The Global Minimum Tax and The Future of International Taxation

9 July 2025

John Vella, Faculty of Law, University of Oxford and Oxford University Centre for Business Taxation

Working paper | 2025-08

DRAFT: 9 JULY 2025

This working paper is forthcoming in the *Modern Law Review.*

THE GLOBAL MINIMUM TAX AND THE FUTURE OF INTERNATIONAL TAXATION

John Vella*

Keywords:

International tax; corporation tax; business tax; global minimum tax; tax reform; international cooperation and competition; tax competition; profit shifting

Abstract:

Over 140 countries have now agreed to the introduction of a Global Minimum Tax, widely regarded as the most significant reform of the international business tax system in a century. While acknowledging that the agreement constitutes a remarkable political and technical achievement, this article questions whether the hype over the reform is justified and reflects on its likely impact on the future of international business taxation. The article makes three principal contributions. First, it argues that the Global Minimum Tax's impact on the existing system is, at best, mixed. Critically, the system continues to perform poorly overall. Second, it argues that this mixed impact is caused by the policy, not its implementation. Propping up the existing origin-based system with a Global Minimum Tax is a poor policy choice because the

* Faculty of Law, University of Oxford, and Oxford University Centre for Business Taxation. I would like to thank Michael P. Devereux for extensive discussions on many of the issues covered in this article over the years. I would also like to thank Sebastian Beer, Kristoffer Berg, Richard Collier, Tsilly Dagan, Niels Johannesen, Michael Keen, Heydon Wardell-Burrus, and two anonymous referees for their comments. The usual disclaimers apply.

destabilising forces generated by the system's incentive incompatibility persist. These forces undermine the reform and continue to undermine the system overall. Third, it argues that by doubling down on the existing origin-based system, the Global Minimum Tax makes it more difficult to pursue promising reform options that depart fundamentally from this system. This is troubling given the article's conclusion that the system continues to perform poorly overall, even in the wake of the Global Minimum Tax.

INTRODUCTION

''An agreement which will really change the world''.[1] Politicians around the world were only narrowly more restrained than the then German Finance Minister in describing the agreement reached by over 130 jurisdictions in October 2021 to reform the international corporate tax regime.[2] The hype was not limited to politicians. Larry Summers, for example, claimed that ''[t]his agreement is arguably the most significant

[1] 'G7 set to strike deal on global corporate taxation', *Financial Times*, 4 June 2021, < https://www.ft.com/content/9eeba922-25a9-4a3a-960d-afca8d139909. The German Finance Minister> Olaf Scholz, was describing the deal that was eventually announced on 8 October 2021: OECD, *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*, 8 October 2021, (October 2021 Statement).

[2] For example, European Commission President Urusla von der Leyen called it 'a historic moment' < https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_21_5166> and US Secretary to the Treasury Janet Yellen argued that '[t]oday's agreement represents a once-in-a-generation accomplishment for economic diplomacy. We've turned tireless negotiations into decades of increased prosperity – for both America and the world.' < https://home.treasury.gov/news/press-releases/jy0394>

international economic pact of the 21st century so far.''[3] Joseph Stiglitz[4] and co-authors, went even further. In the run up to the agreement, they urged jurisdictions to ''get the details of the agreement right'' as '[i]t is not an overstatement to say that societies' capacity to survive and thrive depends on it.'[5] The agreement includes two reform proposals, Pillar One and Pillar Two, but much of the hype is due to the expected impact of the Global Minimum Tax included in Pillar Two. This paper asks whether this hype is justified. It assesses the Global Minimum Tax's impact on international corporate taxation now and in the future.

The Global Minimum Tax (GMT) in Pillar Two – known as the Global Anti-Base Erosion (GloBE) rules – seeks to ensure that multinationals pay a minimum level of tax on income arising in each jurisdiction where they operate. Several explanations can be given for the hype around it. GloBE is viewed by many as a 'resounding success of

[3] Larry Summers is Charles W. Eliot University Professor and President Emeritus at Harvard University. He was Secretary of the Treasury in President Clinton's administration and Director of National Economic Council in President Obama's administration. Summers made the claim on X/Twitter <https://twitter.com/LHSummers/status/1454922542704173059?s=20>.

[4] University Professor at Columbia University and winner of the Nobel Memorial Prize in Economic Sciences in 2001.

[5] Joseph E. Stiglitz, Todd N. Tucker, and Gabriel Zucman, 'Ending the Race to the Bottom: The Global Minimum Tax Deal Is About More Than Fairness' *Foreign Affairs* 17 September 2021. They argue that after this turning point: 'Instead of the competition for resources that characterized earlier periods of humanity's history, an ethos of cooperation emerged.'

international taxation cooperation'[6] and 'a win for diplomacy and a win for multilateralism'[7] at a time of limited success in addressing global collective action problems cooperatively.[8] The hype was also due to the claimed benefits of 'fixing' or at least 'stabilising' the corporation tax. It was argued that if this was not done and jurisdictions struggled to collect corporation tax, the overall tax burden would shift further from capital to labour,[9] thus worsening wealth and income inequality. Some also warned that a growing sense that multinationals do not pay a 'fair share' of tax could feed into broader concerns that the global economic order is rigged in favour of the rich and powerful. This could further fan the flames of populism and protectionism

[6] Final Communiqué of third G20 Finance Ministers and Central Bank Governors meeting, 26 July 2024 < https://www.g20.org/en/documents/documents-resulting-from-the-3rd-g20-finance-ministers-and-central-bank-governors-meeting-rio-de-janeiro-25th-and-26th-of-july-2024/2-3rd-fmcbg-communique.pdf/@@download/file>

[7] Press release by Paolo Gentiloni, EU Commissioner for Economy, 'Fair Taxation: Commission welcomes agreement on minimum taxation of multinationals', 12 December 2022, <https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7674>.

[8] See, for example, Rebecca Kysar, 'The Global Tax Deal and the New International Economic Governance' (2024) 77 *Tax Law Review* 171.

[9] See, for example, remarks by Assistant Secretary for Tax Policy Lily Batchelder at the New York State Bar Association's Annual Meeting, 25 January 2022, <https://home.treasury.gov/news/press-releases/jy0568>, and the testimony of Kimberly A. Clausing, Deputy Assistant Secretary, Tax Analysis, before the Senate Committee on Finance, 25 March 2021, <https://home.treasury.gov/news/press-releases/jy0079>.

and ‘threaten the global economy’.[10] While all these claims are debatable, there is no doubt that the hundred-year-old international corporate tax system was in dire need of reform.[11]

There is also no doubt that GloBE constitutes the most significant reform of the system in a hundred years. An unprecedented series of reforms was introduced between 2012 and 2021,[12] but GloBE is the most ambitious and remarkable. It is also highly sophisticated and technically impressive. Securing the agreement of (now) over 140 jurisdictions required tremendous work and political skill. It is easy to forget that such a reform appeared improbable, even impossible, only a few years ago.

[10] The comment was made by Professor Itai Grinberg of Georgetown University who was part of the US Treasury Department as Deputy Assistant Secretary for Multilateral Tax Office of Tax Policy. ‘Treasury official: Tax deal would help make globalization work’ *New York Times* 22 July 2021.

[11] See for example, Michael J. Graetz, ‘The David R. Tillinghast Lecture: Taxing International Income: Inadequate Principles, Outdated Concepts, and Unsatisfactory Policies’ (2001) 54 *Tax Law Review* 261; Michael P. Devereux and John Vella, ‘Are We Heading for a Corporation Tax Fit for the 21st Century?’ (2014) 35 *Fiscal Studies* 449; and Michael P. Devereux, Alan Auerbach, Michael Keen, Paul Oosterhuis, Wolfgang Schön, and John Vella, *Taxing Profit in a Global Economy* (Oxford: Oxford University Press, 2021).

[12] They include the OECD/G20 Base Erosion and Profit Shifting Project (BEPS) and the creation of the OECD/G20 Inclusive Framework on BEPS (IF). For a front row account of these reforms by one of their principal driving forces see, Pascal Saint-Amans, *Paradis fiscaux: Comment on a changé le cours de l'histoire* (Paris: Éditions du Seuil, 2023).

The present article is written against this background. Many academic articles have already been written on specific aspects of GloBE,[13] but this article takes a step back from the minutiae of technical detail and immediate debates, and adopts a broader, longer-term perspective. Its goal is to understand GloBE's impact on the course of international taxation. The article makes three main contributions.

First, *to determine if GloBE improves the existing system overall*.[14] Given the grandiose claims made for GloBE this is only a modest test, but some may still deem it unreasonable. [15]. This article argues that this question is not only reasonable but of first

[13] The literature on GloBE is growing at speed. Articles on specific issues include those in the following journal special issues: *British Tax Review* (2022) Issue 5; *Intertax* (2022) Volume 50 Issue 12 and (2023) Volume 51 Issue 2; and *Fiscal Studies* (2023), Volume 44 Issue 1. For an early article taking a broader perspective see Johannes Becker and Joachim Englisch, 'International Effective Minimum Taxation – The GLOBE Proposal' (2019) 11 *World Tax Journal* 483.

[14] For a discussion of GloBE's objectives and their evolution over time see Michael P. Devereux and John Vella, 'The Impact of the Global Minimum Tax on Tax Competition'(2023) 15 *World Tax Journal* 323, section 2; and Richard Collier and John Vella, 'Formative Policies and Politics of Pillar Two' in Werner Haslehner, and others (eds), *The 'Pillar Two' Global Minimum Tax* (Cheltenham: Edward Elgar Publishing, 2024).

