"What Now?": The Potential Impact of the G7 Agreement for EU and Swiss Taxpayers

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I. Introduction

On June 28, 2025, the G7 issued a joint statement that marked a shift in the global tax landscape. The agreement, reached just days earlier between the U.S. Treasury and its G7 counterparts, confirmed that U.S.-parented multinational enterprises will be fully excluded from the Organisation for Economic Co-operation and Development's (OECD's) Pillar 2 Income Inclusion Rule (IIR) and Undertaxed Profits Rule (UTPR). Instead, the G7 endorsed a "SbS system" (SbS) under which the U.S. international tax regime, particularly the global intangible low-taxed income (GILTI) rules (now net CFC tested income (NCTI)), will operate in parallel with Pillar 2. While the OECD Inclusive Framework (IF) had previously granted temporary relief to U.S. multinational enterprises (MNEs), the new G7 agreement signals a more permanent accommodation. In response, the U.S. Senate has withdrawn the proposed Section 899, a retaliatory measure targeting jurisdictions that applied Pillar 2 rules to U.S. groups. For European Union (EU) and Swiss taxpayers, the potential implications are complex.

The agreement raises fundamental questions about legal consistency and the future of coordinated implementation. It also introduces new uncertainties, particularly for jurisdictions that have already enacted Pillar 2 legislation, such as Switzerland and EU Member States. This article explores the potential legal, policy, and practical consequences of the G7 agreement for EU and Swiss MNEs. It also examines the remaining uncertainties as the global tax order enters a new phase.

II. Background

Pillar 2 is a project by the OECD and G-20 (IF) introducing top-up tax rules to ensure a minimum effective taxation of 15% in each jurisdiction where MNEs

with a global turnover of at least EUR750 million operate. Pillar 2 consists of interwoven measures, including an IIR, a UTPR and an optional qualified domestic minimum top-up tax (QDMTT). Pillar 2 is considered one of the most ambitious international tax policy initiatives to date, and as global implementation has advanced, tensions have emerged between the U.S. and other IF members. These tensions partially stemmed from U.S. dissatisfaction with Pillar 2, with House Republicans flagging concerns over Pillar 2's extraterritorial aspects for over two years. The tension came to a head in May 2025, when the House fiscal 2026 budget reconciliation bill proposed a new Section 899. Section 899 would have introduced retaliatory measures such as increased withholding taxes against entities from jurisdictions deemed to impose unfair foreign taxes (the UTPR and digital services taxes).[1] While this provision remained in the Senate version released on June 17, Treasury Secretary Scott Bessent announced on June 26 that an agreement was reached with the G7 to remove Section 899 in exchange for limiting the application of Pillar 2 measures to U.S. MNEs, by granting a full exclusion from the IIR and UTPR to U.S.-parented MNEs.[2]

Despite its initial momentum, Section 899 was put on hold in favor of the SbS system. According to the G7 statement, the SbS system would comprise the following elements. Foremost, U.S.-parented MNE groups would be fully exempt from the application of both the IIR and the UTPR, with respect to profits earned domestically and abroad. Additionally, the SbS system would be developed in parallel with efforts to simplify the administrative and compliance burdens associated with Pillar 2. Similarly, the agreement also included a commitment to reassess the treatment of substance-based, non-refundable tax credits under Pillar 2.

In late August 2025, a discussion paper from the OECD proposing options on the SbS system was leaked.[3] The discussion paper, dated August 13, 2025, proposes that the IIR and UTPR would not apply to the low-taxed profits of in-scope MNE groups headquartered in a jurisdiction with an "eligible SbS regime." Additionally, the discussion paper states that such a regime should not interfere with local QDMTTs. In this regard, the discussion paper proposed an initial suggestion on the criteria to be applied to determine whether a jurisdiction has an eligible SbS regime. The proposal included the following criteria for a jurisdiction to satisfy. First, it must impose tax on the income of constituent entities at a rate above the agreed minimum, regardless of whether that income is earned domestically or abroad. Second, if the ultimate parent entity (UPE) of an in-scope MNE Group is located in such jurisdiction, the UPE must be taxed at the agreed rate on its share of income from controlled foreign corporations (CFCs), including income that has not been distributed. Third, such jurisdiction must offer a foreign tax credit or a similar form of relief for any QDMTT paid, subject to the same limitations that apply to other foreign tax credits under domestic law. The discussion paper was shared with delegates of Working Party No. 11, with a deadline to provide written comments by September 5, 2025. To date, no further information on the discussion paper or the outcome of the discussions has been shared publicly.

