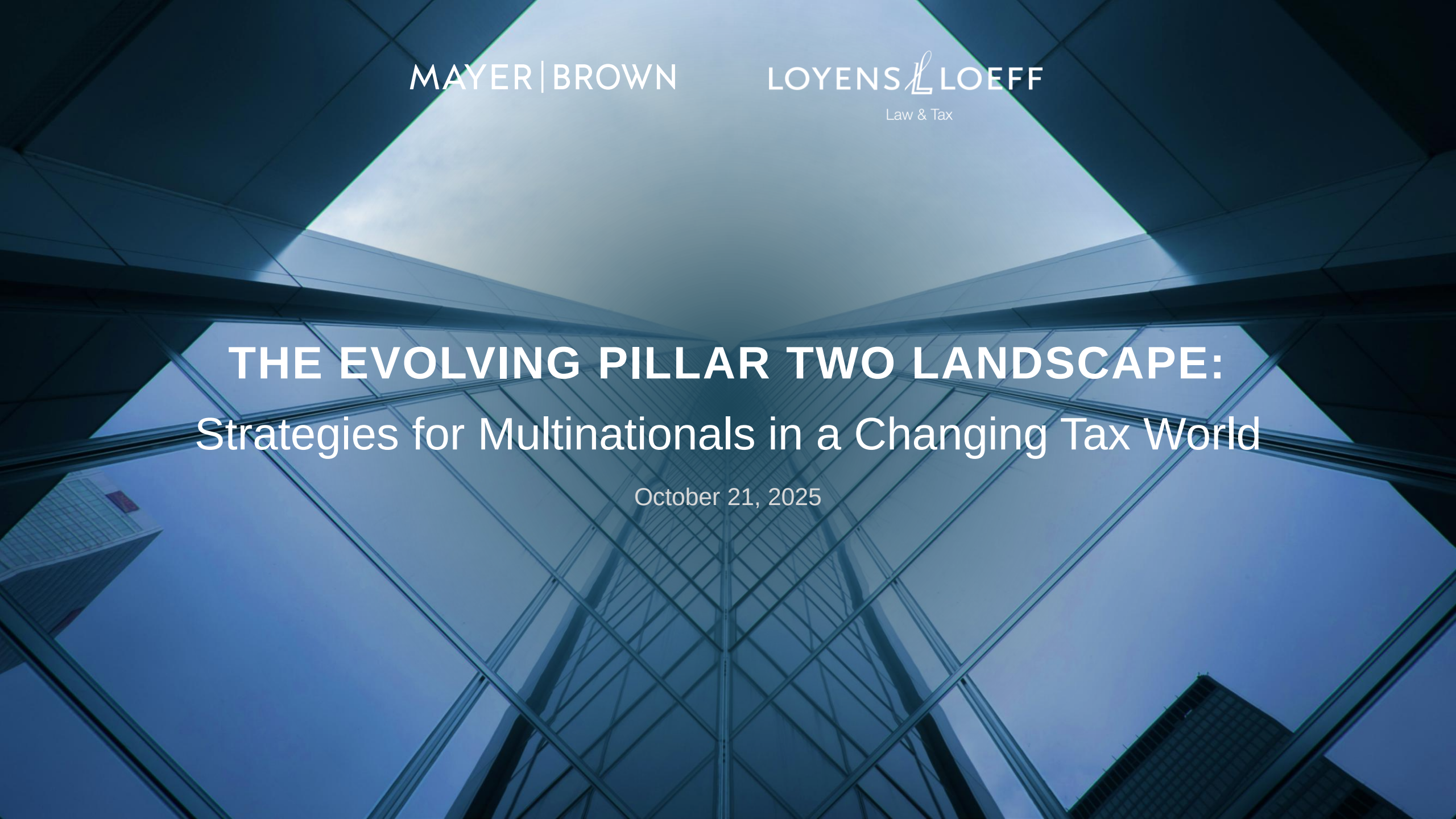

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THE EVOLVING PILLAR TWO LANDSCAPE:

Strategies for Multinationals in a Changing Tax World

October 21, 2025

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State of Play Pre-G7 Agreement

State of Play | US position prior to 2025

Section 891 (enacted in 1934):

- President proclaims that a foreign country is imposing discriminatory or extraterritorial taxes on US citizens or US corporations
- Proclamation doubles the tax rates for income that is effectively connected with a US trade or business or US source income subject to US withholding tax
- Doubled taxes capped at 80% of the “taxable income” of the taxpayer

Section 896 (enacted in 1967):

- President proclaims that foreign taxes imposed on US persons are more burdensome or discriminatory than US taxes imposed on the foreign country’s resident.
- If proclaimed for more burdensome taxes, pre-1967 tax provisions apply to the US-source income of the foreign country’s residents and corporations. If proclaimed for more discriminatory taxes, the US effective tax rates are adjusted higher for the US-source income of the foreign country’s residents and corporations.

