

# International Taxation at the Crossroads: Pathways Forward in a Changing Global Order

**WU**  
VIENNA

STARI Lunchtime Seminar  
Global Tax Policy Developments and the Future of International Taxation

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Singapore Management University  
22 May 2026



# Overview

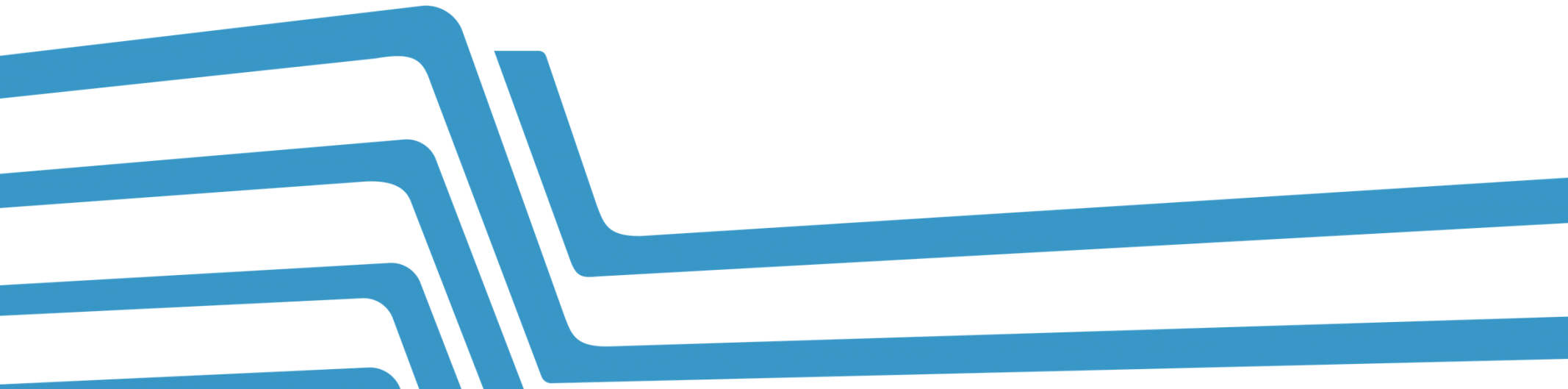
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- **Part I** – Global Tax Deal: Status Quo and Legal Challenges
- **Part II** – Trade, Tariffs, and DSTs
- **Part III** – Big Topics: The UN Framework Convention
- **Part IV** – Conclusions

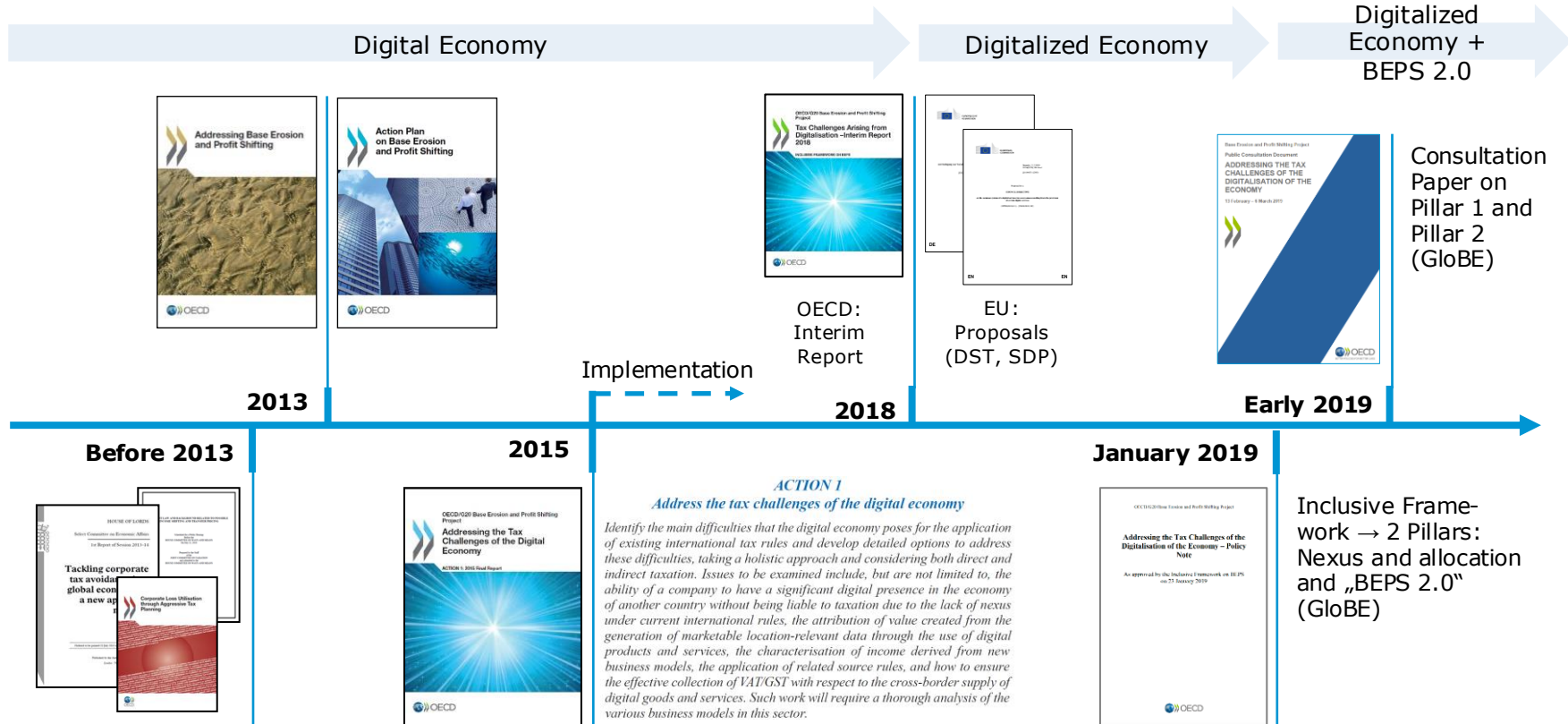
# *Part I*

## **Global Tax Deal: Status Quo and Legal Challenges**

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# OECD | Two Pillar Solution



# OECD | *Two Pillar Solution*

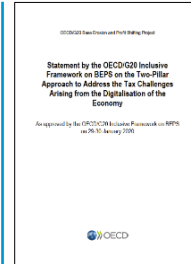
Digitalized economy + BEPS 2.0

Digitalized (and consumer-facing) economy + BEPS 2.0



Full G20 support for a consensus-based two-pillar solution and since then various progress reports by the OECD (e.g., Oct. 2019, Feb. 2021, April 2021, July 2021, Oct. 2021) and ongoing commitment by the G20 to the Two Pillar Approach (e.g., June 2019, Nov. 2020, July 2021, Oct. 2021, July 2022)

Outlines for Pillar 1 and 2 – „[M]embers of the Inclusive Framework affirm their commitment to reach an agreement on a consensus-based solution by the end of 2020“



Since 2019

January 2020

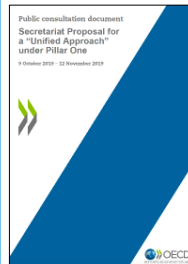
May 2019



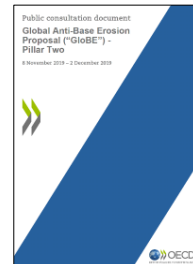
Program for technical work on both pillars

October 2019

Consultation Paper on the “Unified Approach” for Pillar 1

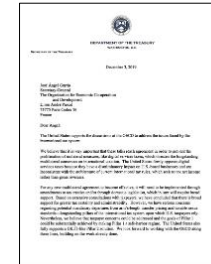


November 2019



Consultation Paper on Pillar 2

December 2019



„Safe harbor“-approach of the US for Pillar 1

# OECD | *Two Pillar Solution*

Digitalized (and consumer-facing) economy  
+ BEPS 2.0

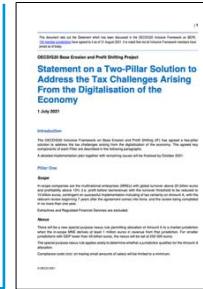
Large, profitable MNEs + BEPS 2.0

Blueprints for Pillars 1 and 2, report on economic impact and Public Consultation



October 2020

OECD, Statement on a Two-Pillar Solution (1 July 2021)



July 2021

PRESS RELEASES

Joint Statement from the United States, Austria, France, Italy, Spain, and the United Kingdom, Regarding a Compromise on a Transitional Approach to Existing Unilateral Measures During the Interim Period Before Pillar 1 is in Effect

October 2021 Statement, and extended in 2024

Juni 2020



US find themselves "at an impasse" regarding Pillar 1

April 2021



US Joint Committee on Taxation, U.S. International Tax Policy: Overview And Analysis, JCX-16R-21 (April 2021)

October 2021



OECD, ***Statement on a Two-Pillar Solution*** (8 Oct. 2021) → *As of June 2023, 139 Members of the OECD/G20 Inclusive Framework on BEPS joining the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (including Brazil, China, USA)*

## Amount A

- Progress Report on Amount A of Pillar One (July 2022) and Factsheet
  - Nexus and revenue sourcing (Feb. 2022)
  - Tax base determinations (Feb. 2022)
  - Scope (Apr. 2022)
  - Extractives exclusion (Apr. 2022)
  - Regulated financial services exclusion (May 2022)
- Progress Report on the Administration and Tax Certainty Aspects of Pillar One (Oct. 2022)
  - Tax certainty framework for Amount A (May 2022)
  - Tax certainty for issues related to Amount A (May 2022)

- Outcome Statement (July 2023 – 142 IF members [May 2024])
- Amount A: Multilateral Convention
  - Multilateral Convention on Amount A (MLC), including withdrawal and standstill of DSTs etc (Oct. 2023, consultation Dec. 2022) – Finalization announced for Mar. 2024 with start of the signing process of the MLC announced for June 2024 – See also Progress Report COM(2023)377
  - Overview (Oct. 2023) and Explanatory Statement (ES) (Oct. 2023)
  - Understanding on the Application of Certainty for Amount A of Pillar One (UAC) (Oct. 2023)
  - Updated economic impact assessment (Oct. 2023) (US JCX-7-24, Mar. 2024)
- Amount B for in-scope distributors (Report Feb. 2024, updates on qualifying jurisdiction and covered jurisdiction → Consolidated Report Feb. 2025) as Annex to Chapter IV of the TPG from 1 Jan. 2025 (consultations Dec. 2022, July 2023) – MCAA (Sept. 2024)

