Irish Tax Institute

May 2023

# Pillar Two Implementation

## Response to the Feedback Statement

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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 publication of the Pillar Two Implementation Feedback Statement (Feedback Statement) and the opportunity to further engage with the Department of Finance regarding the implementation of the Pillar Two Global anti-Base Erosion Model Rules[1] (GloBE Rules) into Irish law.

The Feedback Statement sets out possible draft legislative approaches to the Income Inclusion Rule (IIR) and the Undertaxed Profits Rule (UTPR) and outlines possible approaches that could be taken in respect of the Qualified Domestic Top-Up Tax (QDTT) and the administration of the GloBE Rules.

The draft legislative approaches to the IIR and the UTPR, outlined in Appendix 1 of the Feedback Statement, largely follow the wording of the EU Minimum Tax Directive[2] (Directive). The proposed legislative approaches to the QDTT and the administration of the GloBE Rules by Revenue have not yet been published. Consequently, it is difficult to fully anticipate how the draft legislative provisions will interact with existing provisions of the Taxes Acts.

As work on drafting the legislation transposing the Directive progresses, we firmly believe an iterative process of consulting with stakeholders will help to minimise the complexity involved to the greatest extent possible and ensure the successful practical implementation of the Directive into Irish law.

We welcome the Department of Finance's confirmation that a second Feedback Statement will be published in mid-2023 which will contain draft approaches to the legislation required to transpose the remaining elements of the Directive. It would be important that sufficient time is given to stakeholders to fully consider the impact of the proposed legislative provisions.

Considering the very technical nature of the GloBE Rules and its significant impact for in-scope businesses, we strongly urge the Department of Finance and Revenue to continue to engage with stakeholders directly and via TALC BEPS prior to the publication of the second Feedback Statement. Such engagement should continue up to the publication of the Finance Bill to ensure the legislation, when published, is clearly understood by taxpayers and does not give rise to any unintended consequences.

We have set out in Section 3 of this submission our observations and recommendations in response to the questions raised in the Feedback Statement, however, we believe it is important that policymakers consider the following key matters when transposing the Directive into Irish law:

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[1] OECD (2021), Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS, OECD Publishing, Paris, https://doi.org/10.1787/782bac33-en

[2] Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.

- In drafting the relevant legislative provisions, it must be clear that any top-up taxes payable are incremental corporation tax, i.e., a corporate tax on income. A key concern for taxpayers is that any top-up tax payable under a QDTT will be considered a creditable tax for the purpose of Ireland's Double Tax Agreements with its key trading partners. In particular, care must be taken to ensure that any tax payable under the QDTT is considered foreign tax paid or accrued for foreign tax relief purposes under US Foreign Tax Credit Regulations.

- Consistency of application of the GloBE Rules across jurisdictions will be a crucial factor in providing certainty to businesses. In transposing the Directive into Irish legislation, we believe the legislation should make direct reference to the GloBE Rules, the Commentary on the GloBE Rules[3] and the Administrative Guidance on the GloBE Rules[4]. To provide the necessary tax certainty to taxpayers, it would be important that the Irish legislation defines the Administrative Guidance by reference to the date on which it is published.

- As the Administrative Guidance will evolve and likely be updated regularly during the initial period of implementation, we believe an approach similar to that which applies in Section 835D Taxes Consolidation Act (TCA) 1997 in respect of updates to the OECD's Transfer Pricing Guidelines, should also apply in respect of updates to the OECD's Administrative Guidance. This would mean that if the Administrative Guidance is updated by the OECD, the definition in Irish legislation may be supplemented by such additional guidance as may be designated by the Minister for Finance on or after the date of the passing the Finance Act. Such an approach would provide certainty to taxpayers by ensuring that any future guidance will have prospective application only.

*Adopting a Participation Exemption for Dividends*

- The implementation of the GloBE Rules reduces Ireland's scope to compete for foreign direct investment based on its corporation tax rate. Consequently, if Ireland is to continue to compete for such investment, at a minimum, it must align its corporation tax code with other EU Member States. Adopting a participation exemption would help to align the Irish corporation tax code with those operated by other EU Member States and with the GloBE Rules, which is more in line with a territorial system of taxation.

