Insurance Ireland Comments relating to the public consultation on the implementation of the Pillar Two Minimum Tax rate

22 July 2022

INTRODUCTION

Ireland is a thriving global hub for insurance, reinsurance and captives and Insurtech. Ireland's insurance market is the fifth largest in the EU, and our Reinsurance market is the second largest. Our members represent around 95% of the companies operating in the Irish market, making Insurance Ireland a strong leadership voice for the sector.

Insurance Ireland members are progressive, innovative and inclusive, providing competitive and sustainable products and services to customers and businesses across the Life and Pensions, General, Health, Reinsurance and Captive sectors in Ireland and across the globe.

In Ireland, our members pay more than €13bn in claims annually and safeguard the financial future of customers through €112.3bn of life and pensions savings. Our members contribute €1.6bn annually to the Irish Exchequer and the sector directly employs over 18,000 people in high skilled careers.

The role of Insurance Ireland is to advocate on behalf of our members with policymakers and regulators in Ireland, Europe and Internationally; to promote the value that our members create for individuals, the economy and society; and to help customers understand insurance products and services so that they can make informed choices.

OVERALL OBSERVATIONS

Insurance Ireland welcomes the opportunity to share industry feedback relating to the implementation of the global minimum effective tax rate under Pillar Two of the OECD's Global Anti-Base Erosion rules (GloBE rules). We look forward to discussing our comments further.

We welcome the fact that reinsurance has been included in the list of regulated financial services to be excluded from Pillar One. At the same time, there is still no consensus in the Inclusive Framework, and it is, therefore, important to reiterate why these businesses are correctly being excluded.

Reinsurance meets all the key elements of the definition for regulated financial services. Namely, firms have a licensing requirement, regulatory capital requirements and they undertake the required activities.

Reinsurers are also global companies, and it is part of their business strategy to have an effective local presence via subsidiaries and permanent establishments in relevant markets.

In general, the OECD should provide more clarity on definitions, as well as examples to guide the application of the rules and to avoid unnecessarily cumbersome requirements. In addition, the definition of "insurance contracts" provided in the text might not fully reflect the diverse risks covered in the insurance market.

Consultation Questions

1. **Are there any specific features of the Rules that warrant particular attention with regard to their implications for Ireland's tax code and tax policy?**

Implementation must take account of the unique nature of the insurance industry, the timing/deferral of income and receipts as well as the volatile and cyclical nature of insurance business.

It is often the case with international reform that financial services and especially the insurance industry, is not understood and therefore not addressed appropriately or at all – we saw this in the discussion as to whether Reinsurance was part of the insurance definition.

For example, the rules currently provide for carve-outs (in respect of tangible assets and payroll) which are more favourable to manufacturing and similar industries than to the insurance industry which is capital intensive. These carve-outs aim to reduce the impact of Pillar 2 on Multinational Entity (MNE) groups in a jurisdiction, where they are carrying out real economic activities. In this respect, companies with significant human capital and tangible assets benefit from a carve out by reference to those assets. For insurers, real economic activities are not only measured on the basis of human capital and tangible assets, but particularly in respect of prescribed regulatory capital which can be considered their key asset.

The carve-out proposed, based only on expenditures for payroll and tangible assets, provides less benefit to the financial services industry and effectively favours one set of industries over another. Therefore, we have echoed the call from Insurance Europe for the European Commission (EC) to include in the formulaic carve out a fixed return on the economic/regulatory capital for the financial services industry which will ensure fairness between different industries. We call on the Department of Finance to advocate for this position internationally.

2. **When implementing the Rules, are there any specific issues which should be considered with respect to implications for the Irish tax code arising from US corporate tax reform proposals, with particular reference to the significance of US MNEs operating in Ireland?**

There is currently no expectation that international changes will be enacted in the summer reconciliation package. In any event, it is questionable where the Build Back Better proposals seeking to align US tax law with Pillar Two would work as opposed to actually adopting the rules.

