Irish Tax Institute

July 2022

Pillar Two Minimum Tax Rate Implementation

Response to Public Consultation

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1. About the Irish Tax Institute

The Irish Tax Institute is the leading representative and educational body for Ireland's Chartered Tax Advisers (CTA) and is the country's only professional body exclusively dedicated to tax.

The Chartered Tax Adviser (CTA) qualification is the gold standard in tax and the international mark of excellence in tax advice. We benchmark our education programme against the very best in the world. The continued development of our syllabus, delivery model and assessment methods ensure that our CTAs have the skills and knowledge they need to meet the ever-changing needs of their workplaces.

Our membership of over 5,000 is part of the international CTA network which has more than 32,000 members. It includes the Chartered Institute of Taxation UK, the Tax Institute of Australia, the Taxation Institute of Hong Kong and the South African Institute of Taxation. The Institute is also a member of the CFE Tax Advisers Europe (CFE), the European umbrella body for tax professionals.

Our members provide tax services and business expertise to thousands of Irish owned and multinational businesses as well as to individuals in Ireland and internationally. Many also hold senior roles in professional service firms, global companies, Government, Revenue, state bodies and in the European Commission.

The Institute is, first and foremost, an educational body but since its foundation in 1967, it has played an active role in the development of tax administration and tax policy in Ireland. We are deeply committed to playing our part in building an efficient and innovative tax system that serves a successful economy and a fair society. We are also committed to the future of the tax profession, our members, and our role in serving the best interests of Ireland's taxpayers in a new international world order.

Irish Tax Institute - Leading through tax education

2. Executive Summary

The Institute welcomes the opportunity to contribute to the public consultation on implementation of the Pillar Two Minimum Tax Directive into Irish law.

Close consultation with stakeholders in recent years on the transposition of the EU Anti-Tax Avoidance Directive (ATAD)[1] measures such as the Anti-Hybrid Rules and the Interest Limitation Rules into Irish law has proven to be effective. As work on the legislation transposing the Pillar Two Minimum Tax Directive progresses, we look forward to the publication of Feedback Statements for further stakeholder input.

We firmly believe an iterative process of consulting with stakeholders as the legislation transposing the Directive is drafted and the administrative guidance developed, will help to minimise the complexity involved to the greatest extent possible and ensure the successful practical implementation of the Directive into the Irish corporation tax code.

In implementing the changes required as part of the global tax reform process, it is essential that the Irish policy response provides clarity and establishes long-term tax certainty for business in Ireland.

The proposed Directive seeks to enable the co-ordinated implementation of the OECD Global Anti-Base Erosion Model Rules (the Model Rules) [2] into EU law. Addressing the Institute's Global Tax Policy Webinar in May, the Minister for Finance highlighted the importance to Ireland that the proposed Directive "*remained faithful to the OECD agreement and did not go beyond the international consensus."* In transposing the Directive into Irish law, it is now critical that policymakers seek to align Irish legislation with the minimum standard required in the Directive. MNEs must be able to readily determine when they are in scope of the Model Rules.

Consistency of application of the Model Rules across jurisdictions will be a crucial factor in providing certainty to business. The application of the Model Rules and related OECD Commentary[3] under Irish law must also be considered, especially where there may be divergence with the EU Directive.

If the application of a provision or definition in the Directive is unclear in practice, an Irish taxpayer should be able to rely on the Model Rules and related Commentary to obtain further clarity where possible. Such an approach is supported by the recitals to the Directive which state that Member States should use *"the explanations and examples in the OECD Commentary on the GloBE Rules under Pillar Two, as well as the GloBE Implementation Framework, including its safe harbours rules, as a source of illustration or interpretation in order to ensure consistency in application across Member States to*

[1] Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market and Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries.
[2] 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
[3] 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

the extent that they are consistent with the provisions of this Directive and with Union law."[4]

We have set out in the body of this submission our detailed recommendations in response to the queries raised in the Consultation Paper[5], however, it is important that policymakers take the following key matters into consideration when transposing the Directive into Irish law:

- If a Member State elects to introduce a Qualified Domestic Top-up Tax (QDTUT), it can be recognised as a safe harbour under the Directive. However, the safe harbour currently only applies in EU Member States and does not form part of the Model Rules. In our view, it would be important that such a safe harbour would apply on a wider basis. We would urge Irish policymakers to make representations at OECD level for the QDTUT to be recognised as a safe harbour in the development of the GloBE Implementation Framework. This would ensure consistency of application of Pillar Two across all jurisdictions adopting the global minimum tax rate.

- Ireland should advocate for the introduction of broad safe harbours which remove the need to calculate a jurisdiction's effective tax rate (ETR) and top-up tax where it is likely that an effective tax rate of greater than 15% already applies under domestic provisions. Such safe harbours play a crucial role in reducing both the administrative burden on in-scope groups and the likelihood of disputes between taxing authorities.

- Under the Model Rules, the accounting standard used in preparing the consolidated financial statements must be used to determine the GloBE income or loss. For US headquartered groups, this means that the computation of the Irish jurisdictional top-up tax liability would be computed based on the GloBE income or loss as determined under US GAAP notwithstanding that the Irish subsidiaries may prepare their statutory accounts under FRS101 or FRS102 and pay their Irish corporation tax based on those accounts.

  Unintended consequences may arise where US GAAP applies different treatment to arrangements and transactions between group members compared with what would apply under IFRS/ FRS101 / FRS102. In such circumstances, the tax base on which the Irish jurisdictional top-up tax would be computed may differ from the tax base on which the same Irish subsidiaries would be subject to Irish corporation tax. This could potentially result in double taxation applying under GloBE at 15% and Irish domestic law at 12.5% on the same income in the same period.

- Currently, the US Global Intangible Low Tax Income (GILTI) would not be considered as equivalent to a Qualified Income Inclusion Rule (Qualified IIR) for the purpose of the Directive. If GILTI is not amended in the US to align with Pillar Two, clarification will be required that GILTI may be considered a controlled foreign company (CFC) tax regime for the purpose of the Directive. Failure to recognise GILTI as a CFC tax

[4] Recital 19a, Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union - Compromise text, 6975/22, 12 March 2022.
[5] Department of Finance, Consultation on Pillar Two Minimum Tax Rate Implementation, May 2022.

charge for the purpose of Pillar Two could result in double taxation. If GILTI is not considered a Qualified IIR, as it currently applies on a global rather than a jurisdictional basis, taxpayers will require clarity on the methodology to be used to determine how GILTI should be allocated between various jurisdictions.

