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Taxing Digital, What’s Next?

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After the silent collapse of Pillar One earlier this summer, as it now seems, the question as to what’s next seems to be moving up business agendas and political agendas. On an informal meeting of tax practitioners from business and consultancy in Rotterdam, the Netherlands, on 24 September 2024, the author of the current blog was invited to reflect on the topic. The exercise resulted in an exploration of developments, culminating in a call for some renewed thinking on company tax reform by seeking a tax-equilibrium through competition rather than through coordination, since this is how the world seems to be working. Please read further below.

1) Introduction

The manner in which we tax large companies on their investment returns has been a topic that is in the societal spotlight for quite some time now. There is a lot going on, and it is even more than the eye-catching *Apple* State Aid ruling of the Court of Justice of the EU of 10 September 2024, where the Court upheld the 2016 Commission decision that the famous tech company had to repay Ireland a staggering amount of 13 billion euros worth of State Aid provided by the country to the company.[1] After the silent collapse of Pillar One earlier this summer, as it now seems,[2] the question as to what’s next seems to be moving up business agendas and political agendas. To answering this question, this paper explores some of the backgrounds and political and policy considerations that have been driving some of the large-scale developments and winds of change that we see around us in the company tax landscape, in recent years and up to and including today. As a side note the paper briefly assesses why it is precisely those internet companies that have taken center stage in the multinational company tax debate. The explorations culminate in a call for some renewed thinking on company tax reform, that is, by seeking a tax-equilibrium through competition rather than through coordination.

2) A changing landscape

2.1 Transparency, coherence and substance

Our thinking about the taxation of multinational companies has been changing dramatically. For quite a while now, we have concerned ourselves with unfair tax competition and improper tax planning.[3] Initially, matters mainly involved tax havens and letterbox companies. Developments led to the famous Base Erosion and Profit Shifting Project of the G20/OECD, the BEPS project, and its results in 2015 that a large number of countries, including the EU Member States, subsequently transposed into their national company tax systems. Measures that were taken focused on transparency from companies and between tax authorities, tackling tax avoidance and non-taxation due to differences in tax rules in countries, and ensuring that taxation takes place in the geographical location where companies create their commercial value. The three pillars of the

BEPS Project that is: transparency, coherence and substance.

Examples of the now almost classical anti-abuse measures that resulted from the BEPS developments can today be found in the EU Anti-Tax Avoidance Directive, the ATAD, for example, that the EU Member States implemented since 2019.[4] The Netherlands, by the way and the author's home country, has even gone somewhat further and has also unilaterally taken additional measures, for example with the legislation introduced in 2022 tackling non-taxation due to differences between countries in the pricing of transactions within groups.[5] Political pressure on countries to address their unfairly competitive tax systems has been done through international blacklisting exercises.[6] Taxation in the location of value creation has been sought through the strengthening of the at arm's length standard.[7] Within the EU, since September 2023 a proposal is pending to harmonize the at arm's length standard at EU level.[8] Examples of transparency rules are those in the EU Directive on Administrative Cooperation that have been introduced in recent years, the DACs, including those for online platform companies (DAC7) and crypto services (DAC8), and of course the transparency rules on information exchange between tax authorities and reporting obligations for companies (on rulings, DAC3, and involving country by country reporting, CbCR, DAC4).[9] In 2024, rules have also been added requiring companies to be transparent to the public about where the pay their company taxes and how much: public CbCR.[10]

2.2 Not: where to tax and how much to tax

It is important to note that the 2015 anti-BEPS measures do not deal with the almost philosophical question of where, in a geographical sense, companies should pay their company taxes, nor with the question of how much corporation tax should be paid. The BEPS initiative sought its solutions within the existing tax framework. Indeed, the BEPS Project did contain an item on the Digital Economy: Action 1.[11] The general finding in that regard, however, was to not address matters raised by fundamentally changing the tax-architectural make-up of the international tax system.

Some believe that this also explains why the societal and political discussions did not die down after the results of the 2015 BEPS project. In the meanwhile, and on top of this, we started to witness some increasing criticisms as to the forum within which the international policy discussions were – and today still are – conducted, within the context of the OECD that is, in the Inclusive Framework on BEPS. And not, for example, within the context of the United Nations. Many countries, especially developing countries but also the emerging major economies, did not – and do not feel – sufficiently heard within the Inclusive Framework and their interests served.

