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Global IFA Travelling Lectureship Programme 2025 **Topic: Pillar Two and its Ramifications**





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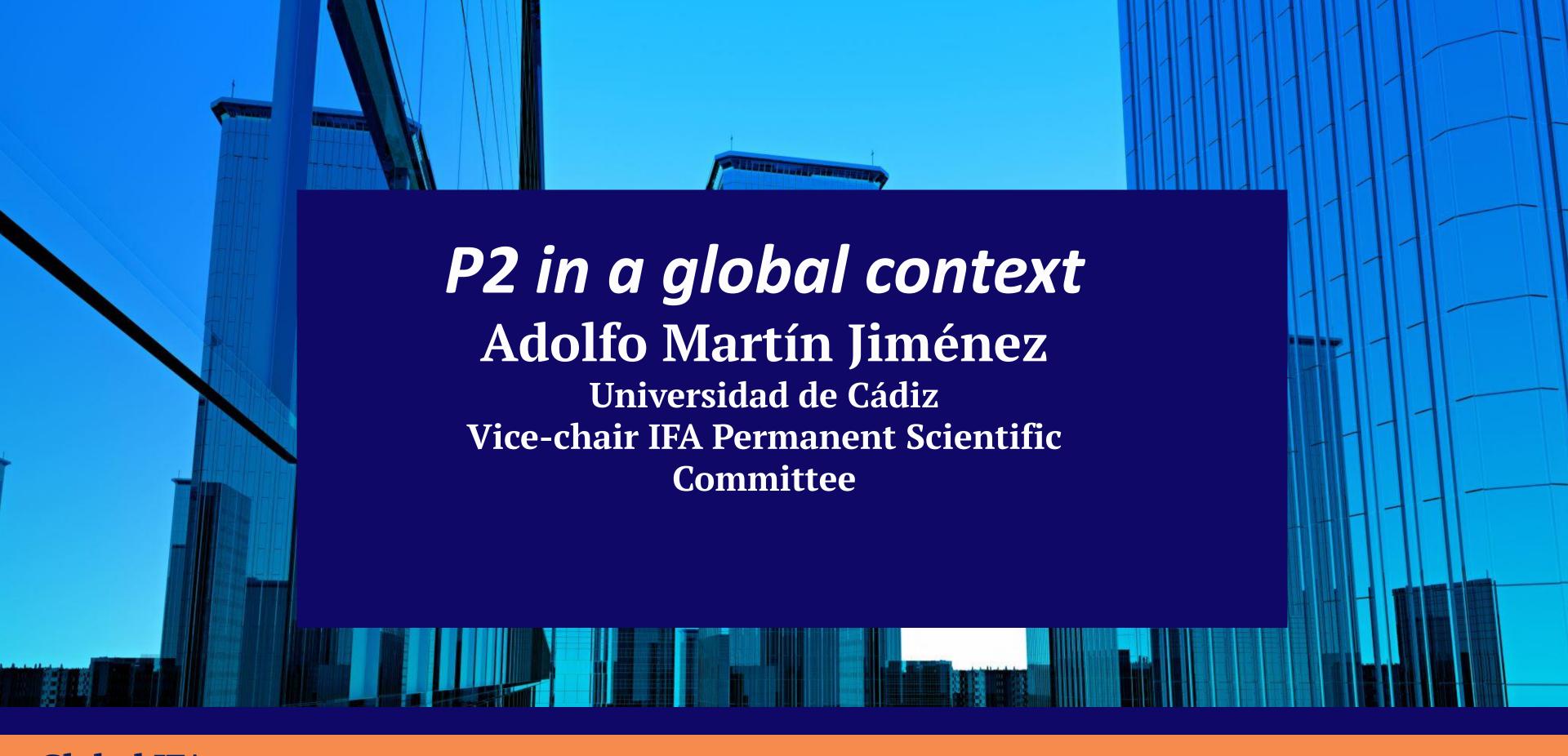
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Outline

- 1. P2: the origins
- 2. P2: the rules
- 3. P2 in the UE
- 4. P2 in the rest of the world (except US)
- 5. P2 and the US
- 6. P2 today (any future?)
- 7. Some practical challenges



