# The Future of the Global Minimum Tax: Where are we in 2024

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IISD International Institute for Sustainable Development

ISLP International Senior Lawyers Project

# Agenda

- Refresher on Pillar Two
- Technical updates to Pillar Two rules:
  - Zach Pouga, Partner/Principal, EY - Adjunct Tax Law Professor, NYU Law
  - Stephen Shay, Senior Tax Fellow, Boston College Law School
- Implementation experience in developing countries - panel discussion:
  - Sam Loi, Commissioner of Taxation, Internal Revenue Commission, Papua New Guinea
  - Matthias Chinanayi, Head of Technical Services, Zimbabwe Revenue Authority
  - Andrea del Pilar Prieto, Advisor on International Taxation, DIAN, Colombia
  - Vikram Chand, Professor, Tax Law and Policy, University of Lausanne
- Launch of IISD policy brief on Pillar Two and Special Economic Zones: Kudzie Mataba, IISD
- Concluding remarks

# Part I: Refresher on Pillar II

# What is the Global Minimum Tax?

## Pillar Two of the OECD/G20 Inclusive Framework on BEPS Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy

- Pillar One: allocating taxing rights to the market country
    - Traditional 'tax nexus' requires a physical presence.
    - Pillar 1 aims to establish a new 'taxing right' in the market country.

- Pillar Two / Global Anti-Base Erosion (GloBE): a 15% minimum effective tax rate
    - Tax competition continues to erode the tax base of nations
    - Pillar 2 aims to limit tax competition through a global minimum effective tax rate
    - Scope: multinational companies with annual turnover > 750 million euros

# How does the global minimum tax work?

**A series of rules will allow either residence countries or source countries to impose a minimum tax so that income in each country is taxed at a 15% effective tax rate.**

- The Effective Tax Rate (ETR) is calculated annually at the jurisdictional level:

$$\frac{\text{Adjusted covered taxes of all entities in the jurisdiction}}{\text{GloBE income of the jurisdiction}} = \text{Effective tax rate (ETR) for the jurisdiction}$$

Covered taxes = tax paid on taxable profits according to each country's local tax rules in the relevant year.

GloBE Tax Base is the profit (or loss) before income tax as determined using the relevant financial accounting standard (e.g., IFRS, GAAP, OHADA), minus the Substance-based Carveout (SBIE).

# How is top-up tax collected?

## There are three ways top-up tax can be collected in the following order

**1. Qualified Domestic Minimum Top-up Tax (QDMTT)**

Source Country

→

**2. Income Inclusion Rule (IIR)**

Country of Ultimate Parent Entity

→

**3. Under-taxed Profits Rule (UTPR)**

Third country with a constituent entity in the same group

# Setting the record straight

*“While the first pillar is stuck, countries are implementing the second pillar of the global minimum tax deal.”*

# Part II: Technical Updates

# 1. Design of QDMTT

## Key issues for Developing Countries

- Definition of a Qualified Domestic Minimum Top up Tax
  - QDMTT legislation must align with the definitions in the GloBE rules and the rules determining the location of a Constituent Entity or PE.
  - The peer review process will determine if the QDMTT is GloBE-compliant.

- Filing obligations
  - How to ensure countries are collecting the right information from taxpayers (GloBE return form).
  - How to work with taxpayers to get the right information.

- Allocation of QDMTT Liability
  - Where there is more than one CE part of the same in-scope MNE group in the Jurisdiction, QDMTT liability must be allocated between them.
  - Jurisdictions are free to choose the allocation approach applicable to their in-scope CEs, and
  - Other jurisdictions are not required to follow the QDMTT jurisdiction's allocation approach.

# 2. Pillar Two Safe Harbors

## What are the Safe Harbors?

2.1 Transitional Safe Harbors (to ease low-risk MNE compliance at outset of Pillar 2):

- Transitional CbCR Safe Harbor
- Transitional UTPR Safe Harbor

2.2 Permanent Safe Harbors:

- QDMTT Safe harbor (would protect against additional top-tax)
- Simplified Calculations Safe Harbors (would ease calculations for low-risk MNEs )

# 2.1 Transitional Safe Harbours

## Observations on Transitional Safe Harbors

Transitional CbCR Safe Harbor:

- The CbCR Safe Harbor is intended to allow low-risk MNEs to use existing CbCR calculations in a tested jurisdiction as they adapt to Pillar 2.
- It is not clear how helpful it is for participating developing countries that do not themselves participate in CbCR as they may have to simply rely on the MNE analysis.

