



OECD Pillar 2 Consultation on implementation: Summary of Responses

July 2022



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Chapter 1

Introduction

Background

1.1 In October 2021, more than 130 countries reached a historic agreement on a two-pillar solution to reform the international tax framework in response to the challenges of digitalisation.

1.2 The second pillar of that agreement will ensure that large multinational groups pay a minimum level of tax (15%) in each jurisdiction they operate in. This will be achieved through the introduction of two new interlocking taxes, the Income Inclusion Rule (IIR) and Undertaxed Profits Rule (UTPR), collectively known as the GloBE Rules, which impose a top up tax when profits in a jurisdiction are taxed below the minimum rate.

1.3 Under the October agreement, the GloBE Rules are subject to a common approach, where countries have agreed that jurisdictions that choose to implement Pillar 2 must do so consistently with the terms of the agreement.

1.4 To facilitate the common approach, the OECD published Model Rules in December 2021 and then Commentary to the Model Rules in March 2022.

1.5 Following the publication of the Model Rules, the government launched a consultation on the implementation of Pillar 2 in the UK in January 2022. This consultation focussed on implementation issues given the policy design of the rules had already been finalised.

1.6 The government set out that it intended to introduce the GloBE Rules in the UK, aimed to legislate these rules in Finance Bill 2022-23 and anticipated that the IIR would apply to accounting periods ending on or after 1 April 2023, with the UTPR coming in a year later at the earliest. However, it set out that it would continue to monitor the progress on implementation made in other countries and in the OECD Inclusive Framework.

1.7 The government also set out that it was considering introducing a Domestic Minimum Tax that would apply to accounting periods ending on or after 1 April 2024 at the earliest.

1.8 The consultation ran until 4 April 2022. A total of 51 written responses were submitted to the consultation and the government also benefited from several meetings with stakeholders during the process.

1.9 This document summarises the main issues raised by stakeholders as part of their responses and how the government intends to address the issues raised,

including where areas will need to be discussed further with international partners as part of the Implementation Framework.

Consultation responses

1.10 Consultation responses covered a number of detailed technical design issues which are explained in the relevant chapters in this document.

1.11 Additionally, almost all respondents raised concerns about the timing of UK implementation. There was a clear consensus that UK implementation should be from the end of 2023. There were various reasons cited for this, which included:

- The challenge of developing systems to comply with a measure as complex as the GloBE Rules in less than 18 months.
- That there is significant outstanding work in the Implementation Framework which is still to be completed.
- That other countries have shifted their implementation timetables to at least the end of 2023. Respondents identified that this, combined with the reasons above, could lead to uncoordinated outcomes and could also risk making the UK less competitive.

1.12 Related to timing, respondents also thought the government's proposal to apply the IIR to accounting periods which straddled the 1 April 2023 commencement date would create significant added complexity.

Intended approach

1.13 The government is committed to these major reforms and believes they will create a stable and effective international tax framework that secures confidence in the international tax system for many years to come.

1.14 However, the scale of these reforms, and the changes to the international tax framework, means businesses need time to adapt their processes and systems so they are able to comply.

1.15 There are also a number of important areas, which are still subject to international discussions, such as possible clarifications, simplifications to the rules and the treatment of other systems such as GILTI.

1.16 The government understands introducing these rules from April 2023 could risk requiring businesses to adapt their systems in advance of this, and that doing this while these issues are still under discussion would create significant challenges and uncertainty, that would risk undermining the long-term effectiveness of Pillar 2.

1.17 The government has therefore decided to apply the IIR to accounting periods beginning on or after 31 December 2023.

1.18 This will allow time for international discussions on the Implementation Framework to take place and ensures businesses will have sufficient time to prepare for the new rules, while still maintaining the UK's role as an international leader.

1.19 The revised implementation date also addresses the concerns businesses have raised around the complexity of calculating the GloBE Rules for part of an accounting period.

1.20 The government intends to legislate the IIR in Finance Bill 2022-23 so businesses have as much certainty as possible on the requirements in the UK legislation, and the maximum time possible to prepare. It has accordingly published draft legislation for further consultation.

1.21 The focus to date has been to turn the Model Rules into the domestic legislation. The overall approach to the draft has been to closely follow the intent of the Model Rules but to adapt the structure and drafting in places in an attempt to ensure the rules are as clear and understandable to readers as possible.

1.22 While additional certainty has been provided in the draft legislation where possible, there were several issues raised during the consultation that the government believes should be addressed within the context of Administrative Guidance as part of the Implementation Framework at the OECD. This will ensure that consistency is maintained across Implementing Jurisdictions and minimise the risk of disputes or uncertainty.

1.23 Later chapters provide more detail about the specific areas where the government believes further international engagement is needed as a matter of priority. It will remain open to resolving some issues domestically where it is necessary to avoid disproportionate and unintended outcomes, provided this does not challenge the common approach or produce risks to the Exchequer or of double taxation to businesses.

1.24 The government is committed to leading the international work and will seek to use the insight gained through this consultation to shape the outcomes in the Implementation Framework and ensure that the GloBE Rules are as robust, effective, and proportionate as possible.

1.25 The government believes a primarily international approach is optimal and in the interests of all parties. However, as the Implementation Framework will be agreed through consensus within the Inclusive Framework, there are places in this document where it is not possible to confirm at this stage what the final outcome will be. The government recognises this may pose challenges for businesses in understanding their obligations and this is one of the main reasons why the implementation date has been deferred until the end of 2023.

1.26 There will also be a later update on the timing and design of the UTPR in light of wider developments internationally.

Next steps

1.27 The government would like to thank respondents for their helpful and constructive feedback and active engagement throughout this consultation.

1.28 The government welcomes feedback on the draft legislation that has been published alongside this summary of responses and welcomes continued engagement with stakeholders as we approach Implementation Framework discussions on the international level.

1.29 This technical consultation will last until 14 September 2022 to inform the final drafting of the legislation.

Chapter 2

Pillar 2 Overview

Policy Objectives

2.1 This consultation did not request responses regarding the fundamental policy objectives of Pillar 2, which were set out by the G20. Those objectives stay consistent:

- 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 In their responses to the specific questions posed, including detailed comments on the OECD Model Rules, respondents indicated that they understood these objectives and accepted that both the Model Rules and the government's outline for UK implementation were in line with them.

Government Response

2.3 As part of the two-pillar solution, the introduction of Pillar 2 represents one of the most significant changes to the international tax system in a century. Designing an effective and practicable framework that met the requirements of the policy objectives was challenging, and the government is highly appreciative of all parties for their work in producing that framework and securing political consensus.

2.4 Among the many parties that have contributed to the development of Pillar 2 the UK has been a key figure through our G7 presidency, as part of the G20, and in the design and technical analysis of the rules as a member of the Inclusive Framework. The UK has worked closely and continuously with the OECD from the earliest stages of Pillar 2, making significant and valued contributions to the final version of the rules that have been approved by 137 jurisdictions.

2.5 The government is particularly grateful to its counterparts in the Inclusive Framework and the OECD Secretariat for their work in the development of the Model Rules and Commentary, and for the work that will be done in the Implementation Framework and beyond.

2.6 The government is also grateful to the external stakeholders whose views contributed to the process and the design of the rules. It notes the depth of understanding demonstrated in their responses to the UK consultation.

2.7 The policy objectives have the full support of the government, and the implementation of Pillar 2 in the UK will be done in a way that is fully consistent with these objectives. The government is committed to enacting legislation that will pass the qualification process in the Inclusive Framework.

Pillar 2 Framework

Government Response

2.8 The government believes that the structure of Pillar 2 presented in the Model Rules is the most effective way to achieve the policy objectives. There has been no change to this fundamental structure during the consultation phase.

2.9 The government considers that the issues raised by respondents should be addressed within the existing framework of the IIR and UTPR. There was no suggestion from stakeholders that a change to the structure would be necessary to implement Pillar 2 effectively, either on a multilateral level or specifically in the UK.

Chapter 3

Common Approach

Question 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?

How the government should approach legislating the Model Rules

3.1 There was general agreement among respondents that the common approach was important and that it is important the GloBE Rules are implemented consistently in different jurisdictions.

3.2 However, there were different views on how closely the UK legislation should follow the OECD Model Rules.

3.3 Most commonly, respondents held the view that the government should be consistent with the underlying principles and policy intention behind the Model Rules, but that the legislation should be adapted where necessary to ensure it is consistent with these principles. These respondents thought it should be acceptable to modify the drafting of the Model Rules to improve clarity and provide greater certainty, provided the legislation was consistent with the policy intention of the Model Rules.

3.4 However, some respondents thought the government should stick very closely to the precise drafting of the Model Rules, in order to maximise consistency in implementation across jurisdictions.

3.5 Others noted that there were some areas in the Model Rules which leave scope for countries to interpret the rules in different ways in their legislation.

Changes to the Model Rules

3.6 Additionally, many respondents felt that there were more significant issues in the Model Rules themselves which need to be addressed. The specific issues are discussed in more detail in later chapters but can broadly be put into two categories. The first set of issues were where respondents thought the Model Rules meant the outcomes under the Model Rules could be inconsistent with the overarching policy objectives of the GloBE Rules. The second concerned issues with the interaction between the GloBE Rules and the broader UK tax system. Respondents felt there were areas where the GloBE Rules could undermine wider government policy objectives or produce unjustified top-up taxation.

3.7 There was not a clear consensus on how the government should seek to resolve these issues. Some respondents emphasised the importance of maintaining consistency and considered that the government should push to agree changes with members of the Inclusive Framework, arguing this was necessary to prevent countries taking different approaches, which they felt would risk disputes and double taxation. They also noted the risk of not being qualified as an IIR, which could lead to double taxation.

3.8 Others thought the government should be prepared to address issues domestically in the UK's Pillar 2 legislation. Some of these respondents identified certain principles that they thought could be used to assess whether changes to the Model Rules in the UK domestic legislation are justified.

3.9 For example, these respondents thought changes could be justified where they were necessary for the avoidance of double taxation or to reduce the risk of disputes. Some also viewed that the government should consider changes which are necessary to prevent distortions that would affect the competitiveness of UK business.

3.10 Finally, some respondents thought the government should consider making changes to wider domestic tax rules, where these could resolve problems or improve outcomes under the GloBE Rules.

Question 2: Do respondents have any views on how the common approach can be more effectively achieved at a global level?

3.11 There was general agreement that the Implementation Framework would be essential to achieving a common approach between jurisdictions and respondents offered several ideas on how best to achieve this.

3.12 Some respondents thought it was important to have a common commencement date across Implementing Jurisdictions. They were concerned countries introducing the rules at different times could lead to inconsistencies. Other respondents wanted guidance on how to proceed if an intermediate parent is briefly subject to an IIR before the UPE jurisdiction implements its IIR.

