STI TAXAND

CYPRUS AND THE GLOBAL MINIMUM TAX: A COMPREHENSIVE ANALYSIS OF THE NEW LEGAL FRAMEWORK

PRESENTATION BY
Christos Theophilou
BSc (Econ.), FCA, ADIT,
MSc Tax Law (Oxon),
LLB Law (Hons)

February 2025

Your global tax partner

CONTENTS

1. Overview
2. Structure of the GloBE Model Rules: Six Step approach
   - Step 1: Determine whether the MNE Group is within scope
   - Step 2: Allocate income of Constituent Entities on a Jurisdictional Basis
   - Step 3: Calculate the GloBE Income
   - Step 4: Determine Adjusted Covered taxes
   - Step 5: Compute the Effective Tax Rate and calculate the Top-up Tax
   - Step 6 – Charge the Top-up Tax under QDMTT, IIR or UTPR
3. Cyprus vs. the Global Minimum Tax: Alignment, Divergences
4. References

OVERVIEW

OVERVIEW

- On December 12 2024, Cyprus adopted the Global Minimum Tax of MNE Groups and Large-Scale Domestic Groups Law, commonly known as "Pillar Two."
- Published in the Official Government Gazette on December 18 2024,
- This legislation implements the EU Directive issued on December 14, 2022
  - The law aligns with the EU Minimum Tax Directive, providing limited flexibility to member states in national implementation.
- The Cyprus Pillar Two law doesn't amend the Cypriot Income Tax Law.
  - Instead, it establishes an additional tax framework that functions alongside the existing income tax law.

KEY PROVISIONS OF THE CYPRIOT PILLAR TWO LAW

- Income Inclusion Rule (**IIR**) is to apply to financial years beginning on or after **31 December 2023**.
  - The IIR requires a local parent company to ensure that its profits and those of its local subsidiaries are taxed at a minimum effective tax rate of 15%

- Under-Taxed Profits Rule (**UTPR**) will apply to financial years beginning on or after **31 December 2024**.
  - UTPR imposes a top-up tax to address any insufficient taxation not taxed by the QIIR by using a denial of deduction mechanism under corporate income tax

- Qualified Domestic Minimum Top-Up Tax (**QDMTT**) will apply to financial years beginning on or after **31 December 31 2024**.
  - This provision takes precedence over the QIIR and QUTPR, ensuring that all constituent entities meet the minimum tax requirements

STRUCTURE OF THE GLOBE MODEL RULES: SIX STEP APPROACH

STI TAXAND
Your global tax partner

CORE PROVISIONS OF THE GLOBE RULES

Step 1 – Determine whether the MNE Group is within scope

Identify Groups within scope

Step 2 –Allocate income of Constituent Entities on a Jurisdictional Basis

Identify the **location** of each Constituent Entity within the Group and **allocate the income** to these Constituent Entities

Step 3 – Calculate the GloBE Income

Determine **GloBE Income** of each Constituent Entity

Step 4 – Determine Adjusted Covered taxes

Determine **taxes** attributable to GloBE Income of a Constituent Entity

Step 5 – Compute the Effective Tax Rate and calculate the Top-up Tax

Calculate the Effective Tax Rate for all Constituent Entities located in the same jurisdiction and determine resulting **Top-up Tax**

Step 6 – Charge the Top-up Tax under QDMTT, IIR or UTPR

Impose Top-up Tax under QDMTT, IIR or UTPR in accordance with agreed rule order and allocation mechanisms

STEP 1: DETERMINE WHETHER THE MNE GROUP IS WITHIN SCOPE

Step 1.1: Determine whether the Group is internationally active

- Determine whether the Group has **entities** or **permanent establishments** in more than one jurisdiction or large-scale domestic groups

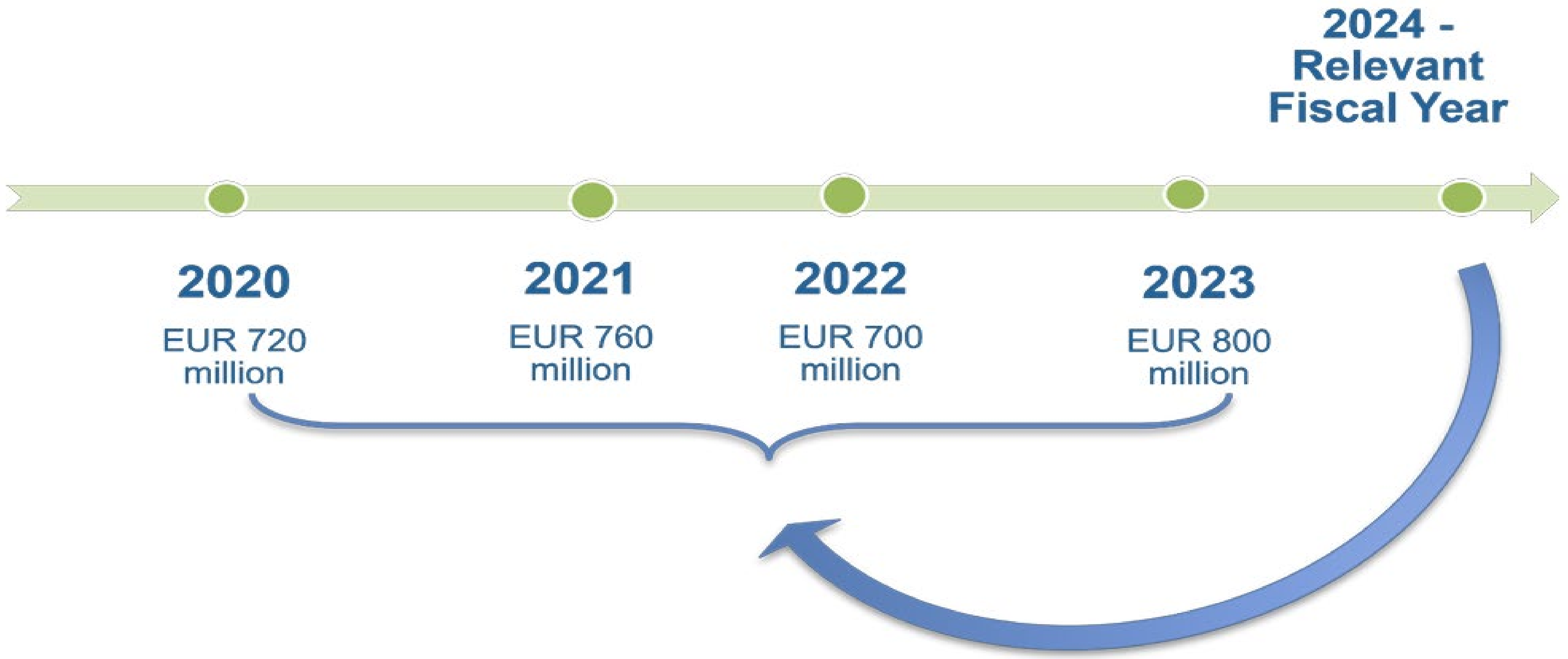
Step 1.2: Determine whether the MNE Group passes the revenue threshold