2022

2022/2023/2024

2026



- Entry into force once a critical mass of jurisdictions as defined by the MLC have ratified it (600/999 points – US has 486) – **Withdrawal of the US** from the “Global Tax Deal” (US Memorandum on the OECD Global Tax Deal, Jan. 2025)
- Standstill for DSTs
  - Standstill for DSTs etc from Oct. 8, 2021 – Dec. 31, 2023 (October 2021 Statement)
  - Extended for Jan. 1, 2024 – Dec. 31, 2024 (or the entry into force of the MLC) (July 2023 Outcome Statement, not joined by Canada)
  - Threshold: 30 jurisdictions accounting for at least 60% of UPEs of the in-scope MNEs ratify before end of 2023 (July 2023 Outcome Statement) → MLC

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



- Some MS's concerns addressed in the **compromise texts** in [Doc. 10497/22](#) (June 2022) and [Doc. 6975/22](#) (Mar. 2022)
- Complex political process (vetos, EP Resolution [P9\\_TA\(2022\)0290](#)) and Joint Statement by France, Germany, Italy, Netherlands and Spain (Sept. 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](#))

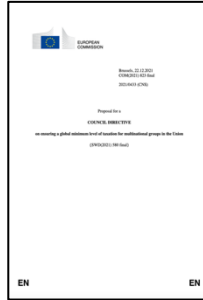
## 2022

### Dec. 2021

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



- Common approach → Statement on a Two-Pillar Solution (8 Oct. 2021)
- Consultations on Implementation Framework (Mar. 2022), GloBE Information Return (Dec. 2022) and tax certainty (Dec. 2022), FAQs ([June 2024](#))
- Report "Tax Incentives and the Global Minimum Corporate Tax" (Oct. 2022) – EU Parliament Research Note [PE 749.793](#) (June 2023), and Study [PE 772.636](#) (May 2025)
- UN work on extractive industries ([E/C.18/2023/CRP.39](#)), special economic zones ([UNCTAD/DIAE/INF/2023/1](#)) and investment treaties ([IIA Issues Note 4/2023](#))
- TIWB support for developing countries



- **Entry into force** → Fiscal years beginning from **Dec. 31, 2023** (for IIR), **Dec. 31, 2024** (for UTPR) (Art. 56)
- Council/Commission Statements on **subsequent OECD guidance** ([Doc. 14732/1/23](#), Oct. 2023) (Art. 32 and Pt. 24 of the Preamble) and on the SbS Package (Jan. 2026, [Notice OJ C, C/2026/253](#)), agreement by (non-OECD member) **Cyprus** regarding safe harbors ([Mar. 2023](#), [Oct. 2023](#), [July 2024](#), and [Jan. 2026](#))
- **Delayed application** (Art. 50): Estonia, Latvia, Lithuania, Malta, Slovakia ([C/2023/1536](#), Dec. 2023)
- **Infringement proceedings** against [Spain](#), [Cyprus](#), [Poland](#) and [Portugal](#) (Oct. 2024)
- **FAQs** on technical issues (Dec. 2023)
- **DAC9** (Directive (EU) 2025/872) on the top-up tax information return (TTIR) (Apr. 2025)
- Note: **ATAD evaluation** ([Ares\(2024\)5539672](#)) → **"Decluttering"** ([Doc. 6748/25](#))

## 2022/2023/2024/2025/2026



- **Safe harbors and penalty relief** (Dec. 2022)
- **Administrative Guidance**: 1: [Feb. 2023](#), 2: [July 2023](#), 3: [Dec. 2023](#) (→ [Consolidated Commentary + Examples](#), Apr. 2024); 4: [June 2024](#), 5: [Jan. 2015](#) (GIR), 6: [Jan. 2015](#) (deferred tax assets) (→ [Consolidated Commentary](#), May. 2025) – Central Record: [Jan. 2026 – Side-by-Side Package](#) (Jan. 2026)
- **GloBE Information Return (GIR) Template** (July 2023) and revised GIR ([Jan. 2025](#)), **XML Schema** (Jan. 2025) (draft [XML Schema](#): Aug. 2024), **MAAC for GIR Exchange** (Jan. 2025 – [20 signatories](#) as of Sept. 2025) – Note: DAC9 in the EU ([Directive \(EU\) 2025/872](#))
- **Outcome Statement** (July 2023 – [142 IF members](#) [May 2024]) → [STTR MR and Comm.](#) (July 2023), [STTR MLI](#) and [Explanatory Statement](#) (Oct. 2023 – [10 signatories](#) as of Sept. 2025)
- **Minimum Tax Implementation Handbook** (Oct. 2023)
- **Qualified Status (Q&A, Jan. 2025)** → Self-certification and peer review → Central Record ([Aug. 2025](#))



- **Legislation and consultations in numerous countries** (with varying implementation IIR/UTPR/QDMTT)
- **Continued opposition from US, e.g.,**
  - Pre-2025 Republican objections to the UTPR (17 Sept. 2024)
  - Letter by members of the House Committee on Ways and Means to President Trump (3 February 2025)
  - On countermeasures, H. R. 3665, on economic analysis, JCX-35-23, on revenue impacts, Republican objections to the UTPR, Sept. 2024)
- **"Withdrawal" of the US** from the "Global Tax Deal" → US Memorandum on the OECD Global Tax Deal (Jan. 2025) (exit from the „Global Tax Deal“, potential countermeasures against extraterritorial or discriminatory foreign taxes)
- **UTPR as extraterritorial tax and potential US countermeasures**
  - US Memorandum on America First Trade Policy (Jan. 2025) (investigation into extraterritorial or discriminatory foreign taxes under § 891 IRC)
  - US Memorandum on Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties (Feb. 2025) (especially DSTs, but also UTPR)
  - Proposed Defending American Jobs and Investment Act, H.R.591 (Jan. 2025) ("DAJI") (targeting UTPR as extraterritorial, likely not IIR) and Proposed Unfair Tax Prevention Act, H.R. 2423 (Mar. 2025) (BEAT vs UTPR) → Draft § 899 of the One Big Beautiful Bill Act (OBBBA), H.R.1 (May 2025), but removed following the G7-agreement on co-existence and removal of § 899 (26 June 2025) and not part of the OBBBA (139 Stat. 72 of 4 Jul. 2025)
  - Reportedly **three options** presented by the Polish EU presidency in Apr. 2025 (i.e., credits, UTPR, equivalence) (Doc. 9960/25 of 18 Jun. 2025)
  - No indication, e.g., from India, China
  - Continued criticism by Global South, NGOs (e.g., Tax Justice Network)

2024/2025

2025



- **G7 statement on "side-by-side" system** (28 June 2025: Statements US Treasury and G7 Presidency via the Canadian Department of Finance), OECD Secretary General Statement (28 June 2025), G20 Communiqué (18 Jul. 2025) in light of § 899 IRC and its removal
- Continued work in the OECD "to reach a solution that is acceptable and implementable by all" (July 2025)
- **OECD/WP11** design options proposal (Aug. 2025) to fully exclude US companies from the global minimum tax, but – reported – opposition by some States.
- **EESC opinion of 18 Jun. 2025, OJ C/2025/4202 (20 Aug. 2025) and EU Parliament's position in A10-0155/2025 (24 Jul. 2025) → Safeguarding integrity? Equivalence (Art 52)? Safe harbors (Art 32)? Amendment?**

Early- to Mid-2025

- **Legislation in > 50 jurisdictions** – As of Dec. 2025: 44 have a QIIR, 46 a QDMTT (but UTPR adoption – 33 – seems largely limited to EU/Europe and, e.g., Australia, Canada, Japan, Korea) → As of July 2025, 55 jurisdictions have implemented or are planning to implement GloBE or QDMTT by 2024/2025, concrete steps by 10 jurisdictions
- Increasing discussion about **suspension of the Pillar Two Directive** and/or work on **safe harbors** (for UTPR and IIR) (e.g., CFE OS FC 2/2025, BDI July 2025, German (State) Finance Ministers Oct. 2025)
- Reference regarding the **compatibility of the UTPR with EU fundamental rights** in Case C-519/25, American Free Enterprise Chamber of Commerce – Reference by the Belgian Constitutional Court (No. 8267), referred to the CJEU (by decision 104/2025 of 17 July 2025)
- **Side-by-Side Package** (Jan. 2026) → Accepted under Art 32 in the EU (Jan. 2026, Notice OJ C, C/2026/253)
  - Simplified ETR Safe Harbour
  - Extension of the Transitional CbCR Safe Harbour
  - Substance-based Tax Incentive Safe Harbour
  - Side-by-Side Safe Harbour → Only US (as of 5 Jan. 2026)
  - UPE Safe Harbor (20% nominal and 15% QDMTT/CAMT)
- **Future work** (e.g., information exchange framework, compliance and administration, dispute resolution)

