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OECD Pillar 2: Consultation on implementation
Response by the Chartered Institute of Taxation

1 Executive Summary

1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.

1.2 We welcome the historic agreement on a two-pillar solution to address the challenges arising from the digitalisation of the economy and its key objective of stabilising the international corporate tax framework, bringing it up to date up with the challenges of the digitalised economy, as well as more transparency and fairness in the global tax environment. However, the speed at which this has been developed by the OECD's Inclusive Framework on BEPS, and in particular the lack of opportunity for deep and public consultation with businesses and other stakeholders before the Model Rules were finalised – although understandable in the context of the mandated timetable – has led to significant challenges with the Global Anti-Base Erosion Model Rules published by the Inclusive Framework and on their implementation coinciding with, rather than following, the development of a global implementation framework. We note the timetable outlined by the OECD in October 2021 that set out an aim for countries to introduce the Pillar 2 rules into the domestic law in 2022, ahead of implementation in 2023. In our view this is too short a time for the introduction of such a complex set of rules, especially given the need for international alignment. The Model 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.

1.3 In addition, the process around the consultation on the implementation of these rules into the UK has been unsatisfactory. This is because the UK government is 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 urge 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.

1.4 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 (although potentially this would be the end of 2023 per the latest compromise text discussed at the March ECOFIN meetings), 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 recognise that the UK government wishes to continue the UK's leadership role in relation to international tax. However, we suggest that the UK government's leadership role should be focussed within the Inclusive Framework, encouraging all jurisdictions to reach agreement around what adaptations to the Model Rules should be permitted in the implementation of the Model Rules, so that the end 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. In our view leadership in these circumstances does not require the UK to introduce this very complex set of rules so speedily, or first, and regardless of how it fits with what others follow with. 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). It is effective leadership toward reaching and implementing an agreed outcome, translating the principles correctly into the detail, that is required. We are not in a race to achieve a presentational milestone, but a common endeavour to reach an agreed, coherent and purposeful result.

1.5 Finally, 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.

2 About us

2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

2.2 The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

2.3 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

3 Introduction

3.1 In October 2021, the OECD Inclusive Framework 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 date up to speed with the challenges of the digitalising economy, as well as more transparency and fairness in the global tax environment.

3.2 The OECD published *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)* on 20 December 2021, referred to in this response as the 'GloBE Rules' or the 'Model Rules'. Capitalised terms in this response that are not defined in it, are terms as defined in Chapter 10 of the Model Rules, and references to 'Articles' are to Articles of the Model 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 (IIR) and its backstop, the Under Taxed Payments Rule (UTPR). Pillar 2 also includes a treaty-based rule, the Subject to Tax Rule (STTR), which allows source jurisdictions to impose limited source taxation on certain related party payments that are subject to tax below a minimum rate. The STTR is still work in progress.

3.3 In January 2022 the UK government published *OECD Pillar 2: Consultation on implementation* (consultation document) which is a consultation on the implementation of the OECD agreed Pillar 2 framework within the UK. This consultation asks for views on various aspects of the Model Rules and, to some extent, how these should be implemented into the UK. HMT and HMRC have also run a welcome series of Roundtable Stakeholder Sessions during February and March to discuss certain aspects of the rules. Our comments below reflect our understanding of the UK government's position as a result of the discussions at those sessions as well as what is set out in the consultation document.

3.4 It is unfortunate that the speed at which the policy objectives outlined in the Blueprint were developed into Model Rules gave insufficient time for any meaningful consultation by the OECD with a wide range of businesses, experts, and other stakeholders.

3.5 The lack of deep consultation with businesses, accountants and other stakeholders throughout the development of the Model Rules has led to significant problems – 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. Some of the most serious of these issues were identified by BIAC in their letter to the Chairs & Members of Working Party 11 on Aggressive Tax Avoidance dated 6 January 2022 (BIAC letter). These, and other issues, are discussed below. Suffice to say at this point that there are many aspects of the Model Rules that are not clear and/or do not work to deliver the policy aims of Pillar 2. Many of these issues have been raised with HMT and HMRC during the Roundtable Stakeholder Sessions (held as part of the UK government's consultation) by businesses and their advisers, and will, no doubt, be reflected in written responses that the government receives to this consultation. The detailed points raised in this response are not intended to be an exhaustive coverage of all of the issues that arise from the Model Rules. Rather they reflect those points that have been specifically raised with us by members.

4 Implementation in the UK

4.1 We welcome the historic agreement reflecting a global consensus on how to address the challenges arising from the digitalisation of the economy. We have long advocated a multilateral solution to these issues as we

have been increasingly facing an international tax landscape of unilateral measures (and retaliatory actions) being taken independently by countries, which lead to less alignment of tax bases globally, resulting in double taxation and a significant compliance burden for businesses and, consequently, stifling economic growth and innovation. Thus the two-pillar solution and its key objective of stabilising the international corporate tax framework is welcome.

4.2 We also recognise and support the UK government's track record of leadership on international tax reform. We welcome the government's commitment to continue with this. However, we suggest that effective leadership in the current circumstances means focussing efforts on the ongoing work of the Inclusive Framework, and exploring what flexibility there may be to reach agreement around what adaptations to the Model Rules should be permitted in the implementation of them into domestic law to address the issues that have been identified.

4.3 In our view, leadership can also be demonstrated by recognising the importance and value of consultation with businesses and other stakeholders. To this extent we welcome this early consultation by the UK government on the Pillar 2 rules. As noted in paragraph 1.20, this will afford businesses time to consider the new concepts. However, an early consultation does not mean that the UK government has to introduce the new rules in the UK in the proposed timetable. In our view, it is not leadership to impose an extremely complicated, unfinished set of rules on UK MNEs and to put these MNEs in a very difficult position by making their ability to comply with the rules very challenging, and potentially impossible, as a result of allowing insufficient time for the development and implementation of them.

4.4 We suggest that the responses to the consultation currently being undertaken are used to inform the UK government's work within the Inclusive Framework, and that the UK government seeks to lead that work to ensure that the GloBE Implementation Framework and, possibly, further Commentary, addresses the myriad of issues that arise from the Model Rules identified by businesses and other stakeholders (this is also discussed in paragraph 5 below in relation to the common approach). This would put the UK in a strong position of being ready to implement Pillar 2 rules in the UK at such time as other jurisdictions are also ready to do so, as well as ensuring that the Pillar 2 rules deliver the policy aims.

4.5 Our understanding is that no other country will be implementing the Model Rules during the course of 2023. While little has been said by most jurisdictions, the EU is currently indicating a timetable of introduction on 31 December 2023, and Singapore and Switzerland have said that they will implement the rules in 2024. It is not clear to us why the UK government's current position is that it wishes to implement the rules, seemingly regardless of their complexity and of what they will entail for MNEs, so fast and in advance of other jurisdictions. We recognise the political aims of the timetable agreed within the Inclusive Framework. However, we note that there is no compulsion to introduce the Pillar 2 rules from 2023. The political agreement is that countries <u>can</u> introduce this from 2023 (but not earlier).

4.6 The Frequently Asked Questions (and answers) published by the OECD in December 2021 envisage 'a critical mass of jurisdictions' is required to ensure that the inter-locking nature of the GloBE Rules work effectively. The Model Rules will present a huge administrative and compliance challenge for many tax authorities. It is difficult to see why it is necessary, or helpful either to UK based MNEs or to other jurisdictions, for the UK to implement domestic rules ahead of everyone else, and a long time ahead of a critical mass of jurisdictions. It would seem more sensible and co-operative for the UK to focus its efforts on the ongoing work at the international level. In this way, the UK government would not be only working towards implementation of the rules in the UK, but also ensuring that the required critical mass of jurisdictions is brought along with the UK so far as possible.