III. Implications for Multinational Enterprises with EU Nexus

Intensified negotiations within the EU resulted in the EU Minimum Taxation Directive (2022/2523) of December 14, 2022 (the Directive), which provided for the introduction of Pillar 2 in the EU. Direct taxation is essentially the last tax policy area within the EU where the approval of new legislation still requires unanimous voting. Navigating this political landscape made the adoption of the Directive challenging. Nevertheless, all EU Member States required to transpose the Directive into their domestic laws have done so as of today.

A. Competitive Distortions

At the end of 2022, there was widespread European anticipation that Pillar 2 would be adopted globally. However, that expectation has somewhat dissipated by now. The SbS system is supposed to remove the U.S. international tax system from Pillar 2, with U.S.-parented MNEs effectively only facing QDMTTs in jurisdictions that have implemented the Pillar 2 rules. Meanwhile, other jurisdictions are seeking similar agreements, as can be derived from their responses to the G7 Agreement.[4] This raises the question of why EU-headquartered companies should remain committed to a system that imposes significant global compliance costs and potentially higher effective tax rates (ETRs) than their competitors based outside the EU, particularly those benefiting from a global exemption under frameworks such as the SbS system. Although OECD delegates remain optimistic that an agreement on the implementation of the G7 Agreement can be reached soon,[5] thereby indicating a future for Pillar 2, the fact that German voices publicly called for suspending the implementation of Pillar

2 may be the first sign of cracks emerging within the EU's commitment to the initiative.[6] While German business leaders urged German Chancellor Friedrich Merz to withdraw from Pillar 2, the German Ministry of Finance responded by affirming its commitment to Pillar 2, albeit calling for some simplification.[7]

B. Compliance Considerations

Pillar 2 by no means simplifies global compliance. Rather, it effectively creates a third set of books, aside from tax and accounting. U.S.-parented MNEs with operations within the EU must still contend with this complexity, as the SbS system is not expected to exempt them from the QDMTT imposed by EU Member States. However, the application of QDMTT safe harbors provides for some relief. Importantly, even if U.S.-parented MNEs are ultimately excluded from the IIR and UTPR under the SbS classification, their compliance obligations under Pillar 2 are unlikely to disappear entirely. Jurisdictions may still require U.S. MNEs to file a GloBE Information Return (GIR) to demonstrate eligibility for the SbS exclusion. This could involve providing detailed information on the group's structure, the jurisdiction of the UPE, and ETRs, even if no top-up tax is ultimately due.

EU-parented MNEs with operations in the United States face significantly greater compliance obligations under the full implementation of Pillar 2. According to a 2022 study examining the compliance costs associated with Pillar 2 in Germany, authors predicted that German MNEs would pay around EUR319 million (about EUR703,000 per firm on average) for implementation and EUR100 million (about EUR214,000 per firm) annually for ongoing compliance, with higher costs for larger firms.[8] These are burdens that German groups had not previously encountered. Given the inherent complexity of both the U.S. international tax system and the Pillar 2 system, it is difficult to determine whether EU-headquartered MNEs face a clear compliance cost disadvantage compared to their U.S.-parented counterparts.

Furthermore, clarity will be needed on eligibility for the SbS system and the associated reporting obligations for EU parent companies that hold subsidiaries in low-tax jurisdictions through intermediary U.S. holding companies (same considerations apply for reporting obligations for Swiss parent companies, *see* section IV.B below). At present, it is unclear whether the IIR will apply to low-taxed foreign subsidiaries held through an intermediary entity located in a jurisdiction operating an eligible SbS regime. If the eligibility of an SbS regime is assessed solely based on its application at the level of the UPE, then MNE Groups headquartered outside such jurisdictions would remain subject to the IIR on all of their profits, including those earned by constituent entities located in jurisdictions with an eligible SbS regime. In any case, a careful balance must be struck to avoid creating additional disparities by allowing U.S. MNEs to bypass all administrative obligations under the exemption.