3.13 There was widespread agreement that the qualification processes for the IIR, UTPR and Domestic Minimum Taxes would be crucial. Many thought that effective peer review of domestic legislation would be necessary to maintain the common approach. Additionally, some expressed a desire for early certainty on what domestic legislation would be treated as a qualified IIR.

3.14 Some respondents thought it was important to ensure that Implementing Countries interpreted the Model Rules consistently in their legislation and their administration of the rules. These respondents thought there were areas in the Model Rules where the rules were unclear and considered it important that the Inclusive Framework produce Administrative Guidance to clarify how the rules should be interpreted and applied, to maintain consistency. A small number of respondents went further and wanted the Model Rules to be redrafted to improve clarity. Finally, others argued the common approach could not be achieved until there was clarity on outstanding issues like the treatment of GILTI under the GloBE Rules.

3.15 There was also strong support for a coordinated approach to GloBE reporting requirements, with support for a standardised Information Return and centralised filing. Some respondents wanted an Exchange of Information mechanism to be in place before implementation to reduce the compliance burdens on business.

3.16 Some respondents thought that Safe Harbours could play an important role in achieving a common approach. These respondents emphasised the importance of coordination and thought the best way to reduce the impact of inconsistencies in implementation would be to reduce the number of situations where multiple countries are simultaneously applying the GloBE Rules to a low-taxed entity. They consequently argued that an MNE should not be subject to the GloBE rules when the profits are subject to a Qualified Domestic Minimum Tax. Safe Harbours and other simplification methods are discussed in detail in Chapter 10.

3.17 Finally, respondents were concerned that differences between the rules in Implementing Countries could cause disputes and thought there was a significant risk of double taxation or over-taxation unless there was an effective multilateral dispute resolution mechanism within the Pillar 2 rules.

Government response

3.18 The government is committed to the common approach. It was integral to the international agreement in October 2021 and is necessary to ensure the consistent implementation of the rules. This consistency will be essential to achieving the policy objectives of the GloBE Rules and ensuring that profits are subject to a consistent minimum level of tax in each jurisdiction. Further, the government notes that departing from the common approach would produce inconsistencies that would increase the risk of double taxation or double non-taxation.

3.19 The government consequently intends to legislate in line with the intent of the Model Rules, as required under the common approach. As respondents identified, there are some areas within the Model Rules where the application is uncertain or not as clear as it could be. The government will look to clarify these areas in the UK's domestic legislation to provide additional certainty and clarity of the expected outcomes. For example, the government has sought to include in its legislation further rules which reflect the outcomes expressed in the Commentary, where it considers these were unclear within the Model Rules themselves.

3.20 It also intends to work with its international partners to agree Administrative Guidance which clarifies in further detail how the rules are expected to apply.

Changes to the Policy Design

3.21 Throughout the consultation there were a number of areas raised where stakeholders expressed concerns with the Model Rules or thought that differences between the GloBE Rules and Corporation Tax bases could result in a top up and argued that changes to the Model Rules were necessary.

3.22 While the government understands these concerns the Model Rules were agreed following intensive negotiations and represent a compromise among over 130 countries. Given the variation between tax systems in different jurisdictions and the need for consensus, it was inevitable there would be some differences between

the GloBE base and corporation tax base. In addition, several countries have now started the process of implementing these rules into their domestic legislation.

3.23 There is consequently a very high threshold for agreeing substantive changes to the Model Rules. The government considers there would need to be:

- Clear evidence of undesirable outcomes that are not consistent with the objectives of the GloBE Rules;
- A viable alternative approach that is contained and does not have an impact on other areas of the rules; and
- Broad consensus among the members of the Inclusive Framework that the change is necessary.

3.24 It therefore will not be possible to address every issue where respondents have indicated a preference to change the Model Rules. The government also does not believe this would be realistic or desirable.

3.25 Despite this, the government does believe some of the issues raised in the consultation may have satisfied the threshold and do deserve further consideration at the international level.

3.26 It is committed to discussing these with its international partners and will seek to solve issues multilaterally as part of the Implementation Framework, for example through processes such as "Agreed Administrative Guidance."

3.27 The government is also open to resolving issues domestically, where it is necessary to avoid disproportionate and unintended outcomes, does not challenge the common approach and does not produce risks to the Exchequer or of double taxation to businesses.

3.28 The legislation of each jurisdiction will need to be evaluated by the Inclusive Framework to assess whether it meets the standards of a Qualified IIR. The government only considers domestic action to be appropriate insofar as it does not impact the qualified status of the UK IIR.

3.29 The government will be working at the OECD level to ensure that this qualification process is rigorous and fair and recognises that certainty should be given as early as possible on the outcome of this process.

Implementation Framework

3.30 The October statement set out that the Inclusive Framework would develop an Implementation Framework to facilitate the effective and coordinated administration of the GloBE Rules. The statement set out that this work would be completed by the end of 2022, and a Workplan is due to be published by the OECD. There is more information on the Implementation Framework available on the OECD website: <https://www.oecd.org/tax/beps/oecd-invites-public-input-on-the-implementation-framework-of-the-global-minimum-tax.htm>

3.31 The government will take a leading role in the Implementation Framework and engage with stakeholders to develop effective guidance, processes, and simplification methods. This is discussed further in Chapters 10 and 11.

3.32 The government also recognises the significance of practical concerns in protecting the Common Approach, such as Exchange of Information and Dispute Resolution, and with partners is open to considering the benefits of a multilateral convention.

Chapter 4

Scope

Question 3: Do respondents have any comments on the calculation of the €750m consolidated revenue threshold?

- 4.1 Respondents generally supported the inclusion of the €750m threshold.
- 4.2 Many respondents thought that the threshold calculation should be aligned exactly with Country by Country Reporting (CbCR). They thought this would simplify the rules and ensure that there was consistency in the scope of both regimes. Conversely, a smaller number of respondents thought that the Pillar 1 and Pillar 2 threshold calculations should be aligned.
- 4.3 There were some technical comments about the calculation of the threshold. A number of respondents requested further guidance on the definition of revenue used in the threshold. They noted that the intention was to align the scope with CbCR but there were some differences in the definitions. For example, respondents highlighted that extraordinary income and gains from investment activities formed part of the CbCR definition of revenue but wouldn't be included in the GloBE threshold under the Model Rules.
- 4.4 Several respondents in the insurance sector considered that income relating to policyholders should not be considered when determining the threshold. Similarly, others thought that either revenue of Excluded Entities or revenue not from trade or business should be excluded, in order to prevent non-profit organisations from falling in scope.
- 4.5 The potential requirement to convert the Consolidated Financial Statements into Euros was considered by some respondents. Further guidance was requested, with some suggesting an election to assess the threshold in GBP if the statements were prepared in GBP. Others thought there could be alignment with CbCR, converting figures at the average exchange rate over the accounting period.
- 4.6 Several respondents wanted the threshold to be index linked.

Question 4: Do respondents agree the IIR should only apply to groups that meet this threshold?

- 4.7 Almost all respondents agreed that the UK should adhere to the threshold in the Model Rules when determining the scope of the IIR. They anticipated an increased administrative burden and damage to UK competitiveness if the IIR was applied to smaller groups.

4.8 It was noted that the EU draft directive extended the rules to Large Domestic Groups. Respondents were opposed to this extension being adopted by the UK.

Question 5: Do respondents have any comments on the definition of a group or of a constituent entity?

4.9 There was generally support for defining the group by reference to the consolidated financial statements, but there were a range of views about the technical drafting of the Model Rules.

4.10 Some respondents expressed general support for the existing definitions in the Model Rules, while others thought that these should be more closely aligned with the CbCR definitions. In particular, there was some concern around the requirement to create deemed consolidated financial statements for the purposes of testing whether the groups revenues met the threshold where these statements are not prepared.

4.11 Respondents were concerned this deeming provision could require entities to consolidate under the GloBE rules when they are not required to consolidate under accounting standards. They also thought further guidance would be useful on some related issues, such as how to create the deemed Consolidated Financial Statements where it is not required under accounting standards.

4.12 Respondents also sought further clarity on a number of issues, including:

- Whether an entity is still in scope if it is not consolidated for materiality reasons.
- How to measure the 20% ownership interest required for a Constituent Entity to be considered a Partially Owned Parent Entity (POPE).
- Whether certain types of entity, including Lloyd's syndicates, are treated as Tax Transparent Entities under the Model Rules.

4.13 There were also questions and requests for clarity around the definition of Permanent Establishments.

4.14 In particular, respondents requested greater clarity around the tax treaty test in part (a) of the Model Rules definition. There was some uncertainty whether this test was limited to the Permanent Establishment and Business Profits Articles of the relevant Tax Treaty or alternatively, looked across the whole treaty and tested whether the source jurisdiction had taxing rights over a Permanent Establishment.

4.15 There were also questions around which part of the permanent establishment definition a branch would be treated under in certain situations, and requests for further clarity over terms in the definitions, for example the reference to "deemed place of business". In particular, subparagraph (d) in the definition attracted several comments. Respondents thought there needed to be further clarification about the distinction in the rules between the amount of income allocated to a jurisdiction under a treaty and the domestic rules in calculating how much of that income is taxable.

Question 6: Do respondents have any comments on the excluded entity rules and definitions?

4.16 There were several comments about the Excluded Entity rules.

4.17 A number of respondents commented on the exclusion for non-profits. Some raised concerns that the revenue from the charitable activities is not excluded from the threshold and thought this could result in non-profit organisations falling in scope of the GloBE rules even if their activities met the Excluded Entity definitions.

4.18 They thought this could be problematic as many non-profit organisations have trading subsidiaries which would be Constituent Entities in the group. These trading subsidiaries benefit from Gift Aid deductions on distributions, and respondents raised concerns this could, in their view, inadvertently lead to a top up.

4.19 There were similar concerns that trading activities carried out within the non-profit organisation itself could prevent the non-profit organisation from qualifying as an Excluded Entity because the definitions were too narrowly drawn.

4.20 Stakeholders requested further guidance on the meaning of “ancillary” in Article 1.5.2.

4.21 Some respondents wanted to broaden the definitions of some types of investment vehicles, to ensure that no entities were unintentionally included within GloBE. For example, some respondents suggested that the exclusion for Pension Funds should be expanded to also exclude arrangements used to back pension policy liabilities.

4.22 Respondents were also concerned that the 95% ownership requirement could prevent some asset holding companies from being treated as an Excluded Entity (or Investment Entity) and that this could undermine the tax neutrality of investment fund structures. They noted it was not uncommon for the ownership of asset holding companies to fluctuate and that these commercial events could bring these entities into scope.

4.23 There were also requests for clarification on how securitisation vehicles would be treated under the GloBE Rules, where respondents noted that the MNE Group may not hold an ownership interest in the vehicle.

