10 Implementation and Rule Co-ordination

10.1. Overview

668. This chapter first summarises the rule co-ordination and rule order framework within which the different elements of Pillar Two are intended to operate. It then discusses questions of implementation of each of the elements as well as mechanisms to ensure that effective co-ordination and tax certainty in practice. It also covers compatibility of the GloBE rules with existing tax treaty obligations, however it does not include an analysis on the compatibility of the GloBE rules with other international obligations, such as the EU fundamental freedoms.

10.2. Rule order

669. The preceding chapters of this Pillar Two Blueprint include recommendations for the design of an income inclusion rule (IIR) and an undertaxed payments rule (UTPR), complemented by a switch-over rule (SOR) that removes treaty obstacles from the application of the IIR to certain branch structures and applies where the treaty otherwise obligates the contracting state to use the exemption method.[1] They also contain a Subject to Tax Rule (STTR). The Policy Note and the Programme of Work (OECD, 2019[4]) call for the development of rules under Pillar Two that operate to co-ordinate these different elements in order to ensure that they interact in a way that minimises compliance and administration costs and avoids the risk of double taxation.

670. The co-ordination between these various elements of Pillar Two is already described in the previous chapters, but for ease of reference is also summarised below.

10.2.1. Subject to Tax Rule

671. Where the STTR permits the source jurisdiction to apply a top-up tax to a covered payment, for example in the form of a withholding tax, the effect of that additional tax will be taken into account in determining the effective tax rate under the GloBE rules.[2] Under the jurisdictional blending approach this top-up tax is assigned to the Constituent Entity that brings the payment into account as income.[3] By taking the tax charged as a consequence of the STTR into account in calculating the ETR of the payee, the GloBE rules effectively give priority to the application of the STTR. Example 10.2.1A provides an illustration of the interaction of the STTR with the IIR while Example 10.2.1B provides an illustration of the interaction of the STTR with the UTPR. These examples demonstrate that the STTR applies even if the MNE Group is subject to the IIR or the UTPR. These examples further illustrate that the withholding tax levied under the STTR is taken into account in order to determine the ETR (and, if relevant, the top-up tax) of the jurisdiction where the recipient is located.

10.2.2. **GloBE rules**

672. The mechanisms for calculating and allocating the tax base and covered taxes under GloBE rules are designed to take into account both domestic and foreign taxes imposed on each Constituent Entity's income.[4] Therefore, the effect of existing rules for taxing foreign income (such as under a CFC regime) or for taxing non-residents on domestic source income (such as through a withholding tax mechanism) are taken into account when determining a Constituent Entity's ETR under the GloBE on a jurisdictional basis. The effect of giving priority to withholding taxes and taxes imposed under a CFC regime is described in further detail in Chapter 3.

Income inclusion rule (IIR)

673. As described further in Chapter 5 of the Pillar Two Blueprint, the IIR applies in priority to the UTPR under the GloBE rules. However, the IIR includes further co-ordination rules that ensure that the IIR in different jurisdictions cannot be applied to the same interest in low-taxed income. The primary mechanism for co-ordinating the application of the IIR in each jurisdiction is through the "top-down approach" which gives priority to the application of the IIR in the jurisdiction of the Constituent Entity that is at or near the top of the ownership chain in the MNE Group, starting with the Ultimate Parent Entity. In the event the Ultimate Parent Entity is not located in a jurisdiction that has implemented the IIR, then responsibility for applying the IIR falls to the Constituent Entity that is directly owned and controlled by that Ultimate Parent Entity, and so on, down the chain of ownership.

674. The application of the top-down approach is subject to a further rule that specifically addresses the application of the IIR in the case of "split-ownership structures". Split-ownership structures are those where a significant portion of the equity interests in a Constituent Entity are held by persons outside the MNE Group (see Section 6.3.2). This rule pushes the obligation to apply the IIR down to the partially-owned "intermediate" parent. The intermediate parent then would apply the IIR to its share of the income of any low-taxed Constituent Entity in which that Intermediate Parent has a direct or indirect ownership interest.

