

# Kluwer International Tax Blog

## The Contents of Intertax, Volume 51, Issue 02, 2023

Ana Paula Dourado (General Editor of Intertax) · Monday, January 23rd, 2023

We are happy to inform you that the latest issue of the journal is now available and includes the following contributions:

### *Victoria Perry, Pillar 2, Tax Competition, and Low Income Sub-Saharan African Countries*

This article explores the implications of Pillar 2 of the G20/OECD Inclusive Framework Blueprint for global tax reform on tax incentives and tax competition in the countries of Sub-Saharan Africa (SSA). It addresses both the impact of the minimum effective tax developed under the Global Anti-Base Erosion (GloBE) model rules, and of the Subject to Tax Rule (STTR) for limited modification of existing bi-lateral tax treaties between SSA countries and various treaty partners. In the GloBE context the article examines the interaction of the substance-based income exclusion (SBIE), the qualified domestic minimum tax (DMT) and existing domestic turnover based minimum taxes in the region, and the proposed qualified refundable tax credit (QRTC) rules. In regard to the STTR it looks at the incentives, or lack thereof, for treaty renegotiation in the existing context of multi-national tax planning and income stripping. The article concludes that SSA countries should, if Pillar 2 is ultimately implemented by a critical mass of advanced countries, adopt the qualified domestic minimum top up tax (QDMTT), as proposed in the December 2021 promulgation of the detailed GloBE rules. The benefits of other actions, such as the adoption of QRTCs, or treaty renegotiation under the proposed STTR, are more ambiguous. Pillar 2 would introduce important fundamental changes to the international tax architecture, through agreement, at least, that there should be some limits on tax competition and profit shifting. It is, though, a far cry from the 15% minimum tax on corporate profits generally portrayed. The highly complex exceptions and structure explored in the article illustrate both the technical and political difficulties involved in attempting to stem the erosion of the global corporate profits tax.

### *Heydon Wardell-Burrus, Pillar Two and Developing Countries: The STTR and GloBE Implementation*

This article argues that the Subject to Tax Rule (STTR), which was noted as an ‘integral part of achieving consensus on Pillar Two for developing countries’, is unlikely to raise significant revenue for low-income countries. This is because it is within both the power and interests of another actor (either the developing country’s treaty partner, or the relevant Multinational Enterprise (MNE)) to produce a better outcome for that actor under which the STTR will not apply. In order to retain support for Pillar Two from developing countries, the Inclusive Framework should explore mechanisms to provide tangible benefits to developing countries under

the implementation of the Global Anti-Base Erosion (GloBE) Rules. This article considers three potential options which could be adopted as part of GloBE implementation and which do not require amending the GloBE Rules. These proposals allow developing countries to leverage the GloBE infrastructure (as well as the administrative capacity of revenue authorities in developed states) to improve the integrity of their tax bases as well as to raise additional revenue if they choose to do so.

Eva Eberhartinger & Georg Winkler, *Pillar Two and the Accounting Standards*

Global minimum taxation under Pillar Two establishes a link to financial statements, in particular with regard to the revenue threshold, to the calculation of the effective tax rate (ETR), and to carve-outs. This article discusses in detail these links and possible incentives, adverse effects and opportunities for improvement. It suggests that Pillar Two incentivizes multinational enterprises (MNEs) to prepare their individual and consolidated financial statements for tax purposes by using the discretionary leeway inherent in accounting standards. In particular they may use such discretion to report lower revenues to avoid falling within the scope, to report profits at the lower margin and tax expense at the higher margin to show a sufficiently high ETR and to adapt their financial accounting measurement to keep the top-up tax low by using tangible asset carve-outs based on financial statements. In consequence, the quality of financial reporting and capital allocation may be impaired. In addition, the acceptance of almost all common accounting standards under Pillar Two incentivizes generally accepted accounting principles (GAAP) competition between countries. The authors conclude that connecting Pillar Two to financial statements has adverse effects from both a tax and an accounting perspective. An improvement of existing tax rules to combat tax avoidance, as started with the Base Erosion and Profit Shifting (BEPS) project, seems preferable.

Niels Bammens & Dieter Bettens, *The Potential Impact of Pillar Two on Tax Incentives*

After lengthy negotiations, the OECD proposed its model rules on Global Anti-Base Erosion Rules (GloBE) on 20 December 2021. They impose a minimum tax rate of 15% on large multinational companies wherever they operate. Consequentially, the GloBE rules are intended to render tax incentives ineffective to the extent that they reduce the effective tax rate (ETR) on in-scope entities below 15%. Moreover, tax competition should also level off at 15% as tax incentives would no longer increase the attractiveness of a jurisdiction to the extent that they reduce the ETR below this amount. Nevertheless, several design aspects of Pillar Two risk obstructing those objectives. Most notably, the substance based carve-out excludes routine profit from substantive activities from the scope of the GloBE rules on a formulaic basis. This means that incentives can theoretically be maintained and tax competition can continue for this income. In practice, however, the design of the carve-out entails that it does not distinguish between incentives for substantive income and those for non-substantive income. Moreover, the combination of the substance based carve-out and the qualified domestic minimum top-up tax (QDMTT) could result in a new form of tax competition.

Yvette Lind, *Auditioning for Hollywood: A Comparative Study of Tax Incentives Offered to the Film Industry*

The European film landscape is characterized by a strong presence of Hollywood productions. In 2019, American productions held approximately 70% of the market within the European Union while European productions had 25%. As a response, the EU has introduced differing types of

financial support schemes with the aim of offsetting the imbalance between the American and the European film industries. This article describes and analyses tax incentives offered to the film industry from two main lines of inquiry: (1) a comparative and empirical tax study of twelve jurisdictions (Canada, China, France, Germany, India, Italy, Japan, the Netherlands, Norway, Spain, the United Kingdom, and the United States) in which the design of such tax incentives is investigated, and (2) a conceptual tax policy discussion on how states may design and implement such tax incentives.

*Antonio Tomassini & Marica De Rosa, Uncertainties Hold Back Achievement of OECD Pillar 2 Goals*

The Organization for Economic Cooperation and Development (OECD) Pillar 2 that was designed to levy a minimum tax on multinationals in all of the countries in which they operate still has many areas of uncertainty. These include issues from the more general uncertainties concerning the politics, including the apparent desire not to adopt a multilateral convention for its implementation to the technical ones that revolve around the complexity of the rules for calculating the effective tax rate (ETR) (which also increases compliance costs), with the risk of jeopardizing the Pillar 2 project's objectives of simplicity and uniformity. Moreover, the Biden Administration's unequivocal support for Pillar 2 has not translated into action in the US Congress, and any administrative steps the United States intending to undertake the implementation of Pillar 2 (in lieu of action in Congress) are also not evidenced.

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