

**The Economic and Legal Implications of the Global
Minimum Tax: Balancing Tax Sovereignty and
Economic Efficiency**

الأثار الاقتصادية والقانونية للحدّ الأدنى للضريبة العالمية على الشركات
الدولية

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Abstract

The OECD's Global Minimum Tax (GMT), introduced under Pillar Two of the Inclusive Framework on Base Erosion and Profit Shifting (BEPS), represents a major advancement in global tax governance. By establishing a universal minimum corporate tax rate for large multinational enterprises (MNEs), the initiative seeks to curb profit shifting, combat tax base erosion, and promote fairer global competition. However, its implementation introduces significant economic, legal, and regulatory challenges. Chief among these are tensions between global tax harmonization and national fiscal sovereignty, increased compliance burdens, potential conflicts with international investment agreements, and the risk of disproportionately disadvantaging developing economies that rely on preferential tax regimes to attract investment.

This study critically examines these implications by exploring the extent to which legislative reforms are required to reconcile global tax obligations with domestic autonomy, as well as assessing the policy's broader effects on global economic efficiency, equity, and administrative feasibility. The findings highlight the need for standardized legal frameworks, enhanced mechanisms for data exchange and enforcement, and targeted provisions to safeguard the interests of developing

countries. The paper further recommends allocating a greater share of tax revenues to source jurisdictions—where production, labour, and consumption occur—to ensure a more equitable distribution of fiscal benefits. Additionally, developing nations should diversify their investment strategies by focusing on non-tax competitiveness factors such as infrastructure, governance, and ease of doing business. In Egypt’s case, the timely adoption of a Qualified Domestic Minimum Top-Up Tax (QDMTT) is advised to preserve domestic taxing rights and strengthen fiscal sovereignty within the evolving global tax landscape.

Keywords: Global Minimum Tax, Base Erosion and Profit Shifting (BEPS), Economic Implications, Egypt and Pillar Two, Legal and Regulatory Impacts, Domestic sovereignty.

مستخلص

يهدف الحد الأدنى للضريبة العالمية على الشركات متعددة الجنسيات (GMT) الذي أقرته منظمة التعاون الاقتصادي والتنمية (OECD) في إطار الركيزة الثانية (Pillar 2) من مبادرة الإطار الشامل لتآكل الوعاء الضريبي وتحويل الأرباح (BEPS)، إلى الحد من تجنب الشركات متعددة الجنسيات للضرائب، وذلك من خلال فرض حد أدنى إلزامي لمعدل الضريبة الفعلي على الشركات، بغض النظر عن موقعها الجغرافي. ويمثل هذا المشروع خطوة بارزة في تطور السياسات الضريبية الدولية، إذ يسعى إلى تقليص ظاهرة تحويل الأرباح وتعزيز المنافسة العادلة على المستوى العالمي. ومع ذلك، فإن تطبيق هذا النظام يطرح تحديات اقتصادية وقانونية وتنظيمية كبيرة، من أبرزها التضارب القائم بين سيادة الدول المالية والضريبية ومتطلبات التنسيق الضريبي الدولي، والتعقيدات المتعلقة بالتنفيذ والاذعان الضريبي، إضافةً إلى ما قد يترتب عليه من آثار سلبية على الدول النامية التي تعتمد على الأنظمة الضريبية التنافسية لجذب الاستثمارات الأجنبية. كما قد يؤدي الإطار المقترح إلى تثبيط تدفقات الاستثمار الأجنبي المباشر (FDI)، وإلى توزيع غير عادل للإيرادات الضريبية عالمياً، فضلاً عن احتمال تعارضه مع بعض أحكام القانون الدولي للاستثمار، بما في ذلك الاتفاقيات التجارية الإقليمية.

يتناول هذا البحث تحليل الآثار الاقتصادية والقانونية والتنظيمية للحد الأدنى للضريبة العالمية على الشركات متعددة الجنسيات، مركزاً على الحاجة إلى تعديل التشريعات الوطنية لتحقيق التوازن بين الالتزامات الدولية والاستقلال الضريبي للدول، وكذلك تأثير الحد الأدنى للضريبة العالمية على الكفاءة الاقتصادية وعدم المساواة العالمية، فضلاً عن التحديات العملية التي تفرضها التفاوتات في القدرات الإدارية بين الدول. وتخلص الدراسة إلى مجموعة من التوصيات التي تؤكد أهمية تطوير أطر قانونية موحدة، وتعزيز التعاون الدولي وآليات تبادل البيانات، ووضع أحكام خاصة تراعي مصالح الدول النامية. كما

توصي بأن يخصص إطار منظمة التعاون الاقتصادي والتنمية نسبة أكبر من الإيرادات الضريبية للدول التي تُمارس فيها الأنشطة الإنتاجية والاستهلاك والعمل، تحقيقاً للعدالة في توزيع الإيرادات الضريبية. بالإضافة إلى ذلك، تُشجّع الاقتصادات النامية على تنويع استراتيجياتها لجذب الاستثمارات من خلال تحسين البنية التحتية والحوكمة وبيئة الأعمال بعيداً عن الاعتماد المفرط على الحوافز الضريبية. وأخيراً، توصي الدراسة بأن تُعطي مصر أولوية لإصدار القاعدة المحلية لضريبة الحد الأدنى الإضافي المؤهل، (QDMTT) وذلك لضمان حقوقها الضريبية ومواءمة نظامها المالي مع المعايير الدولية الجديدة.

1 Introduction

The rapid growth of the digital economy and globalization has significantly reshaped global socio-economic dynamics, allowing multinational and transnational corporations to choose investment destinations that provide the most favorable conditions. This increasing mobility of capital has made effective tax management crucial to prevent practices that erode the tax base and facilitate profit shifting. To address these challenges, the Organization for Economic Co-operation and Development (OECD) introduced the Global Minimum Tax (GMT) as part of its Base Erosion and Profit Shifting (BEPS) initiative. The GMT, now supported by 142 countries, aims to ensure that multinational enterprises (MNEs) pay a fair share of taxes regardless of where they operate, thereby promoting greater tax equity and fiscal stability across jurisdictions.

More specifically, over the past four years, the global tax landscape has undergone a major transformation with the emergence of a new international framework for taxing MNEs. In 2021, the OECD announced a landmark agreement among more than 130 countries to reform

international taxation.¹ Following this, in December 2022, the European Union (EU) adopted a Directive requiring all 27 member states to implement the OECD’s *Global Anti-Base Erosion (GloBE) Model Rules*, commonly known as the “Pillar Two” or “Global Minimum Tax.”² These rules seek to ensure that MNEs pay a minimum effective tax rate of 15% in every jurisdiction where they operate. As of early 2024, 21 European countries and 4 non-European jurisdictions have enacted final legislation, while many others are in the process of doing so. Despite this growing global alignment, implementation remains uneven.³ The United States, for example, continues to debate the policy’s implications, and several G20 economies—such as China, India, Brazil, and Indonesia—have yet to advance domestic legislation, reflecting ongoing concerns over sovereignty, competitiveness, and administrative readiness.

The global minimum tax seeks to curb the “race to the bottom” in corporate tax rates by promoting fairness and

¹ OECD, Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (OECD 2021).

² European Council, Council Directive (EU) 2022/2523 of 14 December 2022 on Ensuring a Global Minimum Level for Taxation for Multinational Enterprise Groups and Large-Scale Domestic Groups in the Union [2022] OJ L328/1.

³ PriceWaterhouseCoopers (PwC), ‘OECD’s Pillar Two Country Tracker’ (2024).

stability in international taxation. It is a landmark reform aimed at restricting the ability of large multinational corporations to exploit loopholes by shifting profits to low-tax jurisdictions or operating digitally without a physical presence. By setting a globally agreed minimum corporate tax rate—known as the Global Minimum Corporate Tax (GMCT)—the initiative ensures that participating countries can secure a fair share of tax revenues. This framework is designed to reduce harmful tax competition, enhance transparency, and discourage profit-shifting practices that erode national tax bases.

However, concerns about harmful tax competition are not a recent development. They gained significant attention following the OECD’s landmark 1998 report on “Harmful Tax Competition,” which identified both “tax haven jurisdictions”⁴ and “preferential tax regimes”⁵ as practices that erode national tax bases and distort global investment

⁴ OECD, Harmful Tax Competition: In its 1998 report Harmful Tax Competition: An Emerging Global Issue, at para. 75, the OECD described tax havens as jurisdictions that deliberately position themselves to facilitate the avoidance of taxes that would otherwise be payable in higher-tax countries. Such jurisdictions are typically characterized by a high degree of secrecy in banking and commercial sectors, a lack of transparency and effective exchange of information with other governments, and the absence of substantial business activities by taxpayers within their territories

⁵ also note that “harmful preferential tax regimes,” which exist not only in tax havens but also in high-tax jurisdictions, are characterized by very low or zero effective tax rates on certain income. Such regimes are often ring-fenced from the domestic economy and similarly lack transparency and effective information exchange with other countries.

and financial flows. The report called for greater international cooperation to address these challenges. However, the initiative faced criticism, with some arguing that it sought to impose a uniform tax system on all countries.⁶ In particular, U.S. lawmakers contended that the OECD's efforts undermined the competitive advantage of tax havens within the global economy.⁷

As a result of the criticism, the OECD softened its stance in its June 2000 follow-up report,⁸ shifting its terminology from "harmful tax competition" to "harmful tax practices." This change reflected a more cooperative and less prescriptive approach. Nonetheless, the OECD continued to face criticism, with some commentators suggesting that its initiative was a step toward establishing itself as a de facto "world tax organization."⁹ Critics argued that by urging countries to eliminate harmful tax competition, the OECD aimed to create a framework where global tax

⁶ Barry Spitz and Geoffrey Clarke, *Offshore Service* (Butterworths 2002) 14–20.

⁷ C. Scott & R. Goulder, U.S. Congressman Owens Calls for US Government to Rescind Support of OECD Tax Competition Initiative, 22 *Tax Notes Intl.*, p. 1202 (2001).

⁸ OECD, *Towards Global Tax Co-operation: Report of the 2000 Ministerial Council Meeting and Recommendations by the Committee on Fiscal Affairs: Progress in Identifying and Eliminating Harmful Tax Practices* (OECD 2000).

⁹ AJ Cockfield, 'The Rise of the OECD as an Informal "World Tax Organisation" Through National Responses to E-Commerce Tax Challenges' (2006) 8 *Yale Journal of Law and Technology* 140.

revenues could be collectively managed and distributed among nations.¹⁰

In 2015—seventeen years after its 1998 report on Harmful Tax Competition—the OECD launched its Base Erosion and Profit Shifting (BEPS) Project, outlining 15 Actions to combat tax avoidance by multinational enterprises.¹¹ Action 5, focused on countering harmful tax practices, reaffirmed that concerns over harmful tax competition remained relevant, as the global race to the bottom in tax rates could eventually drive effective rates to zero, regardless of a country’s policy intentions.¹² The OECD clarified that its work was not aimed at harmonizing tax systems or dictating tax rates, but at reducing distortions and promoting fair competition. Action 5 also highlighted a shift in focus—from merely targeting tax havens to addressing preferential tax regimes that lacked real economic substance.¹³ Such regimes, including intellectual

¹⁰ RS Avi-Yonah, ‘Globalisation, Tax Competition, and the Fiscal Crisis of the Welfare State’ (2000) 113 Harvard Law Review 1662.

¹¹ OECD, Aligning Transfer Pricing Outcomes with Value Creation, Actions 8–10 – 2015 Final Report (OECD 2015) Primary Sources IBFD. The 15 Action measures are intended to ensure that profits are taxed where economic activities generating the profits are performed and where value is created. See OECD, Action Plan on Base Erosion and Profit Shifting (OECD 2013) Primary Sources IBFD.

¹² OECD, Action 5 Final Report 2015 – Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance 23 (OECD 2015) Primary Sources IBFD.

¹³ M Herzfeld, ‘News Analysis: Political Reality Catches Up with BEPS’ Tax Analysts (3 February 2014).

property boxes, headquarter and holding company regimes, and special financing or service centers, had allowed countries to attract tax-driven investments with little or no genuine commercial activity.

The rise of the digital economy intensified the development of preferential tax regimes, as the mobility of digital activities enabled companies to shift their intangible assets, such as intellectual property, to low-tax jurisdictions to minimize taxation in their home countries.¹⁴ This trend deepened global tax competition, with countries increasingly offering generous deductions and exemptions to attract digital firms—fueling a “race to the bottom.” To address this, the OECD’s BEPS Action 5 recommended that profits earned by MNEs be taxed in alignment with the “substantial activities” that generate them, thereby discouraging purely tax-driven arrangements. It also called for greater transparency through the spontaneous exchange of information on rulings related to preferential regimes. However, the OECD’s 2018 Interim Report on the Tax Challenges of the Digital Economy¹⁵ observed that harmful tax practices persisted. Many MNEs continued to exploit loopholes by establishing minimal physical

¹⁴ OECD, Action 1 Final Report 2015 – Addressing the Tax Challenges of the Digital Economy para. 223 (OECD 2015)

¹⁵ OECD, Tax Challenges Arising from Digitalisation – Interim Report (OECD 2018).

presence in low-tax jurisdictions to satisfy the “substantial activity” test. These issues remained unresolved, as Action 5 sought only to mitigate harmful practices rather than prohibit low- or zero-tax regimes outright, allowing MNEs to benefit from minimal taxation provided their host countries-maintained information-sharing commitments.

In Action 1, the OECD recognized that the digital economy has intensified harmful tax practices and created new taxation challenges beyond traditional BEPS concerns, highlighting the need for updated international tax rules. In January 2019, the OECD introduced a Policy Note¹⁶ outlining a two-pillar approach to address these challenges. Pillar One seeks to ensure a fairer allocation of taxing rights and profits among countries, particularly concerning large MNEs.¹⁷ Pillar Two aims to curb harmful tax competition and prevent the ongoing “race to the bottom” through the introduction of a global minimum tax.¹⁸ Following public consultations in February 2019,¹⁹

¹⁶ OECD, Addressing the Tax Challenges of the Digitalisation of the Economy – Policy Note (OECD 2019).

¹⁷ OECD, Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy 4 (OECD 2021).

¹⁸ OECD, Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy (OECD 2019) para 53.

¹⁹ OECD, Public Consultation Document: Addressing the Tax Challenges of the Digitalisation of the Economy (13 February – 6 March 2019), Base Erosion and Profit Shifting Project (OECD 2019) para 3.

the OECD released detailed Blueprints for both²⁰ pillars in October 2020.²¹ Subsequently, on 8 October 2021, 136 members of the OECD Inclusive Framework—including many developing nations—reached a political agreement to implement the two-pillar solution. However, several developing countries, such as Kenya, Nigeria, Pakistan, and Sri Lanka, declined to endorse the agreement, citing concerns about its potential economic implications.²²

On 20 December 2021, the OECD released the Pillar Two Global Anti-Base Erosion (GloBE) Model Rules, which serve as a framework for countries to introduce domestic legislation establishing a minimum level of corporate taxation.²³ The primary objective of these rules is to create a coordinated global system ensuring that large MNEs groups pay at least a 15% minimum effective tax rate (ETR) in each jurisdiction where they operate. While recognizing the sovereign right of countries to design their own tax systems, the GloBE rules also affirm the right of other jurisdictions to safeguard their tax bases when

²⁰ OECD, Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint para 24 (OECD 2020).

²¹ Ibid.

²² O.A. Williams, Developing Countries Refuse to Endorse G7 Corporation tax Rate, *Forbes* (June 2021),

²³ OECD, Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two), Inclusive Framework on BEPS, art 1.1 (OECD 2021).

profits are taxed below this minimum threshold. To achieve this, the rules introduce a “top-up tax” mechanism, allowing jurisdictions to “tax back” profits from low-tax locations.²⁴ On 14 March 2022, the OECD published a detailed Commentary providing guidance for tax authorities and businesses on how to interpret and apply the GloBE rules, along with examples demonstrating their practical implementation.²⁵ The OECD has also outlined plans for an implementation framework to address key issues related to administration, compliance, and coordination under Pillar Two.

The GloBE rules represent a major turning point in global tax policy, reflecting a shift in attitudes toward tax sovereignty and a growing acceptance of a coordinated global minimum tax—an idea that many nations had previously resisted. They mark a significant milestone in international cooperation, as numerous countries have agreed on measures to counter the long-standing race to the bottom in corporate tax rates amid increasing globalization and digitalization. Importantly, the GloBE framework is designed to accommodate diverse national tax systems, allowing flexibility in areas such as tax

²⁴ *Ibid.*

²⁵ OECD, Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two) Examples (OECD 2022).

consolidation, income allocation, entity classification, and the treatment of specific business structures like joint ventures or minority holdings. Consequently, not all provisions will apply uniformly across jurisdictions or to every MNE. It is also essential to note that the GloBE rules are established as a “common approach”—meaning that while countries are encouraged to adopt them, they are not legally bound to do so.

The implementation of the Global Minimum Tax (GMT) carries significant economic and legal implications that require thorough examination. This study seeks to analyze these implications in depth. Economically, the GMT is expected to influence the distribution of tax revenues among countries and reshape the patterns of foreign direct investment (FDI). It also has far-reaching effects on the economies of developing nations, which may face challenges in adapting to the new global tax framework. Moreover, the introduction of the GMT is likely to impose considerable costs on both governments and multinational enterprises, particularly in relation to compliance and administrative obligations.

From a legal perspective, the implementation of the Global Minimum Tax raises several challenges. One of the most critical is its potential conflict with national fiscal

sovereignty, as it constrains the ability of states to design independent tax policies. Additionally, the GMT may create tensions with existing international investment laws, particularly those enshrined in regional trade agreements (RTAs), which could complicate its enforcement and compatibility with current legal frameworks.

On the one hand, the economic implication of the GMT includes its effect on tax revenue, foreign direct investment and its impact on the developing countries' economies.

Initially, the introduction of the Global Minimum Tax (GMT) has profound implications for global tax revenues, as it seeks to stabilize declining corporate tax bases and redistribute revenue gains among nations. While proponents argue that the GMT will enhance fiscal equity and strengthen public finances, particularly in high-income countries, critics contend that its benefits may be unevenly distributed, with developing economies potentially capturing only marginal increases in tax revenue due to administrative limitations and structural economic disparities. Therefore, understanding the fiscal impact of the GMT requires a precise analysis of its effects on revenue mobilization, tax competition, and the broader quest of global economic fairness.

Moreover, the introduction of the Global Minimum Tax (GMT) marks a major reform in international taxation and has significant implications for foreign direct investment (FDI). For many years, countries—especially developing economies—have used low corporate tax rates and tax incentives to attract multinational enterprises. The GMT, by setting a 15% minimum tax rate, reduces the effectiveness of such incentives and may influence how and where global firms choose to invest. While the reform seeks to create a fairer and more stable global tax system, it also raises concerns that developing countries might experience a decline in FDI inflows. Pillars one and two have markedly different implications. Pillar one aims to curb profit shifting and promote a fairer allocation of tax revenues among countries, but its impact on actual investment decisions is expected to be minimal. It targets only the largest multinational enterprises (MNEs)—particularly digital companies with limited physical assets—and applies new tax obligations only when profits exceed a specific threshold. Pillar two, on the other hand, establishes a global minimum tax, which could significantly influence where investors choose to locate their activities. As a result, it may have major implications for countries that rely on tax incentives to attract foreign direct investment (FDI), especially developing economies

competing for global capital.²⁶ Hence, understanding the relationship between the GMT and FDI is therefore essential to assess whether the policy promotes global equity or unintentionally limits investment opportunities in emerging markets.

Furthermore, the proposal for a Global Minimum Tax (GMT) calls for its adoption by all countries—both developed and developing alike. However, developing economies face particular challenges that may not have been fully considered in the global debate. Many of these countries risk adopting the minimum tax rapidly and without adequate assessment of its potential disadvantages within their unique economic contexts. While the policy is often presented as a universal solution promising fairness and increased revenue for all nations, the tangible benefits for developing countries remain uncertain and limited. This research examines the economic impact and potential drawbacks of implementing the GMT in developing economies, highlighting how it may affect revenue generation, investment flows, and overall growth. It also considers alternative policy options and strategies that developing countries could adopt to

²⁶ United Nations Conference on Trade and Development (UNCTAD), World Investment Report 2022: International Tax Reforms and Sustainable Investment (United Nations 2022).

safeguard their fiscal interests and promote sustainable economic development.

Additionally, the implementation of the Global Minimum Tax is expected to impose significant costs on both governments and multinational enterprises, particularly in terms of compliance and administrative requirements. For developing countries, these costs may be especially burdensome, as they often lack the institutional capacity, technical expertise, and digital infrastructure needed to effectively administer complex international tax rules. Multinational corporations will also face higher compliance costs due to the need for detailed data collection, reporting, and calculation of effective tax rates across multiple jurisdictions. These added costs could strain limited public resources in developing economies and create new barriers to investment, raising concerns about whether the benefits of the Global Minimum Tax will outweigh its administrative and compliance burdens.

On the other hand, the legal impacts of GMT are represented in legal challenges to the effective implementation of the Global Minimum Tax lies in its perceived tension with national fiscal sovereignty, and the potential contradiction between GMT rules and investment

laws, particularly the regional trade agreements (RTAs) provisions.

Generally, investment protection is believed to boost foreign direct investment (FDI) by offering investors greater certainty and reducing risk. While such protections began through bilateral treaties, they are now commonly included in regional trade agreements.²⁷ Tax relief and fiscal incentives also influence investment decisions, prompting countries to compete by lowering corporate tax rates or offering tax breaks to attract investors.²⁸ However, these incentives have shown limited effectiveness in driving FDI and often weaken national tax bases. As a result, international efforts have increasingly focused on curbing harmful tax competition among states.

The Global Minimum Tax seeks to curb the use of tax incentives to attract investment by establishing a minimum threshold for tax competition.²⁹ However, investment protections under regional trade agreements (RTAs) may hinder its implementation, as they could shield investors

²⁷ Molly Leshner and Sebastien Miroudot, 'The Economic Impact of Investment Provisions in Regional Agreements' (2007) 62(2) *Aussenwirtschaft*, PP. 194-232.

²⁸ Jeffrey Owens and James X Zhan, 'Trade, Investment and Taxation: Policy Linkages' (2018) 25(2) *Transnational Corporations*, PP. 1-8.

²⁹ Belisa F Liotti, Joy Waruguru Ndubai, Ruth Wamuyu, Ivan Lazarov and Jeffrey Owens, 'The Treatment of Tax Incentives under Pillar Two' (2022) 9(2) *Transnational Corporations*, PP. 25-46.

from domestic legal changes made to align with the GloBE framework—particularly if countries decide to withdraw existing tax incentives for investors from other RTA members. This paper examines whether introducing the GloBE Rules or modifying domestic tax incentive regimes could violate investment protections under RTAs.

From a practical perspective, Egypt as a developing country should consider the implementation of the GMT. Implementing the Global Minimum Tax (GMT) in Egypt represents both an opportunity and a challenge for the country's fiscal and investment landscape. As part of the global effort led by the OECD to curb base erosion and profit shifting by multinational enterprises, the GMT aims to ensure that large corporations pay at least a 15% tax rate, regardless of where they operate. For Egypt, a developing economy seeking to attract foreign direct investment while also safeguarding its tax base, adopting the GMT could strengthen revenue collection and promote tax fairness. However, it may also require significant legal, administrative, and policy adjustments to align domestic tax laws with international standards. Balancing these reforms with the need to remain competitive for foreign investors will be a central consideration as Egypt moves toward implementation.

1.1 Research organization:

Against this background, this research is organized into nine sections. **Section 1** presents the introduction. **Section 2** provides the historical background of low-tax jurisdictions, tracing the main stages in their evolution and highlighting the origins of modern low-tax regimes in the jurisprudence of the United States and the British courts. This section concludes with the emergence of the contemporary framework of low-tax jurisdictions.

For over two decades, the Organisation for Economic Co-operation and Development (OECD) has led multilateral initiatives to address harmful tax competition, culminating in the introduction of the Global Minimum Tax reform. **Section 3** examines the OECD's previous efforts that paved the way for the current comprehensive approach, identifying three distinct phases: the first phase, *Combating Harmful Tax Competition* (the pre-BEPS stage); the second phase, the *Base Erosion and Profit Shifting (BEPS) Project* (BEPS 1.0); and the third and ongoing phase, the *Global Minimum Tax* (BEPS 2.0). Before analyzing the economic and legal implications of the Global Minimum Tax, it is essential to understand its structure and operational mechanisms. Accordingly, **Section 4** outlines the key components of the Global

Minimum Tax. Since the GMT was primarily designed to address two central problems—profit shifting and harmful tax competition—**Section 5** explores these motivations and explains how the reform seeks to mitigate them.

Section 6 analyzes the economic implications of the Global Minimum Tax, including its impact on tax revenues, foreign direct investment (FDI), and the economies of developing countries, as well as the potential costs associated with its implementation. **Section 7** discusses the legal challenges surrounding the implementation of the GMT and its potential conflicts with international investment law. Finally, **section 8** sheds the light on the impact on Global Minimum Tax on Egypt's Domestic Tax System. **Section 9** concludes and provides a policy recommendation.

1.2 Research Problem:

The introduction of the Global Minimum Tax (GMT) marks a major shift in international taxation, aiming to curb profit shifting and ensure that multinational enterprises (MNEs) pay a fair share of taxes wherever they operate. However, this initiative raises a complex research problem concerning the balance between global economic efficiency and national tax sovereignty. While the GMT seeks to create a more equitable and stable international

tax environment, it simultaneously limits the fiscal autonomy of states, particularly those that rely on competitive tax regimes to attract investment and stimulate growth. Developing countries may face additional challenges, including administrative burdens, compliance costs, and reduced policy flexibility. Moreover, the legal dimensions of the GMT—such as its compatibility with constitutional principles and existing international investment agreements—remain uncertain. This tension between promoting global tax fairness and preserving national sovereignty forms the central problem that this research seeks to address.