- The Institute's response[5] to the Department of Finance's consultation on moving to a territorial system of taxation in March 2022 and our Pre-Finance Bill 2022 Submission[6], highlighted how the absence of a participation exemption for foreign

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[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.
[4] OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris. www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two.pdf.
[5] https://taxinstitute.ie/wp-content/uploads/2022/03/2022-03-07-ITI-Response-to-Consultation-on-a-Territorial-System-of-Taxation-Final.pdf
[6] https://taxinstitute.ie/wp-content/uploads/2022/06/2022-06-27-ITI-Pre-Finance-Bill-2022-Submission-FINAL.pdf

dividends puts Ireland at a disadvantage when competing for foreign direct investment with other OECD and EU countries that operate exemption systems. Feedback the Institute has received confirms that Ireland's status as an outlier in this respect is being used against us by competitor countries bidding for investment.

- Companies are currently evaluating the potential impact of Pillar Two on their business and making decisions regarding how to structure their operations going forward. The absence of a participation exemption in the Irish corporation tax code is now acting as a disincentive for such companies when determining where to locate future investment and is already impacting decisions.

- If Ireland is to remain an attractive location for investment, it is critical that a participation exemption for dividends is introduced in Finance Bill 2023 alongside the implementation of the Pillar Two GloBE Rules.

*Ensuring Ireland remains a competitive place to do business*

- Policymakers must also consider other ways to improve the Irish tax system to ensure Ireland remains a competitive place to do business. In tandem with the implementation of Pillar Two, it will be necessary to review existing tax credits and incentives, such as the Digital Gaming Tax Credit, to ensure they remain competitive and are aligned with the GloBE Rules.

- Another part of the corporation tax code which urgently requires reform are the rules relating to interest deductibility. Following the introduction of the Anti-Tax Avoidance Directive (ATAD) Interest Limitation Rule in Finance Act 2021, which was layered on top of existing comprehensive interest deductibility provisions, Ireland now has one of the most complicated interest deductibility regimes within the EU. The Institute strongly urges that priority be given to a review of the interest deductibility provisions, as part of an overall project of simplification, to ensure that Ireland's interest deductibility provisions are easier to administer and more in line with the measures contained in the corporate tax systems of our European counterparts.

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. Proposed legislative approach

### 3.1.1. Transposition of EU Minimum Tax Directive

The Feedback Statement sets out possible draft legislative approaches to the IIR and the UTPR in Appendix 1 and outlines possible approaches that could be taken in respect of the QDTT and administration. As the proposed legislative approaches to the QDTT and the administration of the GloBE Rules by Revenue have not yet been published, it is difficult therefore at this stage to fully anticipate how the draft legislative provisions in Appendix 1 will interact with existing provisions of the Taxes Acts.

The draft legislative approaches to the IIR and the UTPR outlined in Appendix 1 of the Feedback Statement largely follow the wording of the Directive with some additional provisions arising from the GloBE Rules, Commentary and Administrative Guidance. In principle, we welcome this proposed approach to the transposition of the legislation for the IIR and UTPR. However, it is likely that the Administrative Guidance will be updated frequently in the initial phase of implementation. If definitions in the Administrative Guidance are embedded in the legislation it is possible that these may need to be amended to reflect any updated Administrative Guidance.

We would make the following specific observations regarding the draft legislation contained in Appendix 1:

- *Chapter 1, Section XXX [Interpretation]*

  <u>Definition of ‘acceptable financial accounting standard’ and ‘authorised financial accounting standard’</u>
  The way in which the definition of ‘acceptable accounting standard’ and ‘authorised accounting standard’ is currently drafted in Appendix 1 has the potential to limit the accounting standards eligible to be considered authorised financial accounting standards to those jurisdictions which are listed in the definition of ‘generally acceptable accounting principles’ (i.e. GAAP).

  The approach taken to drafting these definitions differs from that in the Directive and the GloBE Rules. We consider that the definition of ‘acceptable financial accounting standard’ should be amended to include the jurisdictions listed in the definition of ‘generally accepted accounting standards’ so that it better aligns with the Directive. This is important as it has potential implications for when the rules regarding material competitive distortion rules apply.

