

# Global Sponsors of the Programme

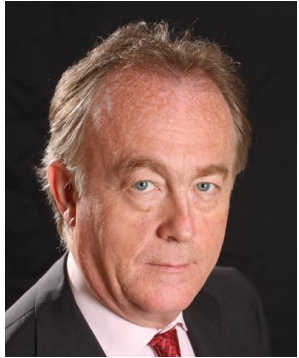


International Fiscal Association

# Global IFA Travelling Lectureship Programme 2025



## Topic: **Pillar Two and its Ramifications**



**Prof. Guglielmo Maisto**  
Global IFA President



**Prof. Adolfo Martín Jiménez**  
Global IFA IFA's PSC, Vice Chair



**Mr. Dapo Ladimeji**  
IFA Nigeria President



**Prof. Stephen Shay (USA)**  
Boston College Law School



**Mr. Theophilus Emuwa**  
AELEX, Senior Partner



**Mrs. Ifueko M. Omoigui Okauru, MFR**  
CPP Group, Group CEO



# *P2 in a global context*

Stephen Shay

Paulus Endowment Senior Tax Fellow  
Boston College Law School

# Topics

1. P2: An Overview
2. P2: Adoption in EU, Sub-Saharan Africa, and the Rest
3. P2: Observations on P2
4. P2: US Legislation, G7 “Agreement,” and Practical Challenges
5. P2: Where To From Here?

## 1. P2: An Overview

- **How Pillar Two Works– the Global Minimum Tax**
  - Scope: MNEs with annual turnover >750 million euros (2 years out of 4 years)
  - Goal: Ensure in-scope MNEs bear 15% minimum effective tax rate (ETR) by country based on covered financial statement income taxes in relation to an adjusted financial income base (GloBE income)
  - Mechanism: Three interconnected charging rules that allow various jurisdictions to impose a top-up tax (TUT) to bring any gap between a MNE's GloBE ETR in any jurisdiction up to the 15% minimum ETR

## 1. P2: An Overview

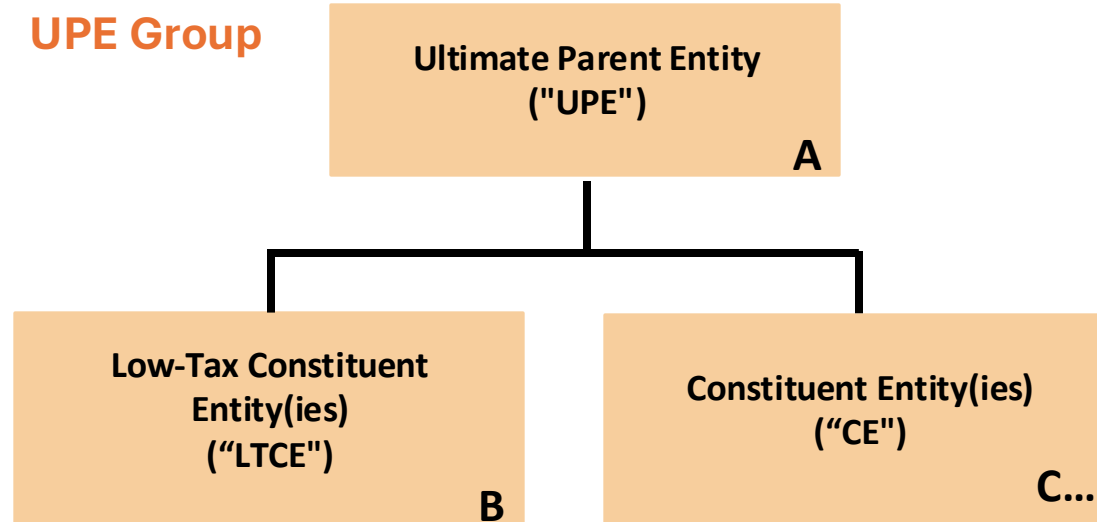
- **The Effective Tax Rate (ETR) is calculated annually at the jurisdictional level:**

$$\frac{\text{Adjusted covered taxes of all entities in the jurisdiction}}{\text{GloBE income of the jurisdiction}} = \text{Effective tax rate (ETR) for the jurisdiction}$$

- Covered taxes = income tax paid on profits in accordance with each country's local tax rules in the relevant year.
- GloBE income is the profit/loss before income tax as determined using the relevant financial accounting standard (e.g., IFRS, GAAP, OHADA)

## 1. P2: An Overview

- Three charging mechanisms to pick up TUT on covered MNE's "under-taxed" income:
  1. Qualified Domestic Top-Up Tax (QDMTT)
  2. Income Inclusion Rule (IIR)
  3. Undertaxed Profits Rule (UTPR)