Question 7: Do respondents have any views on the definitions of international shipping income?

4.24 Several respondents thought that the criteria for International Shipping Income was too stringent in the Model Rules, and that it should adhere more closely to the definition in the Model Tax Convention.

4.25 Clarity was sought on the attribution of GloBE income and Covered Taxes where there is a difference between domestic shipping tax regimes and the exclusion. Some raised the possibility of UK companies being allowed to opt out of the Tonnage Tax regime.

4.26 Guidance was requested for groups which also have non-international shipping income, and whether profits and losses from hedging would be included in Qualified Ancillary International Shipping Income.

Government Response

Threshold

4.27 The government intends to implement the €750m consolidated revenue threshold in accordance with Article 1.1 of the Model Rules. Entities in MNE groups will not be made subject to the GloBE rules unless they meet this threshold.

4.28 The government recognises that it is important that there is consistency between jurisdictions on the threshold, and that this is a concern for businesses, which will need to know whether or not they are in scope of GloBE.

4.29 The government agrees that additional clarity is required on some aspects of the threshold and will work with international partners to ensure adequate Administrative Guidance in this regard.

4.30 Additionally, MNEs will sometimes need to convert the figures in their Consolidated Financial Statements to assess the threshold in the relevant legislation. The government acknowledges that a consistent methodology is required to prevent distortions, and it will also seek a consistent and proportionate way of achieving this.

4.31 The government believes that there is unlikely to be further agreement at the OECD level to exclude any particular types of revenue from the determination of the threshold. Such a change would require a consensus within the Inclusive Framework, and as the threshold was extensively discussed in the development of the rules, the government considers it unlikely this would be revisited.

The MNE Group and Constituent Entities

4.32 The government is considering a number of the specific issues raised around the meaning of an MNE Group for the purposes of the Pillar 2 rules.

4.33 The government notes stakeholder concerns around the deemed consolidation of investment entities and will work with international partners to create Administrative Guidance to clarify that these entities will not be required to consolidate where this is not needed under the accounting standard used by the MNE.

4.34 In developing draft legislation for UK implementation, the government has also identified and attempted to clarify some of the issues raised by stakeholders where to do so doesn't impact on the consistency of the international approach. This includes the process of consolidating entities which are not included in the Consolidated Financial Statements on materiality grounds, or the calculation to determine whether an entity meets the 20% ownership interest requirement to qualify as a Partially-Owned Parent Entity.

4.35 The government will also work within the Implementation Framework to clarify further technical points raised in the response to the consultation, including the definition of Permanent Establishment.

Excluded Entities

4.36 The government welcomes the responses provided by stakeholders on the subject of Excluded Entities.

4.37 The government agrees with stakeholders that the inclusion of the revenues of Excluded Entities in the threshold means that trading subsidiaries of non-profit organisations could be in scope of the GloBE Rules. The government does not consider there was an intention to charge a top up on these subsidiaries where the trading activities are carried out for the sole purpose of raising funds for the non-profit making activities and the revenues generated represent a small proportion of the total revenues of the MNE Group. It therefore intends to work with international partners to ensure there are consistent and proportionate outcomes.

International Shipping

4.38 The scope of the exemption for international shipping income was extensively discussed prior to the agreement of the Model Rules, so it is unlikely that this will be revisited. However, the government agrees there is scope to clarify the application of certain aspects of the rules and will look to ensure this clarity is provided.

Chapter 5

Calculating the Effective Tax Rate

Question 8: Do respondents have comments on the practicalities of computing a constituent entity's accounting profit?

5.1 There were a number of responses to this question.

5.2 Respondents were concerned that there was insufficient clarity about which accounting treatment was expected to be used in a number of situations. They noted that the general rule requires consolidated accounting before consolidation adjustments are made but thought it was unclear which adjustments or items were considered consolidation adjustments. For example, respondents thought it was unclear whether outside basis deferred tax should be included or not or whether assets like properties should be classified according to their use from a consolidation or entity level perspective.

5.3 Respondents also thought the use of consolidated financial statements could create some challenges for the GloBE Rules. In particular, they noted that the Consolidated Financial Statements are prepared earlier than entity accounts and that this, together with the higher materiality threshold, means the figures are estimates and not necessarily at the level of accuracy that would be expected for a tax regime. They thought the use of entity accounts would enable businesses to update these estimates with more robust numbers.

5.4 There were also some concerns that businesses preparing their accounts under US GAAP may not be able to satisfy the merger and acquisition requirements in Chapter 6 of the GloBE Rules. They noted that US GAAP permits greater use of purchase accounting and that it may be difficult to exclude this from the figures to determine the historical carrying value of assets, particularly in respect of historic acquisitions. They further noted that there may not always be entity level accounts available so Article 3.1.3 may not be an available option to those businesses.

5.5 There were also some specific questions around how the rules should be applied in particular fact patterns. For example, respondents wanted guidance on which set of accounts should be used if multiple sets of accounts are prepared by a UPE and wanted to know whether individual entity accounts could be used under Article 3.1.3 when they were made up to a different period to the Fiscal Year.

5.6 Many respondents were also concerned about the potential complexity of determining the profit of each Constituent Entity. There were particular concerns about the complexity of determining the profit of a permanent establishment. Respondents noted that any accounts for the branch would likely be based on the

standard of the Main Entity and not the UPE and also thought there would be many cases where line by line accounts for the branch do not currently exist.

5.7 These respondents thought the Implementation Framework should explore simplifications, for example calculating the accounting profit at a jurisdictional level.

Question 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?

5.8 There were a wide variety of responses to this question. These were broadly split between requests for greater clarity or amendments to the permanent adjustments within Chapter 3 of the Model Rules, and responses which asked for further adjustments to be made to ensure greater alignment with the Corporation Tax base in the UK.

Comments on the provisions in the Model Rules

5.9 There were various comments on the provisions in Chapter 3.

5.10 Respondents thought the requirements to track the period of ownership over which Portfolio Shareholdings are held are onerous and could impose significant compliance costs for businesses, especially for financial services industries which transact in high volumes of portfolio shares.

5.11 Some respondents thought the adjustments for Accrued Pension Expenses would not cover situations where a defined benefit pension scheme was in surplus and when there was income recognised in the Income Statement rather than an expense.

5.12 The Article 3.2.5 election was mentioned in a number of responses. Respondents thought this election was currently too restrictive and should be made more flexible to make it more valuable to businesses.

5.13 For example, they noted that the election generally applies to all assets and liabilities within a jurisdiction. They thought that MNEs should be able to elect to treat some assets or liabilities on a fair value basis and others on a realisation basis. They also suggested that it should be possible to apply the election to certain entities in a jurisdiction and not others, because MNEs may have jurisdictions where some entities are subject to the mark-to-market basis, while other entities are subject to a realisation basis.

5.14 Additionally, respondents sought confirmation that making the election under Article 3.2.5 would prevent the ability to use the provision at Article 4.4.5. Finally, some thought that there should be greater flexibility around the opening carrying value of the assets and liabilities when the election is made when MNEs first enter the rules.

5.15 On Article 3.2.6, respondents queried what would happen to the covered taxes paid on any chargeable gains when an election is made.

5.16 Respondents also thought there was insufficient certainty around the scope of Article 3.2.7 and the types of arrangements that would be caught. In particular, they requested clarification on how the rule applies in situations where the lender is loss-making or has historic losses.

5.17 There were a smaller number of comments around Article 3.2.8. Some respondents observed that transfers involving Flow-Through Entities in a tax consolidated group wouldn't qualify for the election because Tax Transparent Entities are typically treated as stateless entities in the Model Rules. They thought the Article should be extended to ensure these transfers also qualified for the consolidated treatment.

5.18 Some respondents in the insurance industry also requested further clarification on how Article 3.2.9 was intended to apply and asked for further guidance illustrating how the Article would be applied to the UK 'I-E' life insurance tax regime.

5.19 Many respondents observed that the rules for regulatory capital instruments in Article 3.2.10 are limited to instruments issued in the banking sector. These respondents argued this should be extended to other sectors, notably the insurance sector, which also issue similar instruments as part of their regulatory requirements.

Requests for further adjustments or changes

5.20 Respondents also raised some areas where the UK tax rules do not follow the treatment in the financial accounts. Without an adjustment, these areas create permanent differences in the GloBE base and could result in a top up becoming due where they are significant enough to reduce the ETR below 15%.

5.21 Respondents generally thought there were sound public policy reasons for departing from the accounting treatment and thought these should be accommodated within the Model Rules to preserve the effect of these domestic tax provisions.

5.22 Specifically, respondents were concerned that the Model Rules do not exclude credits arising from debt releases. They thought this could result in top up taxes on businesses in financial distress, especially in cases of insolvency.

5.23 Several respondents also raised the importance of excluding gains and losses on hedges against forex movements on Ownership Interests. They pointed out gains and losses on such hedges can be exempted under the Disregard Regulations and argued there should be a similar treatment under the GloBE Rules.

5.24 Some respondents also raised queries around whether the creative sector tax reliefs would meet the definition of a Qualified Refundable Tax Credit (QRTC) and argued it was important to ensure that Pillar 2 does not negate the value of these reliefs.

Question 10: Do respondents have views on the rules allocating profits between jurisdictions?

5.25 There were fewer responses to this question with most respondents expressing broad support for the current rules on allocating profits between jurisdictions.

5.26 Some respondents requested further guidance on how the Article 3.2.3 requirements to value cross border transactions in line with the arm's length principle would be applied in practice. Many of these respondents also expressed concerns that the Model Rules could result in punitive outcomes in relation to historic transfer pricing enquiries.

5.27 While respondents generally agreed the profits of transparent entities should be allocated to the owners of the entity, there were requests for further guidance on how to determine whether an entity is transparent. Some also noted there was a risk of double taxation where there is a chain of entities and some of the owners view the subsidiary as a reverse hybrid and others a transparent entity. They noted the rules assigning covered taxes to a constituent entity don't include a mechanism to assign the taxes to the reverse hybrid.

5.28 Respondents also noted it was important to set out the interaction between Pillar 1 and Pillar 2.

Question 11: What are respondents' views on the impact of the branch rules on business models involving branches taxed under the credit method?

5.29 Some respondents were concerned about the overall practicalities and complexity involved in computing the GloBE Income of branches. They noted that the MNE Group will not typically prepare financial accounts for a branch, given it is a tax concept, and that the accounting records which are available are likely to be prepared under the accounting standard of the Main Entity rather than under the standard used to prepare the group's consolidated financial statements. They also stated existing branch attributions for tax purposes may not be based on a line-by-line attribution but instead use other methodologies.

5.30 Respondents also considered that there were a number of technical areas where there needed to be further guidance and detailed examples.