In the short term, it is therefore unlikely that there will be any changes to the US GILTI rules, including to the GILTI minimum effective tax rate which is lower than the proposed global minimum effective tax rate. For that reason, concerns previously raised about the impact of an increase to the rate above the minimum rate have abated.

For the moment, Ireland needs to monitor both the potential adoption of quasi-Pillar Two rules in the US and the non-adoption of (quasi) Pillar Two rules in the US.

3. **Are there other considerations of significance that should be taken into account when implementing the Rules in domestic legislation?**

The definition of insurance investment funds does not reflect the reality of the insurance business. For example, an ICAV which is opaque for corporate tax purposes but not subject to Irish corporation tax, may have its income included in the denominator of the effective tax rate (ETR) fraction, but have no Irish tax to include in the numerator. Absent any special rule that takes the specific investment fund taxation regime in Ireland into account this could lead to top up tax being payable in another jurisdiction in relation to the income of an ICAV. We would support a solution whereby the income and taxation is taken into account in the ETR calculation of the unitholder.

The “wholly-owned” requirement raises the question of whether a fund whose participations are held by different entities within one group may be seen as an insurance investment fund. Furthermore, the requirement that the fund is established “in relation to liabilities under an

insurance or annuity contract" should be interpreted as including investments not only for life insurance, but for any type of insurance contracts.

Draft implementing legislation should be subject to public consultation prior to enactment to ensure there are no unintended adverse implications on other parts of the Irish tax code.

4. Are there any amendments needed to Ireland's existing tax code to ensure that existing legislation does not result in any unintended outcomes under the Rules when they are implemented in domestic legislation?

Our strong preference would be for any new legislation to be "standalone" i.e. to complement existing legislation, rather than extensively re-write or amend existing legislation. This has been the approach taken in respect of the adoption of the Anti-Tax Avoidance Directive legislation and should be followed in relation to the GloBE rules.

5. Are there any aspects concerning the scope of the Rules, for example the definitions of a Group, a Constituent Entity or an Excluded Entity, that require further clarification in domestic legislation?

Article 2 defines the group and therefore the constituent entities for the purposes of the GloBE rules as the "*entities which are related through ownership or control as defined by the acceptable accounting framework for the preparation of consolidated financial statements by the ultimate parent entity, including any entity that may have been excluded from the consolidated financial statements of the ultimate parent entity solely based on its small size, materiality grounds or on the grounds that it is held for sale".* Including immaterial entities in this definition would require huge operational and manual efforts for an MNE group for low-risk entities, without adequate value added for the tax administrations.

We suggest adopting a more risk-based approach by excluding immaterial entities in the GloBE scope which may result in a significant reduction of compliance costs for the MNE group, while continuing to ensure the effectiveness of the GloBE rules.

The GloBE definitions of "constituent entity" and "permanent establishment" depart from the well-established and relied upon definitions under Country-by Country Reporting (CbCR) rules. Requiring taxpayers to analyse and report on the concepts under the new GloBE definitions adds unnecessary complexity. CbCR reporting rules have been followed by taxpayers in preparing submissions since 2016 and introducing new definitions for these established concepts introduces unwarranted complexity and additional work for taxpayers to both redefine their groups and perform additional calculations that meet the new definitions.

6. Do you have any views on how (i) the Income Inclusion Rule ('IIR') and (ii) the Undertaxed Profits Rule ('UTPR') provisions should be reflected in domestic legislation?

We support the proposal included in the consultation document for any new Irish regime to constitute a qualifying domestic minimum top up tax. This is particularly the case for multinationals headquartered outside Ireland which would otherwise be subject to top up tax under the IIR in the head office jurisdiction. Alignment of the Irish and OECD regimes as much as possible would greatly streamline the computation mechanics, taking into account that companies will have to calculate IIR across multiple jurisdictions.

In addition, the UTPR in particular could also result in adverse impacts on outbound reinsurance to major low tax/no tax jurisdictions for insurance pooling which do not adopt the minimum rate and the IIR. This would result in the retention of additional risks in Ireland,

reduced diversification and increased costs to consumers. We welcome the fact that the UTPR will be deferred by at least one year as it requires careful design to ensure that it achieves its aim as a backstop to the IIR without creating double taxation or other unintended consequence.

