KPMG

Pillar Two: Planning Strategies and Key Insights to Managing Compliance

Transforming tax.
Redefining connections.

2025 US Cross-Border Tax Summit

Notices

The following information is not intended to be “written advice concerning one or more Federal tax matters” subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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Agenda

01

Compliance

Pillar 2 compliance overview

Form/Return	Frequency	Number of Filings	Due Date	Complexity
Registration Form	One time	Once per jurisdiction that has implemented Pillar 2	Varies by jurisdiction	Medium/Low
GloBE Information Return (GIR)	Annual	One central filing (elective)	15-18 months after close of fiscal year	Complex, but simplified if eligible for Transitional Safe Harbor
Local QDMTT/QIIR/QUTPR Tax Forms	Annual	To be determined, but expected to have some filing in each jurisdiction with Pillar 2	To be determined, but likely between local filing deadlines and when the GloBE Information Return is due	To be determined, likely similar to GloBE Information Return requirements
Notification of Filing	Annual	Filed annually per jurisdiction	To be determined, but likely with local GloBE filing requirements	Simple (but may not be uniform given local nuances)

There are other local tax procedural considerations as well, such as payment requirements

Compliance requirements in 2024

Assumes December 31 year end for all jurisdictions

June 30

Registrations

- Denmark
- Romania
- U.K.
- Liechtenstein

September 30

Registrations

- Kuwait

November 30

Local Pillar Two Return

- Belgium

December 31

Registrations

- Ireland
- Portugal

Local Pillar Two Return

- Vietnam
- Turkey

Deep dive on GIR

Three parts to GIR

Part 1	**MNE Group Information**	• This section is unlikely to change much from year-to-year
Part 2	**Jurisdictional Safe Harbors and Exclusions**	• Most relevant in 2024-2026 when the Transitional CBC Safe Harbor is available
Part 3	**GloBE Computations**	• The most burdensome aspect of the GIR, by far • Notably, this section is only required for jurisdictions that fail the Transitional CBC Safe Harbor

Deep dive on GIR (Continued)

GIR Filer

- **The GIR filer can either be the ultimate parent entity (UPE) or an entity selected as the designated filing entity (DFE).**
  - The GIR can be filed centrally, allowing it to be submitted to the tax administration of the UPE or DFE jurisdiction.
  - The chosen tax administration will then exchange the relevant information with other jurisdictions that have a Qualifying Competent Authority Agreement (QCAA) in effect for the applicable year.
  - The QCAA provides the legal framework for the coordinated exchange of information.
  - Since the U.S. has not adopted Pillar 2, U.S multinationals cannot select the UPE as the GIR filer. Therefore, U.S. multinationals will need to select a DFE as the GIR filer.

- **The GIR filer will need to be disclosed on the French Registration (due May 15, 2025) and the U.K. Registration (due June 30, 2025).**

Deep dive on GIR (Continued)

Dissemination of GIR

Part 1

MNE Group Information
(>50 data points)

- All implementing jurisdictions will receive this section of the GIR

Part 2

Jurisdictional Safe Harbors and Exclusions
(nearly 40 data points)

- UPE/designed filing jurisdiction will receive this section of the GIR for all jurisdictions
- Other implementing jurisdictions will receive this section of the GIR in respect of jurisdictions in which they have “taxing rights”
  - QDMTT, IIR and UTPR are all taxing rights, but UTPR is not a “taxing right” where IIR applies
- Example 1. A US-based MNE has a UK Intermediate Parent that owns Switzerland. The UK would receive Part 2 (and 3) of the GIR in respect of Switzerland (as would Switzerland given QDMTT). If the Group’s SG subsidiary was held in a different chain by a Dutch Intermediate Parent, the UK would not receive Part 2 (or 3) of the GIR in respect of SG, instead the NL (and SG, if QDMTT) would.
- Example 2. If SG was instead held directly by the U.S., all jurisdictions with a UTPR would see Part 2 (and 3) for SG, regardless of whether Singapore has a QDMTT (QDMTT safe harbor may provide relief)

Part 3

GloBE Computations
(nearly 400 data points)

- Only applicable in respect of jurisdictions that do not pass the Transitional CBC Safe Harbor
- UPE/designed filing jurisdiction will receive this section of the GIR for all jurisdictions
- Other implementing jurisdictions will receive this section of the GIR in respect of jurisdictions in which they have “taxing rights”

Deep dive on GIR (Continued)

GIR Filer

Steps to consider when selecting a DFE:

1	**Structure**	The organizational structure will naturally narrow down the list of potential jurisdictions. A foreign holding company may be a suitable choice since it would have access to Parts II and III of the GIR via IIR taxing rights.
2	**Information Exchange**	If multiple jurisdictions remain after considering the structure, evaluate them based on the breadth of their information exchange networks. A broader network is preferable, as it reduces the need for local GIR filings.
3	**Facts and Circumstances**	Consider the company's relationship with various tax authorities. A positive or challenging history with a particular authority should influence your decision.
4	**Profile Changes**	Take into account any anticipated changes in the company's profile in future tax years that might impact the above considerations.

