Hon Grant Robertson, Minister of Finance

Hon David Parker, Minister of Revenue

Information Release

Global Anti-Base Erosion Tax Rules for New Zealand

June 2023

Availability

This information release is available on Inland Revenue's tax policy website at https://taxpolicy.ird.govt.nz/publications/2023/2023-ir-cab-globe-tax-rules

Documents in this information release

#	Reference	Type	Title	Date
1	DEV-23-SUB-0031	Cabinet Paper	Global Anti-Base Erosion Tax Rules for New Zealand	29 March 2023
2	DEV-23-MIN-0031	Minute	Minute of Decision: Global Anti-Base Erosion Tax Rules for New Zealand	29 March 2023
3	IR2022/385	Policy Report	OECD Pillar Two: GloBE rules for New Zealand – summary of consultation and officials' recommendations	22 September 2022
4	IR2022/466 (V.1)	Policy Report	Global Anti-Base Erosion tax rules for New Zealand – Cabinet approval	13 October 2022
5	IR2022/466 (V.2)	Policy Report	Global Anti-Base Erosion tax rules for New Zealand – Cabinet approval	9 February 2023
6	IR2023/105	Policy Report	OECD Pillar Two: GloBE rules – Additional decisions	4 April 2023

Additional information

The Cabinet paper was considered by the Cabinet Economic Development Committee on 29 March 2023 and confirmed by Cabinet on 3 April 2023.

One attachment to the Cabinet paper is not included in this information release as it is publicly available:

- Regulatory Impact Statement: OECD Pillar Two GloBE Tax Rules[1]

[1] Available at https://www.taxpolicy.ird.govt.nz/publications/2023/2023-ria-pack-multinational-tax-bill

Information withheld

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply are identified. Where information is withheld, no

public interest was identified that would outweigh the reasons for withholding it.

Sections of the Act under which information was withheld:

9(2)(a)	to protect the privacy of natural persons, including deceased people
9(2)(f)(iv)	to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials

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In Confidence

Office of the Minister of Finance

Office of the Minister of Revenue

Chair, Cabinet Economic Development Committee

GLOBAL ANTI-BASE EROSION TAX RULES FOR NEW ZEALAND

Proposal

1. This paper seeks the Cabinet Economic Development Committee's agreement to introduce Global Anti-base Erosion Rules (GloBE rules) in New Zealand.

2. Cabinet approval is sought as this is a policy change that will in some circumstances impose tax on large multinational enterprises (MNEs) operating in New Zealand, where their income, in either New Zealand or other countries where they operate, bears an effective tax rate of less than 15%.

3. This paper sets out the estimated one-off and ongoing administration costs for Vote Revenue, covering the GloBE rules and country by country reporting (CbC 2.0). CbC 2.0 supports the implementation and ongoing implementation of the GloBE rules. Cabinet approval is sought to note these estimated costs and to delegate to the Minister of Finance and the Minister of Revenue the decision on funding sources for this initiative.

Relation to Government Priorities

4. This proposal relates to the international tax workstream on the Government's tax policy work programme. The Government is committed to ensuring that MNEs pay their fair share of tax. This includes participating in multilateral solutions to the challenge posed by economic globalisation to the international tax framework.

Executive Summary

5. The GloBE rules are the main part of the G20/OECD-led Pillar Two proposal. The purpose of the GloBE rules is to ensure that large MNEs are subject to tax of at least 15% on their mobile income, in every country where that income is earned. This will reduce the incentive for them to take advantage of low tax rates and other tax concessions.

6. The success of this proposal depends on it being adopted by a critical mass of countries. At the moment, it appears that adoption by the EU, Japan, Switzerland and Canada is very likely, with adoption also likely in Australia and the UK. This is more than enough to be a critical mass. By adopting GloBE rules, New Zealand will contribute to that critical mass, as well as raise a modest amount of revenue and simplify compliance for New Zealand-based MNEs.

7. Subject to Cabinet approval, the changes recommended in this paper will be included in the next available omnibus tax bill, and apply from a date to be specified by Order in Council, giving Cabinet the flexibility to align the application date of our GloBE rules with other countries.

8. This initiative will require up to $17.300 million operating and capital funding which will be a mix of Crown Budget 2023 funding and Vote Revenue self-funding to be agreed as part of the Budget 2023 process

9. The estimated costs of $17.300 million includes $8.600 million capital and $8.700 million operating, over the forecast period (2022/23 to 2026/27) for the up-front build and on-going administration costs, covering the GloBE rules (Pillar Two) and the associated country by country reporting (CbC 2.0).

10. We currently estimate up to $25.000 million of additional tax revenue per annum beginning from 2026/27. This equates to $25.000 million in the forecast period (2022/23 to 2026/27). We recommend that the additional tax revenue be managed as a positive impact on the 2023 Budget operating allowance.

11. The net positive financial impact of this initiative over the forecast period (2022/23 to 2026/27) is $7.700 million (2022/23 to 2026/27) and $21.900 million per annum thereafter.

Background

12. Pillar Two is a G20/OECD initiative seeking to address tax base erosion risks caused by profit shifting by large MNEs. These risks arise because these MNEs can choose to shift income, particularly from capital or intangible property, to countries which charge no or little tax on that income. Sometimes this is because of general low tax rates. Other times it is because of targeted tax incentives.

13. The main plank of Pillar Two is the GloBE rules. These rules will ensure that large MNEs are subject to tax of at least 15% on their mobile income, in every country where that income is earned, reducing profit shifting incentives. They apply to MNEs with annual revenues of €750 million or more. The OECD estimates that they will increase global corporate income tax by approximately 9%, or US$220 billion pa.

14. The GloBE Model Rules (the Model Rules) were finalised by the OECD in December 2021, with detailed commentary released in March 2022 and further guidance in February 2023.

15. The rules require an MNE to calculate its effective tax rate (ETR) by comparing its tax in a country with its accounting profit (with certain adjustments) for that country. If the ETR is less than 15%, it must calculate the GloBE top-up tax it has to pay. GloBE top-up tax is the tax required to bring the ETR on mobile income in a country up to 15%. An MNE calculates this by taking its adjusted accounting profit for the country, subtracting the substance-based income exclusion (broadly, a 5% return on the tangible assets and payroll expenses in the jurisdiction[1]), and multiplying the result by the difference between 15% and its ETR.

[1] For an initial 10-year period the rate is higher than 5% and will reduce over time to 5%.

16. The obligation to pay GloBE top-up tax is allocated between countries according to one of three rules.

    16.1 First, if the country where the income is earned has enacted a domestic minimum tax (DMT) the top up tax will be paid to that country.

    16.2 Second, the tax may be paid under the Income Inclusion Rule (IIR) which applies on a top-down basis, giving the ultimate parent entity (UPE) country or an intermediate parent entity country the right to collect GloBE top-up tax for the country where the income is earned, if it has not been taxed under a DMT

    16.3 Third, if no DMT or IIR applies to the under-taxed profits of a member of an MNE, the Undertaxed Profits Rule (UTPR) will allocate GloBE top-up tax in proportion to the group's payroll costs and tangible asset values in each country with GloBE rules. This ensures that if the country where an MNE has its headquarters decides not to implement GloBE rules, the MNE will still have to pay top up tax if it operates in countries that have GloBE rules.

17. Approximately 20-25 New Zealand headquartered MNEs are in scope.

GloBE Rules for New Zealand

Should New Zealand adopt GloBE rules

18. New Zealand has a relatively high corporate tax rate and (with the exception of capital gains) a broad tax base. We have robust rules for ensuring income from New Zealand activities of foreign firms is taxed in New Zealand. We also have rules ensuring that New Zealand firms cannot easily avoid New Zealand tax on foreign income, except where that income arises from the conduct of an active business in the country where the income is taxable.

19. Despite our relatively strong rules for preventing profit shifting out of New Zealand, there remains some residual ability for foreign owned MNEs to shift taxable profits out of New Zealand to lower tax countries. Our strong rules also create a risk that companies will not want to be headquartered in New Zealand.

20. If the GloBE rules are adopted by a critical mass of countries, these risks will be significantly reduced. By adopting the GloBE rules, New Zealand will be contributing to the critical mass, supporting the success of the proposal internationally. Adopting the GloBE rules would also raise a modest amount of revenue, which would otherwise be collected by other countries under the UTPR.

21. s 9(2)(f)(iv)

s 9(2)(f)(iv)

22. We propose that New Zealand adopt GloBE rules, on the basis that they will come into effect only if a critical mass of other countries is also committed to bring GloBE rules into effect.

23. We propose that the GloBE rules application date is specified by an Order in Council. This will give Cabinet the flexibility to align the application date of our GloBE rules with their application date in other countries.

Incorporation into New Zealand law by reference to the Model Rules

24. If a country adopts GloBE rules, it must adopt the OECD's Model Rules, commentary and the administrative guidance (except for a domestic minimum tax, which is optional). Adoption is proposed to be by incorporation into domestic legislation (not by treaty). Where a country's incorporating legislation departs from the Model Rules, there is a risk its GloBE rules will not be "qualifying" and other participating countries will continue to apply GloBE top-up tax to the country's in-scope MNEs under the UTPR. To address the risk of our GloBE rules not being qualifying, we propose that the rules are incorporated into New Zealand law by reference to the Model Rules, Commentary and administrative guidance. There will be limited areas where the rules need to be adapted or clarified, but the general approach will be to follow the agreed OECD Model Rules where possible. Where changes are required, these will respect the intended outcomes agreed in the OECD.

25. The effectiveness of the GloBE rules depends on consistency in their implementation in different countries. For example, there would be a high risk of over or under-taxation if implementing countries adopted different rules to measure the level of taxation and top-ups required in each country. Incorporating the rules into New Zealand law by reference to the Model Rules will reduce these risks.

26. It will be desirable, as a default position, for future changes to the OECD Model Rules to be automatically incorporated into New Zealand law, for periods beginning after those changes are made. That will reduce the burden of the GloBE rules on the New Zealand tax legislative process and maximise the likelihood of cross-country consistency and of our rules being qualifying. It will involve no substantive loss of sovereignty, since if it wants to, Parliament can enact law declaring that a change made at OECD level should not have effect in New Zealand. It will be important to ensure that as changes become effective, they are made publicly available to New Zealand taxpayers.

27. That said, we do propose that the 15% rate of tax under the GloBE rules is included in the proposed Bill. This will ensure that the fundamental issue of the tax rate, which sets the floor on the race to the bottom on taxes, can only be changed by Act of Parliament.

No imputation credits for GloBE top-up tax under the IIR or UTPR

28. The Model Rules state that if the payment of tax under a country's IIR or UTPR gives rise to a benefit, the IIR or UTPR will not be qualifying, and other participating countries

will continue to apply GloBE top-up tax to the country's in-scope MNEs under their UTPR.

29. Generally New Zealand income tax paid by a New Zealand company gives rise to an imputation credit, which can be passed on to the company's shareholders when the company pays a dividend. However, if New Zealand's IIR or UTPR give rise to an imputation credit, although sufficient tax will be paid at a corporate level under the IIR or UTPR, the entire GloBE top-up tax amount will be available as a dollar-for-dollar tax reduction to the shareholder's tax liability and the imposition of the IIR or UTPR would be unwound on distribution. This benefit would result in our IIR and UTPR being non-qualifying, so we propose that GloBE top-up tax payable under the IIR and UTPR does not give rise to imputation credits.

30. A payment of tax under a country's DMT which gives rise to an imputation credit, will not result in the DMT being non-qualifying. This is specifically provided for in the GloBE rules and reflects that, whilst the DMT must be based on the GloBE rules, it is a local tax on local profits.

Charging tax allocated to New Zealand under the UTPR

31. The Model Rules include two approaches for charging tax allocated to a country by the UTPR. Individual countries are left to choose one of these approaches. The first approach denies an income tax deduction on otherwise deductible expenses of the MNE group. The second approach treats the GloBE top-up tax as a separate tax liability independent of income tax. The outcome of either approach must be to produce an additional cash tax impost in the country equal to the top-up tax allocated to it. The amount of this impost in a particular year is subject to the limit that it should not exceed the tax benefit of tax deductions otherwise available to entities in that country in that year.

32. We propose that this GloBE top-up tax be charged as a separate tax liability in New Zealand. This will ensure that the liability will not impact provisional tax. It will also eliminate some of the complexity of using the income tax system to impose a GloBE liability. We propose that the tax would be a joint and several liability of all New Zealand entities in an MNE group.

Domestic minimum tax

33. The GloBE rules give countries the option to introduce a DMT, which would use the same tax base as the GloBE rules but give the local country priority in the collection of the GloBE top-up tax. For New Zealand, this tax would be closely based on the GloBE rules but would apply to undertaxed profits in New Zealand.