Section 899 (first proposed in 2023):

- Section 899 is a mechanism for the US to retaliate against foreign countries that have introduced “unfair foreign taxes.”

State of Play | US position as of 2025

January 2025 – Executive order:

- OECD Global Tax Deal has “no force or effect” in the US
- Treasury Secretary to develop response options for protective measures

April 2025 – Statement by IF (including U.S. delegates):

- Inclusive Framework (including US delegates) state that certainty and stability with respect to Pillar Two is important and agree to continue discussions on Pillar Two.

May 2025 – Public statements by high-ranking Treasury officials:

- U.S. will not amend rules to facilitate interaction with Pillar Two.
- U.S. MNEs and U.S. subsidiaries of foreign MNEs should not be subject to Undertaxed Profits Rule (“UTPR”) under Pillar Two.

May 2025 – House of Representatives passes Big Beautiful Bill

- Includes retaliatory measures against countries with UTPR or Digital Service Taxes (“DSTs”) (Sec. 899).

June 2025 – Senate Draft of One Big Beautiful Bill Act

- Includes revised version of retaliatory measures against countries with UTPR or DSTs (Sec. 899).

State of Play | EU response to US stance on Pillar Two

March 2025 – statements by EU Commissioner for Taxation

- *'I regret the recent Trump administration's announcement on our Global Tax Deal.'*
- *'Bottom line is – this OECD deal is important.'*
- *'The EU will continue to pursue this work diligently with Member States and international partners.'*

April 2025 - EU meeting on tax questions

- Poland – current EU president – prepared three options to amend Pillar Two:
  - Revisit rules on tax credits - US R&D credit to qualify as 'good' tax credit for Pillar Two;
  - Limit application of UTPR – e.g., make current UTPR Safe Harbor permanent or removing it entirely;
  - Treat GILTI as a qualifying Income Inclusion Rule ("IIR").
- Outcome of meeting: no agreement within EU, some EU Member States consider that these discussions should be held at the OECD.

EU does not appear to give up on Pillar Two easily – any change to Pillar Two Directive requires unanimous consent

State of Play | Senate Version of Section 899

Basic Framework

- Section 899 is mechanism for the US to retaliate against foreign countries that have introduced "unfair foreign taxes."
- Unfair foreign taxes include UTPR, DSTs, and, to the extent identified by Treasury, other discriminatory or extraterritorial taxes.
- Groups parented in, and residents of, "discriminatory foreign countries" face higher tax rates on certain US income and Super BEAT would apply to their US affiliates

Applicable Persons

- Government of a discriminatory foreign country (renders Section 892 inapplicable)
- Individuals (other than a U.S. citizen or resident) or corporations (other than US owned foreign corporations) resident in a discriminatory foreign country
- A foreign corporation that is more than 50% owned by applicable persons
- Certain other specified entities majority owned by applicable persons or formed under the laws of a discriminatory foreign country
- Other entities (including branches) identified with respect to a discriminatory foreign country by the Treasury Secretary

State of Play | Senate Version of Section 899

Increases in specified rates of tax by five percentage points annually (capped at 15% over the statutory rate):

- FDAP income (e.g., interest, dividends, and royalties) of nonresident individuals
- FIRPTA gains
- ECI and FDAP income of corporations
- Branch profits tax
- The 4% excise tax on U.S. source gross investment income of foreign private foundations.
    - When relevant, increases start from the otherwise applicable treaty rate but do not appear to override existing exemptions for “portfolio interest,” bank deposit interest, and certain interest-related dividends paid by regulated investment companies
    - Tax increases apply to new and existing investments

“Super BEAT”

- Applicable to (i) a domestic corporation (other than a publicly held corporation) that is majority owned by foreign persons in jurisdictions that have adopted extraterritorial taxes or discriminatory taxes and (ii) a U.S. branch of a foreign corporation in such a jurisdiction
- Would have modified BEAT by lowering thresholds, expanding base (e.g., to include certain capitalized payments) and add back certain credits

State of Play | Senate Version of Section 899

Additional Notes

- These provisions would have applied beginning January 1, 2027.
- Grants Treasury authority to issue regulations necessary and appropriate to carry out the purposes of Section 899. Treasury is also specifically delegated authority to provide guidance on various details about the provision.