- Determine if the MNE Group has global revenues at or above **EUR 750** million by following the four-year test

Step 1.3: Identify excluded entities

- Identify any **excluded entities** to exclude them from the application of the rules, but do not exclude their revenue from the revenue threshold calculation

EXAMPLE: REVENUE THRESHOLD TEST



STEP 3: CALCULATE THE GLOBE INCOME

Adjustments to better align with taxable income

- e.g. net taxes, dividends, equity gains and losses, asymmetric FX gains and losses, pension expenses, stock-based compensation

Adjustments to ensure correct allocation of income between jurisdictions

- e.g. TP adjustments, intra-group financing

Other policy based adjustments

- e.g. bribes, international shipping income

STEP 4: DETERMINE ADJUSTED COVERED TAXES

Step 4.1: Covered Taxes

- Identify Covered Taxes in the current tax expense and compute the amounts

Step 4.2: Adjustments to Covered Taxes

- Adjust the Covered Taxes to take into account taxes that are not recorded in the tax line of the Profit or Loss statement and exclude taxes not related to GloBE Income or Loss
- Address temporary differences, which arise when income or loss is recognised in a different year for financial accounting and tax by deferred tax accounting
- Account for tax credits (if any) depending on their categorisation

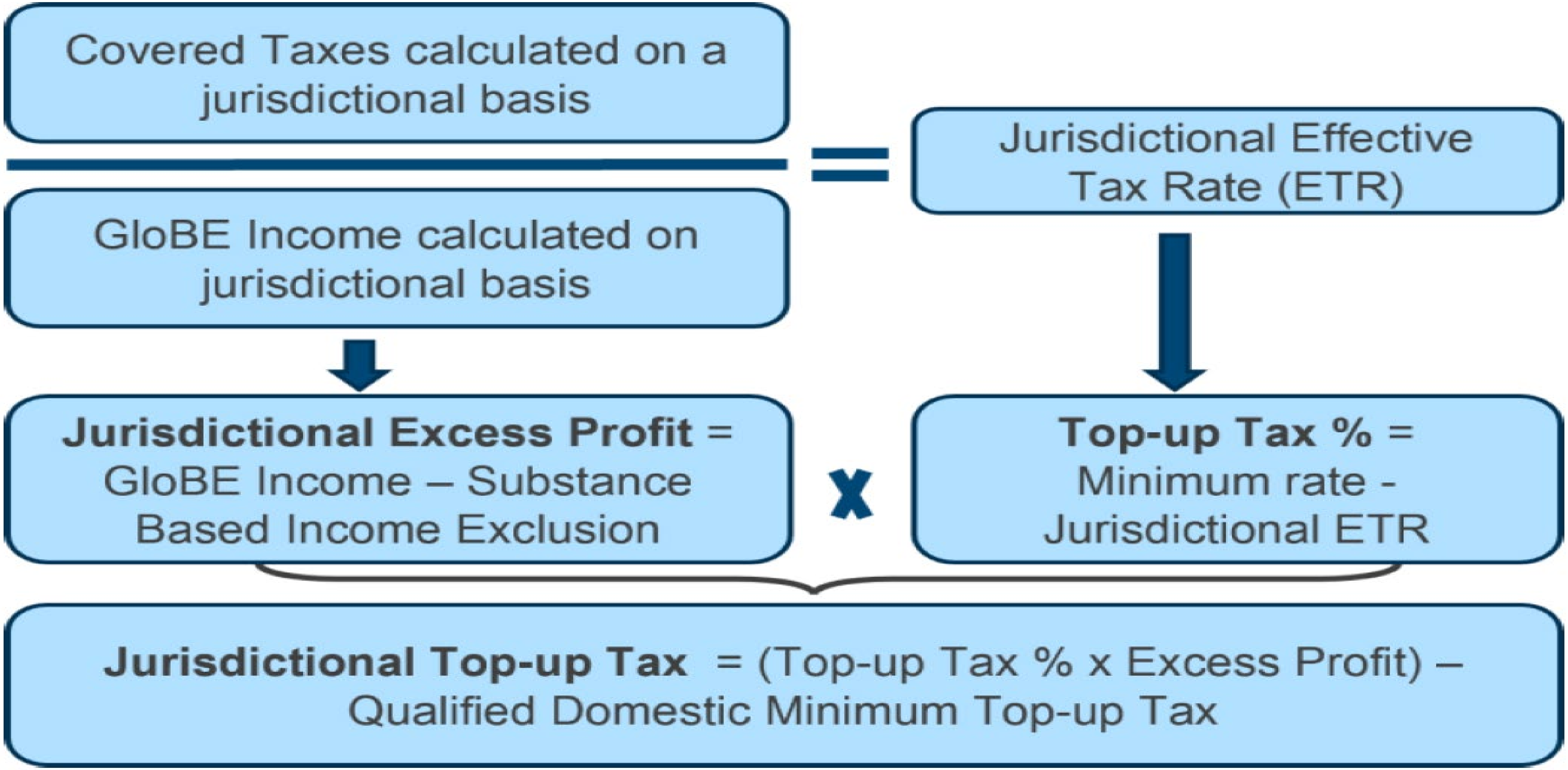
Step 4.3: Cross-border allocation

- Adjust the amounts to allocate certain cross-border taxes to the proper Constituent Entity

