OECD Pillar 2 Review

Corporate Services Scrutiny Panel

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States of Jersey
States Assembly

États de Jersey
Assemblée des États

Contents

Chair's Foreword

"Can you just sum it up really simply?"

So goes probably the most frequent question I've been asked about the OECD "Pillar 2" tax reforms that are the subject of this Scrutiny Review. There is an easy (if somewhat facetious) answer to this question, and that is: "£52 million", i.e. the sum of money that is the "base case" for expected annual revenue when Pillar 2 income starts to flow into the States coffers in 2026.

For most people in the Island, the single most important outcome of the adoption of Pillar 2 into Jersey law is that (in the short-term at least), Jersey will have a new and potentially very significant source of tax revenue. However, the aim of this report is to go a bit deeper into "Pillar 2" than merely to highlight the likely revenue implications.

The first thing to say is that Jersey finds itself in an exceptionally fortunate position. As a result of a change in the global tax regime—which originated with a desire to reduce the tax competitiveness of low tax jurisdictions—we are actually likely to end up as "winners" in terms of tax revenue (again with the qualification that it is unclear how revenues will develop further in the future).

It is not quite a magic money tree, but it is certainly a potentially significant windfall. Therefore, whilst there is likely to be much to argue over in the future in terms of how this unexpected windfall is spent, at this stage the absolute priority for Jersey is to get the legislation right. That means implementing Pillar 2 in a way that complies with OECD expectations whilst not damaging Jersey's competitiveness as an international finance centre and also maintaining our reputation as a good place in which to do business.

The Pillar 2 legislation was only lodged on August 14th, with an expected States debate scheduled for Oct 1st. The panel is grateful to the Ministers for agreeing to defer the debate until Oct 22nd, to allow time for Scrutiny to do its work and produce this report. Even with the extension, the deadline to consider the legislation and all the complex issues that it raises is exceptionally tight.

It is worth noting that whilst the percentage of Jersey registered businesses that will be affected by Pillar 2 is small, they are of considerable economic significance and strategic importance to the island. Furthermore, the legislation raises far reaching questions about Jersey's future as an international finance centre. It is fair to say that whilst we are embarking on a journey well prepared for what lies immediately ahead, where the road will eventually lead and how Jersey will fare as it traverses the developing international tax landscape is far less certain.

It is clear from the panel's discussions with key stakeholders and Government officers that there has been sustained, thorough, and thoughtful engagement with those entities likely to be "in scope" of the new Pillar 2 tax regime. Our view is that the resulting implementation of Pillar 2—as encapsulated in the new law—has been well designed, and steers an appropriate line between implementation of the OECD rules, whilst using the flexibility inherent in the

OECD's "common approach" to create a detailed Jersey-specific law that responds to the needs of the island's finance industry.

Following engagement with stakeholders, the OECD and many other jurisdictions, Jersey has taken a number of key decisions. Perhaps the most important is to implement the 15% minimum tax rate through a new tax (the Multinational Corporate Income Tax or "MCIT") rather than adapting the existing zero/ten regime, or using the OECD's off-the-shelf tax (perfectly within the rules, by the way). This has the advantage of putting all in-scope companies in a separate tax regime, so they do not have to try and interpret their tax liabilities through both the zero/ten and the Pillar 2 lenses. It also has the advantage that a separate system of tax credits can be created of potential benefit particularly to US companies because they are already subject to a 21% minimum tax rate (under the existing US version of a global minimum tax rate).

In short, Jersey's implementation allows US entities to reduce their Jersey tax liability if they can show that they have already paid appropriate tax in the USA through the US tax system. This is likely to prove attractive to US companies, and the hope is that it will encourage them to stay in Jersey. But it also opens the possibility that over time more US companies may be attracted to come to Jersey. This possibility needs to be handled with care. There is a risk that even though Jersey is operating within the rules, it may be perceived as too aggressive in exploiting the flexibility in implementation allowed under OECD "common approach".

Conversely, there are those who argue that Jersey is on the road to ruin now that we have chosen to abandon our zero/ten regime (for large, in-scope companies). The fear is that as a global minimum tax rate bites, large companies based in Jersey will have less reason to stay or move here, because the obvious tax advantage has disappeared. It is of course impossible to tell how Pillar 2 is going to play out, and there may be further moves in the direction of global taxation over the next few years. However, a point not to be overlooked is that Jersey's carefully designed approach to Pillar 2 shows that in fact it is still possible to design a competitive tax regime, even within the limits laid down by the OECD Pillar 2 system.

Finally, some thanks. I am grateful to my fellow panel members for their thoughtful engagement with the issues and their wise counsel in panel discussions. Panel officers worked incredibly hard and under a great deal of time pressure to support the panel and finish the report in time for lodging. Government Officers and Ministers were extremely helpful in providing briefings and answering questions, helping the panel navigate the complexities of the Pillar 2 landscape.

Jonathan Renouf

Deputy Jonathan Renouf
Chair of the OECD Pillar 2 Sub-Panel

Executive Summary

The Sub-Panel has conducted a comprehensive review of the Organisation for Economic Co-operation and Development (OECD) Pillar 2 proposals presented by Government of Jersey. Formally known as the Global Anti-Base Erosion (GloBE) proposal, this initiative seeks to ensure that multinational enterprises (MNEs) pay a minimum level of tax on the income they earn in each jurisdiction. By establishing a global minimum tax rate, Pillar 2 aims to reduce tax avoidance and promote a fairer distribution of tax revenues, particularly benefiting developing economies.

Given Jersey's status as a prominent financial centre, the Sub-Panel examined how these reforms directly affect the Island. To align with OECD standards, Government of Jersey (Government) has proposed a unique policy response, adjusting its domestic tax policies, including corporate tax rates and compliance requirements. The Sub-Panel scrutinised this approach to assess how successfully it aligns Jersey with global standards while maintaining the Island's competitive edge and reputation as a well-regulated jurisdiction.

The Sub-Panel believes that adopting OECD Pillar 2 standards is essential to maintaining Jersey's reputation and global standing. Additionally, the Sub-panel believes this alignment may offer growth opportunities by positioning Jersey as a compliant and forward-thinking jurisdiction in the international financial services sector. This review aims to evaluate Jersey's approach to assess the extent to which it strikes a balance between compliance, competitiveness, and innovation in an evolving tax landscape.

Global Context for International Tax Reform

The Sub-Panel has closely examined the global context in which the OECD Pillar 2 framework operates, noting the substantial changes in international tax reform over recent decades. The report highlights that corporate tax rates have consistently declined globally, with the average worldwide statutory corporate tax rate falling from 40.18% in 1980 to 23.45% in December 2023. This trend, largely driven by larger firms, has resulted in a competitive environment where jurisdictions compete to attract MNEs by lowering tax rates. The Sub-Panel discusses evidence that this "race to the bottom" has not only diminished public revenues required for essential services but has also exacerbated social inequalities and weakened democratic institutions, particularly in developing countries.

The Sub-Panel's analysis of the OECD Pillar 2 framework indicates that it is designed to address these challenges by establishing a global minimum tax rate for MNEs with revenues above a certain threshold. By curbing profit shifting to low-tax jurisdictions, the framework aims to create a level playing field that particularly benefits developing nations. The Sub-Panel recognises that failing to adopt these measures could lead to significant reputational risks and potential loss of tax revenues for non-participating jurisdictions.

Additionally, the Sub-Panel took into account the commitment of major economic blocs such as the United Kingdom (UK) and the EU to implement the Pillar 2 framework, which marks a significant step towards a unified global effort to reduce tax avoidance. Despite criticisms about its applicability to diverse business structures and sectors, the Sub-Panel explored the ambition of the Pillar 2 Model Rules to offer a more straightforward and equitable approach compared to previous international tax regulations. The framework encourages developing countries to reassess the value of tax incentives and to adopt tax practices that offer better money raising potential, which the Sub-Panel understands to be an important component of the global reform efforts.

The establishment of a global minimum tax rate is intended to mitigate the pressures created by tax competition, allowing countries with higher average tax rates to sustain their revenue streams. The Sub-Panel acknowledges that the OECD's efforts represent a major step forward, but ongoing collaboration and adjustments will be required to ensure that the desired outcomes are achieved.

Jersey's Legislative Proposals

The Sub-Panel has thoroughly scrutinised the implementation of the OECD's Pillar 2 framework in Jersey, which has culminated in the drafting of Propositions P.53/2024 and P.54/2024. These legislative proposals seek to introduce the Income Inclusion Rule (IIR) and a domestic Multinational Corporate Income Tax (MCIT) to ensure that MNEs pay a minimum level of tax. The Sub-Panel acknowledges that Jersey's bespoke approach has been informed by extensive consultation with stakeholders, including tax experts, finance industry representatives, the OECD, many other jurisdictions and affected taxpayers.

The Sub-Panel's examination of Government's strategy highlights its focus on flexibility in implementation. Recognising the importance of maintaining Jersey's position as a competitive international finance centre, Government engaged with a core group of senior industry representatives over a four-year period.

The Sub-Panel reviewed the Draft Multinational Corporate Income Tax Law (P.54/2024), which complements the IIR Law (P.53/2024) by imposing a local corporate income tax. This dual approach aims to avoid double taxation and ensure consistency across jurisdictions. The Sub-Panel recognises that this strategy allows Jersey to align with international standards while tailoring its tax policies to support its own economic strategy. The Sub-Panel has noted Government's emphasis on aligning with the OECD framework, while avoiding the Undertaxed Profits Rule (UTPR), as a strategic decision to maintain competitiveness without imposing unnecessary tax burdens.

The Sub-Panel has examined the key objectives of the draft legislation, which include ensuring Jersey's long-term commitment to international tax alignment, selecting a policy design suitable for Jersey's economic position, and supporting the growth of the financial services sector. By avoiding the UTPR, the Sub-Panel acknowledges that Government aims to minimise bureaucracy and ensure that tax liabilities are managed locally, enhancing the Island's attractiveness to MNEs.

The Sub-Panel has identified that Government's bespoke approach to adoption of the OECD Pillar tax regime presents bother opportunities and challenges. A bespoke approach may enhance Jersey's appear to certain MNEs, but the Sub-Panel cautions that it may also invite scrutiny off-Island. We have emphasised the importance of continued collaboration with the OECD and ongoing monitoring to ensure that Jersey's implementation remains effective and fully aligned with global expectations.

Implementation and Practical Considerations

The Sub-Panel has reviewed the preparations required for the successful implementation of Pillar 2 in Jersey, acknowledging that it will necessitate significant investment in resources, infrastructure, and guidance. During the review, the Sub-Panel learned that Revenue Jersey is actively preparing for this transition by developing tailored IT systems and establishing a dedicated Pillar 2 unit. This unit, which will be staffed by officials with expertise in tax, accounting, and dispute resolution, aims to provide targeted support to in-scope groups. The Sub-Panel has highlighted that the creation of these resources is intended to ensure Jersey can meet the complex compliance demands of Pillar 2 while maintaining high standards of customer service.

The Sub-Panel also considered the role of the Income Forecasting Group, which is expected to review the approach to forecasting Pillar 2 revenues again in 2025. As the projected economic impact remains uncertain, the timeline for receiving tax data on revenue receipts is expected to begin at the end of May 2026 and extend through to November 2027. The Sub-Panel recognises that given the evolving nature of Pillar 2 and the emergence of alternative international tax initiatives, such as those proposed by the United Nations, ongoing assessment and transparency will be crucial to managing risks and maintaining industry confidence.

In its review, the Sub-Panel learnt about Revenue Jersey's efforts to support compliance, including the development of a new IT portal designed to provide a streamlined interface for Pillar 2 taxpayers. Additionally, the Sub-Panel has noted the active development of guidance materials, including frequently asked questions, to offer clarity to businesses affected by the reforms. This guidance is intended to evolve as the OECD updates its recommendations, ensuring that Jersey’s approach remains aligned with global best practices.

The Sub-Panel recognises that much of the preparatory focus has been on the financial services sector, given its significant contribution to Jersey's economy. However, the Sub-Panel has stressed the importance of monitoring the potential impact of Pillar 2 on non-financial sectors. To ensure these groups are not disproportionately affected, the Sub-Panel recommends ongoing engagement with stakeholders across all sectors, advocating for a balanced approach in the implementation phase.

Economic Impact and Competitiveness

The Sub-Panel has examined the anticipated financial impact of the OECD Pillar 2 framework in Jersey, acknowledging that while the impact is expected to be significant, it remains uncertain. Government has adopted a prudent approach to revenue forecasting, with an initial estimate of £52 million in the Proposed Budget for 2025-2028. The Sub-Panel notes that this base case figure has been described as a "reasonable but probably prudent estimate," reflecting the uncertainty around how much additional tax revenue will be generated by Pillar 2. The Sub-Panel has highlighted that the evolving nature of Pillar 2 and potential behavioural responses from MNEs necessitate a cautious approach, focusing on strengthening reserves rather than committing revenues to recurring expenditures.

The Sub-Panel supports the Fiscal Policy Panel's (FPP) endorsement of this strategy, noting the FPP’s emphasis on using Pillar 2 revenues to bolster reserves, particularly in light of the current depletion of the Stabilisation Fund. The Sub-Panel agrees with the FPP’s recommendation that any additional revenues generated by Pillar 2 (over and above the “base case”) should not be allocated to recurring expenses but instead invested in medium-term economic stability, recognising the need for a financial buffer against potential economic uncertainties.

To safeguard Jersey's competitive position, the Sub-Panel reviewed the establishment of the new International Competitiveness Political Working Group, which includes key stakeholders such as the Chief Minister, Ministers for External Relations and Treasury and Exchequer, and representatives from the financial services sector. The Sub-Panel acknowledges that this group will oversee efforts to maintain a competitive and growth-friendly environment, including initiatives to enhance customer service for Pillar 2 taxpayers, invest in productivity and digital capacity, and develop incentives such as the Qualifying Refundable Tax Credit (QRTC) system.

The Sub-Panel also evaluated Jersey's proactive approach to implementing both the IIR and the MCIT, contrasting this with the more cautious stances adopted by Guernsey and the Isle of Man. The Sub-Panel recognises that Jersey's willingness to differentiate itself through ambitious implementation demonstrates a strong commitment to maintaining its competitive position within an evolving global tax landscape. However, the Sub-Panel has also identified risks associated with this proactive stance, underscoring the importance of ongoing monitoring and adaptation to ensure that Jersey remains attractive to MNEs while mitigating any potential challenges.

