Implications of the OECD Pillars 1 & 2 for the Crown Dependencies

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Introduction

John Riva
KIG Head of Tax
KPMG in the Crown Dependencies
E: jriva@kpmg.com

Agenda

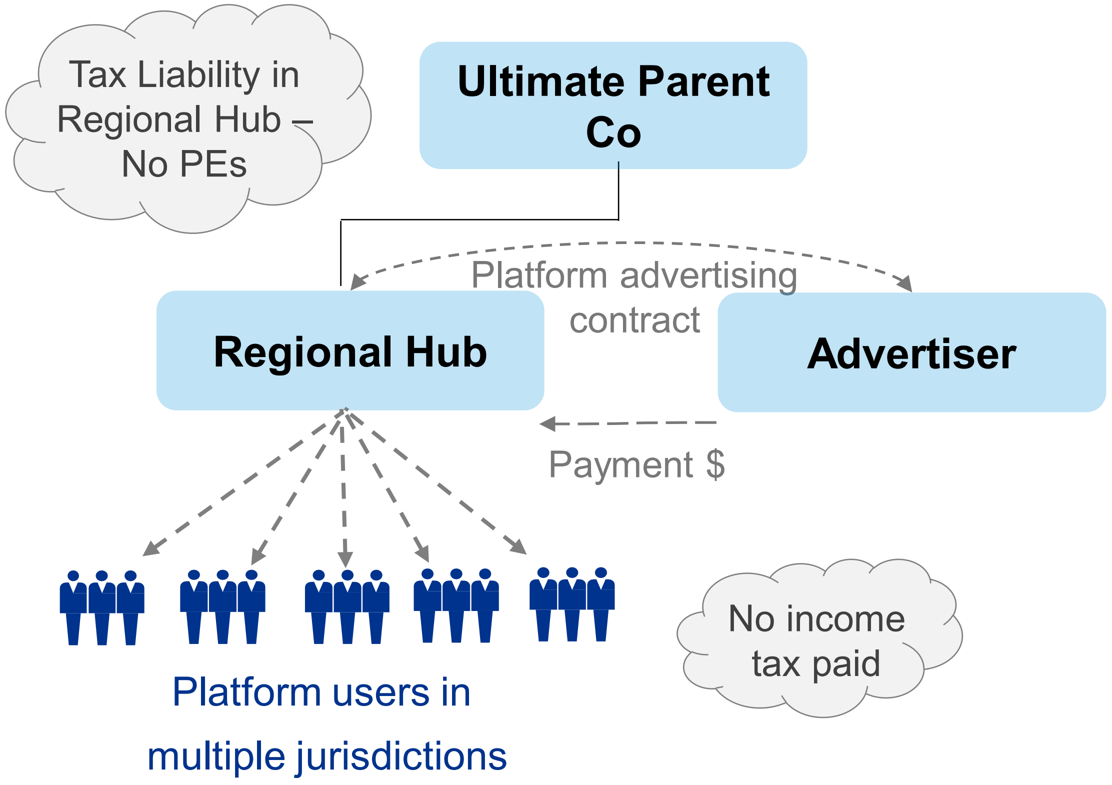
1. Introduction – John Riva
2. Pillar 1 – David Parsons
3. Pillar 2 – Rob Rotherham
4. Implications of Pillar 1 and 2 on companies in the Crown Dependencies – Paul Eastwood
5. Policy options for Guernsey, Isle of Man and Jersey – Tony Mancini
6. Questions