- Ensuring the R&D Tax Credit is considered a “Qualified Refundable Tax Credit” under the Pillar Two Directive is of utmost importance. Condensing the current 3-year R&D Tax Credit refund to one year for all businesses would provide not only valuable assistance to smaller companies that tend to be cash constrained but it would also clearly demonstrate that the R&D Tax Credit is a “Qualified Refundable Tax Credit” under the Model Rules. Accelerating the refund of the R&D Tax Credit in this way would also help to address concerns arising from recent changes to US Foreign Tax Credit Regulations.

- When transposing the Directive into Irish law, care must be taken to ensure that any tax payable under the Income Inclusion Rule (IIR), the Undertaxed Profits Rule (UTPR) or a QDTUT would be considered foreign tax paid or accrued for foreign tax relief purposes under US Foreign Tax Credit Regulations.

- The tax treatment of foreign branches and dividends in the Model Rules is more aligned with a territorial system of taxation. Moving from a worldwide system of taxation in Ireland by adopting a participation exemption for dividends and a foreign branch exemption in Ireland in tandem with the implementation of Pillar Two, would help to reduce the administrative burden for Irish companies with international operations and simplify how double taxation relief would be available in Ireland on such foreign earnings.

- When introducing a participation exemption for dividends, consideration should also be given to amending the capital gains tax participation exemption in section 626B TCA 1997 to ensure the provision aligns with the Pillar Two Model Rules.

The Institute would be happy to engage further in this consultation through stakeholder meetings or direct discussions. Please contact Anne Gunnell at agunnell@taxinstitute.ie or (01) 6631750 if you require any further information.

3. Consultation Questions

3.1. General

Specific features of the Model Rules which will have implications for Ireland's tax code

It is important that in implementing the changes required as part of the global tax reform process, the Irish policy response provides clarity and establishes long-term tax certainty for business in Ireland. Providing certainty in the Irish corporation tax regime has been a long-standing factor in attracting business investment in Ireland.

The Institute welcomes the public consultation on the implementation of the Pillar Two Minimum Tax Directive into Irish law and in our view, ongoing consultation and engagement with stakeholders on its proposed transposition will be of the utmost importance in the months ahead.

We firmly believe an iterative process of consulting with stakeholders, as the legislation is drafted and the administrative guidance developed, will help to minimise the complexity involved to the greatest extent possible and ensure the successful practical implementation of the Directive into the Irish corporation tax code. In transposing the Directive, it is essential that Irish policymakers seek to align Irish legislation with the minimum standard required in the Directive.

Applying the OECD Model Rules and related Commentary

Consistency of application of the Model Rules across jurisdictions will be a crucial factor in providing certainty to business. The application of the Model Rules and related OECD Commentary under Irish law must also be considered, especially where there may be divergence with the EU Directive. For example, if the application of a provision or definition in the Directive is unclear in practice, an Irish taxpayer should be able to rely on the Model Rules and related Commentary to obtain further clarity where possible.

This already happens in the context of transfer pricing, where Irish legislation provides that the transfer pricing rules in section 835C TCA 1997 should be construed and applied in line with the 2017 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations and additional Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles,[6] Revised Guidance on the Application of the Transactional Profit Split Method,[7] and any additional guidance published by the OECD on or after the date of the passing of the Finance Act 2019, as the Minister for Finance may designate by order.

Given the guidance in the OECD Commentary on the Model Rules is likely to be updated on a regular basis during the initial period of implementation, Irish

[6] Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles (June 2018)
[7] Revised Guidance on the Application of the Transactional Profit Split Method (June 2018)

policymakers should consider appropriate legislative mechanisms to allow such updates to be reflected in Irish law, either automatically or subject to Ministerial order. After all, the recitals in the Directive provide that EU Member States should use the OECD Model Rules and the explanations and examples in the related Commentary, as well as the GloBE Implementation Framework as a source of interpretation of the Directive to ensure consistency of application across the EU.

Aligning the R&D Tax Credit with Pillar Two

Ensuring the R&D Tax Credit is considered a “Qualified Refundable Tax Credit” for the purposes of the GloBE Rules under Pillar Two is critical. If the R&D Tax Credit fails to meet the criteria of a “Qualified Refundable Tax Credit”, it will be treated as reducing the covered taxes for GloBE purposes, instead of being considered part of the GloBE income.

Undoubtedly, jurisdictions which offer “Qualified Refundable Tax Credits” will be more competitive for R&D investment from MNEs within the scope of Pillar Two than those with “Non-Qualified Refundable Tax Credits”. We have set out in further detail our recommendations on changes to the R&D Tax Credit to ensure it can be considered a “Qualified Refundable Tax Credit” under Pillar Two in section 3.6 of this submission.

Ensuring differences in accounting standards do not give rise to unintended consequences

For many groups, the accounting standard used to prepare the consolidated financial statements of the group’s ultimate parent entity may differ from the accounting standard used by its subsidiaries. However, under the Model Rules, the accounting standard used in preparing the consolidated financial statements must also be used to determine the GloBE income or loss.

For US headquartered groups and non-US headquartered groups that are listed in the US, this means that the computation of the Irish jurisdictional top-up tax liability would be computed based on the GloBE income or loss as determined under US GAAP notwithstanding that the companies in Ireland may prepare their statutory accounts under IFRS/ FRS 101 / FRS102 and pay their Irish corporation tax based on those accounts.

Unintended consequences may arise where US GAAP applies different treatment to arrangements and transactions between group members compared with what would apply under IFRS / FRS101 / FRS102. In those circumstances, the tax base on which the Irish jurisdictional top-up tax would be computed may differ from the tax base on which the same Irish subsidiaries would be subject to Irish corporation tax. This could potentially result in double taxation applying under GloBE at 15% and Irish domestic law at 12.5% on the same income in the same period.

As work on the transposition of the Directive progresses, it is essential that there is consultation with stakeholders to ensure that differences in accounting standards do not give rise to unintended consequences.