International Landscape and Further Considerations

The Sub-Panel has reviewed the broader international landscape surrounding the implementation of Pillar 2, noting that the process has been marked by significant debate and negotiation. Initial resistance came from countries such as Ireland, Hungary, and China, which secured various carve-outs and reservations. The Sub-Panel acknowledges that these carve-outs have been criticised for potentially undermining the original aims of the global tax deal. Critics argue that such exemptions may continue to incentivise profit shifting and provide advantages to tax havens and MNEs, rather than benefiting developing nations.

Jersey's active participation in international tax reform, including its attendance at OECD forums and ministerial engagements, was recognised by the Sub-Panel as a clear demonstration of the Island's commitment to aligning with global tax standards. However, the Sub-Panel has highlighted that Jersey's position as a sub-sovereign entity with its own seat at the OECD places the Island under heightened scrutiny. The Sub-Panel stressed the importance of ensuring that Jersey's domestic policies, such as Controlled Foreign Company (CFC) rules and QRTCs, do not conflict with OECD guidelines or create perceptions that Jersey is facilitating tax avoidance.

The Sub-Panel also examined challenges arising from international dynamics, including the United States of America's (US) hesitancy to fully adopt Pillar 2 due to its political climate. Additionally, the development of a new global tax convention by the United Nations, which is supported largely by developing nations, was identified by the Sub-Panel as an indicator of a push towards a more inclusive and equitable global tax framework. The Sub-Panel recognises that Jersey must carefully navigate this complex landscape, balancing its alignment with OECD policies while managing potential diplomatic and economic repercussions.

A significant challenge noted by the Sub-Panel is the absence of a fully developed dispute resolution mechanism within the OECD framework. Differing interpretations of Pillar 2 rules could lead to conflicts involving Jersey. The Sub-Panel emphasised the need for proactive risk management, recommending that Government closely monitor MNE behaviour, work to prevent tax avoidance, and prepare for potential disputes to ensure that Jersey's financial sector remains resilient.

The Sub-Panel's review resulted in 12 key findings and 7 recommendations. These can be viewed in the section below.

Key Findings and Recommendations

KEY FINDING 1 The reputational risk associated with non-implementation was a key factor in Government's decision-making process.

KEY FINDING 2 The Sub-Panel have identified that a primary objective of the draft legislation is to prevent Jersey from being used as a conduit for base erosion and profit shifting. By implementing both the Income Inclusion Rule (IIR) and the Multinational Corporate Income Tax (MCIT), Jersey ensures comprehensive coverage against tax avoidance strategies.

KEY FINDING 3 The design of the legislation aims to safeguard Jersey from any possible criticism by extensively leveraging the model rules and terminology used by the Organisation for Economic Co-operation and Development (OECD), rather than designing its own system.

KEY FINDING 4 Government has displayed a commitment to aligning closely with the model rules whilst ensuring provisions are in place that allow Jersey to remain competitive internationally. However, such an approach presents both opportunity and challenges. While tailored adjustments may enhance Jersey's attractiveness to certain multinational enterprises (MNEs), using the flexibility within the common approach could invite scrutiny and affect international perceptions of the jurisdiction's tax regime.

KEY FINDING 5 Effective implementation of Pillar 2 requires substantial investment in resources, infrastructure, and guidance. The establishment of a dedicated international tax policy team within Revenue Jersey, the development of tailored IT systems, and the creation of a customer service unit specifically for Pillar 2 taxpayers are positive steps toward meeting these needs.

KEY FINDING 6 Government's approach has developed to provide a greater sense of caution as an Amendment to P.53/2024, lodged on 8th October, removed its initial intention to produce guidance independently from the Pillar 2 Model Rules and Commentary. The Sub-Panel welcomes this intention to provide a greater depth of alignment with the Model Rules.

KEY FINDING 7 From discussions with stakeholders, the Sub-Panel understands that Government's stakeholder feedback process has been consulted in a manner that was both professional and considerate of industry, with its implementation generally viewed positively. This level of engagement must continue throughout implementation as the Sub-Panel has identified that providing clear, accessible guidance and support to businesses is crucial, particularly given the complexity of the new tax framework.

KEY FINDING 8 The anticipated fiscal impact of Pillar 2 on Jersey is significant but uncertain. Government's prudent approach to revenue forecasting, focusing on strengthening reserves rather than committing Pillar 2 revenue to recurring expenditures, is appropriate given the unpredictability of multinational enterprises' future behaviour and global implementation patterns.

KEY FINDING 9 Jersey has adopted a more proactive approach to its ambitious implementation of the Pillar 2 framework compared to Guernsey and the Isle of Man, demonstrating a willingness to differentiate itself to maintain its competitive position.

KEY FINDING 10 Government has made maintaining Jersey as a financial centre a central aim of its approach to Pillar 2. Strategies such as developing tax credits, enhancing customer service for in-scope groups, and investing in initiatives to boost productivity, digital capacity, and skills within the financial services sector are crucial to ensure Government meets its aims.

KEY FINDING 11 The development of incentives in the form of tax credits aims to strengthen Jersey's position as a competitive and attractive international finance centre. While there is uncertainty as to what the impact will be, it provides Government with the ability to develop unique elements that can drive its competitiveness.

KEY FINDING 12 The potential for international disagreement is fuelled by the current lack of a fully developed dispute resolution mechanism within the Organisation for Economic Co-operation and Development (OECD) framework. Differing interpretations and implementations of Pillar 2 rules across jurisdictions could lead to conflicts involving Jersey. Without clear mechanisms to resolve such disputes, Jersey may find itself embroiled in international tax controversies that could be damaging to its financial sector and broader economy.

RECOMMENDATION 1 The Minister for Treasury and Resources should closely monitor the impact of the Multinational Corporate Income Tax (MCIT) to ensure compliance with global standards and make timely adjustments if required. The review of the MCIT should be undertaken annually, with consideration given to new developments that may impact the robustness of the legislation as well as its suitability for Jersey, with a formal report on compliance and impact to be submitted by Q1 each year to the Council of Ministers.

RECOMMENDATION 2 To monitor the impact of the taxation changes on non-financial sectors as implementation of the Pillar 2 regime progresses, the Minister for Treasury and Resources should initiate an impact assessment and reporting function specifically for the in scope non-financial sectors by Q2 2025, followed by biannual reporting to identify any emerging issues.

RECOMMENDATION 3 To produce clear and accessible guidance and support for businesses, stakeholder engagement throughout the implementation process for the Pillar 2 regime should be upheld. The Minister for Treasury and Resources jointly with the Minister for External Relations should undertake quarterly forums with in-scope stakeholders to review the Pillar 2 implementation progress to deliver updated guidance. Stakeholder forums should commence as soon as possible, by the latest Q1 2025, and guidance documents based on the feedback received should be updated by the end of each quarter.

RECOMMENDATION 4 The Minister for Treasury and Resources should consider how to ensure additional tax revenues are used to strengthen reserves, as recommended by the Fiscal Policy Panel.

RECOMMENDATION 5 Minister for Treasury and Resources should ensure that implementation of the Pillar 2 regime is monitored closely, with periodic support provided to multinational enterprises (MNEs), and establish a helpdesk for MNEs by Q1 2025 to provide tailored assistance during the transition and review the effectiveness of support services annually.

RECOMMENDATION 6 The Minister for Treasury and Resources should consider providing clarity and consultation regarding any spending on "increasing competitiveness," especially given the global sensitivity on this issue. This should include the requirement for public consultation before allocating funds towards increasing competitiveness initiatives. This should result in the publishing of an annual spending breakdown starting in 2025, explaining the purpose and expected impact of each expenditure.

RECOMMENDATION 7 The Minister for Treasury and Resources should proactively identify and address potential risks associated with the new Pillar 2 framework by monitoring multinational enterprises' behaviour, preventing tax avoidance strategies, and preparing for possible international disputes and dispute resolution. Additionally, it is crucial for Jersey to offer a favourable business environment, which includes not only competitive tax rates but also ease of doing business, efficient regulatory processes, and high-quality support services. The Minister should progress these considerations and identify a team to take on the responsibility to develop a risk assessment analysis by Q1 2025, and further publish an annual risk report to identify emerging challenges and provide recommendations for mitigation.

Chapter 1 - Introduction

The OECD Pillar 2 initiative represents a significant advancement in international tax reform, aimed at addressing the challenges posed by globalisation and digitalisation. The initiative, formally known as the Global Anti-Base Erosion proposal, is part of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) (the 'framework'). It seeks to ensure that MNEs pay a minimum level of tax on the income they earn in each jurisdiction, thereby reducing opportunities for tax avoidance and enhancing global tax fairness.

Pillar 2 establishes a global minimum tax rate that applies to profits of MNEs above a certain threshold, regardless of where they are headquartered or operate. This initiative aims to level the playing field by curbing profit shifting to low or no-tax jurisdictions and ensuring that all countries, including developing economies, can collect a fair share of tax revenues.

The implementation of a global minimum tax rate will have significant implications for Jersey's economy, regulatory framework, and its competitive position for in-scope MNEs. To align with new OECD standards, Jersey has chosen a bespoke policy response, which involves adjusting its domestic tax policies, including altering corporate tax rates and compliance requirements for in scope companies.

Given the importance of this global initiative, a Sub-Panel was established under the umbrella of the Corporate Services Scrutiny Panel with two additional co-opted members, to ensure focused and targeted scrutiny of the proposals. This review represents the opportunity to conduct a comprehensive analysis of the implementation strategy proposed by Government, ensuring the legislation and strategy deliver the optimal outcome for the Island.

As outlined in this report, Government believes—and the Sub-Panel agrees—that adopting OECD Pillar 2 standards is essential for maintaining Jersey's reputation and global standing. Additionally, it presents potential growth opportunities for Jersey to innovate and diversify its financial services offerings by positioning itself as a compliant and forward-thinking jurisdiction.

Further to the presentation of the Propositions, on 8th October 2024 two separate sets of Amendments were lodged by the Minister for Treasury and Resources to P.53/2024 and P.54/2024. In summary, these amendments brought Government's proposals further in-line with the OECD Model Rules, which Government have informed is to reflect the latest OECD guidance.

As part of the Sub-Panel's review, it received eight submissions (three of which were received in confidence), conducted a public hearing with the Minister for Treasury and Resources and Minister for External Relations, hosted four private meetings and wrote to both Ministers with a series of enquiries. The evidence gathered, alongside further research, provided the Sub-Panel with the information presented in this report on the following key areas, each of which is covered in a separate chapter:

Global Context for International Tax Reform

This chapter delves into the global context and rationale behind international tax reform. It examines the historical trend of declining corporate tax rates and the resulting "race to the bottom" in tax competition among jurisdictions. The chapter discusses the adverse effects of this trend on global tax fairness, particularly for developing nations. It provides an overview of the OECD's Pillar 2 framework, explaining its key mechanisms like the IIR and the UTPR, and how they aim to establish a global minimum tax rate to curb profit shifting and enhance global tax fairness.

Jersey's Legislative Proposals

Focusing on Jersey's proposed laws—Propositions P.53/2024 and P.54/2024—the chapter summarises the key provisions and legislative approach for implementing the OECD's Pillar 2 framework. It outlines the primary objectives of the draft legislation, such as compliance with international standards, safeguarding Jersey's economic model, and enhancing its reputation as a well-regulated international finance centre. The chapter also analyses how Jersey has adapted the OECD Model Rules to suit its unique legal and economic environment.

Implementation and Practical Considerations

This chapter addresses the practical aspects of implementing the new tax legislation in Jersey. It presents the resource allocation and infrastructure readiness required for successful implementation, including upgrades in resourcing, infrastructure, and guidance. The chapter discusses the establishment of dedicated teams within Revenue Jersey, development of new IT systems, and the importance of effective stakeholder engagement. It emphasises the methods and extent of engagement with businesses, advisers, and other stakeholders, highlighting the provision of guidance and support to facilitate compliance and address concerns.

Economic Impact and Competitiveness

Analysing the anticipated effects of the new tax legislation on Jersey's economy, this chapter explores potential changes in tax revenue, impacts on businesses, and broader economic considerations. It discusses the projected economic impact, acknowledging uncertainties and Government of Jersey's ('Government') prudent approach to revenue forecasting. The chapter further explores strategies and measures Government can adopt to remain an attractive destination for international business despite changes in the global tax landscape. It highlights the development of a QRTC system as a key tool for maintaining competitiveness and encouraging economic growth.

International Landscape and Further Considerations

This chapter examines Government's engagement with international bodies, other jurisdictions, and its efforts to align with global tax standards, including collaborative initiatives and diplomatic considerations. It identifies potential risks and challenges associated with implementing the new tax framework, both domestically and internationally. The chapter explores strategies for managing these risks, emphasising proactive risk management to mitigate negative outcomes, address uncertainties, and ensure the resilience of Jersey's tax system and economy in the face of global changes.

Chapter 2 – Global Context for International Tax Reform

2.1 Global Context and Rationale

The global landscape for international tax reform has undergone significant change over the past few decades. In particular, the trend towards declining corporate tax rates has prompted international bodies and jurisdictions to seek more robust mechanisms to address base erosion and profit shifting.

Over the past 43 years, corporate tax rates have consistently declined globally. In 1980, the unweighted average worldwide statutory tax rate was 40.18 percent. In December 2023, the average statutory rate stood at 23.45 percent—a 42 percent reduction.[1] A submission received by the Sub-Panel argues that, by the same token, evidence has shown that large firms are more likely to engage in tax avoidance activities (e.g., the use of tax havens). Hence, these propensities over the last decades have led to a competitive environment where jurisdictions vie to attract MNEs by offering lower tax rates.[2]

The OECD has identified that this "race to the bottom" has resulted in "strong pressure [for developing countries] to offer tax incentives to attract foreign investment" that "prevents jurisdictions from raising tax revenues from MNE affiliates." Further, it states that "often these incentives have been wasteful and offered poor value for money."[3]

> *"As well as boosting inequality this general race to the bottom in areas like tax erodes democracy, subsidises unproductive rent-seeking, weakens national safety nets, kills jobs by subsidising capital at the expense of labour, allows elites to escape the rule of law, and reduces productivity and economic growth. Tax wars bite all countries – but harm developing countries particularly hard."*[4]

The "race to the bottom" not only diminishes the tax revenues of nations but also exacerbates social inequalities and undermines democratic institutions. By enabling large corporations to exploit tax loopholes, wealth becomes increasingly concentrated among developed nations, while the broader population bears the brunt of reduced public services and economic opportunities.