Definition of ‘consolidated financial statements’

We consider that the proposed indentation and formatting of (d)(ii) of the definition of consolidated financial statements should be amended to ensure the Irish legislation better aligns with the definition in the Directive. This is necessary to make certain that the requirement to adjust for material competitive distortions only applies to financial accounting standards that are not acceptable financial accounting standards in accordance with paragraph 6 of Chapter 3 of the OECD Commentary on the GloBE Rules.

This amendment to the definition of consolidated financial statements is also essential to ensure that the term “controlling interest” is interpreted correctly and in a manner that is consistent with paragraph 34 of Chapter 1 of the Commentary.

Definition of ‘ownership interest’

As currently drafted in Appendix 1, the proposed definition of ownership interest differs from the Directive and the GloBE Rules as it omits the word ‘equity’. By not restricting the definition to equity interests, we believe that applications of the definition could vary from those arising under the GloBE Rules and the Directive. It is clear from paragraph 85 of Chapter 10 of the OECD Commentary that the term equity interest has been purposely used to distinguish between an ownership interest and other rights to the profits, capital or reserves of an entity.

When interpreting ‘capital’ for the purpose of ATAD, it was necessary to clarify that it pertained to equity capital and not debt capital. In our view, consideration should be given in legislation to ensure in this context that capital is interpreted as meaning equity capital and not debt capital.

- *Chapter 2, Section XXX [Effect of a qualified domestic top-up tax]*

  Article 11(3) of the Directive provides that any top-up tax payable under a QDTT, which remains unpaid four years following the fiscal year in respect of which they arose, should be added to the jurisdictional top-up tax collectible under the IIR and UTPR mechanisms and shall not be collected by the Member State which imposed the QDTT. It will therefore be important that the QDTT amounts should be collected within four years of the fiscal period in respect of which they arose.

  It will be necessary to clarify in Irish legislation the treatment of any QDTT liability outstanding and not paid within the required four fiscal years. As the payment will no longer be eligible for collection in Ireland, where a QDTT liability exists (either through self-assessment or an assessment raised by Revenue), upon expiration of the four years, an appropriate legislative provision will be required to revoke the QDTT liability and disapply any Revenue collection procedures and dispute mechanisms. Any procedures which may be adopted should be in line with the outcome of the OECD’s work on Tax Certainty for the GloBE Rules.

Similar considerations will apply where any IIR top-up tax liability is not collected within the appropriate timeframe resulting in the UTPR applying.

The term ‘paid’ should be clarified in legislation to confirm that it includes discharge and to facilitate circumstances where other tax refunds are offset against the QDTT liability, similar to section 960H TCA 1997.

- *Chapter 2, Section XXX [Computation and allocation of the UTPR top-up tax amount]*

  The Feedback Statement invites comments on how the allocation of the UTPR top-up tax amount to the constituent entities located in Ireland may be achieved. As the Directive does not prescribe how the UTPR should be allocated to the various entities within a jurisdiction, in our view, the group should have the option to designate which of the Irish constituent entities should be liable for the UTPR top-up tax amount.

- *Chapter 3, Section XXX [Adjustments to determine the qualifying income or loss]*

  Subsection 9(a) refers to the making of an election by a filing constituent entity. However, currently, there is no cross-reference provided in subsection 9(a) to section XXX [Elections], which we would assume is the legislative provision that will detail how the election should be made. Furthermore, subsection 9(a)(ii) refers to a tax consolidation group even though a tax consolidation group is not a concept which exists in Irish tax law. Notably, paragraph 133 of Chapter 3 of the OECD Commentary states that the requirement that the constituent entities are included in a tax consolidated group includes any rules of the local jurisdiction which enable the constituent entities to share current income or losses by virtue of the fact that they are related through ownership or common control.

- *Chapter 4, Section XXX [Specific allocation of covered taxes incurred by certain types of constituent entities]*

  <u>Definition of ‘passive income’</u>
  In both the Directive and the GloBE Rules, paragraph (a) of the definition of passive income reads ‘a dividend or dividend equivalents’. In contrast, the proposed approach in the draft Irish legislation refers to ‘a dividend or distribution’. As the terms ‘distribution’ and ‘dividend equivalents’ are both separately used in the Directive and GloBE Rules, we consider that this demonstrates that the words should not be used interchangeably.