Transitional UTPR Safe Harbor:

- This safe harbor allows low-risk MNE Groups to avoid application of the UTPR for 2025.
- If properly targeted, it should be unlikely to affect developing country decisions regarding whether or when to adopt or implement a UTPR.

# 2.2 Permanent Safe Harbours

## QDMTT vs. QDMTT Safe Harbour

| QDMTT | vs | QDMTT Safe Harbour |
| --- | --- | --- |
| Jurisdictional Top-Up Tax under GloBE Rules | | Jurisdictional Top-Up Tax under GloBE Rules |
| (Top-Up Tax % X Excess Profit) - QDMTT | | Deemed to be <u>zero</u> |
| Result of the "credit mechanism" under MR Article 5.2.3 | | Result for a GloBE Safe Harbour under MR Article 8.2.1 |

# QDMTT Safe Harbour Additional Requirements

A QDMTT must meet **three *additional* standards** to qualify for the QDMTT Safe Harbour:

**QDMTT Accounting Standard** + **Consistency Standard** + **Administration Standard**

# 2.2 Permanent Safe Harbors contd.

## Observations on Permanent Safe Harbors

QDMTT Safe Harbor:

- The marginal benefit is of the safe harbor depends on the extent to which a QDMTT would nonetheless result in a top-up tax for the jurisdiction under Art. 5.2.3. It appears to align with what would be required in any event.

Simplified Calculations Safe Harbors:

- These principally benefit the MNE by reducing computational burden.

# 3. Treatment of Tax Credits

| Refundability | Non-transferable | Transferable but non-marketable | Transferable and marketable |
|---|---|---|---|
| Refundable within 4 years | GloBE Income (QRTC) | GloBE Income (QRTC) | GloBE Income (QRTC) |
| Refundable beyond 4 years | Covered Tax reduction (Non-QRTC) | Covered Tax reduction (Non-QRTC) | GloBE Income (MTTC) |
| Non-refundable | Covered Tax reduction (OTCs) | Covered tax reduction (Non-MTTC) | GloBE Income (MTTC) |

Transferability

# Treatment of Tax Credits

## The concept of Qualified Refundable Tax Credits (QRTCs)

A Qualified Refundable Tax Credit is

- ✓ a refundable tax credit paid as cash or available as cash equivalents
- ✓ within 4 years from when a constituent entity satisfies conditions for receiving the credit.

A Qualified Refundable Tax Credit will :

- ✓ Be treated as Pillar Two GloBE income and not a reduction in covered taxes.
- ✓ have a noticeable impact on the jurisdictional effective tax rate

# Treatment of Tax Credits

## Observations for Developing Countries

- Developing countries do not commonly use tax credit systems
- Fiscal constraints may limit a developing country's ability to make use of QRTC's
- Was the design of the tax credit system a political compromise?