34. A DMT could be imposed solely on New Zealand headquartered in-scope MNEs or expanded to apply also to foreign headquartered in-scope MNEs operating in New Zealand. The likelihood of any MNEs being subject to GloBE top-up tax on their New Zealand income is low because of our high corporate income tax rate and general lack of tax preferences. However, we propose that a DMT be adopted for New Zealand headquartered MNEs as this will ensure that whatever happens, they do not need to pay tax under any other country's UTPR. This will minimise their compliance costs.

Denying a deduction or foreign tax credit for GloBE taxes in another country

35. The design of the GloBE rules makes it clear that GloBE top-up tax under the IIR or UTPR should not be either creditable or deductible for non-GloBE income tax purposes. The top-up tax is determined after taking into account income tax imposed on the income attributable to a country, whether that tax is imposed by the country itself or another country.

36. Given that the GloBE top-up tax is calculated after taking into account tax imposed under a worldwide or CFC tax regime, it would clearly not be appropriate for the GloBE top-up tax to be creditable or deductible when calculating those taxes. Therefore, we propose that taxpayers be denied a foreign tax credit or deduction for GloBE top-up tax paid in another country. This does not apply to tax imposed under a DMT.

Additional policy decisions

37. This paper also seeks Cabinet's agreement to delegate authority to the Minister of Finance and Minister of Revenue to make additional joint decisions on any policy and drafting issues arising as appropriate.

Operational and financial impacts

International tax work programme

38. There are currently seven proposed international tax initiatives on the government's tax and social policy work programme which are expected to be implemented over the next four financial years and are at various stages of development. This international tax workstream aligns with OECD initiatives and is focused on people and businesses, including multinational companies, paying their fair share of tax. The initiatives are:

- Taxation of the platform economy (included in the Taxation (Annual Rates for 2022-23, Platform Economy and Remedial Matters) Bill (No 2)
- OECD Pillar One
- OECD Pillar Two (Global anti-Base Erosion Rules – GloBE)
- Country by Country reporting (CbC 2.0) – this supports the implementation and ongoing implementation of the GloBE rules
- Crypto Asset Reporting Framework (CARF)
- Common Reporting Standard schema (CRS 2.0)
- s 9(2)(f)(iv)

39. Because the initiatives are at different stages of development there is no overall picture of the financial impact. Officials' current assessment is that once implemented, this work programme will be overall revenue positive – the tax revenue gains will exceed the implementation and on-going administration costs of the initiatives. Inland Revenue will update Ministers on the cumulative financial impact of this programme of international tax initiatives as the individual items are reported on for policy decisions and implementation.

40. The overall net financial gain (additional tax revenue less implementation and on-going administration costs) from the GloBE rules and Country by Country reporting 2.0 over

the forecast period is $7.700 million (2022/23 to 2026/27) and $21.900 million per annum thereafter.

OECD Pillar Two and Country by Country reporting

Financial implications - Additional tax revenue

41. The proposed GloBE rules are expected to increase tax revenue. The following table sets out the estimated tax revenue increase. The estimates are subject to considerable uncertainty and are based on a number of assumptions including the final policies and rules. The timing of these revenue benefits will be dependent on policy implementation dates, and the timing of adoption by other countries. We currently estimate up to $25.000 million of additional tax revenue over the forecast period, with ongoing additional tax revenue of $25.000 million per annum.

	$million				
Crown revenue and receipts: Tax revenue	2022/23	2023/24	2024/25	2025/26	2026/27 & outyears
OECD GloBE rules	-	-	-	-	25.000
Country by Country reporting 2.0	-	-	-	-	-
Total revenue	**-**	**-**	**-**	**-**	**25.000**
Total operating	**-**	**-**	**-**	**-**	**(25.000)**

42. This estimate was arrived at by Inland Revenue with the help of the OECD's global economic impact assessments (which continue to be updated). There are a high number of assumptions in this model, as it is dependent on the final rules (in particular safe harbours), how and which countries implement GloBE rules and the behavioural response of MNEs based on work done by the OECD.

43. It is expected that some additional revenue would be raised through applying the UTPR to foreign-owned MNEs with substance in New Zealand and the DMT to New Zealand headquartered MNEs. It is also possible that additional revenue will be raised from foreign headquartered MNEs who have a reduced incentive to shift profits out of New Zealand. However it is not possible to estimate the amount of this revenue.

44. An increase in New Zealand income tax is also forecast due to reduced profit shifting by New Zealand headquartered MNEs, as a result of a critical mass of other countries adopting the GloBE rules. This has been estimated at approximately $16 million per year after the GloBE rules have been adopted by the critical mass of countries. This benefit will arise whether or not New Zealand adopts GloBE rules itself.

45. It is proposed that this additional tax revenue be managed as a positive impact against the Budget 2023 operating allowance.

Financial implications – up-front build costs and on-going administration

46. Inland Revenue has estimated that the up-front build costs and on-going administration of these two initiatives to be $17.300 million, $8.700 million capital and $8.600 million operating over the forecast period with on-going administration cost of $3.100 million a year. These estimates are subject to any significant changes in the final policies and rules that may materially change these estimates. The following table sets out the capital and operating costs for the up-front build and on-going administration.

	$million				
Vote Revenue	2022/23	2023/24	2024/25	2025/26	2026/27 & outyears
Capital expenditure					
OECD GloBE rules	-	-	5.300	-	-
Country by Country reporting 2.0	-	-	3.400	-	-
Total capital	**-**	**-**	**8.700**	**-**	**-**
Operating expenditure					
OECD Pillar Two	-	0.200	1.500	2.300	2.300
Country by Country reporting 2.0	-	0.100	0.600	0.800	0.800
Total operating	**-**	**0.300**	**2.100**	**3.100**	**3.100**
Total expenditure	**-**	**0.300**	**10.800**	**3.100**	**3.100**

47. The up-front build and on-going administration costs involve system changes to support the standardised reporting by large multi-national groups and information exchanges between tax jurisdictions of key financial information (GloBE information return). In addition, system changes will be required to impose a standard top-up tax (a new tax) to ensure such group pay a minimum level of tax in each jurisdiction where they operate. Inland Revenue estimates that it will require an additional six staff to administer the proposed GloBE rules.

48. The Pillar Two initiative will leverage off the existing reporting requirements under the CbC rules. As part of the implementation of Pillar Two, Inland Revenue will incorporate the current CbC reporting into START and streamline the process. Leveraging off the current reporting requirements will minimise the additional compliance costs for impacted entities. Furthermore, it will provide a sustainable solution to ensure that Inland Revenue can meet its international obligations.

Legislative Implications

49. Implementing these proposals requires changes to the Income Tax Act 2007 and Tax Administration Act 1994. It will also require an Order in Council to be agreed to by

Cabinet in order to bring the rules into effect. This Order in Council will be prepared after a critical mass of countries have committed to implement the GloBE rules.

50. If approved, we propose including the legislative changes resulting from these recommendations in the next omnibus taxation bill, scheduled for introduction in early 2023.

Impact Analysis

Regulatory Impact Assessment

51. The Quality Assurance reviewer at Inland Revenue has reviewed the OECD's Pillar Two GloBE Tax Rules Impact Summary and considers that the information and analysis summarised in it meets the quality criteria of the Regulatory Impact Analysis framework.

This issue has been subjected to wide consultation, including through a public issues paper. As identified in the Key Limitations or Constraints on Analysis section, a difficulty with assessing the revenue implications of the various options has been establishing the administrative costs of adopting the GloBE rules without knowing aspects of the detailed design, and the extent to which behavioural changes occur if a critical mass of other countries adopt the GloBE rules.

Climate Implications of Policy Assessment

52. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

53. There are no population implications arising from the proposals in this paper.

Human Rights

54. There are no human rights implications arising from the proposals in this paper.

Consultation

55. Consultation has been undertaken with affected taxpayers, representative bodies and their advisors. They are broadly supportive of proposals. However, some stakeholders do not support the proposal to incorporate the GloBE rules into New Zealand by reference to the Model Rules, and most do not support the proposal to not provide imputation credits for top-up tax paid under the IIR and UTPR.

56. The Treasury and Inland Revenue have been consulted in the preparation of this paper and support the changes.

Communications

57. Subject to approval from the offices of the Ministers of Finance and Revenue, Inland Revenue will make an announcement on this policy once Cabinet decisions have been made. The Minister of Revenue will also make an announcement about the

introduction of the bill which will contain this proposal. A commentary on the bill will be released at this time.

Proactive Release

58. We propose to proactively release this Cabinet paper, associated minutes, and key advice papers in whole within 30 working days of the public announcement of Cabinet's decisions.

Recommendations

The Minister of Revenue recommends that the Committee:

1. **agree** to adopt GloBE rules for New Zealand;

2. **agree** that the GloBE rules be incorporated into New Zealand law by reference to the OECD Model Rules, Commentary and administrative guidance;

3. **agree** that amendments to the OECD Model Rules, Commentary and administrative guidance be incorporated automatically into New Zealand law;

4. **agree** that no imputation credits be provided for GloBE top-up tax;

5. **agree** that GloBE top-up tax allocated to New Zealand by the Under-Taxed Profits Rule be charged as a separate tax liability;

6. **agree** to adopt a Domestic Minimum Tax for New Zealand headquartered MNEs;

7. **agree** that taxpayers be denied a foreign tax credit or deduction for GloBE top-up tax paid in another country;

8. **agree** that recommendation 1 to 7 should apply from a date to be specified by Order in Council;

9. **agree** to delegate authority to the Minister of Finance and Minister of Revenue to make additional joint decisions on any policy and drafting issues arising as appropriate;

Financial and operational implications

10. **note** the following forecast changes to tax revenue resulting from the decisions at recommendations 1 – 9 to implement the GloBE rules, with a corresponding impact on the operating balance and net debt:

	$m – increase / (decrease)				
Vote Revenue Minister of Revenue	2022/23	2023/24	2024/25	2025/26	2026/27 & Outyears
Crown Revenue and Receipts: Tax revenue	-	-	-	-	25.000
Total operating	**-**	**-**	**-**	**-**	**(25.000)**

11. **note** that after a critical mass of countries adopt the GLoBE rules, forecast revenue will increase by around $16 million a year, regardless of whether New Zealand adopts the GLoBE rules.

12. **agree** that the additional tax revenue in recommendation (10) should be managed as a positive impact against the 2023 Budget operating allowance.

13. **note** that the estimated costs of the up-front build and on-going administration of the GloBE proposal and the associated CbC reporting changes is $17.300 million, being $8.700 million capital and $8.600 million operating, over the forecast period (2022/23 to 2026/27) with an on-going administration cost of $3.100 million a year from 2025/26 onwards.

14. **delegate** authority to the Minister of Revenue and the Budget Ministers to approve up to $17.300 million funding for this initiative and to agree the mix of funding from Budget 2023 allowances and Vote Revenue as part of the Budget 2023 process.

Legislative implications

15. **agree** that the changes recommended above be included in the next available omnibus tax bill;

16. **note** that this Cabinet paper, the associated Cabinet minute, and Regulatory Impact Assessment will be released on Inland Revenue's website.