Implications

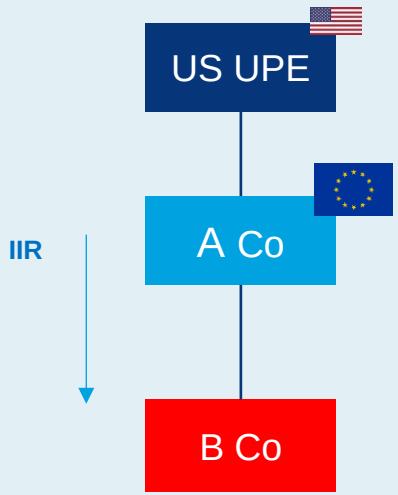
- Reduced foreign investment in key sectors such as infrastructure, real estate, and private equity
- Disruption of routine financing and capital markets transactions
- Challenges for non-US MNEs intragroup dividends, royalties and interest payments from the US
- Challenges for investment fund structuring

Pillar Two Recap

Before agreement | Quick recap of the Pillar Two impact on US MNEs

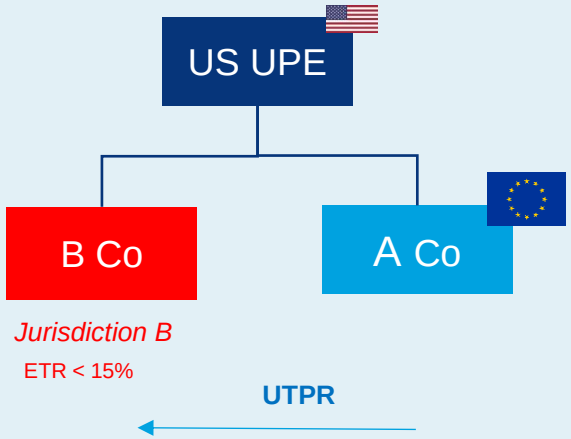
Scenario 1 – Income inclusion rule (IIR)

- Top-down taxation
- Applies as from **2024**



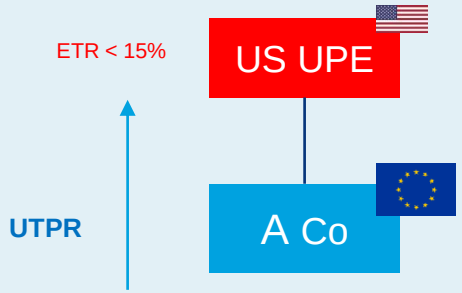
Scenario 2 – Undertaxed Profits Rule (UTPR): taxing profits of sister companies

- Taxation sideways
- UTPR allocation key (total employees + tangible assets)
- Applies as from **2025**



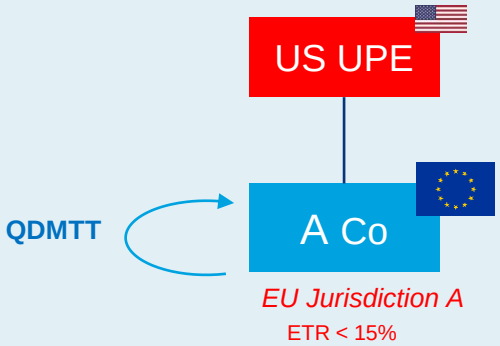
Scenario 3 – UTPR taxing profits of US parent company

- Bottom-up taxation
- Compatible under tax treaty?
- Applies as from **2026** (once temporary UTPR Safe Harbor expires)



Scenario 4 – QDMTT taxing profits of company in P2 jurisdiction

- Taxation in country of residence
- Applies as from **2024**



Before agreement | Quick recap of the Pillar Two impact on US MNEs

- CAMT is not a QDMTT.
- Neither GILTI nor CAMT are IIR.

U.S. is therefore a country without eligible rules under OECD standards and other countries can levy Top-up Tax on low-taxed profits of U.S. MNEs.

Before agreement | Interaction between Pillar Two and the U.S. tax system

Steps taken by OECD/IF to accommodate U.S.

- Even though the U.S. did not implement, it is still part of OECD/IF discussions and pushed for rules to improve the treatment of its tax regime:

What?	How?	Permanent relief?
Blended CFC Regime Rules	Allocation of GILTI to low-taxed jurisdictions, reducing IIR and UTPR exposure for subsidiaries of US UPEs	No – only for FYs starting on or before 31 December 2025
UTPR Safe Harbor	Exempts UPE jurisdiction from UTPR if the UPE is subject to nominal rate of at least 20%	No – only for FYs starting on or before 31 December 2025
Marketable Transferable Tax Credits	Favorable treatment of certain Inflation Reduction Act tax credits	Yes

- Despite these measures, still situations where Pillar Two ETR in U.S. is <15% – e.g., FDDEI, R&D tax credits.

The G7 agreement

G7 Agreement | What has been agreed?