1.3 Research Methodology:

This study adopts a qualitative research approach based on critical analysis of the economic and legal dimensions of the Global Minimum Tax (GMT). The research relies primarily on secondary data sources, including OECD reports, academic journals, policy papers, and international legal instruments. Through a critical examination of these materials, the study evaluates the implications of the GMT on tax sovereignty, revenue distribution, and economic efficiency, with a particular focus on developing economies. The methodology involves identifying gaps, inconsistencies, and potential conflicts within the current

international tax framework, as well as assessing the effectiveness and fairness of the proposed global tax standards. By integrating economic theory with legal interpretation, the research aims to provide a balanced and evidence-based assessment of how the GMT reshapes global fiscal governance.

2 Historical background

The historical evolution of low-tax jurisdictions is riddled with mythical narratives. Their image has been further confused through associations with pirate and criminal hideouts, as well as connections to illicit transactions, organized crime, and intelligence operations. The origins of low tax jurisdictions are subject to numerous, often contradictory, interpretations, many of which lack substantive empirical support. Several of the most well-known origin stories can be definitively disregarded.³⁰

The first commonly cited myth states that Swiss bankers created secret bank accounts to safeguard Jewish assets from Nazi seizure. In fact, these accounts were basically

³⁰ Ronen Palan, Richard Murphy and Christian Chavagneux, *Tax Havens: How Globalization Really Works* (Cornell University Press 2010).

established to shield Swiss bankers themselves from legal action initiated by foreign states.³¹

A second commonly held myth, which endorsed by liberal economists as well as by institutions such as the IMF³² and the OECD,³³ assumes that low-tax jurisdictions emerged as a response to increasing tax burdens during the 1960s. However, historical evidence challenges this point of view: Switzerland had already gained a reputation as a low tax jurisdiction by the 1920s; Luxembourg implemented its holding company regime in 1929; and Bermuda was recognized as a low tax jurisdiction as early as 1935.

A third common myth, perpetrated by low tax jurisdictions themselves, shows them as innocent bystanders exploited by capital mobility. This narrative neglects the intentional strategies employed by these jurisdictions to attract foreign investment.³⁴

³¹ Ira Kuehn, 'A Global Minimum Corporate Tax and its Impact on Corporations and the Global Economy' (Spring 2024) 33(2) Transnational Law & Contemporary Problems 292.

³² Michel Cassard, The Role of Offshore Centres in International Financial Intermediation (IMF Working Paper No 94/107, International Monetary Fund 1994).

³³ OECD, Harmful Tax Competition: An Emerging Global Issue (OECD 1998).

³⁴ Palan, Murphy and Chavagneux, Tax Havens (n 1). P.107.

Tracing back the history of low tax jurisdictions, it can be said that the practices of tax avoidance, asset concealment, and evasion have profound historical roots. In ancient Greece and Rome, citizens skilfully hid their wealth from state authorities.³⁵ During the medieval period, lenders developed numerous methods to conceal interest payments on loans in order to avoid religious prohibitions. In subsequent centuries, Dutch, English, and French merchants used “warehousing,” a practice that used to defer taxation on stored goods until their sale. While concealment has a long history, the emergence of low tax jurisdiction is comparatively recent. In 1869, Prince Charles III of Monaco authorized the establishment of the principality’s renowned casino, the revenue from which enabled him to abolish all forms of income taxation, thus, perhaps unintentionally, creating what could be regarded as the first modern low tax jurisdiction.³⁶

Generally, low-tax jurisdiction development can be divided into three distinct stages. The first one extends from the late nineteenth century to the 1920s. This stage saw the emergence of many of the core mechanisms still associated with low tax jurisdiction today. The second,

³⁵ Caroline Doggart, *Tax Havens and Their Uses* (10th edn, Economist Intelligence Unit 2002).

³⁶ Palan, Murphy and Chavagneux, *Tax Havens* (n 1). P.108.

from the aftermath of World War I to the early 1970s. It was marked by a small group of jurisdictions and led by Switzerland; they intentionally adopted low tax jurisdiction regimes as part of their economic development strategies. The third stage, commenced from the early 1970s to the late 1990s, it witnessed a sharp expansion in both the number of low tax jurisdiction and the volume, complexity, and sophistication of financial flows routed through them. This period is often described as the “golden age” of low tax jurisdictions.³⁷

Although the origins of modern low-tax jurisdictions can be traced to the late nineteenth century, the underlying concept of reducing tax liabilities arising from commercial activity is as old as commerce itself. In essence, the notion of tax evasion has existed for as long as taxation itself.³⁸

2.1 The origins of modern low-tax jurisdictions in the United States

The origins of modern low-tax jurisdictions emerged in the United States in the late nineteenth century, a period christened by rapid industrialization and the emergence of

³⁷ *Ibid.*

³⁸ Ira Kuehn, ‘A Global Minimum Corporate Tax and its Impact on Corporations and the Global Economy’ (Spring 2024) 33(2) *Transnational Law & Contemporary Problems* 292.P.325.

large, profit-driven corporations.³⁹ At the time, New York hosted the highest concentration of corporate entities, generating significantly greater tax revenues than neighbouring states. Observing this disparity, New Jersey sought to attract corporate activity by collaborating with New York corporate lawyer James Dill to introduce a highly permissive corporate law framework. Dill drafted a series of statutes that expanded corporate powers, including the ability to acquire other companies, removed or relaxed restrictions on corporate size and market dominance, and permitted corporations to hold equity in other firms. Although these reforms did not directly alter tax policy, they established a precedent in which states allowed corporations to shape corporate law which ultimately laid the groundwork for the development of low-tax jurisdictions.⁴⁰

Delaware, now the most prominent domestic state of incorporation in the United States, was the next to adopt this approach. In the early twentieth century, the enactment of increasingly permissive corporate laws and favorable tax regimes by eastern states initiated a

³⁹ Ronen Palan, Richard Murphy and Christian Chavagneux, *Tax Havens: How Globalization Really Works* (Cornell University Press 2010). P.110.

⁴⁰ Ira Kuehn, 'A Global Minimum Corporate Tax and its Impact on Corporations and the Global Economy' (Spring 2024) 33(2) *Transnational Law & Contemporary Problems* 292.P.325

regulatory “race to the bottom.” Competing jurisdictions revised their legal frameworks to attract corporate charters and secure external capital investment.⁴¹

Although the strategy of attracting capital investment through the creation of a favorable legal framework originated in the United States, it soon spread internationally. In Switzerland, a comparable form of competition emerged in the 1920s when the Canton of Zug adopted measures similar to those of the U.S. states in order to draw investment to its economically disadvantaged region. Unlike the American model, however, Zug’s approach was explicitly tied to taxation. During this period, two of the canton’s largest companies threatened to relocate unless granted partial tax refunds. The cantonal government accepted their demands due to the calculation that the economic loss from their departure would far exceed the cost of granting the tax refunds.⁴²

2.2 The origins of modern low-tax jurisdictions in British courts

⁴¹ Ronen Palan, Richard Murphy and Christian Chavagneux, *Tax Havens: How Globalization Really Works* (Cornell University Press 2010). P.110.

⁴² Ira Kuehn, ‘A Global Minimum Corporate Tax and its Impact on Corporations and the Global Economy’ (Spring 2024) 33(2) *Transnational Law & Contemporary Problems* 292.P.326.

Although the concept of designing favorable legal frameworks to attract corporate presence originated in the United States, the principle allowing a company to be incorporated in a jurisdiction different from its place of operation was established through decisions of the British courts.⁴³

The Egyptian Land and Investment Co. was a British-incorporated entity established to invest in Egyptian real estate. Although registered in London, the company conducted all of its operations in Egypt, and its board of directors resided in Cairo. Its sole presence in London consisted of a small office staffed by a clerk, serving primarily to provide a registered address in England.⁴⁴ When the English tax authorities sought to levy income tax on profits derived from the company's Egyptian operations, the company refused, leading to litigation. On appeal, the House of Lords held that a company's place of incorporation and its place of residence were distinct concepts, with the latter being the relevant criterion for determining income tax liability. As the company's business activities and board were based entirely in Cairo,

⁴³ Ronen Palan, Richard Murphy and Christian Chavagneux, *Tax Havens: How Globalization Really Works* (Cornell University Press 2010). P.111.

⁴⁴ Ira Kuehn, 'A Global Minimum Corporate Tax and its Impact on Corporations and the Global Economy' (Spring 2024) 33(2) *Transnational Law & Contemporary Problems* 292.P.327.

the court deemed it resident in Egypt and therefore not subject to English income tax. While the judgment was intended as an interpretation of the tax code, it effectively created a legal avenue for companies to incorporate in the United Kingdom without falling under its tax jurisdiction, provided they were resident elsewhere.⁴⁵

At first glance, the ruling seemed unproblematic, aligning with the principle, which later reinforced by the OECD's international tax initiatives, that taxation should be levied in the jurisdiction where revenue is generated.⁴⁶ The House of Lords reasoned that, since the Egyptian Delta's operations were conducted entirely in Egypt, its tax obligations should fall there. However, the decision inadvertently opened the door to "virtual residency," whereby a company could be incorporated in one jurisdiction while being deemed resident in another. The key tax implication was not merely that companies could avoid taxation in their place of incorporation, but that the court endorsed a legal separation between a corporation's place of incorporation and its place of residence. This

⁴⁵ *Egyptian Delta Land and Investment Co Ltd v Todd* (1926) 14 TC 119 (KB), (1927) 14 TC 126 (CA), (1928) 14 TC 138 (HL).

⁴⁶ OECD, *Tax Challenges Arising from the Digitalization of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS* (OECD Publishing 2021) <https://doi.org/10.1787/782bac33-en> accessed 10 August 2025.

indeed approved corporations' dual legal residence, in contrary to the common law tradition of treating them the same as natural persons.⁴⁷

2.3 The modern framework of low-tax jurisdictions

The modern framework of low-tax jurisdictions is led by Switzerland and began to take shape in the 1930s and 1940s. As noted earlier, Swiss cantons had already adapted the U.S. model of deregulated corporate law to attract domestic capital. During this later period, Switzerland applied the same competitive strategy to the international sphere by amending its banking secrecy laws. The resulting legislative combination produced a jurisdiction characterized by exceptionally low taxation coupled with strict confidentiality regarding the origin and existence of assets held in Swiss accounts.⁴⁸

During the same period, numerous British colonies, particularly in the Caribbean, began establishing themselves as effective low-tax jurisdictions for major U.S. corporations. Their development in this role was closely tied to their status under British rule. As the world's largest empire at the time, Britain exerted

⁴⁷Egyptian Delta Land and Investment Co Ltd v Todd (1926) 14 TC 119 (KB), (1927) 14 TC 126 (CA), (1928) 14 TC 138 (HL).

⁴⁸ Ronen Palan, Richard Murphy and Christian Chavagneux, *Tax Havens: How Globalization Really Works* (Cornell University Press 2010). P.115.

considerable economic influence, and its colonies often had social structures dominated by an elite class with strong incentives to circumvent taxation and regulation. Additionally, the adoption of the British common law system across these territories facilitated the work of tax lawyers, who could exploit legal ambiguities through litigation.⁴⁹ Over time, the small British-controlled Caribbean islands underwent repeated cycles of foreign investment and tax code amendments, culminating in low-tax jurisdiction activity becoming their primary industry by the 1970s.⁵⁰

Not only did these islands, with their liberally interpreted corporate laws, adopt relaxed corporate tax policies, but they also facilitated the expansion of illicit markets. Meyer Lansky—infamously known as “the mafia’s accountant”—was among the first in the United States to develop and utilize offshore accounts in what would later become low-tax jurisdictions. His purpose was primarily to launder illegally obtained profits. Soon thereafter, U.S. corporations recognized that the same offshore financial

⁴⁹ Ira Kuehn, ‘A Global Minimum Corporate Tax and its Impact on Corporations and the Global Economy’ (Spring 2024) 33(2) *Transnational Law & Contemporary Problems* 292.P.328.

⁵⁰ Charles A Dainoff, *Outlaw Paradise: Why Countries Become Tax Havens* (Bloomsbury Publishing 2021) xi–xv.

institutions could be employed to reduce domestic tax liabilities.⁵¹

The relationship between illegitimate businessmen and legitimate corporate businessmen in the United States may have been closer than commonly assumed. In the 1950s, approximately a dozen businessmen, some like Lansky, with links to organised crime, became known as the “Bay Street Boys.” Through bribery, they secured control of the Bahamian government and, within a decade, transformed the islands into a major tourist destination for wealthy Americans. Activities prohibited in the United States at the time, such as gambling, were legal in the Bahamas. The Bay Street Boys simultaneously drafted the islands’ laws and acquired prime real estate for development.⁵² Eventually, local discontent over the inflow of American businessmen and questionable tourism ventures led to the election of a reformist leader. While these reforms curtailed some undesirable enterprises, the strict bank secrecy laws preventing U.S. investigators from accessing account information, as well as the low corporate tax rates, remained in place. A similar pattern emerged across

⁵¹ Charles A Dainoff, *Outlaw Paradise: Why Countries Become Tax Havens* (Bloomsbury Publishing 2021) xi–xv.

⁵² Vanessa Ogle, ‘Archipelago Capitalism: Tax Havens, Offshore Money, and the State, 1950s–1970s’ (2017) *American Historical Review* 122(5) 1431, 1433.

numerous islands of comparable size, location, and population.⁵³

The transition from the late twentieth century to the contemporary landscape of low-tax jurisdictions has been significantly shaped by the rapid advancement of technology, which has facilitated the expansion of a globalized economy. Within this evolving financial environment, a distinction can be drawn between *retail finance*, which encompasses consumer-oriented activities such as savings and loans, and *wholesale finance*, involving large-scale transactions conducted between financial institutions across international markets. It is the latter category—wholesale finance—that is most critical for understanding the operation and appeal of low-tax jurisdictions.⁵⁴

Since the conclusion of the Second World War, wholesale finance has functioned predominantly as a global matter. Within this sector, international financial institutions engage in the exchange of incorporeal assets. These are intangible holdings over which entities maintain ownership and control, but they lack physical form. According to

⁵³ Charles A Dainoff, *Outlaw Paradise: Why Countries Become Tax Havens* (Bloomsbury Publishing 2021) xi–xv.

⁵⁴ Ronen Palan, Richard Murphy and Christian Chavagneux, *Tax Havens: How Globalization Really Works* (Cornell University Press 2010). PP.19-21.

estimates by the Bank for International Settlements, outstanding derivative contracts alone exceed USD 600 trillion in value. Such contracts permit the trading of an asset's value without transferring the underlying physical asset itself. Given their intangible and highly mobile nature, these assets are not tied to a fixed jurisdiction, enabling financial institutions to conduct trading operations in major economic centres such as New York, London, or Paris while recording the transactions through branches located in low-tax jurisdictions such as Switzerland or the Cayman Islands. This mechanism illustrates a fundamental way in which low-tax jurisdictions facilitate profit generation for institutions engaged in financial transactions.⁵⁵

Multinational enterprises (MNEs) frequently exploit low-tax jurisdictions through complicated structures comprising subsidiaries and subcontractors, enabling them to register transactions in favorable tax environments. While legal frameworks permit MNEs to retain corporate links with subsidiaries, each subsidiary is formally treated as an independent entity. As corporations commence international business, states typically choose between

⁵⁵ Ira Kuehn, 'A Global Minimum Corporate Tax and its Impact on Corporations and the Global Economy' (Spring 2024) 33(2) *Transnational Law & Contemporary Problems* 292.P.329.

taxing profits in the jurisdiction where they are generated or in the jurisdiction of corporate residence. The residency principle, which dominates global practice, has significant consequences for low-tax jurisdictions. Where a low-tax jurisdiction permits the incorporation of subsidiaries in such country alongside maintaining strict confidentiality regarding the origin of corporate funds, it becomes relatively straightforward for companies to shift profits to such entities in order to reduce their tax liabilities. Consequently, both corporations and low-tax jurisdictions have leveraged this framework to establish extensive and sophisticated arrangements involving multiple financial instruments, accounts, and subsidiaries with the aim of minimising overall tax burden.⁵⁶

Although low-tax jurisdictions often carry a negative reputation among high-tax states, they tend to enjoy a decent reputation within international business and financial sectors.⁵⁷ This reputation can bring potential political and diplomatic costs, including sanctions; however, for many low-tax jurisdictions, the economic advantages outweigh these risks. The main benefit is the

⁵⁶ Ronen Palan, Richard Murphy and Christian Chavagneux, *Tax Havens: How Globalization Really Works* (Cornell University Press 2010). P.80.

⁵⁷ Michiel van Dijk and Francis Weyzig, *The Global Problem of Tax Havens: The Case of the Netherlands* (SOMO Paper, Amsterdam, January 2007).

capacity to attract and secure foreign capital. World Bank data for 2015 indicates that low-tax jurisdictions received average annual foreign direct investment (FDI) inflows of approximately USD 190 billion per country, in contrast to around USD 549 million for comparably sized high-tax jurisdictions in the same period.⁵⁸

Establishing a low-tax jurisdiction can serve as an effective means of stimulating economic growth, particularly for states with limited geographic size or few alternative avenues for industrial development. For such jurisdictions, adopting preferential tax policies for foreign investors often presents a more cost-efficient strategy than exploiting natural resources, while also conserving those resources for potential future use. Politically, the implementation of a favorable corporate tax regime typically entails minimal disruption to the daily lives of citizens. This dynamic is exemplified by the Bahamas, which maintained its low-tax jurisdiction status even after removing ethically or legally questionable foreign enterprises from the original foreign investment into the tourism sector.⁵⁹

⁵⁸ Charles A Dainoff, *Outlaw Paradise: Why Countries Become Tax Havens* (Bloomsbury Publishing 2021), P. 16.

⁵⁹ Ira Kuehn, 'A Global Minimum Corporate Tax and its Impact on Corporations and the Global Economy' (Spring 2024) 33(2) *Transnational Law & Contemporary Problems* 292.P.331.

When a state structures its tax legislation to favour corporations, it effectively enters into a mutual arrangement with multinational enterprises. In exchange for substantial inflows of foreign capital, the host state often permits corporations and their legal representatives to influence, if not shape, its tax and financial secrecy frameworks. Consequently, scholars frequently characterize the phenomenon as a form of “sovereignty for sale.” The rise of low-tax jurisdictions can be interpreted as the intersection between states exercising their sovereign taxing powers in a globalized economic environment and the continuous pressure from multinational enterprises to reduce their overall tax liabilities.⁶⁰

3 The history evolution of the current OECD’s Global Minimum Tax

For over twenty years, the OECD has been at the forefront of multilateral initiatives aimed at addressing, *inter alia*, harmful tax competition, with its most recent measure being the introduction of the global minimum tax reform. The latest OECD–G20 agreement represents the most extensive and assertive international initiative to date aimed at regulating low-tax jurisdictions; however, it is not

⁶⁰ Charles A Dainoff, *Outlaw Paradise: Why Countries Become Tax Havens* (Bloomsbury Publishing 2021), P.23.

without precedent. An examination of prior efforts offers insight into the potential effectiveness of the current framework.

During the late 1990s and early 2000s, the G20 and the OECD prioritized addressing the challenges posed by low-tax jurisdictions. Both organizations sought to identify jurisdictions functioning as low-tax jurisdictions and proposed remedial agreements for their consideration. In parallel, they established dedicated forums and working groups to investigate low-tax jurisdictions and develop strategies to counter their perceived adverse global impacts. Although these initiatives have generally yielded limited reductions in the use of low-tax jurisdictions, they have achieved three notable outcomes: heightened awareness of corporate tax minimization practices, enhanced transparency requirements for firms operating through low-tax jurisdictions, and increased costs associated with their use.⁶¹

The OECD's initiatives to curb tax competition can be classified into three distinct phases. The first stage is Combating Harmful Tax Competition (known as the pre-BEPS phase), the main aim of this stage was to counter

⁶¹ Ira Kuehn, 'A Global Minimum Corporate Tax and its Impact on Corporations and the Global Economy' (Spring 2024) 33(2) Transnational Law & Contemporary Problems 292.P.332.

harmful tax competition and to address unlawful tax Evasion enabled by financial secrecy. This stage commenced with the release of the *Report on Harmful Tax Competition: An Emerging Global Issue*.⁶² The second stage is the Base Erosion and Profit Shifting (BEPS) Project, (known as The BEPS 1.0 stage), it culminated in 2015 with the publication of fifteen final reports under the BEPS Project. The third and ongoing phase is the Global Minimum Tax, (referred to as BEPS 2.0), which is represented by the current global minimum tax reform and christened by countering tax competition in both harmful and genuine cases.

In the following subsections, the three stages are examined comparatively with respect to their focus, methods, and legitimacy.⁶³

3.1 Combating Harmful Tax Competition

In 1998, the OECD released its report *Harmful Tax Competition: An Emerging Global Issue*, which led to the establishment of the Forum on Harmful Tax Practices (FHTP). This body was tasked with conducting tax-related

⁶² OECD, *Harmful Tax Competition: An Emerging Global Issue* (OECD 1998).

⁶³ Jingxian Chen and Wilson Chow, 'Global Minimum Tax Reform and the Future of Tax Competition' (2023) August, *Bulletin for International Taxation*, P.308.

research to identify jurisdictions engaged in what the OECD classified as harmful tax practices. The FHTP distinguished between “preferential” and “harmful” tax regimes.⁶⁴ Low-tax jurisdictions were characterized by four main features: (i) the absence of, or only minimal, taxation; (ii) ineffective exchange of information; (iii) a lack of transparency; and (iv) the absence of substantial economic activity. For harmful preferential tax regimes, the key indicators were: (i) no or very low effective tax rates (ETRs); (ii) ring-fencing measures that isolate the regime from the domestic economy; (iii) insufficient transparency; and (iv) inadequate mechanisms for effective information exchange.⁶⁵

The main distinction that the Forum on Harmful Tax Practices (FHTP) drew between preferential and harmful tax regimes was their lack of transparency toward other governments. However, the reasoning behind this is unclear. It is difficult to see why a low-tax jurisdiction that openly advertises its status would not be more harmful than one with the same status that does not.⁶⁶ The OECD argued that harmful tax competition shifted the location of

⁶⁴ OECD, *Harmful Tax Competition: An Emerging Global Issue* (OECD 1998)

⁶⁵ *Ibid*, PP.23-27.

⁶⁶ *Ibid*, PP.33-34.

financial services, eroded other countries' tax bases, reduced global welfare, and created inequality in the tax system. If this logic was applied to other forms of "harmful" conducts of states in the past, this logic would seem questionable. It is arguably no more harmful; Nonetheless, this was the OECD's approach to combat low-tax jurisdictions in the 1990s, culminating in its 2000 "name and shame" campaign targeting low-tax jurisdictions that they deemed uncooperative.⁶⁷

The OECD listed forty-one jurisdictions it considered uncooperative "harmful" low-tax jurisdictions, defined as low-tax countries meeting the harmfulness criteria above and refusing to sign a memorandum of understanding (MOU) acknowledging low-tax jurisdictions as harmful and pledging reform. Six initially identified jurisdictions avoided the list by agreeing to amend their tax codes. Symbolically, the campaign achieved some success: by August 2001, thirty-five of the forty-one jurisdictions had signed the MOU. In practice, however, the impact was limited. Resistance from low-tax jurisdictions and politically conservative groups, along with the difficulty of translating an international commitment into domestic

⁶⁷ *Ibid*, PP.84.

legislative change, meant little substantive reform was achieved.⁶⁸

Contrary to the OECD's expectations, the "name and shame" campaign did not reduce the use of low-tax jurisdictions but coincided with an overall increase in foreign direct investment (FDI) in most blacklisted states between 2000 and 2018. While part of this trend reflected broader globalisation and enhanced capital mobility driven by rapid technological growth, the data show a marked rise in FDI: from an average of USD 5.18 billion annually during 2000–2002 to USD 9.8 billion annually from 2003–2018, following the adoption of the blacklist and the signing of MOUs by most targeted jurisdictions. If the initiative had achieved its intended effect, FDI flows to low-tax jurisdictions would have declined; instead, they expanded, indicating that the OECD's measures failed to compel substantive behavioural change.⁶⁹

However, due to the challenges of applying the tax rate and economic substance criteria, the OECD revised its approach in the 2001 Progress Report. When assessing jurisdictions as uncooperative low-tax jurisdictions, the

⁶⁸ Ira Kuehn, 'A Global Minimum Corporate Tax and its Impact on Corporations and the Global Economy' (Spring 2024) 33(2) *Transnational Law & Contemporary Problems* 292.P.333.

⁶⁹ Charles A Dainoff, *Outlaw Paradise: Why Countries Become Tax Havens* (Bloomsbury Publishing 2021), P. 65.

focus shifted to securing commitments solely on the principles of effective information exchange and transparency.⁷⁰ As a result, throughout the following decade, the OECD's efforts to combat harmful tax competition primarily concentrated on enhancing transparency and information-sharing mechanisms. In this context, the term "harmful tax competition" referred to jurisdictions providing tax secrecy that enabled unlawful tax evasion.⁷¹

Regarding the regulatory approaches of this stage, the OECD Primarily was using the list of uncooperative tax havens. During the harmful tax competition phase, while the OECD's 1998 Report suggested countermeasures at the unilateral, bilateral, and multilateral levels, its main tool was the publication of a list of uncooperative low-tax jurisdictions to promote greater transparency.⁷² From 2000 to 2009, this approach proved effective in encouraging adherence to tax transparency and information exchange standards. In May 2009, the final three jurisdictions on the list—Andorra, Liechtenstein, and Monaco—committed to

⁷⁰ OECD, The OECD's Project on Harmful Tax Practices: The 2001 Progress Report (OECD 2002).

⁷¹ Jingxian Chen and Wilson Chow, 'Global Minimum Tax Reform and the Future of Tax Competition' (2023) August, Bulletin for International Taxation, P.307.

