



# Pillar 2 Directive

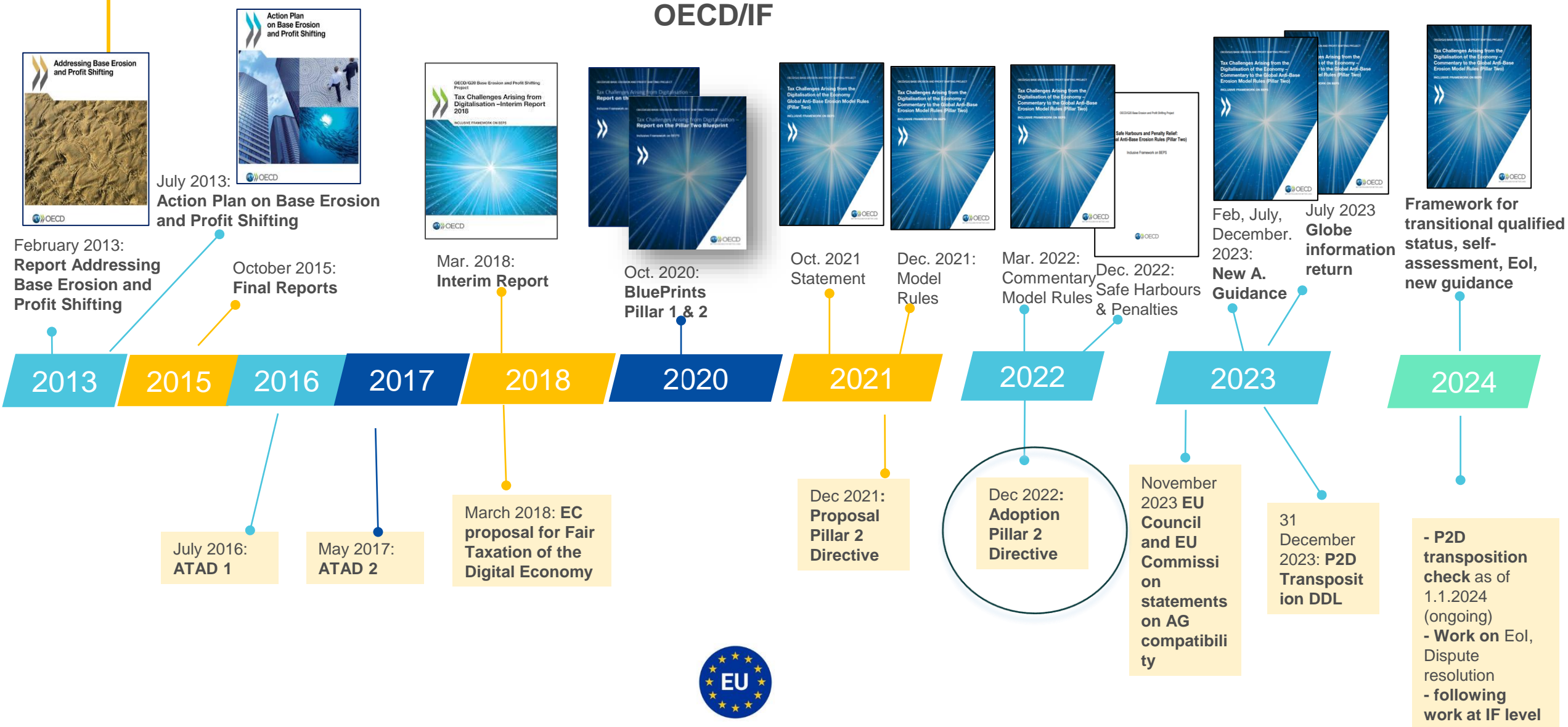
*Council Directive of 14 December 2022  
on ensuring a global minimum level of taxation for  
multinational enterprise groups and large-scale domestic groups  
in the Union*

Francesco BUNGARO  
Directorate-General for Taxation and Customs Union  
DG TAXUD

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# Introductory remarks

## Pillar 2 timeline: a process lasting more than a decade



# G20 St. Petersburg September 2013

- **Addressing Base Erosion and Profit Shifting, Tackling Tax Avoidance, and Promoting Tax Transparency and Automatic Exchange of Information**

*“50. In a context of severe fiscal consolidation and social hardship, in many countries ensuring that all taxpayers pay their fair share of taxes is more than ever a priority. Tax avoidance, harmful practices and aggressive tax planning have to be tackled. The growth of the digital economy also poses challenges for international taxation. **We fully endorse the ambitious and comprehensive Action Plan – originated in the OECD – aimed at addressing base erosion and profit shifting with mechanism to enrich the Plan as appropriate. We welcome the establishment of the G20/OECD BEPS project and we encourage all interested countries to participate. Profits should be taxed where economic activities deriving the profits are performed and where value is created.** In order to minimize BEPS, we call on member countries to examine how our own domestic laws contribute to BEPS and to ensure that international and our own tax rules do not allow or encourage multinational enterprises to reduce overall taxes paid by artificially shifting profits to low-tax jurisdictions. We acknowledge that effective taxation of mobile income is one of the key challenges. We look forward to regular reporting on the development of proposals and recommendations to tackle the 15 issues identified in the Action Plan and commit to take the necessary individual and collective action with the paradigm of sovereignty taken into consideration.”*