- On 26 June 2025, U.S. Treasury announced an agreement with the other G7 countries regarding the application of the OECD Pillar Two rules to U.S.-parented multinational enterprises (**U.S. MNEs**).

- The G7 published a statement on 28 June 2025 that outlines the guiding principles of that agreement.

- According to the G7 statement, the G7 has agreed on a “side-by-side system” (i.e., Pillar Two and the U.S. tax system operating in parallel), which would result in a full exclusion of US MNEs from both the Income Inclusion Rule (**IIR**) and Undertaxed Profits Rule (**UTPR**).

- This announcement marks a significant step forward in the U.S. push against the Pillar Two rules. In response to this agreement, the U.S. Senate has removed the proposed Section 899 – a retaliatory measure – from the pending *“One Big Beautiful Bill Act”*.

G7 Agreement | Key elements

Key elements of the G7 statement:

1) A “side-by-side system” (i.e., Pillar Two and the U.S. tax system operating in parallel) that provides for a full exclusion from IIR and UTPR for U.S. MNEs, covering both domestic and foreign profits.

2) A commitment to address substantial risks of the level playing field being distorted and of base-erosion and profit-shifting, to preserve the common policy intention of the “side-by-side system”.

3) Work to materially simplify the Pillar Two administration and compliance.

4) Upcoming changes to the treatment of substance-based non-refundable tax credits under Pillar Two.

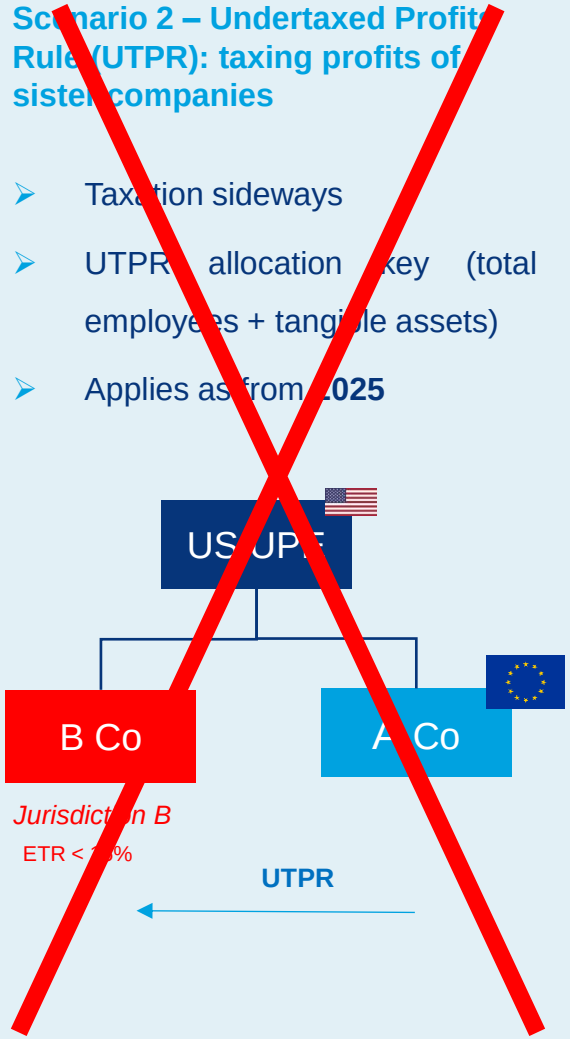
After agreement | What are the intended changes of the G7 agreement?

Scenario 1 – Income inclusion rule (IIR)

- Top-down taxation
- Applies as from **2024**

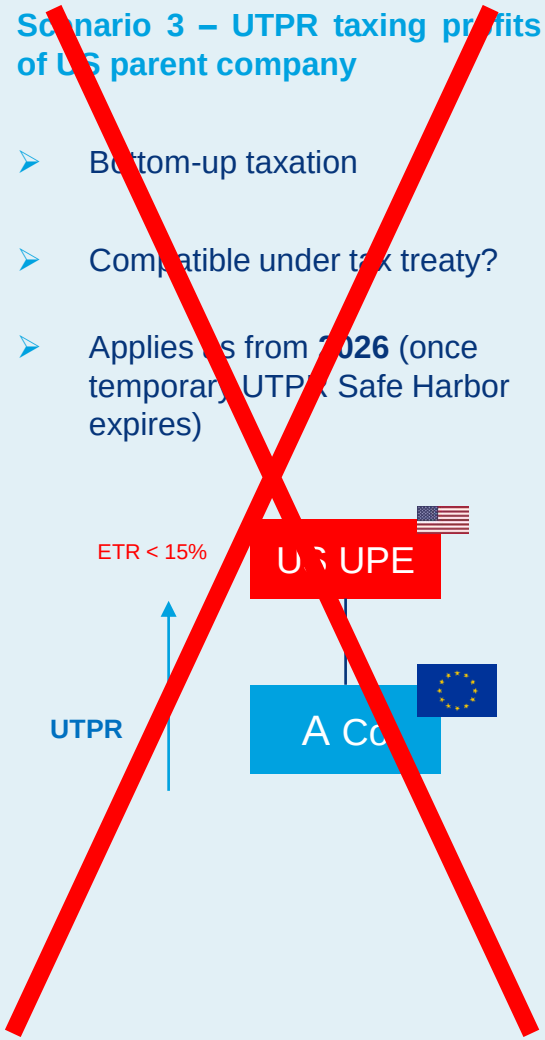
Scenario 2 – Undertaxed Profits Rule (UTPR): taxing profits of sister companies