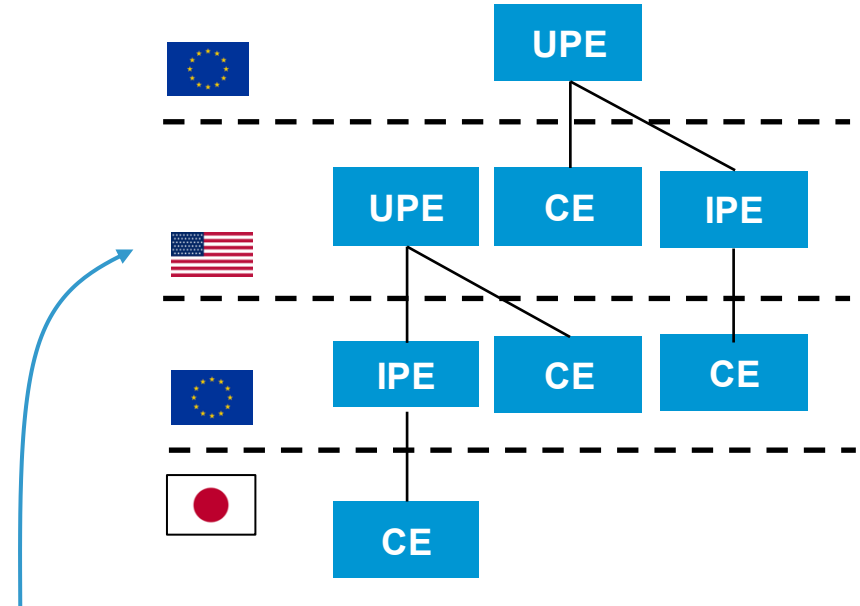
Fall 2025/Spring 2026

2026

- Council Directive (EU) 2022/2523 of 14 December 2022 **on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union**, [2022] OJ L 328/1, based on the Commission's Proposal for a GloBE Directive, tabled by the EU Commission on Dec. 22, 2021 (COM(2021)823)
- Closely based on the **OECD Model Rules** ("common approach" → **Statement on a Two-Pillar Solution**, 8 Oct. 2021)
  - **Idea** → Uniform rules and a common minimum level of protection in the **EU internal market** and prevention of disparities in cross-border situations
  - **Optional elements** → QDMTT (Art. 11) – *And no top-up tax if QDMTT is calculated based on parent's accounting standards or IFRS (Art. 11(2))*
  - **EU-specific elements, fundamental freedoms compliance** → Application of the IIR (or QDMTT) to domestic low-taxed entities of MNEs (UPE + domestic CEs) and to large-scale domestic groups (LSDGs) (Art 5), i.e., little/no scope for the application of the UTPR in case of EU UPEs → *EEA: Iceland (✓), Liechtenstein (✓), Norway (✓)*
  - **Other non-OECD elements** → Penalties (Art. 46), initial phase of international operations for large-scale domestic groups and domestic CEs (Art. 49), election for delayed application for MS with ≤ 12 UPEs (Art. 50), assessment of equivalence of foreign IIR rules, e.g., GILTI (Art. 52), third-country agreements regarding reporting obligations (Art. 55)

# Pillar Two | *Political Challenges*

- **Initially: "GILTI Coexistence"** (Pillar Two Blueprint 2020, para 27)
- **"Common approach"** → **Statement on a Two-Pillar Solution**, 8 Oct. 2021
- **"Withdrawal" of the US** from the "Global Tax Deal" → US Memorandum on the OECD Global Tax Deal (Jan. 2025) (exit from the „Global Tax Deal“, potential countermeasures against extraterritorial or discriminatory foreign taxes)
- Draft **§ 899 of the One Big Beautiful Bill Act (OBBBA)**, H.R.1 (May 2025)
- **G7 statement on "side-by-side" system** (28 June 2025: Statements US Treasury and G7 Presidency via the Canadian Department of Finance), OECD Secretary General Statement (28 June 2025)
- **IF/OECD/WP11** → **Side-by-Side Package** (Jan. 2026)
- **EU acceptance** of SbS Package, Jan. 2026, Notice OJ C, C/2026/253, under Art 32 (not Art 52)

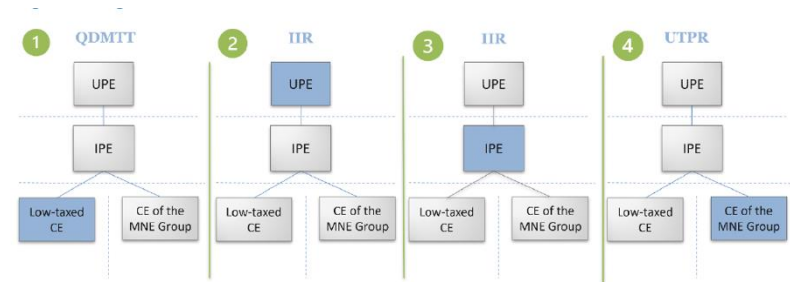


Note: **Net CFC Tested Income (NCTI) and CAMT vs Pillar Two** → Rate (12.6%/14% vs 15%), base (US tax vs adjusted book), carve out (no QBAI vs SBIE), blending (global with income-related pools vs jurisdictional) – US taxes foreign PE income at regular rate. – Both EU and US have CFC rules for passive income etc, taxed at domestic rate.

# Pillar Two | *Political Challenges*

- **The G7 statement on "side-by-side" system** did not address QDMTTs and the **pushdown of cross-border taxes** (such as GILTI/NCTI)
- **SSTR → QDMTT → CFC (GILTI/NFCTI) → IIR → UTPR**
  - **In general:** CFC push down for purposes of calculating ETR (Art 4.3 OECD MR), including allocation of blended CFC tax, such as GILTI (Art 4 paras 58 et seq OECD MR Comm.)
  - **But: OECD rule order** (≠ Commission's Proposal, COM(2021)823, 2) → **QDMTT before CFC** (Art 10 para. 118.30 OECD MR Comm.) → Specific ordering rule "is aimed at attributing primary taxing rights to the jurisdiction applying the QDMTT in relation to its Constituent Entities" and to prevent circular calculations, although unsystematic (as CFC taxes are part of the regular corporate tax system, which logically comes before Pillar Two) → **Foreign QDMTTs as creditable taxes for purposes of the US FTC**
- **QDMTT Priority** in the SbS-Package:

23. Neither of the safe harbours agreed as part of the SbS System will interfere with or prevent QDMTTs applying to the operation of all MNE Groups and those QDMTTs will continue to be calculated without a pushdown of CFC or other owner-level taxes. In addition, all IF members remain committed to crediting QDMTTs on the same terms as any other creditable foreign income tax.



# Pillar Two | *Legal Challenges*

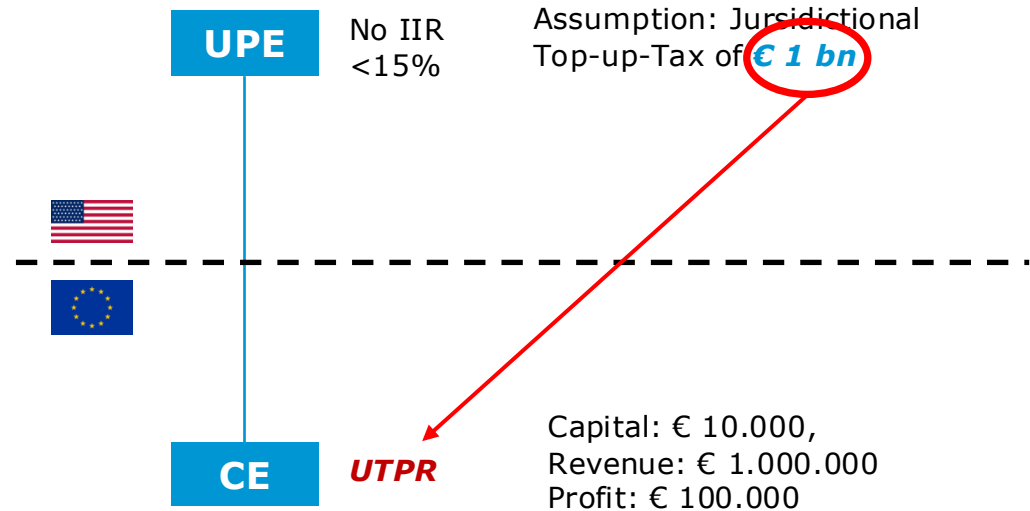
- **Competence** → Based on Art 115 TFEU to remove the “inconsistency” of the “absence of rules ensuring minimum effective corporate taxation across the Single Market” (COM(2021)823) → *Correct legal basis? Proportionality? – Dismissed on procedural grounds T-144/23, Koninklijke Boskalis and BOTS v. Council, and C-146/24 P, Fugro v. Council (appeal to T-143/23 – Commission’s information note).* → But doubts increased by Opinion AG Kokott, 22 May 2025, C-524/23, Commission v. Belgium, EU:C:2025:381 (concerning the ATAD)
- **Fundamental Freedoms** → Clear approach of the Directive to avoid conflicts with the non-discrimination 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 → Hence, no *de jure* discrimination, but perhaps *de facto* discrimination? → “*Shielding Effect*” of *Secondary Law*
- **State Aid** → Art 107 TFEU only refers to “aid granted by a Member State or through State resources” → No **imputability to the Member States** (e.g., Deutsche Bahn, Para. 44 of the 2016 Commission Notice)

# Pillar Two | *Legal Challenges*

- **Fundamental Rights** → UTPR versus freedom to conduct a business, right to property and equality/non-discrimination Art 15, 16, 17, 20 and 21 of the Charter and the principle of territoriality → *Proceedings at the Belgian Constitutional Court (No. 8267), referred to the CJEU (by decision 104/2025 of 17 July 2025, pending as Case C-519/25, American Free Enterprise Chamber of Commerce)*
- **Interpretation of EU Law in light of OECD Guidance** → Art 32 of the Directive, Pt 24 of the Preamble of the Directive Council and Commission statements, Doc. 14732/1/23 → *"SbS Regime"?* → *EU acceptance of SbS Package, Jan. 2026, Notice OJ C, C/2026/253]*
- **Investment Protection etc** → Also connection with "QDMTT payable" in the OECD Administrative Guidance (Art 5.2.3 para 20.1 OECD MR Comm.)
- **Tax Treaties** → IIR, UTPR, QDMTT versus Art 7, 10, 23 OECD MC → If so, "EU mandated treaty override", but Art 351 TFEU (for pre-accession third-country treaties)
- **Application of domestic anti-abuse provisions within Pillar Two?** → Simplification of the EU Tax Architecture and Legislation – Note for discussion on the assessment of the implementation of the ATAD, Ares(2025)8715162 (14 Oct. 2025)
- **Relationship with BEFIT?** → "EU Pooling" versus country-by-country ETR versus "Pillar Two compensation accounting"?