1. P2: the origins

- BEPS 1.0: No agreement on BEPS Action 1 (digitalized economy)
- BEPS 2.0 > 'Statements)' OECD / IF of 2021: Two Pillars solution: source v. residence interconnected solution by the OCDE y G-7
 - 'Super profit split,' first with primacy of allocation to residence countries
 - o Pilar 1 'stabilisacion at source', Pilar 2 'residence and limitation of tax competition' but with different status (pillar 1 MLC, pillar 2 'agreement on common approach')
 - Mix of different positions and goals
 - Blueprint OECD 2020 changed in 2021 'statements' and again mutates in OECD Model Rules on P2 of December 2021 or the first Commentaries of 2022
 - Connection P1-P2 progressively lost force (and separate their ways)

1. P2: the origins (II)

- Minimum tax (15 por 100), 'country by country computation', on consolidated accounts with adjustments of MNLs with a total turnover of 750 millions (2 years out of 4) with specific rules
- STTR (no revenue threshold) > IIR > UTPR
 - IIR residence State of the parent (TUT until 15 por 100) State of residence of the parent
 - UTPR as a backstop where State of the parent does not apply 'minimum tax' including the IIR
- 'Substance Carve-out' for routine activities (payroll + book value of tangible goods + 'mark up' of 5 por 100):
 - Routine benefits taxed in country of activity
 - GloBE more addressed at tax competition on intangibles and some intermediate countries





1. P2: the origins (III) and subsequent changes

- Country of subsidiary / PE can apply DMTT (deactivates IIR or UTPR)
- UTPR mutated from a non-deductibility rule of expenses to an income allocation rules of LT profits ('Undertaxed payments' > 'Undertaxed profits')
 - E.g MNL with parent and some subsidiaries that are LT (< 15 por 100), other P2 countries will reallocated the LT profits to their subs or PEs
 - More effects on the US
- Is STTR relevant (interest, royalties and services taxable at source with overall cap of 9 per 100 if not subject to nominal 9 per 100 tax in residence State)?
 - MLC and model rules (2023) > complex clause with no success
 - 9 signatories only (Barbados, Belize, Benim, Cabo Verde, RD Congo, Indonesia, Rumania, San Marino and Turkey), 27 countries support it (but not EU, US, etc.)



2. P2: the rules

- The order: national corporate tax, including CFC rules > DMTT > IIR > UTPR
- If State of parent does not apply IIR or parent excluded entity > top down approach (IPE or POPEs will apply IIR), with elimination of double taxation
- If DMTT or IIR not applicable, UTPR will kick in to capture top-up tax not included within the scope of other rules



2. P2: calculation of TUT

- 1. Determination of entities and PEs subject to TUT and their location
- 2. Determination of income / expenses and taxes covered per jurisdiction (financial accounting standard of parent company with some exceptions)
- 3. Computation of ETR > low tax jurisdiction' (ETR= Adjusted taxes / Net GloBE Income x 100)?
- 4. Computation of TUT percentage per jurisdiction: % TUT = 15 % ETR in the jurisdiction
- 5. Computation of excessive profit subject to TUT: Net GloBE income 'substance carve out' (5 % over payroll and book value of tangible assets in the jurisdiction)
- 6. Computation of TUT in the jurisdiction = $(\% \text{ TUT (step 4)} \times \text{ excessive profit (step 5)}) + \text{ additional TUT domestic TUT (DMTT)}$
- 7. TUT is allocated per entity in the jurisdiction together with net GloBE income
- 8. Collection of TUT with one of the rules (DMTT, IIR o UTPR; safe-harbours may lead to no collection)



2. P2: the OCDE rules

- OECD: https://www.oecd.org/en/topics/sub-issues/global-minimum-tax/global-anti-base-erosion-model-rules-pillar-two.html
- Model Rules 20 December 2021: Not finished, still evolving throught new administrative guidance
- OECD / IF Commentary to GloBE rules (administrative guides)
 - First Guidance 14.03.2022
 - Safe-Harbors and penalty relief: 20.12.2022
 - Update 2.02.2023 (clarification on scope, computation of mínimum tax, insurance companies, granfathering rules, and design of QDMTT)
 - Update 17.07.2023 (several issues + 2 new safe harbors, QDMTT and UTPR until January 1st, 2026 if parent subject to nominal rate of 20 per 100)
 - Update 18.12.2023 (several issues+ new CBCR safe-harbor guide)
 - Update 17.06.2024 (several issues)
 - Updaet 15.01.2025 (articles 8.1.4., 8.1.5 and 9.1, central registry of legislation qualifying as QDMTT),
 - May 2025, consolidation of previous
- Globe Information Return (guide 17.12.2023 and model + guide GIR 2025+ model II)



