three separate constituent entities for the purposes of the Globe rules.

### Question:

**Do respondents have any comments on the definition of a group or of a constituent entity?**

## Excluded Entities

- 4.24 Some entities are excluded from the definition of a constituent entity.
- 4.25 This has two main effects; first, the entity is excluded from any computation of the ETR in a jurisdiction so the profits of that entity would not be subject to any top up under Pillar 2. Second, the entity would not be charged a top up tax under either the IIR or the UTPR.

- 4.26 In many cases, these entities would not form part of a MNE group even without this exclusion. This is because these entities will not typically prepare consolidated financial statements and consolidate interests in a MNE group.
- 4.27 However, the excluded entity rules ensure there are no unintended outcomes in the rare cases where these entities would be included in a group.
- 4.28 The rules are designed to only exclude the entity(s) meeting the relevant excluded entity definition - other entities in the group not qualifying for the exclusion would remain within the scope of the Globe rules.
- 4.29 There are five types of excluded entity which are defined in the Model Rules:
- Governmental entities
  - International organisations
  - Non-profit organisations
  - Pension funds
  - Investment entities which are the UPE of the MNE group (investment funds and real estate investment entities)
- 4.30 Asset holding companies of an excluded entity are also treated as excluded entities, subject to meeting certain criteria.

**Question:**

**Do respondents have any comments on the excluded entity rules and definitions?**

### **International shipping exemption**

- 4.31 Pillar 2 also includes an exemption for the International Shipping industry.
- 4.32 This exemption is modelled closely on Article 8 of the OECD Model Tax Convention and excludes any income from international shipping activities from the Globe rules. It does this by removing this income (and any associated taxes on that income) from the Globe income (and covered taxes) of a constituent entity.
- 4.33 This means income from qualifying international shipping activities will be exempt from Pillar 2, but any other types of income that shipping groups may earn will be subject to the rules.

**Question:**

Do respondents have any views on the definitions of international shipping income?

# Chapter 5

## Calculating the effective tax rate

### Overview

- 5.1 Pillar 2 works by charging a top up tax where a MNE has profits in a jurisdiction which are taxed below the minimum rate. To do this, Pillar 2 therefore needs to measure the level of taxation in each jurisdiction. This is achieved through calculating the MNE's average Effective Tax Rate (ETR) in a jurisdiction.
- 5.2 Where this ETR is below the minimum rate, a MNE will be charged a top up based on the difference between this ETR and the minimum rate.
- 5.3 This chapter explains the different components of the ETR calculation which are contained in Chapters 3 and 4 of the Model Rules.

### The Effective Tax Rate

- 5.4 The Model rules determine the level of taxation on a MNE's profits in a jurisdiction through calculating its Effective Tax Rate in that jurisdiction.
- 5.5 The ETR is calculated by dividing the aggregate tax by the aggregate profit in the jurisdiction. There are detailed rules prescribing what taxes can be included in this calculation, which are referred to as 'covered taxes', and how much 'Globe income' there is in the jurisdiction.

### Identifying the constituent entities in a jurisdiction

- 5.6 The Globe rules calculate the average ETR for the whole of a jurisdiction. This ensures that a MNE with a high ETR in a jurisdiction does not suffer a top-up tax because of isolated low-tax entities whose low level of taxation could be a function of their relationship with other jurisdictional entities.
- 5.7 The first step is consequently to identify which constituent entities are in the jurisdiction in order to determine which entities' covered taxes and Globe income are included in the jurisdictional ETR calculation.
- 5.8 These rules are set out in Chapter 10 of the Model Rules. Broadly, most constituent entities will be located in the jurisdiction where they

are tax resident. Where a constituent entity is not tax resident in a jurisdiction, it will be located in the jurisdiction where it was created, for instance where it was incorporated.

- 5.9 There are also specific rules to address where tax transparent entities, like partnerships, and permanent establishments (PEs) are located for the purposes of the ETR calculations and charging provisions.
- 5.10 The Model Rules distinguish between transparent entities and their owners. Transparent entities are treated as constituent entities in the Model Rules and are generally treated as 'stateless' entities. This means their ETR is calculated separately and without blending their income or tax with other entities. There is an exception to this rule where the transparent entity is required to apply an IIR, or it is located at the top of the MNE group.
- 5.11 While transparent entities are included in the MNE group, there are special rules for allocating income and taxes their income which are covered below.
- 5.12 Permanent establishments are generally located in the jurisdiction where they are treated as a PE and subject to net basis taxation, but there are special rules in the OECD Model Rules to address more exceptional situations.
- 5.13 The Model Rules also include a tie-breaker provision in the event a constituent entity would otherwise be located in more than one jurisdiction.

## Globe income

- 5.14 The next step is to calculate a constituent entity's Globe income. This is based on the entity's financial accounting profit, which is then subject to certain adjustments that countries agreed are needed to reconcile the most important differences between accounting and tax definitions of profit. These adjustments are intended to bring the Globe base (denominator in the ETR calculation) more into line with a measure of taxable profit so that the ETR provides a reasonable measure of the level of taxation in that jurisdiction.
- 5.15 There are also rules which are designed to ensure that certain types of income are appropriately allocated between jurisdictions.

## Accounting profit

- 5.16 The calculation of a constituent entity's Globe income starts from its financial accounting income. The general rule is that this income should be calculated according to the accounting standard of its ultimate parent entity and therefore reflect the entries which feed into (or are derived from) its consolidated financial statements.



- 5.17 This is subject to a requirement that the ultimate parent prepares its accounts under an acceptable accounting standard or that it corrects any material permanent differences in its accounting standard that could result in the MNE obtaining an unfair competitive advantage.
- 5.18 The Model Rules recognise there are some situations where it may not be practicable to accurately calculate the entity's accounting profit in the ultimate parent's accounting standard.
- 5.19 In these cases, the MNE is permitted to calculate the entity's income based on the accounting standard it uses to prepare its own financial statements. This is subject to the information being reliable, and any permanent differences in excess of €1m between the entity's accounting standard and the accounting standard of the UPE being adjusted.

**Question:**

**Do respondents have comments on the practicalities of computing a constituent entity's accounting profit?**

**Adjustments to accounting profit**

- 5.20 Once the MNE has computed the financial accounting income of the constituent entity, the next step is to make certain adjustments to this figure.
- 5.21 These adjustments reflect significant differences between accounting and tax measures of profit which do not reverse out over time. There are separate rules to address differences in when income and expenses are recognised, which are covered further below.
- 5.22 These adjustments include:
- Removing dividend income from >10% shareholdings or <10% shareholdings which are held for more than 12 months
  - Removing gains or losses from the sale of >10% shareholdings
  - Removing gains and losses in relation to a reorganisation where the gain or loss is deferred for local tax purposes
  - Adjustments to deal with foreign exchange gains and losses created by differences between the tax and accounting functional currencies
  - Adjustments to address differences between the tax and accounting treatment of defined benefit pension schemes
- 5.23 The remaining adjustments are included in Chapter 3 of the OECD Model Rules.

- 5.24 There are also certain elections available to the MNE group. These include elections to:
- remove profits and losses from intragroup transactions within the same jurisdiction
  - substitute the accounting expenses in relation to share-based payments (for example, for employee remuneration paid in share options) for the deduction for tax purposes in the relevant jurisdiction
  - tax gains and losses on a realisation basis, and exclude any pre-realisation gains and losses from fair value movements or impairments
- 5.25 Finally, there is an anti-avoidance rule designed to target intra-group financing arrangements that attempt to inflate the ETR in a low-tax jurisdiction without increasing the taxable income in the other jurisdiction (e.g. through exploiting mismatches in the accounting treatment in the debtor and creditor).

#### Questions:

**Do respondents have comments on the adjustments made to the accounting profit? In particular, are there any uncertainties that could be clarified in the UK's domestic legislation whilst respecting the intended outcomes in the Model Rules?**

#### Allocating income between jurisdictions

- 5.26 The Globe rules are designed to ensure that MNEs pay a minimum effective tax rate of 15% on their profits in each jurisdiction. This means high taxed profits in one jurisdiction cannot be used to offset low-taxed profits in another jurisdiction. Allocating profits appropriately between jurisdictions is consequently integral to the Globe.
- 5.27 The OECD Model Rules achieve this through:
- Valuing cross-border intragroup transactions in accordance with the arm's length principle, where this is different to the transfer price used for accounting
  - Similarly, requiring financial accounting profits to be allocated between a PE and its head office entity based on the attribution of income and expenses to the PE for tax purposes
  - Transferring the Globe losses of a PE that is taxed under the credit method in the jurisdiction of its head office to the head office constituent entity

- Allocating the income of a tax transparent constituent entity to its owners to the extent that the owners also treat the entity as tax transparent (i.e. tax the income) or are not members of the MNE group

Questions:

Do respondents have views on the rules allocating profits between jurisdictions?

What are respondents' views on the impact of the branch rules on business models involving branches taxed under the credit method?