Although matters were already playing out in the background during the upcoming of the BEPS initiative, pressures increased unabated in the period after the release of the BEPS package in 2015. Things started to focus even more emphatically on internet companies. The reason for this is that internet companies can service markets without physically establishing themselves there, while we divide profits for business taxation purposes to countries on the basis of those locations where they make their investments. That raised some questions. Shouldn't online search engines, social media platforms and online marketplaces, and perhaps all large companies, also pay taxes in the countries where their services and products are marketed? In other words, shouldn't it be the case that companies also pay their company taxes in the countries where these sell their products and services? And shouldn't it be the case that these companies actually are to pay a certain minimum level of taxes?

The discussions led to the launch of the BEPS 2.0 project within the Inclusive Framework in 2019, addressing the challenges of the digitalization of the economy, with its two pillars: Pillar One and Pillar Two.[12] Pillar One is mainly about the 'where' question, whereas Pillar Two is mainly about the 'how much' question. With the global political 'two-pillar agreement' in the autumn of 2021, Pillar One introduced the so-called "Amount A", envisaging an allocation of parts of the profits of the biggest companies in the world to market jurisdictions. Pillar Two introduced the so-called "Global Minimum Tax" introducing a 15% global minimum tax level for big companies and top-up taxation where countries do not adhere to the new standard. Pillar Two has made it to the implementation stage in many countries since a year now, including in the EU and the Netherlands. Pillar One, however, is still awaiting some further concretization. Some say that the Pillar One project has come to a halt this summer. More on that later.

2.3 Unilateral measures and counter measures

In the meantime, a variety of countries aspiring additional tax revenue influxes have tried to tax those foreign tech companies that service their domestic markets without an establishing of a physical presence via various unilateral measures.[13] These initiatives became known as the so-called digital services taxes: sales tax-like levies especially for internet companies and platform companies, which are neither VATs nor profit taxes and therefore do not conflict with, for example, European VAT rules and profit tax rules in international tax treaties. Alternatives explored by various countries and regions include the concept of the so-called digital permanent establishment: an online business presence variant of the traditional fixed permanent establishment. Some well-known examples of countries that have introduced such digital levies at some point in time are Canada, France and India.[14]

A frequently heard notion in support of these initiatives is that the place of the product or service recipient actually also is a geographical source of income. The idea that users of internet services create value for the service providing internet companies became fashionable over time, as these companies collect all kinds of personal data and preferences from their users in return for the online services provided, that is, in order to commercially exploit the data accordingly collected: data mining. From a tax perspective, this then provides the angle for countries to tax such a value creation within their geographic territories. Other areas of concern, of course, involve privacy matters and calls for data protection rules.

Within the EU, in 2018, the European Commission published an EU Directive proposal for an EU-wide harmonized approach for a digital levy, amongst others, as part of the so-called Digital Tax Package.[15] An important component of the EU's ambitions, which I feel is sometimes overlooked, has been that the proceeds from such a digital levy would be added to the EU budget as a new own resource, in the same way as we are now seeing with the EU carbon tax (CBAM) and EU emission trading system.[16] The idea would be to accordingly help co-finance NextGenerationEU, the ambitious EU investment plan that was launched some years ago. The 2018 EU proposal for a European digital levy was withdrawn from the EU agenda around a year later, reportedly because some EU member states were concerned about the impact of such a levy, and its underlying thinking, for their national industries, such as the automotive industry. After all, aren't cars nowadays like mobile tablets – digital interfaces – with a possible consequence of a shift of tax revenue from production region Europe to sales region Asia, for instance, considering the newly devised thinking towards market-oriented taxes?

In the meantime, it proved to remain very difficult to get a proper definition of what exactly the digital economy is that we want to subject to taxation – because is it not the economy as such that is digitizing? – which makes a demarcation very difficult to come by from a tax point of view. To this day nobody really seems to know what those so-called ‘consumer facing businesses’ and ‘automated digital services’ exactly are, that we seek to subject to digital taxation. And thinking things through, shouldn’t it be the case that if a product and service recipient would indeed provide a source of income for the product and service provider that should be taxed at the customer location, shouldn’t such then equivalently apply to the economy as a whole regardless of the respective branch of industry. Wouldn’t we otherwise start tax-discriminating one over the other?