Authorised for lodgement

Hon David Parker
Minister of Revenue

Hon Grant Robertson
Minister of Finance

Doc 2

DEV-23-MIN-0031

Cabinet Economic Development Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Global Anti-Base Erosion Tax Rules for New Zealand

Portfolios **Finance / Revenue**

On 29 March 2023, the Cabinet Economic Development Committee:

1 **agreed** to adopt Global Anti-base Erosion Rules (GloBE rules) for New Zealand;

2 **agreed** that the GloBE rules be incorporated into New Zealand law by reference to the Organisation for Economic Co-operation and Development (OECD) Model Rules, Commentary and administrative guidance;

3 **agreed** that amendments to the OECD Model Rules, Commentary, and administrative guidance be incorporated automatically into New Zealand law;

4 **agreed** that no imputation credits be provided for GloBE top-up tax;

5 **agreed** that GloBE top-up tax allocated to New Zealand by the Under-Taxed Profits Rule be charged as a separate tax liability;

6 **agreed** to adopt a Domestic Minimum Tax for New Zealand-headquartered multinational enterprises (MNEs);

7 **agreed** that taxpayers be denied a foreign tax credit or deduction for GloBE top- up tax paid in another country;

8 **agreed** that the decisions in paragraphs 1 to 7 above should apply from a date to be specified by Order in Council;

9 **authorised** the Minister of Finance and the Minister of Revenue to make additional joint decisions on any policy and drafting issues relating to the above decisions, as appropriate;

Financial and operational implications

10 **noted** the following forecast changes to tax revenue resulting from the decisions in paragraphs 1-8 above, with a corresponding impact on the operating balance and net debt:

	$m – increase / (decrease)				
Vote Revenue Minister of Revenue	**2022/23**	**2023/23**	**2024/25**	**2025/26**	**2026/27 & outyears**
Crown Revenue and Receipts: Tax revenue	-	-	-	-	25.000
Total operating	**-**	**-**	**-**	**-**	**(25.000)**

11 **noted** that after a critical mass of countries adopt the GLoBE rules, forecast revenue will increase by around $16 million a year, regardless of whether New Zealand adopts the GLoBE rules;

12 **agreed** that the additional tax revenue referred to above should be managed as a positive impact against the 2023 Budget operating allowance;

13 **noted** that the estimated costs of the up-front build and on-going administration of the GloBE proposal and the associated country-by-country reporting changes is $17.300 million, being $8.700 million capital and $8.600 million operating over the forecast period (2022/23 to 2026/27), with an on-going administration cost of $3.100 million a year from 2025/26 onwards;

14 **authorised** the Minister of Revenue and the Budget Ministers to approve up to $17.300 million funding for this initiative, and to agree the mix of funding from Budget 2023 allowances and Vote Revenue as part of the Budget 2023 process;

Legislative implications

15 **agreed** that the changes referred to above be included in the next available omnibus tax bill;

16 **invited** the Minister of Revenue to issue drafting instructions to give effect to the above paragraphs.

Jenny Vickers
Committee Secretary

Present:
Hon Grant Robertson (Chair)
Hon Dr Megan Woods
Hon Dr Ayesha Verrall
Hon Willie Jackson
Hon Kiri Allan
Hon Damien O'Connor
Hon David Parker
Hon Peeni Henare
Hon Priyanca Radhakrishnan
Hon Dr Duncan Webb
Hon Rino Tirikatene
Hon Dr Deborah Russell

Officials present from:
Office of the Prime Minister
Officials Committee for DEV

POLICY AND REGULATORY STEWARDSHIP

Tax policy report: **OECD Pillar Two: GloBE rules for New Zealand – summary of consultation and officials' recommendations**

Date:	22 September 2022	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	T2022/2037, IR2022/385

Action sought

	Action sought	**Deadline**
Minister of Finance	**Agree** to recommendations **Note** the contents of this report	5 October 2022
Minister of Revenue	**Agree** to recommendations **Note** the contents of this report	5 October 2022

Contact for telephone discussion (if required)

Name	**Position**	**Telephone**
Stephen Bond	Manager, Tax Strategy, The Treasury	s 9(2)(a)
Casey Plunket	Special Policy Advisor	s 9(2)(a)

22 September 2022

Minister of Finance
Minister of Revenue

Summary of public feedback on the issues paper "OECD Pillar Two: GloBE rules for New Zealand" and officials' recommendations

Executive summary

Purpose

1. On 5 May, Ministers approved the release of the officials' issues paper *OECD Pillar Two: GloBE rules for New Zealand* (IR2022/133 refers). This report summarises the submissions on the issues paper, our responses, and our recommendations for next steps.

2. If officials' recommendations are accepted, we will come back to Ministers in October 2022 with a paper seeking Cabinet approval to introduce legislation implementing GloBE rules (and a related domestic minimum tax) in the first quarter of 2023, with an effective date to be determined by order in council. The order in council is expected to make the rules effective for income years beginning on or after 1 January 2024 or 1 January 2025.

Background

3. Pillar Two is an OECD/G20 initiative seeking to address tax base erosion risks caused by profit shifting by large multinationals (MNEs). The main plank of Pillar Two is the **Global Anti-Base Erosion (GloBE) rules**. These rules are intended to ensure that large MNEs are subject to tax of at least 15% on their mobile income, in every country where that income is earned. They apply to MNEs with annual revenues above €750 million. The GloBE Model Rules (the Model Rules) were finalised in December 2021, with detailed commentary released in March 2022. Further guidance (referred to as administrative guidance) is expected during 2022/23 with the GloBE rules expected to be adopted by participating countries in 2023 effective 2024.

4. The GloBE rules work first by requiring an MNE to calculate its effective tax rate (**ETR**) on mobile income in every country where it reports income. The ETR is essentially accounting tax expense divided by accounting income. If the ETR is below 15%, then there will be a top up tax obligation on the group. This top-up tax may be imposed by the country where the income is earned, as a **domestic minimum tax (DMT)**. If that country does not impose the tax, then it will be collected under:

   4.1 The **Income Inclusion Rule (IIR)** which applies on a top-down basis, giving the ultimate parent entity (**UPE**) jurisdiction (i.e. the country where the top company in the group is tax resident) the right to collect top-up tax. If that country does not adopt the GloBE rules, then countries where the group has intermediate holding companies may apply an IIR.

   4.2 The **Under-Taxed Profits Rule (UTPR)** which applies as a back-up to the IIR. It is intended to protect the integrity of the IIR by discouraging MNEs from relocating their UPE to a country that does not implement Pillar Two. If no IIR applies to a MNE, the UTPR will allocate top-up tax to a participating country in proportion to the group's payroll costs and tangible asset values in that country.

5. If a country adopts GloBE rules, it must adopt the OECD's Model Rules, commentary and the (yet to be released) administrative guidance. Adoption is by incorporation into local legislation (not by treaty). Where a country's incorporating legislation departs from the Model Rules, commentary and administrative guidance, there is a risk its GloBE rules will not be "qualifying" and participating countries will continue to apply GloBE top-up tax to the country's in-scope MNEs.

6. 20-25 New Zealand headquartered MNEs are in scope for Pillar Two. Our current forecast is that the GloBE rules could raise circa $40-45 million in additional tax revenue for New Zealand per annum, though approximately $16 million of that will be due solely to the adoption of the GloBE rules by other countries, so does not require New Zealand's participation.

The issues paper

7. The issues paper sought feedback on whether, if GloBE rules are implemented by a critical mass of other countries, New Zealand should also implement them, and how. There were 11 submitters on the issues paper, from industry groups, multinationals, accounting firms and an individual.

8. The key points from the submissions are:

- **Adoption of GloBE rules**

  The majority of submitters agreed that New Zealand should adopt GloBE rules **if** a critical mass of other countries adopt them.

- **Timing**

  Submitters said that minimising compliance costs should inform the timing of New Zealand's adoption of GloBE rules, given the low amount of tax expected to be collected. This could be achieved, they submitted, by following other countries' adoption.

- **Safe harbours and simplifications**

  Submitters were concerned about the potential for onerous compliance obligations especially as New Zealand multinationals are relatively small and not typically engaged in significant profit shifting. Submitters requested that officials push for effective simplifications and safe harbours at the OECD and that New Zealand adopt only the minimum standard of GloBE rules required.

- **Mode of incorporation**

  - Submissions on whether New Zealand should rewrite the Model Rules into New Zealand legislation or simply refer to the OECD's Model Rules were mixed. While rewriting the rules ensures they will mesh with New Zealand's existing tax system, some submitters were concerned with the amount of additional law that would be needed and the potential for the rewrite to cause inadvertent variations.

  - A number of submitters said that any changes to the GloBE rules at OECD level made after the rules become effective in New Zealand should not become part of New Zealand law without amendment of the law by Parliament (the alternative is for such changes to be automatically incorporated unless Parliament disapproves them).

- **Domestic minimum tax**

  Submitters were generally in favour of New Zealand adopting a DMT for in-scope New Zealand multinationals, Submitters did not consider that New

Zealand should adopt a DMT for foreign headquartered multinationals operating in New Zealand, but did not provide a rationale.

- **Interaction with imputation regime**

  Most submitters argued that GloBE top-up tax paid by New Zealand MNEs should give rise to imputation credits in the same way as ordinary corporate income tax. This was on the basis that the purpose of the imputation system is to avoid double taxation of income by New Zealand, and that imputation credits will very rarely reduce the ETR on distributed income below the 15% level (since very few shareholders who can claim imputation credits are on a rate below 15%). This seemed to be the issue submitters felt most strongly about.

Officials' recommendations

Whether or not to adopt GloBE rules

9. In line with submitters, officials recommend that New Zealand should implement the GloBE rules, if a critical mass[1] of other countries does so. The recommendation is for two reasons.

10. First, as noted by submitters, it will be better both for New Zealand as a whole and New Zealand MNEs if that tax is collected by New Zealand and not other countries.

11. The second reason for our recommendation is that adopting GloBE rules aligns with New Zealand's goals around strengthening and adapting the international tax system in response to the challenges posed by increasing globalisation and digitalisation of the economy. MNEs are currently incentivised to shift as much of their profits as possible out of high tax jurisdictions and into low tax ones. This is particularly an issue for income derived from intangible assets, as those assets and associated income are easily moveable across jurisdictions.

12. The global minimum tax is intended to reduce the benefit that MNEs get from shifting profits to low tax jurisdictions, as well as reduce the incentive for countries to use tax competition to attract foreign capital. Both of these impacts will help to reduce the incentive for MNEs that are operating here to shift profits out of New Zealand and into a low tax jurisdiction.

13. Implementing Pillar Two will also be a strong signal that New Zealand is taking active steps to ensure that large MNEs pay a fairer amount of tax. If implemented by a critical mass of other countries, the GloBE rules will prevent MNEs from being able to manipulate the existing international tax rules to pay little tax on much of their global income. This can be expected to improve social capital and public trust in the tax system by at least partially addressing public concerns that large MNEs are not paying a fair share of tax globally.

Other recommendations

14. Officials' recommendations on the other significant points are as follows:

- **Timing**

  - In order to ensure the legislation is ready to go but not effective unless and until other countries' rules are also effective, we recommend that it be enacted with an effective date to be determined by order in council.

[1] Officials generally agree with the list of critical countries proposed by submitters, though note that failure by one of those countries is unlikely to be critical.

  - It seems likely that other countries' DMTs and IIRs will apply for income years beginning on or after 1 January 2024, but their UTPRs may apply from a year later. If so, this would give New Zealand a choice of dates for implementation. Going later will delay the date when the proposal generates tax revenue for New Zealand, but will also give New Zealand MNEs more time to prepare for application of the rules, which would likely be favourably received by them.

  - Of course, the order-in-council trigger also means that even once the rules are enacted, the Government retains discretion not to make GloBE rules effective in New Zealand, even if a critical mass of other countries does adopt them.

- **Safe harbours and simplifications**

  Officials are engaged at an OECD level on this issue, and are advocating for rules that are sensible and pragmatic, but do not allow the objectives of the GloBE rules to be significantly undercut. The rules adopted by the OECD should be replicated in our domestic incorporation, but there is no scope for New Zealand to adopt more generous safe harbours or simplifications, as that would run the risk of New Zealand rules being non-qualifying.

- **Effect of Foreign Investor Tax Credits (FITCs) on the ETR**

  Officials' view is that when a company reduces its corporate income tax payable by claiming, under the FITC regime, a credit for non-resident withholding tax it pays on dividends to foreign shareholders, that must be reflected by a reduced ETR. To do otherwise would call into question the foreign shareholders' ability to claim a credit for the withholding tax.

- **Implementation of UTPR as a separate tax rather than a deduction denial**

  Officials recommend that this rule is not implemented by way of denying deductions for expenditure, but as a separate tax, just like the tax payable under the IIR. This will be administratively simpler and more effective.

- **Mode of incorporation**

  - Officials intend to pursue incorporation of the rules by referring to the OECD Model Rules and associated documents so far as possible.

  - Contrary to most submissions, officials also recommend that amendments to the GloBE rules made at the OECD level are automatically incorporated into New Zealand law for the year following amendment. This will be the most cost-effective approach to ensuring New Zealand's rules are the same as those in other countries. It will not prevent New Zealand enacting legislation to over-ride future OECD level amendments if it wishes to do so. This approach is likely to be opposed by submitters, who will make constitutional objections to it.

- **Domestic minimum tax**

  In line with submissions, officials recommend a DMT for New Zealand MNEs but not foreign headquartered.

- **Interaction with imputation regime**

  Contrary to submissions, officials recommend that tax paid under the GloBE rules does not give rise to an imputation credit. Giving an imputation credit would mean the tax would not be recognised by other countries, and New

Zealand MNEs would be subject to GloBE top-up tax in those countries. This recommendation is not expected to give rise to significant tax consequences for any MNE, given the small amount of tax expected to be paid, and the rule allowing taxed profit to be distributed before untaxed profit Despite this, we expect strong criticism from the private sector for adopting this approach. Officials propose to discuss with the OECD whether it would be acceptable for an imputation credit to be given for tax paid under the DMT.

