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Topic: **Pillar Two and its ramifications**



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Pillar 2

Status Quo, Policy Challenges
and Recent Issues





Agenda

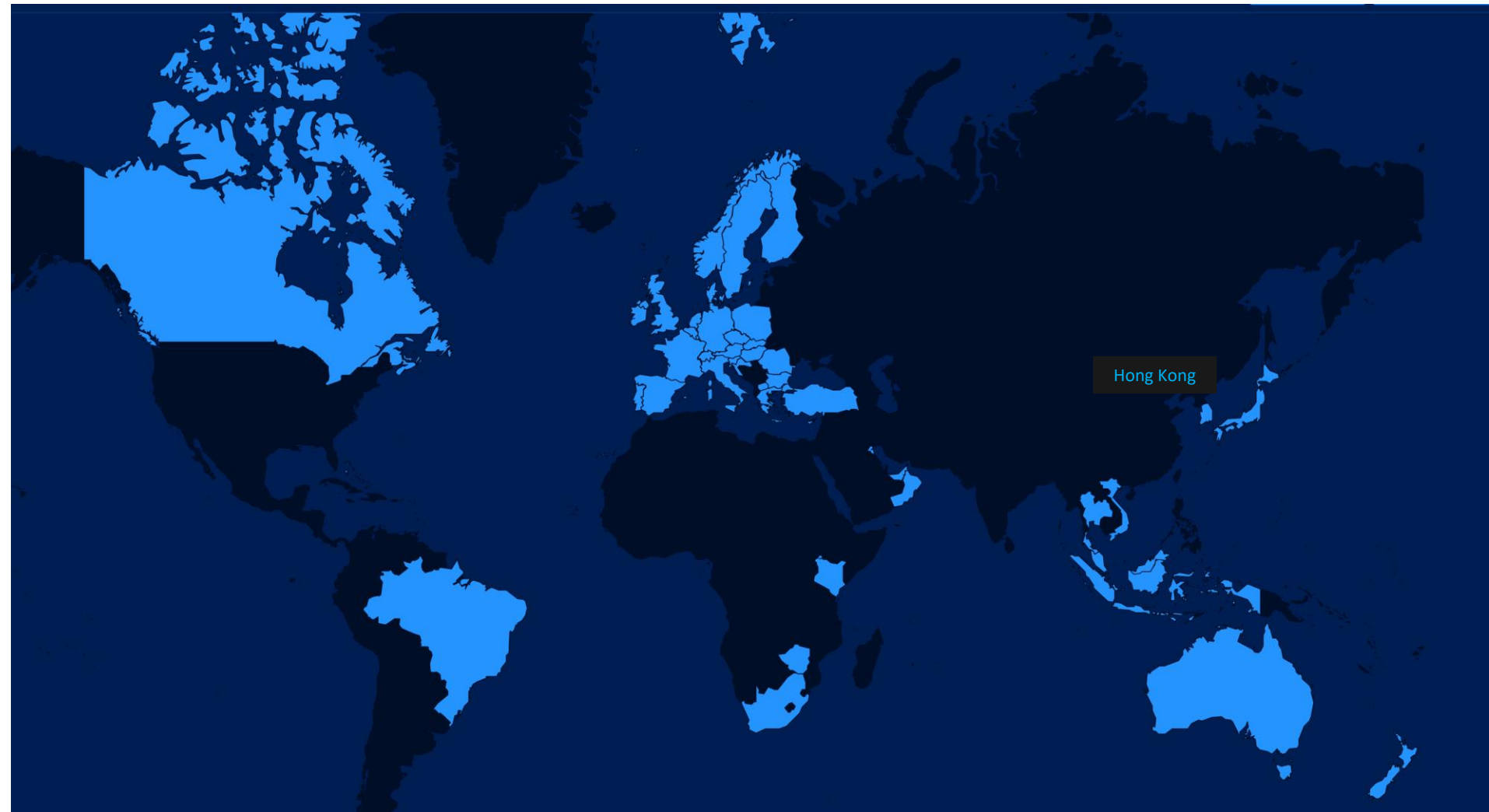
1. Status quo of P2 Implementation
2. Legal and political headwinds for UTPR implementation
3. Other relevant issues
4. Decluttering