Switch over rule

675. The IIR will apply where the parent of the MNE derives income attributable to a foreign permanent establishment (PE) that benefits from a tax exemption under the laws of the parent jurisdiction. In this case the income of that exempt PE will need to be apportioned between the PE jurisdiction and the parent jurisdiction (together with any tax on that income) under the GloBE rules in order to accurately calculate the jurisdictional ETR in the parent jurisdiction and the PE jurisdiction. A parent that seeks to apply the IIR to the income of an exempt PE will, however, be prevented from doing so where the parent jurisdiction has entered into a bilateral tax treaty that obliges the parent jurisdiction to exempt the income of the PE in the hands of its own resident. A jurisdiction that found itself in the position where it was unable to tax the low taxed income of a PE due to the operation of the treaty would not be able to implement an IIR that was compatible with the requirements of the GloBE rules. A switch-over rule is therefore required in order to allow the state of the parent's residence to tax the income of the PE up to the minimum rate as provided for under the income inclusion rule.[5]

Undertaxed payments rule (UTPR)

676. As noted above the IIR takes priority over the UTPR. Therefore, no top-up tax may be allocated under the UTPR in respect of a Constituent Entity that is controlled, directly or indirectly, by a foreign Constituent Entity that is subject to an IIR in accordance with the GloBE rules.[6]

10.3. Implementation

677. Both the STTR and SOR require changes to existing bilateral tax treaties. These could be implemented through bilateral negotiations and amendments to individual treaties. Consideration may also

be given to adopting these under the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the MLI) (OECD, 2016[6]), emerging from BEPS Action 15. The MLI is a multilateral treaty that applies alongside existing bilateral treaties and modifies their application. It represents a significant efficiency gain compared to the alternative of multiple pairs of bilateral negotiations. The MLI requires one negotiation and allows countries to go through a single ratification procedure in their legislature covering all of their affected treaties. Using the MLI, or a new multilateral convention (see Section 10.5.3.), to give effect to the STTR and SOR in relevant treaties could offer a more efficient path to implementation of these rules. The MLI approach would allow for optionality and would not necessarily require all countries to adopt the STTR and SOR.

678. The IIR and UTPR can be implemented by way of changes to domestic law. Therefore, it is a matter for individual jurisdictions to decide to implement the IIR and UTPR in their domestic legislation, the implementation of which must be in accordance with the agreed terms of the GloBE rules. It is acknowledged that jurisdictions may want to retain their right to apply the IIR (or rules based on the IIR) to MNE Groups, headquartered in their jurisdiction, which do not meet the consolidated revenue threshold. However, there is a need to consider whether the right of a jurisdiction to apply the IIR rules to MNE Groups with a lower consolidated revenue should be restricted as part of the overall agreement, to ensure that they are applied consistently with the principles, agreed outcomes and co-ordination requirements of the GloBE rules. For example, a jurisdiction which has introduced the undertaxed payments rule cannot apply that rule to a Constituent Entity of an MNE Group if that group does not have consolidated revenues above the threshold. The mechanisms for ensuring effective overall co-ordination of the application of the IIR and UTPR across multiple jurisdictions are discussed in Section 10.5, including exploration of a multilateral convention for the IIR and UTPR which would be the only means to enshrine rule co-ordination in a legally binding form.

10.4. Treaty compatibility

10.4.1. General principles

679. The common starting point for an analysis of the compatibility of the IIR and UTPR with existing tax treaty obligations is the general principle that, with limited exceptions, tax treaties are not intended to restrict a jurisdiction's right to tax its own residents. This longstanding principle is now codified in Article 1(3) of the OECD Model (often referred to as the "saving clause"), and reads as follows:

> *This Convention shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under paragraph 3 of Article 7, paragraph 2 of Article 9 and Articles 19, 20, 23 [A] [B], 24, 25 and 28.*

680. As a general matter, then, tax treaties should not present any obstacle to jurisdictions implementing an IIR and UTPR along the lines envisaged under the GloBE.

10.4.2. Income Inclusion rule (IIR)

681. The IIR operates by requiring a parent entity (in most cases, the Ultimate Parent Entity) to bring into account as income its proportionate share of the income of each Constituent Entity located in a low-tax jurisdiction in which it owns an equity interest. That income is then taxed in the parent entity's hands up to the GloBE minimum rate, after crediting any covered taxes (as defined for the purposes of the GloBE) on that income. In subjecting a domestic taxpayer to tax on its share of the foreign income of a controlled subsidiary, therefore, the IIR operates in a way that is closely comparable to a CFC rule and raises the same treaty questions. Although there are a number of differences between the IIR and the CFC rules of many jurisdictions, these do not alter the analysis.