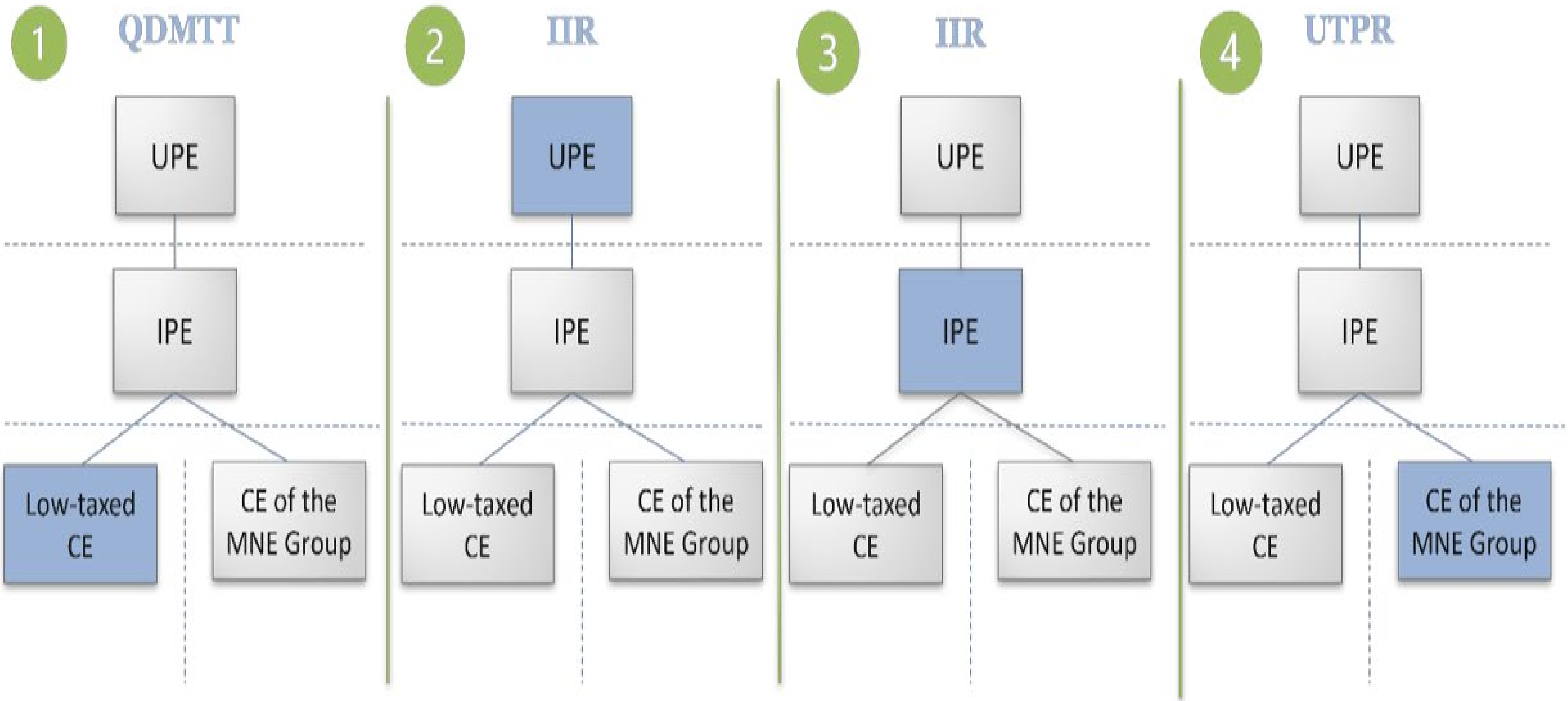
Step 4.4: Post-filing adjustments

- In case of post-filing adjustments, generally a ETR recalculation is required for the relevant Fiscal Year

STEP 5: COMPUTE THE ETR AND CALCULATE THE TOP-UP TAX



STEP 6: CHARGE THE TOP-UP TAX UNDER THE QDMTT, IIR OR UTPR (SIMPLIFIED ILLUSTRATION OF THE RULE ORDER)



STI TAXAND
Your global tax partner

CYPRUS VS. THE GLOBAL MINIMUM TAX: ALIGNMENT & DIVERGENCES

KEY DIFFERENCES OF THE CYPRIOT PILLAR TWO LAW TO OECD MODEL RULES & EU DIRECTIVE

The Cypriot Pillar Two Law largely aligns with the EU Directive, which limits flexibility in national implementation.

Key differences with the OECD Model Rules include:

- QDMTT
- The Law Cypriot Pillar Two Law GloBE rules to large domestic groups.
- Cypriot Pillar Two Law extends the IIR to all domestic entities, not just foreign subsidiaries, which is optional in GloBE Model Rules.
- For the UTPR, Cypriot Pillar Two Law opts for a top-up tax instead of denying deductions.
  - Therefore the provisions of article 2.4.2. of the OECD Model Rules and the corresponding provisions of the corresponding provisions of the EU Directive Article 12(2) and Article 13(2) are not included in the Cypriot Pillar Two Law
- Articles 10(2), 13(1), and 14(1) of the law provides that an MNE group may transfer the top-up tax amount due, either fully or partially, from one constituent entity to another constituent entity or entities within the same group located in Cyprus.

PROVISIONS FROM THE 1ST OECD ADMINISTRATIVE GUIDANCE INCLUDED IN THE CYPRIOT PILLAR TWO LAW

- Sovereign wealth funds and the definition of Ultimate Parent Entity (it also excludes the National Investment Fund from the UPE definition) (Article 1.4)
- Clarifying the definition of ‘Excluded Entity’ (Article 1.5)
- Forex hedge election (Article 2.2)
- Excluded Dividends – Asymmetric treatment of dividends and distributions (Article 2.3)
- Debt release election (Article 2.4)
- Accrued pension expenses (Article 2.6)
- Excess negative tax carry-forward guidance (Article 2.7)
- Substitute loss carry forwards (Article 2.8)
- Equity gain or loss inclusion election (Article 2.9)
- The extension of the taxable distribution method election to insurance investment entities (Article 3.1)
- Exclusion of Insurance Investment Entities from the definition of Intermediate Parent Entity and Partially-Owned Parent Entity (Article 3.2)
- Liabilities related to Excluded Dividends and Excluded Equity Gain or Loss from securities held on behalf of policyholders (Article 3.4)
- Portfolio shareholding election (Article 3.5)

IMPLEMENTING THE PROVISIONS OF THE CYPRIOT PILLAR TWO LAW

In the application of the Cypriot Pillar Two Law it shall be used as a source of examples or interpretations, to the extent that no inconsistency arises in the implementation of the EU Directive and this law the OECD guidelines as defined in Article 2:

- Commentary to the GloBE Rules (First edition) published on 14 March 2022: click here
- Examples originally published on 14 March 2022 and revised on 25 April 2024: click here
- Safe harbours and penalty relief published on December 2022: click here
- 1st Administrative Guidance published on 02 February 2023: click here
- 2nd Administrative Guidance published on 17 July 2023: click here
- GloBE Information Return published on 17 July 2023: click here
- 3rd Administrative Guidance published on 15 December 2023: click here
- Consolidated Commentary to the GloBE Rules published 25 April 2024: click here
- 4th Administrative Guidance published on 04 June 2024: click here
- **Subsequent documents published by the OECD as defined by Decree issued by the Minister pursuant to subsection (2) of Article 60 (secondary law)**
- Does not specifically include a General Anti-Avoidance Rule—aligning with the EU Directive and Model Rules

PROVISIONS FROM THE 2ND, 3RD, 4TH AND 5TH OECD ADMINISTRATIVE GUIDANCE ARE NOT INCLUDED CYPRIOT PILLAR TWO LAW

Examples include

- Blended controlled foreign company regimes
- Transferable tax credits
- Meaning of “ancillary” for Non-Profit Organisations
- The extension of the tax transparency election to mutual insurance companies
- Additional rules (such as the deemed 50% requirement where employees perform work outside the employer’s jurisdiction for the SBIE).

CYPRIOT PILLAR TWO LAW: ELECTIONS

The Cyprus Pillar 2 Law includes **all elections** from the OECD Model Rules and the EU Minimum Tax Directive, including elections from the 1st Administrative Guidance

- Article 4(4) Excluded Entity Election
- Article 17(3) Stock-Based Compensation Election
- Article 17(3)(a) Portfolio Shareholding Election
- Article 17(6) Election to use the Realization Method
- Article 17(7) Election to Spread Capital Gains
- Article 17(9) Consolidation Election
- Article 17(12) Foreign Exchange Hedge Election
- Article 17(13) Debt Release Election
- Article 22(5)(b) Excess Negative Tax Carry-Forward Election
- Article 22(6) Equity Investment Inclusion Election
- Article 23(1)(b) Unclaimed Accrual Election
- Article 24(1) GloBE Loss Election
- Article 26(1) Prior Year Adjustment Election
- Article 31(1) De minimis Election
- Article 29(2) Substance-Based Income Exclusion Election
- Article 36(5) Deemed Disposal of Assets Election
- Article 41(1) Distribution Tax Regime Election
- Article 43 Tax Transparency Election
- Article 44 Taxable Distribution Election

CYPRIOT PILLAR TWO LAW: QDMTT

Article 12(1)(b) Base Calculation: General GloBE top-up tax with specific adjustments as per Cypriot Pillar Two Law.