Status Quo of P2 Implementation

- Approx. 55 jurisdictions have so far enacted 'P2 legislation' (IIR, UTPR, and/or DMTT)
 - An additional 5 EU MS are obliged to do so until 2030 by the EU P2 Directive
- Outside the EU27, only 7 jurisdictions have enacted a UTPR
 - Australia, Indonesia, Turkey, Thailand, Liechtenstein, South Korea, New Zealand
 - 4 more have introduced draft UTPR legislation (UK, CAN, Norway, Japan)
- Only a few jurisdictions with IIR and/or UTPR have not (yet) adopted a DMTT
 - Japan, South Korea, New Zealand
- Some (esp. emerging/developing) economies merely enacted a DMTT
 - Barbados, Bahamas, Bahrain, Kuwait, UAE, Zimbabwe
- Singapore is special: IIR (and DMTT), but only for MNEs headquartered in Singapore

Status Quo of P2

Dolor Semper



Source: KPMG / own research

- So far, P2 is predominantly enacted in the EU, SE Asia and Australasia
- Africa, Latin America and Central Asia are mostly absent; and so is the US
- G20 MoF Feb '25: calls for technical support for developing countries
- Several gvt announcements, but little legislative action: momentum has slowed

UTPR: Legal headwinds



- UTPR challenged (by AmFree) before the **Belgium Constitutional Court**, essentially on four grounds:
 - 1) Excessive interference with fundamental rights, esp. if UTPR liability exceeds local profits
 - 2) Lack of legal certainty
 - 3) Violation of tax equity / equal taxation aligned with fiscal capacity
 - 4) Extraterritoriality
 - Reference to the CJEU would have to be made (if the Belgium CC does not deny standing)
 - The CJEU might find point (1) problematic; not likely any of the others
- Prospectively: **National courts on grounds of DTC incompatibility**
 - But not intra-EU (precedence of P2-Directive)
 - Possibly to little avail, due to UTPR mechanics

UTPR: Political headwinds

- US White House Memoranda, esp. on the “OECD Global Tax Deal”
 - Calls on Sec of Treasury to investigate foreign tax rules that
 - (i) violate DTCs;
 - (ii) are extraterritorial; or
 - (iii) disproportionately affect US companies
 - Reports with findings and recommendations (incl. **Sec 891 / tariffs**) are now due
- “Smith Bill” = relaunched Defending American Jobs and Investment Act
 - Definition of “extraterritorial tax” in proposed **Sec 899 IRC** takes direct aim at the UTPR
 - Intentional (and constitutional) treaty override



UTPR: Ways Forward?

- EU COM / OECD officials have expressed interest in compromise with US; but...
 - UTPR abolition unlikely in short/medium term (needed: backstop / momentum; EU unanimity)
- **Extension of UTPR SH?** → (semi-)permanent SH?
 - Broad repercussions, unless additional conditions attached (e.g. 20 % plus CAMT-style 'D'MTT)
 - Still potentially unfair vis-à-vis developing countries
- **Extension of the Q(R)TC concept**, so as to cover also R&D credits
 - If US were willing to somewhat modify the **CAMT**, it could / should be **recognized as a QDMTT**
 - would shield US profits from both, IIR and UTPR (based on the QDMTT-SH)
 - Caveat: more difficult to implement for EU MS → amendment of P2-Directive required (?)
- **And what about GILTI?** Less crucial, but potentially IIR-equivalence as part of a deal

