THE GLOBAL MINIMUM TAX: SCOPE ISSUES FOR INVESTMENT ENTITIES AND A COMPARISON WITH THE US MODEL.

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Abstract

The international tax landscape is undergoing a profound transformation following the introduction of the Global Minimum Tax under the OECD's Pillar Two framework. While the reform aims to ensure a coordinated minimum level of taxation, its practical operation reveals significant structural gaps. Among these, investment entities (IEs) remain a conceptual and regulatory blind spot: their hybrid nature, elective treatments, and misalignment between entity-level economic capacity and group-level taxation raise systemic issues that the emerging literature has only marginally addressed. Neglecting these entities risks undermining the effectiveness of the GloBE Rules, generating distortions in cross-border investment flows and leaving unresolved hybrid mismatches that the current framework does not fully neutralize.

A further source of tension arises from the growing divergence between the U.S. and EU approaches. The coexistence of NCTI, BEAT, and CAMT alongside the IIR and UTPR suggests the emergence of parallel minimum-tax architectures that may prevent Pillar Two from functioning as a truly global standard. This fragmentation could ultimately recast what was conceived as a multilateral reform into a predominantly European framework.

Against this backdrop, the paper analyses the interaction between Pillar Two and investment entities and compares the EU and U.S. models. It argues that unresolved inconsistencies in consolidation rules, blending methodologies, and the treatment of investment structures may compromise the long-term legitimacy and global reach of the minimum tax. The findings highlight the need for more coherent technical standards and greater international coordination if the Global Minimum Tax is to achieve its intended multilateral scope.

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1. The consolidation requirement within the GloBE scope

Digitalisation and globalisation have profoundly reshaped economic activity, exposing structural weaknesses in traditional international tax rules and enabling widespread base erosion and profit

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shifting (BEPS) [3]. In response, the OECD initially introduced the fifteen actions to enhance coherence, of international standards, strengthen substance-based requirements, and improve transparency in cross-border taxation.

Subsequently, the Inclusive Framework developed a two-pillar solution, within which the GloBE rules establish a jurisdiction-by-jurisdiction minimum tax of 15% for multinational enterprises (MNEs). Whenever an MNE's effective tax rate falls below this threshold, a top-up tax is applied to ensure minimum taxation.

Subjectively, the OECD[4] defines an MNE Group as any group that includes at least one entity or permanent establishment located outside the jurisdiction of the Ultimate Parent Entity (UPE).

The GloBE rules apply to groups[5] composed of entities -whether legal persons, natural persons, partnerships, trusts or permanent establishment- that are linked through ownership or control of assets, liabilities, income, expenses, and cash flows.

Objectively, the group must exceed the €750 million[6] consolidated revenues threshold in at least two of the four fiscal years preceding the tested year. This threshold is designed both to streamline the application of the rules and to ensure consistency with the Country-by-Country Reporting (CbCR) regime[7].

Temporally, the assessment is based on the two highest revenue years within the four-year period, as reported in the UPE's consolidated financial statements prior to intra-group elimination adjustments.

A particularly significant area of emerging practical relevance concerns the interaction between the GloBE framework and IFRS 10[8], given that both rely on a substantively similar concept of "control" to delineate the consolidation perimeter. The most complex interpretive issues arise in borderline[9] IFRS 10 scenarios, which make clear that control cannot be inferred solely from

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[3] To gain a deeper understanding of the implementation process, see: OECD, A Decade of the BEPS Initiative: An Inclusive Framework Stocktake Report to G20 Finance Ministers and Central Bank Governors, OECD Publishing, Paris, 2024.

[4] See article 1.2 OECD, Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two), OECD Publishing, Paris, 2021 - (hereinafter "GloBE Model Rules" or "GloBE Rules").

[5] See article 10.1 GloBE Rules.

[6] Hereinafter "the threshold" concerning the threshold of EUR 750 million.

[7] OECD, OECD/G20 Base Erosion and Profit Shifting Project: Transfer Pricing Documentation and Country-by-Country Reporting – Action 13: 2015 Final Report, OECD Publishing, Paris, 2015.

[8] International Financial Reporting Standard (IFRS) 10 — Consolidated Financial Statements, issued by the International Accounting Standards Board (IASB).

[9] See IFRS 10, Annex B; for example, analogous to Example 8 in the Application Guidance, which regards to an investor holds 35% of the voting rights in an investee. Three other investors each hold 5%, while the remaining shares are widely dispersed among many shareholders, none holding more than 1%. There are no agreements among shareholders regarding consultation or collective decision-making. Decisions on relevant activities require a majority vote at shareholder meetings, and recently 75% of voting rights have typically

nominal equity ownership or abstract majority voting rights. Instead, it requires an analysis of effective participation levels, dispersion of voting rights, and the practical ability to exercise rights that influence returns. Recent enforcement[10] practice consistently confirms that the theoretical capacity to pass resolutions due to minority shareholder absenteeism is insufficient: IFRS 10 demands evidence[11] of actual shareholder participation, meaningful distribution of voting power, and demonstrable exercisability of relevant rights.