5.31 These included guidance on how to calculate the amount of covered taxes accrued in respect of a branch which are reallocated from the head office. Similarly, respondents sought clarification on how this allocation should work when a Main Entity has both profitable and loss-making branches.

5.32 There were also queries around the rules that allocate losses of a branch to the head office, and in particular how these rules interact with the UK Group Relief regime and the anti-hybrid mismatch rules.

5.33 Some thought the government should consider allowing companies to revoke the election to the Branch Profits Exemption.

Question 12: Do respondents have views on the rules on Covered Taxes and their assignment?

5.34 There were a variety of responses on the subject of Covered Taxes.

What taxes qualify

5.35 There were several queries around whether specific taxes would be treated as Covered Taxes in the GloBE Rules. These ranged from subnational income taxes and notional withholding taxes on pension surpluses to gaming duties and Domestic

Minimum Taxes which are not qualified. Relatedly, many respondents thought that the Inclusive Framework or HMRC should produce a comprehensive list of Covered Taxes in each jurisdiction.

5.36 Respondents similarly asked for further clarification on which jurisdiction certain taxes, including Diverted Profits Tax or taxes paid under the Offshore Receipts in Respect of Intangible Property, would be allocated to.

5.37 There were also requests for a centralised list of Qualifying Refundable Tax Credits. While most commenters agreed with the government's analysis that the RDEC should be treated as a QRTC, some thought it was important for this to be put beyond doubt.

5.38 Respondents also requested clarification of the CFC definition, and in particular argued that the GILTI should be treated as a CFC regime if it is not regarded as a Qualified IIR.

Calculating Covered Taxes

5.39 There were also a number of comments received about the computational rules for determining and allocating covered taxes.

5.40 Respondents thought the Model Rules are unclear on which financial statements should be used to compute covered taxes, and in particular deferred tax.

5.41 Some thought covered taxes in respect of uncertain tax positions should not be excluded, arguing that these were subject to audit and therefore represented a true and fair view.

5.42 Further guidance was requested on how to calculate the amount of CFC charges which are accrued by a Constituent Entity owner in respect of a CFC. Respondents noted that certain regimes allow the pooling of foreign tax credits and mean different approaches could be taken to calculating the CFC charge of an individual CFC.

5.43 There were similar questions around how to calculate the amount of policyholder taxes which are excluded from covered taxes of a life insurance company.

5.44 Respondents in the insurance industry were also concerned that the introduction of IFRS17 could lead to significant timing differences and that the GloBE Rules could restrict options to spread the impact of these transitional adjustments.

5.45 Some respondents also queried whether Deferred Tax should be reallocated to other entities in the same manner as allocations of current tax under Article 4.3. For example, respondents asked whether the utilisation of a loss against a CFC charge should result in the tax in respect of the reversal of the DTA being reallocated to the CFC. A number of these respondents thought that the Covered Taxes should be assigned to the entities where the income or loss is allocated.

Question 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?

5.46 The rules to address timing differences attracted a large number of responses. Some comments focussed on perceived problems with the Model Rules and areas where respondents felt changes to the policy were needed, while others requested additional clarification on the detailed rules.

5.47 On the former, many respondents were opposed to Article 4.1.5, which charges a top up when local tax losses exceed the loss in the financial accounts as a result of permanent differences between the GloBE Rules and the local tax base.

5.48 Respondents considered this provision was not in line with the overarching policy objectives of the GloBE Rules to impose a minimum tax on the profits in a jurisdiction. This is because Article 4.1.5 could result in top up taxes being charged when the MNE made a loss in a jurisdiction.

5.49 Some respondents also noted that MNEs may lose the benefit of the substance-based carve-out as a result of Article 4.1.5.

5.50 Respondents proposed a number of different solutions to this issue. Some respondents thought the MNE should be allowed to identify local tax losses which were created by permanent differences and then disallow these from being included in Adjusted Covered Taxes. These respondents challenged the view that this would be complex or difficult to administer for tax authorities. Other respondents suggested the top up calculated under Article 4.1.5 could be deferred until the local tax loss was utilised and the benefit from the permanent difference was obtained.

5.51 Respondents were also concerned by the requirement in Article 4.4.3 to value Deferred Tax Assets and Deferred Tax Liabilities at the minimum rate rather than the local tax rate. Respondents argued this could result in top up charges when tax losses are used because restricting the deferred tax impact on the numerator to 15% would mean the group cannot rely on a higher local tax rate to shelter permanent differences. Some respondents also thought the recast to the minimum rate could create additional volatility in the ETR which could result in top up charges even though a group was highly taxed over time.

5.52 Finally, some respondents were concerned by the recapture mechanism that requires the ETR to be recalculated when a Deferred Tax Liability has not reversed within 5 years. Some responses questioned the need for this recapture mechanism, whereas others focused on the potential complexity involving in tracking when Deferred Tax Liabilities reverse.

5.53 Some respondents suggested MNEs should be able to make an irrevocable election to exclude deferred tax from the Adjusted Covered Tax figure to address these issues and simplify the rules.

5.54 There were also a number of more technical queries and requests for further guidance.

5.55 These included requests for examples of the interaction between Articles 4.4.1 and 4.4.3 and the calculation of the total Deferred Tax adjustment.

5.56 Respondents also requested clarification on the definition of insurance reserves in relation to the Recapture Exception Accrual and asked whether banking reserves should be included.

5.57 Some respondents reiterated their opposition to unilateral improvements to the Model Rules.

Government Response

Accounting profit

5.58 The government agrees that additional guidance is required on the calculation of the Effective Tax Rate (ETR), and welcomes the points raised in the response to the consultation.

5.59 The government will be working closely with international partners to produce this guidance, including the extent to which entity accounts can be used to update estimates. Another issue of priority consideration is clarification on the circumstances when the consolidated accounting treatment or treatment in the entity accounts should be used to compute GloBE Income.

Adjustments

5.60 The government has provided some of the clarity requested by respondents in the draft legislation. This includes adjustments for Accrued Pension Expenses in certain situations where a defined benefit pension scheme is in surplus.

5.61 For other issues, the government considers that the best method for addressing the issue is to produce internationally agreed Administrative Guidance. It will be seeking to address these issues at the OECD level.

5.62 The government accepts that where a credit arises from a debt release, it can produce significant adverse outcomes in some scenarios. These concerns will be raised as part of the Implementation Framework.

5.63 The government agrees that gains or losses on hedging should be excluded if the hedges are made in relation to an excluded item, in line with the Disregard Regulations. This had been identified in the Commentary as requiring resolution, and the government will also take these concerns forward to the Implementation Framework.

5.64 The government notes the questions raised about reliefs by stakeholders and will consider these in light of the outcomes of the Pillar 2 work.

Covered Taxes

5.65 The government is open to providing additional clarification on whether a particular tax should be treated as a Covered Tax or not where there is genuine uncertainty, or where a point of principle is unclear. However, it is not convinced it would be practical or a sensible use of time and resources to produce a comprehensive list of all covered taxes in the world, given this would be a significant undertaking and that such a list could only ever be informative. Nonetheless, it is open to discussions on how to provide appropriate assurance on this in the Implementation Framework.

5.66 Of taxes that were specifically queried by respondents, the government considers that the Digital Services Tax is not a Covered Tax, but can confirm that Diverted Profits Tax, Offshore Receipts in Respect of Intangible Property and the US Federal Excise Tax will all be treated as Covered Taxes.

Timing differences

5.67 The government understands the concerns raised by businesses around Article 4.1.5 potentially leading to top up taxation in a period in which the MNE made a loss in a jurisdiction. While the basic mechanism of this Article is necessary, the government will explore potential options that could address issues relating to the timing of the charge and the ability to access the carve-out. It will explore these issues with international partners and, separately, consider whether concerns could be mitigated by amending the existing UK domestic tax regime.

5.68 On the recast of Deferred Tax to the minimum rate, the government notes the concerns businesses have raised. However, it is important to note that the tax above 15% is not lost, and that the recast only affects when this additional tax is recognised. It is not clear this is necessarily detrimental to business as the outcomes will depend on the profile of tax and profit in the affected years.

5.69 The government also does not consider changes on the recast are feasible. The recast was agreed as part of negotiations in which a number of countries expressed significant concerns about deferred tax liabilities being recognised at the headline CIT rate. It would also be difficult to revisit the recast without making wider structural changes to the rules to address timing differences.

5.70 Similarly, the recapture mechanism is an important provision in the Model Rules and was essential to building consensus around the use of DTA to address timing differences. The government recognises the tracking of individual timing differences creates practical challenges for some businesses and will look to ensure there is appropriate Administrative Guidance, so it is clear what is expected. However, the rule by its nature does necessitate items to be tracked individually.

Chapter 6

Calculating the Top-up Tax

Question 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?

Investment Entities and Insurance Investment Entities

6.1 There were a large number of responses on the rules for Investment Entities and Insurance Investment Entities.

6.2 Some respondents were concerned that the GloBE Rules could result in double taxation and undermine the tax neutrality of investment funds. These respondents were concerned that the ring fenced ETR computation of Investment Entities in Article 7.4 does not take into account all taxes paid by investors in respect of the profits of the Investment Entity. In particular, respondents raised concerns that capital gains taxes were not reallocated from the investor to the Investment Entity. They argued this could result in top up taxes even when the profits are fully taxed by the investor.

6.3 They thought that the elections for Investment Entities wouldn't help. In particular, they thought the Transparency election wouldn't resolve the issue because the requirements that the Constituent-Entity owner is subject to tax on a mark-to-market basis meant investment funds taxed on a realisation basis wouldn't qualify for the election.

6.4 Similarly, there were concerns mutuals wouldn't meet the conditions for the Transparency election and that this could result in significant over-taxation.

6.5 There were concerns investment entities and their asset holding companies could be charged top up taxes in certain situations and that this would undermine the tax neutrality of these investments. For example, respondents were concerned that an asset holding company could temporarily fall below the ownership requirements to be treated as an investment entity under the GloBE Rules and that this could result in those entities being treated as Partially Owned Parent Entities.

6.6 Finally, there were concerns that the Article 7.4 ETR computation did not work properly for Real Estate Investment Vehicles, particularly those in a REIT group. Respondents were concerned that the taxes paid on Property Income Distributions would not be credited in the ETR computation of the REIT. This is because the tax is not borne by a member of the MNE Group, but by the investors themselves, and there is no allocation mechanism for taxes paid outside of the group.

6.7 Respondents also raised several detailed technical comments and requests for clarification on how the rules should be applied. These included requests to expand the Article 7.6 election to Insurance Investment Entities, requests to clarify the status of certain types of fund vehicle or how the elections work when investors are subject to tax on a Mark to Market basis for certain types of income and not others.

6.8 There were a number of ideas put forward on how these issues could be addressed.

6.9 Some respondents thought the access to these elections should be widened or that the taxes which are reallocated from the investor to the Investment Entity should be expanded.