- Article 2 Exclusions: CFC push down, hybrids, PEs, and tax on distributions are excluded from DMTT calculations
- Article 12(1)(a) Ownership: Applies irrespective of shareholdings in group entities in Cyprus.
- Article 12(1)(c) UTPR Exemption: For Initial Phase of International Activity for large-scale domestic groups and certain joint ventures.
- Article 12(1)(d) Top-up Tax Transfer Option: MNE groups can transfer top-up tax within the same group in Cyprus, subject to consent and registration
- Article 12 (3) Safe Harbours & De Minimis Rule as adopted by EU/OECD
- Article 12 (4) Unpaid DMTT: Typically taken into account for top-up tax after four years.

CYPRIOT PILLAR TWO LAW: SAFE HARBOURS

- On 24 July 2024 Cyprus provided consent to all OECD Safe Harbor Rules, including the Transitional CbCR Safe Harbor and the Transitional UTPR Safe Harbor (other than the EU QDMTT safe harbour): click here

- Article 12(3) of the law applies the EU DQMTT safe harbour as well.

- Article 33 of the law: A filing constituent entity may elect for the top-up tax in a specific jurisdiction to be deemed zero for a financial year.

  - Conditions for Safe Harbour Treatment:
    - Constituent entities in the jurisdiction must comply with an “Accepted International Safe Harbour Agreement”.
      - A set of internationally agreed rules and conditions.
      - Consensus among all EU Member States.
      - Provides eligible groups the option to benefit from one or more safe harbours in a jurisdiction.

CYPRIOT PILLAR TWO LAW: COMPLIANCE REQUIREMENTS

- **Registration**: Local Constituent Entities must register with the Cyprus Tax Authorities within 15 months after the fiscal year ends (18 months for the transitional year).

- **Filing requirements**: The GloBE Information Return (**GIR**) must be filed within 15 months after the fiscal year ends (18 months for the first year). If a foreign Constituent Entity files a GIR, a notification is also required by the same deadline. Additionally, a local self-assessment tax return must be filed within 30 days after the GIR filing due date.

- **Penalties**:
  - Includes penalties for late filings, delayed payments, and other violations, aligning.

  - For fiscal years starting on or before December 31, 2026, and excluding any fiscal year ending after June 30, 2028, no administrative fines or penalties will be imposed if the Cyprus Tax Authorities confirms that the relevant MNE/Large-scale Domestic Group has made every effort to comply with the law.

REFERENCES

REFERENCES

- Pillar 2 Model GloBE Rules published on 14 December 2021 click here
- OECD website for Pillar 2 updates click here
- EU Directive issued on December 14, 2022
- Cyprus Pillar 2 law published in the Official Government Gazette on December 18 2024
- Commentary to the GloBE Rules published on 25 April 2024 click here
  - This Consolidated Commentary incorporates Agreed Administrative Guidance that has been released by the Inclusive Framework since March 2022 up until December 2023
- Illustrative examples published on 25 April 2024 click here
- 4th Administrative Guidance published 17 June 2024 click here
- OECD (2022), Tax Incentives and the Global Minimum Corporate Tax: Reconsidering Tax Incentives after the GloBE Rules published on 6 October 2022 click here
- 5th Administrative Guidance published 15 January 2024
  - Central Record of Legislation with Transitional Qualified Status click here
  - Articles 8.1.4 and 8.1.5 of the GloBE Rules and Article 9.1 of the GloBE Rules

FURTHER READING

- For more detailed insights, you can refer to our previous articles published in Bloomburg tax:
  - Deconstructing Pillar Two – Impact on Multinational Enterprise and
  - Analysis of Pillar Two Primary Rule IIR – and Comparison With CFC Rules.
  - Cyprus' Pillar Two Adoption Calls for MNE Safe Harbor Testing

- BOOK: Pillar Two of the Inclusive Framework on BEPS (Global Minimum Taxation of the OECD – OECD)
  - This book is essential for anyone looking to navigate the Global Anti-Base Erosion (GloBE) rules. It provides a comprehensive and practical perspective on the challenges and solutions within the BEPS framework, making it a key resource for businesses, advisors, and policymakers.

THANK YOU!

Christos Theophilou is a distinguished tax expert, providing advisory services to both private and corporate clients on intricate international tax and transfer pricing issues. His expertise encompasses cross-border investments, private equity structuring, structured finance, intellectual property structuring, and international trade.

Christos holds an MSc in Tax Law from Oxford University, a Bachelor's degree in Economics, and an LLB Law degree from Frederick University. He is a Chartered Accountant in England & Wales and has obtained the Advanced Diploma in International Taxation (ADIT) from the UK Chartered Institute of Taxation.

Christos is a prolific contributor to various esteemed international tax publications, including IBFD, Tax Notes International, Bloomberg Tax, International Tax Review, Edward Elgar, and IFA. Furthermore, Christos is currently a member of the Tax Policy and Strategy committee of ICPAC.

Christos also serves as a freelance lecturer for Tolley's (LexisNexis) and IBFD, where he lectures on ADIT Paper 1 Principles of International Tax, Transfer Pricing, and Pillar 2. He is a frequent speaker at international tax conferences, sharing his extensive knowledge and insights with the global tax community.

Christos A. Theophilou
BSc (Econ.), FCA, ADIT, MSc Tax Law (Oxon), LLB Law (Hons)
Partner | STI Taxand
E: ctheophilou@stitaxand.com