  It is critical that there is consistency between Irish legislation, the Directive and the GloBE Rules. Consistency is of particular importance in this instance given the term ‘distribution’ has a much broader meaning than a dividend or equivalent payment under Irish tax law.

  Paragraph (b) of the proposed definition of passive income refers to interest or interest equivalent as defined in section 835AY. The definition of ‘interest

equivalent' used in section 835AY TCA 1997 is broad and would include many forms of income that would be taxable as part of a trade carried on in Ireland. Given the active nature of such income, we consider that the proposed cross-reference to section 835AY TCA 1997 should be removed from the definition of passive income and that the wording should be aligned with the Directive and the GloBE Rules.

- *Chapter 5, Section XXX [Substance-based income exclusion]*

  <u>Definition of 'eligible payroll costs'</u>
  In line with paragraph 34 of Chapter 5 of the OECD Commentary, clarity would be welcomed that stock-based compensation is included in the definition of 'eligible payroll costs'.

  For the purpose of the substance-based income exclusion, eligible employees include independent contractors. It would be helpful if the meaning of independent contractors for the purpose of the definition of eligible employees could be clarified in line with paragraph 32 of Chapter 5 of the Commentary and in addition, if confirmation could be provided that 'eligible payroll costs' includes payments in respect of independent contractors.

- *Chapter 7, Section XXX [Eligible Distribution Tax System]*
  Subsection 1 refers to the making of an election by a filing constituent entity. Again, there is no cross-reference provided in subsection 1 to *Section XXX [Elections],* which we would assume is the section that will detail how an election should be made.

### 3.1.2. OECD Model Rules, Commentary and Administrative Guidance

Consistency of application of the OECD Model Rules across jurisdictions will be a crucial factor in providing tax certainty to businesses. If the application of a provision or definition in the Directive is unclear in practice, an Irish taxpayer must be able to rely on the GloBE Rules, Commentary and Administrative Guidance to obtain further clarity where possible.

In transposing the Directive into Irish legislation, we believe the legislation needs to make direct reference to the GloBE Rules, Commentary and Administrative Guidance. This approach would be in line with Recital 24 of the Directive and would provide assurance to taxpayers that the legislation will be consistently applied in line with the GloBE Rules, Commentary and Administrative Guidance.

Such an approach has already been adopted 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 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published by the OECD on 20 January 2022 and any additional guidance published by the OECD on or after the

date of the passing of the Finance Act 2022, as the Minister for Finance may designate by order.

In order to provide tax certainty to taxpayers it would be important that the Irish legislation defines the Administrative Guidance by reference to the date on which it is published. As the Administrative Guidance is likely to be updated on a regular basis during the initial period of implementation, we consider that a similar approach to that which applies in Section 835D TCA 1997 in respect of updates to the OECD's Transfer Pricing Guidelines should also apply to updates to the OECD's Administrative Guidance.

This means in the event that the Administrative Guidance is updated by the OECD, the definition in the legislation may be supplemented by such additional guidance as may be designated by the Minister for Finance on or after the date of the passing of the Finance Act. Such an approach would provide certainty to taxpayers by ensuring that any future guidance will have prospective application only and equally, will ensure that Ireland is not put at a competitive disadvantage when attracting investment.

In the context of transfer pricing audits, Revenue helpfully adopted an interpretative approach in the past where there was a lacuna between the publication of the OECD's Guidance on Financial Transactions[7], and the incorporation of such guidance in Irish law. A similar approach may be required where there is a gap between the publication of updated guidance on the GloBE Rules by the OECD and an amendment to the Irish legislation to incorporate the updated guidance. Where the updated guidance aligns with the GloBE Rules and provides clarity to the taxpayer regarding the application of the GloBE Rules, then in those circumstances it should be possible for the taxpayer to rely on the updated guidance.

However, if the updated guidance goes further than providing clarity regarding interpretation of the GloBE Rules and is more akin to a material change of the rules (for example, the current treatment of debt releases in the Administrative Guidance), it would be inappropriate for such guidance to have retrospective application.

