The Impact of Pillar 2 on the Notion of Abuse in International Taxation

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Abuse of Law in European Taxation

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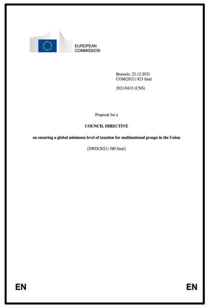
Overview

- ***Part I*** – Pillar Two as Anti-Abuse Measure?
- ***Part II*** – Abuse and Pillar Two?
- ***Part III*** – Abuse within Pillar Two?
- ***Part IV*** – Pillar Two's Impact on Existing Anti-Abuse Measures?
- ***Part V*** – Conclusions

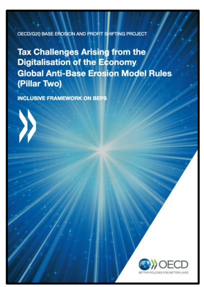
OECD and EU | *Pillar Two*

Dec. 2021

Proposal for a ***Directive*** implementing Pillar Two, COM(2021)823 (Dec. 22, 2021)



Model Rules for GloBE (Dec. 20, 2021), ***Commentary*** (Mar. 14, 2022), ***Examples*** (Mar. 14, 2022) and Factsheet – Announced Model Treaty Rule for STTR



2022/2023

- Some MS's concerns addressed in the ***compromise texts*** in Doc. 10497/22 (21 June 2022) and Doc. 6975/22 (Mar. 12, 2022)
- Complex political process (vetos, EP Resolution P9_TA(2022)0290) and Joint Statement by France, Germany, Italy, Netherlands and Spain (9 September 2022) ("G5")
- Council Directive (EU) 2022/2523, [2022] OJ L 328/1 (***"Pillar Two Directive"***) (including a Council Statement regarding Pillar One in Doc. 15349/22)

- (Draft) Legislation and consultations in numerous countries
- Consultations on Implementation Framework (Mar. 2022), on the GloBE Information Return (Dec. 2022) and on tax certainty (Dec. 2022)
- OECD Report on "Tax Incentives and the Global Minimum Corporate Tax" (Oct. 2022), Note from the EU Parliament Research Service, PE 749.793, and UN work for the extractive industries, E/C.18/2023/CRP.39

2023

Entry into force

- ***OECD*** → October Statement: „Pillar Two should be brought into law in 2022, to be effective in 2023, with the UTPR coming into effect in 2024".
- ***EU*** → Fiscal years beginning from ***Dec. 31, 2023*** (for IIR) and ***Dec. 31, 2024*** (for UTPR) (Art. 56 Directive)

Further Developments

- Safe harbors and penaliy relief (Dec. 2022)
- Administrative Guidance (Feb. 2023, July 2023)
- GloBE Information Return (July 17, 2023)
- STTR model rule and commentary (July 2023) and MLI (Oct. 2023)
- Minimum Tax Implementation Handbook (Pillar Two) (Oct. 2023)
- TIWB support for developing countries
- Next: Peer review process

Part I
Pillar Two as Anti-Abuse Measure?

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Pillar Two | *Rationale*

- OECD MR → ***GloBE*** → "Tax Challenges Arising from the Digitalisation of the Economy – ***Global Anti-Base Erosion Model Rules*** (Pillar Two)"
- But: Pillar Two not ***"Abuse-Driven"*** or ***"Base-Erosion-Driven"*** → ***Starting Points***
  - An "effective tool preventing ***unjustified exploitation of differing tax rates*** should be developed" (German-French Common Position Paper on CCTB Proposal, 19 June 2018 ["Meseberg Declaration"])
  - Call on the EU Commission and the Council to "to submit proposals in due course on taxing the digital economy and ***minimum taxation*** in line with the work of the OECD" (Franco-German joint declaration on the taxation of digital companies and minimum taxation, 4 December 2018)
  - Second pillar that "***addresses remaining BEPS issues***", which recognizes that "in part the tax ***challenges of the digitalisation of the economy*** form part of the larger landscape relating to remaining BEPS challenges" and that addresses "the continued ***risk of profit shifting to entities subject to no or very low taxation*** through the development of two inter-related rules, i.e. an income inclusion rule and a tax on base eroding payments" (Inclusive Framework Policy Note, 23 January 2019)