4.7 The consultation document acknowledges the scale of the changes that Pillar 2 will introduce (paragraph 1.22) and we would urge the government to reflect on this and the progress on outstanding work by the OECD and other implementing jurisdictions (as also mentioned in the consultation document). As a result of both of these things, we urge the government to confirm that it will delay the implementation of the rules in the UK from the currently proposed timetable.

4.8 It is our strong view that the proposed timeline for implementation in the UK is far too short and the government should reconsider this and defer implementation of Pillar 2 rules in the UK until at least 2024, or such later date when it is clear that other jurisdictions (particularly those closest to the UK geographically or economically, including the EU) are going to be implementing the rules. There are three reasons why we urge this delay:

- Firstly, from a policy and process perspective: significant amounts of the detail of the rules, and how these will be implemented in practice, is not settled at an international level, with much work still to be done. This is resulting in an incomplete consultation process, with many questions that are currently unanswerable and anticipated draft legislation in July with gaps in it, reflecting unresolved issues at an international level. This makes the development of the UK's rules a flawed process and suggests that implementation of the Pillar 2 rules into the UK in 2023 is premature.
- Secondly, from a competitiveness perspective: it is clear that no other jurisdictions will be implementing the rules in 2023. If the UK wants to be part of a common approach and a multilateral solution, it is too early to be implementing the rules into the UK in 2023. Introducing the rules in the UK ahead of other jurisdictions will be damaging to the UK from a competitiveness perspective.
- Thirdly, from a practical perspective: again because there is still a significant amount of work to be done in deciding upon the detail of the rules, and the fact that this work will not be completed until later in 2022, implementing the rules in 2023 makes it very difficult for UK headed MNEs to be able to comply.

4.9 ***Policy and process – and translating policy into legislation without unintended consequences***

4.10 The proposed timeline means that the UK government is consulting on the implementation of an incomplete set of rules. As the consultation document recognises, there is further work to be undertaken by the Inclusive Framework to agree an implementation framework which is not expected to be completed until the end of 2022 (paragraph 1.19 of the consultation document). The OECD Commentary, intended to provide technical guidance on the Model Rules, was only published on 14 March 2022, more than half way through the UK government's consultation on implementation of the Model Rules in the UK. During the Roundtable Stakeholder Sessions, HMT and HMRC have acknowledged that there are gaps and ambiguity in the Model Rules that will have to be decided upon in order for MNEs to be able to apply the rules.

4.11 The CIOT's objectives are for a tax system which translates policy intentions into law accurately and effectively, without unintended consequences. The tax system should aim to provide simplicity (so far as possible) and clarity, so businesses can understand how much tax they should be paying and why, and also to provide certainty so that businesses can plan ahead with confidence. It is also important that there is responsive and competent tax administration, with a minimum of bureaucracy.

4.12 We do not believe that these objectives can be achieved by introducing such complex rules as the GloBE Rules in the proposed timeframe. More specifically, it is even more difficult to see how these objectives can be met if the UK rules are being developed at a time when the international rules underpinning them and procedures for implementing them remain in such a state of flux.

4.13 The consultation document expresses an intention to ensure the implementation process can be as smooth as possible for all those businesses affected; we do not believe that this can be achieved in the proposed timeframe. The consequences of seeking to achieve the current timetable is that draft legislation will be published in July for consultation. During the Roundtable Stakeholder Sessions, HMRC have acknowledged that this draft legislation will have gaps in it, reflecting the issues that are still to be resolved by the Inclusive Framework and that are expected to be reflected in the GloBE Implementation Framework in due course. Thus the full shape of the rules will not be known until towards the end of 2022, presumably when the 'final' legislation is produced for the Finance Bill. This is wholly unsatisfactory and unreasonable for businesses and their advisers.

4.14 ***Competitiveness***

4.15 As discussed above, Pillar 2 is intended to be a multilateral solution. In our view it is not helpful for the UK to implement domestic rules ahead of everyone else. It would seem more sensible and co-operative for the UK to work towards implementation of the rules in the UK, at a time more closely aligned to other jurisdictions. An early introduction of the rules will put UK headed MNEs at a competitive disadvantage.

4.16 In addition, as discussed below in paragraph 5 in relation to the common approach, because there is so much outstanding that requires agreement at an international level, it is possible that the UK could end up being out of step with the common approach, causing further harm to the UK's global competitiveness.

4.17 ***Practicalities***

4.18 The complexity of the Pillar 2 rules - exacerbated by the fact that these are still being developed in some respects by the Inclusive Framework - strengthens the argument that there should be less haste by the UK to go first, or early. By doing so the UK government is creating problems that may be solved in time if it waited. The Model Rules will present a huge administrative and compliance challenge for HMRC, as well as for taxpayers and less than 12 months is not a reasonable period of time for their implementation. The inherent complexity and ambiguity of the Model Rules means that it would be helpful to allow taxpayers, advisers and tax administrations to get acquainted with these rules before they become operational. Further, the safe harbours, which the Inclusive Framework is still working on, will be crucial in reducing the administrative and compliance burdens of these proposals, as will what can be agreed through the GloBE Implementation Framework around agreeing to a degree of flexibility and identifying Qualified IIRs etc. (as discussed in paragraph 5 below).

4.19 From a purely practical level, the volume of new data points required by the Model Rules means that many MNEs will need to embark on significant IT projects to fully model and then comply with the Model Rules. Existing accounting systems simply do not capture the detailed profit and loss accounts and balance sheets figures that will be required for the Model Rules for every legal entity that is rolled into a consolidated set of accounts. It is unreasonable to expect MNEs to undertake the task of building systems to identify all the necessary information until the details of these data points have been settled. This will not be until later in 2022 when the GloBE Implementation Framework and further guidance has been agreed upon and is published.

4.20 For these reasons, we strongly urge the UK government to delay the implementation of the Pillar 2 rules in the UK until at least 2024, or such later date when it is clear that other jurisdictions (particularly those closest to us, including the EU) are going to be implementing the rules. This longer time frame will allow the work at the OECD level to be completed before the UK finalises its rules. As discussed below in relation to the common approach, we also urge the UK government to seek flexibility within the GloBE Implementation Framework to

address the flaws within the Model Rules. Once this work has been completed, there will be a clearer picture of the common approach and what the Pillar 2 rules in totality look like. That should be the point in time at which the UK considers its own domestic legislation and businesses can begin to build IT systems etc.

4.21 ***Accounting periods straddling the start date***

4.22 The difficulties facing businesses are exacerbated by the UK government's current suggestion that the rules should apply from 1 April 2023, and not in respect of accounting periods starting after that date. This would require businesses split their accounting periods if these straddle 1 April 2023. This means that businesses with a calendar year accounting period will have to have their systems built by 1 January 2023, which seems unrealistic. It will also create a great deal of additional work for all businesses, other than those with an accounting period end date of 31 March, as businesses will have to create fictional opening balances for 1 April 2023 (or later year) in respect of the split accounting period. This will be required because the GloBE Rules do not make sense if they cannot start from opening balance sheet positions. We recognise that when the CBCR rules were introduced these did require split accounting periods. However, these rules operated different and there was not the same calculation difficulty resulting from splitting accounting periods. We suggest that it would make more sense for the UK's rules to apply to accounting periods beginning after an implementation date.

