BEPS 2.0

Pillar Two

Response to the Department of Finance on Minimum Tax Rate Implementation May 2022 Consultation

Pillar Two Minimum Tax Rate Implementation

Consultation on Pillar Two Proposal,
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By email to ctreview@finance.gov.ie

22 July 2022

Dear Sir / Madam

As representatives of the aircraft leasing industry, we welcome the opportunity to respond to the public consultation by the Department of Finance on the implementation of measures proposed under the second iteration of the OECD Base Erosion and Profit Shifting project ("BEPS 2.0"), in particular the implementation of a minimum effective tax rate under Pillar Two of that project.

Aircraft Leasing Ireland ("ALI") was launched in July 2018 as Ireland's first representative body for the aircraft leasing industry. Comprising 36 members, ALI's primary objectives are to maintain and develop Ireland's position as the leading global centre for aircraft leasing and to be the central representative voice on behalf of the industry. This includes coordinating relevant stakeholder input in formulating industry positions.

The aircraft leasing industry supports approximately 5,000 jobs across the island of Ireland and accounts for a contribution of more than €500m to the local economy[1]. Aircraft leasing is a growing industry and has played a critical role in helping airlines recover from the challenges presented by COVID-19 to air travel in 2020, 2021 and 2022.

As a constituent part of Ireland's international financial services industry, aircraft leasing is unique in having most global decision-makers based here, managing over 60% of the world's leased fleet. In this context, we believe it is important that Ireland continues to maintain the highest standards in international taxation through the implementation of measures agreed under the OECD Base Erosion and Profit Shifting (BEPS) project and Anti-Tax Avoidance Directives, while at the same time retaining an attractive and internationally competitive taxation environment.

We hope that the points outlined below will be of assistance. Please feel free to contact us if you would like us to elaborate on or clarify any of the issues raised.

Yours faithfully,

Marie-Louise Kelly
Chairperson
Aircraft Leasing Ireland

[1] Source: PwC 'Taking Flight' report January 2018.

Introduction

We welcome the opportunity to respond to this consultation on the implementation of a minimum effective tax rate in Ireland (the "Rules"[2]). The aircraft leasing industry in Ireland has since the 1970s developed into a very substantial industry sector and it is expected that the majority of Irish leasing companies will be subject to the GloBE rules once introduced.

We have two key asks:

1. Aircraft leasing companies own a material amount of tangible assets. These assets are integral to the substantive and active businesses carried on by aircraft leasing companies. The ability to access the "tangible asset" substance based carve-out is very important for the Irish leasing sector.

   While the draft Directive allows for this, we would appreciate additional clarity around its application (due to some ambiguity in the existing OECD guidance). In particular, confirmation is required that the "location" of mobile tangible assets (such as aircraft) is based on the jurisdiction of tax residency of the owner of the assets.

2. We are also seeking confirmation that Ireland's implementation of the Rules will be based on a fully compliant QDTUT regime with streamlined and manageable payment and reporting mechanisms, rather than a headline tax rate change. This will (i) provide certainty to taxpayers and to other jurisdictions that the Rules have been fully implemented in Ireland and (ii) ensure that the Rules operate as intended by applying to adjusted accounting profits arising after the date of introduction of the Rules and thereby not impacting historic deferred tax asset/liability balances.

   Typically, leasing groups have a significant number of subsidiaries (upwards of 400 companies would not be uncommon). As a result, there is already a high compliance burden on aircraft leasing businesses, before considering the requirement to perform additional tax calculations which will be required under the Rules. We would ask that consideration be given to allowing Irish companies the option of applying the GloBE rules based on consolidated accounts (which will be consistent with how companies in other European countries which have a consolidated tax system will calculate the minimum tax).

We have structured our response herein so that we have brought these key areas to the fore (see Parts A and B), explaining the rationale and reasoning for each request within those headings. We have also included additional detail on other areas of interest to ALI members (see Parts C and D). We have referenced the relevant consultation questions before each response, as appropriate. Please note that we have only provided responses to questions which have relevance to ALI members, and as such, not all questions have been answered.

We appreciate that there is a considerable amount of detail in the below and we would be more than happy to discuss these various topics in a meeting with you and appropriate representatives once you have had a chance to digest.

[2] 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)

(ii) The Commentary on the GloBE Model Rules as published by the OECD on 14 March 2022, and

(iii) The updated compromise text / draft Directive on Pillar Two published by the European Commission on 28 March 2022 ("Draft Directive").