Within the GloBE context, these borderline assessments acquire heightened significance. The consolidation perimeter under IFRS no longer operates merely as a financial reporting boundary; it now directly determines the scope of tax exposure. As a result, reducing uncertainty surrounding the definition of control becomes a central issue of governance and tax risk management. Aggressive, ambiguous, or probabilistic assumptions regarding control can mechanically produce divergent GloBE outcomes, altering the effective tax rate and the potential application of the top-up tax. In this respect, the GloBE rules indirectly "harden" the IFRS 10 framework: control assessments that may previously have been tolerated for financial reporting purposes now generate immediate tax consequences, narrowing the space for interpretive discretion available to both regulators and auditors[12].

2. Jurisdictional blending approach *vs* European blending approach: un unfair treatment

As a matter of fact, the GloBE rules shall be applicable to the MNE regardless of the headquarter or the place of business. As a consequence, the traditional territoriality principle should be reconciled with the overarching objective of limiting aggressive tax planning and ensuring a minimum level of taxation that cannot be circumvented. This minimum rate, set at 15% of the

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been represented. Because other shareholders actively participate and a sufficient number vote in the same way, the investor does not have the practical ability to unilaterally direct the relevant activities, regardless of whether it has done so in the past.

[10] For instance, the introduction of ESMA which is the EU's financial markets regulator and supervisor. Its 2023–2028 strategy builds on its first decade and reflects a changing market environment. ESMA's mission is to protect investors, ensure orderly and efficient financial markets, and safeguard financial stability. It works to strengthen investor protection, promote transparent and well-functioning markets, and enhance the financial system's resilience to shocks.
ESMA also fosters supervisory convergence among national competent authorities and cooperates closely with the EU banking (EBA) and insurance/pensions (EIOPA) authorities. Although independent, it is accountable to EU institutions, regularly reporting to the European Parliament, the Council, and the European Commission. The 2023–2028 strategy sets three strategic priorities and two cross-cutting themes, which ESMA will implement progressively, considering market developments, emerging risks, new legal mandates, and available resources.

[11] See EuropeanIssuers' Position Paper on ESMA & EBA's Report on the Implementation of SRD2, 2023. Concerning the Shareholder Rights Directive 2 ("SRD2") Assonime, *Call for Evidence on the Implementation of SRD2 Provisions on Proxy Advisors and the Investment Chain*, ESMA80-416-13 (13/2022).

[12] See Gasparri Tamara, "*Il "vulnus" latente della Global Minimum Tax in tema di entità di investimento"* (The latent vulnerability of the Global Minimum Tax in relation to investment entities) in Notes and Studies Assonime, 9/2024.

ETR, is determined through a "jurisdiction-by-jurisdiction"[13] assessment, known as the "*jurisdictional blending approach"*, which compares GloBE Income with Adjusted Covered Taxes to identify any top-up tax due.

As previously mentioned, the first component (GloBE Income) refers to the income earned by the group within a specific jurisdiction, adjusted to exclude any exemptions provided under the GloBE Rules. The second component (Adjusted Covered Taxes) captures the taxes actually paid in that jurisdiction, net of any deductions or credits recognised under the reform.

This allocation of taxing rights follows a "*top-down mechanism*": the right to levy the top-up tax is first granted to the jurisdiction of the parent company[14].

By this perspective, a first critical issue concerns the States that should collect taxes, since the taxable person is not the legal entity that has the capacity to pay. In fact, it is not always the UPE that is subject to taxation, and fiscal sovereignty may be affected whenever there is no obligation but rather the option to request payment of taxes. Undoubtedly, if that jurisdiction opts not to exercise this right, it is transferred to the jurisdiction of the next entity in the ownership chain. This creates a sort of *"action-reaction"* chain, referred to the OECD as a "common approach"[15]. In practice, this means that no member state of the Inclusive Framework is obliged to implement the rules domestically, but all must recognize and accept their application by other jurisdiction that choose to adopt them.

Such a structure demands careful balancing between tax sovereignty, the principle of legality, and the need for predictable, intelligible tax rules. When a jurisdiction already regulates a particular levy, introducing a parallel taxing mechanism risk creating uncertainty and interpretative inconsistencies. For this reason, any alternative approach must be assessed for compatibility with existing legal frameworks, ensuring transparency, foreseeability, and adequate protection of taxpayers' rights. Importantly, the GloBE system maintains its effectiveness even without universal participation, as its built-in cascading mechanism reallocates taxing rights whenever a state remains passive.