# Legal Challenges | Issue #1: Fundamental Rights

- **Fundamental Rights** → UTPR versus freedom to conduct a business, right to property and equality/non-discrimination Art 15, 16, 17, 20 and 21 of the Charter and the principle of territoriality
- *Proceedings at the Belgian Constitutional Court (No. 8267), referred to the CJEU (by decision 104/2025 of 17 July 2025, pending as Case C-519/25, American Free Enterprise Chamber of Commerce)*
- Question purely hypothetical after Transitional UTPR Safe Harbour or SbS Package?



Note: **Transitional UTPR Safe Harbour** under Administrative Guidance (July 2023 = Annex A Chapter 4 OECD MR Comm.) → UTPR Top-up Tax Amount calculated for the UPE Jurisdiction shall be deemed to be zero if nominal statutory tax rate  $\geq 20\%$  (for fiscal years  $\leq 12$  months beginning on or before 31 December 2025 and ending before 31 December 2026)

# Legal Challenges | *Issue #1: Fundamental Rights*

**But:** Choice of the implementing Member States between **UTPR charge** and **denial of deductions** in Art 12 Directive

Article 12

## Application of a UTPR across the MNE group

1. Where the ultimate parent entity of an MNE group is located in a third-country jurisdiction that does not apply a qualified IIR, or where the ultimate parent entity of an MNE group is an excluded entity, Member States shall ensure that the constituent entities located in the Union are subject, in the Member State in which they are located, to an adjustment equal to the UTPR top-up tax amount allocated to that Member State for the fiscal year in accordance with Article 14.

**“Equivalent adjustment”**  
(Art 2.4.1 paras 93-94 OECD MR Comm.)

For that purpose, such adjustment may take the form of either a top-up tax due by those constituent entities or a denial of deduction against the taxable income of those constituent entities resulting in an amount of tax liability necessary to collect the UTPR top-up tax amount allocated to that Member State.

**“Denial of a deduction”**  
(Art 2.4.1 paras 91-92 OECD MR Comm.)

2. Where a Member State applies the adjustment pursuant to paragraph 1 of this Article in the form of a denial of deduction against taxable income, such adjustment shall apply to the extent possible with respect to the taxable year in which the fiscal year for which the UTPR top-up tax amount was computed and allocated to a Member State in accordance with Article 14 ends.

Any UTPR top-up tax amount that remains due with respect to a fiscal year as a result of the application of a denial of deduction against taxable income for that fiscal year shall be carried forward to the extent necessary and shall be subject, with respect to each following fiscal year, to the adjustment pursuant to paragraph 1 until the full UTPR top-up tax amount allocated to that Member State for that fiscal year has been paid.

# Legal Challenges | *Issue #2: Dynamism*

- **OECD Model Rules** (Dec. 20, 2021)
- [*Proposal for a Directive implementing Pillar Two, COM(2021)823 (Dec. 22, 2021)*]
- **OECD MR Commentary** (Mar. 14, 2022) and **Examples** (Mar. 14, 2022)
- [*Council Directive (EU) 2022/2523 of 14 December 2022, precedes the 2023/24/25/26 OECD administrative guidance (e.g., on safe harbors, rule order on QDMTT before CFC)*]
- **Transitional CbCR Safe Harbour** (Dec. 20, 2022)
- **First tranche of Administrative Guidance** (Feb. 2, 2023)
- **Second tranche of Administrative Guidance** (July 17, 2023) → **QDMTT SH** and **Transitional UTPR SH**
- [*→ Consolidated Commentary + Examples, Apr. 2024*]
- **GloBE Information Return Template** (July 17, 2023) and **subsequently updated** (Jan. 2025)
- **Third tranche of Administrative Guidance** (Dec. 18, 2023)
- **Fourth tranche of Administrative Guidance** (June 17, 2024)
- **Fifth tranche of Administrative Guidance** → **Part 1** and **Part 2** (Jan. 15, 2025)
- [*→ Consolidated Commentary, May. 2025*]
- **Side-by-Side Package** (5 Jan. 2026)
- [*→ EU acceptance of Side-by-Side Package, Jan. 2026, Notice OJ C, C/2026/253*]

# Legal Challenges | *Issue #2: Dynamism*

- Council Directive (EU) 2022/2523 of **14 December 2022** precedes the **2023/24/25 OECD administrative guidance** (e.g., on safe harbors, rule order on QDMTT before CFC)
  - **Pt 24 of the Preamble** of the Directive
    - (24) In implementing this Directive, Member States should use the OECD Model Rules and the explanations and examples in the Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two) released by the OECD/G20 Inclusive Framework on BEPS, as well as the GloBE Implementation Framework, including its safe harbour rules, as a source of illustration or interpretation in order to ensure consistency in application across Member States to the extent that those sources are consistent with this Directive and Union law. Such safe harbour rules should be of relevance as regards MNE groups as well as large-scale domestic groups.

- Council Directive (EU) 2022/2523 of **14 December 2022** precedes the **2023/24/25 OECD administrative guidance** (e.g., on safe harbours, rule order on QDMTT before CFC)
  - **Art 32 of the Directive**

Article 32

## Safe harbours

By way of derogation from Articles 26 to 31, Member States shall ensure that, at the election of the filing constituent entity, the top-up tax due by a group in a jurisdiction shall be deemed to be zero for a fiscal year if the effective level of taxation of the constituent entities located in that jurisdiction fulfils the conditions of a qualifying international agreement on safe harbours.

For the purposes of the first paragraph, 'qualifying international agreement on safe harbours' means an international set of rules and conditions which all Member States have consented to and which grants groups in the scope of this Directive the possibility of electing to benefit from one or more safe harbours for a jurisdiction.

- **Does Art 32 fit?** → UTPR transitional safe harbor ("effective level of taxation")? "SbS" safe harbor (EU CEs of US versus third country versus domestic groups)? Substance-based Tax Incentive Safe Harbour ("shall be deemed to be zero")? "Qualifying international agreement"?
- **Limits to the delegation of powers?** → For EU internal delegation see, e.g., CJEU, 13 June 1958, 9/56, *Meroni*, EU:C:1958:7; CJEU, 22 Jan. 2014, C-270/12, *UK v ESMA*, ECLI:EU:C:2014:18.

# Legal Challenges | Issue #2: Dynamism

- Explicit Council/Commission Statements on **subsequent OECD guidance** (Doc. 14732/1/23, Oct. 2023) (covering administrative guidance up to July 2023)
- Agreement by (non-OECD/IF member) **Cyprus** regarding safe harbors, including transitional UTPR safe harbor and SbS Package (Mar. 2023, Oct. 2023, July 2024, and Jan. 2026)
- **Commission Notice – The OECD Inclusive Framework Agreement on Safe Harbors and the Pillar Two Directive**, PUB/2026/5, OJ C, C/2026/253 (12 Jan. 2026)
  - Legal relevance of the “Commission Notice“?
  - Direct effect of the SbS Package via Art 32 (“shall“)?
  - Shield from State aid proceedings?

C/2026/253

12.1.2026

**Commission Notice**

**The OECD Inclusive Framework Agreement on Safe Harbors and the Pillar Two Directive**

(C/2026/253)

**1. General remarks**

The European Commission acknowledges the Organisation for Economic Co-operation and Development (OECD) Inclusive Framework Agreement on Safe Harbors adopted on 5 January 2026 (1), and confirms its application in the context of Council Directive (EU) 2022/2523 (2) (hereinafter: the Pillar Two Directive).

**2. The Pillar 2 Directive and Inclusive Framework Agreements on Safe Harbors**

Article 32 of Directive (EU) 2022/2523 provides that:

‘By way of derogation from Articles 26 to 31, Member States shall ensure that, at the election of the filing constituent entity, the top-up tax due by a group in a jurisdiction shall be deemed to be zero for a fiscal year if the effective level of taxation of the constituent entities located in that jurisdiction fulfils the conditions of a qualifying international agreement on safe harbours.

For the purposes of the first paragraph, “qualifying international agreement on safe harbours” means an international set of rules and conditions which all Member States have consented to and which grants groups in the scope of this Directive the possibility of electing to benefit from one or more safe harbours for a jurisdiction.’

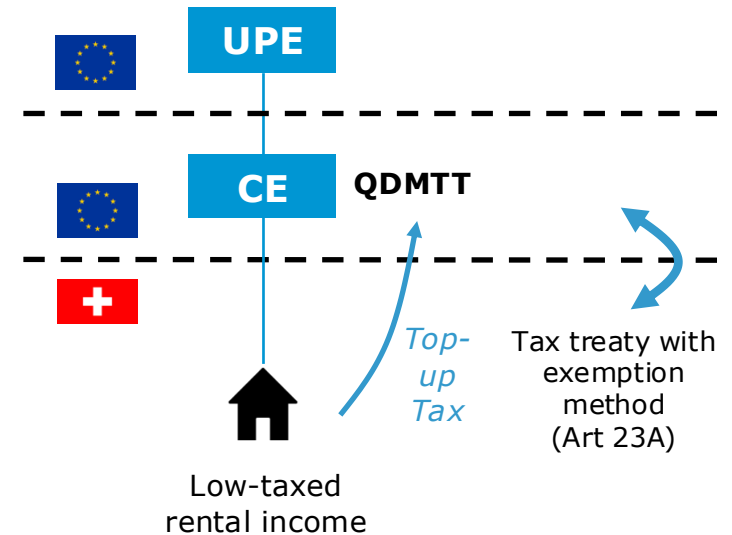
**3. Safe Harbors adopted in January 2026**

On 5 January 2026, the following Safe Harbours were agreed in the OECD Inclusive Framework and all the Member States consented to them:

- Simplified ETR Safe Harbour;
- Extension of the Transitional CbCR Safe Harbour;
- Substance-based Tax Incentive Safe Harbour;
- Side-by-Side System (comprising the Side-by-Side Safe Harbour and the Ultimate Parent Entity (UPE) Safe Harbour).

