OECD Pillar II

October 2023

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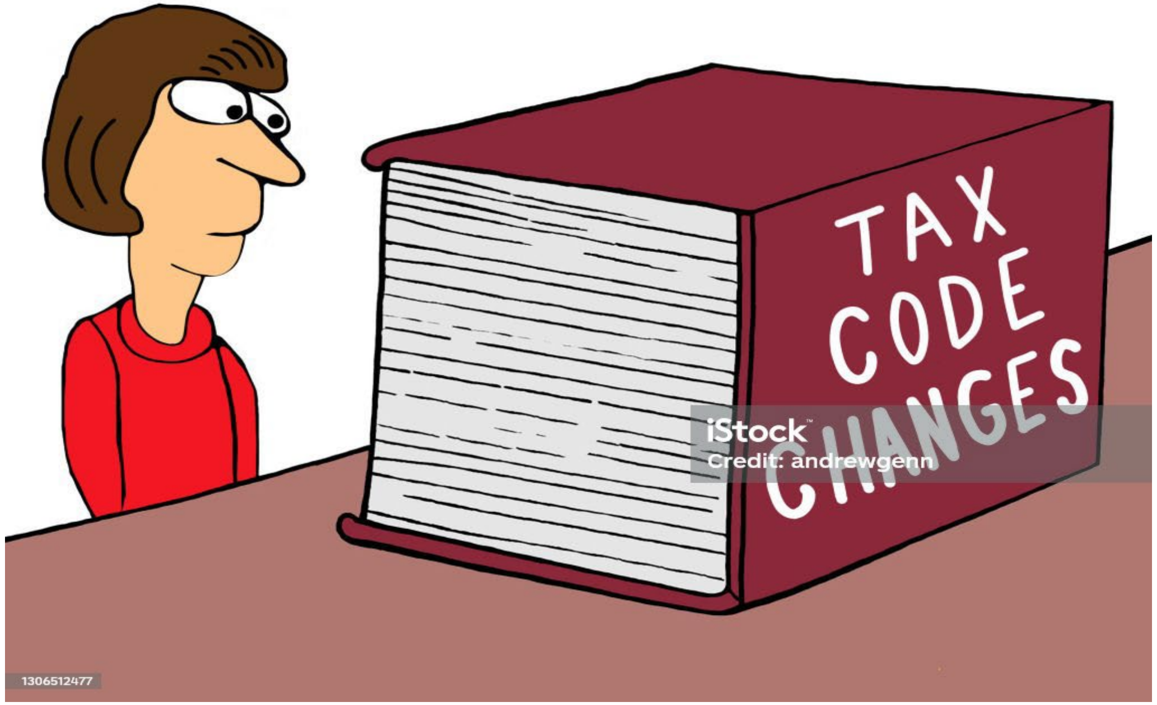
Introduction

Pillar II



The Journey so Far – Irish experience

- **Oct 2021** OECD GloBE model rues
- **Dec 2021** EU proposed Directive
- **May 2022** Consultation (Ireland)
- **Dec 2022** Council Directive 2022/2523
- **July 2023** Second consultation (Ireland)
- **19 Oct 2023** Finance Bill (Ireland)

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Pillar II – Useful Definitions

GloBE	Global Anti Base Erosion Rules
STTR	Subject to Tax Rule
IIR	Income Inclusion rule
UTPR	Undertaxed Profits Rule
QDTT	Qualified Domestic Top Up Tax
QDMT	Qualifying Domestic Minimum Top Up Tax
CE	Constituent Entity
ETR	Effective Tax Rate
MS	Member State (EU)

Overview of Pillar II provisions

Pillar II – Objectives in a nutshell

- Pillar II: the policy objectives behind Pillar II are to:

  1) Ensure large corporate groups pay a minimum amount of tax on the income arising in each jurisdiction in which they operate;
  2) Reduce the incentive to move profits to low or no tax jurisdictions; and
  3) Put a floor on excessive tax competition between countries.