Nevertheless, this cascading allocation may give rise to concerns over the distribution of taxing powers, the risk of double taxation or double non-taxation, and the need for enhanced coordination

[13] Assonime, "*Proposals for a European position in the field of international taxation after the G7 statement 6/2025 on global minimum taxes of June 28th, 2025*". Notes and studies no. 6/2025. In particular the jurisdictional blending approach assesses the top-up tax separately for each country rather than on a consolidated regional or global basis.

[14] Galendi Junior and Ricardo Andrè, The Justification and Structure of the GloBE Model Rules. IBFD Doctoral Series, 2025, 78.

[15] GloBE Rules, p. 70: "*These rules are intended to be implemented as part of a common approach and to be brought into domestic legislation as from 2022*".

among tax administrations. These issues are particularly sensitive within the European Union, where the interaction between the Pillar Two Directive, fundamental freedoms, and Member States' fiscal autonomy introduces further layers of complexity.

A key point to consider is that the GloBE rules risk causing an unequal treatment[16] between domestic economic activities and the cross-border ones. The distortion arises from the application of the jurisdictional blending approach; for instance, only expenses related to the domestic use of labour and tangible assets are taken into account, regardless of workforce or assets located in other EU Member States. Such a restriction creates pressure on the allocation and utilization of labour and capital across borders within the internal market.[17] In this context, the absence of a regional blending mechanism further exacerbates these distortions, limiting flexibility and potentially discouraging cross-border economic integration within the Union.

A proposed solution is the adoption of a single EU jurisdiction for purposes of applying the GloBE rules, effectively pooling Member States into a unified tax space.

Under a European blending approach[18] -or more broadly, a form of *global blending*- top-up taxation would not arise in cross-border situations within the Union, reducing the risk of mismatches and strengthening the EU's strategic position in global tax governance. However, this approach encounters practical obstacles, most notably the United States' refusal to align with the European model.

The divergence between jurisdictions that implement the GloBE rules and those that do not inevitably affects international tax planning. Although a truly global solution remains out of reach, the idea of a "World Tax Court" empowered to adjudicate disputes and bring coherence to the fragmented international tax order is not new[19]. Yet, from another perspective, the EU risks dispersing political and legislative capital by advancing overly ambitious reforms before the international landscape stabilises. A more prudent approach may be to monitor the initial effects of the GloBE rules, allowing organic developments to unfold[20], and intervene only if outcomes

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[16] Treaty on European Union (TEU), art. 21.

[17] De Wilde Marten and Wisman Ciska, "*Why all top-up tax variants in the EU Pillar Two Directive collide with the EU's fundamental freedoms (and how to solve this)".* Kluwer International Tax Blog 2025.

[18] A European blending approach, as referenced here, is not an official OECD mechanism. The term originates from an interpretation of diverse academic perspectives and can be seen as a hypothetical adaptation of global blending principles within the EU context.

[19] Braumann Cèlin, "*The settlement of tax disputes by the international Court of Justice*". Leiden Journal of International Law, 36(4), 2023.

[20] Allowing developments in international taxation to evolve independently before introducing additional EU-level measures may be prudent for several reasons. First, the GloBE Rules represent a substantial structural reform whose effects - both on tax revenues and on corporate behaviour - cannot yet be fully assessed. Premature regulatory intervention risks creating overlapping or inconsistent frameworks that could undermine legal certainty for taxpayers and increase administrative burdens for both tax authorities and multinational groups. Second, the international tax environment is currently highly dynamic, with potential for rapid shifts

prove unsatisfactory. Such an approach would prevent unnecessary alignment with external norms, while signalling the European Union's capacity to articulate an autonomous and credible position in global tax matters[21].

3. Ability to pay as a driver to the next international tax milestone

The ambiguity inherent in the jurisdictional criteria of the GloBE rules calls for a deeper reflection on their underlying purpose: preventing tax avoidance, harmonising a minimum level of taxation, and enhancing cross-border coordination[22]. These objectives touch upon the conceptual foundations of tax liability—most notably taxpayer subjectivity and the ability-to-pay principle—traditionally at the core of fiscal sovereignty[23].

Historically, the ability-to-pay principle has served as a cornerstone of both constitutional and international tax systems, anchoring tax liability to objectively measurable economic capacity.

The emergence of taxable wealth -regardless of whether held by an individual or a corporation- creates a legitimate link between the taxpayer and the sovereign authority competent to levy taxes. This nexus ensures that taxation remains grounded in legality, fairness, and proportionality.

