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TAXES COMMITTEE · PANEL SESSION

Pillar Two: From Policy and Deal to Docs

How Pillar Two considerations are reflected in purchase agreements, joint venture agreements, credit facilities and other transaction documents

Monday 5 October 2026 · 11:15–12:45 · Room B1 1, Level 0

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Roadmap & running order

- Opening & framing
- Block 1 — Side-by-Side / UPE Safe Harbour
- Block 2 — Scope, exclusions & practical frictions
- Closing — From deal to docs
- Q&A

The Side-by-Side / UPE Safe Harbour

1

The Inclusive Framework agreed by consensus a package of measures relating to the Global Minimum Tax on 5 January 2026 designed to accommodate different minimum tax regimes

Political context

Material simplifications

Greater alignment of substance-based tax incentives with QRTCs

Side-by-Side system

Focus on stabilisation / mutual recognition

- Reconciling two systems within the limits of the existing framework
- Focus on material risks of low tax outcomes
- Recognition that multiple systems create imbalances

Reinforcing effectiveness of QDMTTs

- QDMTTs unaffected
- Conditional taxes not recognised as covered taxes
- Integrity measures
- Further simplifications for administrations and MNEs applying QDMTTs to be explored

Stocktake to be concluded by 2029

- Ongoing commitment to address risks to the level playing field or BEPS
- Conclusions to be based on evidence of emerging risks
- Commitment to take action, including targeted action, where necessary

How Colombia got here

I. 8 October 2021, Colombia joined the Inclusive Framework

II. Law 2277 of 2022 introduced two separate Colombian tax provisions inspired by the Two-Pillar OECD solution:

- Article 20-3 of the Colombian Tax Code created a Significant Economic Presence nexus for certain non-residents selling goods or providing services to Colombian customers or users.
- Article 240(6) created a 15% minimum adjusted tax rate based on adjusted financial / accounting profit.

III. Colombia has not implemented the Pillar Two GloBE Model Rules through a qualified Income Inclusion Rule, Undertaxed Profits Rule or Qualified Domestic Minimum Top-up Tax.

IV. The January 2026 Side-by-Side Safe Harbour applies to the United States. It deems only the GloBE top-up tax (IIR / UTPR) to be zero for US-parented groups. It does not exempt American entities from Colombia's ordinary taxes.

V. Colombia submitted an application to the OECD to be treated as an eligible jurisdiction under the UPE Safe Harbour.

Pillar Two: the three layers

1 QDMTT

Qualified Domestic Minimum Top-up Tax

The jurisdiction where the low-taxed income arises gets the first opportunity to collect the top-up tax.

2 IIR

Income Inclusion Rule

If the local jurisdiction does not collect enough tax, the parent jurisdiction can generally impose top-up tax.

3 UTPR

Undertaxed Profits Rule

Top-up tax can be imposed in other jurisdictions where the MNE operates, generally where it has not been collected under QDMTT / IIR.

Under the January 2026 rules, an MNE can elect the UPE Safe Harbour where its Ultimate Parent Entity is located in a jurisdiction with a Qualified UPE Regime.

Eligibility test: a Qualified UPE Regime

Applies for fiscal years commencing on or after 1 January 2026. A jurisdiction has a Qualified UPE Regime only if its eligible domestic tax system was enacted and in effect on 1 January 2026 and satisfies three conditions:

20%

STATUTORY RATE

At least a 20% statutory nominal corporate income tax rate, after relevant preferential adjustments.

15%

MINIMUM TAX

A QDMTT or a corporate alternative minimum tax based on financial-statement income, at a nominal rate of at least 15%, applying to a substantial portion of aggregate in-scope multinational income.

<15%

NO MATERIAL RISK

No material risk that in-scope groups headquartered there are effectively taxed below 15% on the overall profits of their domestic operations.

What it does — and does not do

PROTECTS

- If the UPE is in a jurisdiction with a Qualified UPE Regime and the election is made, top-up tax for the UPE jurisdiction is deemed zero for the UTPR.
- It protects the headquarters jurisdiction from other implementing jurisdictions collecting Pillar Two top-up tax attributable to it.