## Covered taxes

- 5.28 The next stage in the ETR calculation is to determine the taxes paid by the constituent entity that can be included in the numerator. These are referred to as covered taxes in the OECD Model Rules and are generally limited to taxes on income.
- 5.29 This reflects that the Globe rules are intended to ensure a minimum level of tax is paid on the profit in each jurisdiction. It follows taxes should only be included in the numerator when they are levied on a measure of income.
- 5.30 This means Covered Taxes will include Corporate Income Taxes like Corporation Tax. Withholding taxes and other taxes which are imposed in lieu of a Corporate Income Tax also qualify. However, taxes on payroll or sales will not be counted.
- 5.31 Having established which taxes qualify, the next step is to determine the quantum of those taxes. The OECD Model Rules look to the current tax expense recorded in the financial statements to determine the amount of covered taxes that have been paid.
- 5.32 This is then subject to certain adjustments, for example to exclude any tax which is paid in respect of income that has been excluded from Globe income or to add any covered taxes that have been treated as an expense in the accounts.

## Assigning cross-border taxes

- 5.33 As with the rules allocating income, the OECD Model Rules contain rules to assign certain covered taxes between jurisdictions. These generally seek to assign the tax to the jurisdiction where the income is recognised so that all of the taxes paid on this income are taken into account.
- 5.34 For example, taxes paid by a (head office) entity on the profits of its permanent establishments are assigned to the jurisdiction where the branch is located. Similarly, CFC charges are 'pushed down' to the CFC

so that the tax and income are aligned. There are similar rules to assign taxes for transparent entities, hybrid entities and reverse hybrids.

- 5.35 However, there is a limit on the extent to which CFC charges and taxes on hybrid entities can be pushed down where the tax was charged in respect of passive income. In these cases, the tax can only be pushed down to achieve the minimum rate on that income.
- 5.36 Withholding taxes are generally assigned to the constituent entity who recognises the income in their financial accounts (i.e. the entity who suffers the burden of the tax) rather than the entity that deducts the tax on payment. There is an exception to this for withholding taxes on dividends, which also applies to net basis taxes on dividend income, which are assigned to the entity that paid the distribution. The logic behind this is that these taxes can be seen as an additional tax on the profit of the distributing entity.

### Refundable tax credits

- 5.37 The treatment of tax credits in the OECD Model Rules depends on their refundability.
- 5.38 Tax credits which are refundable within 4 years of the year in which the taxpayer became entitled to the credit are treated as Qualified Refundable Tax Credits. These credits are regarded as being equivalent to a grant and are treated as income in the Globe. This means they are included in the Globe income of the constituent entity, and do not reduce the constituent entity's taxes in the numerator.
- 5.39 Non-refundable tax credits (or credits where a refund only becomes due after 4 years) are conversely treated as a repayment of tax. This means the credit is subtracted from the covered taxes (and is excluded from Globe income).
- 5.40 These rules closely follow the relevant accounting treatment and reflect that the value of the credit depends on the entity's tax position when it is non-refundable, whereas a refundable tax credit which is paid regardless of the entity's profitability is equivalent to a grant.
- 5.41 These rules will ensure the UK's Research and Development Expenditure Credit (RDEC) will be treated as an addition to income rather than a reduction in tax in the ETR calculation, which will ensure RDEC continues to be an effective instrument for promoting R&D activity in the UK.

### Question:

**Do respondents have views on the rules on Covered Taxes and their assignment?**

## Timing differences

- 5.42 The OECD Model Rules also include rules that are designed to address circumstances where profits are taxed in a different period to when they are recognised in Globe income. These differences typically arise from differences in when income and expenses are recognised for accounting and tax purposes. For example, capital assets are often depreciated at different rates.
- 5.43 Without rules to address these differences, a MNE could suffer a top up because it appears to be low-taxed, when in reality the income has simply been taxed in a different period.
- 5.44 The OECD Model Rules address this issue using an approach based on deferred tax accounting. Deferred tax accounting is an accounting concept which seeks to match taxes to the period when the income or expenses are recognised for accounting purposes. It does this by shifting the tax expense from the year the tax is paid (or tax deduction received) to the years in which the income or expenditure is recognised in the financial statements.
- 5.45 In the OECD Model rules, this means the covered taxes in the numerator are adjusted by the constituent entity's deferred tax income or expense in the period.
- 5.46 For example, a constituent entity pays 10 of covered taxes and recognises a deferred tax liability of 5 in the Fiscal Year. The 5 is added to the constituent entity's covered taxes to make the numerator 15. The numerator is then reduced by 5 when the deferred tax liability unwinds. This reduction offsets the payment of the tax in that period and effectively brings forward that 5 of tax from that year.
- 5.47 There are however some modifications to the MNE's deferred tax accounting used in its financial statements, which ensure the outcomes are appropriate for the Globe.

## Revaluing Deferred Taxes

- 5.48 The Model Rules require deferred tax liabilities (DTLs) and deferred tax assets (DTAs) to be valued at the lower of the minimum rate and the applicable tax rate. This ensures that there is no top up in respect of the timing difference, without enabling additional upfront credits for Deferred Tax Liabilities to shelter other income in that year.
- 5.49 The Model Rules also exclude certain types of deferred tax movements. These include deferred tax movements in respect of income or expenses that are excluded from Globe income and deferred tax from uncertain tax positions.

## The Recapture

- 5.50 There is a recapture rule for deferred tax liabilities which applies when the deferred tax liability has not unwound within 5 years of the Fiscal Year in which the DTL was originally recognised.
- 5.51 When the recapture applies, the MNE group is required to recompute its ETR in the year the DTL was originally recognised. This ETR is calculated without the DTL. If the revised ETR results in a top up, this top up is added to the top up in the current year.
- 5.52 Some types of timing difference are exempt from the recapture rule. These include those in respect of accelerated depreciation on tangible assets, those arising from fair value accounting and research and development expenses. These timing differences do not need to be recaptured even if it takes longer than 5 years for the DTL to unwind.

## Losses

- 5.53 The timing difference rules also address situations where an MNE has made a loss in a jurisdiction. These rules are similarly based on deferred tax accounting, which means the numerator is reduced in the year the local tax loss arises and a deferred tax asset is recognised. The numerator is then increased in the year that the loss is utilised, and the deferred tax asset unwinds. This is done by taking account of the deferred tax expense accrued in the financial accounts, which could be a positive or negative figure.
- 5.54 As the deferred tax asset is based on the tax loss available under the tax rules of the local jurisdiction, there are further rules to ensure the appropriate relief is given.
- 5.55 For example, the DTA could be based on an economic loss which would also be recognised in the Globe income or loss. These losses are rightly recognised in the Model Rules to prevent top up taxes being applied when the MNE has not made an economic profit. The loss could also be created by a timing difference between the accounts and the local tax system, in which case the accounting will recognise both a DTA and a DTL. Again, it is appropriate to recognise this.
- 5.56 However, the local tax loss could also be caused by certain features of that jurisdiction's tax rules – for instance, if the jurisdiction exempted certain streams of income from tax or provided tax deductions in excess of the cost incurred ('super deductions').
- 5.57 These items are not recognised in the Globe base and would ordinarily reduce the ETR when there was net Globe income in the jurisdiction. However, without further rules, these items would fall outside of the Globe if they produced a local tax loss.

- 5.58 This is because the numerator would be increased by the full amount of the local tax loss when the DTA unwinds, which would effectively adjust the Globe income in that year by the exempt income or super deduction. This would not be appropriate.
- 5.59 There is consequently a special rule which identifies the amount of loss relief that would have been available in the jurisdiction if the DTA was based on the Globe base rather than the local tax rules. Any losses in excess of that are deemed to be losses arising from permanent differences and are treated as an additional top up for that year.
- 5.60 This ensures that MNEs receive appropriate relief in the Globe rules for economic losses and also for those created through timing differences, while preventing excessive relief when the loss arises from a permanent difference.
- 5.61 There is also an election available in zero-tax jurisdictions, where the MNE would not benefit from a system based on deferred tax. This allows the MNE to create a DTA for the purposes of the Globe rules based on the Globe loss in the jurisdiction multiplied by the minimum rate.

**Question:**

**Do respondents have views on how rules on timing differences work including whether there are any uncertainties around how the rules operate that could be further clarified in domestic law?**

# Chapter 6

## Calculating the top up tax

### Overview

- 6.1 Pillar 2 works by imposing a top up tax on an MNE when its ETR in a jurisdiction is below the minimum rate. This top up tax is calculated at the level of the jurisdiction and is applied to any profits in the jurisdiction remaining after the substance-based carve out has been applied. This top up is then allocated between the constituent entities in the jurisdiction.
- 6.2 This chapter explains these rules, which are contained in Chapter 5 of the Model Rules.

### The different steps

- 6.3 There are several steps in the top up tax calculation in the Model Rules:
- Identify whether there is net Globe income in the jurisdiction
  - Calculate the ETR in jurisdictions with net Globe income to identify low tax jurisdictions
  - Compute the top up tax percentage
  - Calculate the substance based carve out
  - Deduct the substance based carve out from the Net Globe Income in the jurisdiction to find the Excess Profit
  - Calculate the top up in the jurisdiction by multiplying the Excess Profit by the top up tax percentage and then:
    - Adding any additional top up tax calculated in respect of earlier years
    - Subtracting any taxes charged under a Qualified Domestic Minimum Tax in that jurisdiction
  - Allocate the top-up tax for the jurisdiction among its constituent entities.

### Identifying the net Globe Income

- 6.4 As the Globe applies a minimum tax on the profits in each jurisdiction, the first step is to determine the profit in the jurisdiction. This is found



by simply aggregating the Globe income and Globe losses of all the constituent entities in the jurisdiction.