- Taxation sideways
- UTPR allocation key (total employees + tangible assets)
- Applies as from **2025**



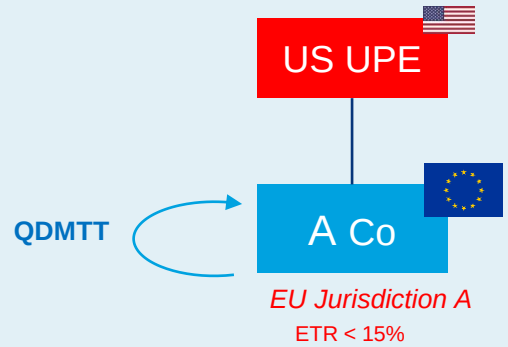
Scenario 3 – UTPR taxing profits of US parent company

- Bottom-up taxation
- Compatible under tax treaty?
- Applies as from **2026** (once temporary UTPR Safe Harbor expires)



Scenario 4 – QDMTT taxing profits of company in P2 jurisdiction

- Taxation in country of residence
- Applies as from **2024**



Based on G7 statement, it appears only Scenario 4 remains applicable for U.S.-parented MNEs.

After agreement | Should US MNEs Be Treated Differently?

The US tax system already subjects domestic and foreign income of US MNEs to robust taxation:

- **CFC taxation of passive (Subpart F) and active (NCTI) income:**
  - Compare with other countries' narrow CFC rules and participation exemptions.
- **Features of NCTI (post-One Big Beautiful Bill Act):**
  - 14% effective rate (same for FDDEI)
  - No QBAI exempt return
  - No carryforward of losses
  - No carryforwards of foreign tax credits
- **BEAT**
- **CAMT**
- ***But*** NCTI (and CAMT) still allows for jurisdictional blending

After agreement | Open questions and Uncertainties

- **US intermediate companies:** Implications for non-US parented groups with US intermediate company (“sandwich structures”) are unclear.
  - Are profits of CFCs under US intermediate parent subject to IIR of UPE jurisdiction or UTPRs?
  - Are the domestic profits of US group subject to IIR of UPE jurisdiction or UTPRs?
- **Scope differences:** How will the side-by-side system address the different scope of US CFC rules and Pillar 2 (e.g., minority-owned constituent entities or 50%-US owned JV)?
  - Profits are subject to Pillar Two, but may not be subject to US CFC rules
- **Compliance burdens:** What will be the compliance requirements for US MNE groups in a side-by-side system?
  - Would QDMTT jurisdictions require a GloBE return for US-parented MNE groups?
  - How is side-by-side qualification substantiated?
- **Relocation Incentive:** Will this provide an incentive to non-US MNE groups to relocate their UPE to the United States?

After agreement | Open questions and uncertainties (cont'd)

- **Agreement context:** Agreement made at G7 level, Pillar Two negotiated via OECD / Inclusive Framework ➔ Unclear if, and how all IF jurisdictions will adopt.
- **Design & technical details:** No specifics yet on implementation, possible mechanisms: safe Harbour for US MNEs, GILTI as qualifying IIR or amending the original rules.
- **Timing & retroactivity:** No guidance on timing, potential retroactive application from 31 Dec 2023?
- **Impact on Pillar Two rules overall:** repeal of UTPR? Conditional application of QDMTT (e.g., exclude US subsidiaries)
- **EU implementation:** Will EU directive be amended?
- **Next steps:** Need for detailed guidance – negotiations on technical details currently ongoing, commitment from OECD/IF jurisdictions essential, or the U.S. may reintroduce Sec. 899.