STI TAXAND

CYPRUS AND THE GLOBAL MINIMUM TAX: A COMPREHENSIVE ANALYSIS OF THE NEW LEGAL FRAMEWORK

PRESENTATION BY
Demis Ioannou
Transfer Pricing and Corporate Tax

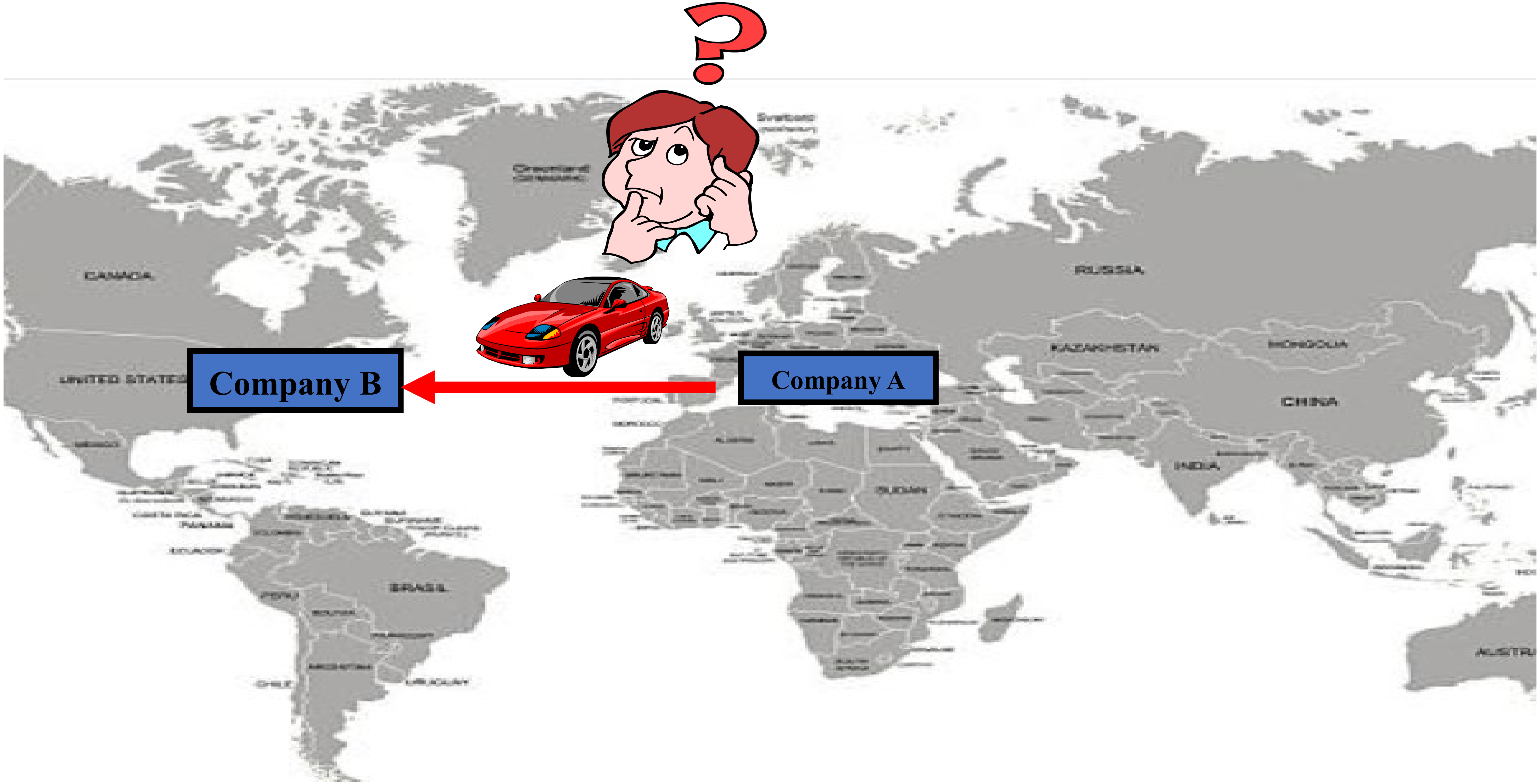
February 2025

Your global tax partner

CONTENTS – DEMIS IOANNOU

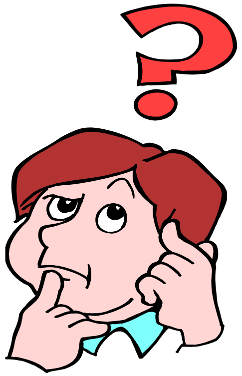
- Base case
- What is he struggling with?
- Transfer Pricing in Action
- The OECD TPG 2022

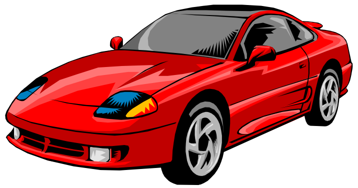
BASE CASE FOR TRANSFER PRICING RULES



WHAT IS HE STRUGGLING WITH ?

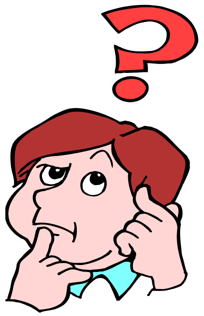
- Compliance of the law. So to help him to avoid penalties interests etc
- Avoid double taxation. So to help him not pay twice the same income
- Optimise legally correct. So to help him pay less tax

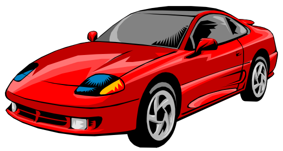




Company B ← Company A

TRANSFER PRICING IN ACTION





Company B ← **Company A**

Company B

1. Compliance of the law. Make the TP

2. Opposite (corresponding) Adjustments

Company A

1. Compliance of the law. Make the TP

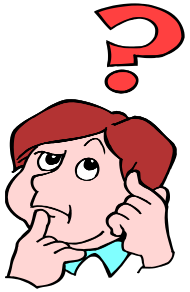
2. Upward Primary Adjustments

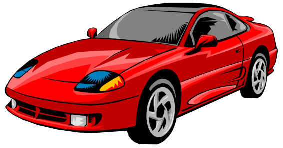
3. Secondary Adjustment

TRANSFER PRICING IN ACTION – OECD GUIDELINES 2022

1. Compliance of the law. Make the TP

2. Opposite (corresponding) Adjustments



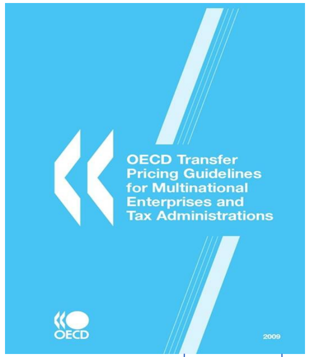


Company B ← **Company A**

1. Compliance of the law. Make the TP

2. Upward (Primary) Adjustments

3. Secondary Adjustment



<u>People</u>
Levels of Decisions (RACI Model)
Risks

Value drivers

Recognition

THANK YOU!

Demis specialises in corporate income tax law, transfer pricing and international tax (treaty) law. He has a strong track record with clients in advising on transfer pricing issues and in complex corporate tax law issues. His extensive interest on comparative income tax law (US, UK, Canada and Australia) offers him a unique advantage in solving complex tax issues in Cyprus.

Demis received his Master of Laws (MSc) in Tax Law from Oxford University. He was trained from a Big4 company and holds a first-class Bachelor’s degree in Accounting and Finance from the UK, as well as being a qualified Chartered Accountant in England & Wales.

Demis’ dissertation in Oxford focuses on analysing the OECD BEPS Project and was supervised by Richard Collier a senior tax advisor of the OECD on transfer pricing issues. In addition, he published a paper for the Cambridge Tax Law History Conference edited by Professor Peter Harris (University of Cambridge) on income tax fundamentals and the origins of the Cypriot income tax law.

Demis is a co-representative for IFA (YIN) in Cyprus.