We do not believe that the Model Rules intended for such differences to arise merely due to the accounting standard of the ultimate parent entity and recommend that Ireland advocate for an effective resolution to this issue to be agreed at the OECD / EU level. This illustrates the importance of a safe harbour that recognises a QDTUT prepared under acceptable financial accounting standards, as this will alleviate some of these unintended outcomes arising from different accounting standards.

Recognising QDTUT as a safe harbour internationally

If a Member State elects to introduce a QDTUT, it can be recognised as a safe harbour under the Directive. However, the safe harbour only applies in EU Member States where the group is EU parented and does not form part of the Model Rules. In our view, it would be important that such a safe harbour would apply on a wider basis. Such an approach is already contemplated in Article 8.2.1 of the OECD Commentary on the Model Rules.

We would urge Irish policymakers to make representations at OECD level for the QDTUT to be recognised as a safe harbour in the development of the GloBE Implementation Framework. This would ensure consistency of application of Pillar Two across all jurisdictions adopting the global minimum tax rate.

Recognising broader safe harbours

In our view, Ireland should advocate for the introduction of broad safe harbours which remove the need to calculate a jurisdiction's ETR and top-up tax where it is likely that an effective tax rate of greater than 15% already applies under domestic provisions. Such safe harbours play a crucial role in reducing both the administrative burden on in-scope groups and the likelihood of disputes between taxing authorities.

For example, Country-by-Country Reporting data may provide a reasonable basis for determining whether a greater than 15% ETR exists for a jurisdiction, and consideration should be given to this and other options to arrive at a meaningful and effective safe harbour. In addition, the creation of an approved list of jurisdictions and taxing regimes that will be eligible for the safe harbour should be considered.

Other features of the Irish corporation tax code to consider

Ireland does not have fiscal consolidation which is common in many jurisdictions globally. Instead, the Irish corporation tax code sets out rules for group loss relief and CGT group transfers. However, some examples in the OECD Commentary on the Model Rules are explained in terms of a fiscal consolidation system. Therefore, care will need to be taken in applying the Model Rules relating to losses in an Irish context.

In addition, the trading and non-trading distinction between the 12.5% trading rate and the 25% passive rate creates unnecessary complexity within the Irish corporation tax code, which businesses do not have to contend with in other tax systems.

Consideration should be given to simplifying Ireland's schedular tax system and different corporation tax rates. Ireland should have only one headline corporation tax rate of 12.5% applying to corporates.

US tax reform proposals and considerations

US MNEs operating in Ireland will need to consider the interaction of the Model Rules with GILTI, US Foreign Tax Credit Regulations and potentially, the Base Erosion Anti-Abuse Tax (BEAT).

Alignment of GILTI with Pillar Two

Currently, GILTI would not be considered as equivalent to a Qualified IIR for the purpose of the Directive. If GILTI is not amended in the US to align with Pillar Two, clarification will be required that GILTI may be considered a CFC tax regime for the purpose of the Directive. Failure to recognise GILTI as a CFC tax charge for the purpose of Pillar Two could result in double taxation.

If GILTI is not considered a Qualified IIR, as it currently applies on a global rather than a jurisdictional basis, a methodology would need to be devised to determine how GILTI should be allocated between various jurisdictions. It would seem appropriate for such a methodology to be agreed at OECD level. In the absence of such an agreement and given the significance of the issue for US MNEs operating in Ireland, it would be important that Irish taxpayers have clarity regarding the approach to be adopted.

It must also be considered that determining the correct allocation of GILTI between jurisdictions is likely to take some time and could potentially impact on compliance deadlines. It would be inappropriate, in our view, to penalise companies for the late filing of a return where they are reliant on group financial information in order to finalise their tax return.

Changes to US Foreign Tax Credit Regulations

Changes to the eligibility for foreign tax credits in US Regulations released in 2021 are discouraging US parented groups from carrying on R&D activities in Ireland. For accounting periods commencing on or after 28 December 2021, where the R&D Tax Credit does not meet the "exclusion" criteria contained in the regulations, any reduction in corporation tax due to the R&D Tax Credit in Ireland will not be available as a foreign tax credit in the US. Prior to this change, the amount of Irish corporation tax creditable in the US was the liability payable before the R&D Tax Credit.

In order to ensure that the R&D Tax Credit is treated as not reducing corporation tax for the purposes of US Foreign Tax Credit Regulations, the R&D Tax Credit must

provide the taxpayer with the option to claim the credit as a cash refund in the year of claim.

In our response to the R&D Tax Credit Consultation in May, we recommended condensing the current 3-year R&D Tax Credit refund to one year for all businesses as it would provide not only valuable assistance to smaller companies that tend to be cash constrained but it would also clearly demonstrate that the R&D Tax Credit is a "Qualified Refundable Tax Credit" for the purposes of the Pillar Two Rules. Accelerating the refund of the R&D Tax Credit in this way would also help to address concerns with the application of the US Foreign Tax Credit Regulations.

Furthermore, when transposing the Pillar Two Minimum Tax Directive into Irish law, care must be taken to ensure that any tax payable under the IIR, the UTPR or a QDTUT would be considered foreign tax paid or accrued for foreign tax relief purposes under US Foreign Tax Credit Regulations.

The interaction of BEAT with the Model Rules

Consideration will also need to be given to whether the BEAT, or its previously proposed replacement the SHIELD, would be considered a covered tax for the purpose of the Model Rules. While the BEAT provisions and the Model Rules require a MNE to determine the ETR, the US tax provisions, and the Model Rules do not align. This could result in a deduction being denied under BEAT because the ETR computed under US tax principles may be lower than what it would be computed under the Model Rules.

Other considerations when implementing Pillar Two

Given the significance of US MNEs operating in Ireland, there has naturally been a focus on the interaction of the Model Rules with the US tax code. In our view, it would be important that consideration is also given to the potential impact of the transposition of the Directive into Irish law and its interaction with the tax rules in other major trading partners.

It would seem inevitable that the implementation of the Model Rules across jurisdictions will lead to an increase in disputes regarding double taxation. It will be essential to ensure the Irish competent authority is adequately resourced to deal with such disputes.