⁷² OECD, Harmful Tax Competition: An Emerging Global Issue (OECD 1998), P. 4.

implementing these principles, leading to their removal. Since then, no jurisdiction has appeared on the OECD's list of uncooperative low-tax jurisdictions.⁷³

In terms of democratic legitimacy, the OECD's work in the harmful tax competition stage lacked broad support from most jurisdictions worldwide, a shortcoming often attributed to significant legitimacy deficits.⁷⁴

Overall, the initiative fell short of its primary objectives, however it was not without impact. The OECD's effort to compile a list of harmful tax jurisdictions helped bring the issue into mainstream political discourse, laying important groundwork for subsequent international tax agreements, including the recent global minimum tax.⁷⁵

3.2 The Base Erosion and Profit Shifting (BEPS) Project

The Base Erosion and Profit Shifting (BEPS) Project represents the most extensive reform effort aimed at modernizing international tax rules, which largely rest on

⁷³ OECD, 'List of Unco-operative Tax Havens' <www.oecd.org/countries/monaco/list-of-unco-operative-tax-havens.htm> accessed 11 August 2025.

⁷⁴ M Littlewood, 'Tax Competition: Harmful to Whom?' (2004) 26 Michigan Journal of International Law 441, PP.441–42 <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1227&context=mjil> accessed 13 August 2025.

⁷⁵ J Sharman, *Havens in a Storm: The Struggle for Global Tax Regulation* (Cornell University Press 2006), P.4.

principles originating with the League of Nations in the 1920s. The current global tax framework relies on two primary components: a network of over 3,000 bilateral tax treaties and domestic tax legislation governing cross-border economic activities. Disparities and inconsistencies between national tax laws and treaty provisions create opportunities for multinational enterprises (MNEs) to minimize or avoid tax obligations. It is estimated that BEPS results in global annual tax revenue losses of approximately USD 200 billion,⁷⁶ with low- and middle-income countries (LMICs) bearing a proportionally greater burden, especially when such losses are assessed relative to GDP.⁷⁷

In 2013, during the G20 summit in St. Petersburg,⁷⁸ the BEPS's Action Plan received formal endorsement. The OECD's Action Plan advocated for substantial reforms to existing frameworks and the implementation of newly developed, consensus-driven measures, including anti-abuse provisions, aimed at preventing and addressing base erosion and profit shifting.

⁷⁶ Tørsløv, T., Wier, L., & Zucman, G. (2022). The missing profits of nations. *The Review of Economic Studies*, 90(3), PP. 1499–1534.

⁷⁷ S Laudage, *The BEPS Project: Achievements and Remaining Challenges* (IDOS Policy Brief 22/2023, IDOS 2023), P.2.

⁷⁸ G20 Leaders' Declaration, St. Petersburg, including the Tax Annex to the G20 Leaders' Declaration.

According to the OECD, aggressive tax planning erodes the fairness and integrity of tax systems, as cross-border enterprises can exploit BEPS mechanisms to secure a competitive advantage over purely domestic businesses. Furthermore, public awareness that multinational corporations can legally avoid income taxation leads to the weakness of the overall voluntary tax compliance by all taxpayers.⁷⁹ This practice of aggressive tax planning has contributed to heightened public sensitivity regarding issues of tax fairness.⁸⁰

The OECD does not explicitly define "aggressive tax planning," but it offers a description of Base Erosion and Profit Shifting (BEPS) as tax strategies that exploit gaps within the international tax framework to artificially transfer profits to jurisdictions with minimal or no economic activity and low or no taxation. This understanding closely aligns with the European Commission's conception of aggressive tax planning, which involves exploiting discrepancies between tax systems—either through technical features of a single system or mismatches between multiple

⁷⁹ OECD, Addressing the Tax Challenges of the Digital Economy, Action 1 – 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project (OECD Publishing 2015), P. 17.

⁸⁰ OECD, Action Plan on Base Erosion and Profit Shifting (OECD Publishing 2013), P. 8.

systems—with the aim of reducing tax liabilities.⁸¹ Accordingly, it can be inferred that the OECD's reference to aggressive tax planning pertains to practices that give rise to BEPS.⁸²

According to the OECD, BEPS has detrimental effects on all stakeholders, including governments, individual taxpayers, and businesses, as it undermines fair competition through the distortions it creates. In response, the OECD formulated a package of fifteen Actions addressing various tax challenges. These measures encompass, among others, rules targeting hybrid mismatch arrangements, restrictions on interest deductibility, recommendations for the adoption of controlled foreign company (CFC) rules, provisions to prevent the artificial avoidance of permanent establishment (PE) status, the elimination of harmful tax regimes, measures against treaty abuse and transfer pricing manipulation, requirements for the disclosure of aggressive tax planning schemes, and enhancements to the mutual agreement procedure. The substantive content of these Actions was developed and endorsed by the BEPS 44

⁸¹ European Commission, 'Recommendation of 6 December 2012 on Aggressive Tax Planning' C (2012) 8806 final, P.2.

⁸² Burgers I and Mosquera I, 'Corporate Taxation and BEPS: A Fair Slice for Developing Countries?' (2017) *Erasmus Law Review* 1, P.29.

group, comprising OECD member states, OECD accession countries, and G20 members.⁸³

In 2016, the OECD established the Inclusive Framework on BEPS with the aim of broadening participation beyond its initial membership, thereby facilitating wider engagement in, and implementation of, the principles and recommendations of the BEPS Project.

For countries to join the Inclusive Framework, they are required to commit to the implementation of the four minimum standards set out in the BEPS Action Plan.

The first minimum standard focuses on countering harmful tax practices. Its primary objective is to detect preferential regimes that grant selective tax advantages—such as industry-specific benefits—that may facilitate BEPS and erode the tax bases of other jurisdictions. Compliance with this standard is ensured through *peer review* processes among members of the Inclusive Framework, with monitoring provided by the OECD’s Forum on Harmful Tax Practices.

The second minimum standard concerns the prevention of treaty abuse. One significant driver of BEPS is treaty

⁸³ Burgers I and Mosquera I, ‘Corporate Taxation and BEPS: A Fair Slice for Developing Countries?’ (2017) *Erasmus Law Review* 1, P.29.

shopping, whereby taxpayers exploit the extensive network of bilateral tax treaties to obtain unwarranted benefits. To address this, jurisdictions are required to incorporate anti-treaty shopping provisions into their treaties, ensuring that the advantages are confined to the contracting states themselves. In practice, most countries have fulfilled this obligation through the Multilateral Instrument (MLI), which facilitates the simultaneous amendment of multiple treaties.

The third minimum standard is country-by-country reporting (CbCR). Under this requirement, multinational enterprises with consolidated group revenues exceeding EUR 750 million are obliged to submit comprehensive reports to domestic tax administrations detailing their global allocation of income, taxes paid, and certain indicators of economic activity across jurisdictions. Member states of the Inclusive Framework must ensure effective enforcement, collect these reports, and exchange them with other participating jurisdictions. The information provided through CbCR enables tax authorities to better evaluate potential BEPS-related risks and detect harmful tax practices.

The fourth minimum standard concerns the Mutual Agreement Procedure (MAP). This mechanism requires

member jurisdictions to establish effective frameworks for resolving cross-border tax disputes, particularly those involving double taxation arising between multinational enterprise groups and the tax authorities of different states. By facilitating negotiations between competent authorities, MAP aims to enhance tax certainty, prevent disputes from escalating, and strengthen trust in the international tax system.⁸⁴

Overall, During the BEPS stage, the OECD concentrated on tackling preferential tax regimes containing harmful features that facilitated artificial profit shifting.⁸⁵ The objective was not to eliminate all instances of non-taxation, but rather to target those linked to abusive or harmful practices, without suggesting that low or zero taxation alone was inherently problematic. At this stage, the OECD's efforts were not directed towards harmonising tax structures or aligning tax rates across jurisdictions, but primarily towards curbing harmful tax competition.⁸⁶

⁸⁴ S Laudage, The BEPS Project: Achievements and Remaining Challenges (IDOS Policy Brief 22/2023, IDOS 2023), P.3.

⁸⁵ OECD, Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance: Action 5 – 2015 Final Report (OECD 2015), P.11.

⁸⁶ OECD, Action Plan on Base Erosion and Profit Shifting (OECD 2013), P. 10.

Regarding the regulatory approaches the OECD Primarily was Using the peer review mechanism. During the BEPS phase, the OECD implemented a peer review process to monitor the preferential tax regimes of all Inclusive Framework members and eliminate harmful elements. In total, 319 regimes have been reviewed, and over 120 with harmful characteristics have either been abolished or are undergoing amendment.⁸⁷

In terms of democratic legitimacy, the OECD's work in the BEPS stage received support from 141 Inclusive Framework members as of November 2021, thereby addressing to some extent the deficiencies of the previous stage.

3.2.1 Assessment of the Effectiveness of BEPS Actions

The BEPS Project has undertaken substantial initiatives aimed at curbing tax avoidance at the global level. Nonetheless, its tangible impact in reducing such practices remains limited. Profit shifting continues to be widespread, with approximately 35 percent of global profits relocated to

⁸⁷ OECD, New results show progress continues in combatting harmful tax practices (OECD 2022) <www.oecd.org/tax/beps/new-results-show-progress-continues-in-combatting-harmful-tax-practices.htm> accessed 11 August 2025.

low-tax jurisdictions annually.⁸⁸ Evidence indicates that global tax revenue losses due to profit shifting rose from 9 to 10 percent between 2015 and 2019, suggesting that while the BEPS Project may have mitigated a sharper escalation, it has not effectively reversed the trend.⁸⁹

Although Action 1 remains unimplemented, the majority of the remaining 14 Actions under the BEPS Action Plan have been put into practice. The extent of adoption, the tools employed, and the resulting effects vary across the different Actions. The following discussion examines the influence of the most significant BEPS Actions, categorized according to their respective modes of implementation.

3.2.1.1 Peer reviews⁹⁰

Three of the BEPS minimum standards (Actions 5, 6, and 14) are primarily enforced through mandatory peer reviews

⁸⁸ Annette Alstadsæter, Sarah Godar, Panayiotis Nicolaides and Gabriel Zucman, *Global Tax Evasion Report 2024* (EU Tax Observatory 2023).

⁸⁹ Laurent S. Wier and Gabriel Zucman, *Global Profit Shifting, 1975–2019* (Working Paper No 7, EU Tax Observatory 2022).

⁹⁰ Within international law, peer review refers to the evaluation of a state's practices in a given domain by experts drawn from foreign administrations and coordinated under the framework of an international organization. This mechanism serves primarily as a means of preventing disputes, functioning as an alternative to traditional compliance monitoring systems, and fostering horizontal accountability among states. See G Dimitropoulos, 'Compliance through Collegiality: Peer Review in International Law' (2016) 37 *Loyola of Los Angeles International and Comparative Law Review* 275, 290.

among the 145 members of the Inclusive Framework, ensuring both broad implementation and procedural transparency. To date, peer reviews have been conducted on 319 preferential tax regimes, 1,900 bilateral tax treaties, and 82 mutual agreement procedures, with progress recorded in annual OECD peer review reports. However, the limited administrative capacity of low-income countries constrains their ability to participate fully, leading to temporary exemptions during their initial year of membership. Despite being capacity-intensive, peer reviewing represents an effective mechanism for international cooperation in combating BEPS. Moreover, once established, such mechanisms can be used for the implementation of future international tax standards. Accordingly, building the necessary digital infrastructure to support peer reviews and facilitate information exchange among tax administrations remains a crucial capacity-building priority for low-income countries.⁹¹

3.2.1.2 Multilateral Instrument

Another key accomplishment of the BEPS Project is the adoption of the Multilateral Instrument (MLI) under Action 15, which enables participating countries to modify their

⁹¹ Michelle Markham, 'Action 14 of the BEPS Project: Taking the Pulse of Tax Certainty and Determining the Effectiveness of the Peer Review Process Five Years On' (2022) 76(2) Bulletin for International Taxation.

entire network of bilateral tax treaties in a single step. The MLI is intended to curb treaty abuse—particularly treaty shopping—and address the artificial avoidance of permanent establishment status (Actions 6 and 7). To date, 101 countries have signed the instrument, covering more than 1,900 tax treaties out of an estimated global total of over 3,000. Nevertheless, early economic assessments suggest that the MLI has had limited success in curbing treaty shopping, as many countries refrain from applying it comprehensively across their treaty networks.⁹² Moreover, widespread opt-outs from voluntary provisions have resulted in partial adoption of anti-BEPS safeguards. The optional design of the MLI has therefore preserved significant loopholes for tax avoidance in today's tax treaty network.

3.2.1.3 Transfer Pricing Guidelines

Actions 8 to 10 were implemented through revisions to the OECD Transfer Pricing Guidelines, which, although not legally binding, are widely adhered to by both OECD and non-OECD countries. Transfer pricing, which governs the pricing of cross-border transactions within multinational

⁹² A Hohmann, V Merlo and N Riedel, *Multilateral Tax Treaty Revision to Combat Tax Avoidance: On the Merits and Limits of BEPS's Multilateral Instrument* (Research School of International Taxation Working Paper 10/2022, Eberhard Karls Universität Tübingen 2023).

enterprise (MNE) groups, is a central mechanism of aggressive tax planning. Research has shown that transfer-pricing manipulation constitutes a major channel of profit shifting. The BEPS measures maintained the core arm's length principle—requiring intra-group transactions to be priced as if conducted between unrelated parties—but sought to better align transfer pricing outcomes with actual value creation. While empirical evidence on the global adoption of these revised guidelines remains lacking, earlier studies suggest that stronger transfer pricing rules can enhance revenue mobilisation in low- and middle-income countries (LMICs).⁹³ Nonetheless, the mere enactment of transfer pricing legislation is insufficient. Many low-income countries face challenges in applying these complex rules and carrying out effective audits. In this context, the OECD and UNDP's Tax Inspectors Without Borders initiative plays a crucial role in providing technical support and capacity building, and its reinforcement is strongly recommended.⁹⁴

⁹³ Sigrid Laudage Teles, Nadine Riedel and Katharina Strohmaier, *On the effects of transfer pricing regulations: A developing country perspective* (Research School of International Taxation Working Paper 08/2022, Eberhard Karls Universität Tübingen 2022).

⁹⁴ Sigrid Laudage Teles, *Transfer pricing audit trainings in the Global South: Are they effective in mobilizing domestic revenues?* (SSRN 2023) <http://dx.doi.org/10.2139/ssrn.4608021> accessed 16 August 2025.

3.2.1.4 Country-by-country reporting

The introduction of country-by-country reporting represents the most significant advancement in terms of data availability and transparency under the BEPS Project (Actions 11 and 13). By 2023, a total of 110 jurisdictions had incorporated country-by-country reporting requirements into their national tax legislation, with approximately 3,300 exchange relationships established to facilitate the sharing of such reports across countries.⁹⁵

The new documentation requirement represents a significant step towards the harmonisation of transfer pricing documentation that multinational enterprises (MNEs) must prepare to justify their transfer prices to tax administrations. Data from country-by-country reports is made publicly available through the OECD's Corporate Tax Statistics, albeit only in aggregate form.

An assessment of the impact of country-by-country reporting on curbing BEPS indicates that its effectiveness has been limited. Although the effective tax rates of MNEs have risen following the adoption of the reporting standard, profit shifting to low-tax jurisdictions has persisted to a large extent. The long-term implications of this measure

⁹⁵ OECD. (2023a). *BEPS Actions*. OECD. <https://www.oecd.org/tax/beps/beps-actions> (Accessed 16 August 2025).

remain uncertain, as systematic exchange of reports only commenced in 2018. Moreover, countries with weaker tax administrative capacities require additional support in processing and analysing the country-by-country reporting files submitted by MNEs operating within their jurisdictions.⁹⁶

The remaining BEPS Actions were primarily implemented through OECD reports addressing specific issues (Actions 2, 3, 4, and 12) and by offering recommendations for incorporation into national tax laws. Since their implementation was not mandatory, adoption rates have been considerably lower. The voluntary nature of these measures is regarded as a key factor limiting the overall effectiveness of the BEPS Project in curbing tax base erosion and profit shifting.⁹⁷

3.3 The Global Minimum Tax: Two-pillar solution

As previously noted, Action 1 of the BEPS Action Plan, which targets the tax challenges linked to digitalisation, has yet to be implemented. Nevertheless, in October 2021, 136 members of the Inclusive Framework endorsed

⁹⁶ P Joshi, 'Does private country-by-country reporting deter tax avoidance and income shifting? Evidence from BEPS Action Item 13' (2020) 58(2) *Journal of Accounting Research* 333.

⁹⁷ Sigrid Laudage Teles, *Transfer pricing audit trainings in the Global South: Are they effective in mobilizing domestic revenues?* (SSRN 2023) <http://dx.doi.org/10.2139/ssrn.4608021> accessed 16 August 2025.

the two-pillar solution for international tax reform, introducing major adjustments to the global tax architecture. The two pillars are designed to tackle both the fiscal implications of digitalisation and the erosion of national tax bases. Notably, this is the only BEPS Action developed jointly by OECD and non-OECD members within the Inclusive Framework. The rollout of the two-pillar framework, scheduled to commence in 2024, presents both opportunities and significant challenges for low- and middle-income countries (LMICs).

3.3.1 Pillar One

The first pillar introduces a reallocation of taxing rights from residence jurisdictions to market jurisdictions (Amount A), ensuring that profits are taxed where MNEs generate significant revenues, irrespective of physical presence. This measure is particularly directed at highly digitalised businesses deriving substantial cross-border income. It employs a formulary apportionment mechanism to determine the share of profits subject to tax in market jurisdictions, with the objective of achieving a fairer allocation of taxing rights in favour of countries where consumers and users are situated.

3.3.2 Pillar Two

The second pillar establishes a global minimum corporate tax rate of 15% on the excess profits of MNEs. In practice, if an MNE's effective tax rate in a given jurisdiction falls below this threshold, other jurisdictions in which the group operates may levy a *top-up tax* to secure compliance with the minimum rate. The primary right to impose this tax rests with the jurisdiction where the low-taxed profits are generated, through a Qualified Domestic Minimum Top-Up Tax (QDMTT). Any residual undertaxed profits can subsequently be taxed by the parent company's jurisdiction under the Income Inclusion Rule (IIR). By introducing this mechanism, Pillar Two sets a binding floor to harmful tax competition and aims to promote greater stability and equity in the international tax system.

In contrast to earlier phases that concentrated mainly on harmful tax competition, Pillar Two is regarded by scholars as having a wider remit. Its objective is to curb corporate income tax competition in both harmful cases—such as artificial profit shifting—and genuine cases involving real investment relocation.⁹⁸ Moreover, even tax regimes

⁹⁸ RS Avi-Yonah and YR Kim, 'Tax Harmony: The Promise and Pitfalls of the Global Minimum Tax' (2022) 43 Michigan Journal of International Law, P. 515 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4102332 accessed 11 August 2025.

deemed compliant with BEPS Action 5 may fall within the scope of Pillar Two if they produce an overall effective tax rate below 15%.⁹⁹

The OECD's initiatives to date have primarily targeted traditional corporate income tax competition. Nonetheless, the introduction of Pillar Two could spur new types of competition, suggesting that both the nature of tax competition and the strategies to address it are likely to shift and develop over time.¹⁰⁰

Regarding the regulatory approaches, the OECD primarily is using the fiscal fail-safe under the guidance of game theory. In the Global Minimum Tax phase, Pillar Two seeks to harmonize corporate income tax rates globally by introducing a minimum tax threshold. To encourage both adoption and compliance, its designers deliberately incorporated a fiscal safeguard, which is guided by game theory.

Regarding the fiscal fail-safe, some scholars have analysed international taxation as a decentralised market,

⁹⁹ BF Liotti et al, 'The Treatment of Tax Incentives under Pillar Two' (2022) 2 Transnational Corporations Journal 2, 43 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4132515 accessed 11 August 2025.

¹⁰⁰ Jingxian Chen and Wilson Chow, 'Global Minimum Tax Reform and the Future of Tax Competition' (2023) August, Bulletin for International Taxation, P.308.

in which governments have increasingly become strategic players.¹⁰¹ Within this decentralised competitive structure, states are supposed to tax strategically. As the tax policies of different jurisdictions interact, each jurisdiction designs (or, if acting rationally, must design) its international tax rules to best support its national interests, in light of the choices made by other jurisdictions. Building on this dynamic, fiscal fail-safes establish a mechanism that links tax treatment across jurisdictions, that is, where one country does not impose tax, another jurisdiction fills the resulting gap. By automatically closing such gaps, fiscal fail-safes are effective in achieving comprehensive taxation and curbing state defection. Although fiscal fail-safes are not new to international taxation,¹⁰² Pillar Two is considered to have introduced a more coordinated and complex version, intended to maximise strategic interactions between jurisdictions. Through this mechanism, Pillar Two is expected to address traditional corporate income tax competition more directly and effectively.¹⁰³

¹⁰¹ T Dagan, *International Tax Policy: Between Competition and Cooperation* (Cambridge University Press 2018), P. 4.

¹⁰² R Mason, 'The Transformation of International Tax' (2020) 114 *American Journal of International Law* 376, 376–380.

¹⁰³ Ruth Mason, 'A Wrench in the GLOBE's Diabolical Machinery' (2022) 107 *Tax Notes International*, P. 1391, Virginia Law and Economics

In terms of democratic legitimacy, the OECD's Pillar Two initiative has garnered broad backing, with 139 jurisdictions expressing their support.

4 Main features of Global Minimum Tax

4.1 Two Pillars responses to the challenges of digitalization

Against the background of the increasing digitalisation of the economy, which has created new opportunities for base erosion and profit shifting (BEPS), the OECD proposed an Inclusive Framework on BEPS.¹⁰⁴ The global minimum tax, also referred to as *Pillar Two*, is intended to address issues that the BEPS Actions did not resolve effectively. The connection between the digital economy, taxation, and BEPS arises from several defining characteristics that often overlap within different business models. These include the high degree of mobility and intangibility of assets, as well as the central role of users and customers in generating value. A notable feature is the reliance on data, particularly “big data,” alongside significant user participation. Network effects also play a

Research Paper No 2022-22, available at <https://ssrn.com/abstract=4236393> accessed 11 August 2025.

¹⁰⁴ OECD, Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy (OECD/G20 Inclusive Framework on BEPS, OECD 2019).

crucial role, as the behaviour of earlier users directly influences the engagement of subsequent ones.¹⁰⁵

The digital economy is incompatible with notion of physical existence. The rise of the digital economy has generated significant tax challenges, especially for multinational enterprises with substantial intangible assets, such as Microsoft. Digitalisation has transformed goods and services, dematerialised assets, and enabled disintermediated and virtualised trading activities, all of which create new opportunities for BEPS.

In most jurisdictions, the taxation of domestic business profits earned by non-resident taxpayers is contingent upon the existence of a sufficient physical nexus within the source country. Typically, income tax laws require that non-resident enterprises establish a tangible presence—such as offices, fixed places of business, or dependent agents—before the source country may assert taxing rights over such cross-border income.¹⁰⁶

¹⁰⁵ OECD, *Addressing the Tax Challenges of the Digital Economy, Action 1 – 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project (OECD Publishing 2015) <http://dx.doi.org/10.1787/9789264241046-en> accessed 18 August 2025.

¹⁰⁶ Yixin L, 'Addressing the Challenges of the Digital Economy to International Legal Order for Taxation' (2015) (3) *International Taxation in China*, P. 20.

However, non-resident enterprises can establish virtual sales spaces on commercial websites, consisting of data and software hosted on internet-connected servers. Through these digital platforms and virtual entities that perform core business functions, such enterprises are able to sell digital products or services in the markets of any country and thereby earn cross-border business profits. In this model, there is no need to create substantive business institutions, physical places of business, or rely on entrusted agents or other transaction intermediaries in the consumer's jurisdiction. As a result, such transactions lack the constitutive elements of a substantive tax nexus, meaning that the country in which the consumer is located has no legal basis to assert source-based taxing rights.

Moreover, the digital economy ignored value generated from data. The digital economy facilitates a shift in value creation from traditional value chains to value networks and ultimately to value stores, thereby fostering the transformation of consumer-cantered business models. In this context, consumers not only consume digital products and services but also actively contribute to value creation by generating feedback in the form of data, regardless of its type or source. As producers of data and information, consumers are increasingly redefined as "prosumers" and

are recognized as central drivers of value within the digital economy.

With the increasingly frequent interactions among users, platforms, and enterprises, the very consumption and generation of data have become a form of wealth in itself. For example, Amazon, one of the largest third-party online trading platforms, illustrates how user participation generates economic value. By encouraging users to provide public reviews and feedback, the platform fosters credibility and trust, which in turn facilitates exchanges of goods and services, thereby stimulating transactions and increasing revenue. Moreover, through the collection and analysis of large volumes of user data, the platform is able to identify consumer preferences and implement targeted advertising strategies, further enhancing trading opportunities and consolidating its market position.

Furthermore, traditional tax administration has primarily concentrated on the valuation and taxation of intangible assets, while largely overlooking the economic value generated by user-produced data. This oversight creates a significant mismatch: although value is generated within the jurisdiction of the users' country, the resulting profits are often captured by digital exporting countries or third-party jurisdictions. Such a disparity undermines both the

fairness and the sustainability of international taxation, raising concerns about the adequacy of current frameworks in addressing the realities of the digital economy.¹⁰⁷

In the context of the digital economy, specific business models can be structured through tax and legal mechanisms to facilitate BEPS. These models exploit distinctive features of digitalisation in both direct and indirect taxation, employing methods such as transfer pricing in related-party transactions, the use of cost-sharing agreements, and the granting of parent company licenses.¹⁰⁸

4.2 Pillar One

Pillar One introduces a novel taxing right that supplements existing international tax norms, including the traditional permanent establishment requirement. Designed in response to the challenges of digitalization, it targets very large MNEs that generate significant profits in market jurisdictions, even without a physical presence. Under this framework, part of an MNE's residual profits is reallocated to the source jurisdiction. Specifically, the new taxing right

¹⁰⁷ Li Rui and Li Shuijun, 'Digital Economy: How does China's tax system respond' (2020) (3) Tax Research 91–98.

¹⁰⁸ OECD, Addressing Base Erosion and Profit Shifting (OECD Publishing 2013).

(referred to as Amount A) applies only to companies with consolidated global revenues above €20 billion and profitability exceeding 10 percent. Profits above this 10 percent threshold are classified as “non-routine” and are apportioned among market jurisdictions according to a revenue-based allocation formula.