In the international context, this principle has been operationalized through jurisdictional allocation rules. States claim taxing rights based either on the referability of wealth to their markets (source) or belonging (residence). These rules function as selection mechanisms, linking the "economic entity" (the business activity generating wealth) to the "jurisdiction" (the sovereign power entitled to tax) through the mediating role of the "taxpayer" (the legal subject to which wealth is attributed). While imperfect, this tripartite structure has historically provided coherence

driven by OECD negotiations, unilateral measures by major economies, or geopolitical developments. Intervening too early could therefore lock the EU into rules that become obsolete or misaligned with global standards. Finally, allowing time for empirical observation of the GloBE Rules' real-world impact enables policymakers to design subsequent adjustments based on evidence rather than speculation, ensuring that any future provisions are proportionate, targeted, and aligned with emerging market practices.

[21] Indeed, last July the US dealt an agreement: U.S. Department of the Treasury. (2025). G7 statement on global minimum tax.; which is called by the Italian financial minister an *"hounorable compromise agreed with the American administration to protect our companies from the automatic retaliatory measures originally provided for in clause 899 of the Obbba (One Big Beautiful Bill Act) under consideration by the US Senate, the tax bill proposed by Donald Trump that provides for the extension of tax cuts and selective reductions in public spending for a total value of approximately $2.7 trillion"* see Il Sole 24 Ore. (2025, June 28). Accordo G7 su global minimum tax con esenzioni per gli Usa.

[22] More specifically as it states in OECD, Implementation of the Two-Pillar Corporate Tax Framework, 2021: *"Pillar Two's main aim is to mitigate global corporate tax competition through the introduction of a minimum effective corporate tax rate for multinational corporations".*

[23] For a purely illustrative reference to the doctrine that has expressed itself on the subject of the ability to pay, see: Gallo Franco "*Nuove espressioni di capacità contributiva*" (New expressions of ability to pay), Rivista di Diritto Tributario, n. 4, 2015, pp. 771-784; Rosembuj Tulio "*La capacità contributiva del «non fare» Il concetto di imposta. A proposito di un'importante sentenza della Corte Suprema degli USA*" (Ability to pay of «doing nothing» The concept of taxation. Regarding an important ruling by the US Supreme Court), Diritto e Pratica Tributaria, n. 6, 1 novembre 2012, p. 11295 and Falsitta Gaspare, "*Il doppio concetto di capacità contributiva"(*Double concept of ability to pay*)*, in Rivista di diritto tributario, 2004, p.889.

to international taxation by aligning tax liability with measurable economic capacity and jurisdictional legitimacy.

This balance is reshaped by the introduction of the GloBE rules. As previously described, the GloBE rules impose a minimum tax burden on the group as a whole, regardless of the territorial referability of its profits, as opposed to tying taxation to the financial strength of a single entity operating within a jurisdiction. Wealth is now considered a globally consolidated economic outcome rather than a locally measurable capacity.

This shift represents a paradigmatic transition: taxation moves from an entity-based assessment of ability to pay to a form of international tax solidarity, treating multinational groups as global taxpayers and states as collective custodians of a minimum tax standard. In this framework, a core issue arises whether fiscal sovereignty can coherently coexist with the emerging notion of *global wealth* as a shared tax base, without eroding the normative force of the ability-to-pay principle.

The long-term legitimacy[24] of the GloBE system will depend on its ability to integrate or at least reconcile the ability-to-pay principle within its architecture, such as improve allocation mechanism, a more proportionate distribution of tax burden, or the development of a conceptual framework that balances international cooperation with enduring standards of tax justice.

This evolution is particularly relevant for investment entities, which often serve as intermediaries holding diversified, pass-through, or pooled assets. Such entities may have limited entity-level economic capacity but become subject to Top-up Tax through consolidated outcomes over which they have limited operational control. This raises the question of whether their constitutional ability-to-pay, understood as the entity's own capacity rather than that of the broader group, is respected, and whether the minimum tax burden aligns with the proportionality and equality principles recognized in U.S. and EU constitutional traditions.

4. Investment entities as a blind spot: out of GloBE rules scope or it depends?

The ability-to-pay principle is significantly influenced by the regulatory framework governing investment funds and IE, which represents one of the most opaque areas of the current international tax architecture.

IEs function as vehicles through which capital from multiple investors is pooled and collectively allocated, pursuant to a predefined investment strategy, to diversified and relatively secure assets with the aim of generating added value[25].

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[24] Maisto Guglielmo, "*President's Welcome: Reflections on and Issues with the Global Minimum Tax – A Tribute to the 2025 Global IFA Travelling Lectures*", in Journals IBFD, 9/10, 2025.

[25] Definition and description of mutual funds sourced from the CONSOB website *"I fondi comuni"* (Investment Funds).

These entities -commonly referred to as collective investment undertakings- are typically managed by licensed asset management companies.

The tax regime applicable to mutual funds generally distinguishes between units held by individuals outside a business activity and units held within a commercial context.

In the former case, taxation is deferred to the moment the investor receives income, whereas in the latter, income derived from fund units is classified as business income and taxed according to ordinary business rules[26].