Amendments to Ireland's existing tax code

The implementation of the Pillar Two Minimum Tax Directive will restrict Ireland's scope to compete for foreign direct investment based on its corporation tax rate. Consequently, it is now more important than ever for policymakers to consider other ways to improve the Irish corporation and personal tax systems and enhance Ireland's attractiveness as a place to do business. Simplifying Ireland's corporation tax code and making it easier to administer would enhance the country's competitiveness.

Adopting a territorial system of taxation

As set out in the Institute's response[8] to the Department of Finance consultation on moving to a territorial system of taxation in March this year, we highlighted how the absence of a participation exemption for foreign dividends puts Ireland at a disadvantage when competing for foreign direct investment with other OECD and EU countries that operate exemption systems.

Moving to a territorial system of taxation would reduce the administrative burden for Irish companies with international operations and simplify how double taxation relief would be available in Ireland on such foreign earnings. Critically, it would bring Ireland's corporation tax code in line with most OECD countries and EU Member States and the Pillar Two Model Rules.

Under the Model Rules, an entity's financial accounting net income or loss is adjusted to exclude dividends to arrive at that entity's GloBE income figure, in recognition of the fact that dividends are generally subject to a participation exemption[9] in most jurisdictions, which is not the case in Ireland.

Companies are currently evaluating the potential impact of the OECD Inclusive Framework international tax agreement on a Two-Pillar Solution to Address the Tax Challenges of Digitalisation[10] (Two-Pillar Solution) on their business and making decisions regarding how to structure their operations going forward. The existence of a participation exemption in the Irish corporation tax code will be a key factor for such companies when determining where to locate future investment and is already impacting decisions. A participation exemption would also encourage international growth and development by Irish headquartered multinationals.

With the proposed deadline for transposing the Minimum Tax Directive moving to 31 December 2023, we believe there is now an opportunity to progress the work on implementing a participation exemption and foreign branch exemption with the implementation of the Pillar Two Model Rules to ensure Ireland remains an attractive location for investment.

This reform process should also include a review of section 626B TCA 1997 which exempts gains accruing on certain disposals of shares from capital gains tax. To qualify for the section 626B exemption, the investor company must hold a 5% interest in the investee company for a period of 12 months and be trading / part of trading group. Irish policymakers should consider aligning section 626B with the Pillar Two Minimum Tax Directive, which does not require a minimum holding period or a trading requirement and provides that the exemption applies to all jurisdictions. Ireland should

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[8] https://taxinstitute.ie/wp-content/uploads/2022/03/2022-03-07-ITI-Response-to-Consultation-on-a-Territorial-System-of-Taxation-Final.pdf

[9] OECD (2020), Tax Challenges Arising from Digitalisation – Report on Pillar Two Blueprint: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/abb4c3d1-en, paragraph 181.

[10] OECD/G20 Inclusive Framework on BEPS, Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, 8 October 2021.

still retain the 5% shareholding test for business outside the scope of the Pillar Two Rules.

Simplifying the interest deductibility provisions

Another area where simplification of the corporation tax code is required are the rules regarding the deductibility of interest. The Anti-Tax Avoidance Directive (ATAD) Interest Limitation Rule (ILR), introduced in Finance Act 2021, was layered on top of existing comprehensive interest deductibility provisions making the operation of the rules onerous and overly complex. Taking such an approach makes it difficult for businesses to operate in Ireland and comply with their tax obligations and has resulted in Ireland having one of the most complicated interest deductibility regimes within the EU.

We would strongly urge for the interest deductibility provisions to be reviewed to ensure Ireland's interest deductibility regime is simplified. The Institute's Pre-Finance Bill 2022 Submission[11] to the Minister for Finance outlines the interest deductibility provisions which we believe, following the adoption of the ATAD ILR into Irish law, are either no longer necessary or require simplification.

It should be noted that the relevant profit for the purpose of the ATAD ILR is defined as *"the amount of the profits on which corporation tax falls finally to be borne".* Policymakers will therefore need to consider the proposed interaction of the ATAD ILR and the rules regarding interest deductibility more generally with the Model Rules when transposing the Directive into Irish law. The potential interaction of the rules with the European Commission's proposal for a Debt-Equity Bias Reduction Allowance (DEBRA) must also be evaluated.

Reducing the marginal cost of employment in Ireland

A consequence of the Two-Pillar Solution is that going forward the attractiveness of a country's personal tax regime and the cost of employers locating workers in a country will be an even more significant factor in determining where key talent and substantial businesses locate.

In our view, an objective of any long-term strategy aimed at attracting and retaining foreign direct investment in the country should include reducing the marginal cost of employment in Ireland for both businesses and individuals. Feedback from our members would suggest that a marginal rate of tax (including social insurance contributions) set at 50% would help to attract highly skilled and mobile labour to Ireland.

[11] https://taxinstitute.ie/wp-content/uploads/2022/06/2022-06-27-ITI-Pre-Finance-Bill-2022-Submission-FINAL.pdf

3.2. Scope of the Rules – Definition of a Group, a Constituent Entity and an Excluded Entity

Investment funds and real estate investment vehicles are excluded from the scope of the Minimum Tax Directive where they are at the top of the ownership chain. The rationale provided for this approach in the Directive is that for those so-called flow-through entities, the income earned is taxed at the level of the owners.

A real estate investment entity is defined in the Directive as *"a widely held entity that holds predominantly immovable property and that is subject to a single level of taxation, either in its hands or in the hands of its interest holders, with at most one year of deferral."* The provisions governing Real Estate Investment Trusts (REITs) under the Irish tax system will need to be considered to ensure they are consistent with the definition of a real estate investment entity under the Directive.

Furthermore, it would be helpful if confirmation could be provided in legislation that all Irish Collective Asset-management Vehicles (ICAVs) are considered out of scope as an excluded entity under the Directive unless, as permitted by the Directive, the filing constituent entity makes an election not to be treated as excluded.

In the context of mergers and acquisitions, it may be difficult to evaluate whether an entity is within the scope of the Pillar Two Minimum Tax Directive. This will undoubtedly necessitate additional due diligence by acquirers to determine whether there are historic top-up tax charges for which the acquirer could be liable. In our view, consideration should be given to providing such taxpayers with an appropriate grace period to consider the potential implications of the Model Rules following a merger or acquisition and that a pragmatic approach is taken in respect of interest and penalties in the initial period following the implementation of the Directive into Irish law.