Outline of Submission

Our submission is divided into 4 key sections:

Part	Subject	Consultation Question
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Part A: Computation of GloBE Income or Loss [Question 8]

ALI welcomes the introduction at Article 5.3 of the OECD Pillar Two Model Rules (the "Model Rules") and Article 27 of the Draft Council Directive on Ensuring a Global Minimum Level of Taxation for Multinational Groups in the Union (the "Directive") of a carve-out from GloBE Income based on substance and measured with reference to tangible assets and payroll. Such carve-outs are appropriate and reflect the real and valuable contributions made to local and global economies by businesses with significant substance in their home jurisdiction.

We are keen to confirm our interpretation of the provisions in both the Model Rules and the Directive in relation to the substance-based carve-out for eligible tangible assets, which we have set out below.

Question	**Confirmation requested**	**Rationale**
Q 8	Confirmation that the tangible assets (substance) carve-out incorporates leased plant and equipment.	This is reflected in the draft Directive and the Model Rules. It also reflects the reality of an active leasing business having significant local substance.
Q 8	Confirmation that the "location" of tangible assets will be defined in such a way as to include the jurisdiction of tax residence or other taxable presence of the owner of those assets.	A definition of location which incorporates residence and/or taxable presence will be required to allow for the range of tangible assets which will fall within the scope of the carve-out. Without such a definition, there is a risk that industries with significant local substance will not be in a position to benefit from the carve-out as intended.

Article 5.3 of the Model Rules ("Substance-based Income Exclusion") provides for a carve-out from an MNE's calculated GloBE Income for a measure of substance. This carve-out is measured with reference to both the carrying value of eligible tangible assets and the payroll costs of eligible employees. The payroll element of the calculation is a welcome recognition of economic contribution and substance arising from locally based employees. ALI fully supports the inclusion of the payroll cost element of the substance based carve-out. The carve-out will play an important role in attracting high quality employment to Ireland in the future.

A.1 Confirmation that the tangible assets carve-out incorporates leased plant and machinery

The inclusion of the additional element of a carve-out from GloBE Income for 5% of the carrying value of eligible tangible assets is welcome and reasonable. It recognises the contribution made by asset intensive industries to local economies and that the "BEPS risk" associated with such industries is lower. In the wider Irish leasing industry, there is a very strong correlation between substance and the ownership of assets in Ireland, with most aviation lessors having significant offices and teams in Ireland as well as holding assets in Ireland.

Our reading of the draft Directive, the Model Rules and the Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two) (the "Commentary") is that aircraft acquired, owned, held on balance sheet and leased to airlines and other lessees by a specialist asset lessor are included within the scope of the definition of "eligible tangible assets".

The Model Rules and the Directive define "eligible tangible assets" as (among other things) "**property, plant and equipment** located in the jurisdiction". At Article 27.4 the Directive sets out certain exclusions from the definition of eligible tangible assets, as follows:

The tangible asset carve-out of a constituent entity located in a jurisdiction shall be equal to 5% of the carrying value of the eligible tangible assets located in the jurisdiction, with the exception of:

> *(a) the carrying value of **property**, including land and buildings, that is held for sale, for lease or for investment;*
> (b) *the carrying value of tangible assets used to derive income that is excluded in accordance with Article 16.*

In this regard, we note the following:

- Aircraft (and other moveable leased assets, such as hired cars, leased trucks and leased rail cars) will qualify as being "equipment" for the purposes of the substance based carve-out.
- The exclusion in (a) is very specific and refers only to "property". Equipment is not excluded from the carve-out.
- The exclusion in (b) refers to the general exclusion for international shipping income and is not relevant to aircraft leasing. However, we do note that the drafting of (b) refers to "tangible assets" – which would include all equipment. By using two different terms in (a) and (b) to define which assets are to be excluded under each clause, it is clear that a distinction is being made.

The Model Rules similarly carve out the carrying value of property, but do not carve out the carrying value of plant and equipment – see Article 5.3.4. The wording of this exclusion appears entirely consistent with the stated policy of ensuring that investment assets do not qualify for the substance based carve-out. Unlike property, it is unlikely that a company would acquire plant and equipment (which are depreciating assets) as an investment.

The draft UK legislation published on 20 July 2022 also includes a substance based exclusion. Similar to the EU Directive, this exclusion is not available for property (including land and buildings) but would seem to be available for other leased assets such as plant and equipment.