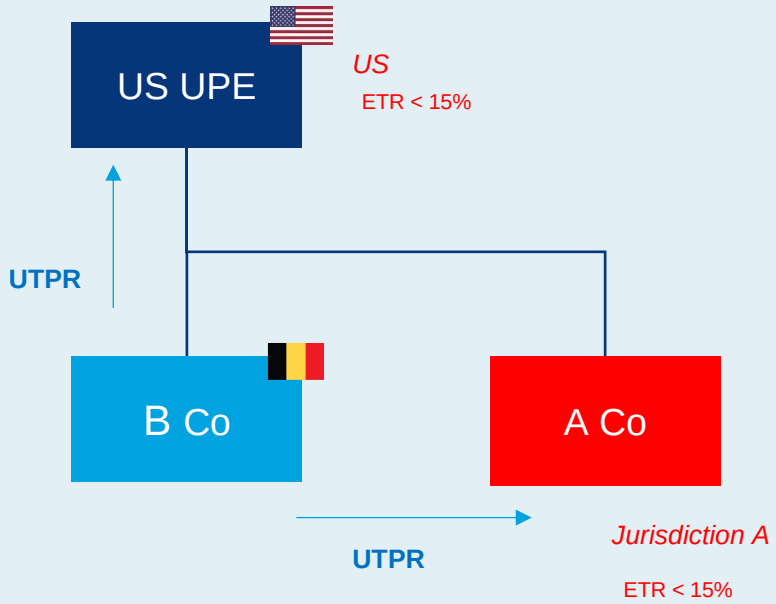
Agreement made at G7 is a promising step, but the details will be key – further detailed guidance and commitment by OECD/IF jurisdictions to implement crucial.

UTPR Litigation in Belgium

UTPR Case | Background

Background

- Under Belgian law, any person with a legitimate interest can challenge legislation before the Constitutional Court within six months of its publication.
- A petition was filed with the Belgian Constitutional Court in June 2024 to request annulment of the Belgian implementation of the UTPR.
- The plaintiff claims that the UTPR violates the Belgian Constitution, the European Convention of Human Rights and the Charter of Fundamental Rights of the European Union.
- Central concern: Can a company be taxed under the UTPR on foreign profits, regardless of its own financial capacity?
- **Example:** Group with large, low-taxed R&D activities in the US and large manufacturing activities with a tax holiday in jurisdiction A. In Belgium, the group has small distribution activities. Under UTPR, B Co could be subject to large Top-up Tax on profits of US and A Co, despite its own small profits.



UTPR Case | Ruling Belgian Constitutional Court

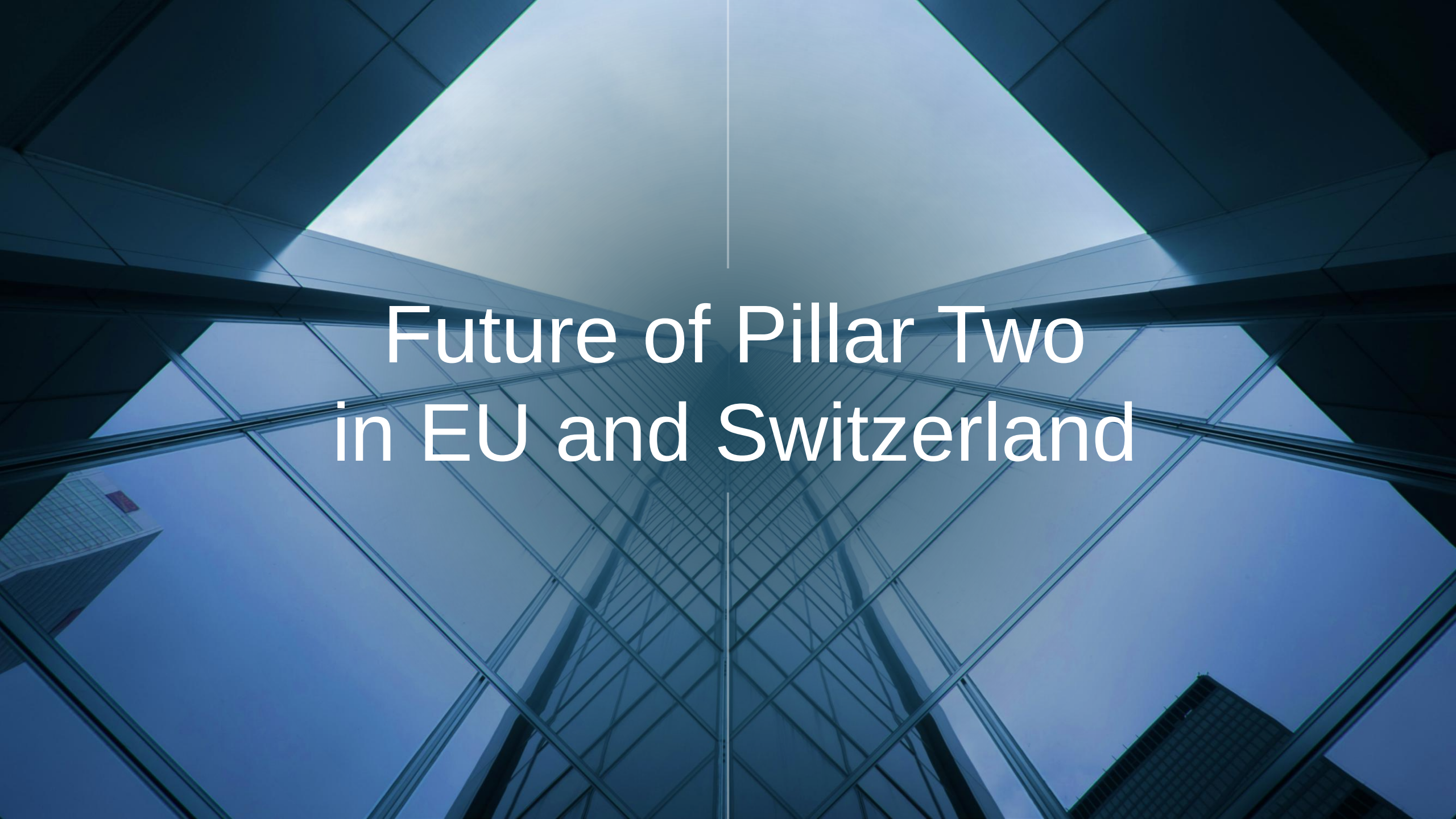
- On 17 July 2025, the Belgian Constitutional Court ruled that the legality of Belgium's UTPR must be assessed at the EU level.