3.3. Charging Provisions - Income Inclusion Rule and Undertaxed Profits Rule

A stated imperative of the Directive is to ensure uniform implementation of the OECD Model Rules in the EU. It is also noted in the Directive that it is necessary to ensure the rules implemented by EU Member States are considered qualified for the purposes of the Model Rules and do not go beyond what is necessary to achieve the objectives of the global agreement. We would urge that the legislation transposing the rules into Irish law is closely aligned with the EU Directive and does not go beyond the minimum standard required in the Directive.

Clear order of priority for the IIR and UTPR

The two domestic tax rules to be implemented, the IIR and its backstop, the UTPR, operate by imposing the top-up tax on a jurisdictional basis utilising an ETR test. It will be important that the provisions transposing the rules into Irish law are easy to administer and are not overly complex. There needs to be a clear order of priority set out in Irish legislation and MNEs must be able to readily determine when they are in

scope. The interaction of the rules with the anti-hybrid provisions and Ireland's double taxation agreements should also be considered.

Minority-owned constituent entities

In the context of minority-owned constituent entities, some consideration will need to be given to the allocation of top-up tax. Under the Directive, the computation of the ETR and the top-up tax with respect to a minority-owned subgroup applies as if each minority-owned subgroup is a separate MNE group. Ireland applies different corporation tax rates to trading and passive income, which could lead to some unexpected outcomes, as the allocation of the top-up tax is based on profits rather than taxes paid.

Other jurisdictions do not apply different rates depending on the nature of the income. This peculiarity in the Irish corporation tax code could result in some cases whereby a top-up tax may be still be imposed on such a minority-owned entity even though the effective tax rate of the entity may be above the minimum rate of 15% because the income was taxed at the passive rate of 25%.

UTPR - top-up tax or denial of a deduction

Initial feedback from our members suggests that a UTPR in the form of a top-up tax rather than a denial of a deduction may be preferrable as it may be easier to administer. However, it is unclear from the Directive, what the implications would be if the UTPR were to take the form of a denial of deduction against taxable income. For example, could losses be used to offset the addback arising as a result of the denial of deduction? It would be helpful for stakeholders to understand the potential consequences were the UTPR to take the form of a denial of a deduction as this will have significant consequences for taxpayers.

As work on the transposition of the Directive progresses, we strongly urge the Department to engage with stakeholders on an ongoing basis to ensure the proposed approach to the transposition of the IIR and the UTPR is clearly understood to allow stakeholders give an informed view on how the UTPR should operate.

Commence rules for accounting periods on or after 31 December 2023

The compromise text of the Directive considered by ECOFIN, states that the provisions of the Directive will apply in respect of the fiscal years beginning as from 31 December 2023. “Fiscal year” is defined as the accounting period with respect to which the ultimate parent entity of an MNE group or a large-scale domestic group prepares its consolidated financial statements. In accordance with the Directive, the commencement of the rules in Irish legislation should apply to accounting periods beginning on or after 31 December 2023, rather than applying split year rules, as this will be overly complex to administer.

3.4. Computation of GloBE Income or Loss

Based on feedback we have received, there is some uncertainty regarding the provisions concerning the computation of GloBE income or loss set out in Chapter III of the Directive. For example, initially there was some confusion among business following the release of the Model Rules as to whether the Profit Before Tax or Profit After Tax figure in the accounts should be considered the starting point for the computation of GloBE income or loss.

The definition of net taxes expense and what constitutes covered taxes, means that the Profit Before Tax figure does not necessarily equate to the Profit After Tax figure plus net taxes expense. Since the Commentary on the Model Rules was published, the understanding seems to be that the starting point for the computation of GloBE income or loss is the Profit After Tax figure in the accounts. However, clarity in Irish legislation on this point would be welcomed.

There is also some uncertainty in relation to how some definitions in the computation of GloBE income or loss interact with existing measures in domestic legislation.

Functional currency for tax purposes

Financial accounting net income or loss of a constituent entity must be adjusted by the amount of asymmetric foreign currency gains and losses in determining the qualifying income or loss. In determining asymmetric foreign currency gains and losses, one must consider foreign currency gains and losses that are attributable to "*fluctuations in the exchange rate between the accounting functional currency and the tax functional currency of the constituent entity*". There is some uncertainty regarding the meaning of functional currency for tax purposes in Ireland. While it may be assumed the tax functional currency would always be euro, it is unclear how this would align with certain provisions of the Directive.

For example, under section 76A TCA 1997, in order to determine the functional currency for tax purposes a company would follow the accounts, i.e., *"the profits or gains of a trade or profession carried on by a company shall be computed in accordance with generally accepted accounting practice".*

Furthermore, section 402 TCA 1997, which is concerned with the calculation of capital allowances and trading losses for companies whose primary currency is a currency other than the euro, states that "functional currency" in relation to a company resident in the State means the currency of the primary economic environment in which the company carries on trading activities in the State.

In our view, clarity will be required as to how these existing domestic provisions will interact with the provisions of the Directive.

Transactions between group members

Feedback we have received suggests that there is uncertainty regarding the treatment of transactions between group members. Under the Model Rules, the GloBE income or loss is determined by using the accounting standard used in preparing the consolidated financial statements of the group's ultimate parent entity. Accordingly, certain companies will need to calculate deferred tax attributes in line with an accounting standard other than the standard used for the entity level accounts.

Under IFRS, an asset transferred from a group member will be recognised as having an opening cost equal to the consideration paid for the asset, and this amount can be written off in full over time. For US GAAP purposes, the accounting treatment can be more complex. In group transactions, common control rules may apply such that the carrying value that the transferor has in an asset may be the base cost under US GAAP provisions or indeed, nil. These differences under different accounting standards can have a significant impact, particularly where a company has statutory losses and acquired intellectual property in a group transaction.

It is essential that there is close consultation with stakeholders regarding the proposed approach in Irish legislation to the treatment of transactions between group members to ensure that unintended consequences do not arise.