2.4 Two-Pillar Solution, Pillar One comes to a halt

And, of course, there was also political pressure, from the United States for example. The United States suffered from what the country sees as discriminatory digital levies targeted against U.S. tech companies. This is because, of course, the most successful internet companies are predominantly American companies, and taxation in user jurisdictions would imply some significant tax cost increases for these companies, and at best a shift of tax revenues from the United States to foreign jurisdictions, European countries for instance. In practice, matters involving the rise of digital services taxes came to be discussed in terms of a proliferation of such usurious levies.

The United States responded to the digital tax initiatives of these foreign countries that dared to introduce any such digital services taxes against U.S. businesses with retaliatory levies, duties and tariffs, and threats thereof, imposed on the imports of products from these countries. That led to what became known in the press as the ‘tax wars’ in the period 2018-2021.[17] U.S. legislation allows for retaliatory charges against countries that – in American eyes – introduce discriminatory tariffs on U.S. companies.[18] In the United States, we see an active role of the U.S. Trade Representative when it comes to putting some counter-pressure on these kinds of digital levies on the grounds of international free trade rules. Worthy of note, perhaps, is that a look at the case law of the Court of Justice, for example its judgments in the 2020 *Vodafone* and *Tesco* cases in the state aid domain, an area of EU law that deals with discriminatory taxes as well, the Court does not seem to have much juridical difficulties with sector-specific taxes imposed by the EU Member States.[19]

In early 2021, the United States government proposed in the context of the Inclusive Framework to transpose the plans for taxes specifically for tech companies into a less industry-specific alternative. This resulted in a plan for a redistribution of company profits for corporate tax purposes for only the top-100 largest multinationals in the world, as an overlay to the existing system that is: “Amount A” as it has been called. That same year, the plan was politically endorsed, first by the G7 in the summer of 2021, then the G20, and later that year in the autumn of 2021 by almost all jurisdictions that participate in the Inclusive Framework, as part of the two-pillar solution, Pillar One that is, together with that other Pillar, Pillar Two, the 15% global minimum tax system. The two-pillar solution was there.

Part of the Pillar One agreement was the push back of the unilateral measures by countries to the benefit of the U.S., the so-called rollback workstream. Matters were laid down in the global political agreements of 2021 and also in a number of political agreements between the U.S. and those countries that in the meanwhile had taken tax measures unilaterally and which were now running into American countermeasures. However, the path from international political consensus to concretization proved to be unruly in the period thereafter. After various rounds of consultations, releases of discussion papers and some more consultations, the Inclusive Framework finally released a draft multilateral convention on Amount A in October 2023.[20] The convention aims to adapt countries' tax treaty networks with an apparent stroke of the pen to create a new reality of taxation in market jurisdictions. In reality, the treaty has taken on almost monstrously complex proportions.

Since then, things around the multilateral convention on Amount A turned rather quiet. A deadline formulated within the Inclusive Framework to open the convention for signature by the end of June 2024 was not met. The draft convention says that a critical mass of countries that host those in-scope companies to be affected by the new tax measures must ratify the treaty in order for it to enter into force. In effect, this means that nothing will happen as long as the United States does not participate. To get the treaty ratified in the United States, two-thirds of the U.S. Senate must agree to the treaty. It doesn't look like that's going to happen any time soon. There are various impact analyses circulating that basically all conclude that the Pillar One plan will cost American companies and the U.S. treasury a lot of money.[21] And that's not what the American voter seems to want.

The convention also states, and this is also part of the political agreement, that if it is not ratified by the end of 2024, countries may revive their initial plans for their unilateral measures. It seems that, although we have not yet seen that much concrete action in this area so far, a number of countries seem quite eager to do so. It should be noted that Canada has already recently taken actual steps by effectuating a digital services tax in the summer of 2024.[22] This has immediately led to some pushback from the U.S. Trade Representative with reference to the free trade rules in place between the U.S. and Canada.

2.5 Towards a U.N. Convention on Tax Cooperation?

At the same time dissatisfaction has been growing in countries around the world with the OECD-hosted platform within which the international tax policy discussions have been organized and with the results to which this has led. Many developing countries and transition economies do not feel sufficiently heard within the Inclusive Framework and their interests to be insufficiently reflected in the outcomes of the talks.