# Legal Challenges | Issue #3: Tax Treaties

- **Do the IIR, the UTPR and the QDMTT comply with tax treaties?**
  - **Applicability of tax treaties** → Probably: ✓, although GloBE is about allocation of the top-up tax (and not of a tax base) and taxpayer is single entity, not the MNE group. – *Equally for IIR, QDMTT and UTPR?*
  - Potential **conflicts between GloBE and tax treaties** can arise with regard to IIR (e.g., foreign treaty-exempt PE under Art 7, 23A OECD MC), QDMTT (e.g., foreign real estate under Art 6, 23A OECD MC) and UTPR (Art 7 OECD MC)
  - Detailed discussion in the 2020 **Blueprint** (paras 679-696, but on the Undertaxed Payments Rule) → **Based on the assumption that GloBE-taxes are "covered taxes" under Art 2 OECD MC**
    - IIR → **Saving clause** Art 1(3) OECD MC (or the general principle enshrined in it) and the general discussion of CFC rules in the OECD MC Comm. (Art. 7 no. 14 and Art. 10 no. 37), but would not help for PEs (at least not in a traditional treaty understanding)
    - UTPR → Tax treaty discussion in the **Blueprint** had focused on **Art 9 and Art 24 OECD MC** in light of restrictions on deductibility (UTPR was "undertaxed payments rule" before it became a reverse-IIR, i.e., an "undertaxed profits rule")



- **Treaty Conformity of IIR and UTPR** (OECD, Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two) (2023) Pt. 2):

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<sup>[3]</sup>) and the *Model Tax Convention on Income and on Capital: Condensed Version 2017*, (the “OECD Model Tax Convention”) (OECD, 2017<sup>[3]</sup>).

- **Example:** Explicit treaty override in §§ 1 und 100 **German MinStG** (BGBl I 2023, 397)

? *Prevention of PE tax treaty entitlement?*

§ 1

#### Steuerpflicht

(1) Im Inland belegene Geschäftseinheiten, die zu einer Unternehmensgruppe gehören, welche in den Konzernabschlüssen der obersten Muttergesellschaft in mindestens zwei von vier dem Geschäftsjahr unmittelbar vorhergehenden Geschäftsjahren jährliche Umsatzerlöse von 750 Millionen Euro oder mehr ausweist (Umsatzgrenze), unterliegen ungeachtet der Vorschriften eines Abkommens zur Vermeidung der Doppelbesteuerung der Mindeststeuer. § 63 ist zu beachten.

§ 100

#### Auswirkung auf die Abkommensberechtigung

Die Besteuerung nach diesem Gesetz oder nach einer ausländischen Vorschrift, die den Vorschriften der Richtlinie (EU) 2022/2523 entspricht, begründet keine Berechtigung zur Anwendung eines Abkommens zur Vermeidung der Doppelbesteuerung.

- In the **EU** (at least for IIR and UTPR under the Directive, QDMTT optional) → **EU-mandated “Treaty Override”** (Art. 351 TFEU)

- **Challenges to the QDMTT?** → Article 5.2.3 para. 20.1 2025 MR Commentary (originally: Ch. 4 para. 73-81 OECD July 2023 Guidance) → Art 11 of the Directive?

20.1 For purposes of Article 5.2.3, the amount of the “Qualified Domestic Minimum Top-up Tax payable” shall be equal to the amount accrued by the Constituent Entities in the jurisdiction in respect of the QDMTT for the Fiscal Year, except that such amount shall not include any amount of QDMTT that:

- (a) the MNE Group directly or indirectly challenges in a judicial or administrative proceeding; or
- (b) the tax authority of the jurisdiction has determined is not assessable or collectible based on constitutional grounds or other superior law or based on a specific agreement with the government of the QDMTT jurisdiction limiting the MNE Group’s tax liability, such as a tax stabilization agreement, investment agreement, or similar agreement.

Any QDMTT that was not included in QDMTT payable pursuant to this paragraph shall be included in QDMTT payable for the Fiscal Year to which it relates when such amount is paid and no longer contested by the MNE Group.

# Legal Challenges | *Issue #5: QDMTT and SbS*

- **QDMTT and SbS?** → Para. 25 of the Side-by-Side Package (Jan. 2026)
  - No **selective switch-off** of the QDMTT for SbS groups

25. The Inclusive Framework agrees that conditional or discriminatory taxes will not be recognised as Covered Taxes and will consider further work on how this will be consistently applied. The qualified status of domestic minimum top-up taxes remains dependent on their consistent and non-discriminatory application to MNE Groups, regardless of whether an MNE Group has elected to apply the SbS Safe Harbour. In light of this, the Inclusive Framework notes the role of the peer review and ongoing monitoring in connection with the GMT, including the work on Related Benefits.

- But what if a jurisdiction simply **abolishes its QDMTT altogether**? → Discrimination of domestic/non-SbS situations? → EU State aid issues (QDMTT under Art 11 of the EU Directive as an option, not mandatory)?

- ***Simplification of the EU Tax Architecture and Legislation*** – Note for discussion on the assessment of the implementation of the ATAD, Ares(2025)8715162 (14 Oct. 2025)
- Specific suggestions on the ***General Anti-Abuse Rule (GAAR) (Art 6 ATAD)***

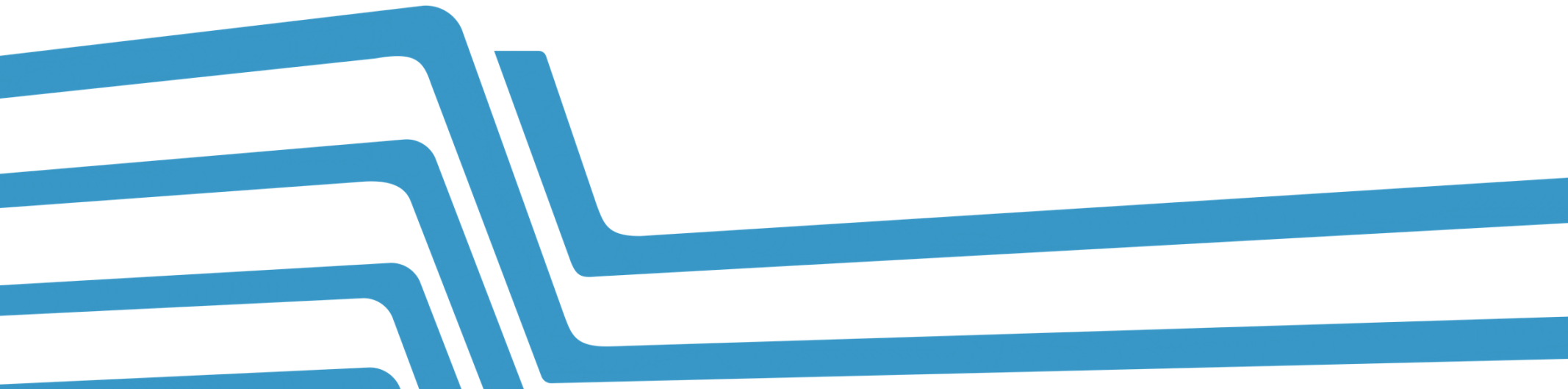
In addition, it is unclear whether **taxation resulting from the GloBE Rules, or the Pillar 2 Directive is in scope of the ATAD GAAR**. The simplification exercise could be an opportunity to clarify this. If the ATAD GAAR covers Pillar 2 taxation, Member States may be given a waiver from having to enact a large part of complex OECD Administrative Guidance into their laws.

- ***But:*** SAARs inside Pillar Two, but deliberately no GAAR? Pillar Two as “closed system” not subject to additional domestic anti-abuse standards? Ripple effects of potential GAAR adjustments across the MNE group (e.g., “denial” of SBIE)?

# *Part II*

## **Trade, Tariffs, and DSTs**

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# Liberation Day Tariffs | EU “Trade Deal”

- **“Liberation Day Tariffs”** → On EU: 20% (Executive Order 14257, 90 Fed. Reg. No. 65, 15041 [7 Apr. 2025]), in violation of maximum tariffs (“bound tariffs”) under Art II GATT and MFN treatment under Art I GATT, but US reliance on national security exception under Art XXI GATT (contra, e.g., WT/DS544/R)
- **EU Options**
  - **Anti-Coercion Instrument** → Regulation (EU) 2023/2675 on the protection of the Union and its Member States from economic coercion by third countries, [2023] OJ L 2023/2675 [7 Dec. 2023]) → *Not triggered*
  - **WTO-compliant “rebalancing measures”** → Commission Implementing Regulation (EU) 2025/1564 of 24 July 2025, [2025] OJ L 2025/1564 (24 July 2025) → *Suspended for six months by Commission Implementing Regulation (EU) 2025/1727 of 5 August 2025, [2025] OJ L 2025/1727 (5 Aug. 2025) and then for another six months by Commission Implementing Regulation (EU) 2026/295 of 4 February 2026, [2025] OJ L 2026/295 (5 Feb. 2026) (suspension until 6 Aug. 2026).*
- Note: “Liberation Day Tariffs” found to not be covered by the **US International Emergency Economic Powers Act** (US Supreme Court, 20 Feb. 2026, *Learning Resources v. Trump*, No. 24-1287 )

# Liberation Day Tariffs | EU “Trade Deal”

- **Agreement on Reciprocal, Fair, and Balanced Trade (“EU-US Trade Deal”)**
  - **US** → 90 Fed. Reg. No 184, 46136 (25 Sept. 2025)
  - **EU** → Commission’s Proposal COM(2025)471 (28 Aug. 2025) and COM(2025)472 (28 Aug. 2025), but stalled in EU Parliament after Greenland tariff threats
  - Note:
    - EU-US Trade Deal likely violates **MFN treatment obligations of both parties**, but not WTO-adjudicable because of dysfunction of the Appellate Body (but: Multi-Party Interim Appeal Arbitration Arrangement, MPIA, of which the EU is a member)
    - Dominos falling: **Tariffs** → **Indirect Taxation** → **Direct Taxation**
    - **No solution for DSTs** → Unlike, e.g., in the US “deals” with Cambodia, Malaysia, Switzerland, Liechtenstein, Argentina, Ecuador, El Salvador, Guatemala, and Thailand , and unilateral withdrawals of enacted or proposed DSTs (Canada, India, and New Zealand)