- 6.5 If this is positive, the ETR will need to be calculated for that jurisdiction. The only exceptions to this are when the jurisdiction qualifies for the de minimis (which will be the case when the Globe revenue and Globe income in the jurisdiction are below €10m and €1m respectively) or when the jurisdiction qualifies for a Globe safe harbour (discussed in Chapter 10).

## Calculating the ETR

- 6.6 The next step is to calculate the ETR for the jurisdictions identified above. To do this, the adjusted covered taxes of the constituent entities in the jurisdiction are also aggregated.
- 6.7 The ETR is found by dividing the aggregate adjusted covered taxes by the net Globe income (if any) in the jurisdiction.

## Stateless entities

- 6.8 The ETR is calculated for each individual stateless entity without any blending with other entities.

## Investment entities

- 6.9 Chapter 7 of the Model Rules provides different rules for calculating the ETR of investment entities (i.e. investment funds, insurance investment entities and real estate investment entities) which do not qualify as excluded entities.
- 6.10 Investment entities are required to calculate their ETR on a standalone basis without blending or aggregating their results with other constituent entities in the jurisdiction. The ETR calculation is also based on the MNE's share of the Globe income and covered taxes of the entity, and therefore excludes any income or taxes which belong to minority shareholders.
- 6.11 The MNE can elect to treat the investment entity as a transparent entity for the purposes of the Globe where the owner of the investment entity is subject to tax on a mark to market basis on the fair value of its interest in the entity. Where the election is made, the income and any taxes associated with that income will be included in the owner jurisdiction's ETR calculation.

## Joint ventures

- 6.12 Pillar 2 also applies to Joint Ventures which are at least 50% owned by the MNE group, unless the Joint Venture is an excluded entity or is itself an MNE group in scope of the Globe rules.

- 6.13 In these cases, Article 6.4 requires the Joint Venture to calculate the ETR and any top up taxes of its Joint Venture subsidiaries which together are referred to as the JV Group. This includes the entities which are consolidated in the Joint Venture's consolidated financial statements or that would be if such statements were prepared.
- 6.14 However, the profits and taxes of the Joint Venture are not blended with other constituent entities in the MNE group. This means the ETR of the JV Group is calculated separately from the rest of the MNE Group and reflects the challenges both the MNE Group and the Joint Venture would experience in computing a full jurisdictional ETR of all entities.
- 6.15 Once this top up has been calculated, it is collected under the ordinary charging rules which are covered in Chapter 7. The only exception is that the total top up tax is restricted to the Ultimate Parent's allocable share of the top up.

### Minority owned constituent entities

- 6.16 In some situations, financial standards can require entities to be consolidated even though the parent has less than 50% of the rights to profits.
- 6.17 This is expected to be relatively uncommon but there are some structures where a parent is regarded as having control from an accounting perspective despite minority investors holding (in aggregate) the majority of the economic rights to the profits.
- 6.18 The Model Rules include special provisions for these entities where the Ultimate parent holds less than 30% of the ownership rights in an entity it consolidates.
- 6.19 These rules require the ETR of these entities and their subsidiaries to be calculated separately from any other constituent entities in the MNE group.

#### Question:

**Do respondents have any comments on the special provisions for computing the ETR and top up of investment entities, joint ventures or minority owned constituent entities?**

### The top up tax percentage

- 6.20 The top up tax percentage is calculated when the ETR is below the 15% minimum rate. This is found simply by subtracting the ETR from the minimum rate and represents the additional tax rate that needs to be charged on the low taxed profits to bring the tax up to the minimum.

- 6.21 This top up tax percentage is applied to the profits that are in scope of the Globe, which is the net Globe income in the jurisdiction left in the jurisdiction after the Substance Carve-Out has been applied.
- 6.22 This approach ensures that the substance based carve out does not inappropriately increase the ETR in the jurisdiction.

### Substance based carve-out

- 6.23 The Globe rules include a formulaic carve out which is designed to approximate the level of substance in the jurisdiction. This is based on a fixed percentage of the MNE Group's payroll costs and tangible assets in the jurisdiction, on the grounds that employment costs and tangible assets tend to be relatively immobile factors of production and therefore reasonable proxies for substantive economic activities.
- 6.24 This amount is then deducted from the Net Globe income in the jurisdiction.

### The percentage

- 6.25 The carve-out will be based on 5% of the carrying value of the payroll costs and tangible assets in the jurisdiction. There is an increased amount in the transition period which begins from 1 January 2023 and lasts for 10 years.
- 6.26 In this period, the carve-out for payroll costs is 10% in the first year and then is reduced by 0.2% per year for the first five Fiscal Years and then 0.8% per year for the remaining five Fiscal Years.
- 6.27 The carve out for tangible assets is 8% in the first year and then is reduced by 0.2% in the first five Fiscal Years and then 0.4% for the remaining five Fiscal Years.

### Payroll costs

- 6.28 The payroll costs which qualify for the carve-out include employee benefits that provide a direct personal benefit to the employee like health insurance and pension contributions as well as wages and salary costs. Payroll taxes and social security contributions borne by the employer are also included.

### Tangible assets

- 6.29 The tangible asset carve out is based on the average carrying value (net of accumulated depreciation) in the financial statements. The tangible assets which qualify include property, plant and equipment, natural resources as well as licences for the use of immovable property or exploitation of natural resources.
- 6.30 The asset must be located in the jurisdiction.

- 6.31 Assets which are leased also qualify, which provides consistency between owned and leased assets. Where an asset is leased from another group member, the asset will only be included in the jurisdiction of the lessee.
- 6.32 There are special rules to determine how the carve-out is allocated for permanent establishments and transparent entities.

### Computing the top up in the jurisdiction

- 6.33 The top up for the jurisdiction is then calculated by deducting the substance based carve out from the Net Globe income in the jurisdiction. The result is then multiplied by the top up tax percentage.
- 6.34 In some circumstances, the Globe rules require the ETR in an earlier year to be recalculated. These include when the recapture rule is applied to deferred tax liabilities which have not unwound within 5 years. When these recalculations result in an ETR falling below the minimum rate, the top up tax is added to the current year's top up and charged in the current Fiscal Year.
- 6.35 Some countries may decide to introduce a domestic minimum tax in response to Pillar 2, in order to ensure any top up tax imposed on the profits of a group's entities within their jurisdiction stays within their own jurisdiction. In these cases, the top up collected under a qualifying domestic minimum tax is subtracted from the top up tax charged under the Globe rules. This ensures that there is no over-taxation.
- 6.36 A domestic minimum tax will be treated as qualifying if it imposes an additional top up tax to domestic entities and the top up is calculated on the same basis as the Globe rules.

### Allocation of a jurisdiction's top up tax to constituent entities

- 6.37 The final step is to allocate the jurisdiction top up tax to the individual constituent entities located in the jurisdiction.
- 6.38 This is necessary to deal with situations where some of the top up tax is charged by an entity which is not the Ultimate Parent Entity. For example, if the UPE is not subject to a qualified IIR, the top up tax will be collected through a combination of the IIR applied at different levels of the group structure and the UTPR.
- 6.39 Allocating the top up tax to individual constituent entities ensures these different charging rules are coordinated, and that only the appropriate top up tax for the jurisdiction is collected without over or under taxation.

6.40 The Globe rules generally allocate the top up tax between the constituent entities based on their proportion of the Globe income in the jurisdiction. There are special rules to deal with situations when top up taxes are payable when there is no Globe income in the jurisdiction, for example when there is a recalculation of the ETR from an earlier year.

**Question:**

**Do respondents have views on the process for calculating top up tax?**

# Chapter 7

## Charging mechanisms

### Overview

- 7.1 There are two collection mechanisms to charge the top up tax in the Model Rules, the Income Inclusion Rule (IIR) and the Undertaxed Profits Rule (UTPR), which was previously known as the Undertaxed Payments rule.
- 7.2 These are designed to work together and are also coordinated to ensure the right amount of top up is collected when multiple IIRs or UTPRs are applied in tandem in different jurisdictions. Therefore, both rules start from the same top-up tax calculation explained in the previous chapter.
- 7.3 This chapter sets out how the IIR and UTPR operate and asks for views on how tax allocated to the UK under the UTPR should be brought into charge domestically. The rules are contained in Chapter 2 of the Model Rules.

### Income Inclusion Rule

- 7.4 The IIR takes the top up tax calculated for a low-taxed constituent entity and then charges this tax on the entity's parent.
- 7.5 In this respect, the IIR is conceptually similar to a Controlled Foreign Company rule in that it charges a parent company tax which is calculated in relation to the low-taxed profits of its subsidiaries.

### The top-down approach

- 7.6 There will frequently be MNE structures where the low-taxed constituent entity is owned by more than one parent entity. The OECD Model Rules consequently include a priority order which establishes the order in which the IIR is applied.
- 7.7 This priority order is designed to prevent the over-taxation that would result if multiple countries simultaneously sought to charge the same top up tax.
- 7.8 The basic structure is to follow a top-down approach. This means the UPE jurisdiction will usually have the first priority to collect the top up tax.