While Pillar One seems to have come to a standstill the Pillar Two 15% minimum taxation system has degenerated into a set of rules of an almost mythical complexity. Pillar Two seems very hard if not impossible to administer, particularly for the developing world while the forecast of revenue increases grows slimmer by the day. Moreover, the idea exists that Pillar Two deprives the developing world of the opportunity to bind and retain investments to their territory through the use of tax incentives and tax holidays, a tax sovereignty argument basically. At the same time, one of the basic notions under Pillar Two is to put a floor to competition between countries via their fiscal systems and to achieve a global level playing field. And Pillar One, too, if such were to ever see the light of day, would be extremely complex to administer and would arguably yield only modest tax revenues for market jurisdictions, especially in comparison with the projected revenues from those withholding taxes and digital services taxes that had to be cut back as part of the 2021 global political agreement.

In recent years, the United Nations has been working on amendments to the UN Model Convention, the template convention that is, which focuses on the interests of developing countries and countries with economies in transition to a greater extent than, for example, the OECD Model

Tax Convention does.[23] One of the modifications to the U.N. Model Tax Convention concerns a withholding tax on digital services, Article 12B of the UN Model Tax Convention. In fact, this is some sort of a digital services tax however embedded in tax treaty law that – unlike a digital services tax – is intended to guarantee tax credit eligibility in the company's country of residence. The provision now has been part of the UN Model Convention since 2021.

So far, the U.N. Model Tax Convention measure has not had that much of traction in terms of subsequent rounds of corresponding incorporation of equivalent provisions into the bilateral tax treaty networks of countries. Often those countries that have an interest in an Article 12B equivalent tax treaty provision – for instance those developing countries and transition economies where digital services are being provided by foreign tech companies that do not have established that much of a physical presence there – do not have a tax treaty in place with the relevant country where the tech companies involved are established. And if a tax treaty is in place, the latter mentioned country – typically the geopolitically and economically dominant party at the negotiation table – may not prove to be particularly keen on modifying the treaty as such a treaty modification would entail a surrendering of its existing taxing rights and ensuing tax revenues. Moreover, any moving towards taking measures unilaterally is politically rather difficult in the light of the existing political agreements on the rollback workstream in the global two-pillar agreement. And indeed, on top, technically, Article 12B also does not really seem to actually solve the demarcation issues mentioned above.

Fueled by the noted discontent in many countries on how events turned in the Inclusive Framework, particularly those in the Global South, the United Nations General Assembly adopted a resolution on a U.N. Framework Convention on International Tax Cooperation in December 2023.[24] The envisaged convention should become a reality in the coming years. The central idea is that the United Nations should play a pivotal role in the development of international tax policy, including in the field of international taxation of profits, more or less rather than the Inclusive Framework that is. Notably, the EU and the US, amongst others, seem to consider such differently. The vote on this resolution showed the dividing line sharply. The countries of the EU and the US and a number of other of the most developed countries in the world voted against the resolution. Just about the rest of the world, from Brazil to India, which resulted in a large numerical majority, voted in favor.

Recently, in August 2024, in follow-up to this, a Terms of Reference developed within an ad hoc working group of the United Nations for the development of this convention was agreed upon. 110 countries voted in favor, the EU Member States abstained from voting and 8 countries – including the United States – voted against. Within the context of the United Nations Framework Convention project, a priority has been emerging when it comes to address the challenges of the digitalizing economy and to achieve a fairer taxation of company profits. All that seems to involve the pursuit of a more market-oriented approach toward company tax base division. There is some political tension there, and we will have to see what will come about here.

2.6 EU tax integration and Own Resources

And what about the EU? The ambitions of the EU institutions in the company tax dossier should not go unmentioned. For decades, there has been an ambition within the EU institutions to integrate the company taxation systems of the EU Member States into – eventually – an EU-wide company tax system.[25] In 2011, this has led to a Commission proposal for an EU Directive for an EU company tax system that divides taxable base among the EU Member States by reference to a formula rather than based on the at arm's length standard.[26] The formula would include a component allocating tax base to the market jurisdiction. The 2011-proposal did not gain sufficient political traction, the EU Member States did not endorse it. With the tail wind momentum of the 2015 BEPS project, the 2011-proposal was relaunched by the Commission in 2016.[27] Interestingly, the proposal included measures to support the European economy and its innovative capacity with tax incentives, including for instance a super deduction for R&D investment activities. The international aspects of the plans eventually transposed into the ATAD. The remaining parts of the 2016-relaunch failed again, for similar reasons as the 2011-proposal did 5 years earlier.