# 8 October 2021 Statement

- *“The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (IF) has agreed a two-pillar solution to address the tax challenges arising from the digitalisation of the economy [...]”*
- *“Pillar Two - Overall design*
- *Pillar Two consists of:*
- ***two interlocking domestic rules** (together the Global anti-Base Erosion Rules (GloBE) rules): (i) **an Income Inclusion Rule (IIR)**, which imposes top-up tax on a parent entity in respect of the low taxed income of a constituent entity; **and (ii) an Undertaxed Payment Rule (UTPR)**, which denies deductions or requires an equivalent adjustment to the extent the low tax income of a constituent entity is not subject to tax under an IIR; and*
- *a treaty-based rule (the Subject to Tax Rule (STTR)) that allows source jurisdictions to impose limited source taxation on certain related party payments subject to tax below a minimum rate. The STTR will be creditable as a covered tax under the GloBE rules.”*



## Pillar 2 - Design elements EU Directive

- Point of departure **OECD Model Rules**

OECD  
elements



- EU Directive is **legal instrument with specific design elements**
- Compliance with the **fundamental freedoms**:
  - application IIR to domestic low-taxed entities
  - application IIR to large-scale domestic groups

EU  
elements



- Qualified Domestic Top-Up Tax (QDTT)
- Exceptions from the mandatory obligation of the IIR and UTPR
- Equivalence

Other  
elements

# EU Pillar 2 Directive («P2D»)

- Chapter 1 **General Provisions**
- Chapter 2 **IIR and UTPR**
- Chapter 3 **Computation of the Qualifying Income or Loss**
- Chapter 4 **Computation of Adjusted Covered Taxes**
- Chapter 5 **Computation of the Effective Tax Rate and the Top-up Tax**
- Chapter 6 **Special rules for Corporate Restructuring and Holding Structures**
- Chapter 7 **Tax Neutrality and Distribution Regimes**
- Chapter 8 **Administrative Provision**
- Chapter 9 **Transition Rules**
- Chapter 10 **Final Provisions**

# General Provisions



# Scope

Directive applies if:

1

## Group requirement

- One or more Constituent Entities (CEs) located in the European Union that are members of an **MNE group** or a **large-scale domestic group**.

2

## Revenue threshold

- An **annual revenue of at least 750 million euros** based on consolidated financial statements in at least 2 of the 4 consecutive fiscal years.

3

## Location EU

- IIR: UPE, IPE or POPE is located **in a EU MS**
- UTPR: CE **is located in a EU MS** and there is no qualifying IIR

# Top-up tax

# Calculation top-up tax

**Top-up tax = (Top up tax % x Excess Profit) – Qualified Domestic Top-up Tax**

**Top up tax % =**  
15% - Effective Tax Rate

**Excess Profit =**  
Qualifying Income - Substance-based income exclusion

**Effective Tax Rate (ETR) = Covered Taxes / Qualifying Income**

## Covered Taxes:

- Starting point = **current tax expenses accrued in financial statements**
- Adjustments:
  - i) bring taxes in line with **Pillar 2 purposes**
  - ii) **allocation rules** for taxes
  - iii) mechanism to address **temporary differences**
  - iv) **Qualifying Loss Election**
  - v) mechanism for **post-filing adjustments** and **tax rate changes**

## Qualifying Income:

- Starting point = **financial accounting net income or loss**
- Adjustments:
  - i) financial accounting income
  - ii) exclusion **International Shipping**
  - iii) **allocation rules** for income (relating to PE's, and Flow-through Entities)

# Substance-based income exclusion

**5% eligible payroll costs of eligible employees + 5% carrying value of eligible tangible assets**



## Eligible Payroll Costs not include:

- Costs that are capitalised and included in the carrying value of **Eligible Tangible Assets**
- Costs related to **International Shipping Income**



## Eligible Tangible Assets are:

- Property, plant and equipment;
- Natural resources;
- A lessee's right of use of tangible assets;
- A licence or similar arrangement from the government for the use of immovable property or exploitation of natural resources that entails significant investment in tangible assets.

## Eligible Tangible Assets not include:

- Carrying value of property that is held for **sale, lease or investment**
- Carrying value of tangible assets related to **International Shipping Income**

- Special rules for allocation of Eligible Payroll Costs and Eligible Tangible Assets to **PEs and Flow-through Entities**
- **Investment entities** excluded and **stateless CEs** calculated separately.



# IIR, UTPR and QD(M)TT

# Pillar 2 – GloBE rules (IIR and UTPR)

**GloBE Rules:**  
common measures for the minimum effective  
taxation in the form of:

## Income Inclusion Rule (IIR)

- Imposing **top-up tax in respect of the low taxed income** of a constituent entity of an MNE group or a large-scale domestic group.  
→ Application IIR by **the parent entity**

## Undertaxed Payments Rule (UTPR)

- **Backstop to the IIR** and applies in situations where there is no qualifying IIR.  
→ Application UTPR by **other constituent entities**

# Income Inclusion Rule (IIR)

## Application of the IIR by:

- **Ultimate Parent Entity (UPE):** an entity that owns a Controlling Interest in any other Entity and is not owned by another Entity
- **Intermediate Parent Entity (IPE):** CE that owns an Ownership Interest in another CE in the same MNE Group
- **Partially-Owned Parent Entity (POPE):** CE that owns an Ownership Interest in another CE of the same MNE Group and has more than 20% of the Ownership Interest in its profits held by third parties.