3. P2 in the UE: Directive 2022/2523, 15 December 2022

- Overrides tax treaties within the EU and with third States
- Directive does not include guides after December 2022 but . . . sends to the OECD MR and Guides (prior or posterior to adoption) as interpretative element of the Directive and Article 32 admits future safe-harbor agreements
- Relevant differences with OECD rules (e.g. applies to domestic groups and subsidiaries to avoid discrimination, special rules for some MS etc.) and there are differences in the implementation of Directive
- Entered into force on 31.12.2023, applicable 2024 (first return 30.06. 2026), except UTPR, which applies after 31.12.2024 (but 'safe harbor' until 31.12.2026, if parent company state of residence has a CIT with a nominal rate of 20 per 100).
 - Deferred application of rules for Estonia, Lithuania, Latvia, Malta and the Slovak Republic
- DAC 9 with GIR and applicable principles (May 2025)
- National implementing rules linked with 2022 Directive and not with later OECD Guidance



4. P2: rest of the world

- Far from being a worldwide agreement (many countries do not apply the rules)
- Some countries have the 'full P2 package': IIR + UTPR + DMTT (NZ, Liechtenstein, Turkey, Japan, South Korea . . .)
- Some countries only have IIR and DMTT, but no UTPR (Switzerland, Norway, Malaysia, Guersey, Jersey, Gibraltar, Singapore etc.)
- Some countries only have DMTT, but not IIR o UTPR (Brazil, Barbados, Mauricio, UAE etc.)
- Some countries have regulated different versions of the rules (e.g. Singapore only applies IIR for parent companies resident in Singapore; others exclude DTT for certain entities, e.g. Financial entities in GBT)
- The rules are not applicable simultaneously in all countries that have approved them + the implementation or interpretation is not always the same
- Impact on tax policy in different jurisdictions (UAE now levies a CIT, changes in the design of tax incentives to adapt them to P2 and turn them into refundable tax credits or credits outside the scope of P2)



5. P2: US and the executive orders 20.01.2025

- Withdrawal of the US from the OECD / IF agreements of 2021
- Investigation if other countries comply with DTC with the US (override) or have extraterritorial or disproportionate rules that affect US MNEs
 - UTPR and DTS, ¿also IIR and other measures (Apple decision, indirect transfers of assets, extraterritorial rules in Germany for certain transmission of intangibles etc.)?
- Announced 'counter-measures': section 891 title 26 IRC (doubles the tax rate to citizens or companies from affected countries on US income without exceeding 80 per 100 of the income of the taxpayer)
- In parallel: appeal by US lobby before the Belgian Constitutional Court to reach the CJEU (focus on Belgium and UTPR)



5. P2: US reform still not approved (One Big Beautiful Bill Act)

- Revenge tax,' section 899 IRC (May and June 2025 projects), for jurisdictions with 'unfair taxes' (discriminatory or extraterritorial: UTPR, DST, or DPT):
 - Increase in taxes collected in the United States (5 per 100 per year, with a limit of 20 (House) / 15 (Senate) percentage points above the national tax rate in the United States
 - Effective as of January 1, 2027, and treaty override
 - . . . But eliminated by agreement with G-7 not to apply P2 rules to US MNEs (post on X by US Treasury Secretary on 06/26/2025 + G-7 Communiqué)
- And section 891 IRC?
- BEAT exemption for high-tax jurisdictions (18.9% rate): mitigates discriminatory effects of BEAT
- Changes to GILTI that 'bring it closer' to P2 (14 per cent, exclusion).