5 Chapter 3: Common approach

5.1 ***Question 1. Do you see any strong reason why UK legislation should not follow the OECD Model Rules as closely as possible to ensure consistency bearing in mind the limited flexibility permitted by the common approach?***

5.2 We recognise the importance of consistency across the globe in order to ensure that the detailed and complex framework for the system of top up taxes, that is Pillar 2, works as intended. We agree that the aim should be a consistent and common interpretation of the Pillar 2 rules. We also recognise that the 'common approach' envisages that jurisdictions should implement and administer Pillar 2 rules in a way that is 'consistent with the outcome provided under the GloBE Rules and the commentary on the GloBE Rules' (paragraph 1 of the Introduction to the Commentary). However, the Commentary continues: 'Consistency in the implementation and administration of the GloBE Rules is intended to result in a transparent and comprehensive system of taxation that provides predictable outcomes for MNEs and avoids the risk of double or over-taxation'. There is a tension between these aspects of the common approach in circumstances where the wording of the Model Rules themselves produces results that either (a) are not predictable, due to ambiguity and/or a lack of clarity or detail in the rules, (b) are not predictable because of the way in which each country will assess each other's rules, and/or (c) give rise to double or over-taxation. Examples of each of these outcomes can be found in our comments below.

5.3 It seems to us that the common approach should be considered to be the 'end game', encompassing the Model Rules, the Commentary and the GloBE Implementation Framework. This approach, and the development of the GloBE Implementation Framework in particular, presents an opportunity for jurisdictions to agree how to resolve some of the difficulties arising from the Model Rules; and ensure that there is some flexibility permitted in the implementation of them so that the policy objectives of Pillar 2 are always met. We do not think that this approach is contrary to the overall aim of a common approach, or the idea that the Model Rules should be the starting point for domestic rules (a template is how they are described in the

Commentary); but it does mean that a departure from some aspects of them should be agreed to be acceptable by the Inclusive Framework.

5.4 In any event, from the UK's perspective, it is clear from discussions at the Roundtable Stakeholder Sessions that there is still much work to be done in developing the GloBE Implementation Framework and that this work will have an impact on at least some aspects of the Model Rules. As a result, it is not clear at this point in time that closely following the Model Rules in every respect will mean that the UK will be aligned with the overall common approach once this has been finally settled. As discussed in paragraph 4 above, this is one reason why we are urging the UK government to delay the implementation of the Pillar 2 rules in the UK from the current proposed start date of 1 April 2023.

5.5 The position of HMT and HMRC throughout the Roundtable Stakeholder Sessions has generally been that it is necessary to follow the Model Rules, even if this leads to outcomes that are contrary to the broader policy aims of Pillar 2 (for example, give rise to double taxation). However, this position is contradicted by HMT and HMRC in other areas where it is acknowledged that the Model Rules are incorrect (for example, where the commentary refers to the wrong Articles). In other areas, HMT and HMRC have acknowledged that the Model Rules are not clear and that the position must be clarified through either the Commentary or the GloBE Implementation Framework (for example, with regard to whether consolidated accounts or local accounts should be used for determining the deferred tax positions). Thus it is acknowledged that the Model Rules must, at least, be supplemented by the Commentary and the GloBE Implementation Framework to make them operable in practice.

5.6 We understand from the Roundtable Stakeholders Sessions with HMT and HMRC that the UK government does not consider there to be any international appetite to amend the Model Rules themselves. However, it is not clear how much flexibility there is, or could be, internationally around reaching agreement to depart (or at least allow departure without being deemed a non-qualifying IIR) from some aspects of the Model Rules as jurisdictions implement their domestic rules, to make the resulting IIRs and UTPRs work better from a policy perspective, and at a practical level to iron out anomalies and ambiguities that arise from the Model Rules themselves. The work at an international level is ongoing through the Inclusive Framework and, as discussed in paragraph 4 above, we encourage the UK to take a leadership role in these discussions.

5.7 Given the current state of play, it makes little sense for the UK government to say that, on the one hand, it has to stick precisely to the Model Rules in order to follow the 'common approach', when, on the other hand, there are ongoing international discussions and negotiations which will supplement and, in some respects, result in departure from the Model Rules. It seems possible that the UK could potentially find itself out of alignment with the common approach by implementing its own rules at a very early stage, and ahead or all other jurisdictions, if these do closely follow the Model Rules – flaws and all. The result may be that the UK is out of step with the common approach, but cause significant harm to the UK headed MNEs and the UK's global competitiveness by implementing the Pillar 2 rules early.

5.8 Based on general principles of good policy and law making, we are concerned by the UK government's position of following the Model Rules closely in every respect, because by doing so the UK government will be implementing legislation that does not effectively translate the policy aims of Pillar 2 into law. However, if, in fact, it is the UK government's policy position that it intends to implement the Model Rules – flaws and all, we can see that there is some logic in that, if it is also acknowledged that in doing so the UK government would be effectively over-writing the stated policy aims of Pillar 2 in some respects. But this latter policy position is not being consistently applied, because, as we say above, although the overall message is that the

UK government wishes to closely follow the Model Rules, there are examples where this approach is not being taken and a departure from the Model Rules is anticipated.

5.9 It is our view that the current position, with regard to the huge amount of work that is still required to be done by the Inclusive Framework in developing the GloBE Implementation Framework is a good reason for the UK not to follow the Model Rules in every respect. Instead the UK government should ensure that, so far as possible, the defects in the Model Rules are not replicated into UK domestic tax legislation. We would encourage the UK government to make the changes that are required in order to ensure that the UK's implementation of the GloBE Rules operate as intended and align with the Pillar 2 policy objectives.

5.10 In our view where a problem in the Model Rules could be fixed by departing to some extent from the Model Rules, but remaining consistent with the Pillar 2 policy objectives, the UK government should indicate its willingness to do that, whilst seeking to ensure that such departures are recognised and accepted by the Inclusive Framework, such that the UK's domestic rules are recognised as a Qualified IIR. There is a degree to which adaptation of the Model Rules to accommodate the practical reality of the complexities of MNEs businesses will be necessary. We encourage the UK government to explore what flexibility there may be within the Inclusive Framework to reach agreement around what adaptations to the Model Rules should be permitted to make them better fit for purpose and deliver the policy aims.

5.11 The key question should be what is a Qualified IIR for the purposes of the UTPR, and how flexibility will be viewed by other countries when they come to implement the Pillar 2 rules into their domestic law. We encourage the UK government to make these points in the ongoing negotiations within the Inclusive Framework that continues to develop the GloBE Implementation Framework. It would be preferable for other jurisdictions to recognise others' domestic rules as qualifying regimes, even if they depart in some aspects from the detail of the Model Rules in order, for example, to mitigate against double taxation, but nonetheless deliver the policy objectives of the Pillar 2 rules.

5.12 In this regard we note that the definitions of both Qualified Domestic Minimum Top-up Tax and Qualified IIR in the Model Rules envisage rules that 'are implemented and administered in a way that is consistent with the outcomes provided for under the GloBE Rules and the Commentary', thus envisaging a purposive approach, if it is considered that these 'outcomes' should be taken to be in line with the Pillar 2 policy objectives. In our view a better approach from HMT and HMRC would be, rather than saying that the UK cannot depart from Model Rules, to frame the question around how much all countries can depart from them within the constraints of the Pillar 2 policy objectives.