C. Outlook

To date, the EU has not issued a formal public response to the SbS exclusion, which might partly reflect the discontent among certain EU Member States, who expressed concerns over the G7 Agreement being negotiated without their involvement.[9] Setting aside the previously discussed considerations on competitive distortions and compliance burdens, the OECD's idea would be to accommodate the objectives of the SbS solution through one or more safe harbors. Within the EU, Article 32 of the Directive includes a provision allowing for the implementation of safe harbors. However, interpreting Article 32 of the Directive as a gateway for jurisdiction-wide carve-outs risks undermining the legal integrity of the EU framework. Originally designed to facilitate administrative simplification through safe harbors, Article 32 was never intended to justify broad exemptions based on political agreements. Warnings have been issued in literature that such reinterpretation could transform the provision into a "constitutional Trojan horse," eroding both the Directive's coherence and the EU's commitment to a level playing field.[10]

An alternative approach would involve amending the Directive itself, thereby abandoning the dynamic interpretation of OECD Guidance and formally embedding the SbS exclusion as a component of the EU legal framework. However, given the considerable political challenges that accompanied the Directive's initial adoption, and considering explicit statements from certain EU Member States suggesting that the Directive does not serve their national interests,[11] this legislative route appears suboptimal from an EU perspective. It risks reopening complex negotiations and further fragmenting consensus at a time when cohesion is critical to maintaining the credibility of the EU's commitment to Pillar 2. Against that background, it is unsurprising that EU legislators would favor a safe harbor mechanism over a formal amendment of the Directive.

IV. Implications for Multinational Enterprises with Swiss Nexus

Following the approved public vote on June 18, 2023, the required Swiss constitutional basis was created for implementing Pillar 2. The Swiss Federal Council, in exercising its authority, introduced the regulations on the Swiss QDMTT by means of a temporary ordinance on January 1, 2024 (Swiss Ordinance).[12] On November 20, 2024, the Swiss Ordinance was amended to include the Swiss IIR as of January 1, 2025. In an explanatory note, the Swiss Federal Council explained that it refrained from implementing the UTPR for the time being, citing heated debates on the compatibility of the UTPR with international law as well as rising political opposition to the UTPR, particularly in the United States.[13]

A. Competitive Distortions

Approximately 500 Swiss companies operate in the United States, while more than 1,200 American companies are active in Switzerland.[14] Under the current form of the SbS system, U.S.-parented groups are exempt from both the IIR and the UTPR with respect to their domestic and foreign profits.[15] As a result, Swiss entities belonging to U.S.-parented groups are placed in a more favorable position regarding the IIR. This may incentivize global restructuring among non-U.S.-parented groups to relocate their headquarters to the United States. However, the SbS system is currently not expected to interfere with local QDMTTs.[16] In other words, Swiss entities of U.S.-parented groups located in cantons with an ETR below 15% would generally remain subject to the Swiss QDMTT. In turn, this may encourage U.S.-parented groups to migrate their Swiss subsidiaries to low-tax jurisdictions that do not operate a QDMTT regime. Nevertheless, such migration would typically trigger exit taxation in Switzerland,[17] and depending on the timing of the migration, the Swiss entity may remain subject to the Swiss QDMTT until the beginning of the next fiscal year.[18] Additionally, it is anticipated that the IF will consider introducing integrity rules to address QDMTT arbitrage.[19]

The current version of the Swiss Ordinance excludes the application of Article 4.3.2 (c) of the GloBE Model Rules (MR) under the Swiss QDMTT.[20] The rule in Article 4.3.2 (c) MR stipulates that when a constituent entity is taxed under a CFC Tax Regime by its direct or indirect owners, the portion of covered taxes recorded in the owner's financial accounts on their share of the CFC's income is reallocated to the CFC itself. By excluding the application of Article 4.3.2 (c) MR, the taxes paid by the constituent entity-owner subject to a CFC Tax Regime on the Swiss entity's income are not reallocated to the Swiss entity. Consequently, this can result in a lower ETR for the Swiss entity under the Swiss QDMTT, potentially triggering top-up tax. However, even if the U.S. parent is exempt from applying the IIR and other jurisdictions cannot apply the UTPR due to the SbS system, the Swiss entity itself remains subject to the Swiss QDMTT if its ETR falls below the minimum rate. The QDMTT is calculated based on the jurisdictional ETR and operates as a standalone top-up tax mechanism. In other words, while the SbS system proposed by the U.S. exempts U.S.-parented groups from the IIR and UTPR, it should not override the application of the Swiss QDMTT. In effect, if the SbS system is implemented as proposed, the lack of reallocation would not be remedied for U.S.-parent groups, since the Swiss QDMTT would still apply. Therefore, the SbS system would not provide a particular advantage regarding the exclusion of Article 4.3.2 (c) MR *vis-à-vis* parent companies located in other CFC regimes. Additionally, the explicit exclusion of Article 4.3.2 (c) MR in the current Swiss Ordinance is expected to be removed in the revised Swiss Ordinance (see below for details on the revised Swiss Ordinance).

