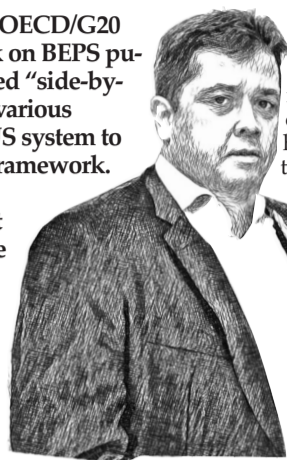


The new Pillar Two safe harbor:

A boost for Luxembourg's investment tax credit?

On 5 January 2026, the OECD/G20 Inclusive Framework on BEPS published the anticipated "side-by-side package" providing for various measures and allowing the US system to sit alongside the Pillar Two framework. As part of this document, the newly introduced permanent substance-based tax incentive (SBTI) safe harbor may be of particular interest to Luxembourg taxpayers since it should allow certain qualified tax incentives (QTIs) to be treated as additions to covered taxes once the safe harbor is implemented in the Luxembourg domestic legislation.



they initially have been accounted for as reductions, resulting in a much smaller impact through an increase of both the numerator and denominator of the jurisdictional ETR calculation. On the other hand, non-QRTCs and non-MITCs continue to be treated solely as reductions to covered taxes, leading to a reduction of the jurisdictional ETR by a much higher amount as there is no adjustment for these incentives under the GloBE rules.

Currently, the favorable treatment of QRTCs and MITCs is not applicable to the Luxembourg ITC as it is non-refundable and non-marketable.

Companies may benefit from the ITC locally, thereby impacting their jurisdictional ETR. However, should the latter drop below the 15% minimum rate due to the ITC, the benefit may then be reversed in the form of a "qualified domestic minimum top-up tax" (QDMTT). This could have the effect of partially or even fully undermining the positive incentive effect of the ITC.

Qualifying tax incentives under the new SBTI safe harbor

Subject to domestic implementation, it is expected that, as from 1 January 2026, companies in scope of Pillar Two should have the possibility to elect the SBTI safe harbor in order to reduce the potential top-up tax payable in relation to certain substance-based tax incentives (the so-called QTIs). This amount is limited by a substance cap (further defined below), calculated by reference to the multinational enterprise (MNE) group's payroll or tangible assets in the given jurisdiction.

Regarding the scope of the QTIs, the OECD limits the applicability of the new SBTI safe harbor to certain types of QTIs that (i) must be generally available to taxpayers, (ii) cannot be limited to groups in scope of Pillar Two, and (iii) cannot arise from discretionary arrangements between an MNE group and a government.

In addition to this set of general criteria, the OECD explicitly excludes certain types of incentives from the definition of QTIs, i.e., incentives that reduce liability for non-covered taxes, incentives applying only to expenditure that produces excluded income for Pillar Two purposes, incentives taking the form of subsidies or grants, as well as incentives based on future expenditure/production or on expenditure/production before the incentive was in effect.

Ultimately, the SBTI safe harbor applies to two defined types of QTIs.

The broader type of QTIs are expenditure-based tax incentives that are calculated directly by reference to qualifying expenditure incurred, and which can take the form of a tax credit, additional deduction, or exemption. Under this category, the January 2026 administrative guidance explicitly excludes pure timing differences (e.g., standard capital allowances) from the definition of QTIs. It is also noted that, in the case of super deductions, the excess relief exceeding the original cost may be treated as an expenditure-based QTI amount. The impact of this clarification should be limited in Luxembourg since no super deduction is currently available. However, based on the above-mentioned conditions and the broad range of QTIs, the Luxembourg ITC, which applies a global rate up to 18% on qualifying CAPEX and potentially OPEX, is expected to fall within this category.

The second type of QTIs are certain production-based tax incentives, calculated by reference to the volume (and not the value) of the production of tangible property and based on the output of the economic activity. Ultimately, this type of QTI is strongly associated with substance in the given jurisdiction and requires that the incentive be based on the units produced in the jurisdiction providing the incentive.

The treatment of a tax incentive as a QTI—i.e., the inclusion of the tax credit as additional covered taxes—could be more beneficial to an MNE group than the treatment foreseen by the 2023 administrative guidance for QRTCs and MITCs (inclusion as GloBE income, as described above). As such, an annual election can be made to align the treatment of these tax credits with the treatment of QTIs as well.

