

Kluwer International Tax Blog

The Contents of Intertax, Volume 53, Issue 05, 2025

Ana Paula Dourado (General Editor of Intertax) · Monday, April 28th, 2025

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

Antonio Lopo Martinez, Global Taxation's Price: Quantifying Pillar Two Damages in IIA Disputes

This article addresses the emerging conflicts between Pillar Two taxation rules and international investment agreements (IIAs) by focusing on developing methodologies for assessing economic damages in related disputes. The study aims to establish a comprehensive framework for quantifying economic losses arising from potential IIA violations due to Pillar Two implementation. It examines the legal basis for damage claims under IIAs by analysing relevant precedents and provisions. The research evaluates various methodological approaches for calculating damages in international investment disputes and assesses their suitability for Pillar Two-related scenarios. Economic models and quantitative techniques, such as the discounted cash flow (DCF) analysis and the lost profit method, are examined for their effectiveness in estimating Pillar Two's financial impact on investors. The article incorporates case studies and reviews past damage assessments in tax-related contexts. It discusses policy implications and offers guidelines for key stakeholders including policymakers, investors, and arbitral tribunals as well as focusing on best practices and potential challenges in damage assessment. This research aims to alleviate a critical deficiency in the existing literature by providing a nuanced, multidimensional framework to facilitate a more informed approach to resolving disputes at the intersection of Pillar Two rules and IIAs.

Jarrold Hepburn & Sunita Jogarajan, Denial of Justice: International Investment Agreements and the Implementation of the Global Minimum Tax

To assist in the introduction and operation of the global minimum tax, the OECD's supplementary material includes a rule which would likely result in a multinational entity paying tax in another jurisdiction on income earned in a particular source jurisdiction where the entity launches a legal challenge against the source jurisdiction's minimum tax. In effect, this rule (intentionally) discourages taxpayers from using either domestic or international law to challenge the imposition of a minimum tax, by making the challenge economically unviable.

Some commentators have queried whether the jurisdictions that adopt this rule may commit a denial of justice under customary international law, by impeding or discouraging taxpayers' resort to rights of access to domestic courts and international arbitration tribunals constituted under

international investment agreements (IIAs). This paper concludes, however, that such a rule would likely not amount to a denial of justice in so far as it discourages claims to either domestic courts or international tribunals. As such, this paper removes one potential obstacle for countries – particularly developing countries – in implementing the OECD’s minimum tax rules, even if other obstacles may remain.

Paloma Garcia Córdoba, The Impact of Pillar Two Rules on International Investment Treaties: An Assessment of Tax Carve-Out Provisions

Pillar Two, proposed by the Organization for Economic Cooperation and Development (OECD), represents a paradigm shift in international taxation. However, its implementation could result in disputes under existing international investment treaties (IIAs). The investor-state dispute settlement mechanisms (ISDS) may become a relevant procedure for resolving those issues with tax carve-out provisions in IIAs being a key factor. This raises a few relevant questions: What is the purpose of tax carve-out clauses in the context of IIAs? What role do they have in tax-related disputes under investment arbitration? This article explores their crucial relevance in the context of implementing the OECD’s Pillar Two and emphasizes their potential influence on tax-related disputes under IIAs and their significance in preserving states’ sovereignty over their tax policies.

Fabian Kratzlmeier & Aitor Navarro, Escaping Minimum Taxation Through Investor-State Arbitration? A Closer Look at the Robustness of the EU GloBE Directive

The OECD proposal for a global minimum tax (GloBE) is designed in a manner that could be conflictive with investment treaties. This tension is even more severe in the context of its adoption in the European Union through Directive (EU) 2022/2523 as EU Law *prima facie* supersedes any other international law obligation adopted by Member States. Yet, investors from jurisdictions not subject to GloBE liabilities (and their investment vehicles) may try to seek remedies envisaged in investment treaties and enforce them abroad. Would such claims succeed? How should the Member States or the Union itself react to such undermining of EU Law (and the very idea of the GloBE proposal) abroad? This article explores the robustness of EU Law for adequately enforcing the minimum tax Directive (MTD) and prospective challenges set to arise during arbitration, at the enforcement stage, and after successfully recouping minimum taxation through a fruitful collection of awarded damages.

To make sure you do not miss out on regular updates from the Kluwer International Tax Blog, please subscribe [here](#).

2024 Future Ready Lawyer Survey Report

Legal innovation: Seizing the future or falling behind?

[Download your free copy →](#)



This entry was posted on Monday, April 28th, 2025 at 11:18 am and is filed under [Intertax](#). You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.