Notwithstanding that the wording of the draft Directive and its associated policy intent seems clear, the Commentary published by the OECD in relation to these provisions has given rise to some confusion, with concerns expressed among ALI members that the guidance in Paragraph 43 of the Commentary refers to "an asset" on lease being excluded (without clearly defining this to be a property asset). While Paragraph 43 must be read in the context of the Directive itself (where the wording is quite clear) and the rest of the Commentary, which has some clarifying guidance over what types of property the drafters were seeking to exclude, we would appreciate if confirmation could be provided to the leasing industry on this point.

The following points are relevant in this regard:

- As noted above, the exclusion from the carve-out as drafted in both the Model Rules and the Directive does not include plant and equipment such as aircraft and aircraft parts and is limited only to property and international shipping.
- Paragraph 25 of the Commentary articulates the policy rationale behind the carve-out. It states that *"[the] policy rationale behind a formulaic, substance-based carve-out, based on payroll and tangible assets is to exclude a fixed return for substantive activities within a jurisdiction from the application of the GloBE rules […]. Conceptually, excluding a fixed return from substantive activities focuses GloBE on "excess income", such as intangible-related income, which is most susceptible to BEPS risks*". The intention of the substance-based income exclusion is to reward substantive activities, such as an active trade of aircraft leasing, and ensures that the policy objectives of GloBe are met. Paragraph 43 itself develops this point, explaining that the carve-out does not apply where "the lessor is not ***actively*** using the underlying asset to earn income". For an active leasing company, the leasing and managing of aircraft/engines is a lessor's core and active business (i.e. it is not ancillary investment activity). Aircraft/engines are actively managed throughout their lifecycle by large teams within aviation lessors.
- Paragraph 46 of the Commentary makes clear that the exception at 27.4 of the Directive and at 5.3.4 of the Model Rules is intended to apply to buildings and land held as investments only. It is worth quoting extensively:

  > "*While the carve-out generally seeks to recognise a broad range of tangible assets, an MNE Group should not be allowed to generate a larger carve-out by purchasing* ***an investment*** *property in a jurisdiction.* ***This risk is particularly relevant as it relates to buildings and land, which are commonly held as investments****. To neutralise this risk,* ***buildings and land that are held to earn rental income or for capital appreciation (or both), are excluded from the carve-out***".

  It is clear from the above that leased plant and equipment are not intended to be excluded from the carve-out. The exclusion is targeting investments. For example, it is right and appropriate that a manufacturing or technology company which acquires a property solely as an investment (and which is not used in its active business) would not benefit from the substance based carve-out for this investment. In our view, this is undoubtedly what the exclusion is seeking to capture. This is very different to an active leasing company which deploys its aircraft/engines in the active supply of a leasing service to its customers and which actively manages those aircraft/engines over their lifecycles.

The Commentary around the tangible asset carve-out, taken in the round, makes clear that owned plant and equipment, such as aircraft, which are actively managed and leased in the course of a substantive trade, are not intended to be included in the scope of the exclusion from the carve-out. Confirmation of this point would be appreciated by ALI.

A.2 Confirmation that the "location" of tangible assets includes the jurisdiction of tax residence of the owner of those assets

Both the definition of "eligible tangible assets" set down in the draft Directive at 27.1, and the provisions at 27.4 describing the scope of exceptions from the carve-out, refer to assets "located in the / a jurisdiction". The Commentary (at Chapter 5 Paragraph 38) acknowledges the complexities this brings in the context of a mobile tangible asset such as, for example, an aircraft held by an international airline and suggests that further guidance will be given to address these difficulties. Given the inherently mobile nature of aircraft (which could be present in multiple jurisdictions on any given day), it is appropriate that they are considered separately.

We have given consideration to the ways in which "location" can be defined in the context of an aircraft. There are four potential options:

i) physical location of the aircraft: it would not be appropriate to interpret "location" as solely referencing the physical location of an aircraft. For example, an aircraft may be physically located in a country on a temporary basis due to flight operations, but the airline (or lessor) may not have a taxable presence in that country. As a result, the airline (or lessor) may never benefit from the substance based carve out if "location" solely focused on the physical location of an asset.

ii) jurisdiction of registration of the aircraft: the jurisdiction of registration is highly flexible, changes regularly and would be open to manipulation. It is also driven by regulatory requirements rather than being in any way related to the aircraft's owner or lessee.

iii) main base of the aircraft: defining location with reference to main base would not be appropriate in the context of a moveable asset such as an aircraft, the main base of which can change regularly as flight schedules change and which has no material relationship to its owner or lessee.