[15] Claims that GloBE did not aim to improve the existing system overall can be easily rejected. As discussed in the next section, the characteristics of a 'good' system are robustness to profit shifting, incentive compatibility, economic efficiency, fairness and ease of administration. GloBE specifically aimed at improving the existing system against the first two characteristics (eg, OECD, *Tax Challenges Arising from Digitalisation - Report on Pillar Two Blueprint*, (Paris: OECD Publishing, 2020)14, (Blueprint)). Inclusive Framework (IF)/OECD documentation claimed GloBE would improve on the third (eg, OECD, *Tax Challenges Arising from Digitalisation – Economic Impact Assessment*, (Paris: OECD Publishing,

order importance because GloBE locks in the existing system. Taking a broad view, this article concludes that GloBE's impact is mixed. Critically, the existing system will continue to perform poorly overall despite GloBE's introduction.

Second, *to explain why GloBE did not do better overall*. It may be argued that GloBE's mixed impact is due to the particularly challenging political process[16] that produced it.[17] Political realities should be acknowledged, but policy evaluation must be undertaken independently of them. If not, agreed public policies would be 'good' by stint of having been agreed. A fortiori, this article argues that GloBE's weaknesses

---

2020) 151, (Impact Assessment)) and fourth (eg, Blueprint, 10)[15] characteristics while minimizing administrative and compliance costs (the fifth) (eg Blueprint, 17).

[16] This process required political compromise within and among jurisdictions. See, for example, OECD, *Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy – Brochure*, (2021), 9 (OECD Brochure).

[17] See, for example, David Kamin, 'Why Book Minimum Taxes: Taking Politics Seriously,' *Tax Notes Federal* 19 October 2022 and David Kamin, 'The Ambition and Limits of the Global Minimum Tax', *Tax Notes International* 17 October 2022. In the first paper, Kamin agrees that '[t]he politics aren't determinative of whether a change is a good idea' but then continues 'they inform the types of relevant alternatives, and they illuminate when policy tools may in fact be designed specifically to overcome coordination problems in our politics that undermine action toward the collective good. That is exactly what the book minimum tax is doing, and there are no good alternatives in the international context for addressing profit s hifting to low-tax jurisdictions. In sum, the most compell ing reason to pursue book minimum taxes lies in our politics… ' This paper argues both that there were better alternatives, and that the overall impact of a GMT was necessarily and predictably not as positive as proponents argued.

cannot be blamed on the particular process that produced it. These weaknesses stem from the policy rather than its execution and were thus predictable. Most of the existing system's problems are ultimately due to its fundamental structure[18] (its origin basis[19] and its utilisation of the separate entity approach)[20] and the destabilising incentives it creates. A GMT – such as GloBE - does not alter this fundamental structure. A GMT is a superstructure of rules added on top of the existing structure to contain the destabilising incentives it creates and thus stop it from collapsing. But the destabilising incentives remain, and this article argues that they (unsurprisingly) undermined GloBE's design and will undermine its operation. Attempting to save an origin-based system with a GMT is a poor policy choice.

Third, *to assess Globe's likely impact on the future of the international corporate tax system*.[21] GloBE constitutes a pivotal point in the history of international taxation, one that may determine its course for years to come. International corporate taxation was at a crossroad in 2015-2019. Fundamental reform that moved away from the existing structure was given serious political consideration in this period, including reform that moved from an origin to a destination basis of taxation.[22] While not without issues, such

[18] Devereux and others, n 11 above, ch 3.

[19] Under origin-based systems, multinationals are broadly taxed where their activities and assets are located.

[20] This approach entails that different parts of a multinational are broadly treated as separate entities.

[21] See the caveats in the text following n 231.

[22] In destination-based systems multinationals are taxed in the location of their consumers. The most significant destination-based proposal was the Border Adjustment Tax (BAT) proposed in 2016 by the Congressional Republicans as part of their broad reform agenda *A Better Way: Our Vision For A Confident*

a move promised significant improvement over the existing system, depending on how it was done.[23] GloBE was put forward as an alternative to reform proposals that moved towards destination.[24] Whether deliberate or not, GloBE can be viewed as an anchor that stops the system from drifting too far towards destination. This article shows that once GloBE is implemented it will be harder to move to destination-based systems but also to other systems that depart meaningfully from the existing one, including systems that tax multinationals in the location of shareholders and unitary tax systems with standard three-factor[25] formulary apportionment. The adoption of GloBE thus increases the likelihood that the origin-based system limps on for years to come. Fundamental change may come in the future, but it will be harder to achieve politically and technically because of GloBE. This makes it even more important to ask whether GloBE improves the existing system overall, as this article does. In this light, this article's conclusion that the existing system continues to perform poorly overall is troubling.

At the time of writing there is some uncertainty around the next steps in the GloBE project. Following the election of Donald J. Trump as the United States' (US) 47th President, the US threatened the imposition of retaliatory taxes against jurisdictions

---

America. The BAT is a form of Destination Based Cash Flow Tax – see Devereux and others, n 11 above., ch 7.

[23] The case for shifting from an origin to a destination basis of taxation is set out at length in Devereux et al, n 11 above..

[24] Mindy Herzfeld, 'As the End of the OECD Project Draws Near, Jurisdiction Differences Sharpen', *Tax Notes Federal* 13 December 2021. These reform proposals eventually became Pillar One.

[25] A formula including labour, assets and sales.

that imposed the UTPR, perhaps the key cog in the GloBE mechanism.[26] In doing so, the US reneged on its October 2021 commitment to "accept the application of the GloBE rules applied by other [Inclusive Framework] members",[27] imperilled the GloBE project, and left other countries between a rock and a hard place. Eventually, the G7 struck a deal, [28] which primarily entailed the full exclusion of US parented groups from the GloBE top-up mechanisms[29] in respect of both their domestic and foreign profits, in

[26] On 20 January 2025, the day of his inauguration, President Trump signed an Executive Order clarifying that "the Global Tax Deal has no force or effect in the United States absent an act by the Congress adopting the relevant provisions of the Global Tax Deal" and signalling the administration's intent to take retaliatory action against jurisdictions which were deemed to impose "discriminatory" or "extraterritorial" taxes. ('The Organization for Economic Co-operation and Development (OECD) Global Tax Deal (Global Tax Deal)', 20 January 2025.) That possibility moved a step closer when retaliatory taxes against "discriminatory foreign countries" that have implemented "unfair foreign taxes" where proposed in the House of Representatives' version of the *One Big Beautiful Bill* of 25 May 2025 and the Senate's initial version of the same bill of 16 June 2025. If enacted into law the "Enforcement of Remedies Against Unfair Foreign Taxes" provision would become section 899 of the Internal Revenue Code. See Mindy Herzfeld, 'The Unites States' Sharp Turn Toward Tax Unilateralism', *Tax Notes International*, Volume 118, May 19, 2025; Danielle Rolfes, Casey Caldwell, and Alistair Pepper, "Evaluating Possible U.S. Retaliatory Tax Measures," *Tax Notes Federal, April 21, 2025, p. 493; and* Danielle Rolfes, Alistair Pepper, Daniel Winnick, and Casey Caldwell, "Take 2: Evaluating the Revised Retaliatory Measures in the House Bill", *Tax Notes International*, Volume 118, June 9, 2025.

[27] October 2021 Statement n 1 above.

[28] G7, *G7 Statement on global minimum taxes*, 28 June 2025.

[29] The UTPR and the Income Inclusion Rule (IIR). These are described in some detail below.

return for the removal of the proposed retaliatory taxes by the US.[30] It is easy to portray this deal as a simple capitulation before the US's demands. But the other G7 countries were presented with a difficult hand, one that required complex calculations[31] and trade-offs. The statement announcing the deal justified the exclusion by noting that the US imposes its own global minimum tax (Global Intangible Low-Tax Income – GILTI) on US parented groups, as well as the costs of not reaching a deal and the benefits of reaching one.[32] But questions remain as to whether GloBE is more onerous than GILTI, and, if so, by how much, as this exclusion would then advantage US parented groups. This is a difficult question to answer in broad terms[33] but the recent strengthening of GILTI and the widespread adoption of Qualified Domestic Minimum Top-up Taxes (QDMTTs) appear to have provided the other G7 countries with some comfort.[34] Of

[30] The retaliatory taxes were removed from the Senate version of the One Big Beautiful Bill which was eventually passed by the Senate on 1 July 2025 and approved by the House of Representatives on 3 July 2025.

[31] Note, for example, that the US's proposed retaliatory taxes could have had a self-harming impact on cross-border investment by making the US a less attractive place for foreign parented groups to invest in.

[32] The costs of not reaching the deal included those flowing from the imposition of the retaliatory taxes, and the loss of important gains made by jurisdictions in the Inclusive Framework in tackling base erosion and profit shifting. The benefits of reaching the deal included the provision of greater stability and certainty in the international tax system moving forward. *Ibid*.

[33] See Heydon Wardell-Burrus, 'GILTI and the GloBE', *Oxford Centre for Business Taxation, WP 23/1*, February 2023.

[34] G7 Statement n 34 above. Note, however, that the estimates provided by the US Congress' Joint Committee on Taxation suggest that these changes would bring a relatively modest increase in revenue. Joint Committee on Taxation, 'Estimated revenue effects relative to the current policy baseline of the tax provisions in the "Title VII – Finance" of the substitute legislation as passed by the Senate to provide for

course, the US could weaken GILTI in the future and countries may repeal their QDMTTs to attract US parented groups' real activity and profit, but the G7 deal also includes a commitment "to ensure any substantial risks that may be identified with respect to the level playing field, or risks of base erosion and profit shifting, are addressed". One can only speculate on the effectiveness of this commitment.