B. Compliance Considerations

The operation of the SbS system also raises compliance questions for Swiss entities of U.S.-parented groups. On behalf of all 26 cantons, the Swiss Tax Conference has introduced OmTax, a centralized information system for the Swiss domestic QDMTT and IIR. OmTax serves as a platform for identifying the tax liability of taxable constituent entities and for declaring the Swiss domestic QDMTT and IIR. In other words, it facilitates the preparation and submission of the Swiss domestic QDMTT and IIR tax returns and has been available since January 1, 2025. Invoicing, collection, and settlement of the Swiss domestic QDMTT and IIR are not handled through OmTax but remain the responsibility of the cantons *via* their existing systems. U.S.-parented MNEs with subsidiaries in Switzerland are expected to remain subject to the Swiss QDMTT and will presumably file "regular" Swiss QDMTT returns *via* OmTax. In general, if a Swiss filing entity is not subject to the IIR, it must still submit a nil return through OmTax. Accordingly, the current structure of OmTax does not appear to create a significant disparity in administrative

burden. However, it remains unclear whether compliance simplifications will be granted to U.S.-parented Swiss entities or whether specific reporting requirements will be imposed.

Regarding the GIR, consideration will need to be given to the reporting requirements expected from U.S.-parented MNEs (*i.e.*, relevant group structure and identification of the UPE). The first international exchange of Swiss GIRs for the 2024 tax period is scheduled to take place by December 31, 2026. Group parent companies based in Switzerland must submit a GIR to the Swiss Federal Tax Administration by June 30, 2026. By that time, the applicable reporting requirements must be clearly defined. This need for clarification extends beyond Switzerland and will also be anticipated across EU Member States (*see* above section III.B).

C. Outlook

To date, the Swiss government has not issued a formal public response to the SbS system. Switzerland is expected to take a cautious, "wait-and-see" approach before making any amendments to the Swiss Ordinance. When Switzerland voted in favor of the constitutional amendment to implement Pillar 2 *via* ordinance in June 2023, the expectation was that Pillar 2 would operate as an international system.[21] However, with the introduction of the SbS regime and the continued non-participation of major jurisdictions such as China and India, questions may emerge on whether Pillar 2 can still be regarded as a truly international framework, as originally envisioned.

It is important to note that the Swiss Ordinance is an independent ordinance based on the Swiss federal constitution.[22] As such, it must generally adhere to fundamental constitutional principles, including the principle of legality and the prohibition of retroactivity. References to non-governmental rules within an independent ordinance can be static, meaning linked to a specific set of rules at a fixed point in time; or dynamic, allowing the underlying materials to evolve without altering the ordinance itself. The Swiss Ordinance adopts a static reference to the MR, as the Swiss government recognised that a dynamic reference would raise constitutional concerns.[23] Consequently, any revision to the MR would necessitate a corresponding revision of the Swiss Ordinance.[24] Additionally, the Swiss Ordinance permits the use of the Commentary[25] as an interpretative aid for the MR, constituting an indirect dynamic reference. However, this raises constitutional questions when new guidance is released, particularly regarding whether such interpretation alters the substance of the MR. If it does, the Swiss Ordinance may require revision, which in turn may prompt questions on its compliance with constitutional principles. Therefore, the introduction of a SbS system, and Switzerland's response to it, may also give rise to constitutional considerations.

