

# Global IFA Travelling Lectureship Programme 2025

## Topic: Pillar Two and its ramifications



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# Pillar Two and its ramifications Opening presentation

*Daniel Gutmann*

# **Structure of the presentation**

- 1- Pillar Two Implementation : where do we stand?**
- 2- Pillar Two and the US : what to expect from an EU perspective?**
- 3- Selection of practical concerns currently raised by GloBE rules**

# **1 – Pillar Two Implementation : where do we stand?**

## **1.1. Inclusive Framework**

## **1.2. Domestic legislation (outside the EU)**

## **1.3. EU**



**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.

## 1.1. Recent publications on GloBE by the OECD

# 1.1. Beyond GloBE : 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



## 1.2. Domestic legislation (outside the EU)

- Some countries outside the EU have implemented the « full package » : IIR + UTPR + DMTT (New Zealand, Liechtenstein, Turkey...)
- Some countries have only implemented the IIR (ex. Japan...)
- Some countries have only implemented the IIR and DMTT, but not the UTPR (ex. Switzerland, Norway, Malaysia...)
- Some countries have only implemented the DMTT, but not the IIR and UTPR (ex. Barbados, Brazil, Mauritius...)



**Not all rules enter into force during the same financial year**





# 1.3. European Union

- Directive implemented in almost all EU Member States
- On 3 October 2024, the European Commission decided to refer Spain, Cyprus, Poland and Portugal to the CJEU for failing to notify measures for the transposition into national law of Directive 2022/2523 of 15 December 2022
  - Since then legislation has been adopted in Cyprus (12 Dec. 2024), Poland (6 Nov. 2024), Portugal (8 Nov. 2024) and Spain (20 Dec. 2024)
- Deferred implementation of GloBE in Estonia, Latvia, Lithuania, Malta and Slovak Rep.
- Still to come : DAC9 introducing exchange information and a standard form in line with that developed by the Inclusive Framework (COM(2024)497 final, 28 Oct. 2024)



# **2. Pillar Two and the US: what to expect from an EU perspective?**

**2.1. Executive orders of 20 January 2025**

**2.2. Possible impact on EU companies**

**2.3. Is there a way out?**

# 2.1 Executive orders of 20 January 2025

## -Executive Order on “The OECD Global Tax Deal”

-“Any commitments made by the prior administration on behalf of the US with respect to the Global Tax Deal have no force or effect within the US absent an act by the Congress adopting the relevant provisions of the Global Tax Deal”

-Investigation whether “any foreign countries are not in compliance with any tax treaty with the US or have any tax rules in place, or are likely to put tax rules in place, that are extraterritorial or disproportionately affect American companies”

-Develop a list of options for protective measures or other actions that the US should adopt or take in response to such non-compliance or tax rules”



## **2.1 Executive orders of 20 January 2025**

**-Executive Order on “The OECD Global Tax Deal” raises the following questions :**

**-Are UTPR & IIR consistent with tax treaties?**

**-Are UTPR & IIR extraterritorial?**

**-Do other features of Pillar Two disproportionately affect American companies?**



# **2.1 Executive orders of 20 January 2025**

## **-Executive Order on “America First Trade Policy”:**

**-“The Secretary of the Treasury, in consultation with the Secretary of Commerce and the United States Trade Representative, shall investigate whether any foreign country subjects US citizens or corporations to discriminatory or extraterritorial taxes pursuant to section 891 of title 26, United States Code”**

**-This provision, which dates back to 1934, allows for a doubling of the tax rate on citizens of those foreign countries.**

**-Applies to income taxes on individuals and corporations, withholding taxes on interest and dividends ; actual impact still to assess**

**-Cannot exceed 80% of the taxpayer’s income**



## **2.2 Possible impact on EU companies**

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

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

**that** **-Tax rates on US income of wealthy investors and corporations in countries 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**



## **2.2 Possible impact on EU companies**

**-Possible actions following Executive Order on “America First Trade Policy”:**

**-Sect. 891 mentions “discriminatory or extraterritorial taxes”**

**-This might include :**

**-UPTR**

**-Digital Services Taxes**

**-German tax code that imposes a withholding tax on royalty payments for patents and trademarks registered in Germany?**

**-Other types of taxes that rely on a constructive nexus?**

**-State aid decisions of the European Commission?**



## 2.3 Is there a way out?

- At EU level : difficult to repeal the UTPR which is enshrined in the GloBE Directive

- At Inclusive Framework level :

  - Negotiation on recognition of US minimum taxation rules as qualified for the purpose of Pillar Two?