5.13 Therefore, we would encourage the UK government to establish what departure from the Model Rules is required to meet the policy objectives of Pillar 2, and to encourage other countries in the Inclusive Framework to embrace this degree of flexibility and still recognise each other's rules as Qualified IIRs.

5.14 In addition, the GloBE Implementation Framework is defined in the Model Rules as being 'the procedures to be developed by the Inclusive Framework on BEPS in order to develop administrative rules, guidance, and procedures that will facilitate the co-ordinated implementation of the GloBE Rules'. This seems to us to provide scope for countries to agree some departure from the Model Rules in order to ensure that Pillar 2 works as intended and in line with the policy aims of it.

5.15 In this regard, we note that the grandfathering of the US GILTI regime is still under consideration. If GILTI is allowed to co-exist with the IIR, any exclusions applied to GILTI should be broadly available to any jurisdiction for other similarly consistent regimes on the same basis.

5.16 ***Question 2. Do respondents have any views on how the common approach can be more effectively achieved at a global level?***

5.17 As we discuss in response to question 1 above, in our view the work that is ongoing at an international level with regard to the GloBE Implementation Framework is the ongoing development of the common approach. In addition, as we discuss in paragraph 4 above, we would encourage the UK government to take a leadership role and to fully engage with this work and encourage flexibility.

5.18 More specifically, generally, across the Model Rules, key terms (and key elements such as safe harbours and the confines of qualified domestic minimum taxes) are not defined, although in some cases they mirror commonly used accounting terms. If these terms in the Model Rules are supposed to have the same meaning as they do in accounting standards, then this should be confirmed. However, it appears that this is not always intended to be the case. Some terms used in the Model Rules do not align the understood meanings of them within IFRS. A good example is 'tangible assets', although we recognise that the Commentary has given some further clarification on this point. Further detail on this is given in the Appendix. We would welcome confirmation in the Commentary that all fixed assets as defined by accounting standards - other than those specifically excluded (that is to say intangible assets, financial assets, cash and cash equivalents – also as defined by accounting standards) – should be considered 'Tangible Assets' or 'tangible assets' for the purposes of the Model Rules where this term is used. However, Article 9.3 and UTPR percentage and the substance based carve out have their own definitions of this term. We would welcome clarity around what should be included in each case and suggest that it would be helpful for there to be alignment so far as possible with similar or identical accounting standards where possible.

5.19 The Pillar 2 proposal envisages safe harbours and other mechanisms will be developed during the course of 2022 and included in the GloBE Implementation Framework. These are intended to ensure that the administration of the GloBE Rules is as targeted as possible and to avoid compliance and administrative costs that are disproportionate to the policy objectives. The CIOT is supportive of any such measures that will help to achieve these aims and think that these mechanisms will be crucial in reducing the impact of these proposals. We urge the UK government to seek, wherever possible, to reduce the complexity in the Model Rules consistent with Pillar 2's stated policy objectives through the development of these safe harbours in the GloBE Implementation Framework and other guidance.

5.20 In addition, a domestic minimum top up tax (DMT) for the UK is discussed in paragraph 14 below. At this point we note that we would welcome the introduction of a UK DMT and agree with both of the policy intentions in paragraph 12.6 of the consultation document. In particular the simplification aspect of DMTs will be welcomed by MNEs. If the UK introduces a UK DMT and encourages other jurisdictions to do the same, we would like to see work towards a white list of jurisdictions with DMT's (possibly through a mechanism of peer review, as discussed in paragraph 13.3. This will reduce the pressure on taxing 'other jurisdictions' profits through either IIR or UTPR and will make tax administration much simpler for MNEs and tax administrations.

6 Chapter 4: Scope

6.1 ***Question 3. Do respondents have any comments on the calculation of the €750m consolidated revenue threshold?***

6.2 Guidance will be required on what items are included in consolidated revenues for the purpose of the €750 million test. For example, does it include the proceeds from the sale of non-current assets? We note that

there is some commentary in the CBCR guidance on this point and this suggests that extraordinary income and gains from investment activities can be included in the equivalent test for CBCR purposes. This is at odds to the accounting meaning of the word revenue which would not pick up such items. The Commentary refers to the GloBE Rules as having the 'same monetary threshold' as used for CbCR purposes, but also continues to say that the threshold applies to the 'revenue that is reported in the Consolidated Financial Statements of the MNE Group' suggesting that accounting meaning should be taken. It will be important to have clarity around this.

6.3 ***Question 4. Do respondents agree the IIR should only apply to groups that meet this threshold?***

6.4 Yes, we agree that the UK government should not take the option to apply the IIR to sub-€750m groups that are headquartered in the UK.

6.5 ***Question 5. Do respondents have any comments on the definition of a group or of a constituent entity?***

6.6 The rules at Article 6.1.1 of the Model Rules that endeavour to set out how the basic rule that GloBE Rules apply in respect of MNE Groups that have an annual revenue of €750 million apply where there are corporate restructurings are very complicated. Inevitably circumstances other than those that are specifically considered will arise. We suggest that a transparent 'fair and reasonable' apportionment approach, put forward by MNEs would be a sensible alternative approach that should be permitted in circumstances that are not expressly covered by the rules.

6.7 The definition of a Partially-Owned Parent Entity refers to more than 20% of the Ownership Interests being held outside the group. It will be necessary to determine how this is measured, for example, by nominal value of the shares or some other measurement.

6.8 ***Question 6. Do respondents have any comments on the excluded entity rules and definitions?***

6.9 We understand that the UK government's position is to ensure that the definitions around funds (Investment Funds) are as wide as possible for the rest of the Pillar 2 rules (in particular, the STTR) as these are developed; but that the threshold around this depends on what other countries are willing to agree via multilateral instruments and treaties. The CIOT supports this approach.

6.10 ***Question 7. Do respondents have any views on the definitions of international shipping income?***

6.11 We understand that the rules around the exclusion for international shipping income and qualified ancillary shipping income do not work if there is a loss. This industry specific problem with the rules is an example of circumstances where we suggest that the UK government does deviate from the Model Rules to ensure that the UK's domestic rules work as intended, and that the UK government encourages other jurisdictions to do the same. It should be possible for tax administrations (and the OECD) to agree that such deviations from the Model Rules are within the purposive approach envisaged by the definitions of both Qualified Domestic Minimum Top-up Tax and Qualified IIR in the Model Rules.

7 Chapter 5: Calculating the effective tax rate

7.1 ***Question 8. Do respondents have comments on the practicalities of computing a constituent entity's accounting profit?***

7.2 Article 3.1.3 is a relieving provision around which accounting standard should be used for a Constituent Entity. However, it is difficult to see how MNEs will be able to avail themselves of this relief in practice. It would be helpful if the circumstances of the application of this provision could be made clearer.

7.3 ***Question 9. Do respondents have comments on the adjustments made to the accounting profit? In particular, are there any uncertainties that could be clarified in the UK's domestic legislation whilst respecting the intended outcomes in the Model Rules?***

7.4 The adjustments listed in Article 3.2.1 do not include any adjustment to GloBE Income for gains arising from debt releases or any adjustment to deal generally with accounting gains and losses arising in respect of derivatives.

7.5 The lack of an adjustment for gains arising from debt releases may give rise to unintended consequences, particularly where releases occur as part of insolvency or near-insolvency arrangements. Debt releases or debt-for equity exchanges in such situations may give rise to large P&L profit. If such transactions result in a top up tax liability, this could be problematic as insolvent or near insolvent companies will lack the funds to meet an additional liability. There may also be wider implications. For example could it have an impact on the amount of regulatory capital required by banks or other financial institutions?