- **No deduction or foreign tax credit for GloBE taxes paid to other countries**

  Because GloBE taxes are taxes of last resort, they should not give rise to a tax credit or a deduction under any other tax systems. While a deduction is already denied for foreign income taxes, New Zealand law does provide for a credit for foreign income taxes, so a law change will be needed to exclude GloBE taxes from this rule. This will need to include additional income tax paid in another country as a result of that country's UTPR applying to deny deductions.

Fiscal Implications

15. Our initial modelling, aided by the OECD's global economic impact assessments indicate that the GloBE rules proposals will raise a modest amount of revenue. There are a high number of assumptions in this model, as it depends on the final rules (in particular safe harbours), how and which countries implement Pillar Two and the behavioural response of MNEs.

16. Our forecast estimate of GloBE top-up tax revenue from New Zealand adoption is approximately **$25 million** per annum made up of:

    - $25 million per annum from GloBE top-up tax from applying the IIR to New Zealand MNEs. This amount makes allowance for the possibility of other countries increasing their tax rates in response to Pillar Two to reduce the amount of top-up tax collected by us. We expect this revenue to increase over time as transitional concessions are unwound.

    - A further positive amount from the UTPR and the DMT, however it is not possible to estimate how much this will be.

17. Officials have also estimated that the adoption of GloBE rules by other countries is likely to lead to increased income tax revenue for New Zealand from New Zealand MNEs of approximately **$16 million** per annum due to reduced profit shifting.

18. From a cost perspective, the build and ongoing administration costs for Inland Revenue are dependent on the final design aspects, but have been provisionally estimated at $10.9 million, to deliver the GloBE rules and $5.1 million to deliver the associated Country-by-Country reporting change. We are preparing a separate briefing note that will bring together the funding requirements and funding options for all of the OECD driven initiatives.

Consultation

19. The recommendations in this report follow public consultation and consideration of submissions from Air New Zealand, CAANZ, Cantin Consulting, Corporate Taxpayers Group, EY, Fonterra, KPMG, PwC, New Zealand Law Society, Tax Justice Aotearoa and an individual submitter.

Next steps

20. If you agree to the recommendations, the next step would be for us to provide you with a Cabinet paper in early October seeking Cabinet approval to the proposals in November. Legislation could then be included in the 2023 tax bill. Provision would be made to ensure that this legislation would only become effective once the Government is satisfied that GloBE rules will be adopted by a critical mass of other countries.

21. We will continue to keep you updated as appropriate on any significant developments with regard to the adoption of GloBE rules.

Recommended action

We recommend that you:

a) **agree** to introduce a bill in early 2023 that would allow New Zealand to collect tax under the GloBE rules if a critical mass of other countries also does so

Agreed/Not agreed Agreed/Not agreed

b) **agree** that GloBE rules should become effective in New Zealand no later than the year in which the UTPR is effective in a critical mass of other countries, and no earlier than the year in which the IIR is effective in a critical mass of other countries

Agreed/Not agreed Agreed/Not agreed

c) **agree** that foreign investor tax credits should reduce the amount of tax payable by a company for the purpose of calculating its ETR

Agreed/Not agreed Agreed/Not agreed

d) **agree** that the UTPR should be implemented as a separate tax and not as denial of a deduction otherwise available for income tax purposes

Agreed/Not agreed Agreed/Not agreed

e) **agree** that the GloBE rules be incorporated into New Zealand legislation by reference to the OECD Model Rules, Commentary and Administrative Guidance

Agreed/Not agreed Agreed/Not agreed

f) **agree** that subsequent changes to the OECD Model Rules, Commentary and Administrative Guidance be automatically incorporated into New Zealand law in the year following the year the changes are made

Agreed/Not agreed Agreed/Not agreed

g) **agree** that GloBE top-up tax paid should not give rise to an imputation credit

Agreed/Not agreed Agreed/Not agreed

h) **agree** that New Zealand should implement a domestic minimum tax for New Zealand headquartered MNEs

Agreed/not agreed Agreed/Not agreed

i) **agree** that for New Zealand tax purposes no deduction or tax credit should be allowed for GloBE tax paid in other countries.

Agreed/Not agreed Agreed/Not agreed

j) **note** that agreeing to recommendation (a) to (i) will have an estimated revenue gain of $25 million per year, beginning from the 2026/27 fiscal year and increasing slowly over time

Noted Noted

k) **note** that recommendation (j) assumes an application date of 1 January 2024

Noted Noted

l) **note** that the proposal will require changes to Inland Revenue systems to introduce new OECD information exchanges and tax returns filings at an estimated cost of $10.9 million

Noted Noted

m) **note** that the proposal will require changes to Inland Revenue systems to introduce the OECD mandated Country by Country reporting exchanges and the application of non-compliance penalties at an estimated cost of $5.1 million

Noted Noted

n) **note** that we are preparing a separate briefing note that will bring together the funding requirements and funding options for all the current OECD-driven initiatives

Noted Noted

o) **note** that to give effect to these recommendations amendments will be required to the Income Tax Act 2007 and Tax Administration Act 1994.

Noted Noted

p) **agree** that officials should work on preparing a Cabinet Paper for submission by Ministers to Cabinet in November 2022 seeking Cabinet approval for the proposal

Agreed/not agreed Agreed/not agreed

Stephen Bond
Manager, Tax Strategy
The Treasury

Casey Plunket
Special Policy Advisor
Policy and Regulatory Stewardship

Hon Grant Robertson
Minister of Finance
/ /2022

Hon David Parker
Minister of Revenue
/ /2022

Background

Context and background

22. Pillars One and Two are the second phase of the BEPS ("base erosion and profit shifting") tax reform project launched by the OECD and G20 in 2013.

23. The Pillar Two GloBE rules are often referred to as the global minimum tax, as they seek to ensure that large MNEs pay tax at a rate of at least 15% on their mobile profits[2] in every country where those profits are earned. This is achieved by requiring MNEs to calculate their effective tax rate (ETR) in every country where they operate. The ETR is essentially accounting tax expense divided by accounting net income. If the ETR in a country is below 15%, then the countries that adopt GloBE rules will impose a top up tax, on MNE members in their country, to bring the rate on the low tax income up to 15%. Generally this top up tax will be imposed on MNE members outside the country where the low tax income arises.

24. In October 2021 136 members of the Inclusive Framework, including New Zealand, endorsed a high-level statement detailing the key building blocks for Pillar One and Pillar Two. In December 2021 the OECD released the GloBE Model Rules followed in March 2022 by detailed commentary to the rules. Administrative guidance is expected to be published by the OECD during 2022/23 with the rules expected to be effective in participating countries in 2024 (possibly the UTPR will be effective a year later).

25. The rules have two elements:

    25.1 **Income Inclusion Rule (IIR)** which applies on a top-down basis, giving the ultimate parent entity (UPE) jurisdiction or an intermediate parent jurisdiction (if no UPE or intermediate parent further up the corporate chain has adopted the GloBE rules) the right to collect GloBE top-up tax for the MNE's group entities that are below it in the corporate chain.

    25.2 **Under-Taxed Profits Rule (UTPR)** which applies as a back-up to the IIR. The UTPR allocates GloBE top-up tax to participating countries in proportion to the group's payroll costs and tangible asset values in each participating country.

26. The GloBE rules also allow a country to introduce a **Domestic Minimum Tax (DMT)** which applies the rules to income earned in the country. It gives a country priority in respect of domestic income over the IIR and UTPR, so that a country can collect the tax on any undertaxed mobile profits earned there.

27. If a country adopts the GloBE rules, it needs to adopt an IIR and UTPR that align with the OECD's Model Rules, commentary and the (yet to be released) administrative guidance. Adopting a DMT is optional. Where a country departs from the Model Rules, there is a risk that its GloBE rules will not be "qualifying" and participating jurisdictions will continue to apply GloBE top-up tax to the country's in-scope MNEs.

28. We reported to you on 18 March 2022 seeking permission to consult publicly on whether and how New Zealand should implement the GloBE rules. This approval was given, and an officials' issues paper was released for consultation in May 2022.

[2] Mobile profit (called excess profit in the OECD documents) for a year is profit in excess of a percentage return on in-country tangible assets and payroll expense. The percentage return starts at 8% and 10% respectively and declines to 5% over 10 years.

Officials' issues paper

29. The officials' issues paper sought feedback on whether, if GloBE rules are implemented by a critical mass of other countries, New Zealand should also implement them, and how to do so. The issues paper sought feedback on:

    29.1 Whether there are any issues with the Model Rules including scope, calculating a taxpayer's ETR and calculating top up tax.

    29.2 Effective transitional, simplification and safe harbour measures.

    29.3 The mode of implementation in New Zealand including whether the GloBE rules should be rewritten into New Zealand law or if the tax acts should incorporate the rules by reference to the OECD documents.

    29.4 Tax administrative matters.

    29.5 Implementation of the UTPR as a deduction denial or tax charge.

    29.6 Whether a DMT should be adopted in New Zealand.

    29.7 Interaction of the GloBE rules with New Zealand rules including the imputation and foreign investor tax credit (FITC) regimes.

30. 11 submissions were received on the issues paper. These submissions came from Air New Zealand, CAANZ, Cantin Consulting, the Corporate Taxpayers Group, EY, Fonterra, KPMG, the New Zealand Law Society, PwC, Tax Justice Aotearoa and an individual.

31. Submissions are summarised below, divided by topic. For each topic there is a brief description of the issue, a summary of submissions received and officials' response.

Submissions received and officials' response

<u>Should New Zealand adopt GloBE rules?</u>

Issue

32. Should New Zealand adopt GloBE rules if a "critical mass" of other countries adopts them?

    32.1 Why or why not

    32.2 If so, what is considered a "critical mass"

    32.3 If so, when should New Zealand adopt the rules

Submissions received

Whether New Zealand should adopt GloBE rules

33. Submitters generally supported New Zealand adopting the GloBE rules if a critical mass of other countries does so, on the basis that:

    33.1 it is in New Zealand's interests to adopt GloBE rules as the goal of the rules, to disincentivise profit shifting by MNEs, aligns with the Government's priorities. Submitters also acknowledged that the Government made a clear political commitment to the BEPS process and that it's important to New Zealand's international reputation that it is seen to be doing its part.

    33.2 the operation of the rules means that were New Zealand not to adopt GloBE rules, but a critical mass of countries does adopt, taxpayers would incur the

compliance costs regardless and there is a risk of tax leakage to other jurisdictions.

33.3 adopting GloBE rules in New Zealand would streamline and simplify compliance for in-scope New Zealand businesses making it easier for them to pay top up tax once in New Zealand as opposed to paying tax under the UTPR to a number of other countries. There was a general preference for in-scope taxpayers to deal with Inland Revenue rather than other tax authorities.

34. Submitters were concerned about the potential for onerous compliance obligations arising from the GloBE rules compared to the tax revenue expected to be generated for New Zealand and given that New Zealand taxpayers weren't the focus of the rules, since New Zealand has a high corporate tax rate and robust international tax settings.

34.1 KPMG said New Zealand based multinationals generally do not have the operating model attributes the GloBE rules are designed to target. In particular, New Zealand headquartered businesses will often prefer to hold their intellectual property and pay their corporate income tax in New Zealand due to for example the imputation credit regime.

34.2 Air New Zealand considered it likely that across New Zealand companies, the cost of complying with the GloBE rules will be more than the combined tax take.

35. Submitters suggested these concerns could be dealt with by:

35.1 Implementing the minimum requirements only and using any appropriate safe harbours or simplification measures made available.

35.2 Ensuring appropriate adaptation to existing New Zealand tax policy settings such that the GloBE rules work within New Zealand's existing tax/fiscal preferences and settings.

Officials' views

36. Officials agree with submitters that if a critical mass of other countries adopt the GloBE rules, New Zealand should also adopt them.

37. On the basis that New Zealand MNEs are not generally earning significant amounts of low tax mobile income, officials expect that they will be able to use the safe harbours currently under development by the OECD to minimise the cost of compliance with the rules.

38. With respect to Air New Zealand's comment that the cost of compliance with the GloBE rules will outweigh the revenue generated for New Zealand, this does not seem relevant to New Zealand's decision, since those costs will have to be incurred in any case by virtue of other countries imposing GloBE rules.

39. Officials agree that implementing Pillar Two aligns with New Zealand's goals around strengthening and adapting the international tax system in response to the challenges posed by increasing globalisation and digitalisation of the economy. There has been a long-standing issue with the current international tax framework whereby firms that operate in multiple countries are able to exploit low tax rates available in some countries by shifting income into those countries.

