

# Pillar 2 Walking the World

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# Outline

1. Pillar 2 in a Nutshell
2. Pillar 2 in Canada
3. Pillar 2 Walking the Globe
4. Some musings

# Pillar 2 in a Nutshell

## What?

Pillar 2: a global minimum tax on large MNEs

## Why?

- “race-to-the-bottom tax competition”
- Tax base erosion in high-tax countries

## How?

- Top-up tax on parent or sibling companies
- “common approach”

# Background: the 2-pillar solution

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**Pillar 1 –  
new  
taxing  
rights in  
market  
countries**

**Pillar 2 –  
global  
minimum tax**

## BEPS

# Pillar 2 Now Stands Alone

## Pillar 1 – DOA

- New fiscal contract under Amount A
- Redistributing taxing rights
- Multilateral Convention required
- US De Facto Veto

- Pillar 2

- **Global minimum tax (GMT)**
- Domestic minimum tax (DMT)
- ~~Subject-to-tax-rule (STTR)~~

# Pillar 2 in A Nutshell:

## Centralized Design

- OECD technical design
- Approval by the Inclusive Framework
- OECD Model Rules (GloBE) (Dec.2021)
  - Commentary
    - March 2022
    - April 2024
  - Administrative Guidance (“supplements” the Commentary)
    - Feb, July, Dec., 2023
    - 2024?

# Pillar 2 in A Nutshell:

## Common Approach

- **GMT:**
  - Implementation through domestic law
  - Common approach
  - “Qualified” status
  - “Peer review”
- DMT

**Who is in control?**

# Pillar 2 in A Nutshell:

## Taxpayers

- MNE groups with >750 EUR  
(same threshold for country-by-country reporting)
- Some exclusions



# Pillar 2 in A Nutshell:

## “Tax Base”

- GMTTop-up amount (TUA)  
(15% - ETR in a country) x excess profit

*TUA = tax revenue of the low-tax country*

# Pillar 2 in A Nutshell:

## “Tax Base” computation

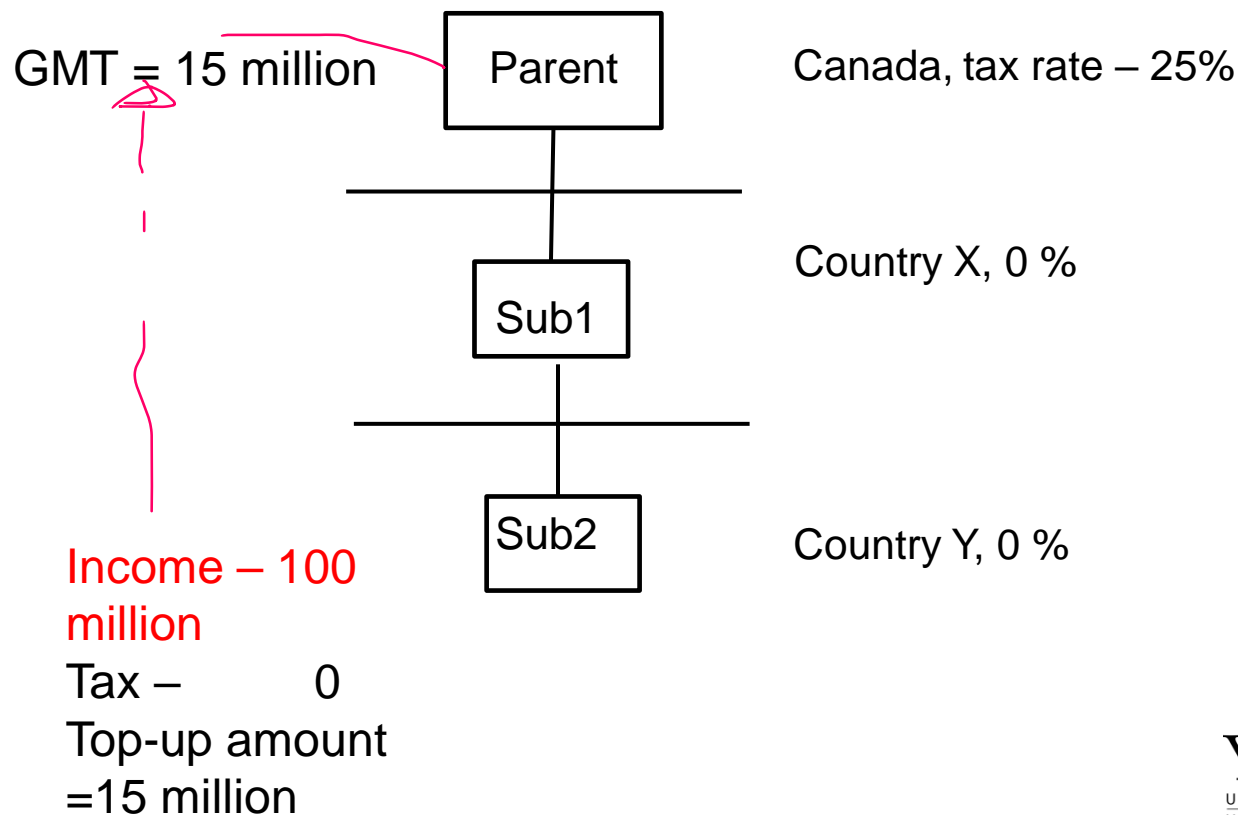
- Effective tax rate (ETR) per jurisdiction
  - Covered tax/GloBE income
- Accounting standards
  - GloBE income/loss
  - Covered tax
  - “excess profit”