7. **In relation to the UTPR, should this take the form of either (i) a top-up tax or (ii) a denial of deduction against taxable income resulting in an amount of tax liability necessary to collect Ireland's portion of the UTPR top-up tax amount?**

There is some benefit in the former approach as it may be easier to work out the top-up tax without considering which entity should deny a deduction. This allows some flexibility to ensure that regulated entities are not subject to additional taxation as this would erode regulatory capital.

8. **Do you have any comments on the Computation of GloBE Income or Loss provisions contained within the Rules and how these could be implemented in domestic legislation? In particular, do you have any comments on:**
   (i) the determination of the Financial Accounting Net Income or Loss, and
   (ii) the adjustments to determine the GloBE Income or Loss?

While there is significant complexity throughout the Model Rules and Commentary, a particularly prominent source of complexity is the use of financial accounting concepts as the starting point for measuring GloBE Income or Loss (and Adjusted Covered Taxes) combined with the requirement of myriad adjustments to the underlying financial accounting amounts. These rules would require preparation of financial accounting data at the Constituent Entity level, that in many cases is not being produced currently in the form that is specified. In addition, the many adjustments to be made would require new computations and maintenance of new data points which are not relevant for any other purpose. Simplifications, detailed guidance and relevant examples on an agreed basis all would be extremely valuable in these areas.

The formulaic carve-out in the GloBE rules has the effect of allowing routine returns to be excluded for both labour-intensive and fixed/tangible asset-intensive businesses. Financial services companies – particularly insurance companies – operate around the globe under the careful oversight of regulators, which require specific and quantifiable amounts of capital be held in specific entities to ensure the protection of policyholders. The allocation of capital follows risk and, regulators require specific amounts of capital in specific entities to support that level of risk. In short, there are objective measures of how much capital is required to be in a jurisdiction. We support an economic substance exemption for financial services companies that reflects the realities of their business model – and therefore is based on regulatory capital. As provided above, the carve-out in the GloBE Model rules is only appropriate for labour-intensive and tangible asset-intensive businesses, and therefore provides little benefit to capital intensive industries such as (re)insurance.

The Model Rules introduce a more arduous compliance process on PEs than is currently the case. Typically, PEs do not maintain financial statements under a group reporting standard, but rather, maintain management accounts purely to support the filing of a local tax return. These accounts will not always include, for example, the allocation of capital required under the OECD Report on the Attribution of Profits to PEs, or transfer pricing adjustments. Under the Model Rules, the income (or loss) of a PE will have to be prepared on a standalone basis in accordance with the group consolidated accounting standards, thus introducing a new reporting obligation for many groups. This is unduly onerous.

9. Are there any aspects of the Computation of GloBE Income or Loss provisions that require further clarification in domestic legislation?

It is important to have clarity on the interaction between minimum taxes and the regular corporate income taxes of jurisdictions, including the tax treaties that apply to these taxes. It would, for example, be important to address matters such as:

- How does the definition of covered taxes under tax treaties relate to the definition of covered taxes under the GloBE Rules?
- When is a domestic minimum tax a covered tax for the GloBE rules, and when is it a QDMTT?
- Are QDMTTs creditable if the profits of a subsidiary are also taxable in the hands of a parent entity in another jurisdiction?

10. Do you have any views on the rules regarding the allocation of Income or Loss to entities/jurisdictions as they could apply to domestic legislation?

There must be clarity about the distinction in the rules between the amount of income allocated to a jurisdiction under a double tax agreement and domestic rules in calculating how much of the income is taxable. It is important to adopt clear priority rules and provisions to prevent double taxation, or to have a mechanism that deals with any double taxation that might arise.

11. Do you have any comments on the Computation of Adjusted Covered Taxes provisions and how these could be implemented in domestic legislation?