Pillar II – Components

Pillar II

Domestic
(GloBE rules)

Treaty Based

IIR

UTPR

STTR

Pillar II- GloBE provisions

- Global minimum ETR of 15% applicable to global MNEs with global annual turnover of at least €750m
- Adjusted accounting measure of profit to be calculated for a group's operations in each jurisdiction
- Where the tax payable by the group on profits in a jurisdiction falls below the 15% ETR, a top-up tax levied to bring the overall level of taxation up to the minimum
- The top-up tax is provided for in two interlocking GloBE rules as follows:
  - A primary IIR, which imposes top-up tax on a parent company in respect of the low taxed income of a CE and
  - A backstop provision, the UTPR which denies deductions or requires an equivalent adjustment to the extent that the low tax income of a CE is not subject to tax under an IIR.
- Option for a QDMT in domestic law - calculate and collect top-up tax locally in a jurisdiction in a manner equivalent to the GloBE rules

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Pillar II – Process requirements

Step		Summary
1	CEs within scope	Identify Groups within the scope and the location of each CE within the Group
2	GloBE Income	Determine the income of each CE
3	Covered Taxes	Determine taxes attributable to income of a CE
4	Effective Tax Rate and Top up Tax	Calculate the Effective Tax Rate of all CEs in the same jurisdiction and determine resulting Top Up Tax
5	IIR and UTPR	Impose Top-Up Tax under IIR or UTPR in accordance with agreed rule order

Pillar II – Income Inclusion Rule (IIR)

- Requires countries to include income of controlled foreign subsidiaries in their tax base
- If that income is subject to an effective tax rate below a certain minimum threshold.

Pillar II – Undertaxed profits Rule (UTPR)

- Allows an adjustment for top up tax to the extent that it is not covered by the IIR
- Denial of a deduction
- Equivalent adjustment

Pillar II – Minimum tax rate

- Establishes a minimum effective tax rate that countries should aim to apply to the income of multinational corporations
- Intended to deter profit shifting to low-tax jurisdictions.
- The framework includes mechanisms to coordinate and harmonize the implementation of these rules among countries.
- This coordination ensures that multinational corporations do not face double taxation while also preventing them from avoiding taxation altogether.

Pillar II – Minimum tax rate

- Implementing Pillar II will pose challenges, including determining the minimum tax rate, addressing issues related to tax credits, and ensuring that the rules are enforced consistently across jurisdictions

Pillar II – STTR

- STTR complements GloBE rules
- Effectively a treaty override.
- Impose limited additional tax on certain cross-border payments between connected companies – 9% minimum rate
- Where a jurisdiction applies a rate on the receipt of less than 9% then the payor territory can collect a “top up”
- STTR as a treaty based rule requires amendment either via bi-lateral negotiations and amendments to treaties or by way of a multilateral convention

EU Minimum Tax Directive

EU Minimum Tax Directive

- Principally a direct transposition of the OECD GloBE Model Rules
- A number of amendments to ensure compatibility with EU law or to deal with certain operational matters
- The main additional provisions are:
  - Rules extended to include large purely domestic groups
  - Mandatory for MS to apply the IIR and UTPR
  - Requirement for a MS to apply the IIR to all domestic constituent entities as well as foreign subs

