



## **The Consultative Committee of Accountancy Bodies-Ireland**

Chartered Accountants Ireland  
The Association of Chartered Certified Accountants  
The Chartered Institute of Management Accountants  
The Institute of Certified Public Accountants in Ireland

Response to the Department of Finance Public Consultation on Pillar  
Two Minimum Tax Rate Implementation

July 2022

## About CCAB-I

The Consultative Committee of Accountancy Bodies–Ireland is the representative committee for the main accountancy bodies in Ireland. It comprises Chartered Accountants Ireland, the Association of Chartered Certified Accountants, the Institute of Certified Public Accountants in Ireland, and the Chartered Institute of Management Accountants.

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## Introduction

This consultation takes place against a backdrop of multiyear discussions concerning fundamental changes to the international tax landscape due to the burgeoning digital economy. These discussions led to the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (“BEPS”) agreeing a two-pillar approach to tackling the tax challenges arising from the digitalisation of the economy.

Pillar One refers to a “Unified Approach” to profit allocation for large multinational enterprises (MNEs) and nexus rules which seek to ensure profits are taxable where the economic substance of the underlying transactions is located. Pillar Two refers to the Global Anti-Base Erosion (GloBE) rules (which seek to impose a minimum level of taxation for MNEs) and the treaty-based rule (that permits the local authority to set limited source taxation on certain related party transactions subject to tax below that minimum rate).

The OECD published the GloBE Model Rules<sup>1</sup> in December 2021 and subsequently published guidance notes<sup>2</sup> in March 2022. The EU also published its Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union<sup>3</sup> (“the Draft Directive”) in December 2021, which was based on the GloBE Model Rules, with certain modifications.

The next phase in the process is the implementation of the GloBE Model Rules (which will be in the form of an EU Directive). The implementation process will be informed by the GloBE Implementation Framework and the development of this framework is now underway by the OECD.

From an Irish perspective, EU measures on taxation require the unanimous agreement of all Member States under the European treaties. At the time of writing, the Draft Directive has yet to be adopted by the Council of the European Union and the European Parliament. As such, until the Draft Directive is agreed and adopted, Ireland is not able to transpose the directive into domestic legislation. Therefore, implementation will not be possible until the final directive has been agreed. In this regard, the comments made herein are based on the OECD Model Rules and the corresponding EU draft Directive as they stand at 22 July 2022.

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<sup>1</sup> 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.htm>

<sup>2</sup> OECD (2022), *Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two)*, 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-commentary.pdf>

<sup>3</sup> [Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union](#)

## Executive summary

The purpose of this consultation is to inform the ultimate implementation of Pillar Two in Ireland. In this regard, the CCAB-I's recommendations are summarised as follows:

- There should be ongoing stakeholder engagement throughout the course of implementation of Pillar Two to enable stakeholders to adapt most efficiently to the new reporting regime and provide meaningful input throughout the implementation process.
- The R&D Tax Credit should be modified to ensure that the effective tax rate calculation is not prejudiced because of the domestic rules regarding the repayment of excess R&D tax credits.
- The Knowledge Development Box relief should be restructured into a tax credit regime that may be treated as a Qualified Refundable Tax Credit.
- As part of the ongoing implementation process, potential mismatches created by tax reliefs which are available on a paid basis should be addressed.
- The manner in which relief under Section 291A Taxes Consolidation Act ("TCA") 1997, Intangible assets, is made available may need to be modified to ensure that its benefits are not eroded following the implementation of Pillar Two.
- The domestic rules in relation to the tax treatment of foreign exchange movements are likely to distort the calculation of effective tax rates in many instances and so will need to be adapted to align with Pillar Two.
- Specific input should be sought to ensure that US MNEs are not comparatively disadvantaged where tax differences arise due to differences in accounting standards (i.e., between US GAAP and IFRS).
- Ireland should adopt a Qualified Domestic Top-up Tax (QDTUT). Ireland should also advocate at both an OECD and EU level for a safe harbour that will deem top-up tax for a jurisdiction to be nil where it implements a QDTUT.
- Penalties and surcharges should be fixed and non-tax geared, at least for the initial implementation phase.
- The Government should ensure that the international community remains fully aware that the headline rate of corporation tax in Ireland remains 12.5 per cent for the 160,000 businesses who will continue to pay corporation tax at this rate.
- At the same time, the Government must undertake a broad review of Ireland's tax regime for businesses and individuals in light of the reduced attractiveness of Ireland's 12.5 per cent rate for the world's largest companies.
- As part of this simplification process, the Government should acknowledge the work completed earlier in the year as part of the Department of Finance's public consultation on a territorial system of taxation and set a clear pathway to establishing such a system of corporate taxation.
- The Government should advocate for certain specific administrative requirements including changes to the transition rules that are negatively impacting bona fide commercial transactions; alignment with the EU/OECD proposal that filing requirements will not fall earlier than 15 months after an accounting year end; a standardised return separate from the Form CT1; etc.

