

Conference

“The Implementation of the Global Minimum Corporate Tax”

Rust, Austria

July 4-6, 2024

**Organized by the Institute for Austrian and
International Tax Law, Vienna**

Questionnaire

1. Implementation of the IIR and the UTPR

Has your country already introduced an Income Inclusion Rule (IIR) and an Undertaxed Profits Rule (UTPR) in accordance with the OECD Model Rules? Has it introduced draft legislation, or is it willing to implement the OECD Model Rules in the future? Is your country a member of the OECD/G20 Inclusive Framework?

Have there been political and academic discussions regarding the usefulness of a Global Minimum Tax and the content of the OECD Model Rules? What are the arguments in favor and against a Global Minimum Tax in general and the OECD Model Rules in particular?

Does your country have economic impact assessments? What percentage of the profits of in-scope MNEs will be exempt by the Substance-based Income Exclusion (SBIE)? For high tax jurisdictions, what is the estimated amount of tax revenue to be gained through the top-up tax and the decrease in profit shifting? For low tax jurisdictions, how much tax revenue will be lost as a result of less investment in your country?

The IIR and the UTPR constitute a Common Approach. Though there is no obligation to implement the IIR and the UTPR, what are the pros and cons of implementing them? A Common Approach also means that, when introducing a Global Minimum Tax, the legislation has to be in accordance with the suggestions of the OECD. Does the implementation into national law deviate from the OECD Model Rules? What are the deviations, and what are the reasons for the differences? How did your country implement the options offered by the OECD Model Rules (and the Administrative Guidance)? Has your country modified its accounting standards (e.g. in order to qualify as an Acceptable Financial Accounting Standard) or allowed additional accounting standards?

Has your country introduced (or will it introduce) transitional rules to facilitate the application of the IIR and the UTPR during the initial phase of application? How about safe harbor rules?

2. Major challenges regarding the implementation and application of the IIR and the UTPR

When implementing and applying the IIR and the UTPR, what are the major challenges for the legislature, the tax administration, and the taxpayers? How do the tax administration and the taxpayers deal with the complexity of the rules? How does the tax

administration provide legal certainty (e.g. can the taxpayer obtain a ruling)? What are the issues for which the OECD should provide additional guidance?

If the USA does not upgrade its GILTI rules to follow more closely the design of the GloBE rules, how will this affect implementation in your jurisdiction?

According to the EU Pillar II Directive, the IIR must be transposed by the end of 2023 and the UTPR by the end of 2024. If your country is not an EU Member State, when will the IIR and the UTPR be applied for the first time? Do in-scope MNE groups have a sufficient amount of time to adapt to the new rules? How do in-scope MNE groups comply with the new rules – have they introduced new software systems?

Who are the service providers who help MNEs comply with the rules? Do tax law firms still play a role giving advice on the IIR and the UTPR, or are accounting firms mainly providing advice due to the GLOBE's strong reliance on accounting rules?

3. The QDMTT and other measures to avoid the application of the GLOBE rules on domestic CEs

Will your country introduce retaliatory measures (e.g. tariffs) if resident companies are subject to an IIR or UTPR by other countries?

What are the measures taken to avoid that domestic income is subject to a top-up tax in other countries? Will your country increase corporate tax rates in general? Does your country introduce a QDMTT and, if affirmative, how is it designed? What are the reasons for (not) changing the general corporate tax system or introducing a QDMTT?

Does your country benefit from the safe harbor rules?

4. GLOBE and tax incentives

The introduction of a Global Minimum Tax will neutralize the effects of tax incentives.

What is your country's reaction? Will it abolish all tax incentives that can lead to an effective tax rate below 15%? Will your country abolish tax incentives for in-scope MNEs and keep the tax incentives for all other taxpayers? Will your country introduce additional tax incentives for out-of-scope taxpayers? Will it introduce additional tax incentives that do not influence the amount of covered taxes (e.g. incentives in the form of reductions of wage taxes, social security contributions, sales taxes, VAT, and administrative fees)? Will

your country keep all of its tax incentives and introduce a QDMTT so that the income falling within the SBIE still benefits from the incentives? Is your country redesigning its tax incentives so that they are treated as Qualified Refundable Tax Credits? What are the reasons for keeping or changing the tax incentive regimes?

5. Dispute resolution

The application of the complex GLOBE rules will lead to disputes among the affected countries that concern the interpretation and the application of the rules. What are the main issues that will lead to disputes (e.g. recognition as a qualified IIR, UTPR, or QDMTT, apportionment of the UTPR among the different countries, etc.)?

Do you believe that the risk of differing interpretations will be significantly reduced because countries will use the global model rules and the subsequent agreed administrative guidance as a basis for their domestic legislation?

The OECD issued a consultation document on Tax Certainty for the GLOBE Rules. It proposes inter alia the use of MAPs or the development of an MLC to ensure coordination and consistent implementation of the GloBE rules to prevent and resolve disputes. How do you evaluate these proposals? What other types of dispute resolution mechanisms do you consider necessary and realistic to be implemented?

6. EU law, tax treaty, investment treaty, and constitutional issues

If your country is an EU Member State, does the EU have the competence to enact the Pillar II Directive? What is the legal basis for it? Does the EU have the power to conclude international agreements regarding the GLOBE?