02

Transitional CbCR

Simplified ETR test details

The Simplified ETR Test is expected to deliver the most simplification for most MNE groups.

Simplified ETR

Calculated by dividing the jurisdiction's income tax expense as reported on the MNE group's Qualified Financial Statements, after eliminating any taxes that are not Covered Taxes and uncertain tax positions, by the jurisdiction's Profit (Loss) before Income Tax as reported on the MNE group's Qualified CbC Report.

Transition rate

15% for fiscal years beginning in 2023 and 2024, 16% for fiscal years beginning in 2025, and 17% for fiscal years beginning in 2026.

Qualified financial statements

Includes the accounts used to prepare consolidated financial statements of the ultimate parent entity, separate financial statements of each constituent entity prepared using an acceptable financial accounting standard or an authorized financial accounting standard, or a more limited set of accounts used in preparing the CbC Report when the entity is not consolidated on a line-by-line basis due to size or materiality.

Qualified CbC report

A Country-by-Country Report filed using Qualified Financial Statements.

Accounting Standards

- As a general matter, the following GAAPs can be used in preparing a Qualified CbC Report.

  "Accounts used to prepare Consolidated Financial Statements (CFS) of the UPE; and Local statutory accounts that are an Acceptable or other Authorized Financial Accounting (if the information in the financial statement is reliable). To be noted, separate financial statements do not need to be prepared for local statutory reporting purposes. See paragraphs 16-19 of the Transitional CbCR SH for more details.
- The CbCR should not be prepared using local management accounts. Management accounts are only allowed as the source of data for Permanent Establishments (PE).
- Notably, there is no requirement to use the same "qualified" source of data, there is however a requirement to disclose what source has been used to prepared the CbCR. Therefore, for example, a change from US GAAP Consolidated Financial Statements to local statutory accounts in a certain jurisdiction should be noted on Table 3 / Form 8975, Part II.
- Also, while a different qualified source of data is permitted among different jurisdictions, the MNE Group cannot use different sources of QFS for different CE within the same Tested Jurisdiction.

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Key considerations for CbCR Report

- Purchase Price Accounting ("PPA") Adjustments
- Items Held in Consolidation
- Bridge to Qualified Financial Statements
- Revenue Reporting
- Definition of Constituent Entities

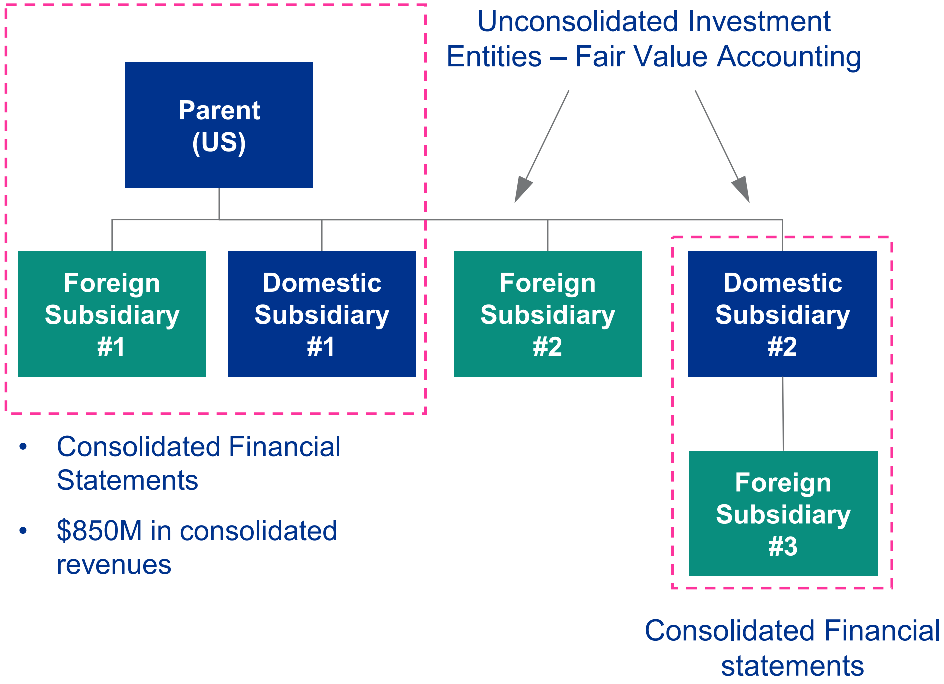
Revenue Definition

- In the case of US CbC Reports, revenue is defined in Treas. Reg. Sec. 1.6038-4(d)(3)(ii) to include revenue from sales of inventory and property, services, royalties, interest and premiums. However, it does not take into account COGS (including all other reductions, except for discount or rebates on inventory).
- In the OECD CbCR guidance, the term “revenues” is broadly defined to include all revenues, gains, income, or “other inflows” shown in the financial statements. Accordingly, in addition to topline gross revenues (i.e., “core operating revenues”), MNE groups should take into account all other items of gain or income as reflected on their GAAP P&L (e.g., items that are often located in “other income” on a P&L).
- Revenue should be reported aggregated by jurisdiction and pre-elimination (not consolidated).
- Gross amounts of income/gain should generally be reported on Table 1 but netting on a per-entity basis may be acceptable for like-items included in “other income” e.g., it is generally acceptable to net Interest Income with Interest Expense. To the extent netting occurs, only income/gains should be included; net items of expense/loss would be excluded.