## EU Fundamental Freedoms:

- IIR applies to **both domestic and foreign low-taxed CEs (as well as to large-scale domestic groups).**

## Ordering rules:

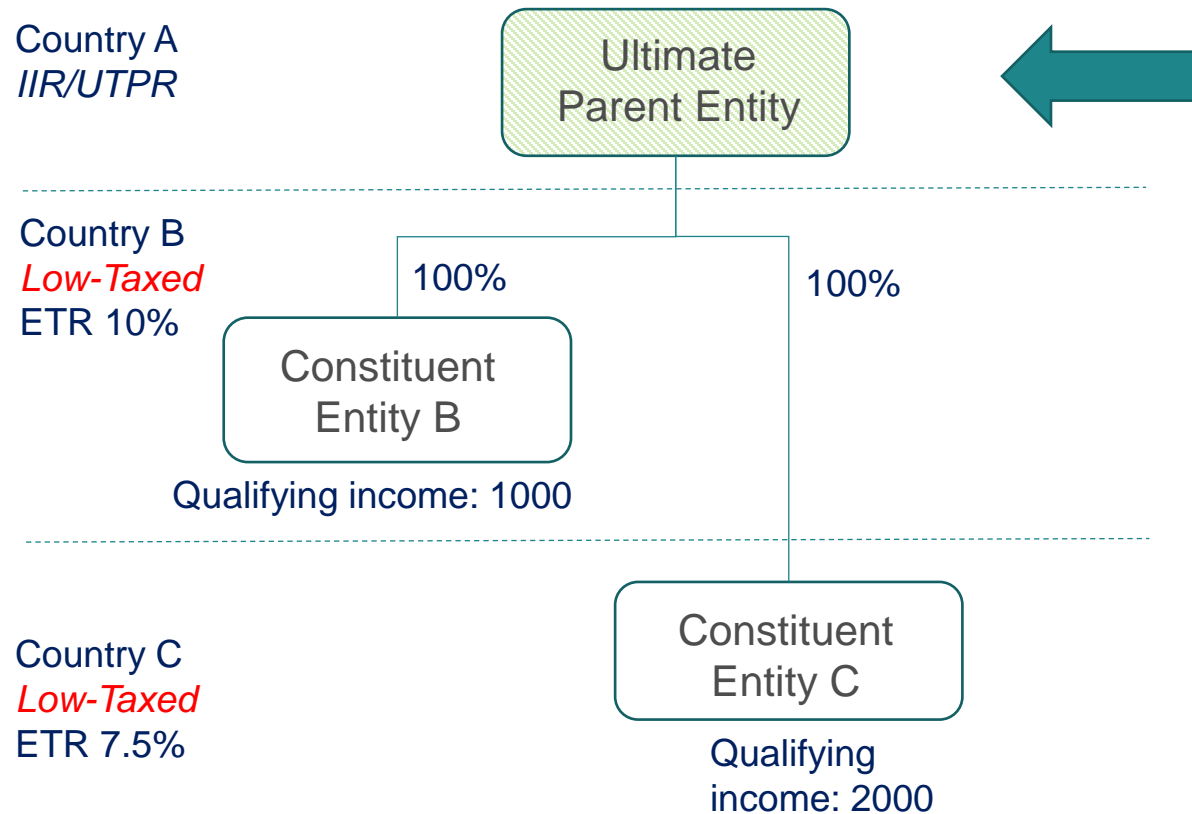
- **Top-down Approach:** give priority to the UPE or the IPE with the controlling interest at the top of the ownership chain to apply the IIR
- **Split-ownership:** push-down the primary obligation to apply the IIR to the POPE

## Mechanisms:

- **Allocation:** top-up tax low-taxed CE multiplied by parent entity's allocable share in such top-up tax
- **IIR Offset Mechanism:** reduction of the Top-up Tax by an Upper-Tier Parent Entity where that amount has already brought into charge under a Qualified IIR applied by a Lower-Tier Parent Entity (so-called '*Bottom-up Approach*')