iv) jurisdiction of the owner: a definition of location which looks to the situs of the entity (being the owner) which records the aircraft on its balance sheet is the only reasonable and robust definition. Specifically, this definition would look to the jurisdiction of tax residence or other taxable presence of the entity seeking to avail of the carve-out, *i.e.* the jurisdiction in which the income derived from the aircraft is subject to taxation. In their 10 April 2022, submission in response to the OECD's Public Consultation on the Pillar Two Framework, the International Air Transport Association ("IATA"), the trade association representing airlines, suggested an allocation method to apply the substance based carve-out to both airlines' jurisdictions of tax residence and any other jurisdiction in which they have a taxable presence or permanent establishment. ALI agrees with IATA's suggestion and supports its implicit understanding of the "location" of an eligible tangible asset being linked to the tax residence / taxable presence of the owner or lessee.

ALI recommends that a definition which looks to the jurisdiction of tax residence or other taxable presence of the owner of the relevant asset be adopted. This would also ensure symmetry with the expected treatment of airlines, as we expect airlines will benefit from the substance based carve-out

for the aircraft which they own or lease in their home jurisdictions and jurisdictions in which they have a taxable presence, even though the aircraft will be regularly deployed in flight operations elsewhere.

We note that the Model Rules and Directive provide for a deduction from GloBE Income for (i) a lessor, which records a tangible aircraft asset on its balance sheet, and (ii) an airline lessee, which records an intangible "right of use" asset in respect of the lease of that aircraft on its balance sheet. Accounting rules, including IFRS 16, acknowledge the distinction between these two different assets. The difference in the assets recorded derives in part from the fact that the lessor and lessee operate two separate and discrete businesses, and exploit the aircraft in two very different ways in the course of their active and substantial economic activities (*e.g.* the lessor uses an aircraft to generate lease rentals and airline uses it for ticket fares). This fact should not stand in the way of confirming the availability of the carve-out to active lessors of eligible tangible assets.

We would welcome the opportunity to discuss these points further once the Implementation Framework is released.

Part B: Qualified Domestic Top-up Tax ("QDTUT"), Administration, Payment and Filing [Questions 17-22]

ALI welcomes the EU Commission's introduction of an option to adopt a QDTUT which, if implemented in Ireland, will apply to in-scope Irish entities. The introduction of a QDTUT would simplify the administration of the GloBE rules and reduce the burden of compliance on in-scope entities.

We also welcome the openness of the Department of Finance to consult on the payment and filing obligations with respect to the Rules. Given the various data points on which the Rules rely and the complexity of those calculations, ALI members and Irish companies in general will have a considerably increased burden of compliance to deal with following the introduction of the Rules. As such, our ability to input on this point is greatly appreciated.

We have set out some of our key points in this regard below.

Question	Confirmation Requested	Rationale
Q 17	Confirmation that Ireland will introduce a QDTUT.	This is in line with our understanding of the anticipated implementation of the rules in Ireland, and simplifies and streamlines the administration process associated with the GloBE rules. It is consistent with the Directive and the OECD proposals.
Q 18	Consider bringing in an optional group consolidation regime to allow Irish UPEs and their constituent entities calculate the GloBE income based on their consolidated financial statements.	Will considerably ease the compliance burden of those groups with a large number of entities, will align the calculation with other jurisdictions that already operate a tax consolidation regime and will remove some ETR discrepancies which might occur with regard to adjusted intra-group permanent differences.
Q 18	Await further guidance released on a global GloBE return in the Implementation Framework but ensure that the domestic reporting timelines in Ireland in this regard are, at a minimum, 15 months following the end of the accounting period.	Allow taxpayers as much time to gather information, across territories, to make accurate calculations under Pillar 2. The 15 month timeline is noted in the OECD Commentary on the Model Rules and as such Ireland should not enforce a shorter timeframe.

Q 18	Provide confirmation that the reporting currency for calculation of the GloBE return and the approach with regard to translations from non-Euro accounting currency will follow the same approach as Ireland's existing corporation tax rules.	ALI members and indeed many other Irish taxpayers tend to have USD financial reporting currency. Utilising the existing provisions of the Irish corporate tax regime with regard to calculations of taxable profits in non-Euro currency will help ease the administrative burden on taxpayers.
Q 19	Allow the payment of a QDTUT liability to be made with the filing of a GloBE return, 15 months after the fiscal year end; thus ensuring it exists as an additional corporate tax charge (and not a deduction denial) and sits outside the preliminary tax rules.	The 15 month timeline is provided for in the OECD guidance and allows taxpayers sufficient time to meet this additional compliance burden.
Q 20 / 22	Flexibility should be provided to allow for any elected Irish group member to settle any tax payments arising under the Rules. Taxpayers should be free to elect who should make payments similar to the approach taken under the VAT grouping provisions.	Flexibility to allow taxpayers nominate who should settle liabilities will make the overall process around collection of liabilities more straightforward and streamlined.