Constituent Entities (C/E)

- **Only C/Es included in the consolidated financial statement group count (generally, at least 50% controlled but determined by applicable GAAP)**
  - Includes all legal entities (corporations, partnerships, etc.) and disregarded entities, as well as grantor trusts owned at least in part by entities
  - Also includes all permanent establishments, i.e., branches and business establishments
  - Entities that have been excluded from the consolidated group on materiality grounds alone should be included
  - Does not include contractual JVs or non-taxable rep offices
  - Entities that are accounted for via fair value or equity method are not constituent entities for CbC reporting purposes
- **Even private companies that do not have a requirement to prepare consolidated financial statements can have a CbC filing requirement**
  - A private company may qualify as a UPE in cases where it would be required to prepare consolidated financial statements if it were publicly traded
- **Per the US rules, the term "constituent entity" does not include a foreign corporation or partnership for which the UPE does not have a section 6038 filing requirement**

Multiple groups



Structure

- Parent's consolidated MNE group includes Foreign Subsidiary #1 and Domestic Subsidiary #1
- Parent accounts for Foreign Subsidiary #2 and Domestic Subsidiary #2 using the Fair Value Method

CbC Filing Obligations

- Parent and its consolidated subsidiaries, Foreign Subsidiary #1 and Domestic Subsidiary #1 form an MNE Group
- Assuming the consolidated group has revenues of at least $850 million, Parent would have a CbC filing obligation in the United States
- The inclusion of Foreign Subsidiary #1 in Parent's consolidated financial statements results in a CbC filing obligation even where its revenues are immaterial
- The only available exception would be if total consolidated group revenue is less than $850 million.
- Note that Domestic Subsidiary #2 may have a separate CbC reporting obligation if its consolidated revenues are at least $850 million.
- In this case, Domestic Subsidiary #2 would be an Ultimate Parent of a separate MNE Group.

Constituent entities – CbC vs. GLoBE

Consolidation	CbC	GLoBE
Consolidating entities	In	In
Entities owned >= 50% but are not consolidated	Out	In[1]
Entities owned < 50% that are not consolidated	Out	Out
Entities owned <= 50% that are consolidated	In[2]	In[3]

1 Pillar 2 Joint Venture

2 Constituent entities for purposes of the OECD Model Rules but might not be per section 6038

3 Special rules apply for entities that are owned less than 30%

Tax resident

- **Once the universe of C/Es is determined, they need to be "located" for tax purposes**
  - First, where is each C/E a tax resident? Generally where the entity was formed but there are exceptions.
    - "Tie-breaker" rules apply if a C/E is tax resident in multiple jurisdictions
  - PEs, including PEs of Stateless entities, are resident where they are located
- **Tax transparent C/Es are "Stateless" (generally partnerships)**
  - Note that US LLCs default to Stateless (because they are tax transparent) but there are two exceptions:
    1. US LLC for which a U.S. "check-the-box" (CTB) election has been made in order to treat it as a corporation subject to U.S. federal income tax (less common); or
    2. US LLC that is both a **single member LLC** and is **directly held** by another U.S. entity (more common)
- **Entities should be analyzed from a local country perspective, not a U.S. income tax perspective.**
  - Ignore CTB elections unless they affect the taxability of a U.S. entity

BEPS 2.0 Pillar 2 CbC Transitional Safe Harbor Considerations:

- Note that the US LLC exception is only found in the US instructions to Form 8975; there is no similar exception found in the OECD model rules nor is there any support for the exception in the model rules
- Consider the impact to the Safe Harbor testing if US LLCs were treated as Stateless – would it materially affect any of the calculations?

Coordination with 2024 U.S. federal income tax reporting

Item	Considerations
Form 8975 CbCR	• Ensure Transitional CbCR Safe Harbor calculations reflect the final amounts utilized on the Form 8975
Forms 5471/8858 Schedule G Reporting	• Pillar Two top up taxes are required to be reported on Schedule G • Consider accelerating Form 8975 during the compliance process and refreshing Q'4 2024 Pillar Two calculations
Subpart F/GILTI computations	• Preliminary Subpart F and GILTI is determined by including QDMTT as a creditable deemed paid under sections 960(a) and section 960(d) • Based on preliminary Subpart F and GILTI, the CFC tax allocation pushdown should be performed for the GloBE computation • Once IIR and UTPR amounts are determined from the full GloBE computation, final Subpart F and GILTI should be calculated by taking into account IIR and UTPR taxes as deductible, but not creditable foreign income taxes
Foreign Tax Credit	• QDMTTs are the only creditable Pillar Two foreign income taxes.

