OECD Pillar 2 Review

Submission – Anonymous

13 September 2024

We welcome the opportunity to participate in the review of the proposed OECD Pillar 2 legislation and to provide feedback to the Government of Jersey ("**GoJ**"). We note the Terms of Reference for the review are as follows:

1. **Conduct a comprehensive review of Propositions P.53/2024 (Draft Multinational Taxation (Global Anti-Base Erosion – IIR Tax) (Jersey) Law 202-) and P.54/2024 (Draft Multinational Corporate Income Tax (Jersey) Law 202-), with consideration to how the underpinning draft legislation and the Government of Jersey's approach for implementing the OECD Pillar 2 Framework provides the optimal outcome for Jersey.**
2. **Assess Jersey's proposed implementation of the OECD Pillar 2 Model Framework.**
3. **Evaluate the draft legislations' alignment with the Government's intended objectives and policy goals.**
4. **Assess the feasibility of the draft legislation for implementing the OECD Pillar 2 Framework, focusing on how it ensures that Jersey's approach can be practically implemented, including the evaluation of timelines, processes, and resource allocation.**

We are unable to comment at granular level on the Terms of Reference set out above and instead provide our comments on a wholesale basis.

The proposed approach to implementation appears to us to be consistent with previous published commitments from the GoJ. It is noted that there has been a divergence of approach to implementation across the Crown Dependencies, with Jersey choosing to introduce multinational corporate income tax (“**MCIT**”) rather than a Qualified Domestic Minimum Top-up Tax (“**QDMTT**”). A new domestic tax measure to sit alongside the existing corporate income tax system we feel is, for the reasons set out at point 1 below, overall a sensible approach, but we would welcome a discussion as to whether the GoJ has any concerns as to whether (i) the MCIT adds additional compliance burden to an in scope multinational enterprise ("**MNE**") group which has Constituent Entities in jurisdictions that have adopted QDMTT, (ii) another jurisdiction implementing the income inclusion rule ("**IIR**") would give credit for or recognition to MCIT paid by a Jersey Constituent Entity (as opposed to a QDMTT paid by a Constituent Entity in another jurisdiction), and (iii) whether the adoption of MCIT could be viewed negatively by other jurisdictions.

We are of the view that not implementing the Undertaxed Profits Rule ("**UTPR**") in Jersey is the correct approach. The popularity of Jersey holding structures and the attractiveness of Jersey as a jurisdiction for such holding structures would have, we believe, been impacted had this secondary top up mechanism being implemented such that this would have levied the top up tax right across group subsidiaries of MNEs. Whilst the UTPR would only be relevant once the IIR was exhausted, we think introduction of the UTPR could have been optically damaging.

The draft legislation must be read alongside the Model Rules[1], which necessitates a mapping exercise in order to be able to fully understand the legislation and what is being implemented or adapted. Defined terms have the meaning given by the Model Rules and so you must cross refer to the Model Rules when reading the domestic legislation. There is also cross referencing that needs to be done in relation to the "OECD commentary" and the "OECD June guidance". This is cumbersome and time consuming, although it is difficult to suggest an alternate approach which would achieve the same level of accuracy and adherence with implementation of international tax standards.

<u>Further input requested</u>

[1] Being the model rules published by the OECD on 20 December 2021 as "Tax challenges arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS"

We provide further views/comments on each of the following key areas identified:

1. **How the proposed legislation might affect day-to-day business operations, including administrative burdens and compliance costs. Insights into specific challenges or adaptations required by businesses would be valuable.**

As Pillar 2 is to be widely adopted by various jurisdictions, MNE Groups will inevitably face increased compliance costs as they grapple with the new rules in all their relevant jurisdictions. For Jersey, local corporate service providers to Jersey Constituent Entities may well need to take specialist advice, at least to start with, as to the approach to be taken. However, it may well be that this advice is centralised by an MNE Group that seeks co-ordinated advice from all relevant jurisdictions. There will be a teething period whilst top up taxes are calculated and the form of returns are engaged with and this will come with associated administrative burdens/costs.

As a general matter, as the OECD Model Rules were designed to be universally adopted, there is a saving with implementing the same rules in each jurisdiction. However, whilst MCIT is designed to borrow various concepts from QDMTT, it is not a QDMTT and so there is a possible concern that it could add a further compliance cost by requiring additional calculations. It may be that this additional cost is negligible.

2. **Any sector-specific impacts or concerns. The Panel is keen to understand how different sectors may be differently affected by the global minimum tax rate and related rules.**

We welcome the exclusion for certain investment entities, insurance investment entities and securitisation entities, including investment funds. To remain an attractive and competitive jurisdiction for these vehicles we consider the retention of tax neutrality for these structures to be the right approach. Maintaining the tax treatment of dividend income also goes to Jersey remaining an attractive jurisdiction for holding structures.