The OECD Pillar 2 framework ('the framework') has been identified as a "common approach rather than a hard and fast international standard,"[5] which provides countries with options in choosing their preferred form of implementation. This flexibility allows jurisdictions to implement the guidelines in the way they believe is best provided they align with the overall framework. It also means that jurisdictions have the choice of not implementing. However, the current sentiment internationally means there is significant reputational risk in not adopting

[1] Tax Foundation - Corporate Tax Rates around the World, 2023 - 12 December 2023
[2] Submission - OECD Pillar 2 Review - Ha-Phuong Luong (Aston University) - 24 September 2024
[3] OECD – 2024 Progress Report on Tax Co-operation for the 21st Century – May 2024 – p.22
[4] Tax Justice Network – Tax competition and the race to the bottom – 14 November 2020
[5] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024

these measures. Further, due to the interlocking nature of the framework that ensures MNEs are tax liable, it would result in the tax revenue being lost to another jurisdiction.

The framework has been in development for a number of years but has only recently become a reality as the first implementations of the GloBE Model Rules came into force at the beginning of 2024.[6] Additionally, a growing number of jurisdictions have announced that they intend to implement various forms of Pillar 2, with a "critical mass" expected to have systems in place from 2025.[7] The majority of jurisdictions that have committed to international tax reform are aligned with the OECD, which has made the biggest strides in developing a global minimum tax in comparison to alternative projects such as the US-designed Global Intangible Low-Taxed Income (GILTI) and ongoing developments from the United Nations.[8]

These recent strides come after years of debate and negotiations to reach an agreed framework, with an acknowledgement that the framework will require ongoing work to ensure it meets the intended outcomes. The commitment of major economies such as the UK and EU to Pillar 2 signify a significant step towards a unified global effort to curb tax avoidance and establish a level playing field between developed and developing countries,[9] who have historically been more exposed to profit-shifting than developed countries.[10]

The development of the global minimum tax is seen as an improvement on previous rules that were "frequently both complicated and difficult for lower capacity jurisdictions to administer."[11] It is also hoped that it will "provide incentives for developing countries to shift their use of tax incentives towards those that offer better value for money."[12] However, the scheme is not without its criticisms, particularly as regards to its interaction with developing countries and lack of authority.[13]

Nevertheless, the establishment of a global minimum tax rate is a major step in curtailing the relentless competition between jurisdictions to offer the lowest corporate tax rates. By setting a tax floor, Pillar 2 should mean that even developing countries with higher average tax rates can maintain their revenue streams without succumbing to the pressures of tax competition.

2.2 Overview of the OECD Pillar 2 Framework

The Pillar 2 Model Rules provide a significant and meticulously designed legislative template to facilitate jurisdictions in adopting a standardised approach within their domestic law.[14] Although the OECD has set out Model Rules, implementation allows each country to choose its own path, provided it stays within the spirit of the rules. This flexibility ensures that

[6] OECD – 2024 Progress Report on Tax Co-operation for the 21st Century – May 2024 – p.16
[7] P.53/2024 – Draft Multinational Taxation (Global Anti-Base Erosion – IIR Tax) (Jersey) Law 202- - 14 August 2024
[8] United Nations - Why the world needs a UN global tax convention - 16 August 2024
[9] OECD – 2024 Progress Report on Tax Co-operation for the 21st Century – May 2024 – p.21
[10] Ibid. – p.21
[11] Ibid. – p.21
[12] Ibid. – p.22
[13] Oxfam International - OECD tax deal is a mockery of fairness: Oxfam - 8 October 2021
[14] P.53/2024 – Draft Multinational Taxation (Global Anti-Base Erosion – IIR Tax) (Jersey) Law 202- - 14 August 2024

jurisdictions can tailor the rules to fit their unique legal and economic contexts while maintaining consistency across borders.

Pillar 2 consists of domestic rules collectively known as the GloBE rules. The GloBE rules apply to MNEs meeting a €750 million revenue threshold, excluding government, non-profit, and specific investment entities.[15] Top-up taxes are allocated through a jurisdictional effective tax rate (ETR) test, with a minimum rate of 15%. Transitional rules provide temporary exemptions for MNEs starting international activities.[16]

Carve-outs include a substance-based exclusion for a percentage of income tied to tangible assets and payroll, phased over ten years, and exclusions for low-revenue jurisdictions, international shipping income.[17]

The interconnected design of the rules ensures that the global minimum tax is effectively enforced across jurisdictions. Even if one country does not implement the IIR and domestic minimum tax rules, other participating nations can apply the UTPR to capture under-taxed profits, thereby maintaining the integrity of the global tax system. In effect, this means that a jurisdiction choosing not to implement Pillar 2 simply loses the potential tax revenue to another jurisdiction that is participating. From an MNE perspective, there is no gain to locating within a jurisdiction that has not implemented Pillar 2, because they will simply have to pay the tax accruing in a different jurisdiction.

The establishment of a €750 million revenue threshold was a result of extensive debates within the OECD, balancing the need to include significant MNE groups while avoiding undue burdens on smaller entities. Despite some jurisdictions advocating for a lower threshold, consensus was reached to align with existing country-by-country reporting standards, ensuring consistency and practicality in implementation. The emphasis remains on faithfully implementing the agreed-upon rules, allowing time for these measures to integrate seamlessly into domestic tax systems and for jurisdictions to adapt to their practical implications.[18]

> *"I think the safeguard for us as a tax authority and a jurisdiction is that these rules fundamentally work off consolidated financial statements, which is new; that is a kind of new methodology. It is a question of fact as to whether the auditors say that if you have consolidated financial statements and those consolidated financial statements show that you have global turnover of over €750 million, then de facto you are within the rules. That process has all of the auditing that has gone behind it, so that there is a lot of reliance can be placed on that."*[19]

Additionally, the use of consolidated financial statements, verified by rigorous auditing processes, serves as a critical safeguard in the Pillar 2 framework. This ensures that the revenue thresholds and tax obligations are accurately assessed, reducing the potential for manipulation and enhancing the framework's overall reliability.

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[15] OECD – Tax Challenges Arising from Digitalisation of the Economy - Global Anti-Base Erosion Model Rules (Pillar 2): Inclusive Framework on BEPS – 20 December 2021

[16] OECD - Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy – 8 October 2021

[17] Ibid.

[18] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024

[19] Ibid.

Despite the comprehensive design of the Pillar 2 Model Rules, the Sub-Panel was informed of criticisms regarding their applicability to diverse business structures. These criticisms were somewhat addressed during a public hearing where it was shared that the OECD acknowledges there are limitations and is committed to providing ongoing guidance to ensure the rules are effectively implemented across various contexts, thereby enhancing their inclusivity and practicality.[20] These criticisms highlight the complex challenges involved in implementing a global initiative designed to achieve widespread benefits while mitigating various risks. The Sub-Panel acknowledges these issues, which will be further examined throughout this report.

[20] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024

Chapter 3 - Jersey's Legislative Proposals

3.1 Introduction to Propositions P.53/2024 and P.54/2024

The implementation of the OECD's Pillar 2 framework in Jersey has been an ongoing piece of work for Government over the past four years,[21] culminating in the drafting of Propositions P.53/2024 and P.54/2024. These Propositions are designed to implement the IIR as well as an underlying domestic MCIT, as permitted under the OECD's Common Approach.

In April 2022, Government published the "Pillars 1 & 2 Policy Reflections Paper," which shared information on the OECD's two-pillar project and sought feedback on key policy questions. Government reported that stakeholder comments received were instrumental in shaping subsequent policy design choices. In May 2023, Jersey, alongside the other Crown Dependencies, issued a Joint Statement on Pillar 2, signalling a unified approach to the implementation. This collaboration continued in May 2024 with a further Joint Update, followed by individual Implementation Updates from each Crown Dependency in August 2024.[22]

The Sub-Panel was informed that Government had collaborated with a core group of senior Jersey industry representatives to review the evolving details of the Pillar 2 regime. As part of these efforts, Government held numerous one-on-one confidential meetings between impacted groups, their advisers, and Revenue Jersey to discuss specific circumstances, and these interactions often included senior industry representatives and impacted groups, with some engaging in multiple meetings over the years.

Additionally, the Sub-Panel was informed that confidential Ministerial meetings with industry and advisory groups were conducted in 2024 and in May-June 2024, key impacted groups and their advisers were consulted on the draft legislation, and the detailed feedback received was used to refine Propositions P.53/2024 and P.54/2024 before they were lodged in August 2024.[23]

In terms of how the two Propositions work, the Draft Multinational Corporate Income Tax Law (P.54/2024) complements the IIR Law (P.53/2024) by imposing a local corporate income tax, ensuring that MNEs pay a minimum tax rate on Jersey profits. The MCIT Law aligns with the OECD Model Rules, considered to be essential by Government, to ensure that Jersey remains fully compliant with the Pillar 2 regime.[24]

It is Government's belief that its approach—as shared by the Minister for Treasury and Resources and Minister for External Relations—to Pillar 2 emphasises flexibility, in the belief that this allows Government to tailor its implementation strategy whilst remaining within the OECD framework. This was discussed during the public hearing as the Minister for External Relations (who is also the Assistant Minister for Treasury and Resources) stated "what has ended up is what is called a common approach rather than anything else. So that means that

[21] Letter – Minister for Treasury and Resources and Minister for External Affairs to OECD Pillar 2 Sub-Panel – 2 October 2024
[22] Ibid.
[23] Ibid.
[24] P.53/2024 – Draft Multinational Taxation (Global Anti-Base Erosion – IIR Tax) (Jersey) Law 202- - 14 August 2024

there is flexibility in how jurisdictions can implement their Pillar 2 framework."[25] Additionally, during the public hearing with the Minister for Treasury and Resources and Minister for External Relations ('the Ministers'), the Sub-Panel learnt that there has been extensive collaboration with the OECD to develop a "real deep understanding of a positive implementation pathway."[26]

> *"All the work that they have undertaken at the OECD., which I think has given us in Jersey a real deep understanding of a positive implementation pathway. They have also done a lot of data analysis and colleagues in Revenue Jersey to understand those in scope companies in Jersey, what they do, where they are, what profits are earned here, where they are headquartered, what group structures they have."*[27]

As part of the Sub-Panel's review, it has learnt of Government's consultation efforts that took place with stakeholders and the OECD, which highlights Government's recognition of the significance of getting its approach to Pillar 2 right. Submissions received identify the Island's longstanding policy of alignment with international standards and reputation as a well-regulated international finance centre,[28] [29] which emphasises the importance attached to successful implementation by local stakeholders.

The Sub-Panel notes that the proposed legislation extensively references the OECD Model Rules on Pillar 2. These measures within the Model Rules are designed to ensure that MNEs operating globally pay a fair minimum tax rate, thereby contributing to the global effort to curb base erosion and profit shifting.

3.2 Objectives of the Draft Legislation

In a letter received from the Ministers, the key criteria in designing the Propositions were maintaining Jersey's long-term commitment to alignment with international tax initiatives whilst ensuring consideration is given to its own policy aims and long-term strategy. In this letter, Government emphasises its commitment to adhering to the OECD's Pillar 2 framework as outlined in the GloBE Model Rules and Commentary:

> *"The design of the Pillar 2 implementation policy for Jersey and the drafting of the accompanying P.53/2024 and P.54/2024, was developed very carefully over the past four years and was based on a number of key criteria:*
>
> - *Jersey's long-term commitment to alignment with international tax initiatives. In the case of the Pillar 2 15% GloBE (Global Anti-Base Erosion) minimum tax regime, this means aligning with the OECD Common Approach as set out in the GloBE Model Rules and Commentary.*

[25] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024
[26] Ibid.
[27] Ibid.
[28] Submission - OECD Pillar 2 Review - Jersey Financial Services Commission - 10 September 2024
[29] Submission - OECD Pillar 2 Review - Jersey Finance - 3 September 2024

- *Selecting an appropriate policy design for Jersey's economic position as a competitive International Finance Centre with a global book of business.*

- *Supporting our long-term strategy for growing our Financial Services sector and securing new business flows from growth markets like the US.*

- *Alignment with Jersey's Tax Policy Principles agreed by the States Assembly and reproduced at Appendix 1."*[30]

In this letter, Government outlines its intention to ensure that Jersey participates in global efforts to address base erosion and profit shifting and contribute to a fairer and more transparent international tax environment, whilst also protecting Jersey's economic model as a competitive international finance centre. Further, Government has prioritised flexibility within the Pillar 2 framework in its ambition to tailor its implementation strategy and produce legislation that supports Jersey's economic objectives without imposing unnecessary tax burdens.

The secondary mechanism of the Pillar 2 framework, UTPR, applies to "any top-up tax remaining after the application of the IIR is exhausted, collected by the means of the backstop UTPR."[31] Jersey's approach aims to ensure that the new domestic minimum tax is collected locally, providing the ability to manage bureaucracy and processes in such a way that negates the need for other jurisdictions to impose any IIR or UTPR top-up taxes on in-scope Jersey profits. This was proposed to align with Jersey's broader economic model, but the Sub-Panel identified that this approach differs to that of some other jurisdictions.

> *"…one of the proposals under the OECD proposals that we are not introducing is the under-taxed profits rule. The reason we are not introducing that is back to your point about what our economic model is, not adding any additional layer of tax in Jersey that we do not need to. Therefore, we are saying we are not going to add the under-taxed profit rule because that is not in line with our economic model."*[32]

Essentially, Government is seeking to ensure that tax is paid by in-scope companies in Jersey, but without pursuing any additional top-up tax liabilities on Jersey profits beyond what is domestically required. An anonymous submission determined this to be "the correct approach" due to the impact it would have had on Jersey's attractiveness as a jurisdiction for certain business areas:

> *"We are of the view that not implementing the "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.*

[30] Letter – Minister for Treasury and Resources and Minister for External Affairs to OECD Pillar 2 Sub-Panel – 2 October 2024

[31] P.53/2024 – Draft Multinational Taxation (Global Anti-Base Erosion – IIR Tax) (Jersey) Law 202- - 14 August 2024

[32] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024

Whilst the UTPR would only be relevant once the IIR was exhausted, we think introduction of the UTPR could have been optically damaging."[33]

The notion of not implementing Pillar 2 was dismissed as "nonsensical"[34] during the public hearing, as the Sub-Panel was extensively advised on the reputational risks associated with non-implementation. This will remain a broad theme throughout the report as we explore how Jersey and other jurisdictions attempt to implement Pillar 2 in the most effective possible manner. Competitiveness will also be discussed in relation to the specific routes chosen for implementation.