# Pillar 2 in A Nutshell:

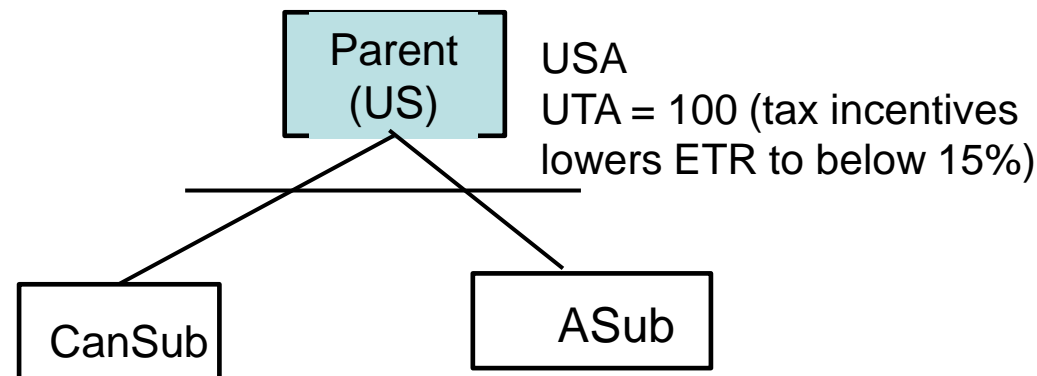
## Charging Rules (GMT)

- IIR (Income Inclusion Rule)
  - Parent entity (UPE, POPE, IPE)
  - Each CE's top-up tax
- UTPR (undertaxed profits rule)
  - Sibling or subsidiary entity of low-taxed entity
  - Backstop the IIR
  - Pro rata basis

# EXAMPLE: IIR



# EXAMPLE: UTPR



**If Australia charges UTPR on ASub, Australia gets 100**  
**If both Australia and Canada charge UTPR, the 100 is**  
**shared on a pro-rata basis (UTPR allocation formula)**

# Pillar 2 in A Nutshell

## DMT

- A “low-tax” jurisdiction can charge a domestic top-up tax to raise its ETR to 15%
- So, the top-up tax for other countries (IIR and UTPR) would become 0