## Comments on Implementation

### Ongoing stakeholder engagement throughout course of implementation

Implementing the GloBE Model Rules into Irish law will require a robust process. The CCAB-I recommends that the implementation is informed by ongoing engagement with stakeholders throughout the process. In recent years, Government and Revenue have proactively engaged with practitioners and other stakeholders in tax technical matters and other related compliance and administrative matters. A current example of this is the DAC7 Sub-group of the Tax Administration Liaison Committee (TALC) BEPS Subcommittee. A similar forum will be beneficial for, and inform, the implementation of the GloBE Model Rules into Irish law.

This forum of stakeholder engagement lends itself to provide an opportunity for sharing draft legislation with stakeholders which greatly benefits impacted MNEs and practitioners.

### The R&D Tax Credit and the GloBE Model Rules

Irish tax legislation contains provision for excess R&D tax credits to be repaid in certain circumstances<sup>4</sup>. The rules are designed such that any amount repayable is repaid in three separate instalments in three successive tax years.

This refund mechanism is incongruent with the GloBE Model Rules. To ensure that in-scope MNEs are not disadvantaged relative to their international competitors, the CCAB-I recommends (as also recommended in previous submissions<sup>5</sup>) that the R&D Tax Credit is amended so that repayable credits are fully repayable in the year in which they arise.

The CCAB-I accepts that this will create a temporary timing issue for the Exchequer. However, the rules must be adapted to ensure MNEs engaged in the R&D activities continue to view Ireland favourably as a destination for investment.

### The Knowledge Development Box and the GloBE Model Rules

A company qualifying for Knowledge Development Box<sup>6</sup> (KDB) relief is entitled to a deduction equal to 50 per cent of its qualifying profits. Given that the relief reduces the effective tax rate on qualifying profits to 6.25 per cent, the benefits of the KDB relief will be eroded by the Top up Taxes under Pillar 2.

If companies falling within the GloBE Model Rules are to preserve the benefits of the KDB relief, the rules will need to be restructured. The CCAB-I recommends that the KDB is restructured into a tax credit regime that may be treated as a Qualified Refundable Tax Credit.

### Tax reliefs which apply on a paid basis only

Certain tax deductions are available on a paid basis only. For example, relief to companies on loans applied in acquiring interest in other companies<sup>7</sup> and pension contributions<sup>8</sup>. Specifically in relation to pensions, deductions for ordinary pension costs are allowable on a paid basis when calculating the GloBE tax base, however the domestic corporation tax deduction for 'special contributions' for

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<sup>4</sup> [Section 766 TCA 1997](#)

<sup>5</sup> [CCAB-I Response to the Public Consultation on the Research & Development Tax Credit and the Knowledge Development Box](#)

<sup>6</sup> [Chapter 5 Part 29 TCA 1997](#)

<sup>7</sup> [Section 247 TCA 1997](#)

<sup>8</sup> [Section 774 TCA 1997](#) & [Section 787 TCA 1997](#)

pensions does not yet align with GloBE income. The CCAB-I recommends that the rules for special contributions are aligned with the GloBE Model Rules.

Similarly, under the Interest Limitation Rules<sup>9</sup>, relief for interest expenses can be deferred and carried forward to a later period. This produces timing mismatches which will create difficulties under the GloBE Model Rules in circumstances where deferred tax attributes are not included in a company's accounts.

As a result of these and similar instances, there may often be mismatches between the accruals for accounts' purposes and the tax relief claimed in the year. These mismatches could drive a company's effective tax rate well above 12.5 per cent in one year and well below in another. This will erode the benefits of the reliefs and so the underlying legislation must now be modified to adapt to the GloBE Model Rules.

The view of professional accountants is that on balance, there would have a preference that most reliefs would not move from a paid basis to an accruals basis. In practice, the deferred tax mechanism in the GloBE Model Rules should ensure that no permanent tax difference will arise. Outside of Pillar Two, many businesses still manage their interest on a paid basis and would like to retain the flexibility this provides. However, consideration should be given to specific reliefs (such as the examples given above) in the course of the ongoing consultation process throughout the course of implementation of Pillar Two.