A market jurisdiction qualifies for the new taxing right under Pillar One if it meets the nexus threshold, which requires an MNE to generate at least €1 million in revenues within that jurisdiction. For smaller economies with GDPs below €40 billion, the threshold is reduced to €250,000. Once in scope, 25 percent of the multinational’s non-routine profits are reallocated to market jurisdictions where nexus is established.¹⁰⁹ Overall, Pillar One is projected to reassign taxing rights over approximately USD 200 billion in profits from residence jurisdictions to source jurisdictions.

To illustrate the operation of Pillar One’s Amount A, consider the case of X Corp, a multinational enterprise headquartered in Country A and active in the technology sector. X Corp generates revenues globally, including in jurisdictions where it lacks a physical presence. In 2022, it

¹⁰⁹ OECD, Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (2021).

reported €30 billion in global revenues and €4 billion in profits. Under traditional tax rules, and in the absence of a permanent establishment, these profits would ordinarily be taxed entirely in Country A. However, because X Corp exceeds both Pillar One's revenue threshold of €20 billion and its profitability threshold of 10 percent, it falls within scope of the new taxing right. According to the framework, €3 billion of its profits (equivalent to 10 percent of global revenues) would be treated as "routine" and not subject to reallocation. The remaining €1 billion constitutes residual, or "non-routine," profit. A quarter of this amount, €250 million, would then be redistributed to eligible market jurisdictions where X Corp meets the nexus criteria. The allocation of this €250 million would follow a revenue-based formula proportionate to the sales generated in each market jurisdiction.¹¹⁰

Therefore, Pillar One functions by reallocating taxing rights from residence jurisdictions (where multinational enterprises are incorporated) to source jurisdictions where their sales occur. Nonetheless, its redistributive effect is constrained by the exceptionally high eligibility thresholds: global revenues exceeding €20 billion and profitability above 10 percent. Multinational enterprises must meet

¹¹⁰ Assaf Harpaz, 'International Tax Reform: Who Gets a Seat at the Table?' (2023) 44 U Pa J Int'l L 1007.

both criteria to fall within scope, and even then, only 25 percent of their residual (non-routine) profits are redistributed among market jurisdictions with nexus rights. Current projections suggest that fewer than 100 multinational groups will be affected, including U.S.-based firms such as Apple, Microsoft, and Alphabet (Google), along with Chinese firms such as Tencent (WeChat) and Alibaba.¹¹¹ Other major platforms may be excluded—for example, Amazon for not meeting the profitability requirement, and eBay or Airbnb for failing to reach the revenue threshold.¹¹² Given these limitations, the expected global revenue gains under Pillar One are relatively modest, estimated at between USD 13 billion and USD 36 billion annually.¹¹³

4.3 The design of Pillar Two

Pillar Two introduces the concept of a global minimum tax through three primary rules and a fourth treaty-based rule. It introduces two interrelated rules, collectively referred to as the Global Anti-Base Erosion (GloBE) Rules. It applies

¹¹¹ Martin A Sullivan, ‘Which Companies Could Be Caught in the Pillar 1 Net?’ (2021) 173 Tax Notes Federal 435.

¹¹² eBay Inc, ‘eBay Inc. Reports Better Than Expected First Quarter 2022 Results’ (4 May 2022) <https://www.ebayinc.com/stories/news/ebay-inc-reports-better-than-expected-first-quarter-2022-results/> accessed 17 August 2025.

¹¹³ OECD, “Revenue Impact of International Tax Reform Better Than Expected” (18 January 2023).

to multinational enterprises with consolidated revenues exceeding €750 million.¹¹⁴ The first is the domestic minimum top-up tax, which enables jurisdictions to tax profits where the effective tax rate falls below the 15 percent threshold. The second is the income inclusion rule (IIR), which requires the parent entity to include in its taxable base the low-taxed income of foreign subsidiaries. Where the subsidiary's effective tax rate is below 15 percent, additional taxes are imposed to reach the minimum standard. In other words, under the Income Inclusion Rule (IIR), the Ultimate Parent Entity (UPE)—or, where relevant, an intermediate parent entity—of a multinational enterprise (MNE) group is obliged to pay a *top-up tax* corresponding to its proportionate share of the income earned by any low-taxed constituent entity (LTCE) within the group. Both rules raise the tax costs of cross-border investment and may influence corporate location decisions.

The third rule, the undertaxed profits rule (UTPR), permits jurisdictions to impose top-up taxes on entities if group members in other jurisdictions are subject to an effective tax rate below 15 percent. Meaning that the Undertaxed

¹¹⁴ OECD, Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (8 October 2021).

Payments Rule (UTPR) functions as a complementary safeguard to the Income Inclusion Rule (IIR), establishing a mechanism for imposing top-up tax adjustments on the profits of a low-taxed constituent entity (LTCE) that falls outside the scope of an applicable IIR.¹¹⁵ Collectively, these three rules operate to ensure that multinational groups pay at least the minimum rate on income earned in every jurisdiction in which they operate. The fourth rule, the subject-to-tax rule (STTR), functions within bilateral tax treaties, allowing source jurisdictions to tax certain intra-group payments that are subject to tax below 9 percent in the recipient jurisdiction.¹¹⁶

The GloBE rules introduce a system of Top-up Taxes designed to guarantee that the overall tax burden on a multinational enterprise's excess profits within a given jurisdiction reaches the minimum effective rate of 15%. Unlike conventional direct taxes levied on a company's income, the Top-up Tax is imposed on surplus profits determined at the jurisdictional level, and only where those

¹¹⁵ Ruth Wamuyu, Belisa Ferreira Liotti and Jeffrey Owens, 'Challenges at the Intersection between Investment Provisions in Regional Trade Agreements and Implementation of the GloBE Rules under Pillar Two' (2023) 30 *Transnational Corporations* 1

¹¹⁶ Daniel Bunn and Sean Bray, 'The Latest on the Global Tax Agreement' *Tax Foundation* (6 November 2022) <https://taxfoundation.org/global-tax-agreement/> accessed 17 August 2025.

profits are subject to taxation below the agreed minimum rate in that jurisdiction.

The determination and computation of a Top-up Tax for each Low-Taxed Constituent Entity (LTCE) requires a series of procedural steps. Initially, a Constituent Entity must consolidate its net income and Adjusted Covered Taxes with those of other Constituent Entities operating within the same jurisdiction in order to establish both the Effective Tax Rate (ETR) and the applicable Top-up Tax Percentage. In cases involving Low-Tax Jurisdictions, the Substance-Based Income Exclusion (SBIE) is applied to the jurisdiction's aggregate GloBE income to delineate the amount of excess profits. The Top-up Tax Percentage is subsequently imposed on those excess profits to determine the final liability.¹¹⁷

4.3.1 The GloBE Effective Tax Rate

In simplified terms, the effective tax rate (ETR) is calculated as the ratio of a multinational enterprise's taxes paid or accrued on its GloBE income in a given jurisdiction to the amount of GloBE income earned in that jurisdiction. Importantly, the Substance-Based Income Exclusion (SBIE) is not deducted from the calculation, ensuring that

¹¹⁷ OECD, Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two) (OECD 2022) 1,2,4, 8.

the ETR reflects the tax actually borne by the taxpayer. The numerator, representing taxes on GloBE income, is adjusted to account for divergences between the GloBE definition of taxable income and that of domestic law, and also incorporates certain shareholder-level taxes, such as those arising under controlled foreign corporation (CFC) rules.

4.3.2 Routine profit and excess profit

Most importantly, the global minimum tax framework differentiates between two categories of profit: routine profit and excess profit.¹¹⁸

Routine profit refers to a deemed, or hypothetical, return on investment.¹¹⁹ Under the global minimum tax framework, firms are presumed to earn a 5 percent return on most physical assets—such as property, plant, and equipment—as well as payroll costs. This deemed return, classified as routine profit, is excluded from the scope of the global minimum tax through the mechanism known as the Substance-Based Income Exclusion (SBIE). The SBIE

¹¹⁸ Organisation for Economic Co-operation and Development (OECD), Tax Challenges Arising from Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two), arts. 5.2.2, 5.3 (2021).

¹¹⁹ Org. for Econ. Coop. & Dev. [OECD], Tax Challenges Arising from Digitalisation of the Economy – Consolidated Commentary to the Global Anti-Base Erosion Model Rules ch. 2, 2 (2023), <https://doi.org/10.1787/b849f926-en>.

allows firms to be taxed at any rate, including zero, on their routine profits.¹²⁰

Excess profit refers to the portion of earnings that remains after deducting routine profit, and it is this component that is subject to the global minimum tax of 15 percent. Where the effective tax rate applied to excess profit in a given jurisdiction falls below this threshold, additional top-up taxes are imposed sequentially until the minimum rate is met.¹²¹ For instance, if excess profit is taxed at only 5 percent in a low-tax jurisdiction, an additional 10 percent top-up tax would be levied to achieve the required 15 percent rate.

A simple example illustrates the distinction between routine and excess profit under the global minimum tax framework. Suppose a firm earns \$8 million in profit from operating a factory in Country A. The factory employs \$80 million in physical assets and has a payroll of \$20 million, amounting to a total investment of \$100 million. Under the global minimum tax rules, a deemed return of 5 percent on this \$100 million investment—equivalent to \$5 million—is classified as routine profit. The remaining \$3 million is

¹²⁰ Organisation for Economic Co-operation and Development (OECD), Tax Challenges Arising from Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two), arts. 5,3,4, (2021).

¹²¹ Wei Cui, ‘Strategic Incentives for Adopting the Global Minimum Tax’ (2024) 16 Journal of Legal Analysis 211.

treated as excess profit. If Country A imposes no tax on corporate profits, the firm would pay no tax on the \$5 million of routine profit but would be subject to a top-up tax of 15 percent on the \$3 million of excess profit.¹²²

4.3.3 Substance-Based Income Carve-Out

A key element of the GloBE framework is the Substance-Based Income Exclusion (SBIE), which serves to moderate its impact on domestic tax systems. The SBIE operates by excluding a portion of income from the top-up tax calculation, thereby limiting the exposure of low-taxed Constituent Entities that maintain substantive economic activities. The exclusion is determined with reference to the level of tangible assets and payroll located in the source jurisdiction. In practice, this means that where a Constituent Entity holds qualifying assets or incurs payroll expenses, its GloBE income is correspondingly reduced for the purpose of calculating top-up tax. Consequently, if the effective tax rate falls below the 15 percent minimum, the SBIE lowers the income base subject to the GloBE rules, ultimately diminishing the amount of top-up tax payable.

¹²² Adam Kern, ‘The Hole in the Global Minimum Tax’ (forthcoming, 2026) 93 *University of Chicago Law Review*, San Diego Legal Studies Paper 25-015, P.18, <https://ssrn.com/abstract=5178492> accessed 17 August 2025.

According to the OECD, the SBIE is designed to enable jurisdictions to maintain tax incentives on routine returns derived from substantive economic activities without automatically invoking a GloBE top-up tax. The exclusion is ultimately fixed at 5 percent of the carrying value of tangible assets and 5 percent of payroll costs. However, during a ten-year transitional phase, higher rates of 8 percent for tangible assets and 10 percent for payroll are applied.

4.3.4 Covered Taxes

The GloBE ETR is calculated by dividing the defined *Adjusted Covered Taxes* in the jurisdiction by the defined *GloBE income* in that jurisdiction. The calculation of each in-country Constituent Entity's top-up tax therefore begins with its Covered Taxes. Covered Taxes are defined as income taxes (and related taxes) recorded in the Constituent Entity's financial statements, subject to specified adjustments.¹²³ The determination of a Constituent Entity's ETR is further complicated by the

¹²³ The financial statement applied under the GloBE rules is that of the individual Constituent Entity on an unconsolidated basis. Where the entity engages in intra-group transactions that do not reflect arm's length conditions, adjustments must be made to ensure that such dealings are recorded as if conducted on arm's length terms. Since consolidated financial statements of multinational groups eliminate intercompany transactions, the unconsolidated accounts relied upon for GloBE purposes are unlikely to have been subject to prior assessment against the arm's length principle.

GloBE rules on attribution: taxes withheld on payments of income (such as interest, royalties, and services) are treated as Covered Taxes of the recipient entity; taxes withheld on distributions are treated as Covered Taxes of the distributing entity; and certain shareholder-level taxes on undistributed earnings of a subsidiary are attributed as if paid by the subsidiary itself (rather than its shareholder). Accordingly, the GloBE ETR is computed with reference not only to domestic corporate income taxes recorded in the entity's financial statements, but also to withholding taxes on income received, and certain controlled foreign corporation (CFC) taxes imposed at the shareholder level.

The inclusion of CFC taxes within the GloBE framework is intended to reflect that shareholder-level taxes imposed on undistributed profits are, in substance, taxes on the income of the local Constituent Entity. Accordingly, these taxes are taken into account when assessing whether the entity's income is "low-taxed" for the purposes of triggering a potential top-up tax. Their inclusion in the ETR calculation has the practical effect of diminishing the scope for additional top-up taxation under GloBE.

4.3.5 Income Inclusion Rule

The Income Inclusion Rule (IIR) functions as a backstop measure: if any Constituent Entity of a multinational group

is subject to a low Effective Tax Rate (ETR) in the source jurisdiction, the IIR allows the residence country of the parent or an intermediate holding company to impose a top-up tax. The Income Inclusion Rule (IIR) functions as a backstop measure. Where a Constituent Entity of a multinational group is subject to a low Effective Tax Rate (ETR) in the source jurisdiction, the IIR permits the residence country of the parent or intermediate holding company to impose a top-up tax.

4.3.6 Undertaxed Profits Rule

The GloBE framework incorporates the Undertaxed Profits Rule (UTPR), formerly referred to as the undertaxed payments rule. This mechanism applies where a multinational group within scope fails to achieve the 15% minimum Effective Tax Rate (ETR), and where neither a Qualified Domestic Minimum Top-up Tax (QDMT) nor an Income Inclusion Rule (IIR) in another jurisdiction has imposed a top-up tax. Functioning primarily as a backstop, the UTPR ensures that taxing rights are preserved. It allows the source jurisdiction to assert priority through a QDMT, or alternatively, enables the jurisdiction of the ultimate parent entity to levy the full top-up tax. If these jurisdictions abstain, intermediate jurisdictions are

permitted to exercise taxing rights over the undertaxed profits.

Accordingly, the existence of an Income Inclusion Rule (IIR) nullifies any liability under the Undertaxed Profits Rule (UTPR). Similarly, the application of a Qualified Domestic Minimum Top-up Tax (QDMT) reduces the residual top-up tax that would otherwise be imposed under either the IIR or the UTPR.¹²⁴

The Undertaxed Profits Rule (UTPR) functions by reallocating income among Constituent Entities to ensure that any top-up tax not collected from a low-taxed entity, including an ultimate parent entity, is recovered elsewhere in the group. When multiple jurisdictions apply the UTPR, the uncollected top-up tax is apportioned among them using an allocation formula that considers both employee numbers and the net book value of tangible assets located in each jurisdiction. To implement this, a jurisdiction may employ a variety of mechanisms, such as disallowing deductions, adding deemed income, levying surcharges, or applying other equivalent measures.

¹²⁴ OECD, Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two) (OECD Publishing 2021).

In other words, the IIR operates by imposing an additional tax liability on a parent entity when the effective tax rate (ETR) of a constituent entity in a given jurisdiction falls below the 15 percent global minimum rate. The UTPR, by contrast, functions as a secondary or backstop measure, applying where an IIR has not been imposed on low-taxed income within a group. Under this rule, jurisdictions may deny deductions for otherwise deductible expenses or apply equivalent domestic law adjustments to ensure that constituent entities bear a tax burden equal to their allocated share of the UTPR top-up tax amount.¹²⁵

In essence, the IIR assigns taxing rights to the residence country of the parent entity, thereby capturing income from low-taxed subsidiaries, while the UTPR allocates taxing rights to source jurisdictions by targeting intra-group payments through the denial of deductions or similar adjustments.¹²⁶

The Global Anti-Base Erosion (GloBE) framework prioritises the application of the Top-up Tax through the Income Inclusion Rule (IIR), particularly within the

¹²⁵ Organisation for Economic Co-operation and Development, Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two) (OECD 2022) 1, 8, P.32.

¹²⁶ Jiangzhuo Li, ‘Causes and Impacts of Global Minimum Tax’ (2022) 1 Journal of Education, Humanities and Social Sciences 177, 185.

jurisdiction of the ultimate parent entity. If the parent jurisdiction has not implemented GloBE, the IIR applies a top-down ordering principle, giving precedence to entities positioned higher in the ownership chain.¹²⁷ Where no upstream entity can be charged, the Undertaxed Profits Rule (UTPR) comes into effect in the source jurisdiction. The UTPR functions as a safeguard against the strategic relocation of corporate headquarters to jurisdictions without IIR adoption, thereby ensuring that profits in the parent jurisdiction remain within the scope of GloBE.¹²⁸ The division of tax liability under the UTPR depends on domestic law, enabling alignment with existing national tax frameworks.¹²⁹ Importantly, the UTPR employs the same jurisdictional Effective Tax Rate (ETR) and Top-up Tax calculation method as the IIR, which promotes consistency, minimises compliance burdens, and prevents double taxation.¹³⁰

4.3.7 Qualified Domestic Minimum Top-Up Tax

¹²⁷ OECD, Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two) (OECD 2022) 1, 8, P.9.

¹²⁸ Joachim Englisch, ‘International Effective Minimum Taxation – Analysis of GloBE (Pillar Two)’ (18 April 2021), P. 17.

¹²⁹ OECD, Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two) (OECD 2022) 1, 8, P.32.

¹³⁰ Reuven S Avi-Yonah and Christine Kim, ‘Tax Harmony: The Promise and the Pitfalls of the Global Minimum Tax’ (2022) 43 Michigan Journal of International Law 505, 530.

The GloBE rules also accommodate the introduction of domestic minimum taxes. In particular, the adoption of a Qualified Domestic Minimum Top-up Tax (QDMTT) preserves the source country's primary taxing rights by allowing it to collect the GloBE Top-up Tax directly, rather than deferring that right to another jurisdiction through the Income Inclusion Rule (IIR) or the Undertaxed Profits Rule (UTPR). The OECD has clarified that QDMTTs will be recognized as "fully creditable against any liability under GloBE."¹³¹ Moreover, recent administrative guidance from the OECD Inclusive Framework confirms that source-country QDMTTs will take precedence over shareholder-level taxes. They will also be treated as creditable against taxes imposed at the shareholder level by the parent jurisdiction in the same manner as other domestic source-based taxes.¹³²

An important addition to the GloBE framework is the Qualified Domestic Minimum Top-up Tax (QDMTT).¹³³ This mechanism enables a jurisdiction to impose a

¹³¹ OECD, The Pillar Two Rules in a Nutshell (OECD n.d.), P.1, <https://www.oecd.org/tax/beps/pillar-two-rules-in-a-nutshell.pdf> accessed 17 August 2025.

¹³² OECD Inclusive Framework on BEPS, Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two) (OECD 2023), P.69.

¹³³ OECD, Tax Incentives and the Global Minimum Corporate Tax: Reconsidering Tax Incentives After the GloBE Rules (2022) 1, 7.

domestic top-up tax, thereby securing revenues that would otherwise be collected abroad under the IIR or, failing that, the UTPR.¹³⁴ In practice, a low-tax jurisdiction implementing a QDMTT is likely to capture the majority, if not all, of the top-up tax.¹³⁵ This outcome arises because the QDMTT takes priority over both the IIR and UTPR, allowing jurisdictions to retain tax revenues from their own low-taxed entities before foreign jurisdictions can apply their own top-up rules.

4.3.8 Subject to Tax Rule

Countries implementing the GloBE rules may also adopt a Subject-to-Tax Rule (STTR) in cases where their tax treaties prescribe withholding rates below the minimum agreed threshold of 9 percent. The STTR alters treaty outcomes by permitting source jurisdictions to impose an additional tax where the gross payment is taxed in the recipient's jurisdiction at less than 9 percent. Importantly, the STTR is narrowly targeted, applying only to certain deductible intra-group payments—such as interest and royalties—while excluding other categories, including service fees, capital gains, and offshore indirect transfers.

¹³⁴ Michael P Devereux, John Vella and Heydon Wardell-Burrows, Pillar 2: Rule Order, Incentives, and Tax Competition, Oxford University Centre for Business Taxation Policy Brief (2022) 1, 4.

¹³⁵ Joachim Englisch, 'Pillar 2: QDMTT or Safe Harbour Domestic Minimum Top-Up Tax (SHDMTT)?' (31 October 2023).

Similar to other withholding taxes, the STTR is levied on gross payments rather than on net income. Under its current formulation, payments already taxed at a rate of at least 9 percent are excluded from the STTR, though they may still give rise to a GloBE top-up tax if the recipient entity's effective tax rate remains below the 15 percent threshold. Consequently, jurisdictions implementing an STTR may apply it irrespective of whether another jurisdiction has already imposed a top-up tax under an IIR. Moreover, taxes collected pursuant to the STTR are treated as Covered Taxes in calculating a Constituent Entity's effective tax rate for GloBE purposes.

Since the STTR would take precedence over existing treaty provisions, the Inclusive Framework has committed to developing a multilateral instrument to support its implementation. Although its application will necessitate negotiations among states, members of the Inclusive Framework whose treaty withholding rates fall below the agreed STTR minimum have undertaken to incorporate the rule into their bilateral treaties with developing countries upon request. However, for jurisdictions with limited treaty networks, the STTR may prove less effective than simply

raising domestic withholding tax rates—an approach that remains available independently of GloBE adoption.¹³⁶

5 Motivations in the Global Minimum Tax

The global minimum tax was driven by two central problems—profit shifting and harmful tax competition—which also provide the basis for evaluating its effectiveness.

International tax law has long faced two central difficulties. Since capital is mobile, capital owners seek to reduce their tax burden, and governments compete by offering lower tax rates, the result is an ongoing environment of tax competition.

The term “tax competition” describes the situation in which states compete with one another by adopting strategic tax policies intended to attract investment.¹³⁷ As sovereign entities, states have the discretion to determine their own fiscal frameworks and may therefore design competitive tax regimes—such as lowering tax rates or granting tax incentives—to draw economic activity from other

¹³⁶ Allison Christians and others, A Guide for Developing Countries on How to Understand and Adapt to the Global Minimum Tax (International Institute for Sustainable Development, April 2023), P.11.

¹³⁷ T Rixen, ‘Tax Competition and Inequality: The Case for Global Tax Governance’ (2011) 17 Global Governance 449.

jurisdictions.¹³⁸ In certain contexts, tax competition can have positive effects, for instance by counteracting governmental tendencies toward excessive public spending or over-taxation, thereby promoting more efficient tax rates.¹³⁹

However, when such competition escalates into a “race to the bottom”, it becomes harmful tax competition. In this scenario, states continually undercut each other’s tax rates to secure mobile capital, ultimately undermining their own fiscal sovereignty and revenue bases. This process often leads to what is termed the “winner’s curse”, where a country that successfully attracts investment realizes that the benefits are minimal relative to the fiscal concessions granted. Moreover, the resulting “prisoner’s dilemma” reveals that competing states would collectively fare better by refraining from excessive tax incentives, as these measures primarily benefit multinational investors while eroding public welfare.¹⁴⁰

¹³⁸ AP Morriss and L Moberg, ‘Cartelizing Taxes: Understanding the OECD’s Campaign against Harmful Tax Competition’ (2012) 4 Columbia Journal of Tax Law 1, 9.

¹³⁹ G20 Development Working Group (IMF, OECD, UN and World Bank), Options for Low Income Countries: Effective and Efficient Use of Tax Incentives for Investment (15 October 2015), P. 9.

¹⁴⁰ J Morisset and N Pirnia, How Tax Policy and Incentives Affect Foreign Direct Investment (Policy Research Working Paper, World Bank 2000), P.19.

Although states retain sovereign authority over their tax systems, it has been argued that domestic tax policies can create negative spillover effects on the tax bases of other jurisdictions.¹⁴¹ Such dynamics threaten the integrity of the global corporate income tax system, particularly harming developing economies. With smaller markets and limited bargaining power, developing countries are disproportionately affected, as they often engage in offering tax incentives to attract investment yet derive little long-term benefit from doing so.¹⁴²

The global decline in corporate tax rates over recent decades illustrates the “race to the bottom.”¹⁴³ OECD countries experienced the sharpest drop, from 32.3% in 2000 to 22.9% in 2021 (a 9.4% decrease), followed by Latin American countries, where rates fell from 26.8% to 19.1% (a 7.7% reduction). In 2021, Africa’s average corporate tax rate stood at 26.8%, compared to 19.2% in Asia.¹⁴⁴ This downward trend threatens the corporate income tax, a key component of developing countries’

¹⁴¹ E Crivelli, R de Mooij and M Keen, *Base Erosion, Profit Shifting and Developing Countries* (IMF Working Paper WP/15/118, May 2015), P.4.

¹⁴² A W Oguttu, ‘International Tax Competition, Harmful Tax Practices and the Race to the Bottom: A Special Focus on Un-strategic Tax Incentives in Africa’ (2018) 51 *Comparative and International Law Journal of Southern Africa* 293

¹⁴³ K A Clausen, ‘Corporate Tax Revenues in OECD Countries’ (2017) 14 *International Tax and Public Finance* 2, P.121

¹⁴⁴ OECD, *Corporate Tax Statistics* (3rd edn, OECD 2021), P. 13.

fiscal revenues.¹⁴⁵ Strengthening corporate tax collection could help rebalance tax systems and reduce dependence on taxes imposed on labour, property, and consumption. Interestingly, while nominal corporate tax rates have fallen globally, corporate tax revenues as a share of GDP—reflecting the effective tax rate (ETR)—have remained relatively stable. Consequently, it is argued that focusing on the ETR as an indicator could mitigate harmful tax competition and counter the race to the bottom.