Pillar Two | *Rationale*

- ***Pillar Two not "Abuse-Driven" → Elaborations on Rationale*** (Programme of Work, 29 May 2020)
  - BEPS 1.0 does "provide a comprehensive solution to the risk that continues to arise from ***structures that shift profit to entities subject to no or very low taxation***" (especially with regard to profit shifting relating to intangibles and financing) (para. 53)
  - "[G]lobal action is needed to ***stop a harmful race to the bottom***, which otherwise risks shifting taxes to fund public goods onto less mobile bases including labour and consumption, effectively undermining the tax sovereignty of nations and their elected legislators" (para. 54)
  - GloBE "could effectively ***shield developing countries from the pressure to offer inefficient incentives*** and in doing so help them in better mobilising domestic resources by ensuring that they will be able to effectively tax returns on investment made in their countries" (para. 54)
  - GloBE "helps to address the remaining BEPS challenges linked to the digitalising economy, where the ***relative importance of intangible assets as profit drivers*** makes highly digitalised business often ideally placed to avail themselves of ***profit shifting planning structures***" (para. 55)
  - IIR "would ensure that the income of the MNE group is subject to tax at a minimum rate thereby ***reducing the incentive to allocate returns for tax reasons to low taxed entities***. The income inclusion rule would have the effect of protecting the tax base of the parent jurisdiction as well as other jurisdictions where the group operates by reducing the incentive to put in place ***intra-group financing***, such as thick capitalisation, or ***other planning structures*** that shift profit to those group entities that are taxed at an effective rate of tax below the minimum rate" (para. 60)

Pillar Two | *Rationale*

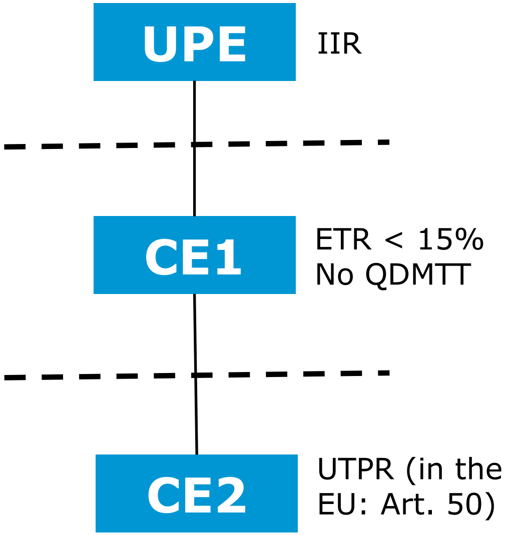
- ***Pillar Two not "Abuse-Driven" → Subsequent Conceptualization***
  - Pillar Two "addresses ***remaining BEPS challenges*** and is designed to ensure that large internationally operating businesses pay a minimum level of tax regardless of where they are headquartered or the jurisdictions they operate in" (Report on Pillar Two Blueprint, 13 October 2020, para. 8)
  - "***[L]evelling the playing field*** and ***ending the race to the bottom*** in corporate income tax through a global minimum tax" (OECD, Tax Co-operation for the 21st Century, May 2022, para. 2)
  - Aims "to put a ***floor on competition over corporate income tax rates*** through the establishment of a global minimum level of taxation. By removing a substantial part of the advantages of shifting profits to jurisdictions with no or very low taxation, the global minimum tax reform will ***level the playing field for businesses worldwide*** and allow ***jurisdictions to better protect their tax bases***" (Pt 2 of the Preamble to Directive (EU) 2022/2523)

Pillar Two | *Rationale*

- Structural elements for the qualification of Pillar Two → ***STTR*** (source State priority regarding low taxed, base-eroding payments), ***QDMTT*** (a "game changer" regarding priority) and ***SBIE*** (formulaic exclusion for "substantive activities")
- ***Focus:***
  - ***Protection of the domestic tax base*** in the broadest sense (e.g., GAARs, CFC rules, TP, "interest barrier", exit taxation) versus minimum taxation (e.g., QDMTT), but (indirect) effects on tax planning (because tax benefit materializes to a lesser extent)
  - ***Low-taxation or double-non taxation concerns*** (e.g., certain deduction limitations, STTR) considering minimum taxation (e.g., QDMTT)