- 7.9 Consequently, other jurisdictions cannot generally apply their IIR to other parent entities in the group when the UPE is subject to a qualified IIR. The only exception to this is when minority shareholders hold at least 20% of a parent entity, lower down the group structure. These rules are explained below.
- 7.10 If the UPE is not subject to a qualified IIR, an intermediate parent entity will be charged the IIR. For these purposes, intermediate parent entities are entities that are controlled by the UPE and have an ownership interest in the low-taxed constituent entity. However, investment entities are excluded.
- 7.11 There will also be structures where there are multiple intermediate parents that have an interest in the low-taxed constituent entity.
- 7.12 In line with the top-down approach, an Intermediate Parent will not be charged the IIR if it is controlled by another Intermediate Parent which is subject to a qualified IIR.
- 7.13 However, the IIR will not be switched off when the higher Intermediate Parent does not control the lower Intermediate Parent. In this circumstance, the lower Intermediate Parent will charge its IIR, and the higher Intermediate Parent will reduce its share of the top up tax by the tax charged by the lower intermediate parent.
- 7.14 This maximises the amount of top-up tax collected under the IIR, which in turn reduces the residual top up which is collected through the UTPR.
- 7.15 For example, 100 of top up tax has been calculated for Entity A. Parent A holds 20% of Parent B which holds 100% of Entity A. If Parent A collects the top up, then 20 of the top up would be collected and the remainder would be taxed under the UTPR. However, if Parent B also applies its IIR the full 100 of top up is collected so there is no need to apply the IIR. Parent A reduces its 20 top up to nil because this has already been charged by Parent B.

### The split ownership rules

- 7.16 There is a limited exception to the top-down approach when an Intermediate Parent Entity is more than 20% owned by minority investors outside the MNE group. These entities are referred to as Partially Owned Parent Entities (POPEs) in the OECD Model Rules.
- 7.17 In these cases, the POPE has the priority rights to apply the IIR notwithstanding the top-down approach.
- 7.18 The definition of a POPE is satisfied when minority investors directly or indirectly own at least 20% of the ownership interests in the parent entity. Therefore, the POPE definition doesn't just cover the parent entity in which the minority investors directly hold their ownership

interest but could also include subsidiaries of that parent entity too. This means some structures may include chains of POPEs.

- 7.19 There are consequently also ordering rules for POPEs. Again, these rules will typically give priority to the highest POPE in the structure. However, a lower POPE is only required to switch off its IIR when it is wholly owned by a higher POPE which is subject to the IIR.
- 7.20 So, if the lower POPE is itself owned by multiple shareholders, whether they're part of the MNE group or not, the lower POPE will apply its IIR.
- 7.21 So, to take an example, POPE A is owned 80% by the MNE and 20% by 3rd party investors. It owns 100% of POPE B which owns 100% of the Low-Taxed Constituent Entity.
- 7.22 In this example, POPE B would not be required to apply the IIR because it is wholly owned by POPE A.
- 7.23 If POPE B was 90% owned by POPE A and 10% owned by another shareholder, both POPE A and POPE B would apply the IIR based on their own respective interests in the low-taxed constituent entity and subject to the requirements set out below.
- 7.24 The OECD Model Rules require any parent entity (whether a UPE, intermediate parent or a POPE) to reduce its own liability under the IIR by the IIR tax charged by a POPE further down the group structure.
- 7.25 So, in the example in Paragraph 7.23, the top up charged under POPE A's IIR would be reduced by the top up collected by POPE B, preventing double taxation.
- 7.26 This reduction is limited to the portion of the top up tax charged by the parent that reflects its interest in the POPE (i.e. that arises from its indirect ownership in the low taxed entity).
- 7.27 So, consider a Parent entity holds all of its interests in the low taxed entity indirectly through its interest in a POPE. The POPE is 60% owned by the parent entity and 40% owned by minority investors.
- 7.28 Therefore, the POPE's allocable share of the low-taxed entity's top up is 100. The parent's allocable share is 60.
- 7.29 In this case, the parent must reduce its top up from 60 to zero. This is because all of the parent's top up tax arises through its interest in the POPE and this has already been fully taxed by the POPE.
- 7.30 If, however the parent held half of its interests in the low taxed entity directly, and half through the POPE, the parent would only reduce its top up to the extent that the top up is charged by the POPE.



7.31 So, in this example, the POPE's allocable share would be 50 and the parent's allocable share would be 80. This would be comprised of 50 from its direct interest in the low-taxed entity and 30 from its 60% share of the POPE. The parent is only required to reduce its top up by the 30 and not the 50.

### Calculating the parent's share of the top up

7.32 When a parent entity is subject to an IIR, it will be charged an amount based on the top up tax calculated for the relevant low-taxed constituent entity multiplied by its 'allocable share' of that entity.

7.33 The allocable share is a measure of the Parent's rights to the profit of the low-taxed entity and is calculated based on accounting principles. The test works by hypothesising how much of the low-taxed constituent entity's Globe income, the Parent entity would consolidate if it prepared consolidated financial statements.

7.34 The OECD Model Rules require the MNE to make certain assumptions when performing this test, which are designed to ensure it achieves the right outcomes.

#### Questions:

**Do respondents have any comments on how the IIR provisions should be reflected in the UK domestic legislation while respecting the agreed outcomes in the OECD Model Rules?**

**Do respondents have any views on how information or administration challenges with the split ownership rules could be addressed in the implementation framework?**

### Undertaxed profits rule

7.35 The UTPR is the second charging mechanism in the OECD Model Rules. Like the IIR, it starts from the calculation of top up tax for each jurisdiction, under the rules explained in Chapters 5 to 6. However, it allocates the top up between jurisdictions in which the group has constituent entities based on where the group's tangible assets and employees are located instead of by ownership. This top up will then be charged on the constituent entities in the jurisdiction. The Model Rules do not prescribe how this tax is brought into charge.

7.36 The UTPR primarily functions as a back-up rule to the IIR. It looks to ensure that top up tax is paid in respect of a low-taxed constituent entity when its parent entities are located in a jurisdiction that do not impose an IIR.

7.37 However, the UTPR is also intended to ensure that low taxed entities in the ultimate parent's jurisdiction are also subject to top up taxation,

to prevent distortions and level playing field concerns that could arise from such entities being outside of the Globe rules.

### Interaction with the IIR

- 7.38 The OECD Model Rules provide rules which are designed to give the IIR priority over the UTPR in charging low-taxed profits outside of the UPE jurisdiction.
- 7.39 These rules work by disapplying the UTPR when the UPE is subject to a qualified IIR, or when all of the interests in the low-taxed constituent entity are held by parent entities which are subject to a qualified IIR.
- 7.40 However, the UTPR will apply when all of the interests of a low-taxed constituent entity are not held by Parent Entities which are subject to a qualified IIR. However, the top up tax collected under the UTPR is reduced by the amount which is charged under an IIR. This ensures the IIR still takes priority.
- 7.41 So, for example, if the total top up tax for the low-taxed constituent entity is 100, but 60 of that is charged under an IIR, the top up tax which is allocated under the UTPR will be 40.

### Allocating the tax

- 7.42 The UTPR uses an allocation key to allocate the top-up tax due to be collected under the UTPR between the jurisdictions in which the group has constituent entities and which have implemented a qualified UTPR.
- 7.43 The allocation is calculated at a jurisdictional level and allocates the top up based on the proportion of the tangible assets and number of employees in each UTPR jurisdiction.
- 7.44 So, if 5 jurisdictions implement the UTPR and 4 of those jurisdictions have 25% of the group's tangible assets and employees and the fifth has 0%, the first four jurisdictions would each be allocated 25% of the top up.
- 7.45 There are equal weights for the asset and employee factors.
- 7.46 The data for this calculation can be taken from the MNE's CBC report, which will minimise the additional compliance burdens on MNEs and improve coordination by basing the calculation on existing, readily available, and objective data.

### Bringing the tax into charge

- 7.47 The Model Rules do not prescribe how a jurisdiction should bring the UTPR top up tax allocated to it into charge. This is left to jurisdictions to decide domestically but the outcome must be to produce an

additional cash tax expense in that jurisdiction equal to the top up allocated to it.

- 7.48 The government believes there are two broad approaches which it could take and welcomes views from respondents on this.
- 7.49 The first approach which is set out in the Model Rules would be to deny a Corporation Tax deduction on payments made by constituent entities.
- 7.50 The top up would be converted into payments by dividing the top up tax allocated to the UK by the UK statutory Corporation Tax (CT) rate. This would cap the charge to the lower of the top up tax allocated to the UK and the amount of payments made by UK constituent entities.
- 7.51 As the intention would be to bring the maximum top up into charge, the government would not restrict the type of payment which could be subject to the adjustment.
- 7.52 So, the denial could apply to any payment made from an entity, not just in respect of related party payments to the relevant low-taxed jurisdiction.
- 7.53 Similarly, there does not need to be any link between the type of expense which is denied and the nature of the low-taxed income.
- 7.54 As the top up is allocated for the jurisdiction as a whole, there would need to be rules to specify how the MNE should apply the adjustment when there are multiple constituent entities in the UK. The guiding principle here would be to ensure the maximum top up tax is collected.
- 7.55 This could be achieved by specifying that the deduction should be made first in the most profitable company in the group and then continue onto the next company if that is still insufficient to collect the full top up and so on.
- 7.56 Where the Corporation Tax accounting period and the Pillar 2 Fiscal year are different, the adjustment would be made in the CT accounting period in which the Fiscal Year ends.
- 7.57 The second approach would be to introduce a new charge on a UK constituent entity based on the top up allocated to the UK. This charge would be capped by reference to the payments made by constituent entities in the UK in order to meet the 'equivalent adjustment' requirements in the Model Rules.
- 7.58 The government sees some attraction in this approach as it may be simpler to operate and may avoid some of the challenges that could arise with integrating a denial of deduction approach with the existing Corporation Tax rules.