The Inclusive Framework is yet to agree to the G7 agreement at the time of writing. Challenging discussions lie ahead, and time will tell if this "side-by-side" system - where US parented groups are subject to GILTI and non-US parented groups are subject to GloBE - constitutes a stable equilibrium. Butthis article's three principal contributions on GloBE's impact on the existing system hold beyond these immediate discussions. Even in the extreme case where the Inclusive Framework rejects the G7 deal and GloBE collapses, it is safe to predict that jurisdictions will eventually return to the question of reform because the existing system is not viable in its current state for the long run. And one of the options on the table will surely be that of reviving a GMT. This article's analysis would then inform the choice between propping up the existing origin-based system with a GMT and more comprehensive reform. If this came to pass, it is hoped that the considerations set out in this article are given more thought than they did in the run up to the October 2021 agreement.

---

reconciliation of the Fiscal Year 2025 Budget' JCX-34-25, 1 July 2025. QDMTTs are discussed in some detail below.

This article proceeds as follows. Section 2 describes and evaluates the existing system, and discusses reform options considered in 2015-2019. Section 3 evaluates GloBE's impact on the existing system overall. Section 4 identifies the root cause of GloBE's mixed performance. Section 5 assesses GloBE's likely impact on international corporate taxation going forward. Section 6 concludes.

THE EXISTING INTERNATIONAL CORPORATE TAX SYSTEM: EVALUATION AND OPTIONS FOR REFORM

The existing system

The existing international corporate tax system is made up of the domestic law of each jurisdiction, a few thousand bilateral treaties and a handful of multilateral treaties.[35] It is not a coherent and principled system of law, but a few key structural features can be

[35] The literature on the current system is huge. Literature adopting a comprehensive or big picture approach includes, Graetz, n 11 above; Reuven S. Avi- Yonah, 'The Structure of International Taxation: A Proposal for Simplification', (1996) 74 *Texas Law Review* 1305; Wolfgang Schön, 'International Tax Coordination for a Second- Best World (Part I)', (2009) *World Tax Journal* 1, 67; Devereux and others n 11 above; Ruud De Mooij, Alexander Klemm and Victoria Perry, *Corporate Income Taxes under Pressure: Why Reform Is Needed and How It Could Be Designed,* (Washington DC: IMF Publishing, 2021); Eduardo Baistrocchi, 'The International Tax Regime and Global Power Shifts', (2021) 40 *Virginia Tax Review*219; Florian Haase and Georg Kofler (eds), *The Oxford Handbook of International Tax Law*, (Oxford: Oxford University Press, 2023); and Craig Elliffe (ed), *International Tax at the Crossroads Institutional and Policy Reform in the Era of Digitalisation*, (Cheltenham: Edward Elgar Publishing, 2023).

identified.[36] First, multinationals are largely taxed where their functions and activities take place and where rights to passive income are held, i.e. where subsidiaries and permanent establishments are located. This *origin-based system* is one of four possible locations where multinationals could be taxed, the others being the location of shareholders, parent companies, and consumers.[37] Second, a corporate group is not viewed as one for tax purposes; instead group entities are largely treated as separate. Third, taxing rights are 'allocated'[38] among jurisdictions employing rules centred on a source / residence dichotomy. Generally, and subject to many exceptions, passive

[36] Devereux and others n 11 above, ch 3.

[37] Origin-based taxation may be thought 'natural' and continues to have widespread support. Support is often based on the benefit principle; see, for example, Klaus Vogel, 'Worldwide vs. Source Taxation of Income— A Review and Re- Evaluation of Arguments (Part I)', (1988) 16 *Intertax* 216; 'Worldwide vs. Source Taxation of Income— A Review and Re- Evaluation of Arguments (Part II)', (1988) 16 *Intertax* 310; and 'Worldwide vs. Source Taxation of Income— A Review and Re- Evaluation of Arguments (Part III)',(1988) 16 *Intertax* 393. For a critique see Devereux and others n 11 above, 68-70 and 132-138.

[38] Technically, jurisdictions are not 'allocated' taxing rights. Under public international law countries have a right to tax profit if they have a sufficient nexus to the person earning it or the activities generating it. (For a recent discussion see Stepan Gadzo, 'The Principle of 'Nexus' or 'Genuine Link' as a Keystone of International Income Tax Law: A Reappraisal', (2018) 46 *Intertax* 194). Jurisdictions can unilaterally choose not to exercise such rights in full or at all, or they can agree not to do so by entering into treaties with other jurisdictions. Speaking of the allocation of taxing rights is thus technically imprecise, but it is a convenient and widespread shorthand which conveys the message that a primary function of international tax law is to determine which jurisdiction/s will exercise its/their right to tax if multiple jurisdictions have a right to do so under public international law.

income tends to be primarily taxed in residence jurisdictions and active income tends to be primarily taxed in source jurisdictions.[39]

A 'good' system is economically efficient, robust to profit shifting, easy to administer, and incentive compatible.[40] Many argue that it should also be fair. As set out at length in Devereux and others, the existing system performs badly on all these criteria[41] (leaving GloBE to one side for now). It is economically inefficient, distorting decisions along several margins, including whether, how much and where to invest. It is also susceptible to strategies that allow multinationals to shift profit to low tax jurisdictions thus reducing their global effective tax rates (ETRs). This is not surprising given that under the existing system a multinational's global ETR depends on cross-border intra-group transactions.[42] The Base Erosion and Profit Shifting (BEPS) project launched in 2012 sought to address these practices by narrowing loopholes in the system rather than altering its fundamental features.[43]

It is hard to overstate the existing system's absurd complexity, making it difficult for tax authorities to administer and for multinationals to comply with. This complexity partly reflects the complexity of international business. But it is primarily due to the system's

[39] This is often referred to as the '1920s compromise'. See, for example, Graetz, n 11 above.

[40] Devereux and othersn 11 above ch 2.

[41] *ibid* ch 3. To be clear, this section evalutes the existing system without taking GloBE into account.

[42] Such transactions are open to manipulation, thus making them ideal for profit shifting, be it through interest, royalty, or other payments.

[43] Devereux and Vella n 11 above.

fundamental structure. The system seeks to tax *profit*, a notoriously elusive notion that causes difficulties even in purely domestic contexts.[44] To compound matters, this elusive profit is taxed in an elusive location – its *origin* (broadly where it is deemed to have arisen). It is unsurprising that a system that seeks to achieve two elusive goals is problematic, requiring voluminous and complex rules. Despite repeated attempts at reform, critical parts of the regime – including transfer pricing and profit allocation rules[45] - remain dysfunctional, even inoperable in some cases..

The system's fundamental structure also leads to complexity indirectly. Voluminous and complex rules are needed because of the regime's susceptibility to profit shifting. These rules are not the product of overzealous legislators. If the overall tax paid by a multinational depends on cross-border intra-group transactions that are easily manipulated, then one necessarily needs complex rules to police these transactions.[46]

The current system is also incentive incompatible meaning that jurisdictions acting in their own interests have an incentive to undermine it. This follows from the first two points. Because multinationals have an incentive to shift real activity and profit to low

[44] See, for example, John Brooks, 'The Definitions of Income' (2018) 71 *Tax Law Review* 253.

[45] See for example, Joseph Andrus and Richard Collier, 'Transfer Pricing and the Arm's Length Principle After the Pillars' *Tax Notes International* 31 January 2022; Richard Collier and Ian Dykes, 'On the Apparent Widespread Misapplication of the OECD Transfer Pricing Guidelines' (2022) 76 *Bulletin for International Taxation* 20 ; and Richard Collier and John Vella, 'Five core problems in the attribution of profits to permanent establishments' (2019) 11 *World Tax Journal* 159.

[46] Including, for example, rules dealing with transfer pricing, interest deductibility, controlled foreign companies, and hybrid mismatch arrangements.

tax jurisdictions under the existing system, jurisdictions in turn have an incentive to cut their tax rates and narrow their bases to attract real activities and profit thus leading to a race to the bottom.[47] This is best encapsulated in the decline of headline corporation tax rates over the past couple of decades,[48] but is also seen in base-narrowing policies and in the deliberate non-adoption or weakening of anti-avoidance rules.[49]

Fairness is a standard criterion in tax policy evaluation, but it is not straightforward to use in the context of international corporation tax – partly because of the unclear economic incidence of the tax, but also because the meaning of a 'fair' allocation of taxing rights among jurisdictions is also unclear.[50] This notwithstanding, many jurisdictions are dissatisfied with the current allocation. For many years, developing jurisdictions' concerns that this allocation favoured developed jurisdictions were

[47] The incentives to compete over real activity may have intensified because of BEPS. This was predicted at the time BEPS was being negotiated, see Michael P. Devereux and John Vella n 11 above.

[48] The latest data shows that these rates stabilized around 2021 after 20 years of steady decline. OECD, *Corporate Tax Statistics 2024*, (Paris: OECD Publishing, 2024).

[49] US check-the-box rules are a notorious a notorious example; see Lawrence Lokken, 'Whatever happened to Subpart F? U.S. CFC legislation after the check-the-box regulations' (2005) 7 *Florida Tax Review* 185; and Harry Grubert, and Rosanne Altshuler, 'Three parties in the race to the bottom: Host Governments, Home Governments and Multinational Companies' (2005) 71 *Florida Tax Review* 153. On this point more generally see the discussion in Devereux and Vella n 11 above, 458-461.

[50] See Michael P. Devereux and John Vella, 'Issues of Justice in Taxing Corporate Profit' (2022) 2 *LSE Review of Public Policy*1.

dismissed.[51] But in recent years some developed jurisdictions themselves grew dissatisfied with the current allocation because of change caused by digitalisation.[52]

Overall, therefore, the existing system is hopelessly deficient. It is politically unsustainable as multinationals are deemed to pay less than a 'fair share' of tax due to profit shifting opportunities and anachronisms in the system. It is also practically unsustainable because of its complexity, dysfunctionality of key rules, and the downward pressure caused by competition. Without intervention it is likely to crumble or wither away.

