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Global IFA Travelling Lectureship Programme 2025

Topic: **Pillar Two and its ramifications**



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Pillar Two and its ramifications

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Structure of the presentation

1- Pillar Two: how it all started

2- Pillar Two: where we are right now (the “GlobE debacle”)

3- Pillar Two: How to get out of this mess

**4- Selection of practical concerns currently raised by GloBE rules -
Simplifications**

1 – Pillar Two: how it all started

1.1. The BEPS Project

1.2. The OECD and the Inclusive Framework

1.3. BEPS Action Item One



1.1 – The BEPS Project

- **BEPS: Base Erosion and Profit Shifting**
- **Started in 2013 by the OECD tasked by the G20**
- **Target on aggressive tax planning and tax avoidance by MNEs**
- **Resulted in the 15 BEPS Action Items (AI), covering topics such as hybrid mismatches arrangements, treaty abuse or PE avoidance**

1.2 – OECD & the IF

- *To achieve a global consensus on the BEPS AIs the OECD established the Inclusive Framework (IF) in 2016*
- *Allow interested jurisdictions (i.e. Non-OECD-Members) to work together on an equal footing*
- *OECD and IF cannot set rules, they can only develop models/frameworks*
- *The jurisdictions need to implement the proposed rules into domestic law*
- *E.g.: ATAD I & II in the EU, or BEAT and GILTI in the U.S.*

1.3 – BEPS Action Item One

- BEPS Action Item One was to deal with the issues around the taxation of the digital economy.
- The OECD struggled to find a tailor-made solution after exploring various approaches.
- The exercise ended with the Two-Pillar-Solution:
- Pillar One: Profit Allocation – dead end with the U.S. not playing along
- Pillar Two: GloBE rules

2 – Pillar Two: Where we are right now

2.1. The GloBE Rules

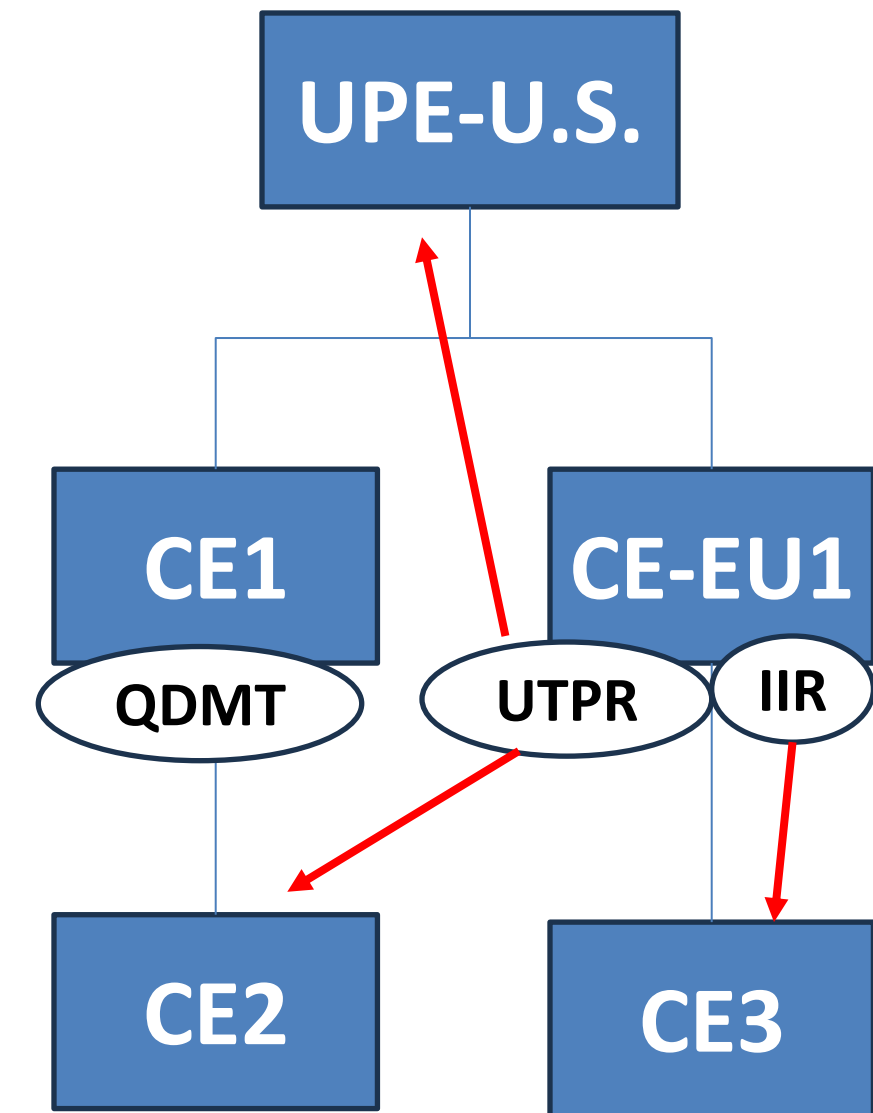
2.2. Implementation Status: the EU and the rest of the world