40. This is particularly an issue for income derived from intangible assets, as those assets and associated income are easily moveable across jurisdictions. The growth of intangibles, like patents and copyright, means that large portions of MNE profits are able to face little to no taxation. This is further exacerbated by the fact that

many countries are engaged in tax competition to incentivise MNEs to locate these intangibles in their jurisdiction.

41. The primary purpose of Pillar Two is to reduce the incentive for large MNEs to shift profits to low tax jurisdictions. If multinationals know they will have to pay tax of at least 15% on their mobile income, even if that income is derived from activities in a country with a tax rate substantially lower than 15%, they will be less likely to structure their activities so that most of their income is located in low-tax jurisdictions. While there will continue to be an incentive for MNEs to move profits to countries with a tax rate of at most 15% and away from countries with a higher tax rate, this incentive will be weaker than the current incentive that MNEs face to move their profits to countries that will impose a tax rate much lower than 15%.

42. Adopting Pillar Two will also be a strong signal that New Zealand is taking active steps to ensure that large MNEs pay a fairer amount of tax. While Pillar Two will not address the issue of MNEs not paying an appropriate amount of tax in market jurisdictions, if implemented by a critical mass of other countries it will prevent MNEs from being able to manipulate the existing international tax rules to pay little tax on much of their global income. This is likely to improve social capital and public trust in the tax system by at least partially addressing public concerns that large MNEs are not paying a fair share of tax.

43. By implementing these rules, New Zealand would be playing its part in a reform which goes a considerable way towards addressing MNE tax planning, by significantly reducing the tax benefit that MNEs can obtain by shifting income between countries. New Zealand has been consistent in the past in promoting strong international tax rules around profit shifting and base erosion (for example, the *Taxation (Neutralising Base Erosion and Profit Shifting) Act 2018)*, and Pillar Two can be considered an extension of these rules.

44. In addition, there will be long-term benefits to New Zealand if Pillar Two is successful in stopping the global trend of decreasing corporate tax rates. While Pillar Two does contain a carve-out for income derived from "real" activities, limiting the incentive for countries to offer tax rates of lower than 15% on mobile income will substantially reduce the scope for tax competition between countries.

What is a critical mass

45. Submitters said that the critical mass of countries was Australia, China, the European Union, Japan and the United Kingdom.

Officials' views

46. Having analysed the activities of New Zealand MNEs, officials' view is that if the GloBE rules are adopted by Australia, the UK and the countries of the European Union, that would be sufficient to ensure that New Zealand MNEs (with one exception) would be subject to an effective UTPR if New Zealand did not impose GloBE top-up tax under an IIR. Officials therefore would exclude China and Japan from the necessary critical mass.

Timing

47. Submitters' general view was that New Zealand should not be an early adopter as this would compromise the long-term success and sustainability of the regime and put New Zealand businesses at a competitive disadvantage.

48. Submitters highlighted the previous experience with BEPS 1.0 as demonstrating the lack of consistency in implementation dates by participating jurisdictions.

49. Submitters considered that New Zealand should defer the implementation until:

49.1 it becomes apparent with a high degree of certainty that other jurisdictions, particularly our key economic partners, will implement the rules

49.2 there is certainty that another country's UTPR will apply to tax a New Zealand MNE's profits

49.3 Australia has adopted them, so we can learn from their experience

50. Given the modest amount of revenue for New Zealand, submitters considered that minimising compliance costs should inform the timing of New Zealand implementation of the GloBE rules.

Officials' views

51. Officials agree with submitters that New Zealand should not impose tax under the GloBE rules before other countries impose an IIR. There is also an argument for not imposing tax until other countries' UTPRs are in force, since it is only at that point that Pillar Two becomes inescapable. Now that introduction of the IIR has been deferred to 2024, it is not clear whether there will in fact be any lag between the implementation of these two rules.

52. Officials propose that when legislation for the GloBE rules is prepared, it will provide for an effective date to be determined by order in council, so that the legislation can be enacted and ready to go, but not made effective until other countries have in fact made their rules (either the IIR or the IIR and UTPR) effective.

Whether the revenue threshold for New Zealand's GloBE rules should match the OECD's

Issue

53. Should the revenue threshold for New Zealand's GloBE rules match the OECD's €750M?

53.1 If so, why or why not?

53.2 If you think New Zealand should use an alternative domestic threshold, what should the threshold be based on and why?

53.3 Are there any difficulties in adopting a Euro threshold?

Submissions received

Alternative domestic threshold

54. Submitters unanimously agreed that New Zealand should follow the OECD threshold. There were concerns that if New Zealand departs from this it might:

- Create a disproportionate compliance burden for smaller MNEs who may not be resourced to comply with such a tax
- Create undue compliance costs because MNEs below the threshold would not be subject to Country-by-Country Reporting (CbCR)[3]
- Remove the benefit of any CbCR safe harbours which may be introduced as smaller MNEs are not in-scope for CbCR reporting.

Use of Euro Threshold

[3] Country by Country reporting requirements have been published by the OECD as part of an agreed international tax reform package addressing base erosion and profit shifting. CbCR applies to corporate groups headquartered in New Zealand with annual consolidated group revenue of over EUR 750 million.

55. Submitters unanimously agreed that a EUR threshold should be used to ensure consistency with the OECD, and alignment with CbCR.

General comments

56. Submitters requested Officials request confirmation from the OECD that the GloBE and CbCR threshold will be the same, or where different, further guidance is provided. As an example, CbCR guidance suggests that extraordinary income or gains from investment activity should be included in applying the CbCR threshold. However, such items may not constitute revenue for IFRS accounting purposes.

57. KPMG requested officials request an Indigenous Entities exclusion, in particular, that we push for Māori Authorities to be excluded from the scope of the GloBE rules due to lower tax rate being attributable to underlying policy settings, not tax competition. Māori Authorities are currently subject to a tax rate in New Zealand of 17.5%, 2.5% above the GloBE minimum rate. They recognised that there are currently no Māori Authorities that are even close to being in scope of Pillar Two.

Officials' response

58. Officials:

- agree with submitters that New Zealand should adopt the OECD threshold of €750M
- will follow up with the OECD to ensure that the revenue thresholds for CbCR and the GloBE rules use the same measure of revenue
- do not think that it would be worthwhile seeking an indigenous entities exclusion at this point in time, given that this is not and may never be a pressing issue, that Māori Authorities are currently taxed above the minimum rate, and that there is no general pressure in the OECD for such an exclusion.

<u>Issues identified with the Model Rules</u>

Submissions received

59. Few submissions addressed the substantive questions of whether there were any issues in the GloBE model rules themselves, acknowledging that the rules had been accepted by the Inclusive Framework and any adoption of the GloBE rules in New Zealand should follow the Model Rules as closely as possible to ensure they remain qualifying.

60. With respect to the application of the rules to foreign investor tax credits (FITCs)[4] provided to companies that pay supplementary dividends:

60.1 Submitters considered that no adjustment for FITCs should be required as they are not a reduction in tax payable at the corporate level

60.2 Submitters considered the objective of the FITC regime to be limiting New Zealand income tax on foreign portfolio investors to the prevailing tax rate for New Zealand companies by compensating such investors for the cost of

[4] FITCs are the way that we ensure that the New Zealand tax paid by foreign portfolio (less than 10%) investors in New Zealand companies does not exceed 28%. For example, the company pays tax on $100 income at 28%. Subsequent distribution of the remaining $72 to the non-resident shareholder triggers a $12.70 tax credit (FITC) to the company, so its net tax payable is only $15.30. The company is required to distribute this credit to the shareholder as a supplementary dividend. Non-resident withholding tax on the dividend and supplementary divided is $12.70. The purpose is to ensure the shareholder can claim a foreign tax credit for the non-resident withholding tax while limiting the total tax paid on the income (by both the company on derivation and the shareholder on distribution) to 28%.

the NRWT impost. The end result of the FITC rules is no reduction in corporate tax and this should be reflected in any GloBE rules enacted.

61. The other points raised on the Model Rules themselves were very technical (these points were mostly raised by the Corporate Taxpayers Group and KPMG). Some of the points highlighted areas where further guidance on the Model Rules would be useful and others questioned some of the technical features of the rules from a policy perspective but did not go as far as identifying flaws that need fixing.

Officials' recommendation

62. Officials do not agree with the treatment proposed by submitters for FITCs. Submitters are correct to say that the purpose of the FITC regime is to ensure that the total tax rate imposed on the income of foreign portfolio investors in New Zealand companies is no more than the corporate rate. The more telling point is that this is achieved by way of imposing a *reduced* rate of corporate income tax plus non-resident withholding tax (NRWT) for distributions of that income. The integrity of the FITC regime requires that the NRWT is a real tax imposed on the shareholder. This would be called into question if the GloBE rules treated the company as having paid both the (reduced) corporate income tax and the shareholder level NRWT. Officials also note that the GloBE Model Rules specifically provide for the inclusion of only the FITC-reduced tax amount in the ETR calculation.

63. Officials plan to raise the technical points on the Model Rules themselves with the OECD as appropriate and, where needed, will advocate for clarifications from the OECD by way of administrative guidance (or develop guidance as part of the implementation process).

<u>Simplification and safe harbour measures</u>

Issue

64. Are there any simplifications that could be introduced to simplify the effective tax rate calculation?

65. What do submitters think of a safe harbour based on CbCR data?

Submissions

Simplification

66. Submitters generally focused on reducing the need for detailed calculations to determine whether a taxpayer is actually in scope of the Pillar Two rules and ensuring any calculations are based on existing data.

67. In acknowledging there would be a trade-off between accuracy and simplicity, a submitter proposed a simplified calculation based on adjustments arising from only the most significant items including dividends/gains and losses on non-portfolio and equity accounted interests as well as tax losses.

Safe harbours

68. Submitters generally supported the introduction of a safe harbour based on country-by-country reporting (CbCR) with a higher tax rate to avoid making numerous adjustments.

Officials' response

69. Officials are continuing to engage with the OECD in the development of effective safe harbours, and will advance the submitters' ideas as appropriate.

Mode of implementation in New Zealand

Issue

70. If adopted, a decision will need to be made on how to incorporate the GloBE Model Rules into New Zealand legislation. In particular, do we:

    70.1 Rewrite the OECD's Model Rules into New Zealand legislation (i.e., the Income Tax Act 2007) in full, with limited adaptation for New Zealand-specific concepts ('repetition'), or

    70.2 Draft legislation which so far as possible refers to, rather than repeats, the Model Rules and other dispositive documents ('incorporation by reference').

71. In addition, New Zealand will also need to decide how to adapt any changes to the Model Rules by the OECD into New Zealand law, in particular, do we:

    71.1 Allow any changes adopted at the OECD level to automatically be incorporated into New Zealand law ('ambulatory'), or

    71.2 Require any changes made to be adopted into New Zealand law before becoming effective ('static').

72. These OECD-level changes may be made by way of changes to the Model Rules themselves or (more likely) by changes to the Commentary or Administrative Guidance, which have the effect of over-riding the Model Rules. Already there is some language in the Commentary which seems intended to take priority over the Model Rules.

Submissions received

73. Submissions on both questions were mixed. Submitters generally favoured repetition over incorporation by reference.

74. The most common arguments in favour of repetition were that:

    74.1 the process of writing the rules into New Zealand legislation would force officials to consider the New Zealand-specific issues with implementing the rules, and design legislation to deal with these appropriately. Submitters were concerned that incorporating by reference would mean New Zealand specific issues would only be considered once they created practical problems for taxpayers post-implementation.

    74.2 There is a clear distinction between the automatic exchange of information rules (where incorporation by reference is common) and the GloBE rules in that the GloBE rules create a taxing charge. As such, they needed to be housed in the Income Tax Act, not by reference to extrinsic material that the New Zealand government cannot guarantee will be readily available.

75. KMPG and CTG favoured using repetition assisted by reference to OECD materials for greater detail/aiding interpretation.

76. EY favoured using modified repetition to ensure consistency with New Zealand drafting principles. They gave as an example the fact that New Zealand drafting conventions allow for the use of flow-charts and other aids to assist comprehension and simplify complex concepts, which might be useful in relation to the GloBE rules.

77. Submissions favouring incorporation by reference highlighted the amount of drafting that would be required under an incorporation by repetition approach (considering rewriting the rules will add hundreds of pages to the Income Tax Act 2007), ensuring our rules are consistent with other jurisdictions and allowing for simpler future amendments to the rules.

77.1 NZLS highlighted that one of the main benefits of incorporating by reference was having globally consistent legislation but acknowledged that this could easily be negated if other jurisdictions opt for a repetition approach and heavily adapt the rules to their local circumstances.