Article 3.2.8 deals with a local tax consolidation for GloBE Income or Loss computation purposes. Local tax consolidation is not dealt with under Chapter 4 for the identification and calculation of Adjusted Covered Taxes. We consider it necessary to provide administrative guidance with respect to the notion of Covered Taxes in the context of a local tax consolidation. In particular, assuming all Constituent Entities (CEs) participating in the local tax consolidation have local taxable income only one CE could pay the local taxes (while other CEs provide funding to the paying CE). When some CEs are in a local tax loss position, and others are in a local tax profit position, the set-off between income and losses could cause any current or deferred tax to disappear. This could have a distortive effect in the case where a CE with a local tax profit position does not account for current tax expenses but does account for the funding amount in lieu of the local current tax expenses.

Article 4.4.5. - Recapture Exception Accrual: Subject to the reservation stated above, the Model Rules provide for a recapture exception accrual that includes insurance reserves, in order to take into account the length of business cycles in the insurance industry. The amount of insurance reserves required for future claims are defined by insurance regulatory bodies, under applicable prudential rules. The principle is generally consistent across various jurisdictions worldwide, but accounting and tax regulations may differ locally. Given the range of insurance classes available, some local accounting rules may provide for specific insurance reserves items, or specific splits of insurance reserves items depending on local markets' issues. Thus, global insurance groups should not have to select locally among insurance reserves which items or related items may be eligible.

In this respect, the scope of insurance reserves that allow for a recapture exception accrual under minimum tax rules as regards deferred tax liabilities should be defined as broadly as possible. The scope should therefore include all insurance reserves or related items allowed by accounting and consolidation rules, to the extent that they are linked to the insurance business, irrespective of what is eligible for a tax deduction. This should include amounts which are required by regulators to be set aside or accrued to satisfy future liabilities

pursuant to the insurance policy which may not be reported on the reserve line for accounting or tax purposes, (for example, certain insurance products may be classified for local accounting purposes as investment products with liabilities to policy holders not reported as insurance reserves).

12. Are there any aspects of the Computation of Adjusted Covered Taxes provisions that require further clarification in domestic legislation?

We appreciate that it may not be practical to produce a comprehensive list of covered taxes by jurisdiction, but it would be helpful to provide guidance which lists key industry related taxes such as, in the context of the insurance industry, US FET and certain other withholding taxes on gross premiums.

13. Do you have any views on the rules on (i) the allocation of covered taxed between entities, (ii) the mechanism to address temporary differences, and (iii) post-filing adjustments as they could apply to domestic legislation?

Temporary differences
The mechanism to address temporary differences should not limit deferred tax assets and liabilities to the Minimum Rate. Limiting deferred tax amounts to the Minimum Rate while the reversals of those amounts are at the locally applicable current tax rate introduces complexity, volatility, and distortion into the computation of the GloBE ETR where none need exist. For example, GloBE income which gives rise to a deferred tax liability could result in a reduced GloBE ETR in the year the deferred tax liability arises, and an increased GloBE ETR when the deferred tax liability reverses. Similarly, a GloBE loss which gives rise to a deferred tax asset will result in an increased GloBE ETR in the year the deferred tax asset arises, and a decreased GloBE ETR when the deferred tax asset reverses as a current item. Requiring a separate tax rate for calculation of deferred taxes for GloBE purposes essentially requires companies to maintain a separate set of records, adding significant compliance burdens to an already complex process. Allowing deferred tax amounts at the applicable tax rate will eliminate this distortion and provide a more accurate computation of the GloBE ETR. We believe administrative ease and cost burdens will reduce if the Model Rules do not limit the calculation of deferred tax assets and liabilities to the Minimum Rate. At a minimum, we recommend clarifying that the 15% recast only applies in respect of certain perceived risk areas, rather than applying it across the board, or the OECD provides greater clarification on how it intends to resolve the mis-match issues identified.

Post-filing adjustments
Art. 4.6.1 Model Rules- post filing adjustments: Increases to Covered Taxes due to post filing adjustments are taken into account in the current fiscal year. On the contrary, material decreases are taken into account in the previous fiscal year to which the tax adjustment relates, triggering a recalculation of ETR and Top-up tax. In order to avoid high administrative effort resulting from having to monitor post filing adjustments, simplification is needed.

