

STATES OF JERSEY



Jersey

DRAFT MULTINATIONAL TAXATION (GLOBAL ANTI-BASE EROSION – IIR TAX) (JERSEY) LAW 202- (P.53/2024): AMENDMENT

**Lodged au Greffe on 8th October 2024
by the Minister for Treasury and Resources
Earliest date for debate: 22nd October 2024**

STATES GREFFE

DRAFT MULTINATIONAL TAXATION (GLOBAL ANTI-BASE EROSION – IIR TAX)
(JERSEY) LAW 202- (P.53/2024): AMENDMENT

1 PAGE 23, ARTICLE 1 –

- (1) Delete the definition “currency guidance”.
- (2) For the definition “OECD commentary” substitute –
 - “ “OECD commentary” means –
 - (a) the consolidated commentary published on 25 April 2024 by the OECD as “Tax Challenges Arising from the Digitalisation of the Economy – Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023)”, as revised or re-issued from time to time; and
 - (b) all agreed administrative guidance published by the OECD after 25 April 2024 (to the extent that the guidance is not incorporated in a revised or re-issued version of the consolidated commentary referred to in sub-paragraph (a));”.

2 PAGE 25, ARTICLE 7 –

Delete paragraph (3).

3 PAGE 25, ARTICLE 8 –

Delete Article 8, and renumber the subsequent Articles and cross-references accordingly.

4 PAGE 25, ARTICLE 9 –

In paragraph (1), for “a constituent entity of the group” substitute “an entity included in the group”.

5 PAGE 25, ARTICLE 10 –

Delete Article 10, and renumber the subsequent Articles and cross-references accordingly.

6 PAGE 28, ARTICLE 17 –

- (1) In paragraph (1), after “fiscal year” insert “(subject to Rule 8.1.2)”.
- (2) In paragraph (2), delete “, (2)”.

7 PAGE 28, ARTICLE 18 –

Delete paragraph (2), and renumber the subsequent paragraph and cross-references accordingly.

8 PAGE 37, SCHEDULE 1 –

In paragraph 2, delete “qualified IIR (modified by Article 10)”.

MINISTER FOR TREASURY AND RESOURCES

REPORT

The amendments to the Draft Multinational Taxation (Global Anti-Base Erosion – IIR Tax) (Jersey) Law 202- (P.53/2024) will help ensure that the referenced provisions align with the OECD Pillar 2 GloBE Model Rules and accompanying guidance, as recently revised.

A small number of changes are required to the draft Income Inclusion Rule (IIR) Law as a result of new information regarding the OECD peer review process that has come to light since the lodging of the draft Law. We now have reference documents around the self-assessment form and instructions, as well as being able to see how other jurisdictions have begun completing the self-assessment form. This further informs the Government’s approach and in order to conform accordingly, the following changes are proposed:

1) **Modification of Article 1, definition of “OECD Commentary”:**

Proposal:

- (1) For the definition “OECD commentary” substitute –
“ “OECD commentary” means –
 - (a) the consolidated commentary published on 25 April 2024 by the OECD as “Tax Challenges Arising from the Digitalisation of the Economy – Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023)”, as revised or re-issued from time to time; and
 - (b) all agreed administrative guidance published by the OECD after 25 April 2024 (to the extent that the guidance is not incorporated in a revised or re-issued version of the consolidated commentary referred to in sub-paragraph (a));”.
- (2) Delete the definition “currency guidance”.

Reason for change:

Initially, the Government was seeking to maintain flexibility in how Jersey approached any future guidance issued by the OECD, as we wanted to maintain sovereignty and ensure that any new guidance was not detrimental to local industry. However, the peer review instructions now clarify that if a jurisdiction does not automatically incorporate new Pillar 2 guidance, it must do so within a 24-month period. Absent an ambulatory approach, this would require reversion to the States Assembly on a recurring basis to affirmatively adopt new guidance.