Nevertheless, the Swiss Ordinance is currently slated for revision, following the publication of a public discussion draft by the Swiss Federal Council on April 30, 2025.[26] Among the proposed changes was an update to the footnote referencing the Commentary,[27] aligning it with the 2024 version that incorporates the December 2023 Administrative Guidance.[28] However, the draft did not reflect the most recent version of the Consolidated Commentary,[29] which was published on May 9, 2025, after the consultation period had already commenced. The public consultation on the draft ordinance closed on August 20, 2025. On November 26, 2025, the Swiss Federal Council released the results of this consultation. In particular, the draft's proposed footnote reference to the 2024 version of the Commentary was replaced with a general note that the "Commentaries can be accessed free of charge" and a link to the OECD's webpage containing the published Commentaries. However, and as expected, the Swiss Federal Council has not issued any formal guidance or amendments to the Swiss Ordinance reflecting the implications of the SbS system. The revised Swiss Ordinance is expected to enter into force on 1 January 2026.

V. Legal Uncertainties

The SbS system raises important questions regarding the enforcement and broader practical application of the current Pillar 2 rules. This paragraph assesses the potential impact on the integrity rule in Article 3.2.7 MR (*see* section V.A), as well as on the treatment of partially owned parent entity (POPE) structures (*see* section V.B). Additionally, this article will consider the legal uncertainties surrounding the continued application of Pillar 2, with a focus on the ongoing legal challenge before the European Court of Justice (ECJ) (*see* section V.C).

A. Article 3.2.7

Article 3.2.7 MR aims to prevent MNE groups from artificially inflating the ETR of a low-tax entity by granting it an "Intragroup Financing Arrangement" (IFA) without a corresponding pickup in the high-tax counterparty's taxable income.[30] Without Article 3.2.7 MR,

the MNE group could reduce its total top-up tax by shifting GloBE Income to the high-tax entity, without triggering regular corporate income tax consequences in the recipient jurisdiction. However, when Article 3.2.7 MR applies, expenses related to the IFA are excluded from the borrower's GloBE Income or Loss, while the corresponding income remains included in the lender's GloBE Income or Loss.

Moreover, Article 3.2.7 MR specifically applies to arrangements involving an IFA, which it defines as "any arrangement entered into between two or more members of an MNE Group, whereby a high tax counterparty directly or indirectly provides credit or otherwise makes an investment in a low tax entity."[31] Accordingly, the rule targets arrangements from high-tax counterparties to low-tax entities, as transactions that shift GloBE Income between low-tax jurisdictions do not similarly reduce the group's top-up tax.

Under the SbS system, a U.S.-parented group could shift GloBE Income from a low-tax jurisdiction with a QDMTT to another low-tax jurisdiction without a QDMTT, without triggering Article 3.2.7 MR. In turn, this dynamic may further incentivize movement away from low-tax QDMTT jurisdictions. Working Party No. 11 has raised general concerns about arbitrage in its ongoing workstreams. However, considering the SbS system, it has been acknowledged by the Working Party that a broader solution is likely necessary.[32]

This reconsideration also presents an opportunity to clarify other aspects of Article 3.2.7 MR. One such issue is the interpretation of a "commensurate increase in taxable income" when tax loss carry-forwards are used to offset taxable income. Under Article 3.2.7 MR, increased expenses allocated to the low-tax entity should generally be neutralized only if there is no corresponding commensurate increase in the high-tax counterparty's taxable income. The Consolidated Commentary and accompanying Examples[33] illustrate scenarios where the increase in the high-tax entity's taxable income is not considered commensurate due to excess interest expense carry-forwards. This raises the question of whether all tax loss carry-forwards, including general tax losses permitted under domestic law to offset taxable income, are considered "harmful." As currently drafted, the Pillar 2 rules do not address this point. It is argued that the integrity rule in Article 3.2.7 MR was not intended to prohibit the use of ordinary tax loss carry-forwards that can be applied against *any* taxable income.[34] Instead, further clarification could specify that the rule targets tax loss carry-forwards restricted to offsetting interest income only. Therefore, as the Working Party addresses the broader issues raised by the SbS system, it should also take the opportunity to resolve existing ambiguities.

B. Partially Owned Parent Entities

Under the ordering rules of Pillar 2, the jurisdiction where the UPE is located holds the primary taxing right for any top-up tax due under the IIR (Article 2.1.1 and 2.1.3. MR). An exception to this general principle applies to a so-called POPE. A POPE is an entity (other than a UPE) in which more than 20% of ownership interests are held by members outside of the MNE Group for Pillar 2 purposes. In such cases, instead of the UPE's jurisdiction, the jurisdiction where the POPE is located has the primary taxing right under the IIR (Article 2.1.4 MR). The implementation of the SbS system could create issues for U.S. MNEs that include a POPE in their structure.