Pillar 1

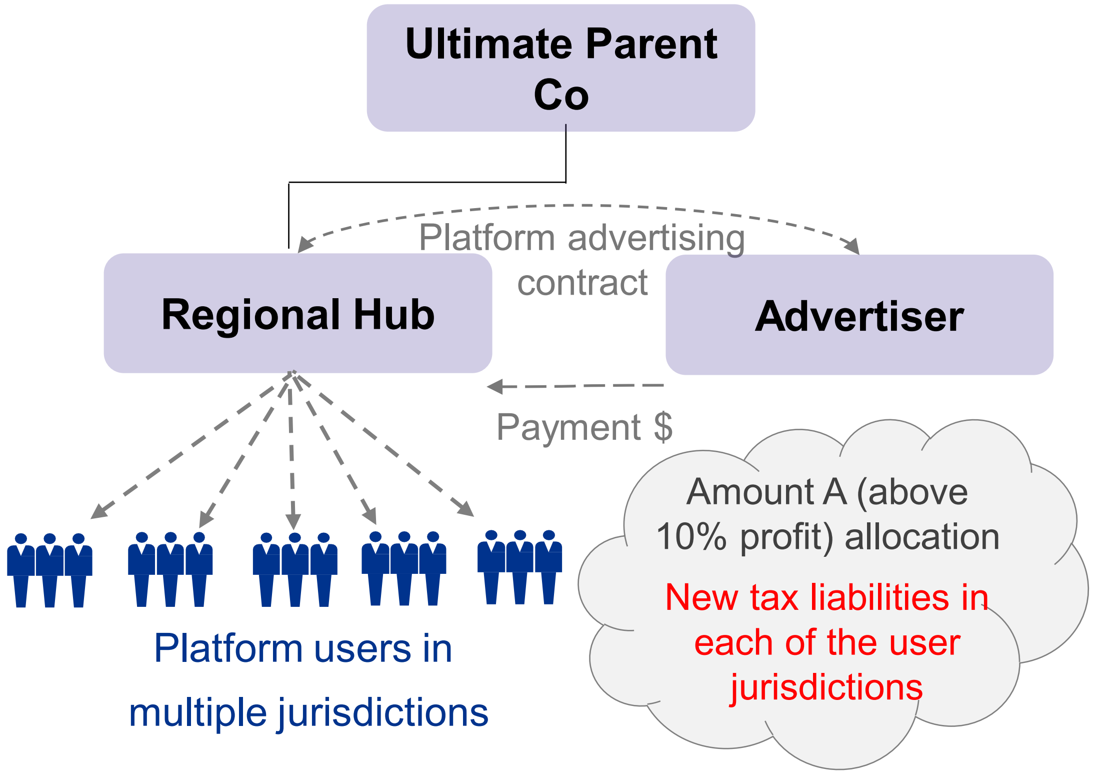
David Parsons
Tax Executive Consultant
KPMG in the Crown Dependencies
E: davidparsons@kpmg.co.im

Pillar 1 – High-Level Impact (Market Jurisdictions)

No Profit allocation (no PEs)



Profit reallocation under Pillar One to Market Jurisdictions



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OECD/G20 IF Statement - Pillar One

P1 Key Aspects

Groups in scope – Turnover EUR20 billion and Profitability above 10%

Exclusions – Extractives and Regulated Financial Services

Market profit allocations – 25% of profit above 10% margin

Market and distribution safe harbour – If residual profit already taxed in market

Jurisdictional taxing rights – €1 million (€250,000 if GDP less than €40 billion)

Sourcing – Where goods/services used/consumed - “reliable method”

Paying entities – Those with residual profits

Tax Certainty – Binding dispute prevention/resolution where “relating” to Amount A

Unilateral Measures – Digital Service Taxes and other relevant measures

Implementation – Multilateral convention signing 2022. Inclusive Framework members to use ‘all efforts’ to ratify for effect in 2023

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Pillar 2

Rob Rotherham
Tax Partner
KPMG in the Crown Dependencies
E: rrotherham@kpmg.co.im

Scope of the Global Minimum Tax

Revenue

- MNE with consolidated group revenue exceeding €750m
- determined using consolidated financial statements
- A PE in another jurisdiction is deemed to be part of the group

Testing Period

- Four-year test period
  - revenue over €750m in at least two of the previous four fiscal years
- In the context of a merger, look to the sum of the revenue of each group to meet the €750m threshold
- Special rules for demergers

Excluded Entities

- Government Entities, which do not carry on a trade, International Organizations and Non-profits and Pension funds
- Investment Funds only when they are the Ultimate Parent Entity of an MNE Group
- Certain holding vehicles owned by these excluded entities also excluded

International Shipping

- Exclusion for international shipping and related income
- Exclusion does not apply to income from inland waterways transportation within a jurisdiction.
- Must demonstrate that strategic or commercial management of all ships concerned is effectively carried on from within the location of Constituent Entity