Demis Ioannou
International Tax Lawyer
LL.M (WU)
Partner | STI Taxand
E: dioannou@stitaxand.com

STI TAXAND

CYPRUS AND THE GLOBAL MINIMUM TAX: A COMPREHENSIVE ANALYSIS OF THE NEW LEGAL FRAMEWORK

PRESENTATION BY
Gaspar Lopes Dias
Transfer Pricing and Corporate Tax

February 2025

Your global tax partner

CONTENTS – GASPAR LOPES DIAS

Recent updates 2024 - 2025 – global transfer pricing case law

- Finance
- Intangibles
- Other topics

TP FINANCE: FRANCE VS GEII RIVOLI HOLDING, APRIL 2024 (1/2)

- **Issue:** The French tax authority challenged the deductibility of interest payments (5.08%) on an intragroup loan, allowing only a lower safe harbor rate (2.79%).

- **Taxpayer's Defense:** GEII Rivoli Holding justified its interest rate using two methods:

Moody's Analytics (RiskCalc) – Rejected

- RiskCalc is a credit scoring model that estimates a company's default risk using financial ratios.
- GEII Rivoli used it to determine a **Baa1 credit rating**, supporting its 5.08% interest rate.
- **Why rejected?** The court found the method unreliable in this context, possibly due to assumptions made in the model or its lack of direct market comparability.

- S**&P Bond Yield Curve Comparison** – Initially Rejected, Later Accepted
    - LTV used to determine GEII Rivoli's risk profile which was compared to BBB-rated companies and their corresponding bond yields.
    - The taxpayer showed that at the loan date, 10-year market rates for BBB-rated firms were 5.21%, justifying the 5.08% interest rate.
    - **Why initially rejected?** Lower courts argued that issuing bonds was not a realistic alternative for the company due to its size and market presence.
    - **Why accepted?** The Conseil d'État ruled that bond market data can be a valid benchmark, provided adjustments are made for company-specific factors.

TP FINANCE: FRANCE VS GEII RIVOLI HOLDING, APRIL 2024 (2/2)

- **Outcome:** The Conseil d'État overturned the lower courts' rulings, holding that using bond market data to determine an arm's length interest rate was valid.

Key Transfer Pricing Takeaways:

- **Use of bond market data upheld** – The ruling confirms that external bond yield curves can be a valid benchmark for determining an arm's length interest rate.
- **Rejection of the blanket "safe harbour" approach** – Authorities cannot automatically limit deductible interest to a statutory safe harbour rate without proper economic analysis.

⚠️ **Challenges in proving realistic alternatives** – The court emphasized that companies must demonstrate that a bond issuance could be a viable alternative to an intragroup loan. [Potential comparability adjustments needed - Liquidity premium]

⚠️ **Importance of proper benchmarking** – Taxpayers should provide robust justification for their choice of comparables and make necessary adjustments.

Another French case: France vs Willink SAS, May 2024 – accepting Moody's RiskCalc to estimate ratings and S&P Capital IQ to search for comparable independent loans, under certain conditions.

TP FINANCE: NETHERLANDS VS “REAL ESTATE LOAN B.V.” - MAY 2024 (1/3)

- "Real Estate Loan B.V." deducted **10% interest** on shareholder loans.
- Dutch Tax Authorities challenged the deduction, arguing the loans were **"non-businesslike"** and not at arm’s length.
- The **District Court upheld** the tax authority’s position.
- The company appealed to the **Court of Appeal**.

TP FINANCE: NETHERLANDS VS “REAL ESTATE LOAN B.V.” - MAY 2024 (2/3)

Judgment & Key Findings

- **Loan deemed "non-businesslike"** – No independent third party would have provided the loan under the same terms.
- **Deemed guarantee approach applied** – Interest rate should reflect a scenario where a third party grants a loan with a parent company guarantee.
- **Interest rate adjusted to 3.09%**, significantly lower than the claimed 10%.
- **Reclassified as dividend** – A large portion of the disallowed interest was deemed a shareholder distribution.

TP FINANCE: NETHERLANDS VS “REAL ESTATE LOAN B.V.” - MAY 2024 (3/3)

Key Transfer Pricing Takeaways

- **Substance over form:** Shareholder loans must be structured like third-party loans to be deductible.

- **Market-based benchmarking is crucial:** Interest rates should align with what a third party would charge.

- **Guarantee analogy is a key approach:** When a loan is deemed non-businesslike, courts may use the **parent guarantee rate** to set arm’s length terms.

- **Heightened scrutiny on intercompany financing:** Tax authorities closely examine related-party loans, emphasizing credit risk and realistic lending terms.

TP FINANCE: UK VS KWIK-FIT, MAY 2024

✅ **Intra-group loan structure scrutinized** – The loan was part of a reorganization primarily aimed at securing tax benefits.
✅ **Interest rate set at LIBOR + 5%** – Not motivated by transfer pricing concerns but to **maximize tax savings** while remaining justifiable under TP rules.
✅ **Lack of commercial rationale** – Increased interest costs had no **non-tax justification**, as companies had the choice not to participate.
✅ **Differential treatment of loans** – Some intra-group loans had interest rate increases, while others did not—indicating a tax-driven motive.

Key Takeaways for TP

- **TP defense requires a genuine commercial rationale** – Tax authorities scrutinize **interest rate setting mechanisms** in related-party loans.

- **Consistency matters** – Disparate treatment of similar intercompany loans may trigger scrutiny.

- **Substance over form** – Courts will look beyond documentation to assess the real economic purpose of financial transactions.

TP FINANCE: PERU VS "LENDER SA", APRIL 2024

✅ **Reclassification of equity as debt** – Tax authorities treated the funds as loans, leading to the imputation of arm's length interest.

✅ **Application of the CUP method** – The tax administration used banking sector interest rates to determine an arm's length rate.

✅ **Court ruled against tax authority's adjustment** – Due to **insufficient comparability analysis**, the adjustment was overturned.

Key Takeaways for TP

🔹 **Proper comparability analysis is critical** – A broad selection of financial transactions without detailed matching on amount, terms, or borrower profile is inadequate.
🔹 **Industry characteristics matter** – Comparables should reflect the **lender's business model** (not just banking institutions) and the **borrower's risk profile**.
🔹 **Debt vs. equity classification remains a key TP risk** – Authorities can challenge classifications, but adjustments must be **properly substantiated**.

TP INTANGIBLES: PORTUGAL VS – GESTÃO DE EMPRESAS DE RETALHO SGPS. S.A., MAY 2024 (1/2)

- A Portuguese holding company transferred ownership of intangible assets (brands) to a related Swiss entity.
- Despite the transfer, the Portuguese subsidiaries (F… and P…) continued to bear costs related to managing, promoting, and developing the brands while also paying royalties to the Swiss entity for their use.
- The Tax Authority challenged the deductibility of these royalty payments, arguing that independent entities would not have structured the transaction in this manner.
- The Tax Authority applied the **Profit Split Method (PSM)** to determine arm's-length pricing and concluded that no royalties would have been payable under such conditions.
- The company appealed, claiming lack of reasoning in the judgment and disputing the chosen TP method.
- The court **dismissed** the appeal, upholding the Tax Authority's assessment and affirming the use of the **PSM**.