We understand that the European Commission is considering publishing guidance on the Directive to assist consistent implementation of the Directive by Member States. Irish legislation should adopt a similar approach for any such implementation guidance released by the Commission to what we have outlined above regarding the OECD's Administrative Guidance.

[7] OECD (2020), Transfer Pricing Guidance on Financial Transactions: Inclusive Framework on BEPS Actions 4, 8-10, OECD, Paris, www.oecd.org/tax/beps/transfer-pricing-guidance-on-financial-transactions-inclusive-framework-on-beps-actions-4-8-10.htm.

## 3.2. QDTT

The Feedback Statement outlines two possible approaches to applying the QDTT in legislation:

- Prepare a detailed part of the legislation to set out all of the elements required to calculate and implement a QDTT, separate and stand-alone from the parts of the legislation required to implement the IIR and UTPR, or
- Prepare shorter provision(s) which would reference the detailed provisions relating to the IIR with any necessary modifications.

In our view, the second approach would be preferable as it would be more streamlined and straightforward for taxpayers.

*Qualified Status*

The primary concern in adopting the QDTT must be to ensure that it meets the conditions to be recognised as 'qualifying' for the purposes of the safe harbour under the EU Directive and the Qualified Domestic Minimum Top-up Tax (QDMTT) Safe Harbour which is being developed by the members of the OECD Inclusive Framework on BEPS.

The Administrative Guidance, which was published after the Directive, sets out detailed guidance on the design of a QDMTT that will be used for an assessment of whether a minimum tax meets the requirements for qualified status. It states that the two guiding principles in determining whether a minimum tax is functionally equivalent to the GloBE Rules and therefore qualifies as a QDMTT are:

- the minimum tax must be consistent with the design of the GloBE Rules; and
- the minimum tax must provide for outcomes that are consistent with the GloBE Rules.

It is essential that the QDTT to be adopted in Irish legislation complies with these two guiding principles.

In addition, in line with paragraph 118.30 of the Administrative Guidance, the Irish legislation should ensure that the QDTT excludes tax paid or incurred by a constituent entity-owner under a controlled foreign company (CFC) tax regime that is allocable to the constituent entity for the purposes of the IIR and UTPR rules (and similarly for tax paid or incurred by a head office that is allocable to a permanent establishment located in the jurisdiction for the purposes of the IIR and UTPR rules).

*Aligning the QDTT with the ILR*

With the implementation of Pillar Two across jurisdictions, ease of administration is now a key deciding factor for in-scope groups in deciding where to locate future investment. Some groups are considering centralising their Pillar Two compliance

functions. A QDTT which is aligned with the IIR would help facilitate such streamlining of compliance functions and consequently, contribute to easing the administrative burden for some in-scope groups operating in Ireland.

It is possible that some companies will pay more tax under the QDTT than they would under the IIR. For instance, the QDTT must exclude tax paid by a constituent entity-owner under a CFC tax regime that is allocable to the constituent entity for the purposes of the IIR and UTPR. As the US global intangible low-taxed income (GILTI) is considered a CFC charge under the GloBE Rules, the portion of any tax paid by a US parent under the GILTI regime, which is attributable to an Irish constituent entity, will not be offset when calculating the QDTT in Ireland, whereas GILTI would be creditable when computing the IIR.

While recognising the importance of incorporating necessary divergences from the IIR, such as the exclusion of tax paid by a constituent entity-owner under a CFC tax regime, into the Irish QDTT to ensure it can be considered a qualifying domestic top-up tax, Irish policymakers should equally endeavour to safeguard Ireland's position as a competitive location for investment, by closely aligning the QDTT as far as possible to the IIR.

For example, the QDTT should include the elections that are available under the IIR. In addition, the substance-based exclusion, including the transitional relief for the substance-based income exclusion outlined in Article 48 of the Directive, should also apply to the computation of the QDTT. Furthermore, the QDTT should take account of the Transitional CbCR Safe Harbour and Permanent Safe Harbour[8] which have been agreed by the Inclusive Framework.

A QDTT that is aligned with the IIR would help provide certainty for taxpayers regarding the tax due and reduce the risk of disputes from other jurisdictions regarding additional tax due.

