



An Roinn Airgeadais  
Department of Finance

# Consultation on Pillar Two Minimum Tax Rate Implementation

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Prepared by the Tax Division  
Department of Finance  
[www.gov.ie/finance](http://www.gov.ie/finance)

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# 1. Introduction

In October 2021, Ireland, along with over 130 other countries in the OECD/G20 Inclusive Framework, signed up to an historic agreement to reform the international tax framework as it applies to large corporate groups.

Building on the original Base Erosion and Profit Shifting (BEPS) project, the agreement contains a two-pillar solution to address the tax challenges arising from digitalisation and globalisation. Recognising how multi-national enterprises (MNEs) across the globe now operate commercially and generate value, this significant reform will ensure that the international tax framework keeps pace with these developments in a coordinated way.

## Pillar One

Pillar One of the OECD agreement envisages a re-allocation of a proportion of profits to market jurisdictions, and involves calculation of two new Amounts:

- ‘Amount A’ seeks to determine a value for ‘excess profits’ to allow for the reallocation of a proportion of the worldwide profits of an MNE to market jurisdictions, i.e. countries where the end-consumers and users of products and services are based, regardless of whether an MNE has a physical presence in those jurisdictions.
- ‘Amount B’ seeks to simplify and streamline the application of the arm’s length principle to in-country baseline marketing and distribution activities, with a particular focus on the needs of low capacity countries.

Work on Pillar One continues at the OECD, with draft model rules on the various building blocks for Amount A being released for public comment on a rolling basis. A separate OECD public consultation will take place in relation to Amount B.

## Pillar Two

Pillar Two primarily consists of two interlocking domestic rules, together referred to as the Global Anti-Base Erosion (GloBE) rules, which will introduce a global minimum

effective tax rate of 15% for in-scope businesses, and is the subject of this public consultation. The remaining element of Pillar Two, the Subject to Tax Rule (STTR), is a treaty-based rule which will apply where certain intra-group cross-border payments are subject to low levels of taxation. The STTR has not yet been finalised, but it is expected that a multilateral instrument will be developed to assist countries in adopting the rule where required to do so.

Work on the Pillar Two GloBE rules is more advanced than for Pillar One. The OECD Inclusive Framework published the GloBE Model Rules in December 2021, followed by an accompanying Commentary in March 2022 to provide further technical guidance to taxpayers and tax administrations.

The next phase of this process, the development of the GloBE Implementation Framework, is now underway at the OECD. This will include ensuring coordination and consistency in the application of the rules across jurisdictions, as well as providing further administrative guidance.

At EU level, to enable a coordinated implementation of the GloBE rules across all Member States and in line with EU law, the European Commission has proposed an implementing Directive. The initial draft legislation (*Proposal for a COUNCIL DIRECTIVE on ensuring a global minimum level of taxation for multinational groups in the Union*) was published in December 2021 and intensive discussions at Council Working Parties took place throughout Q1 2022, resulting in the current compromise text dated 28 March 2022<sup>1</sup>.

While the final text of the Directive has not yet been agreed by all Member States, Ireland is supportive of the proposal and it is envisaged that agreement will be reached in due course, with the Directive to be transposed into each Member State's national law and in operation by the end of 2023.

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<sup>1</sup> Current compromise text available at: <https://data.consilium.europa.eu/doc/document/ST-7495-2022-INIT/en/pdf>

The Pillar Two framework will have significant impacts for Ireland across our fiscal, budgetary and industrial policies. We have engaged extensively at both OECD and EU level to achieve a considered framework that allows continued support for economic growth and prosperity, while safeguarding our competitive tax regime for real and substantive activities in the State.

In the context of the above, it is now considered timely to invite views of interested parties on how the Pillar Two framework will be implemented into Irish legislation. As set out below, submissions are invited on the implementation of the GloBE Model Rules and not the design of Pillar Two itself, on which agreement has already been reached.

## 2. Pathway to Pillar Two

**October 2015:** The final reports issue in relation to the fifteen original Base Erosion and Profit Shifting (BEPS) actions.