- 7.59 For instance, the government anticipates there could be some challenges in:
- Identifying entities with the most profit capacity to absorb the top up
  - Creating ordering rules where there are different tax rates on certain types of income, deductions are already subject to some limitation under other tax rules or where the group has losses.
- 7.60 The government welcomes views on the relative merits of both approaches.

### Carrying forward the remaining top up

- 7.61 Depending on the approach taken above, there may be circumstances when the above adjustment is not sufficient to collect the full top up that is allocated to the UK.
- 7.62 This could be the case where there are insufficient payments in the jurisdictions or where the group is loss-making in the UK. In this case, the OECD Model Rules require the uncollected portion of the top up to be carried forward, to be collected in the next year.
- 7.63 When there are insufficient deductions to collect the top up, there will be a further adjustment in the second year to collect the remaining top up.
- 7.64 Conversely, there would be no further adjustment if there were sufficient deductions, but losses meant the adjustment didn't produce an additional cash tax liability equal to the top up. In this case, the adjustment in the first year will already be enough to collect the right amount of top up over time because the taxpayer will no longer be able to carry forward that loss to offset their profits in subsequent years.
- 7.65 Finally, the OECD Model Rules contain a provision which prevents future top ups being allocated to a jurisdiction which has carried forward some of its top up from an earlier year. In this case, this jurisdiction would be removed from the allocation key.

#### Questions:

Do respondents have views on how the UTPR should be brought into charge in the UK?

Do respondents have any other comments on the UTPR provisions in the OECD Model Rules?

# Chapter 8

## Transition rules

### Overview

8.1 Chapter 9 of the Model Rules provides special rules that will apply for a period of time when groups first enter the regime. These rules govern the treatment of losses and other timing differences between accounting and taxable profits that span the commencement date and also provide for higher levels of profits subject to the substance carve out and a lower ownership threshold for portfolio dividends during the transition period. Groups will have a longer filing deadline in the first year of entering the regime. Groups in the initial phase of their international activity will not be subject to the UTPR.

### Losses and timing differences

- 8.2 Losses and other timing differences which began before a group enters the Pillar 2 regime will generally be treated as though Pillar 2 were in place at the time that the losses were incurred, or the timing differences began.
- 8.3 Losses and other timing differences which arose in low tax jurisdictions must be recast to the statutory rate of the jurisdiction, unless the group can demonstrate that a loss would have arisen under the Globe rules, in which case it may be recast to the minimum rate. This aligns with the ordinary treatment of losses and timing differences in the rules.
- 8.4 Losses in zero tax jurisdictions which are made before the rules come into effect will not be brought into the regime. But once the rules are in place a group may make an election, as described in chapter 5 above, to ensure that future losses are brought into the ETR calculation.
- 8.5 In order to prevent tax motivated restructuring in response to the publication of the model rules, there are special rules to deal with deferred tax assets incurred and asset transfers taking place after 30 November 2021.

### Filing obligations in the transitional year

8.6 In the first year in which a group comes within scope of the rules the filing deadline will be increased to 18 months from the end of the accounting period for the group's consolidated accounts. This is

intended to allow groups some additional time to set up the necessary compliance processes and systems when they first enter the regime.

## Substance based carve out

- 8.7 As described above in chapter 6, the carve out percentages will be higher during the transition period, tapering down to the normal rates over a ten-year period.

## Groups in their initial phase of international expansion

- 8.8 The UTPR will not apply to groups which are in the initial phase of expanding internationally. This is a temporary relief which applies when the group operates in no more than six jurisdictions and when it holds less than €50m of tangible assets outside of the country in which it has the largest tangible asset base. This relief will no longer apply after the group has been in scope for five years.
- 8.9 This is to prevent the rules deterring groups from undertaking international activity in cases where this might otherwise bring a group's entire domestic activities within scope of the rules through the UTPR. This will not apply in certain scenarios where the UTPR is necessary to counter group inversion.

### Question:

Do respondents have views on how rules on the transition rules work including whether there are any uncertainties around how the rules operate that could be further clarified in domestic law?

# Chapter 9

## Reporting and payment

### Overview

- 9.1 Chapter 8 of the Model Rules provides a coordinated and standardised approach to reporting, which is designed to reduce the compliance burden for businesses and facilitate the effective administration of the Globe.
- 9.2 MNEs will be required to submit a Globe return providing detailed information to support their Globe calculation, including information about the calculation of their ETRs, any top up tax liabilities and how they are allocated between different jurisdictions.
- 9.3 This information will be provided in a standardised return which is expected to be developed as part of the implementation framework. This will ensure the same information is provided to every tax administration which will reduce the scope for error and help to reduce compliance costs by preventing businesses from having to comply with different requirements in every jurisdiction.
- 9.4 There are further provisions which are designed to reduce the administrative burden for businesses. The Model Rules allow for returns to be exchanged between tax administrations using a similar approach to the model developed for Country-by-Country Reporting.
- 9.5 Under this approach, the Group will file its Globe return with the jurisdiction of its Ultimate Parent Entity or a designated filing entity where different. This jurisdiction will then exchange the Globe return with other tax administrations. The obligation to file in other jurisdictions will then be treated as discharged when those jurisdictions have received the return through the exchange mechanism. This is intended to reduce the compliance burdens on businesses by reducing the number of returns it is required to submit.
- 9.6 Where businesses are unable or choose not to take advantage of the single filing entity model, there will be a legal obligation on each constituent entity to register and file with HMRC. However, groups will be able to choose a single UK group entity to complete these obligations on behalf of the rest of the group.
- 9.7 The Model Rules set out that the return must be filed within 15 months of the end of the Fiscal Year, although there is an extension to

18 months in the first year of the Globe rules in recognition that businesses may need more time to configure their systems to comply with these rules.

- 9.8 There is also an obligation on constituent entities which are relying on another entity to file their return to notify their tax administration of the details of the filing constituent entity.

## UK reporting process

- 9.9 Groups will be required to notify HMRC that they are within the scope of the Globe through a new registration process. This will enable groups to send their Globe return to HMRC where they are a filing entity, or alternatively to issue a notification with the details of the relevant filing entity. The government is considering allowing businesses 6 to 9 months from the end of their Fiscal Year/Consolidated financial reporting period to complete this registration.
- 9.10 There are different approaches which could be taken to the reporting of liabilities under the IIR or UTPR. For example, information about liabilities under the IIR could be reported through the Corporation Tax return or taken directly from the Globe return itself.
- 9.11 This process is still to be determined as it depends on the level of information which is included in the Globe return. However, HMRC's preference would be to take the relevant data directly from the Globe return. This will simplify the process for businesses by ensuring that all return information relating to P2 can be provided by the Group's filing entity.
- 9.12 It would also provide additional flexibility to design the reporting requirements specifically around the design features of Pillar 2, in a way that wouldn't be possible within the existing CT process. For example, it would not be possible to have different payment schedules within the CT return so taxpayers who pay their CT through QIPS would need to pay their Pillar 2 liabilities quarterly.
- 9.13 The approach to collecting any UTPR liability will depend on whether the UTPR is collected through a denial of deduction mechanism or an alternative. The denial of deduction would be included within a company's computation of its CT liability so could be collected within the CT return. However, there may also be scope to record the liability through the Globe return if that is the approach taken to collect liabilities under the IIR.

### Questions:

Do respondents have views on the proposed approach to reporting?



Do respondents have views on the approach taken to collecting liabilities under the IIR or UTPR?

Do respondents have views on the time limit for notifying the group is in scope of the Globe?

## Payments

- 9.14 The government recognises there is a significant amount of information required to calculate liabilities under the Globe rules and that it would be challenging to forecast these liabilities during the Fiscal year as would be required under similar rules to the Quarterly Instalment Payments rules in CT.
- 9.15 The government consequently prefers that liabilities under the IIR or UTPR are paid annually after the end of the Fiscal year to ensure the compliance burden from these rules is proportionate. The government proposes to align the payment due date rules with the normal due date in CT (i.e. 9 months from the end of the Fiscal Year).
- 9.16 This would provide businesses with more time to collect information about their ETR in overseas jurisdictions and their liabilities under the Globe.
- 9.17 It should be noted these changes would only be possible if the IIR is collected outside of the CT return.

## Credit interest

- 9.18 Under the CT rules, HMRC pays interest to businesses which pay their CT liability before the relevant due date. This encourages timely payment and ensures symmetry with late payments where HMRC charges interest (albeit the relevant interest rates are different).
- 9.19 This interest can sometimes be material particularly for businesses that pay their CT quarterly, and therefore have to forecast how much their liability will be. However, in most cases, businesses prefer to pay their liability close to the due date.
- 9.20 The government is considering not providing credit interest in respect of Pillar 2 liabilities. This is because credit interest adds significant cost and complexity to the relevant IT systems, and it is unclear it would provide a significant benefit to businesses given the government's preference for annual payments.
- 9.21 The government invites views on this and the significance of credit interest.
- 9.22 Businesses would continue to receive interest on any overpayments.