682. The compatibility of CFC regimes with treaty obligations is addressed in paragraph 81 of the Commentary on Article 1 of the OECD Model Tax Convention (OECD, 2017[8]) (MTC), which concludes that they do not conflict with treaty obligations. Paragraph 81 reads as follows:

> *"A significant number of countries have adopted controlled foreign company provisions to address issues related to the use of foreign base companies. Whilst the design of this type of legislation varies considerably among countries, a common feature of these rules, which are now internationally recognised as a legitimate instrument to protect the domestic tax base, is that they result in a Contracting State taxing its residents on income attributable to their participation in certain foreign entities. It has sometimes been argued, based on a certain interpretation of provisions of the Convention such as paragraph 1 of Article 7 and paragraph 5 of Article 10, that this common feature of controlled foreign company legislation conflicted with these provisions. Since such legislation results in a State taxing its own residents, paragraph 3 of Article 1 confirms that it does not conflict with tax conventions. The same conclusion must be reached in the case of conventions that do not include a provision similar to paragraph 3 of Article 1; for the reasons explained in paragraphs 14 of the Commentary on Article 7 and 37 of the Commentary on Article 10, the interpretation according to which these Articles would prevent the application of controlled foreign company provisions does not accord with the text of paragraph 1 of Article 7 and paragraph 5 of Article 10. It also does not hold when these provisions are read in their context. Thus, whilst some countries have felt it useful to expressly clarify in their conventions, that controlled foreign company legislation did not conflict with the Convention, such clarification is not necessary. It is recognised that controlled foreign company legislation structured in this way is not contrary to the provisions of the Convention."*

683. For the same reasons, it can be concluded that an IIR along the lines envisaged under the GloBE is similarly compatible with the provisions of tax treaties that are generally based on the OECD Model.

10.4.3. Undertaxed payments rule (UTPR)

684. The UTPR serves as a backstop to the IIR. It operates when the IIR does not apply by providing jurisdictions with a tool to protect themselves from the effect of base eroding transactions. In order to do so, the UTPR takes the form of a limitation (or denial) of the deduction of intra-group payments, or an equivalent adjustment. The extent to which the deduction of an intra-group payment is affected by the UTPR depends on the amount of top-up tax that is allocated to a UTPR Taxpayer. As described in Chapter 7 the UTPR uses the same mechanics as the IIR for determining the MNE's jurisdictional ETR and the amount of top-up tax allocable under the rule. The UTPR, however, operates through an allocation key that is based on deductible intra-group payments.

685. The top-up tax is allocated to a UTPR taxpayer that is a member of the same MNE Group as the low-tax entity as follows:

- First, if the UTPR taxpayer makes any deductible payments to the low-tax entity during the relevant period, the top-up tax that applies to the income of such entity is allocated in proportion to the deductible payments made to such low-tax entity by all UTPR taxpayers;
- Second, if the UTPR taxpayer has net intra-group expenditure, the remaining top-up tax is allocated in proportion to the total amount of net intra-group expenditure incurred by all UTPR taxpayers.

686. The rationale for the two-step approach is that the full amount of top-up tax may not be allocated after application of the first allocation key. This can happen if there are no direct payments made to any low-tax entity from a UTPR taxpayer or if the adjustments on direct payments are not sufficient to soak up the computed top-up tax. In such a case, the remaining top-up tax after the first allocation key applied is allocated to the UTPR taxpayers in proportion to their net intra-group expenditures. The UTPR taxpayers with net related party income are disregarded for the purpose of the second allocation key. Both allocation keys only take into account the payments that were made in the same year as the year when the top-up tax arises.

687. The UTPR provides a coordinated mechanism to identify the maximum amount of top-up tax that can be allocated and that can be imposed on each UTPR Taxpayer. The top-up tax imposed on each UTPR taxpayer is capped by reference to the gross amount of deductible intra-group payments that are taken into account for the purpose of the allocation keys. The UTPR, however, does not provide any requirements as to how this top-up tax is collected. The adjustment in the payer jurisdiction could take the form of a denial or a limitation of a deduction for intra-group payments, or an equivalent tax computed by reference to those payments. The precise method under which the adjustment is made will be a matter of domestic law implementation left to the jurisdictions applying the UTPR (see Section 7.7).