6. P2 today: any future?

- There is no common set of international rules and where they exist they may be implemented and applied differently
- Uncertainty on the fate of the rules in the OECD / IF:
 - China, India, EE.UU. will not apply them
 - What does "OECD P2 taxes will not apply to US companies" mean? Negotiations on recognition of US rules (GILTI) as equivalent and exclusion from UTPR? IIR exclusion from certain US tax benefits?
- EU:
 - Complexity of reforming the Directive (unanimity)
- Other countries: Assessment if it is convenient the implementation of P2 rules and how or whether they should adjust them to the US requirements (also for DSTs etc.), assessment per measure and sectorial assessments are also useful



7. P2: Some practical challenges

- Legal value of Administrative Guidance and Practical Problems?
- Transition towards GloBE rules: DTA and L, GIR and national rules (no procedural rules), cost of compliance v. collection of P2 taxes etc.
- Mechanics of the rules is complex: definition of thresholds, relation of Globe net income rules with domestic CIT rules, concept of covered taxes, adjustments affecting several countries or with overtaxation risks etc.
- Restructuring (mergers and demergers), minority shareholders, investment structures and Latam investments through or in countries with P2 rules
- Ex ante legal certainty more difficult to obtain, affects also concept of 'related benefits'
- No dispute resolution system for 'internal P2 disputes'
- External disputes (DTCs, investment protection agreements, fundamental rights and principles)



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Agenda

- 1. Delineation of the multinational group: UPE and constituent entities
- 2. Financial reporting of the multinational group: Local GAAP vs. Group GAAP (IFRS)
- 3. Globe Income: aggregated profit + homogenization adjustments + globe adjustments
- 4. Identification of Covered Taxes
- 5. Calculation of ETR/TUT
- 6. Transitional safe harbors: "de minimis" test/simplified ETR test/routine profit test
- 7. Global Information Return ("GIR")





Agenda

Step 1 – Determine whether the MNE Group is within scope

· Identify Groups within scope

Step 2 – Allocate income of Constituent Entities on a Jurisdictional Basis

 Identify the location of each Constituent Entity within the Group and allocate the income to these Constituent Entities

Step 3 - Calculate the GloBE Income

· Determine GloBE Income of each Constituent Entity

Step 4 – Determine Adjusted Covered taxes

Determine taxes attributable to GloBE Income of a Constituent Entity

Step 5 – Compute the Effective Tax Rate and calculate the Top-up Tax

 Calculate the Effective Tax Rate for all Constituent Entities located in the same jurisdiction and determine resulting Top-up Tax

Step 6 – Charge the Top-up Tax under QDMTT, IIR or UTPR

 Impose Top-up Tax under QDMTT, IIR or UTPR in accordance with agreed rule order and allocation mechanisms



1. Delineation of MNE Group: Group, UPE and constituent entities

MNE Group Concept:

- MNE Groups: UPE and constituent entities that are required to prepare consolidated financial statements
- MNE Group and Listed MNE Subgroup: Required under Pillar 2?

UPE/IPE/POPE Concept and Constituent Entities:

- Ultimate Parent Entity:
 - Obligation to prepare consolidated financial statements
 - Control Concept:
- Intermediate Parent Entity and Partially Owned Parent Entity
- Constituent entities (including PEs). Joint ventures

Net revenue of the MNE Group + EUR 750 million:

- Ordinary income, extraordinary income, and capital gains
- Two of the last four fiscal years
- Changes in the composition of the MNE Group



1. Delineation of MNE Group: Group, UPE and constituent entities

Figure 1.2. Determination of MNE Groups within scope

Step 1 – Determine whether the Group is internationally active

 Determine whether the Group has entities or permanent establishments in more than one jurisdiction

Step 2 – Determine whether the MNE Group passes the revenue threshold

 Determine if the MNE Group has global revenues at or above EUR 750 million by following the four year test

Step 3 – Identify excluded entities

 Identify any excluded entities to exclude them from the application of the rules, but do not exclude their revenue from the revenue threshold calculation



2. Financial reporting of the MNE: Local GAAP vs. Group GAAP (IFRS)

- Group GAAP: International Financial Reporting Standard (IFRS):
 - Reporting standard used to prepare Group Consolidated Financial Statements (IFRS)
 - Temporary adjustments :
 - Group Fiscal Year vs. Local Fiscal Year (mandatory)
 - Valuation Adjustments:
 - Valuation of Assets
 - Amortization of Assets
 - Impairment of Assets
 - o IFRS 16: Leases
 - Presentation Currency of Financial Reporting
 - Adjustments regarding intercompany transactions
- Local GAAP: Authorized Financial Accounting Standard (list of countries and authorization)