The global minimum tax rules aim to establish a lower limit on tax competition in relation to corporate income tax. The OECD describes the GloBE rules as a landmark reform of the international tax framework,¹⁴⁶ asserting that they will curb harmful tax competition in developing countries by reducing the pressure to provide inefficient tax incentives and thereby enhancing domestic resource mobilisation.¹⁴⁷

This section outlines the two main forms of tax competition—profit shifting and the race to the bottom—

¹⁴⁵ MC Durst, *Beyond BEPS: A Tax Policy Agenda for Developing Countries* (ICTD Working Paper 18, 2 June 2014), P. 8.

¹⁴⁶ OECD, *OECD Releases Pillar Two Model Rules for Domestic Implementation of 15% Global Minimum Tax* (20 December 2021).

¹⁴⁷ OECD, *Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy – Inclusive Framework on BEPS* para 54 (OECD 2019).

and considers how the global minimum tax is designed to curb both.

5.1 Profit-Shifting

Profit shifting takes place when a company generates income in one jurisdiction but records that income for tax purposes in another, often a low tax jurisdiction.¹⁴⁸ Such tax jurisdiction attracts firms by offering very low tax rates, and in return gain an expanded tax base. If the inflow of profits is large enough, the increase in the tax base can offset the lower rates, ultimately boosting the tax jurisdiction's overall revenue.¹⁴⁹

Profit-shifting rose to public prominence in the early 21st century. In the United Kingdom, controversy erupted when Starbucks reported tax losses despite holding a significant share of the market and simultaneously assuring investors of strong profitability. Around the same period, Apple's CEO, Tim Cook, admitted before the US Congress that some of the company's subsidiaries operated in a "stateless" manner, without a tax residence in any

¹⁴⁸ Dhammika Dharmapala, 'Do Multinational Firms Use Tax Havens to the Detriment of Non-Haven Countries?' in C Fritz Foley, James R Hines Jr and David Wessel (eds), *Global Goliaths: Multinational Corporations in the 21st Century Economy* (Brookings Institution Press 2021) 437, PP.454–55.

¹⁴⁹ Michael Keen and Kai A Konrad, 'The Theory of International Tax Competition and Coordination' in Alan J Auerbach, Raj Chetty, Martin Feldstein and Emmanuel Saez (eds), *Handbook of Public Economics*, vol 5 (Elsevier 2013) 257, PP.274–77.

jurisdiction.¹⁵⁰ Google, for its part, became emblematic of sophisticated tax planning through the so-called “Double Irish Dutch Sandwich,” a structure that channelled profits across European entities and reduced the effective taxation of billions in earnings to near zero.¹⁵¹

These high-profile cases represent only a fraction of the problem. Each year, multinational firms across diverse sectors shift hundreds of billions of dollars in profits. Although technology giants like Apple often dominate headlines, they are neither exceptional nor unusual in their tax practices. Research shows that oil companies are also major players in profit shifting, with Saudi Aramco and ExxonMobil consistently ranked among the top five globally.¹⁵²

Profit-shifting operates by reallocating tax attributes across different entities within the same corporate group.

¹⁵⁰ Permanent Subcommittee on Investigations of the US Senate, Offshore Profit Shifting and the U.S. Tax Code – Part 2 (Apple Inc.) (Hearing before the Committee on Homeland Security and Governmental Affairs, 21 May 2013).

¹⁵¹ Edward D Kleinbard, ‘*Stateless Income*’ (2011) 11 *Florida Tax Review* 699; Edward D Kleinbard, ‘*Through a Latte, darkly: Starbucks’s Stateless Income Planning*’ (2013) 139 *Tax Notes* 1515

¹⁵² Fotis Delis, Manthos D Delis, Luc A Laeven and Steven RG Ongena, ‘Global Evidence on Profit Shifting Within Firms and Across Time’ (forthcoming, 2024) *Journal of Accounting and Economics* <https://ssrn.com/abstract=4291888> accessed 16 August 2025.

Consider Starbucks.¹⁵³ The company is not a single legal entity but rather a parent firm with numerous subsidiaries, all ultimately controlled by the same group of shareholders. These shareholders are primarily concerned with the firm's aggregate profitability, not with the distribution of profits and losses among individual subsidiaries. From their perspective, it is immaterial whether €1 billion is reported in Starbucks Netherlands or Starbucks France. This corporate structure enables profit-shifting, as Starbucks can strategically organise its internal transactions to record profits in low-tax jurisdictions (such as the Netherlands) while conducting substantial business operations in higher-tax jurisdictions (such as France).¹⁵⁴

There is a wide, though not unanimous, agreement among scholars that profit-shifting poses significant problems. This view is grounded in three main concerns. First, it likely deprives governments of a valuable and efficient source of revenue.¹⁵⁵ Much of the shifted profit represents

¹⁵³ Julie Roin, 'Inversions, Related Party Expenditures, and Source Taxation: Changing the Paradigm for the Taxation of Foreign and Foreign-Owned Businesses' (2017) 2016 BYU L Rev 1838, PP.1855–60.

¹⁵⁴ Edward D Kleinbard, 'Through a Latte, darkly: Starbucks's Stateless Income Planning' (2013) 139 Tax Notes 1515, PP.1521-1522.

¹⁵⁵ Harry Grubert and Rosanne Altshuler, 'Fixing the System: An Analysis of Alternative Proposals for the Reform of International Tax' (2013) 66 Nat'l Tax J 671; Daniel Shavero, 'The New Non-Territorial U.S. Tax System, Part 2' (2018) 160 Tax Notes 171; Dana L. Trier, 'International Tax Reform in a Second-Best World: The GILTI Rules' (2019) 97 Taxes 39.

economic rent—returns that exceed what owners need to deploy their factors of production.¹⁵⁶ When such rent is location-specific, meaning it can only be earned in one jurisdiction, it can be taxed without distorting economic behaviour, making it a particularly efficient tax base.¹⁵⁷ Second, profit-shifting exacerbates economic inequality: the revenue shortfall it creates often forces governments to compensate through either budget cuts or increased taxation on less well-off citizens.¹⁵⁸ Third, profit-shifting runs counter to widely held moral intuitions that firms should contribute taxes to the countries where they generate substantial economic value.¹⁵⁹

5.2 the Race to the Bottom

While profit-shifting reflects competition among states to attract taxable profits on paper, the race to the bottom concerns a different dynamic: countries deliberately

¹⁵⁶ Joseph Bankman, Mitchell A Kane and Alan O Sykes, 'Collecting the Rent: The Global Battle to Capture MNE Profits' (2019) 72 Tax L Rev 197, 200–2.

¹⁵⁷ Mitchell A Kane and Adam Kern, 'The Use and Abuse of Location-Specific Rent' (2023) 76 Tax L Rev 277, 281; Wei Cui, 'The Digital Services Tax: A Conceptual Defense' (2019) 73 Tax L Rev 69; Michael P Devereux, 'Business Taxation in a Globalized World' (2008) 24 Oxford Rev Econ Pol'y 625, 627.

¹⁵⁸ Alex Cobham and Petr Janský, 'Global Distribution of Revenue Losses from Corporate Tax Avoidance' (2018) 30 J Int'l Dev 206, 232; Peter H Eggar, Sergey Nigai and Nora M Strecker, 'The Taxing Deed of Globalization' (2019) 109 Am Econ Rev 353.

¹⁵⁹ OECD, Tax Challenges Arising from Digitalisation: Report on Pillar One Blueprint (2020) 3.

lowering their tax rates to attract real investment and mobile capital. Together, these two mechanisms illustrate the dual pressures of international tax competition.

Countries have strong incentives to attract investment, since additional capital often boosts labour productivity and wages while also expanding the potential tax base.¹⁶⁰ To secure these advantages, states actively compete with one another to draw in investment.¹⁶¹

In such competition, it can be rational for countries to reduce their tax rates. Although firms weigh numerous factors when choosing where to invest—such as labour availability, infrastructure, and the quality of legal institutions—taxation can at times be the decisive element.¹⁶² By lowering tax burdens, governments may succeed in attracting new investment or retaining capital that might otherwise relocate. When the prospective inflow of marginal investment is substantial, offering it in

¹⁶⁰ Assaf Razin and Efraim Sadka, 'International Tax Competition and Gains from Tax Harmonization' (1991) 37 *Economics Letters* 69.

¹⁶¹ Adam Kern, 'The Hole in the Global Minimum Tax' (forthcoming, 2026) 93 *University of Chicago Law Review*, San Diego Legal Studies Paper 25-015 <https://ssrn.com/abstract=5178492> accessed 17 August 2025.

¹⁶² Bo Bernhard Nielsen, Christian Geisler Asmussen and Cecile Dohmann Weatherall, 'The Location of Foreign Direct Investments: Empirical Evidence and Methodological Challenges' (2017) 52 *J World Bus* 62.

exchange for lower taxes can appear economically justifiable.¹⁶³

A “race to the bottom” arises when two or more countries compete to attract the same investment by lowering their tax rates. The dynamic is described as a “race” because each state is driven both to initiate tax reductions and to respond to, or even exceed, the cuts made by others.¹⁶⁴

There is evidence that countries have raced to the bottom since at least the 1980s. In 1980, the average worldwide statutory corporate tax rate was 40.11 percent; in 2022, it was 23.37 percent.¹ Empirical research suggests that the race to the bottom has contributed significantly to this decline. It has been found that more open countries—those imposing fewer restrictions on outbound investment—cut their corporate tax rates to a greater extent than less open ones.¹⁶⁵ This correlation is consistent with the logic of a race to the bottom and is difficult to explain through alternative causal factors. For

¹⁶³ Adam Kern, ‘The Hole in the Global Minimum Tax’ (forthcoming, 2026) 93 *University of Chicago Law Review*, San Diego Legal Studies Paper 25-015 <https://ssrn.com/abstract=5178492> accessed 17 August 2025.

¹⁶⁴ Michael Keen and Kai A Konrad, ‘The Theory of International Tax Competition and Coordination’ in Alan J Auerbach, Raj Chetty, Martin Feldstein and Emmanuel Saez (eds), *Handbook of Public Economics*, vol 5 (Elsevier 2013) 257.

¹⁶⁵ Michael P Devereux, Ben Lockwood and Michela Redoano, ‘Do Countries Compete Over Corporate Tax Rates?’ (2008) 92 *J Pub Econ* 1210, P.1231.

example, if national leaders simply became more business-friendly after 1980, we would expect similar tax cuts across both open and closed economies.

The welfare implications of the race to the bottom are contested. One view holds that this variety of tax competition beneficially constrains governments' tendency towards excessive capital taxation.¹⁶⁶ The dominant perspective, however, sees the race to the bottom as leading to inefficiently low levels of taxes and public spending. This inefficiency can be understood through a simple thought experiment: Compare a world of many countries to one united under a single government.¹⁶⁷ In the many-country world, reducing any country's capital tax rate reduces the capital available to other countries, imposing a negative externality on them. The fiscal union eliminates this externality, implying a more efficient pattern of taxes and public spending.¹⁶⁸

5.3 A Global Minimum Tax as a Solution

¹⁶⁶ Geoffrey Brennan and James M Buchanan, *The Power to Tax: Analytical Foundations of a Fiscal Constitution* (CUP 1980).

¹⁶⁷ John D Wilson and David E Wildasin, 'Capital Tax Competition: Bane or Boon' (2004) 88 *J Pub Econ* 1065, 1070.

¹⁶⁸ Adam Kern, 'The Hole in the Global Minimum Tax' (forthcoming, 2026) 93 *University of Chicago Law Review*, San Diego Legal Studies Paper 25-015, P.15 <https://ssrn.com/abstract=5178492> accessed 17 August 2025.

The preceding subsections examined two distinct types of tax competition: competition over profit and competition for investment. In principle, minimum taxes are designed to limit both dynamics, and a global minimum tax holds out the prospect of doing so with exceptional effectiveness.

Minimum taxes function by establishing a floor on a taxpayer's effective tax rate.¹⁶⁹ If the effective tax rate under the ordinary regime falls below this threshold, the minimum tax imposes a supplementary liability, effectively "topping up" the taxpayer's rate to the required minimum.¹⁷⁰

By setting a floor on effective tax rates, minimum taxes constrain both profit shifting and the race to the bottom.¹⁷¹ Where a country imposes a minimum tax on the worldwide profits of its resident firms, those firms derive little benefit from shifting profits to low-tax jurisdictions, as the minimum tax recaptures much of the previous tax savings.

¹⁶⁹ James R Hines Jr and Kyle D Logue, 'Understanding the AMT, and Its Unadopted Sibling, the AMxT' (2014) 6 J Legal Analysis 367, 374; David Gamage and Ari Glogower, 'The Policy and Politics of Alternative Minimum Taxes' (2024) 77 National Tax Journal 467; Daniel Shaviro, 'What Are Minimum Taxes, and Why Might One Favor or Disfavor Them?' (2021) 40 Va Tax Rev 395, 402–07.

¹⁷⁰ Organisation for Economic Co-operation and Development (OECD), Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two) (OECD 2021) arts 5.2.2, 5.3.

¹⁷¹ Harry Grubert and Rosanne Altshuler, 'Fixing the System: An Analysis of Alternative Proposals for the Reform of International Tax' (2013) 66 Nat Tax J 671.

Likewise, firms cannot reduce their effective tax rates below the minimum by relocating investments. Consequently, foreign countries cannot attract additional investment by cutting their tax rates beneath the minimum, and the home country need not lower its own rates to remain competitive. In this way, the race to the bottom halts at the minimum rate.¹⁷²

Of course, any minimum tax enacted unilaterally by a single country has an obvious limitation: firms can avoid it by exiting that country's jurisdiction. For instance, if the United States imposes a minimum tax on the profits of firms whose parent companies are incorporated domestically, such firms may circumvent the measure by "inverting" through acquisition by a foreign-chartered company. Likewise, if the minimum tax applies to corporations headquartered in the United States, a firm could escape liability simply by relocating its headquarters abroad, for example to Canada.¹⁷³

¹⁷² Michael Keen and Kai A Konrad, 'Tax Competition and Coordination' in Alan J Auerbach, Raj Chetty, Martin Feldstein and Emmanuel Saez (eds), *Handbook of Public Economics*, vol 5 (Elsevier 2013) 257, PP.288–92.

¹⁷³ Adam Kern, 'The Hole in the Global Minimum Tax' (forthcoming, 2026) 93 *University of Chicago Law Review*, San Diego Legal Studies Paper 25-015, P.17 <https://ssrn.com/abstract=5178492> accessed 17 August 2025.

A global minimum tax closes this escape route. As more countries coordinate to impose such a measure, the costs of avoidance rise significantly. It may be relatively easy for a firm to relocate its headquarters outside the United States, but it is another matter entirely to shift outside a coalition of countries representing the vast majority of global GDP.¹⁷⁴ Accordingly, a global minimum tax offers a potentially robust solution to profit-shifting and to the “race to the bottom” in corporate taxation.

6 The economic implications of global minimum tax

The Global Minimum Tax carries several important economic implications. It may affect the distribution of tax revenues across different jurisdictions and influence the location decisions of foreign direct investment (FDI). Developing economies, in particular, could face negative consequences from the implementation of the GMT, as it may reduce their ability to attract investment through tax incentives. In addition, the reform is expected to raise the costs of cross-border operations, not only by increasing administrative and compliance burdens on MNEs, but also by discouraging new investment. This section examines these economic impacts in detail.

¹⁷⁴ Rebecca M Kysar, *The Global Tax Deal and the New International Economic Governance* (74 Tax L Rev, 2024), Fordham Law Legal Studies Research Paper No 4831166, P.36.

6.1 The impact of Global Minimum tax on tax revenue

Although the global minimum tax sets a uniform rate of 15% alongside specified carve-out thresholds, the question of taxing rights remains less clear. Under the Income Inclusion Rule (IIR), the taxing right rests with the headquarters jurisdiction, which may levy top-up tax on the low-taxed affiliates of its multinational enterprises. By contrast, the Qualified Domestic Minimum Top-up Tax (QDMTT) prioritises host countries, enabling them to collect top-up tax directly from subsidiaries generating profits within their territory. The findings of this research consider the first-round revenue implications of implementing both mechanisms within a static framework, demonstrating that the geographical allocation of additional revenues depends largely on which jurisdiction is accorded priority in applying the minimum tax.

Certain study revealed that a global minimum tax set at 15%, with taxing rights allocated to the headquarters jurisdiction, is projected to yield approximately EUR 67 billion for the European Union and around EUR 179 billion for the eighty-three parent countries included in the

study's sample.¹⁷⁵ These figures decline significantly once the model rules carve-outs are applied. For instance, with the long-term 5% carve-out for both tangible assets and payroll, expected EU revenues fall by about 18%, from EUR 67 billion to EUR 55 billion. Nevertheless, this still represents a notable increase, amounting to nearly 16% more than current corporate income tax revenues within the EU. The primary beneficiaries of the Income Inclusion Rule (IIR) would be the United States, projected to secure more than EUR 50 billion, alongside major European economies such as Germany (approximately EUR 13 billion) and the United Kingdom (around EUR 7 billion). Certain low-tax jurisdictions that have become attractive locations for multinational headquarters are also expected to gain considerably, including Ireland (over EUR 12 billion) and Luxembourg (EUR 6 billion). However, the global distribution of revenues under full IIR implementation would remain highly uneven, with developed and high-income countries capturing the majority of the additional tax revenues, while developing and low-income nations would gain comparatively little.

¹⁷⁵ Mona Baraké, Paul-Emmanuel Chouc, Theresa Neef and Gabriel Zucman, 'Revenue Effects of the Global Minimum Tax Under Pillar Two' (2022) 50(10) *Intertax*, P.705.

If all jurisdictions were to adopt a Qualified Domestic Minimum Top-up Tax (QDMTT), revenue collection would be confined to the countries in which undertaxed affiliates conduct their operations. Under such a framework, the potential revenue gains of major Western economies such as France, Germany, and the United States would be significantly reduced. Conversely, tax revenues would be redistributed across roughly 197 jurisdictions worldwide. Yet, in both the IIR- and QDMTT-based scenarios, the least developed countries would secure either negligible or no additional revenues at all.¹⁷⁶

However, it should be noted that all of the revenue projections in these findings represent only first-round effects and do not take into account the potential behavioural responses of either multinationals or governments, which are likely to significantly influence the global distribution of revenues. The scale of such behavioural adjustments remains uncertain. While some analyses suggest that higher taxation in low-tax jurisdictions could lead to a sharp reduction in the profits reported there, evidence from the U.S. Global Intangible Low-Taxed Income (GILTI) regime—the most comparable

¹⁷⁶ Emil Janeba and Guttorm Schjelderup, 'The Global Minimum Tax Raises More Revenues Than You Think, or Much Less' (2023) 145 *Journal of International Economics* 103837.

initiative to date—indicates that its introduction produced only modest effects on effective tax rates and multinational profit-shifting practices.¹⁷⁷

6.1.1 Potential revenue gains

If Pillar One were to be adopted in all jurisdictions hosting major multinational enterprises, such as the United States and the European Union, it is expected to enhance tax revenues in countries with expanding digital economies, including numerous low and middle-income countries. According to OECD economic assessments, the introduction of Amount A under Pillar One could generate additional global tax revenues estimated between USD 12 and 25 billion annually.¹⁷⁸ A separate study projects supplementary revenues of approximately EUR 15.6 billion attributable to Amount A. By contrast, low tax jurisdictions are anticipated to experience revenue declines as a result of this reform.¹⁷⁹

Pillar Two is projected to generate the largest share of additional revenue in jurisdictions where multinational

¹⁷⁷ Mona Baraké, Paul-Emmanuel Chouc, Theresa Neef and Gabriel Zucman, ‘Revenue Effects of the Global Minimum Tax Under Pillar Two’ (2022) 50(10) *Intertax*, P.705.

¹⁷⁸ OECD, *Economic impact assessment of the Two-Pillar Solution* (Webinar, 18 January 2023).

¹⁷⁹ Mona Baraké and Etienne Le Pouhaër, *Tax revenue from Pillar One Amount A: Country-by-country estimates* (Working Paper No 2023-12, Paris School of Economics 2023).

enterprises are headquartered. According to OECD estimates, the global revenue effect of Pillar Two could reach approximately USD 220 billion—nearly ten times higher than the anticipated yield from Pillar One. When the impact of various carve-outs is factored in, projected revenue gains are reduced to a range between EUR 139 and 165 billion. For low- and middle-income countries, the potential gains are estimated to more than double if the rules are applied through a Qualified Domestic Minimum Top-Up Tax rather than the Income Inclusion Rule. Nevertheless, the least developed countries are expected to capture less than one per cent of the overall revenue generated under Pillar Two.¹⁸⁰

Overall, Revenues generated from the global minimum tax would not be evenly distributed worldwide. Developed and high-income countries are expected to capture a larger share of the additional revenue compared to developing and low-income countries, primarily because the majority of multinational enterprises are headquartered in high-income jurisdictions.

For instance, The European Union could boost its corporate tax revenue by over €80 billion through the

¹⁸⁰ Mona Baraké, Paul-Emmanuel Chouc, Theresa Neef and Gabriel Zucman, 'Revenue Effects of the Global Minimum Tax under Pillar Two' (2022) 50(10) Intertax 689.

implementation of a 15% global minimum tax — representing an increase of roughly 25% of the current corporate tax revenue across the EU-27. In comparison, the United States would gain approximately €57 billion annually, while developing countries would experience relatively smaller revenue increases.

The recent international tax agreement could serve as an initial step toward adopting more ambitious tax rates. If the European Union collectively increased the minimum tax rate from 15% to 21%, its revenue from the global minimum tax could nearly double—from around €80 billion to approximately €170 billion.

However, the inclusion of substance-based carve-outs can significantly diminish potential revenue gains. In the first year, these carve-outs are estimated to lower revenues from a 15% minimum tax in the European Union from €83 billion to €64 billion—a reduction of approximately 23% of the initial gain. Even after the ten-year transition period, when carve-out rates decline to 5% of assets and payroll, they would still reduce revenue by about €12 billion, or roughly 14%.¹⁸¹

6.2 The cost of implementing Global Minimum Tax

¹⁸¹ Mona Baraké, Paul-Emmanuel Chouc, Theresa Neef and Gabriel Zucman, *Revenue Effects of the Global Minimum Tax* (2022).

Proponents of the OECD's global minimum corporate tax largely emphasize the additional revenue it is projected to generate. According to OECD estimates, the implementation of the plan could yield between USD 56 and 102 billion annually in new tax revenues.¹⁸² While this outcome appears advantageous, it overlooks the potential adverse consequences for multinational enterprises (MNEs), domestic economies, and the global economy more broadly. The reform is expected to increase the costs associated with cross-border operations, not only through higher administrative burdens on MNEs but also by discouraging foreign investment. Moreover, the measure would raise tax liabilities not only in low-tax jurisdictions but also in high-tax countries where governments may need to curtail existing tax incentives. The cumulative effect of these changes could be a slowdown in global economic activity, driven by reduced foreign investment and diminished corporate expenditure, ultimately producing negative repercussions for workers and consumers worldwide.¹⁸³

6.2.1 Increased administrative compliance costs

¹⁸² OECD, *Tax Challenges Arising from Digitalisation – Economic Impact Assessment* (12 October 2020) 15.

¹⁸³ Daniel Bunn and Sean Bray, 'The Latest on the Global Tax Agreement' *Tax Foundation* <https://taxfoundation.org/global-tax-agreement/> accessed 26 August 2025.

At the state' level, the introduction of a global minimum tax necessitates extensive restructuring and strict compliance mechanisms. Its implementation will directly affect domestic tax systems, particularly in relation to rates, tax bases, collection methods, compliance requirements, administrative management, and the use of incentives. To align with the new framework, jurisdictions will need to recalibrate their existing tax regimes, including the selective repeal of tax incentives that fall below the agreed minimum threshold. In some cases, such adjustments may be undertaken unilaterally, while in others they may be constrained by stabilization clauses or require the renegotiation of bilateral tax treaties.¹⁸⁴

The compliance burden would be somewhat mitigated if all jurisdictions adopted the OECD model uniformly. However, as the framework is not legally binding, implementation will vary across more than 130 countries, each enacting different versions with distinct criteria and computational formulas. This fragmentation undermines predictability, leaving MNEs uncertain about where their tax obligations

¹⁸⁴ Alexandra Readhead, Thomas Lassourd and Howard Mann, 'The End of Tax Incentives: How Will a Global Minimum Tax Affect Tax Incentives Regimes in Developing Countries?' *Investment Treaty News* (IISD, 7 October 2021) <https://www.iisd.org/itn/en/2021/10/07/the-end-of-tax-incentives-how-will-a-global-minimum-tax-affect-tax-incentives-regimes-in-developing-countries/> accessed 26 August 2025.

arise, and potentially subjecting the same stream of revenue to tax assessments in multiple jurisdictions.

Given that this is the first attempt at implementing a coordinated global minimum tax, the associated administrative and compliance procedures are expected to be especially complex. This complexity is likely to result in increased compliance costs and extended transition periods as countries adapt their tax legislation and enforcement practices to conform to the new international standard.¹⁸⁵

Furthermore, at corporations' level, the OECD's two-pillar framework substantially increases the complexity of taxation for multinational enterprises (MNEs), compelling them to allocate greater resources toward compliance and administrative costs. A central feature of the reform is the principle that profits should be taxed in the jurisdiction where the underlying revenue is generated. This requires MNEs to compute distinct tax liabilities in each jurisdiction from which they derive revenue, a process further complicated by rules mandating the identification of the place of consumption for goods and services. Even businesses engaged solely in wholesale or intermediate

¹⁸⁵ Thabo Legwaila, 'Global Minimum Corporate Tax – Developing Countries Beware' (2025) 45 *Obiter* 17257, 177–78.

production could be liable for a tax burden, despite lacking a direct global presence.¹⁸⁶

While MNEs have historically had to account for tax obligations in the jurisdictions where they operate, the current regime introduces a new challenge: the possibility of overlapping or unexpected tax liabilities. As a result, companies may need to calculate dual tax obligations on a single portion of revenue, an unprecedented scenario that heightens complexity. The consequent need for greater international coordination among tax authorities across jurisdictions not only inflates administrative costs but also risks depressing investment and economic output, with adverse consequences for both firms and individuals.¹⁸⁷

Moreover, the implementation of a global minimum tax may prove particularly burdensome for developing countries, both financially and in terms of administrative efficiency. It has therefore been proposed that African states, rather than adopting the tax unilaterally, should pursue a coordinated regional approach.¹⁸⁸ For example,

¹⁸⁶ Charles A Dainoff, *Outlaw Paradise: Why Countries Become Tax Havens* (Bloomsbury Publishing 2021), P.79.