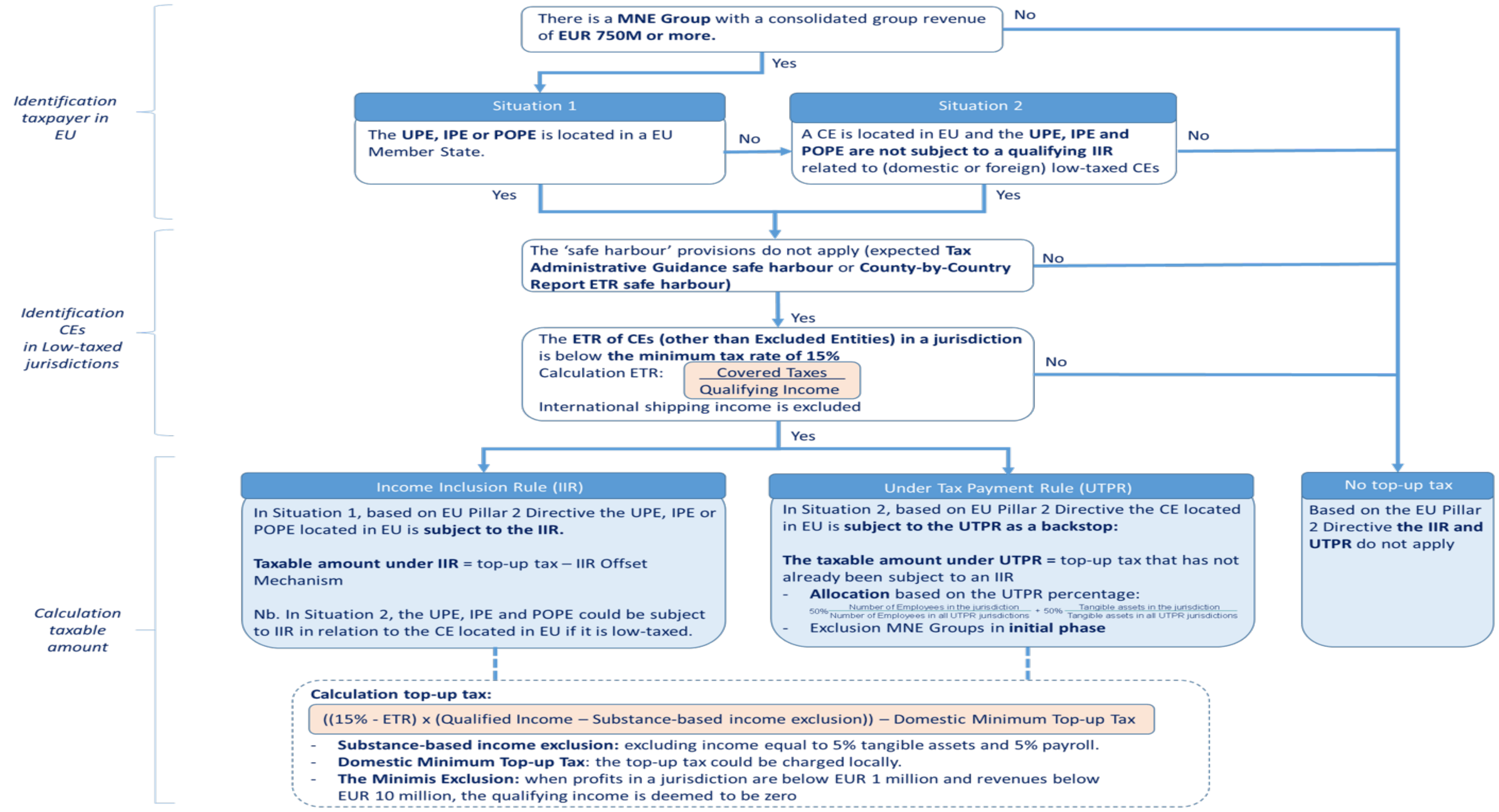
EU Minimum Tax Directive

- MS can elect to apply the top up tax domestically to CEs (QDTT)
- Allows the top up tax to be charged and collected in the jurisdiction in which the low level of taxation occurred, instead of collecting all the additional tax at the level of the ultimate parent entity
- Parent entity applying the IIR will be obliged to reduce, up to a minimum of zero, the IIR by the amount of the qualified domestic top up tax due by those CEs

EU Minimum Tax Directive

- Where a MS elects to apply a QDTT Tax this will operate on a ‘safe harbour’ basis - no further top-up tax liability will be calculated in another MS
- MSs can defer implementation of the rules where the ultimate parent entities of twelve or fewer multinational groups are in that MS
- Applicable from 31 December 2023

Flowchart from Directive



Key	
UPE	Ultimate Parent Entity
IPE	Intermediate Parent Entity
POPE	Partially Owned Parent Entity
UTPR	Under Taxed Payments Rule
CE	Constituent Entity
IIR	Income Inclusion Rule
ETR	Effective Tax Rate

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The Irish Experience

Ireland’s approach – The road (not so) less travelled

- *“We have engaged extensively at both OECD and EU level to ensure the agreed rules allow continued support for economic growth and prosperity, and also safeguarding our competitive tax regime for real and substantive activities in the State” (DOF)*

- Ireland is very much inside the tent, taking the approach that it is better to be involved, shaping the provisions, rather than be outside and have no input

Ireland's approach to transposing the Directive

- Directive provides the primary basis for the transposition of the minimum tax rules in Ireland. Will be transposed into Irish law via the autumn 2023 Finance Bill.

- Four key elements to the transposition,
  1. IIR
  2. UTPR
  3. QDTT
  4. Administration

Irish Approach – IIR

- Applies to:
  - Corporate groups (Multinational and domestic)
  - Ultimate parent entity is Irish resident and
  - Annual consolidated group revenue at least €750m in at least 2 of the previous 4years
- Top-up tax applies to the Irish parent and CEs located in Ireland or elsewhere
- Also applies to Irish intermediate parent entities of foreign-headquartered groups:
  - owned 20% or more by minority investors or
  - are controlled by parent entities not located in a jurisdiction that has introduced the IIR.
- IIR will impose a top-up tax on these parent entities based on their interests in subsidiaries and branches located in jurisdictions in which their ETR <15%
- ETR calculated on a jurisdictional basis, by reference to agreed rules