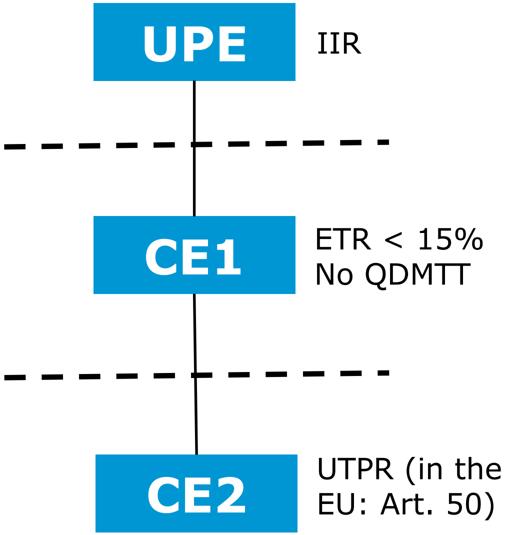
Freedoms | *Anti-Abuse Measure?*

- ***Pillar Two certainly not an "anti-abuse" measure in the traditional sense*** → Discussion on EU/EEA fundamental freedoms
- ***Post*-Directive Discussion**
  - Clear approach to avoid conflicts with the non-disrcimination rules of the ***fundamental freedoms*** by extending the IIR to purely domestic groups and domestic subsidiaries (Art. 5), i.e., to groups with the UPE and CEs (entities or PEs) in the same MS (Pt 6 of the Preamble to Directive (EU) 2022/2523) → *EEA: Iceland (?), Liechtenstein (✓), Norway (✓)*
  - Factual discrimination? "Shielding Effect" of the Directive because of "exhaustive harmonization"?



Freedoms | *Anti-Abuse Measure?*

- ***Pillar Two certainly not an "anti-abuse" measure in the traditional sense*** → Discussion on EU/EEA fundamental freedoms
- ***Pre-Directive Discussion*** (on OECD MR)
  - ***Discriminatory restriction → IIR*** versus, e.g., *Cadbury Schweppes*, *Olsen*, *X GmbH*, and **UTPR** versus, e.g., *Eurowings*, *Skandia*, *SIAT*
  - ***Justification and Proportionality?***
    - Ground #1: ***Anti-Avoidance***?
      - Pillar Two not targeted at "artificial structures" or "non-genuine arrangements" → Not changed by formulaic Substance-Based Income Exclusion (SBIE) (does not make the remainder "non-genuine")
      - Can this ground of justification even apply after the (implementation of the) ATAD?
    - Ground #2: ***"Fair" minimum level of taxation***? → "[O]bjective of ensuring a minimum level of taxation […] is regarded as an overriding reason in the public interest" (AG Kokott in *Allianzgi-Fonds*).
    - Ground #3: ***International consensus*** on the OECD/IF level (139 jurisdictions)?



Tax Treaties | *Why no Conflict?*

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- OECD, *[Report on Pillar Two Blueprint](#)* (2020)
  - ***Switch-over Rule (SOR)*** requires ***changes to existing bilateral tax treaties*** (Blueprint, paras. 21 and 677. – See also OECD, Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy [2019] para. 72):

> 21. While the IIR and the UTPR do not require changes to bilateral treaties and can be implemented by way of changes to domestic law,[4] both the STTR and the SOR can only be implemented through changes to existing bilateral tax treaties. These could be implemented through bilateral negotiations and amendments to individual treaties or as part of a multilateral convention. Alternatively the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the MLI) (OECD, 2016[6]), emerging from BEPS Action 15, may offer a model for a coordinated and efficient approach to introducing these changes.