03

The Evolution of Pillar 2 Planning

Phases of Pillar 2 Planning

- **Transition Period Planning**
  - Out-from-under Planning
  - DTA Creation
- **Safe Harbor Planning**
  - Cross-border financing transactions
  - Attribution utilization (e.g., Lux loss planning)
- **Full Globe Planning**
  - Cross-border financing transaction
  - Incentive regimes
- **Retrofitting Global Structure**
  - Impact from US Tax Reform Proposals
  - Negotiations between US Treasury and OECD

Pillar Two from outbound perspective

Pre-full rule adoption

- Ensure compliance with TSH for as many jurisdictions as possible, to defer detailed compliance and reporting requirements and minimize TUT in those locations. If close consider methods to confirm compliance.
- Maximize asset values on transition into full rules.
- Consider flexibility around GAAP adoption where beneficial.

Post-full rule adoption

- Ensure as efficient allocation of CFC taxes as possible offset potential local country TUT.
- Utilize intra-jurisdiction blending.
- Maximize longevity of financing structures.
- Maximize incentives in foreign locations within Pillar Two constraints.
- Ensure foreign taxes are paid in as efficient manner as possible from a US FTC perspective.

04

Planning through transition period

Swiss transactions potentially in scope of new 9.1.2. AG (3/3)

Non-refundable tax credit (NRTC)

- Upon publication of OECD Pillar Two Model Rules, certain cantons re-designed the tax holiday mechanism to continue to provide a benefit to taxpayers under Pillar Two.
- General prerequisites to qualify for a cantonal tax holiday:
  - Newly opened business (a significant change in operational activities can also qualify as new opening) – in exceptional cases also granted where tax treatment changes
  - Canton should have a special public and macroeconomic interest in the company's activity, e.g. typically includes the creation of a significant number of jobs or apprenticeships, the promotion of sustainable development of the living and economic area of the respective canton, or the promotion of innovative economic activity
  - Requires political decision by Cantonal Council or other executive body approving application for tax holiday
- Tax holiday is formally agreed as non-refundable tax credit (i.e. a fixed amount to be used during a duration of up to e.g. 10 years) and may include a minimum tax mechanism.

Overview of OECD Pillar Two guidance released in January 2025

Highlights from the January 2025 Guidance

- On January 15, 2025, the Inclusive Framework (IF) on BEPS released:
  - A fifth tranche of Administrative Guidance (AG5) on a specific provision dealing with the use of deferred tax assets ("DTAs") under the GloBE transitional rules
  - Material concerning the GloBE Information Return, the qualification process, and exchange of information
- AG5 sets out additional rules that limit the use of DTAs resulting from government actions after November 30, 2021.
  - Specifically, subject to a grace period and limitation, the AG5 extends the section 9.1.2 Limitation to the following 3 scenarios: (i) DTAs attributable to government arrangements that would not arise independently of the arrangement; (ii) DTAs resulting from retroactive elections; and (iii) DTAs related to new corporate income tax systems.
  - Applies to both the Transitional CbCR Safe Harbor and the full Pillar 2 computation
  - **Rationale**: Concern that these DTAs will shelter low-taxed income from the GloBE rules in a manner considered to be inconsistent with the objectives of the GloBE rules.

Background regarding the 9.1.2 Limitation

- The GloBE rules use deferred tax accounting concepts to deal with temporary differences and carried forward losses. To minimize distortions and for simplification, transitional rules allow pre-GloBE deferred tax assets arising from temporary differences and carryforwards to be carried into the GloBE regime and used in the calculation of the effective tax rate (ETR) of a Constituent Entity of a relevant group (CE).
- As those DTAs reverse in an accounting period, there is a deferred tax expense which, when added to the current tax expense, lifts the ETR for that period.
- Article 9.1.2 of the model rules limits the transitional relief. It excludes DTAs that arise from items that would be excluded from GloBE Income or Loss (for example, super deductions) if they are generated in transactions that occurred after 30 November 2021.

3 scenarios for an extension of the 9.1.2 limitation

Scenarios for an extension of the 9.1.2 limitation

Scenario 1

Non-Independent Tax Benefit

Case where a DTA is attributable to a government arrangement concluded after 11/30/2021 and the arrangement gives rise to a tax credit or other tax relief (such as a tax basis step-up) that does not arise independently of the arrangement.

- A tax credit or relief arises independently of a government arrangement if no critical aspect of the credit or relief, such as the eligibility or amount, relies on discretion exercised by the general government.

Scenario 2

Retroactive Election

Case where a DTA is attributable to an election or choice exercised or changed after 30 November 2021 that retroactively changes the treatment of a transaction in determining its taxable income in a tax year for which an assessment has been made or tax return has already been filed.

Scenario 3

No Preexisting Corporate Income Tax

Case where a DTA or a deferred tax liability arose from a tax step-up in basis of assets pursuant to a new corporate income tax regime enacted by a jurisdiction after 30 November 2021 and before the Transition Year (as defined).