2.3. Interplay between GloBE Models rules (EU directive) and domestic legislation

2.4. U.S. cancelation of “Global Tax Deal” and threat of retaliatory measures

2.1 The GloBE Rules

- Tax imposed under GloBE is a “top-up tax” calculated and applied at a jurisdictional level.
- GloBE uses a uniform base and definition of covered taxes to identify those jurisdictions where an MNE is subject to an effective tax rate below 15%.
- It then imposes a coordinated tax charge that brings the MNE’s effective tax rate on that income up to the minimum rate,
- after taking into account a substance-based carve-out.
- Top Up Tax is collected under an Income Inclusion Rule (IIR), either at the level of the Ultimate Parent Entity (UPE) or under a Qualifying Domestic Minimum Top up Tax (QDMTT) at the level of a constituent entity
- As a backstop the Undertaxed Profits Rule (UTPR) applies. The UTPR imposes a Top Up Tax on constituent entities for low taxed income which is earned by other related parties of this entity.



2.1 The GloBE Rules: the STTR

- The STTR is a treaty-based rule that protects the right of developing Inclusive Framework members to tax certain intra-group payments, where these are subject to a nominal corporate income tax that is below 9%**
 - Exceptions apply, in particular to some items of covered income that result in a mark-up on costs of 8.5% or less in the hands of the person deriving that income**
- The STTR MLI is open for signature since 19 September 2024**
 - 9 Signatories**
 - 24 Jurisdictions signed a declaration of political support**
 - 57 Jurisdictions participated in the signing ceremony**



2.2 Implementation Status: EU & RoW

- Directive 2022/2523 of 15 December 2022 implemented in almost all EU Member States, with some late legislative actions (Cyprus, Poland, Portugal and Spain only implemented after having been referred to CJEU on 3 October 2024)
- Deferred implementation of GloBE in Estonia, Latvia, Lithuania, Malta and Slovak Rep.
- Mixed Picture outside the EU:
 - « full package » : IIR + UTPR + DMTT (New Zealand, Liechtenstein, Turkey, South Korea, Japan (expected for end of March 2025))
 - only IIR and DMTT, but not UTPR (Switzerland, Norway, Malaysia...)
 - only DMTT, but not IIR and UTPR (Barbados, Brazil, Mauritius etc.)

2.3 Interplay GloBE – Domestic Legislation

- **GloBE Rules are only “Model Rules”:**
 - **Countries are free to deviate, not implement;**
 - **dynamic development at the OECD creates legislative issues (“per se OECD legislation”) – see latest examples on next slide**
- **But GloBE Rules impact country behavior:**
 - **Some countries implemented a CIT (e.g. UAE)**
 - **Many went for a QDMTT (see previous slide)**
 - **Tax Incentives need to be carefully designed to work in a GloBE world**
- **EU Member States have locked themselves in: the EU Directive 2022/2523 obligates all EU MS to implement the GloBE Rules**

25 April 2024

Consolidated Commentary incorporates Agreed Administrative Guidance that has been released by the Inclusive Framework since March 2022 up until December 2023

17 June 2024

Guidance on application of the recapture rule applicable to deferred tax liabilities, cross-border allocation of current and deferred taxes, allocation of profits and taxes in certain structures involving Flow-through Entities, and the treatment of securitisation vehicles.

15 January 2025

Guidance on Central Record of Legislation with Transitional Qualified Status

Guidance on the basis that MNE Groups shall rely on to complete the GloBE Information Return

Guidance addresses the treatment of certain deferred tax assets that arose prior to the application of the global minimum tax as a result of certain governmental arrangements or following the introduction of a new corporate income tax.



Illustration of ongoing dynamics at the OECD

2.4 The U.S. cancel “Global Tax Deal”

-Executive Order Jan/20 on “The OECD Global Tax Deal”

- All commitments in the IF cancelled
- Investigation whether foreign countries don't comply with U.S. tax treaties, or impose extraterritorial or discriminatory taxes on American companies
- Develop a list of options for protective measures or other actions to respond

-Executive Order Jan/20 on “America First Trade Policy”:

- Secretary of the Treasury tasked to analyze foreign countries applying discriminatory or extraterritorial taxes pursuant to sec. 891 IRC
- This provision (from 1934), allows for a doubling of the tax rate on individuals/corporations of those foreign countries.
- Applies to US source income; cannot exceed 80% of the taxpayer's income

2.4 The U.S. cancels “Global Tax Deal”

-Possible actions following Executive Order on “The OECD Global Tax Deal” :

“Defending American Jobs and Investment Act” reintroduced (first time 2023) by House Republicans on 22 January (Ways and Means Committee)