  - ***Income Inclusion Rule (IIR) and UTPR*** can be implemented by way of changes to domestic law (Blueprint, paras. 678 and 705) and are also ***compatible with tax treaties*** (Blueprint, paras. 679-696)
    - Implicit: IIR and UTPR are ***covered taxes*** (Art. 2 OECD MC), although GloBE is about allocation of the top-up tax (and not of a tax base)
    - ***IIR*** → Covered "Saving Clause" (Art. 1(3) OECD MC) and/or underlying "longstanding principle" (but: does not apply if CE is a PE) as well as comparability with CFC rules (Art. 7 no. 14 and Art. 10 no. 37 OECD MC)
    - ***UTPR*** (then: Undertaxed *Payments* Rule, later: Undertaxed *Profits* Rule) → Again, covered by the "Saving Clause" (Art. 1(3) OECD MC) and/or underlying "longstanding principle", and detailed discussion of compatibility of non-deductibility rules with Art. 7(2), Art. 9 and Art. 24(3) and (4) OECD MC

Tax Treaties | *Why no Conflict?*

- Treaty-based ***switch-over rule (SOR)*** required (?) to apply the IIR in the context of treaty-exempt PEs (Art 2 no. 2 OECD Model Rules Comm.):

> 2. Taken together, the IIR and UTPR provide a systematic solution to ensure all in scope MNE Groups pay a minimum level of tax on their profits in excess of a routine return in the jurisdictions in which they operate. However, concerns about the intended application of these rules can arise where a Parent Entity jurisdiction, which would otherwise apply the IIR in accordance with the provisions of Article 2, has entered into bilateral Tax Treaties in which it has adopted the exemption method (instead of a credit method) to eliminate double taxation of income arising in the other jurisdiction. In this case, a switch-over rule in a Tax Treaty could facilitate the application of the IIR by the jurisdiction of residence of the Parent Entity to tax the income of the PE in those cases where the IIR applies as a matter of domestic law. The switch-over rule could safeguard the application of the IIR by the residence state with respect to a PE. The rule would, by virtue of its domestic law trigger, only apply when and to the extent that a resident of a Contracting State was required to apply the IIR with respect to a PE in the other Contracting State.

- Why MLI/tax treaty only for the SOR? → Art. 23A(1) OECD MC (= exception from the saving clause)
- But: By 2023, obviously "understanding" in the Inclusive Framework that SOR is not needed

- IIR and UTPR ***"designed" to be compatible with tax treaties*** (OECD, Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two) (2023) para. 2, as statement by 142 IF members):

> 2. The GloBE Rules were approved and released by the Inclusive Framework on 20 December 2021. The GloBE Rules consist of an interlocking and coordinated system of rules which are designed to be implemented into the domestic law of each jurisdiction and operate together to ensure large MNE Groups are subject to a minimum effective tax rate of 15% on any excess profits arising in each jurisdiction where they operate. Consistent with the intention of the Inclusive Framework, the GloBE Rules (including the IIR and UTPR) are designed so that the imposition of top-up tax in accordance with those rules will be compatible with the provisions of the United Nations Model Double Taxation Convention between Developed and Developing Countries (the "UN Model Double Tax Convention") (UN, 2021[3]) and the *Model Tax Convention on Income and on Capital: Condensed Version 2017*, (the "OECD Model Tax Convention") (OECD, 2017[3]).

- Statement, not reasoning
- Analogy to CFC or anti-avoidance rules? → Pillar Two is not about (traditional) anti-avoidance nor about base erosion (as could have been argued for an Undertaxed *Payments* Rule)
- Is "anti-abuse" character relevant?

Tax Treaties | *Why no Conflict?*

OECD	Discussion of CFC Rules	Additional Notes
OECD MC 1977	"[C]ounter possible manoeuvres" through domestic law, "preserve the application" of such provisions "in their bilateral double taxation conventions" (Art. 1 no. 7 OECD MC Comm. 1977)	
1986 Base Companies Report	Discussion of, *inter alia*, the various views of the relationship between CFC regimes and tax treaties (viewing CFC rules essentially as attribution/anti-abuse rules, exception for genuine economic activities)	
1992 Update	Majority view that also CFC rules "are not addressed in tax treaties and are therefore not affected by them" (Art. 1 nos 22, 23 OECD MC Comm. 1992), not affected by Art. 10(5) OECD MC (Art. 10 no. 37 OECD MC Comm. 1992)	
1998 Harmful Tax Competition Report	Recommendation to introduce CFC rules, reference to the discussion in the OECD MC Comm. (noting that Art. 7 was not discussed), and recommendation that the "the Commentary to the Model Tax Convention be clarified to remove any uncertainty or ambiguity regarding the compatibility of domestic anti-abuse measures with the Model Tax Convention".	