To remain informed of the international landscape, Government has monitored international developments and engaged collaboratively with affected stakeholders including in Jersey, the UK and the US "to ensure the most appropriate technical design of the policy and implementation."[35] A key policy principle is to maintain existing business and ensure a 15% effective tax rate is paid on their Jersey profits, which necessitates measures to minimise double taxation where they occur. The measures to maintain business from the US, in particular, are designed to ensure that a 15% tax rate (and not substantially more), is paid on the Jersey in-scope profits. The Sub-Panel understands that over time this could prove attractive to US-based entities and may therefore result in a potential increase in US business.

Although Government's focus on the importance of remaining competitive has been clear, it is also clear that a primary objective of the draft legislation is to prevent Jersey from being used as a conduit for base erosion and profit shifting, as per the Model Rules. By implementing both the IIR and MCIT, Government hope to ensure comprehensive coverage against tax avoidance strategies:

"The legislation contained herein demonstrates the Government's commitment to implementing the OECD framework while maintaining an attractive business environment."[36]

Government has recognised that tax policies must evolve in response to changing economic conditions, as seen by the legislation's ability to be adjusted in future. Ministers informed the Sub-Panel that this adaptability aims to ensure that Government can respond to emerging challenges and opportunities to maintain the relevance and effectiveness of tax legislation over time:

"The results of those objectives are what we have now got in the model rules and our objective is in effect to give effect to those model rules here in Jersey in a way that means that we can maintain sovereignty, which is why we have gone for a domestic covered tax [MCIT]. We can remain flexible as this process unfolds, because we know that there is still some guidance which is being worked on and only this last week there has been other guidance published. It also allows us, in the way that we have published the legislation and the approach that we have taken, to manage the bureaucracy and the processes, thereby giving us, I think, a competitive advantage. So high-level objective is to

[33] Submission - OECD Pillar 2 Review - Anonymous - 13 September 2024
[34] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024
[35] Ibid.
[36] P.53/2024 – Draft Multinational Taxation (Global Anti-Base Erosion – IIR Tax) (Jersey) Law 202- - 14 August 2024

deliver the model rules, but in a way which (a) is best for Jersey and also allows us to be flexible and competitive."[37]

The Sub-Panel recognises that the design of the legislation aims to safeguard Jersey from any possible criticism by extensively leveraging the model rules and the terminology of the model rules, which, according to the Minister for External Relations, was "felt [to be] the safer position."[38] This approach shows that Government has drafted legislation with consideration given to that common approach. Government believes that any such risk is addressed by the fact that the legislation is directed linked to the OECD Guidance on Blended Controlled Foreign Company regimes, transitional in nature and subject to a 50% cap.

KEY FINDING 1 The reputational risk associated with non-implementation was a key factor in Government's decision-making process.

KEY FINDING 2 The Sub-Panel have identified that a primary objective of the draft legislation is to prevent Jersey from being used as a conduit for base erosion and profit shifting. By implementing both the Income Inclusion Rule (IIR) and the Multinational Corporate Income Tax (MCIT), Jersey ensures comprehensive coverage against tax avoidance strategies.

KEY FINDING 3 The design of the legislation aims to safeguard Jersey from any possible criticism by extensively leveraging the model rules and terminology used by the Organisation for Economic Co-operation and Development (OECD), rather than designing its own system.

3.3 Jersey's Interpretation of the Model Rules

There are some permissible modifications and additions that Government have proposed in the IIR legislation[39] that require further examination from the Sub-Panel:

- **Article 3** of the proposed law states that the Comptroller must "have regard to" the OECD commentary when determining liability or penalties under the Law. The Sub-Panel believes that further consideration should be given to the potential for subjective interpretation of the law by Jersey authorities. How Jersey's subjective interpretation might impact global consistency in tax enforcement is not discussed.
- **Article 7** changes simplify the filing obligations for MNE groups operating in Jersey, reducing the administrative burden and ensuring that entities only need to focus on a single consolidated filing when a qualifying entity exists. While Article 7 disapplies the requirement for each constituent entity to notify the Comptroller, Article 16 ensures that the Comptroller still receives the necessary information, maintaining effective oversight.
- **Article 9** modifies the definition of "designated local entity" in Rule 10.1 to grant the Comptroller greater authority in determining which entity will serve as the designated local entity for an MNE group. This will require a transparent process to counter the possible influence of MNEs.
- **Article 11** modifies how the location of an entity is determined, particularly for flow-through entities, which differs from the OECD's Rule 10.3. In relation to the possibility of this providing structuring advantages for some MNEs, Government have advised that this will

[37] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024
[38] Ibid.
[39] P.53/2024 – Draft Multinational Taxation (Global Anti-Base Erosion – IIR Tax) (Jersey) Law 202- - 14 August 2024

not be the case as the modification in Law prevents potential tax leakage by mandating the reverse hybrid entities are deemed located in Jersey.

In addition to the above modifications, Article 37 provides for the States Assembly to amend the definitions, should the need arise.[40]

Government's distinctive modifications to the OECD Model Rules present both opportunities and challenges. As with any changes to domestic tax regimes, because of Pillar 2, all jurisdictions will be scrutinised by the OECD and peers to ensure outcomes are consistent with the Pillar 2 framework. While tailored adjustments may enhance Jersey's attractiveness to certain MNEs, modifications to domestic tax regimes because of Pillar 2 could invite scrutiny by Jersey's OECD peers if the outcomes are perceived to be inconsistent with the Pillar 2 framework. The Sub-Panel believes that balancing local economic benefits with the need for global compliance must remain a critical consideration for ongoing tax policy development.

In its evidence gathering, the Sub-Panel was anonymously informed that Jersey's bespoke approach brought an element of risk due to the potential of appearing unduly advantageous to some in-scope entities. During the public hearing, Government acknowledged that "there is a potential substantial upside"[41] to the approach taken (in terms of its attractiveness to some in scope entities). The Sub-Panel has been informed by Government that it has taken significant steps to be transparent with the OECD and other jurisdictions about its approach to the implementation of Pillar 2.

Nonetheless, the motivations behind the initial development and implementation of Pillar 2 may result in Jersey, in addition to other International Finance Centres, being perceived negatively due to competitive elements in its approach. Government believes that these risks are addressed by the direct link from the legislation to the agreed OECD Guidance on Blended CFC regimes and by the fact that the proposed legislation is in line with the Common Approach.

The Sub-Panel also understands there are concerns locally regarding the penalties stipulated in the Propositions, with some believing they are unnecessarily high and exceed the OECD guidance. Although the Sub-Panel believes they appear to align with the Model Rules, Government must remain conscious of any fears or concerns amongst local businesses.

Overall, the Sub-Panel believes that the effect of Government's two Propositions is to align with the OECD Model Rules. Ultimately, Jersey's alignment will be measured by the OECD and so the Sub-Panel supports continued collaboration to ensure Jersey meets the necessary standards for what will remain an evolving piece of work.

KEY FINDING 4 Government has displayed a commitment to aligning closely with the model rules whilst ensuring provisions are in place that allow Jersey to remain competitive internationally. However, such an approach presents both opportunity and challenges. While tailored adjustments may enhance Jersey's attractiveness to certain multinational enterprises (MNEs), using the flexibility within the common approach could invite scrutiny and affect international perceptions of the jurisdiction's tax regime.

[40] P.53/2024 – Draft Multinational Taxation (Global Anti-Base Erosion – IIR Tax) (Jersey) Law 202- - 14 August 2024
[41] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024

Chapter 4 - Implementation and Practical Considerations

4.1 Resource Allocation and Infrastructure Readiness

To implement Pillar 2 successfully there will need to be considerable upgrades in resourcing, infrastructure and guidance in Revenue Jersey. The legislation, if approved, will come into effect in 2025 but the timeline for beginning to receive tax data on revenue receipts will be the end of May 2026 through to the end of November 2027.[42]

The Sub-Panel has learnt that there are a number of parallel workstreams currently underway that Government hopes will ensure that resources and infrastructure are in place to meet the demands of Pillar 2. This includes a new I.T. system "specifically tailored" for Pillar 2 and a dedicated Pillar 2 unit within Revenue Jersey that will work with in-scope groups.[43]

> *"We are looking at our I.T. (information technology) system that we are going to need to procure a new kind of top class I.T. system that will be specifically tailored for Pillar 2 businesses. At the minute we are doing some business process analysis work which will lead to a tender that will need to then go out for the I.T. system, so that work is happening. We are going to set up a dedicated Pillar 2 unit within Revenue Jersey, so it will be a unit that will be staffed by officials with different types of accounting and tax experience and dispute experience to look after the groups, and it will include rulings and guidance that we are working on, frequently asked questions."*[44]

In preparation of the legislation coming into effect, the Sub-Panel understands that Revenue Jersey receives confidential OECD Country-by-Country Reporting (CbCR) data containing information about the population of in-scope multinational groups that are subject to Pillar 2. Government informed the Sub-Panel that this has provided the ability to "carry out some analysis of the degree to which many impacted groups are embedded in the Jersey economy, their tax contribution and the flight risk of certain taxpayers."[45]

Government also advised the Sub-Panel that it had identified that the financial services sector was the largest contributing sector to the Jersey economy and contained the largest cluster of in-scope Pillar 2 groups, and so the work carried out by Government to address the competitiveness of Jersey's economy is primarily focused in this sector.[46] However, the Sub-Panel believes that there is potential for non-financial sector in-scope entities to be more adversely affected, as they may not have received the same level of attention. The impact on

[42] Letter – Minister for Treasury and Resources and Minister for External Affairs to OECD Pillar 2 Sub-Panel – 2 October 2024
[43] Ibid.
[44] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024
[45] Letter – Minister for Treasury and Resources and Minister for External Affairs to OECD Pillar 2 Sub-Panel – 2 October 2024
[46] Ibid.

non-financial sectors should be monitored to carefully consider the impact of Pillar 2 on these groups as implementation progresses, ensuring a balanced approach across all sectors.

> *"Impacted businesses are highly sophisticated taxpayers with professional advisors and in-house personnel. Nevertheless, they will require support from Revenue Jersey to deal with the implementation of Pillar 2."*[47]

The extent of the provisions to support implementation of Pillar 2 as well as businesses affected was explained in a letter to the Sub-Panel from the Ministers:

"i) Revenue Jersey customer service for Pillar 2 groups

- *Revenue Jersey intends to ensure that excellent customer service is a differentiating factor in Jersey's implementation of Pillar 2.*
- *A new customer service unit is being established in Revenue Jersey which will be dedicated to Pillar 2 taxpayers – to support them through implementation and on an on-going basis.*
- *The unit will be staffed by specialist officers with Pillar 2 tax technical knowledge, Pillar 2 accounting knowledge and operational expertise. Some of these staff are already in place and more will be recruited over 2025 and 2026.*
- *Revenue Jersey is already providing assistance to taxpayers who have approached them for technical support. The new IT Portal Revenue Jersey Guidance and FAQs*

ii) The new IT Portal

- *Revenue Jersey has begun development work on a new IT Portal that will provide the simplest possible interface for Pillar 2 taxpayers to deal with Jersey's Multinational Corporate Income Tax (MCIT) and the Income Inclusion Rule (where applicable).*
- *Over the next two-three months, all Pillar 2 business processes will be identified and mapped systematically. This information can then clearly inform the Invitation to Tender process for the procurement and design of the new IT solution that will underpin the portal.*

iii) Revenue Jersey Guidance and FAQs

- *Revenue Jersey is working with stakeholders to publish guidance that will accompany P.53/2024 and P.54/2024. This guidance will be a living document that evolves over time, as the OECD guidance evolves and as implementation takes place globally.*
- *In the early stages of developing this guidance, Revenue Jersey will focus on providing as much clarity as possible on the questions that are most frequently being asked by businesses and advisers. These FAQs will be published on the coming weeks on a dedicated webpage that Revenue Jersey is developing."*[48]

[47] Letter – Minister for Treasury and Resources and Minister for External Affairs to OECD Pillar 2 Sub-Panel – 2 October 2024
[48] Ibid.

Government shared in its letter that this work has a proposed allocation of £4m with anticipation of a further Business Case being presented to the Minister for Treasury and Resources in time to be considered for the Proposed Budget in 2026 which will seek further funding needed to fully deliver all aspects of the administration for Pillar 2 taxes.[49]

Further work through the coordination of a Minister-led tripartite group will also be carried out "to improve the attractiveness of the island's business environment, economic growth and long-term prosperity."[50]

> *"We have got lots of these work streams will, ultimately, filter up into [the tripartite] group. We have got the review of the regulatory environment; that comes under the auspice of that. We have got the tax credit, Qualifying Refundable Tax Credit, the design of that will be done in Revenue Jersey but it comes up under that group. We have got things strategic that we are thinking about but also things tactical, some short term and others much longer."*[51]

Despite the analysis described by Government, the administrative burden on businesses is still not yet fully known. The Sub-Panel was informed that there are about 1,400 in-scope companies in Jersey,[52] which implies a significant increase in demand on Revenue Jersey's resources. In an anonymous submission received by the Sub-Panel, the potential burden on businesses was explored, highlighting the necessity for support:

> *"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. … 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."*[53]

While the Sub-Panel recognises the significant resources that MNEs are likely to have, it should also be recognised that there is a considerable amount of additional filing with such a broad and complex set of compliance demands such as Pillar 2. As part of its intentions to compete on customer service, Government should remain aware of teething problems for MNEs and display a supportive approach.

Regarding Pillar 2 revenues during this period, the Sub-Panel understands that the Income Forecasting Group will review the approach to the forecasting again in 2025.[54] The Sub-Panel believes that this will be a crucial piece of work as the projected economic impact is currently largely unknown and this will continue for many years to come, not only as Pillar 2 matures,

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[49] Letter – Minister for Treasury and Resources and Minister for External Affairs to OECD Pillar 2 Sub-Panel – 2 October 2024
[50] P.53/2024 – Draft Multinational Taxation (Global Anti-Base Erosion – IIR Tax) (Jersey) Law 202- - 14 August 2024
[51] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024
[52] Ibid.
[53] Submission - OECD Pillar 2 Review - Anonymous - 13 September 2024
[54] Letter – Minister for Treasury and Resources and Minister for External Affairs to OECD Pillar 2 Sub-Panel – 2 October 2024

but as alternative initiatives such as the United Nations' approach to international tax reform[55] continue to develop.