As a rule, income generated by mutual funds constitutes investment income and is subject to a 26% substitute tax rather than progressive income tax.

Capital gains are calculated as the difference between the redemption or sale value of the units and their weighted average purchase cost, while capital losses can be offset against gains of the same type.[27] Additionally, funds must calculate the percentage of assets invested in eligible bonds based on the average of their last one or two financial statements. This percentage is then applied to the fund's income to determine the portion eligible for the reduced 12.5% substitute tax.

This differentiated tax treatment may give rise to disparities between EU and non-EU funds, resulting in potential distortions of competitive neutrality[28].

Under the OECD Model Rules, an IE includes both investment funds and real estate investment vehicles, each governed by a specific definition[29].

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[26] Sanna Salvatore "*Fondi comuni di investimento"* (Investment Funds), Eutekne, 2025

[27] As regard, concerning tax optimization, managing the timing of transactions reduce the tax burden. Investors may realise losses when other investments generate gains to maximise offsetting; an approach known as "tax loss harvesting", which can lower the portfolio's overall tax impact.

[28] It should be noted that lastly the European Court of Justice Case C-602/23 states a key principle concerning the article 63 TFEU, which should be interpreted to mean that a national rule excluding a non-resident entity from a refund of tax on capital income does not restrict the free movement of capital, provided that the entity resembles an EU UCITS (OICVM) but has legal personality comparable to a resident company, while resident UCITS are treated as fiscally transparent and taxed only at the level of their unit-holders. See also Turri Giovanni "*Corte di Giustizia dell'Unione Europea. Sentenza causa C-602/23: discriminati i fondi di investimento extra-UE*"*,* (Court of Justice of the European Union. Judgment in case C-602/23: discrimination against non-EU investment funds). *Fiscalità & Commercio Internazionale*, 2025, (8-9), 31. And see Rossi Luca, Ampolilla Marina and Tardini Armando, "S*ulla (persistente) discriminazione a danno dei fondi di investimento extra europei"* (On the (persistent) discrimination against non-European investment funds). 2025, in Diritto Bancario (DB)

[29] See Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2025). In particular, an investment fund is an entity that pools assets from multiple investors, invests according to a defined policy, spreads costs and risk, generates income or gains, grants investors rights to returns, operates under regulatory supervision, and is managed by professional fund managers. A real estate investment vehicle achieves a single level of taxation, holds predominantly immovable property, and is widely held.

The definition also encompasses certain asset holding companies: entities at least 95% owned by an investment fund or real estate vehicle that operate solely to hold assets or invest funds for their benefit, or where at least 85% of their value is held by such entities and most income qualifies as excluded dividends or excluded equity gains under the GloBE Rules.

A key distinction for the application of GloBE Rules depends on the position of the IE within the ownership chain. Those rules apply to the IE only if it qualifies as a CE, whereas an IE that is an UPE and meets the exclusion criteria is generally not subject to GloBE rules[30].

On the one hand, an excluded entity is investment fund or real estate vehicle that is an UPE; for instance, a public entity, non-profit organization, international organization, pension fund, and their related asset holding companies.

These entities are excluded because their income is either taxed directly at the investor level or otherwise exempt, ensuring tax neutrality[31]. As a result, excluded entities are not subject to TUT under the GloBE Rules, and their profits, losses, and taxes are disregarded in computing the group's ETR. However, their revenues still count toward determining whether the group exceeds the consolidated revenue threshold[32]. Excluded entities could opt out of this treatment on an entity-by-entity basis, but the election lasts five years and cannot be revoked during that period[33].

On the other hand, included entity is an investment funds and related entities that do not meet the criteria for exclusion because it is a CE. This entity is subject to the GloBE and QDMTT rules, and their profits, losses, and taxes are included in the ETR computation for the group.

However, it should elect to be treated as flow-through entities[34], in which case income, losses, and taxes are allocated to constituent owners according to their ownership interests. Alternatively, groups can apply the distribution method[35], whereby the investment entity's losses and taxes are disregarded, and distributions are instead included in the GloBE income of its owners.

Therefore, excluded entities, such as UPE investment funds, are generally shielded from GloBE and QDMTT rules to preserve tax neutrality, meaning their losses do not offset top-up taxes for other entities unless an opt-out is made. While, CE is fully included in the calculations, with top-up taxes affected by ownership chains, intra-group transactions, and jurisdictional blending. Tax-transparent UPEs follow special flow-through rules, allocating GloBE income to the relevant jurisdictions while maintaining transparency benefits for qualifying owners. This situation,

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[30] Brunelli Fabio, Tronci Sabrina, Acquaro Lorenzo "The Fate of Investment Entities under the Global Minimum Taxation Framework with a Focus on Italy", in Journals IBFD, 10, 2024

[31] Chan Hugo and others (Schaffner, J., Rajathurai, B., Becvort, G.) "*Impact of Pillar Two on Investment Funds: A Practical Overview*". IBFD, Finance and Capital Markets (formerly Derivatives & Financial Instruments), 25, 2024.