1. Country B imposes QDMTT – to claim LTCE's TUT for itself. If no QDMTT and TUT is uncollected, then
2. Country A imposes IIR to collect LTCE TUT. If TUT is still uncollected, then
3. Country C and other group members in participating countries impose UTPR to collect share of any uncollected LTCE TUT



# 1. P2: An Overview

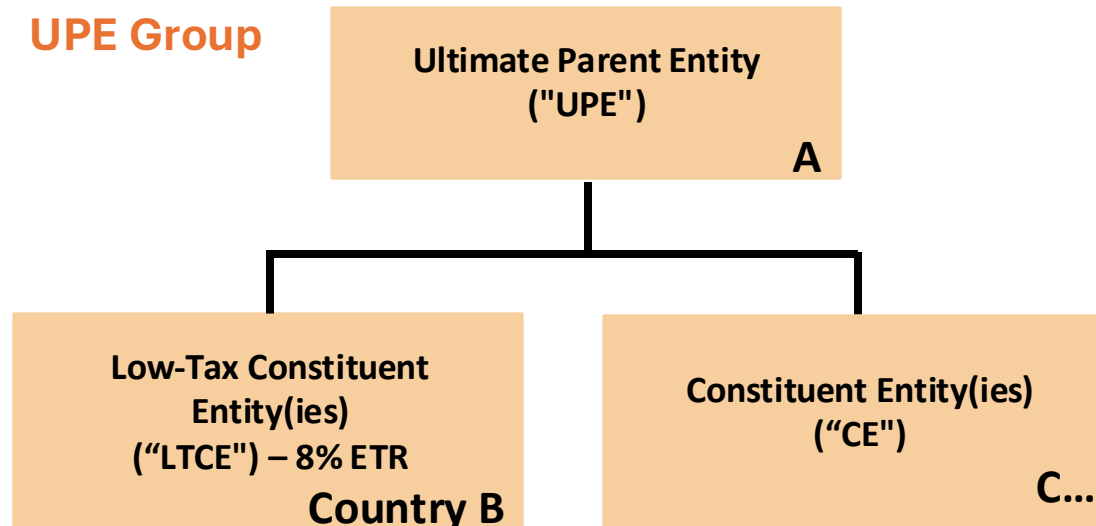
## Simple Pillar Two Example (without substance-based income exclusion (SBIE))

### Facts

- Country B imposes an 8% corporate income tax
- LTCE earns \$100 in Country B, and pays \$8.00 in tax

### P2 Analysis (assuming no SBIE)

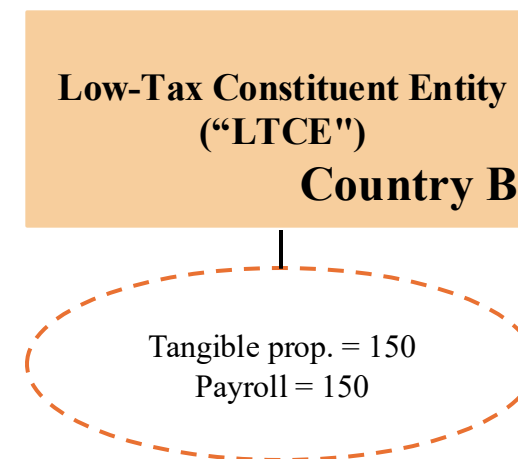
1. By implementing QDMTT, Country B can pre-empt P2 TUT of \$7.00
  - 15% minimum – LTCE 8% ETR = 7%
  - 7% \* \$100 = \$7 TUT
2. If no Country B QDMTT, Country A can collect TUT of \$7.00 from UPE under the IIR
3. If no Country B QDMTT and no Country A IIR, then Country C can collect TUT of \$7.00 from CE under the UTPR





## 1. P2: An Overview

**Substance-based income exclusion (SBIE):** A portion (10% of tangible property & payroll in the country) of local CE's income is excluded from top-up tax.



Application to prior simple P2 example: Assume based on LTCE's assets and payroll in Country B, it is entitled to an SBIE exclusion of \$30. Accordingly, Pillar Two analysis proceeds by applying the minimum tax top-up percentage to \$70 for a top-up tax or \$4.90 ( $7\% * 70 = \$4.90$ ).