Such a potential issue could arise for U.S.-parented MNEs that have subsidiaries in EU jurisdictions where a third party holds a minority interest exceeding 20%. Under such circumstances, the EU-based subsidiary may qualify as a POPE under the Pillar 2 rules. If the POPE itself owns a low-taxed entity, the current rules would permit the EU jurisdiction to impose a top-up tax under the IIR. The practical implications of this become particularly relevant in light of the anticipated implementation of the SbS system. It remains uncertain whether Article 2.1.4 MR will continue to confer primary taxing rights to the POPE's jurisdiction, even in cases involving U.S.-parented MNEs. If so, this would imply that such U.S. MNEs could remain subject to top-up tax under the IIR for profits attributable to low-taxed entities held through a POPE. This outcome appears to conflict with the intended full exemption from both the IIR and the UTPR as articulated in the G7 Statement.

Alternatively, if the POPE were no longer subject to the IIR when held by a U.S.-parented MNE, a portion of the profits targeted by the IIR, specifically, the share not held by the U.S.-parented MNE would effectively fall outside the scope of both the Pillar 2 framework and the U.S. tax system (assuming the minority shareholder is neither EU- nor U.S.-headquartered). Such an outcome raises important questions about its acceptability to the OECD/IF, particularly in light of its stated objective to ensure a consistent and comprehensive application of Pillar 2 across jurisdictions.

C. Litigation

Beyond the concerns previously outlined in this article, many of which may potentially undermine the long-term

viability of the Pillar 2 framework, one element appears particularly vulnerable: the UTPR. This vulnerability partially stems from an ongoing legal challenge before the ECJ, following preliminary questions raised by the Belgian Constitutional Court regarding the UTPR's compatibility with fundamental principles of EU law.[35]

Under Belgian constitutional law, any individual with a legitimate interest may initiate a constitutional review procedure before the Belgian Constitutional Court within six months of a law's publication. In the UTPR case, the plaintiff argued that Belgium's implementation of the UTPR infringes upon fundamental rights protected under the Belgian Constitution.

On July 17, 2025, the Belgian Constitutional Court issued its initial judgment in the case concerning the UTPR. It held that, because the Belgian UTPR legislation is derived from the Directive, any potential infringement of fundamental rights must be assessed at the European level. Consequently, the Belgian Constitutional Court referred preliminary 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 and/or the principle of fiscal territoriality.

Central to these challenges surrounding the UTPR is the question of whether it is compatible with fundamental rights for an entity to be taxed on profits earned by entities in other jurisdictions, without regard to its own financial capacity. The Belgian Constitutional Court's referral confirms that the validity of the UTPR must be evaluated at the EU level. Should the CJEU annul the UTPR provisions in the Directive, EU Member States would lose the legal basis for their national UTPR rules, which could then be repealed or further contested. While the referral opens the door to potential amendments to the Directive, the path forward remains uncertain. The outcome and its timing will depend not only on the CJEU's ruling but also on how EU Member States respond if the CJEU sides with the plaintiff. In the meantime, the UTPR remains in force, and in-scope groups should remain vigilant and prepared for potential legal and political developments. That said, to the extent the objectives of the G7 Agreement (namely, a full exclusion from the UTPR for U.S.-parented MNEs) are implemented, the outcome of this case becomes particularly relevant to MNEs whose UPE is not located in the United States.

In terms of admissibility, it is important to distinguish the preliminary questions raised by the Belgian Constitutional Court regarding the UTPR from the ECJ's recent decision in the Fugro case.[36] In that case, the company directly challenged the Directive under Article 263 of the Treaty on the Functioning of the European Union (TFEU), which imposes strict standing requirements. The ECJ upheld the General Court's 2023 ruling, denying access to directly challenge the Directive. By contrast, the UTPR case reached the ECJ through a preliminary question from the Belgian Constitutional Court under Article 267 of the TFEU. This is a procedural path that originates from a national court seeking interpretative guidance. This distinction is important to keep in mind as it underscores how the procedural route within an EU context may significantly influence the ECJ's ability to engage with legal questions on Pillar 2.