Three shots at achieving global minimum tax rate

Qualified domestic tax in Jurisdiction

- Calculate the ETR of MNE in each jurisdiction (using prescribed methodology)
- If < 15%, calculate Jurisdictional Top up Tax
- Reduce Jurisdictional Top up tax by Domestic Top up Tax
- If positive top up tax remains, determine if IIR applies

IIR

- Determine if entity is a constituent entity of a parent entity in a jurisdiction with an IIR,
- If yes, determine if applicable IIR is sufficient to absorb the top-up tax
- If no, or if insufficient, determine if UTPR applies

UTPR Back Stop

- Determine total aggregate remaining top up tax owed by MNE
- Apportion share of top-up tax to each constituent entity in jurisdictions that have adopted UTPR
- 50% $\frac{\#of\ employees\ in\ jurisdicton}{\#\ of\ employees\ in\ all\ UTPR\ Juris}$ plus
- 50% $\frac{Value\ of\ Tangible\ assets\ in\ Juris}{Value\ of\ tangible\ asses\ in\ n\ all\ UTPR\ Juris}$

Overview of steps in application of GloBE Rules

1. Determine GloBE income on a jurisdictional basis

2. Determine Covered Taxes on a jurisdictional basis

3. Calculate jurisdictional ETR = Covered Taxes / GloBE income

4. Calculate Top-up Tax % = Minimum ETR – Jurisdictional ETR

5. Determine Excess Profit = GloBE Income – Substance Carve Out

6. Calculate jurisdictional Top-up Tax = Top-up Tax % * Excess Profit

7. Jurisdictional Top-up Tax of a CE is then absorbed by a qualified domestic top up tax, charged to a parent entity (IIR) or apportioned to a subsidiary entity (UTPR)

As shown, the centerpiece of Pillar 2 GloBE Rules is computing "GloBE Income," "Covered Taxes," and ETR on a jurisdictional basis

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Implications of Pillar 1 and 2 on companies in the Crown Dependencies

Paul Eastwood
Tax Partner
KPMG in the Crown Dependencies
E: peastwood@kpmg.com

Implications for the Crown Dependencies

- Lesson from last c.20 years any international tax initiative will have an impact on the Crown Dependencies – particularly one that looks at minimum effective corporate tax rates
- **Pillar One** – minimum international standard which will need to be implemented
- Expected limited impact for industry in Crown Dependencies
- Resource implications for Government (e.g. law drafting, Parliamentary time)
- Tax authorities – peer reviews checking on implementation and operation

Implications for the Crown Dependencies

- **Pillar Two** – again limited impact for industry in Crown Dependencies – predominantly due to the turnover threshold (future reductions in threshold? jurisdictions set a lower threshold?)
- These rules do not require the removal the 0% standard rate of corporate income tax
- Implemented on a global basis – maintaining a “level-playing field” vis-à-vis competitor jurisdictions
- Maintained focus on effective tax rates (not nominal/headline rates)

Implications for the Crown Dependencies

- Large multinational groups will pay tax of (at least) 15% on the profits arising in each jurisdiction where they have a taxable presence in a GloBE jurisdiction – one taxable presence will be sufficient!
- “Common approach” rather than minimum standard
- But EU propose to “introduce Pillar 2” into the criteria for assessing 3rd countries under the non-cooperative jurisdictions listing process
- Number of policy options for the Crown Dependencies to consider

Policy options for Guernsey, Isle of Man and Jersey

Tony Mancini
Tax Partner
KPMG in the Crown Dependencies
E: amancini@kpmg.com

Available Options

Option 1

Do nothing

— Superficially attractive for international business

BUT - damage to the Islands' reputations - potential blacklisting by EU and OECD

Available Options

Option 2

General corporate tax rate of 15%

— Superficially attractive to Islands' Treasuries

BUT - goes beyond minimum standard and potentially costs MNEs more than 15% makes finance sector uncompetitive

Available Options

Option 3

Adopt minimum standard only

— Only apply GloBE rules to parent of MNE Groups
— Meets international obligations and avoids initial blacklisting
— Retains Islands' competitiveness

Available Options

Option 4

Minimum Standard plus Domestic Top Up Tax

— Full application of GloBE rules to parent undertaking
— Apply Domestic Top Up Tax to Constituent Entities

NB: DTUT applies after calculation of Effective Tax Rate and after application of substance carve out, so not necessarily 15%

Questions?

Thank you

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