# Part III: Implementation experience in developing countries

# Part IV: Pillar II and SEZs

Name

Event

Date

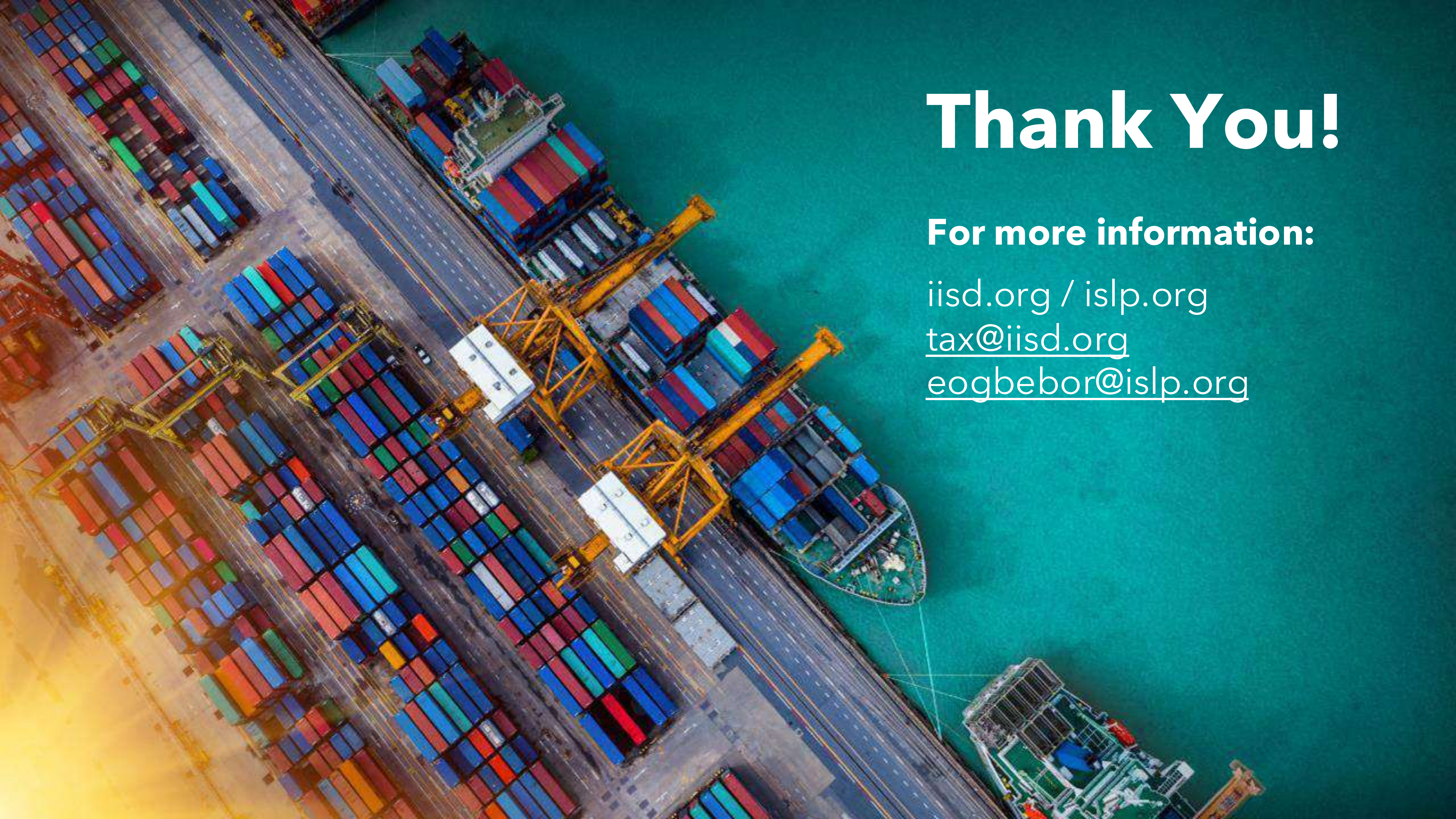
# The Global Minimum Tax and Special Economic Zones

## Launch of new IISD Policy Brief on the need for reform of incentives in SEZs

- SEZs are on the rise – 6000 zones in 150 economies in 2022.
- Tax incentives are central to SEZs – 80% of SEZs offer tax incentives with tax holidays being the most common.
- Tax incentives have been ineffective in improving zone performance and establishing global competitiveness.
- GloBE will make many incentives redundant in SEZs.
- Reform is urgently needed to prevent a transfer of tax revenue.