Art. 3.2.3 Model Rules – Arm's length principle: It is unclear how this paragraph is supposed to interact with the paragraph on post filing adjustments in 4.6.1. A transfer pricing adjustment as a result of a tax audit for a previous year could result in a higher income for GloBE and tax purposes as well as an increase of the tax liability. The increase in GloBE income according to the Model Rules is supposed to affect the previous year but the increase in tax would affect the amount covered taxes for the current year. The result would be a timing mismatch and possibly Top-up tax. More clarification is also in a situation where a tax authority adjusts the transfer price unilaterally without a corresponding adjustment of the transfer price of the counterparty in a different jurisdiction.

14. Do you have any comments on the potential interaction of tax credit provisions, as currently set out in the corporation tax code, with the definition of "Qualified Refundable Tax Credit"?

We support amending the domestic R&D tax credit regime so that the credit comes within the definition of a refundable tax credit.

15. Do you have any views on the Computation of Effective Tax Rate (ETR) and Top-up Tax provision? In particular, do you have any views on the process to calculate ETR and Top-up Tax and how these could be implemented in domestic legislation?

The primary concern of our members is to ensure that the calculation of ETR takes into account temporary differences that would otherwise create anomalies in the calculation. However, the majority of these differences are already referenced in the OECD model rules and therefore should be mirrored in Irish domestic legislation.

To alleviate the burden of having to perform ETR recalculations, the materiality threshold of €1m in Article 24 should be raised. It should be noted that there is currently no adjustment to the €1m for inflation (which is running at 8-9%). The €1m should be both increased and inflation adjusted.

In addition:

1. It is important that if Ireland implements a Qualified Domestic Top-Up Tax (QDTUT) that this follows the same rules on temporary differences as set out in the model rules. Ideally, we would want a "standard" calculation to work with, not one that is different in each country (thus increasing complexity).
2. The re-casting of deferred tax liabilities at the minimum rate (Article 4.1.5 of the model rules) is a significant issue and remains so. This makes no sense and causes anomalies to the ETR. DT should be at the "normal" rate.

16. Are there any aspects of the calculation of the ETR and Top-up Tax of investment entities, joint ventures or minority-owned constituent entities that require further clarification in domestic legislation?

Insurers take the view that a fundamental policy concept of Pillar Two is to look at ETR over a period of time to neutralize the consequences stemming from the application of the annual accounting concept. The 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, as noted immediately above, and does not appear to be justified. 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 a top-up tax both in respect of timing and permanent differences. This will arise notwithstanding that the true ETR borne by the MNE over time is higher than the minimum rate. For example, the top-up tax will arise in circumstances where there are loss carry-back rules under local legislation or where tax losses are being utilised 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 calculation is double taxation.

Regarding the deferred taxes, the industry also has serious concerns with the level of aggregation. In financial statements, the deferred taxes are computed on an aggregate basis. The gathering of these data would be tremendously burdensome. Therefore, the

industry recommends that computing deferred taxes on an aggregate basis is accepted, where such aggregation would not undermine ETR computation rules.

Also, it is important for insurers that contingency reserves (safety reserves) get the same treatment under Article 21 (8) (g) as other insurance reserves and that should be made clear in the Directive.

Due to the insurance business model, insurers must make assumptions about the future. Contingency reserves are a legitimate way for insurers to cater for factors that are random or otherwise difficult to assess.

The specific provisions for insurance companies relating to insurance provisions are most welcome, but these do not include the tax treatment of derivatives related to these provisions. In many cases, substantial deferred tax positions exist in relation to these derivatives. The EC should also confirm that these deferred tax positions, based on paragraph 4.4.5(e), are treated the same as insurance reserves and insurance policy deferred acquisition costs. If not, the scope for the special treatment for insurance provisions should be extended to derivatives that relate, are linked to these provisions.

If a 3.2.5 election is made, it should be confirmed that deferred tax related to these excluded gains or losses attributable to fair value or impairment accounting, are excluded from the covered taxes.