[32] Iannella Chiara, "*L'applicazione della Global Minimum Tax alle Investment Entities*" (The application of the Global Minimum Tax to the Investment Entities). Corriere Tributario, 485, 2025.

[33]See GloBE Rules, Article 1.5.3.

[34] See Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2025)

[35] See Chan Hugo and others (Schaffner, J., Rajathurai, B., Becvort, G.) "Impact of Pillar Two on Investment Funds: A Practical Overview". IBFD, Finance and Capital Markets, 2024

however, may create distortions in fiscal competition, as excluded entities can enjoy advantages not available to included entities.

5. A comparison with the US model

The final key focus regards US model, with the purpose to assess whether, and to what extent, existing U.S. tax instruments correspond both functionally and structurally to the GloBE Rules.
The discussion focuses on the US Net CFC Tested Income ("NCTI") - previously known as Global Intangible Low-Taxed Income ("GILTI") - and then examining the Base Erosion and Anti-Abuse Tax ("BEAT") together with the Corporate Alternative Minimum Tax ("CAMT"). On 28th June 2025, the Group of Leading industrial nations (G7) expressed its willingness to pursue a "side-by-side"[36] solution through that the US GILTI regime, currently seems like a minimum tax on the foreign income of US-headed multinational groups, would operate together with the GloBE rules. The key message is that the U.S. system and the GloBE architecture do not converge, but rather operate side-by-side, creating uncertainties in rule ordering and potential overlap.
The NCTI[37] aims to impose a minimum tax of 14% on the foreign income of US shareholders of foreign controlled companies, however, the alignment is only superficial.
Most notably, NCTI continues to rely on global blending, allowing income and foreign taxes to be aggregated across all foreign jurisdictions. As a result, low-taxed income in one country may be offset by high-taxed income or losses in another.
In contrast, GloBE Rules adopt jurisdictional blending approach, requiring multinational groups to meet the minimum tax threshold separately in each country of operation.
In addition, distinctions include the determination of the tax base - U.S. taxable income under NCTI versus financial accounting income under GloBE Rules - and the absence of payroll or tangible asset based carve-outs under NCTI, whereas GloBE Rules provides a substance-based income exclusion ("SBIE")[38].
Overall, the transition from GILTI to NCTI reflects an attempt to modernize the U.S. minimum tax regime in a manner that operates "side by side"[39] with GloBE Rules. By broadening the tax base, increasing the effective minimum rate, and maintaining global blending, NCTI establishes a

[36] European Parliament, Side by side- The future of Pillar Two minimum corporate tax rules, 15th September 2025.
[37] Before, the IIR mechanism was faraway the GILTI one, concerning the tax rate (15% for IIR and 10,5% for GILTI), the calculation base (Country by Country for IIR and Global aggregation for GILTI), and the application (Top-up tax by parent jurisdiction for IIR and Included in US shareholders' taxable income for GILTI). See Hakelberg Lukas and Roland Aanor "*Trumpian Neomercantilism, European Fiscale Capacity and the Global Minimum Tax*" in De Gruyter, 16th July 2025.
[38] See GloBE Rules, Article 5.3.
[39] OECD/G20 Inclusive Framework on BEPS, Side-by-Side Package on Pillar Two, 5 January 2026

distinct yet interoperable framework that balances international alignment with longstanding U.S. policy priorities.

This redesigned regime provides multinational groups with greater certainty in forecasting tax liabilities while mitigating risks of base erosion in the international tax landscape.

But, the NCTI cannot be considered equivalent to the IIR, even though it pursues similar objectives from a functional standpoint.

Looking forward the BEAT[40] mechanisms, it introduced under Section 59A of the U.S. Internal Revenue Code, is designed as a minimum tax targeting large corporations that significantly reduce[41] their US tax base through deductible payments to related foreign parties[42]. Its rationale seems like the UTPR backstop OECD's rule despite of its different operational stand.

For instance, BEAT covers the base erosion payments typically encompass deductible costs that reduce taxable income, such as payments for services, interest, royalties, and amortizable property, with the exception of inventory, which is included in the cost of goods sold[43].

This tax shall be applicable to corporations with average annual gross receipts exceeding the statutory threshold of \$500 million[44] or more over the preceding three taxable years, and a base erosion percentage of at least 3% (reduced to 2% for banks, financial institutions, and securities dealers). The base erosion percentage is calculated by dividing the total base erosion tax benefits[45] by all the allowable deductible expenses.

Once a corporation qualifies, it calculates its regular federal tax liability and compares it with the BEAT liability. If the BEAT liability exceeds the regular tax, the corporation must pay the difference in addition to its ordinary tax.