B.1 Confirmation that Ireland will introduce a QDTUT

ALI welcomes the introduction in the draft Directive of provisions to allow Member States to elect to apply a QDTUT, under which the amount of any GloBE top-up tax due will be reduced, up to zero, by the amount of QDTUT due. The QDTUT, if introduced by Ireland, will greatly simplify the calculation of amounts due under the GloBE rules and in doing so will reduce the burden of complexity falling on in-scope groups under Pillar Two. There are a number of other important reasons why a QDTUT should be introduced, including:

- Given that a QDTUT is provided for in the draft Directive, Irish businesses have been operating on the basis that a QDTUT will be introduced. Introducing a QDTUT would continue Ireland's long held policy of providing certainty and predictability when it comes to important tax matters.
- A QDTUT is fully compliant with the draft Directive and is provided for in the GloBE rules.
- A QDTUT provides greater certainty around the additional tax due under Pillar 2 thereby reducing the risk of costly disputes/audits in multiple jurisdictions regarding the Pillar 2 tax due.

The specific provisions which we recommend including in a QDTUT are set out in detail in B.2 below.

In the absence of introducing a QDTUT, one alternative which may have been considered is an increase in the headline corporation tax rate applying to in-scope groups from 12.5% to 15%. There are a number of difficulties associated with a headline rate increase. These include:

- Significant differences could arise between the adjustments required to be calculated under the GloBE rules and those required under existing Irish corporation tax rules meaning that a

headline rate increase to 15% would not necessarily result in an effective Irish tax rate for in-scope groups of 15% when calculated using the GloBE rules. This could mean that IIR and UTPR adjustments will still be required to bring the GloBE effective tax rate in Ireland up to the mandated 15%, which would result in significant complexity and difficulty for taxpayers and a potential loss of revenue for the Irish exchequer.

- The GloBE rules are designed to ensure large multinational enterprises pay a minimum level of tax (set at 15%) on the income arising in each jurisdiction where they operate (see paragraph 1.1 of the Commentary) in the future. They are not intended to subject historic profits which have been deferred solely due to timing differences (like capital allowances) to the 15% rate. This policy objective is achieved where a QDTUT is introduced, whereas changing the headline rate to 15% could give rise to an unintended consequence of (retrospectively) applying the increased tax rate to historic profits as historic deferral of tax due to capital allowances or other reliefs unwinds.

It is our strong preference that a QDTUT be introduced in Ireland. In order to provide certainty and allow businesses to plan, ALI would welcome a clear statement that this, rather than a change to the Irish headline rate, is the anticipated manner in which the introduction of the GloBE rules will be introduced in Ireland. We would also suggest that Ireland advocates at an international level for a safe harbour that deems the top-up tax due by the parent entity under the GloBE rules to be nil where an OECD/EU country (such as Ireland) introduces a QDTUT. This would provide significant long-term certainty to Irish business and significantly reduce the administrative burden associated with Pillar 2.

B.2 Practical collection and reporting considerations

General approach

The QDTUT should be the primary mechanism for collecting any Top-Up Tax amounts from low-taxed constituent entities that are resident here. This adoption of a QDTUT should ensure Ireland is protected from losing tax revenue to jurisdictions where parent companies of Irish groups may be located. In addition, an Income Inclusion Rule ("IIR") will then further support the corporation tax receipts whereby Irish-headquartered ultimate parent entities ("UPEs") pay Top-Up Taxes on behalf of their foreign subsidiaries (in the event that a QDTUT is not applicable to the subsidiary's location). We expect that these two methodologies will account for the majority of the Irish Exchequer receipts under the Rules.

As noted in the consultation document, a QDTUT should also minimise the administrative burden on Irish taxpayers and foreign UPEs, particularly where the Irish QDTUT can be considered to be a "safe harbour" regime. Ensuring that our QDTUT acts as a "safe harbour" regime will be crucial to the effectiveness of the Rules in Ireland.