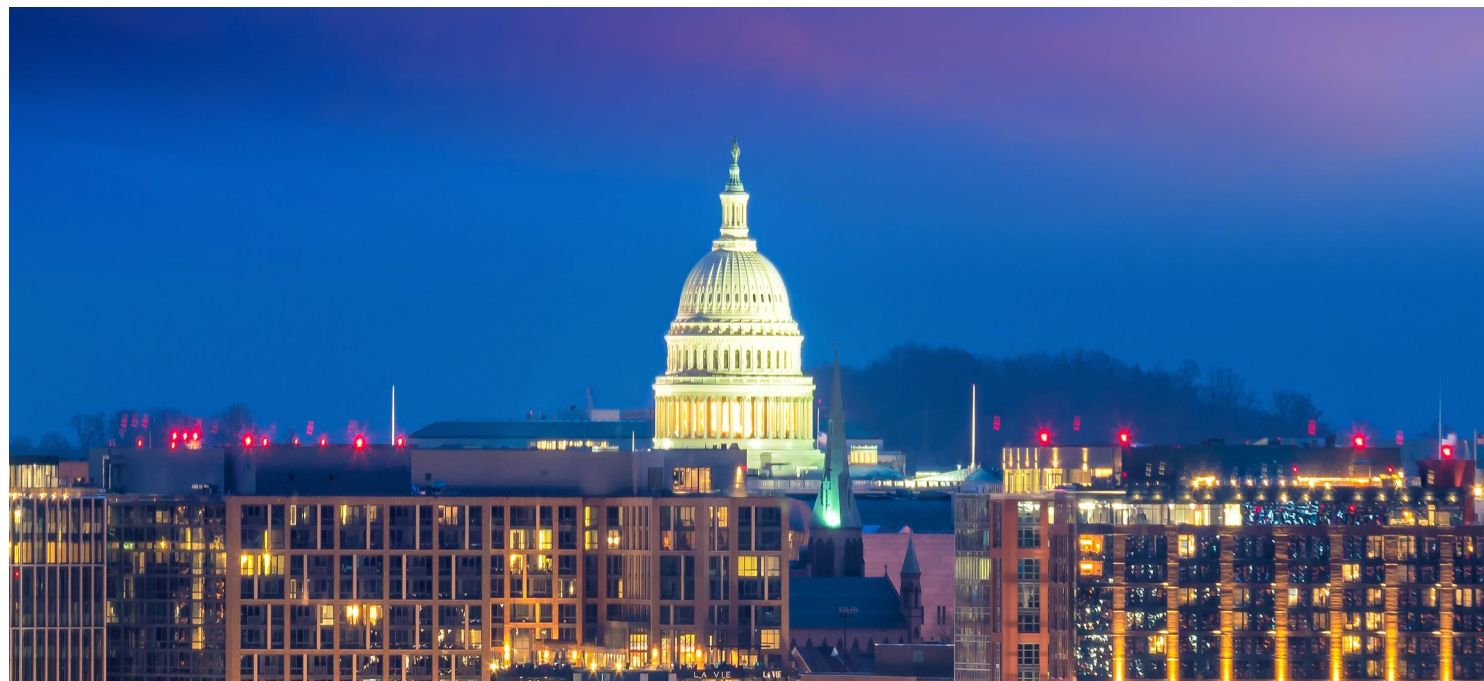
‘No related benefits’ clause

- No “Q” for a IIR, UTPR, or DMTT in case of full/partial compensation through “related benefits”
 - Includes covered tax benefits, non-covered tax benefits, and non-tax benefits (subsidies)
 - ‘Determined’ centrally (albeit non-binding) at IF level through review process
 - Related benefits will *de facto* be “taxed away” by other jurisdictions
- So far, only a few countries have openly contemplated schemes that *might* be caught
- Broadly worded concept & little IF Guidance in the Commentary (2023) on Art. 10
 - (i) Ringfencing of benefits (probably strong indication; cf. Sec 1.901-2 US IRC)
 - (ii) Marketing of benefits as part of a ‘P2 package’ (hardly relevant)
 - (iii) Date of introduction: prae-/post-GloBE discussions (weak / questionable indicator)

'No related benefits' clause

- IF Admin Guidance Jan. 2025 has **announced further Guidance**
 - Will involve setting up a **monitoring / review process** of national legislation
 - Challenges (will) remain; esp.:
 - Delicate balance between GloBE effectiveness & national sovereignty → politicized process
 - Hard-to-assess benefits involving admin. discretion (e.g. Singapore Refund. Investment Credit)
- **A simple and bright-line test would be preferable**
- Should not fundamentally undermine anti-BEPS qualities
 - Would be facilitated by an extension of the Q(R)TC concept...

Other relevant issues



Compliance

- Additional data points / error risk (now even an issue for CbCR SH)
- Rule complexity & volatility (and divergent interpretations)
- M&A due diligence: more difficult

Qualified status

- January 2025 IF central record & explanatory Q&A document
- Self-certification with IF clearance
- Full review 'not retroactive' → non-binding commitment?