The international corporate tax system at a crossroad: 2015-2019

As seen, the problems with the existing system ultimately stem from the incentives generated by its fundamental structure. Under an origin-based system multinationals are broadly taxed where activities and assets are located. Activities and assets are *relatively mobile*, and, therefore, this fundamental structure creates incentives for multinationals to shift real activity and profit to low tax jurisdictions. This in turn creates

[51] As recently as 2013, for example, the BEPS Action Plan explained that although 'a number of countries have expressed a concern about how international standards on which bilateral tax treaties are based allocate taxing rights between source and residence States' its proposed actions 'are not directly aimed at changing the existing international standards on the allocation of taxing rights on cross-border income.' OECD*, Action Plan on Base Erosion and Profit Shifting,* (Paris: OECD Publishing, 2013, 11.

[52] As discussed below, many developing countries were also dissatisfied with the process of reform and have taken steps to shift international tax rulemaking to the United Nations.

incentives for jurisdictions to reduce their corporate tax rate and base to improve their attractiveness. A GMT addresses the system's problems by seeking to contain these incentives.

Between 2015 and 2019 alternative systems were considered that would not create such incentives in the first place or would create weaker ones. These reforms would move from an origin to a destination basis of taxation (ie where consumers are located). The case for such a move and examples of destination-based systems were set out and examined at book-length in Devereux and others (2021).[53] The fundamental intuition behind such systems is that significant benefits flow from taxing multinationals in the location of a *relatively immobile* factor, such as consumers, because multinationals cannot easily move such factors to improve their corporate tax outcomes. As a result, the problematic incentives created under the current system do not arise or arise in a weaker form when tax is levied on this basis, depending on the precise design of the tax. Consider the most radical option - a Destination-Based Cash Flow Tax (DBCFT) - where multinationals' total profit is allocated on a destination basis. [54] Multinationals would have no incentive to move real activity and profit to low tax jurisdictions as that

[53] Devereux and others n 11 above.

[54] See Stephen Bond and Michael P. Devereux, 'Cash flow taxes in an open economy'(2002) *Centre for Economic Policy Research Discussion Paper Series No. 3401*; Alan Auerbach and Michael P. Devereux, 'Cash- flow Taxes in an International Setting'(2018) 10 *American Economic Journal: Economic Policy* 69; and Devereux and others n 11 above ch 7. This tax had also been proposed in the US in 2005: President's Advisory Panel on Federal Tax Reform, *Simple, fair and pro growth: Proposals to Fix America's Tax System* (2005).

will not affect their global ETR, given that they will be taxed in the location of their consumers and not that of their real activity and profit. In turn, jurisdictions would not have incentives to reduce their tax rates to attract real activity and profit[55] to outcompete others. By following a clear principle and obviating the need for masses of anti-avoidance rules such a move should also reduce complexity. Administrative challenges would arise, but the system should be simpler to administer too. Depending on the extent of the shift towards destination and how it would be done, such a shift thus promised a system that performs better – even much better - on a comprehensive set of evaluative criteria.[56]

In 2016 the House Republicans in the US Congress proposed the Border Adjustment Tax,[57] a variant of the DBCFT. Coordination would have made the widespread switch to a DBCFT easier and smoother, but the US's unilateral adoption of the DBCFT was expected to create incentives for other jurisdictions to follow suit, thus leading to an improved equilibrium to the present one.[58] It is worth emphasising this point. Unlike

55 On the DBCFT's robustness to profit shifting and other gaming strategies see, Alan Auerbach, Michael P. Devereux, Michael Keen, and John Vella 'International tax planning under a destination based cash flow tax' (2017) 70 *National Tax Journal* 783; and Michael P. Devereux and John Vella, 'Gaming destination based cash flow taxes' (2018) 71 *Tax Law Review* 477.

[56] See Devereux and others n 11 above ch 6 and 7 on evaluations of Residual Profit Allocation by Income and DBCFT systems respectively.

[57] This was proposed in 2016 by the Congressional Republicans as part of their broad reform agenda *A Better Way: Our Vision For A Confident America*.

[58] See Devereux and others n 11 above, 298-300.

GloBE, the widespread adoption of the DBCFT may not require cooperation among jurisdictions with different preferences (including net exporting jurisdictions and others that could lose out, at least in the short run). To see this consider a simple example where Jurisdiction A adopts a DBCFT, but Jurisdiction B retains its existing origin-based corporation tax. Multinationals would then have an incentive to locate in A, whether they are selling to consumers in A or B. If MNE sells goods to consumers in A, it pays DBCFT whether it is located in A or B, but if located in B it may also pay some additional origin-based tax there. If MNE sells goods to consumers in B, it pays full origin-based tax if located in B, while if located in A it may pay some tax in B depending on whether it had a PE there but it does not pay a DBCFT in A. Furthermore, by adopting a DBCFT A facilitates profit shifting from B to A. For example, if MNE's subsidiary in A grants a licence to another subsidiary in B, royalties paid by the subsidiary in B to that in A are deducted in B but not taxed in A, because granting a licence is a non-taxable export under the DBCFT in A. This simple example illustrates the basic incentives created by the unilateral adoption of the DBCFT. A's unilateral adoption of the DBCFT incentivizes MNE to shift real activity and profit from B to A,[59] which, in turn, incentivizes B to respond by also adopting a DBCFT.

Given the US's size and importance, the widespread adoption of a DBCFT became a genuine possibility following its 2016 Border Adjustment Tax proposal. However, the

[59] Note that a jurisdiction adopting the DBCFT unilaterally must trade off this benefit against the reduced ability to 'export' taxes to the residents of other countries. However, the latter benefit is clear under an origin-based cash-flow tax, but less clear under existing origin-based taxes. *Ibid*.

proposal was dropped after intense debate.[60] Proposals for a more limited shift towards destination also arose around this period from BEPS Action 1.[61] They were not driven by concerns with the system's poor state overall and an understanding of the benefits of a shift towards destination. Instead, they were driven by concern about fairness in the face of digitalisation. Broadly, two causes of concerns could be discerned.[62] Some jurisdictions were concerned that taxing rights are not allocated to jurisdictions where users of certain highly digitalised businesses are found, even if such businesses derive significant value from these users.[63] Put simply, these European jurisdictions were primarily frustrated by their inability to adequately tax the profit of US tech giants. Other jurisdictions argued that the existing system was anachronistic in only allowing market jurisdictions to tax non-resident companies if they have a physical

[60] See, for example, the articles in the special issue of the *Columbia Journal of Tax Law* (2017) Volume 8 Number 2. For views from outside the US see, for example, the articles in the special issue *Bulletin for International Taxation*, (2017), Volume 71, Number 6a, and Johannes Becker and Joachim Englisch, 'A European Perspective on the US Plans for a Destination-Based Cash Flow Tax' (2017) *Oxford University Centre for Business Taxation Working Paper 17/03*.

[61] OECD, *Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report*, (Paris: OECD Publishing, 2015).

[62] OECD, *Tax Challenges Arising from Digitalisation – Interim Report,* (Paris: OECD Publishing, 2018). On this report see Michael P. Devereux and John Vella, 'Taxing the digitalised economy: targeted or system-wide reform?' (2018) *British Tax Review* 301; and Richard Collier, 'The Evolution of Thinking on Tax and the Digitalization of Business 1996-2018' (2023)15 *World Tax Journal* 145.

[63] See, for example, HM Treasury, *Corporate tax and the digital economy: position paper*, (2017), and HM Treasury, *Corporate tax and the digital economy: position paper update*, (2018).

presence in the markets.[64] Different proposals allocating taxing rights to users or consumers' jurisdictions were put forward,[65] and over time these became the OECD's Unified Approach. The GMT was proposed by Germany and France *as an alternative* to the Unified Approach,[66] but eventually both the Unified Approach and the GMT were adopted, becoming Pillars One and Two respectively.[67]

Whether the German and French proposal was a deliberate strategy to halt a shift towards destination is unclear. An academic blog written at the time shows that such considerations were in people's minds then.[68] Some jurisdictions' hostility to the

[64] Remote sales may have been possible in the past, but the scale was now many times in magnitude because of digitalisation.

[65] The UK's 'User Participation' proposal, the US's 'Marketing Intangibles' proposal, and G24's 'Significant Economic Presence' proposal.

[66] Inspiration and cover for the proposal was provided by the US's recent adoption of GILTI. On GloBE being proposed as an alternative to destination-based taxes see Mindy Herzfeld, 'As the End of the OECD Project Draws Near, Jurisdiction Differences Sharpen' *Tax Notes Federal* 13 December 2021.

[67] See Collier and Vella n 14 above.

[68] 'A general shift of taxation to the market jurisdiction, on the other hand, is not in the German interest, given its huge and persistent export surplus – as such a reform would probably be costly for jurisdictions that produce more than they consume and invest. … In total, the German proposal for a minimum tax has its merits – and it is a clever move to deflect from the debate on a re-allocation of taxing rights, or at least provide strong arguments for a reduced scope and impact of the other proposals that are currently on the table. This applies not only to the proposed EU Digital Services Tax, which is unpopular with the German government, but also to broader efforts within the framework of the OECD TFDE to shift taxing rights to the jurisdiction of destination (ie the sales market states). With the minimum tax now proposed, the German Finance Minister can argue that in future the destination jurisdiction would have subsidiary

destination principle was well-known. Destination-based reforms were even disingenuously packaged as extensions of the existing origin-based system to make them more agreeable to them.[69] Whatever its intent, the GMT is likely to act as a drag on moves towards destination. At the time of writing GloBE's adoption around the world is continuing apace while Pillar One is in significant doubt, at best. But even if Pillar One is eventually adopted its impact will be less significant because of GloBE. If GloBE had not been adopted it was reasonable to predict that over time competition would have made origin-based taxation increasingly untenable thus opening the door for further destination-based taxation. This would have mirrored the experience in the US with state-based taxation where over time competition drove states from an origin to a destination basis of taxation.[70]

---

taxing rights whenever the recipient state does not exercise its taxing rights sufficiently, and that the problem of under-taxation of large digitalized businesses would also be taken care of.' Johannes Becker and Joachim Englisch, 'The German Proposal for an Effective Minimum Tax on MNE Profits', 17 January 2019, Kluwer Tax Blog.