¹⁸⁷ Ira Kuehn, 'A Global Minimum Corporate Tax and its Impact on Corporations and the Global Economy' (Spring 2024) 33(2) *Transnational Law & Contemporary Problems* 292.

¹⁸⁸ Ruth Wamuyu, Belisa Ferreira Liotti and Jeffrey Owens, *Challenges at the Intersection Between Investment Provisions in Regional Trade*

the East African Community could collectively implement a conditional minimum tax across its seven member states. Such an arrangement would allow these countries to pool administrative responsibilities and resources among their respective revenue authorities.¹⁸⁹ Additionally, a regional framework for engaging with the evolving international tax system could foster broader regional development and strengthen economic integration.¹⁹⁰

6.3 The impact of Global Minimum Tax on FDI

Generally, according to an OECD report on FDI and development, extensive evidence demonstrates that foreign direct investment generates significant benefits for developing economies, provided that host countries maintain appropriate policies and a minimum threshold of development. FDI has been shown to facilitate technology transfer, foster human capital development, support integration into international trade, and stimulate enterprise growth by creating a more competitive business environment. Collectively, these outcomes drive higher

Agreements and Implementation of the GloBE Rules under Pillar Two (UNCTAD Transnational Corporations Journal, 30(1), 2023) ch. 1.

¹⁸⁹ Afton Titus, ‘Global Minimum Corporate Tax: A Death Knell for African Country Tax Policy?’ (2022) Intertax 50(5) 414.

¹⁹⁰ Ruth Wamuyu, Belisa Ferreira Liotti and Jeffrey Owens, Challenges at the Intersection Between Investment Provisions in Regional Trade Agreements and Implementation of the GloBE Rules under Pillar Two (UNCTAD Transnational Corporations Journal, 30(1), 2023) ch. 1.

economic growth, which is widely regarded as the most effective means of reducing poverty. In addition to its economic contributions, FDI can also promote social and environmental improvements, such as through the diffusion of cleaner technologies and the encouragement of more socially responsible corporate practices.¹⁹¹

For developing economies, foreign direct investment (FDI) serves as an essential source of capital for infrastructure development and broader economic growth, thereby contributing to improvements in citizens' living standards. From the perspective of the MNE's home country, FDI is equally advantageous, as it promotes firm expansion, generates employment, and stimulates overall economic activity.¹⁹² The use of low-tax jurisdictions to structure such investments has often reduced the cost of capital deployment, enabling firms to reinvest profits both in host economies and in their domestic markets. Consequently, FDI functions as a mutually beneficial mechanism that advances economic outcomes for both developing host

¹⁹¹ OECD, *Foreign Direct Investment for Development: Maximising Benefits, Minimising Costs* (2002), P.5.

¹⁹² Ruud de Mooij & Li Liu, *At a Cost: The Real Effects of Transfer Pricing Regulations*, 68 IMF Econ. Rev. 293, 293–94 (2018).

states and the home jurisdictions of multinational enterprises.¹⁹³

Moreover, FDI has positive effects not only on the parent country of an MNE but also on the global economy.¹⁹⁴ This is a well-established principle, even recognized by the OECD, the very organization now advancing the global minimum tax despite its potential to make FDI significantly more costly. In developing economies, the benefits of FDI are particularly pronounced, as it brings technology transfer, job creation, and improved productivity. For this reason, many developing countries have deliberately adopted liberal FDI policies as a strategy to attract MNEs and stimulate long-term economic growth.

However, the implementation of Global minimum tax would disincentivize FDI and make it cost more. A global minimum tax will effectively raise the “price” of foreign direct investment (FDI), making multinational enterprises (MNEs) more cautious about deploying capital abroad. When considering investment decisions, MNEs are highly sensitive to the tax liability they may incur in a given

¹⁹³ Daniel Bunn, A Global Minimum Tax and Cross Border Investment: Risks and Solutions, TAX FOUND. (June 17, 2021), <https://taxfoundation.org/global-minimum-tax/>.

¹⁹⁴ Daniel Bunn, A Global Minimum Tax and Cross Border Investment: Risks and Solutions, TAX FOUND. (June 17, 2021), <https://taxfoundation.org/global-minimum-tax/>.

jurisdiction. This impact is particularly pronounced for small- and medium-sized MNEs, whose investment strategies are more constrained by tax costs. Under the current system, MNEs are often able to channel their investments through low-tax jurisdictions, ensuring that their overall tax burden does not become prohibitive. This mechanism has enabled corporations to invest in developing countries that might otherwise be economically unattractive.¹⁹⁵ Such investments are not only beneficial to MNEs but also to host countries, which gain jobs, technology transfer, and improvements in living standards. However, the introduction of a global minimum tax would increase the cost of FDI, thereby reducing investment flows to the very countries that most rely on them. In this sense, stifling FDI produces negative outcomes for both investors and host economies.¹⁹⁶

For instance, consider a jurisdiction that offers favorable conditions for expansion, such as an abundant labour force and adequate infrastructure, but imposes a relatively high corporate tax burden. Under the current international

¹⁹⁵ Ronald B. Davies, Julien Martin, Mathieu Parenti & Farid Toubal, *The Impact of Taxes on the Extensive and Intensive Margins of FDI*, 28 *Int'l Tax & Pub. Fin.* 434 (2021).

¹⁹⁶ Ira Kuehn, 'A Global Minimum Corporate Tax and its Impact on Corporations and the Global Economy' (Spring 2024) 33(2) *Transnational Law & Contemporary Problems* 292.

tax regime, an MNE may nevertheless invest in that jurisdiction by routing its investment through a low-tax jurisdiction, thereby minimizing its overall effective tax liability. This structure not only facilitates the investment but also generates positive externalities across three fronts: the MNE's home country, the host economy, and the low-tax jurisdiction.¹⁹⁷ By contrast, under the OECD's global minimum tax, the MNE would be subject to a 15 percent minimum effective tax rate, significantly raising its tax burden. The increased liability could render such investments less economically viable, thereby constraining FDI and slowing both firm growth and the economic development of emerging markets.

Widespread adoption of the OECD agreement could substantially increase the cost of FDI for MNEs. As investment becomes more expensive, firms will be less inclined to channel capital into developing economies that depend on FDI to build infrastructure and generate positive social outcomes. At the same time, the cost of conducting business internationally will rise, reducing the capacity of MNEs to reinvest profits in their home jurisdictions. Consequently, while the OECD's minimum tax may raise additional tax revenue, it is likely to reduce

¹⁹⁷ OECD, *Foreign Direct Investment for Development: Maximising Benefits, Minimising Costs* (2002).

FDI inflows into developing economies and heighten the cost of domestic investment. These dynamic risks dampening global economic growth, weakening employment outcomes, and increasing reliance on government income assistance programs.¹⁹⁸

6.4 The economic impact of Global Minimum Tax on Developing countries

It has become evident that the implementation of the new global minimum tax regime poses considerable obstacles for developing countries, which must contend with a system of tax competition largely designed without their meaningful participation. Unlike developed economies (many of which are better equipped to identify and exploit potential loopholes in the Pillar Two framework) developing states often lack the institutional and financial capacity to comply with its basic requirements.¹⁹⁹ Since developing countries are already disadvantaged within the existing tax competition environment, they unlikely to benefit from a regime that renders competition increasingly opaque and complex. Their decision to endorse the

¹⁹⁸ Juan Carlos Suárez Serrato, 'Unintended Consequences of Eliminating Tax Havens' (NBER Working Paper No 24850, 2019) <https://doi.org/10.3386/w24850> accessed 17 August 2025.

¹⁹⁹ Andrea Ricardi, 'Implementing a (global?) minimum corporate income tax: an assessment of the so-called "Pillar Two" from the perspective of developing countries' (2021) 4(1) *Nordic Journal on Law and Society*, PP.1-38.

agreement may therefore reflect dependency on larger markets or sheer necessity, rather than a genuine ability to negotiate more favorable terms.²⁰⁰

Developing countries encounter tax challenges that are less acute in advanced economies, largely due to their constrained fiscal capacities and their heavy reliance on revenues from multinational enterprises, especially within the extractive industries. As a result, the anticipated revenue gains from the implementation of the Global Minimum Tax are expected to accrue predominantly to developed economies, which pursue policies aligned with their own interests. Should widespread adoption of the GMT occur, developing countries are projected to secure only modest gains compared with high-income jurisdictions, where the majority of MNEs are domiciled.²⁰¹

Moreover, the use of subsidies, credits, and grants necessitates substantial upfront resources, a factor that disproportionately benefits wealthier nations. Developed economies, such as the EU and the United States, are better placed to attract investment in large-scale initiatives, exemplified by the EU's €500 billion Green

²⁰⁰ Heydon Wardell-Burrows, 'Pillar Two and Developing Countries: The STTR and GloBE Implementation' (2023) 51(2) *Intertax*, PP. 118-133.

²⁰¹ Assaf Harpaz, 'International Tax Reform: Who Gets a Seat at the Table?' (2023) *University of Pennsylvania Journal of International Law*, P.26.

Energy programme and the U.S. \$350 billion plan.²⁰² Ultimately, while Pillar Two may reduce profit-shifting to tax havens, developing countries are expected to reap limited benefits, whereas advanced economies remain positioned to exploit gaps within the framework.²⁰³

Developing countries frequently rely on preferential tax regimes and low tax rates as instruments to attract foreign direct investment, stimulate growth, and compete with more advanced economies. Such incentives are often integral to their development strategies, serving to encourage multinational enterprises, generate employment, and foster innovation. The introduction of a Global Minimum Tax, however, risks eroding this competitive advantage by restricting the ability of states to differentiate themselves through favorable tax policies. As a result, emerging economies may face difficulties in securing investment, thereby constraining their growth prospects and widening the developmental gap with high-income countries. In the absence of tax incentives as a policy tool, many developing nations may become increasingly reliant

²⁰² KPMG, *Clarity on Swiss Taxes* (2023) 1, 8 <https://assets.kpmg.com/content/dam/kpmgsites/ch/pdf/kpmg-ch-swiss-taxes-2023-clarity.pdf> accessed 17 August 2025.

²⁰³ Bret Wells, 'Enigma of the United States, Base Erosion, and the Global Minimum Tax' (2023) 2023-W-1 University of Houston Law Center 1, P.16.

on external aid and foreign capital from developed states, further reinforcing existing asymmetries in the global economic order.²⁰⁴

Many developing economies are attempting to position themselves within high-growth sectors such as clean energy, biotechnology, and information technology. These industries are inherently R&D-intensive, demanding significant financial commitments to sustain competitiveness. The enforcement of a Global Minimum Tax may place such countries at a structural disadvantage relative to economies with mature innovation systems and lighter tax constraints. Traditionally, lower tax regimes have incentivised entrepreneurial activity and R&D investment by reducing the cost of innovation. However, aligning with GMT requirements could compel developing states to increase tax rates, thereby constraining entrepreneurial dynamism and long-term economic expansion.

Moreover, higher effective tax burdens are likely to diminish the fiscal space available for innovation policies, particularly in economies that already allocate substantial resources to R&D support. The impact would be especially

²⁰⁴ Rifat Azam, 'The Global Minimum Tax and Intra Western Tax Competition' (2026) 44(1) Berkeley Journal of International Law, P.17.

pronounced for start-ups and small enterprises, which serve as vital engines of innovation and employment creation but are disproportionately sensitive to shifts in tax regimes. Elevated tax compliance costs and reduced after-tax resources may, therefore, curtail their capacity to invest in innovation, expand markets, and pursue product development, ultimately undermining sustainable growth trajectories.²⁰⁵

Although the GMT is designed to limit tax avoidance and enhance equity within the international tax system, its implementation may unintentionally suppress entrepreneurial activity and innovation in emerging markets by increasing tax burdens. Such constraints risk impeding economic diversification strategies and undermining the competitiveness of these economies in high-value sectors. In turn, this dynamic may exacerbate structural inequalities between developed and developing countries, entrenching the economic and fiscal dominance of Western powers in global tax governance.²⁰⁶

A further significant obstacle to the effectiveness of a global minimum tax for developing countries lies in their

²⁰⁵ Christian Bauer, 'Unintended and Undesired Consequences: The Impact of OECD Pillar I and II Proposals on Small Open Economies' (2021) ECIPE Occasional Paper.

²⁰⁶ Rifat Azam, 'The Global Minimum Tax and Intra Western Tax Competition' (2026) 44(1) Berkeley Journal of International Law, P.17.

existing commitments under international agreements, private investment contracts, and domestic legislation. These often restrict their ability to withdraw or amend tax incentives previously granted to investors. Attempts to impose a top-up tax in line with the global minimum tax framework could therefore risk breaching such commitments, potentially exposing the country to expensive international arbitration claims. This places developing nations in a difficult position: either forgo collecting the minimum tax to honour prior agreements—allowing the parent company’s home country to capture the revenue—or attempt collection and face the legal and financial consequences of dispute resolution.²⁰⁷

A further complication for developing countries lies in the interaction between global minimum tax rules and existing international agreements, particularly treaties that contain tax-sparing provisions. Such provisions are designed to preserve the benefits of domestic tax incentives by allowing the residence country to grant relief as if tax had been levied in the source state, thereby encouraging inward foreign investment. However, under the minimum

²⁰⁷ Brown, ‘A Global Minimum Tax: Is Pillar Two Fair for Developing Countries?’ (International Centre for Tax and Development, 2023) <https://www.ictd.ac/blog/global-minimum-tax-pillar-two-fair-developing-countries/> accessed 17 August 2025.

tax framework, spared taxes are not recognized as covered taxes when computing a constituent entity's effective tax rate. This mismatch could generate tax disputes and diminish the effectiveness of tax-sparing arrangements as a policy tool to attract FDI. Consequently, countries wishing to comply with the minimum tax would need to renegotiate their bilateral treaties and remove tax-sparing provisions, a process that may reduce their flexibility in using tax incentives as part of their development strategies.²⁰⁸

Estimates suggest that developing countries lose approximately \$100 billion annually due to corporate tax avoidance strategies. The global "race to the bottom," characterized by the steady reduction of corporate tax rates, has facilitated these avoidance practices, disproportionately harming developing economies. By lowering the effective tax burden on multinational enterprises, such dynamics allow firms to generate significant profits while contributing minimal tax revenues in host jurisdictions. Proponents of the global minimum tax argue that its introduction could help counter this

²⁰⁸ Annet Wanyana Oguttu, 'Preventing International Tax Competition and the Race to the Bottom: A Critique of the OECD Pillar Two Model Rules for Taxing the Digital Economy – A Developing Country Perspective' (2022) 76 *Bulletin for International Taxation* 547, 557.

phenomenon by curbing tax competition, dismantling tax havens, and potentially enhancing revenue mobilization for African states.²⁰⁹

In theory, multinational enterprises (MNEs) operating in developing countries should not face difficulty in meeting the 15 percent global minimum tax, since statutory corporate tax rates in these jurisdictions typically range between 20 and 40 percent. However, in practice, companies may fall below the minimum threshold due to the tax incentives widely employed by developing countries to attract investment. These incentives generally fall into two categories. The first category comprises measures that create timing differences between accounting profits, reported under international accounting standards, and taxable income, determined by domestic tax rules. An example is accelerated depreciation of capital assets. Such incentives do not reduce the overall tax liability but defer its collection over time. They are considered relatively efficient, as they lower the cost of capital and enable otherwise marginal projects to become viable. The OECD, through the Inclusive Framework, has

²⁰⁹ A Protto, F Heitmüller, M Baine, M Ndajiwo, U Tandon and X Dai, 'Perspectives on the Progress of Global Corporate Tax Reform' (International Centre for Tax and Development Blog, 2021) <https://www.ictd.ac/blog/perspectives-progress-global-corporate-tax-reform-inclusive-framework-beps/> accessed 17 August 2025.

acknowledged the potential distortion these measures may create and has committed to developing a solution to ensure that such incentives do not automatically trigger the imposition of a top-up tax, though specific details remain unresolved.²¹⁰

A second category of tax incentives directly reduces or eliminates the taxes payable on profits, often for a limited period of time. These include tax holidays, preferential corporate tax rates, investment allowances, tax credits, or income exemptions. Unlike timing-based incentives, such measures are widely considered less efficient, as they tend to facilitate profit shifting rather than stimulating genuine investment. These provisions are precisely the type of incentives targeted by the global minimum tax reform. Under the new rules, their effectiveness is largely neutralised: where a multinational enterprise's effective tax rate falls below the 15 per cent threshold due to such incentives, the differential will simply be collected as a top-up tax by another jurisdiction, typically the residence country of the parent company.²¹¹

²¹⁰ International Institute for Sustainable Development, 'The End of Tax Incentives: How Will a Global Minimum Tax Affect Tax Incentives Regimes in Developing Countries?' (2021) <https://www.iisd.org/articles/end-tax-incentives> accessed 17 August 2025.

²¹¹ Platform on Tax Collaboration, Options for Low-Income Countries' Effective and Efficient Use of Tax Incentives for Investment: A Report to

The global minimum tax applies exclusively to profit-based taxes levied on multinational enterprises, such as corporate income taxes, withholding taxes on cross-border payments of dividends or interest, and profit-related levies including mineral royalties or economic rent taxes. By contrast, it does not extend to non-income-based taxes and charges, such as value-added tax (VAT), customs duties, payroll taxes, revenue-based mineral royalties, or production-sharing arrangements. Likewise, incentives tied to these revenue streams remain unaffected. This raises the possibility that jurisdictions may attempt to attract investment by lowering such taxes in the future. However, doing so would be ill-advised, as these taxes are generally more stable and easier to administer than profit-based taxes.

Furthermore, the scope of the minimum tax regime is limited to multinational enterprises (MNEs) with an annual consolidated revenue above €750 million. Consequently, the vast majority of MNEs operating in developing economies fall outside its application. This creates a dual corporate tax framework, distinguishing between those entities subject to the minimum tax and those below the

the G-20 Development Working Group by the IMF, OECD, UN and World Bank (IMF 2015) <https://www.imf.org/external/np/g20/pdf/101515.pdf> accessed 3 September 2025, 3.

threshold. Such a system would inevitably require significant investment in tax administration and compliance infrastructure, a burden that may prove financially unsustainable for many developing countries. Moreover, given the relatively small number of MNEs in these jurisdictions that would actually meet the threshold, the potential tax revenue gains are unlikely to offset the substantial costs of implementing and maintaining the regime.²¹²

6.4.1 Legal and Policy Challenges Facing Developing Countries

Traditionally, low corporate tax rates have served as a key instrument for developing economies to attract foreign direct investment (FDI), which is a principal driver of economic growth, employment generation, and technology transfer. The implementation of the Global Minimum Tax diminishes the effectiveness of such tax incentives, potentially reducing the appeal of these jurisdictions to multinational enterprises. Consequently, this may lead to a decline in FDI inflows, adversely affecting economic growth and employment levels in countries heavily

²¹² OECD, *The Global Minimum Tax and the Taxation of MNE Profit: Economic Impact Assessment* (OECD 2024)
https://www.oecd.org/en/publications/2024/01/the-global-minimum-tax-and-the-taxation-of-mne-profit_2c3d9f9d.html

dependent on foreign investment. In response, these economies may be compelled to explore alternative revenue sources, such as increased reliance on indirect taxation. However, such measures tend to be regressive, placing a disproportionate burden on lower-income populations and exacerbating domestic income inequality.

The introduction of the Global Minimum Tax could exacerbate the economic divide between developed and developing nations. Advanced economies, equipped with robust tax administrations and stronger financial capacities, are better positioned to capture higher revenues from multinational enterprises. In contrast, developing countries often face limitations in administrative efficiency and technical expertise, hindering their ability to ensure compliance and secure an equitable share of tax proceeds. Consequently, the reform may reinforce existing global inequalities, allowing wealthier nations to benefit disproportionately while poorer economies struggle with revenue deficits and diminished competitiveness.

To effectively respond to the regulatory challenges posed by the Global Minimum Tax, developing economies must implement targeted policy reforms and institutional adjustments:

- ***Enhancing National Tax Administration and Enforcement Capabilities:***

Developing countries should prioritize the modernization of their tax administration frameworks to better detect profit-shifting practices and ensure compliance with global tax standards. This entails improving data management systems, fostering closer collaboration with international tax bodies, and enhancing technical expertise and human capacity in tax enforcement and auditing.

- ***Securing Carve-Outs and Temporary Exemptions through Negotiation:***

Several developing economies are seeking to secure special carve-outs or transitional exemptions within the OECD framework to safeguard industries essential to their national development agendas. Such measures—such as sector-specific exclusions or threshold-based relief—could provide temporary flexibility, allowing these nations to gradually realign their fiscal and investment policies with the requirements of the new global tax architecture.

- ***Promoting Diversified Investment Approaches:***

As traditional tax incentives lose their potency under the Global Minimum Tax framework, developing countries should pivot toward alternative strategies to sustain

investment inflows. This entails prioritizing improvements in infrastructure, strengthening governance and institutional transparency, simplifying regulatory procedures, and investing in human capital development. Such reforms can enhance the overall business climate, mitigate potential reductions in FDI, and promote long-term, sustainable economic growth.²¹³

The implementation of the Global Minimum Tax presents significant regulatory challenges for developing economies, particularly in maintaining foreign direct investment and managing widening global economic inequalities. To navigate these challenges effectively, these countries must pursue a comprehensive policy approach encompassing the strengthening of domestic tax administration, the negotiation of context-specific exemptions, and the enhancement of non-tax investment incentives. Through such strategic adaptation, developing economies can cushion the potential adverse effects of the new international tax framework while fostering sustainable economic resilience and long-term growth.²¹⁴

²¹³ A Kurian, 'The Evolution of International Tax Regime and the OECD Two-Pillar Solution: Analysis from a Developing Country Perspective' (2022) 1 *Journal of Economic Issues*, P. 61.

²¹⁴ Prithivi Raj, Reetesh Kumar Jena and Soubhagya Sundar Nanda, 'Harmonizing International Tax Laws: Legal Challenges of the OECD Global Minimum Tax' (2025) 21(3S) *Economic Sciences* 143–150.

6.4.2 The STTR and Developing Countries

Under the Subject-to-Tax Rule (STTR), developing countries are granted the right to impose a minimum nominal tax rate of 9% on interest, royalties, and other defined payments. This rule applies where members of the Inclusive Framework (IF) that receive such income subject it to a nominal rate below the STTR threshold. Functioning as a switch-over mechanism on a gross basis, the STTR takes precedence over both the Income Inclusion Rule (IIR) and the Undertaxed Payments Rule (UTPR), as the tax levied under the STTR is treated as a covered tax in the parent entity's jurisdiction pursuant to the Global Anti-Base Erosion (GloBE) Rules.²¹⁵ While the STTR's priority enhances international tax equity by ensuring some allocation of taxing rights to source jurisdictions, it nonetheless falls short of providing developing countries with adequate revenue. This shortfall stems largely from the operation of substance-based carve-outs and the persistent challenges of base erosion and profit shifting (BEPS) in these economies.

²¹⁵ OECD (2021), Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, 8 Oct. 2021, p. 4; L De Broe and M Massant, 'Are the OECD/G20 Pillar Two GloBE Rules Compliant with the Fundamental Freedoms?' (2021) 30(1) EC Tax Review 88–89.

Furthermore, the OECD/G20 Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy refers to the development of a multilateral instrument aimed at ensuring the effective and uniform implementation of the Subject-to-Tax Rule (STTR) within bilateral tax treaties. Interestingly, this mechanism may, in practice, result in lower withholding tax rates than those currently imposed under unilateral domestic measures. However, since the application of the STTR appears to depend on the existence of bilateral tax treaties between interested jurisdictions, it may reduce the overall tax revenues available to developing countries. Under these treaties, source jurisdictions are required to relinquish certain taxing rights to the jurisdictions of parent entities. A more equitable approach would be the adoption of a multilateral instrument, independent of existing bilateral treaties, specifically designed to implement Pillar Two and incorporate the STTR.

For developing countries to derive tangible benefits from the Subject-to-Tax Rule (STTR), they must also adopt domestic legislative measures consistent with the recommendations of the BEPS Project aimed at mitigating base erosion and profit shifting. Moreover, jurisdictions possessing an extensive network of tax treaties would be

required to accede to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS, thereby ensuring coherence between domestic reforms and international treaty obligations.²¹⁶

Nevertheless, the gross taxation of interest, royalties, and similar payments under the STTR is insufficient to offset the corporate income tax revenue losses that arise from profit shifting through deductible costs. Furthermore, implementing transfer pricing rules aligned with value creation, as envisaged under BEPS Actions 10–13, poses substantial administrative challenges for developing countries. Overall, the STTR appears inadequate as a mechanism for enhancing tax revenue in these jurisdictions.²¹⁷

²¹⁶ R Szudoczky and D Blum, ‘Unveiling the MLI: An Analysis of Its Nature, Relationship to Covered Tax Agreements and Interpretation in Light of the Obligations of Its Parties’ in Ana Paula Dourado (ed), *International and EU Tax Multilateralism: Challenges Raised by the MLI* (IBFD 2020) 125 et seq; R Prokisch and F Souza de Man, ‘Multilateralism and International Tax Law: The Interpretation of Tax Treaties in Light of the Multilateral Instrument’ in Ana Paula Dourado (ed), *International and EU Tax Multilateralism: Challenges Raised by the MLI* (IBFD 2020) 199 et seq.

²¹⁷ Ana Paula Dourado, ‘Pillar Two Model Rules: Inequalities Raised by the GloBE Rules, the Scope, and Carve-Outs’ (2022) 50(4) *Intertax* 282–285.

7 Legal Implications of Implementing the Global Minimum Tax

The implementation of the Global Minimum Tax raises several challenges. One of the most critical is its potential conflict with national fiscal sovereignty, as it constrains the ability of states to design independent tax policies. Additionally, the GMT may create tensions with existing international investment laws, particularly those enshrined in regional trade agreements (RTAs), which could complicate its enforcement and compatibility with current legal frameworks.