Otherwise, only the regular tax is due. The BEAT rate is currently "*an amount equal to 10.5 percent*"[46].

As it is shown above, BEAT is designed as a defensive rule to protect the US tax base rather than as a coordinated minimum tax system. Its scope is limited to inbound structures and does not directly account for the effective tax rate of the recipient jurisdiction. Consequently, BEAT focuses

[40] For a deeper understanding see Jane Gravelle & Donald Marples, "*Issues in International Corporate Taxation: The 2017 Revision*" (P.L. 115–97), Cong. Rsch. Svc. Rep. No. R45186 (updated 16 Dec. 2021).
[41] Overall, BEAT establishes a targeted mechanism to protect the U.S. tax base, imposing additional tax where significant deductible payments are made abroad and reinforcing the broader framework of anti-abuse and minimum taxation rules.
[42] Foreign related parties include foreign shareholders owning at least 25% of the corporation, see Internal Revenue Service, IRC 59 G paragraph 1a), Base Erosion Anti-Abuse Tax Overview, LB&I Concept Unit INT-C-245 (updated 9 Aug. 2021).
[43] Herzfeld Mindy, "*Do GILTI + BEAT + BMT = GloBE?*", in 50 Intertax 888-897, 2022.
[44] IRC 59E paragraph 1b).
[45] Negative income components associated with base erosion payments.
[46] IRC 59A paragraph 1a).

on payment denial through an alternative tax computation rather than on ensuring a minimum level of taxation abroad.

A practical example illustrates the mechanism[47]: a corporation with $600 million in revenue and $400 million in deductible expenses, including $300 million in base erosion payments to a foreign parent, would calculate a modified taxable income of $500 million. Applying the 10,5% BEAT rate results in a BEAT liability exceeding the ordinary federal tax, necessitating payment of the difference[48].

While effective in curbing base erosion, BEAT has raised concerns regarding compliance with international tax treaties, as it discriminates between domestic and foreign related party payments. Payments deductible for U.S.-resident related parties remains fully deductible, whereas payments to foreign affiliates are subject to BEAT, potentially conflicting with the non-discrimination principles of double taxation agreements[49].

For the sake of completeness, BEAT resembles the UTPR, but only conceptually: the BEAT is not based on effective tax rates, does not coordinate with foreign tax systems, and merely imposes an alternative tax calculation when payments that erode the tax base exceed certain thresholds. Its objective is internal protection, not global minimum taxation. Therefore, BEAT cannot be considered a safeguard mechanism equivalent to UTPR under the GloBE rules.

Thirdly the CAMT introduced by the Inflation Reduction Act of 2022, represents a significant reform in the U.S. minimum tax system, ensuring that large corporations ("C-corporations")[50] pay a minimum level of federal income tax regardless of deductions, credits, or other tax attributes that might otherwise reduce their regular tax liability. Functionally, CAMT operates as a top-up tax on large corporations, reinforcing the minimum tax base while providing flexibility through specific adjustments and statutory provisions, conceptually aligning the U.S. system closer to the OECD GloBE rules framework[51]. CAMT applies to corporations with average annual adjusted financial statement income ("AFSI") exceeding USD 1 billion and is calculated as 15 percent[52] of such income, subject to specific statutory adjustments, despite of the 21% federal income tax.

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[47] See "*Stati Uniti d'America diritto e fiscalità d'impresa*" (United Staes law and corporate tax), 2019 Wolters Kluwer Italia.

[48] This demonstrates the intended anti-abuse purpose of BEAT, which is to reduce incentives for profit shifting and base erosion through transactions with non-U.S. related parties.

[49] Herzfeld Mindy, "Do GILTI + BEAT + BMT = GloBE?", in 50 Intertax 888-897, 2022.

[50] KPMG report: Observations on the final Form 4626 Instructions for CAMT.

[51] Although CAMT is primarily focused on domestic taxation, it may also impact multinational groups due to the inclusion of income from foreign subsidiaries in consolidated financial statements. Its design remains rooted in U.S. policy objectives and does not explicitly seek international coordination.

[52] The primary purpose of CAMT is to ensure that highly profitable corporations contribute a minimum level of tax, independent of deductions, credits, or timing differences that may reduce their regular tax liability. Guaranteeing that highly profitable corporations contribute a consistent level of federal taxation and addressing

The CAMT is calculated[53] by first determining a taxable base equal to the corporation's financial statement income for the fiscal year, adjusted for specific items.

A minimum rate of 15% is then applied to this adjusted amount to compute the minimum tax owed to the Treasury.

This figure is compared with the sum of the regular corporate income tax and BEAT.

If the CAMT amount exceeds the combined regular tax and BEAT, the excess is payable as CAMT in addition to ordinary tax. Conversely, if there is no excess, CAMT is not due.