[69] For example, the term 'destination' was not used in OECD debates on reform, including to describe the Unified Approach, even if it was clearly a destination-based tax. Collier notes: 'since the publication of the 2018 Interim Report to date, the OECD has seemed very reluctant to recognize the destination concept, even though states (and the OECD) have in the Pillar One work been exclusively concerned with what are essentially alternative destination 'solutions''. Richard Collier, 'The Evolution of Thinking on Tax and the Digitalization of Business 1996-2018'(2023) 15 *World Tax Journal* 145.

[70] See, for example, Juan Carlos Suarez Serrato and Owen Zidar, 'Who Benefits from State Corporate Tax Cuts? A Local Labor Markets Approach with Heterogeneous Firms', (2016) 106 *American Economic Review* 2582.

GLOBE

GloBE in outline and state of play

GloBE is complex, but its general framework can be described briefly.[71] GloBE applies to international groups with annual revenues exceeding €750 million. It imposes a top-up tax on 'undertaxed profit' earned in any jurisdiction in which the group operates. Simplifying, the process can be divided into three steps.

First, determine whether profit in a jurisdiction is 'undertaxed' i.e. subject to an Effective Tax Rate (ETR) below 15%.[72] The ETR is calculated by dividing Adjusted Covered Taxes (broadly, taxes on income) by Adjusted GloBE Income (financial accounting income subject to several modifications).

Second, calculate the top-up tax. Once undertaxed profit is identified, the top-up tax rate is calculated by subtracting the group's ETR in that jurisdiction from 15%. This top-up rate is then applied to Excess Profit (defined as Adjusted GloBE income less the

[71] GloBE rules are set out in Model Rules and clarified in Commentary and Administrative Guidance. In places the Commentary and Guidance add to the Model Rules.

[72] For these purposes the taxes paid and profit earned in each jurisdiction in which the group operates are aggregated.

Substance Based Income Inclusion (SBIE)).[73] No top-up tax is thus due in a jurisdiction if the ETR is below 15% but GloBE income is equal to or less than the SBIE.

Third, determine which jurisdiction imposes and collects the top-up tax, following GloBE's rule order. The origin jurisdiction may collect the top-up tax first by adopting a Qualified Domestic Minimum Top-up Tax (QDMTT). If the origin jurisdiction does not exercise this option, the jurisdiction of the Ultimate Parent Entity or an Immediate Parent Entity may collect the top-up tax by adopting an Income Inclusion Rule (IIR). If none of these jurisdictions collects the top-up tax, then jurisdictions where the group's affiliates (subsidiaries and branches) are found may collect the top-up tax by adopting a UTPR. If more than one jurisdiction has enacted a UTPR the top-up tax is shared following a formula.[74]

Jurisdictions that agreed to the October 2021 statement did not actually agree to implement GloBE. GloBE is a 'common approach', and these jurisdictions merely agreed that if they adopted GloBE, they would implement and administer it in a way that is consistent with its outcomes and in line with the model rules and guidance, and that

[73] The SBIE is a formulaic return on payroll expenses (which starts at 10% in 2023 and following tapering reaches 5% from 2033) and the carrying value of depreciable tangible assets (which starts at 8% in 2023 and following tapering reaches 5% from 2033). The tapering rules are found in the Model Rules. OECD, *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS*, (Paris: OECD Publishing, 2021),art 9.2, (Model Rules).

[74]

$$50\% \times \frac{\text{Number of employess in jurisdiction}}{\text{Number of employees in all UTPR jurisdictions}} + 50\% \times \frac{\text{Total value of tangible assets in jurisdiction}}{\text{Total value of tangible assets in all UTPR jurisdictions}}$$

they will accept the application of GloBE by other jurisdictions.[75] However, enough jurisdictions are on the way to implement GloBE for it to have near worldwide impact.[76] Critically, EU Member States are obliged by EU law to transpose the global minimum tax Directive[77] by introducing the IIR and the UTPR through domestic legislation. The OECD estimates that by 2025 90% of large multinationals will be in-scope of GloBE through the IIR and UTPR.[78]

For an in-scope group to avoid any top-up tax liability under GloBE its Ultimate Parent Entity and Intermediate Parent Entities must not be located in jurisdictions that adopted an IIR, and it must not have any affiliate (subsidiary or branch) in a jurisdiction that adopted a QDMTT or UTPR.[79] Given the proportion of in-scope MNEs with affiliates

[75] October 2021 Statement n 1 above. As noted in the Introduction above, the US has clearly reneged on this commitment.

[76] At the time of writing, 55 jurisdictions implemented or intend implementing GloBE with effect from January 2024 or 2025. 10 further jurisdictions have taken concrete steps towards GloBE implementation. OECD, *OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors - G20 South Africa, February 2025,* (Paris: OECD Publishing, 2025).

[77] 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.

[78] OECD, *OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors - G20 Brazil, July 2024,* (Paris: OECD Publishing, 2024).

.

[79] If it only has affiliates in jurisdictions that adopted QDMTTs it may become liable to top-up taxes in those jurisdictions. If it has a UPE in a jurisdiction which adopted an IIR or has an affiliate in a jurisdiction which adopted a UTPR, it will be liable to top-up taxes on undertaxed profit in any jurisdiction around the

in jurisdictions that already introduced the IIR and UTPR it is reasonable to conclude that the critical mass for GloBE to operate as intended, has been reached.[80]

Cui questions whether sufficient incentives have been created to ensure the widespread—or indeed any—implementation of GloBE.[81] While this author remains unconvinced by the arguments motivating such concerns,[82] the point is ultimately moot.

---

world. If the top-up tax is collected through the IPE, it will only be collected from affiliates in ownership chains below the affiliate in the IPE.

[80] Michael P. Devereux, Johanna Paraknewitz and Martin Simmler, 'Empirical evidence on two issues for the Global Minimum Tax: What is a critical mass and how large is the Substance-Based Income Exclusion' (2023)44 *Fiscal Studies* 9. By 'critical mass' is meant a rough number of adopting jurisdictions that is sufficient to ensure that a substantial proportion of in-scope entities are subject to top-up tax under the IIR or UTPR. Once this is reached, the incentives for other jurisdictions not to adopt GloBE weakens significantly. By not adopting GloBE they would forego top-up tax revenues without improving their competitive position given that the top tax revenues they could have collected (for example through the QDMTT or the IIR) would be collected by other jurisdictions (for example through the IIR or the UTPR respectively).

[81] Wei Cui, 'Strategic Incentives for Adopting the Global Minimum Tax', (2024) 16 *Journal of Legal Analysis* 211.

[82] First, the article is built on the questionable assumption that jurisdictions aim to maximize *national income*. Its main conclusions may not hold once this assumption is relaxed. Second, even if jurisdictions did maximise national income, whether the adoption of an IIR leads to a reduction in national income for a particular jurisdiction is an empirical question, and the nascent state of empirical research on this issue does not warrant the strong conclusions made in this article. Third, even if jurisdictions did maximise national income, the extent to which the adoption of the QDMTT leads to a genuine loss of national income for Ultimate Parent Entity jurisdictions, if at all, depends on the extent to which their residents are the ultimate owners of the multinationals in question, and whether they bear the economic

As a group of jurisdictions of significant size and importance have cooperatively adopted the UTPR,[83] the questions raised by Cui fall away.[84]

GloBE evaluation

Incentive Compatibility

The existing system creates incentives for jurisdictions to compete with one another for real activity and profit, leading to a race to the bottom. GloBE aimed to address this and thus safeguard the system's long-term viability. Clearly, GloBE was not intended to address competition through other taxes, such as personal income tax or national insurance, let alone competition in other areas, such as labour market, environmental, or financial regulation.[85] Constraining competition on corporation tax could even

---

incidence of the QDMTT. The uncertainty around these empirical questions again undermines the strong conclusions reached in the article. Finally, the article's conclusions on the UTPR are undermined if jurisdictions have an incentive to adopt IIRs. Once jurisdictions choose to have an IIR they then had an incentive to ensure that as many jurisdictions as possible adopt the UTPR to buttress the IIR.

[83] Now including all 27 EU Member States, the United Kingdom, Canda, Australia, New Zealand, Turkey, Norway and South Korea.

[84] This point is made persuasively in Heydon Wardell-Burrus, *The Global Minimum Tax*, unpublished DPhil thesis, University of Oxford (2024).

[85] Academics have studied the race to the bottom in other areas (eg Hans-Werner Sinn, *The New Systems Competition* (New Jersey: Wiley-Blackwell, 2003) and jurisdictions have taken steps to address such competition too (eg the International Labour Organisation was set up in 1919 to address the harmful effects of competition on labour standards – see Eddy Lee, 'Globalization and Labour Standards: A

strengthen jurisdictions' incentives to compete though other tax and regulatory channels.[86] Notwithstanding politicians' over-reaching claims,[87] GloBE did not seek to put an end to competition over corporation tax. As more carefully articulated by the OECD, GloBE set 'multilaterally agreed limitations on [tax competition].'[88] GloBE allows competition down to the agreed minimum and over activities by out-of-scope companies. Competition is also allowed over real activity covered by the SBIE,[89] which could be significant.[90]

Review of Issues' (1997) 136 *International Labour Review* 173, 181). But the race to the bottom in corporate tax appears to have attracted particular attention in recent years. Several reasons could explain this, including the striking impact competition has had on corporation tax rates, the salience of corporation tax for investment, and the public clamour for multinationals to pay their 'fair share' of tax.