TP INTANGIBLES: PORTUGAL VS – GESTÃO DE EMPRESAS DE RETALHO SGPS. S.A., MAY 2024 (2/2)

Key Transfer Pricing Takeaways:

- **Substance over form:** The case highlights the importance of actual business functions and risk allocation. Despite the formal transfer, the Portuguese entities still bore the brand-related costs and risks, which undermined the economic rationale for royalty payments.
- **Profit Split Method as a preferred approach:** The court reaffirmed that PSM can be appropriate where intangible assets are highly specific and lack comparability with unrelated transactions.
- **Tax Authority discretion:** Courts may allow tax authorities a margin of discretion in choosing TP methods, provided they are legitimate and well-substantiated.
- **Risk of non-arm's-length arrangements:** Intra-group transactions that result in profit shifting without a true economic rationale can face severe adjustments and tax authority scrutiny.

TP INTANGIBLES: SWEDEN VS MEDA AB, APRIL 2024 (1/2)

- Meda AB (Sweden) established a Luxembourg subsidiary, which acquired intangible assets from external parties.
- The Luxembourg entity was the contractual owner and received residual profits, while Meda AB and other group companies received only routine compensation.
- The **Swedish Tax Authority** challenged this structure, arguing that Meda AB controlled the key risks and decision-making related to the intangibles.
- The tax authority **reallocated 60% of profits to Meda AB** and **40% to other group companies**, limiting the Luxembourg entity's compensation to a cost-plus return.
- The **Administrative Court** initially ruled in favor of Meda AB, but the **Court of Appeal overturned the decision**, upholding the tax authority's assessment.
- The Supreme Administrative Court denied Meda AB's request to appeal.

TP INTANGIBLES: SWEDEN VS MEDA AB, APRIL 2024 (2/2)

Key Transfer Pricing Takeaways

✅ **Substance over form:** The legal ownership of intangibles does not automatically entitle an entity to residual profits. Control over key functions and risks determines the economic owner.

✅ **Functional & risk analysis is critical:** The court emphasized that **decision-making and risk control matter more than contractual terms** when determining profit allocation.

✅ **OECD TP Guidelines can apply retroactively:** The court confirmed that later versions of the OECD Guidelines (2017) can be used as guidance for past tax years.

✅ **Risk-free vs. risk-bearing returns:** The Luxembourg subsidiary, having not controlled acquisition risks, was only entitled to a **risk-free return**, aligning with OECD principles.

✅ **Heightened scrutiny on IP structuring:** Tax authorities will challenge structures where valuable IP is moved to low-tax jurisdictions **without a genuine shift in decision-making and risk control**.

GREECE VS ENET SOLUTIONS LOGICOM S.A., MAY 2024

- **Enet Solutions Logicom S.A.**, a Greek subsidiary, reported a **€204,115 loss** in its 2010 tax return.

•The Greek tax authority **disallowed €22.8M in expenses**, mainly payments for goods invoiced by its **Cypriot parent company**, but shipped directly from **Cisco and Intel (UK)**.
•The tax authority classified these as **triangular transactions** and denied deduction, arguing that the parent company **only handled invoicing**.
•The **Administrative Court of Appeal ruled for Logicom**, confirming that the parent company had **a substantive economic role** in the transactions.
•The **Supreme Administrative Court upheld this ruling**, rejecting the tax authority’s appeal.

Key Transfer Pricing Takeaways:

✅ **Substance Over Form:** Deductibility depends on the **economic role** of the intermediary, not just its invoicing function.
✅ **Burden of Proof:** Taxpayers must present clear evidence (e.g., contracts, invoices) to demonstrate **substantial business activities** in intragroup transactions.
⚠️ **TP Risk Alert:** Authorities scrutinize transactions with **low-tax jurisdictions**, especially in triangular trade structures.
📌 **Strategic TP Consideration:** Multinational groups should **document and justify** the economic rationale behind their supply chain structures to mitigate TP risks.

CONCLUSIONS AND TAKEAWAYS – 2024 TP CASE LAW

🚨 **Common TP Risks Across Cases**

- **Debt vs. Equity Reclassification** – Interest denial, WHT risks (*Peru, France, Netherlands*).
- **Substance Over Form Challenges** – TP adjustments for lack of economic role (*Greece, Portugal, UK*).
- **Flawed Benchmarking & Safe-Harbor Rates** – Rejection of TP analysis due to poor comparability (*France, Peru, Sweden*).
- **Business Restructuring & Intangibles** – Scrutiny on IP transfers & intra-group fees (*Sweden, Portugal*).
- **Key TP Lessons**

✓ **Prove Substance** – Functional analysis & documentation must align with actual business activities.
✓ **Defend TP Comparables** – Use relevant benchmarks, justify adjustments, and challenge arbitrary safe-harbor rates.
✓ **Justify Financing Structures** – Demonstrate commercial rationale for debt vs. equity classification.
✓ **Document Business Restructuring** – Show economic rationale beyond tax efficiency.

📌 **Final Thought:** Courts demand stronger TP analysis—align transactions with economic reality to mitigate risks.

THANK YOU!

Gaspar has experience in a broad range of transfer pricing and international tax matters including financial operations, business reorganisations and IP structuring, advising multinationals in various industries and investment funds.

He joined Taxand Cyprus in 2021 from the tax practice of Baker & McKenzie in London, having previously worked at Loyens & Loeff in Luxembourg, and KPMG Belgium. Gaspar holds an LL.B civil law (Nova University Lisbon), LL.M International Tax (Tilburg University), MSc Taxation (University of Oxford), ADIT member UK CIOT, and is an IFA member (UK Branch).

Gaspar Lopes Dias
Transfer Pricing and Corporate Tax
Partner | STI Taxand
E: glopesdias@stitaxand.com

STI TAXAND

CYPRUS AND THE GLOBAL MINIMUM TAX: A COMPREHENSIVE ANALYSIS OF THE NEW LEGAL FRAMEWORK

PRESENTATION BY

Costas Savva

International Tax Lawyer

LL.M (WU)