7.6 With regard to derivatives, although there are specific rules dealing with the tax treatment of derivatives that can give rise to book tax differences, not all accounting differences in relation to derivatives will necessarily be dealt with by these timing differences rules (especially given the five year time limit). This could result in top up tax arising in unintended and unexpected circumstances.

7.7 With regard to Article 3.2.1(f) specifically, the adjustments for 'Asymmetric Foreign Currency Gains or Losses', this does not deal adequately with any book tax differences that arise from the specific treatment of such items under UK legislation, for example through the application of the disregard regulations. A particular difficulty here appears to be that 'Asymmetrical Foreign Exchange Gains or Losses' as defined appear to only arise where tax and accounting functional currencies are different. The disregard regulations apply in other situations as well, including where functional currencies are the same. Paragraph 57 of Chapter 3 of Commentary notes that the GloBE Implementation Framework will consider the treatment of foreign exchange gains and losses in relation to hedging equity movements. This would clearly be helpful as regards the application of the disregard regulations. However, we understand from comments by HMRC during the Roundtable stakeholder sessions that there may not be consensus within the Inclusive Framework on how such movements are treated (some jurisdictions taxing them and others like the UK exempting/deferring taxation). Therefore this is an example of what the ultimate position under the Pillar 2 rules will be is currently uncertain.

7.8 ***Question 10. Do respondents have views on the rules allocating profits between jurisdictions?***

7.9 Article 3.2.6 permits an Annual Election to reallocate an Aggregate Asset Gain. Where this election is made, we cannot see where any related Covered Taxes are reallocated. We assume that such Covered Taxes should also be reallocated and suggest that the UK's domestic rules could clarify this.

7.10 We assume that an 'increase in taxable income' referred to in Article 3.2.7(b) refers simply to a full inclusion in any computation of taxable profits, thus, for example, there would still be an increase in taxable income even if the resulting profits were offset by losses brought forward. Please could the UK rules clarify this.

7.11 We welcomed the confirmation during a Roundtable Stakeholder Session that the reference to tax consolidations in Article 3.2.8 would include the UK grouping rules. We understood from HMRC that this had

been expressly recognised by other Inclusive Framework members during negotiations. The UK's domestic rules should make this clear. However, this article does not seem to apply to a transfer by a Flow-through Entity whose results are included in a tax consolidation, since the Flow-through Entity is regarded as stateless (see Article 3.5). Clarity on this point would be welcome.

7.12 In relation to these entities, the definition of Tax Transparent Entity (in Article 10.2.1) is not clear where a jurisdiction owns a Flow-through Entity which it sees as fiscally transparent through a chain of fiscally transparent entities, but where one of those intermediate entities does not see the Flow-through Entity as fiscally transparent (with a consequential lack of clarity on the allocation of income and taxes). Clarity on this point would be welcome.

7.13 ***Question 11. What are respondents' views on the impact of the branch rules on business models involving branches taxed under the credit method?***

7.14 We do not have any specific comments in response to this question.

7.15 ***Question 12. Do respondents have views on the rules on Covered Taxes and their assignment?***

7.16 Chapter 4 of the Model Rules, which sets out the rules for Computation of Adjusted Covered Taxes, presents some significant issues and outcomes that are inconsistent with the policy intent of the Model Rules. The first of these is in relation to Article 4.1.5 described more fully in paragraph 7.17 below. The second is in relation to Article 4.4.1 which is discussed in paragraph 7.22 below. These points were first raised in the BIAC letter.

7.17 Article 4.1.5 means that there may be Top-Up Tax arising even when there is no income in a jurisdiction in a year. This seems to be inconsistent with the policy intent of the Model Rules which says in the preamble that the policy intent of the rules is to: 'provide for a coordinated system of taxation intended to ensure large MNE groups pay a minimum level of tax on the **income** arising in each of the jurisdictions where they operate. It does so by imposing a top-up tax on **profits** arising in a jurisdiction whenever the effective tax rate, determined on a jurisdictional basis, is below the minimum rate.' (emphasis added).

Thus Article 4.1.5 applies Top-Up Tax in circumstances where there is no net GloBE income for a jurisdiction, and where Adjusted Covered Taxes are negative and are less than the GloBE Income or Loss for that jurisdiction multiplied by the Minimum Rate. This tax charge is fundamentally inconsistent with the overall policy goals of Pillar 2. We understand the policy concern this rule is seeking to address is that a permanent difference benefit (for example, an additional tax deduction) should not result in additional GloBE attributes (for example, a tax loss that can be carried forward) that may shelter undertaxed income. However, it seems contrary to the 'minimum tax' concept to levy tax in a year when there is no income.

Furthermore in the calculation of any Top-Up Tax, there does not appear to be any application of the substance based carve out – is that correct?

7.18 Covered Taxes as per Article 4.2.2 does not include '(b) Top-up Tax accrued by a Constituent Entity under a Qualified Domestic Minimum Top Up Tax'. This is presumably because domestic top up tax reduces Jurisdictional Top Up Tax under Article 5.2.3. However it is not clear that Article 4.2.2 also applies to the Ultimate Parent Entity; we think that it should do.

7.19 It would be helpful to have clarity on whether withholding taxes on dividends, interest or royalties are covered taxes for the purposes of Pillar 2 and to which entity they are assigned. We note the reference in Article 4.3.1

to 'taxes on distributions' but are not clear if that relates to withholding tax on dividends or to taxes under an eligible distribution system.

7.20 The definition of Passive Income, relevant for the purposes of Article 4.3.3, includes royalties (amongst other things). Such income can be received as part of a trading activity and is, therefore, not generally regarded as passive. Consideration should be given to reflecting this point in the implementation of the rules.

7.21 ***Question 13. Do respondents have views on how rules on timing differences work including whether there are any uncertainties around how the rules operate that could be further clarified in domestic law?***

7.22 Article 4.4.1 (broadly) means that deferred tax attributes are limited to minimum tax rate, even if the jurisdiction has higher tax rate. This rule is another significant defect in the Model Rules that results in outcomes that are inconsistent with the policy intent of the Model Rules. The October 2020 Blueprint acknowledged the appropriateness of smoothing the ETR of the jurisdiction over a period of time, regardless of whether fluctuations in the ETR arise from temporary or permanent differences. Specifically, the Blueprint states in paragraph 306: 'There will be many cases in which the tax rate in a jurisdiction exceeds the minimum rate by an amount sufficient to avoid GloBE tax liability even after taking into account a permanent difference. By incorporating mechanisms that take into account the effects of temporary and permanent differences on the computation of income and tax liabilities over a period of years, the rules **neutralize** the consequences stemming from application of the annual accounting concept under the GloBE rules.' (emphasis added).

7.23 We concur with BIAC's understanding that it has remained a fundamental policy concept of Pillar 2 that it is appropriate to look at ETR over a period of time to neutralise the consequences stemming from application of the annual accounting concept. Article 4.4.1 departs from this principle by recasting deferred tax at the Minimum Rate, regardless of whether the actual tax rate in that jurisdiction is substantially higher than the Minimum Rate.