- Carryforward losses are subject to a rule which is discussed below

Swiss transactions potentially in scope of new 9.1.2. AG (2/3)

Immigration Step-up (Federal and Cantonal level)

- Upon relocation to Switzerland, a non-Swiss company/branch can disclose hidden reserves (built-in gains) including goodwill in a tax-free manner (in tax balance sheet)
- Immigration can occur through:
  - Migrating the statutory seat or the place of effective management to Switzerland; or
  - Transferring functions, assets and business units to a Swiss legal entity or Swiss branch
  - Creation of a new value driver – typically by virtue of implementing a CoE
- The fair market value is determined using recognized valuation methods (e.g., discounted cashflow method) and subject to discussion with responsible tax authority.
- The disclosed hidden reserves can be amortized in line with the useful life of the underlying assets. For goodwill, a 10-year amortization period was included in the statute. While the law does not foresee a minimum tax mechanism (and even allows such amortization to result in losses), most Cantonal tax authorities have insisted on the same minimum tax mechanism as for Alternative A of the TRAF Step-up.

Safe Harbor Planning: Treatment of Hybrid Arbitrage Arrangements

Treatment of hybrid arbitrage arrangements

The December 2023 AG introduced rules that are designed to counteract three types of hybrid arbitrage arrangements where groups could otherwise have benefited from the Transitional CbCR Safe Harbor

Targeted at specific arrangements

The rules target three types of hybrid arbitrage arrangements: (1) deduction/non-inclusion; (2) duplicate loss; and (3) duplicate tax recognition (see next slide for more details) entered into after December 15, 2022 (unless retrospective legislation constitutional impermissible when date deferred to December 18, 2022)

Broader than Article 3.2.7

Arrangements targeted extend beyond those impacted by Article 3.2.7, a provision in the Model Rules targeted at certain types of intragroup financing arrangements.

Require re-computation

Where a group is subject to the rules the associated expense/income tax expense must be excluded when applying the safe harbor tests.

Coming to the GloBE Rules

Guidance limited to Transitional CbCR Safe Harbor but includes a statement that indicates further guidance will be provided in the full GloBE Rules to address similar arrangements.

Three types of hybrid arbitrage arrangements

01

Deduction/Non-Inclusion

CE1 provides credit/makes an investment in CE2 that results in an expense or loss in the financial statements ("FS") of CE2 where there is no commensurate increase in the revenue or gain in the FS of CE1 or CE1 is not reasonably expected over the life of the arrangement to have a commensurate increase in its taxable income.

Example 1: CE1 makes a loan to CE2 that results in an expense in the FS of CE2 and where the taxable income of CE1 is not increased because the income is offset against a carry forward loss that was subject to a valuation allowance.

Example 2: US1's foreign disregarded entity, CE2, borrows from US3, such that CE2's interest payment, which is recognized as such in its FS, gives rise to a US tax deduction.

02

Duplicate Loss

Expense or loss included in FS of one CE is also included in FS of another CE or the arrangement gives rise to a duplicate amount that is deductible for purposes of determining the taxable income of another CE in another jurisdiction.

Not a duplicate loss arrangement to the extent that the amount of relevant expense is offset against revenue / income included in <u>both</u>:

- FS of CE including expense / loss in its FS; and
- TI of CE claiming the deduction for expense / loss

Example: Disregarded service providers (regarded expense of DRE included in financial statements of DRE and taxable income of US owner)

- Role of grandfathering
- Paragraph 74.30(f)

03

Duplicate Tax Recognition

More than one CE includes part or all of the same income tax expense in its Adjusted Covered Taxes or Simplified ETR test, unless the income subject to tax is included in the relevant FS of both CEs or the arrangement arises because the Simplified ETR test does not require an adjustment (e.g., for CFC taxes).

Example: Unclear

Comparing the deduction / non-inclusion rule to Article 3.2.7

Article 3.2.7 of the Model Rules

- Applicable for purposes of "regular" calculation
- No grandfathering (i.e., applicable to transactions entered into before December 15, 2022)
- Disallows expenses used in calculating GloBE Income / Loss of Low-Tax Entity when there is no commensurate increase in taxable income of High-Tax Counterparty:
    - **High-Tax Counterparty** – CE located in non-Low-Tax Jurisdiction or a jurisdiction that would not be one if its ETR were determined w/o regard to income / expense accrued in respect of an Intragroup Financing Arrangement
    - **Low-Tax Entity** – C E located in Low-Tax Jurisdiction or one that would a Low-Tax jurisdiction if ETR determined w/o regard to income / expense accrued in Intragroup Financing Arrangement

Deduction / Non-Inclusion (D/NI) Rule

- Currently only applicable for the purposes of the Transitional CbCR Safe Harbor, but with intention to include equivalent concept in the "regular" calculation
- Grandfathering – Only applicable to exclude any expense / loss resulting from a D/NI arrangements entered into after December 15, 2022, in calculating PBT for Simplified ETR purposes
- No "low-tax"/ "high-tax" ETR test
- Applicable to arrangements (e.g. involving US DREs) that are not caught by Article 3.2.7

05

US Planning Considerations

Tax reconciliation & uncertainty

U.S. Concerns with Pillar Two

Some members of Congress have publicly expressed concern with:

1. **UTPR generally and how it applies to U.S. income specifically;**
2. **GILTI not recognized as a "qualified" IIR; and**
3. **Potential negative revenue effects of global adoption of Pillar Two, including QDMTTs**

More generally, the current Administration may not accept that Pillar Two effectively constrains future U.S. tax policy

The above is focused only on Pillar Two. Notably, U.S. concerns go beyond Pillar Two, not least DSTs.