Ability to use optional consolidation basis for calculating and paying QDTUT

Ireland does not have a concept of fiscal unity or tax consolidation (see our comments at Section C below). However, should the Rules be introduced in a way which allows an optional ability for an Irish UPE and its Irish constituent entities to prepare a consolidated GloBE Income calculation and covered taxes calculation based on consolidated financial statements, it would significantly reduce both the complexity and the compliance burden for aircraft leasing groups, and it would be consistent with the calculation of the minimum tax in many other countries in the EU/OECD that have a consolidated tax regime. It would also help ensure a more balanced and consistent application of the Rules as it would ensure that intra-group transactions which eliminate on consolidation would not distort individual GloBE income calculations.

As noted above, there is often a large number of entities within an aircraft leasing group. Individual calculations for each of those entities will be a large compliance burden on the relevant UPE. Although the concept of group consolidation doesn't exist in Irish tax legislation, it does appear in a large number of other OECD jurisdictions and could likely offer a good proposition for the wider Irish tax system going forward. As such, taking an opportunity now to establish this basis for the GloBE calculations could be an important first step on the introduction of a broader consolidation regime.

Timeframe of reporting

It is too early to comment on the reporting requirements that are likely to be put in place given the Implementation Framework ("IF") has not yet been agreed. We await confirmation through the IF regarding whether one global GloBE return will be required to be prepared, who will be tasked with preparing and filing that return, whether it will be shared among countries in which MNE Group members are resident, how the Top-Up Tax amounts will be verified and audited, and other related matters.

In terms of specifics within the control of the Department of Finance, the timeframe within which to report on the Rules should, at a minimum, be 15 months following the end of the accounting period. The Rules are based on, and integral to, finalised financial accounts. Often, due to the number of legal entities within aircraft leasing groups, some aircraft leasing company accounts are not finalised until the second half of the year following the end of the accounting period (Q3/Q4). On the basis that the Rules will require considerable cross border coordination of accounting figures, we would suggest that as much time as possible is afforded to companies to complete this process.

This 15 month timeline is suggested in the OECD Commentary on the Model Rules in the Administration section of that document at paragraph 25, and also within the Charging Provisions commentary (at paragraph 56 of that section). As such, it is clear that the OECD and the EU are cognisant of the need to have extended timelines for reporting and payment.

Reporting Currency

At present, it is not clear what the tax functional currency will be for Irish tax resident companies under the Rules. Many aircraft leasing companies prepare their accounts in USD due to the nature of the industry and the companies' assets and income streams. Under the existing corporate tax regime,

those results are calculated and translated to Euro at the average €:$ exchange rate for the accounting period in order to pay tax due. It will be important that a similar regime is put forward for the calculation of the Rules and that this is made clear in the Irish legislation. We understand that certain jurisdictions can take differing views on how to translate accounting results in a reporting currency into tax liability currency. However, we would ask the Department of Finance to maintain the approach already adopted to date in terms of this administrative element to help limit the additional compliance burden and complexity on taxpayers.

Payment obligations

Given the uncertainties that will arise from year to year in terms of the Top-Up Tax amount payable, and the reliance that will need to be placed on the consolidated and entity level financial accounts (which as noted above can be considerably after the end of the fiscal period) to calculate such Top-Up Tax, the GloBE Top-Up Tax should not feature as an element of the local preliminary corporation tax liability.

Given the novelty of the GloBE system and the fact that information and calculations would need to be carried out across several different jurisdictions, as a practical matter the payment deadline should align with the reporting deadline under the Rules, which as noted above should be 15 months following the end of the fiscal period.

We note that the draft Directive allows up to 4 years to a pay a QDTUT without the amount falling to be collected under an alternative mechanism. As such, a 15 month payment timeline is consistent with the draft Directive and recognises that there will be a considerable amount of effort required to calculate the QDTUT due, particularly in the early years after its introduction.

In terms of collecting the Top-Up Tax amount, we believe that the most straightforward way to collect the tax is by treating the GloBE tax liability as an additional Irish corporation tax liability, albeit with separate reporting and payment deadlines. This avoids the need to make adjustments to bring in imputed income or by denying deductions of otherwise deductible payments. It also prevents circularity in terms of GloBE taxes having to be considered or rather not, as part of the company's covered taxes. The covered tax and the GloBE Top-Up Tax should be easily identifiable and distinct under this approach.

We suggest that as much flexibility is granted as possible in determining who can pay this tax, with the introduction of a group payor of the QDTUT, similar to the remitter concept in a VAT group being preferred. As noted, many members of ALI will have a large number of asset owning entities and having to individually manage and process QDTUT payments on all those entities will generate a huge amount of unnecessary administration. As such, allowing a taxpayer to elect a remitter will help manage this administrative burden and make the process more manageable.