Tax Treaties | *Why no Conflict?*

OECD	Discussion of CFC Rules	Additional Notes
2003 Update	Addition of Art. 1 no. 23 MC Comm. as part of the discussion on "Improper use of the Convention" → CFC rules not barred by Art. 7(1) (Art. 7 no. 10.1 OECD MC Comm. 2003) or Art. 10(5) (Art. 10 no. 37 OECD MC Comm. 2003)	(Changes in cross-references in Art. 1 no. 23. in the 2008 and 2010 Updates.)
2017 Update	Introduction of a "Saving Clause" (as Art. 1(3) OECD MC, viewed as mere clarification), amendment and renumbering of Art. 1 no. 23 OECD MC Comm. to new Art. 1 no. 81 (with cross-references to Art. 7 no. 14 and Art. 10 no. 37 OECD MC)	Preceded by Action 6 Final Report (2015) (especially para. 59 regarding changes to the OECD MC Comm. and rejection of the argument that "Article 7 and/or Article 10(5) prevent the application of CFC rules" in para. 54)

Tax Treaties | *Why no Conflict?*

Art. 1 no. 81 OECD MC Comm. 2017

Controlled foreign company provisions

81. A significant number of countries have adopted controlled foreign company provisions to address issues related to the use of foreign base companies. Whilst the design of this type of legislation varies considerably among countries, a common feature of these rules, which are now internationally recognised as a legitimate instrument to protect the domestic tax base, is that they result in a Contracting State taxing its residents on income attributable to their participation in certain foreign entities. It has sometimes been argued, based on a certain interpretation of provisions of the Convention such as paragraph 1 of Article 7 and paragraph 5 of Article 10, that this common feature of controlled foreign company legislation conflicted with these provisions. Since such legislation results in a State taxing its own residents, paragraph 3 of Article 1 confirms that it does not conflict with tax conventions. The same conclusion must be reached in the case of conventions that do not include a provision similar to paragraph 3 of Article 1; for the reasons explained in paragraphs 14 of the Commentary on Article 7 and 37 of the Commentary on Article 10, the interpretation according to which these Articles would prevent the application of controlled foreign company provisions does not accord with the text of paragraph 1 of Article 7 and paragraph 5 of Article 10. It also does not hold when these provisions are read in their context. Thus, whilst some countries have felt it useful to expressly clarify, in their conventions, that controlled foreign company legislation did not conflict with the Convention, such clarification is not necessary. It is recognised that controlled foreign company legislation structured in this way is not contrary to the provisions of the Convention.

Art. 7 no. 14 OECD MC Comm. 2017

14. The purpose of paragraph 1 is to limit the right of one Contracting State to tax the business profits of enterprises of the other Contracting State. As confirmed by paragraph 3 of Article 1, the paragraph does not limit the right of a Contracting State to tax its own residents under controlled foreign companies provisions found in its domestic law even though such tax imposed on these residents may be computed by reference to the part of the profits of an enterprise that is resident of the other Contracting State that is attributable to these residents' participation in that enterprise. Tax so levied by a State on its own residents does not reduce the profits of the enterprise of the other State and may not, therefore, be said to have been levied on such profits (see also paragraph 81 of the Commentary on Article 1).

Art. 10 no. 37 OECD MC Comm. 2017

37. As confirmed by paragraph 3 of Article 1, paragraph 5 cannot be interpreted as preventing the State of residence of a taxpayer from taxing that taxpayer, pursuant to its controlled foreign companies legislation or other rules with similar effect, on profits which have not been distributed by a foreign company. Moreover, it should be noted that the paragraph is confined to taxation at source and, thus, has no bearing on the taxation at residence under such legislation or rules. In addition, the paragraph concerns only the taxation of the company and not that of the shareholder.

