Jersey Adopts OECD's Global Minimum Tax Rate of 15%

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Jersey has passed legislation to implement the OECD's global minimum tax rate of 15%, known as "Pillar 2", which will apply for fiscal years commencing on or after 1 January 2025.

Recap – What is Pillar 2?

Pillar 2 is an OECD initiative that ensures that multinational enterprises with a consolidated annual turnover of at least €750 million (MNEs) pay a minimum blended "effective tax rate" (ETR) of 15% on their worldwide profits, no matter where those profits arise.

This 15% minimum rate is achieved through jurisdictions enacting the OECD's Global Anti-Base Erosion (GloBE) Rules. These rules allocate taxing rights amongst certain jurisdictions that are relevant to the MNE group.

There are three key features of Pillar 2:

- A qualified domestic minimum top-up tax (**QDMTT**) - a fundamental international tax concept is that the jurisdiction in which profits arise has primary taxing rights over those profits. Under the GloBE Rules, where the ETR in the jurisdiction where the profits arise is less than 15%, the MNE group is required to pay a "top-up tax" to bring the jurisdictional ETR up to the 15% rate;
- An income inclusion rule (**IIR**) - where the jurisdiction in which the profits arise does not have a QDMTT and the ETR on those profits is less than 15%, secondary taxing rights over those profits are allocated to the jurisdiction of the Ultimate Parent Entity (**UPE)** being the entity that holds the ultimate control over the MNE group (and is not itself under the control of another entity). However, if the UPE is located in a jurisdiction that has not implemented an IIR in line with the GloBE Rules (such as the US), then the IIR top-up tax is levied on the next highest level intermediate parent entity (**IPE**) entity in the ownership chain that is located in a jurisdiction has implemented an IIR in line with the GloBE Rules; and
- An under taxed profits rule (**UTPR**) – this is a back-up to the IIR. Under UTPR, residual taxing rights are allocated to other jurisdictions implementing Pillar 2. Where an MNE group has an ETR below 15% in a jurisdiction that has not adopted a QDMTT, and the IIR cannot be applied to the low-tax profits in that jurisdiction (e.g. because the UPE is located in a non-IIR jurisdiction) the top-up tax is collected by all jurisdictions that have implemented a UTPR (there is a mechanism that allocates the profits).

How is Jersey implementing Pillar 2?

Jurisdictions are free to choose whether to adopt some, all or none of Pillar 2.

Jersey has adopted IIR which will be payable by a Jersey resident entity that is the UPE of an MNE group, or is the IPE of an MNE group where the UPE is located in a non-Pillar 2 jurisdiction. Broadly, the top-up tax is triggered where and to the extent that a constituent entity in another jurisdiction has an ETR of less than 15% in relation to its income/loss calculated under the GloBE Rules (**GloBE Income**) (subject to certain adjustments).

Jersey has adopted a new 15% multinational corporate income tax (**MCIT**) instead of a QDMTT. MCIT will effectively implement Jersey's domestic top up tax. MCIT will be payable by constituent entities of in-scope MNEs which are either tax resident in Jersey or have a permanent establishment in Jersey (each a **Jersey constituent entity**) charged by reference to their GloBE Income. Further details on MCIT are set out below.

Jersey is not adopting a UTPR.

Are there any exemptions?

Yes. There are exemptions from IIR and MCIT for REITs and regulated investment funds (in each case they must be the UPE) and also insurance investment entities. Securitisation vehicles are also exempt from MCIT.

There is also an exemption from MCIT for any fiscal year where the average GloBE revenue for Jersey is less than €10m and the average GloBE Income for Jersey is less than €1m (or is a loss).

For IIR, where the average GloBE revenue for a jurisdiction is less than €10m and the average GloBE Income for that jurisdiction is less than €1m (or is a loss) then that jurisdiction's profits can be excluded from the top-up tax calculation in Jersey.

What is GloBE Income?

Both MCIT and IIR top-up tax are calculated by reference to GloBE Income. Broadly, GloBE Income is the financial accounting net income/loss, but various adjustments are made to include/exclude certain items, including:

- dividends/distributions received by an entity are excluded, unless they are paid on a short-term portfolio holding or if an election is in place;
- gains/losses arising from an equity holding of 10% or more are excluded;
- gains/losses arising from an equity holding of less than 10% are included; and
- gains/losses arising from the disposal of certain assets are included (there are some adjustments for reorganisations that defer the recognition of the gain/loss for Pillar 2 purposes).

This means that intra-group dividends/distributions and disposals of subsidiary companies are exempt from MCIT and IIR top-up tax. However, the concept of GloBE Income can include capital profits arising

on the disposal of certain assets, making the scope of MCIT and IIR wider than Jersey's existing 0/10 corporate tax income system which does not tax capital profits.

MCIT – further details

MCIT will sit alongside Jersey's existing 0/10 corporate tax income system. The general rate of corporate income tax for companies outside of scope will therefore remain at 0% (with certain companies and income streams being subject to a 10% or 20%[1] rate). Jersey constituent entities will be exempt from the 0/10 regime and will instead be subject to an effective tax rate of 15% on their taxable profits under MCIT.