# The Global Minimum Tax and Special Economic Zones

## Access the report here



# Thank You!

**For more information:**

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# Annex: Design of QDMTT

| | |
|---|---|
| **Blending of income and taxes** | ➢ A QDMTT need not permit jurisdictional blending and may permit blending only on a sub-national level or only on a single "taxable unit" (for example, a single CE) level. For example, a QDMTT imposed on a sub-national level blending would not generally be expected to permit blending with CEs outside of that sub-national jurisdiction. |
| **Allocation of QDMTT liability to CEs** | ➢ A QDMTT must allocate QDMTT liability among in-scope CEs, but jurisdictions are free to choose the allocation approach. Other jurisdictions need not follow the QDMTT jurisdiction's allocation approach. |
| **Taxes allocable to Hybrid Entities or Distributing CEs** | ➢ A QDMTT must exclude taxes imposed on a CE-owner that is located outside of the QDMTT jurisdiction (a "foreign CE-owner") that are otherwise allocable to a Hybrid Entity under MR Article 4.3.2(d). This is consistent with the February AG requiring QDMTTs to exclude taxes allocated to CFCs and PEs.<br>➢ A QDMTT must also exclude taxes imposed on a foreign CE-owner on distributions from a CE in the QDMTT jurisdiction (otherwise allocable to the CE under MR Article 4.3.2(e)), except for withholding taxes imposed by the QDMTT jurisdiction. |
| **Treatment of Stateless CEs** | ➢ A QDMTT need not treat Stateless CEs as in-scope of the QDMTT.<br>➢ The QDMTT <u>may</u> treat Stateless CEs as in-scope, provided that the Stateless CE is either:<br>    ➢ A Flow-through Entity created under the domestic law of the jurisdiction; or<br>    ➢ A PE (i.e., a Stateless PE under Article 10.1(d)) for which the place of business (or deemed place of business) is located in the jurisdiction and either (i) there is no applicable tax treaty, or (ii) the applicable tax treaty allocates the taxing rights to such jurisdiction. |

# Design of QDMTT

| | |
|---|---|
| **Specific rules relating to other entities** | ➢ Jurisdictions may impose the QDMTT only where all the domestic CEs in the jurisdiction are 100% owned by the UPE or a Partially Owned Parent Entity for the entire fiscal year.<br>➢ Specific rules on the treatment of Joint Ventures (“JVs”), JV subsidiaries and Minority-Owned Constituent Entities.<br>➢ Specific rules for a Flow-through UPE and a UPE subject to a Deductible Dividend Regime, for Eligible Distribution Tax Systems and for Investment Entities, including the application of related elections.<br>➢ A QDMTT must include specific rules for multi-parented MNE-groups similar to the GloBE Rules.<br>➢ Three options relating to the exclusion from UTPR for MNE Groups in the initial phase of their international activity in relation to QDMTT legislation. |
| **Currency** | ➢ Currency to be used for the QDMTT is essentially based on the accounting standard for QDMTT calculations using either the presentation currency of the CFS or the local currency. |
| **Definitions** | ➢ A jurisdiction must ensure that its QDMTT legislation incorporates the outcomes provided by all the definitions in the GloBE Rules and the rules determining the location of an Entity or PE. |
| **Filing obligations** | ➢ The information return collected by the QDMTT jurisdiction may follow a different format from the GIR, could use the GIR, or could rely on the information included on the GIR.<br>➢ Further guidance may be provided on the information collection and reporting requirements. |

# QDMTT Safe Harbour Additional Requirements

A QDMTT must meet **three *<u>additional</u>* standards** to qualify for the QDMTT Safe Harbour:

## QDMTT Accounting Standard

The QDMTT legislation adopts either:

(i) provisions that require QDMTT calculations based on the Model Rules (i.e., using CE-level accounts based on the financial accounting standard of the ***<u>UPE's CFS</u>***, except where not reasonably practicable;* OR

(ii) the *<u>Local Financial Accounting Standard Rule</u>*

## Consistency Standard

The QDMTT computations are the same as required under the Globe Rules, except where:

(i) The QDMTT Commentary *<u>explicitly requires</u>* the QDMTT to depart from the GloBE Rules; OR

(ii) The QDMTT follows an *<u>optional variation</u>* that departs from the GloBE Rules

## Administration Standard

The QDMTT jurisdiction meets the ongoing monitoring process requirements applicable to the GloBE Rules, which includes a review of the information collection and reporting requirements to ensure consistency with the equivalent requirements under the GloBE Rules and the approach set out in the GIR