Part II
Abuse and Pillar Two?

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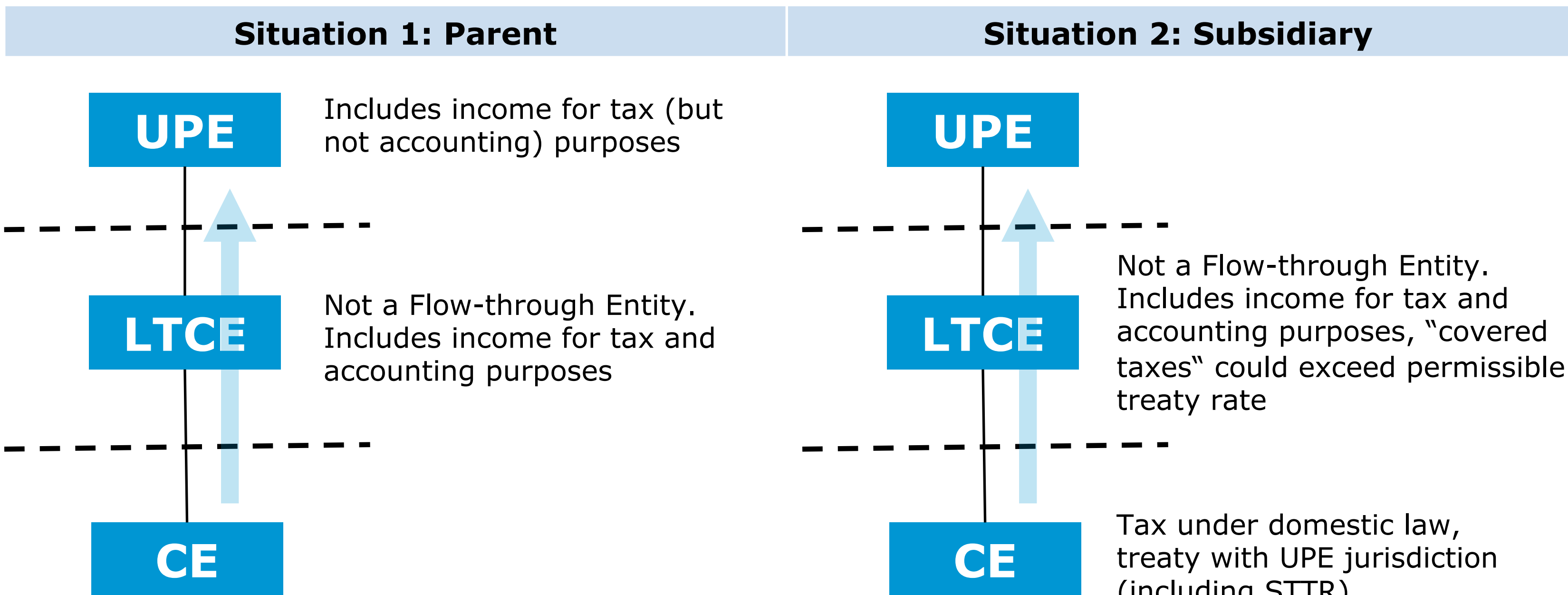
Pillar Two | *Impact of Abuse?*