[86] See the discussion in Noam Noked, 'From Tax Competition to Subsidy Competition' (2020) 42 *University of Pennsylvania Journal of International Law* 445.

[87] See, for example, Statement from Secretary of the Treasury Jane L Yellen on the OECD Inclusive Framework Announcement, 8 October 2021. As recently as July 2024 OECD documentation claimed, 'The global minimum tax ensures that large multinational enterprises pay a minimum level of tax (at an effective rate of 15%) on their income in each jurisdiction where they operate, thereby reducing the incentive for profit shifting, placing a floor under tax competition and *bringing an end to the race to the bottom on corporate tax rates*' (emphasis added), OECD n 85 above.

[88] OECD Brochure n 16 above.

[89] IF members disagreed over GloBE's objectives. Some argued that GloBE should pick up where BEPS left off and thus address profit shifting. Others argued for a more ambitious GMT that also addressed competition over real activity. The SBIE is the resulting political compromise. It means that GloBE does more than address profit shifting, but it also allows some tax competition over real activity.

[90] In the sample under study the SBIE shielded 57% and 42% of an average and median firm's pre-tax profit in its first year, falling to 41% and 28 % respectively after 10 years. Michael P. Devereux, Johanna

In the run up to agreement on Pillar Two these opportunities to compete post-GloBE were well understood. But there was less clarity on competition beyond these opportunities. Indeed, it was not even clear whether GloBE would seek to place a floor on the corporation tax paid by multinationals or on tax competition among origin jurisdictions.[91] This issue was analysed at length[92] and the following findings were made. First, GloBE creates both a floor on the total tax paid by multinationals and a floor on competition among origin jurisdictions. The floor for multinationals is 15% of Excess Profit. The floor for competition among origin jurisdictions is no corporation tax and 15% of Excess Profit collected through a QDMTT. This is the most aggressive

---

Paraknewitz, Martin Simmler, 'Empirical evidence on two issues for the Global Minimum Tax: What is a critical mass and how large is the Substance-Based Income Exclusion' (2023) 44 *Fiscal Studies* 9.

A more recent study by OECD economists found that on average over the sample period, the SBIE carves-out 29.8% of total profit in its first year, falling to 20.5% of total profit after 10 years. Felix Hugger and others , 'The Global Minimum Tax and the taxation of MNE profit, *OECD Taxation Working Papers*, (2024) no 68.

[91] Devereux and Vella n 14 above sec 2.

[92] In a blog: Michael P. Devereux, John Vella, and Heydon Wardell-Burrus, 'More on Pillar 2 and Tax Competition', *Oxford University Centre for Business Taxation Blog* 23 December 2021, available at https://oxfordtax.sbs.ox.ac.uk/article/more-on-pillar-2-and-tax competition; a Policy Brief: Michael P. Devereux, John Vella, and Heydon Wardell-Burrus, 'Pillar 2: Rule Order, Incentives, and Tax Competition', *Oxford University Centre for Business Taxation Policy Brief* 14 January 2022, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4009002; and an academic paper: Devereux and John Vella n 14 above..

position a jurisdiction can adopt post-GloBE, subject to the third point below.[93] Second, following GloBE's introduction, jurisdictions may have an incentive to collect tax revenues on corporate profit through a QDMTT rather than through the corporation tax.[94] Third, the floors can be breached if jurisdictions offer government grants, Qualified Refundable Tax Credits (QRTCs),[95] or Marketable Transferable Tax Credits (these two credits are called 'favoured' credits henceforth).[96][97] In other words, these

[93] It does not mean that all jurisdictions, or even any jurisdiction, will go down to this point. This is the lowest point jurisdictions should reach if they are above it and want to compete as aggressively as possible. They have no incentive to go below this point; doing so will not improve their competitiveness as other jurisdictions will collect top-up tax equivalent to 15% of Excess Profit through the IIR or the UTPR. Similarly, if jurisdictions are below this point and would like to keep as aggressive a competitive position as possible post-GloBE, they should go up to this point but no further.

[94] Jurisdictions with multinationals with local ETRs below 15% and some Excess Profit (ie with MNEs liable to a top-up tax) may have to reduce the corporation tax liability just to *retain* the same competitive position they currently enjoy relative to competitor jurisdictions. They can use the QDMTT to collect the revenues foregone by reducing the corporation tax.

[95] To qualify as a QRTC, a credit must be 'paid as cash or available as cash equivalents within four years from when a Constituent Entity satisfies the conditions for receiving the credit'. Model Rules, Article 10.1.1.

[96] The Administrative Guidance released in February 2023 includes special rules which apply where a flow-through tax benefit is received by an in-scope MNE which accounts for the relevant investment under the equity method. OECD, *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)* (Paris: OECD Publishing, 20023, 61-66 ('Administrative Guidance').

[97] The G7 agreement reached on 28 June 2025, n 34 above, includes the following principle: 'Work to deliver a side-by-side system would be undertaken alongside considering changes to the Pillar

options allow multinationals to pay less than and jurisdictions to compete below 15% of Excess Profit.[98] [99][100]

The third point is now well understood. Jurisdictions that are able and willing to offer grants and favoured credits can outcompete jurisdictions that are not. What is not yet known is the extent to which jurisdictions will be able and willing to do so given domestic political constraints and potential fiscal costs. But one can assume that

---

2 treatment of substance-based non-refundable tax credits that would ensure greater alignment with the treatment of refundable tax credits.' The wording of this principle is looser and less committal than that of other principles in the agreement. It remains to be seen whether jurisdictions will agree to change, but if the treatment currently extended to QRTCs is broadened to include other credits, including certain non-refundable credits, the scope for jurisdictions to compete aggressively post-GloBE will be even greater. If this change is agreed, GloBE will have an even weaker impact on tax competition.

[98] Any pre-GloBE ETR can be reduced below 15% of Excess Profit, even to zero, using these three instruments. This is because grants and favoured credits are added to the denominator rather than deducted from the numerator when calculating multinationals' ETR.

[99] Finally, note that relatively high tax jurisdictions may compete over discrete projects post-GloBE. If MNE has operations in Jurisdiction A subject to an ETR comfortably above 15%, A may outcompete Jurisdiction B which has no corporation tax for a discrete project by offering a low tax rate on profit from this project. Profit from this project will be subject to a top-up tax equal to 15% of Excess Profit if MNE locates in B, but it may be subject to a lower ETR if it locates in A. Despite the low tax rate for this project, no top-up tax is triggered in A because of the higher tax rate on profit from other operations there. See Heydon Wardell-Burrus, 'Tax Planning under the GloBE Rules'(2022) 67 *British Tax Review* 545, 571-573 and 588-590, and Heydon Wardell-Burrus, 'State Strategic Responses to the GloBE Rules', *Oxford University Business Taxation Working Papers* (2022) WP 22/1. Of course, several issues arise here, including constitutional issues around the provision of lower tax rates to specific taxpayers.

[100] Model Rules n 80 above art 3.2.4.

jurisdictions that were willing to compete aggressively pre-GloBE will also be willing to compete aggressively post-GloBE, albeit through different channels. Early indications support this assumption.[101] It is also not yet known where the line will be drawn between permissible and impermissible grants and favoured credits.[102] Two main sets of rules police this boundary. First, specific conditions are placed on credits to qualify as favoured credits.[103] Second, if jurisdictions providing grants or favoured credits collect QDMTT or IIR, the former must not be 'benefits that are related' to the latter.[104] We return to these two sets of rules below.[105]

[101] Mindy Herzfeld, 'The Next Phase of Pillar 2 Implementation: Creative Competition' *Tax Notes International* 17 June 2024.

[102] 'Permissible' here means grants and credits that achieve the desired outcome. A permissible credit is designed with the intention of being classified as a QRTC and is successful in attaining that classification

[103] For QRTCs see: Model Rules, n 80 aboveart 10.1.1 and OECD, *Tax Challenges Arising from the Digitalisation of the Economy – Consolidated Commentary to the Global Anti-Base Erosion Model Rules: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project*, (Paris: OECD Publishing, 2025) 215-216 (Commentary). For Marketable Transferable Tax Credits see OECD (2023), *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS*(Paris: OECD Publishing, 2023) sec 2 (Administrative Guidance 2).

[104] If they are the domestic minimum top-tax will lose its status as 'qualified'. Model Rules n 80 above art 10.1.1

[105] The conditions to qualify as a QRTC as discussed in section xx below. The 'related benefits' rules is discussed further below.

Robustness to profit shifting

GloBE does not target profit shifting[106] mechanisms per se, as transfer pricing and other rules do. It addresses profit shift incentives by increasing the tax rate on income shifted to low tax jurisdictions, most significantly those with no or little economic substance. Prima facie, therefore, GloBE should lead to a reduction in profit shifting, thus easing pressure on transfer pricing rules and the like.[107] However, profit shifting opportunities remain to the extent that some jurisdictions move to or stay at the floor set by GloBE and others stay above the floor or move further away from it in response to GloBE. Beyond this, profit shifting may also take place by gaming the GloBE rules. Potential strategies will be undoubtedly devised,[108] but this does not mean that they will

[106] Profit shifting here means strategies that allow a business to pay less tax without changing the nature or location of real activities or changing them nominally or marginally. While not without issues, this definition usefully distinguishes such behaviour from real responses involving a change in the nature or location of real activities. Some responses fall in the grey area between the two, where the real response is more than nominal, and the tax gain is high relative to the cost.