  - Extension of UTPR safe harbour?

# **3 – Selected topics of practical interest for MNE groups**

- 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**



# Panel Discussion

**Global IFA  
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# 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**

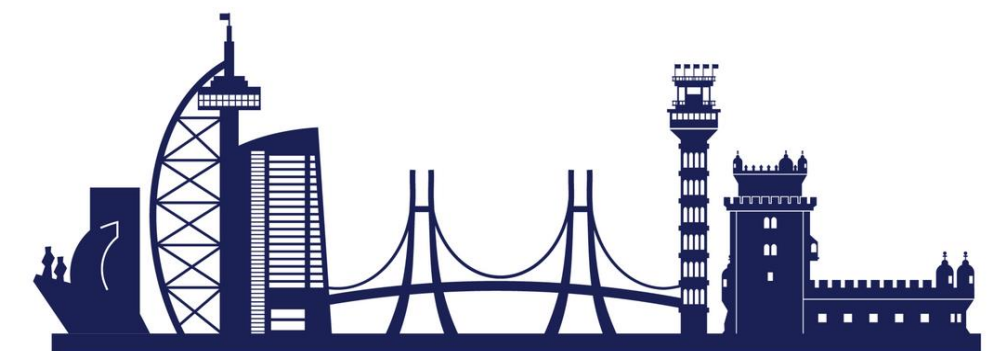
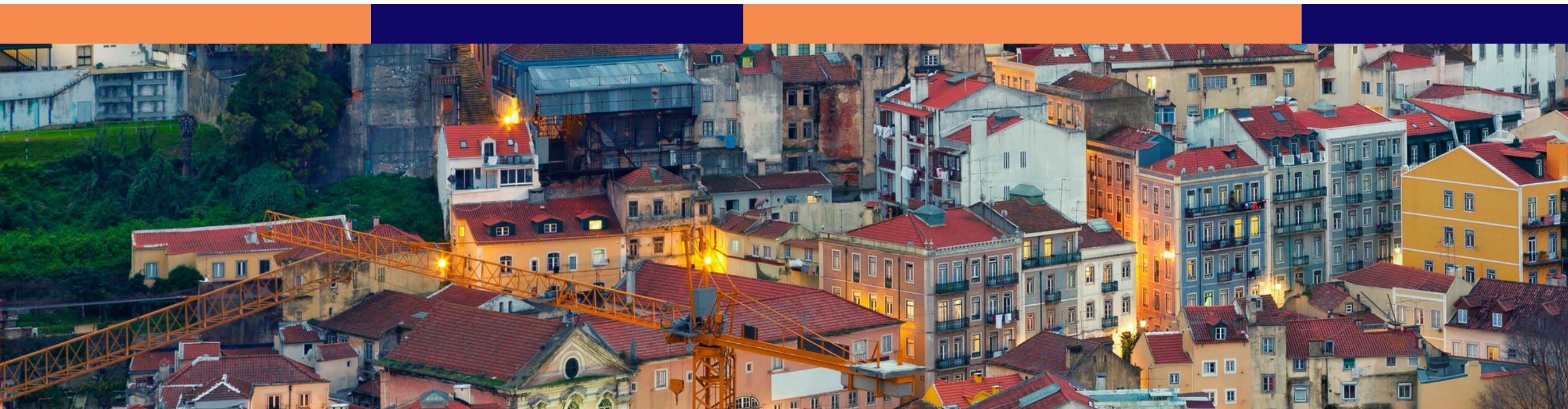
Visit the Congress Website for the details

### **3 Luncheon Dialogues**

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



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