Irish Approach – UTPR

- Top-up tax collected where the IIR does not apply.
- Tax arising under the UTPR can be collected by other group entities regardless of whether or not they are parent entities.
- UTPR is allocated amongst jurisdictions where the group operates using an allocation key based on employee headcount and the value of tangible assets per jurisdiction, weighted equally.
- Comes into effect 1 year following the IIR

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Irish Approach – QDTT

- Under the Directive, each MS may elect to apply a QDTT to the CEs of a group located within its borders.
- Model Rules provide that a QDTT will be directly creditable against liabilities otherwise arising under the IIR and UTPR.
- The Directive provides that implementation of a QDTT by a MS is sufficient to satisfy the requirements of Pillar Two - and no further top-up is required in other MS.
- Each MS applying a QDTT becomes a ‘safe harbour’. A similar safe harbour is under consideration at the OECD.
  - Ireland’s 12.5% trading rate of corporation tax is < 15% minimum ETR
  - Ireland opting to introduce a QDTT
  - international adoption of a QDTT / QDMTT expected to be widespread.

Irish Approach – Administration

- Recital 20 of the Directive provides that: *"…the rules on a top-up tax should not operate as a tax levied directly on the income of an entity…"*
- No requirement for the top-up taxes to be part of a corporate tax regime.
- Open to jurisdictions to legislate for the top-up taxes under a corporate income tax system
- Majority of the respondents to the Public Consultation in Ireland requested that the administration of Pillar Two (e.g. pay and file obligations) be kept separate to the existing corporation tax regime.
- Irish Government have therefore proposed that the administration of the GloBE rules and the associated top-up taxes will be kept separate to the existing corporation tax regime.
- Interaction with double tax relief

Irish Approach – Administration

Step	Summary	Proposed Irish Approach
1	Registration	• 12 months from the end of the first Fiscal Year that the group, of which it is a member, is within scope of the GloBE rules • One off • Provisions for de-registration
2	File GIR	• “Information return” as opposed to a self assessment return • 15 months after the end of the fiscal year (18-month Transition Year).
3	File GloBE top up return	• Additional domestic top-up tax return for Irish CEs • Separate to existing CT return • 15 months after the end of the fiscal year (18-month Transition Year).
4	Pay any top up liabilities arising	• 15 months (18 months for transition period) • Not part of CT preliminary tax payments obligations.

Irish Approach – Excluded entities

(i) a governmental entity,

(ii) an international organisation,

(ii) a non-profit organisation,

(iv) a pension fund,

(v) an investment fund that is an ultimate parent entity, and

(vi) a real estate investment vehicle that is an ultimate parent entity,

Irish Approach – Exclusions

- **De minimis exclusion**
  - territorial exclusion from the top-up tax due where average qualifying revenue of all CEs of an MNE group or large-scale domestic group in that territory is less than (a) €10,000,000, and (b) the average qualifying income or loss of all CEs of an MNE group or large-scale domestic group in that territory is a loss or is less than €1,000,000.
- **Substance-based income exclusion (SIBE)**
  - Reduction of net qualifying income subject to top-up tax based on a measure of employee related expenses and percentage of tangible assets.
  - 10 per cent carve-out for payroll costs/ 8 per cent carve-out for tangible asset. The percentages then reduce annually over ten years, before settling at 5 per cent for each category
- **Safe harbours**
  - Provides for internationally agreed safe harbours from the application of top-up tax.

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Irish Approach – Challenges

- System changes
- Compliance requirements
- Financial statement disclosures re Pillar II
- Revenue audit – if QDTT OS 4 years Directive provides that the top up can be collected at parent level
- Tax Appeal/Court process
- Mergers/corporate restructuring

Useful Links

GloBE – Model rules	https://www.oecd-ilibrary.org/docserver/782bac33-en.pdf?expires=1697457464&id=id&accname=guest&checksum=563A7D26810B5AD2DF7B71F07B1BB14E
Commentary om the GloBE model rules	https://www.oecd-ilibrary.org/docserver/1e0e9cd8-en.pdf?expires=1697454817&id=id&accname=guest&checksum=E72C5B17A7426D03B9C82145934D8911
Pillar II Rules Fact Sheet	https://www.oecd.org/tax/beps/pillar-two-GloBE-rules-fact-sheets.pdf
EU Directive 2022/2523	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022L2523&from=EN

Agenda


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NONE OF THIS MAKES ANY SENSE! IT'S ALMOST AS IF THEY DON'T WANT ME TO UNDERSTAND!
MAYBE THAT'S WHY THEY CALL IT THE TAX CODE.

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Thank you