Aligning the Irish corporation tax code with the Model Rules

As outlined above, the tax treatment of foreign branches and dividends in the Model Rules is more aligned with a territorial system of taxation. Moving from a worldwide system of taxation in Ireland by adopting a participation exemption for dividends and a foreign branch exemption in Ireland in tandem with the implementation Pillar Two, would help to reduce the administrative burden for Irish companies with international operations and simplify how double taxation relief would be available in Ireland on such foreign earnings.

When introducing a participation exemption for dividends, consideration should also be given to amending the section 626B TCA 1997 capital gains tax participation exemption to ensure the provision aligns with the Pillar Two Model Rules which does not require a minimum holding period or a trading requirement and provides that the exemption applies to all jurisdictions. Ireland should still retain the 5% shareholding test for business outside the scope of the Pillar Two rules.

3.5. Computation of Adjusted Covered Taxes

The Directive defines "Covered Taxes" and outlines the rules for the calculation of "Adjusted Covered Taxes". However, as some of the language in the Directive is broadly drafted, it would be helpful if clarity could be provided in Irish legislation on what is included within the definition of covered taxes. For instance, it is not clear from the Model Rules the difference between a deferred tax liability and a deferred tax expense and we believe the Irish legislation could provide further clarity on this.

As noted in section 3.1 above, confirmation will be required that GILTI may be considered a CFC charge for the purpose of the Directive. Clarification regarding the position of taxes that are not clearly identifiable as covered taxes would also be welcomed. For example, the UK Overseas Receipts in respect of Intangible Property (ORIP) tax which is not considered a CFC charge and does not appear in the financial statements.

The OECD Commentary on the Model Rules confirms that withholding taxes are a covered tax. It would be important that this confirmation is reflected in Irish legislation. In addition, consideration should be given to the simplification of the Irish tax rules on withholding taxes.

The primary principle in allocating covered taxes is to assign them to the jurisdiction where underlying profits subject to these taxes were earned. We believe the greatest level of simplification allowable under the OECD Commentary on the Model Rules should be permissible for Irish tax purposes.

Complexities may arise for taxpayers where there is a deferred tax asset (DTA) that has elements of a GloBE loss that could be recognised at the global minimum tax rate of 15% and other DTAs recognised at the Irish corporation tax rate of 12.5%. This scenario could arise in the context of allowances claimed on specified intangible assets, where there may be a DTA on unused restricted allowances carried forward. It would be helpful if this area of complexity could be addressed when transposing the rules into Irish law.

The Model Rules include a recapture mechanism that adjusts for certain deferred tax liabilities that have not reversed (i.e., the tax has not actually been paid) within five years. The Directive notes that *"a deferred tax liability that is not paid or reversed within the five subsequent fiscal years shall be recaptured to the extent it was taken into account in the total deferred tax adjustment amount of a constituent entity."* [12]

The interaction of the recapture mechanism and certain aspects of Ireland's existing domestic rules may cause complexities for Irish businesses. OECD Commentary suggests that such deferred tax liabilities should be tracked on an item-by-item basis. Large groups may have millions of separate items in respect of which deferred tax arises. It would not be feasible for such groups to track the deferred tax arising on all such items on an individual basis. We consider that agreement on robust simplification measures is needed at an OECD level to ensure these provisions are workable.

With respect to post-filing adjustments, we would strongly urge that a pragmatic approach is taken in respect of interest and penalties in the initial period following the implementation of the Directive into Irish law. An appropriate lead-in time should be provided to allow businesses to become accustomed to the practical application of these very complicated new rules.

[12] Article 21, Chapter IV of the Draft Directive

3.6. Qualified Refundable Tax Credits - R&D Tax Credit

Ensuring the R&D Tax Credit is considered a "Qualified Refundable Tax Credit" for the purposes of the GloBE Rules is of the utmost importance. In the Institute's response[13] to the Department of Finance public consultation on the R&D Tax Credit and KDB in May, we set out our recommendations to ensure that the R&D Tax Credit is compliant with the Model Rules, noting the importance for Ireland to continue to encourage R&D investment in Ireland by in-scope large multinational groups.

A "Qualified Refundable Tax Credit" is treated as income for GloBE purposes. If the R&D Tax Credit fails to meet the criteria of a "Qualified Refundable Tax Credit", it will be treated instead as reducing the covered taxes for GloBE purposes. This means it would result in a lower ETR for the company compared with a credit that meets the criteria, resulting in potentially higher top-up tax payable under the Pillar Two Model Rules. To meet the criteria of a "Qualified Refundable Tax Credit", the credit must be paid as cash or available as a cash equivalent within four years from when the company is eligible to claim it.

Under existing legislation, Ireland's R&D Tax Credit is offset against a company's corporation tax liability for a particular year. If the company is not paying enough tax in any year to offset the R&D Tax Credit in full, it can first offset the credit against the corporation tax for the previous period and any balance can either be carried forward indefinitely or can be allocated to another member of the group. If the company exhausts all these options and there is still a surplus credit, it can make a claim to have that excess paid to it in cash by Revenue in three instalments over a period of 33 months.

Even though the Irish rules provide for a cash refund of surplus R&D Tax Credits within the 4-year timeframe stipulated by the Model Rules, the refund mechanism only applies to surplus credits and often, companies eligible for such refunds do not receive the cash due within the 33-month period, because the relevant refund claim is subject to a Revenue Compliance Intervention.

Therefore, at a minimum, we believe a legislative amendment is necessary to ensure Ireland's R&D Tax Credit is fully compliant with the criteria for a "Qualified Refundable Tax Credit" in GloBE Rules, such that refunds are mandated to be paid within the four years even in situations where a claim is subject to an open Revenue Compliance Intervention at the time. Of course, the legislation should include the necessary protections for the Exchequer to provide for a clawback of any amount of the repaid R&D Tax Credit that may be determined to be incorrectly claimed following the completion of the Compliance Intervention by Revenue.

In our response to the R&D Tax Credit Consultation in May, we also recommended condensing the current 3-year R&D Tax Credit refund to one year for all businesses as it would provide not only valuable assistance to smaller companies that tend to be

[13] Irish Tax Institute Submission to Department of Finance Public Consultation on the Research and Development (R&D) Tax Credit and Knowledge Development Box (KDB), May 2022.

cash constrained but it would also clearly demonstrate that the R&D Tax Credit is a "Qualified Refundable Tax Credit" for the purposes of the OECD Model Rules, which in turn would enhance the Irish regime's competitiveness internationally.

