

Jersey's implementation of the OECD Pillar Two rules

Briefing Summary: The Government of Jersey has issued an update to the statement it released a year ago in relation to its plans to implement key aspects of the Pillar Two international tax reforms in Jersey.

Service Area: Taxation and Economic Substance Requirements

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In May 2023, Jersey announced its intention to implement a Pillar Two Income Inclusion Rule and a Domestic Minimum Tax from 2025. Jersey has now confirmed that it intends to achieve its 2023 commitment by introducing the following legislation:

1. An Income Inclusion Rule (IIR); and
2. A new stand-alone multinational corporate income tax (MCIT) to sit alongside Jersey's existing corporate income tax regime.

Jersey also confirmed that it will not be enacting an Undertaxed Profits Rule at this time.

The Government's news release states:

"The MCIT will align with the OECD GloBE Model Rules so that Jersey companies and Jersey branches of in-scope multinational groups pay an effective rate of 15% on their profits.

The Government of Jersey is clear that this new multinational corporate income tax is the right approach to Pillar Two implementation for Jersey. It will support our diverse geographical investment base and, where relevant, will address certain unintended double taxation challenges that Pillar Two implementation creates for some taxpayers. It will also operate independently of our existing tax regime, thereby reducing the need for top-up calculations and maintaining administrative simplicity to the greatest extent possible."

Deputy Ian Gorst (Jersey's Minister for External Relations) stated:

"We are focused on maintaining a globally competitive business environment and providing our taxpayer customers worldwide with administrative simplicity, certainty of outcome, and adherence to international standards."

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The remaining details of Jersey's new multinational corporate income tax regime will be finalised in the coming weeks and it is noted that the Government intends to publish draft IIR and MCIT legislation in the summer when it is lodged with Jersey's Parliament, the States Assembly.

Background

In October 2021, members of the Organisation for Economic Cooperation and Development ("OECD") agreed on a two-pillar solution to reform the international tax framework to address challenges related to the digitalisation of the economy. As part of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting ("BEPS"), members agreed to a co-ordinated system of Global Anti-Base Erosion ("GloBE") rules that are designed to ensure large multinational groups pay a global minimum level of tax through a combination of domestic and international tax mechanisms.

Developed through the collaboration of more than 130 countries, the GloBE model rules were released in December 2021 ("Model Rules"), setting in motion the implementation of global minimum tax rules known as Pillar Two.

The Model Rules aim to ensure that large multinational groups pay a minimum effective tax rate of at least 15% on profits in every jurisdiction in which they operate. This will be achieved by allowing countries to impose top-up taxes in situations where a multinational group is taxed below the minimum rate.

Multinational enterprises (MNEs) and ultimate parent entities (UPEs)

Under the Model Rules, a multinational enterprise/group ("MNE") is broadly one with annual revenues in excess of €750 million in at least two of the previous four accounting periods as shown in the consolidated financial statements of the ultimate parent entity ("UPE"). The UPE is the entity that is required to prepare consolidated accounts while not itself being consolidated in the accounts of an entity above it. Entities include all legal persons (other than natural persons) as well as "arrangements" that prepare separate financial accounts, such as partnerships and trusts.

Excluded entities

An MNE which falls within the scope of the Model Rules, will need to identify which of its entities will be subject to the main charging rules. The Model Rules provide for certain entities to be excluded ("Excluded Entities") including: government entities, international organisations, pension funds, non-profit organisations and subsidiaries of non-profit organisations as well as investment funds and real estate investment trusts that are themselves UPEs.

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Investment funds and asset holding entities

The Model Rules define an investment fund as an entity that meets each of seven specified criteria set out in the rules. These include being designed to pool assets from a number of investors at least some of whom are unconnected, investing in accordance with a defined investment policy and the entity or its management being subject to a relevant regulatory regime.

The investment fund exclusion also extends to certain asset holding entities being entities that are either: (a) at least 95% owned by other Excluded Entities and which operate to hold assets or invest funds for the Excluded Entity's benefit or to carry out activities which are ancillary to those of the Excluded Entity; or (b) at least 85% owned by other Excluded Entities and whose income is substantially all dividends and gains which meet certain provisions of the Model Rules which exclude them from the GloBE tax base.