Overall, this change should allow companies to include all qualifying tax credits under the QTI rules as additional covered taxes, such as to align the local and GloBE treatments, resulting in a more consistent impact on the jurisdictional GloBE ETR compared to the local treatment of tax credits.

Substance cap

Given that the eligibility for tax incentives is usually strongly linked to levels of capital or employment, the new mechanism limits the amount eligible for relief by a substance cap, determined based on the level of economic substance in the given jurisdiction. The guidance offers some flexibility to determine the substance cap as there are two methods to calculate it, accounting for the varying levels of asset and labor across industries and jurisdictions.

The first method is based on the greater of 5.5% of eligible payroll costs or the depreciation or depletion of eligible tangible assets, which is most suitable for incentives that are predominantly payroll- or asset-based. It is noted that, under this method, eligible payroll costs (as defined by article 10.1 of the GloBE rules), computed on a jurisdictional basis, should also include payroll costs capitalized and included in the value of eligible tangible assets (i.e., costs typically excluded from the substance-based income exclusion (SBIE) under article 5.3.3.(a) of the GloBE rules).

Alternatively, the MNE group can make a five-year jurisdictional election to apply the second method, which is set at 1% of the carrying value of eligible tangible assets (excluding land and other non-depreciable assets). Given that a depreciable asset's carrying value tends to be higher in the initial years of its useful life, to prevent abuse, a switch between the two methods would require excluding any asset whose carrying value was previously taken into account in determining the substance cap based on the calculation of the asset's depreciation or depletion.

Practical considerations for Luxembourg taxation

The timeline for implementing the side-by-side package through domestic legislation is unclear. However, it is expected to be implemented in Luxembourg in the second half of 2026, with the legislation expected to apply as from 1 January 2026.

From a Luxembourg tax perspective, an alignment of the Pillar Two rules with the ITC has been much anticipated and this new rule should be well received by Luxembourg businesses. The expected treatment of the ITC as an "expenditure-based" QTI by applying the January 2026 administrative guidance should indeed allow Luxembourg companies to access Pillar Two relief and pursue digital and green transformation with little to no Pillar Two friction.

The most effective strategy for Luxembourg companies going forward is to evaluate the impact of the guidance if they benefit from ITC or other expenditure-based credits, monitor the implementation of the side-by-side package in Luxembourg in 2026, and determine the most suitable substance cap method for their situation.

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The treatment of tax credits for GloBE purposes prior to the January guidance

Tax credits, offered by many jurisdictions and aimed at incentivizing targeted sectors and industries, have an important impact on the jurisdictional effective tax rate (ETR) calculation. An ETR below 15% (i.e., minimal ETR as per the global anti-base erosion (GloBE) rules) can indeed arise even in high statutory tax jurisdictions due to the use of such tax credits.

Under the Pillar Two GloBE rules, the treatment of tax credits for purposes of the ETR computation is twofold depending on whether they are refundable within four years or marketable. The qualifying credits are therefore either qualified refundable tax credits (QRTCs) or marketable transferable tax credits (MITCs).

On the one hand, article 3.2.4 of the GloBE rules foresees that QRTCs and MITCs should be treated as additional income (and not as tax reductions) and even added back to the amount of covered taxes if

Digital Finance Forum organisé par Luxembourg for Finance

La finance numérique s'impose comme moteur stratégique en Europe

La finance numérique transforme en profondeur les modèles économiques, les marchés et la régulation. Portée par l'intelligence artificielle, les paiements digitaux et le Web3, elle redéfinit le rôle des acteurs financiers et l'intégration des crypto-actifs. Entre innovation technologique et nouveaux cadres réglementaires, un nouveau chapitre s'ouvre pour l'écosystème financier en Europe et au Luxembourg.

Pour analyser ces évolutions, l'édition 2026 du Digital Finance Forum, organisée par Luxembourg for Finance le 4 mars, a réuni plusieurs experts afin d'éclairer les enjeux à venir. Un sujet crucial pour l'avenir des marchés financiers et pour la compétitivité européenne, comme l'a souligné le ministre luxembourgeois des Finances Gilles Roth dans son discours d'ouverture : « La finance n'est pas une fin en soi, c'est un système facilitateur. Elle permet le financement et la croissance. La finance numérique peut renforcer ce système en orientant le capital plus rapidement et plus efficacement vers l'économie réelle et en soutenant la compétitivité de l'Europe. »

Au cœur des discussions : les crypto-actifs et la place croissante qu'ils occupent dans les portefeuilles d'investissement. Pour les intervenants du panel animé par Thomas Campione (Senior Manager chez Deloitte Luxembourg), la crypto n'est plus un actif marginal ou purement spéculatif, mais une classe d'actifs en cours de structuration



tion dont le rôle stratégique devrait s'accroître. La réglementation européenne, notamment MiCA, contribue à attirer les investisseurs institutionnels.