688. Because the UTPR has the potential to apply in any jurisdiction where a UTPR taxpayer makes an intra-group payment, and because the outcomes under the UTPR will vary based on the amount of intra-group payments made by each entity, the UTPR is a more complex rule to apply and requires a greater amount of co-ordination between jurisdictions than the IIR. In practice, however, the scope for the application of the UTPR is expected to be relatively narrow. This is because the UTPR only applies where the entity is not otherwise subject to an IIR that is implemented in accordance with the GloBE rules under the laws of another jurisdiction (see Section 10.2 on rule order).

689. The UTPR would also, therefore, affect how a country taxes its own residents. Since a denial of a deduction under the UTPR could result in a higher taxable base than the base solely based on arm's length profits, some may question whether the denial could conflict with Article 9(1) (Associated Enterprises) or, where the UTPR applies to a PE, Article 7(2) MTC. It is generally recognised, however, that once the profits have been allocated in accordance with the arm's length principle, how they are taxed is a matter determined by the domestic law of each country. A frequently quoted illustration of this point, found in the domestic law of many countries, are rules denying a deduction for entertainment expenses. As mentioned above, this longstanding principle is now codified in Article 1(3) of the OECD Model (the "saving clause") and is further confirmed by paragraph 30 of the Commentary on Article 7 MTC, as follows:

> *"Paragraph 2 determines the profits that are attributable to a permanent establishment for the purposes of the rule in paragraph 1 that allocates taxing rights on these profits. Once the profits that are attributable to a permanent establishment have been determined in accordance with paragraph 2 of Article 7, it is for the domestic law of each Contracting State to determine whether and how such profits should be taxed as long as there is conformity with the requirements of paragraph 2 and the other provisions of the Convention. Paragraph 2 does not deal with the issue of whether expenses are deductible when computing the taxable income of the enterprise in either Contracting State. The conditions for the deductibility of expenses are a matter to be determined by domestic law, subject to the provisions of the Convention and, in particular, paragraph 3 of Article 24 […]"*

Non-discrimination provisions

690. The general principle codified in Article 1(3) MTC is, however, constrained in some circumstances by Article 24 MTC (the non-discrimination provision). In relation to the UTPR two provisions of Article 24 need to be considered. Article 24(4) requires equal treatment to be given to payments made by a resident to a non-resident when compared to payments between resident taxpayers. In order to comply with Article 24(4), the conditions for deductibility should not be different merely because the payment is made to a non-resident. And, where the UTPR applies to deemed payments by a PE, Article 24(3) requires that the taxation on that PE shall not be less favourably levied than that on resident enterprises carrying on the same activities.

691. As described in Section 7.4.3, the UTPR will not apply where a payment is made from a jurisdiction that is characterised as a low tax jurisdiction for that group in a particular year (based on the local group's ETR profile in that jurisdiction in that year). The first step of the UTPR will also not apply to a payment from a jurisdiction that is characterised as a high tax jurisdiction for the group in a particular year to a group entity in a jurisdiction that is also characterised as a high tax jurisdiction for that group in that year. There is no denial of a deduction under the UTPR in either scenario. The first step of the UTPR will only apply

where a payment is made from a jurisdiction that is characterised as a high tax jurisdiction for that group in a particular year to a group entity in a jurisdiction that is characterised as a low tax jurisdiction for that group in that year. In this scenario, there may be a denial of a deduction under the UTPR. And, because a jurisdiction cannot be both a high tax and a low tax jurisdiction for a group in a particular year, this denial will only apply to certain cross-border payments. But in all of these scenarios, the conditions under which a deduction for a domestic or cross-border payment is permitted or denied are the same; the only relevant consideration is whether the payment is high tax to low tax. This demonstrates that the denial of a deduction under the first step of the UTPR is not determined by the residence of the recipient of the payment but by the jurisdiction's classification as high or low tax on the basis of the local group's effective tax rate profile in the relevant period.

692. Under the second step described above, deniability can arise in respect of any net related party expenditure, whether the payment is made to a domestic or foreign member of the group. The net related party expenditure is determined on an entity-by-entity basis. Under this step, therefore, the UTPR will apply in the same way to intra-group payments made to domestic and non-resident group entities without any distinction.

693. For these reasons, it can be concluded that a UTPR along the lines envisaged under the GloBE rules is compatible with the obligation not to discriminate on the basis of the residence of the recipient of a deductible payment set out in Article 24(4). A similar conclusion can be reached in relation to Article 24(3) for the reasons set out below.

