Representation from the Chartered Institute of Taxation
for Finance Bill 2024-25 Public Bill Committee

International Matters

Pillar Two: clause 19 and Schedule 4
Offshore receipts in respect of intangible property: clause 20
Application of PAYE in relation to international mobile employees etc: clause 21
Advance pricing agreements: clause 22

Executive Summary

Clause 19 and Schedule 4 – Pillar Two

The undertaxed profits rule: This is the backstop for Pillar Two. We are supportive of its introduction because it serves to keep UK headed MNEs on the same footing as international investors.

Amendments to multinational top up tax and domestic top-up tax: We are supportive of these changes, which generally seek to ensure that the UK's legislation is consistent with the rules, commentary and administrative guidance that have been agreed by the OECD/G20 Inclusive Framework. While there are not many issues or concerns with them, there is an open point around the application of the transitional safe harbour anti-arbitrage rules in respect of which clarification would be welcome. The top-up taxes are complicated and burdensome; therefore, further clarity around the transitional safe harbours as well as progress towards a permanent safe harbour is desirable.

It may be helpful to press the minister during the debate on Pillar One, and the UK's plans for its digital services tax if Pillar One is implemented, and also if it is not, noting that a review of the UK's digital services tax is due to take place this year.

Clause 20 – Offshore receipts in respect of intangible property

We welcome the repeal of these rules that are no longer necessary.

Clause 21 – Application of PAYE in relation to internationally mobile employees etc.

These amendments allow an employer to self-certify the proportion of earnings liable to UK tax where an employee is either non-resident or qualifies for split-year treatment. The CIOT has previously called on HMRC to make such a change.

Clause 22 – Advance pricing agreements: indirect participation in financing cases

We welcome these changes, which correct a technical gap in the circumstances in which an advance pricing agreement may be entered into. We are not aware of any issues with the proposed amendments to the UK's rules.

Clause 19 and Schedule 4: Pillar Two

1.1 In October 2021 more than 135 countries in the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) agreed a two-pillar solution to reform international tax to deal with the challenges arising from the digitalisation of the global economy, aiming to

ensure that multinational enterprises (MNEs) pay a fair share of tax wherever they operate and generate profits.

'Pillar One' involves a partial reallocation of taxing rights over the profits of MNEs to the jurisdictions where consumers are located. The detailed rules that will deliver this are still under development by the Inclusive Framework.

'Pillar Two' intends to ensure that MNEs pay a minimum rate of 15 per cent corporation tax (or their version of it) in every country they operate in.

1.2 The Inclusive Framework published model legislation for the Pillar Two Global Anti-Base Erosion (GloBE) rules in December 2021. The Inclusive Framework has subsequently published commentary, which provided further technical guidance on the rules, in March 2022, and administrative guidance in February 2023. Throughout the process of implementing the rules in the UK, the government's approach has been to follow the Model Rules. We understand that the rationale for this is to ensure, so far as possible, the principle of consistency across the globe in respect of the GloBE rules.

1.3 The principle behind the Pillar Two rules is that where a group company in jurisdiction A has paid less than 15% tax on its profits, then jurisdiction B where there is another group company, higher up the ownership chain in the corporate structure, is expected to impose a 'top-up tax'.

1.4 The UK introduced its top-up taxes, as the first tranche of implementation by the UK of the agreed G20-OECD Pillar Two framework, by Finance (No.2) Act 2023. The UK's multinational top-up tax (MTT) and domestic top-up tax (DTT) came into effect for accounting periods beginning on or after 31 December 2023.

1.5 The undertaxed profits rule (UTPR) is the backstop for Pillar Two. The UTPR brings a share of top-up taxes that are not paid under another jurisdiction's income inclusion rule or domestic minimum top-up tax rule into charge in the UK. The measure serves to keep UK headed MNEs on the same footing as international investors.

1.6 Part 2 of Schedule 4 to the Finance Bill introduces the UTPR into the UK with effect for accounting periods that begin on or after 31 December 2024. Part 3 of Schedule 4 contains amendments in relation to the MTT and DTT to ensure that these taxes work as intended and that the UK's legislation is consistent with the GloBE rules, commentary and administrative guidance agreed and issued by the Inclusive Framework. In addition, the government laid amendments to the Finance Bill on 19 December 2024. These include several amendments to the Pillar Two rules in Schedule 4.

1.7 When the MTT and DTT were introduced into UK law in 2023, it was envisaged that additional law and significant additional guidance would be required to supplement the rules. Negotiations were, and still are, continuing at the OECD on many technical and interpretive issues, as well as mechanisms for qualifying each country's implementation for the purpose of other implementing countries' rules.

1.8 There has been positive engagement and consultation between stakeholders and HMRC in order to ensure the UK's Pillar Two legislation works as intended and is up to date with OECD commentary etc. HMT/HMRC have worked hard to ensure that this is the case. We are aware that HMRC are continually taking points from agents (predominantly the Big 4 accountancy firms) around glitches in the rules, and responding to these, including by making changes to the legislation where necessary.