Treasury position to address these concerns

Pillar 2 does not need to be an overlay on top of US tax rules which are robust. Seeking to have side-by-side system for the two regimes. Continuing to be engaged in the OECD process and seek changes to the rules to reduce impact on US entities and income.

a) Limit applicability of UTPR

b) Give GILTI equivalence to IIR

c) No GIR filings necessary

d) QDMTT jurisdictions should be allowed to take into account CFC taxes

e) Treatment of credits and incentives under GloBE rules

What can be done administratively by OECD vs requiring national (or EU) legislation?

Section 899: Enforcement of Remedies Against Unfair Foreign Taxes

Provides a means for the U.S. to retaliate against applicable persons of discriminatory foreign countries that impose unfair foreign taxes on U.S. persons or certain foreign subsidiaries of U.S. persons.

Per se unfair foreign taxes

- UTPRs
- DSTs
- DPTs

Extraterritorial Taxes

- Taxes *imposed by* a foreign country on a corporation or its trade or business based upon the income or profits of any person connected to the corporation through a direct or indirect chain of ownership
- Treasury has authority to expand or make exceptions to extraterritorial or discriminatory taxes

Discriminatory taxes

Taxes imposed on

1. Income that would not be considered from sourced or effectively connected to a trade or business in the taxing foreign country under the Code;
2. A base other than net income;
3. That apply "exclusively or predominantly" to nonresident corporations or partnerships, determined by reference to the Code and treating the foreign country as the United States; or
4. Is not treated as an income tax or is otherwise treated by the foreign jurisdiction as outside the scope of tax treaties.

Section 899: Increased Rates of Tax

- **Increases specified rates of tax under the following sections by 5% (cannot not exceed the statutory rate by more than 20 percentage points):**
  - Section 871(a) – 30% tax on FDAP of nonresident individuals
  - Section 871(b) – graduated rates for individual ECI, but limited to FIRPTA gains
  - Section 881 – 30% tax on non-ECI FDAP of corporations
  - Section 882 – ECI of corporations
  - Section 884(a) – branch profits tax
  - Section 1441(a) – withholding on individual FDAP
  - Section 1442(a) – withholding on FDAP of corporations
  - Section 1445 – withholding on disposition of U.S. real property interests
  - Section 4948- foreign private foundation tax

Section 899: Super BEAT

Super BEAT is applicable to certain corporations that are more than 50% owned, by vote or value (within the meaning of section 958(a)), by one or more “applicable person” and would modify BEAT by:

- Removing the $500 million gross receipts test and the 3 percent (2 percent for banks and registered securities dealers) base erosion percentage threshold
- Increase the BEAT rate to 12.5 percent and regular tax liability is reduced by all credits allowed under chapter 1 of the Code
- Eliminate the exception for FDAP payments subject to tax under section 871 or section 881
- Eliminate the services cost method (SCM) exception
- Treat as BEPs and BETBs any amounts paid to a foreign related party that are capitalized, other than purchase price allocation amounts

Section 899: Who is impacted?

Section 899 would apply to *applicable persons*:

- A government of a discriminatory foreign country (turns off 892 benefits in addition to rate increases)
- An individual (other than a U.S. citizen or resident) that is a resident of a discriminatory foreign country
- A foreign corporation that is resident of a discriminatory foreign country, other than a United States-owned foreign corporation within the meaning of section 904(h)(6)
- A private foundation created or organized in a discriminatory foreign country
- A foreign corporation that is more than 50% owned within the meaning of section 958(a) by an applicable person
- A trust that is majority owned by one or more applicable persons
- A foreign partnership, branch, or any other entity identified by the Secretary with respect to a discriminatory foreign country

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Section 899: When does it apply?

- **Section 899 is effective immediately upon enactment of the tax bill, but has a delayed applicable date**

When does the 5-percentage point tax rate increase begin?

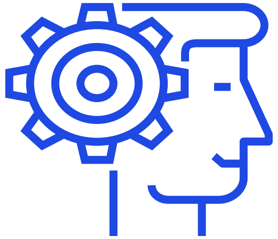
- The first day of the first calendar year beginning on or after the latest of either:
  - 90 days after the enactment of section 899;
  - 180 days after the date an unfair foreign tax is passed into law; or
  - The first date that an unfair foreign tax begins to apply

When do the tax rate increases and modified BEAT rules apply to taxpayers?