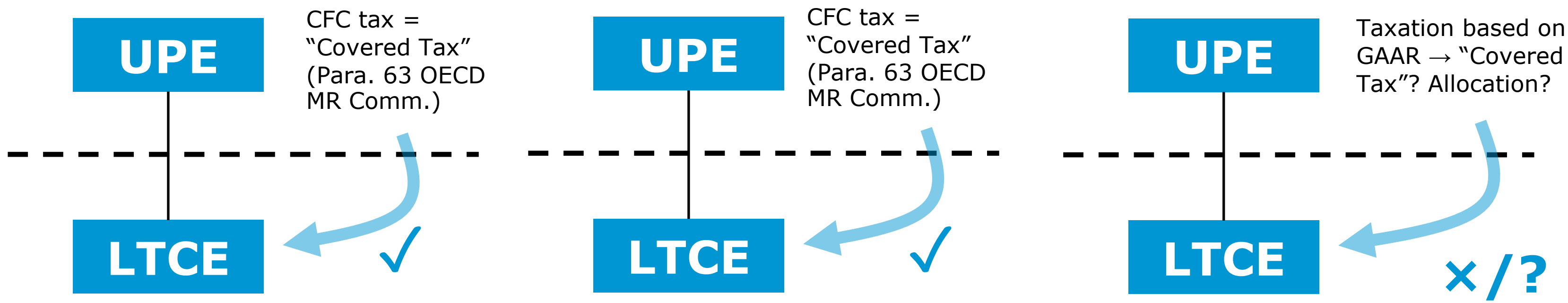
- Impact of the application of ***domestic GAARs/Art. 6 ATAD*** on Pillar Two? → ***Example 1:*** Mismatch between accounting and income attribution (in a broad sense, e.g., under general principles, specific attribution rules, GAARs, beneficial ownership rules, "Unshell" etc)



Pillar Two | *Impact of Abuse?*

- Impact of the application of ***domestic GAARs/Art. 6 ATAD*** on Pillar Two? → ***(Follow-up) Example 2:*** Allocation of ***CFC taxes*** (Art. 4.3.2.(c), 4.4.4. OECD MR and Art 24(3), (6) Directive)

Art. 7 Alt. A ATAD (“categorical”)	**Art. 7 Alt. B ATAD (“transactional”)**	**Art. 6 ATAD (GAAR)**



Controlled Foreign Company Tax Regime means a set of tax rules (other than an IIR) under which a direct or indirect shareholder of a foreign entity (the controlled foreign company or CFC) is subject to current taxation on its share of part or all of the income earned by the CFC, irrespective of whether that income is distributed currently to the shareholder.

Part III
Abuse within Pillar Two?

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Pillar Two | *Abuse within?*

- Pillar Two does ***not contain a GAAR*** …
- … but arguably ***several SAARs/TAARs***, e.g.,
  - … for intragroup financing arrangements in the context of "interest barrier rules" (Art. 3.2.7. OECD MR and Art. 16(8) Directive)
  - … book valuation with the of in the case of a transfer of assets between CEs after 30 November 2021 (Art. 9.1.3. OECD MR and Art. 47(4) Directive)
  - … for the non-UPE "reference jurisdiction" with regard to the UTPR exclusion in the initial phase of international activity (Art. 9.1.5. OECD MR, not in the Directive)
- … and ***further "guidance"*** announced (e.g., accounting treatment of hybrid instruments)
- Application of ***domestic GAARs/Art. 6 ATAD*** inside Pillar Two (e.g., to deny the SBIE, to re-allocate income or covered taxes)?
  - Pillar Two (Directive) as "closed system"
  - Art. 6 ATAD only applies for purposes of "calculating the corporate tax liability", not for Pillar Two
- Note: OECD discussion so far largely focused on ***States' behaviour***, especially with regard to a Qualified IIR, a Qualified UTPR, or a QDMTT ("… provided that such jurisdiction does not provide any benefits that are related to such rules", the so-called "no-benefit requirement" or "NBR")

Part IV
Pillar Two's Impact on Existing Anti-Abuse Measures?

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Pillar Two | *Collateral Effects*

- Pillar Two as a ”driver” for a ***“minimum tax” requirement*** in the IRD? (Pt 2.2. in the Communication on “Business Taxation for the 21st Century”, COM(2021)251, and Pt 2 of the Explanatory Memorandum to the Commission’s Proposal COM(2021)823)

> The transposition of Pillar 2 should pave the way for agreeing the **pending proposal for recasting the Interest and Royalties Directive (IRD)** [28], which has been in the Council since 2011. The aim of the recast Directive was to make the benefits of the Directive (which eliminates withholding tax obstacles to cross-border interest and royalty payments within a group of companies) conditional on the interest being subject to tax in the destination state. Some Member States held the view that the IRD should go further and set a minimum level of tax in the destination state as a condition for benefiting from the absence of withholding tax. Agreement on Pillar 2 will resolve this issue.