**March 2018:** The Inclusive Framework agrees the “*Tax Challenges Arising from Digitalisation – Interim Report*”.

**2019:** The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (Inclusive Framework) begins work on examining a possible two-pillar solution to addressing the tax challenges of digitalisation. The two Pillars of the project are:

- Pillar One: to develop new nexus and profit allocation rules to assign more taxing rights to market countries.
- Pillar Two: to develop new global minimum tax rules.

**October 2020:** The Inclusive Framework releases a detailed Blueprint on Pillar Two which provides a basis for a future agreement.

**October 2021:** Ireland joins with over 130 other countries in agreeing the two-pillar solution, with an OECD Statement issued affirming this position. The Statement confirms the main features including a minimum 15% corporate tax rate, and an implementation plan and timeline. The stated aim is for countries to have Pillar Two transposed and in operation in their domestic law by 2023.

**December 2021:** On 20 December 2021, the OECD publishes the GloBE Model Rules to assist countries to coordinate implementation in a consistent manner. On 22 December 2021, the EU Commission publishes a draft Minimum Tax Directive which closely follows the GloBE Model Rules, signalling its intent that Pillar Two will be implemented in Member States via EU process.

**Q1 2022:** Negotiations continue both at OECD and EU level on the technical details of Pillar Two. Ireland actively engages in working parties at both fora to help shape the new provisions. A Commentary on the GloBE Model Rules is also released in March 2022.

**Q2 2022:** It is currently envisaged that the EU Directive will be transposed and in effect in Member States, including Ireland, by 31 December 2023. Negotiations continue at OECD level on the finer technical points.

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## 3. Overview of Pillar Two Rules

The policy objectives behind Pillar Two are to:

- Ensure large corporate groups pay a minimum amount of tax on the income arising in each jurisdiction in which they operate;
- Reduce the incentive to move profits to low or no tax jurisdictions; and
- Put a floor on excessive tax competition between countries.

### Main Provisions

- A new global minimum effective tax rate of 15% will be adopted, applying to multinationals (MNEs) with global turnover of at least €750m. This minimum rate will apply in each jurisdiction in which the MNE operates.
- In order to calculate the tax, an adjusted accounting measure of profit will need to be calculated for a group's operations in each jurisdiction.
- Where the tax paid by the group on profit in a jurisdiction falls below the minimum 15% level, a top-up tax will be levied to bring the overall taxation on certain jurisdictional profit up to the minimum.
- The top-up tax is provided for in two interlocking GloBE rules as follows:
  - A primary Income Inclusion Rule (IIR), which imposes top-up tax on a parent company in respect of the low taxed income of a constituent entity, and
  - A backstop provision, the Undertaxed Profits Rule (UTPR), which denies deductions or requires an equivalent adjustment to the extent that the low tax income of a constituent entity is not subject to tax under an IIR.

### EU Directive

The draft EU Minimum Tax Directive<sup>2</sup> largely represents a direct transposition of the OECD GloBE Model Rules, with a number of amendments to ensure compatibility with EU law or to progress operational matters not yet addressed at the OECD. The main additional provisions in the Directive are:

- Extension of Pillar Two to include large scale, purely domestic groups. This is so as not to contravene the EU fundamental freedoms. It is expected that this

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<sup>2</sup> Proposal for a COUNCIL DIRECTIVE on ensuring a global minimum level of taxation for multinational groups in the Union (22 December 2021).

extension will primarily be of relevance to larger Member States, where there is greater scope to have domestic-only groups that meet the €750m threshold.

- The Directive makes it mandatory for Member States to apply the IIR and UTPR. By contrast, jurisdictions could sign up to the OECD agreement on the basis that they themselves would not implement the top-up tax domestically, but would not object to its application on companies within their borders by other jurisdictions.
- Requirement for a Member State of a constituent entity applying the IIR to apply it not only to foreign subsidiaries but also to all constituent entities resident in that Member State. This is permitted but not mandatory under the GloBE Model Rules.