Jerome Dave, President of Bitstamp by Robinhood, a ainsi estimé : « Je ne pense pas que cela rende les choses plus faciles, mais certainement plus sûres. »

Les investisseurs traditionnels avancent toutefois avec prudence. **Denzel Walters**, Head of Luxembourg chez B2C2 Europe, observe que « les grands investisseurs institutionnels limitent généralement leurs allocations aux 10 ou 20 principaux actifs, en fonction de leur liquidité ».

Pour **Jean-Baptiste Graftieaux**, CEO de Coinbase Europe, « la crypto est aujourd'hui un actif macro très sérieux ». Il se dit notamment enthousiaste à l'idée de voir émerger « un stablecoin en euro permettant une participation plus large des investisseurs européens ».

Lors d'un premier échange consacré à l'évolution du Web3, **Raoul Heinen** (Investment Funds Partner chez Linklaters) et **Dan Jones** (Partner chez Morrison Foerster) ont évoqué un « tournant stratégique pour l'écosystème Web3 ». La tokenisation s'accélère : l'Union européenne pose les bases réglementaires, le Royaume-Uni cherche à combler son retard

et les États-Unis mettent en place, avec le **GENIUS Act**, un cadre pour les émetteurs de stablecoins de paiement.

Un second panel consacré à l'adaptation des marchés de capitaux au Web3, animé par **Emilie Allaert** (Director of Digital Assets Products chez Standard Chartered Luxembourg), a mis en évidence l'émergence d'un écosystème hybride mêlant marchés financiers traditionnels et infrastructures Web3.

Ala Presenti, cofondatrice de la société d'investissement luxembourgeoise Investre et premier agent de contrôle agréé du pays sous la Blockchain IV Law, a souligné que « les actifs tokenisés ne constituent pas une nouvelle classe d'actifs, mais une nouvelle manière d'émettre, de gérer et de distribuer des produits financiers ». Selon elle, le Web3 fera émerger de nouveaux usages pour les instruments financiers existants.

Rafal Kwasny, Conducting Officer chez Franklin Templeton Luxembourg — qui a lancé depuis le Luxembourg son premier fonds tokenisé en Europe — estime que ce qui a déjà migré vers la DLT est appelé à perdurer. Il a également salué l'approche du régulateur luxembourgeois : « Nous avons eu une expérience très positive avec le régulateur. Nous avons construit une forme de partenariat, ce qui est assez unique. »

Martin Watkins, CEO de Montus Digital, a pour sa part évoqué le rôle potentiel de la Banque centrale européenne : « La future monnaie de banque centrale on-chain sera un tournant décisif. »

Autre thème majeur : la transformation du secteur financier sous l'effet de l'intelligence artificielle.

Jean-Louis Schiltz, Senior Partner chez Schiltz & Schiltz, et **David Shrier**, Professor of Practice in AI & Innovation à l'Imperial Business School de Londres, ont souligné que l'IA n'est plus expérimentale : elle est désormais intégrée aux modèles économiques et aux dispositifs de gestion des risques, tout en attirant l'attention des régulateurs.

Pour David Shrier, l'enjeu est aussi social : « L'une des questions les plus critiques concerne la transformation du travail », a-t-il expliqué, estimant que « le simple reskilling ponctuel ne suffira plus » et qu'une capacité d'apprentissage continu sera nécessaire.

La matinée s'est conclue par un débat de haut niveau sur l'avenir des paiements, réunissant **Sean Byrne** (CEO de PayPal Europe), **Matthew Osborne** (Policy Director Europe & UK chez Ripple) et **Martina Weimert** (CEO d'EPI Company), animé par **Ananda Kautz** (membre du comité de direction de l'ABBL).

Les échanges ont porté sur les monnaies numériques, l'interopérabilité des systèmes de paiement, les portefeuilles numériques et les paiements de compte à compte. Une conclusion s'est dégagée : la prochaine étape décisive dépendra de la capacité des acteurs publics et privés à coordonner leurs efforts pour construire une infrastructure européenne de paiement résiliente, compétitive et inclusive.

Source : Luxembourg for Finance