After the EU digital levy was removed from the agenda for the reasons we saw above, the Commission's corporate tax integration ambitions for the internal market joined the momentum around the two-pillar agreement. This is reflected in the European Commission's Communication on Business Taxation for the 21st Century of 18 May 2021.[28] The EU later adopted the Pillar Two Global Minimum Tax as a part of this plan in December 2022, and Pillar Two has now been transposed by the EU Member States into their domestic tax legislation.[29] As far as Pillar One is concerned, the intention has been, and indeed still is, to transpose the political outcomes into EU legislation some day. The idea is that a 15% rate will be applied to the envisaged Pillar One tax base influx into the internal market.[30] The revenue stream is intended to flow into the EU budget as an own resource to help finance NextGenerationEU. My impression is that, although public information, this is not widely known.

The Commission's company tax reform ambition culminated in the September 2023 Commission proposal for a Business in Europe: Framework for Income Taxation (BEFIT).[31] This, yet again, is a Directive proposal based on the idea of an EU-wide harmonization of company taxes with ultimately, a distribution of tax base among the EU Member States by reference to a formula. Indeed, in the same way as the previous 2011 and 2016 proposals did, and again, among other things, to address the tax challenges raised by the digitalization of the economy via EU tax measures. And indeed, here too, the Directive proposal reveals rather clear language on the ambition of BEFIT as an own resource as well.

2.7 What's next?

Now that Pillar One seems to have stagnated since this summer, the question arises as to what is coming next. What will the EU for instance do? Nothing concrete is known about that yet, but I would not be surprised if we will see the Commission start moving at some point in the not-too-distant future. Very recently, on 9 September 2024, former Italian Prime Minister and former EU Central Bank President Draghi published a report outlining an economic strategy for Europe.[32] The message of the report is clear. The EU needs to be pulled out of the doldrums and catch up with its rivals or face 'slow agony', and that requires spending of a lot of public money the report says. Interestingly, the report also talks about tax incentives. This too is considered a necessary component to further an achieving of the major strategic policy goals in the area of, for example, the environment and the energy transition, but also when it comes to building innovative and technological strength to further the economic power and strategic independence and resilience of the EU Member States in concert. High-tech companies and their investments, in the EU of course, play a pivotal role in the pursuit of such aims.

It will be interesting to see how any of such envisaged tax incentives to further EU policy ambitions may be shaped. In the internal market State Aid rules apply,[33] while the EU is also trying to impose a level playing field on third countries with its Foreign Subsidies Regulation.[34] The EU Member States will need to mutually coordinate their incentive mechanisms not to fall foul under the State Aid rules, and that is something of relevance considering for instance the outcome of the recent *Apple* State Aid case. At the same time, the Global Minimum Tax does not – at least not for the time being – offer too much room to the EU Member States for any tax incentives and other subsidies. The central idea behind the global minimum tax system is that if countries fall below the 15% minimum rate, for instance because of any tax subsidy measures, other countries will proceed to levy additional taxes up to that level in order to neutralize the anticipated effects of the tax subsidy measures involved. Mitigating tax competition, namely, is one of the objectives of the Pillar Two system. This could mean that any of the envisaged EU tax incentives could be soaked-up and neutralized by some Pillar Two top-up tax mechanism somewhere in the world.

There too, we see some serious tensions. The United States and China already subsidize their business communities to quite a large extent and, as it seems, these countries do not seem to care too much about the alignment of their tax policies, or lack thereof, with any level playing field considerations underlying the Pillar Two Global Minimum Tax. The United States already operates a light-variant of the global minimum tax rules and the country considers that sufficient. The U.S. basically opposes both Pillar Two and Pillar One in its current forms, particularly where such would operate to the detriment of U.S. interests. China on the other hand is still holding its cards close to its chest, it seems. Other countries, too, seem to be wanting to continue to operationalize their company tax and fiscal systems to mutually compete for the investment location decisions of multinational business enterprises.

All this puts some serious pressure on the sustainability of the Pillar Two reform as well. With Pillar Two, we tell the world that we want to tackle tax competition. At the same time, when it comes down to it, we see countries focusing their efforts very much on securing measures to keep their countries competitive. We have already seen that the Pillar Two rules are being modified along the way to facilitate those tax credits of a design very similar to those provided in the United States to invest in the U.S. economy under the Inflation Reduction Act.