VI. Conclusion

This article has examined the evolving dynamics of the SbS system and its potential impact on compliance, competitiveness, and legal certainty across the EU and Switzerland. To date, no further information has been publicly and formally released regarding the discussion paper or the outcome of related deliberations. With upcoming filing deadlines and ongoing discussions with auditors, greater clarity would be highly beneficial. In the summer, members of the IF agreed to begin negotiations on a deal that would allow the U.S. tax system to operate "side-by-side" with Pillar 2. While these negotiations are still ongoing, the United States has set a deadline of December 31, 2025, to reach an agreement.[37] Until then, both the SbS system and Pillar 2 remain in a state of uncertainty.

While endorsement of Pillar 2 was initially broad and included over 140 IF members, only around 65 jurisdictions have enacted or are in the process of enacting Pillar 2 legislation. Moreover, the proposed exclusion of U.S. MNEs from key components of Pillar 2 introduces uncertainty regarding the feasibility of a truly global minimum tax. This asymmetry could also create competitive disadvantages for MNEs headquartered in jurisdictions that fully implemented the Pillar 2 rules. However, measures to mitigate these risks are being explored in ongoing discussions,[38] and the QDMTT is expected to remain in place as a concession from the United States.[39] Nevertheless, until official guidance is released, it remains uncertain whether the outcome will preserve or further distort the future of Pillar 2's coordinated implementation.

ENDNOTES

1 One Big Beautiful Bill Act (P.L. 119-21) (H.R. 1).

2 Sen. Mike Crapo, R-Idaho, post on X of Treasury Secretary Scott Bessent's announcement on removal of section 899 (June 26, 2025).

3 Stephanie Soong, *Confidential OECD Documents Outline Potential Pillar 2 Changes*, Tax Notes (2025), *www.taxnotes.com/featured-news/confidential-oecd-documents-outline-potential-pillar-2-changes/2025/08/29/7syzc* (last visited October 9, 2025).

4 Lee Sheppard, *Not GILTI and Pillar 2, Part 2,* Tax Notes (2025), *www.taxnotes.com/tax-notes-international/base-erosion-and-profit-shifting-beps/not-gilti-and-pillar-2-part-2/2025/10/27/7t6kl?highlight=g7%20sheppard* (last visited October 24, 2025).

5 Stephanie Soong, *Top U.K. Delegate Hopeful for SbS Pillar 2 Tax Deal,* Tax Notes (2025), *www.taxnotes.com/tax-notes-international/oecd-pillar-2-global-minimum-tax/top-u.k-delegate-hopeful-side-side-pillar-2-tax-deal/2025/10/13/7t2tb* (last visited October 24, 2025).

6 Stephanie Soong, *Three German States Call for Suspending Minimum Tax Talks*, Tax Notes (2025), *www.taxnotes.com/tax-notes-today-international/oecd-pillar-2-global-minimum-tax/three-german-states-call-suspending-minimum-tax-rules/2025/10/03/7t29p?highlight=merz%20pillar%20two*, (last visited October 24, 2025).

7 Alexander Peter, *States' Proposal to Suspend German Global Minimum Tax Voted Down,* Tax Notes (2025), *www.taxnotes.com/tax-notes-international/oecd-pillar-2-global-minimum-tax/states-proposal-suspend-german-global-minimum-tax-voted-down/2025/10/13/7t2xr* (last visited October 25, 2025).

8 Sean Bray and William McBride, *Does the G7 Global Minimum Tax "SbS" Solution Give US Multinationals an Advantage?*, *taxfoundation.org/blog/g7-global-minimum-tax-side-by-side-solution-us-multinationals/* (last visited October 25, 2025).

9 Sheppard, *supra* note 4.

10 Dennis Weber, *A full carve-out for U.S. groups for Pillar 2: an EU Constitutional Trojan Horse?*, Kluwer International Tax Blog (2025), *legalblogs.wolterskluwer.com/international-tax-law-blog/a-full-carve-out-for-us-groups-for-pillar-2-an-eu-constitutional-trojan-horse/* (last visited October 26, 2025).

11 Elodie Lamer, *Sunk Costs Don't Justify Continued Push for Pillar 2, Estonia Warns*, Tax Notes (2025), *www.taxnotes.com/tax-notes-today-international/oecd-pillar-2-global-minimum-tax/sunk-costs-dont-justify-continued-push-pillar-2-estonia-warns/2025/09/19/7t11x* (last visited October 26, 2025).

