

# Pillar Two and Investment Fund Documentation: Two Years of Lessons

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**T**he European Directive (EU) 2022/2523 introducing a global minimum effective taxation of 15% for large groups, commonly referred to as "Pillar Two", has applied in Luxembourg since 1 January 2024. Two years into its application, one point has become increasingly clear in the investment funds space: Pillar Two is not only a technical tax issue. It is also, and in many cases primarily, a question of fund documentation.



In practice, the key question is often not simply whether the GloBE rules may apply as a matter of principle, but where the resulting economic burden may arise within the structure, how it may affect returns and, ultimately, who should bear it. That is where fund documentation becomes critical.

This article does not revisit the GloBE rules comprehensively. It focuses instead on the main practical lessons that have emerged when negotiating and reviewing fund documentation in light of Pillar Two.

## Pillar Two Creates an Economic and Contractual Risk

The principal risk created by Pillar Two is economic. Where an entity belonging to a group within the scope of the rules is taxed below the 15% minimum rate, a top-up tax may arise. That tax may be collected by the jurisdiction of the low-taxed entity itself through a Qualified Domestic Minimum Top-up Tax, or QDMTT, by the jurisdiction of the ultimate parent entity through the Income Inclusion Rule, or IIR, or, failing that, by other jurisdictions through the Undertaxed Profits Rule, or UTPR. From an investor perspective, however, the place of collection is not the central issue. The central issue is that an additional layer of tax may reduce returns.

That issue becomes more acute in pooled or co-investment structures. If a top-up tax arises below a fund, a parallel vehicle or a joint venture vehicle, its economic impact may affect all investors participating through that vehicle, including those that played no role in triggering the application of Pillar Two to the structure. The tax cost is not the only concern. Pillar Two also generates potentially significant compliance costs. In larger cross-border structures, these may include additional reporting systems, external advisory fees, internal resourcing and recurring GloBE computations across multiple jurisdictions. In investment structures, those costs are another potential drag on returns and should be addressed as part of the broader contractual allocation of Pillar Two risk.

## The Rules Matter, but the Practical Issue Is Where the Cost Sits

Pillar Two relies on three main charging mechanisms. The QDMTT allows the jurisdiction of a low-taxed constituent entity to collect the top-up tax itself. The IIR generally gives the jurisdiction of the ultimate parent entity the right to collect that tax. The UTPR operates as a backstop where the other charging rules do not fully apply.

These rules apply to multinational enterprise groups and large domestic groups with annual consolidated revenues exceeding EUR 750 million in at least two of the four preceding fiscal years. In Luxembourg, the IIR and the QDMTT apply for fiscal years beginning on or after 31 December 2023, while the UTPR applies for fiscal years beginning on or after 31 December 2024. For sponsors, managers and counsel, however,

the practical issue is not simply the architecture of the rules themselves. It is identifying where within the structure the cost may arise, whether that cost may be pushed into a common investment vehicle and whether the relevant documentation allocates that burden in an economically coherent manner.

## Being in Scope Is Only Part of the Problem

Pillar Two risk is not limited to groups that are already within scope on a standalone basis. It also arises where a structure becomes associated, directly or indirectly, with an investor or group that is itself within scope. The analysis must therefore be carried out on two levels. First, one must assess whether the relevant investment platform or fund structure may itself fall within the GloBE perimeter. Second, one must consider whether the presence, entry or subsequent evolution of an investor group could cause Pillar Two consequences to arise within the structure.

This point is critical in practice. A fund structure may appear outside the Pillar Two risk zone at inception but become exposed later, for example because an investor group grows, crosses the EUR 750 million threshold, undergoes an acquisition or internal reorganisation, or transfers its interest to a purchaser already within scope. The documentation should therefore address not only the position on admission, but also subsequent changes in circumstances.

This is not a question confined to the fund context. Similar questions arise in transactional documentation more broadly. In the fund context, however, the need for forward-looking contractual protection is particularly acute, given the duration of the investment and the multiplicity of parties involved.