# Income Inclusion Rule (IIR)

## Example IIR:

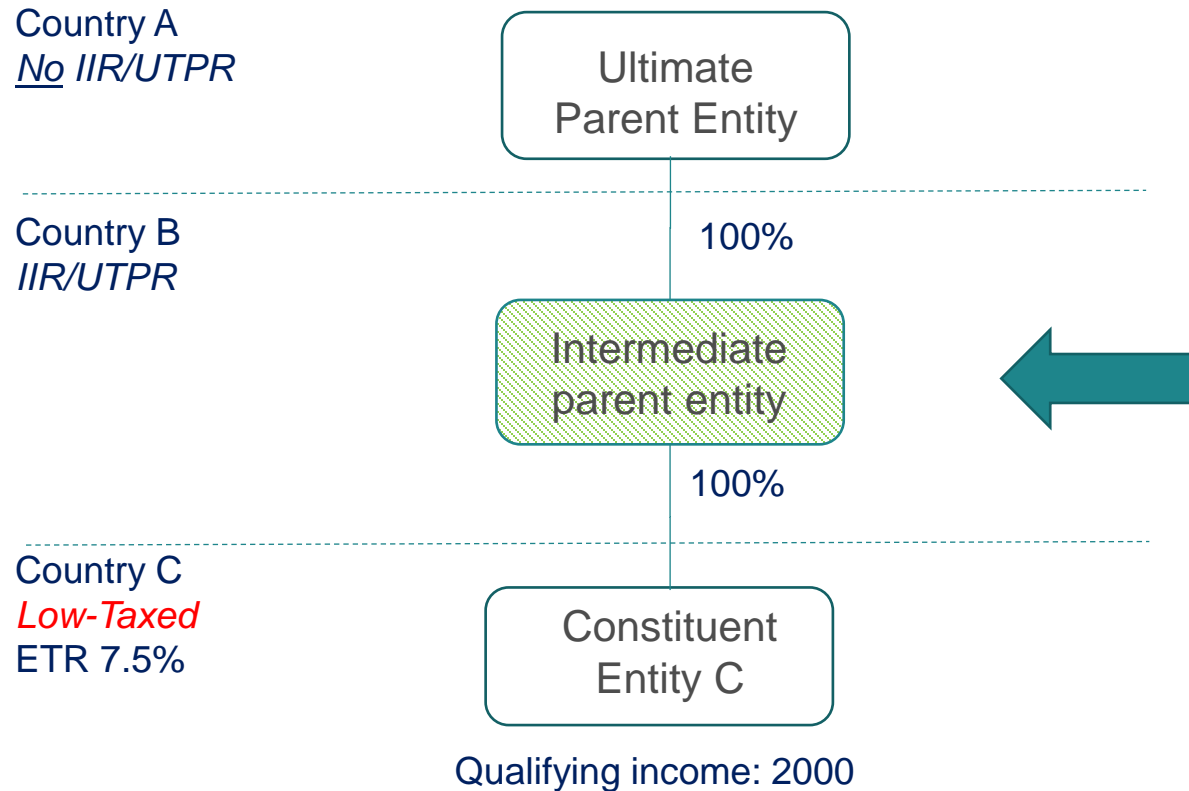


- The UPE is located in a jurisdiction that applies the IIR
- **Effective tax rate** Country B: 10%  
**Effective tax rate** Country C: 7.5%
- **Top-up tax** Country B: 50  
[ $1000 * (15\% - 10\%)$ ]  
**Top-up tax** Country C: 150  
[ $2000 * (15\% - 7.5\%)$ ]
- **UPE is subject to the IIR in relation to CE B: 50 and CE C: 150**



# Income Inclusion Rule (IIR)

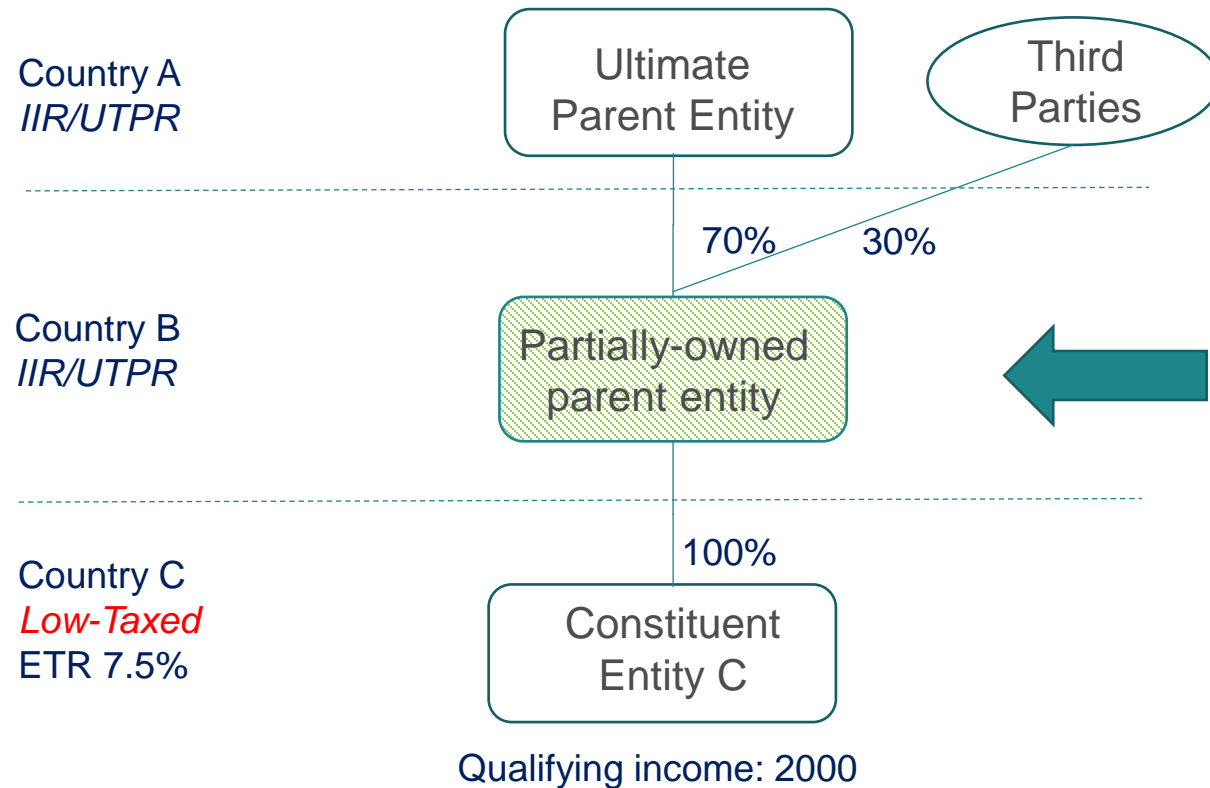
## Example IIR – Intermediate parent entity (IPE):