Part C: Impact on Ireland's existing tax code [Questions 1, 3, 4]

Outside of the keys areas of focus for ALI which we have already outlined above, there are a number of other general considerations within the Rules which warrant particular attention so as to ensure that they can coexist with Ireland's existing tax code and policy.

These are set out in more detail below.

Question	Suggestion	Rationale
Q 1	Undertake a material review of Ireland's existing tax code to simplify areas which have become increasingly complex in recent years and seek to ease the significant administrative burden which now exists on taxpayers, including consideration of a corporate tax consolidation regime and removal of the 25% tax rate.	A streamlined tax system creates certainty, simplicity and ultimately encourages foreign direct investment, as well as reducing the ever-growing compliance burden for ALI members and Irish companies in general.
Q 1	Confirm that the Rules are to apply in respect of accounting periods beginning after 31 December 2023 at the earliest.	Giving companies as much time as possible to implement this fundamental change to tax reporting is vital to ensuring effective transposition of the Rules.
Q 4	A participation exemption for dividends and branch profits should be introduced.	The Rules are designed based on the presumption that the jurisdiction implementing them already has a participation exemption with respect to dividends and branch profits. Given this is already being considered by the Department of Finance, we ask that this territorial regime is brought into Irish legislation without delay.

C.1 The simplification of Ireland's tax code should be accelerated

At the outset, it is important to acknowledge that the introduction of the Rules will signal a very significant change to the Irish tax code and tax policy. These Rules come on the back of other recent fundamental changes, such as the transposition of all the EU Anti-Tax Avoidance Directive I & II initiatives, changes to the transfer pricing rules, and other domestic revisions to the tax code. To date, these changes have been brought in so as to layer them "on top" of the existing Irish tax code and legislation (*e.g.* the interest limitation rules and the changes to the transfer pricing rules). This has led to more and more complexity within the Irish tax system as well as a significantly increased administration and compliance burden for corporate taxpayers.

As a result of Ireland's already strong domestic legislation, as well as the adoption of the above-mentioned rules, we believe that the Irish tax code is sufficiently robust from a tax anti-avoidance and compliance perspective. Given this, we do not believe there is / will be a need to strengthen these areas of the Irish tax code for the next 3-5 years.

We believe that there exists an opportunity to spend the next 3-5 years streamlining some of the Irish tax code, while removing unnecessary elements which create complexity and an additional compliance burden on taxpayers, but do not generate material tax receipts for the Irish Exchequer. One obvious example of streamlining would be the introduction of a territorial (exemption) regime with respect to dividends and branch profits which would make Ireland's corporate tax regime much more efficient and significantly less complex. This is discussed further below in section C.3.

Consideration should also be given to the introduction of a full tax consolidation regime, similar to that now in place in many OECD countries. Allowing groups to file a single consolidated tax return would significantly reduce the existing compliance burden and complexity on taxpayers, particularly those with large numbers of Irish tax resident entities (such as aircraft leasing groups). While it is accepted that this would be a fundamental change to Ireland's corporate tax reporting system, the existing consolidated group provisions under the ILR regime, together with the suggested consolidated group provisions for the GloBE calculation (see comments at B above) will allow Ireland to effectively "road test" a full consolidation reporting regime.

There are many other examples where simplification changes could be made to align some of the practical compliance measures (around payments, returns, etc) included in s.959A TCA 1997 *et. seq*. with the Rules and the IF Computational rules which have been recently introduced, such as interest limitation rules, will also need to be monitored and amended depending on their application to companies (including members of ALI) and their interaction with the Rules – both of which are currently unknown. Finally, the removal of the 25% tax rate has often been considered at various points over the last number of years and its removal would serve to simplify some elements of the Irish corporate tax code.

In summary, ALI respectfully requests the Department of Finance to (i) allow the major tax policy shifts over the last number of years to be embedded into Irish tax legislation and (ii) use these subsequent years to simplify and align the existing Irish tax code.

C.2 Confirmation of applicable date

The consultation document provided by the Department of Finance notes that a number of compromise texts were issued during the course of negotiations at EU Council level. One of those compromises was in respect of the date of implementation, with the latest text providing that the Rules will apply from 31 December 2023, rather than 1 January 2023. Clearly the calculation of tax payable regarding the Rules will be based on financial accounts. There will be many entities, including a number of ALI members, which will prepare accounts up to the year ended 31 December 2023. Clarity will be required on how the Rules will interact with these year ends. Given the complexity of the Rules and the somewhat uncertain timing of their broader application, we believe that the transposition of these rules should apply to "accounting periods beginning after 31 December 2023". Any other transposition will bring the rules in too quickly (*e.g.* accounting periods "ending on 31 December 2023") or in an ineffective manner (*e.g.* were the Rules to apply "from 31 December 2023"). ALI would welcome transposition wording which would allow our members to fully prepare for the implementation of these rules, as there will be considerable internal infrastructure required to adapt to these new rules.