## Fund Structures Are Not Outside the Pillar Two Risk Zone

It is sometimes assumed that investment funds are broadly protected from Pillar Two by virtue of the excluded entity rules. That assumption should be treated with caution. Under Article 1.5.1 of the GloBE Model Rules, an Investment Fund or Real Estate Investment Vehicle may qualify as an excluded entity, but only where it is the Ultimate Parent Entity of the relevant MNE Group. Article 1.5.2 further extends excluded-entity treatment to certain entities owned by excluded entities, notably where the relevant ownership and activities conditions are met.

In practice, however, these exclusions often provide narrower protection than is initially assumed. Certain fund structures hold minority or non-controlling positions and therefore do not consolidate their investments for accounting purposes. In those cases, they may fall outside the GloBE rules not because an excluded-entity exemption applies, but because the relevant consolidation conditions are not met in the first place. Conversely, where a fund controls portfolio companies, as is often the case in private equity, the fund itself may qualify as an excluded entity where it is the Ultimate Parent Entity, while the consolidated subsidiaries may nonetheless remain exposed to top-

up taxation. Just as importantly, excluded entity status does not solve the separate issue of association with an in-scope investor group. A fund may therefore still face Pillar Two consequences within the structure even where the fund itself benefits from a formal exclusion.

In short, the relevance of the excluded entity framework should not be overstated. In the fund context, the position remains highly fact-specific and requires a disciplined case-by-case review.

## Documentation Must Address the Risk at Entry

The first level of protection is preventive. Fund documentation should seek to identify and contain Pillar Two risk before investors enter the structure.

The first line of protection lies in information rights. The fund's governing documents, subscription documentation and related side letter framework should include appropriate disclosure obligations requiring investors to provide relevant information on their Pillar Two position and that of their group, both on admission and on an ongoing basis. Such information may be essential not only to assess current exposure, but also to identify subsequent changes in circumstances.

More importantly, the fund documentation should confer sufficient flexibility on the relevant governing body, sponsor or manager to respond where a Pillar Two issue arises, or is likely to arise. Depending on the structure, this may include powers to reorganise the relevant holding or investment chain, require the use of alternative participation channels, restrict transfers, refuse a proposed transferee or, in more serious cases, require the exit, redemption or restructuring of an investor whose participation gives rise to unacceptable tax or compliance leakage for the wider investor base.

Such powers should not be viewed as merely defensive or theoretical. In a long-dated vehicle, Pillar Two exposure may evolve materially over time. Documentary flexibility is therefore not optional. It forms part of the fund's core legal and contractual architecture.

## Documentation Must Also Allocate the Cost During the Life of the Fund

Even where robust entry protections are in place, Pillar Two exposure may still arise during the life of the fund. This may result from the admission of a new investor, an existing investor becoming part of a larger group, a transfer to an acquirer already within scope, or a group previously outside scope crossing the relevant revenue threshold. Where that occurs, the documentation should not leave the resulting economic burden to general principles or default pro rata allocation mechanics.

Absent specific provisions, top-up tax and related compliance costs may in practice be borne across the investor base. That may be commercially difficult to justify where the relevant exposure is attributable to one investor, or to a limited subset of investors only.

Fund documentation should therefore include tailored allocation provisions making clear that Pillar Two-related costs should, to the extent possible, be borne by the investor or investors whose status, actions or subsequent changes in circumstances gave rise to them. This should cover not only the top-up tax itself, but also the associated compliance costs, including reporting, advisory and implementation expenses. This is often where negotiations become more delicate. The issue is no longer purely technical from a tax perspective. It also becomes a question of fairness among investors and of preserving the agreed economics of the structure.

## Post-Exit Liabilities Should Be Addressed Expressly

Particular care is required where Pillar Two liabilities arise after an investor has exited. A top-up tax or compliance cost may be assessed in respect of a fiscal year during which a former investor caused the structure to fall within scope or otherwise contributed to the relevant exposure. If the documentation is silent, the resulting burden may ultimately fall on the remaining investors.

That outcome is difficult to justify. Where the economic burden is attributable to a former investor's status or actions, the documentation should preserve the ability to recover the relevant amount from that investor following its exit. This may require tailored claw-back, indemnity or hold harmless provisions, coupled with appropriate survival language for information and cooperation obligations. Absent such provisions, the practical ability to reallocate the cost following exit may be materially weakened.