6.10 Others thought the issues could be addressed through making changes to the UK's domestic tax rules for the taxation of funds, so that the domestic tax rules met the requirements of the elections.

6.11 Some respondents also considered it to be a principle of the Model Rules that investments backing policyholder liabilities should not be taxed under GloBE and thought the tax-neutral status of these funds should be specifically protected by expanding the scope of the pension fund excluded entity definition.

6.12 Finally, some respondents thought it was disproportionate that a Minority Owned Constituent Entity could be subject to full top up under the UTPR when the MNE's interests in that entity could be as low as 30% of the Ownership Interests.

Joint Ventures and Minority Shareholdings

6.13 Some respondents were concerned about the ring-fencing of Joint Ventures, which they thought might create a disincentive to make investments through joint ventures. In particular, there were concerns that ring fencing could undermine consortium relief and other regimes designed to allow loss-sharing between a Joint Venture and its owner.

6.14 Several respondents noted the potential practical difficulties in obtaining the information required for the GloBE Information Return. These respondents thought this could require sharing commercially sensitive data and could also require the renegotiation of agreements.

6.15 Respondents also questioned the application of the rules where there is a Joint Venture between an MNE and a government entity, which can create discrepancies between the equity ownership percentage and the share of profits actually received.

6.16 Further guidance, with examples on the Joint Venture rules, was also requested.

Question 15: Do respondents have views on the process for calculating top up tax?

6.17 Some respondents thought the allocation of top-up tax on an entity, rather than jurisdictional basis, was onerous. They requested an election to compute the top up tax on a jurisdictional basis if the Ultimate Parent Entity is subject to a qualified IIR and the constituent entities in the group are all wholly owned by the

group. They thought this would simplify the rules and should not cause concerns because in this scenario any top up tax would be suffered by the UPE under the IIR so the UTPR and IIRs at other levels of the group would not apply.

6.18 Some respondents requested additional guidance on the carve-out.

6.19 In respect of the payroll element of the carve-out, respondents sought clarification on how to treat share-based compensation, and also suggested that, if one individual worked for multiple entities, it should be possible to allocate employee costs between entities.

6.20 In respect of the tangible asset element, respondents sought clarification on the meaning of “located” and wanted to know how to treat assets that were located in different jurisdictions during the period. Respondents also wanted further information on the treatment of leased assets, including where the ‘right of use’ approach is not used, and whether they would still be excluded if leased to another entity in the same group.

Government Response

6.21 The government welcomes the responses received from stakeholders and will continue to work with the industry to further understand the scale of the potential impacts of the Model Rules and explore practical solutions.

6.22 The government is working internationally to resolve the issues concerning mutuals and will explore with partners whether there is consensus to deal with the wider fund issues raised.

6.23 The government notes the points on which respondents requested clarity and has sought to address these points in the draft legislation where possible.

6.24 The government understands the concerns raised about Joint Ventures. It considers that the concerns around information sharing should already be mitigated in the Model Rules by the ring-fenced ETR calculation and through collecting any top up in the MNE Group rather than in the joint venture.

Chapter 7

Charging Mechanisms

Question 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?

7.1 There was widespread agreement that it was essential that the IIR was treated as a Qualified IIR by other jurisdictions. Respondents believed this was necessary to prevent other jurisdictions applying the UTPR to the overseas activities of UK headquartered multinationals.

7.2 Some respondents thought that the Model Rules should be followed as closely as possible in order to achieve this, and also highlighted the importance of consistency between jurisdictions.

7.3 Respondents considered it to be important to have clear priority rules and provisions to prevent double taxation, or to have a mechanism that deals with any double taxation that might arise.

7.4 Some respondents raised concerns with the compatibility of the IIR with Double Tax Treaties and supported a multilateral instrument to put the treaty compatibility beyond doubt.

7.5 Respondents requested more detailed guidance, with further worked examples and flowcharts.

Question 17: Do respondents have any views on how information or administration challenges with the split ownership rules could be addressed in the implementation framework?

7.6 Respondents noted a number of problems that they anticipated in relation to the split ownership rules.

7.7 It was observed that POPE provisions might result in multiple tiers of IIRs and that this could increase compliance costs for an MNE.

7.8 Some thought that the information required on the Information Return should not be excessive. They noted that there were concerns around confidentiality where commercially sensitive information needed to be passed to partially owned entities with minority investors. Some considered that the split ownership rules could require groups to create new arrangements for information sharing.

7.9 There was a desire for simplification among respondents, including the possibility of a simplified calculation for MOCEs, or a grace period in which MNEs would have the opportunity to agree new arrangements with relevant entities.

7.10 Further guidance was requested on the computation of the 80% ownership interest threshold for determining whether a Constituent Entity is a Partially Owned Parent Entity (POPE). In particular, respondents asked for further clarity where an entity has different share classes with different rights or has issued equity-like debt or other instruments.

Question 18: Do respondents have views on how the UTPR should be brought into charge in the UK?

7.11 The majority of respondents preferred UTPR to be collected by a separate charge.

7.12 Those respondents thought this was a simpler approach and would avoid significant complications with amendments to the CT return and limit complex interactions with other CT rules. They also thought including the UTPR on the CT return could negatively affect taxpayer certainty as compliance activity could delay returns from becoming final. This was also linked to the general preference for annual payments rather than Quarterly Instalment Payments, as discussed in Question 24.

7.13 However, a small number of respondents thought that UTPR should be collected by a denial of deduction. They considered this method to be stipulated by the Model Rules.

7.14 Some respondents also noted that their preference would be affected by the extent to which a charge was capped by reference to deductible payments.

7.15 Finally, some respondents were concerned the UTPR could conflict with treaty obligations not to tax the business profits of non-resident enterprises and thought there may need to be changes to treaties to facilitate the effective introduction of the UTPR.

Question 19: Do respondents have any other comments on the UTPR provisions in the OECD Model Rules?

7.16 A number of respondents had views on the UTPR allocation key. They thought that this allocation was potentially arbitrary and could result in jurisdictions with significant economic substance being allocated a comparatively small amount of the UTPR charge.

7.17 In particular, some thought the use of tangible assets and headcount to determine allocation would not produce reasonable results for particular industries, such as finance and insurance, and thought that regulatory capital and KERT functions should be taken into consideration, as they are in UK CFC rules.

7.18 Where a jurisdiction has uncollected UTPR because the relevant entities did not have sufficient deductions to deny, Article 2.6.3 stipulates that no further UTPR will be allocated to that jurisdiction. A number of respondents suggested that a de minimis be included, so that UTPR would still be allocated if there was an immaterial uncollected amount.

7.19 Respondents wanted further information about the operation of UTPR. In particular, they sought further information about how UTPR would interact with other GloBE rules and Domestic Minimum Taxes, including clarification that UTPR would not be charged if a qualifying domestic IIR is applied to the UPE.

7.20 There were also a number of comments about the allocation of the UTPR top up tax for a jurisdiction to individual entities. Some wanted to have a choice of how to allocate the charge between entities. Others thought it was necessary to include exemptions or ordering rules to prevent certain types of entities from being allocated the top up charge. For example, respondents thought it was important to ensure Investment Entities and entities with regulatory capital requirements were not allocated the top up, or only as a last resort.

7.21 It was noted that an entity may sometimes be compensated by another entity for bearing the top up taxes under Pillar 2 or in order for the former entity to meet the liability. Respondents wanted it to be possible for these payments to be made on a tax-neutral basis.

Government Response

7.22 The government agrees that it is essential that the IIR is treated as a Qualified IIR, which is why it will implement the GloBE Rules in line with the intent of the Model Rules.

7.23 It also agrees that it is essential that the rule order is adhered to, and that there is a clear priority order is to ensure co-ordinated application of the rules across jurisdictions with no double taxation.

7.24 The government considers the GloBE rules are compatible with the UK's Double Tax Treaties.

Split Ownership

7.25 The government has clarified how the ownership interest threshold to determine a POPE should be calculated when ownership interests carry different rights in the draft legislation. It welcomes further comments on this from stakeholders. These clarifications are based on the government's understanding of the Commentary to the Model Rules, and the government will seek to confirm this understanding in Administrative Guidance as necessary.

7.26 The government understands the comments from respondents relating to sharing of information where there is split ownership. It considers that a centralised filing system will mitigate these concerns as the UPE will take on responsibility for the calculation and filing of information on behalf of the partially owned entity.

UTPR

7.27 The government continues to believe that, absent sufficiently comprehensive implementation of IIRs, the UTPR serves an important role in the GloBE rules by ensuring all groups are subject to the standards set by Pillar 2 irrespective of where they are headquartered.

7.28 The government is consequently preparing to introduce a UTPR in the UK and will make a final decision on timing, at a later date. This will allow for the

progress and extent of Pillar 2 implementation in other countries to be taken into account.

7.29 More time is also required to finalise the detailed design of the UTPR, and in particular the mechanism for bringing the jurisdictional top up tax into charge in the UK.

7.30 The government appreciates the points made by respondents in respect of the allocation key and accepts that the value of tangible assets and number of employees may not exactly align with economic activity, particularly in service industries.

7.31 However, this allocation key was a fundamental part of the political agreement in the October Statement, and it will not be feasible to reconsider this.

7.32 The government also observes that simplicity was a key consideration in the design of the allocation key and considers that it is correct that an objective and simple metric was chosen over a more precise one. This view was shared by businesses overall and taken into consideration when the allocation key was developed.

7.33 The government also notes the comments raised about the allocation of UTPR top up to individual entities. It accepts there may be situations where the allocation between entities has significant commercial implications, for instance where certain entities are subject to capital requirements or investor protection regulations. It will develop allocation rules which address these concerns while maximising the top up collected, in line with the requirements in the Model Rules.

7.34 The government agrees that where payments are made between entities to facilitate the payment of the top-up tax, these payments should be tax neutral.

Chapter 8

Transition Rules

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

8.1 Some respondents were opposed to the provision in Article 9.1.3 that prevents a step up in the carrying value of an asset when it is transferred intra-group in the transition period. They thought this would inhibit the transfer of assets from a low-tax to a high-tax jurisdiction and questioned the policy rationale for this provision, arguing this should be viewed as a positive behavioural change that the GloBE Rules were intended to encourage.

8.2 They also thought the Article was poorly targeted as it does not distinguish between the purpose for the transaction and applies equally to transactions that were taxed in the selling jurisdiction as a result of the transfer. They thought the provision would consequently lead to significant double taxation when an asset is transferred between high-tax jurisdictions.

8.3 There was also uncertainty about the application of Deferred Tax Accounting to transfers affected by Article 9.1.3.

8.4 Additionally, some respondents thought there should be a time limit to restrict the application of 9.1.3, in addition to the specific date of 30 November 2021. They thought it would be inappropriate for the 30 November 2021 date to apply to groups which come into scope of the GloBE Rules in subsequent years.