77.2 PwC were concerned that adoption by repetition directly into legislation risks missing some of the intricacies of the rules and increases the risk of the rules being interpreted differently. They suggested Inland Revenue produce a New Zealand version of the GloBE rules commentary to demonstrate officials had considered New Zealand-specific issues arising from implementation. KPMG considered that any risks from inaccuracy arising from incorporation by repetition could be dealt with by having the OECD undertake a detailed peer review of the New Zealand rules.

78. Submissions on how to update New Zealand legislation in response to any future changes by the OECD were generally in favour of a static approach, where amendments would not automatically be incorporated into New Zealand law. While some submitters appeared to conflate a static approach with repetition, submitters stressed the need for New Zealand to retain its sovereignty in tax matters and ensure any changes made at the OECD are subject to close scrutiny by New Zealand legislators before being incorporated into law.

79. Submitting in favour of an ambulatory approach, PwC highlighted the need for New Zealand to remain aligned with the globally agreed position. They accepted the risk of a loss of sovereignty but suggested this could be countered by Inland Revenue closely monitoring changes made at the OECD and carving out undesirable OECD amendments and pointed to previous hybrids changes as an example of successful ambulatory legislation.

80. General comments included a desire for the policy process to follow the generic tax policy process. Submitters expressed dissatisfaction with the implementation of previous OECD initiatives, where they felt the drafting of legislation had been rushed and resulted in poorer quality law which created issues for taxpayers' post-implementation. The desirability of reducing compliance costs by ensuring our rules will be interpreted consistently with the global standard was noted several times. Finally, almost all submitters agreed that whatever form of legislation is adopted should be included in the Income Tax Act 2007 rather than a separate Act, and almost all agreed the rules should be contained in their own part or part for ease of reference.

Officials' recommendation

81. Officials believe that in the interests of limiting the amount of policy and legislative drafting resource required, as well as ensuring our GloBE rules are qualifying and enhancing the likelihood that the rules will be the same in New Zealand as they are elsewhere, an incorporation by reference approach should continue to be explored in preference to incorporation by repetition. This will certainly involve ensuring taxpayers who are subject to the rules are able to access the OECD documents. Since these taxpayers and their advisers are the most well resourced and sophisticated, this should not be difficult. Flow charts and diagrams could be incorporated in the explanatory material that will accompany the legislation when it becomes effective.

82. Officials also believe that it would be desirable for changes to the OECD documents to be automatically incorporated into New Zealand law, at least for periods beginning after those changes are made. Again, that will reduce the burden of Pillar Two on the New Zealand tax legislative process and maximise the likelihood of cross-country consistency and of our rules being qualifying. It will involve no substantive loss of sovereignty, since Parliament can always enact law declaring that a change made at OECD level should not have effect in New Zealand (though the reasons for doing so are not obvious).

Undertaxed profits rule

Issue

83. The undertaxed profits rule (UTPR) is a backstop to the IIR and aims to ensure that top-up tax is paid even if an MNE group member is not directly or indirectly owned by a higher tier group member subject to a qualified IIR. The Model Rules do not prescribe how tax allocated to a jurisdiction by the UTPR should be brought to charge. This is left to individual jurisdictions.

84. Submitters were asked for their preference between two possible methods of charging the UTPR:

    - Denying income tax deductions on otherwise deductible expenses of the MNE group; or
    - Treating the GloBE calculation and any resulting tax liability as a separate tax liability independent of income tax (for both the UTPR and IIR).

85. Officials stated a preference for a separate tax liability in the issues paper. This is because:

    - It would be simpler to administer
    - It would avoid complex flow-on effects to other types of taxes which denying deductions would create, and
    - Denying a deduction will not result in an additional cash tax expense when the relevant New Zealand entity is in a loss position.

Submissions received

86. Four submitters commented on this issue, and views were split evenly. Tax Justice Aotearoa and PwC favoured a separate tax liability for the same reasons as officials.

87. KPMG and CTG favoured denying deductions. CTG argued this was more consistent with the understood purpose of the UTPR to deny deductions for payments that are undertaxed to the payee, and that concerns regarding administrative complexity were overstated given other regimes exist which can deny deductions for income tax purposes.

88. Both submitters disagreed that denying deductions for a loss-making business would not create an additional cash tax expense, on the basis that this disregards the economic value of tax losses which can be carried forward or offset.

89. In general comments, both KPMG and CTG also submitted that because of the complexity involved and the relative flexibility the OECD has afforded countries to design their own UTPRs, New Zealand should conduct a separate consultation on the UTPR itself if New Zealand opts to adopt the GloBE rules.

Officials' recommendation

90. Officials recommend that the UTPR is implemented as a separate stand alone tax rather than denial of a deduction which would increase taxable income (or reduce losses). This is the simpler option. It is also completely consistent with the purpose of the UTPR. Initially the UTPR did attempt to impose tax only where the payee was undertaxed, but it now operates simply as a back-up to the IIR, allocating top-up tax to countries on a basis of the MNE's relative physical substance in each country. Officials do not agree that reducing losses that may be used in the future or may expire unused is the same as imposing a current cash tax liability. They also note that the income giving rise to the current cash tax liability will in most

cases be income arising in another country. There is no reason to allow the liability for tax on that income to be offset against New Zealand tax losses.

Tax administration impacts

Issue

91. Several questions were put to submitters regarding how Inland Revenue should administer the GloBE rules in New Zealand. Questions covered practical concerns such as the format for returns, the desirability of aligning the country by country reporting with the GloBE information return, filing dates and the penalty for late or non-compliance.

Submissions received

92. Few submissions addressed this section, of those that did, the submissions largely related to the penalties suggested and the format for submission:

92.1 CTG and PwC both consider the late filing penalty should be low. CTG suggested that Inland Revenue utilise the existing penalty available in section 139AB of the Tax Administration Act 1994 (a maximum of $100,000) for a member of a large multinational group who fails to provide information when requested to do so under section 17 of the Tax Administration Act 1994. PwC suggested the Commissioner be given power to serve notice of a penalty prior to enforcement, to provide the taxpayer time to remedy their late filing/payment.

92.2 PwC agreed with officials' that an XML electronic format would be appropriate for both the GloBE return and the country by country reporting, and that (subject to the New Zealand return not requiring any further information than the GloBE return) a New Zealand filing date of one month after the GloBE return deadline is appropriate. PwC also submitted the payment date should be later than the filing date for the New Zealand GloBE return, to allow taxpayers time to coordinate funds, pointing out this was consistent with New Zealand's terminal tax requirements.

Officials' response

93. Officials will continue to consult on the issue of penalties. Costing is being undertaken on the basis of an XML format report, which we propose will also be required for country by country reporting.

Interaction with imputation

Issue

94. New Zealand income tax paid by a New Zealand company gives rise to an imputation credit, which can be passed to the company's shareholders when the company pays a dividend. Submitters were asked whether tax paid in New Zealand under the GloBE rules should give rise to an imputation credit.

95. In the issues paper Officials said that tax paid under the GloBE rules should not give rise to imputation credits, because:

- Allowing them would unwind the effect of the IIR (which is to top up the amount of tax paid to a 15% rate) when income is distributed.
- Allowing them would very likely mean New Zealand's IIR would not meet the OECD's requirements to be a 'qualifying IIR", meaning other countries UTPR's would apply to New Zealand-headquartered MNEs.

- The imputation system is not set up to deal with tax imposed at a rate other than 28%.

Submissions received

96. Almost all submitters considered the issue, with a clear preference for allowing imputation credits for GloBE taxes paid. Tax Justice Aotearoa supported denying imputation credits, but did not provide a reason for its view. This was the issue submitters in favour of allowing credits felt the most strongly about.

97. Several arguments for allowing imputation credits were submitted, with some appearing in most submissions:

    97.1 *Doing so would not unwind the IIR or disqualify New Zealand's IIR*

    - The model rules have been designed for the classical tax systems in use in most of the rest of the world, not the imputation system used by New Zealand. Allowing imputation credits does not defeat the IIR, but merely equalises its effect to what will apply in other jurisdictions. Imputation is purely a means to ensure there is not double taxation, it is not a benefit, it achieves the same outcome as a jurisdiction with an exemption on dividend income (i.e. one level of tax).
    - Imputation credits relieve double taxation at the shareholder level – they do not refund tax at the corporate level and will therefore not concern the OECD or unwind the effect of GloBE top-up tax. The OECD's concern is to prevent countries from implementing GloBE rules whilst at the same time creating new corporate tax kickbacks which are designed to undermine their effect.
    - Analysing the language of the Model Rules and Commentary shows that allowing imputation credits for IIR tax would not disqualify New Zealand's IIR. Even if this may be the case, Officials should advocate at the OECD for New Zealand's imputation system to be permissible, and only deny them if compelled to by the OECD.

    97.2 Denying credits would be contrary to core New Zealand tax principles by subjecting New Zealand taxpayers to economic double taxation

    - Most submitters argued that preventing double taxation is a fundamental principle of New Zealand's tax system, and imputation credits are a means of achieving this. To disallow credits would undermine this principle and impose double taxation on affected taxpayers thereby making New Zealand companies less competitive.
    - Tax imposed under the IIR is a New Zealand tax, it benefits the New Zealand economy and is available for New Zealand to spend on services in New Zealand.

98. Submitters argued that GloBE top-up taxes are not conceptually different from CFC taxes:

    98.1 Officials stated in the issues paper that GloBE tax can be distinguished conceptually from CFC taxes (where imputation is allowed), and this negates the argument that similar treatment should apply. Several submitters disagreed with this distinction, arguing GloBE taxes should instead be viewed as an extension of the CFC rules and therefore also be allowed credits.

99. Submitters argued that the imputation system did not need to be modified to deal with tax rates other than 28%.

99.1 Several submitters disagreed with officials' view that allowing credits would create additional complexity. CAANZ, KPMG and CTG submitted the concerns of officials were unfounded, as the imputation system does not require sources of income to be tracked, income from FIF interests is in effect not taxed at 28% (due to the fair dividend rate income calculation) and partially imputed dividends are effectively taxed at a rate other than 28%.

100. Submitters argued that disallowing imputation credits on GloBE income would lead to unfair and inconsistent treatment when compared to other countries

100.1 Several submitters said that by comparison with Australia, New Zealand denying imputation credits for IIR tax would be unfair. Fonterra gave the example of a New Zealand MNE which earns a large untaxed capital gain in another country. This untaxed gain could give rise to IIR tax in New Zealand but no imputation credits under officials' proposals. If the same gain were earned by an Australian MNE, the Australian CFC rules would tax the gain, giving rise to franking credits for the Australian company which could be passed on to its shareholders. Accordingly shareholders in the New Zealand MNE would be taxed more harshly on the same type of gain than the shareholders in the Australian MNE.

Officials' recommendation

101. For the reasons set out in paragraph 95 above, officials do not recommend allowing GloBE tax to give rise to an imputation credit. Unfortunately, there is a conflict between the objectives of imputation and the objectives of the GloBE rules. If tax paid under the GloBE rules gives rise to an imputation credit, the imposition of that tax is effectively reversed, through a reduction in the tax that would otherwise be paid by the shareholder. That would be an impermissible benefit, that would disqualify New Zealand's IIR from recognition by other countries, and would thus expose New Zealand MNEs to other countries' UTPRs. Officials expect that Australia will take the same approach, i.e. will not allow a franking credit for tax imposed under the GloBE rules.

102. Officials continue to believe that this outcome is of little practical significance, and no submitters have pointed to cases which would disprove that. Despite this, we expect some criticism from the private sector if the Government adopts our recommended approach.

Domestic minimum tax

Issue

103. The GloBE rules contemplate that countries may introduce a domestic minimum tax (DMT), which would use the same tax base as the GloBE rules but take priority over the IIR and UTPR in respect of low taxed income earned in that country. For New Zealand, this tax would be closely based on the GloBE rules but would apply to undertaxed profits in New Zealand. It would mean that New Zealand would collect all of the top-up tax on such profits, rather than sharing it with other countries with Pillar Two rules.

104. Submitters were asked whether New Zealand should adopt a DMT, whether it should apply only to New Zealand headquartered MNEs, and if so, how it should operate.

Submissions received

105. Submitters favoured New Zealand adopting a DMT. CAANZ did not express a final view but said New Zealand should strongly consider a DMT if a if a critical mass of countries enact the GloBE rules and DMTs.