We see Draghi's report calling to prevent the EU from putting itself at a disadvantage both competitively and geopolitically by not following suit. European business communities have been raising similar concerns, and increasingly call for action from the EU and its institutions to boost EU competitiveness via fiscal interventions. Once again, all is about innovation, R&D, technology and tech companies, about digitalization, artificial intelligence, and how all this may be cranked-up to promote European prosperity. The OECD reportedly is currently working on frameworks within which countries can or cannot compete with each other via their tax systems without falling foul under the Pillar Two global minimum tax rules. Depending on the room for maneuver that may accordingly be created, the effectiveness of Pillar Two may very well be expected to be further diluted.

And what about the developing world? We see countries looking for possibilities of unilaterally resorting back to digital services taxes, the withholding tax variant in the U.N. Model Tax Convention, digital permanent establishments, or even a unilateral implementation of Pillar One – for example in relation to countries with which no bilateral tax treaty has been put in place. Digital services taxes and withholding taxes increase the cost of doing business, considering their gross base and tax cascading implications. Such, although hard to quantify, may have detrimental implications for local investment climates and ensuing job creation and welfare implications. The

Pillar One rulebook is very complex and, if ever implemented, will result in administrative costs and burdens for companies and governments. And we still have not resolved the question as to how to exactly tax-ring-fence the digital part from the rest of the economy. We will have to see whether the U.N. Framework Convention initiative will turn out to be successful. And all this, aside any tax-incidence implications. Although hard to quantify, again, tax imposts on companies tend to be passed on to immobile consumers and (blue collar) workers.

Whichever route it will be, the battle will be uphill it seems. Every transformation of dividing the tax pie from investment jurisdictions to market jurisdictions will inevitably bring winners and losers. Both in terms of revenues and tax burdens. Every minimum rate standard introduced will inevitably have sovereignty implications. We have already seen that, for example, the United States does not seem to shy away from taking counter measures to protect the interests of American business against fiscal interventions from abroad. Worthy of note is the latest development in this regard, the letter from the US Congress to the OECD of 17 September 2024 on the Pillar Two initiative and particularly its extraterritorial top-up tax implications to the detriment of U.S. business interests. The letter contains the following lines: *"We write today to renew our objections and express support for a lawsuit filed by the American Free Enterprise Chamber of Commerce in the Belgian Constitutional Court challenging the undertaxed profits rule ("UTPR"), which would surrender U.S. tax sovereignty, allowing unelected foreign bureaucrats to dictate tax policy, and help foreign governments arbitrarily extract hundreds of billions of dollars from the U.S. economy,"* whereas *"[t]he U.S. Congress remains opposed to the unfair and unworkable OECD global tax deal. Should foreign governments seek to target Americans through the UTPR or other mechanisms in the OECD global tax deal, we will be forced to pursue countermeasures"*[35] That doesn't sound too promising.

3) Final remarks; equilibrium through competition

The dynamics are fascinating. We tell each other and the world that we want to address the tax challenges of digitization by taxing companies on their investment returns in the market jurisdiction rather than in the investment jurisdiction, Pillar One. Because it increases revenues for the first-mentioned jurisdiction. At the same time, we do not actually seem to want to tax these companies in the market jurisdiction, at least not in those developed countries where the biggest multinational firms reside, but in the investment jurisdiction. Because it would otherwise cost the latter-mentioned jurisdiction its revenues. So, the first pillar of the two-pillar agreement has come to a halt. We also tell each other and the world that we do not want to mutually fiscally compete for the investment location decision of multinational companies, Pillar Two. At the same time, we nevertheless, actually, do seem to want to mutually fiscally compete for the investment location decisions of companies, regardless. Obviously, we cannot have both. So, what will happen at the end of the day with the second pillar of the two-pillar agreement? Time will tell.

This raises the question whether the two-pillar solution will bring us the sustainable international company tax system we pursue and envisage. My feeling is that it will not. My assessment is that we are in for a messy time, of relentless controversy, red tape, multiple taxation, legal proceedings, fiscal fragmentation, and ongoing discussions on how to best move forward. In 2020, I wrote in *World Tax Journal* that perhaps we should consider abandoning the narrative of seeking a tax-equilibrium through coordination.[36] In that paper I wrote that, perhaps, we should start considering thinking in terms of seeking a tax-equilibrium through competition instead, as this is how the world seems to work. I think that such an equilibrium through competition should be feasible. The route towards such would be a tax model that allocates consolidated excess profits to market countries. Preferably coordinated of course and otherwise via self-centered driven regional or unilateral action. If a country or region were to start moving into such a direction, such would attract investment. The intuition here is that companies would respond. Upon such a move there will be not much left for any other countries or regions to do but follow suit. We have seen a similar transformation in U.S. state taxation.[37] Any step into such a direction at the international tax stage would indeed require some political courage and perseverance. And perhaps the recognition that the two-pillar solution may actually be degenerating into a two-pillar problem. We'll see.

