The Global Anti-Base Erosion Model Rules (Pillar 2): CIOT responses

International Tax | Large Corporate

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The CIOT has responded to consultations by the UK government and the OECD/G20 Inclusive Framework on BEPS on the Pillar 2 rules addressing the tax challenges arising from the digitalisation of the economy – the Global Anti-Base Erosion Model Rules.

In October 2021, the OECD/G20 Inclusive Framework on BEPS reached an agreement on a two-pillar solution to reform the international tax framework in response to the challenges of digitalisation. We welcome this historic agreement and its key objective of stabilising the international corporate tax framework, bringing it up to speed with the challenges of the digitalising economy, as well as more transparency and fairness in the global tax environment.

The OECD published 'Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)' on 20 December 2021, - the 'GloBE Rules'. Broadly, Pillar 2 intends to deliver a minimum level of corporation tax for all multinational enterprises (MNEs) of 15% of accounting profits in all jurisdictions through the introduction of two rules in national domestic tax laws: the Income Inclusion Rule; and its backstop, the Under Taxed Payments Rule. Pillar 2 also includes a treaty-based rule, the Subject to Tax Rule, which allows source jurisdictions to impose limited source taxation on certain related party payments that are subject to tax below a minimum rate. The Subject to Tax Rule is still work in progress.

UK government consultation on implementation in the UK

In January 2022, the UK government published 'OECD Pillar 2: Consultation on implementation', which was a consultation on the implementation of the OECD

agreed Pillar 2 framework within the UK. This consultation asked for views on various aspects of the GloBE Rules and, to some extent, how these should be implemented into the UK. HMT and HMRC also ran a series of Roundtable Stakeholder Sessions during February and March to discuss certain aspects of the rules that the CIOT attended.

In our response to the UK government, whilst welcoming the historic agreement, we highlighted the speed at which this has been developed by the Inclusive Framework, and in particular the lack of opportunity for deep and public consultation with businesses and other stakeholders before the GloBE Rules were finalised. Although the lack of consultation was understandable in the context of the mandated timetable, it has led to significant challenges with the rules published by the Inclusive Framework and to their implementation coinciding with, rather than following, the development of a global implementation framework. We said that the timetable outlined by the OECD in October 2021, with the aim for countries to introduce the Pillar 2 rules into domestic law in 2022, ahead of implementation in 2023, is too short a time for the introduction of such a complex set of rules, especially given the need for international alignment. We noted that the GloBE Rules will present a huge administrative and compliance challenge for many tax authorities as well as for taxpayers; 12 months is not long enough to successfully implement these as yet incomplete and very detailed laws.

Our response said that the process around the consultation on the implementation of these rules into the UK has been unsatisfactory. This is because the UK government was consulting on an incomplete framework of rules, as work by the Inclusive Framework is continuing throughout 2022. In our view, a process and timetable that means the UK is developing its domestic legislation alongside the ongoing development of the underlying international framework will not lead to good law, will put businesses and advisers in a very challenging position, and will lead to arbitrary and unsatisfactory results. We strongly urged the government to confirm to businesses as soon as possible that it will delay the implementation of these rules in the UK, until at least 2024, or such later date when it is clear that other jurisdictions are going to be implementing the rules.

In this regard, we also noted that while some countries have publicly announced that they intend to meet the 2023 timeline, and there is clearly a desire from some EU countries for the EU to mandate introduction from 2023, the UK is currently the only country that has committed to issuing draft legislation in the coming months that

would bring the Pillar 2 rules into law from early 2023.

We recognised that the UK government wishes to continue the UK's leadership role in relation to international tax and we support that aim. However, we suggested that the UK government's leadership role should be focused within the Inclusive Framework, encouraging all jurisdictions to reach agreement around what adaptations to the GloBE Rules should be permitted in the implementation of them, so that the result is a multilateral set of interlocking rules that deliver the policy aims of Pillar 2 in a manner where each country's implementation is recognised from the outset to be a qualifying regime. We said that leadership in these circumstances does not require the UK to introduce this very complex set of rules so speedily, or first. Indeed, doing so would place UK parented multinational businesses at a competitive disadvantage (and, given the systems challenges against the pace of entry into force, place them in the position of potentially being unable to comply and/or meet their financial reporting obligations). We said that it is effective leadership toward reaching and implementing an agreed outcome, translating the principles correctly into the detail, that is required. We said that we are not in a race to achieve a presentational milestone, but a common endeavour to reach an agreed, coherent and purposeful result.

Finally, we said that we would support further safe harbours and other simplification mechanisms that can be developed through the GloBE Implementation Framework and would support a UK domestic minimum tax. The introduction of domestic minimum taxes, together with an effective mechanism to have a 'white list' of qualifying regimes, would result in an overall simplification of the Pillar 2 rules.

Inclusive Framework consultation on Implementation Framework

During the consultation by the UK government on the implementation of the Pillar 2 rules, on 14 March 2022, the Inclusive Framework released Commentary on the GloBE Rules. The Commentary is intended to provide governments and MNEs with technical guidance on the operation and intended outcomes of the GloBE Rules. At the same time, the Inclusive Framework launched a public consultation, seeking input on the issues that should be addressed during the development of the GloBE Implementation Framework, which is intended to facilitate the co-ordinated implementation and administration of the GloBE Rules. The CIOT as also submitted

comments to the Inclusive Framework in response to this consultation.

In this we reiterated our support for the international agreement. But we also said that whilst we welcome this public consultation, it is unfortunate that it comes at this late stage. As we said to the UK government, our response noted that the lack of deep consultation with businesses, accountants and other stakeholders throughout the development of the GloBE Rules has led to significant challenges – both in terms of the rules seeming to depart in some areas from the stated policy aims of Pillar 2 outlined in the Blueprint and/or creating incoherent and arbitrary or illogical outcomes.

We reiterated the points made to the UK government around encouraging the Inclusive Framework members as a priority to reach agreement around what adaptations to the GloBE Rules should be permitted in the implementation of them, so that the result is a multilateral set of interlocking rules that deliver the policy aims of Pillar 2 in a manner where each country's implementation is recognised from the outset to be a qualifying regime. We said that we would like to see the Inclusive Framework work towards reaching and implementing an agreed outcome, translating the policy principles correctly into the detail. We also reiterated our support for further safe harbours and other simplification mechanisms that can be developed through the GloBE Implementation Framework. We said that, in our view, the introduction of domestic minimum taxes, together with an effective mechanism to have a 'pass list' of qualifying regimes, would result in an overall simplification of the Pillar 2 rules.

Our full responses can be found at:

UK government consultation on Pillar 2: www.tax.org.uk/ref913

OECD/G20 Inclusive Framework consultation on the implementation framework: www.tax.org.uk/ref938

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