So, it uses accounting profits rather than taxable income and functions as a top-up mechanism when the ordinary federal tax is lower. However, the CAMT remains a national or at least a "federal" minimum tax, not a global one. It does not operate by jurisdiction, nor does it target low-taxed foreign income.

From this perspective, CAMT can also be seen as a possible precursor to a future alternative minimum tax model similar to that proposed by the BEFIT[54] directive. By anchoring the tax to the accounting base and introducing a minimum tax that is independent of the GloBE mechanisms, the United States seems to have anticipated a development that the European Union is now attempting to achieve with BEFIT, namely to guarantee a minimum level of effective taxation as a safeguard should the GloBE Rules architecture not operate fully effectively.

Overall, the compromise preserves the US domestic minimum tax while working alongside the GloBE rules, highlighting the emerging "side-by-side" coexistence of unilateral and multilateral minimum taxation systems and raising questions about the future uniformity of the global minimum tax.

6. Concluding remarks

The analysis developed throughout this paper demonstrates that the GloBE rules mark a decisive step toward greater coordination in international taxation. Yet the architecture of Pillar Two still reveals structural tensions that could undermine its long-term coherence and global legitimacy. Under the GloBE Rules the evolution from a collection of domestic minimum tax mechanisms into a truly integrated multilateral framework raise systemic issues.

A first and fundamental challenge lies in the reliance on IFRS 10 to determine the GloBE consolidation perimeter. As control assessments now determine not only financial reporting outcomes but also tax exposure, the absence of clear standards for borderline cases risks

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potential gaps created by deductions and other tax attributes, thereby enhancing the fairness and integrity of the corporate tax framework.

[53] FiscoOggi. (2025, first august). "*Scheda fiscale: USA*" (US tax form). Fiscalità & Commercio Internazionale, (8–9), 113.

[54] See the proposal of Directive COM (2023)532 on Business in Europe: Framework for Income Taxation.

transforming accounting discretion into fiscal uncertainty. This creates a paradox at the heart of GloBE rules: the global minimum tax depends on an accounting standard never designed for tax purposes. A more autonomous and tax-specific consolidation criteria may therefore be required if the system is to maintain consistency and legal certainty.

A second unresolved issue concerns the jurisdiction-by-jurisdiction blending approach. In economically integrated regions such as the European Union, restricting substance-based relief to domestic factors may unintentionally distort the allocation of labour and capital across Member States. A key policy question therefore emerges: can regional or plurilateral blending mechanisms preserve the integrity of the minimum tax while better reflecting the economic reality of integrated markets? The answer will determine whether Pillar Two functions coherently within federated or quasi-federated systems.

The shift from entity-based taxation to group-level taxation also raises a deeper conceptual question: can the ability-to-pay principle be meaningfully preserved in a system where tax liability is assessed on consolidated global wealth rather than on the economic capacity of each taxpayer? This tension becomes particularly acute for investment entities, whose entity-level economic capacity does not mirror the consolidated results of the group. If proportionality and taxpayer equality remain constitutional cornerstones in both the EU and the United States, policymakers must determine whether top-up taxes applied to intermediaries adequately reflect each entity's true economic capacity - or whether the minimum tax risks eroding the normative foundations of domestic tax systems.

Investment entities arguably represent the most significant blind spot of GloBE rules. The coexistence of excluded and included entities, elective flow-through treatments, and distribution-based approaches creates structural asymmetries that distort competition among domestic, EU, and non-EU funds. The broader question is whether collective investment structures - which are designed to be tax-neutral intermediaries - can be effectively integrated into a minimum-tax framework conceived for multinational operating groups. A more harmonised and less elective regime appears essential to ensure competitive neutrality and to avoid tax-driven allocation effects in the capital markets.

Finally, the contemporaneous existence of parallel U.S. minimum tax regimes (NCTI, BEAT, CAMT) alongside the OECD's IIR and UTPR raises an unavoidable question: will Pillar Two ultimately materialise as a truly global standard or as a predominantly European project? Achieving genuine multilateralism will require structured dialogue between the United States, the OECD, and other key jurisdictions on rule ordering, coordination, avoidance of double taxation, and interoperability between autonomous minimum tax systems. Equally important will be the establishment of more robust dispute-resolution mechanisms - potentially including binding arbitration or an international tax panel - to prevent interpretative fragmentation as implementation diverges across countries.

In conclusion, the GloBE rules represent an historic turning point for the evolution of international taxation. Its success will depend on the willingness of policymakers to refine consolidation standards, address blending-related distortions, reconcile the minimum tax with the ability-to-pay principle, rationalise the treatment of investment entities, and bridge the divide between the OECD and U.S. approaches. Only by confronting these systemic challenges can Pillar Two evolve from a promising but imperfect compromise into a truly global minimum tax capable of promoting fairness, legal certainty, and economic efficiency.