- The UPE is located in a jurisdiction that does not apply the IIR
- **Effective tax rate** Country C: 7.5%
- **Top-up tax** Country C: 150  
[ $2000 * (15\% - 7.5\%)$ ]
- **IPE is subject to the IIR in relation to CE C: 150**

# Income Inclusion Rule (IIR)

## Example IIR – Partially-owned parent entity (POPE):



- Through the **Split-ownership rule**, **not the UPE** but the POPE is subject to IIR top-up tax
- **Effective tax rate** Country C: 7.5%
- **Top-up tax** Country C: 150  
[ $2000 * (15\% - 7.5\%)$ ]
- **POPE is subject to the IIR in relation to CE C: 150**

# Under Taxed Payments Rule (UTPR)

## Subject to the UTPR :

- CEs located in the EU in relation to (domestic or foreign) low-taxed CEs.
- Not apply to CEs that are an **Investment Entities**.

## Ordering rules:

- Any top-up tax under Qualified IIR related to (domestic or foreign) low-taxed CEs will have priority.

## Allocation mechanism:

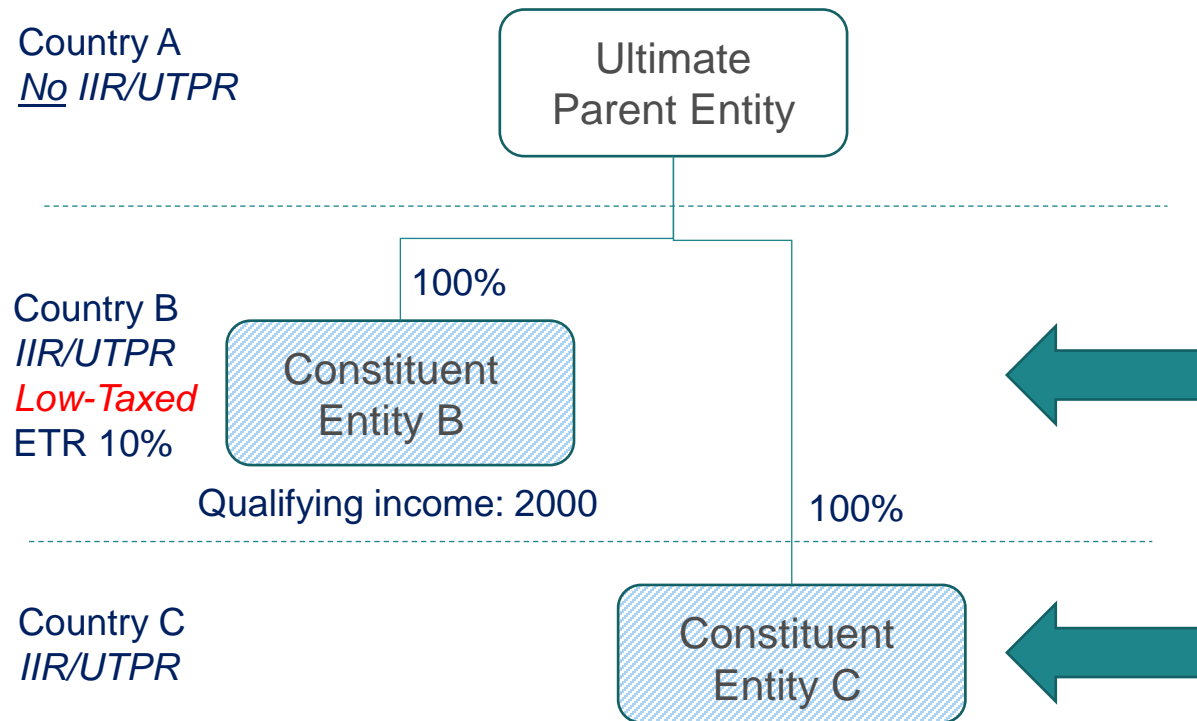
### Inclusion Ratio:

- Allocation among the UTPR jurisdictions based on the **UTPR percentage**:

$$50\% \frac{\text{Number of Employees in the jurisdiction}}{\text{Number of Employees in all UTPR jurisdictions}} + 50\% \frac{\text{Tangible assets in the jurisdiction}}{\text{Tangible assets in all UTPR jurisdictions}}$$

# Application of UTPR

## Example UTPR across the Group:



- The UPE is located in a jurisdiction that **does not** apply the IIR
- **Effective Tax Rate** Country B: 10%
- **Top-up Tax** Country B: 100  
[ $2000 * (15\% - 10\%)$ ]
- CE B and CE C are subject to UTPR top-up tax of 100 in relation to CE B
- **Allocation** UTPR top-up tax 100 among CE B and CE C based on number of employees and tangible assets



# Some more “EU” elements

# Interaction with OECD Model Rules and other related Documents

## EU Pillar 2 Directive



## OECD Model Rules and other related Documents



## Recital 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.”

# Recital 24

- *In implementing this Directive:*
  - *Member States **should use the OECD Model Rules and the [...] Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two) [...] 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[...].***