[107] The OECD's latest estimate is that shifted profit will fall by half as a result of GloBE. Hugger and others n 105 above 17.

[108] Indeed, some have already been suggested in the literature. Wardell-Burrus, for example, has discussed 'blending' and 'sheltering' strategies in an academic article. The former uses jurisdictional blending to reduce or eliminate top-up taxes. Blending can be inter- or intra-jurisdictional, and essentially seeks to combine high and low tax profit in the same jurisdiction. Sheltering involves the use of the SBIE. See Wardell-Burrus, (2022) *British Tax Review*, n 114 above.

withstand challenge, will be amenable to use at scale, and will not be shut down.[109] Some uncertainty on the extent of GloBE's impact on profit shifting is thus inevitable.

Some more general points can be made. Post-GloBE, multinationals have no incentive to shift profit to low tax jurisdictions with no real activity *unless* the jurisdiction from which the profit is shifted has a corporate tax rate *above* 15%.[110] The question then arises whether multinationals can make overall savings by incurring costs on *new* real activities in low tax jurisdictions to facilitate profit shifting. This question is examined in two settings with a simple example. Jurisdictions A and B have corporation tax rates of 15% and 0% respectively, and B operates a QDMTT. MNE has real activity in A earning profit of $1,000 and paying $150 in tax. Can MNE make an overall saving by investing in new real activity in B, and shifting the $1,000 of profit which arose in A to B?[111] In sum, this strategy may produce overall savings, but this depends on the values of several

[109] The Model Rules already include rules to address aggressive tax planning strategies, eg Model Rules n 80 above art 3.2.7, 4.1.4, 4.3.3.

[110] Consider jurisdictions A and B which have corporate tax rates of 15% and 0% respectively. MNE has real activity in A earning profit of $1,000 and incurring a tax liability of $150. If MNE has no real activity in B, shifting the profit from A to B triggers a top-up tax liability of $150 in B and does not produce a tax saving. A saving is made if, for example, the tax rate in A is 20%. MNE then pays $150 in tax rather than $200.

[111] To be clear, the question here is not whether MNE has an incentive to shift its costs from A to B. MNE has costs in A and earns profit in A - that remains unchanged. The question is whether MNE has an incentive to incur *further* costs in B to facilitate the shifting of profit earned in A to B. In other words, can the further real costs incurred in B and the tax paid on the profit shifted to B (and on any other profit arising there as a result of the strategy), less any credit or grant given by B, amount to less than the $150 MNE would have paid in A if the profit would not have been shifted?

variables. In particular, the answer depends on the return on the new costs incurred in, and the generosity of incentives provided by, the low tax jurisdiction.

[Table 1 to be inserted here]

We start by examining a setting where B does not provide any incentive. As seen in column a of Table 1, if MNE incurs $100 in new labour costs in B and labour produces revenue equal to cost, MNE is marginally better off by shifting the profit from A to B: it pays $149.30 in B rather than $150 in A. This marginal saving arises because of the SBIE: the 15% top-up rate is applied to Excess Profit of $995 and not profit of $1000. Therefore, if B's rate is less than 15%, incurring labour costs in B and shifting profit from A to B may lead to a net saving depending on the return to the labour cost. Three further points can be made. First, if labour does not generate revenue equal to its cost, no saving will arise.[112] Second, if labour produces revenue at least equal to its cost, the higher the labour cost the higher the saving.[113] Third, the closer the rate in B is to 15%, the lower the saving.[114] Overall, however, the savings from this strategy are likely to be small.

[112] In such a case the cost of labour will be higher than the saving made by shifting profit.

[113] Again, this is because of the benefit of the SBIE. If $500 of labour costs are incurred, then the tax paid in B will be $146.3 (15% of $975) rather than $149.3 (15% of $995).

[114] This is because the benefit of the SBIE will be availed of less. If the CIT rate in B is 14%, the total tax paid will be the sum of 14% of $1000 and 1% of $995, whereas if the CIT rate in B is 0%, the total tax will be 15% of $995.

Savings could be significant, however, if B offers incentives, such as grants or QRTCs. Assume that B offers a QRTC of 100% of labour costs. As seen in column b, if labour produces revenue equal to its cost, MNE will make a sizeable saving of $85.7 by shifting the profit to B.[115] Indeed, as long as labour produces revenue equal to its cost, shifting profit from A to B produces a saving for MNE even if B and A had equal rates (15%) and B offered only a miserly QRTC. Column c shows that this holds even if B had a corporate tax rate of 15% and offered a QRTC of 1% of labour cost.

If labour produces no revenue, shifting profit to B will only produce a net saving for the MNE if the QRTC is at least 100% of labour cost. Column d shows that even with a QRTC of 99% MNE would not make a net saving by shifting profit to B if labour produces no revenue. Finally, note that MNE's saving increases with the generosity of the QRTC and with labour costs (if labour generates revenue equal to cost). Column e and f, show that with a QRTC of 150% of labour costs the saving increases to $128.3 and with labour costs of $200 the saving increases to $171.5. Column g shows results where variables have more moderate values. If B has a tax rate of 15%, offers a QRTC of 80% of labour costs, and labour produces revenue equal to 50% of its cost, MNE makes a net saving of $25.2.

[115] MNE pays $164.25 in QDMTT if it shifts profit to B, but to reach the net outcome of the strategy, the QRTC (- $100) and the net labour costs ($0, which is equal to $100 of revenue less $100 of cost) have also to be taken into account. MNE faces a total cost of $64.25 if the profit is shifted to B. This is a significant saving over $150 of tax due in A if the profit is not shifted.

The takeaway from this analysis is that if a jurisdiction offers grants and QRTCs, multinationals may make an overall saving by undertaking the real activity that is being incentivised in that jurisdiction and shifting profit to it. It is not straightforward to set out the conditions under which this strategy leads to a net saving because it depends on a variety of factors, including the cost incurred to undertake the real activity, the return on the cost, and the generosity of the grant or QRTC. Clearly, however, this can be an attractive strategy for multinationals and jurisdictions.

A few further points may be made.

First, the above example assumes that there are no profit shifting costs for MNE. Clearly, the strategy could fail if these costs were high enough.

Second, this strategy may also benefit Jurisdiction B in net revenue terms, thus incentivising it to facilitate the strategy by providing grants and QRTCs. Both MNE and B make a net revenue gain in columns b, c, d, e, and g,[116] essentially at the expense of Jurisdiction A. B, however, does not make a net revenue gain in column f. Of course, the benefit to B may go beyond possible net revenue gains and includes the benefits of increased domestic labour activity (both by MNE and businesses providing professional and related services), with the tax and other positive spillovers that brings.

[116] Note that in column e, B makes a net revenue gain despite offering a QRTC of 150% of labour costs.

Such incentives may be open to abuse, but domestic anti-avoidance rules may be included to guard against it.[117]

Third, one must consider whether this planning could be defeated by existing rules or should be defeated by new rules. A QRTC is defined as 'a refundable tax credit designed in a way such that it must be paid as cash or available as cash equivalents within four years from when a Constituent Entity satisfies the conditions for receiving the credit under the laws of the jurisdiction granting the credit.'[118] The Commentary explains that the conditions for QRTCs 'are designed to identify tax credits that are, as a matter of substance and not merely form, *likely* to be refunded',[119] and the refund mechanism must have 'practical significance for those taxpayers entitled to the credit'. Assessing refundability as a matter of substance rather than form is entirely reasonable. On the other hand, it makes no sense to deem a credit 'refundable' only if it is 'likely' to be refunded. If it is highly unlikely that a credit is refunded, it is reasonable to question whether it is genuinely refundable. But it does not follow that a credit should only be deemed refundable if it is 'likely' to be refunded. For example, it would be odd to deem a credit non-refundable because it has a 50%-50% chance of being

[117] For example, Barbados introduced refundable job and R&D tax credits in its 2024 Income Tax Act reform, which include such a mechanism. Section 65 H (4)(b) provides that the credit will not be available 'where the eligible payroll expenditure can reasonably be considered by the Commissioner to be excessive and unreasonable in relation to the company's business.'

[118] Model Rules n 80 above art. 10.1.1.

[119] Commentary n 118 above, 215 (emphasis added).

refunded, as the Commentary's plain language here seems to suggest. Credits should be deemed refundable if there is a genuine possibility that they will be refunded.[120]

A sensible interpretation of this condition is met if the QRTC is available to companies that may be unprofitable and thus unable to use it, thus requiring a refund. The fact that a multinational may not require a refund if it shifts profit from other jurisdictions should not mean that the condition is not met. The credit is not conditional on multinationals shifting profit. Furthermore, a refund may be required even if profit is shifted, as seen in column f. In any event, the Model Rules do not place similar limitations on the use of grants, which may thus be used for these purposes instead of QRTCs.

If the jurisdiction offering the incentives relies on the QDMTT, the incentives would also need to avoid being deemed a 'collateral benefit' to a QDMTT. For a start, note that the strategy can also work with little reliance on the QDMTT, if at all, as seen in column g. The guidance on the meaning of 'collateral benefit' in the Commentary and Administrative Guidance is sparse.[121] The Commentary states that '[a] tax benefit or grant provided to all taxpayers is not related to the GloBE Rules'.[122] But offering the incentive broadly increases costs to B. The Commentary also states that 'whether the tax benefit or grant benefits only taxpayers subject to the GloBE rules' is a fact that is

[120] This important sentence in the Commentary must have been drafted poorly and should be amended.

[121] See the discussion in Devereux and Vella n 14 above 365 et seq.

[122] Commentary n 118 above, 213.

'relevant but not decisive'.[123] Compliance with this test will thus depend on the specific grant or QRTC on offer.