## The Side-by-Side Package Changes Part of the Analysis, Not the Need for Contractual Protection

On 5 January 2026, the OECD published the so-called "Side-by-Side Package", reflecting agreement reached within the Inclusive Framework following, inter alia, the political understanding announced by the G7 on 28 June 2025. Among other features, the package includes a Simplified ETR Safe Harbour, namely a simplification mechanism intended to reduce compliance burdens by allowing, in certain cases, a simplified jurisdictional effective tax rate test to be used in place of a full GloBE computation. It also includes an extension of the Transitional Country-by-Country Reporting safe harbour by one year, a Substance-based Tax Incentive Safe Harbour and a Side-by-Side System.

Its practical significance may be considerable, particularly for certain US-parented groups. That said, its effect should not be overstated from the perspective of fund documentation. The package does not eliminate exposure to domestic QDMTTs, including Luxembourg's; it does not apply retroactively to fiscal years 2024 and 2025; and its practical operation remains dependent on jurisdictional status, domestic implementation and further political and technical developments.

For those reasons, the package changes part of the technical analysis, but it does not remove the need for robust contractual protections. The response remains the same: the fund documentation should be designed to identify risk early, preserve flexibility and allocate economic burden appropriately.

## Pillar Two Must Now Be Built into Fund Documentation

Two years into its application, Pillar Two has become a structural documentation issue for the funds industry. The technical tax analysis remains necessary, but it is no longer sufficient on its own. The real questions are practical: whether Pillar Two exposure may arise within the structure, whether the resulting economic burden may dilute returns across the investor base, and whether the documentation allows that burden to be identified, contained and allocated in a coherent manner.

The excluded entity rules offer useful protection in some cases, but not nearly as broadly as is sometimes assumed. Likewise, more recent developments, including the Side-by-Side Package, may reduce exposure in certain scenarios, but they do not justify a lighter contractual approach.

The lesson from the last two years is straightforward. In fund structures, Pillar Two should no longer be treated as a peripheral tax point. It should instead be built into the legal and contractual architecture of the vehicle from the outset.

## Coup d'envoi du nouveau bureau de Norman K. au Luxembourg

**N**orman K., plateforme de gestion de fortune indépendante dédiée aux entrepreneurs internationaux et aux grandes familles, a officiellement inauguré son nouveau bureau à Luxembourg ce 4 mars 2026.

La soirée d'inauguration organisée au Tero House17 Luxembourg a marqué une étape importante pour le Groupe Norman K, qui a eu le plaisir d'accueillir dans ce lieu d'ex-



Nicolas L'Hermite, CEO et Nicolas Mayer, Sales Director Norman K.

ception plus d'une centaine de professionnels de la place financière luxembourgeoise. Leur présence témoigne de l'énergie, de la confiance et de l'élan collectif qui animent notre écosystème.

« Cette mobilisation confirme la résonance des valeurs que nous portons et la solidité des relations que nous construisons avec nos partenaires au Luxembourg », a déclaré Nicolas L'Hermite, CEO de la filiale luxembourgeoise de Norman K.

Le groupe entretenait, depuis de nombreuses années déjà, des

relations étroites avec l'écosystème luxembourgeois, notamment bancaire et assurantiel, faisant de cette nouvelle implantation une évolution naturelle et stratégique.

Avec plus de 10 milliards d'euros d'actifs supervisés et une équipe de plus d'une soixantaine de collaborateurs engagés en Europe, le Groupe Norman K consolide ainsi sa mission : offrir une plateforme performante, innovante et résolument tournée vers les besoins des actionnaires familiaux, des holdings patrimoniaux et des investisseurs institutionnels.

Cette mission s'articule autour de quatre verticales complémentaires, développées et opérées en interne : la gestion d'actifs, le financement, le Corporate Advisory, ainsi que les solutions de Family Office.

L'implantation dans la capitale luxembourgeoise lui permettra, en outre, d'accélérer sa croissance par le biais d'acquisitions externes. L'organisation de Norman K. en plateforme intégrée permet au groupe d'enrichir en permanence les solutions proposées à ses clients, tout en attirant des talents reconnus et expérimentés.