- Applicable all *tax years* beginning after the later of:
  - 90 days after the enactment of section 899;
  - 180 days after the date of enactment of an unfair foreign tax; OR
  - The first date that an unfair foreign tax (of a discriminatory foreign country) begins to apply
- AND
- Before the last date on which the unfair foreign tax is imposed

Retrofitting Global Structure: Value Chain Management

A 15% "New Normal"



15% Rate

- Traditional **tax havens** are less useful
- Typical **rate arbitrage** is smaller…
- …but history suggests it will quickly **normalize (**meaning each relative dollar of arbitrage has increased importance)

"Usual Suspects" Continue

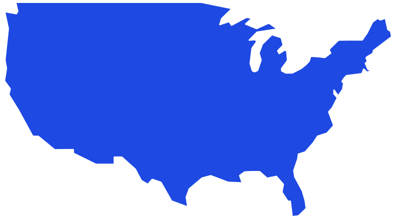
- Ireland (esp. digital and data)
- Singapore (esp. digital and data)
- Switzerland

Patent Boxes

- Modified nexus rule has always been a practical limitation
- Getting to, or close to, 15% is more realistic in most cases than getting to 10.5% or 12.5%
- Increased interest in places like Poland, Portugal

Remember, P2 and tax in general is just one of several factors impacting VCM planning. We continue to have significant business issues influencing both moving to the U.S., moving offshore, or moving nearshore.

A 15% "New Normal" (cont'd)



U.S.A. Continues to Rise…

- US MNCs
  - **Maintaining DEMPE**, other operational substance may no longer be worthwhile for "stressed" tax structures
- Foreign parented groups
  - 15% in the U.S. is as good as 15% in Ireland!
  - Many have existing substance in the U.S. to build on

…But offshoring also remains hot!

- The **shrinking rate arbitrage on foreign profits** of a US MNC (potentially near zero in some cases) has increased focus on offshoring U.S. profits to go from ~25% (federal plus ave. state rate) to 15%
- Significant increase in **business-driven offshoring** recently driven by business needs to reduce costs, access global talent, etc.

What is 15% May Vary

- How you get there
- Refundable credits
- Other tax incentives (e.g., WH tax relief)
- Non-income tax incentives

What Are Other Companies Doing?

Aligning an IP competitive advantage to tax and finance

Value Chain Analysis (VCA)
An enterprise-wide VCA takes a look at what drives value in a company, importantly taking into account new and emerging trends, and opportunities to take advantage of tax efficient alternative models with respect to key value drivers such as IP.

Digital COE
An operating unit built around software development for internal use or for customer sale that can create an agile, cutting edge offering, distinguishing the business and potentially providing significant financial benefits.

Global R&D Review
Comprehensive and holistic analysis of global R&D function that considers labor pools, credits, super deductions, and other incentives as well as operational needs to design an effective global model for R&D.

Innovation Hub
An operating model that combines aspects of innovation, digitalization, internally disruptive assets into a hub that enables global organizational growth.

Data & Analytics Hub
A hub built around data acquisition, data management, and analytics, including customer data, third-party data, buy and sales-side pricing data, and other similar data generated by the company.

Connected Commerce Models
Integrated B2B connected commerce models that align supply chain management through inventory to customer interfaces, customer experience and internal functions such as pricing analytics, etc. to capture the value of your digitized commercial self.

IP Operating Models

2025 US Cross-Border Tax Summit

Triggers for IP realignment

Fact Patterns

- Outdated legacy IP Structures
- Decentralized IP Ownership
- Changing Business Models
- New Technologies
- Misalignment between allocation of IP profits, people functions and ownership/management of assets and risks
- M&A Activity

Opportunities and Considerations

Various entities may own IP based on legacy IP structures, historic global footprint or business acquisitions triggering a need to reevaluate the IP Model to align funding, development, enhancement, maintenance, protection and exploitation (DEMPE) functions, IP ownership and related governance to manage the US and foreign risks

New Technologies may create new types of IP and income flows and likely demand optimization of the existing IP Model

- How and where should new technologies be funded?
- What framework would allow agility in the technology development process while reducing tax risk?
- What substance would be required?
- Will new products and/or services be treated as product or service?
- Are there new contractual or transactional relationships?

Would the company benefit from implementing a cost sharing arrangement (CSA) for purposes of sharing development risk and resources between parties and aligning territorial rights for commercialization.

IP Models

	Key Features	Pillar 2/Global Reform layer
US IPCo	• Consolidation of IP ownership in the US – potentially driven by: - Alignment with existing business footprint and historical location of people substance in the US that can develop and manage the business global IP - More confidence in stability of US rate/FDII or ability to subsequently move IP out from under the US - Less confidence in GILTI FTC profile - IP is not of a type that can be transferred offshore (e.g., regulated industry, etc) • Consider most efficient and effective option to repatriate IP (step up in basis vs no step up in basis for US purposes) • FDII benefits may be available for IP exploited outside the US • BEAT impact on outbound payments to related and unrelated parties performing development and support services should be considered and mitigated • US IP owner attractive to foreign companies	• Still optimal structure where: - Rate differential does not justify foreign IP Co: 15% under P2 vs. FDII rate • P2 complexity on getting full IP step-up for GloBE computation purposes • Potential UTPR risk if FDII + R&D rate is below 15%
Onshore income to US but maintain IP offshore (e.g., usufruct IP structure)	• Temporary solution to have (almost) all IP returns to be taxed in the US, without having to commit IP asset to any jurisdiction • Maintain flexibility to subsequent restructure as future tax development progress • Onshoring income could take a variety of forms: US charges DEMPE fee, US is granted rights to income for a defined term (usufruct), US acts as licensee/global principal • FDII benefit may be available • Design/implementation complexity associated with IP transfer and structuring cost sharing transactions if under a cost sharing arrangement (CSA) • Legal, local tax and indirect tax considerations	• DEMPE impacted • Still viable if substance requirements met to qualify for local incentives