*Accounting Standard*

Both the Directive and the GloBE Rules permit a QDTT to be computed using the domestic excess profits of the low-taxed constituent entities based on an acceptable financial accounting standard or an authorised financial accounting standard permitted by the authorised accounting body and adjusted to prevent any material competitive distortions, rather than the financial accounting standard used in the consolidated financial statements.

It is important that taxpayers are afforded flexibility to choose the accounting standard to be used in calculating the QDTT and therefore, we firmly believe the optionality provided by the Directive and GloBE Rules regarding accounting

[8] OECD (2022), *Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two)*, OECD/G20 Inclusive Framework on BEPS, OECD, Paris. www.oecd.org/tax/beps/safe-harbours-and-penalty-relief-global-anti-base-erosion-rules-pillar-two.pdf.

standards should be transposed into Irish law (i.e., the taxpayer can choose the accounting standard used by its Ultimate Parent Entity (UPE), IFRS or local GAAP).

The threshold for material competitive distortions is €75 million in a fiscal year for the entire MNE Group. Notably, the Administrative Guidance states that this threshold was developed based on the premise that the consolidated financial statements would be prepared, in full, using the particular accounting standard and it should not apply in the context of a QDMTT applicable to a single jurisdiction.

The Administrative Guidance also confirms that the Inclusive Framework will consider providing further guidance on the determination of a lower threshold to provide for outcomes that are consistent with the GloBE Rules.

## 3.3. Administration

### 3.3.1. Proposed approach to administration

In drafting the relevant legislative provisions, it must be clear that the top-up taxes are incremental corporation tax, i.e., a corporate tax on income, and that the description of the top-up taxes in Irish legislation does not inadvertently give rise to any unintended consequences. A key concern for taxpayers is that any tax payable under a QDTT will be considered a creditable tax for the purpose of Ireland's Double Tax Agreements with its key trading partners. In particular, care must be taken to ensure that any tax payable under a QDTT is considered foreign tax paid or accrued for foreign tax relief purposes under US Foreign Tax Credit Regulations.

We recognise that it is necessary for different rules to apply to the administration of the top-up taxes than those which apply to the existing corporation tax system. However, from a legislative perspective, where a constituent entity registers as a member of a group that is in-scope of the GloBE rules, it must be clear the entity is not registering for a new tax head separate to corporation tax.

### 3.3.2. Registration and De-Registration

The proposed approach to registration set out in the Feedback Statement provides for a 12-month period within which constituent entities located in Ireland must register as being a member of a group that is in-scope of the GloBE Rules. Similarly, it is proposed that a 12-month period would apply to de-register where an entity is no longer in scope.

In our view, imposing a specific 12-month time limit to register for top-up taxes is unnecessary when the proposed deadline to file the relevant GloBE Top-Up Tax Return will be 15 months after the end of the fiscal year. We do not believe that a timeline should be provided within which the constituent entity must register. Rather, the requirement should be for the constituent entity to register and file the necessary return/notification on time within the specified period. This is the approach which has

been adopted elsewhere in the TCA 1997, for example, in relation to the reporting requirements for DAC7.

If policymakers believe it is necessary to specify a date by which registration must take place, then the deadline should be aligned with the proposed 15-month deadline for the filing of the GloBE Top-Up Tax Return (with a similar extension of the deadline to 18 months for the Transition Year) to help ease the burden of administration on businesses.

Our members would also query the need for the proposed automatic requirement to de-register within 12 months. Insisting on an automatic timebound de-registration in all cases is adding a further layer of administration on businesses. Of course, de-registration may be necessary in certain circumstances, such as where the constituent entity has been sold or liquidated but, however, in most situations, Revenue will be aware when a constituent entity has fallen out of scope of the GloBE Rules, because the relevant information will have been reported via the GloBE Information Return.

We welcome the proposal that registration would be once-off and believe that it would be appropriate for registration to be carried out via ROS. With a view to easing the administrative burden for businesses, where possible, the information to be provided on registration should be limited to the information which Revenue does not already have in its possession.

We do not believe it is necessary to require a constituent entity to nominate a local contact person on registration. Staff often move around in organisations meaning this information is likely to become outdated quickly and we do not consider a constituent entity should be required to keep such information up to date.

