



Council of the European Union
General Secretariat

Brussels, 24 April 2025

WK 5183/2025 INIT

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MEETING DOCUMENT

From: Presidency
To: Delegations

Subject: Global Minimum Tax – a way forward
Note by the Presidency

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Global Minimum Tax – a way forward Note by the Presidency

Objective

On 16 April 2025, Coreper 2 tasked the working party on Tax Questions (High Level) to pursue technical work on policy options for the ongoing negotiations on the OECD Two-Pillar Solution and report back to Coreper.

In line with this tasking, the Presidency aims to hold an exchange of views on the possible way forward regarding the negotiations on the Global Minimum Tax.

Background

In the latest meeting of the OECD/G20 Inclusive Framework on BEPS (7-10 April 2025), the US administration announced that it remains committed to seeking a solution that respects US sovereign powers and allows the Pillar 2 rules to coexist with US domestic rules.

All other major economies have shown openness to further constructive work to finalize the Two-Pillar Solution, allowing the negotiations to continue at the OECD/IF level.

Pillar 2 rules are already a part of EU *acquis* by way of the GloBE/Pillar 2 Directive (Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union).

The new Administration of the United States of America (US) has questioned the implementation of the GloBE rules on several occasions since they took office in January 2025.

In particular, the Undertaxed Profits Rule (“UTPR”) is identified as one of the main issues.

On January 20, 2025, the US President issued a Memorandum¹, indicating that “*any commitments made by the prior administration on behalf of the United States with respect to the Global Tax Deal have no force or effect within the United States absent an act by the Congress adopting the relevant provisions of the Global Tax Deal*”. Additionally, the Secretary of the Treasury was given 60 days to investigate “*whether any foreign countries are not in compliance with any tax treaty with the United States or have any tax rules in place, or are likely to put tax rules in place, that are extraterritorial or disproportionately affect American companies*” and deliver findings and recommendations to the President.

In this context, the discussion should be focused on the elements of the GloBE system that the US has criticised. In the context of Pillar 2, the enforcement of the UTPR is at the centre of this discussion.

In balancing the integrity of the global minimum tax framework, key considerations include:

1. the treatment of US tax credits within the GloBE system;
2. the recognition of GILTI as an equivalent to Qualified IIR;
3. whether to limit the application of the UTPR;
4. as a last resort, whether to apply UTPR despite US opposition.

To be noted, the UTPR has been criticised for being an “extraterritorial” and “discriminatory” measure that unfairly affects US businesses. It is therefore understood that continued application of UTPR could lead to retaliatory measures (including retaliatory measures against EU-based companies).

While the UTPR seems a major concern, the latest informal exchanges with the US indicate that other elements of the Pillar 2 system, such as the Income Inclusion Rule (“IIR”), may also raise concerns when applied to US located subsidiaries of EU groups.

¹ <https://www.whitehouse.gov/presidential-actions/2025/01/the-organization-for-economic-co-operation-and-development-oecd-global-tax-deal-global-tax-deal/>

The section below outlines a number of possible scenarios for further technical discussion on these matters and assesses the broader implications for international tax cooperation.

It is worth noting that some of the presented solutions may require actions at the OECD/IF, which go beyond the scope of the Pillar 2 Directive.

The presented scenarios do not preclude any decision or course of action. In fact, these scenarios would most likely be complementary elements for a way forward, rather than as mutually exclusive alternatives (options). The Steering Note serves as a background for technical discussions.

A possible way forward

Scenario 1: Revisiting GloBE rules on the Treatment of Tax Credits

Currently, most US tax incentives do not qualify under GloBE as qualified refundable tax credits (QRTCs), which increases the chances that US MNEs are found to be taxed at an effective rate of less than 15% and effectively become subject to top-up taxes in other jurisdictions. An option could be to eliminate the requirements for refundability of tax credits. This would by effect extend the favourable treatment under the GloBE to additional types of tax credits. The outcome would be to increase the effective tax rate at which US companies pay tax and reduce their exposure to the top-up tax under Pillar 2, in particular under the UTPR. The condition for recognition of a tax credit could be based, for example, on a substance requirement (expenditure-based tax incentives).

Benefits:

- Could address US concerns while maintaining global tax cooperation.
- Encourages a more flexible approach to international tax rules, benefiting multiple jurisdictions, including the EU Member States, since their tax credits would receive the same beneficial treatment. This could therefore be a 'win' for all sides.