7.1 Legal Challenges of Implementing the Global Minimum Tax

One of the key legal challenges to the effective implementation of the Global Minimum Tax lies in its perceived tension with national fiscal sovereignty. The authority to levy and structure taxes is a core expression of state sovereignty, allowing governments to design tax regimes aligned with their unique economic objectives and development strategies. The introduction of a uniform minimum tax threshold restricts states' discretion to determine corporate tax rates that might otherwise be used to attract foreign investment or promote strategic industries. For many nations, particularly smaller and

developing economies, this is viewed as an encroachment by international bodies, creating a fundamental conflict between the goals of global coordination and the preservation of domestic policymaking autonomy.

The Global Minimum Tax framework poses a direct challenge to jurisdictions that have historically relied on low corporate tax rates as a central pillar of their economic strategy to attract multinational enterprises. Countries such as Ireland, Singapore, and several Caribbean states have long anchored their development models on tax-based incentives. The emergence of this new international tax order compels these nations to depart from their established fiscal paradigms, potentially triggering significant economic disruption. Moreover, the implementation of the Global Minimum Tax risks creating tension between states' international commitments and their domestic legal or constitutional provisions. Achieving coherence between the two will, for many jurisdictions, necessitate substantial legislative and institutional adjustments.

The implementation of the Global Minimum Tax presents a range of legal and constitutional challenges, alongside broader structural barriers. In many jurisdictions, the reform would necessitate significant legislative revisions to

embed the new framework within existing domestic tax systems. In federal systems such as the United States, the complexity is further heightened by the division of fiscal authority between federal and state governments. State governments, which exercise a degree of tax-policy autonomy, may find their powers constrained by the need for alignment with international commitments. Consequently, harmonizing subnational tax regimes with the requirements of the Global Minimum Tax could demand constitutional amendments or, at minimum, provoke substantial legal and political complications.

The effective implementation of the Global Minimum Tax hinges on the establishment of robust compliance and enforcement mechanisms. However, a number of factors complicate these efforts. One key challenge arises from potential jurisdictional conflicts, particularly in the interaction between the Income Inclusion Rule (IIR) and the Undertaxed Payments Rule (UTPR). Multiple jurisdictions may assert taxing rights over the same income, giving rise to risks of double taxation and disputes over revenue allocation. The absence of adequate and efficient international dispute resolution mechanisms exacerbates this issue, as existing arbitration frameworks have proven insufficient to address conflicts of this

complexity. Moreover, many developing countries lack the administrative capacity and technical expertise required to design, implement, and monitor such sophisticated international tax regimes. These include limitations in detecting profit-shifting practices, calculating effective tax rates across multiple jurisdictions, and coordinating compliance with other tax authorities. Consequently, these institutional and capacity gaps undermine the consistent enforcement of the Global Minimum Tax framework and may jeopardize its global effectiveness.

The implementation of the Global Minimum Tax also requires alignment with existing international legal obligations, thereby adding another layer of complexity. Numerous bilateral tax treaties contain provisions that may conflict with the operation of the Global Minimum Tax. For example, some treaties prohibit the imposition of additional taxation on income that has already been taxed in another jurisdiction, creating potential inconsistencies with the OECD's framework. Renegotiating such treaties on a global scale would be both protracted and politically delicate. Furthermore, mechanisms under the Undertaxed Payments Rule (UTPR), such as the denial of tax deductions or the imposition of withholding taxes, could be perceived as discriminatory or trade-restrictive, potentially

conflicting with principles under the World Trade Organization (WTO) framework. Measures that specifically target low-tax jurisdictions could invite scrutiny by the WTO as being inconsistent with the principles of non-discrimination and fair competition. Addressing these conflicts would necessitate detailed legal examination and, in some cases, amendments to existing international agreements to ensure coherence between tax and trade regimes.

The legal challenges associated with the implementation of the OECD's Global Minimum Tax underscore the inherent complexity of reconciling national fiscal regimes with a unified global framework. While the initiative seeks to address pressing concerns of tax avoidance and base erosion, its success will ultimately depend on the resolution of significant legal and regulatory obstacles. Achieving this will require robust international cooperation, the strengthening of administrative capacities, and the harmonization of existing legal obligations across jurisdictions. In the absence of such coordinated efforts, the Global Minimum Tax risks encountering strong political

resistance, inconsistent implementation, and an escalation of legal disputes.²¹⁸

7.2 The impact of Global Minimum Tax on Investment Laws

The purpose of this subsection is to examine the potential implications of implementing the GMT or modifying domestic tax incentive frameworks on the obligations contained within Regional Trade Agreements (RTAs). Specifically, the analysis focuses on whether such measures could contravene investment protection standards embedded in RTAs. For this purpose, four key provisions are considered: non-discrimination clauses, fair and equitable treatment (FET) obligations, expropriation safeguards, and investor–State dispute settlement (ISDS) mechanisms.

The domestic implementation of the GMT will necessitate several legislative and regulatory reforms that could directly impact existing investments. These reforms primarily encompass three dimensions. First, the adoption of the IIR and UTPR will require amendments to domestic legislation to establish the top-up tax mechanism and corresponding adjustment provisions. Second, jurisdictions

²¹⁸ Prithivi Raj, Reetesh Kumar Jena and Soubhagya Sundar Nanda, 'Harmonizing International Tax Laws: Legal Challenges of the OECD Global Minimum Tax' (2025) 21(3S) *Economic Sciences* 143–150.

may elect to introduce a QDMTT, either limited to in-scope multinational enterprises or extended to all resident taxpayers. Third, governments may be compelled to rationalize existing tax incentives, as the operation of the top-up tax could erode or nullify the effective benefits derived from corporate income tax reliefs. Consequently, it becomes crucial to assess whether such reforms could give rise to breaches of investment protection obligations under Regional Trade Agreements (RTAs), and to determine the potential avenues through which investors may seek redress.

7.2.1 Non-discrimination clauses

Non-discrimination provisions are designed to prohibit host States from affording less favourable treatment to foreign investors than to domestic counterparts (national treatment, NT), or from extending preferential treatment to investors of one foreign State over those of another (most-favoured-nation treatment, MFN).²¹⁹ These standards generally apply to the treatment of investors after their entry into the host jurisdiction and, in certain cases, also govern pre-establishment conditions. Their overarching objective is to guarantee competitive equality

²¹⁹ Nicolas Diebold, 'Standards of Non-Discrimination in International Economic Law' (2011) 60 *International and Comparative Law Quarterly* 831.

between domestic and foreign investors under NT, and among foreign investors themselves under MFN.²²⁰ Accordingly, member States are precluded from granting undue advantages either to domestic investors in breach of NT or to specific foreign investors in violation of MFN. Notably, all Regional Trade Agreements (RTAs) examined incorporate NT and MFN obligations,²²¹ together with delineated exceptions to their application.

The GMT Rules and their implications for tax incentives may potentially give rise to claims of discriminatory treatment. In principle, the top-up tax applies exclusively to entities that form part of MNE groups, thereby predominantly affecting foreign investors. Such differentiation could be interpreted as nationality-based discrimination. For instance, where a tax incentive is generally available to all companies operating within a State—domestic and foreign alike—the effectiveness of that incentive may be undermined for foreign investors as a consequence of the GMT framework. Similarly, if the host State chooses to withdraw or modify the incentive

²²⁰ UNCTAD, National Treatment, UNCTAD Series on Issues in International Investment Agreements (United Nations, New York and Geneva 1999).

²²¹ UNCTAD, Most-Favoured-Nation Treatment, UNCTAD Series on Issues in International Investment Agreements (United Nations, New York and Geneva 1999).

solely for in-scope entities, questions of compliance with the national treatment (NT) obligations under regional trade agreements (RTAs) may arise. Moreover, the introduction of a Qualified Domestic Minimum Top-up Tax (QDMTT) limited to in-scope MNEs, while exempting purely domestic enterprises, could also be construed as conferring less favourable treatment upon foreign investors in “like circumstances,” thereby potentially contravening NT provisions.²²²

Furthermore, the general tax carve-outs contained in many Regional Trade Agreements (RTAs) may restrict the possibility of invoking a breach of national treatment (NT) obligations. Agreements such as the USMCA and NAFTA, which served as models for subsequent RTAs, incorporate claw-back clauses intended to reinstate the application of NT and most-favoured-nation (MFN) provisions. However, these claw-backs typically exclude matters concerning the taxation of corporate income or capital. Consequently, investors are unlikely to be afforded protection in disputes arising from the application of the

²²² Ruth Wamuyu, Belisa Ferreira Liotti and Jeffrey Owens, *Challenges at the Intersection Between Investment Provisions in Regional Trade Agreements and Implementation of the GloBE Rules under Pillar Two* (UNCTAD Transnational Corporations Journal, 30(1), 2023) ch. 1.

GMT Rules or from the withdrawal of tax incentives that affect the income and profits of corporations.

In situations where an RTA does not contain a claw-back provision but instead permits the adoption or enforcement of measures designed to ensure the fair and efficient collection of taxes under domestic law, it appears improbable that a tribunal would regard the implementation of the GloBE Rules or the revocation of a tax incentive as a violation of national treatment (NT) obligations. This reasoning rests on the argument that the GMT framework seeks to mitigate harmful tax competition and guarantee a minimum effective level of taxation for large MNE groups, thereby reducing profit shifting. Consequently, such measures could plausibly be characterized as efforts to secure the “equitable” and “effective” collection of taxes within the meaning of the relevant RTA provisions.

Accordingly, the tax-related carve-outs embedded in Regional Trade Agreements (RTAs) may afford host States a considerable degree of protection regarding measures they adopt, thereby reducing the likelihood of investors successfully advancing discrimination claims. Nonetheless, safeguarding non-discriminatory treatment of cross-border investments remains a fundamental principle, particularly with respect to investments governed by

International Investment Agreements (IIAs). Consequently, even where such carve-outs exist, investors may still seek to challenge the application of the GMT Rules on the basis of alleged discriminatory treatment.²²³

7.2.2 Fair and equitable treatment

Foreign investors frequently invoke the *fair and equitable treatment* (FET) clause when seeking protection under investment treaties. Arbitral tribunals have consistently held that a breach of the FET standard occurs when an investor is subjected to treatment so arbitrary or unreasonable that it falls below the threshold of what is acceptable under international law.²²⁴ In assessing such claims, tribunals often examine whether the investor's legitimate expectations—particularly regarding the stability, transparency, and predictability of the host State's legal and regulatory environment—have been undermined.²²⁵

In this regard, investors might contend that the implementation of the GMT Rules and their consequent

²²³ Ruth Wamuyu, Belisa Ferreira Liotti and Jeffrey Owens, 'Challenges at the Intersection Between Investment Provisions in Regional Trade Agreements and Implementation of the GloBE Rules under Pillar Two' (2023) 30 *Transnational Corporations* 1.

²²⁴ *S.D. Myers, Inc v Government of Canada* (Partial Award, 30 November 2000) NAFTA Arbitration under the UNCITRAL Arbitration Rules, para. 263.

²²⁵ Prabhash Ranjan, 'Investor-State Dispute Settlement and Tax Matters: Limitations on States' Sovereign Right to Tax' (2022) 30 *Asia Pacific Law Review* 1019–1057.

effects on tax incentives constitute a breach of the Fair and Equitable Treatment (FET) standard. Their argument could rest on the assertion that the introduction of a global minimum tax undermines the certainty, stability, and predictability of the existing legal framework governing incentives. Specifically, investors may claim that the erosion or withdrawal of tax incentives—whether as a direct result of the GMT Rules or through deliberate domestic policy adjustments—was unforeseeable and inconsistent with their legitimate expectations of a stable regulatory environment at the time of investment. In certain instances, such claims could be reinforced by evidence that the host State provided explicit or implicit assurances regarding the continued availability of such incentives, thereby creating reasonable expectations on the part of investors.

This line of argument may arise irrespective of whether the host State decides to abolish existing tax incentives or to maintain them while introducing a Qualified Domestic Minimum Top-up Tax (QDMTT) applicable to in-scope entities. In the latter scenario, the operation of the QDMTT could effectively neutralize the value of such incentives, since the resulting top-up tax would increase the overall fiscal burden on investors. Consequently, investors might

argue that this outcome generates regulatory instability and unpredictability, thereby contravening their legitimate expectations regarding the continuity and effectiveness of the incentive framework.

Ultimately, the determination of whether a state's conduct meets the standard of "fair and equitable treatment" (FET) depends heavily on the specific circumstances of each case. The assessment requires careful consideration of the context, rationale, and proportionality of any regulatory or legal changes, as well as their effects on the investment. While RTAs impose an obligation on States to uphold FET, in the absence of a stabilization clause or an equivalent guarantee, States retain the sovereign authority to modify their legal and regulatory frameworks in pursuit of legitimate policy objectives. Such actions, by themselves, do not automatically amount to a breach of investors' legitimate expectations concerning legal stability or predictability. However, a violation of the FET standard may arise where an investor has acquired enforceable rights, or where the State's conduct has created legitimate expectations upon which the investor reasonably relied when committing capital to the host country.²²⁶

²²⁶ Ioan Micula, Viorel Micula, SC European Food SA, SC Starmill SRL and SC Multipack SRL v Romania (Award) ICSID Case No ARB/05/20 (11 December 2013), para. 667.

Given this reasoning, it appears improbable that investors would succeed in challenging the GMT Rules on the basis of a breach of the fair and equitable treatment standard. It would be particularly difficult for claimants to demonstrate that the adoption or implementation of the GMT Rules, or the withdrawal of a related tax incentive, constitutes a *mala fide* taxation measure such that the tax carve-out would not apply. Moreover, even if the measure's consequences were unforeseen or adverse to the investor, establishing that they amount to gross misconduct or manifest injustice on the part of the State would be highly unlikely.

7.2.3 Expropriation

In general, expropriation clauses prohibit both direct and indirect forms of expropriation, the latter encompassing regulatory takings, creeping expropriation, and measures deemed *tantamount to* or *equivalent to* expropriation. Given its inherent nature, taxation may in some instances be characterized as a form of indirect expropriation. However, such a determination must be made on a case-by-case basis to ensure that legitimate governmental actions—such as the introduction or modification of tax regimes—can proceed without giving rise to compensation

claims merely due to their adverse economic consequences.²²⁷

Certain Regional Trade Agreements (RTAs) incorporate a *claw-back* clause within their tax carve-out provisions on expropriation, thereby extending protection to investors against measures such as the imposition of a top-up tax or the withdrawal of tax incentives under the expropriation framework. In this context, the GloBE Rules might be construed as a form of indirect expropriation, since they impose additional tax liabilities on investors and could adversely affect the value of their investments. Consequently, investors may, in principle, invoke the expropriation provisions before investor-State dispute settlement (ISDS) tribunals to contest the legality of the GMT Rules on the grounds of unlawful expropriation.

A tax measure is generally not regarded as constituting indirect expropriation where it represents a bona fide exercise of general taxation powers. While arbitral tribunals in subsequent ISDS cases have reaffirmed this principle, such recognition has not necessarily clarified the criteria for determining when a tax measure amounts to

²²⁷ UNCTAD, *International Investment Agreements and Their Implications for Tax Measures: What Tax Policymakers Need to Know – A Guide Based on UNCTAD’s Investment Policy Framework for Sustainable Development* (United Nations, New York and Geneva 2021), PP.30-37.

indirect expropriation. The evaluation continues to hinge on the specific factual circumstances and the conduct of the State in each case. Notably, when a tax reform arises from an internationally negotiated framework, such as the GMT Rules, it becomes particularly challenging for investors to demonstrate that the measure was adopted in bad faith (*mala fide*).

7.2.4 Bona fide application of tax carve-outs

Beyond the context of indirect expropriation, the bona fide general taxation principle has also been invoked in disputes concerning the application of tax carve-outs under Regional Trade Agreements (RTAs). Case law indicates that, for such a carve-out to be operative, the State's actions must reflect a legitimate and good-faith exercise of its taxing authority, rather than an attempt to conceal or justify conduct of a manifestly wrongful or abusive nature.

Accordingly, where a state's conduct is deemed to constitute a mala fide taxation measure, investors remain protected under the obligations contained in Regional Trade Agreements (RTAs). In such circumstances, Investor-State Dispute Settlement (ISDS) tribunals may assert jurisdiction over tax-related claims alleging breaches not only of the indirect expropriation provision

(with the exception of cases under the USMCA), but also of other substantive protections such as Fair and Equitable Treatment (FET), National Treatment (NT), and Most-Favoured-Nation (MFN) obligations—even where these are not expressly reinstated through a claw-back clause within the RTA's tax carve-out.

In this context, arbitral tribunals may not summarily dismiss claims alleging that the GMT Rules adversely affect tax incentives and investment if such claims are grounded in the assertion that the measure does not constitute bona fide taxation. Nevertheless, it would likely be challenging for investors to demonstrate that a state's decision to implement a minimum tax or to modify or withdraw tax incentives—either directly or indirectly in response to the GMT framework—amounts to a mala fide fiscal measure or breaches obligations under an RTA. This difficulty arises because the GMT Rules prescribe a globally endorsed minimum effective tax rate of 15 per cent, making it problematic to characterize their application as an excessive or confiscatory act that deprives investors of the use or value of their property. Furthermore, as the GMT initiative is designed to mitigate harmful tax competition and counter profit shifting to low- or no-tax jurisdictions, these objectives reinforce the argument that

the Rules represent an equitable and legitimate exercise of taxing authority, consistent with the principle of bona fide general taxation.

Conversely, the GMT Rules have been criticized as inequitable, affecting not only investors but also certain States. Critics argue that the Rules extend beyond their intended objective, and in practice, may fail to achieve equitable or effective taxation in some jurisdictions.²²⁸ Moreover, the GMT framework has the potential to erode the value of most tax incentives, including those designed to promote environmental sustainability or mitigate the effects of economic crises. Such outcomes could, in specific contexts, be regarded as disproportionate interferences with legitimate fiscal policy objectives.

Ultimately, the actual impact of the GMT Rules on individual investors must be assessed on a case-by-case basis. There may be exceptional circumstances in which a state's conduct—such as granting or guaranteeing a tax incentive and subsequently entering into an international agreement that effectively nullifies it—could be deemed egregious, thereby amounting to a breach of its obligations under an RTA. However, even if investors attempt to

²²⁸ Ana Paula Dourado, 'Pillar Two Model Rules: Inequalities Raised by the GloBE Rules, the Scope, and Carve-Outs' (2022) 50(4) *Intertax* 282–285.

challenge the GMT framework and its implications for tax incentives on the grounds of RTA violations, the response of arbitral tribunals remains uncertain and is likely to hinge on detailed factual and contextual examination. Nonetheless, challenges to the implementation of the IIR, QDMTT, or UTPR are unlikely to prevail, given that these mechanisms form integral components of a multilateral consensus reflected in the international tax reform architecture.²²⁹

7.2.5 Remedies available to investors in RTAs

The GMT Rules prescribe a clear hierarchy governing the application of their charging mechanisms. Under this framework, where a top-up tax is due, the jurisdiction in which the low-taxed income arises has the primary right to impose the tax through a Qualified Domestic Minimum Top-up Tax (QDMTT). Should that jurisdiction fail to exercise this right, the top-up tax may instead be levied under the Income Inclusion Rule (IIR) by the jurisdiction of the Ultimate Parent Entity (UPE) or an intermediate parent. In the absence of both the QDMTT and the IIR, the Undertaxed Payments Rule (UTPR) permits another jurisdiction—where a constituent entity of the same

²²⁹ United Nations Conference on Trade and Development (UNCTAD), *The Global Minimum Tax and Investment Treaties: Exploring Policy Options* (Issue 4, November 2023).

multinational group is resident—to apply an adjustment. Consequently, the adverse impact of the GMT Rules on a given investment may stem from three possible sources: the host jurisdiction through the QDMTT, the UPE’s jurisdiction (or that of an intermediate parent) through the IIR, or a third jurisdiction applying the UTPR.

The first scenario—namely, the application of a Qualified Domestic Minimum Top-up Tax (QDMTT)—may fall within the jurisdiction of investor–State dispute settlement (ISDS) provisions. In this context, the host State, within whose territory the investor has established an investment, could be alleged to have breached an obligation under a Regional Trade Agreement (RTA) by imposing the QDMTT. Under such circumstances, the investor would generally be entitled to submit a claim to arbitration pursuant to the relevant treaty. Here, the “investment” may be defined as the investor’s participation, ownership, or control in a constituent entity with an effective tax rate (ETR) below the 15 per cent threshold, and the “investor” would correspond to the owner or shareholder—such as the ultimate parent entity (UPE). Accordingly, an investor might challenge the imposition of the QDMTT on grounds of an alleged violation of investment protections under RTAs. Similarly, claims may arise where the host State

directly withdraws previously granted tax incentives upon which the investor relied when making the investment, thereby frustrating legitimate expectations of regulatory stability. In such instances, it could be contended that the State's actions do not constitute bona fide taxation measures, but instead amount to unlawful indirect expropriation and/or breaches of fair and equitable treatment (FET), national treatment (NT), or most-favoured-nation (MFN) standards.

The second and third scenarios—concerning the application of the Income Inclusion Rule (IIR) and the Undertaxed Profits Rule (UTPR)—may likewise fall within the scope of investor-State dispute settlement (ISDS) mechanisms. However, in such instances, the identity of the host State alleged to have caused the harm, as well as the corresponding investor and the protected investment, would differ from those in the QDMTT context. Moreover, these cases would not concern the withdrawal or impairment of incentives granted within the low-tax jurisdiction (the host State in the first scenario), but rather the imposition of an additional top-up tax by the jurisdiction of the ultimate parent entity (UPE) or by another jurisdiction applying the UTPR.

In the second scenario—where no Qualified Domestic Minimum Top-up Tax (QDMTT) is imposed and the top-up liability arises under the Income Inclusion Rule (IIR)—the relevant investor is the owner or shareholder of the Ultimate Parent Entity (UPE), the protected investment is the UPE itself, and the host State responsible for the alleged harm is the jurisdiction in which the UPE is resident. Consequently, an investor could seek to challenge the imposition of the top-up tax by the UPE jurisdiction under the investment protection provisions of Regional Trade Agreements (RTAs). Although the tax obligation originates from the low-taxed income of a constituent entity situated in another jurisdiction, the IIR requires the UPE jurisdiction to collect the top-up tax. Accordingly, the UPE jurisdiction's application of the IIR could arguably constitute conduct detrimental to the investor's interest in the UPE.

The third scenario relates to the application of the Undertaxed Payments Rule (UTPR), in which the host State is the jurisdiction implementing the UTPR. In this context, the protected investment consists of the investor's participation, ownership, or control over the constituent entity affected by the rule, while the investor is typically the owner of that entity—such as the Ultimate Parent

Entity (UPE). Consequently, the host State's decision to apply the UTPR could be regarded as an act adversely affecting the investor's interest in the constituent entity situated within its territory, thereby potentially giving rise to an investor–State dispute settlement (ISDS) claim.²³⁰

8 The impact of Global Minimum Tax on Egypt's Tax System

8.1 Introductory remarks

The adoption of OECD Pillar One and Pillar Two in Egypt presents both opportunities and constraints for the national tax framework. Positively, it could facilitate the modernization of Egypt's tax legislation, ensuring greater alignment with international standards and reinforcing principles of transparency and equity. Conversely, the reforms may impose heavier administrative and compliance obligations on both tax authorities and corporations, particularly in relation to the enforcement of new regulations and expanded reporting duties.

The introduction of Pillar One and Pillar Two also raises significant implications for Egypt's network of double tax treaties. While the core purposes of these treaties—

²³⁰ Ruth Wamuyu, Belisa Ferreira Liotti and Jeffrey Owens, Challenges at the Intersection Between Investment Provisions in Regional Trade Agreements and Implementation of the GloBE Rules under Pillar Two (UNCTAD Transnational Corporations Journal, 30(1), 2023) ch. 1.

namely, the elimination of double taxation and the mitigation of tax evasion—remain central, revisions may be required to ensure consistency with the OECD’s new framework.²³¹ In response, Egypt has begun renegotiating a number of its treaties to bring them in line with the principles underpinning the reforms, signalling a proactive commitment to international tax coordination.²³² Furthermore, the government has established a specialized task force to oversee the transition process, thereby facilitating an orderly integration of the new global tax rules into its domestic system.²³³

Egypt’s adoption of the OECD Pillar One and Pillar Two frameworks presents both a challenge and an opportunity to reshape its tax system in line with international standards. While the reforms require careful implementation, they offer the potential to enhance fiscal stability, strengthen the country’s competitive position in the global economy, and improve perceptions of fairness within the tax regime. Through deliberate policy design

²³¹ OECD, Making Dispute Resolution More Effective – Simplified Peer Review, Egypt (Stage 1): Inclusive Framework on BEPS: Action 14, OECD/G20 Base Erosion and Profit Shifting Project (OECD Publishing 2024) <https://doi.org/10.1787/08921eb5-en> accessed 31 August 2025.

²³² Egyptian Ministry of Finance, Press Release: Egypt Joins OECD Inclusive Framework on BEPS (Ministry of Finance, 2022).

²³³ Tax Department, 'Egypt's Tax System with OECD Pillar One and Two Reforms' (Andersen Egypt, 2025) <https://eg.andersen.com/oecd-pillar-one-two/> accessed 9/7/2025.

and inclusive stakeholder engagement, Egypt could harness these reforms not only to attract greater investment and stimulate economic growth but also to promote greater tax equity, thereby positioning itself as a model for other emerging economies undertaking similar transitions.

8.2 Egypt's Domestic Tax System and Global Minimum Tax

For Egypt, compliance with the 15% global minimum tax under Pillar Two presents considerable challenges, particularly in light of its reliance on tax incentives designed to support key domestic industries, including manufacturing. These incentives, which are central to Egypt's investment and growth strategies, often result in effective tax rates that fall below the OECD threshold. Failure to adopt clear policies to align with Pillar Two could expose Egypt to the risk of revenue losses, as other jurisdictions may impose top-up taxes on profits sourced within its territory.