DOES NOT

- Switch off the IIR or UTPR for constituent entities located outside the UPE jurisdiction.
- Affect Qualified Domestic Minimum Top-up Taxes.
- Provide a worldwide exemption for the multinational group.

The policy objective is narrow but important: to prevent other implementing jurisdictions from collecting Pillar Two top-up tax attributable to the (Colombian) headquarters jurisdiction.

Colombia has a substantive case

Colombia has a substantive case for recognition of its domestic system for UPE Safe Harbour purposes.

35%

General corporate income tax rate

Comfortably above the OECD 20% statutory-rate threshold.

15%

Article 240(6) alternative minimum tax

A corporate alternative minimum tax that starts from financial / accounting profit.

The minimum tax rate

- Pillar Two establishes a 15% global minimum tax for in-scope multinational groups and uses a jurisdictional effective-tax-rate calculation under the GloBE Rules.
- The Colombian minimum tax shares important structural elements: a 15% floor, a financial / accounting-profit starting point, and an additional tax when the adjusted rate falls below 15%.
- **However, Article 240(6) is not a Qualified Domestic Minimum Top-up Tax and does not reproduce the GloBE computation.**
- **This does not automatically prevent UPE Safe Harbour eligibility: OECD paragraph 13 expressly allows a corporate alternative minimum tax based on financial-statement income to qualify without meeting the requirements of a QDMTT.**

Adjustments

ADJUSTED PROFIT (UD)

Accounting or Financial Profit Before Tax

(+) Permanent Differences that Increase Taxable Income

(-) Non-Taxable Income and Non-Taxable Occasional Gains

(-) Income Recognized under the Equity Method

(-) Net Occasional Gains

(-) Exempt Income

(-)Tax Loss Carry forwards

_____

Adjusted Profit

Exemptions

- ✓ **Exempt income arising from the application of Double Taxation Treaties and the Andean Community Agreement.**
- ✓ **Income received under the Colombian Holding Company (CHC) regime.**
- ✓ **Profit from the sale of land intended for the construction of social-interest and priority-interest housing, and profit from the first sale of such housing.**

Exclusions

- State and Mixed Economy Companies with a state share of more than 90% dealing with games and lotteries and beer and liquor monopolies.
- Special Economic and Social Zones (ZESE): La Guajira, Norte de Santander and Arauca.
- Areas Most Affected by the Armed Conflict (ZOMAC).
- EXCLUSIONS FOR COMPANIES NOT REQUIRED TO FILE THE COUNTRY-BY-COUNTRY REPORT UNDER TRANSFER PRICING RULES.
- Hotels, ecotourism and agritourism.
- Book publishing companies.
- Legal entities performing concession agreements and public-private partnership agreements.

The exclusion in question: Article 32

Article 32 concession and public-private partnership taxpayers

Expressly excluded without a Country-by-Country-report override. Article 32 applies a special intangible-asset model to concession and public-private partnership contracts incorporating construction, administration, operation and maintenance stages.

- **This Article 32 exclusion is particularly important for the OECD substantial-portion test, because its materiality must be measured against the aggregate Colombian income of in-scope multinational groups.**

Main areas requiring OECD review

The statutory exclusions are not automatically fatal.

PARAGRAPH 15

Substantial-portion test

Asks whether the alternative minimum tax applies to a substantial portion of the aggregate income of in-scope multinational groups.

PARAGRAPHS 16–18

Material-risk test

Apply a holistic, aggregate and over-time material-risk test to the overall domestic effective tax rate.