12 Ordinance on the Minimum Taxation of Large Corporate Groups (*Verordnung über die Mindestbesteuerung grosser Unternehmensgruppen, Mindestbesteuerungsverordnung;* SR 642.161).

13 Federal Department of Finance, *Explanatory notes on the amendment to the Ordinance on Minimum Taxation of Large Corporate Groups*, Bern (November 20, 2024).

14 Swiss-U.S. Economic Relations, Federal Department of Foreign Affairs (2025), *www.eda.admin.ch/countries/usa/en/home/representations/embassy-washington/embassy-tasks/economic-and-financial-affairs/swiss-u-s--economic-relations-.html* (last visited October 1, 2025).

15 G7 statement on global minimum taxes, Government of Canada (2025), *www.canada.ca/en/department-finance/news/2025/06/g7-statement-on-global-minimum-taxes.html* (last visited October 1, 2025).

16 Soong, *supra* note 3.

17 Article 61*b* of the Direct Federal Tax Act (*Bundesgesetz über die direkte Bundessteuer;* SR 642.11); Article 24*d* of the Federal Act on the Harmonization of Taxes (*Bundesgesetz über die Harmonisierung der direkten Steuern der Kantone und Gemeinden*; 642.14).

18 Article 10.3.6 of the Model Rules; OECD (2021), *Tax Challenges Arising from Digitalisation of the Economy—Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, *doi.org/10.1787/782bac33-en*.

19 Soong, *supra* note 3.

20 Article 2 para. 2 (b) of the Swiss Ordinance (*Mindestbesteuerungsverordnung*).

21 Federal Council Dispatch dated June 22, 2022, on the Federal Resolution on Taxation of Large Corporate Groups (Implementation of the OECD/G20 Project); BBI 2022 1700 Nr. 1.1.1.

22 Federal Constitution of the Swiss Confederation (*Bundesverfassung der Schweizerischen Eidgenossenschaft*; SR 101).

23 Federal Department of Finance, *supra* note 13 at 13.

24 *Id.*

25 OECD (2022), *Tax Challenges Arising from the Digitalisation of the Economy—Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two), First Edition: Inclusive Framework on BEPS*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, *doi.org/10.1787/1e0e9cd8-en*.

26 Bundesrat will die Mindestbesteuerungsverordnung anpassen, (2025), *www.news.admin.ch/de/newnsb/DHi1b9zb2qGiVXQXhKpSF* (last visited October 9, 2025).

27 Commentary, *supra* note 25.

28 OECD (2024), *Tax Challenges Arising from the Digitalisation of the Economy—Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023): Inclusive Framework on BEPS*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, *doi.org/10.1787/b849f926-en*.

29 OECD (2025), *Tax Challenges Arising from the Digitalisation of the Economy—Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2025): Inclusive Framework on BEPS*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, *doi.org/10.1787/a551b351-en*.

30 Consolidated Commentary (2025), *supra* note 29, Article 3.2.7 at para. 127.

31 Article 10.1 of the Model Rules.

32 OECD (2025), *SbS System* (Discussion Paper), Working Party No. 11, 26.

33 OECD (2025), *Tax Challenges Arising from the Digitalisation of the Economy—Global Anti-Base Erosion Model Rules (Pillar Two) Examples*, OECD, Paris, *www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/taxchallenges-arising-from-the-digitalisation-of-the-economy-global-anti-erosion-model-rules-pillar-two-examples.pdf*.

34 However, this could be viewed differently where income received by the lender solely consists of interest income on a loan from a borrower (or multiple loans) and therefore effectively the use of prior year tax losses is linked to the payments received on the arrangement.

35 Stephanie Soong, *Belgian Court Refers UTPR Challenge to EU's Highest Court,* Tax Notes (2025), *www.taxnotes.com/tax-notes-today-international/oecd-pillar-2-global-minimum-tax/belgian-court-refers-utpr-challenge-eus-highest-court/2025/07/18/7ss10?highlight=utpr%20belgium* (last visited October 26, 2025).

36 *Fugro NV v. Council of the European Union*, C-146/24 P.

37 Saim Saeed and Lauren Vella, *Countries Score Concession From US in Latest Global Tax Talks* (2025), Bloomberg Law News.

38 *SbS System* (Discussion Paper), *supra* note 33 at 26.

39 Saaed & Vella, *supra* note 37.