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)

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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.

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[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

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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.