As stated above, a "Qualified Refundable Tax Credit" will be considered income under the GloBE Model Rules and would therefore potentially be subject to a top-up tax. This could result in the R&D Tax Credit being taxed at 15% for Irish taxpayers in scope of the Pillar Two Minimum Tax Directive. This could erode the economic benefit arising from the R&D Tax Credit and reduce the incentive to carry out R&D activities in Ireland for such companies. For Ireland to remain an attractive location for R&D, policymakers should consider increasing the value of the R&D Tax Credit from 25% to at least 30% to ensure the value of the R&D Tax Credit remains the same value to in-scope MNEs post-transposition of the Pillar Two Minimum Tax Directive into Irish law.

3.7. Computation of Effective Tax Rate (ETR) and Top-up Tax

The rules regarding the computation of the ETR and top-up tax are set out in Chapter V of the Directive. We have received some feedback from members to suggest that elements of Articles 25, 26 and 27 in Chapter V of the Directive could be interpreted as calculating the qualifying income on an entity basis rather than jurisdictional basis. We believe any uncertainty should be addressed and clarified when transposing the rules into Irish law.

There may be significant differences in the timeframe for the preparation of financial statements under different accounting standards. In addition, the payment deadlines for taxes vary across jurisdictions. The ability of Irish constituent entities to calculate the ETR and any potential top-up taxes due under the Model Rules will be dependent on the availability of consolidated financial statements. In many cases, consolidated financial statements will not be available until after the Irish corporation tax filing deadline, which falls nine months after the accounting period.

We do not consider that it would be appropriate to align the filing and payment requirements for top-up taxes with the Irish corporation tax deadline. In our view, the maximum 15-month period permitted under the Directive for the filing of top-up tax information should be reflected in Irish legislation. Furthermore, we firmly believe that the top-up tax should not be taken into consideration for the purposes of computing a company's Irish preliminary corporation tax obligations.

3.8. Implementation of a Qualified Domestic Top-up Tax (QDTUT) in Ireland

In our view, if Ireland wishes to collect additional top-up tax arising in respect of businesses operating in Ireland, a QDTUT which is fully aligned with the Model Rules should be implemented in Ireland. A QDTUT which aligns with, but does not go beyond the requirements of the Model Rules, will be an important consideration for in-scope MNEs when considering whether to locate future investment in Ireland.

The introduction of a QDTUT is likely to have a positive impact for the Exchequer as any top-up tax would be payable in Ireland rather than being collected elsewhere. However, for US headquartered groups operating in Ireland, any potential QDTUT payable may be directly and significantly impacted by the amount of GILTI which falls to be allocated to the Irish subsidiary as a CFC charge. Therefore, it is critical that there is clarity regarding the approach to be adopted to the allocation of GILTI.

Under the Model Rules, income, expenses, and taxes of in-scope constituent entities will be determined based on the accounting standard used in preparing the consolidated financial statements of the group's ultimate parent entity. For example, in the case of US headquartered groups and non-US headquartered groups listed in the US, the computation of their Irish jurisdictional top-up tax liability would be determined by using the income, expenses and taxes paid on their Irish operations under US GAAP. This is the case even where the Irish subsidiaries prepare their statutory accounts under FRS101 or FRS102 and file their Irish corporation tax return based on those accounts.

Arrangements and transactions may be treated differently under US GAAP compared with what would apply under IFRS. As a result, the tax base on which the Irish jurisdictional top-up tax would be computed may differ from that on which the same Irish subsidiaries would be subject to Irish corporation tax.

Article 10 of the Directive provides that a Member State can elect to apply a QDTUT to constituent entities located in its territory, which may be computed based on the local GAAP rather than the financial accounting standard used in the consolidated financial statements. Where a QDTUT applies, the parent entity located in an EU Member State applying the IIR will be obliged to give credit for the QDTUT when calculating the top-up tax for that jurisdiction. However, this could still give rise to additional top-up tax where the group's consolidated financial statements are prepared under a different accounting standard, e.g. US GAAP, and the QDTUT is prepared under IFRS / FRS101 / FRS102.

Article 10(2) of the Directive provides that nil top-up tax arises in the jurisdiction of an EU parent entity where a constituent entity is located in a jurisdiction which has a QDTUT, provided the QDTUT is prepared using the same financial accounting standard as the consolidated financial statements or IFRS.

Consequently, the introduction of a QDTUT into Irish law would effectively provide a safe harbour which would simplify the operation of the Model Rules in certain circumstances by removing the requirement for a subsidiary that prepares its financial statements under IFRS to recalculate its tax base using the accounting standard of the ultimate parent entity. However, the safe harbour does not form part of the Model Rules, it only applies where the parent entity is in an EU Member State, and it does not recognise a QDTUT prepared in accordance with an acceptable financial accounting standard, other than that used in preparing the consolidated accounts or IFRS. Therefore, it will have limited application.

In our view, it is an imperative that Ireland and the EU actively advocate for the QDTUT be considered as a safe harbour for the purposes of the OECD Model Rules among members of the Inclusive Framework. Such an approach is already contemplated in Article 8.2.1 of the OECD Commentary on the Model Rules, and we would strongly urge Irish policymakers to make representations at OECD level for the QDTUT to be reflected as a safe harbour in the development of the GloBE Implementation Framework. We consider that Ireland should also advocate that the draft Directive is amended so that the safe harbour applies to non-EU parented groups and where the QDTUT is prepared using an acceptable financial accounting standard. This would ensure consistency of application of Pillar Two across all jurisdictions adopting the global minimum tax rate.

We do not believe that it would be appropriate for the QDTUT to be returned as part of the Irish corporation tax return (Form CT1) and filed within nine months of the end of the accounting period. Article 42 of the Directive requires a top-up tax information return to be filed with the tax administration of the Member State within 15 months of the end of the fiscal year. In our view, the filing of the QDTUT should form part of the top-up tax information return and the maximum 15-month period under the Directive should be provided.

3.9. Administration – Payment and Filing

Article 42 of the Directive sets out the filing obligations of in-scope entities located in a Member State. It stipulates that a top-up tax information return is required to be filed with the tax administration within 15 months of the end of the fiscal year. As stated, we believe the 15-month period permitted under the Directive for the filing of top-up tax information should be reflected in Irish legislation.