- Tax rates on US income of wealthy investors and corporations in countries that apply discriminatory taxes such as the UTPR surtax would increase by 5% each year for four years, after which the tax rates remain elevated by 20% while the “unfair taxes” are in effect**
- Treaty override (lex posterior) – domestic withholding at 30%**



3. Pillar Two: How to get out of this

- **To avoid U.S. retaliatory measures on a country level:**
 - **If country has not implemented GloBE rules, only go for a QDMTT**
 - **If country implemented a UTPR, give the U.S. a permanent UTPR Safe Harbor,**
 - **and also accept the GILTI as a qualifying IIR.**
 - **Retaliate back.... Not a wise option for most countries**

- **At Inclusive Framework level:**
 - **Global consensus is apparently lost (China not implementing GloBE, neither)**
 - **Strive for overhauling the GloBE rules: more flexibility (GILTI), better, wider and permanent safe harbors, and especially simplification of the GloBE Rules**

4. – Selected topics of practical interest for MNE groups - Simplifications

-Legal value of IF Guidance : a practical issue

-Transition into GloBE rules : deferred taxes, GIR (content, timing...), compliance burden, safe harbours

-“Mechanics” of GloBE rules : group scope, covered taxes, allocation of top-up taxes within the group...

-Mergers and acquisitions : group structures, GloBE impact of acquisitions...

-Legal certainty

Pillar Two and its ramifications

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

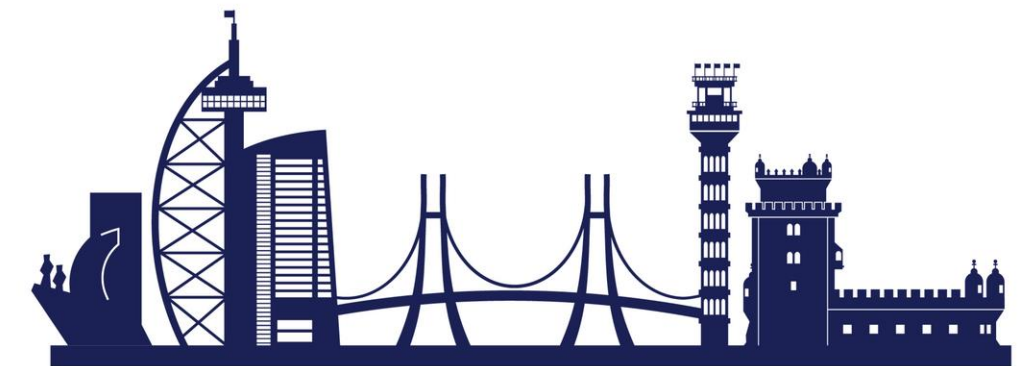
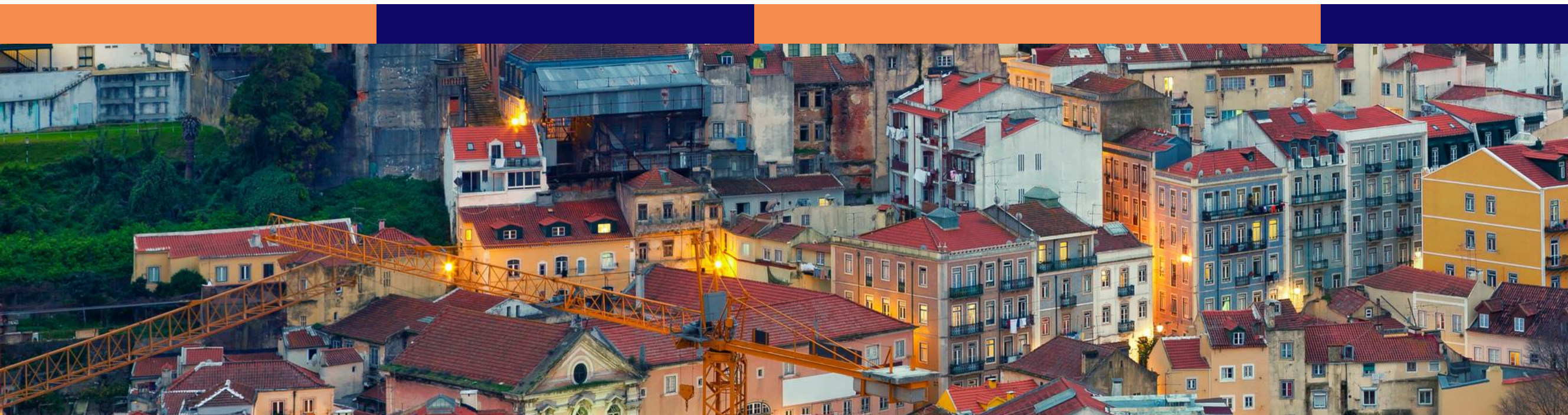
Visit Congress Website for the details

3 Luncheon Dialogues

The TLP series, spanning 12 cities worldwide, will conclude with debates at the IFA 2025 Lisbon.



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