- **US Position on WTO reform** (WT/GCW/984, 15 Dec. 2025)
  - **Issues Raised by the Reform Facilitator** (e.g., decision-making, special and differential treatment, level playing field)
  - **Other Problems at the WTO that Need to be Addressed** (e.g., MFN treatment, role of the secretariat, essential security)
  - **Problems the WTO Cannot Address** (e.g., imbalances, overcapacity and overconcentration of production, economic security)

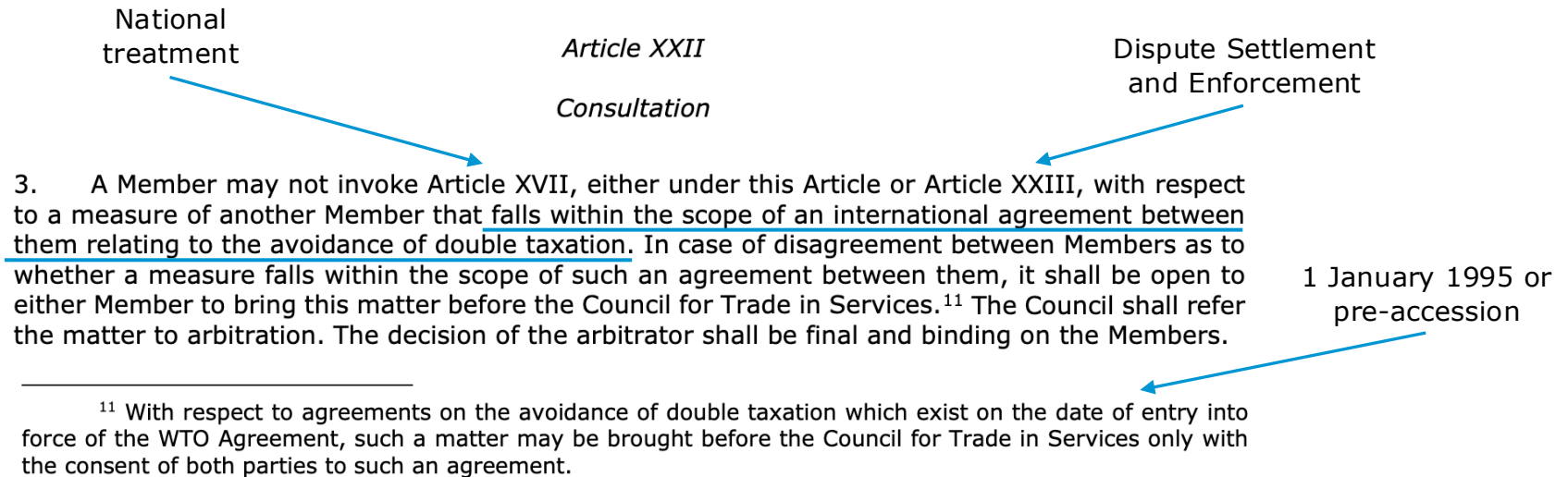
## Most Favored Nation (MFN) Principle

3.1. The MFN principle, which seeks to prevent discriminatory trade practices and promote equal treatment among trade partners, was designed for an era of deepening convergence among trading partners. During that era, countries were expected to adopt open, market-oriented trade policies, as stated by the founding Members of the WTO in the preamble to the *Marrakesh Declaration*. That expectation was naïve, and that era has passed. It has been replaced by an era of deepening divergence, rooted in some countries' unwillingness to pursue and uphold fair, market-oriented competition, some countries' insistence on maintaining economic systems that are fundamentally incompatible with WTO principles, and many countries' pursuit of chronic trade surpluses that have adverse economic and political consequences in deficit countries. To face these challenges, trading nations must be able to treat different trading partners differently.

3.2. The MFN principle is not just unsuitable for this era; it prevents countries from optimizing their trade relationships in ways that would benefit each party in that relationship. Put differently, MFN impedes welfare-enhancing liberalization. It pushes Members to engage in one venue—the WTO—and attempt to develop a one-size-fits-all approach. If Country A lowers a tariff for Country B, and Country B lowers a tariff for Country A, both countries have to lower those tariffs for all countries, unless their agreement covers "substantially all the trade" or a waiver or exception applies. This does not actually advance the economic objectives of the organization, and it prevents trading partners otherwise willing to enter into mutually beneficial agreements from doing so. It sets up an impossible requirement of negotiating the same terms with all Members, resulting in an all-or-nothing approach that typically ends in "nothing".

3.3. WTO Members have a long history—dating back to the GATT era—of recognizing the limits of the MFN principle. The 'Enabling Clause' eliminated the MFN principle for Members that claimed developing country status. Particularly given the distinction between developed and developing status is now blurred, it is time to recognize the necessity of allowing all Members to enter into mutually beneficial agreements that may not extend to every Member.

- **Art XXII:3 GATS** (exclusion of consultation and dispute settlement)



- **Art XXII:3 GATS** (exclusion of consultation and dispute settlement) → *Art 1(3) US MC, Art 25(5) UN MC 2025, Art 25(6) OECD MC 2025*

**6. For purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that –**

Every tax treaty, irrespective of entry-into-force

**a) a measure “falls within the scope of this Convention” only if it is a measure to which the provisions of Article 24 apply; and**

**b) notwithstanding paragraph 3 of Article XXII of the General Agreement on Trade in Services, any dispute between them as to whether a measure falls within the scope of this Convention shall be resolved under paragraph 3 of Article 25 or, failing agreement under that procedure, any other procedure agreed to by both Contracting States.**

“Discipline of non-discrimination” (Art 24(6) OECD MC), irrespective of actual taxpayer protection

- **But: EU** (as claimant or respondent under WTO law) versus **tax treaties of the MS** (Art 25 para. 89 OECD MC Comm. 2025 )

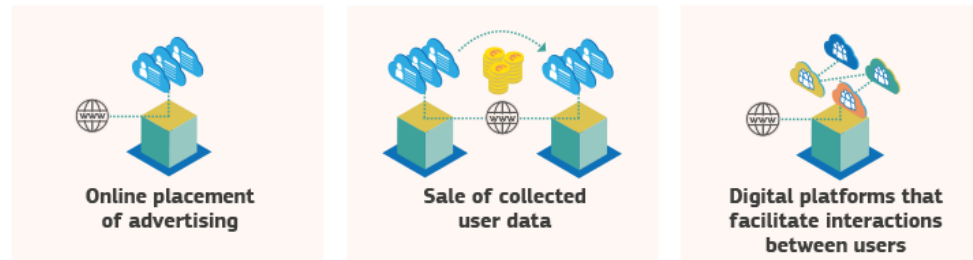
# Digital Services Taxes | *Status Quo*

Commission's Communication "Time to establish a modern, fair and efficient taxation standard for the digital economy" (COM(2018)146 and Annex)

Long-Term Solution: <b>Significant Digital Presence (SDP)</b>		Short-Term Solution: <b>Digital Services Tax (DST)</b>
<p>Proposal for a Council Directive laying down rules relating to the corporate taxation of a <b>significant digital presence</b>, COM(2018)147 and Annexes</p>	<p>Commission Recommendation of 21.3.2018 relating to the corporate taxation of a significant digital presence, C(2018)1650</p>	<p>Proposal for a Council Directive on the common system of a <b>digital services tax</b> on revenues resulting from the provision of certain digital services, COM(2018)148 – <i>No agreement in December 2019 (Doc. 14885/18 FISC 510 ECOFIN 1148 [29 November 2018] and Doc. 14886/18 FISC 511 ECOFIN 1149 [29 November 2018]), subsequent limitation to <b>digital advertising services</b> in March 2019 ("DAT"; Doc. 6873/19 FISC 135 ECOFIN 242 [1 March 2019]) and postponed in March 2019 (Doc. 7368/19 PRESSE 12 [12 March 2019]), but might be taken up again if no OECD consensus is reached (Dok. 9773/19 FISC 281 ECOFIN 528 [7 June 2019]). – But: Unilateral implementation/adoption of DSTs/DATs in various (Member) States and in third States.</i></p>
<p>Impact Assessment SWD(2018)81 and SWD(2018)82</p>		

# Digital Services Taxes | *Status Quo*

An interim tax of 3% on revenues made from three main types of services, where the main value is created through user participation.



... and provided by businesses with:



# Unilateral DSTs | Adoption

State	Law	Scope	Rate	Thresholds	Effective Date	Remarks
Austria	Digital Tax Act <sup>1</sup>	Advertising	5%	€ 750m/€ 25m	1 Jan. 2020	—
Canada	Digital Services Tax Act <sup>2</sup>	Marketplaces, advertising, social media services, user data	3%	€ 750m/\$C20m	1 Jan. 2022	Repeal announced for fall 2025 <sup>3</sup>
France	Tax on Digital Services <sup>4</sup>	Digital interfaces, advertising, user data	3% <sup>5</sup>	€ 750m/€ 25m	1 Jan. 2019	—
Hungary	Law on Advertisement Tax <sup>6</sup>	Advertisement	0% <sup>7</sup> (5%/7.5%)	HUF100m	15 Aug. 2014	—
India	Equalisation Levys <sup>8</sup>	Advertisement	6%	—	1 April 2016	Repealed as of 1 Apr. 2025 <sup>9</sup>
		E-commerce	2%	—	1 April 2020	Repealed as of 1 Aug. 2024 <sup>10</sup>
Italy	Digital Service Tax <sup>11</sup>	Advertisement, digital interfaces, user data	3%	€ 750m/[€ 5.5m <sup>12</sup> ]	1 Jan. 2020	—
Spain	Tax on Certain Digital Services <sup>13</sup>	Advertisement, intermediation, user data	3%	€ 750m/€ 3m	16 Jan. 2021	—
Türkiye	Digital Service Tax <sup>14</sup>	Advertising, digital content, social media	7.5%	€ 750m/TRY20m	1 March 2020	—
United Kingdom	Digital Services Tax <sup>15</sup>	Marketplaces, search engines, social media	2%	£500m/£25m	1 April 2020	—

<sup>1</sup> Digitalsteuergesetz 2020 (DiStG 2020), Federal Gazette (BGBl) I 2019/21.