Whilst not sector-specific, we would welcome a discussion as to whether the GoJ has any concerns as to another jurisdiction implementing IIR would give credit for or recognition to MCIT paid by a Jersey Constituent Entity (as opposed to a QDMTT paid by a Constituent Entity in another jurisdiction).

3. **Your perspective on the consultation process conducted so far, including the clarity, transparency, and inclusiveness of the information provided by the government. Feedback on any perceived gaps in stakeholder engagement or areas where further consultation is needed would be helpful.**

We note that the GoJ has sought to engage with industry and stakeholders on this matter since April 2022 when the OECD Pillars 1 & 2 Tax Policy Reflections Paper was published. Since this date, we're aware that a wide range of stakeholders have been consulted with and multinational groups have been actively encouraged to engage with Jersey's tax policy team.

4. **The degree to which the proposed legislation aligns with international tax standards and best practices. The Panel seeks views on whether the legislation adequately addresses issues such as double taxation, and its potential impact on Jersey's international agreements and obligations.**

A feature of MCIT that is not shared with QDMTT is the local tax credit for certain controlled foreign company ("**CFC**") taxes suffered elsewhere in the MNE Group, such as the US's GILTI. We appreciate that this can be an attractive feature for certain MNE Groups, and are aware that at least one other jurisdiction is adopting a similar feature in its implementation of Pillar 2.

In our view the proposed legislation does adequately address double taxation, and in fact goes further as it seeks to mitigate the additional tax burden on MNE Groups that operate in jurisdictions which have CFC regimes that are not within the Pillar 2 framework.

That said, we repeat our above comment regarding the creditability of the MCIT at the level of an ultimate parent in a jurisdiction that has adopted IIR. An extension of this, is to also question whether

there is any concern that by adopting this feature, Jersey could be viewed unfavourably by jurisdictions who have adopted QDMTT.

5. **The potential impact on Jersey's competitive position as a financial centre. Considerations on how the OECD Pillar 2 measures may influence investment flows, employment, and the broader economic landscape in Jersey.**

It is apparent to us that the proposed approach to implementation could make Jersey more attractive to US businesses, by virtue of the tax credit applied for CFC taxes suffered elsewhere in the MNE Group, including the US's GILTI. We note that this follows the approach taken by Bermuda. As the MCIT seeks to give credit for certain CFC and GILTI taxes levied by jurisdictions that have not adopted an IIR, Jersey could benefit MNE groups that are headquartered in jurisdictions that have adopted their own CFC tax regimes, rather than Pillar 2. This would set Jersey apart from Guernsey and the Isle of Man where a QDMTT is being adopted and the credit offered by MCIT will not be available.

However, there are matters that need to be considered, which we have highlighted above, being (i) whether there could be a tax credit issue in an IIR jurisdiction, and (ii) whether not adopted QDMTT could be viewed negatively by other jurisdictions.

The exclusions in the Model Rules in respect of investment entities mean we expect most funds to be out of scope of Pillar 2, subject to the approach to consolidation for accounting purposes. This is good news for Jersey's funds industry, whilst adhering to international standards.

6. **Suggestions for how the government could effectively communicate and implement the new tax rules, including timelines, guidance for businesses, and support mechanisms for ensuring smooth compliance.**

Guidance notes to be produced, perhaps with flowcharts/FAQs, to communicate the changes in the most simplistic and clearest way possible. The OECD have their own guidance, and where Jersey's legislation reflects the Model Rules, this guidance can be used. However, unlike with the Common Reporting Standard, it will be difficult to adopt the OECD guidance wholesale, as adoption of the components of Pillar 2 is voluntary, and the MCIT wouldn't be covered by the OECD guidance and so Jersey specific guidance will need to be published in this area.

Further, one key area for guidance will be in relation to migrations. We note that the proposed legislation adopts (with some modifications) the location rules set out in Rule 10.3 of the Model Rules. Rule 10.3.6 states that where an entity changes its location during a fiscal year, it shall be treated as located in the jurisdiction where it was located at the beginning of the year. This overrides the general concept that a company migrating its tax residence in or out of Jersey becomes or ceases to be Jersey resident at the point of migration. It would be useful for industry to have guidance as to how that will work in practice, for example whether a Jersey company (being a Constituent Entity of a MNE Group) that migrates its tax residence out of Jersey during a tax year will not need to finalise its tax affairs at the point of migration as it will continue to remain Jersey tax resident for the rest of the year, and equally whether a non-Jersey company that migrates in during a tax year will need to file return as it should not be tax resident until the start of the next year.

We would welcome the opportunity to assist in the drafting of the guidance.

Other suggestions:

- Dedicated hotline or email address to support queries during transitional period.
- Working groups/drop-in sessions with Revenue Jersey?