## 1. P2: An Overview

- **P2 Rule Complexity:** Model Rules (2021.14.12) at <https://www.oecd.org/en/topics/sub-issues/global-minimum-tax/global-anti-base-erosion-model-rules-pillar-two.html>.
  - **Model Rules:** Still evolving through ongoing administrative guidance.
  - **OECD / IF Commentary to GloBE rules (administrative guidance):**
    - First Commentary 2022.03.14
    - Safe-Harbors and penalty relief: 2022.12.20
    - Update 2023.02.03 (clarification on scope, computation of minimum tax, insurance companies, grandfathering rules, and design of QDMTT)
    - Update 2023.07.17 (several issues + 2 new safe harbors, QDMTT and UTPR until January 1st, 2026 if parent subject to nominal rate of 20 per 100)
    - Update 2023.12.18 (several issues+ new CBCR safe-harbor guide)
    - Update 2024.06.17 (several issues)
    - Update 2025.01.15 (articles 8.1.4., 8.1.5 and 9.1, central registry of legislation qualifying as QDMTT),
    - May 2025, consolidation of previous guidance
- **Globe Information Return (GIR):** (Guide 2023.12.17 and model GIR + Guide 2025 + model GIR II)

## 2. P2 Adoption: 2022.12.15 EU Directive 2022/2523

- **Directive does not include guidance after December 2022 but . . .** Considers OECD MR and guidance (prior or posterior to adoption) as interpretative element of the Directive; Directive Article 32 admits future safe-harbor agreements.
- **Overrides tax treaties within the EU and with third States.**
- **Differences with OECD rules** (e.g. applies to domestic groups and subsidiaries to avoid discrimination, special rules for some member states etc.) and differences in the implementation of Directive.
- **Entered into force on 2023.12.31, applicable 2024, except UTPR, which applies after 2024.12.31** (but [U.S.-directed] ‘safe harbor’ until 2026.12.31, if parent company state of residence has a CIT with a nominal rate of 20% or more).
  - Deferred application of rules for small member states (Estonia, Lithuania, Latvia, Malta and the Slovak Republic).
- **National implementing rules linked with 2022 Directive and not with later OECD Guidance.**
- **EU DAC 9 - standardized top-up tax information return (TTIR) for the entire group within one EU member state** (May 2025).

## 2. P2 Adoption: Rest of the world

- **Far from being a worldwide agreement:** Many countries do not apply the P2 rules (Nigeria ... ). Nigeria has a graduated corporate tax and a minimum tax.
- **Some countries have the ‘full P2 package’:** IIR + UTPR + QDMTT (NZ, Liechtenstein, Turkey, Japan, South Korea . . . ).
- **Some countries only have IIR and QDMTT, but no UTPR** (Switzerland, Norway, Malaysia, Guernsey, Jersey, Gibraltar, Singapore. South Africa etc.).
- **Some countries only have QDMTT, but not IIR or UTPR** (Brazil, Barbados, Mauritius, UAE etc.).
- **Country’s rules are not all applicable at the same time, and approaches to implementation and interpretation differ** (in addition to differences in the rules, e.g., for financial statements).
- **Adjacent tax policies** (UAE now levies a CIT, some tax incentives adapted to be P2 favorable).

#### **P2 Participation: Benefits - Revenue**

- LMICs that are primarily capital importing *and* have little FDI from in-scope MNEs – limited potential P2 benefit.
- LMICs with material FDI from in-scope MNEs and low MNE ETRs may benefit from QDMTT, reduced incentive for MNE to shift (net) income out of the country, and UTPR revenue (if any).
- Higher income FDI capital importing countries benefit from QDMTT revenues, reduced incentive for MNE to shift (net) income out of the country, and UTPR revenue (if any).
- Higher income FDI capital exporting and importing countries, e.g., developed countries, benefit from IIR (in relation to non-QDMTT countries), QDMTT, reduced incentive for MNE to shift (net) income out of the country, and UTPR (if any).

**P2 Benefit (?):** Reduced tax competition for in-scope MNE investment.

#### **P2 Participation – Costs**

- Reduced value of tax incentives (e.g., tax competition).
- Rule complexity, implementation costs, and interaction with adjacent tax policies.
- Ongoing administrative burden on Revenue Authority, information collection and enforcement.

#### **P2 Non-Participation – Costs**

- If GloBE ETR < 15%, revenue loss to IIRs and UTPRs; less benefit from low taxes on in-scope MNEs.
- Less benefit from incentives for in-scope MNEs.
- In-scope home country MNEs (UPEs and constituent entities) bear P2 compliance and implementation costs (including avoidance planning and restructuring) in any event.

#### **P2 not designed to address developing country issues.**

- The subject to tax rule (“STTR”) was a late add-on to the P2 project.
  - Due to compromises to satisfy developed countries (France and other EU members) OECD STTR is largely ineffective.
  - The UN STTR in Model Treaty Commentary to Article 1 would be simpler and more effective.
- The QDMTT, thought by many to be to benefit developing countries, was adopted in the EU P2 directive to avoid EU concerns (while maximizing protection of incentives outside scope of P2).
- Favored incentives (e.g., refundable credits) less helpful to developing countries.
- Rule complexity and accommodations to enforcement capacity resource constraints very limited.