106. Tax Justice Aotearoa, which opposed a DMT, did not provide reasoning. Those in favour generally pointed to a preference for dealing with Inland Revenue rather

than overseas revenue authorities and the reduction in compliance costs this would mean for taxpayers. However, most of those in favour caveated that they would want a DMT to be defensive-only, that is, to apply only where another countries' UTPR would otherwise apply. This logic also extended to the timing of introducing a DMT, where three submitters argued New Zealand's DMT should only come into effect once other countries' UTPRs are in force.

107. Four submitters stated that imputation credits should be allowed for taxes paid under a DMT, for the same reasons as outlined in the submissions on imputation credits generally.

108. KMPG and CTG both considered a DMT should apply only to New Zealand-headquartered firms. The primary reason was that the benefit of a DMT for New Zealand headquartered MNEs (simplification for taxpayers) would not apply to foreign-headquartered businesses. PwC thought it should apply to all in-scope businesses, and pointed to a need for detailed analysis of the proposed costs and revenues associated with expanding a DMT to overseas-headquartered firms.

109. Several submitters commented that the proposed introduction of a DMT should warrant its own consultation process before implementation, considering the complexity involved.

Officials' recommendation

110. In line with most of the submissions, officials recommend that the GloBE proposals be progressed on the basis that a DMT will be adopted for New Zealand headquartered MNEs. This will ensure that they do not need to pay tax under any other country's UTPR. Officials will also raise with the OECD the possibility of allowing this tax to give rise to an imputation credit.

Treatment of foreign GloBE taxes in determining New Zealand income tax liability

Issue

111. Whether or not New Zealand adopts GloBE rules, if other countries do so, the status of GloBE tax for purposes of calculating New Zealand tax on foreign earnings will need to be dealt with.

112. Officials stated in the issues paper their view that the payment of foreign GloBE tax should not give rise to a tax credit or deduction in New Zealand. This was on the basis that allowing a deduction or credit for a top up tax would be illogical (as it would effectively neutralise the top up tax) and give rise to circularity problems. Submitters were asked if they agreed with this view.

Submissions received

113. Only three submissions were received on this point. All three agreed with officials that there should be no tax credit or deduction allowed.

Officials' recommendation

114. In line with submissions, officials recommend that payment of GloBE taxes overseas by New Zealand companies does not give rise to a deduction or credit for New Zealand income tax purposes.

Fiscal Implications

115. Our initial modelling, aided by the OECD's global economic impact assessments (which continue to be updated) indicate that the GloBE rules proposals will raise revenue. It is noted that there are a high number of assumptions in this model, as

it is dependent on the final rules (in particular safe harbours), how and which countries implement GloBE rules and the behavioural response of MNEs.

116. Our forecast revenue estimate for GloBE rules in New Zealand is approximately **$40-45 million** per annum made up of:

- $25 million per annum from GloBE top-up tax from applying the IIR to New Zealand MNEs. We expect this to increase over time as transitional concessions are unwound.
- $16 million per annum from an increase in New Zealand income tax paid by New Zealand headquartered MNEs due to reduced profit shifting. This benefit arises whether or not New Zealand adopts GloBE rules itself.
- It is expected that additional revenue could be raised through applying the UTPR to MNEs with substance in New Zealand and the DMT to New Zealand headquartered MNEs. It is also possible that additional revenue will be raised from foreign headquartered MNEs who have a reduced incentive to shift profits out of New Zealand. However it is not possible to estimate the amount of this revenue.

117. The first payments made by MNEs under the GloBE rules are not expected to be made until the 2026/27 fiscal year, assuming the rules come into force from 1 January 2024. It is unusual in a New Zealand context for income tax relating to a year not to be received at all until 16 months (in the initial year, 20 months) after the end of the year in which the income arises. The reason for the delay is the status of GloBE rules taxation as a taxation of last resort. It can only be determined after all other taxes are determined. In some countries, determination of income tax obligations may take a relatively long time.

Administration cost

118. From a cost perspective, the build and ongoing administration costs are dependent on the final design aspects. We will provide further detail on this following the finalisation of the following areas:

- The content of the GloBE information and tax returns and details of validations that will be stipulated for these returns
- Whether New Zealand adopts the domestic minimum tax for foreign headquartered multinationals
- Safe harbours and simplifications
- Content of the Country by Country information exchange schema.

119. Our current estimate is that it will cost around $10.9 million to deliver the GloBE rules and $5.2 million to deliver the associated Country by Country reporting change. A separate briefing note will be prepared that will bring together the funding requirements and options for all of the OECD-driven initiatives

120. Given the 18 month delay between the effective date of the rules and the first date that a return will be required to be filed, it should be possible for most of the build and administration costs to be deferred until it is certain that New Zealand will (along with a critical mass of other countries) implement the rules. This will also be dealt with in the separate briefing note.

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POLICY AND STRATEGY

Tax policy report: **Global Anti-Base Erosion tax rules for New Zealand – Cabinet approval**

Date:	13 October 2022	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2022/466

Action sought

	Action sought	**Deadline**
Minister of Revenue	**Sign** and **refer** the attached Cabinet Paper to Cabinet Office	10 November 2022
Minister of Finance	**Sign** and **refer** the attached Cabinet Paper to Cabinet Office	10 November 2022

Contact for telephone discussion (if required)

Name	**Position**	**Telephone**
Casey Plunket	Special Policy Advisor	s 9(2)(a)

13 October 2022

Minister of Revenue
Minister of Finance

Global Anti-Base Erosion tax rules for New Zealand – Cabinet approval

1. On 22 September Treasury and Inland Revenue officials presented the tax policy report "OECD Pillar Two: GloBE rules for New Zealand – summary of consultation and officials' recommendations" (the Tax Policy Report). You agreed with officials that New Zealand should enact GloBE rules and that the design and delivery follow the recommendations in the Tax Policy Report.

2. As we noted in the Tax Policy Report, the funding of the build and ongoing administrative costs required by the GloBE initiative, as well as other international tax initiatives, is being dealt with by a separate briefing note. As this briefing note has not been completed at the date of preparing the cabinet paper for your review we have not provided this detail. We expect a decision on funding of the initiatives to have been made by the time the cabinet paper is lodged.

3. Consequently, we recommend that you sign the attached Cabinet paper and refer it to the Cabinet Office. The Cabinet paper is consistent in all respects with the recommendations you agreed to in the Tax Policy Report. If the separate briefing note regarding build and administrative costs makes any change to the attached paper before referral to the Cabinet Office desirable, we will look to discuss that with you as soon as possible.

4. The Cabinet paper needs to be lodged with the Cabinet Office by 10am on Thursday 10 November 2022 for consideration by the Cabinet Economic Development Committee on Monday 21 November 2022.

Recommended action

We recommend that you:

a) **Sign** and **refer** the attached Cabinet paper and Regulatory Impact Assessment on *Global Anti-Base Erosion Tax Rules* to the Cabinet Office by 10.00am, Thursday 10 November 2022 for the Cabinet Economic Development Committee to consider at its meeting on Monday 21 November 2022.

Signed and referred

Signed and referred

s 9(2)(a)

Casey Plunket
Special Policy Advisor
Policy and Regulatory Stewardship

Hon Grant Robertson
Minister of Finance
/ /2022

Hon David Parker
Minister of Revenue
/ /2022

 Doc 5

POLICY AND STRATEGY

Tax policy report: **Global Anti-Base Erosion tax rules for New Zealand – Cabinet approval**

Date:	9 February 2023	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2022/466

Action sought

	Action sought	**Deadline**
Minister of Revenue	**Sign** and **refer** the attached Cabinet Paper to Cabinet Office	2 March 2023
Minister of Finance	**Sign** and **refer** the attached Cabinet Paper to Cabinet Office	2 March 2023

Contact for telephone discussion (if required)

Name	**Position**	**Telephone**
Casey Plunket	Special Policy Advisor	

In Confidence

9 February 2023

Minister of Revenue
Minister of Finance

Global Anti-Base Erosion tax rules for New Zealand – Cabinet approval

1. On 22 September Treasury and Inland Revenue officials presented the tax policy report "OECD Pillar Two: GloBE rules for New Zealand – summary of consultation and officials' recommendations" (the Tax Policy Report). You agreed with officials that New Zealand should enact GloBE rules and that the design and delivery follow the recommendations in the Tax Policy Report.

2. On 13 October Inland Revenue officials submitted a Cabinet paper to be referred to the Cabinet Office which covered the recommendations you agreed to in the Tax Policy Report. This paper noted that the funding of the build and ongoing administrative costs required by the GloBE initiative, as well as other international initiatives, had not been determined and we would modify this paper if any changes were necessary, prior to referral to the Cabinet Office.

3. The funding decisions for the international initiatives have now been considered by Inland Revenue and the Treasury and the Cabinet paper has been modified to request Cabinet approval for the one-off and ongoing administration costs for Vote Revenue, covering the GloBE rules and country by country reporting (CbCR).

4. CbCR costs are included as Pillar Two leverages off the existing reporting requirements under CbCR. This is done to minimise the additional compliance costs for in-scope entities. Inland Revenue will incorporate the current CbCR into START and streamline the process. This provides a sustainable solution to ensure Inland Revenue can meet its international obligations.

Capacity constraints

5. Inland Revenue is committed to deliver the current policy initiatives agreed to by Cabinet including the ones in this paper. We have assessed that the Government's current tax and social policy work programme will use up most of our specialist design and delivery capacity over the next three years. Upcoming proposals in the next two omnibus taxation bills are also absorbing these same resources. In addition, if the initiatives that Ministers are currently seeking advice on proceed this will put further pressure on this capacity and will require reprioritisation and/or rescheduling of the existing work programme. Any further reduction in Inland Revenue's Budget 23 cost pressure bid will likely exacerbate this pressure.

6. Inland Revenue is undertaking work to try to reduce its capacity constraints and continually looking at whether a reprioritisation of Inland Revenue's existing and future commitments will be required to enable delivery of any new policy initiatives, in this timeframe, including this one. This means Inland Revenue may be unable to deliver on policy options that Ministers have already agreed to or wish to progress. Inland Revenue will report back to the Ministers of Finance and Revenue on options to reprioritise if this becomes necessary.

Globe updates

OECD updated economic impact assessment

7. On 18 January 2023, the OECD presented an updated economic impact assessment for the GloBE rules. The OECD estimates that the GloBE rules will increase global corporate income tax by approximately 9% or US $220 billion. This is up from 6-

7.5% or US $130-180 billion from the 2021 economic impact assessment. The rationale for the increase is:

- Better data on global low-taxed profit
- Increase in low-taxed profit over time
- Modelling a consistent application of GloBE rules across jurisdictions

8. The New Zealand revenue estimate from GlobE remains unchanged from our previous analysis. This is because we used CbCR data to calculate the expected New Zealand revenue from GloBE, which provides a more accurate picture for New Zealand, whilst utilising the underlying assumptions the OECD used in its estimate. As these underlying assumptions have not changed in the updated economic impact assessment our revenue did not need to be revised.

OECD release of further technical guidance on the GloBE rules

9. On 2 February 2023 the OECD released further technical guidance on the Pillar 2 GloBE rules. Of note for the government is further detail on the mechanics of the domestic minimum tax (DMT). The DMT is calculated using the GloBE rules, but only on local (in-country) profits. It has priority over the Income Inclusion Rule (IIR) and the Undertaxed Profits Rule (UTPR).[1]

10. The DMT guidance confirms that, if an in-scope MNE pays a DMT which gives rise to an imputation credit, this will not result in the DMT being non-qualifying. Consequently, for NZ MNEs whilst GloBE taxes paid under an IIR or UTPR will not give rise to an imputation credit, GloBE tax paid under the DMT will attract an imputation credit.

Country updates

11. On 15 December 2022, the Council of the European Union reached unanimous agreement to implement Pillar Two. The EU Directive requires Member States to transpose the rules into domestic law by 31 December 2023. The Directive states the IIR will be effective for periods on or after 31 December 2023 and the UTPR on or after 31 December 2024.

Recommendations

12. We recommend that you sign the attached Cabinet paper and refer it to the Cabinet Office. The Cabinet paper is consistent in all respects with the recommendations you agreed to in the Tax Policy Report.

13. The Cabinet paper needs to be lodged with the Cabinet Office by 10am on Thursday 2 March 2023 for consideration by the Cabinet Economic Development Committee on Wednesday 8 March 2023.

[1] The IIR applies on a top-down basis, giving the ultimate parent entity country, or an intermediate parent entity country, the right to collect GloBE top-up tax where the income is earned, if it has not been taxed under a DMT.

The UTPR is a back-up rule which allocates GloBE top-up tax in proportion to the group's payroll costs and tangible asset values in each country with GloBE rules. This ensures that if the country where an MNE has its headquarters decides not to implement the GloBE rules, the MNE will still have to pay top-up tax if it operates in countries that have GloBE rules.