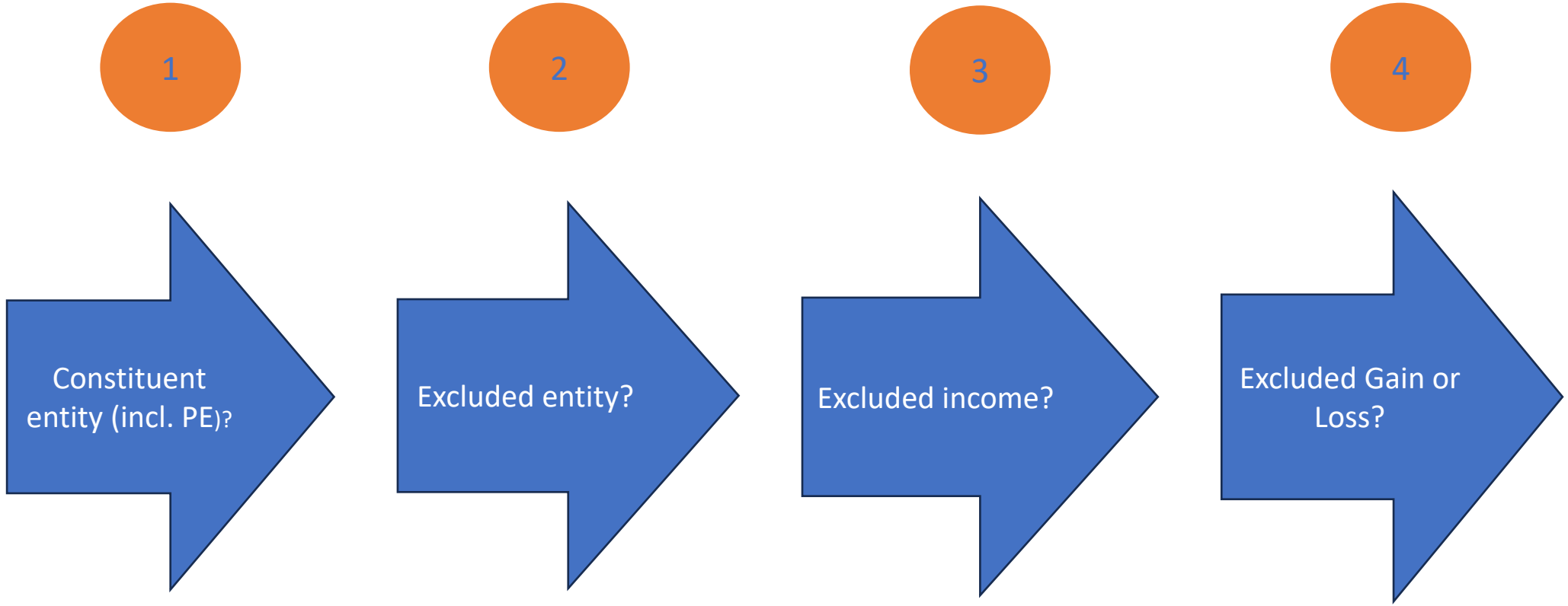
Scope, exclusions & practical frictions

2

Target identification and pillar II strategy: why is this crucial?

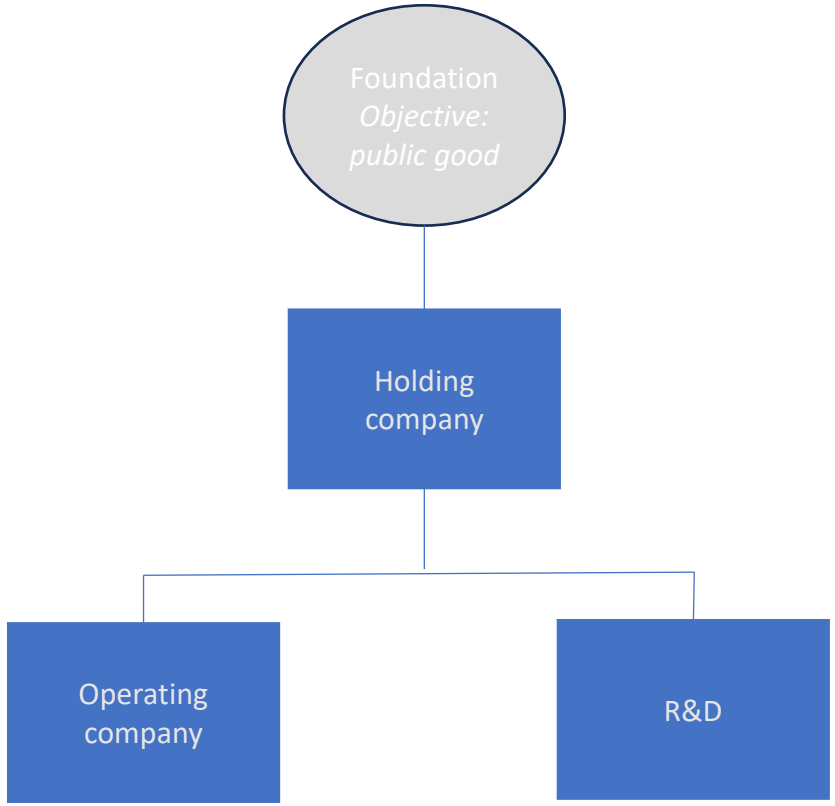
- Potential impact on
  - the tax effects related to the transaction in itself,
  - pillar II exposure post closing,
  - historic pillar II exposure, and
  - compliance requirements