While the Sub-Panel understands that Government believes it is unlikely that the current base case approach will change significantly until there is clearer sight of actual Pillar 2 tax data in 2026/27,[56] it is of the view that maintaining transparency and keeping industry informed will alleviate any concerns that might damage business. It has been informed that information will be communicated by Government through the Budget process in the usual way,[57] but adopting a more consistent approach might be prudent.

KEY FINDING 5 Effective implementation of Pillar 2 requires substantial investment in resources, infrastructure, and guidance. The establishment of a dedicated international tax policy team within Revenue Jersey, the development of tailored IT systems, and the creation of a customer service unit specifically for Pillar 2 taxpayers are positive steps toward meeting these needs.

RECOMMENDATION 1 The Minister for Treasury and Resources should closely monitor the impact of the Multinational Corporate Income Tax (MCIT) to ensure compliance with global standards and make timely adjustments if required. The review of the MCIT should be undertaken annually, with consideration given to new developments that may impact the robustness of the legislation as well as its suitability for Jersey, with a formal report on compliance and impact to be submitted by Q1 each year to the Council of Ministers.

RECOMMENDATION 2 To monitor the impact of the taxation changes on non-financial sectors as implementation of the Pillar 2 regime progresses, the Minister for Treasury and Resources should initiate an impact assessment and reporting function specifically for the in scope non-financial sectors by Q2 2025, followed by biannual reporting to identify any emerging issues.

4.2 Stakeholder Engagement and Guidance

The expected evolution of Pillar 2 over the years will necessitate continuous engagement with stakeholders to ensure that their needs are met with appropriate support measures and guidance. Since Pillar 2 has been announced there has been a single package of amendments to the Propositions and that the guidance issued by Government will be "living, breathing and evolving."[58]

> *"As with any new international initiative, Pillar 2 is likely to evolve over the coming years and the Government will be continuing its engagement work throughout this time. There are likely to be modifications and amendments required to the Pillar 2 legislation as it evolves; in fact, Ministers advised the sub-Panel of some early clarificatory amendments that will be lodged in the coming days, following ongoing OECD clarifications and stakeholder feedback since P.53/2024 and P.54/2024 were lodged. This is a normal part of*

[55] United Nations - Why the world needs a UN global tax convention - 16 August 2024

[56] Letter – Minister for Treasury and Resources and Minister for External Affairs to OECD Pillar 2 Sub-Panel – 2 October 2024

[57] Ibid.

[58] Ibid.

implementing such major change and is being experienced by all jurisdictions involved. The Legislation and guidance will be kept under continuous review."[59]

In the initial Proposition (P.53/2024), a modification within the legislation, Article 8, reduced reliance on the OECD guidelines to produce guidance for local MNEs.[60] It is the Sub-Panel's understanding that this would have placed additional administrative burden on Revenue Jersey. However, Article 8 was subsequently removed in an Amendment lodged on 8th October, which alongside other changes,[61] further aligned Government's proposals with the OECD Model Rules. The Sub-Panel welcomes this Amendment to progress towards greater unification with the Model Rules, however, still believes it is critical to ensure that the unique challenges faced by local MNEs are addressed.

> *"Yes, we will be publishing guidance. It is going to be living, breathing and evolving guidance. We are going to start early with key immediate questions for people and then over the coming months we have worked out tables of contents for this guidance and we will be putting in our frequently asked questions and constantly modifying it. We do not want to wait until we finish guidance to publish anything."*[62]

Government have advised that its consultation with stakeholders has been extensive, and instrumental in developing the legislation and the Sub-Panel believes that these efforts should continue as both Government and businesses get to grips with implementation. Such efforts should include requesting and responding to feedback received in developing key questions and continually developing the table of contents for the guidance. While Government have informed that roughly 50% of in-scope groups have been engaged in the process so far,[63] all in-scope groups should be actively encouraged to share their feedback.

In addition to working closely with in-scope groups, the Sub-Panel believes that consideration must be given to how this will be perceived publicly. Such a large piece of work that poses significant changes to the economy will raise questions throughout the community and the necessity of communicating these changes is therefore extremely important.

The difficulty in deciphering the legislation is discussed in a submission received for the review and explains how "the draft legislation must be read alongside the Model Rules, which necessitates a mapping exercise to be able to fully understand the legislation and what is being implemented or adapted. … 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."[64]

The submission notes that Jersey's unique position on implementation necessitates specific guidance. Government is also encouraged to provide infographics, frequently asked

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[59] Letter – Minister for Treasury and Resources and Minister for External Affairs to OECD Pillar 2 Sub-Panel – 2 October 2024

[60] P.53/2024 – Draft Multinational Taxation (Global Anti-Base Erosion – IIR Tax) (Jersey) Law 202- - 14 August 2024

[61] P.53/2024: Amendment - Draft Multinational Taxation (Global Anti-Base Erosion – IIR Tax) (Jersey) Law 202- - 8 October 2024

[62] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024

[63] Ibid.

[64] Submission - OECD Pillar 2 Review - Anonymous - 13 September 2024

questions, a dedicated hotline, and information on best practices with specific examples where applicable.[65]

Further, the Sub-Panel heard privately that newer, smaller businesses should be included in Government's consultation. Although in-scope groups have rightly been the target of Government's consultation efforts so far, it may be worth contacting companies who are slightly outside the current thresholds to understand how it impacts their business activity. The Sub-Panel raised questions on this during the public hearing and found that there are many unknowns around what the behavioural changes by in-scope, and those entities on the fringes of the threshold, might be, so the Sub-Panel believes it would be sensible to consider the wider impact of Pillar 2.

KEY FINDING 6 Government's approach has developed to provide a greater sense of caution as an Amendment to P.53/2024, lodged on 8th October, removed its initial intention to produce guidance independently from the Pillar 2 Model Rules and Commentary. The Sub-Panel welcomes this intention to provide a greater depth of alignment with the Model Rules.

KEY FINDING 7 From discussions with stakeholders, the Sub-Panel understands that Government's stakeholder feedback process has been consulted in a manner that was both professional and considerate of industry, with its implementation generally viewed positively. This level of engagement must continue throughout implementation as the Sub-Panel has identified that providing clear, accessible guidance and support to businesses is crucial, particularly given the complexity of the new tax framework.

RECOMMENDATION 3 To produce clear and accessible guidance and support for businesses, stakeholder engagement throughout the implementation process for the Pillar 2 regime should be upheld. The Minister for Treasury and Resources jointly with the Minister for External Relations should undertake quarterly forums with in-scope stakeholders to review the Pillar 2 implementation progress to deliver updated guidance. Stakeholder forums should commence as soon as possible, by the latest Q1 2025, and guidance documents based on the feedback received should be updated by the end of each quarter.

[65] Submission - OECD Pillar 2 Review - Anonymous - 13 September 2024

Chapter 5 - Economic Impact and Competitiveness

5.1 Projected Economic Impact

The projected financial impact of Pillar 2 tax revenues is likely to be the headline concern for the wider public and, given the significant unknowns that lie ahead, might explain the conservative approach taken by Government so far in forecasting revenue for the years ahead. In the Proposed Budget 2025-2028, a base case figure of £52m is provided that was described to the Sub-Panel as a "reasonable but probably prudent estimate."[66]

The Sub-Panel was further informed that this prudent approach by Government took into consideration the difficultly of forecasting the tax revenue with so many unknowns lying ahead, both internationally and locally.

> *"As the Pillar 2 regime is still in its inception phase and the pace and manner of its global roll out can vary in accordance with the OECD Common Approach, multinational groups affected by Pillar 2 may still be determining their behavioural response.*
>
> *…*
>
> *Therefore, the approach taken to the forecasting of Pillar 2 revenues has been to forecast the tax revenue that the Government is reasonably confident will be received on a recurring basis. The degree of confidence in the level of recurrence of these receipts is important because the purpose of tax forecasting is to produce an estimate of the revenues available for Government for current spend, capital and to invest in Reserves."*[67]

While it was acknowledged in the public hearing that "tax revenues may be considerably higher than the Base Case," the uncertainty around this potential upside has resulted in the decision "not to try to estimate the upside tax revenues in the Budget," but notably there is a commitment that this "will be kept under review."[68] The Sub-Panel, whilst recognising the potential upside, also highlights the potential downside, as some MNEs may not need or want to stay in Jersey once a global minimum tax rate is established, particularly due to the associated costs in comparison with other jurisdictions.

This approach by Government to the Pillar 2 income forecast has been endorsed by the Fiscal Policy Panel, in its recently published Annual Report:

> *"In May 2024, the Government announced it would adopt the OECD Pillar 2 tax regime from 2025. This will introduce a 15% minimum tax framework to multi-national enterprises with annual global revenues of at least €750 million and is expected to generate additional corporate income tax revenue for Jersey. This*

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[66] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024

[67] Letter – Minister for Treasury and Resources and Minister for External Affairs to OECD Pillar 2 Sub-Panel – 2 October 2024

[68] Ibid.

global tax change can be expected to create some uncertainty and could negatively affect the competitiveness of large businesses in Jersey and some behavioural change can be expected.

Given the uncertainty about how much additional tax revenue will be raised by Pillar 2 in the short and medium term, the Panel supports the decision of the Government in not including Pillar 2 tax revenues in its main forecast and in not using these to fund expenditure. It also supports the Budget proposal that any upside additional revenues from Pillar 2, above the base forecast, should not be spent on recurring items but should be used for strengthening reserves and investing for the medium-term. The Panel recommends that this proposal is made into a commitment."[69]

The Sub-Panel shares the view that any upside to additional revenues from Pillar 2 should be used for strengthening reserves, given the economic uncertainty that may arise in future. In the Fiscal Policy Panel's report, it highlights that "the Stabilisation Fund is effectively exhausted and cannot fulfil its purpose … to support Jersey's economy in the case of an economic downturn."[70] The Sub-Panel agrees with the FPP that this requires further, immediate action and commitment from Government:

"The introduction of the OECD Pillar 2 framework will mean a change in the tax regime. This will directly affect Jersey's financial sector and, by extension, the island's economy. All else equal, tax receipts are expected to increase in the short-term but the change inevitably creates some uncertainty about the future."[71]

A further recommendation from the FPP states that "investing Pillar 2 income in reserves will generate future investment returns which could in turn be used to fund investment into increasing Jersey's productive capacity, crucial for long-term economic growth. Such a prudent approach in the short term is recommended considering the medium-term risks around the changing global tax regime."[72] Mitigating such risks would provide greater stability to the business environment, in particular, during a period of economic uncertainty that will help in "maintaining a competitive and growth-friendly environment."[73]

"Against the backdrop of Pillar 2 implementation, the Minister for External Relations, Assistant Minister for Treasury and Resources and Assistant Chief Minister will be overseeing a tripartite group of industry, the regulator and the Government to coordinate a competitiveness work programme dedicated to maintaining a competitive and growth-friendly environment that boosts the productivity, innovation, digital capacity and skills of the financial services sector and the wider economy, while seeking to reduce operating costs – harnessing Jersey's continued growth as an International Finance Centre."[74]

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[69] Letter – Minister for Treasury and Resources and Minister for External Affairs to OECD Pillar 2 Sub-Panel – 2 October 2024
[70] Jersey's Fiscal Policy Panel – Annual Report 2024 – September 2024
[71] Ibid.
[72] Ibid.
[73] P.53/2024 – Draft Multinational Taxation (Global Anti-Base Erosion – IIR Tax) (Jersey) Law 202- - 14 August 2024
[74] Ibid.

Further complications arise in forecasting such additional revenue, in comparison to that of the previous Zero/Ten regime, due to the adoption of a new approach in calculating tax. The Sub-Panel raised questions on this approach during the public hearing, and it was explained that the impact of this new method of tax calculation is currently unknown: "just because something is moving from 20% to 15% does not mean to say there is a loss because the basis of the initial calculation is different."[75]

The Sub-Panel was unable to develop a clear understanding during the public hearing as to what the impact will be of this new method of calculation, specifically whether companies moving from Zero/Ten to Pillar 2 will pay a higher or lower amount of tax, even in scenarios where their tax rate has increased or decreased. This brings further unpredictability when forecasting future revenue.

The Sub-Panel learnt during the public hearing that the base case forecast was calculated by identifying businesses that are most likely to stay in Jersey beyond Pillar 2 due to the strength of their operations locally. This means that Government acknowledges there is substantial upside to the forecast, but should this arise, further debate about how that revenue is spent will be required. During the public hearing it was speculated that such revenue might be spent in a manner than aligns with some of Government's broader policy objectives, such as developing skills or addressing pertinent local issues such as housing and childcare.[76]

In addition to bolstering reserves, Government's Proposed Budget 2025-2028 explains that "Pillar 2 income will help to cover the costs of financing our New Healthcare Facilities and will also allow us to invest in the ongoing competitiveness of our Island economy."[77] It is then further explained that the competitive package "will be used to boost the productivity, digital capacity and skills of the financial services sector and the wider economy, while seeking to reduce operating costs."[78]

KEY FINDING 8 The anticipated fiscal impact of Pillar 2 on Jersey is significant but uncertain. Government's prudent approach to revenue forecasting, focusing on strengthening reserves rather than committing Pillar 2 revenue to recurring expenditures, is appropriate given the unpredictability of multinational enterprises' future behaviour and global implementation patterns.

RECOMMENDATION 4 The Minister for Treasury and Resources should consider how to ensure additional tax revenues are used to strengthen reserves, as recommended by the Fiscal Policy Panel.

5.2 Maintaining Competitiveness as a Financial Centre

The ability to maintain the Island's competitiveness as a financial centre has been carefully considered by Government and was discussed at length during the public hearing. Government's focus is tailored towards keeping in-scope businesses in the island:

[75] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024
[76] Ibid.
[77] Government of Jersey – Proposed Budget 2025-2028 – 2 August 2024
[78] Ibid.