### 3.3.3. Filing of GloBE Information Returns and Notifications

We welcome the proposed approach outlined in the Feedback Statement to the filing of GloBE Information Returns and associated notifications, in particular, the proposal that a Designated Local Entity could discharge the obligation on a constituent entity to file a GloBE Information Return.

Article 44(6) of the Directive provides that where a constituent entity is located in the EU but its UPE is located in a third-party jurisdiction, the constituent entity or the Designated Local Entity must file a top-up tax information return with the tax administration of the Member State. Such a return will contain similar information to the GloBE Information Return which will be filed by the UPE in the third-party jurisdiction.

As the GloBE Information Return will be shared by the third-party jurisdiction with the Member State where the constituent entity is located, this requirement will lead to dual reporting. We understand that the concern regarding dual reporting has been discussed at EU/OECD level and in our view, it would be critical that every effort is made by policymakers to ensure that a dual reporting requirement does not arise.

### 3.3.4. Filing of Domestic Returns/Self-Assessment

We welcome the proposed overall approach to domestic returns and self-assessment in relation to the GloBE Rules. Aligning the filing deadline of the GloBE Top-Up Tax Return with the deadline for filing the GloBE Information Return is practical and will assist groups who wish to streamline their Pillar Two compliance processes.

As we have outlined in paragraph 3.3.8 of this submission, it is essential that there is flexibility to elect a group filer who would be responsible for registration and filing the GloBE Top-Up Tax Return on behalf of other Irish constituent entities in the filing group. As the GloBE Top-Up Tax Return will contain a jurisdictional calculation of the top-up tax liabilities, it should be possible for one joint return to be filed by the group filer on behalf of the Irish constituent entities in the filing group.

The proposed deadline for filing of the GloBE Top-Up Tax Return is 15 months after the end of the fiscal year (extended to 18 months in the Transition Year). For many companies with a December year end, this deadline will extend their compliance season from September to March of the following year. With a view to easing the administration burden for groups operating in Ireland, it is important that compliance with domestic reporting requirements is not unduly complex and that the reporting requirements are in line with the principle of self-assessment to ensure Ireland can continue to be a good place to do business.

The information reporting requirements for constituent entities located in Ireland should be reduced to the greatest extent possible, to ensure there is minimal overlap with information already provided on the GloBE Information Return. In this regard, we welcome the proposal in the Feedback Statement for limited additional information to be disclosed in the GloBE Top-Up Tax Return. However, we note that the information requirements for both the GloBE Information Return and the domestic filings will be clarified in the coming months in discussions at OECD level.

### 3.3.5. Payments

We consider the proposal that top-up tax liabilities should be due for payment at the same time as the filing of the GloBE Information Return / GloBE Information Return notifications and the GloBE Top-Up Tax Return (i.e., 15 months after the end of the Fiscal Year and 18 months after the Transition Year) a reasonable approach. We welcome the proposal that top-up tax liabilities would not form part of the corporation tax preliminary tax payment obligations.

### 3.3.6. Record Keeping

It is proposed that the provisions within Section 886 TCA 1997 regarding the obligation to keep records should apply (subject to appropriate modifications) to an Irish constituent entity in respect of the aspects of the GloBE Information Return

relating to that Irish constituent entity, the GloBE Top-up Tax Return and any top-up tax liability payable in Ireland.

We consider this proposed approach to record keeping requirements is reasonable. However, given the challenges which will inevitably exist for MNEs in the initial phase of implementation as they seek to design and implement the complex system changes necessary to capture the required information, it would be important that Revenue adopts a pragmatic approach to the record keeping requirements in the initial years.

### 3.3.7. Other Administration Provisions

The Feedback Statement proposes that the relevant provisions within the TCA 1997 are extended to apply to Pillar Two GloBE returns, assessments and liabilities. In our view, any decision on the approach to be adopted in respect of assessments, enquiries and compliance interventions must take into account any potential developments at OECD level in relation to dispute prevention and dispute resolution mechanisms. For example, if it is determined that enquiries or audits should be centralised through the UPE, this would have an impact on whether existing provisions within the TCA 1997 could be used by Revenue.