<sup>2</sup> Fall Economic Statement Implementation Act 2023, Statutes of Canada 2024, c. 15.

<sup>3</sup> See Government of Canada, *Canada rescinds digital services tax to advance broader trade negotiations with the United States* (29 Jun. 2025).

<sup>4</sup> Loi n° 2019-759 du 24 juillet 2019 portant création d'une taxe sur les services numériques et modification de la trajectoire de baisse de l'impôt sur les sociétés, JORF No. 0171 of 25 July 2019, now regulated in the French Code des impositions sur les biens et services

<sup>5</sup> The increase of the rate to 5% proposed in the Senate (N°I-1431 rect. of 22 Nov. 2024) was eventually not adopted as part of the French Finance Bill for 2025 (Loi n° 2025-127 du 14 février 2025 de finances pour 2025, JORF n°0039 of 15 Feb. 2025).

<sup>6</sup> Law No XXII of 2014.

<sup>7</sup> As a temporary measure, the Hungarian advertisement tax rate has been reduced to 0%, effective from 1 Jul. 2019, through 31 Dec. 2025.

<sup>8</sup> Finance Act 2016, Law No. 28/2016 (for advertisement), expanded by Finance Act 2020, Law No. 12/2020 (for e-commerce).

<sup>9</sup> Finance Act 2025, Law No. 7/2025.

<sup>10</sup> Finance (No. 2) Act 2024, Law No. 15/2024.

<sup>11</sup> 2020 Budget Law, Law No. 160/2019.

<sup>12</sup> The threshold of €5.5m annual income from qualified digital services to Italian customers was removed by the Italian 2025 Budget Law, Law No. 207/2024.

<sup>13</sup> Ley 4/2020, de 15 de octubre, del Impuesto sobre Determinados Servicios Digitales.

# Unilateral DSTs | *Adoption*

- **Impact of pressure by the US** US “deals” with Cambodia, Malaysia, Switzerland, Liechtenstein, Argentina, Ecuador, El Salvador, Guatemala, and Thailand , and unilateral withdrawals of enacted or proposed DSTs (Canada, India, and New Zealand)
- **Revenues of DSTs** in some Member States (Austria in 2023: € 103m) → *European Parliament, Taxing the digital economy (Sept. 2025)*

Revenue (€ million)	2019	2020	2021	2022	2023
Spain			166	295	323
France	277	375	474	621	668
Italy		233	303	394	434

- **Trade-off between multilateral Pillar One Amount A (limited number of MNEs) and domestic DSTs** → Starkov/Jin, A Toss Up? Comparing Tax Revenues from the Amount A and Digital Service Tax Regimes for Developing Countries, Research Paper 199 (June 2024) (South Centre, ATAT, WATAF)
- **Note:** In 2023, the EU had a goods trade surplus of €157bn with the US, but a **services trade deficit of €109bn**

# Unilateral DSTs | *Criticism*

- No consensus on either merit or need of equalization taxes in the 2018 **OECD's interim report**, DSTs not part of the IF/OECD work on **Pillars 1 and 2** → Rather: Commitment to remove DSTs under Pillar 1
- Optimal tax on **location-specific rents** for business models with low or zero marginal production costs and non-rival usage?
- Broader **economic questions**, e.g., impact on investment, innovation, welfare and growth, distortion of consumer choices and business decisions, benefits the older over digital technology. – Incidence of DSTs (e.g., *Kaźmierczak, Intertax 2024, 635; Langenmayr/Muddasani, Navigating the Amazon: The Incidence of Digital Service Taxes* (1 Juli 2025))

- **Legal issues**

- Does it violate **domestic constitutional law** (e.g., the principle of equality)? → As for the French DST: No, see Conseil constitutionnel, 12 Sept. 2025, 2025-1157 QPC (reference by Conseil d'État, 17 June 2025, N° 502728).
- Does it conflict with (or potentially override) **bilateral tax treaties**? → Broad consensus: no.
- Does it violate **international trade law and policy or investment agreements**? → Investigation by the US Trade Representative (USTR) under § 301 of the Trade Act of 1974 (e.g., for France 84 Fed. Reg. No. 235, 66956, based on the report of December 2, 2019), interim Pillar One compromise (e.g., 2021 Statement and 2024 Update) (initially until Dec. 31, 2023, prolonged until June 30, 2024) → Note: WTO-path closed for US (AB, GATS-clause in US treaties)
- **EU-specific**
  - Does it violate **EU fundamental freedoms** (Art 49, 54, 56 TFEU) and/or **EU State aid rules** (Art 107 TFEU)? → Likely no: CJEU's Grand Chamber in C-75/18, Vodafone, in C-323/18, Tesco, in C-562/19 P, Commission v Poland, and in C-596/19 P, Commission v Hungary.
  - Is it barred by **Art 401 VAT Directive**, which prohibits domestic taxes that can "be characterised as turnover taxes"? → No: CJEU's Grand Chamber in C-75/18, Vodafone, in C-323/18, Tesco.

- **Current status #1** (Presidency progress report on new own resources, [Doc. 10045/25](#) (13 June 2025) → “Non-paper” in [WK 4848/2025 INIT](#) (25 Apr. 2025):

To this aim, it presented a non-paper on **potential new own resources** for the EU budget<sup>1</sup>, which included a brief summary of past work and initial reflections, based on that work, on possible new own resources around several main axes: :

taxation of big multinationals and especially “big tech”, suggesting the possible pursuit of negotiations on the 2018 Commission proposal for a digital services tax given the lack of international agreement on Pillar I OECD, a tax based on excess profits<sup>2</sup>, and internal market levy;

- **Current status #2** (European Parliament, [Taxing the digital economy](#) (Sept. 2025))

During the September 2025 European Parliament plenary session, in response to [questions](#) from Members of the European Parliament on the state of play of Pillar One and the prospects for a European DST, the European Commission [acknowledged](#) that Pillar One discussions were 'on hold' but could resume later this year. To give the OECD-led process space and time to deliver, the Commission stated that it does not intend to table a new proposal for a DST at this stage.

# Excursus | Investment and Trade Treaties

## ■ **Bilateral Investment Treaties (BIT)**

- Protection of foreign investment with a recent trend to broad tax carve-outs, especially for national treatment and most-favoured nation treatment
- Full preference for tax treaties under **Art 25(6) UN MC 2025** (the “extended provision”; [E/2025/45/Add.1-E/C.18/2025/3](#)), hesitation in the [OECD MC Comm. Update 2025](#)
- **EU specifics**
  - **Intra-EU BITs** terminated because of *Achmea* etc (e.g., [Agreement \[2000\] OJ L 169/1 \[29 May 2020\]](#))
  - **Extra-EU BITs** would fall in exclusive EU competence since the Lisbon Treaty (Art 3 TFEU), but remain with Member States until competence is exercised ([Regulation \(EU\) No 1219/2012 of 12 December 2012, \[2012\] OJ L 351/40](#)) → Tax carve-outs in the [EU Model Clauses](#)

## ■ **Regional Trade Agreements (RTA)**

- Currently 380 RTAs (up from only 50 in 1990), among them, e.g., the EU (both an RTA itself and party to 47 RTAs), EFTA, EEA, ASEAN, USMCA, and CETA.
- Broad tax carve-outs → Example: Art 28.7 of the **EU-Canada Comprehensive Economic and Trade Agreement (CETA)**