"One of the things that I think we have recognised is that international tax policy and tax policy can be in itself part of Jersey's competitiveness; how we manage it, how we engage, how we use technology, in this case how we have designed it in legislation is an important element of being competitive in certain of our markets."[79]

The approach has led to the establishment of a new International Competitiveness Political Working Group that includes "Ministerial representation from the Chief Minister, Minister for External Relations and Minister for Treasury and Resources, as well as representation from the JFSC, JFL, Digital Jersey and officers across Government departments."[80] This cross-body approach towards driving competitiveness shows significant commitment from Government in working to ensure the future success of the financial sector,[81] which includes significantly enhancing the customer service in this area for in-scope groups.

Government's competitiveness strategy encompasses several key aspects. Firstly, it includes the development of QRTCs, which are tax credits granted to business that allocate revenue towards certain outlined areas (the most prominent example of such is Research and Development (R&D) tax credits in the US, but this type of tax credit is not planned for Jersey).

Secondly, Government has designed a targeted tax credit regime specifically following OECD guidance to minimise double taxation arising from blended CFCs, including in the US. This system recognises circumstances in which US entities may incur double taxation, which arises from the existing US global minimum tax rates, known as the GILTI rules.

Lastly, the strategy involves using a portion of Pillar 2 tax revenues to enhance the overall competitiveness of the Island's economy by investing in initiatives that boost economic competitiveness.

Qualified Refundable Tax Credits (QRTCs)

During the public hearing, Government informed the Sub-Panel that work was underway in developing QRTCs:

"This wider competitiveness work will include the design of a new QRTC that is permissible under the Pillar 2 rules and that will be suitable for Jersey as an IFC. The design of a QRTC is important – it has to be effective in incentivising business growth and deepening business ties for the financial services sectors that we have in Jersey, both now and in the future."[82]

The design of QRTCs may provide Jersey with a significant opportunity to maintain a competitive business environment. An example, would be a R&D QRTC, as seen in Hungary, where a new R&D incentive regime as a QRTC has been introduced that is "potentially resulting in a cash refund."[83] A similar approach to "encourage sizeable investments that bring substantive economic activities" has also been developed in Singapore in the form of a

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[79] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024

[80] Letter – Minister for Treasury and Resources and Minister for External Affairs to OECD Pillar 2 Sub-Panel – 2 October 2024

[81] P.53/2024 – Draft Multinational Taxation (Global Anti-Base Erosion – IIR Tax) (Jersey) Law 202- - 14 August 2024

[82] Letter – Minister for Treasury and Resources and Minister for External Affairs to OECD Pillar 2 Sub-Panel – 2 October 2024

[83] EY Global - Hungary's draft legislation on BEPS 2.0 Pillar Two introduced to Parliament - 7 November 2023

Refundable Investment Credit, which was determined to be a GloBE “rules compliant” QRTC.[84] It is the Sub-Panel’s understanding that the development of QRTCs is being looked at by many jurisdictions globally[85] and therefore Jersey faces significant competition.

International competitiveness was addressed by Government during the public hearing:

> *“The way that we have published the legislation and the approach that we have taken, to manage the bureaucracy and the processes, thereby giving us, I think, a competitive advantage. So high-level objective is to deliver the model rules, but in a way which (a) is best for Jersey and also allows us to be flexible and competitive.”*[86]

However, it was noted that other jurisdictions have developed a range of incentives to maintain in-scope companies in their jurisdictions. It was also shared that businesses have approached Government to understand what incentives Jersey will offer, declaring that they have received offers elsewhere.[87] Despite certain constraints within the Model Rules, there is flexibility in what jurisdictions can offer and so this provides significant room for competition to develop:

> *“There are rules that are developing around these tax credits that are called the no-benefits rule, which basically say that you cannot take the same pot of money and give it back to the same group of companies because then you are not really implementing the tax fairly. … There are some tax credits that exist in the world already around R. and D. (research and development) tax credits, for example, and that is really not a huge part of Jersey’s business. We need to do similarly to what we did with the M.C.I.T. and just think about it in the context of Jersey. What would incentivise businesses on the one hand and add to that breadth and depth of substance but also come within the rules, not fall foul of the rules?”*[88]

A Tax Credit for Blended Controlled Foreign Companies (CFCs)

As part of its general approach to economic competitiveness, the jurisdiction has identified promotional interests in a number of markets for growth, including the US (among others).[89] The US, due to the creation of its own GILTI regime, poses a unique challenge for all jurisdictions in their efforts to avoid double taxation. Upon learning of Government’s strategy in relation to GILTI, the Sub-Panel was also informed of a potential increase in business from US MNEs, which was highlighted in an anonymous submission:

> *“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. … 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*

[84] EY Global - Singapore proposes legislative changes for Refundable Tax Credits - 19 July 2024
[85] PwC - OECD Pillar 2 Country Tracker - 30 September 2024
[86] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024
[87] Ibid.
[88] Ibid.
[89] Ibid.

Man where a QDMTT is being adopted and the credit offered by MCIT will not be available."[90]

The development of this CFC-focused system as well as QRTCs will be discussed in the next section.

Economic Competitiveness

Separate to the introduction of QRTCs, there is an estimated figure of £15m within the Proposed Budget 2025-2028 that has been provided to boost Jersey's competitiveness. It was shared in the public hearing that areas such as developing skills locally and the digital sector are considered to bring benefit to both the financial sector and wider community, but Government's strategy to boost economic competitiveness is not yet fully determined. This element of benefiting the wider community is crucial in meeting the demands of the "no benefit" rule within the Model Rules, which prevents Pillar 2 revenue being used to benefit MNEs only.

With regards to the overall impact of Pillar 2, there is something of a mixed perception as to whether the introduction of a global minimum tax will provide a positive outcome for Jersey, with one submission received declaring that "the 15% agreement marks the end of Jersey as a tax haven. A tombstone should be erected to mark this occasion. The problem is that, as an International Finance Centre our USP is not strong."[91]

However, the Sub-Panel received a contrasting view during a private meeting that believed Jersey has always faced competition on non-tax factors that influence where a company chooses to do business, such as transport links, time zone, and administrative costs. This view suggests that, while Jersey is losing the ability to compete through headline corporate tax rates, its implementation of Pillar 2, particularly the use of QRTCs and credits to offset GILTI tax liabilities, provides areas for Government to compete on significant aspects of its tax regime.

In addition to tax-friendly measures, the Sub-Panel highlights the importance in maintaining a suitable environment for businesses to flourish, as identified by the Tax Justice Network:

> *"Survey after survey shows that what companies really want from countries is good infrastructure, the rule of law, a healthy and educated workforce, and other public goods – which require tax."*[92]

If used correctly, the Sub-Panel believes that the revenue gained from Pillar 2 could significantly enhance Jersey's competitiveness as a financial centre whilst providing much-needed stability to the economy. The Sub-Panel understands the necessity of adopting a prudent approach towards forecasting but encourages Government to remain active in this area and focused on providing an optimal outcome for both the community as well as all industry sectors. The Fiscal Policy Panel's concerns around recent survey data indicating that "growth has weakened further for non-finance sectors"[93] locally, highlights the importance of considering the economy as a whole.

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[90] Submission - OECD Pillar 2 Review - Anonymous - 13 September 2024
[91] Submission - OECD Pillar 2 Review - Ben Shenton - 8 September 2024
[92] Tax Justice Network – Tax competition and the race to the bottom – 14 November 2020
[93] Jersey's Fiscal Policy Panel – Annual Report 2024 – September 2024

Collaboration with Crown Dependencies

Further to this consideration, the Sub-Panel also believes Government should work closely with other Crown Dependencies in its approach. On 19th May 2023, a joint statement was released by Jersey, Guernsey and Isle of Man conveying their intention to adopt a joint approach amongst the crown dependencies. Since this statement, Jersey has progressed at a faster pace than Guernsey and Isle of Man, having proceeded with its intended approach and lodging of Propositions outlining implementation measures.

While Jersey has lodged legislation to implement both an IIR and MCIT, both Guernsey and Isle of Man are yet to fully lodge detailed proposals outlining their implementation strategies. On 4th September, Guernsey made progress as the States of Guernsey voted in favour of P.2024/56 to enable "Regulations … introducing an income inclusion rule and domestic minimum top-up-tax for large in-scope multinationals enterprises from the 1st January 2025,"[94] aligning closely with the approach taken by Jersey.

The Isle of Man has taken a cautious approach by announcing the introduction of QDMTT but delaying a final decision on the IIR. As per a statement released on 20 May 2024, the Isle of Man has fewer large multinational firms affected by Pillar 2 and has chosen to assess the relevance of IIR further before committing.[95]

Jersey's early introduction of both IIR and MCIT in comparison to other Crown Dependencies makes it difficult to truly compare the outlined approaches. Due to limitations in time and information, the Sub-Panel was unable to explore these differences in detail, but it is hoped that the Crown Dependencies continue to work together closely even with differing regimes proposed.

KEY FINDING 9 Jersey has adopted a more proactive approach to its ambitious implementation of the Pillar 2 framework compared to Guernsey and the Isle of Man, demonstrating a willingness to differentiate itself to maintain its competitive position.

KEY FINDING 10 Government has made maintaining Jersey as a financial centre a central aim of its approach to Pillar 2. Strategies such as developing tax credits, enhancing customer service for in-scope groups, and investing in initiatives to boost productivity, digital capacity, and skills within the financial services sector are crucial to ensure Government meets its aims.

RECOMMENDATION 5 Minister for Treasury and Resources should ensure that implementation of the Pillar 2 regime is monitored closely, with periodic support provided to multinational enterprises (MNEs), and establish a helpdesk for MNEs by Q1 2025 to provide tailored assistance during the transition and review the effectiveness of support services annually.

RECOMMENDATION 6 The Minister for Treasury and Resources should consider providing clarity and consultation regarding any spending on "increasing competitiveness," especially given the global sensitivity on this issue. This should include the requirement for public consultation before allocating funds towards increasing competitiveness initiatives. This should result in the publishing of an annual spending breakdown starting in 2025, explaining the purpose and expected impact of each expenditure.

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94 States of Guernsey: Electronic Voting – OECD Pillar 2 Global Rules – 4 September 2024
95 Gov.im - Isle of Man's next step in implementing OECD's Pillar Two global tax framework - 20 May 2024

5.3 Development of Credit Systems and Future Work

A central component of the Island's competitiveness strategy is the development of QRTCs. QRTCs aim to incentivise business growth, deepen economic ties, and mitigate potential disadvantages arising from the new global minimum tax regime. Additionally, work has been undertaken by Government to ensure that risks of double taxation for CFCs are mitigated with the legislation.

Qualified Refundable Tax Credits (QRTCs)

In relation to QRTCs, the Sub-Panel heard during a public hearing that this is something Government has never done before and so work was underway to understand the possible benefits and demand within the community:

> *"Let us just focus on the tax credit because we have never done a tax credit like this before, one of the questions we do not know is how much take-up would there be in the community and just how much or how many more assets would people bring here to have under management if there was this qualifying tax credit too?"*[96]

As discussed during the previous section Government has established a new International Competitiveness Political Working Group that has been tasked with focusing on Jersey's offer as an international financial centre (IFC) and overseeing work on international competitiveness.[97]

> *"This wider competitiveness work will include the design of a new QRTC that is permissible under the Pillar 2 rules and that will be suitable for Jersey as an IFC. The design of a QRTC is important – it has to be effective in incentivising business growth and deepening business ties for the financial services sectors that we have in Jersey, both now and in the future.*
>
> *…*
>
> *As with all other aspects of Pillar 2 work, the Revenue Jersey international tax policy team is constantly monitoring international developments on QRTCs and discussing their suitability for Jersey with our stakeholders."*[98]

Central to this effort is the design of a QRTC that is permissible under the Pillar 2 rules whilst creating a mechanism that incentivises businesses to remain in Jersey. In a letter to the Sub-Panel, Government informed that work on QRTCs has already begun, with the Revenue Jersey international tax policy team continuously monitoring international developments and OECD guidance in this area. There are also active discussions around the suitability of various QRTC models with stakeholders to ensure that an attractive package is developed:

> *"We intend to move at pace on this issue but also to move thoughtfully and with appropriate stakeholder engagement, to come up with a credit mechanism that will actually fit the types of international business in the Island. We will build on*

[96] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024

[97] Letter – Minister for Treasury and Resources and Minister for External Affairs to OECD Pillar 2 Sub-Panel – 2 October 2024

[98] Ibid.

the innovative approach we have taken to the implementation of the Pillar 2 regime itself."[99]

A Tax Credit for Blended Controlled Foreign Companies (CFCs)

A further challenge arises in mitigating the risk of double taxation for MNE groups that operate in jurisdictions with blended CFC regimes not within the Pillar 2 framework, such as the US. Government acknowledges a "mismatch" between the OECD's Pillar 2 rules and certain jurisdictions' tax regimes, notably the US GILTI regime. It was informed by Government during the public hearing that the OECD itself recognises this mismatch, referring to it as a blended CFC regime in the Model Rules, and has created a transitional period to allow for changes in domestic regimes like that of the US.[100]

Provision related to the CFC are set out in Articles 16 and 17 of P.54/2024, notably when:

> *"Calculating a group's "creditable blended CFC amount". This amount is determined by reference to the amount of covered taxes included in the group's consolidated financial statements attributable to a blended CFC tax regime and charged by reference to the income of constituent entities that are controlled foreign companies. It is subject to an overall cap of 7.5% of the group's MCIT net GloBE income for the fiscal year."*[101]

By offering such a credit to CFCs, Jersey aims to mitigate the additional tax burden on MNE groups that might otherwise face double taxation due to the interaction of the MCIT and their home country's tax regime.

It is the Sub-Panel's understanding from the information currently available that this sets Jersey apart from other jurisdictions, particularly Guernsey and the Isle of Man, and that this approach has been positively received by US-based entities, generating goodwill and potentially making Jersey more attractive to US businesses.

In relation to double taxation that may impact entities in jurisdictions with blended CFC regimes, an anonymous submission shared a view that "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."[102]

The Sub-Panel acknowledges that the development of these measures may provide a strategic advantage aimed at strengthening Jersey's position as a competitive and attractive international finance centre. While there is uncertainty as to what the impact will be, it provides Government with the ability to develop unique elements that can drive its competitiveness.

KEY FINDING 11 The development of incentives in the form of tax credits aims to strengthen Jersey's position as a competitive and attractive international finance centre. While there is uncertainty as to what the impact will be, it provides Government with the ability to develop unique elements that can drive its competitiveness.