2. Financial MNE Group Reporting: Local GAAP vs Group GAAP

Figure 1.4. Allocation of income of Constituent Entities on a jurisdictional basis

Step 1 – Identify Constituent Entities within the MNE Group

 Identify all the entities, PEs and other arrangements within the MNE Group which are accounted for on a net income basis

Step 2 – Determine the location of the Constituent Entities

Follow the legal and tax treatment of each Constituent Entity to determine its location

Step 3 – Determine FANIL of each Constituent Entity

- Use the same accounts that are used in preparing the consolidated financial statements to calculate the FANIL of each CE
- Where separate financial accounts are not maintained for a PE, use local tax rules as a basis for determining income to be allocated to PE

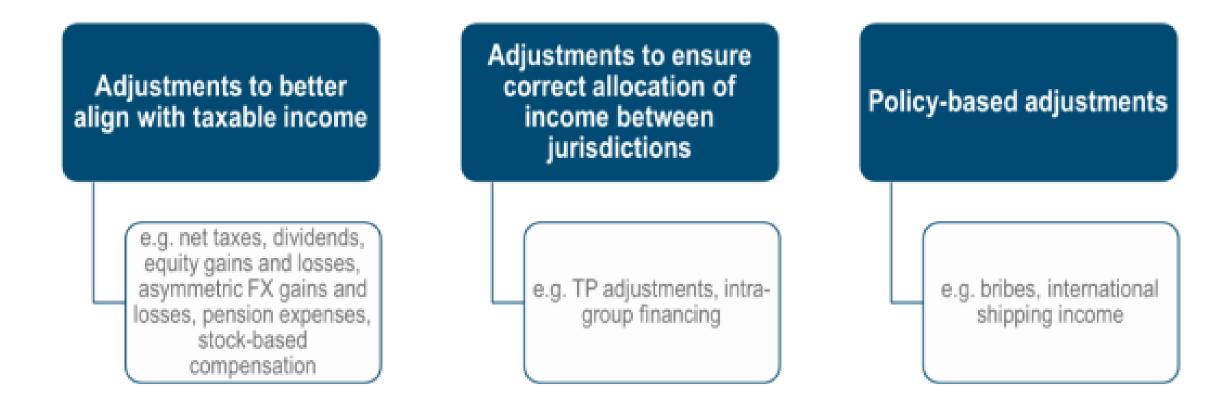
Step 4 – Adjust for income of transparent entities

 Income of transparent entities is re-allocated to the owners of those transparent entities in proportion to their ownership and in line with local tax treatment



3. GloBE Income: Aggregated profit + homog. Adj. + GloBE Adj.

Figure 1.5. Types of adjustments to the FANIL



- IFRS accounting profit, aggregated at jurisdictional level
- Homogenezation adjunstments: fiscal year and valuation; intercompany transactions disregarded
- GloBE Adjustments: excluded dividends, excluded capital gains,...



4. Determination of Covered Taxes

- Covered taxes: concept
 - Concept
 - Relationship between Covered Tax and Income Taxes (NIC 12)

Some examples:

- France: Corporate Income Tax and CVAE/CFE
- Italy: IRES and IRAP
- Germany: Corporate Income Tax y Trade Tax
- Switzerland: Federal Direct Tax, Cantonal Tax and Communal Tax
- Hungary: Corporate Income Tax, Local Business Income Tax, Innovation Contribution and Retail Tax
- Japan: Corporate Income Tax, Enterprise Tax and Inhabitant Tax
- USA: Federal Tax and State Tax
- Brazil: IRPJ and CSLL



4. Determination of Covered Taxes

Figure 1.6. Determination of Covered Taxes

Step 1 - Covered Taxes

· Identify Covered Taxes in the current tax expense and compute the amounts

Step 2 – Adjustments to Covered Taxes

- Adjust the Covered Taxes to take into account taxes that are not recorded in the tax line of the Profit or Loss statement and exclude taxes not related to GloBE Income or Loss
- Address temporary differences, which arise when income or loss is recognised in a different year for financial accounting and tax by deferred tax accounting
- · Account for tax credits (if any) depending on their categorisation