A number of compromise texts were issued during the course of negotiations at EU Council, including the following additions or amendments to the original proposal:

- Member States can elect to apply a Qualified Domestic Top-up Tax in order to meet the required 15% minimum effective tax rate. The Directive now provides that, under certain circumstances, this will operate on a 'safe harbour' basis so that such payment will meet the requirement of Pillar Two minimum taxation as it pertains to an entity situate in that jurisdiction and no further liability will arise.
- The latest text provides that the GloBE rules will apply from 31 December 2023, rather than 1 January 2023 as initially proposed by the European Commission.
- A new transition provision allows Member States to defer implementation of the rules where the Member State is home to the ultimate parent entity of twelve or fewer multinational groups. In such cases, as is the case under the OECD agreement, the Member State could not object to the application of the GloBE rules on companies within their borders by other jurisdictions.

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## 4. Implementation of Pillar Two in Ireland

Upon final agreement of the text, the EU Minimum Tax Directive will provide the primary basis for the transposition of the Pillar Two agreement in Ireland. It is intended the legislation will be transposed into Irish law via future Finance Act(s). It is likely that there will be four key elements to the transposition, as follows:

### Income Inclusion Rule (IIR)

The IIR will apply to corporate groups whose ultimate parent entity is Irish resident and whose annual consolidated group revenue is at least €750m. The top-up tax will apply in respect of the Irish ultimate parent itself, any constituent entities located in Ireland, and any constituent entities located in other jurisdictions, whether inside or outside the EU.

It will also apply to Irish intermediate parent entities of foreign-headquartered groups where those entities are more than 20% owned by minority investors or are controlled by parent entities that are not located in a jurisdiction that has introduced Pillar Two.

The IIR will impose a top-up tax on these parent entities based on their interests in subsidiaries and branches located in jurisdictions in which their Effective Tax Rate (ETR) is below 15%. The ETR is calculated on a jurisdictional basis, by reference to the agreed GloBE calculation rules.

### Undertaxed Profits Rule (UTPR)

The UTPR allows a top-up tax to be collected in instances where the IIR does not apply. Tax arising under the UTPR can be collected by other group entities regardless of whether these are parent entities. UTPR top-up tax is allocated amongst jurisdictions where the group operates using an allocation key based on employee headcount and the value of tangible assets per jurisdiction, weighted equally.

### Qualified Domestic Top-Up Tax (QDTUT)<sup>3</sup>

The GloBE Model Rules provide that a domestic top-up tax will be directly creditable against liabilities otherwise arising under the IIR and UTPR. Under the Directive, each Member State may elect to apply a QDTUT to the constituent entities of a group located within its borders. As noted above, the Directive provides that implementation of a QDTUT will be recognised as sufficient to satisfy the requirements of Pillar Two, meaning that other Member States are assured sufficient tax has been paid by

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<sup>3</sup> Termed 'Qualified Domestic Minimum Domestic Top-Up Tax' (QDMTUT) in the GloBE Model Rules.

companies in the jurisdiction applying a QDTUT and no further top-up would be required. In effect, each jurisdiction applying a QDTUT becomes a 'safe harbour' in tax terms. This is an EU rule which is expected to be adopted globally.

As Ireland's 12.5% trading rate of corporation tax is below the agreed 15% minimum effective rate, it is very likely that Ireland will introduce a QDTUT as part of the Pillar Two implementation process. The views of stakeholders are being sought to fully inform this decision, and considerations relevant to its possible introduction include:

- Revenue protection – to ensure collection of top-up taxes due from in-scope entities in respect of profits arising in Ireland.
- Minimising the administrative burden on in-scope groups, having regard to the potential benefits of the safe harbour provision in the proposed Directive.

## **Subject to Tax Rule (STTR)**

The Subject to Tax Rule is a bilateral tax treaty rule which will operate separately to the GloBE rules outlined above. Although not yet finalised, it is intended to apply in respect of certain intra-group cross-border payments, such as interest and royalties, where the payment is subject to taxation on receipt below the 9% STTR minimum rate.

If tax on the payment is below the STTR minimum rate, a taxing right (or additional taxing right, as the case may be) will be granted to the source jurisdiction. The taxing right granted will be equal to the difference between 9% and the tax applied (in the source and residence jurisdictions) to the payment.

It is expected that a multilateral instrument will be developed to assist countries in adopting the STTR where required to do so.