# Recognition of AGs

- Commission and Council statements issued on 9 November 2023:
  - **Commission:** “The Commission is of the view that **the administrative guidance** endorsed by the OECD/G20 Inclusive Framework on BEPS in December 2022, February 2023 and July 2023 **is compatible with [...] (the Pillar Two Directive)**. The Commission encourages all Member States to proceed swiftly with the transposition of the Pillar Two Directive and will continue to support the efforts of Member States in this regard.”
  - **Council:** “[...] notes the statement by the European Commission and **welcomes**, in particular, **its view that the administrative guidance** endorsed by the Inclusive Framework in December 2022, February 2023 and July 2023 **is compatible with the Pillar Two Directive**”
  - **recognizes the need to ensure consistency with the aforementioned documents when applying the Pillar Two Directive [...]** by Member States in order to avoid non-alignment or applicability of diverging standards;
  - **recalls that the recitals of the Pillar Two Directive** refer to the use of the guidance developed by the Inclusive Framework as a source of illustration or interpretation, and
  - **notes the intention of the EU Member States to follow this guidance when transposing the Pillar Two Directive** into their national law in order to avoid divergences and inconsistencies in interpretation of the provisions of that Directive.



# Safe Harbours (Art. 32 P2D)

**At the election of the filing CE, the top-up tax due shall be deemed to be zero, if the CE's fulfils the conditions of a **qualifying international agreement on Safe Harbours****



- On **20 December 2022**, the OECD issued the *Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two)*.
- This document includes details of two safe harbours (CBCR TSH and Simplified calculations PSH) and penalty relief for the Pillar Two GloBE rules.
- On 17 July 2023 other 2 Safe Harbours were agreed:
  - UTPR Safe Harbour
  - QDMTT Safe Harbour

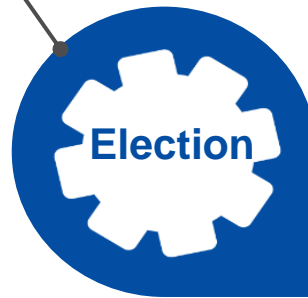
# WPIV

- DG TAXUD offered assistance to MS during the transposition phase
- 10 Working Party IV meetings during 2023 dealing with +300 questions raised
- Q&As published on the COM website
- They represent the outcome of informal reflections of the Commission Services and should, as such, not be interpreted as binding on the European Commission and its Member States.

# Art. 11 - Qualified domestic top-up tax (QDTT)

## 1) Election

- Member State can **elect to apply the top-up tax domestically** to constituent entities located in their territory.

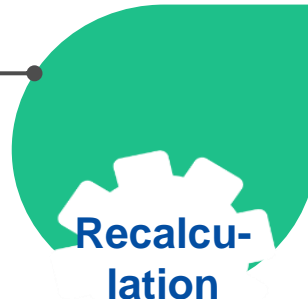


## 2) Reduction top-up tax

- The top-up tax shall be **reduced** by qualified domestic top-up tax.
- It provides that the **top-up tax could be charged locally**.

## 3) Recalculation

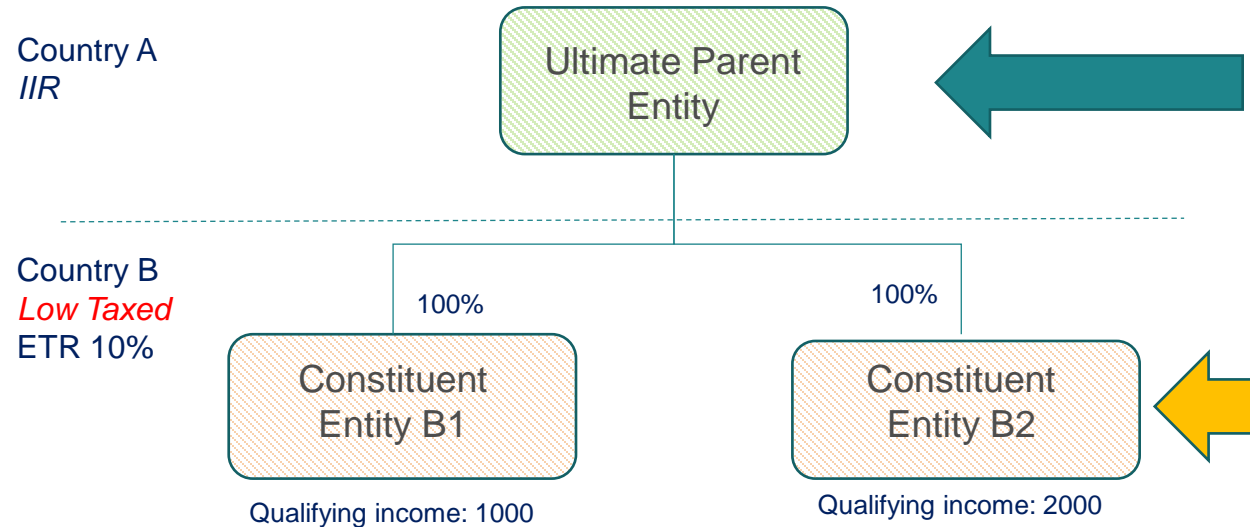
- If **not fully paid within the 4 following fiscal years**, the QDTT not paid shall be added to jurisdictional top-up tax.



## 4) Notification

- Member States shall notify the Commission of this election **within 4 months of the adoption of their national laws**.

