OPINION STATEMENT

Opinion Statement FC 2/2025 on Introduction of a Temporary Pause of Pillar Two Extra-Territorial Rules (IIR & UTPR) Under Article 32 EU Minimum Tax Directive

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CFE Tax Advisers Europe is the European association of tax institutes and associations of tax advisers. Founded in 1959, CFE brings together 33 national tax institutes, associations and tax advisers' chambers from 24 European countries. CFE was the initiator of the Global Tax Advisers Platform through which it is associated with more than 600,000 tax advisers worldwide. CFE is part of the EU Transparency Register no. 3543183647-05.

We would be pleased to answer any questions you may have regarding our Opinion Statement. For further information, please contact Piergiorgio Valente, President of CFE, Jeremy Woolf, Chairman of the CFE Fiscal Committee, or Aleksandar Ivanovski, Director of CFE at info@taxadviserseurope.org. For further information regarding CFE Tax Advisers Europe please visit our web page http://www.taxadviserseurope.org/

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Executive Summary

- **Global implementation of the OECD Pillar Two framework has stalled:** The EU has implemented the rules by means of the Council Directive on a global minimum tax (the EU Minimum Tax Directive). Major trading partners – notably the United States, China and India – have not. As a result, Pillar Two risks becoming an essentially EU-only tax, undermining its objective of creating a floor/ level playing field.

- **The extra-territorial rules – the Income Inclusion Rule (IIR) and the Undertaxed Profit Rule (UTPR) – now place EU-headquartered groups at a structural competitiveness disadvantage:** Because the Income Inclusion Rule (IIR) and the Undertaxed Profit Rule (UTPR) will apply almost exclusively to EU-headquartered groups, those companies face higher effective tax burdens and compliance costs than competitors based elsewhere, undermining EU competitiveness.

- **CFE therefore urges a temporary pause of the Pillar Two extra-territorial rules:** Using the mechanism in Article 32 of the EU Minimum Tax Directive, Member States could reduce the IIR and UTPR rates to 0% for a defined period. During that pause, the EU, its Member States, the OECD and key non-EU jurisdictions should agree an equitable, administratively workable solution that treats EU- and US-headquartered groups alike.

- **Permanent UTPR safe harbour or an unconditional alignment of the US GILTI regime with the IIR is not an acceptable substitute:** A permanent UTPR safe harbour or an unconditional declaration that the US GILTI regime is equivalent to the IIR would entrench – rather than resolve – competitive distortions, because GILTI is not economically or legally equivalent to the IIR and the UTPR cannot be isolated from the rest of the system.

- **A temporary pause would not undermine the 15 % minimum tax regime within the EU:** Qualified Domestic Minimum Top-Up Taxes (QDMTTs) would continue to secure the 15 % floor on profits generated inside each Member State.

- **Compliance burden is enormous,** and it will not be met with increased revenue in the EU.

- **The pause would give the Commission, Member States, the OECD and non-EU jurisdictions sufficient space** required to work on and implement feasible and technically workable solution that treats EU- and US-headed multinationals alike.

- **CFE Tax Advisers Europe therefore urges the European Commission to table, and the Council to adopt, a decision under Article 32 of the Directive setting the rates of the IIR and UTPR to zero for fiscal years commencing during the temporary pause period.**

1. Introduction

CFE Tax Advisers Europe represents the European tax institutes and the tax advisory profession in and, through the Global Tax Advisers Platform, is associated with more than six hundred thousand practitioners worldwide. CFE has always supported the development of coherent and administratively feasible tax rules in Europe. We have consistently backed EU and international policymakers in the objective of a achieving a global agreement on a coherent minimum tax regime and we appreciate the behaviour change and the significant policy impact of these measures. Today, however, Pillar Two is today essentially a European measure, leaving EU-headquartered groups exposed to asymmetric obligations that their global competitors do not share. The resulting complexity also creates issues for tax advisers and their ability to advise proactively European and other taxpayers on the way forward.

2. Background and Current State of Play

Pillar Two was designed as a framework with three interlocking rules: a qualified domestic minimum top-up tax that protects national tax bases, an income-inclusion rule (IIR) at the level of the parent entity, and a back-stop rule, the undertaxed profits rule (UTPR) that reallocates residual taxing rights when the first two mechanisms fail to materialise. The EU translated that IF/OECD agreed architecture into binding EU law in December 2022 through the Directive on EU Minimum Tax, requiring Member States to apply the IIR from 2024 and the UTPR from 2025.