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## 5. Consultation Period

We are inviting replies from interested parties to any or all of the below questions with a view to informing Ireland's implementation of Pillar Two. You are also invited to provide responses on issues not covered in this paper but which you nevertheless feel are relevant to the introduction of Pillar Two in Ireland.

The consultation period will run **from 26 May 2022 to 22 July 2022**. Any submissions received after this date may not be considered.

### How to Respond

The preferred means of response is by email to: [ctreview@finance.gov.ie](mailto:ctreview@finance.gov.ie). Please include "Consultation on Pillar Two" in the subject box.

Alternatively, you may respond by post to:

*Consultation on Pillar Two Proposal,  
Tax Division, Department of Finance,  
Government Buildings,  
Upper Merrion Street,  
Dublin 2  
D02 R583*

Please include contact details if you are responding by post.

When responding, please indicate the capacity in which you are contributing to the consultation process, for example as a professional tax adviser, representative body, in an individual capacity or as non-governmental organisation.

### Freedom of Information

Responses to this consultation are subject to the provisions of the Freedom of Information (FOI) Acts. Parties should also note that responses to the consultation may be published on the website of the Department of Finance. Parties should clearly indicate where their responses contain personal information, commercially sensitive information or confidential information which they would not wish to be released under FOI or published.

### Meetings with Key Stakeholders

The Department of Finance may also invite stakeholders to meet with them, including representative bodies, tax professionals and other interested groups or individuals.

## 6. Consultation Questions

It is important to reiterate that the Rules<sup>4</sup> have largely been finalised and agreed at an international level and are to be implemented as part of a common approach. In this regard, it is not the purpose of this consultation to obtain views on the policy and design of the Rules themselves. The purpose of this consultation is to seek views on the implementation of the Model Rules and proposed EU Directive in domestic Irish legislation. When submitting responses to the below it is important to note that the implementation of Pillar Two will need to respect the intended outcomes and operation of the Rules.

### General

1. Are there any specific features of the Rules that warrant particular attention with regard to their implications for Ireland's tax code and tax policy?
2. When implementing the Rules, are there any specific issues which should be considered with respect to implications for the Irish tax code arising from US corporate tax reform proposals, with particular reference to the significance of US MNEs operating in Ireland?
3. Are there other considerations of significance that should be taken into account when implementing the Rules in domestic legislation?
4. Are there any amendments needed to Ireland's existing tax code to ensure that existing legislation does not result in any unintended outcomes under the Rules when they are implemented in domestic legislation?

### Scope

5. Are there any aspects concerning the scope of the Rules, for example the definitions of a Group, a Constituent Entity or an Excluded Entity, that require further clarification in domestic legislation?

<sup>4</sup> For the purposes of this document "the Rules" mean –

- (i) The GloBE Model Rules as published by the OECD on 20 December 2021 (OECD (2021), *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS*, OECD, Paris), (<https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.pdf>),
- (ii) The Commentary on the GloBE Model Rules as published by the OECD on 14 March 2022, (<https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two-commentary.pdf>), and
- (iii) The updated compromise text / draft Directive on Pillar Two published by the European Commission on 28 March 2022 ("Draft Directive"), (<https://data.consilium.europa.eu/doc/document/ST-7495-2022-INIT/en/pdf>).

### **Charging Provisions**

6. Do you have any views on how (i) the Income Inclusion Rule ('IIR') and (ii) the Undertaxed Profits Rule ('UTPR') provisions<sup>5</sup> should be reflected in domestic legislation?
7. In relation to the UTPR, should this take the form of either (i) a top-up tax or (ii) a denial of deduction against taxable income resulting in an amount of tax liability necessary to collect Ireland's portion of the UTPR top-up tax amount?

### **Computation of GloBE Income or Loss**

8. Do you have any comments on the Computation of GloBE Income or Loss provisions contained within the Rules<sup>6</sup> and how these could be implemented in domestic legislation? In particular, do you have any comments on:
  - (i) the determination of the Financial Accounting Net Income or Loss, and
  - (ii) the adjustments to determine the GloBE Income or Loss?
9. Are there any aspects of the Computation of GloBE Income or Loss provisions that require further clarification in domestic legislation?
10. Do you have any views on the rules regarding the allocation of Income or Loss to entities/jurisdictions as they could apply to domestic legislation?