7.24 This requirement that deferred tax balances be recast at the Minimum Rate undermines the ability of the rules to achieve the policy objective of smoothing the ETR. Recasting deferred tax amounts at the Minimum Rate does not provide recognition of the actual rate of tax that will be borne in respect of the relevant underlying timing difference when looking at the annual ETR, and will result in top up tax both in respect of timing and permanent differences. This consequence will arise notwithstanding that the true ETR borne by the MNE over time is higher than the Minimum Rate. For example, top up tax will arise in circumstances where there are loss carry-back rules under local legislation or where tax losses are being utilized and there is a permanent difference, regardless of the materiality of that permanent difference or its impact on the effective tax rate, and regardless of the level of tax paid by an MNE over time. The outcome of this is double taxation.

7.25 There are also other aspects of Chapter 4 where it is not clear how the rules should be applied in practice. Clarity on these areas should be built into the UK's domestic rules.

7.26 It is noted that Article 4.4.1 refers to deferred tax *expense.* It is assumed that this is also intended to cover situations where there is a net deferred tax credit. It is not clear what is meant by 'tax credits' in Art 4.4.1(e) that is to say rebates or items that reduce tax payable, and if and how this Article is meant to interact with Article 4.1.5? Further, with regard to Article 4.4.1(e), why is it considered necessary to treat deferred taxation in respect of credits differently?

7.27 In Article 4.4.2(c), there appears to be a reduction for Covered Taxes where a loss arises and a deferred tax asset is not recognised because the accounting recognition criteria are not met. However it is not clear what the position is (ignoring the GloBE Loss Election) when a loss that has not been reflected in the balance sheet

as a deferred tax asset is actually utilised. There does not appear to be any explicit provision providing a corresponding increase to Covered Taxes unless this is intended to be addressed through 4.4.1(c)? Is the intention that 4.4.1(c) is supposed to create parity between recognised and unrecognised deferred tax? In which case the need for 4.4.2(c) is unclear. Taken together, Article 4.4.2(c) and 4.4.1(c) seem to mean that a DTA loss is recognised within GloBE even in the year the loss arises where it is not recognised (as failing to meet the recognition criteria), which does not seem correct.

7.28 Article 4.4.4 implies that a deferred tax liability that is not a Recapture Exception Accrual needs to be tracked to understand if the amount is paid within the five subsequent fiscal years. A number of deferred tax balances may not fall within the Recapture Exception Accrual list in Article 4.4.5. Consequently, the UK domestic rules should clarify how the tracking of deferred tax liabilities should be done in practice and, specifically, the level of granularity required. The Model Rules use the wording 'category of deferred tax' and it is not clear what this would mean and how it would be applied. While deferred tax was agreed by business to be the correct mechanism to deal with timing differences (because the rules are based on accounting profits), restricting their use to undefined categories that are not tracked for accounting purposes creates difficult compliance burden.

7.29 Article 4.4.5(b) creates a new category of Recapture Exception Accrual but there is no definition of 'similar arrangement'. Would it be possible to clarify that this is wider than simply an ownership interest and could include for example, a right of use?

7.30 Where there is a decrease in a Constituent Entity's liability for tax related to a previous Fiscal Year an adjustment is required to be made to the GloBE calculations for that previous Fiscal Year (unless it is immaterial) under Article 4.6.1. However, the rules do not appear to provide an ability for the MNE to make a corresponding adjustment to a previous Fiscal Year in respect of an increase in the Constituent Entity's tax liability in that previous year. One-sided adjustments such as these may give rise to double taxation.

8 Chapter 6: Calculating the top up tax

8.1 ***Question 14. Do respondents have any comments on the special provisions for computing the ETR and top up of investment entities, joint ventures or minority owned constituent entities?***

8.2 The rules in relation to Joint Ventures could be interpreted to produce unexpected outcomes that result in economic rates of tax that are much higher than the 15% global minimum tax rate. This arises as a result of how accounting rules work when the profit share from a Joint Venture is not aligned with the equity share in it (for example where the Joint Venture partner is a government wishing to stabilise its combined economic returns at a higher rate than its equity share plus tax). This seems contrary to the policy rationale of the rules as it results in double taxation of those profits of the JV and targets profits that may already be highly taxed.

8.3 In addition, there are a number of places where the meaning and application of the rules could be clarified. Article 6.4.1(a) treats the Joint Venture as the Ultimate Parent Entity of its own Group. It is unclear whether this means that the IIR of the Joint Venture jurisdiction should be applied. Article 6.4.1(b) states that 'a Parent Entity' … shall apply the IIR in respect of its Allocable Share of the Top-Up Tax of a member of the JV Group ….'. It is unclear whether 'a Parent Entity' in this article refers to the deemed parent entity in Article 6.4.1(a) (that is to say the Joint Venture itself), or whether it refers to a Parent Entity above the Joint Venture, as is perhaps implied by Article 6.4.1(c), such that the Joint Venture is included in two IIR calculations. The degree of blending between the Joint Venture and the rest of the MNE Group will depend on the answer to this question.

8.4 It should be noted that there may be commercial issues in obtaining some of the data required to apply the rules relating to Joint Ventures (and also the Partially-Owned Parent Entity rules). This was noted during a Roundtable Stakeholder Session during a discussion around Minority-Owned Constituent Entities. HMRC confirmed that the rules operated to bring into charge 100% of the Top-Up Tax calculated for a Minority-Owned Constituent Entity, on the basis that the Minority-Owned Constituent Entity is only controlled by one Group (also confirming the corollary, that a Group will not be liable for Top-up Tax in respect of a minority-owned investment which is not consolidated into that Group's accounts (and is not a Constituent Entity of that Group)). It was acknowledged that if CFC type rules of another jurisdiction had resulted in domestic tax for another shareholder in the Minority-Owned Constituent Entity, that should be tax that credit is given for under the Pillar 2 rules, as otherwise there will be double taxation in respect of the profits of the Minority-Owned Constituent Entity. However, it is difficult to see how the Group that controls the Minority-Owned Constituent Entity would obtain that information and there is not a mechanism within the Pillar 2 rules to deal with this issue. HMRC said that they hoped that this would be an unusual situation, but acknowledged that the result would be double taxation if it did arise.

8.5 ***Question 15. Do respondents have views on the process for calculating top up tax?***

8.6 We do not have any further comments specifically on the process of calculating Top-Up Tax.

9 Chapter 7: Charging mechanisms

9.1 ***Question 16. Do respondents have any comments on how the IIR provisions should be reflected in the UK domestic legislation while respecting the agreed outcomes in the OECD Model Rules?***

9.2 We do not have any specific comments in response to this question.

9.3 ***Question 17. Do respondents have any views on how information or administration challenges with the split ownership rules could be addressed in the implementation framework?***

9.4 We do not have any specific comments in response to this question.

9.5 ***Question 18. Do respondents have views on how the UTPR should be brought into charge in the UK?***

9.6 The mechanism for collecting any top up tax under the UTPR appears to be left open to jurisdictions as to whether to do this by disallowing payments or simply imposing an additional tax. There does not appear to be any requirement that the entity paying the tax has actually made any payments to the low tax entity. This can result in top up tax arising in jurisdictions where no base eroding payments have been made to the low tax entity. Furthermore, the lack of any nexus between the low tax entity and the taxpayer may give rise to questions concerning the legal basis for the tax, for example under the application of tax treaties. This in turn leads to the broader question as to whether the top up tax will be Corporation Tax or a brand new tax with its own collection mechanism etc? There are varying opinions as to whether or not the GloBE Rules are compatible with many double tax treaties. We understand that UK government's view is that the rules will be compliant with treaties and, therefore, a multilateral instrument will not be required to implement the IIR and UTPR. Introducing a new tax to charge any Top-up Tax that arises under the IIR or UTPR would assist in this analysis.