# Pillar 2 in a Nutshell

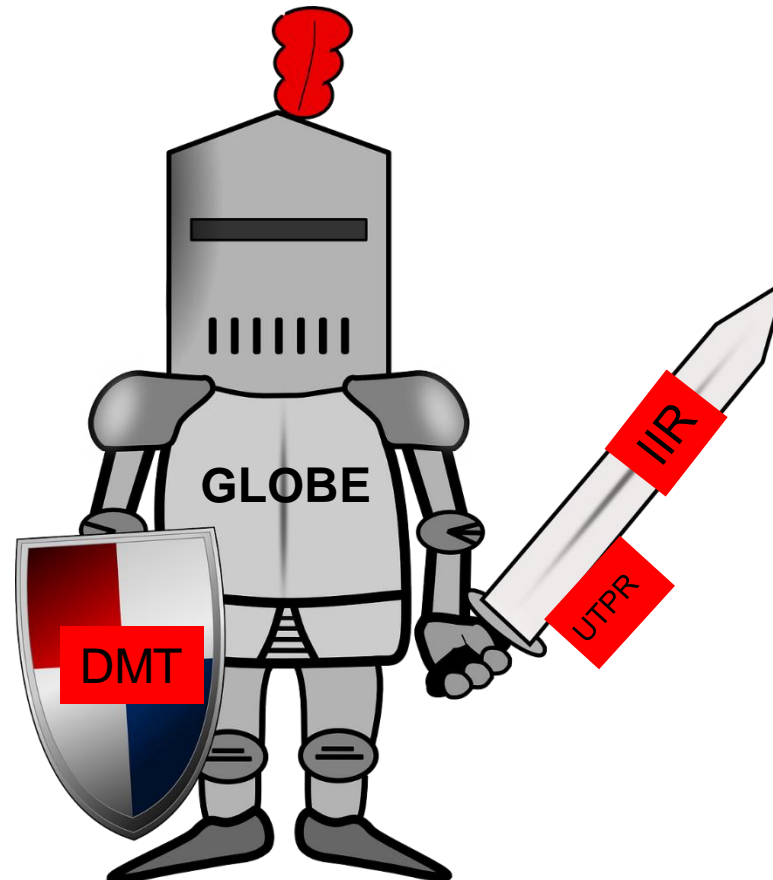
## Administration

- Filing a return
- Payment of tax
- Audit
- Disputes
  - MNE v. tax administration
  - tax administration v. tax administration

# Pillar 2 “Tax Knight”

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# Canada- Pillar 2

## *Global Minimum Tax Act*

<https://fin.canada.ca/drleg-apl/2023/ita-lir-0823-l-4-eng.pdf>

- Translation and adaptation of the Model Rules
- Statutory incorporation of OECD Commentary and Adm Guidance



# Canada Accepts the OEC's Design and Control

**3 (1)** This Part, Parts II and III and relevant provisions of Part VI **implement the GloBE model rules, the GloBE commentary and the administrative guidance** in respect of the GloBE model rules approved by the Inclusive Framework and **published by the OECD from time to time and**, unless the context otherwise requires, these Parts are to be **interpreted consistently with those sources**, as amended from time to time.

# Canada Wants to Be “Qualified”

**3(2)** The Governor in Council may from time to time by regulation designate any additional sources in respect of which the interpretation of this Act should be consistent.

# Canada “waits” on UTPR

- A placeholder for UTPR rules

**GMT Act**

**PART III - UTPR**

**[empty]**

**PART IV - Domestic Minimum Top-up Tax**

# Canada Adds Local Flavour

- Place definitions at the top of the legislation
- Canadian existing rules on compliance and dispute resolution
- GAAR in the Income Tax Act

# E.g. “Liability for Tax” rules

**14 (1)** A person must pay a tax in respect of an MNE group for a fiscal year in the amount determined under subsection 15(1), if

**(a)** the MNE group is a qualifying MNE group for the fiscal year;

**(b)** one of the following conditions is met:

**(i)** the person is

**(A)** a relevant parent entity of the MNE group for the fiscal year, and

**(B)** located in Canada at any time in the fiscal year, or

**(ii)** the person would, under the relevant assumptions, include in its income for the purposes of Part I of the *Income Tax Act* income for the fiscal year of a relevant parent entity that is

**(A)** located in Canada, and

**(B)** not a person; and

**(c)** the relevant parent entity referred to in subparagraph (b)(i) or (ii) has a direct or indirect ownership interest at any time in the fiscal year in one or more constituent entities of the MNE group that

**(i)** is not located in Canada, and

**(ii)** has a top-up amount for the fiscal year.

# E.g. “Liability for Tax” rules

## Relevant assumptions

**14(2)** For the purposes of subparagraph 14(1)(b)(ii), the relevant assumptions are that

**(a)** the relevant parent entity referred to in that subparagraph has income for the fiscal year that would be included in computing its income for the purposes of Part I of the *Income Tax Act* if it were a person resident in Canada; and

**(b)** the person referred to in that subparagraph is resident in Canada for the purposes of the *Income Tax Act*.

# Canada's Pillar 2: Potential Legal Issues

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- Constitutional
- Legal certainty and predictability
  - Legislation
  - Interpretation
  - Dispute resolution
- Fiscal federalism
- Tax treaty (esp. UTPR)
- Investment agreements





## Canada's Pillar 2: Interaction with Income Tax Act

- Taxable entities (entity v. group)
- Computation
  - Financial standards v. tax law
  - Adjustments
- Transfer pricing
- CFC (FAPI) rules
- Interest limitation rules
- UTPR tax paid by Canadian CE [on behalf of foreign UPE – shareholder benefit?]