C.3 Updates to existing Irish tax legislation in order to implement the Rules

C.3.1 Participation Exemption

Currently, a "worldwide" system of double taxation relief applies in Ireland (*i.e.* generally, to the extent that foreign income, profits or gains arise to an Irish company, the Irish company is subject to tax in Ireland on these sources of income, but may claim a credit for foreign tax suffered on those sources of income). This approach to providing relief from double taxation differs from a "territorial" system of double taxation relief (also referred to as the "participation exemption" approach). Under a territorial system (which is typical in the majority of other developed countries), foreign income is generally exempt from tax in the non-source location.

We acknowledge that the introduction of a participation exemption is an area of consideration for the Department of Finance already, evidenced by the public consultation that was carried out in Q1 2022 on the introduction of a territorial regime of double tax relief in Ireland. However, we would suggest that the introduction of a participation exemption needs to be accelerated in order to simplify the application of the Rules, noting in particular that:

- The Rules pre-suppose that a jurisdiction exempts certain sources of income from tax. This is evident from Article 15(2) of the draft EU Directive which requires an adjustment for "excluded dividends" and "excluded equity gains and losses" from GloBE income. Foreign dividends are currently taxable in Ireland at either 12.5% or 25%, with a credit given for the underlying tax on profits. Foreign gains are similarly taxable, unless the gain arises in a relevant territory and can be treated as exempt under Section 626B.

- It is also evident from the allocation of GloBE income and covered taxes to a branch, rather than the head office, that the underlying assumption is that head offices would not typically apply further tax on branch profits (which is not the case in Ireland given that Ireland taxes branch income at either 12.5% or 25%, with a credit given for foreign tax suffered).

Aligning the treatment of dividends, gains and branch profits in the Rules and the local Irish tax code, so that dividends, gains and branch profits generated abroad would be exempt from Irish tax via a participation exemption, would hugely simplify the administrative burden on Irish corporate taxpayers. It would relieve the need to perform complex double tax credit calculations, it would lead to great symmetry between the Irish corporate tax calculations and the GloBE income calculations, and it would align Ireland's corporate tax offering with those of our key competitors.

We respectfully ask the Department to consider introducing this regime in the 2022 Finance Bill to allow sufficient time for it to embed into the existing system before the introduction of the Rules in the following Finance Bill. This would allow for a more seamless integration of the Rules from 31 December 2023. At a minimum, a clear and unequivocal commitment should be given so that certainty is provided to investors and businesses that a participation exemption for foreign taxes will be introduced in Ireland in preparation for (and in advance of) the transposition of the Rules into Irish law.

C.3.2 Other updates / considerations with respect to current Irish legislation

There are also some discrete areas of Irish domestic legislation which should be considered / amended in order to ensure the Rules operate effectively.

For example, there are some references to the "amount of profits on which corporate tax finally falls to be borne" in Irish domestic legislation. This definition is integral to the interest limitation rules ("ILR") where it makes up the starting point of the Relevant Profits figure for the calculation of EBITDA. Where a top-up tax exists, it is unclear how this tax would interact with the above definition. We would presume that corporate tax in the above definition excludes a top-up tax, but would appreciate confirmation from the Department of Finance on this.

C.4 Other considerations when implementing the rules

Given the profile of the aircraft leasing industry and the frequent requirements from third party financiers and rating agencies to have large numbers of asset owning companies ("AOCs"), the existing tax compliance burden for the industry is significant. The Rules will create a considerably increased compliance burden for ALI members and indeed all Irish companies to which they apply. We would therefore respectfully encourage the Department of Finance to ensure the implementation of these Rules is done in a way which minimises administration and compliance for taxpayers (please refer to our comments at Section B above on these points).

Part D: Subject to Tax Rule ("STTR") [Question 24]

We will not seek to offer any comment in this response regarding the STTR on the basis that the model rules have not yet been shared. However, the broad concept and blueprint of the rules is something which is relevant to ALI and which we are monitoring. We look forward to the opportunity to consult with the Department of Finance when there is more detail on the rules available.