Risks:

- If not carefully structured, expanded “recognition” of tax credits could create loopholes that would weaken the GloBE system.
- Other jurisdictions may demand similar accommodations, leading to further fragmentation.

Scenario 2: Limitations on the application of the UTPR

It is possible that a more favourable treatment of tax credits alone is not considered sufficient to fully eliminate the risk that the US companies become subject to top-up tax under UTPR.

The EU could also consider limiting the application of the UTPR. This could happen either through a safe harbour or by amending the GloBE Directive with the aim to remove this mechanism entirely.

Currently, such a safe harbour exists: the UTPR Transitional Safe Harbour², under which the UTPR top-up tax amount calculated for the UPE jurisdiction is deemed zero for fiscal years no longer than 12 months that begin on or before December 31, 2025, and end before December 31, 2026. This Safe Harbour is applicable provided that the UPE jurisdiction has a CIT rate of at least 20%. The EU could either extend this Safe Harbour or introduce a new, more tailored alternative. It should be also noted that limiting the application of the UTPR would not only affect the US but also other non-EU countries.

Benefits:

- If agreed, would address the concerns regarding extraterritorial taxation.
- Encourages diplomatic cooperation between the EU and the US, potentially leading to broader tax policy agreements.
- Provides greater tax certainty for US-based MNEs operating in the EU.

² See July 2023 Administrative Guidance.

Risks:

- Removes an incentive for jurisdictions to implement the GloBE system.
- Could create an uneven playing field, disadvantaging EU-headquartered MNEs subject to minimum taxation, while exempting MNEs located in non-implementing jurisdictions.

Scenario 3: The prospects for equivalence for GILTI

Introduced in 2017, Global Intangible Low-Taxed Income (GILTI) aims to tax the foreign income of U.S. MNEs to prevent profit shifting to low-tax jurisdictions. However, unlike the GloBE framework which applies “jurisdictional blending”, GILTI calculates a blended tax rate across all foreign earnings of a given group (i.e. “global blending”).

At the Inclusive Framework on BEPS meeting on April 7-10, 2025, the US delegation expressed an interest in opening negotiations to treat GILTI as equivalent to IIR.

Under Article 52 of the GloBE Directive, a foreign tax regime shall be considered to be equivalent to Qualified IIR if it meets specific conditions, including “jurisdictional blending”. Since GILTI relies on a “global blending” approach, it does not conform to these requirements. As a result, GILTI is unlikely to qualify as an IIR without substantial modifications either to the sets of rules on GILTI or Qualified IIR.

Nonetheless, one should take into account the legislative developments in the US affecting the functioning of GILTI, particularly regarding the increase in its effective tax rate.

If this increase does not occur, given the opposing views within Congress, the acceptability of the current scenarios may need to be reconsidered.

For GILTI to be recognized as an IIR, one of two possible subscenarios (or both) would need to occur:

Subscenario 3.1: Amendment of Article 52 of the Pillar 2 Directive

The Article 52 of the Pillar 2 Directive could be amended to allow tax regimes using “global blending”, such as GILTI, to qualify as a QIIR. This would represent a major policy shift, as it would depart from the jurisdictional blending standard that underpins the GloBE framework.

Benefits:

- The potential compromise on GILTI would permit international tax cooperation to continue.

Risks:

- Possibly weakens the “jurisdictional blending” standard, potentially reducing the effectiveness of the GloBE system.
- It does not require changes to US tax law. May create loopholes that could be exploited by other jurisdictions seeking similar recognition.
- Creates an uneven playing field, disadvantaging EU-based MNEs subjected to minimum taxation that would be blended on a jurisdictional basis.

Subscenario 3.2: US Modification of GILTI to align with Pillar 2 Directive requirements

The US could amend GILTI to incorporate changes required to make it equivalent to IIR (i.e. adoption of “jurisdictional blending”), ensuring alignment with requirements of Article 52 of the Pillar 2 Directive.

Benefits:

- Strengthens the consistency of the GloBE system without requiring changes to EU rules.
- Ensures US-based MNEs are subject to international minimum tax

standards. Risks:

- Requires significant legislative changes.
- Could increase the tax burden on US-based MNEs.

Questions

The Presidency would like to ask delegations for their views on the options outlined and the way forward. Delegations are also invited to discuss other options as well, having in mind the possibility that US may refuse to apply UTPR which is an essential element of the GloBE system.