Step 3 – Cross-border allocation

 Adjust the amounts to allocate certain cross-border taxes to the proper Constituent Entity

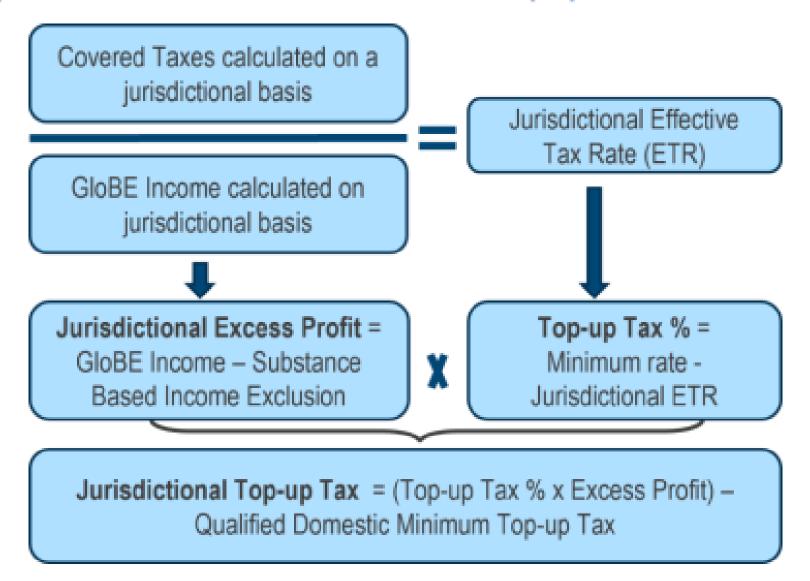
Step 4 – Post-filing adjustments

 In case of post-filing adjustments, generally a ETR recalculation is required for the relevant Fiscal Year



5. ETR and Top Up Tax (TUT) calculation

Figure 1.7. Computation of the ETR and calculation of the top-up tax





6. Temporary Safe Harbours

- "De minimis":
 - Revenue by jurisdiction: 10 M. EUR (Country By Country rules)
 - GloBE Income by jurisdiction: 1 M. EUR (Country By Country rules)
- "Simplified ETR":
 - Profit before taxes (Country By Country rules)
 - Corporate Income Tax expense: Current tax and Deferred tax, UTPs excluded
 - ETR: 15% (2023 and 2024), 16% (2025) and 17% (2026)
- "Routine Profit":
 - Profit before taxes (Country By Country rules)
 - Substance-Based Income Exclusion (Tangible Assets and Payrroll)
- Temporary Safe Harbours becoming permanent?: making P2 simpler



7. Globe Information Return (GIR) and self assessment

Globe Information Return:

- Information return at UPE jurisdiction
- Automatic Exchange of information
- Ocontent:
 - MNE Group composition
 - UPE and constituent entities (IPE and POPE included)
 - Information to apply SH ("de minimis", "simplified ETR" and "routine profit")
 - Information to calculate ETR and TUT, if SH do not apply
- Mandatory GIR subsmission if Automatic Exchange does not exist

Self Assessment for P2:

- Taxpayer concept and Taxpayer Substitute
- Tax credit mechanism for UPE/POPE



8. Conclusions

- Complex set of rules (Model Rules; EU Directive and MS trasposition; local rules)
- Hyrbrid nature (accounting and tax)
- MNE Group liability vs. MNE legal entities liabilities (Corporate Income Tax)
- Accounting impact of P2 expense and distribution among constituent entities
- Relevant tech investment to be compliant: UPE (IIR) and constituent entities (QDMTT)
- Limited impact to countries with tax rates 15%
- US position: G7 deal? Next steps in EU?

IFA 2025 ANNUAL CONGRESS IN LISBON 5-9 OCTOBER 2025

Highlights

2 Main Subjects

- Residency of legal entities for corporate income taxation
- Improper use of tax treaties and source taxation: policy, practice and beyond

10 Scientific Seminars

3 Luncheon Dialogues

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