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[99] Letter – Minister for Treasury and Resources and Minister for External Affairs to OECD Pillar 2 Sub-Panel – 2 October 2024

[100] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024

[101] P.54/2024 – Draft Multinational Corporate Income Tax (Jersey) Law 202- – 14 August 2024

[102] Submission - OECD Pillar 2 Review - Anonymous - 13 September 2024

Chapter 6 - International Landscape and Further Considerations

6.1 International Landscape and Coordination

Implementation of Pillar 2 has required significant debate and negotiation to arrive at the current stage. Initial resistance from countries like Ireland, Hungary, and China required a series of carve-outs and reservations in order to secure their agreement to Pillar 2.[103] This resulted in Hungary obtaining a ten-year transition period for lower taxes on tangible investments, China ensuring protections for expanding domestic companies, and Ireland agreeing to end its 12.5 percent corporate tax rate "with assurances sought and received from the EU that it would not seek to increase the tax rate further down the line."[104]

In an academic paper titled *'Tax Harmony: The Promise and Pitfalls of the Global Minimum Tax'*, Reuven and Young note that commentators have criticised the carve-outs in Pillar 2 for undermining the original aim of the global tax deal. Critics argue that the exemptions allow only a fraction of MNE profits to be taxed, maintaining incentives for profit shifting. Further, organisations like Oxfam contend that these concessions favour tax havens and multinationals, offering little benefit to poorer nations.[105]

Government's engagement with international bodies and other jurisdictions is a critical aspect of its strategy to align with global tax standards and avoid such criticisms. While the Island has actively participated in international tax reform initiatives in the past and currently, there are further significant challenges faced in the wider international landscape and coordination efforts.

Despite undertaking numerous intergovernmental engagements, including Ministerial visits to the US, the UK, EU Member States, and other jurisdictions,[106] Government's decision to act as "a fast follower" rather than an early adopter could be viewed as prioritising competitive advantage over international collaboration.

The collaboration with the other Crown Dependencies since 2022 aims to develop policy approaches and coordinate communications regarding Pillar 2's implementation.[107] However, the Sub-Panel believes that variations in policy details among the Crown Dependencies could lead to differences that undermine the effectiveness of this cooperation, particularly if Jersey is seen to be overly competitive in its approach.

The Sub-Panel notes that Jersey's active participation in OECD forums, including attendance at numerous Working Party meetings and the Steering Group for the Inclusive Framework on

[103] Reuven Avi-Yonah & Young R. Kim - Tax Harmony: The Promise and Pitfalls of the Global Minimum Tax - 19 August 2022 – p.550-551
[104] The Guardian - Ireland ends 12.5% tax rate in OECD global pact - 7 October 2021
[105] Reuven Avi-Yonah & Young R. Kim - Tax Harmony: The Promise and Pitfalls of the Global Minimum Tax - 19 August 2022 – p.551
[106] Letter – Minister for Treasury and Resources and Minister for External Affairs to OECD Pillar 2 Sub-Panel – 2 October 2024
[107] Ibid.

Base Erosion and Profit Shifting,[108] demonstrates a commitment to engaging with global tax discourse. Furthermore, the Sub-Panel recognises the Island's unique position within the OECD as a sub-sovereign entity with its own seat places it under heightened scrutiny.[109] The Sub-Panel is of the opinion that there is a critical need for Jersey to ensure that its domestic policies, particularly concerning CFC rules and tax credits like the QRTCs, do not conflict with OECD guidelines or be perceived as facilitating tax avoidance.

The international implementation of Pillar 2 faces significant obstacles, notably in major economies like the US. The political climate in the US, identified as being marked by partisan divisions and scepticism towards international tax agreements, casts uncertainty over the full adoption of Pillar 2.[110] This hesitancy from a key global player could undermine the overall efficacy of the global tax deal and, by extension, the relevance of Jersey's efforts to align with it. The Sub-Panel stress that Government must consider the implications of these international dynamics in relation to its own tax policy and economic interests.

Additionally, the development of a new global tax convention by the United Nations, supported largely by developing nations, further signals an international desire to push towards a more inclusive and equitable international tax framework.[111] However, this alternative regime poses a challenge to Pillar 2 and the Sub-Panel notes that its reception amongst OECD Member States has been largely negative, as the majority of OECD members have either voted against or abstained from this initiative, highlighting a division in the global approach to tax reform. The Sub-Panel believes Jersey must navigate this complex landscape carefully, as aligning too closely with policies that are viewed unfavourably by a significant portion of the international community could have diplomatic and economic repercussions:

> *"Tackling an issue as big as global taxation requires that nations act in concert, which requires mutual respect and understanding."*[112]

The Sub-Panel also identified that the potential for international disagreement is further fuelled by the current lack of a fully developed dispute resolution mechanism within the OECD framework.[113] Differing interpretations and implementations of Pillar 2 rules across jurisdictions could therefore lead to conflicts involving Jersey. Without clear mechanisms to resolve such disputes, the Sub-Panel understands that Jersey may find itself embroiled in international tax controversies that could be damaging to its financial sector and broader economy.

KEY FINDING 12 The potential for international disagreement is fuelled by the current lack of a fully developed dispute resolution mechanism within the Organisation for Economic Co-operation and Development (OECD) framework. Differing interpretations and implementations of Pillar 2 rules across jurisdictions could lead to conflicts involving Jersey. Without clear mechanisms to resolve such disputes, Jersey may find itself embroiled in international tax controversies that could be damaging to its financial sector and broader economy.

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[108] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024
[109] Ibid.
[110] Reuven Avi-Yonah & Young R. Kim - Tax Harmony: The Promise and Pitfalls of the Global Minimum Tax - 19 August 2022 – p.551-555
[111] United Nations - Why the world needs a UN global tax convention - 16 August 2024
[112] Bloomberg Tax - Countries Must Work Together to Get Rid of Low-Tax Loopholes - 26 August 2024
[113] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024

6.2 Challenges and Risk Management

The Sub-Panel believes that implementation of the OECD's Pillar 2 global minimum tax framework presents a range of challenges and risks for Jersey, both domestically and internationally, where proactive risk management is essential to mitigate negative outcomes, address uncertainties, and ensure the resilience of Jersey's tax system and economy amidst global changes.

One of the primary challenges lies in the behavioural responses of MNE groups to the new tax framework. The Sub-Panel understands that the full extent of these behavioural implications is currently unknown, making it difficult to predict how MNEs will adjust their operations, tax planning strategies, or even their presence in Jersey. As these groups are understood to be sophisticated in their choices, they may explore various avenues to minimise their tax liabilities, which could impact Jersey's revenue projections. Recognising this uncertainty, Government has shared its strategy for the use of revenue receipts, focusing on building up reserves rather than committing to recurring expenditure based on potentially fluctuating revenues:

> *"Whether an individual jurisdiction implements Pillar 2 itself or the groups operating in its jurisdiction are subject to top up taxes elsewhere, there are likely to be behavioural implications for Pillar 2 groups that are, as yet, unknown. … Fluctuations in revenue receipts will be managed in part by adopting a prudent strategy for their use – for example, in helping to build up reserves and not applying them to recurring revenue spending."*[114]

Internationally, the Sub-Panel has identified concerns about tax avoidance strategies exploiting differences between tax and accounting rules. For instance, the UK has implemented anti-arbitrage rules[115] in response to avoidance transactions designed to qualify for transitional safe harbour provisions under the Pillar 2 framework. Such actions highlight the risk of "gamesmanship" where MNEs might leverage loopholes or inconsistencies within the global tax rules.[116] The Sub-Panel notes fears that Pillar 2's relative inflexibility may exacerbate this issue, as the system may struggle to respond swiftly to emerging avoidance strategies.[117] The Sub-Panel believes that these fears underscore the need for Jersey to remain vigilant and adaptable, ensuring that its legislation is robust and capable of addressing potential exploitation.

> *"It is about making it clear that both of these that we are following the model rules. It is important that we make it clear that we are following the model rules because, if ever there is a dispute and we need to use the dispute resolution mechanism, we can show clearly that we have been following the model rules."*[118]

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[114] Letter – Minister for Treasury and Resources and Minister for External Affairs to OECD Pillar 2 Sub-Panel – 2 October 2024
[115] GOV.UK - Multinational top-up tax and domestic top-up tax — transitional country by country reporting safe harbour anti-arbitrage rule - 29 July 2024
[116] Tax Foundation - The Fatal Flaw of Pillar 2 - 27 February 2024
[117] Ibid.
[118] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024

Domestically, the Sub-Panel understands there are concerns about maintaining competitiveness in the face of the new tax regime. While the global nature of Pillar 2 means that MNEs cannot simply relocate to avoid the minimum tax,[119] there is still a risk of capital flight or restructuring, particularly if businesses perceive Jersey's implementation as more burdensome than that of other jurisdictions. To mitigate this, it is crucial for Jersey to offer a favourable business environment, which includes not only competitive tax rates but also ease of doing business, efficient regulatory processes, and high-quality support services.

The stakeholder feedback received highlighted the importance of a collaborative and supportive approach by regulatory bodies such as Revenue Jersey, as concerns have been raised related to aggressive enforcement practices and inconsistent interpretations of tax laws, which could hinder Jersey's attractiveness to businesses. To address this, the Sub-Panel believes that Government should ensure that regulatory agencies engage constructively with taxpayers, providing clear guidance, fostering transparency, and assisting businesses in complying with the new requirements without unnecessary penalties or administrative burdens.

RECOMMENDATION 7 The Minister for Treasury and Resources should proactively identify and address potential risks associated with the new Pillar 2 framework by monitoring multinational enterprises' behaviour, preventing tax avoidance strategies, and preparing for possible international disputes and dispute resolution. Additionally, it is crucial for Jersey to offer a favourable business environment, which includes not only competitive tax rates but also ease of doing business, efficient regulatory processes, and high-quality support services. The Minister should progress these considerations and identify a team to take on the responsibility to develop a risk assessment analysis by Q1 2025, and further publish an annual risk report to identify emerging challenges and provide recommendations for mitigation.

[119] Transcript - OECD Pillar 2 Review - Witness: Minister for Treasury and Resources and Minister for External Relations - 26 September 2024

Chapter 7 – Conclusion

The implementation of the OECD's Pillar 2 global minimum tax framework marks a significant turning point in international taxation, aiming to address the challenges of base erosion and profit shifting by MNEs. Government's legislative proposals reflect a strategic commitment to align with these global standards while aiming to safeguard the island's economic interests and maintaining its competitiveness as an international finance centre.

However, the Sub-Panel stresses that there remain ongoing challenges associated with implementing Pillar 2 that Government must continually monitor in a transparent and informed manner. Such challenges include assessing behavioural responses from MNEs, potential tax avoidance strategies, and the evolving international tax landscape. Proactive risk management is essential, including:

- Staying abreast of international developments, OECD guidance, and changes in other jurisdictions' tax regimes is vital to adjust policies and legislation as necessary to remain compliant and competitive.
- Engaging constructively with businesses, providing clear guidance, and ensuring regulatory agencies adopt a supportive approach can enhance compliance and mitigate the risk of capital flight or restructuring.
- Active participation in international forums and maintaining a positive standing with organisations like the OECD are critical in displaying transparency and adherence to global standards.

Ultimately, Jersey's ability to adapt to global tax reforms while preserving its strengths as an international finance centre will determine its economic resilience and prosperity. By embracing innovation, fostering collaboration, and maintaining a commitment to transparency and fairness, Jersey's finance industry can continue to thrive in the evolving global economy.

Appendix 1 – Glossary

Base Erosion and Profit Shifting (BEPS): Tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations, eroding the tax base of higher-tax jurisdictions.

Compliance Requirements: The reporting, documentation, and procedural requirements that Multinational Enterprise (MNE) Groups must fulfil to adhere to the GloBE rules.

Effective Tax Rate (ETR): A rate calculated by dividing the Adjusted Covered Taxes by the GloBE Income in a jurisdiction, used to determine if additional Top-Up Tax is required to meet the minimum tax rate.

Global Intangible Low-Taxed Income (GILTI): A U.S. tax provision introduced by the Tax Cuts and Jobs Act of 2017. GILTI imposes a minimum tax on certain foreign income earned by U.S. multinational corporations, targeting income from intangible assets like patents and trademarks to discourage shifting profits to low-tax jurisdictions.

Global Anti-Base Erosion (GloBE) 'Model Rules': A set of rules under Pillar Two designed to ensure that large MNEs pay a minimum level of tax on income arising in each jurisdiction where they operate.

Implementation Framework: Guidance provided by the OECD to assist jurisdictions in the adoption and consistent implementation of the GloBE rules, including legislative and administrative aspects.

Income Inclusion Rule (IIR): A primary rule under Pillar Two that imposes Top-Up Tax on a parent entity in respect of the low-taxed income of its Constituent Entities. This is particularly relevant to the Draft Multinational Taxation (Global Anti-Base Erosion – IIR Tax) (Jersey) Law 202- lodged by Government of Jersey.

Inclusive Framework on BEPS: A coalition of over 140 countries and jurisdictions collaborating on the implementation of measures to tackle tax avoidance and improve the coherence of international tax rules.

Multinational Corporate Income Tax (MCIT): The Draft Multinational Corporate Income Tax (Jersey) Law 202- lodged by Government of Jersey.

Multinational Enterprises (MNE): A group of entities that are related through ownership or control such that they are required to prepare consolidated financial statements for financial reporting purposes and that includes entities or permanent establishments in more than one jurisdiction.

Organisation for Economic Co-operation and Development (OECD): An international organisation comprising 38 member countries committed to democracy and market economies. The OECD develops and promotes policies to improve economic and social well-being worldwide, including international tax standards like the BEPS initiative and Pillar Two.

OECD Guidance: Clarifications and explanations issued by the OECD to aid in the consistent interpretation and application of the GloBE rules across different jurisdictions.

Qualified Controlled Foreign Company (CFC) Tax Regime: A domestic tax regime that includes certain income of foreign subsidiaries in the taxable income of the parent entity, recognised under the GloBE rules if it meets specific criteria.

Qualified Domestic Minimum Top-Up Tax (QDMTT): A domestic minimum tax aligned with the GloBE rules, allowing jurisdictions to collect Top-Up Tax on low-taxed income arising within their borders before the IIR or UTPR apply.

Qualified Refundable Tax Credit (QRTC): A refundable tax credit treated as income rather than a reduction of tax expense under the GloBE rules, affecting the calculation of GloBE Income and Adjusted Covered Taxes.