MCIT will not be charged on top of the 10% or 20% rates and does not apply to low-taxed income outside of Jersey. However, it is designed to ensure that the ETR in Jersey is 15% and the income that is taxed under MCIT is calculated using GloBE principles. It should be noted that while MCIT follows the GloBE computation in determining the amount of the GloBE net income or loss, MCIT applies a 15% tax rate to the GloBE net income or loss (while also taking into account specified losses and certain credits). In calculating the MCIT charge, there is no "substance based income exemption" (being a subtraction for a specified portion of costs related to tangible assets and payroll) which there is under QDMTT. The reason for this is that MCIT is a domestic covered tax rather than a GloBE top-up tax regime – if it allowed for a deduction for substance based income it would lead to a Jersey ETR of less than 15%.

A notable feature of MCIT is that it includes a tax credit for foreign taxes levied on a non-Jersey parent company (further up the chain of ownership) under certain "controlled foreign company" or "**CFC**" regimes that tax the parent company on the underlying low-taxed blended profits of its subsidiaries[2]. The CFC regime must have a threshold for low tax that is less than 15%. The CFC tax credit available under MCIT is subject to an overall cap of 7.5% of the MNE group's net Jersey income that is taxable under MCIT for the fiscal year, such that the maximum credit is effectively half of the MCIT.

Migrations

If an entity that is subject to Pillar 2 is looking to migrate in or out of Jersey, it should be noted that the change of tax residence caused by the migration is only effective for Pillar 2 purposes at the beginning of the following fiscal year.

Filings

There are separate filings for MCIT and IIR.

For MCIT, a Jersey constituent entity will be responsible for the MCIT filings for all Jersey members of the MNE group. This **Reporting Entity** will be the Jersey UPE (if there is one) or sole Jersey IPE (if there is one) or will otherwise be designated by Revenue Jersey (RJ).

The Reporting Entity must register each Jersey constituent entity with RJ before the end of the first fiscal year that MCIT applies to Jersey members of the in-scope MNE group or, where the entity is joining an existing in-scope MNE group, within 6 months of joining that group.

The Reporting Entity must file the MCIT return within 12 months after end of the relevant fiscal year. MCIT will be payable by instalments and Reporting Entity must pay 50% of the reasonable estimate of the MCIT due by 5 months after the end of the fiscal year, with the balance becoming due on the MCIT return filing due date.

For IIR, there are two relevant returns. The first is a GloBE information return, which is a standardized group return providing various items of information about the MNE group, including the group structure, names, tax numbers, jurisdiction of residence and Pillar 2 status of each entity, and ETR and top-up tax for each jurisdiction. In general, this return is filed by the UPE or, if the UPE is located in a jurisdiction that does not have Pillar 2, an IPE that is located in a jurisdiction that does have Pillar 2.

The second is an IIR return, which relates to the top-up tax payable under IIR. In general, this return is also filed by the UPE or, if the UPE is located in a jurisdiction that does not have IIR, an IPE that is located in a jurisdiction that does have IIR.

Where the UPE is located in Jersey, or where the UPE is not subject to Pillar 2 and the IPE is located in Jersey (and there is no other IPE subject to IIR somewhere else), then each year the Jersey UPE/IPE will be obliged to notify RJ and file the GloBE information return and the IIR return. Both returns are due within 15 months after the end of the relevant fiscal year (18 months for the first fiscal year that Pillar 2 applies to the MNE group). Any top-up tax under IIR is also due by the same deadline.

If neither the UPE or an IPE are located in Jersey, each year one of the Jersey entities in the MNE group must provide RJ with details of the constituent entity that will file the GloBE information return and the jurisdiction of the filing. The deadline for this filing is the same as for an IIR return.

Walkers' commentary

MCIT is an interesting development. QDMTT does not take into account foreign taxes levied on a parent company (further up the chain of ownership) under CFC regimes, such as the US's Global Intangible Low-Taxed Income (GILTI) regime. As MCIT does take into account such CFC taxes, it means that, in some cases, Jersey is ceding its primary taxing rights on Jersey profits to other jurisdictions that have CFC regimes with a low tax threshold of less than 15%. GILTI is one such CFC regime and so Jersey could be an attractive jurisdiction for US headquartered MNE groups.
RJ has already published interim guidance on certain key points and will develop and publish further guidance in due course.

Conclusion

It is important to bear in mind that MCIT and IIR will only apply to those in scope MNEs. All other groups that are below the €750 million threshold will see no impact and will remain under Jersey's existing 0/10 corporate income tax regime. There are also exclusions for investment funds, REITs and securitisation entities.

Larger structures should now be analysing whether they are in scope and seeking to understand the impact for their respective operations.

Do get in touch with Walkers' Jersey Regulatory and Risk Advisory team should you wish to discuss.

About Walkers' Jersey Regulatory and Risk Advisory Team

Walkers' has a team of dedicated experts in Jersey spanning all areas of tax and regulatory compliance. We frequently advise on all aspects of Jersey tax and regulation, including economic substance, financial services, fintech, AML, sanctions, data protection, FATCA and the CRS. With specialist tax expertise within the wider firm and experience of Pillar 2 implementation in other jurisdictions, Walkers is uniquely well placed among offshore law firms to advise on the impact of the global minimum tax rate in Jersey.

1 10% is generally charged on regulated financial services businesses and 20% is generally charged on larger corporate retailers and companies with Jersey property income

2 "Blended" means aggregating income, losses and creditable taxes