8.5 Respondents requested more detailed guidance on the transition rules in Chapter 9. Particular concerns included:

- Whether the exclusion in the initial phase of international activity has to be assessed annually or only once.
- Whether unrecognised deferred tax balances are includible under Article 9.1.1.
- How to treat deferred tax attributes arising in periods spanning 30 November 2021, for the purposes of Article 9.1.2.
- Whether deferred tax assets and liabilities are netted off when entering the GloBE regime.

- If there is any ordering between deferred tax attributes when an MNE has attributes arising both before and after 30 November 2021, and then utilises those attributes prior to entering the regime.
- Whether Article 9.1.3 only applies when an asset has legally been transferred between entities or whether it also applies to transactions which have the economic substance of a transfer, for instance arrangements involving licences.

8.6 Additionally, respondents asked for further guidance on mergers and acquisitions. Specific points raised included:

- That a target company will often prepare its accounts under a different accounting standard to the acquiring MNE and that there needed to be further clarification on how the rules address this scenario.
- How to determine the carrying value of assets, liabilities and deferred tax items when an acquired entity has a different accounting standard to the acquiring entity, or where the acquired entity does not have sufficient records.

Government Response

8.7 The government recognises there is currently significant uncertainty about the effect of Article 9.1.3 and in particular the Deferred Tax consequences of this Article, and that this uncertainty is affecting current business decisions.

8.8 It agrees there is a need for further guidance on this point as part of the Inclusive Framework and will look to expedite this with international partners as part of the Implementation Framework as soon as possible.

8.9 The government welcomes the responses on other aspects of the Transition Rules and will seek to provide further clarity to stakeholders internationally and through the UK legislation where appropriate.

Chapter 9

Reporting and Payment

Question 21: Do respondents have views on the proposed approach to reporting?

Information Return

9.1 There was widespread agreement that the GloBE reporting should be centralised and that it was important the Information Return was standardised and submitted to a single jurisdiction. Businesses were concerned about the volume of reporting and the potential for disputes if they were required to file in multiple jurisdictions.

9.2 There was general support among respondents for the extension of the filing date to 18 months in the Transition Year, and several responses suggested this should be the normal filing date as they thought 15 months could still be challenging for businesses to comply with given the volume of data required.

9.3 Some respondents thought it was important that a proportionate approach was taken to the data items included in the return, and that there should be limits to the extent to which tax authorities can request information in order to prevent requests for information already contained in the return.

9.4 Respondents also thought early guidance would be important, as businesses are already beginning to collect information, and would benefit from knowing the exact information they were required to return.

9.5 Simplification options were mentioned in a number of responses. Several requested a simplified version of the return in cases where there was unlikely to be a top-up. For example, some suggested reduced filing requirements where a qualifying IIR is applied by the UPE jurisdiction as this would mean overseas entities would not be chargeable to UTPR. Respondents thought that simplified filing requirements would be reasonable in such cases.

9.6 Others requested simplified filing in the transition period.

Domestic reporting

9.7 There were fewer responses on the domestic reporting process. Respondents were generally keen to minimise additional reporting requirements outside of the GloBE Information Return.

9.8 They thought this would minimise the compliance burden.

9.9 Some respondents asked for more information about HMRC’s approach to administering the GloBE Rules. They thought HMRC should introduce a soft landing for penalties in the initial years, because of the complexity of the rules, especially when some areas of the rules are still evolving.

9.10 Finally, some respondents thought the GloBE Rules should be excluded from other regimes like the Senior Accounting Officer regime and the Notification of Uncertain Tax Treatment rules, particularly in the transition period.

Question 22: Do respondents have views on the approach taken to collecting liabilities under the IIR or UTPR?

9.11 In general, respondents emphasised that the key principle when determining the collection of GloBE liabilities should be simplicity and minimisation of the compliance burden.

9.12 Respondents expressed a strong preference in favour of an annual collection of GloBE liabilities, and against Quarterly Instalment Payments.

9.13 However, a few respondents thought that it would be preferable to collect with relevant CT liabilities. Those respondents considered that this would be simpler than a separate collection.

9.14 Respondents typically preferred collection of UTPR through a separate charge, as discussed in Question 18.

9.15 Some respondents noted practical concerns relating to collection of liabilities. These included:

- How to demonstrate that they have paid GloBE liabilities due to a jurisdiction, where it is necessary to do so in order to maintain the integrity of the common approach.
- Whether a liability accruing to one entity could be assigned to another within the same jurisdiction

Question 23: Do respondents have views on the time limit for notifying the group is in scope of the GloBE?

9.16 There were relatively few responses on the obligation to notify when a MNE first becomes in scope (i.e. the obligation to register). A small number of responses thought the time limit should be extended.

9.17 There were more responses on the notification obligations in the Model Rules. Some respondents did not understand the purpose of this requirement and thought it imposed unnecessary additional compliance burdens on businesses.

9.18 These respondents thought the notification obligations should be limited as much as possible. They suggested that instead of making an annual notification, the requirement could be waived unless there was a change in the details from the previous year. They also thought the notification obligation could be combined with similar obligations in other taxes, notably in Country-by-Country Reporting.

9.19 There were mixed views on the timing of the notification. Some thought it should be made at the same time as the GloBE Information Return while others suggested it should be made twelve months after the end of the accounting period.

Question 24: Do respondents have views on whether payments should be made quarterly or annually for Pillar 2?

9.20 There was a strong and consistent preference for an annual payment. Respondents thought it would be very challenging to comply with quarterly payments as the complexity of the calculation would make it difficult to reliably estimate the annual liability.

Question 25: Do respondents have views on an appropriate payment deadline for GloBE liabilities?

9.21 There was strong opposition to the payment date of 9 months after the end of the Accounting Period proposed in the Consultation Document. Respondents noted this would require businesses to estimate their liabilities given this payment date would be earlier than the filing date of the returns. Respondents felt that the complexity of the GloBE rules meant that any estimation of liability would be both inaccurate and also burdensome to compute.

9.22 Some respondents noted that this complexity would become even greater in the context of Domestic Minimum Taxes.

9.23 There was consequently near universal support for aligning the payment deadline with the filing deadline for the returns.

9.24 A few respondents suggested alternative dates, including:

- A 30-day extension after the GloBE Information Return filing date.
- 12 months after the reporting date.
- Combination with other payment dates, such as Corporation Tax, so that the GloBE payment date would fall on the CT payment immediately following the GloBE filing date.

Some respondents mentioned that the payment date should be extended to 18 months rather than 15 months in the Transition Year.

Question 26: Do respondents have views on the importance of giving credit interest for early payments?

9.25 A majority of respondents were in favour of credit interest for early payments if the payment deadline was not aligned with the filing date.

9.26 Some respondents considered this to be essential if payment was required before the filing deadline.

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

9.27 Respondents provided a variety of views on joint and several liability.

9.28 Several respondents thought there was insufficient clarity about how joint and several liability would work and that there would need to be more information about this before they were able to form a view.

9.29 There were mixed views on whether joint and several liability should be included. A number of respondents agreed that UK Constituent Entities should be joint and severally liable for GloBE debts or understood the possible utility. On the other hand, some respondents felt that it would be sufficient to have the UK top company be liable, and others thought that joint and several liability would be inappropriate.

9.30 There were also a number of comments around the detailed rules.

9.31 Several respondents raised concerns around the impact of joint and several liability on regulated entities. There were concerns joint and several liability could undermine bank ringfencing by making core retail banks potentially liable for debts incurred outside of the ringfence. Other respondents thought it could complicate regulatory reporting more widely. Some respondents also thought investor protection regulations could prohibit some firms from meeting these liabilities.

9.32 Respondents also argued that Investment Entities should be exempt from joint and several liability in order to maintain tax neutrality.

9.33 Finally, some respondents suggested joint and several liability could have commercial implications. They thought partially owned entities should not be made liable for debts arising in entities in which the minority investors did not hold an interest. Similarly, they argued entities should not be held liable for debts arising from entities in a different tax group for wider UK tax purposes.

Government Response

UK Reporting process

9.34 The government shares the view that the reporting obligations should be co-ordinated between jurisdictions, and that duplicate reporting to multiple jurisdictions should be avoided as far as possible. It will therefore be promoting work with international partners to produce a standardised GloBE Information Return, and a system for centralised reporting so that a MNE should only need to file to a single jurisdiction.

9.35 The government understands that businesses will require lead in time to collect the necessary information and adapt systems, so it will look to ensure this work is treated as a high priority in the Implementation Framework.

9.36 In the UK, there will be a one-time requirement for MNEs to register that they are in scope of GloBE, when they first come into scope. The registration will be made digitally, and a minimum of information will be required.

9.37 A single entity will register and file on behalf of the whole MNE. The government understands this to be the preference of businesses based on feedback received throughout the consultation. Based on this feedback, the UPE will be the default filing entity and the MNE will be able to designate another entity as the filing entity, if it wishes to.

9.38 There will be an annual notification in line with the requirements in the Model Rules. The purpose of this obligation is to discharge the local entity's filing requirements when the Information Return is sent to another jurisdiction, and to enable HMRC to link the Information Return to the correct MNE's records when it is received through inward exchange. The notification will include only the minimum information necessary to achieve this in order to minimise reporting burdens.

9.39 Reporting of tax liability to HMRC will be done through the MNE's Pillar 2 digital service, outside of the CT return. The registered entity will submit a short report alongside either its GloBE Information Return or annual notification, which will confirm its liability under the GloBE Rules to the UK. This will allow HMRC to account for the charges correctly in its systems.

9.40 The filing date for this short domestic return will be aligned with the filing dates of the GloBE Information Return.

Payments

9.41 The government has heard the strong preferences from business to align the payment due date with the filing date for the Information Return. Payments will therefore be required in a single annual instalment, 15 months from the end of the accounting period (18 months in the Transition Year), in order to align with filing obligations.

9.42 Consequently, it will not be necessary for businesses to estimate their liabilities or for HMRC to provide any credit interest on overestimated liabilities. However, interest will still be paid on overpayments in line with other taxes.

Joint and several liability

9.43 Because the default filing entity will be the UPE, this could potentially mean a non-UK company is responsible for reporting the liabilities in the UK (for example where a Partially Owned Parent Entity is chargeable in the UK). The government therefore considers it necessary for UK Constituent Entities to be joint and severally liable for liabilities arising under the IIR.

9.44 The legislation will allow HMRC to issue a payment notice to any UK Constituent Entity in respect of IIR debts, if the debt has not been paid within 3 months.

9.45 However, the government recognises this would be inappropriate in certain business models where regulatory rules prevent certain entities from being held responsible for liabilities arising to other entities. The payment notice provisions will be appropriately targeted in these circumstances.