## Joint and several liability

- 9.23 The government is considering making UK constituent entities joint and severally liable for IIR and UTPR debts that were charged to UK constituent entities.
- 9.24 The government believes this is proportionate given these liabilities represent undertaxed profits of the MNE group as a whole.
- 9.25 As all groups with liabilities in the UK will have a UK taxable presence (e.g. for CT), the government does not believe it would be proportionate or necessary to extend this joint and several liability to non-resident members of the MNE group.

### Questions:

Do respondents have views on whether payments should be made quarterly or annually for Pillar 2?

Do respondents have views on an appropriate payment deadline for Globe liabilities?

Do respondents have views on the importance of giving credit interest for early payments?

Do respondents have views on making UK constituent entities joint and severally liable for any (UK) Globe debts?

# Chapter 10

## Simplification

### Overview

- 10.1 The October statement set out that there would be further work in the OECD in 2022 to establish an implementation framework for the Globe rules.
- 10.2 Part of this work will consider safe harbours, where there would be simplified reporting obligations for businesses in jurisdictions where there is a low risk that the ETR would be below the minimum rate.
- 10.3 Where a business qualifies for an agreed safe harbour, the MNE group would not need to provide the full ETR calculation for that jurisdiction but would provide a simpler computation to evidence that they were eligible for this simplification.
- 10.4 The programme in 2022 is still to be agreed, but this chapter explains some of the simplification approaches which have previously been considered in OECD discussions.
- 10.5 The government welcomes views on these, and in particular the extent to which businesses would prefer to maximise simplicity even if it means the safe harbour is unavailable in some low-risk situations, or alternatively trade off some of the simplification benefits for a design which more accurately measures the risk of low-tax outcomes in the Globe.

### CBC Safe Harbour

- 10.6 There have previously been discussions about using a simplified ETR calculation based on data in a MNE's CBC report to approximate the risk the full Globe ETR is below the minimum rate.
- 10.7 This would work by starting from the profit and accrued taxes the MNE reports for a jurisdiction in the CBCR. This data would be used to calculate an ETR.
- 10.8 The group would qualify for the safe harbour when this ETR is above a certain CBCR safe harbour minimum rate. This could be higher than the 15% minimum rate in the Globe rules to reflect the risk that the CBCR ETR is different because of differences in how the Globe income and adjusted covered taxes are calculated.

- 10.9 There is an important policy design question whether that risk should be addressed through increasing this rate premium over 15% or whether there should also be adjustments to the CBCR figures to bring the ETR calculation closer into line with how the Globe ETR is calculated.
- 10.10 There is a trade-off between accuracy and simplicity here. Increasing the number of adjustments reduces the risk that a MNE inappropriately qualifies for the safe harbour. Equally, it reduces the risk a MNE is inappropriately excluded from the safe harbour.
- 10.11 However, it also increases the complexity of the calculation, and therefore reduces some of the simplification benefits the safe harbour is intended to provide.
- 10.12 The government invites views on whether the design should prioritise simplicity or seek to achieve more of a balance between simplicity and accuracy here.
- 10.13 The adjustments that would be made could broadly be split into two categories.
- 10.14 The first would mirror some of the adjustments made to Globe income in Chapter 3. So, for example, the CBCR profit could be adjusted where this includes gains and losses on disposals of participation shareholdings, so the figure more accurately represents the profit in the Globe base (and in most cases also the taxable profit in the local tax jurisdiction).
- 10.15 These adjustments wouldn't necessarily need to reflect all of the adjustments in the Globe rules but could identify those which are most impactful or are most likely to lead to the ETR being inappropriately inflated.
- 10.16 The government welcomes views on the extent to which these adjustments should be made, and also on which adjustments would be the most important to include.
- 10.17 The second category would be intended to reflect timing differences and bring the CBCR ETR closer into line with the outcomes achieved by the timing differences rules in Chapter 4.
- 10.18 Without these adjustments, a taxpayer could have a low ETR in the CBCR even though this low ETR is simply a consequence of the taxpayer having used losses from earlier years to offset its profits.
- 10.19 The government similarly welcomes views on how necessary these adjustments are, and how these could be achieved in a CBCR based safe harbour without significantly increasing compliance burdens and undoing the intended simplification.

- 10.20 The design could also seek to address some of the complexities in the jurisdictional blending rules. For example, there may be limited risk a branch is low-taxed when it is taxed in the head office jurisdiction at a high rate.
- 10.21 There may be scope to consider whether the safe harbour could be designed to take account of this and reduce the allocations between jurisdictions required under the main rules.
- 10.22 Again, the government welcomes views on the extent to which this would be helpful or conversely would introduce unnecessary complexity.
- 10.23 Lastly, the implementation framework discussions will need to consider how the rules deal with transitions out from the safe harbour into the main rules (for example, if the MNE no longer qualifies for the safe harbour in a given jurisdiction). This raises issues like what should happen with respect to items like timing differences which arose while the MNE group was within the safe harbour.

**Questions:**

**What are respondents' views on a CBCR based safe harbour and how it should be designed?**

**How could timing differences be addressed within a CBCR safe harbour design? Do they need to be?**

**Do respondents have views on how the rules should address when a business moves from the safe harbour into the main Pillar 2 regime?**

# Chapter 11

## Further work in the OECD

### Overview

- 11.1 The Inclusive Framework agreed in the October statement to develop an implementation framework to facilitate the effective and consistent implementation of the Globe.
- 11.2 This work will take place in the OECD next year and conclude by the end of 2022. The programme will be agreed by the Inclusive Framework, but this chapter sets out some of the issues which may be considered in the course of this work in addition to the simplification work mentioned in the last chapter.

### Interaction between Pillar 1 and Pillar 2

- 11.3 There may need to be further consideration as to how the outcomes of Pillar 1 are reflected in Pillar 2 once the Pillar 1 design has been finalised and reflected in a multilateral convention in 2022.
- 11.4 This work will likely need to consider how the allocation of Amount A to market jurisdictions should be taken into account in the Globe ETR calculations. For instance, Amount A could be included in the jurisdictional ETR of the market jurisdiction which would require further adjustments in the Globe Income base.
- 11.5 Alternatively, Amount A could be kept within the jurisdictional ETR of the surrendering jurisdiction. This may require an adjustment to ensure taxes paid by the market jurisdiction on Amount A are included in the surrendering jurisdiction's ETR.

### GILTI Grandfathering

- 11.6 In the October statement it was agreed that, in the context of Pillar 2 imposing a minimum rate on a jurisdictional basis, consideration will be given to the conditions under which the US GILTI regime will co-exist with the GloBE rules, to ensure a level playing field.
- 11.7 This matter is still under consideration within the OECD Inclusive Framework.

- 11.8 That reflects the ongoing process of tax legislative reform in the United States under which reforms to the US GILTI have been proposed.
- 11.9 The government anticipates that there will be further work in the Inclusive Framework to determine how the GITLI will coexist with the Globe rules once the outcomes of the US legislative process are clear.
- 11.10 Several issues will need to be addressed as part of this work:
- how the Pillar 2 rules, both the IIR and the UTPR, should be applied to entities within US headquartered groups
  - how the US GILTI will be applied to the US subsidiaries of non-US headquartered groups that are subject to a qualifying IIR at the level of a foreign parent
  - Whether the agreed ordering rules should be different for partially owned intermediate entities as contemplated in the Pillar 2 framework
  - How tax paid under the US Base Erosion and Anti-Abuse Tax should be taken into account in the Pillar 2 framework and in calculations of jurisdictional ETRs.
- 11.11 The appropriate approach to resolving these issues will be dependent on the outcome of the US legislative process.
- 11.12 However, the government's general view is that there will need to be a fair, consistent and comprehensive approach to ensuring that jurisdictional profit is taxed at the minimum level, but also to ensuring that top up taxation is not excessive due to overlapping rules.
- 11.13 The government looks forward to engaging with its international partners to reach solutions on these issues as soon as possible.

## Implementation

- 11.14 There are likely to be various implementation issues considered in the course of the implementation framework discussions.

## Qualified IIR and UTPR

- 11.15 The Globe rules include the concept of a Qualified IIR. This concept is meant to ensure a jurisdiction is only required to switch off its IIR or UTPR under the agreed rule order when the jurisdiction with the primary taxing rights exercises those rights in accordance with the agreed standards set out in the October statement and Model Rules.
- 11.16 Similarly, the OECD Model Rules refer to a Qualified UTPR, which determines whether a jurisdiction is entitled to receive an allocation of top up under the UTPR.

11.17 The Implementation Framework is likely to consider an international process to review and evaluate whether a jurisdiction has implemented a Qualified IIR or UTPR.

### **Globe return and exchange of information**

11.18 The OECD Model Rules envisage a standardised Globe return which would be shared with all jurisdictions. The Implementation Framework is likely to include work to develop and agree this standardised return.

11.19 There will also be work to develop the legal and operational framework for the exchange of Globe returns between jurisdictions.