Manufacturing plays a central role in Egypt's economic structure and is sustained through a range of tax incentives aimed at encouraging investment and advancing industrial development. However, with the implementation of Pillar Two, firms benefitting from such

incentives may nonetheless incur additional tax obligations where their effective tax rate remains below the 15% threshold. This could potentially alter investor perceptions, leading multinational enterprises to reassess their investment strategies in Egypt under the revised global tax framework.

If Egypt fails to adopt clear provisions concerning the Qualified Domestic Minimum Top-Up Tax (QDMTT), the Income Inclusion Rule (IIR), and the Undertaxed Profits Rule (UTPR), it risks significant revenue losses to jurisdictions that have already implemented these mechanisms. In particular, the QDMTT enables a state to levy additional taxes necessary to raise a multinational corporation's effective tax rate to the 15% minimum threshold. In the absence of such measures, foreign jurisdictions may rely on the IIR or UTPR to collect top-up taxes on income generated within Egypt—revenues that would otherwise accrue domestically. Consequently, Egypt's fiscal position could be weakened if these instruments are not effectively integrated into its tax framework, especially with regard to foreign enterprises operating in its territory.

The integration of these rules into Egypt's tax framework is expected to generate both opportunities and constraints.

On the positive side, the adoption of a global minimum tax rate could enhance government revenues by curbing base erosion and profit-shifting practices. Conversely, the implementation process will demand substantial reforms to Egypt's tax system, including the establishment of robust mechanisms for calculating and administering top-up taxes, as well as the reconfiguration of existing tax incentives to ensure consistency with emerging international standards.²³⁴

8.3 Implementing Global Minimum Tax in Egypt

Regarding of how to transpose GMT into domestic law, it could be said that under the global consensus, Egypt is not legally obliged to implement Pillar Two. Nevertheless, should it decide to proceed, the most effective approach would be to integrate the model rules into domestic legislation, either by (1) redrafting them with limited modifications tailored to national circumstances, or (2) adopting them through direct reference within local law.²³⁵

The former option is generally more suitable, as it aligns with Egypt's previous practice of adapting OECD

²³⁴ Tax Department, 'OECD's Global Tax Impact on Egypt and the Middle East' (Andersen Egypt, 2025) <https://eg.andersen.com/oecd-global-tax-impact/> accessed 9/7/2025

²³⁵ African Tax Administration Forum (ATAF), ATAF Suggested Approaches to Drafting Domestic Minimum Top-Up Tax Legislation (ATAF 2023) <https://ataftax.org/wpcontent/uploads/2025/07/ATAF-Suggested-approach-2023-Low-res.pdf> accessed 4 October 2025.

recommendations into its legal framework. By contrast, the latter method establishes only the legislative framework necessary to accommodate the OECD provisions, granting them effect through incorporation by reference.²³⁶

Considering the potential overlap between the Global Minimum Tax (GMT) provisions and Egypt's general corporate tax framework, it would be most practical to situate the GMT rules within the Income Tax Law, but in a distinct section to ensure their relative autonomy. A further refinement would be to codify only the core provisions within the primary legislation, while delegating more technical aspects to secondary regulations. This method would mirror the treatment of existing foreign affiliate rules and would offer two key benefits. First, it would prevent the Income Tax Law from becoming overly burdensome or excessively detailed ("weight control"). Second, it would allow greater flexibility ("agility"), as subsequent OECD commentaries or updates could be integrated more efficiently through amendments to the regulations by the executive branch, avoiding the more protracted parliamentary process.

²³⁶ New Zealand, Inland Revenue, OECD Pillar Two: GloBE Rules for New Zealand, An Officials' Issues Paper (Inland Revenue, May 2022)

Translating and adapting the model rules requires not only a grasp of their underlying objectives and rationale but also their articulation in terminology consistent with Egyptian tax law. In pursuing this, Egypt could adopt one of several approaches—ranging from a more flexible, “liberal” interpretation, through a more closely aligned, “respectful” rendition, to a streamlined, “simplified” version designed for practical application.²³⁷

The United Kingdom has adopted what may be considered the most liberal approach. Its draft legislation sought to reflect the substance of the GMT Rules while modifying their structure and language to enhance clarity and accessibility for users. This approach departs from the GMT Rules both in terminology and in computational procedures. For instance, the draft law designates the Global Minimum Tax as a “multinational top-up tax” and applies the Income Inclusion Rule (IIR) to the low-taxed profits of what it defines as a “responsible member.”²³⁸

The European Union directive takes a more deferential approach to the OECD model rules by largely adopting both their terminology and substance, though it introduces

²³⁷ Jinyan Li, ‘Introducing a Global Minimum Tax (Pillar Two) in Canada: Some Knowns and Unknowns’ (2022) 70(4) Canadian Tax Journal 1167.

²³⁸ United Kingdom, HM Treasury and HM Revenue & Customs, OECD Pillar 2 Consultation on Implementation: Summary of Responses (HM Treasury, July 2022) para 1.21.

a restructured format. For instance, the directive places definitions at the outset rather than dispersing them throughout. It also makes several substantive modifications. Article 4²³⁹ extends the scope of application to include purely domestic groups and adjusts the Income Inclusion Rule (IIR) so that an ultimate parent entity (UPE) situated in a low-tax jurisdiction is subject to the top-up tax not only on its own low-taxed profits but also on those of all constituent entities (CEs) established in the same member state. Moreover, the directive diverges in terminology by omitting the word “minimum” from the expression “domestic minimum top-up tax” that appears in the GMT rules.²⁴⁰

South Korea’s approach to implementing Pillar Two is notably straightforward. Its legislation incorporates both the IIR and UTPR but simplifies the framework by retaining only the fundamental provisions, while delegating much of the technical detail to be addressed later through presidential decrees.

Substantive departures from the GMT rules are generally expected to be minimal. For instance, any translation or

²³⁹ Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union [2022] OJ L328/1.

²⁴⁰ Ana Paula Dourado, ‘Pillar Two from the Perspective of the European Union’ [2022] 5 BTR 573.

adaptation of provisions concerning the scope of application, the calculation of the effective tax rate (ETR), and the determination of top-up tax will most likely be stylistic in nature. Making substantive changes could jeopardize the recognition of Egypt's IIR or UTPR as "qualified" under the global framework. Likewise, Egypt's ability to alter the charging mechanism for the IIR appears to be highly constrained by the model rules.²⁴¹

Substantive adaptations of the model rules are generally expected to remain minimal. In practice, any Egyptian adjustments to provisions governing the scope, effective tax rate (ETR) calculation, or top-up tax are likely to be largely stylistic. More significant alterations could jeopardize the recognition of Egypt's IIR or UTPR as "qualified" under international standards. Likewise, Egypt has very limited scope to alter the IIR charging mechanism, which is tightly prescribed by the model rules.

Should Egypt choose to implement Pillar Two, the adoption of a Qualified Domestic Minimum Top-Up Tax (QDMTT) would be advisable. This would enable Egypt to safeguard its own taxing rights by ensuring that any additional revenue arising from undertaxed profits is

²⁴¹ Jinyan Li, 'Introducing a Global Minimum Tax (Pillar Two) in Canada: Some Knowns and Unknowns' (2022) 70(4) Canadian Tax Journal 1167.

collected domestically, rather than being transferred to foreign jurisdictions under the Income Inclusion Rule (IIR) or the Undertaxed Payments Rule (UTPR).²⁴²

8.4 Implementing a Domestic Minimum Top-Up Tax Regime in African Jurisdictions

If an African jurisdiction opts to implement a Domestic Minimum Top-Up Tax (DMTT), it must carefully design the regime and determine the degree to which it aligns with the Income Inclusion Rule (IIR). This consideration is crucial for two primary reasons. First, if the DMTT is not sufficiently consistent with the IIR to be recognised as a “Qualified DMTT” under the GMT Framework’s peer review process, the tax levied under it may not be treated as a deductible item in calculating the jurisdictional top-up tax for IIR purposes. Instead, it would be treated as a credit when determining the effective tax rate, leaving the excess profits still subject to top-up taxation under the IIR or the Undertaxed Profits Rule (UTPR)—potentially payable in the jurisdiction of the Ultimate Parent Entity (UPE). Such an outcome could diminish the intended benefits of the DMTT and negatively affect foreign direct investment inflows.

²⁴² Jinyan Li, Angelo Nikolakakis and Jean-Pierre Vidal, ‘Canadian QDMTT Challenges’ (2023) 51 Intertax 9.

Secondly, insufficient alignment between the DMTT and the IIR could lead to inefficiencies in tax collection. Specifically, the DMTT might either fail to capture the full amount of the top-up tax within the African jurisdiction or, conversely, impose a higher tax burden than intended. Both outcomes could undermine the predictability and competitiveness of the tax regime, thereby discouraging foreign direct investment.

In implementing a DMTT, it is essential for African countries to engage in inter-agency coordination, particularly with government bodies responsible for tax incentives. These agencies may lack a comprehensive understanding of the potential implications of the DMTT—such as the risk that another jurisdiction could claim taxing rights over income benefiting from local incentives. Providing such context can facilitate smoother navigation of the legislative process. Moreover, maintaining transparency and fostering public trust would benefit from proactive communication with key stakeholders, including the business community, to ensure broad understanding and support for the introduction of the DMTT.

To support African countries seeking to introduce a DMTT, the African Tax Administration Forum (ATAF) has prepared the *Suggested Approaches to Drafting Domestic*

Minimum Top-Up Tax Legislation. This guidance outlines three alternative legislative models, allowing each jurisdiction to select the approach most suited to its legal and administrative framework. While the adoption of a single model is sufficient, ATAF presents all three options in the subsequent chapters to facilitate informed decision-making.

The first approach involves incorporating only the essential and foundational provisions required to establish a DMTT within the primary legislation passed through the parliamentary process, while delegating the detailed operational and technical rules to supplementary regulations issued by the relevant ministerial authority. These regulations include the computation mechanisms and key definitions for the Domestic Minimum Top-Up Tax, largely replicating or closely reflecting the OECD GloBE rules to maintain a high degree of consistency. The principal advantage of this model lies in its legislative efficiency—by keeping the primary law concise and transferring much of the technical detail to secondary legislation, the parliamentary process may be simplified, and administrative flexibility enhanced.

The second approach is a “reference model”, which would enact a DMTT by incorporating the GMT rules by

reference, with only the necessary modifications to make it appropriate to the DMTT context. An advantage of this approach is that it ensures the maximum consistency with the GMT rules and makes the rules that are required to be issued by the local country very short.

The third approach adopts a *comprehensive model* for enacting a DMTT, in which all provisions based on the GMT rules are fully incorporated into the primary legislation passed through the parliamentary process. The main advantage of this approach is that it grants parliament the highest degree of oversight and control over the detailed design and implementation of the DMTT.²⁴³

8.5 Toward Effective QDMTT Implementation in Egypt: A Strategic Roadmap

Within the MENA and African regions, several states are moving towards the adoption of Pillar Two beginning in 2025. In the Gulf, Kuwait, the United Arab Emirates, Qatar, Bahrain, and Oman have either legislated or formally announced their intention to introduce the framework. Similarly, across Africa, jurisdictions such as

²⁴³ African Tax Administration Forum (ATAF), ATAF Suggested Approaches to Drafting Domestic Minimum Top-Up Tax Legislation (ATAF 2023) <https://ataftax.org/wpcontent/uploads/2025/07/ATAF-Suggested-approach-2023-Low-res.pdf> accessed 4 October 2025.

South Africa, Nigeria, and Kenya are in the process of developing regulatory mechanisms, including Qualified Domestic Minimum Top-up Tax (QDMTT) provisions, to bring their tax systems in line with the global minimum tax rules.²⁴⁴

Egypt, by contrast, is still at an initial stage and has not yet enacted domestic legislation or executive regulations to secure top-up tax rights before they are claimed by ultimate parent jurisdictions.²⁴⁵ This legislative gap exposes Egypt to potential revenue losses and weakens its ability to regulate the taxation of multinational enterprises operating within its borders. The proposed roadmap therefore identifies the principal measures Egypt should pursue to progress from the stage of legislative design to the effective implementation of a Qualified Domestic Minimum Top-up Tax (QDMTT).

As an initial measure, Egypt should enact legislation that explicitly identifies the Multinational Enterprise (MNE) Groups within scope, establishes a statutory Minimum

²⁴⁴ OECD, Minimum Tax Implementation Handbook (Pillar Two), OECD/G20 Base Erosion and Profit Shifting Project (OECD 2023) <https://www.oecd.org/tax/beps/minimum-tax-implementation-handbook-pillar-two.pdf>, accessed 22 February 2025.

²⁴⁵ WTS Global, Pillar Two – Country-by-Country Implementation Status (August 2025) <https://wts.com/wts.com/hot-topics/pillar-two/implementation-status/wtsglobal-pillar-two-country-by-country-implementation.pdf> accessed 4 October 2025

Effective Tax Rate (ETR) of 15 percent, and designates a definitive commencement date (for example, 1 January 2026).²⁴⁶ Such legislation should further clarify that the rules apply to MNE groups with consolidated annual revenues above EUR 750 million. This foundational reform would demonstrate Egypt's commitment to international tax standards while simultaneously preserving its primary taxing rights, thereby preventing their transfer under instruments such as the Income Inclusion Rule (IIR) or the Undertaxed Profits Rule (UTPR).

Following the enactment of primary legislation, the issuance of comprehensive executive regulations will be critical to ensure effective implementation. Such regulations should address procedural and technical aspects, including registration requirements, filing deadlines, methodologies for calculating the Effective Tax Rate (ETR) and top-up tax, standards for documentation, rules governing currency conversion, and mechanisms for audit and enforcement. These regulatory provisions

²⁴⁶ Committee of Experts on International Cooperation in Tax Matters, Interaction with Investor and Other Tax Regimes: Tax Incentives and the Global Minimum Tax in the Extractive Industries (Proposed Supplement to Chapter 5 of the Handbook on Taxation of the Extractive Industries) E/C.18/2024/CRP.44, 1 October 2024 <https://financing.desa.un.org/sites/default/files/2024-10/CRP%2044%20Tax%20Incentives%20and%20Pillar%202.pdf> accessed 4 October 2025.

function as the practical link between legislative intent and application, providing clarity to both taxpayers and tax administrators while mitigating compliance and administrative burdens.

The regulatory framework must clearly delineate the scope of application. In particular, it should encompass MNE groups with consolidated revenues exceeding EUR 750 million in at least two of the preceding four fiscal years, as well as Egyptian subsidiaries, branches, or joint ventures in which such groups hold a direct or indirect ownership stake of 50 percent or more. The scope should further extend to foreign enterprises operating in Egypt through a permanent establishment (PE). At the same time, explicit exemptions should be provided for governmental bodies, non-profit organizations, pension funds, recognized investment vehicles, and entities engaged in critical public-interest logistics functions.

Compliance procedures should remain clear and practical. Entities falling within the scope of the rules should be obligated to register with the tax authority within a period of 6 to 9 months following the enactment of the legislation. Filing requirements should mandate the submission of tax returns and corresponding top-up payments within 6 to 15 months after the close of the fiscal year. To ensure

effective enforcement, a system of proportionate penalties should be established, including fines of up to twice the amount of unpaid tax, thereby strengthening incentives for accurate and timely compliance.

To align more closely with the requirements of Pillar Two, Egypt should strengthen its transfer pricing regime. This would involve codifying the arm's length principle within domestic legislation, obligating taxpayers to prepare both local files and master files, and mandating the annual disclosure of related-party transactions. Furthermore, the Egyptian Tax Authority should be equipped with advanced risk-assessment mechanisms and benefit from OECD-endorsed documentation standards to ensure consistency and effectiveness in enforcement.

The legislative framework should incorporate effective dispute resolution mechanisms. This could be achieved through the establishment of national tax grievance committees, ensuring access to Mutual Agreement Procedures (MAP) provided under existing double tax treaties, and implementing transparent appeal processes that safeguard confidentiality while setting clear timelines for resolution.

Successful implementation will depend on coordinated efforts among government authorities, the private sector, and tax professionals. Capacity-building initiatives, including specialized training for ETA personnel on BEPS standards and international accounting frameworks (e.g., IFRS), are essential. Moreover, engaging businesses and practitioners in pilot compliance programs, coupled with awareness-raising campaigns, would help ensure preparedness across the entire tax ecosystem.

In the absence of a domestic QDMTT, Egypt stands to forfeit taxing rights to the home jurisdictions of multinational enterprises. Establishing a comprehensive QDMTT would safeguard Egypt's primary claim over low-taxed profits arising within its territory. Such a measure would not only protect domestic revenue but also reinforce fiscal sovereignty and promote equitable taxation of multinational corporations.

The introduction of a QDMTT should form part of a wider program of tax system modernization rather than being implemented in isolation. This broader agenda would entail reassessing corporate tax rates, revising Controlled Foreign Company (CFC) regulations, extending withholding tax mechanisms, advancing the digitalization of tax reporting, and reinforcing both audit processes and

appeals procedures. Taken together, these reforms would align Egypt with international best practices and contribute to building a tax system that is resilient and future-oriented.

Egypt finds itself at a critical juncture in the evolving landscape of international tax reform. A delay in legislative or administrative measures could place the country at a disadvantage relative to global developments. The timely adoption of a QDMTT, accompanied by comprehensive and enforceable executive regulations, would enable Egypt to secure its taxing rights, strengthen its appeal to internationally compliant investors, and position itself as a frontrunner in regional tax modernization.

9 Conclusions, findings and policy recommendations

9.1 Findings

The findings of this research reveal several pressing challenges and implications arising from the OECD's Global Minimum Tax (GMT) framework.

- ***Sovereignty and Policy Flexibility***

The GMT framework poses significant challenges to national sovereignty by obliging low-tax jurisdictions to undertake major legislative reforms. These requirements often constrain the capacity of states to employ tax policies as instruments of economic development. Although the framework aspires to promote a fairer and more uniform international tax order, many countries struggle to reconcile global standards with the need to retain domestic policy flexibility. For economies dependent on tax incentives to attract investment, these new constraints may undermine established development strategies. Furthermore, alignment with existing international legal obligations, especially bilateral tax treaties, adds an additional layer of complexity, as treaty provisions may conflict with the operation of the GMT.

- ***Regulatory and Administrative Complexity***

Achieving cross-border tax harmonization entails considerable regulatory and administrative burdens. Developing and resource-constrained nations face acute difficulties due to limited institutional capacity, insufficient technical expertise, and inadequate enforcement infrastructure. Divergences in enforcement mechanisms and information-sharing standards exacerbate these difficulties, producing uneven implementation across jurisdictions. Strengthened international coordination (through agreements emphasizing robust enforcement and efficient data exchange) is essential to ensure effective global compliance. Without such cooperation, adherence to the GMT framework will remain fragmented and inconsistent.

- ***Economic and Investment Implications***

The reform is expected to elevate the costs of cross-border operations, both through heightened compliance burdens for multinational enterprises (MNEs) and through disincentives to foreign investment. The resulting increase in tax liabilities will affect not only low-tax jurisdictions but also high-tax economies that may need to curtail fiscal incentives. Collectively, these developments risk dampening global economic activity by reducing

investment flows, corporate spending, and employment opportunities, with adverse effects for workers and consumers alike.

- ***Challenges for Developing Countries***

Developing economies, which often depend on preferential tax regimes to attract foreign direct investment (FDI), face particular vulnerability under the GMT framework. The erosion of low-tax advantages threatens their competitiveness, constraining investment inflows and deepening structural inequalities between developed and developing states. Without tailored provisions—such as revenue-sharing mechanisms or targeted technical assistance—the GMT risks amplifying global disparities. Many developing countries' supports for the initiative may reflect economic dependence or the absence of viable alternatives rather than genuine policy alignment.

- ***Corporate Tax Strategy and Avoidance Risks***

MNEs are likely to adapt by exploiting residual loopholes within the GMT framework, potentially undermining its objective of curbing tax avoidance. Effective implementation will therefore require robust anti-avoidance mechanisms, including enhanced transparency measures,

stricter reporting standards, and meaningful penalties for non-compliance. Continuous monitoring and periodic revisions of the framework will be necessary to address emerging avoidance practices and ensure sustained effectiveness.

- ***Inconsistent Implementation and Legal Uncertainty***

Divergent national approaches to implementing the GMT highlight the need for greater standardization. While domestic adaptations are unavoidable, the absence of a coherent global framework risks producing inconsistencies and legal disputes. The development of model laws or guiding principles could promote harmonization while preserving the flexibility needed to accommodate specific national contexts.

- ***Unequal Revenue Distribution***

Projected fiscal gains from the GMT are expected to accrue disproportionately to developed and high-income countries, as most MNEs are headquartered in these jurisdictions. Consequently, developing and low-income economies may realize only limited revenue benefits, reinforcing pre-existing global fiscal imbalances.

- ***Foreign Direct Investment Disincentives***

By effectively raising the cost of cross-border investment, the GMT framework is likely to deter FDI. MNEs, particularly smaller firms, are highly responsive to tax burdens when making investment decisions. Under the new regime, the inability to utilize low-tax jurisdictions to minimize global tax exposure may discourage international capital mobility. This, in turn, could constrain investment-led growth, particularly in developing economies, with adverse implications for employment and productivity.

- ***Investor-State Dispute Settlement Considerations***

It is improbable that investors could successfully challenge the GMT framework under investment treaties based on claims of unfair or inequitable treatment. Demonstrating that the adoption or withdrawal of tax incentives constitutes a mala fide measure would be difficult, given that such reforms reflect legitimate exercises of fiscal authority within an internationally negotiated framework. Even if investors experience adverse consequences, these are unlikely to meet the threshold of gross misconduct or manifest injustice required to establish a breach.

- ***Expropriation and Fiscal Legitimacy***

Tax reforms arising from the GMT framework generally constitute bona fide exercises of state taxation powers and thus do not amount to indirect expropriation. Because the GMT is a product of multilateral negotiation designed to counter harmful tax competition and profit shifting, it reinforces the presumption of good faith and legitimacy in states' exercise of their fiscal authority.

- ***Implications for Egypt***

Egypt remains in the preliminary phase of engagement with the GMT, having yet to enact domestic legislation or executive regulations to assert its right to collect top-up taxes before they are claimed by parent jurisdictions. This legislative gap exposes Egypt to potential revenue leakage and limits its capacity to tax multinational activity effectively. To safeguard its fiscal interests, Egypt should prioritize the introduction of a Qualified Domestic Minimum Top-Up Tax (QDMTT), ensuring that additional revenue from undertaxed profits is collected domestically rather than abroad. Timely adoption of a QDMTT (supported by detailed and enforceable implementing regulations) would enhance Egypt's fiscal sovereignty, strengthen its attractiveness to compliant investors, and position the country as a regional leader in modern tax governance.

9.2 Conclusion

The OECD's Global Minimum Tax represents a pivotal advancement in the global effort to counteract tax avoidance and profit shifting by multinational enterprises in an increasingly integrated world economy. By establishing a uniform minimum threshold for corporate taxation, the framework aims to reduce harmful tax competition among jurisdictions and promote a fairer and more stable international tax order.

However, the long-term success of this initiative depends on achieving a delicate equilibrium between the pursuit of global tax coherence and the preservation of national fiscal sovereignty. Effective implementation requires navigating complex legal, regulatory, and administrative hurdles that vary significantly across jurisdictions with differing levels of institutional and economic development.

For developing economies, these challenges are particularly pronounced due to limited administrative capacity, reliance on tax incentives to attract foreign investment, and a diminished ability to secure a proportionate share of global tax revenues. Consequently, the equitable realization of the Global Minimum Tax

demands context-sensitive and well-calibrated policy measures that ensure fairness, protect national interests, and foster inclusive participation in the evolving international tax landscape.

9.3 Policy recommendations

Establish Standardized Legal Frameworks: To ensure consistency and minimize regulatory fragmentation, it is essential to develop and adopt standardized legal frameworks across jurisdictions. These frameworks should specify clear methodologies for calculating effective tax rates, provide mechanisms for dispute resolution, and outline how domestic tax systems will align with global minimum tax standards. A harmonized legal structure will reduce ambiguity, strengthen compliance, and promote fairness in the global tax environment.

Safeguard the Interests of Developing Economies: Targeted protective measures should be integrated into the global minimum tax regime to address the unique vulnerabilities of developing countries. Transitional implementation periods, enhanced revenue allocation to source jurisdictions, and exemptions for strategic or emerging industries can help mitigate potential adverse effects such as declining foreign direct investment (FDI) and administrative strain.

Enhance Financial and Technical Support for Developing Countries: Many developing economies lack the institutional capacity and expertise required for effective implementation of the Global Minimum Tax. Accordingly, developed nations and international institutions should provide financial assistance and technical cooperation. Support should focus on modernizing tax administration, training tax officials, upgrading digital infrastructure, and strengthening governance frameworks to ensure equitable participation in the new international tax order.

Implement a Qualified Domestic Minimum Top-Up Tax (QDMTT) in Egypt: Egypt should prioritize the enactment of a Qualified Domestic Minimum Top-Up Tax to retain taxing rights over undertaxed profits generated within its territory. The timely adoption of a QDMTT—supported by comprehensive and enforceable implementing regulations—would safeguard Egypt’s fiscal autonomy, bolster investor confidence, and position the country as a regional frontrunner in tax reform and compliance with global standards.

Promote a Fairer Allocation of Tax Revenues: A more equitable distribution of global tax revenues is essential for sustainable economic development. The OECD framework

should allocate a greater share of tax proceeds to source countries—those where production, labour, and consumption take place—rather than solely to jurisdictions where multinational corporations are headquartered. Such a shift would enable developing economies to capture a fairer portion of global tax income, thereby enhancing their capacity to finance infrastructure and public services.

Diversify Investment Incentives Beyond Tax Measures:

Developing countries should broaden their investment attraction strategies by emphasizing non-tax factors such as infrastructure quality, governance efficiency, and business climate. Investments in transportation, energy, and digital connectivity can enhance competitiveness and offset potential declines in FDI resulting from the Global Minimum Tax. By improving the overall investment environment, these countries can sustain economic growth while reducing dependency on preferential tax regimes.

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