694. PEs are treated as separate Constituent Entities for the purpose of the GloBE rules. Deemed or notional payments from a PE to its head office (HO) that are recognised for tax purposes will be included in the definition of payments, provided they meet the general criteria for being deductible in the payer jurisdiction. This applies to payments taken into account under either the first or second step described above. Such a PE could therefore be a UTPR taxpayer and be subject to a denial of deduction where the PE is in a jurisdiction characterised as high-tax and its HO is in a jurisdiction characterised as low-tax on the basis of the ETR profile in each jurisdiction in a particular year, in the same way as described above. The UTPR will then apply, using the same mechanics as the IIR for determining the MNE's jurisdictional ETR and the amount of top-up tax allocable under the rule and applying to the PE the two step allocation key based on the PE's deductible intra-group payments (that is, the deemed payments recognised for tax purposes). The effect is the same as for payments made by a group entity that is a UTPR taxpayer.

695. Article 24(3) requires that the taxation on a PE shall not be less favourably levied in the host jurisdiction as compared to a hypothetical enterprise resident in that jurisdiction and carrying on the same activities. In applying this test, as with the other tests in Article 24, paragraph 3 of the Commentary on Article 24 MTC sets out the following general principles:

> *"The various provisions of Article 24 prevent differences in tax treatment that are solely based on certain specific grounds […] Thus, for these paragraphs to apply, other relevant aspects must be the same. The various provisions of Article 24 use different wording to achieve that result (e.g. "in the same circumstances" in paragraphs 1 and 2; "carrying on the same activities" in paragraph 3; "similar enterprise in paragraph 5). Also, whilst the Article seeks to eliminate distinctions that are solely based on certain grounds, it is not intended to provide foreign nationals, non-residents, enterprises of other States or domestic enterprises owned and controlled by non-residents with a tax treatment that is better than that of nationals, residents or domestic enterprises owned or controlled by residents."*

696. The UTPR applies to a PE that is a UTPR Taxpayer, in the same way as to a UTPR Taxpayer that is a group entity, as a mechanism to allocate top-up tax resulting from a low-tax outcome within an MNE. The mechanism takes the form of a limitation (or denial) of the deduction of intra-group payments, or an equivalent adjustment, based on deductible payments to a low-tax entity or net related party expenditures in the relevant period. It is a rule designed to serve as a backstop to the IIR by allocating top-up tax among the Constituent Entities in an MNE Group when the IIR does not apply. The UTPR, therefore, does not

discriminate against a PE situated in a state compared with a resident entity of that state which carries on the same activities merely because it is the PE of a non-resident entity.

10.5. Effective co-ordination of the GloBE rules

697. Further guidance and mechanisms will be developed to ensure consistent, comprehensive and coherent application of the IIR and UTPR, and effective overall coordination of their application across multiple jurisdictions. This will include model legislation and guidance together with a multilateral review process as well as the exploration of a multilateral convention containing the key elements of the IIR and UTPR.

698. Further consideration will be given to whether it would be appropriate for jurisdictions to agree to stagger the implementation of the rules, allowing the IIR to come into effect first and only activating the UTPR after a specified number of years following the finalisation of Pillar Two.

10.5.1. Model legislation and guidance

699. To enhance consistency and improve rule co-ordination, model legislation will be developed setting out the detailed rules for the IIR and UTPR. The model legislation will serve as a template that jurisdictions could use as the basis for domestic legislation.

700. Furthermore, as jurisdictions move into the implementation stage, questions of interpretation may arise. In the interest of consistent implementation and certainty for both tax administrations and taxpayers, the Inclusive Framework on BEPS will develop co-ordinated guidance to respond to those questions. This is similar to the approach used in connection with the implementation of BEPS Action 13.

701. Work on model legislation for the IIR and UTPR will proceed in parallel to the work on drafting the STTR and SOR.

10.5.2. Multilateral review process

702. To simplify both the compliance with the UTPR and the administration of the rule in instances where the UTPR should not apply, there is a need for a system that allows an MNE Group to certify that Constituent Entities of the MNE are parented in a jurisdiction which has implemented an IIR is in line with the GloBE requirements.