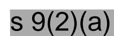
Recommended action

We recommend that you:

a) **Note** that Inland Revenue has assessed that the delivery of the Government's current tax and social policy work programme will use up most of their specialist design and delivery capacity over the next three years and is undertaking work to reduce its capacity constraints and continually looking at whether a reprioritisation of Inland Revenue's existing and future commitments.

b) **Lodge** and **refer** the attached Cabinet paper on *Global Anti-Base Erosion Tax Rules* to the Cabinet Office by 10.00am, Thursday 2 March 2023 for the Cabinet Economic Development Committee to consider at its meeting on Wednesday 8 March 2023.

Signed and referred Signed and referred



Casey Plunket
Special Policy Advisor
Policy and Regulatory Stewardship

Hon Grant Robertson
Minister of Finance
/ /2023

Hon David Parker
Minister of Revenue
/ /2023

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POLICY AND REGULATORY STEWARDSHIP

Tax policy report: OECD Pillar Two: GloBE rules – Additional decisions

Date:	4 April 2023	**Priority:**	Medium
Security level:	In Confidence	**Report number:**	IR2023/105

Action sought

	Action sought	Deadline
Minister of Finance	**Agree** to recommendations **Note** the contents of this report	11 April 2023
Minister of Revenue	**Agree** to recommendations **Note** the contents of this report	11 April 2023

Contact for telephone discussion (if required)

Name	Position	Telephone
Casey Plunket	Special Policy Advisor	s 9(2)(a)
Matt Mintrom	Special Advisor	s 9(2)(a)

4 April 2023

Minister of Finance
Minister of Revenue

OECD Pillar Two: GloBE rules – Additional decisions

Purpose

1. This report seeks joint agreement to additional decisions necessary for the introduction into Parliament of legislation giving full effect to the GloBE rules in New Zealand.

Background

2. On 3 April, Cabinet agreed to:

   2.1 adopt the OECD's Pillar Two Global Anti-Base Erosion (GloBE) rules in New Zealand once a critical mass of other countries do so;

   2.2 incorporate the GloBE rules into New Zealand tax law by reference to the OECD Model Rules, commentary, and administrative guidance; and

   2.3 delegate authority to the Minister of Finance and Minister of Revenue to make additional joint decisions on any policy and drafting issues arising as appropriate [CAB-23-MIN-0111 refers].

3. The GloBE rules ensure that multinational enterprises (MNEs) with annual revenues above €750 million are subject to tax of at least 15% on their mobile income, on a country-by-country basis. Where income in a country is subject to an effective tax rate (ETR) of less than 15% it will be subject to a 'top-up tax'. A top-up tax can be collected, in the following order, by either:

   3.1 the country in which the MNE derived the relevant income, under a Domestic Minimum Tax (DMT);

   3.2 the country in which the MNE is headquartered, or an intermediate parent is located, under an Income Inclusion rule (IIR); or

   3.3 all countries that have adopted the rules in which the MNE has operations, under an Under-taxed Profits Rule (UTPR).

4. The OECD Model Rules were approved by the more than 130 countries in the OECD-led Inclusive Framework in December 2021, with detailed commentary released in March 2022 and further administrative guidance released in February 2023. If a country adopts the GloBE rules, it must adopt the OECD Model Rules, commentary, and administrative guidance to ensure they are applied consistently across countries. The GloBE rules are expected to be adopted by participating countries in 2023, effective from no earlier than 2024 (for DMTs and IIRs) and 2025 (for UTPRs).

5. Cabinet has agreed to incorporate the GloBE rules into legislation by reference to the OECD Model Rules, commentary, and administrative guidance, rather than by converting them into New Zealand legislation. This significantly reduces the administrative cost for government and increases the likelihood that our GloBE rules will be considered "qualifying", meaning locally headquartered MNEs will be subject to New Zealand's IIR and not be required to pay top-up tax in other jurisdictions.

Additional decisions

6. Officials have identified the following areas for ministerial decisions in addition to those already made by Cabinet.

GloBE Registration

7. Officials consider that a registration requirement for in-scope MNEs with operations in New Zealand, similar to the system used for GST, would significantly lower the administrative burden of the GloBE rules for IR. This would give us a defined and regularly updated population to monitor.

8. However, the exact scope of the rules will not be clear until safe harbour negotiations are finalised. To allow for flexibility as the regime develops, GloBE registration details would take an electronic form to be prescribed by the Commissioner.

9. We recommend MNEs be required to register with IR within six months of the end of the first income year in which they are in scope of New Zealand's GloBE rules and to deregister with IR within six months of the end of the first year in which they are out of scope of New Zealand's GloBE rules.

Top-up tax return

10. The GloBE rules stipulate that in-scope MNEs must file GloBE information returns (GIRs) in jurisdictions in which they operate, which will contain the information required to calculate any top-up tax the MNE must pay. However, it is up to each jurisdiction to determine the rules for filing a tax return for the top-up tax.

11. Officials consider that all in-scope MNEs with operations in New Zealand should be required to file an annual top-up tax return in New Zealand. If they have no top-up tax liability, the return would simply be nil. This would ensure that they all make a conscious and affirmative statement regarding their New Zealand top-up tax position.

12. To allow for flexibility as the regime develops, the top-up tax return would take an electronic form to be prescribed by the Commissioner. We envisage a short return.

GloBE penalties

13. The commentary on the GloBE rules states that jurisdictions should make penalties or sanctions for non-compliance with the GIR commensurate with penalties or sanctions in respect of other information return filing obligations in the jurisdiction.

14. Once the GloBE rules are incorporated, and if you agree to introduce a top-up tax return, penalties for not filing or late filing of a tax return (up to $500) and shortfall penalties (from 20% to 150% of a shortfall in a tax position) already in the Tax Administration Act can be amended to apply to top-up tax. However, we consider two new penalties are desirable.

15. Officials believe a penalty should apply where an in-scope MNE with operations in New Zealand does not register on a timely basis. The administrative burden for IR of keeping track of which MNEs are in scope would be prohibitive. If IR does not know who is in scope of the rules it cannot apply the GloBE rules effectively.

16. We believe a penalty should also apply where an in-scope MNE with operations in New Zealand does not file a complete GIR on a timely basis. That is because IR cannot determine whether an MNE has a top-up tax liability without the information in the GIR. Moreover, with respect to a New Zealand-headquartered MNE, New

Zealand is obliged to exchange certain information with other jurisdictions in which the MNE operates, fifteen months after the end of the MNEs' fiscal year. If a GIR is incomplete or filed late, we will be unable to fulfil our information exchange obligations.

17. We have found two examples of penalties in the TAA that could be considered commensurate for non-compliance with these obligations, on the basis that they also apply to large MNEs. Both are civil penalties of up to $100,000. The relatively high penalty reflects the size of the taxpayers affected. We therefore recommend introducing equivalent civil penalties of up to $100,000 where an in-scope MNE with operations in New Zealand:

    17.1 does not complete GloBE registration on a timely basis; or

    17.2 does not file a complete GIR on a timely basis.

18. We note that, in Australia, a "significant global entity" who does not file a tax return by the due date can be liable for a late filing penalty of between $111,000 and $555,000, depending on how overdue the return is.

Country-by-Country Report penalty

19. The Country-by-Country Reporting rules were implemented in 2016 as part of the OECD's Base Erosion and Profit Shifting (BEPS) Action Plan to help jurisdictions risk assess large MNEs primarily as to their compliance with transfer pricing rules. They require MNEs with a combined revenue of €750 million or more (the same population that is subject to the GloBE rules) to provide an annual report that breaks down key elements relevant to their transfer pricing policies by jurisdiction. The Country-by-Country Report (CbCR) is the forerunner to the GIR. In addition to continuing to be used for transfer pricing risk assessment, it will be used for transitional safe harbour calculations under the GloBE rules and is therefore also necessary for the effective administration of the rules.

20. Currently, there is no penalty under New Zealand law for not filing a CbCR. Officials expect future OECD peer reviews of our GloBE and CbCR rules to note this and recommend a penalty be introduced to incentivise compliance, particularly given the flow-on impact to other jurisdictions with whom we are obliged to exchange information collected in the CbCR. Given this, and the size of the in-scope taxpayers, officials recommend applying an up to $100,000 civil penalty to in-scope MNEs with operations in New Zealand who do not file a complete CbCR return on a timely basis. This aligns with the penalty recommended for the GIR.

Domestic Income Inclusion Rule vs Domestic Minimum Tax (DMT)

21. On 3 April Cabinet agreed to our recommendation to introduce a DMT alongside the GloBE rules (which mandatorily include an IIR and a UTPR) [CAB-23-MIN-0111 refers]. In the Cabinet paper, we explained that the DMT would ensure that if a New Zealand-headquartered MNE had an effective tax rate of below 15% on its New Zealand income in a given year (e.g., because it makes an untaxed capital gain), New Zealand would collect the top up tax rather than another country.

22. Following recent work by the OECD, it is now clear that the tax we described as a DMT is better described as a domestic IIR. This is because:

    22.1 it is only intended to apply to New Zealand headquartered MNEs; and

    22.2 if a New Zealand ultimate parent entity has a direct subsidiary that is low-taxed where there is also a minority interest, the tax is only intended to apply for the portion of the low-tax profits attributable to the New Zealand MNE's ownership.

23. This change in name does not affect the policy conclusion relating to the DMT and imputation credits, i.e., that unlike other tax paid under the GloBE rules, tax paid under a DMT/domestic IIR should give rise to imputation credits.

24. As the domestic IIR matches the policy outcome Cabinet has agreed to for the DMT in all but name, we ask Ministers to note the change in the name (but not the substance) of this element of the GloBE rules that the omnibus bill will introduce.

The GloBE rules in relation to tax treaties

25. The OECD has stated that the IIR and UTPR are both compatible with tax treaties, such as New Zealand's, based on the OECD Model. Nevertheless, the compatibility of the UTPR with the OECD model treaty has been the subject of some debate. This is on the basis that the UTPR is effectively an income tax imposed by a country (say New Zealand) on non-New Zealand income earned by a non-New Zealand company, where no New Zealand person has an interest in the non-New Zealand company. Accordingly, it is possible that some companies, and also some governments, may not agree with the OECD position, and might deny our ability to tax under the UTPR relying on a tax treaty between New Zealand and another country.

26. Officials do not believe that this would be likely to succeed if challenged in court. However, we do believe that it would be desirable to eliminate any possible uncertainty in this respect. Accordingly, we recommend confirming in legislation that the GloBE rules adopted by New Zealand apply notwithstanding the terms of a tax treaty, unless those terms expressly refer to the GloBE rules. This is consistent with the intention of the rules, and with the consensus position adopted by the OECD-led Inclusive Framework which has developed and approved the Model Rules. Although tax treaties usually take priority over the provisions of the Income Tax Act, there is precedent for such an over-ride in the Act.

Consultation

27. Officials have consulted with:

- Australian tax officials on their administrative regime for tax reporting by large multinational groups;
- the OECD on the distinction between a DMT and a domestic IIR.

Next steps

28. Draft legislation will be prepared in accordance with Ministers' decisions and included in the upcoming omnibus bill.

Recommended action

We recommend that you:

1. **agree** that MNEs with operations in New Zealand should be required to register with IR within six months of the end of the first income year in which they are in scope of the New Zealand GloBE rules and to deregister with IR within six months of the end of the first income year in which they are out of scope of the New Zealand GloBE rules.

Agreed/Not agreed Agreed/Not agreed

2. **agree** to require all in-scope MNEs with operations in New Zealand to file an annual top-up tax return in New Zealand.

Agreed/Not agreed Agreed/Not agreed

29. **agree** that an in-scope MNE with operations in New Zealand which does not register for GloBE when required to do so will be liable for a civil penalty of up to $100,000.

Agreed/Not agreed Agreed/Not agreed

30. **agree** that an in-scope MNE with operations in New Zealand who does not file a complete GloBE information return or files such a return late will be liable for a civil penalty of up to $100,000.

Agreed/Not agreed Agreed/Not agreed

31. **agree** that an in-scope MNE with operations in New Zealand who does not file a complete Country-by-Country report or who files such a report late will be liable for a civil penalty of up to $100,000.

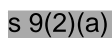
Agreed/Not agreed Agreed/Not agreed

32. **note** that the domestic minimum tax Cabinet has agreed to implement is more accurately described as a domestic income inclusion rule and will be referred to as such going forward.

Noted Noted

33. **agree** that the GloBE rules adopted by New Zealand should be given effect notwithstanding the terms of any tax treaty, unless those terms expressly refer to the GloBE rules.

Agreed/Not agreed Agreed/Not agreed



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