### **Dispute resolution**

11.20 The October statement sets out that Implementation Framework discussions will consider whether a multilateral convention is necessary for the effective implementation of the Globe rules.

11.21 This work could consider whether there is a need for a dispute resolution framework within the Globe rules, given that the rules are predicated on adherence to rule order and the allocation of top up tax between multiple jurisdictions on a commonly agreed allocation basis.

11.22 This could also consider other issues like the legal framework for exchange of information.

### **Question:**

**Do respondents have any comments on this further implementation work?**



# Chapter 12

## Domestic minimum tax

### Overview

- 12.1 As part of the Pillar 2 implementation process, the UK is exploring the idea of introducing a domestic minimum top up tax (DMT) in the UK.
- 12.2 This would be closely based on the Globe rules, but rather than allowing a foreign jurisdiction to charge top up taxes in relation to any low-taxed profits of a group's entities in the UK, the UK would instead impose that top-up tax.
- 12.3 While this goes beyond the requirements in the Globe rules, those rules contemplate countries introducing domestic minimum taxes alongside Pillar 2 and the government believes there is a strong case for doing so in the UK.
- 12.4 This is because a DMT would only ensure that any additional tax on UK economic activities and profits that results from the Pillar 2 minimum tax framework is to the benefit of the UK Exchequer. In other words, businesses would in most cases pay the same level of tax on their UK profits whether there was a DMT or not, but rather than allow another country to collect that tax, a DMT would ensure the tax is paid to the government.
- 12.5 The government also believes a DMT could significantly reduce compliance burdens on UK headquartered groups by preventing them from being subject to the UTPR in multiple countries in respect of their UK domestic operations.

### Policy Rationale

- 12.6 There would be two policy rationales for the introduction of a UK DMT:
  - Revenue protection
  - Simplification
- 12.7 The first reflects that, absent a domestic minimum tax, the Globe rules will mean that low-taxed profits in the UK will likely be topped up in foreign jurisdictions. A DMT therefore secures additional revenue for

the UK exchequer without increasing the overall tax burden on entities operating in the UK.

- 12.8 On the second, the government believes a DMT could reduce the compliance and administrative burdens on businesses and increase taxpayer certainty.
- 12.9 This would be particularly true for MNEs headquartered in the UK who would otherwise be subject to the UTPR on UK profits. This would require MNEs to report tax liabilities to multiple jurisdictions so will inherently lead to an increased risk of disputes and could increase compliance costs through the MNE having to deal with audits from a number of different tax administrations.

## Interaction with Pillar 2

- 12.10 The OECD Model Rules reduce the amount of top up tax that is due to be collected under the IIR or UTPR by the amount of tax charged under a Qualified Domestic Top up Tax. This means the tax under the UK DMT would £ for £ reduce any top up taxes charged by another country under either the IIR or the UTPR.
- 12.11 This treatment only applies to domestic minimum taxes which are qualified. These are top up taxes which are based on the Globe rules and which are designed to collect the same top up that would otherwise be collected under Pillar 2.
- 12.12 Where a domestic minimum tax is not qualified because it is not closely based on the Globe rules, it would be treated as a covered tax instead and be included in the ETR calculation for the jurisdiction.
- 12.13 This would mean the tax on the income which is excluded from the Globe base through the substance carve out would be disregarded, meaning the tax rate would have to be higher to fully cover the top up tax which would be charged under the IIR or UTPR.
- 12.14 A UK DMT would therefore need to be designed to closely follow the Globe rules, to ensure it is qualified.

## Scope

- 12.15 The government would need to determine the scope of the DMT and invites views from respondents on this.
- 12.16 The government generally believes any DMT should be designed to match the scope of the Globe rules. Therefore, the government's preference would be to restrict a DMT to groups which have over €750m of global consolidated revenue in line with the Globe rules explained in Chapter 4.
- 12.17 This reflects that smaller groups would be outside of the scope of the Globe and would therefore not be subject to top up charges in other

jurisdictions. Imposing a DMT on these groups would consequently go beyond the intended rationale by having the potential to increase the overall tax burden on these groups. There also could be significant challenges for these groups complying with a DMT.

- 12.18 The government also welcomes views on whether, if introduced, a DMT should apply to all groups within scope of the Globe rules or only to groups which are headquartered in the UK.
- 12.19 There may be a stronger case to apply a DMT to UK headquartered groups as these groups are likely to obtain a greater benefit from any simplification provided by the DMT. This is because the effect of the domestic minimum tax would be to reduce the number of countries in which a UK HQ group is subject to top-up taxation, an effect which might not be experienced by foreign HQ groups.
- 12.20 However, there are potential arguments to apply the DMT to foreign headquartered groups too. This would provide a level playing field for all large groups operating in the UK and would ensure top up taxes in relation to UK profits are collected in the UK.
- 12.21 There may also be some advantages to foreign groups in paying the UK DMT, particularly if any top up tax attributable to UK entities would otherwise be collected under multiple jurisdictions' IIRs or UTPRs.
- 12.22 For example, this could be the case where the UK entities of a foreign group are not subject to a qualifying IIR and would therefore be exposed to the UTPR in respect of any required top-up tax.

## How a DMT would work

- 12.23 If introduced, the government believes a DMT would have four key components:
- The scoping rules (as discussed above)
  - The calculation of the top up tax liability
  - The charging rules
  - The administrative rules
- 12.24 It is envisaged that the calculation of the top up liability would be based on similar rules to those in the Model Rules. This would be designed to ensure that the top up calculated in the DMT matches the top up that would be charged by a foreign jurisdiction.
- 12.25 The definition of a qualified domestic minimum top up tax in the Model Rules does enable jurisdictions to permit MNEs to compute the

domestic top up based on the local accounting standard in their jurisdiction, rather than the standard used by the ultimate parent.

- 12.26 The government welcomes views on whether this would be helpful additional flexibility and provide simplification, or conversely whether it would be simpler to follow the computations used to calculate the MNE's ETR under the Globe rules.
- 12.27 There would need to be new charging rules to charge the tax on UK constituent entities.
- 12.28 These would allocate the top up tax calculated for the UK to individual constituent entities using similar rules to those in the Globe. The government believes it would be appropriate to allocate the top up to individual entities because the group definition in the Globe rules is broader than those used to define a group for Corporation Tax purposes.
- 12.29 This means minority investors could have significant stakes in certain constituent entities. Allocating the whole of the top up to a single entity could result in minority investors suffering a disproportionate burden of top up taxes which are attributable to low tax outcomes in entities in which they do not have an ownership interest, and which are treated as economically independent and separate under the UK's grouping rules.
- 12.30 It is envisaged that top up taxes under the DMT would be collected through the Corporation Tax return. In some cases, the Corporation Tax accounting period and the Fiscal Year for the Globe could be different.
- 12.31 The MNE would therefore report their DMT liability in the Corporation Tax accounting period in which the Pillar 2 Fiscal Year ends. This is similar to the approach taken in the Controlled Foreign Company rules and ensures that the top up tax is calculated based on the same period and same rules as those found in the Globe.

## Questions

**Do respondents agree that a DMT could help to reduce compliance costs for businesses?**

**Do respondents have views on whether the DMT should apply to both UK headed and foreign headed groups?**

**Do respondents agree that the DMT should only apply to groups with over €750m of revenue to align with the P2 population?**

**Do respondents have any comments on the policy design of the DMT?**

# Chapter 13

## Wider reforms interaction with existing BEPS measures

### Overview

- 13.1 The Globe rules are a significant change to the international tax landscape and there will inevitably be an increase in compliance and administrative burdens on affected businesses as they adjust to these new rules.
- 13.2 The government is aware some businesses have questioned how the Pillar 2 rules will interact with other BEPS and anti-avoidance measures.
- 13.3 This chapter sets out how these measures are integrated within the Pillar 2 framework and then outlines why the government believes they will continue to play an important role in protecting the UK tax base.
- 13.4 The government is therefore not proposing to undertake major reforms to wider BEPS measures but may consider limited reforms where tax risks are appropriately protected by Pillar 2 and where there are clear benefits to reform in terms of reducing compliance burdens and avoiding uncertainty and disputes.

### Existing BEPS measures

- 13.5 Pillar 2 is designed to operate alongside a jurisdiction's anti-avoidance rules. This is why the Model Rules set out how taxes imposed under BEPS measures like CFC charges should be taken into account in the Globe ETR calculations.
- 13.6 These rules are broadly designed to ensure taxes charged under anti-avoidance rules are treated as covered taxes and, where possible, then allocated to the jurisdictions in which the relevant income is recognised in the Globe base.
- 13.7 This ensures that the tax charged under BEPS measures is taken into account in the ETR calculations and therefore prevents Pillar 2 imposing additional top up taxes on income streams that have already been subjected to tax under other BEPS measures.

13.8 In other words, Pillar 2 is intended to be applied after other anti-avoidance rules are applied and seeks to tax any remaining low-taxed profits in the jurisdiction.

## Why Pillar 2 does not remove the need for BEPS measures

13.9 The government acknowledges that the introduction of Pillar 2 will lead some to ask whether other BEPS measures are still necessary.

13.10 The government has considered this and believes that there are several reasons why Pillar 2 will not remove the need for targeted BEPS rules.