Chapter 10

Simplification

Question 28: What are respondents' views on a CbCR based safe harbour and how it should be designed?

10.1 Respondents strongly supported simplification measures.

10.2 Respondents frequently observed that they were required to complete a separate computation for every jurisdiction, even though a charge would only arise in a minority of jurisdictions. They argued simplifications which removed the requirements to compute the ETR of jurisdictions where there was no expected top up would significantly reduce compliance costs.

10.3 A clear majority of respondents expressed support for some form of CbCR Safe Harbour and thought this could be a valuable simplification. However, they thought the design of the Safe Harbour was important and said it needed to be a simple calculation or the value of the safe harbour would be lost.

10.4 They generally expressed the view that changes to the figures in the CbCR should be minimised or not be adjusted at all. They thought any risks resulting from differences between the GloBE Rules and CbCR data should be addressed by including a higher minimum ETR as a threshold for the Safe Harbour. Most respondents who cited a figure thought 17.5% would be an appropriate rate but suggestions ranged from 17.5% to 25%.

10.5 Some respondents recognised that some businesses may favour a more precise calculation. They suggested there could be a two-tier Safe Harbour to address this. The first tier would be a highly simplified computation with a higher minimum ETR, involving no or minimal adjustments to the existing CbCR figures. The second tier would be a more complex computation with a lower ETR.

10.6 Some respondents noted the slight difference of scope between CbCR and Pillar 2. They suggested businesses should be able to voluntarily complete a CbCR return so they could qualify for the Safe Harbour.

Question 29: How could timing differences be addressed within a CbCR safe harbour design? Do they need to be?

10.7 Some thought timing differences wouldn't materially affect their ETR and so wasn't essential to include whereas others thought a safe harbour would have limited value if it did not take into account timing differences. Because of this

variation, a number of respondents thought a two-tiered approach would be sensible for addressing timing differences in the safe harbour.

10.8 Otherwise, respondents were generally in favour of a more simplified approach to timing differences in the Safe Harbour, compared to the Model Rules.

10.9 A number of respondents suggested that the Safe Harbour ETR could be computed on a multi-year average. Of those who suggested a particular number of years, three to five years was the preference.

10.10 Alternatively, some respondents thought the CbCR rules could be amended to include deferred tax as well as the tax accrued for the period. They thought this would have to reflect the deferred tax in the accounts rather than reflecting the modifications to this in the GloBE Rules if the safe harbour was to provide meaningful simplification.

10.11 Finally, some respondents thought it may be possible to use a mechanism similar to the GloBE Loss Election.

Question 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?

10.12 The majority of respondents thought that the ordinary transition rules should be used when an MNE that was in a Safe Harbour for a jurisdiction enters the regime.

10.13 However, some respondents expressed a preference against having to fulfil the requirements in Article 9.1 if transitioning from a Safe Harbour. They did not want to have to track Deferred Tax attributes or intra-group transactions during the Safe Harbour period or undertake a lookback.

Government response

10.14 The government acknowledges the complexity of the Pillar 2 rules and agrees that simplifications could reduce the compliance burden for businesses adjusting to the new rules and allow businesses and tax authorities to focus resources on areas where there is the greatest risk of tax.

10.15 The government supports the idea of simplifications and suitable Safe Harbours. It recognises the strong support from businesses on this.

10.16 The government notes the support from businesses for a safe harbour using CbCR data and can see the advantages for businesses of basing the safe harbour calculations on data that is already available to MNEs, both in terms of simplifying the calculations but also in providing more time to develop systems to gather the data needed for the full rules. It also agrees with business that safe harbours must be designed to be as easy to apply as possible, and that any design of a CbCR or similar safe harbour should therefore seek to minimise the number of adjustments required.

10.17 The government will ensure these views are appropriately raised in the international discussions. It is open to the use of CbCR data as part of a safe harbour but notes that the concept of a CbCR safe harbour has already been explored in the Inclusive Framework. It was previously a contentious area where it was difficult to

find consensus and it is likely there may be similar challenges in the Implementation Framework.

10.18 It will consequently work with international partners to explore creative solutions which can obtain consensus, while ensuring that there is genuine simplification for businesses. For example, in addition to permanent provisions in the rules, there may also be the case for so-called transitional safe harbours that would operate to ease the compliance burdens of MNE Groups during the initial stages of implementing the GloBE Rules.

10.19 There may also be areas where relatively simple provisions could be found to reassure tax authorities that there will not be top-up tax due, without requiring a significant number of computations to be submitted. On this the government would welcome further views from stakeholders.

10.20 The government notes the relative urgency of agreeing simplifications and safe harbours, in particular for MNE Groups that need to build compliance systems to collect the appropriate data and will look to accelerate progress on these areas to the greatest extent possible.

Chapter 11

Further Work in the OECD

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

11.1 Respondents had a variety of comments relating to further implementation work.

11.2 The most common responses related to the need for simplification methods, including Safe Harbours:

- Some respondents supported a whitelist of high-tax jurisdictions, for which an MNE would not need to complete a full computation.
- Some respondents wanted a switch-off of GloBE rules where a jurisdiction had a qualifying Domestic Minimum Tax.
- Others supported a Safe Harbour where a top-up arose on an MNE that had made a loss.

11.3 Numerous respondents noted the importance of effective dispute resolution, with some requesting a multilateral instrument in order to achieve this.

11.4 Many respondents wanted resolution on the interaction with other taxes, including Pillar 1, GILTI, and BEAT.

11.5 Some respondents noted the amount of work still remaining as part of the Implementation Framework and expressed concerns about jurisdictions implementing ahead of others, which they thought could result in a lack of consistency.

11.6 Respondents said that the UK should continue to play a leading role in the design of GloBE, and work to protect the interests of UK businesses.

11.7 Other key issues mentioned included:

- The qualification process for domestic IIRs and Domestic Minimum Taxes.
- Exchange of Information.
- A centralised and standardised information return and filing systems.
- Co-ordination and consistency between jurisdictions.

Government response

11.8 The government is grateful for the views provided by respondents on the further work required. The government acknowledges that there is a significant amount of work still to be completed at the OECD level and will continue to work closely with stakeholders and international partners to develop an effective Implementation Framework.

GILTI

11.9 The government recognises the importance that businesses attach to the issue of the treatment of GILTI under the GloBE rules.

11.10 The government notes that the US has committed to reforming its GILTI rules so that they apply on a country-by-country basis and apply a minimum rate of 15% in a similar manner to the GloBE rules.

11.11 The government is encouraged by the steps that the US has already taken and welcomes the expected further progress on GILTI reform in line with the commitments made in the OECD's October statement.

11.12 Notwithstanding that, some respondents have asked how the current GILTI rules would be treated under the GloBE rules in the event that the current rules were to be retained, even temporarily.

11.13 In order to provide as much clarity as possible, the government's expectation in this event is that tax paid in the US under the GILTI would be included in the adjusted covered taxes of a US company's CFC for the purposes of both the IIR and UTPR. There would need to be rules to determine the additional US tax that results from a GILTI inclusion, and how that should be allocated to the CFCs of Constituent Entities to which the GILTI inclusion relates.

11.14 This would avoid double taxation while ensuring all groups are subject to the standards set by Pillar 2 and preventing any competitive distortions.

11.15 As above, the government expects that the US will continue to make progress towards meeting its commitments to reform the GILTI in line with the October Statement, and welcomes this.

Safe Harbours

11.16 The government recognises the support among respondents for "switching off" the GloBE rules in respect of a jurisdiction that has introduced a Qualified Domestic Minimum Tax (QDMT).

11.17 The government agrees that a Safe Harbour where there is a qualified DMT in place could provide real benefits to both tax administrations and businesses. In particular, the government believes this could help to reduce the number of calculations MNEs are required to perform for a jurisdiction, and also improve taxpayer certainty by protecting MNEs from top up taxation and disputes based on relatively minor differences between countries rules. This would be particularly valuable in the context of the UPE jurisdiction, where the MNE would otherwise need to comply with potentially many other jurisdictions' rules under the UTPR.

11.18 It is therefore supportive of a QDMT safe harbour. However, the safe harbour is only likely to be feasible if Qualified Domestic Minimum Taxes are required to be closely aligned with the Model Rules. Consequently, the safe harbour will need to be considered in conjunction with the ongoing work to develop a peer review process. The government is committed to taking this forward and will ensure the potential benefits of a safe harbour are considered as part of these discussions.

11.19 The government acknowledges the views from stakeholders on a potential “whitelist” Safe Harbour that, broadly, would switch off the GloBE rules in specific jurisdictions that are considered to be high tax by the Inclusive Framework.

11.20 The government recognises that some groups may be required to perform a large number of calculations, and that it is possible only a small number of jurisdictions could be subject to a top up tax. It is therefore in principle supportive of options which could reduce the number of calculations required where there is very clearly no risk of a top up tax becoming due. However, it is uncertain whether it will be possible to achieve consensus on such a Safe Harbour between members of the Inclusive Framework. The GloBE rules are based around an ETR, and a Safe Harbour based on statutory rates would require significant adaptations to take all the features of domestic regimes into account. The government is open to considering the feasibility of such a Safe Harbour, but the adaptations required may produce so much complexity that the benefit of the simplification is lost.

11.21 There is further information on the government’s response to safe harbours, including those using simplified ETR calculations, in the previous chapter.

Dispute Resolution

11.22 The government agrees that co-ordination between jurisdictions in the administration of the GloBE rules is important. Without strong co-ordination, there will be an increased risk of disputes.

11.23 The government believes that the most effective ways in which it can achieve this for UK-headquartered groups is to ensure that the UK rules are qualified, and to press for Administrative Guidance which ensures that jurisdictions introduce and apply the rules consistently. This will protect UK-headquartered groups from being subject to another jurisdiction’s IIR or UTPR.

11.24 Nonetheless, the government recognises that the possibility of disputes would remain. It therefore supports a multilateral Dispute Resolution mechanism as part of the Implementation Framework and will continue to explore this possibility with international partners, noting some of the significant challenges that would need to be overcome.

Qualification Process

11.25 The government will work closely with the OECD to produce a robust qualification process that maintains co-ordination and avoids global complexity, in keeping with the common approach.

11.26 The government recognises that it is important for businesses to have early certainty on the operation of the GloBE rules. It is also important for jurisdictions to have certainty that the intended design of their domestic rules will qualify. The

government will work with international partners to ensure that the qualification process is as clear and efficient as possible.

Exchange of Information

11.27 As above, the government supports a coordinated approach to the administration of the GloBE Rules and agrees with business that reporting should be as standardised and centralised as possible. It is clear that Exchange of Information is necessary to achieve this, and the government supports this. It will look to ensure there are appropriate safeguards for the security and use of information.