703. The determination of whether a jurisdiction's IIR is in line with GloBE can be facilitated through a multilateral review process. The multilateral process for determining whether a jurisdiction has introduced an IIR in line with GloBE requirements would be a collective assessment and would result in publication of an agreed compilation of jurisdictions that had implemented an IIR consistent with the rules contained in this Pillar Two Blueprint. The model legislation and guidance will serve as a consistent set of guidelines on what constitutes a Pillar Two-compliant IIR, and will form the basis of the multilateral review process.[7]

704. Separately, following implementation of the IIR and UTPR in jurisdictions' domestic law, Inclusive Framework on BEPS members will consider undertaking a general review of the operation of the GloBE rules to ensure that they are working as intended. This would be linked to the process that allows Inclusive Framework on BEPS members to consider whether the way the rules operate in a particular context "results in material competitive distortions in the application of the GloBE rules".[8] In the meantime, where Inclusive Framework on BEPS members identify specific issues or risks, the Inclusive Framework on BEPS could develop further guidance to address these. A multilateral review process will seek to minimise the resource burdens on tax administrations engaged in this exercise.

10.5.3. Multilateral convention

705. Although it is not a prerequisite, a multilateral convention would be the only means to enshrine rule co-ordination in a legally binding form. Inclusive Framework on BEPS Members will therefore develop provisions that could be included in a new multilateral convention and that would be designed to ensure consistency, certainty and co-ordination in the application and operation of the IIR and UTPR. This would supplement the model legislation, guidance and multilateral review process with a legal overlay that underpins the political agreement on Pillar Two.

706. The provisions could contain the key elements and high-level principles of the GloBE rules that are necessary to ensure consistent and coordinated application across multiple jurisdictions, in particular rule order and the top-down approach for the IIR. They could also contain the key design elements of the GloBE rules that require common defined terms, including tax base, definition of covered taxes, jurisdictional blending approach, and the allocation rules for the UTPR. The model legislation would contain the detailed rules for the IIR and UTPR, which would sit alongside the multilateral convention as a source of further guidance and interpretation.

707. Unlike the MLI used to implement the tax treaty related BEPS measures, the provisions would not seek to modify existing treaty provisions. Instead, the provisions could be included in a new multilateral convention, which would be a standalone international public law instrument designed specifically for the purposes of ensuring consistent, coordinated and comprehensive application of the GloBE rules, and which would coexist with the existing tax treaty network. It may also be possible to include the GloBE provisions in the new multilateral instrument considered under Pillar One, which could also have the benefit of setting out the interaction between Pillar One and Pillar Two.[9] Consideration could also be given to including the STTR and SOR in this new multilateral instrument.

708. A multilateral convention could also confirm the compatibility of the GloBE rules with existing double tax treaties providing further certainty for the operation of the GloBE rules. Furthermore it could contain exchange of information and dispute resolution mechanisms (see Section 10.6.2).

10.6. Dispute prevention and resolution

709. Ensuring tax certainty through dispute prevention and resolution mechanisms is a key component of Pillar Two. There are a number of tools within the existing international tax framework to mitigate the risks of a taxpayer potentially being exposed to double taxation.

10.6.1. STTR and SOR

710. The STTR and the SOR are treaty rules that could be incorporated into existing tax treaties. Therefore, they would benefit from the existing dispute resolution mechanisms in the relevant tax treaties. In accordance with the BEPS Action 14 Minimum Standard, all treaties involving the members of the Inclusive Framework on BEPS should include a MAP article that is in line with Article 25(1-3) of the OECD Model Tax Convention (OECD, 2017[8]). Therefore, a mutual agreement procedure could be initiated in case a taxpayer would consider that one jurisdiction has applied the STTR or the SOR in a way that resulted or will result in taxation is not in accordance with the tax treaty.

10.6.2. GloBE rules (IIR and UTPR)

711. The IIR and UTPR are new rules that would be incorporated into the domestic law of jurisdictions. The IIR and UTPR have been designed in a way to minimise the scope for disputes concerning their application across multiple jurisdictions primarily because of the rule order and the binary way in which they operate (i.e. the UTPR should not apply in situations where the low-tax Constituent Entity is controlled, directly or indirectly by a foreign Constituent Entity that is subject to an IIR which has been implemented in accordance with the GloBE rules). Other design features of the GloBE rules that will help to minimise

disputes include the application of the IIR at a single Parent level and the mechanism for identifying those jurisdictions that have implemented an IIR in line with the requirements of the GloBE rules as well as the standard mechanism for the MNE to certify that it is subject to these rules.[10]