If your country is a Member State of the EU or of the EEA, is the Pillar II Directive/are the GLOBE rules in accordance with the fundamental freedoms and the fundamental rights of the Charter? Are violations of the fundamental freedoms avoided by extending the rules to purely domestic situations, or are there still issues of de-facto discrimination? Can a violation of the fundamental freedoms be avoided through the shielding effect of a directive? For Iceland, Liechtenstein, and Norway, is your country extending the scope of the Model Rules to Large-Scale Domestic Groups as well?

Are the IIR and the UTPR in accordance with tax treaties? The OECD recommends introducing a switch-over clause if your country exempts foreign PE profits but does not see other treaty issues. Do you agree with the OECD's position? For instance, is levying a top-up tax on profits earned by a subsidiary via the IIR in line with Article 7 and Article 23A OECD MC? Is levying a top-up tax on profits earned by a parent company via the UTPR in line with Article 7 OECD MC? Does the saving clause change the situation? What are possible constellations where the application of the UTRR might conflict with Article 24 OECD MC? Is the QDMTT creditable in PE constellations under Articles 7 and 23B? If your country has introduced CFC legislation, does the QDMTT increase the effective tax rate of the foreign CFC, or is the QDMTT creditable at the parent company level? Can the IIR and the UTPR conflict with investment treaties? Will the removal of tax incentives be challenged under stability clauses in investment treaties? What are the constitutional issues in your country regarding the application of the GLOBE rules?

7. Subject-to-tax rule

The subject-to-tax rule (STTR) protects the rights of developing Inclusive Framework members to tax certain intra-group payments when these payments are subject to a nominal corporate income tax that is below the minimum rate. Inclusive Framework members that apply nominal corporate income tax rates below 9% to intra-group interest, royalties, and a defined set of other payments must implement the STTR in their treaties with developing Inclusive Framework members when requested to do so.

If your country is a developing Inclusive Framework member, will it require its treaty partners to include an STTR? What are the reasons for this choice?

Does your country prefer an implementation of the STTR through the MLI or through bilateral treaty negotiation? Please state the reasons for this choice.

For the requested country, do you comply with this request by signing the MLI or by renegotiating the tax treaty on a bilateral basis.

The UN has also proposed a new STTR. For the developing Inclusive Framework member, do you prefer the OECD or the UN rule? What are the reasons for this choice?

For the requested country, would it be willing to include a UN based STTR into its tax treaty?

8. Overall evaluation and future

Do you believe that the development of the Pillar II rules constitutes a success? Do you think it would have been a better solution to strengthen the already existing Anti-BEPS measures (e.g. CFC legislation, Interest Barrier Rules, GAARs and SAARs, Initiatives on Harmful Tax Competition) instead of introducing the very complex IIR and UTPR rules? Are the IIR and UTPR rules an effective measure to prevent BEPS for in-scope MNEs? Do you believe that we need to lower the EUR 750 Mio threshold in the future to cover other MNEs as well? Do we need an additional but less complex Global Minimum Tax for all other taxpayers (e.g. SMEs and individuals)? Can we abolish or modify other anti-abuse provisions for in-scope MNEs or all taxpayers once the GLOBE rules are implemented? What is the purpose of the SBIE? Why do we want to allow (harmful) tax competition with regard to routine profits and prevent all tax competition for excess profits? Do you think that the SBIE should be abolished or extended? Please state your reasons.

How do we change the GLOBE Model Rules in the future? At the OECD level, changes require consensus and, at the level of the EU, changes require unanimity. Are these rules now set in stone? Which parts of the Model Rules and (or) the Commentary should be changed?

Paper length: 20 pages, Times New Roman 12 pt.

Format: preferably Microsoft Word

Bibliographic references (footnotes) and quotations: Follow the IBFD guidelines, for download under <https://www.ibfd.org/sites/default/files/2021-06/IBFD-Author-Instructions-v1.pdf>

The questionnaire does not necessarily have to be followed question by question (e.g. when there is nothing to report from your jurisdiction). Rather, it should stimulate your thinking about the various topics that are outlined. However, your report should be structured in accordance with the eight-section-structure of this questionnaire.

Deadline for delivery of the national reports and general reports: May 15, 2024

Provide a **brief biographical statement** (3-5 lines) for the List of Contributors in the book by the deadline mentioned above. Ensure that graphics and charts in the final version are black-and-white or greyscale only (No colour graphics are allowed for the book!), and email them as separate files in xlsx, docx, pptx, jpg or tif format. The resolution of images must be at least 300 DPI to ensure good quality for printing.

The national reports and general reports (papers) will be made available for download on a password-protected conference website so that the conference participants can be well prepared for the discussions.

On the basis of the national reports, we will identify the most relevant topics and select speakers who will present selected issues in a three-minute input statement to stimulate public debate and discussion. We will include the topics from the three general reports – governance/regulation, transparency/reporting and CBDCs – to complement this discussion.

After the conference, there will be a short period of time granted for authors to include the findings of the conference in their respective papers. The general reports as well as the national reports will be published as a book. We will organise quality checks and linguistic editing of the final reports.

If you have any questions or concerns, do not hesitate to contact us at taxlawconference@wu.ac.at. We will be happy to assist you.