Capacity Building

11.28 As part of the Implementation Framework, the government will be working with the OECD and other international partners to build capacity across the Inclusive Framework. Domestic implementation of Pillar 2 is a challenge for some tax administrations due to its significant complexity. Capacity building initiatives will enable these jurisdictions to meet the challenges of introducing and enforcing the GloBE rules effectively and efficiently, increasing co-ordination.

Chapter 12

Domestic Minimum Tax (DMT)

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

12.1 There was no consensus among respondents on whether a Domestic Minimum Tax would reduce the compliance burden.

12.2 Many respondents thought a DMT could in principle help to reduce compliance costs. These respondents identified two main channels through which these savings could be made.

12.3 Firstly, respondents thought a DMT could simplify the rules themselves by removing the need to perform UTPR calculations.

12.4 Secondly, respondents thought a DMT could provide additional certainty for MNEs by protecting them from the application of other jurisdictions' GloBE Rules, and in particular the UTPR.

12.5 However, a number of respondents thought these savings would only materialise if there was a Safe Harbour from the IIR and UTPR when a jurisdiction had introduced a qualifying DMT. Without this, a small number of respondents thought a DMT could actually increase complexity, by requiring MNEs to perform additional calculations, and reduce taxpayer certainty by exposing MNEs to the risk of incremental taxation where there were differences between the DMT, and another jurisdiction's GloBE Rules.

12.6 As a result, most respondents thought that the question over whether a DMT would increase or reduce overall compliance costs would ultimately depend on its detailed design, and in particular how DMTs are treated under the GloBE Rules and the extent to which the DMT was aligned with the Model Rules.

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

12.7 The majority of responses thought that a DMT should apply to both domestic and foreign-headed groups. Respondents thought that this would ensure a level playing field and prevent any harmful distortions to UK business. Some noted that this would align with the EU draft directive.

12.8 A small number of respondents thought the DMT should only apply to UK-headed groups, arguing that there was a risk that the DMT would impose additional top up taxes beyond those which would be charged under another jurisdiction's GloBE Rules. Some identified GILTI as an area where this would be a particular risk.

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

12.9 Almost all respondents supported a threshold identical to the one in the Model Rules. Respondents believed that having a lower threshold would be harmful to UK competitiveness.

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

12.10 There were a number of views on how a Domestic Minimum Tax should be designed.

Timing

12.11 There were relatively few responses on the timing of a DMT. Most of those responses thought the DMT should be aligned with the implementation date of the UTPR internationally, so businesses were protected from the application of the UTPR, without being exposed to incremental taxation.

Scope

12.12 Respondents generally thought the scope of the DMT should be aligned with the scope of the GloBE Rules. They thought the DMT should not apply to groups with revenues below the €750m revenue threshold or to wholly domestic groups.

12.13 However, some thought it may be necessary to extend the rules to wholly domestic groups to ensure the rules were compatible with Double Tax Treaties. It was suggested that such groups should be able to complete a simplified computation, as they would be in scope of the DMT but not GloBE.

12.14 Finally, respondents thought it was important a Domestic Minimum Tax also excluded entities which are excluded from the GloBE Rules such as Non-Profit Organisations.

Calculation

12.15 Most respondents thought the calculation of the tax should closely adhere to the Model Rules, arguing that it was important the tax was treated as a qualified DMT and that close alignment with the Model Rules was the best way to ensure this.

12.16 Some noted that there could be multiple sub-groups in the UK as the definition of the group is broader in the Model Rules than in the Corporation Tax rules. These respondents thought there should nonetheless be a single computation for all UK entities, even where they fall in different sub-groups.

12.17 Respondents also thought MNEs should be able to make an election to compute DMT using the UPE accounting standards used to compute the ETR under the GloBE Rules. They thought calculating the ETR under the local accounting standard would duplicate calculations, increasing compliance costs and raising the possibility of incremental taxation.

12.18 They considered the option to calculate the ETR under the local accounting standard would be of limited use or benefit unless there was a Safe Harbour for qualifying DMTs.

Charge

12.19 Some responses focused on the allocation of the charge to individual entities. These responses argued that the charge should not be allocated to Investment Entities as this would undermine the tax neutrality of investment fund structures.

12.20 Furthermore, some thought there should be a priority ordering, with wholly owned entities in the group allocated the top up before entities with minority investors.

Administration

12.21 Most respondents thought the reporting and administration of a DMT should be aligned with GloBE reporting as far as possible. These respondents generally thought the detailed calculations underpinning the DMT should be reported on the GloBE Information Return and that the government should avoid introducing another complex return specifically for the DMT.

12.22 There were mixed views on whether the DMT should be reported within the Corporation Tax framework or integrated within the reporting framework being developed for the GloBE Rules.

Government response

12.23 The government notes the comments made in response to the consultation and maintains the belief that there are strong arguments in favour of a UK DMT to ensure the UK Exchequer receives any additional tax on UK economic activities applied from Pillar 2. The government will continue to consider the introduction of this new tax.

12.24 If a DMT is introduced, it is envisaged that the threshold would be €750m to mirror the Pillar 2 rules, and that it would apply to both UK-headed and foreign-headed MNEs. In addition, the government will consider the costs and merits of application to wholly domestic groups to prevent economic distortions. The government welcomes further comments on a DMT.

12.25 In considering a DMT, the government will take into account progress on:

- implementation of IIRs and UTPRs in other countries
- the process for determining whether a DMT is qualified in the Implementation Framework
- whether there will be a safe harbour from the IIR or UTPR when a jurisdiction has a qualified DMT

Chapter 13

Wider Reforms and Interaction with Existing BEPS Measures

Question 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?

13.1 There were a mixture of views on this question.

13.2 Several respondents accepted that existing measures applied to a different population and addressed different risks to the GloBE Rules. These respondents generally accepted that it would be premature to introduce substantial reforms to the UK tax rules before the GloBE Rules had been introduced.

13.3 However, there was extensive support for conducting a holistic and detailed review of the UK tax system once the GloBE Rules had been introduced. Respondents who mentioned timescales suggested that a review should take place 2-5 years after implementation. Respondents noted that the effect of the Domestic Minimum Tax should also be reviewed.

13.4 They considered this review should cover the continuing need for other base protection measures and whether these could be simplified, as well as a review of tax reliefs and other elements of the tax system that interact with Pillar 2.

13.5 However, some respondents thought the government should act more quickly. They thought the introduction of the GloBE Rules would remove the need for some of the UK's base protection measures and thought there was a strong case for reforming or repealing some of these measures to simplify the compliance burden for businesses.

13.6 For example, some respondents thought that CFC taxes should be reformed or repealed following implementation of Pillar 2 as they considered CFC regimes to duplicate the purpose of Pillar 2.

13.7 A number of respondents focussed on unilateral measures such as Diverted Profits Tax or Offshore Receipts in respect of Intangible Property and argued these measures in particular should be repealed. The rationale given was that the implementation of Pillar 2 should successfully change behaviours, making these measures unnecessary.

13.8 Others stopped short of calling for measures to be repealed but thought the government could make changes to simplify the rules or target the other measures on risks which weren't adequately addressed by Pillar 2.

13.9 For instance, these respondents thought that DPT could be included as a Covered Tax or thought that certain measures could be disapplied, either in targeted cases where there could be double taxation or over-taxation, or generally for entities that were subject to the Pillar 2 regime.

Government response

13.10 The government welcomes the views provided by respondents on existing measures and their potential interaction with Pillar 2.

13.11 The government considers there to be important differences between the GloBE rules and other BEPS measures. Because of these differences, there may be a continuing need for these other measures subsequent to the implementation of Pillar 2.

13.12 However, the GloBE rules, if widely adopted, will have a significant impact on the international corporate tax landscape. The government accepts that it would be appropriate, once the impact of the rules has become clear, to review the wider international corporate tax system and identify opportunities for reforms that could simplify UK tax rules and reduce the compliance burden, without exposing the UK tax base to significant risk.

Chapter 14

Assessment of Impacts

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

14.1 Some respondents commented on the OECD Impact Assessment. They thought the OECD revenue estimates may be overstated. They noted that these estimates used 2016 data and they thought this was out of date and pre-dated significant changes to the international tax environment. They also noted the assessment was sensitive to behaviours and this made accurate estimation difficult.

14.2 Others noted that the scheduled increase to the UK Corporation Tax rate would mean the ETR in the UK should generally be above the minimum rate. They considered the compliance burden could be disproportionate compared to the revenue generated.

14.3 Many respondents referred to the compliance burdens that the GloBE Rules would introduce. They thought the burden would be very substantial and argued that this has not been fully appreciated.

14.4 Some respondents reiterated that simplifications, especially Safe Harbours, would be critical to reducing this burden.

14.5 Finally, respondents noted that MNEs who are close to the threshold will suffer a compliance burden as they will need to monitor whether they have fallen into scope.

Government response

14.6 The Model Rules have been designed to minimise the compliance burden by using data from financial accounts to the greatest extent possible.

14.7 Nevertheless, the government acknowledges that the GloBE Rules are complex, and businesses will face additional costs in calculating their GloBE liabilities and complying with new administrative requirements.

14.8 The government will support work in the Inclusive Framework to ensure that reporting requirements are as streamlined and centralised as possible. The government will also advocate simplification methods which reduce compliance costs where there is a negligible risk of top-up taxes being due.

14.9 The government notes comments made by stakeholders on the existing impact assessments. The government will publish its own costings, which will be subject to OBR scrutiny in line with the normal process, at a future fiscal event.

Annex A

List of respondents

Association of British Insurers (ABI)
Abrdn
Ade Tax
Alternative Investment Management Association (AIMA)
Air Liquide UK
AstraZeneca
Aviva
BDO
British Property Federation (BPF)
British American Business
British Universities Finance Directors Group (BUFDG)
BVCA (British Private Equity & Venture Capital Association)
Confederation of British Industry (CBI)
Charity Law Association
Charity Tax Group
Chartered Accountants Ireland
Chartered Institute of Taxation (CIOT)
CLLS Revenue Law Committee
Deloitte
EY
Fair Tax Foundation
FTI Consulting
Grant Thornton
Investment Association (IA) with Securities Industry and Financial Markets
Association (SIFMA)
ILAG (Investment and Life Assurance Group)
Information Technology Industry Council (ITI)
Insurance Company Working Group
KPMG LLP
Legal & General
Lloyd's
M&G Plc
Macfarlanes
Netflix
Open University
OSB Group
Phoenix Group
Prudential
PricewaterhouseCoopers LLP (PwC)
Royal London
Royal Mail Group
RSM UK Tax and Accounting
Standard Chartered

Tech UK
The 100 Group
TheCityUK
Travers Smith LLP
UK Chamber of Shipping
UK Finance
University of Edinburgh
University of Glasgow
University of Manchester

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