Therefore, the proposed change for the IIR only adapts the Law to provide for future OECD administrative guidance to be taken into account automatically, which will ensure that the Law remains consistent with the obligation under the Model Rules on an ongoing basis. This change further ensures that the Law will be viewed as in conformity with the Common Approach for purposes of the OECD peer review.

2) **Deletion of Article 7(3), “Filing Obligations”**

Proposal:

To delete the current text at Article 7(3):

- ~~“(3) Rule 8.1.2 does not apply and, accordingly, Rule 8.1.3 does not apply.”~~

Reason for change:

The deletion of paragraph (3) is meant to ensure that we fully apply the OECD Model Rules regarding filing requirements. As lodged, the draft would impose an additional filing requirement

beyond the Model Rules as Rule 8.1.2 allows for filing to be turned off if the return is made in another jurisdiction with a qualifying exchange agreement. Ensuring that Rule 8.1.2 has primacy will allow us to meet the conditions for the peer review.

3) Deletion of Article 8, “Administrative Guidance”

Proposal:

To delete the current text at Article 8:

“~~Rule 8.3.1 does not apply (but see Article 3).~~”

Reason for change:

This change is necessary as the Law intends to apply Rule 8.3.1 (consistent with the approach taken by the ambulatory approach for the definition of “OECD Commentary”) in order to ensure consistency for the OECD peer review.

4) Modification to Article 9, “Designated Local Entity”

Proposal:

To modify the language of Article 9(1) to:

“(1) The “designated local entity” of an MNE group is an ~~constituent~~ entity of included in the group that is –”

Reason for change:

This change is necessary to allow certain excluded entities the option to file a Global Anti-Base Erosion Regime (GloBE) Information Return with Jersey even if they are an excluded entity. This will provide Groups with flexibility and greater certainty in their filing options.

5) Deletion of Article 10, “Qualified Income Inclusion Rule”

Proposal:

To delete Article 10, which currently defines a Qualified IIR and also gives the Minister an Order power to add specific jurisdictions’ rules to the list.

Reason for change:

When the original Law was being drafted, it was not clear how the OECD would communicate which rules were deemed qualified, and whether the peer review process would lead to high-profile jurisdictions being determined to have non-qualified rules. However, the OECD now publishes the list of qualified IIRs, and the guidelines around peer review make it fairly certain that no major countries will be non-qualified. On that basis, there is no need for Jersey to maintain a separate list of qualifying jurisdictions.

6) Modification of Article 17, “Qualifying entity required to file GloBE information return”

Proposal:

Include a reference that Rule 8.1.2 supersedes the Article 17 filing requirement.

Reason for change:

This change is needed to provide legal certainty that Model Rule 8.1.2 supersedes the Article 17 requirement by a qualifying entity to file a GloBE information return (GIR). Without such clarity,

affected taxpayers may not have legal certainty about their filing obligation and the OECD peer review could inquire and come to the conclusion that Article 17 is out of step with the Model Rules.

7) Modification of Article 18 “Content and form of GloBE information return”

Proposal:

To delete the requirement in the Law that the financial information in the GloBE Information Return must be provided in pounds or translated into pounds.

Reason for change:

This change is needed to provide administrative simplicity in allowing the GloBE information return to be filed in the currency of the qualifying entity’s consolidated financial statements, as permitted by the OECD Model Rules and provided by a number of other jurisdictions. Otherwise, an entity would have to translate each data point in the GIR from its reporting currency to GBP, which is incredibly complex.

8) Deletion of Schedule 1, paragraph 2, “qualified IIR (modified by Article 10)”

Proposal:

To delete the reference to “qualified IIR” in the list of terms in Schedule 2 that have a meaning different from the Model Rules.

Reason for change:

This change is necessary as the term is no longer modified from the OECD definition (arising from deletion of Article 10).

Financial and staffing implications

There are no corresponding financial or staffing implications arising from these amendments.

Children’s Rights Impact Assessment

A Children’s Rights Impact Assessment (CRIA) has been prepared in relation to this proposition and is available to read on the States Assembly website.