Top-Up Tax: The additional amount of tax payable to bring the Effective Tax Rate on income in a jurisdiction up to the agreed minimum rate under the GloBE rules.

Transitional Safe Harbour: Temporary measures that simplify compliance with the GloBE rules during the initial years of implementation, easing the administrative burden on MNE Groups.

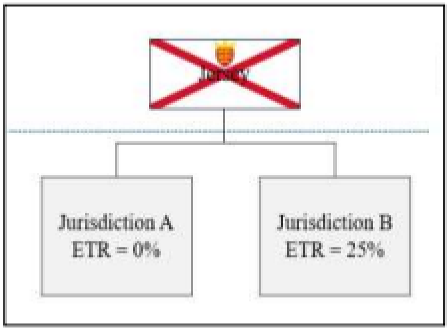
Undertaxed Payments Rule (UTPR): A secondary rule under Pillar Two that allocates Top-Up Tax to Constituent Entities in jurisdictions that have implemented the UTPR when the IIR does not fully capture low-taxed income.

Appendix 2 – Pillar 2 Flow Diagram

The below illustrations were provided in the accompanying report to P.53/2024: Amendment - Draft Multinational Taxation (Global Anti-Base Erosion – IIR Tax) (Jersey) Law 202- - 8 October 2024.

Jersey Income Inclusion Rule

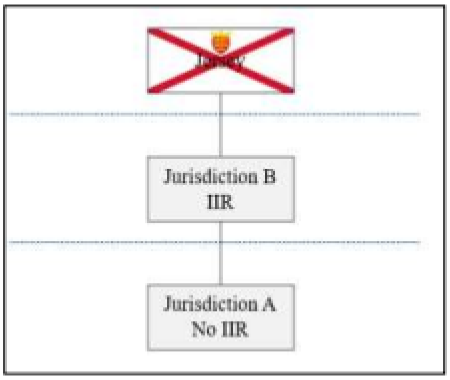
Illustration 1:



Explanation

- When the UPE is resident in Jersey, then Jersey will apply the IIR to any low-taxed profits arising outside Jersey.
- This Jersey UPE has subsidiaries in Jurisdiction A and Jurisdiction B.
- The Jersey IIR will only apply a top-up tax to the Jurisdiction A profits as they are low-taxed (i.e. below the 15% minimum ETR).
- The Jurisdiction B subsidiary profits are not low-taxed (i.e. the Jurisdiction B ETR is 25%).

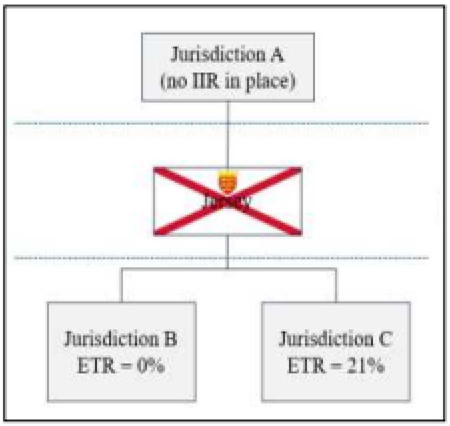
Illustration 2:



Explanation

- The IIR applies on a top-down approach, so the Ultimate Parent Entity jurisdiction (Jersey) has first priority in applying the IIR against any UPE low-taxed profits within the group.
- In this example, Jersey will still collect the IIR top-up tax due on the Jurisdiction A low-taxed profits even though Jurisdiction B also has an IIR in place, and the Jurisdiction B Intermediate Parent Entity (IPE) directly holds the Jurisdiction A low-taxed profits. The Jurisdiction B IIR is switched off in favour of the Jersey IIR.

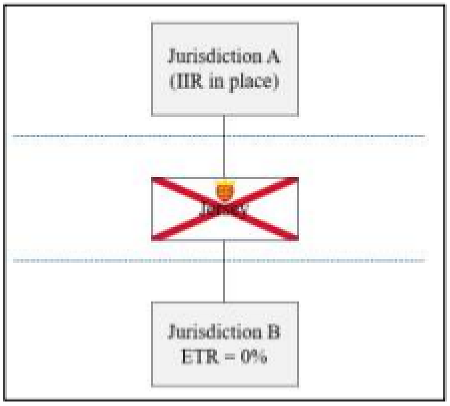
Illustration 3:



Explanation

- Jersey might apply an IIR in certain circumstances even when the UPE is not located in Jersey.
- Because the Jurisdiction A UPE is not subject to an IIR in Jurisdiction A, the IIR's top-down approach means that the IIR may apply to an Intermediate Parent Entity (IPE).
- Here, the IPE is in Jersey.
- Because Jurisdiction B subsidiary has low-taxed profit (i.e. ETR is less than 15%), that profit can be taxed under the Jersey IIR.
- Note that Jurisdiction C Subsidiary's profits are not low-taxed and so will not be subject to IIR top-up.

Illustration 4:

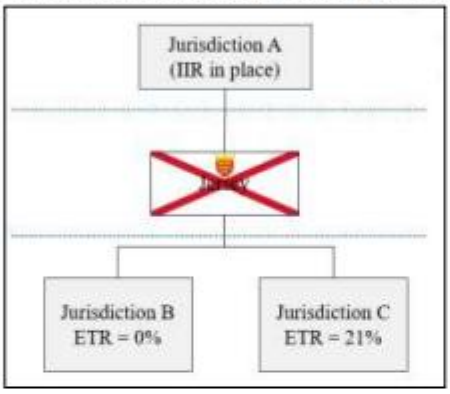


Explanation

- The UPE is in Jurisdiction A, while Jersey has an IPE.
- Because of the top-down approach, even though the Jurisdiction B low-taxed profit is held directly by the Jersey IPE, Jurisdiction A will collect the IIR top-up tax as it is the UPE jurisdiction.

Jersey Multinational Corporate Income Tax

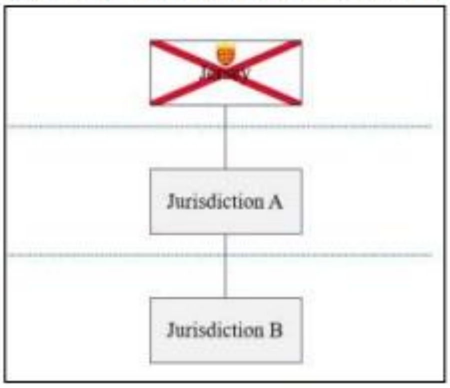
Illustration 5: Effect of implementing the MCIT in Jersey



Explanation

- If Jersey does not implement Pillar Two (i.e. keeps its current tax regime in place for Pillar Two MNE groups), then the MNE's ETR in Jersey will be below 15%.
- Because the Jersey ETR is below 15%, the IIR kicks in to top-up any low-taxed income.
- In this case, Jurisdiction A, which has an IIR in place, will top-up the low-taxed income of the MNE's profits in both Jersey and Jurisdiction B (but not Jurisdiction C as Jurisdiction C ETR is above 15%).

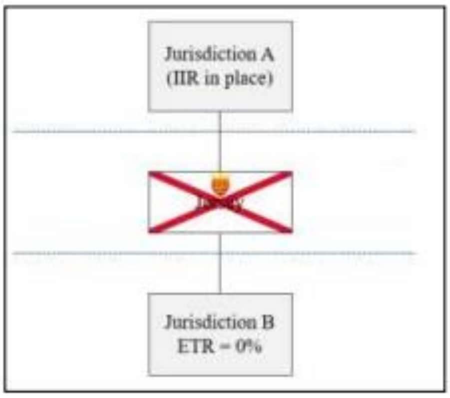
Illustration 6: How the MCIT works when Jersey is the UPE



Explanation

- Jersey will apply its MCIT on the UPE's Jersey net GloBE income only.
- It is not a top-up tax, so it does not apply to low-taxed income outside of Jersey.

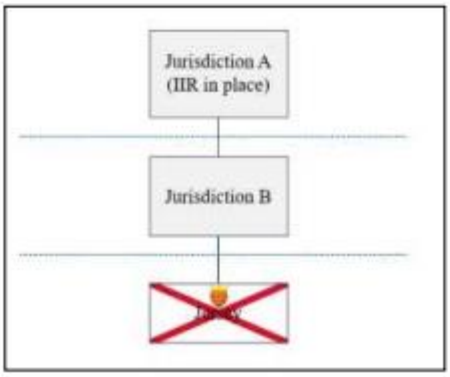
Illustration 7: How the MCIT works when Jersey is the IPE



Explanation

- The MCIT will be applied in Jersey to the MNE's Jersey net GloBE income.
- As it is not a top-up tax, it does not apply to low-taxed income outside of Jersey.
- Presuming that the MCIT leads to an ETR of 15% in Jersey, there will be no top-up required in Jurisdiction A under its IIR on Jersey profits.

Illustration 8:

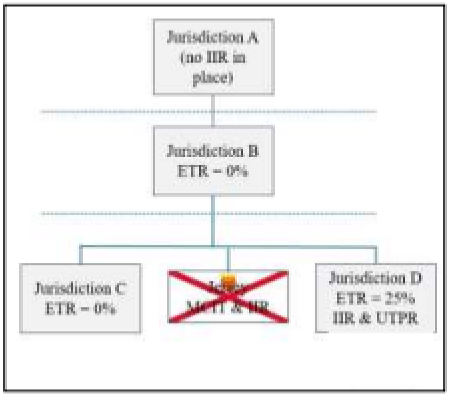


Explanation

- The MCIT will be applied in Jersey to the MNE's Jersey net GloBE income.
- Because the MCIT leads to an ETR of 15% in Jersey, there will be no top-up required in Jurisdiction A under its IIR on Jersey profits.

The Undertaxed Profits Rule

Illustration 9:



Explanation

- The MCIT will be applied in Jersey to the MNE's Jersey net GloBE income.
- There is no IIR in place in the chain above Jurisdiction C to impose a top-up.
- However, because Jurisdiction D imposes an IIR and UTPR, Jurisdiction D's UTPR acts to impose a top-up on Jurisdiction C's low-taxed profits. There is no UTPR on Jersey as the MCIT creates a 15% ETR.

Appendix 3 – Review Details

Sub-Panel Membership

Deputy Jonathan Renouf (Chair)

Deputy Montfort Tadier (co-opted Vice-Chair)

Deputy Max Andrews

Deputy Hilary Jeune (co-opted)

Connétable David Johnson

Terms of Reference

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.

Evidence Considered

Public Hearings

- Public Hearing jointly with the Minister for Treasury and Resources and Minister for External Relations

The public hearing transcript can be viewed here the webcast of the hearing can also be viewed here up until six months after the hearing was held.

Meetings and Visits

Private meetings with:
- Deloitte
- Walkers Global
- Institute of Directors
- Anonymous Individual

Written Submissions

A total of 8 written submissions were received by the Sub-Panel, of which 5 were given consent to be published and can be viewed here.

Written Questions

The Sub-Panel wrote letters to the following Ministers with written questions:

- Minister for External Relations
- Minister for Treasury and Resources

The correspondence between the Sub-Panel and the Ministers can be found here.

Other Evidence Considered

- Bloomberg Tax - Countries Must Work Together to Get Rid of Low-Tax Loopholes - 26 August 2024
- EY Global - Hungary's draft legislation on BEPS 2.0 Pillar Two introduced to Parliament - 7 November 2023
- EY Global - Singapore proposes legislative changes for Refundable Tax Credits - 19 July 2024
- Government of Jersey – Proposed Budget 2025-2028 – 2 August 2024
- GOV.UK - Multinational top-up tax and domestic top-up tax — transitional country by country reporting safe harbour anti-arbitrage rule - 29 July 2024
- IMF – Deciphering the GloBE in a Low-Tax Jurisdiction – 22 March 2024
- International Monetary Fund – Tackling Tax Havens – September 2019
- Jersey's Fiscal Policy Panel – Annual Report 2024 – September 2024
- Letter – Minister for Treasury and Resources and Minister for External Affairs to OECD Pillar 2 Sub-Panel – 2 October 2024
- OECD – 2024 Progress Report on Tax Co-operation for the 21st Century – May 2024
- OECD - Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy – 8 October 2021

- OECD – Tax Challenges Arising from the Digitalisation of the Economy – Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023) – 25 April 2024
- OECD – Tax Challenges Arising from Digitalisation of the Economy - Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS – 20 December 2021
- Oxfam International - OECD tax deal is a mockery of fairness: Oxfam - 8 October 2021
- P.53/2024 – Draft Multinational Taxation (Global Anti-Base Erosion – IIR Tax) (Jersey) Law 202- - 14 August 2024
- P.53/2024: Amendment - Draft Multinational Taxation (Global Anti-Base Erosion – IIR Tax) (Jersey) Law 202- - 8 October 2024
- P.54/2024 – Draft Multinational Corporate Income Tax (Jersey) Law 202- – 14 August 2024
- P.54/2024: Amendment - Draft Multinational Corporate Income Tax (Jersey) Law 202- - 8 October 2024
- PwC - OECD Pillar Two Country Tracker - 30 September 2024
- Reuven Avi-Yonah & Young R. Kim - Tax Harmony: The Promise and Pitfalls of the Global Minimum Tax - 19 August 2022
- States Assembly – OQ.201/2023 – 17 October 2023
- Tax Foundation - Corporate Tax Rates around the World, 2023 - 12 December 2023
- Tax Foundation - The Fatal Flaw of Pillar Two - 27 February 2024
- Tax Justice Network – Tax competition and the race to the bottom – 14 November 2020
- United Nations - Why the world needs a UN global tax convention - 16 August 2024

Review Costs

The costs of this review totalled £296 for the public hearing and transcriptions costs plus £50 for advertising and engagement, totalling £346 for the entire review.

What is Scrutiny?

Scrutiny panels and the Public Accounts Committee (PAC) work on behalf of the States Assembly (Jersey's parliament). Parliamentary Scrutiny examines and investigates the work of the Government, holding ministers to account for their decisions and actions. They do this by reviewing and publishing reports on a number of areas:

- Government policy;
- new laws and changes to existing laws;
- work and expenditure of the Government;
- issues of public importance.

This helps improve Government policies, legislation and public services. If changes are suggested, Scrutiny helps to make sure that the changes are fit for purpose and justified.

The Corporate Services Scrutiny Panel scrutinise Government on matters within the remits of the Chief Minister (excluding Financial Services) and the Minister for Treasury and Resources. More information about the Panel's work can be found here.

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