Back to basics: Scope



Excluded entities – Example: ”Non Profit Organisations”/fund structures

- Which entities qualify as “NPO”’s?
- Which entities are excluded?
- Under which conditions?
- What is the impact on the group?



Excluded income/CGT's – Example: shipping

Pillar II	Global 15% top-up tax - Shipping Exclusion Mixed services - Qualified Ancillary International Shipping
Danish CIT	Exemption under tonnage tax (upon domestic conditions/subject to EU State Aid rules)
Pillar II CGT exemption	Sale of a ship used for the transportation of passengers or cargo in international traffic if the ship has been held for use by the Entity for a minimum of one year
CGT exemption - scope	Accounting treatment IAS 2 vs. IAS 16 - Consolidated accounts
Danish pillar II implementation	has been owned by the Entity for a minimum of one year

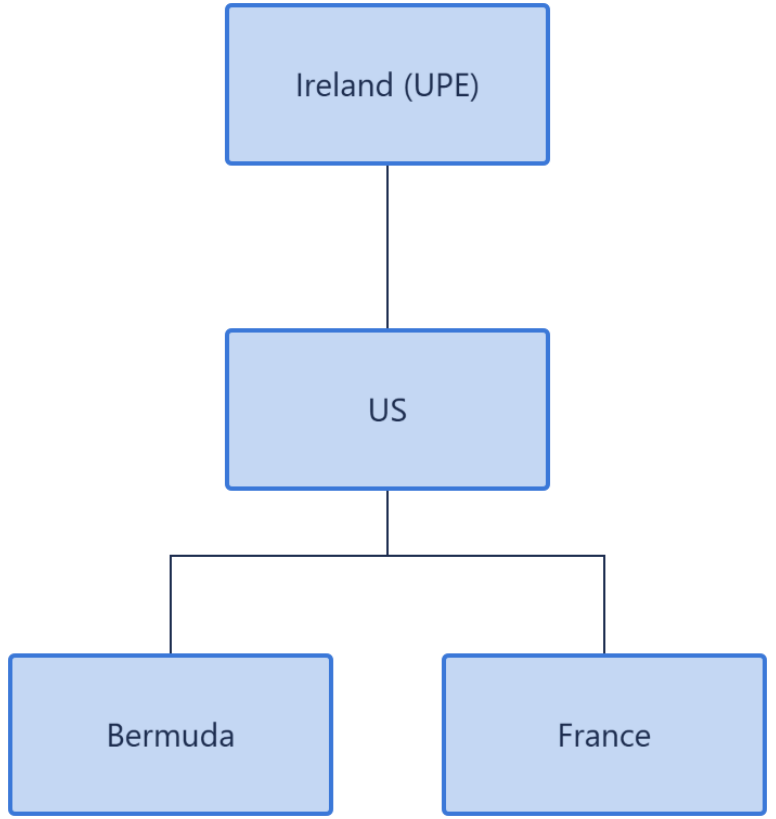
How to mitigate Pillar II risks in M&A transactions?