Article 28.7

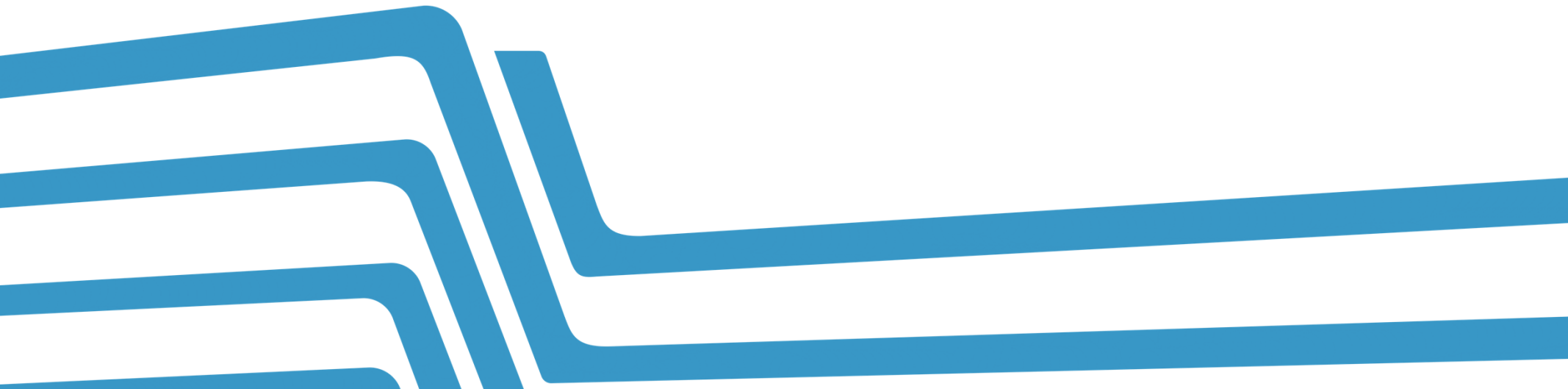
Taxation

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining any taxation measure that distinguishes between persons who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.
2. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining any taxation measure aimed at preventing the avoidance or evasion of taxes pursuant to its tax laws or tax conventions. In the event of inconsistency between this Agreement and a tax convention, that convention prevails to the extent of the inconsistency.
3. This Agreement does not affect the rights and obligations of a Party under a tax convention. In the event of inconsistency between this Agreement and a tax convention, that convention prevails to the extent of the inconsistency.
4. Nothing in this Agreement or in any arrangement adopted under this Agreement shall apply:
  - (a) to a taxation measure of a Party that provides a more favourable tax treatment to a corporation, or to a shareholder of a corporation, on the basis that the corporation is wholly or partly owned or controlled, directly or indirectly, by one or more investors who are residents of that Party;
  - (b) to a taxation measure of a Party that provides an advantage relating to the contributions made to, or income of, an arrangement providing for the deferral of, or exemptions from, tax for pension, retirement, savings, education, health, disability or other similar purposes, conditional on a requirement that that Party maintains continuous jurisdiction over such arrangement;
  - (c) to a taxation measure of a Party that provides an advantage relating to the purchase or consumption of a particular service, conditional on a requirement that the service be provided in the territory of that Party;
  - (d) to a taxation measure of a Party that is aimed at ensuring the equitable and effective imposition or collection of taxes, including a measure that is taken by a Party in order to ensure compliance with the Party's taxation system;
  - (e) to a taxation measure that provides an advantage to a government, a part of a government, or a person that is directly or indirectly owned, controlled or established by a government;
  - (f) to an existing non-conforming taxation measure not otherwise covered in paragraphs 1, 2 and 4(a) through (e), to the continuation or prompt renewal of such a measure, or an amendment of such a measure, provided that the amendment does not decrease its conformity with the provisions of this Agreement as it existed immediately before the amendment.
5. For greater certainty, the fact that a taxation measure constitutes a significant amendment to an existing taxation measure, takes immediate effect as of its announcement, clarifies the intended application of an existing taxation measure, or has an unexpected impact on an investor or covered investment, does not, in and of itself, constitute a violation of Article 8.10 (Treatment of investors and of covered investment).
6. Articles 8.7 (Most-favoured-nation treatment), 9.5 (Most-favoured-nation treatment) and 13.4 (Most-favoured-nation treatment) do not apply to an advantage accorded by a Party pursuant to a tax convention.
  - (a) Where an investor submits a request for consultations pursuant to Article 8.19 (Consultations) claiming that a taxation measure breaches an obligation under Sections C (Non-discriminatory treatment) or D (Investment protection) of Chapter Eight (Investment), the respondent may refer the matter for consultation and joint determination by the Parties as to whether:
    - (i) the measure is a taxation measure;
    - (ii) the measure, if it is found to be a taxation measure, breaches an obligation under Sections C (Non-discriminatory treatment) or D (Investment protection) of Chapter Eight (Investment); or
    - (iii) there is an inconsistency between the obligations in this Agreement that are alleged to have been breached and those of a tax convention.
  - (b) A referral pursuant to subparagraph (a) cannot be made later than the date the Tribunal files for the respondent to submit its counter-memorial. Where the respondent makes such a referral the time periods or proceedings specified in Section F (Resolution of investment disputes between investors and states) of Chapter Eight (Investment) shall be suspended. If within 180 days from the referral the Parties do not agree to consider the issue, or fail to make a joint determination, the suspension of the time periods or proceedings shall no longer apply and the investor may proceed with its claim.
  - (c) A joint determination by the Parties pursuant to subparagraph (a) shall be binding on the Tribunal.
  - (d) Each Party shall ensure that its delegation for the consultations to be conducted pursuant to subparagraph (a) shall include persons with relevant expertise on the issues covered by this Article, including representatives from the relevant tax authorities of each Party. For Canada, this means officials from the Department of Finance Canada.
8. For greater certainty,
  - (a) **taxation measure of a Party** means a taxation measure adopted at any level of government of a Party; and
  - (b) for measures of a sub-national government, **resident of a Party** means either resident of that sub-national jurisdiction or resident of the Party of which it forms a part.

# *Part III*

## **Big Topics: The UN Framework Convention**

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- **2022** → General Assembly **Resolution 77/244** of 30 December 2022 on “Promotion of inclusive and effective international tax cooperation at the United Nations”, [A/RES/77/244](#) (9 Jan. 2023)
- **2023** → **Report of the Secretary-General** on “Promotion of inclusive and effective international tax cooperation at the United Nations”, [A/78/235](#) (26 July 2023)
- **2024** → **Draft Terms of Reference (“ToR”)** for a United Nations Framework Convention on International Tax Cooperation (A/AC.295/2024/L.4, [A/79/333](#)), adopted by a vote of 110 to 8, with 44 abstentions
- **2024-2026** → General Assembly **Resolution 79/235**, [A/RES/79/235](#) (31 Dec. 2024) (adopting [A/79/333](#)), adopted by a vote of 119 to 9, with 43 abstentions
  - Subject of Protocol I: **Taxation of services** ([A/RES/79/235](#) [31 Dec. 2024] and [A/AC.298/2](#) [16 Jan. 2025])
  - Establishment of the Intergovernmental Negotiating Committee (INC) on the United Nations **Framework Convention** on International Tax Cooperation
  - Subject of Protocol II: **Prevention and resolution of tax disputes** ([A/AC.298/CRP.5](#) [5 Feb. 2025]) – Note by the Secretariat on potential subjects of the second early protocol ([A/AC.298/CRP.4](#) [4 Feb. 2025])
  - **Decision-making on matters of substance** ([A/AC.298/CRP.9](#) [6 Feb. 2025]) (adoption without a vote) – Rejection by a vote of 98 against 42 with 10 abstentions of consensus-based decision making ([A/AC.298/CRP.8](#) [6 Feb. 2025])

- **2025** → **United States** “reject the very nature of these discussions”, “underscore our profound objection to the process thus far” and “intends to reject the outcomes of this Framework Convention process and oppose them”, Letter by J. Shrier (3 Feb. 2025)
- **2026** → Roadmap and working methods
  - **Workstream I:** Framework Convention – Co-Leads’ Draft Issues Note (June 2025) → Co-Leads’ Draft Framework Convention Template: 24 Oct. 2025, 22 Jan. 2026: A/AC.298/CRP.26
  - **Workstream II:** Protocol 1 – Taxation of services – Co-Leads’ Draft Issues Note (June 2025) – Co-Lead’s Draft Options Paper: 21 Jan. 2026: A/AC.298/CRP.27 – Background Note Gross-basis versus net-basis taxation: efficiency and equity considerations (Jan. 2026)
  - **Workstream III:** Protocol 2 - Dispute prevention and resolution – Co-Leads’ Draft Outline of Issues Overview and Scope (June 2025) → Co-Leads’ Concept Note on Ideas for Potential Solutions: 24 Oct. 2025, 23 Jan. 2026: A/AC.298/CRP.28

## Background

- Death of **Pillar One**, but commitment to “a constructive dialogue on the tax challenges arising from the digitalisation of the economy” (G20 South Africa Summit: Leaders’ Declaration (22 Nov. 2025), para. 72)
- UN Model Tax Convention 2021/2025
  - General STTR (Art 1(3) UN MC)
  - Extractive Industries (Art 5A UN MC)
  - Shipping and air transportation income (Art 8 UN MC)
  - Services (Art 12AA UN MC)
  - Automated Digital Services (Art 12B UN MC)
  - Cross-Border Insurance (Art 12C UN MC)
  - Capital Gains and Offshore Indirect Transfers (Art 13 UN MC)
  - Software payments as royalties (Art 12(3) UN MC)

- **Workstream I**

- Framework Convention – Co-Leads' Draft Issues Note (June 2025)
- Co-Leads' Draft Framework Convention Template: 24 Oct. 2025, 22 Jan. 2026: A/AC.298/CRP.26

## Article 5 Fair Allocation of Taxing Rights

The States Parties agree that all jurisdictions in which value is created, markets are located, revenues are generated or economic activities take place have a right to tax a portion of the income generated from such activities and shall take such actions as are necessary to ensure a fair allocation of taxing rights among all such jurisdictions, including renegotiation of existing tax agreements that are inconsistent with this article.

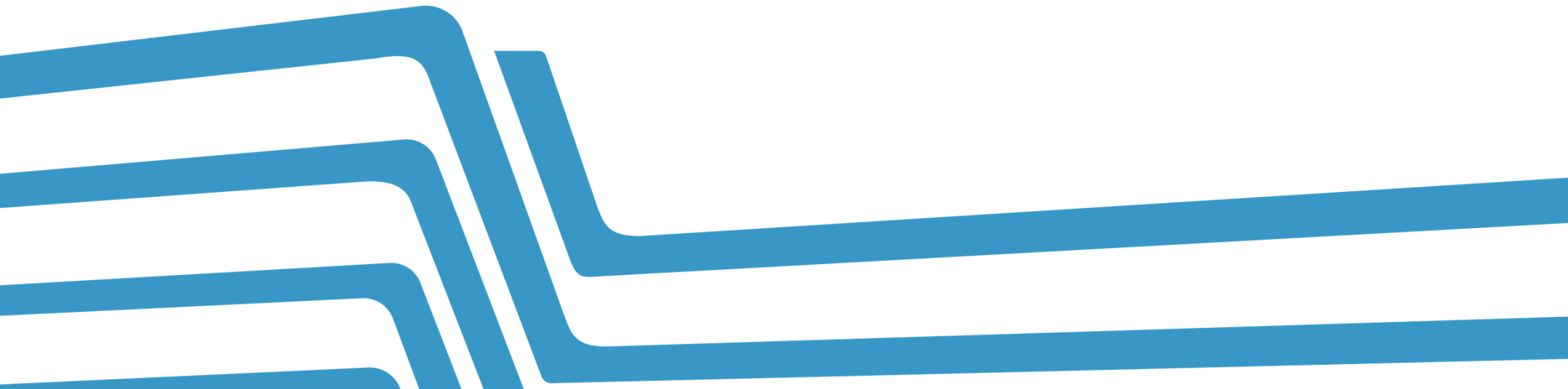
## Article 6 High-net worth individuals

1. States Parties shall develop and implement measures to detect, deter and prevent tax avoidance and evasion by high-net-worth individuals.
2. The States Parties shall share information regarding structures and techniques used by high-net worth individuals to avoid and evade taxes.
3. The States Parties shall explore coordinated approaches to ensuring effective taxation of high-net worth individuals.

# *Part IV*

## Conclusions

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# Conclusions

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- **Two Pillars** → One dead, one crumbling? Time for DSTs?
- **Trade and Tariffs** → Back to discrimination? → From multilateralism to bi- and plurilateralism?
- **Pandora's Box** → Value creation, market states, consumer/user location → Geopolitical force versus international consensus?

# Thank you!

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