9.7 Article 2.5.2 is clear that there is no UTPR Top-Up Tax for an individual entity if it is subject to an IIR by (for example) a UPE Jurisdiction. However, Article 2.5.1 appears to still apply to every Constituent Entity of the

group. Unless qualification for Article 2.5.2 is confirmed to exempt entities from UTPR in full where they are subject to an IIR, this would require calculations and filings for every Constituent Entity (presumably with credit then applied for tax paid in the IIR jurisdiction). Clarification that the interaction between these two Articles should not result in this extraneous requirement would be welcome in the UK domestic legislation.

9.8 ***Question 19. Do respondents have any other comments on the UTPR provisions in the OECD Model Rules?***

9.9 Guidance will be required on what is meant by 'apply a Qualified IIR ... with respect to that Low Taxed Constituent Entity' for example in the case of the application of GILTI (assuming it is a Qualified IIR) to an entity that is disregarded for US purposes but whose profits are included in another entity that is itself subject to GILTI (see further at paragraph 13.6 below).

9.10 It appears that Article 2.6.3 (Allocation of Top-Up Tax for the UTPR) can result in no current year Top-Up Tax being allocated to a particular jurisdiction no matter how small the brought forward unrecovered amount is. Is this correct?

10 Chapter 8: Transition rules

10.1 ***Question 20. Do respondents have views on how rules on the transition rules work including whether there are any uncertainties around how the rules operate that could be further clarified in domestic law?***

10.2 Article 9.1 sets out the Rules in relation to Tax Attributes Upon Transition. Under this rule, deferred tax assets relating to losses on the disposal of shares after 30 November 2021 are not brought forward into the regime, even where a gain on those shares would have been taxable. It appears that this asymmetric treatment is also reflected in Article 4.1.3 where any tax on a gain on the sale of shares is excluded from Covered Taxes whereas a tax deductible loss on the sale of shares could give rise to top up tax. This means that a Top-up Tax could arise simply because a jurisdiction taxes and relieves gains and losses on share disposals. It would be helpful if the UK's domestic laws made clear that a Top-up Tax will not arise in the these circumstances.

10.3 It is not clear if 'reflected or disclosed' in Article 9.1.1 includes amounts referred to in the accounts but which are not booked, for example, because recognition criteria have not been met. Clarity is then needed as to which set of accounts is being referred to, is this the Consolidated Financial Statements?

10.4 Similarly under Article 9.1.3 there appears to be a restriction on the step up in the basis of an asset on an intra group transfer after 30 November 2021 even if the gain on the disposal was taxable. This could lead to double taxation. It would be helpful if the UK's domestic laws could clarify that this will not be the case.

11 Chapter 9: Reporting and payment

11.1 ***Question 21. Do respondents have views on the proposed approach to reporting?***

11.2 We suggest that there should be a carve out so that groups do not have to report/pay tax under both the UK and the EU rules (as well as potentially other jurisdictions rules as these are introduced). There should only be one reporting requirement for each group and we would encourage consistency of reporting obligations across the globe.

11.3 ***Question 22. Do respondents have views on the approach taken to collecting liabilities under the IIR or UTPR?***

11.4 We do not have any specific comments in response to this question.

11.5 ***Question 23. Do respondents have views on the time limit for notifying the group is in scope of the Globe?***

11.6 We do not have any specific comments in response to this question.

11.7 ***Question 24. Do respondents have views on whether payments should be made quarterly or annually for Pillar 2?***

11.8 We do not have any specific comments in response to this question.

11.9 ***Question 25. Do respondents have views on an appropriate payment deadline for Globe liabilities?***

11.10 We do not have any specific comments in response to this question.

11.11 ***Question 26. Do respondents have views on the importance of giving credit interest for early payments?***

11.12 We do not have any specific comments in response to this question.

11.13 ***Question 27. Do respondents have views on making UK constituent entities joint and severally liable for any (UK) Globe debts?***

11.14 We do not have any specific comments in response to this question.

12 Chapter 10: Simplification

12.1 ***Question 28. What are respondents' views on a CbCR based safe harbour and how it should be designed?***

12.2 We would welcome a safe harbour based on CbCR data and suggest that the design of this should follow as closely as possible the information already included in the CBCR return with any necessary calculations being based on this information and being made as straightforward as possible.

12.3 ***Question 29. How could timing differences be addressed within a CBCR safe harbour design? Do they need to be?***

12.4 We do not have any specific comments in response to this question.

12.5 ***Question 30. Do respondents have views on how the rules should address when a business moves from the safe harbour into the main Pillar 2 regime?***

12.6 We do not have any specific comments in response to this question.

13 Chapter 11: Further work in the OECD

13.1 ***Question 31. Do respondents have any comments on this further implementation work?***

13.2 As discussed above, in relation to implementation in the UK and Chapter 3 (Common approach), we encourage the UK government to take a leadership role in the further implementation work and to advocate for the Inclusive Framework to take the opportunity to explore flexibility around the Model Rules in order to resolve some of the difficulties that have been identified. In this work, the Inclusive Framework could take steps to ensure that the Model Rules are more consistent in their delivery of the Pillar 2 policy aims and other outcomes.

13.3 We would like to see the GloBE Implementation Framework include a mechanism of peer reviewing implementation by jurisdictions, based on clear and purposive principles that allow countries to depart in minor ways (in areas that the Inclusive Framework can agree are needed) to ensure integrity of the domestic rules and the recognition of each regime as 'qualifying'; that is to say a white list that looks at the impact of a jurisdiction's domestic rules, not necessarily the replication of every single word of the Model Rules into domestic law.

13.4 We reiterate our support for safe harbours and other simplification mechanisms that can be developed through the GloBE Implementation Framework.

13.5 We note that work is progressing on Pillar 1 and that the intention is that a multilateral convention will be available for signature in 2022, with the aim of these rules also becoming effective in 2023 (paragraph 1.10 of the consultation document). Our understanding of the UK government's position has always been that Pillar 1 and Pillar 2 must be a package and that there should not be one without the other. We would welcome clarification as to whether or not this is still the UK government's position. Thus, will the implementation of the Pillar 2 rules be dependent on the multilateral convention for Pillar 1 being available? And being entered into by a critical mass of countries? In addition, previous drafts of Model Rules were clear on the interaction of Pillar 1 and Pillar 2. That clarity seems to have been deleted from the final Model Rules. There should be clarity as to whether any profits reallocated under Pillar 1 are also reallocated for Pillar 2 purposes and whether Pillar 1 tax is a Covered Tax for Pillar 2.

13.6 As discussed above, the common approach is intended to result in consistency in the implementation and administration of the GloBE Rules in all jurisdictions. This is important if they are to achieve their intended objectives and be fair. In this respect, in particular, we suggest that the effects of GILTI grandfathering (and coexistence) on the overall implications of Pillar Two, and ensuring that there is a level playing field, warrant further consideration. It is accepted that GILTI grandfathering is necessary for the US to agree to Pillar 2, and we understand that to mean that GILTI will be treated as a Qualified IIR. However it remains unclear as to how GILTI grandfathering would operate in practice and how precisely it would 'coexist' as a Qualified IIR and interact with the GloBE Rules more precisely. We suggest that there should be clarity that GILTI grandfathering will remain under review and that the option retained to withdraw grandfathering if the US amends the GILTI rules in the future, resulting in a regime that is materially divergent from the IIR rules.