[1] See https://curia.europa.eu/juris/document/document.jsf?docid=289923&doclang=EN.

[2] See https://www.oecd.org/en/topics/sub-issues/reallocation-of-taxing-rights-to-market-jurisdictions/multilateral-convention-to-implement-amount-a-of-pillar-one.html.

[3] See https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html.

[4] See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016L1164 and https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2017.144.01.0001.01.ENG.

[5] See https://www.eerstekamer.nl/wetsvoorstel/35933_wet_tegengaan_mismatches_bij.

[6] See https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/.

[7] See https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html.

[8] See https://taxation-customs.ec.europa.eu/taxation/business-taxation/transfer-pricing-eu/proposal-harmonised-transfer-pricing-rules-eu_en.

[9] See https://taxation-customs.ec.europa.eu/taxation/tax-co-operation-and-control/administrative-co-operation-and-mutual-assistance/enhanced-administrative-cooperation-field-direct-taxation_en.

[10] See https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/public-country-country-reporting_en.

[11] See https://www.oecd.org/en/publications/addressing-the-tax-challenges-of-the-digital-economy-action-1-2015-final-report_9789264241046-en.html.

[12] See https://www.oecd.org/en/about/news/press-releases/2023/07/138-countries-and-jurisdictions-agree-historic-milestone-to-implement-global-tax-deal.html.

[13] See https://taxfoundation.org/blog/oecd-beps-digital-tax/.

[14] See https://taxfoundation.org/research/all/global/digital-taxation/.

[15] See https://joint-research-centre.ec.europa.eu/jrc-news-and-updates/taxation-digital-economy-underpinned-science-2018-03-21_en.

[16] See https://commission.europa.eu/strategy-and-policy/eu-budget/long-term-eu-budget/2021-2027/revenue/next-generation-eu-own-resources_en.

[17] See https://news.bloombergtax.com/daily-tax-report/digital-services-tax-why-the-world-is-watching.

[18] See https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-digital-services-taxes.

[19] See https://curia.europa.eu/juris/liste.jsf?num=C-75/18 and https://curia.europa.eu/juris/liste.jsf?num=C-323/18&language=EN.

[20] See https://www.oecd.org/en/topics/sub-issues/reallocation-of-taxing-rights-to-market-jurisdictions/multilateral-convention-to-implement-amount-a-of-pillar-one.html.

[21] See https://crsreports.congress.gov/product/pdf/R/R47988.

[22] See https://www.canada.ca/en/services/taxes/excise-taxes-duties-and-levies/digital-services-tax.html.

[23] See https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf.

[24] See https://financing.desa.un.org/post-news/ad-hoc-committee-draft-terms-reference-united-nations-framework-convention-international.

[25] See, e.g., https://taxation-customs.ec.europa.eu/towards-internal-market-without-corporate-tax-obstacles_en.

[26] See https://eur-lex.europa.eu/EN/legal-content/summary/common-consolidated-corporate-tax-base.html.

[27] See https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_16_3471/IP_16_3471_EN.pdf.

[28] See https://taxation-customs.ec.europa.eu/communication-business-taxation-21st-century_en.

[29] See https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32022L2523.

[30] See https://commission.europa.eu/strategy-and-policy/eu-budget/long-term-eu-budget/2021-2027/revenue/next-generation-eu-own-resources_en.

[31] See https://taxation-customs.ec.europa.eu/taxation/business-taxation/business-europe-framework-income-taxation-befit_en.

[32] See https://commission.europa.eu/topics/strengthening-european-competitiveness/eu-competitiveness-looking-ahead_en.

[33] See https://competition-policy.ec.europa.eu/state-aid_en.

[34] See https://competition-policy.ec.europa.eu/foreign-subsidies-regulation_en.

[35] See https://waysandmeans.house.gov/wp-content/uploads/2024/09/U.S.-House-Letter-to-OECD.pdf.

[36] See https://www.econbiz.de/Record/on-the-future-of-business-income-taxation-in-europe-wilde-maarten-floris/10012617884.

[37] See https://taxadmin.org/wp-content/uploads/resources/tax_rates/apport.pdf.

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