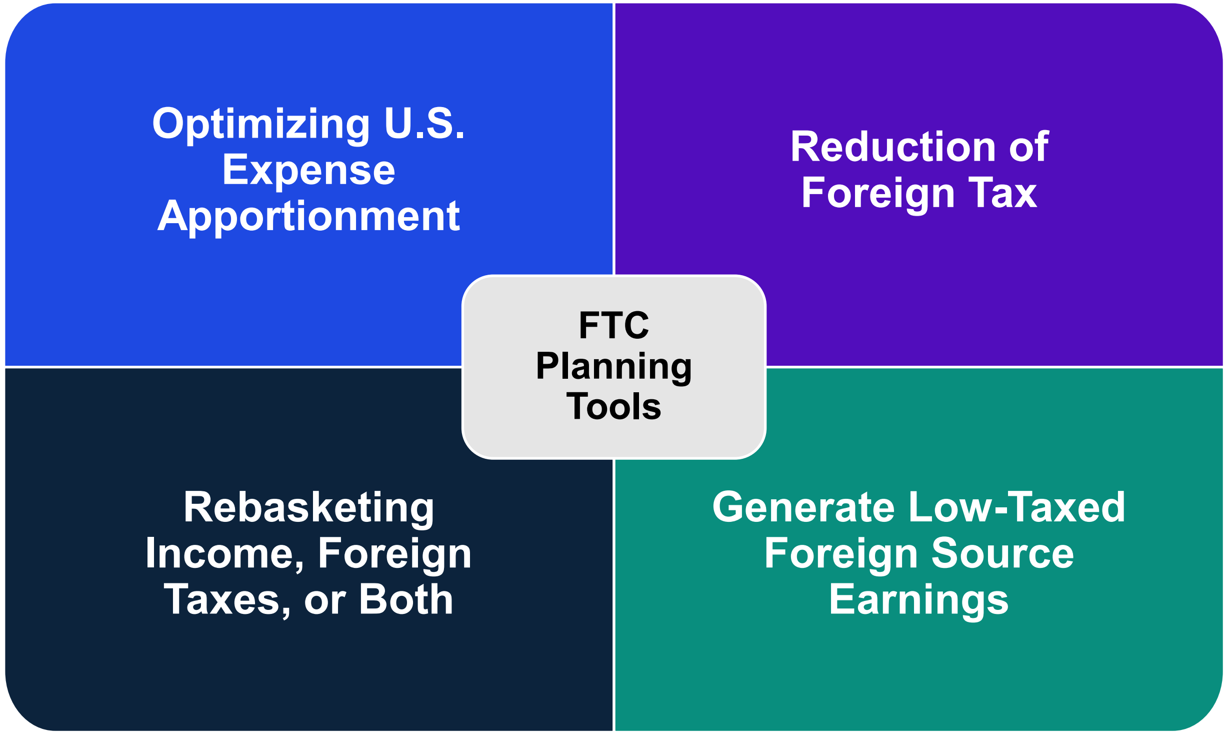
IP Models (Continued)

	Key Features	Pillar 2/Global Reform layer
Foreign IPCo	• Consolidation of IP ownership outside the US • May be driven by existing global footprint of the business or historic IP structures • Onshore vs. offshore IP ownership • Given OECD tax developments, alignment between business and IP profits/ownership is required • GILTI/Subpart F considerations associated with profits earned by the subsidiaries of US-parented multinational groups • Sourcing consideration need to be evaluated based on specific facts. • BEAT considerations for payment from US routine entities to foreign IP owner(s) • Legal, local tax and indirect tax considerations • Offshoring US IP is the only way for most companies to meaningfully reduce tax on US profits • Under the right facts, taxes US IP profits at ≈15% (as GILTI) and OUS profits at the FDII rate	• Still viable if the substance needs align with business model • Attractive for companies that want to hedge against potential US rate increase • Increased scrutiny on structuring steps to benefit from IP basis step up
Traditional CSA	• IP ownership may be aligned with territories of respective geographic markets (e.g., US and rest of world) • Alignment of CSA and cost contribution arrangements requirements under OECD principles • Allows netting for purpose of BEAT computation with respect to R&D and sharing of IP	• Same as above
Reverse CSA	• US IPCo owns economic rights for rest of the world, and Foreign IPCo owns rights for US market	

Optimizing Foreign Tax Credit Capacity

Optimizing foreign tax credit capacity

– It is expected that a QDMTT would be a foreign income tax and therefore eligible to be claimed as a FTC. The premium on FTC planning will likely increase as a result because most taxpayers will likely be subject to a QDMTT apportioned to one or more separate limitation categories (“baskets”) in which they are excess credit.



Q&A

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