- Awareness in due diligence phase
- Early modelling and scenario analysis is key to identify potential risks, anticipate compliance needs and to determine the tax exposure
- Identify possible routes for early certainty (e.g. advance rulings)
- Tailored drafting
    - Standard tax clauses might refer solely to CIT
    - Indemnification post closing may be considered
    - Coordination between the buy and sell side on pillar II compliance and filing

The United States

Sandwich Structures Remain a Pillar Two Issue

- Facts
  - Ireland owns 100% of US Co share, which owns 100% of Bermuda Co and France Co shares
  - Ireland has an IIR
  - US Co has an ETR of 5% under GloBE Rules due to refundable/direct pay energy tax credits (calculated with the S-b-S election
  - Bermuda Co has an ETR of 0% under GloBE Rules and no QDMTT
  - France has an ETR of 20% under GloBE Rules
  - Assume Bermuda Co and France Co do not have subpart F income, and all income is subject to NCTI
- Irish UPE will apply its IIR downward to top up US and Bermuda
- US will apply its NCTI regime



The United States

Sandwich Structures Remain a Pillar Two Issue

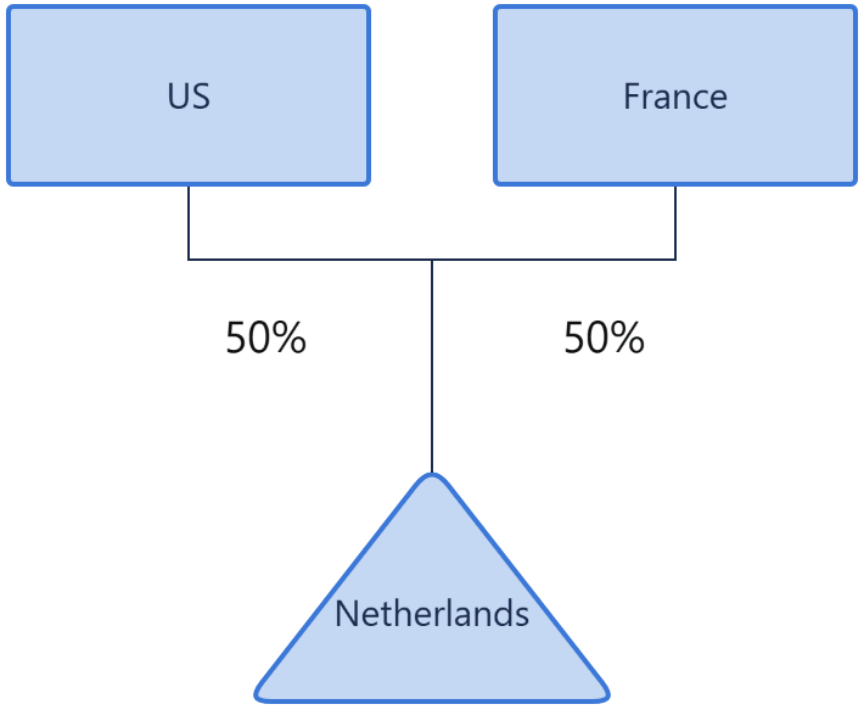
US practical issues

- NCTI versus Pillar Two
  - Blending
  - Carry forwards of losses and foreign tax credits
  - Substance based exclusion
  - NCTI tax credit haircut
- How to allocate the NCTI taxes?
  - February 2023 guidance would have allocated to Bermuda Co

The United States

Side-by-Side and Pillar Two Joint Ventures

- Facts
  - US Co and France Co each own 50% of a pass-through joint venture
  - US Co elected side-by-side treatment
  - France Co applies an IIR
- Discussion



Looking Ahead

Tax Certainty with Overlapping Taxes

- How can disputes be timely resolved?
- How can disputes over interpretations be resolved?
- Are disputes (potentially) more problematic in a UTPR world?