1.9 We understand that there is an open point around the application of the transitional safe harbour anti-arbitrage rules that paragraph 42 of Schedule 4 introduces. The OECD's anti-arbitrage rules for the transitional safe harbours are drafted very broadly and as such may go further than originally anticipated. In particular, there is some concern that they may apply in a number of common scenarios (for example, one-sided foreign exchange losses, payments within tax consolidations, disregarded payments within a US group, loss-making branches, and there are other examples). Clarification is being sought from HMRC about how HMRC views the scope of these rules being introduced by Finance Bill 2024-25.

1.10 We are not aware of any other issues or concerns with the legislation in the Finance Bill. However, there are a number of issues outstanding in relation to the existing legislation for Pillar Two. The most pressing of these are those that relate to taxpayers' ability to qualify for the transitional safe harbours. For example, to qualify for the transitional safe harbours it is important that groups ensure that their country by country (CbC) reports are prepared in accordance with the relevant legislation in order to be the 'qualified CbCR'. This leads to uncertainty and jeopardy as to whether a single error in a CbC report could disqualify all jurisdictions from applying the transitional safe harbours, whatever the size or direct relevance of that mistake to the safe harbour calculation.

1.11 Taxpayers and advisers have been discussing this with HMRC for some time and HMRC has recently indicated that they may be open to permitting re-filings of CbC reports where errors are spotted, with the refiled report taking over as the 'qualified CbCR'. This approach may only be possible for errors identified prior to the deadline for correcting the GloBE Information Report (the report that MNE groups must file setting out the Pillar Two calculations, including effective tax rate and top-up tax calculations for the jurisdictions in which they operate), which is yet to be established. Whilst HMRC's approach is to be welcomed, the exact details and extent of permitted corrections are still to be established. Furthermore, the approach of other jurisdictions to this matter is currently unknown. Taxpayers wishing to rely on the transitional safe harbours will therefore continue to have concerns on this point unless or until further reassurance is provided

1.12 Generally, it is important and welcome that the UK's legislation aligns with the agreed OECD position. As the OECD guidance etc is coming out in tranches, this is not the last time that changes to the legislation will have to be made to ensure the UK stays up to date. We welcome the confirmation in the Corporate Tax Roadmap published with the Budget, that the government will continue to ensure that the UK rules reflect the internationally agreed updates to Pillar Two.

1.13 However, while we recognise and support the government's efforts in aligning the UK's rules, it must be remembered that this work is against the background of the overriding fact that the new top-up taxes, and the new UTPR, are very complicated and will be burdensome. The burdens being imposed by Pillar Two continue to appear disproportionate to the amount of tax that will be raised, and the cost of compliance diverts businesses' funds away from business activity (such as seeking growth and rewarding shareholders etc.) to paying professional advisors.

1.14 Although the UK is largely doing what it can, there are still significant issues at the global level that it would be helpful for the UK government to push for resolution on. In particular, the key thing that most in-scope businesses would like to see is a permanent safe harbour (that takes an MNE's operations in lower-risk jurisdictions out of scope, or reduces the number of computations and adjustments required, thereby providing relief to MNEs in respect of their Pillar Two compliance obligations). Discussions on this seem to have stalled at the OECD / Inclusive Framework, and without progress on this in the near future,

businesses will be committed to the cost of full mapping for year one. A permanent safe harbour would also assist tax authorities, as it would reduce their administration burden.

1.15 A further point is around the lack of centrally maintained lists in key areas such as (a) list of data required (b) list of qualifying domestic minimum taxes (c) list of qualified refundable or marketable tax credits and (d) list of registration deadlines by implementing jurisdictions. Some of these exist on Big 4 platforms, but that seems to be duplication of effort. It would be helpful if HMRC and/or OECD took the lead on this and produced an agreed or 'official' list of some of these things.

1.16 More generally, we are currently in a period of uncertainty for international tax, primarily because of the new administration taking office in the US. In addition a new European Commission was installed in December 2024. With regard to Pillar Two, as the UK has decided to have top-up taxes, it makes sense to also implement the backstop (the UTPR) to maintain integrity of the measure and level the playing field. However, like digital services taxes (DSTs) the effect of UTPRs, in particular on US headed MNEs, is one of the considerations in the debate about potential retaliatory measures such as tariffs. Thus, the introduction of the UTPR is not risk free.

1.17 The Corporate Tax Roadmap confirmed the UK government's support of the international agreement on a multilateral solution under Pillar One, and the intention to repeal the UK's DST when that solution is in place. It may be helpful to press the minister during the debate on this point. Despite the publication of a draft multinational convention that will be required to implement Pillar One, there is significant doubt that a solution under Pillar One will be implemented. On 13 January 2025, the OECD released a statement about the status of negotiations regarding Pillar One. This said that progress has been made, but that consensus has not been reached, and notes that there remain outstanding issues. A review of the DST is due this year, and an indication of the timings and format of this review in light of likely outcome around Pillar One would be welcome.