17. In your view, should a QDTUT be implemented by Ireland? If so, what should be the features of such a QDTUT and how should it operate? In particular, please provide your view on the charging and administrative rules that should apply.

We would support Ireland implementing a QDTUT. Any QDTUT should be calculated in line with the Pillar 2 IIR rules, in order to prevent groups from having to make different sets of calculations and invest in different technological solutions in different jurisdictions. However, our comments in response to Q15 should also be taken into account here.

The Model Rules permit for a Qualified Domestic Minimum Top-up Tax (QDMTUT) (if adopted) to be based on different applicable accounting standards than are generally applicable under the GloBE rules. For simplification purposes, an election should be allowed to use either local accounting standards or the accounting standards used in the Consolidated Financial Statements in calculating the QDMTUT.

In terms of administration, we note that the IIR calculations are very complex, and it would not be practical to file a consolidated QDTUT return at the ordinary filing date. Our proposal would be for the consolidated QDTUT return to be filed 3 months later (i.e., by 23 December). Additional time would be needed for first time adoption. The OECD has proposed to extend the first IIR return deadline to 18 months after the period end date. We would strongly recommend that Ireland adopts a consistent approach both for IIR and QDTUT.

18. For example, could a QDTUT form part of the corporation tax liability of a company and be returned as part of the corporation tax return? How should the jurisdictional calculation of the QDTUT be addressed in return filings, particularly where entities in an MNE group in scope in Ireland might have different intermediate parents?

As noted above the administration is complex. Not all our members have a common holding company for their Irish operations and so there may not be an obvious “head” of the group responsible for filing the QDTUT return. We would recommend allowing groups to nominate a “representative member” (in a similar manner to VAT grouping), which would be

responsible for filing the QDTUT return. We would also recommend that groups have flexibility as to which group entities bear the economic cost of any top up tax under a QDTUT.

Finally, we note that it is impractical to calculate preliminary tax on a QDTUT basis. We would recommend that the tax payment deadline for QDTUT is aligned with the QDTUT tax return filing deadline, and not earlier.

19. Do you have any views on how the reporting obligations of entities that are in scope of the Rules, should be satisfied?

International co-ordination & standardised format: The GLoBE rules should be introduced on a co-ordinated process focused on the practical implementation of the minimum taxation rules. To maximise efficiency, accuracy and verifiability of information reporting while taking into account compliance costs, and also to ensure data protection and confidentiality of sensitive information, there should be a single filing process whereby MNE Groups would file a single minimum tax return with the tax administration of the jurisdiction of the Ultimate Parent Entity (UPE) or designated filing entity.

Development of a GloBE Information Return form that is standardized, both in information required and format, is important for facilitating the automation of MNE Groups' reporting processes. The XML standard used for the CbCR could serve as an example. This would be shared with the jurisdictions of the Constituent Entities through current exchange of information network, subject to confidentiality and data protection.

Safe harbours: It is important that safe harbours are introduced to protect the position of groups and companies which pay tax at substantially more than 15%. This will also reduce the compliance costs of having to prepare detailed and complex Pillar 2 calculations just to demonstrate that no tax is due under Pillar 2.

Safe harbours should include calculations based on existing CbCR filings (including some adaptions to reflect the differing Pillar 2 requirements, for example, deferred tax) to demonstrate that ETR is higher than the minimum rate. There should also be administrative guidance whitelisting jurisdictions where it is reasonably expected that the effective tax rates do not fall below the minimum tax rate. In addition, if a jurisdiction has introduced a qualifying domestic minimum tax then that jurisdiction should automatically meet the Pillar 2 requirements and no further obligations should be put on that jurisdiction. This would be a significant simplification, reducing unnecessary administration burden, without undermining the intention of the policy.

Penalty provisions: In the initial years of implementation, there should be a proportionate approach to penalties by tax authorities. The filing and payment deadlines adopted should allow sufficient time for transition and factor in the differing filing deadlines in jurisdictions other than Ireland in order to allow for the completion of local returns in multiple jurisdictions.

20. How should liabilities arising under the IIR or UTPR be reported and paid/collected? Do you have any views on the frequency of such payments and the deadlines that should apply?