# Qualified domestic top-up tax (QDTT)



- The UPE is located in a jurisdiction that applies the IIR
- Country B applies the QDTT. CE B1 and CE B2 are **subject to QDTT** :
  - CE B1: EUR 50 ( $1000 * (15\% - 10\%)$ )
  - CE B2: EUR 100 ( $2000 * (15\% - 10\%)$ )
- UPE is subject to IIR top-up tax relating to CE B1 and CE B2. **The QDTT levied in Country B reduces the IIR top-up tax in Country A.**

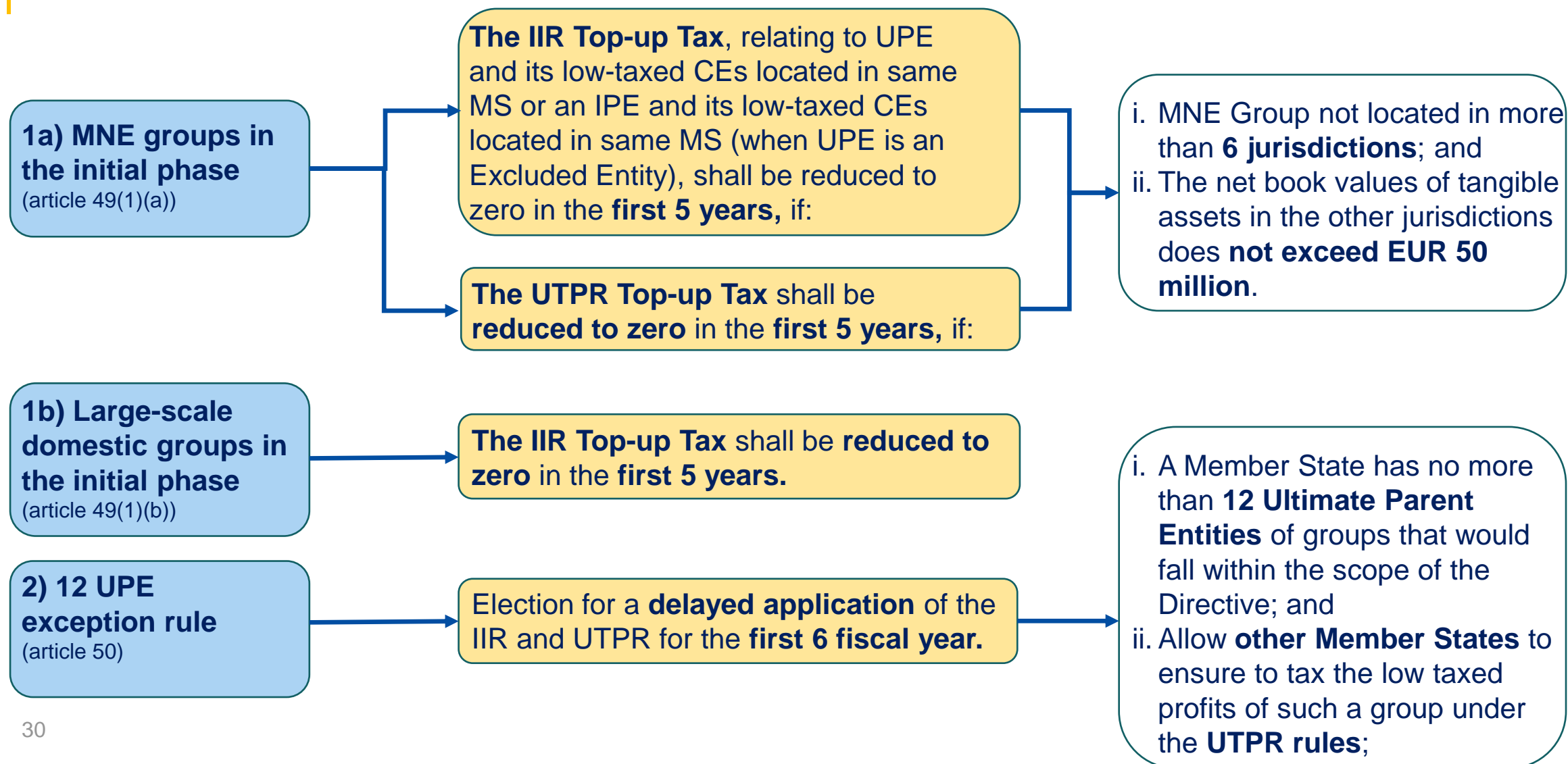
# Art. 11(3) – Clawback mechanism

- Where the amount of qualified domestic top-up tax for a fiscal year:
  - has not been paid within the four fiscal years following the fiscal year in which it was due,
  - the amount of qualified domestic top-up tax that was not paid shall be added to the jurisdictional top-up tax computed in accordance with the rules on the computation of the top-up tax (Article 27(3)) and
  - shall not be collected by the Member State which made the election pursuant to paragraph 1 of this Article.
- New AG is expected (see AG of July 2023 on QDMTT payable):

*“20.3 The Inclusive Framework will consider further Administrative Guidance to clarify the meaning of paid or payable in the context of this guidance and to address cases where the QDMTT is not paid within four Fiscal Years or not payable under the GloBE Rules and develop a mechanism of re-computation with the purpose of providing guidance that minimizes the potential for double taxation and double non-taxation under the GloBE Rules.”*



# Exceptions from the Mandatory Obligation of the IIR and UTPR



# Art. 52 – Assessment of equivalence

## Conditions for equivalence (of a third-country jurisdiction): delegated acts by the Commission

### i. Set of rules

Enforces a **set of rules** in accordance with which the parent entity of an MNE group shall **compute and collect** its allocable share of top-up tax in respect of the low-taxed constituent entities

### ii. Rate

Establishes a **minimum effective tax rate of at least 15%** below which a constituent entity is considered as low-taxed