- The Court referred four questions to the Court of Justice of the European Union (**CJEU**), asking whether the UTPR violates:
  - The right to property;
  - The freedom to conduct a business;
  - The principle of equal treatment;
  - The principle of fiscal territoriality.

- Decision for now in line with plaintiff's request – UTPR will now be reviewed at EU level, possibly leading to wider impact than Belgium alone.

UTPR Case | Implications and next steps in procedure:

- The CJEU process will include written and oral phases, and likely an Advocate General opinion.
- The average time for CJEU cases is 17.7 months – this one may take longer given political dimension.
- If the CJEU invalidates the UTPR provisions in the Pillar Two Directive, Member States may lose the legal basis for their national UTPR rules.
- G7 Agreement on Pillar Two appears to have limited impact on procedure as that would only apply to U.S. companies – questions to the CJEU are formulated more broadly.



Future of Pillar Two in EU and Switzerland

Future of Pillar Two | EU position

- EU has been in favor of Pillar Two from beginning – one of the first to adopt, reiterating support during first half of 2025.

- Mixed responses in period after G7 agreement:
  - Several large EU member states are part of G7, apparently endorsing statement. However, recent news is that these have also criticized the impact within subsequent OECD discussions.
  - The European Commission has so far not indicated any intention to revise the Pillar Two Directive.
  - Business organizations warned for structural disadvantages for EU-headquartered groups.
  - German Chancellor has publicly called for the suspension of Pillar Two in the EU, citing competitive disadvantages under G7 agreement. However, Germany's Finance Minister stated afterwards that Germany remains committed.

- Overall, appears that Pillar Two is likely to remain in some form in the EU, but new safe harbours, litigation and political pressure will likely aim to reduce impact on EU companies.

G7 / U.S. deal | Impact on Switzerland

Swiss policy considerations (official)

- Switzerland implemented QDMTT as of 1 January 2024 and IIR as of 1 January 2025.
- UTPR dropped, concerns re infringement of tax treaties and BITs.
- Pillar 2 implemented to safeguard tax basis and as US "was expected" to apply Pillar two as well.
- G7 Agreement: no official policy statement to so far.
- Current developments: amendment to Minimum Tax Ordinance.

Swiss policy considerations (unofficial)

- Many open questions.
  - Main reason to adopt Pillar 2 was QDMTT whereas IIR and UTPR are no policy fit for Switzerland (capital import neutrality)
  - Discussion whether to drop IIR or modify Pillar 2 implementation (e.g., QDMTT only)
  - Without the US it is highly unlikely that Pillar 2 is in fact an "international standard”
    - Implementing approx. USD 26T GDP, non-implementing approx. USD 50T GDP
  - Key issue: Does federal government still have the authorization to apply Pillar 2 or might it be forced to limit Pillar 2 to QDMTT or abolish Pillar 2?