February 2025

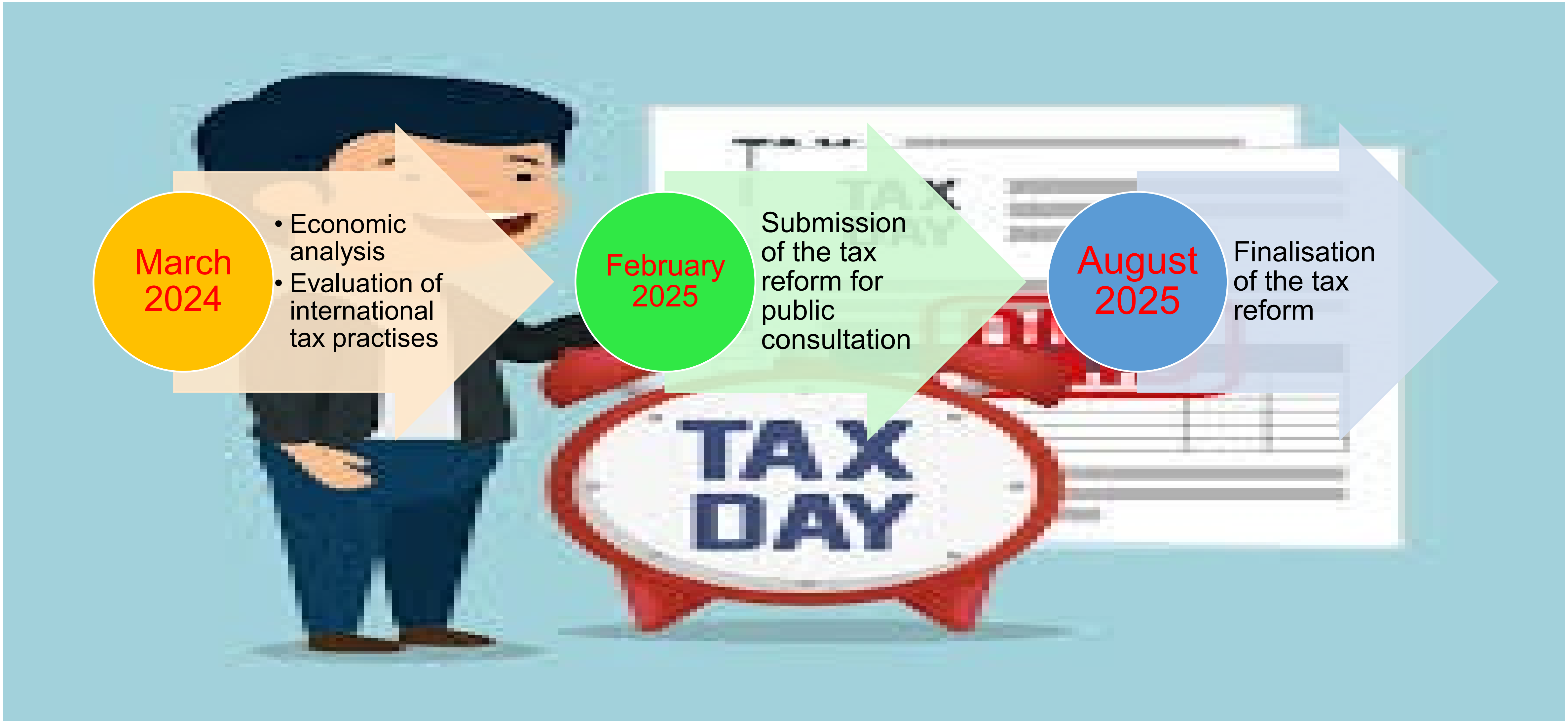
Your global tax partner

TAX REFORM IN CYPRUS: COSTAS SAVVA

Table of Contents

- The Need for Tax Reform
- Key and Policy Objectives of Tax Reform
- Key Principles in Designing Tax Law
- Stakeholder Involvement in the Tax Reform Process

WHERE DO WE STAND?



March 2024

- Economic analysis
- Evaluation of international tax practises

February 2025

Submission of the tax reform for public consultation

August 2025

Finalisation of the tax reform

THE NEED FOR TAX REFORM

- Colonial Hangover (1941 Colonial Model, 1959 CAP 323, 1961 and 2002)
- Fragmented administration rules in different taxes
  - Simplified audit
  - Single powers of tax administrators
- Distortion between laws SDC vs Income tax and CGT
- Globalization and increased mobility
  - Source, residence
  - Inbound and outbound investments
  - Anti-abuse rules – i.e. Transfer Pricing, exchange of information

KEY AND POLICY OBJECTIVES OF TAX REFORM

- Encouraging Foreign Direct Investments (FDI)
- Encouraging entrepreneurship
- Shifting the tax burden to promote employment
- Enhancing transparency and simplification
- Addressing tax evasion and ensuring fairness
- Aligning with environmental goals

KEY AND POLICY OBJECTIVES OF TAX REFORM

- Encouraging Investments and entrepreneurship

I. Provide Business certainty

II. Tax Incentives

III. Simplified tax compliance

- Promote employment

I. Reducing the Tax Burden on Labor

II. Incentives for Job Creation and Retention

III. Sector-Specific Employment Incentives (staid aid review)

KEY PRINCIPLES IN DESIGNING TAX LAW

- Economic Efficiency
    - I. Broad Tax Base
    - II. Neutrality (ensuring that taxes are applied horizontal)
    - III. Stability
- Equity
    - I. Progressive tax system might be more fair
- Simplicity and Clarity
    - I. Best practice: Simple language

KEY PRINCIPLES IN DESIGNING TAX LAW

- Competitiveness and Growth Friendliness

  I. Low Corporate Tax Rates

  II. Encourage R&D and green investments

- Alignment with international standards

  I. OECD BEPS

  II. EU Directives

  III. Double tax treaties

KEY PRINCIPLES IN DESIGNING TAX LAW

- Targeted and well-designed incentives

I. Investment tax credits

II. R&D tax deductions

III. Employment-Based Incentives

IV. Green Tax Incentives

V. Time-Limited incentives (sunset clauses)

KEY PRINCIPLES IN DESIGNING TAX LAW

Targeted and well-designed incentives

I. Exempt Income (participation exemption)

II. Exempt activities (i.e. headquartering – staid aid)

III. Special incentives for foreign retirees, tax breaks for new residents (Greece)

IV. R&D tax credits, Special Assignee Relief Program (SARP) for foreign workers (Ireland)

V. Tax refund system (Malta)

STAKEHOLDER INVOLVEMENT IN THE TAX REFORM PROCESS

- Government and Tax authorities

  I. Policy formulation

  II. Regulatory oversight

  III. Revenue forecasting

  IV. Implementation and enforcement

- Business and corporate sector

  I. Advocacy and consultation (investment attraction)

  II. Economic impact assessment

STAKEHOLDER INVOLVEMENT IN THE TAX REFORM PROCESS

- Professional associations and Tax experts

  Technical expertise

  I. Legal compliance Analysis

  II. Risk Assessment

- International Organizations (OECD, EU commission, IMF etc)

  I. Policy Guidance

  II. Funding and Technical support

  III. Harmonization and compliance

THANK YOU!

Costas has considerable experience in advising on international tax law and corporate tax issues. He focuses his practice on the tax aspects of inbound and outbound business operations with a strong track record in cross-border investment structures and structured finance. Costas also specializes in Transfer Pricing, with experience in a broad range of transfer pricing matters.

Costas holds an LL.B. and a Master of Laws (LL.M.) in International Taxation from the Vienna University of Economics and Business (WU) in Austria. He is admitted to practice as lawyer to the Cyprus Bar Association and a qualified fellow member of the Association of Certified Chartered Accountants (ACCA).

Costas serves as the Cypriot correspondent of the IBFD holding regime.

He is also the co-author of the book Limiting Base Erosion edited by Professor Michael Lang. He regularly publishes on a wide variety of tax topics. Costas contribute the taxation of trusts chapter on the book of Prof. Christos Clerides Equity & Trusts in Cyprus.

Costas Savva
International Tax Lawyer
LL.M (WU)
Partner | STI Taxand
E: csavva@stitaxand.com