For in-scope companies, a single return should be required which would be in addition to their corporation tax return. It is important that any top-up tax payable under the Model Rules does not impact the preliminary tax obligations of a company. We consider that groups could be given the option to nominate a filer for the group with the option for either the nominated company or each entity in the group to pay the liability via ROS. The information required in the return should mirror the information set out in Article 42 of the Directive.

Akin to corporation tax, we do not believe that it would be appropriate for Irish constituent entities to be made joint and severally liable for any QDTUT or other top-up taxes of the Irish constituent entities of the same multinational group.

The publication of a list of regimes which are considered to meet the definitions of a CFC tax regime and a Qualified IIR would simplify compliance with the Model Rules and ease the administrative burden for companies.

We would strongly urge that a pragmatic approach is taken in respect of interest and penalties in the initial period following the implementation of the Directive into Irish law.

An appropriate lead-in time and grace period should be provided to allow businesses to become familiar with the practical application of these very complex new rules.

It will be critical to have a very clear dispute resolution process at OECD level to contend with the inevitable increase in disputes arising from the implementation of the Pillar Two Model Rules across jurisdictions. It will be essential to ensure the Irish competent authority is adequately resourced to manage such disputes.

The Consultation Paper asks what group entity should be made initially liable for paying UTPR tax and whether the answer would be dependent on the UTPR being collected by way of denial of deduction or direct charge. As previously mentioned, it is unclear from the Directive, what the implications would be if the UTPR were to take the form of a denial of deduction against taxable income.

As work on the transposition of the Directive progresses, we strongly urge the Department to engage with stakeholders on an ongoing basis to ensure the proposed approach to the transposition of the IIR and the UTPR is clearly understood to allow stakeholders give an informed view on how the UTPR should operate.

3.10. Transition Rules

The Transition Rules are set out in Chapter IX (Articles 45 to 48) of the Directive. Article 45(5) of the Directive states that in the case of a transfer of assets between constituent entities after 30 November 2021 and before the start of a transition year, 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.

The Model Rules were expected to be published at the end of November but were not published until 20 December 2021. Therefore, the provision could potentially have retrospective effect and result in double taxation where there has been a transfer of an asset in the period between 30 November 2021 and the publication date of the Model Rules. This issue may be addressed by the OECD in due course when updating the Model Rules.

We believe that the interaction of the Transition Rules with the rules which apply from 1 January 2024 to a transfer of assets needs to be clarified. In addition, as we have set out above, there is uncertainty regarding the treatment of transactions between group members where different accounting standards are used by a group's ultimate parent entity and a constituent entity.

We recommend that Ireland advocates at the OECD / EU level for changes to the Transition Rules that are negatively impacting bona fide commercial transactions. A potential option which could be considered would be to insert an exception to the Transition Rules that would apply where the profit arising on the intra-group disposal was subject to tax at a minimum rate of 15%. In our view, such an approach would be in keeping with the policy intention of the Transition Rules.

Close consultation with stakeholders regarding the proposed approach in Irish legislation to the treatment of transactions between group members will be necessary to ensure that unintended consequences do not arise.

Article 45(3) of the Directive provides that when determining the ETR for a jurisdiction in a transition year, and for each subsequent fiscal year, the MNE group shall take into account the deferred tax assets and deferred tax liabilities “reflected or disclosed” in the financial accounts of the constituent entities in a jurisdiction for the transition year. It would be helpful to understand what is meant by “reflected or disclosed” in this context. Clarity is also required regarding the treatment which applies where an entity has trading losses carried forward and the impact of such losses on any potential liability to top-up taxes.

3.11. Subject to Tax Rule (STTR) – Potential Amendments to Irish Legislation

The Two-Pillar Solution provides that Inclusive Framework members that apply nominal corporate income tax rates below the STTR minimum rate of 9% to interest, royalties and a defined set of other payments would adopt the STTR into their bilateral treaties with developing Inclusive Framework members when requested to do so.

In considering the implementation of the STTR into Ireland’s bilateral treaties with developing countries, it would be important to ensure that the approach taken is consistent with Ireland’s Double Tax Treaty Policy for Developing Countries as set out in the recently published Tax Treaty Policy Statement.[14]

The model treaty provision to give effect to the STTR is still being developed by the OECD. As such, it is not possible to comment at this stage on any potential amendments to domestic legislation to address the application of, or interaction with, the STTR. Further consultation with stakeholders will be necessary when the STTR model treaty provision and associated Commentary is published by the OECD.

However, as the STTR requires a minimum rate of 9%, consideration will need to be given to any in-scope payments taxed under the Irish Knowledge Development Box (KDB), which applies an effective rate of 6.25% on profits generated from the commercialisation of intellectual property.

We understand from our members that large Irish PLCs or foreign-owned MNC companies are generally not claiming the KDB due to the restrictions imposed within the scheme on Irish groups and for acquired IP, so the impact of the STTR under Pillar Two on existing KDB claimants may be limited. This feedback is borne out by the low take-up of the KDB to date.[15]

In any case, when the final details regarding the operation of the STTR are available, further consideration and engagement with stakeholders will be needed on the potential implications of the STTR on the KDB, especially if any enhancements are

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[14] Ireland’s Tax Treaty Policy Statement, Department of Finance, June 2022.

[15] The most recent data available on the KDB shows that in 2020, 17 companies claimed the KDB in 2020 - Corporation Tax - 2021 payments and 2020 returns (revenue.ie).

made to the KDB following the recent consultation process which could significantly alter the profile and number of claimants.

3.12. Large-Scale Domestic Groups

While the Directive, in general, closely follows the Model Rules, it extends its scope to large-scale purely domestic groups, in order to ensure compliance with the fundamental freedoms of the EU.

We support the provisions included in Article 47(1)(b) of the draft EU Directive, which would delay the application of the Model Rules for the first five years upon a large-scale domestic group falling within scope of the Directive. Ireland should ensure that this provision is included in Ireland's transposition of the Directive once finalised.

To the extent that Ireland introduces a QDTUT, the above deferral for large-scale domestic groups should equally apply for QDTUT purposes.