Dispute Resolution

- Complex *multilateral* disputes
- MAP inadequate (/ unavailable?)
- No MLI proposed yet (WP1 & WP11 are drafting convention)
- Focus on prevention?

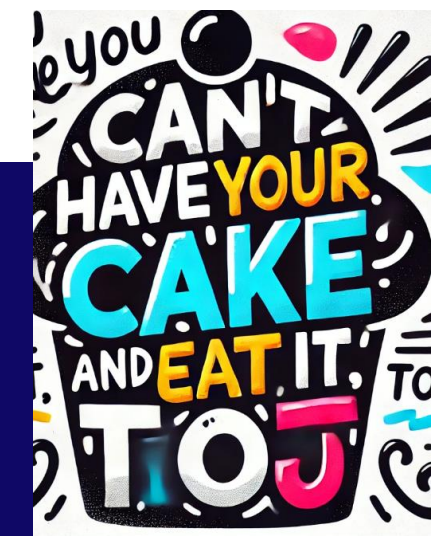
Permanent SH

- OECD/EU COM support BIAC: substitute CbCR by consolidated financial accounts
- "Minimal adjustments" → Higher rate for ETR test?



Follow-up issue: 'Decluttering'

- **Impact on BEPS 1.0** and similar regimes for GloBE-adopters? Esp.:
 - CFC regimes
 - Deduction barriers (Action 4-style, or “home-made”)
 - Anti-hybrid rules, UK DPT, ...
- **EU Council Decluttering Agenda**
 - Focus primarily on duplicative / disproportionate reporting obligations and “outdated or overlapping” tax rules (esp. DAC and ATAD)
 - “level of protection against aggressive tax planning should be preserved”
 - Council calls upon the Commission to present road map in Q3 2025





Pillar 2

PANEL DISCUSSION

IFA 2025 LISBON

5-9 OCTOBER 2025

Highlights

2 Main Subjects

Subject 1. Residency of legal entities for corporate income taxation

Subject 2. Improper use of tax treaties and source taxation: policy, practice and beyond

8 Scientific Seminars

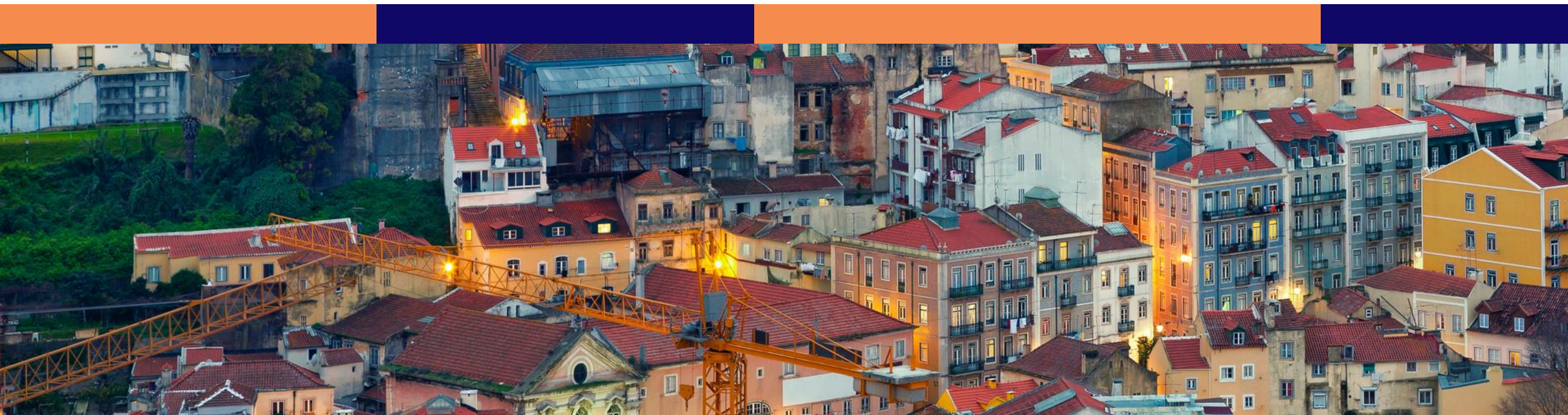
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3 Luncheon Dialogues

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