- Pillar Two as part of the **“listing criteria”** for the EU’s “Black List”? (Commission’s Communication on Tax Good Governance in the EU and Beyond, COM(2020)313, and Pt 13 in Doc. 13649/23, 5 October 2023)

> As reflected in the recent Communication on Tax Good Governance in the EU and Beyond[29], the Commission will propose to introduce Pillar 2 in the criteria used for assessing third countries in the EU listing process, so as to incentivise them to join the international agreement. This is in line with the EU’s existing approach to use the listing process to promote internationally agreed good practices.

Pillar Two | *Collateral Effects*

- Initial discussions, e.g., ***relative minimum rates*** or ***preferential regimes***, not part of the final Pillar Two (Programme of Work, 29 May 2020, paras 61 et seq.)
- ***Review of existing anti-abuse measures?*** → OECD, Tax Co-operation for the 21st Century, May 2022, para. 57:

> 57. When countries introduce or adopt new rules or filing requirements, an impact assessment should be performed to determine which existing rules and obligations would no longer seem needed, could be refocused, revised, simplified or standardised. For instance, there may be slightly different information reporting obligations that could be streamlined. Similarly, given that the Pillar Two rules reduce the incentive to shift profits across jurisdictions by providing a floor to tax competition, countries may wish to review existing anti-abuse measures with this in mind. To the extent duplicative rules or filing requirements are identified in this assessment, countries should assess the possibility to eliminate or adapt the duplicative rules or filing requirements.

Pillar Two | *Collateral Effects*

- Will Pillar Two (with the SBIE) be a ***"safe harbor"*** with regard to domestic GAARs/SAARs? → Different focus: Protection of tax base ("where") versus minimum taxation ("how much", e.g., QDMTT)
- So far no changes to the ***ATAD*** (Pt 2 of the Explanatory Memorandum to the Commission's Proposal COM(2021)823)
- (Policy) discussions specifically with regard to ***CFC rules*** in light of, e.g., …
  - … top-up effect (domestic rate versus minimum rate, but different bases)
  - … personal scope (ownership threshold versus additional € 750-million-threshold)
  - … blending (entity versus jurisdiction)
  - … low-tax threshold (e.g., half of domestic rate/domestically set versus 15%)
  - … definition of passive income (different lists in the ATAD and Pillar Two for the "push-down" limitation)
  - … relevance in light of QDMTTs and their rule-order priority (low-tax threshold, creditability)
- No reference to Pillar Two in the Commission's Proposal for a ***Transfer Pricing Directive*** (COM(2023)529)

Pillar Two | *Collateral Effects*

- Pillar Two and Commission's ***Proposal for "Unshell"*** (COM(2021)565) would run in parallel → Pt. 1 of the Explanatory Memorandum:

> The legal framework on the minimum level of taxation exclusively pertains to the rate, i.e. level of taxation. It does not touch upon potentially harmful features of the tax base. Neither does it involve examining whether an entity possesses sufficient substance to carry out the activity that it is supposed to. It is true that the implementation of the rules on the minimum level of taxation may gradually discourage the creation of shell entities to some extent. Yet, this is yet an unknown outcome which cannot be guaranteed at this stage.
>
> In addition, an exclusion from the scope of this Directive of the groups within the scope of the Directive on a minimum level of taxation would create unequal treatment against 'shell' entities belonging to smaller-sized groups that do not meet the threshold of EUR 750 million. It would namely be mostly large MNE groups that would receive a waiver from the transparency requirements and the tax consequences under this Directive.

Part V
Conclusions

Pillar Two and Abuse | *Conclusions*

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- BEPS 1.0 + BEPS 2.0 + GAAR
- “Base protection” reasoning versus “abuse”/”avoidance” reasoning (e.g., CFC rules and Pillar Two in the OECD framework, BEPS 1.0) → (Still) different in the EU/EEA fundamental freedom analysis, but likely limited relevance of the ”anti-avoidance” justification (because of Art. 6 ATAD)
- Pillar Two versus GAARs (e.g., Art. 6 ATAD) → From the “inside” and from the “outside”
- Stocktaking and potential reform considering the *effects* of Pillar Two

Thank you!

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