# Canada's Pillar 2: The US issue

- How safe are the safe harbours?
- “Interfering with” US fiscal/tax policy?
  - US entities lower ETR due to US tax incentives
  - Canadian IIR to “neutralize” effect of US tax incentives on Canadian-parented MNEs?
  - “treasury transfer”?
  - Economic / diplomatic?
- Canada-US Tax Treaty re UTPR
- US data relevant to computing Canadian GMT?

# Pillar 2 Walking the World?

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<https://wts.com/wts.com/hot-topics/pillar-two/implementation-status/wtsglobal-pillar-two-country-by-country-implementation.pdf>



# Pillar 2: Started Walking

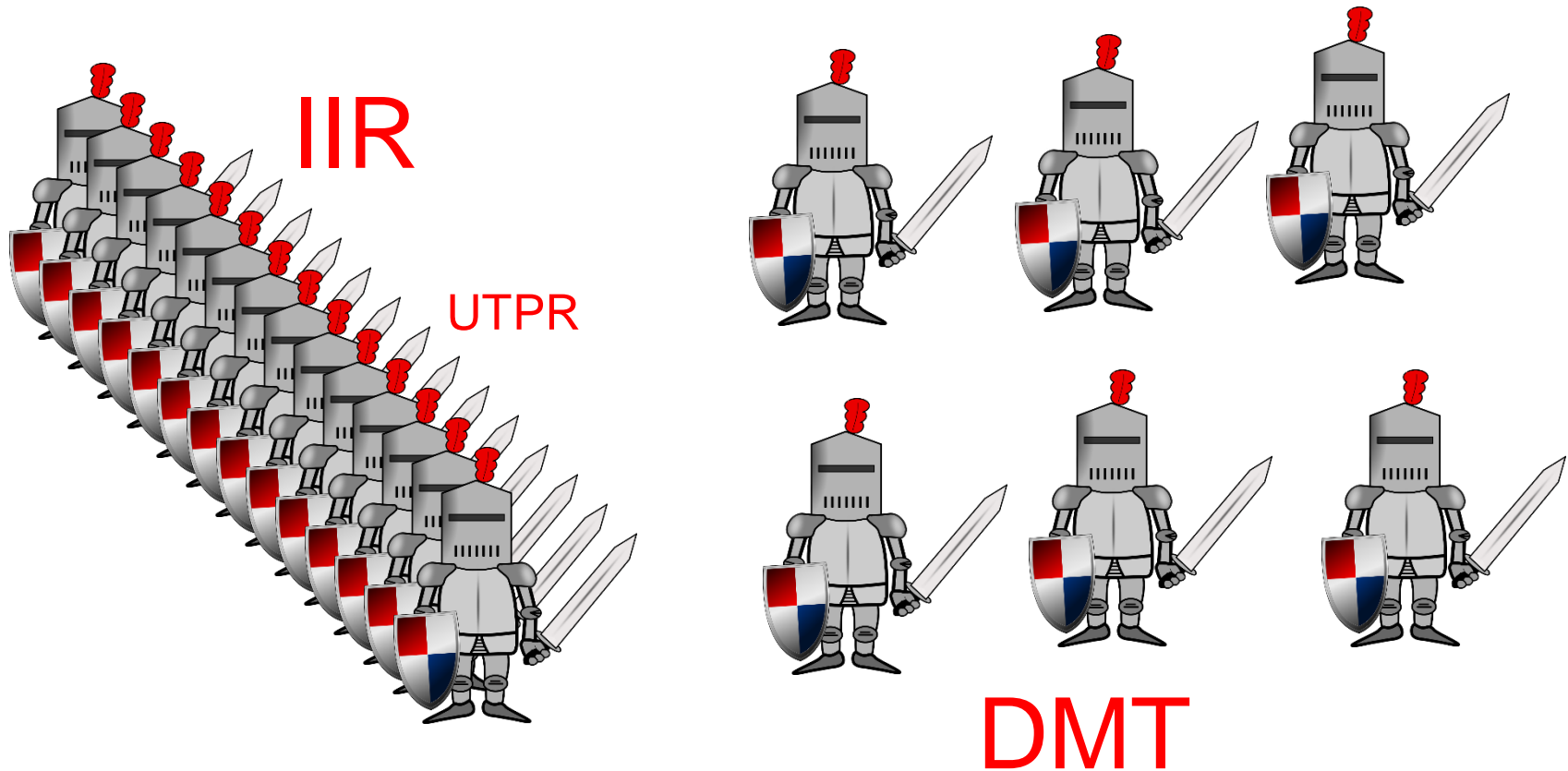
## Why?