Multinational top-up taxes (MTT)

Pillar Two introduces the multinational top-up tax ("MTT"), a new tax charged on the ultimate parent entity of an MNE which has an effective tax rate of less than 15% (the minimum rate) in any jurisdiction in which it operates.

Income Inclusion Rules (IIR)

The MTT is applied through the Income Inclusion Rule ("IIR"), a mechanism which imposes a top-up tax in respect of the low/zero-taxed income of a constituent entity on the UPE of the MNE if the parent is located in a jurisdiction that has implemented Pillar Two IIR provisions. Otherwise, it is necessary to find the highest level intermediate parent that is located in a jurisdiction that has implemented Pillar Two IIR provisions.

Jersey's statement confirms that it will be introducing an IIR into Jersey domestic legislation. It is anticipated that this will be done by reference to applicable sections of the Model Rules. Jersey's statement also confirms that the IIR is anticipated to apply for fiscal years commencing on or after 1 January 2025.

The IIR is expected to apply in Jersey where there is: (i) a UPE of an in-scope MNE located in Jersey; or (ii) an intermediate parent of an in-scope MNE located in Jersey and no higher level parent that is located in a jurisdiction that has implemented Pillar Two IIR provisions.

Under the Model Rules, an entity is generally located in a jurisdiction if it is tax resident in that jurisdiction based on its place of management, place of creation or similar criteria. The Model Rules contain tie breaking provisions.

Undntaxed Profits Rule (UTPR)

The Undertaxed Profits Rule ("UTPR") is another key component of the Pillar Two regime. Jurisdictions implementing a UTPR will be seeking to collect tax from entities located in their jurisdiction which form part of an in-scope MNE but where the profits of one or more constituent entities are not subject to an IIR mechanism. This could arise where, for example, the parent entity is established in a jurisdiction that does not implement Pillar Two IIR provisions.

Jersey has confirmed that it will not be implementing a UTPR at this time.

Domestic Top-up Taxes (DTTs)

In-scope MNEs will increasingly find that profits earned by constituent entities located in jurisdictions that offer a low or no corporate tax will be subject to IIR or UTPR provisions elsewhere. Accordingly, many jurisdictions are seeking to ensure that such profits are taxed locally through the mechanism of a Domestic Top-up Tax ("DTT").

Multinational Corporate Income Tax (MCIT)

The MCIT regime that has been announced will implement Jersey's DTT in respect of constituent entities of in-scope MNEs which are located in Jersey. It will sit alongside Jersey's existing 0/10 corporate tax income system. The consequence being that the general rate of corporate tax for companies outside of scope will remain at 0% with certain companies and income streams being subject to a 10% or 20% rate while Jersey tax-resident companies and branches of in-scope MNEs will be subject to an effective tax rate of 15% on their taxable profits.

Legislation

As noted, the Jersey Government has indicated that the remaining details of the MCIT and IIR will be finalised in the coming weeks and draft legislation will be published in the summer.

Further advice and updates

The Model Rules which are anticipated to be incorporated in part into Jersey's domestic legislation together with the associated guidance are complex and there are many areas where further clarity as to their application will be required.

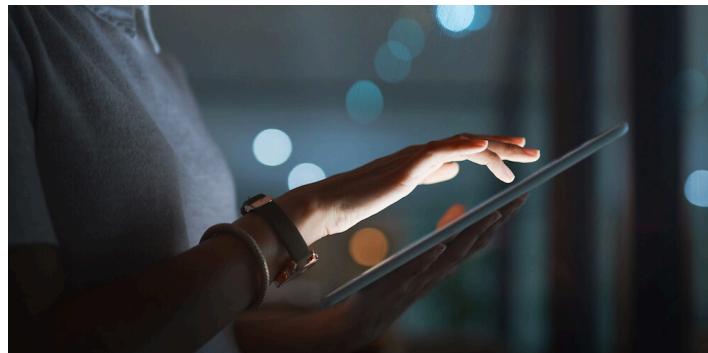
The application of the IIR and the MCIT to Jersey located entities will require detailed analysis and advice should be taken in respect of the application of these provisions to relevant entities.

We will provide further information and updates as and when draft legislation is published.

For further information please contact Alex Ohlsson or your usual Carey Olsen contact.

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