EU Implementation of side-by-side framework

I. EU Approach

I. The Pillar Two rules were first implemented in the EU through the **EU Pillar Two Directive** (2022/2523)

II. On 12 January 2026, the European Commission published **Notice C/2026/253** in the Official Journal of the EU, formally acknowledging the side-by-side package, including the SbS System, and confirming its application in the context of the EU Pillar Two Directive

III. Legal basis for integration relies on **Article 32** of the EU Pillar Two Directive which provides for zero top-up tax where:

> "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 these purposes, a qualifying international agreement 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"

II. Irish Approach

I. 5 January 2026, the Irish Department of Finance published a statement welcoming the Side-by-Side package

II. The Minister for Finance also made public statements that Ireland would implement legislation in the upcoming Finance Bill to enact the SbS package with **retrospective effect from 1 January 2026**

III. Legality of retrospective application?

QDMTT – What accounting standard to use?

I. **Original Rule**

   I. The ability to calculate QDMTT using the local financial accounting standard **(LFAS) disapplied** if the fiscal year of one or more entities in the jurisdiction did not match the **fiscal year** of the consolidated financial statements.

   II. In those cases, the QDMTT calculation defaulted to using the **UPE financial accounting standard**.

II. **Practical issues**

   I. Potential for need to switch the accounting standard used in the case incorporations, acquisitions or mergers

III. **Irish solution**

   I. Ireland introduced new **domestic legislation** in Finance Act 2025 that applied retrospectively for periods commencing on or after 31 December 2023. Even though the local fiscal year does not align, ability to still use LFAS in the case of:

      I. an entity or PE being formed or created during the fiscal year

      II. an entity being liquidated, dissolved or otherwise ceasing to exist during the fiscal year

      III. a merger or division during the fiscal year

      IV. an entity being acquired by the group during the fiscal year

QDMTT – What accounting standard to use? (Cont'd)

I. OECD September 2026 Administrative Guidance

I. Meaning of same fiscal year

There is no mismatch in fiscal periods when the fiscal period of the entity's financial accounts is the same as the fiscal period used for preparing the consolidated financial statements.

Example

An MNE group makes up its accounts to 31 December 2025.

The group incorporates a subsidiary on 1 June 2025

There is no mismatch of fiscal periods if the MNE used accounts of the newly incorporated subsidiary for the period from 1 June 2025 to 31 December 2025. In this case, LFAS can be used for QDMTT for this period.

II. Mismatches arising from certain transactions

If the reason for a mismatch in fiscal years is the result of certain transactions, including an acquisition, disposition, dissolution, merger, or similar restructuring (including establishment of a PE), LFAS can continue to be used in calculation of the QDMTT.

Practical experience with first filings

I. Irish approach

Entities in-scope of the Pillar Two rules with an accounting period ending 31 December 2024 were due to file their information returns (TIR or NoF) and their domestic tax returns (IIR, UTPR or QDTT) by **30 June 2026** and pay any associated liabilities.

II. Impact of deferrals in other jurisdictions

I. Under "central filing", a constituent entity is not obliged to file a TIR where the TIR is delivered to a tax authority in another jurisdiction that has a qualifying competent authority agreement in effect for the relevant fiscal year.

II. Irish Revenue prepared to accept that the central filing mechanism may continue to be available and late filing penalties will not apply where:

(i) a correct and complete TIR is filed in a jurisdiction that delays implementation on behalf of a constituent entity located in Ireland on or before the earlier of:

a) the date to which penalties will not apply in that jurisdiction, and

b) 30 September 2026, and

(ii) a NoF has been submitted to Revenue on or before the specified return date

Back to the documents

Purchase agreements

Pillar Two reps & warranties; tax indemnities and covenants; treatment of top-up tax exposure in the price.

Joint venture agreements

Which party bears top-up tax; information and filing obligations; Side-by-Side and non-US group structures.

Credit facilities & other docs

Tax gross-ups and increased-costs clauses; financial-covenant impact; MAC and change-of-law provisions.

Questions & discussion

Pillar Two: From Deal to Docs · Taxes Committee · IBA Annual Conference Copenhagen 2026

Thank you

Co-Chairs: Gregory Price (Macfarlanes) · Ana Carolina Monguilod (CSMV Advogados)
Speakers: John Peterson (OECD) · Monica Reyes (Reyes Abogados) · Nina Legaard Kristensen (Gorrissen Federspiel) · Joshua Odintz (Holland & Knight) · Philip Tully (Matheson)