The global scenario, which includes EU's key trading partners, is very different. The United States has opted not to bring its GILTI rules in line with the IIR or to legislate a UTPR equivalent; China, India and other important jurisdictions have taken no legislative steps at all. The upshot is that the extra-territorial rules, such as IIR and UTPR, will apply largely to EU groups, whereas companies whose parents are resident outside the Union will either escape taxation altogether or can invoke domestic rules that grant them relief. This places EU tax technical rules in the hands of foreign, albeit partner jurisdictions which solely take into account domestic policy and economic interests.

In such an asymmetric environment EU-based companies will be affected in several ways. First, they incur taxation expenses from IIR or UTPR levies that their rivals avoid. Second, EU Member states face threats of retaliatory measures, particularly from the United States, if they collect top-up tax on US sourced income. Third, they must shoulder the full compliance burden of parallel IIR, UTPR and QDMTT calculations, something non-EU rivals will not do until their home jurisdictions adopt equivalent laws. Finally, and most seriously, the disparity undermines the EU's objective of enhancing competitiveness of the Single Market and attracting investment, a goal championed by the current Commission and President von der Leyen.

3. Why the Suggested Quick Fixes Will Not Work

Some stakeholders have floated a permanent safe harbour that would neutralise the UTPR, while others have urged that GILTI be deemed equivalent to the IIR. Both ideas fall short of protecting both EU's competitiveness and companies from undue complexity and disproportionate tax burden. Eliminating only the UTPR would leave the IIR intact and thereby compound the competitive gap, because EU-based groups would still be liable to top-up taxes abroad whereas US-based groups would be entirely shielded inside the Union. Deeming GILTI equivalent would breach both the letter and the spirit of Article 52 of the Directive, which requires any equivalent regime to deliver a 15% rate on a jurisdiction-by-jurisdiction basis. GILTI, by contrast, is levied at a lower rate and allows global blending. Achieving genuine equivalence would demand extensive US legislative change, which under the current political climate with the administration is unrealistic, as well as unanimous agreement among the 27 Member States to amend the Directive.

4. Legal Feasibility of a Temporary Pause

The EU Minimum Tax Directive already contains a legal mechanism that accommodates a temporary pause and reduction to allow time and space for to consider further steps. Article 32 permits Member States to treat a top-up tax liability as zero where they agree a qualifying international safe harbour. The Union has already exercised that power once in order to smooth the path to full application of the UTPR. Extending the concept to both extra-territorial rules for a limited period would neither dilute the 15 % minimum inside the Union, because QDMTTs would continue to apply, nor require any unanimous amendment of the Directive. In addition, the recital text of the Directive repeatedly emphasises that the global minimum tax can be considered fair and effective only when it is implemented worldwide (with references to the OECD/ IF agreement). A temporary pause of the application of the extraterritorial elements of the Directive, grounded in Article 32, would therefore advance rather than undermine the Directive's objectives. In fact, it is a practical way to protect the integrity of this legislation with an outcome that puts EU- and US-headed companies on an equal footing, reconciles the technical mechanics of GILTI with the IIR and preserves the symmetry between IIR and UTPR, which will otherwise require detailed negotiations in the Inclusive Framework and, quite possibly, further US domestic legislation. Those processes cannot be rushed without jeopardising legal certainty and administrative workability for taxpayers and tax authorities alike. For example, pause of 3 (three) fiscal years as defined by the Directive would provide the necessary window, although this should be kept under review.

5. Recommendations and Next Steps

CFE Tax Advisers Europe therefore urges the European Commission to table, and the Council to adopt, a decision under Article 32 setting the rates of the IIR and UTPR to zero for fiscal years commencing during the temporary pause period. In parallel, we invite the Commission, Member States and the OECD Secretariat to open structured talks with the United States and other non-implementing jurisdictions with a view to rapid, reciprocal adoption of genuinely equivalent minimum-tax rules. During the pause the Commission should consult intensively with business, tax advisers and national administrations to ensure that any revised framework is administratively sustainable and technically robust.

6. Concluding Remarks

The EU has demonstrated leadership by being the first major jurisdiction to legislate the global minimum tax rules, which should not be allowed to turn into unilateral disadvantage. A temporary suspension of the extra-territorial pieces of the package is both legally feasible and economically necessary to safeguard the integrity of Pillar Two, avert escalating cross-border tax conflict and, most importantly, prevent lasting competitive harm to Europe's own taxpayers. CFE and its member organisations stand ready to assist policymakers in designing and implementing the proposed pause and in shaping the permanent solution that must follow.