13.11 Firstly, there is not a significant overlap between Pillar 2 and other BEPS measures. Most BEPS measures are designed to address specific tax planning risks, for instance to counteract arrangements which are designed to shift particular streams of income out of the UK tax base.

13.12 Pillar 2 does not address these risks directly. While Pillar 2 will reduce the incentive to shift profits to low tax jurisdictions, by reducing the tax rate arbitrage that can be achieved, it imposes a minimum tax at the jurisdictional level so does not prevent the type of planning targeted by other anti-avoidance rules.

13.13 Secondly, the planned increase in the UK Corporation Tax rate to 25% means that there will continue to be a significant rate difference with the minimum rate of 15%, and therefore potential ongoing incentives and opportunities for tax planning.

13.14 Finally, as Pillar 2 only applies to MNEs with over €750m of global revenue, other BEPS measures will continue to play an important role in protecting the UK's tax base for the wider population.

## Reform

13.15 The government does not therefore intend to make significant reforms to existing anti-avoidance rules designed to protect the UK's tax base at this time.

13.16 However, it is open to considering reform should stakeholders identify reforms that would have a significant benefit in reducing burdens or uncertainty without exposing the UK tax base to material risks.

13.17 Equally, the government may revisit the issue of reform once Pillar 2 is fully implemented and the level of protection it provides to the UK tax base is clearer.

### Question:

**Do respondents consider there are reforms which would have a significant benefit in reducing compliance burdens without exposing the UK tax base to material risks?**



# Chapter 14

## Assessment of impacts

### Summary of impacts

<b>Exchequer impacts</b>	The exchequer impacts will be formally assessed through the OBR forecast process in the usual way.
<b>Economic impacts</b>	Pillar 2 will significantly change how the international tax framework operates but this is not expected to have significant macroeconomic impacts.
<b>Impact on individuals, households and families</b>	Pillar 2 is not expected to have any direct impact on individuals, households and families.
<b>Equalities impacts</b>	Pillar 2 is not expected to directly impact on any of the groups with protected characteristics.
<b>Impact on businesses and Civil Society Organisations</b>	Pillar 2 will exclusively impact large multinational businesses, specifically with revenues in excess of €750m p/a. The clearly defined revenue threshold means that any businesses with revenues lower than €750m p/a will not be impacted by the new rules. There is likely to be an increase in the compliance and administration burden on those businesses affected as a result of Pillar 2. The impacts of this will be assessed at a later time.
<b>Impact on HMRC or other public sector delivery organisations</b>	The government expects there to be both one off and ongoing costs related to the administration of Pillar 2.
<b>Other impacts</b>	Other impacts have been considered and none have been identified at this stage. We would welcome views on this initial assessment of impacts.

Question:

Do you have any comments on the summary of impacts?



# Annex A

## List of consultation questions

### *A.1 Chapter 3: Common approach*

1. Do you see any strong reason why UK legislation should not follow the OECD Model Rules as closely as possible to ensure consistency bearing in mind the limited flexibility permitted by the common approach?
2. Do respondents have any views on how the common approach can be more effectively achieved at a global level?

### *A.2 Chapter 4: Scope*

3. Do respondents have any comments on the calculation of the €750m consolidated revenue threshold?
4. Do respondents agree the IIR should only apply to groups that meet this threshold?
5. Do respondents have any comments on the definition of a group or of a constituent entity?
6. Do respondents have any comments on the excluded entity rules and definitions?
7. Do respondents have any views on the definitions of international shipping income?

### *A.3 Chapter 5: Calculating the effective tax rate*

8. Do respondents have comments on the practicalities of computing a constituent entity's accounting profit?
9. Do respondents have comments on the adjustments made to the accounting profit? In particular, are there any uncertainties that could be clarified in the UK's domestic legislation whilst respecting the intended outcomes in the Model Rules?
10. Do respondents have views on the rules allocating profits between jurisdictions?
11. What are respondents' views on the impact of the branch rules on business models involving branches taxed under the credit method?
12. Do respondents have views on the rules on Covered Taxes and their assignment?

13. Do respondents have views on how rules on timing differences work including whether there are any uncertainties around how the rules operate that could be further clarified in domestic law?

**A.4 Chapter 6: *Calculating the top up tax***

14. Do respondents have any comments on the special provisions for computing the ETR and top up of investment entities, joint ventures or minority owned constituent entities?
15. Do respondents have views on the process for calculating top up tax?

**A.5 Chapter 7: *Charging mechanisms***

16. Do respondents have any comments on how the IIR provisions should be reflected in the UK domestic legislation while respecting the agreed outcomes in the OECD Model Rules?
17. Do respondents have any views on how information or administration challenges with the split ownership rules could be addressed in the implementation framework?
18. Do respondents have views on how the UTPR should be brought into charge in the UK?
19. Do respondents have any other comments on the UTPR provisions in the OECD Model Rules?

**A.6 Chapter 8: *Transition rules***

20. Do respondents have views on how rules on the transition rules work including whether there are any uncertainties around how the rules operate that could be further clarified in domestic law?

**A.7 Chapter 9: *Reporting and payment***

21. Do respondents have views on the proposed approach to reporting?
22. Do respondents have views on the approach taken to collecting liabilities under the IIR or UTPR?
23. Do respondents have views on the time limit for notifying the group is in scope of the Globe?
24. Do respondents have views on whether payments should be made quarterly or annually for Pillar 2?
25. Do respondents have views on an appropriate payment deadline for Globe liabilities?
26. Do respondents have views on the importance of giving credit interest for early payments?

27. Do respondents have views on making UK constituent entities joint and severally liable for any (UK) Globe debts?

**A.8 Chapter 10: *Simplification***

28. What are respondents' views on a CBCR based safe harbour and how it should be designed?

29. How could timing differences be addressed within a CBCR safe harbour design? Do they need to be?

30. Do respondents have views on how the rules should address when a business moves from the safe harbour into the main Pillar 2 regime?

**A.9 Chapter 11: *Further work in the OECD***

31. Do respondents have any comments on this further implementation work?

**A.10 Chapter 12: *Domestic minimum tax***

32. Do you agree that a DMT would help to reduce compliance costs for businesses?

33. Do businesses agree the DMT should apply to both UK headed and foreign headed groups?

34. Do businesses agree that the DMT should only apply to groups with over €750m of revenue to align with the P2 population?

35. Do respondents have any comments on the policy design of the DMT?

**A.11 Chapter 13: *Wider reforms interaction with existing BEPS measures***

36. Do respondents consider there are reforms which would have a significant benefit in reducing compliance burdens without exposing the UK tax base to material risks?

**A.12 Chapter 14: *Assessment of impacts***

37. Do you have any comments on the summary of impacts?

# Annex B

## Privacy notice

This notice sets out how HM Treasury will use your personal data for the purposes of the Consultation on the policy design of a Residential Property Developer Tax (RPDT) and explains your rights under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA).

### ***B.1 Your data (Data Subject Categories)***

The personal information relates to you as either a member of the public, parliamentarians, and representatives of organisations or companies.

### ***B.2 The data we collect (Data Categories)***

Information may include your name, email address, job title, the name of your employer, your employer's address, your opinions/answers to the consultation questions and any other elements of your response. It is possible that you will volunteer additional identifying information about themselves or third parties.

### ***B.3 Legal basis of processing***

The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in HM Treasury. For the purpose of this consultation the task is consulting on departmental proposals and obtaining opinion data in order to develop effective government policy.

### ***B.4 Purpose***

The personal information is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policy and proposals.

### ***B.5 Who we share your responses with***

Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.

Where information about respondents is not published, it may be shared with officials within other public bodies involved in this consultation process to assist us in developing the policies to which it relates. Examples of these public bodies appear at: [www.gov.uk/government/organisations](http://www.gov.uk/government/organisations)

We plan to share responses to this consultation document, including any information specified in section B.2 above, with Her Majesty's Revenue and Customs for the purposes of developing effective government policy.

As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor, NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

#### ***B.6 How long we will hold your data (Retention)***

Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.

Personal information in responses that is not published will be retained for three calendar years after the consultation has concluded.

#### ***B.7 Your Rights***

- You have the right to request information about how your personal data are processed and to request a copy of that personal data.
- You have the right to request that any inaccuracies in your personal data are rectified without delay.
- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.
- You have the right, in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted.
- You have the right to object to the processing of your personal data where it is processed for direct marketing purposes.
- You have the right to data portability, which allows your data to be copied or transferred from one IT environment to another.

## How to submit a Data Subject Access Request (DSAR)

To request access to personal data that HM Treasury holds about you, contact:

HM Treasury Data Protection Unit  
G11 Orange  
1 Horse Guards Road  
London  
SW1A 2HQ

[dsar@hmtreasury.gov.uk](mailto:dsar@hmtreasury.gov.uk)

### **B.8** *Complaints*

If you have any concerns about the use of your personal data, please contact us via this mailbox: [privacy@hmtreasury.gov.uk](mailto:privacy@hmtreasury.gov.uk).

If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, the UK's independent regulator for data protection. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

0303 123 1113  
[casework@ico.org.uk](mailto:casework@ico.org.uk)

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

## HM Treasury contacts

This document can be downloaded from [www.gov.uk](http://www.gov.uk)

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

Tel: 020 7270 5000

Email: [public.enquiries@hmtreasury.gov.uk](mailto:public.enquiries@hmtreasury.gov.uk)