### [Section 291A regime for intangible assets](#)

Irish tax legislation contains specific provisions for claiming capital allowances on intangible assets<sup>10</sup>. The legislation provides for the write down of certain intangible assets either over 15 years or in line with the amortisation policy for accounts' purposes. Depending on the methodology chosen, there may be a timing difference between the tax treatment of amortisation (by way of capital allowances) and the treatment of amortisation for accounts' purposes. Where there is a difference between the treatment of amortisation for tax and accounting purposes, there will be a deferred tax movement each year.

Further mismatches may arise under the transitional rules for assets acquired from constituent entities before the start of the transition year. Under the Draft Directive," the value of the acquired assets shall be based upon the transferring entity's carrying value of the transferred assets at the time of the transfer"<sup>11</sup>. In contrast, the relief available under section 291A TCA 1997 is based on the consideration paid. The manner in which this important relief is made available may need to be modified to ensure that its benefits are not eroded following the implementation of Pillar Two.

### [Foreign exchange gains and losses regime](#)

Under the GloBE Model Rules, a Constituent Entity's financial accounting net income or loss is adjusted for asymmetric foreign currency gains or losses. This only covers mismatches between the treatment of such gains or losses for tax and accounting purposes which arise either as a result of different tax and accounting functional currencies, or which are attributable to the use of a third foreign currency.

These adjustments do not align with the current tax treatment for foreign exchange gains and losses in Ireland. The domestic rules governing foreign exchange movements turn on whether the

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<sup>9</sup> [Part 35D TCA 1997](#)

<sup>10</sup> [Section 291A TCA 1997](#)

<sup>11</sup> [Article 45, Para 5 Draft Directive](#)

differences arise on trading balances, and on whether they are realised or unrealised. As such, the domestic rules are likely to distort the calculation of effective tax rates in many instances.

### [The impact of divergence in accounting practices](#)

The treatment of arrangements and transactions under US GAAP may differ from that applied under IFRS/FRS101/FRS102. As a result, the tax base on which the Irish jurisdictional top-up tax is calculated may differ from that on which the same Irish subsidiaries are subject to Irish corporation tax. This may produce significant adverse results for a MNE Group, including double taxation applying under the GloBE Model Rules at 15 per cent and under Irish domestic law at 12.5 per cent on the same income in the same period.

Further, as part of the ongoing consultation process (discussed above), specific input should be sought to ensure that US MNEs are not comparatively disadvantaged, particularly where tax differences arise due to differences in accounting standards (i.e. between US GAAP and IFRS).

### [Qualified Domestic Top-up Tax and other appropriate safe harbours](#)

The view of professional accountants is that Ireland should adopt a QDTUT. Ireland should also advocate at both an OECD and EU level for a safe harbour that will deem top-up tax for a jurisdiction to be nil where it implements a QDTUT.

The CCAB-I also recommends that the Draft Directive safe harbour be expanded to include Groups with Ultimate Parent Entities (UPEs) located in non-EU OECD countries and allow for the QDTUT to be prepared under the local acceptable financial accounting standards. If US GILTI<sup>12</sup> is not a Qualified Income Inclusion Rule (IIR)<sup>13</sup>, we recommend that GILTI be considered a CFC charge<sup>14</sup> for the purposes of determining domestic tax liabilities/covered taxes for QDTUT purposes.

### [Penalties and surcharges](#)

The GloBE Model Rules represent one of the most comprehensive changes to the international tax landscape in recent years. Implementation will be burdensome and complex for MNEs in the early stage of adoption. To alleviate the burden and acknowledge the complex compliance that in-scope MNEs will need to adhere to implement Pillar Two, during the initial implementation periods tax penalties should be fixed and non-tax geared.

### [Maintaining Ireland's competitiveness](#)

Minister for Finance, Paschal Donohoe, in a statement following Ireland's decision to sign up to the OECD International Tax agreement<sup>15</sup>, noted that there will be no increase in the 12.5 per cent corporate tax rate for 160,000 businesses who represent approximately 1.8 million employees. As mentioned in the Minister's statement, assurances have been received from the EU Commission that

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<sup>12</sup> [Global Intangible Low-Taxed Income \(GILTI\) IRC 951A \("GILTI"\)](#)

<sup>13</sup> Qualified IIR means a set of rules equivalent to Article 2.1 to Article 2.3 of the GloBE Model Rules (including any provisions of the GloBE Model Rules associated with those articles) that are included in the domestic law of a jurisdiction and that are implemented and administered in a way that is consistent with the outcomes provided for under the GloBE Rules and the Commentary to the GloBE Rules as developed by the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting provided that such jurisdiction does not provide any benefits that are related to such rules.