### iii. Jurisdictional Blending

Only allows the blending of income of entities located within the same jurisdiction

### iv. Relief

**Provides for relief for any top-up tax that was paid** in a Member State in application of the IIR

# Transposition checks

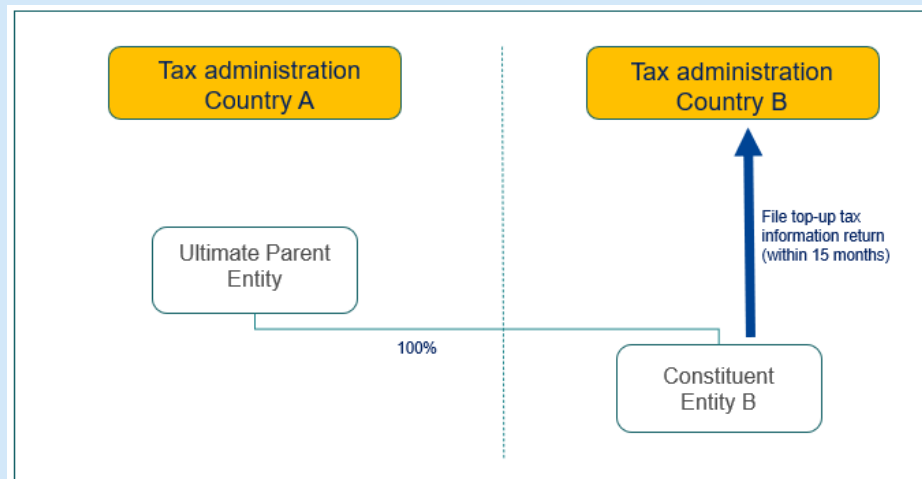
- **All 27 Member States have adopted measures implementing the Pillar 2 Directive.** The EU is therefore implementing the OECD Pillar 2 agreement in full.
- The reasoned opinions launched last year were for **reasons of non-communication** in instances in which some Member States had experienced a delay in transposing the Directive into national legislation.
- Once Member States notify their transposing legislation (which all, including those subject to formal infringement procedures have now done), the Commission begins – per normal practice – a transposition check ensuring that national legislation is both complete and conform with the EU Directive.
- Open procedures can be subsequently closed as these checks are completed. This can take some time and there is no specific prescription on when or in what instance the Commission then follows through with next formalized steps.
- What is important is to stress that the Pillar 2 Directive has been transposed in all EU27, and that national legislation to this effect is in place.

# Next steps

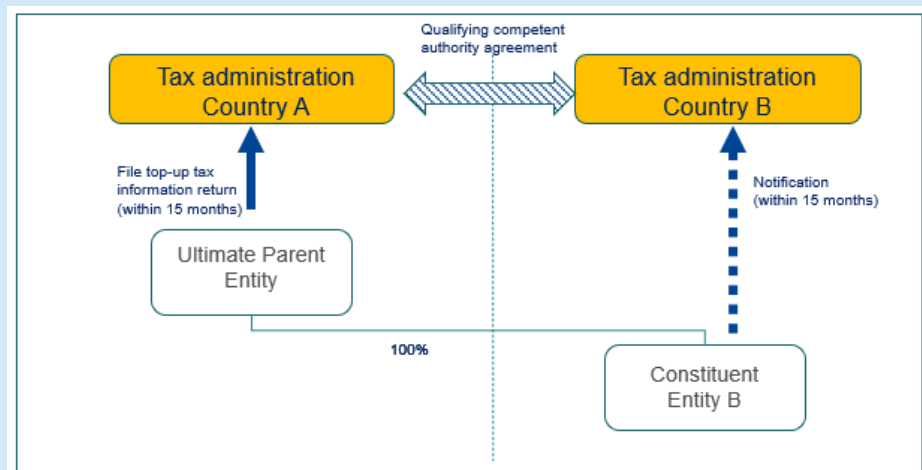
- Exchange of Information
- Dispute Resolution
- New developments at IF level
- Fiscalis project with tax administration

# Filing obligations (art. 44 P2D)

## 1. CE files top-up information tax return:



## 2. UPE or designated filing entity files top-up information tax return:



# EOI – DAC9

- 8<sup>th</sup> amendment to the Directive on Administrative Cooperation (2011/16/EU) based on a proposal by the EC of 28 October 2024
- Political agreement reached at the March 2025 ECOFIN
- Based on Pillar 2 MCAA
- Will allow for Central filing within the EU
- GIR as recently updated must be used by MNEs and LSDGs with JVs abroad
- First reporting by 30 June 2026 (art. 51 P2D) – first exchange no earlier than 1 December 2026;



# DRM

- Discussion ongoing in both WP1 and WP11
- In the EU:
  - **DRM Directive:** scope limited to “[...]disputes between Member States when those disputes arise from the interpretation and application of agreements and conventions that provide for the elimination of double taxation of income and, where applicable, capital.”
  - Competence and role of the Court of Justice of the EU (CJEU) :
    - Pillar 2 is EU law.
    - Compulsory jurisdiction of the CJEU in the matters of interpretation of EU law.

# Upcoming developments at IF level of interest for the EU

- Guidance on **related benefits**
- Discussion on **Permanent Safe harbours**
- **Full legislative review**
- Other **new AGs** and future **updates of the GIR**

# Many thanks for your attention!

Francesco.bungaro@ec.europa.eu