## 4. P2: US Legislation, G7 “Agreement,” and Practical Challenges

### Recent US Legislation and P2

- GILTI minimum tax nominal effective top up rate *increased* from 10.5% to 12.6%; with credits for 90% of foreign income taxes, US ETR maximum is 14% - not that far from P2 15% (but on a different tax base).
- GILTI substance-based exclusion (10% of tangible investment) *eliminated*, so effect is to increase minimum tax (and loss of space for incentives).
- BEAT anti-base erosion tax increased to 10.5%.

## 4. P2: US Legislation, G7 “Agreement,” and Practical Challenges

### Recent US Legislation and P2

- **CAMT:** US corporate alternative minimum tax (CAMT) adopted in 2022 applies to large corporations if 15% of adjusted financial statement income (AFSI) after foreign tax credits (tentative minimum tax or TMT) is greater than the regular corporate tax amount. The excess is paid as CAMT and carries over as a credit against regular tax in future years to the extent regular tax exceeds that year’s TMT.
- Section 899 retaliatory tax not included in legislation, apparently in exchange for G7 Agreement.

## 4. P2: US Legislation, G7 “Agreement,” and Practical Challenges

### **G7 Ministerial “Agreement” to four key principles for a P2 [US] side-by-side system:**

1. Exclude U.S. parented MNE groups from the UTPR and the IIR.
2. Include commitment to ensure substantial risks to “level playing field”, or “base erosion and profit shifting” are addressed to preserve the common policy objectives.
- Work to deliver side-by-side system alongside:
  3. Material simplifications to the overall Pillar Two administration and compliance framework.
  4. Considering changes to P2 substance-based non-refundable tax credits to ensure alignment with refundable tax credits.

## 4. P2: US Legislation, G7 “Agreement,” and Practical Challenges

- P2 compared to GILTI/CAMT - broadly, advantage is to US MNEs:

<u>Provision</u>	<u>GILTI (CFCs)</u>	<u>CAMT* (group)</u>	<u>Pillar 2</u>	<u>Advantage</u>
Income base	US tax accounting	Adjusted financial accounting	Adjusted financial accounting	GILTI
Lowest Tax Rate	12.60%	15.00%	15%	GILTI
Global or jurisdictional blending	Global	Global	Jurisdictional	GILTI/ CAMT
Substance-based/other exclusion	No	Yes	Yes	P2
Minimum tax carries as credit	No	Yes	No	CAMT

\* Less coverage by CAMT than P2 (3-yr average USD 1 billion net AFSI vs 4-yr average EU 750 million revenues)

- Is the net of these a level playing field?
- Comparison will differ firm-by-firm. More empirical work required.

## 4. P2: US Legislation, G7 “Agreement,” and Practical Challenges

### Technical Issues

- Scrutiny of any advantage that tilts level playing field (second principle).
  - US global blending may allow foreign tax credit to “protect” lower jurisdictional rate.
  - Low-taxed US UPE subject to CAMT, not to UTPR or GILTI.
  - P2 SBIE reduces TUT based on substance – no GILTI exclusion.
- US ask for “push-down” of GILTI for QDMTT TUT likely a non-starter.
- US ask for equivalent treatment of non-refundable credits - attractive to other countries?

## 4. P2: Where Do We Go From Here?

- G7 Ministerial level “agreement” is non-binding and needs completion.
  - Need to resolve technical specification issues and political compromise sufficient to gain Inclusive Framework consensus.
  - If achieved, Inclusive Framework “consensus” is non-binding.
- EU modification of directive would seem to be required, but there may be wriggle room. If not, there is potential for hold-up.
- Non-EU countries need to adopt in their laws. Any remaining UTPR(s) on US group collects the TUT. This is a heavy lift.

## 4. P2: Where Do We Go From Here?

- There is enormous room for mischief before translating G7 agreement into law.
  - What is satisfying to US is uncertain.
  - A threat to adopt Section 899 in new legislation is uncertain.
    - It would require use of reconciliation, but qualification of Section 899 for reconciliation and passage of Section 899 even in reconciliation is uncertain.
    - Another round of tariff threats?
- If G7 agreement is operationalized through the inclusive Framework, will there be further “defections” from coordination? What is the role for the UN?



## 4. P2: Conclusion (as of now)

Nobody Knows.

# IFA 2025 LISBON

5-9 OCTOBER 2025

*THE UNMISSABLE CONGRESS FOR INTERNATIONAL TAX EXPERTS*

## **Highlights**

### **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**

**8 Social & Networking events**

*Visit Congress Website for the details*



[www.ifa2025lisbon.com](http://www.ifa2025lisbon.com)