<sup>14</sup> Controlled Foreign Company (CFC) Tax Regime means a set of tax rules (other than an IIR) under which a direct or indirect shareholder of a foreign entity (the controlled foreign company or CFC) is subject to current taxation on its share of part or all of the income earned by the CFC, irrespective of whether that income is distributed currently to the shareholder.

<sup>15</sup> [Statement by Minister Donohoe on decision for Ireland to enter OECD International Tax agreement \(October 2021\)](#)

the 12.5 per cent headline rate of corporation tax does not present difficulties in the context of the GloBE Model Rules.

The 12.5 per cent headline rate of corporation tax is a key feature of Ireland's FDI offering, and this will remain the case post-implementation of the GloBE Model Rules into Irish law. As such, it is incumbent on the Government to ensure that the international community is remains fully aware that the GloBE Model Rules will only apply to enterprises with turnovers in excess of €750 million.

In addition to this, CCAB-I recommends that the Department of Finance now also needs to undertake a broad review of Ireland's tax regime for both businesses and individuals. This review should not only focus on simplification of Ireland's business taxes regime, but also on improving the attractiveness of our personal taxes regime in order to be able to effectively attract substantial business and mobile talent to Ireland.

### [Territorial system of taxation](#)

Building on the above point regarding simplification of the Irish tax code, the Department of Finance should commit to developing a territorial system of taxation in conjunction with developing domestic legislation to implement the GloBE Mode Rules.

In March 2022, the CCAB-I responded to the Department of Finance's public consultation on a territorial system of taxation<sup>16</sup>. In response to that consultation, the CCAB-I recommended that a territorial basis of taxation would be congruent with Pillar Two. Further, the CCAB-I sought a commitment from Government to introduce the required rules by 2024 "to send a strong message to the international community and address concerns relating to competitiveness".

The benefits of such a regime are that taxes are eliminated on foreign profits, Ireland's tax base is protected, and the tax code is simplified. In the context of the GloBE Model Rules, a territorial regime is congruent with Pillar Two on the basis that Pillar Two effectively exempts foreign dividends and foreign branch profits.

### [Further points on tax administration considerations](#)

The CCAB-I recommends that the Government consider the following from an administrative perspective:

- Ireland should advocate for changes to the transition rules that are negatively impacting bona fide commercial transactions.
- Ireland should align with the EU/OECD proposal that filing requirements will not fall earlier than 15 months after an accounting year end.
- A return separate from the Form CT1 should be used. Further, this return should be standardised among participating jurisdictions.
- Similar to the interest limitation regime, MNEs should have the opportunity to have a group remitter which can file and pay the liability on behalf of companies that have elected to be part of the filing and payment group.
- Group members should not be jointly and severally liable for any top-up tax arising.
- The Revenue Commissioners should prepare and maintain a database of tax regimes, tax measures and taxes levied in other countries which are accepted as falling within certain definitions in the GloBE Model Rules, including: Covered Taxes; Controlled Foreign Company

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<sup>16</sup> [CCAB-I Response to the Public Consultation on a Territorial System of Taxation](#)



Tax Regimes; Qualifying IIRs; Qualifying UTPRs; Qualified Refundable Tax Credits; and, QDTUTs.

- The GloBE Model Rules are designed in such a way as to mitigate potential instances of double taxation. However, disputes and differences of interpretation will inevitably arise in certain cases. Taxpayers will therefore require access to an effective and efficient dispute resolution process in these instances.
- In addition, CCAB-I notes that the collection and recording of the data needed to calculate any additional top-up tax will prove a significant challenge, given that most businesses do not readily keep foreign entity level financial statements in the same financial reporting standard as the ultimate parent entity, or keep details of tax attributes in more than one reporting standard. In this regard, CCAB-I recommends that the rules pertaining to the collection and recording of data, and/or the calculation of the additional top-up tax must be clear and precise so as to avoid uncertainty for the impacted MNEs.

## Closing Comments

We look forward to engaging with the Department of Finance and other government bodies to implement the GloBE Model Rules into Irish legislation as efficiently and robustly as possible. We trust our recommendations will be given due consideration as they represent the voice of professional accountants across the island of Ireland.

Yours faithfully,



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**Peter Vale**

*Chair, CCAB-I*