G7 / U.S. deal | Impact on Switzerland

Key take-aways for Swiss operations

- Current expectation is that Switzerland will maintain QDMTT and IIR for the time being
- Switzerland is passive and looks to other jurisdictions (e.g., EU although very different background)
- Filing obligations: QDMTT return but no GIR for US MNE?
- But multiple issues unsolved:
  - Lack of constitutional power: Is Pillar 2 still an "international standard"?
  - Can US parented groups be excluded from QDMTT (maintaining Q status?)?
  - Can Swiss subsidiaries of US MNE appeal QDMTT assessment on grounds of lack of sufficient constitutional basis of P2 and no top-up tax can be levied?

Future of Pillar Two | What is expected to remain for U.S. groups?

- While not fully clear from G7 statement, QDMTTs expected to remain applicable to both non-U.S. parented groups as well as non-U.S. parented groups.
- This means that U.S.-parented groups will need to meet local QDMTT obligations in EU (and other Pillar Two) countries.
- From a compliance perspective, MNEs will likely need to provide sufficient information to demonstrate that the IIR and UTPR no longer apply – likely means some type of GIR filing is necessary.
- In addition, U.S. groups will need to consider other Pillar Two rules in the context of M&A transactions, two main scenarios:
  - **U.S. group acquires EU group (target)** – historical Pillar Two liabilities and responsibilities;
  - **EU group acquires U.S. group (target)** – the U.S. group and its (foreign) subsidiaries ***may*** become subject to IIR in the EU going forward (subject to implementation details of the "side-by-side" agreement).

Potential Next Steps in US and International Policy Response


Questions?

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Michiel works closely with clients active in the Energy and Technology sectors, helping them navigate complex European tax regimes and structure their cross-border investments effectively. His LL.M. in International Taxation from New York University (NYU) enables him to bridge the gap between European and U.S. tax systems, enhancing the advice he provides on cross-border structures and investments.

Clients describe Michiel as highly knowledgeable about Dutch and EU tax topics, practical and responsive in his approach, and proactive in keeping them informed about developments that may impact their business.

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Fabian Sutter, Swiss certified tax expert and attorney at law, is a member of the tax practice group. He specialises in Swiss and international taxation with a strong focus on cross-border tax planning, corporate reorganizations and restructurings, M&A as well as financing and capital market transactions, including a strong focus on Pillar Two in connection with transactional matters. He also advises on private equity and real estate transactions. As lead manager of the Swiss transfer pricing practice he further advises clients on complex transfer pricing aspects both in the context of non-contentious procedures and in litigation. He regularly publishes and speaks at conferences.

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Multinational clients around the world rely on Jason Osborn to solve their most complex international tax and transfer pricing challenges, optimize cross-border structures and prevent and resolve cross-border disputes.

He helps clients with:

- Bilateral and Multilateral Advance Pricing Agreements
- Resolving controversies at the IRS Audit, Appeals and Competent Authority levels
- International Tax and Transfer Pricing planning and structuring

Clients served by Jason include some of the world's largest US and non-US based multinationals in the financial services, life sciences, software, technology, consumer products, and transportation among other industries.

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Warren S. Payne helps clients to address a wide range of tax issues. He joined Mayer Brown from the US House of Representatives Committee on Ways and Means, where he held several of staff leadership roles from 2007 to 2015, including serving as policy director.

As the Committee's policy director Warren was responsible for developing policy in all areas within the Committee's jurisdiction. Major legislation that Warren worked to enact into law includes the Tax Increase Prevention Act, the ABLE Act, the Middle Class Tax Relief and Job Creation Act, two highway and infrastructure funding bills in 2012 and 2014, and free trade agreements with Colombia, Peru, Panama and South Korea.

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Multinational companies rely on Lucas Giardelli for the structuring and execution of business transactions and corporate and international tax planning. Lucas advises clients across different industries on the tax aspects of acquisitions, divestitures, joint ventures, financings and other corporate transactions, particularly in the cross-border context. Lucas also regularly assists US and international clients in international tax planning, including internal restructurings and financings, holding company structures, double tax treaties, tax attribute optimization, supply chain and IP planning, and post-acquisition integration. He also has experience counseling high-net worth individuals and family offices on international tax matters.

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Clients turn to Michelle Jewett in matters related to all areas of federal income taxation, including with regard to private investment funds, real estate, real estate investment trusts, mergers and acquisitions, partnerships, energy and infrastructure, financial restructuring, and financial instruments both domestically and internationally. Clients value Michelle's ability to provide practical guidance with respect to complex tax concepts in a manner that is understandable and approachable.

Clients seek Michelle's advice on structuring private investment funds, real estate investments by taxable and tax-exempt entities, cross-border taxable and tax-free mergers, acquisitions and dispositions, domestic and foreign private equity investments, various international investments and transactions, and bankruptcy and debt workouts.