### **Computation of Adjusted Covered Taxes**

11. Do you have any comments on the Computation of Adjusted Covered Taxes provisions<sup>7</sup> and how these could be implemented in domestic legislation?
12. Are there any aspects of the Computation of Adjusted Covered Taxes provisions that require further clarification in domestic legislation?
13. Do you have any views on the rules on (i) the allocation of covered taxed between entities, (ii) the mechanism to address temporary differences, and (iii) post-filing adjustments as they could apply to domestic legislation?

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<sup>5</sup> Contained within Chapter 2 of the GloBE Model Rules and Chapter II of the Draft Directive.

<sup>6</sup> Chapter 3 of the GloBE Model Rules and Chapter III of the Draft Directive.

<sup>7</sup> Chapter 4 of the GloBE Model Rules and Chapter IV of the Draft Directive.

### **Qualified Refundable Tax Credits**

14. Do you have any comments on the potential interaction of tax credit provisions, as currently set out in the corporation tax code, with the definition of “Qualified Refundable Tax Credit”<sup>8</sup>?

### **Computation of ETR and Top-up Tax**

15. Do you have any views on the Computation of Effective Tax Rate (ETR) and Top-up Tax provisions<sup>9</sup>? In particular, do you have any views on the process to calculate ETR and Top-up Tax and how these could be implemented in domestic legislation?

16. Are there any aspects of the calculation of the ETR and Top-up Tax of investment entities, joint ventures or minority-owned constituent entities that require further clarification in domestic legislation?

### **Qualified Domestic Top-up Tax (‘QDTUT’<sup>10</sup>)**

17. In your view, should a QDTUT be implemented by Ireland? If so, what should be the features of such a QDTUT and how should it operate? In particular, please provide your view on the charging and administrative rules that should apply.

For example, could a QDTUT form part of the corporation tax liability of a company and be returned as part of the corporation tax return? How should the jurisdictional calculation of the QDTUT be addressed in return filings, particularly where entities in an MNE group in scope in Ireland might have different intermediate parents?

### **Administration – Payment and Filing**

18. Do you have any views on how the reporting obligations of entities that are in scope of the Rules, should be satisfied?

19. How should liabilities arising under the IIR or UTPR be reported and paid/collected? Do you have any views on the frequency of such payments and the deadlines that should apply?

<sup>8</sup> Chapter 10 of the GloBE Model Rules and Chapter I of the Draft Directive, Article 3 para 32(a).

<sup>9</sup> Chapter 5 of the GloBE Model Rules and Chapter V of the Draft Directive.

<sup>10</sup> For the purposes of this document, references to QDTUT shall include ‘Qualified Domestic Minimum Top-up Tax’ (‘QDMTUT’) as defined in the GloBE Model Rules.

20. Do you have any views on whether Irish constituent entities should be made joint and severally liable for any Irish GloBE liabilities of the Irish constituent entities of the same MNE Group? In this regard, would you differentiate between IIR liabilities and UTPR liabilities?
21. Do you have any views on whether Irish constituent entities should be made joint and severally liable for the QDTUT (if Ireland were to adopt such a provision) of the Irish constituent entities of the same MNE Group?
22. What group entity should be made initially liable for paying UTPR tax? Is your answer dependent on whether UTPR tax is collected by way of denial of deduction or direct charge?

### **Transition Rules**

23. Are there any aspects of the Transition Rules<sup>11</sup> that require further clarification in domestic legislation?

### **Subject to Tax Rule ('STTR')**

24. Should amendments to any domestic legislation be considered to address potential application of, or interactions with, the STTR?

### **Large Scale Domestic Groups**

25. The proposed Directive on Pillar Two will also apply to large-scale domestic groups<sup>12</sup>. Are there any aspects of the application of the Rules to large-scale domestic groups that require further clarification in domestic legislation?

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<sup>11</sup> Chapter 9 of the GloBE Model Rules and Chapter IX of the Draft Directive.

<sup>12</sup> Chapter I of the Draft Directive, Article 1.



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