1.18 It would also be helpful for businesses to hear more detail about the proposal in the Corporate Tax Roadmap to develop a new process for increasing the tax certainty available in advance for major investments. A well thought through process could help businesses that are able to avail themselves of it. To the extent that 'major investments' resulting from inward investment are included, it could also enhance the UK tax system's international competitiveness.

Offshore receipts in respect of intangible property: clause 20

2.1 Clause 20 repeals the offshore receipts in respect of intangible property (ORIP) rules at Chapter 2A of Part 5 Income Tax (Trading and Other Income) Act 2005.

2.2 The ORIP rules were a unilateral measure aimed at disincentivising large multinational enterprises (MNEs) from holding intangible property in a low tax jurisdiction if the intangible property is used to generate income in the UK. Such MNEs could gain an unfair competitive advantage over MNEs that hold intangible property in the UK, as well as eroding the UK tax base.

2.3 The ORIP rules are no longer required because Pillar Two's global minimum tax will more effectively address the multinational tax-planning arrangements that the ORIP rules sought

to counter. The repeal will take place alongside the introduction of the UTPR in the UK from 31 December 2024.

2.4 We welcome that the government is repealing a measure that is no longer considered necessary. The rules applying to MNEs and in relation to international taxation are many and complex. Therefore, any reduction in the legislative code to minimise overlap and unnecessary measures is welcome.

Application of PAYE in relation to international mobile employees etc.: clause 21

3.1 Clause 21 will allow employers to immediately operate PAYE on only the proportion of earnings they believe relates to UK duties where a non-resident employee (or an employee who qualifies for split-year treatment) performs duties both in the UK and abroad, rather than having to wait for HMRC to approve their application (new ITEPA 2003, s. 690–690C).

3.2 The CIOT has previously called on HMRC to amend the process by which employers can operate PAYE on a proportion of earnings paid to an employee during the tax year, to allow employers to self-certify rather than apply and wait on HMRC to issue a direction. The old (existing) s.690 process has been beset with delays with HMRC unable to process applications and issue directions in a reasonable time. Amending the process to allow employers to self-certify, subject to HMRC having a power to subsequently issue a direction where they believe the employer has incorrectly calculated the proportion of earnings to be subject to PAYE in the UK, is a welcome change.

3.3 The reforms to s.690 (contained in this clause and clause 38, schedule 8) make no reference to treaty non-resident cases. While this is consistent with the law as it is now, currently HMRC have a similar process (PAYE81561 - PAYE operation: international employments: PAYE directions for individuals who are treaty non resident in the UK) to obtain an informal direction in respect of someone who is treaty non-resident to operate PAYE on income relating to the estimated proportion of UK workdays only. We would welcome clarification as to whether it will continue to be possible to informally apply relief in this way for treaty non-resident cases via the new s.690 employer notification regime, or whether there will be another process.

Advance pricing agreements: indirect participation in financing cases: clause 22

4.1 This measure amends both the transfer pricing[1] and Advance Pricing Agreement (APA) legislation to ensure the validity of APAs in cases where the parties to the provision are only connected by virtue of acting together in relation to financing arrangements. APAs are

[1] The UK's transfer pricing rules are intended to ensure that the profits attributed to a UK company are those which the UK company would have made had it been a separate, independent company dealing with the non-UK parts of the group on arm's length terms. Broadly, you look at the activities of the company and determine how much they would have made out of performing those activities for third party customers, not how much they actually did make performing them for the multinational group they are part of. This is to ensure that multinational groups of companies cannot price their activities amongst themselves to ensure that the profits end up in parts of the group that are in low (or no) tax countries. Other countries have similar rules.

agreements entered into between tax authorities and taxpayers on the future application of transfer pricing policies, including determining the method for pricing related party transactions. Part 5 Taxation (International and Other Provisions) Act (TIOPA) 2010 is the UK's APA legislation.

4.2 HMRC have recently become aware that there is a technical gap in the circumstances in which an APA may be entered into. Specifically, this gap exists where the UK transfer pricing legislation is only in scope by virtue of section 161 or 162 TIOPA 2010, which apply in certain cases where persons act together in relation to financing arrangements.

4.3 This measure will ensure the validity of APAs with businesses in such circumstances, in line with Statement of Practice 1 (2012), and is intended to ensure HMRC can provide businesses with tax certainty in relation to the application of the transfer pricing legislation to certain financing arrangements in line with that Statement of Practice. As such, this measure will be helpful for taxpayers that have applied or want to apply to HMRC for APAs in relation to financing arrangements (such as Advance Thin Capitalisation Agreements) in circumstances where the UK's transfer pricing rules are only in scope due to persons acting together in relation to those financing arrangements.

4.4 We welcome these changes and are not aware of any issues with the proposed amendments to the UK's rules.

The Chartered Institute of Taxation

5.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. 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. 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.

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. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 20,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

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