- “Protection” of tax base (revenues)
- No need for public international law instrument
- “Critical mass” and collective action problem
- Domestic politics

# Pillar 2: The Swords v. the Shields

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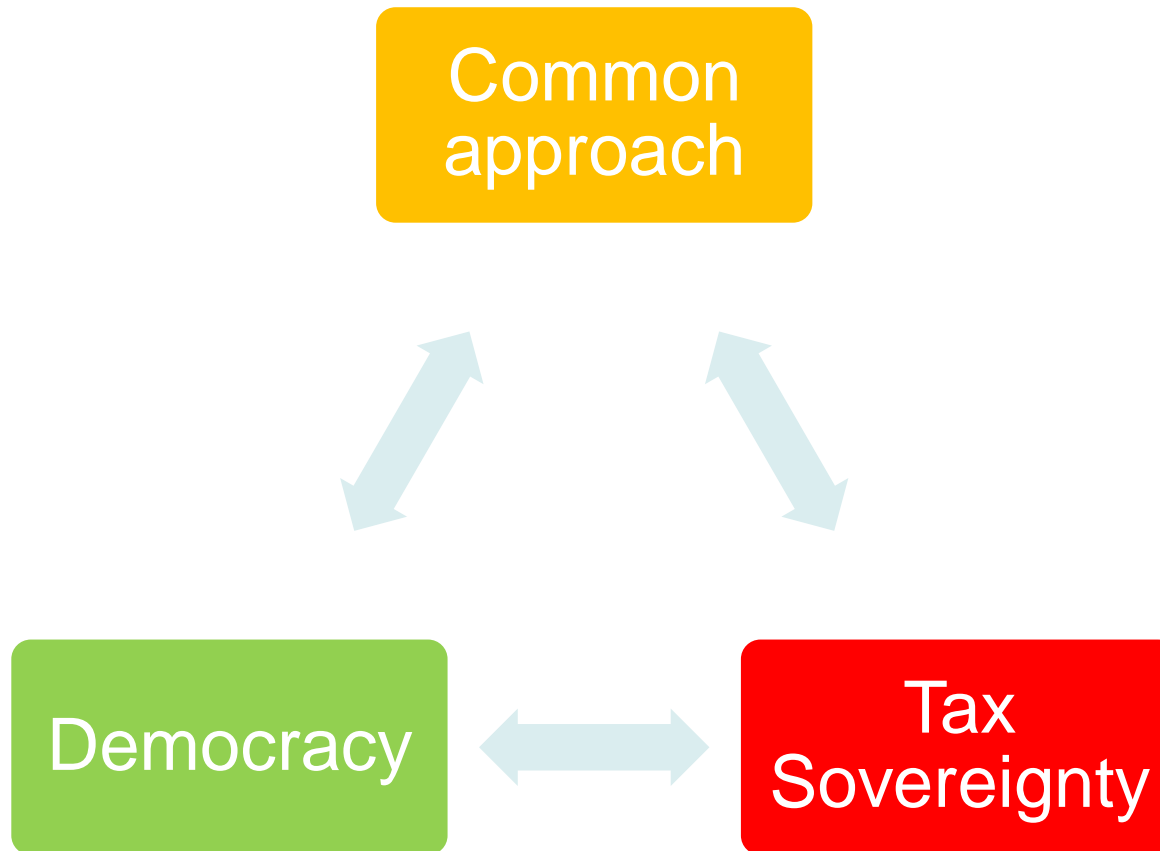
# Some musings

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# Trilemma?



# Swords for whom?

- United States, 719 MNEs, 33% of total MNCs globally
- Japan, 264 MNCs (12%)
- China, 219 companies (10%)
- U.K., 118 companies (5%)
- India, 81 companies (4%)

<https://www.investopedia.com/ask/answers/021715/why-are-most-multinational-corporations-either-us-europe-or-japan.asp>



# Can developing countries use the shield?

- Barbados
- DMTs
  - Legislative and administrative resources to “qualify”?
- Loss of fiscal autonomy
- STTR is “performative”/”gesture”

# Tax principles: GMT v. CIT

- Nature
  - GMT as an excise or income tax?
  - GMT as a “sin tax”?
- Fundamental principles
  - Arm’s length principle
  - Territorial principle of taxing active income
  - Separate entity principle

# De facto World Tax Organization?

- OECD
- What about the UN?

# Pillar 2 Inspires Pillar 3?

- G20 initiative?
- Global minimum tax on billionaires?

# The “Tax” World v. The “Real” World?

- Agreement on fiscal/tax matters
- “hot” wars
- “trade” wars
- “ideology” wars