13.7 Further in relation to the US rules, we suggest that the operation of BEAT should be limited in respect of payments to entities that are subject to a Qualified IIR. Specifically, payments made to foreign connected parties who have a relevant Parent Entity in a jurisdiction that has implemented a Qualified IIR should be excluded from being considered as base erosion payments for the purposes of BEAT. If this is not politically feasible, then BEAT should clearly be made a Covered Tax. We understand that the UK government's view is that BEAT would be a Covered Tax.

13.8 We welcome the continued focus on dispute resolution. We suggest that the complexity of Pillar 2 emphasises the need for a clear, strong and effective multilateral arbitration process agreed by tax administrations which is binding on them. The timing and process of the mandatory multilateral arbitration system should also be

clearly established to address the current delays that taxpayers currently face in resolving multilateral tax disputes. This will take on further importance if, as seems to be the case, disputes around Amounts B and C under Pillar 1, and any liability under Pillar 2, will have to be determined before the calculation and allocation of Amount A can be finalised.

13.9 Finally, we understand the reasons for the introduction of the STTR in conjunction with the GloBE Rules and can see its merit to address the risk of mobile income being shifted to jurisdictions with very low or zero nominal tax rates. However, there is a serious concern that the STTR would give rise to double taxation. It is important that the nominal rate that will trigger an STTR withholding tax liability is set at a low rate since it is applied to gross payments. As a stand-alone gross basis tax, the STTR will set an unwelcome precedent. Gross basis taxes generally have negative impacts (and compliance costs) and often give rise to a very high effective rate of tax. This would be contrary to the objectives of the GloBE proposals.

14 Chapter 12: Domestic minimum tax

14.1 ***Question 32. Do you agree that a DMT would help to reduce compliance costs for businesses?***

14.2 We would encourage the UK to introduce a DMT and agree that if all Inclusive Framework countries were to introduce minimum tax rules into domestic law this would significantly reduce the compliance costs for businesses, provided the DMT rules do not themselves introduce an additional set of rules for MNEs to comply with. Thus we suggest that the rules should be aligned so far as possible with the Pillar 2 rules, so that two sets of calculations are not required.

14.3 ***Question 33. Do businesses agree the DMT should apply to both UK headed and foreign headed groups?***

14.4 We do not have any specific comments in response to this question.

14.5 ***Question 34. Do businesses agree that the DMT should only apply to groups with over €750m of revenue to align with the P2 population?***

14.6 We do not have any specific comments in response to this question.

14.7 ***Question 35. Do respondents have any comments on the policy design of the DMT?***

14.8 The key policy aim for the design of the DMT must be to ensure that it is a Qualified Domestic Minimum Top-Up Tax for the purposes of the GloBE Rules.

15 Chapter 13: Wider reforms interaction with existing BEPS measures

15.1 ***Question 36. Do respondents consider there are reforms which would have a significant benefit in reducing compliance burdens without exposing the UK tax base to material risks?***

15.2 It is our view that a condition of benefiting from the new taxing rights under the Pillars (and Pillar 1 in particular) should be the repeal of unilateral measures, such as digital services taxes (DSTs). Having DSTs and the Pillars operating simultaneously will be both highly complex and have potentially very significant negative impacts on business and investment. At the very least in the meantime, Covered Taxes should include DSTs.

15.3 We note that the Pillar 2 rules are designed to sit alongside existing anti-avoidance rules, including those that have been introduced as part of the wider reforms arising from BEPS. We welcome that the intention is that taxes charge under these anti-avoidance rules are generally treated as Covered Taxes (although see the comments at paragraph 8.4 above in this regard). However, we suggest that there should be a review in, say, five years' time to see whether the Pillar 2 rules are operating in such a way that these other BEPS rules are no longer required.

15.4 In addition, once the Pillar 2 rules have been given a chance to settle down, consideration could be given to lowering (or removing) the threshold at which the rules apply and then repealing the CFC and diverted profits tax type rules. Alternatively, the CFC rules and diverted tax profits rules could be switched off for MNEs within the Pillar 2 regime. These changes should be balanced against the desirability of having different rules for larger and smaller businesses.

16 Chapter 14: Assessment of impacts

16.1 ***Question 37.Do you have any comments on the summary of impacts***

16.2 The summary of impacts contains only very general statements as to the expected impacts of Pillar 2. In addition, we expect that there will be some behavioural change by MNEs as a result of these rules, which makes it very difficult to anticipate what the impacts might be.

16.3 Impact on businesses and Civil Society Organisations

We do not agree with the statement that 'Pillar 2 will exclusively impact large multinational businesses, specifically with revenues in excess of €750m p/a.'. Businesses with revenues slightly below this threshold or fluctuating across this threshold will have to undertake some work to monitor revenue levels to determine whether or not the rules will apply to them.

16.4 Whilst noting that the impacts of the compliance and administration burden on those businesses affected will be assessed at a later date, the statement that 'There is likely to be an increase in the compliance and administrative burden ….' is an egregious understatement, as it is abundantly clear that these rules will result in a very substantial for all (and unprecedented for many) additional compliance burden for MNEs that have to comply with them.

17 Acknowledgement of submission

17.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation
4 April 2022

Appendix

Across the Model Rules, key terms are not defined, although in some cases they mirror commonly used accounting terms. If these terms in the Model Rules are supposed to have the same meaning as they do in accounting standards, then this should be confirmed. However, it appears that this is not always intended to be the case. Some terms used in the model rules do not align the understood meanings of them within IFRS.

A good example is 'tangible assets':

- The term 'Tangible Assets' is relevant for three areas of the rules:
    - The Recapture Exception Accrual (Article 4.4)
    - The Substance Based Income Exclusion (Article 5.3)
    - The UTPR Percentage (Article 2.6) and the single country exclusion from UTPR (Article 9.3)
- 'Tangible Assets' are defined in Chapter 10 – although specifically this definition is said only to apply 'for the purposes of the UTPR percentage and for Article 9.3 (exclusion from UTPR)'. Accordingly, for the purposes of the Recapture Exception Accrual and the Substance Based Income Exclusion, there is no definition for 'tangible assets'. It would be useful if the Commentary were to confirm whether a separate definition is to be used for these Articles (and if so what it should be), or whether the same definition should in fact apply across all three Articles.
- In any event, the definition provided in Chapter 10 is not extensive enough to confirm whether many common types of asset should be deemed 'Tangible'. Under IFRS, the terms 'Tangible' and 'Tangible Assets' are not defined – the IASB Framework defines an asset as 'a resource controlled by the entity as a result of past events and from which future economic benefits are expected to flow to the entity', and guidance on accounting treatments (including additional supporting definitions) are provided in a number of accounting standards including but not limited to IAS 16 (Property, Plant & Equipment), IAS 38 (Intangible Assets), IAS 39 / IFRS 9 (Financial Instruments) and IAS 40 (Investment Property).
- While the definition in Chapter 10 is explicit that it does not include 'cash or cash equivalents, intangibles, or financial assets', these are not themselves defined terms, and prima facie many significant assets that are capitalised for accounting purposes may not meet the dictionary definition of being 'tangible'. For example:
    - Directly attributable (but not 'tangible') costs required to bring the asset to the location and condition necessary for it to be capable of being operated in the manner intended are capitalised for accounting (and typically tax) purposes – eg labour expense from construction, direct materials used, delivery costs, installation, testing and professional fees.
    - Capitalised costs of site construction work (eg stripping costs (incurred when removing overburden or waste materials) and underground mine development costs).