The uncertainty and additional costs that are likely to be incurred in cases of inconsistent or uncoordinated application of the GloBE Rules remains a key concern for multinational groups. Where disputes arise, groups need to be confident that there is an effective dispute resolution mechanism in place which will resolve cases of double or over-taxation on a timely basis. Therefore, if any dispute prevention or dispute resolution mechanisms are developed at OECD or EU level, it would be crucial for businesses operating in the State that Ireland joins in those procedures.

*Interest and Penalties*

The OECD guidance on Safe Harbours and Penalty Relief[9] describes the Transitional Penalty Relief Regime which is a common understanding that, during the Transition Period, no penalties or sanctions should apply in connection with the filing of a GloBE Information Return where a tax administration considers that an MNE has taken “reasonable measures” to ensure the correct application of the GloBE Rules.

For the purpose of the Transitional Penalty Relief, a tax administration may consider that an MNE has taken reasonable measures where the MNE can demonstrate that it has acted in good faith to understand and comply with the relevant domestic application of the GloBE Rules and the QDMTT.

The objective of the Transitional Penalty Relief Regime is to provide MNEs with a “soft-landing” during the initial years in which the rules are being introduced. This soft

[9] OECD (2022), *Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two)*, OECD/G20 Inclusive Framework on BEPS, OECD, Paris. www.oecd.org/tax/beps/safe-harbours-and-penalty-relief-global-anti-base-erosion-rules-pillar-two.pdf.

landing is intended to allow multinational groups and tax administrations to familiarise themselves with the rules and develop the data collection and the reporting and compliance systems to comply with the new obligations without the risk of being penalised for making reasonable mistakes.

In line with the objective of the Transitional Penalty Relief Regime, we would strongly urge that a pragmatic approach is taken by Revenue 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 multinational groups to familiarise themselves with these very complex rules in practice and to develop the internal systems necessary to meet their compliance obligations. The OECD Administrative Guidance is evolving and undoubtedly, more clarity will be needed before Pillar Two can be administered properly, and therefore, if companies are making best efforts to comply, they should not be penalised in the early years of implementation.

### 3.3.8. Group Filings / Payments

Many groups will endeavour to streamline the administration of GloBE tax returns and payments to the greatest extent possible. To facilitate groups who wish to streamline their compliance processes, it is essential that there is flexibility to elect a group filer who would be responsible for registration and filing the GloBE Top-Up Tax Return on behalf of other constituent entities in the filing group.

Where a group filer approach is adopted, one approach could be for any top-up tax liability to be allocated between the various constituent entities on the GloBE Top-Up Tax Return. The allocation of the top-up tax to the relevant constituent entities would also be required for the purpose of each entity's statutory accounts. Such an approach would mean that it would be possible to clearly identify the portion of the top-up tax that each entity is liable to pay.

The Administrative Guidance confirms that it is not necessary for the QDMTT to be allocated to or among constituent entities in any particular manner, so long as the tax liability is allocated to one or more constituent entities that are subject to tax in the jurisdiction.

Indeed, allocating top-up tax liabilities amongst the Irish constituent entities may prove difficult and could possibly give rise to disputes between independent business units within an in-scope MNE as it could potentially distort the measurement of their real economic contribution to the group. For example, where a local entity is paying tax at an effective rate of at least 15%, third party investors with a non-controlling interest in the local entity which is being consolidated into an in-scope MNE group, may not agree to the allocation of top-up taxes to that entity.

In considering whether any top-up tax liability is to be allocated between the various constituent entities on the GloBE Top-Up Tax Return, in our view, the primary

concern must be to ensure that any top-up tax payable under a QDTT will be considered a creditable tax.

It should be permissible to elect a constituent entity within a group (a "group payer") to pay the top-up tax liabilities on behalf of other constituent entities within the group. The group payer may not always be located in Ireland.

Akin to corporation tax, we do not consider it would be appropriate for Irish constituent entities to be made joint and severally liable for any QDTT or other top-up taxes of the Irish constituent entities of the same multinational group. Adopting joint and several liability with respect to GloBE liabilities is likely to significantly complicate the due diligence process for M&A transactions where a single constituent entity or a number of constituent entities in a group are being sold.