An extension should be made to the filing date, i.e. to 18 months from 15 months. This is particularly important for regulated industries such as insurance due to their existing significant regulatory reporting obligations in the first half of each calendar year which are in addition to statutory financial reporting and investor reporting obligations. The payment date should be aligned with the filing date ensuring that estimation is not required and also mitigating the payment of credit interest.

21. Do you have any views on whether Irish constituent entities should be made joint and severally liable for any Irish GloBE liabilities of the Irish constituent entities of the same MNE Group? In this regard, would you differentiate between IIR liabilities and UTPR liabilities?

Ireland's approach to joint and several liability for tax purposes should remain consistent with current provisions and used where possible. However, consideration should be given to the potential adverse impact of joint and several liability on regulated entities including with respect to regulatory reporting. It can be the case that regulatory rules prevent certain entities from being held responsible for liabilities arising to other entities

22. Do you have any views on whether Irish constituent entities should be made joint and severally liable for the QDTUT (if Ireland were to adopt such a provision) of the Irish constituent entities of the same MNE Group?

Refer to 21.

23. What group entity should be made initially liable for paying UTPR tax? Is your answer dependent on whether UTPR tax is collected by way of denial of deduction or direct charge?

The response does depend on which mechanism applies i.e. denial of deduction or direct charge. A group within the scope of the rules should be allowed to notify the tax authorities which entity is liable to pay the UTPR tax.

24. Are there any aspects of the Transition Rules that require further clarification in domestic legislation?

Transition Period: The transitional period rules are cumbersome to apply and track for MNEs. Further, when the Model Rules were drafted, the envisaged date of effectiveness was January 1, 2023. Now the envisaged effective date is at least one year beyond that, January 1, 2024. It is recommended that the transitional period should be revised to be the twelve months prior to the Pillar Two effective date. As it stands the transition period is much longer than intended at the time of drafting.

Tax attributes on transition: Article 9.1.1 provides for transition rules based on deferred tax accounting concepts, to prevent temporary differences leading to a top up tax. Rather than requiring an MNE Group to undertake complex calculations as if the Constituent Entity had been subject to the GloBE Rules in prior years, it uses a simplified approach that provides for taking into account the deferred tax accounting attributes of the group at the beginning of the Transition Year. The Commentary clarifies that this includes tax assets resulting from prior year losses. Guidance should confirm that this includes deferred tax assets related to tax credits as well.

M&A: a target company will often prepare its accounts under a different accounting standard to the acquiring MNE and there is a need for clarification on how the rules address this scenario. How should the carrying value of assets, liabilities and deferred tax items be determined when an acquired entity has a different accounting standard to the acquiring entity, or where the acquired entity does not have sufficient records.

25. Should amendments to any domestic legislation be considered to address potential application of, or interactions with, the STTR?

No comments.

26. The proposed Directive on Pillar Two will also apply to large-scale domestic groups. Are there any aspects of the application of the Rules to large-scale domestic groups that require further clarification in domestic legislation?

According to 1.2.2. (b) of the OECD Model Rules and Article 3 paragraph 3 letter a of the Directive the MNE group definition for Pillar 2 also includes related entities which are excluded from the consolidated financial statements of the ultimate parent entity solely on size, materiality grounds or on the grounds that they are held for sale. Currently, these insignificant entities are often not connected to the reporting infrastructure and the accounting standard used for the entity regularly deviates from International Financial Reporting Standards (IFRS) or another accounting standard used in the preparation of the consolidated financial statements of the ultimate parent entity. For that reason, the data required for the ETR computation is not easily available and a reconciliation of the financial statements under local GAAP for these entities would be necessary.

The exclusion of insignificant related entities from the consolidated financial statements of the ultimate parent entity follows the materiality principle. Given the policy rationale of Pillar 2 to limit the scope of the global minimum tax to large multinational companies it seems exuberant to include insignificant entities. Due to their small size, a possible minimum tax for these entities would be marginal and disproportionate to the resulting administrative burden.

ENDS