712. In addition, the UTPR has been designed in a way to minimise the scope for disputes since (i) as a backstop, the UTPR is only expected to be applied in a limited number of situations and (ii) the UTPR calculation and allocation rules are largely mechanical and less subject to interpretation than other rules allocating taxing rights (such as transfer pricing rules). Furthermore, the development of model legislation and guidance together with the development of a multilateral legal instrument as well as standardised returns will help to prevent disputes arising by facilitating consistent application of the GloBE rules and multilateral working by tax administrations.[11]

713. If an inconsistent application of the GloBE rules would nevertheless result in a taxpayer potentially being exposed to double taxation, then there are a number of tools within the existing international tax framework to mitigate these risks. First, jurisdictions can rely on the Convention on Mutual Administrative Assistance in Tax Matters ("MAAC") to exchange information.[12] Furthermore, in the situations where a tax administration considers reassessing the UTPR return filed by the taxpayer in its jurisdiction, it could be required to inform or consult with other jurisdictions or to initiate simultaneous tax examinations across several jurisdictions potentially affected by the reassessment of the UTPR return.[13] The legal framework for simultaneous tax examinations is provided for in the MAAC.[14] Simultaneous tax examinations have proven to be an effective tool to ensure the right amount of tax is paid while minimising the risk of double taxation (OECD, 2019[13]).

714. Furthermore, in case a jurisdiction reassesses the UTPR return filed by the taxpayer, and this results in double taxation for the taxpayer (for example, because it affects the top-up tax that was allocated to another jurisdiction), a mutual agreement procedure could be initiated under existing treaties. For that purpose, competent authorities of the relevant jurisdictions could rely on the provision contained in Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2017[8]), which allows them to consult together for the elimination of double taxation in cases that are not provided for in the Convention. This would require, however, that the jurisdictions involved in the double taxation have entered into a tax treaty with each other, and that they have the authority to resolve the case, which may not be the case for all jurisdictions involved.

715. In addition, the Inclusive Framework on BEPS will also explore the development of a multilateral convention which could then also contain provisions for dispute prevention and resolution concerning the application of the GloBE rules as well as provisions for exchange of information between tax administrations – reflecting that ensuring effective compliance with the UTPR and IIR will require tax administrations to have access to information on constituent entities that are outside of the control of local resident companies (see Section 10.5.3). Further consideration could also be given as to whether this convention could be combined with the instrument that is under consideration for the purposes of Pillar One.

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Notes

[1] See Section 4.2.1.

[2] See Section 3.3.2.

[3] See Section 3.4.2.

[4] See Section 3.4.

[5] See Section 4.2.1.

[6] For the situation where no controlling Parent entity can apply the IIR, see above Section 6.3.1.

[7] Parallel with this process, tax administrations that have implemented an IIR could agree on simplified risk assessment procedures that could be applied in determining compliance with the IIR in each jurisdiction. Options for development of simplified risk assessment procedures are discussed further in Chapter 5. These simple procedures could also include a mechanism for demonstrating that the effective tax rate in the parent jurisdiction for GloBE purposes was above the agreed minimum rate.

[8] See the discussion on *'Other generally accepted financial accounting standards'* in Section 3.3.3.

[9] See Section 10.2.2. *Public international law implementation* of the Pillar One Blueprint (OECD, 2020[16]).

[10] See Section 7.8 on the Compliance and administration of the UTPR.

[11] See also Section 7.8.2 about certification mechanisms and standardised returns for the purpose of the UTPR. Further work could explore whether standardised returns could also be developed for the purpose of the IIR. In addition, as model legislation and guidance are developed, further technical work will be undertaken to explore potential simplification options associated with the exchange of the relevant certifications and standardised returns.

[12] The Convention on Mutual Administrative Assistance in Tax Matters as Amended by the 2010 Protocol (OECD, 2011[17]) (the MAAC) is a multilateral treaty aimed at assisting countries to better enforce their tax laws by providing an international legal framework for exchanging information and co-operating in tax matters with a view to countering international tax evasion and avoidance. As of June 2020, there are 137 participating jurisdictions in the MAAC.

[13] Simultaneous tax examinations refer to an arrangement between two or more tax administrations to examine simultaneously, each in its own territory, the tax affairs of a person or persons in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain.

[14] Under the MAAC, two or more jurisdictions may consult together for the purposes of determining cases and procedures for a simultaneous tax examination (Article 8). One jurisdiction may also request its competent authority to be present during tax examinations that occur in another jurisdiction (Article 9).

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