Economic Efficiency

Various factors come into play in assessing GloBE's impact on the system's overall economic efficiency, but analysis of this issue is still at an early stage. As a start and at a high-level of analysis, some factors suggest an increase and others a decrease in overall efficiency.

An increase in ETRs in low tax jurisdictions and the consequent narrowing of the dispersion in ETRs promises to contribute to improved efficiency. This could lead to weaker distortions to location decisions, improved efficiency in the international allocation of capital, and increased global output.[124] But this analysis is complicated by several factors. First, the dispersion in ETRs may not in fact narrow or it may be weaker than expected. As seen above, post-GloBE multinationals may continue achieving low ETRs through grants and favoured credits. On the other hand, if ETRs in low tax jurisdictions do increase, high tax jurisdictions may respond by increasing their tax rates in response – thus maintaining the tax differential between the two. The OECD

[123] *ibid*.

[124] Hugger and others n 105 above; Englisch and Becker n 13 above.

estimates that GloBE will reduce tax rate differentials by 30% - but it does not consider these two possible effects.[125]

Second, if GloBE leads to an increase in ETRs in low tax jurisdictions, this will also reduce profit shifting. This complicates the analysis because a reduction in profit shifting would in turn increase distortions in investment location decisions.[126] Bares et al[127] have studied the interaction of these two effects caused by an increase in ETRs: reduced profit shifting and dispersion in rates. They simulate a minimum tax at different rates. At first, as the minimum tax rate rises the dispersion in rates increases because of a reduction in profit shifting, meaning that statutory differences between jurisdictions matter more. As GloBE bites in more jurisdictions, the dispersion starts to fall as the lower bound on effective average tax rates, on which location depends, rises steeply. With a 15% rate, the dispersion in rates is roughly the same as without GloBE. This suggests that GloBE will have little effect on inefficiency due to distortions to location choices.

[125] Hugger and others n 105 above.

[126] A simplistic example provides the intuition behind this. MNE's decision whether to invest in jurisdiction A (10% corporation tax rate) or B (30% corporation tax rate) may be distorted by the corporation tax. The decision is not distorted in the same way if MNE can shift its profit to jurisdiction C (0% corporation tax rate), whether it invests in A or B.

[127] Francoise Bares, Michael P. Devereux, Irem Guceri, and Vikram Patil, 'Business Location Decisions with a Global Minimum Tax', (under review).

Some factors suggest that GloBE could have a negative impact on the overall economic efficiency of the system. Most significantly perhaps, the increase in the cost of capital caused by an increase in ETRs is expected to have a negative impact on investment decisions leading to a drop in global aggregate investment.[128] The impact of tax on the cost of capital is measured by effective marginal tax rates, which will increase if GloBE increases tax rates, thus discouraging investment. The question is by how much. Empirical work on this question is still at an early stage, and, thus far, results carry some differences.

In 2020 the OECD released an Impact Assessment which estimated that as a result of both Pillars, '[a]t the MNE group level, the GDP-weighted average increase in effective marginal tax rates could be around 1.4 percentage points, suggesting only limited impacts on global investment.'[129] Bares et al also provide estimates of this impact.[130] They translate changes in effective marginal tax rates into estimated changes in

[128] There is a vast literature showing that investment decisions respond negatively to increases in ETR dating back to Robert E. Hall and Dale W. Jorgenson, 'Tax Policy and Investment Behavior' (1967) 57 *American Economic Review* 391.

[129] OECD Impact Assessment (2020), op. cit., p. 143. It argued that this 'would likely have a relatively small effect on global business investment… because the firms most affected by the additional investment costs would be relatively large and highly profitable MNEs' and '[t]hese firms are estimated to be less sensitive to corporate taxes in their investment decisions than less profitable firm'. This is based on recent work at the OECD including: Tibor Hanappi, Valentine Millot and Sébastien Turban, 'How does corporate taxation affect business investment? Evidence from aggregate and firm-level data', *OECD Economics Department Working Papers* (2023) no 1765.

[130] Bares and others n 142 above.

investment, and use estimates of the elasticity of investment with respect to cost of capital in existing empirical literature to do so. Given the range of elasticities in the literature, changes due to GloBE at 15% are estimated by them to reduce investment by between 3.2% and 11.2%, with an average estimate of around 7%. They also find considerable variation across jurisdictions.[131] Applying different assumptions about the tax elasticity of investment from the literature UNCTAD find a range of estimates of impact between -1 % and -4 % in foreign direct investment flows.[132]

As seen, GloBE's impact on investment will depend on jurisdictions' willingness and ability to offer grants and favoured credits, and on profit shifting opportunities. These studies do not account for this. We should also note that GloBE does not prevent jurisdictions from implementing immediate expensing, which should weaken the negative impact of an increase in tax rates on investment decisions along the extensive and intensive margin.[133] But – puzzlingly - Allowances for Corporate Equity measures are undermined by GloBE, even if they could be economically equivalent to immediate expensing.[134]

[131] For example, Germany would experience a fall of 17.7%, while the US only 1.2%. UNCTAD's estimates are different again.

[132] UNCTAD, 'The Impact of a Global Minimum Tax on FDI', in (2022) *World Investment Report 2022* 99.

[133] Model Rules n 80 above art 4.4.

[134] Shafik Hebous and Andualem Mengistu, 'Efficient Economic Rent Taxation under a Global Minimum Corporate Tax', *IMF Working Paper* (2024) no 2024/057.

Other factors could also have a negative impact on the overall efficiency of the system. Subject to the discussion above, the system would be less efficient if GloBE leads to a reduction in incentives necessary to address market failures, such as positive externalities from R&D tax incentives. This could be significant.[135] While hard to assess, other factors that could have a negative impact on efficiency appear less significant, including distortions to location and ownership decisions caused by blending and sheltering strategies,[136] and to competition between in and out of scope entities.

Fairness

Fairness is a difficult concept to use in international corporate taxation, but there are at least two important questions to ask in the GloBE context. First, whether GloBE addresses concerns that multinationals do not pay their 'fair share' of tax. Second, whether GloBE addresses concerns about the existing system's interjurisdictional unfairness.

Much of the rhetoric around GloBE was couched in terms of fairness. Politicians extolled GloBE's ability to ensure that multinationals pay their 'fair share' of tax.[137] This

[135] Of course, if there was an excess of incentives pre-GloBE, a reduction would lead to an improvement in efficiency.

[136] Heydon Wardell-Burrus (2022) *British Tax Review* n 114 above.

[137] US President Joe Biden and EU Commission President Ursula von der Leyen are just two of many who sold the minimum tax to the public on these grounds. Biden: 'We must adopt the global minimum tax, among other measures I have proposed, to make sure corporations pay their fair

is misguided, not least because it is a nebulous target and it ignores economic incidence.[138] But fairness considerations matter politically even when they are of questionable academic soundness, especially when politicians explicitly set them as a goal. Not meeting this goal could have consequences, including calls for further reform. Grinberg went further, arguing that GloBE is necessary to persuade the public that the system is fair[139] and that failure to do so could ultimately contribute to the demise of the liberal global economic order.

In its latest work, the OECD estimates that GloBE will raise USD 155 billion - USD 192 billion in additional annual corporate global tax revenue.[140] This represents 6.5% - 8.1%

---

share.' <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/01/statement-by-president-joe-biden-on-todays-agreement-of-130-jurisdictions-to-support-a-global-minimum-tax-for-the-worlds-largest-corporations/>. von der Leyen: 'A global minimum tax is a major step forward in making the global tax system fairer' < https://x.com/vonderleyen/status/1473622576597540864>.

[138] Corporation tax incidence was taken into account at other times in the public debate, for example by US Treasury officials, but it was assumed to fall on the owners of capital. US Assistant Secretary for Tax Policy Lily Batchelder, for example, explained: 'Fundamentally, we at Treasury see the agreement as essential to saving the corporate income tax, which in turn is fundamentally about making sure the income tax taxes capital and not just labor.' Batchelder n 9 above.

[139] 'The Biden administration has argued that its international tax proposals would bring more fairness to the United States and to economies around the world. They would do so, it says, by putting an end to a system that allows corporations to pay less tax than middle-class workers and by giving nations more tax revenue that they could spend on infrastructure and other public goods. Grinberg said this would be in the interest of corporations, arguing that the sense of unfairness was creating a landscape that is problematic for global businesses.'

'Treasury official: Tax deal would help make globalization work' *New York Times* 22 July 2021.

[140] Hugger and others n 105 above.

of global annual corporate tax revenues.[141] Are the public likely to be satisfied that multinationals pay a 'fair share' of tax if their tax liabilities increase by up to 8.1%? The revenues raised by GloBE are important, but this increase seems unlikely to be perceived as game changing.

The instability of the current system is partly due to its perceived lack of fairness towards some jurisdictions. The question thus arises whether GloBE improves or worsens this perception. Many jurisdictions[142] – as well as NGOs and commentators – do not believe that GloBE has improved matters on this front, albeit for different reasons.[143] Some developing jurisdictions felt GloBE did not address their needs or was

[141] When thinking about the importance of this revenue gain for public finances we should recall that corporation tax constitutes a relatively limited portion of total tax revenues in OECD jurisdictions (9.6% on average), although it is higher in other parts of the world. LAC 15.8%, Africa 18.8% and Asia and Pacific 18.2%. OECD, *Corporate Tax Statistics 2024* (Paris: OECD Publishing, 2024).

[142] Of course, different voices within a jurisdiction can take opposing views. In the UK Rishi Sunak, former UK Prime Minister and Leader of the Conservative Party has hailed GloBE a 'historic agreement', while Pritti Patel MP, a former conservative cabinet minister, slammed GloBE as 'OECD's radical plan for permanent worldwide socialism'. Priti Patel, 'Britain can still escape the OECD's radical plan for permanent worldwide socialism' *The Telegraph* 18 June 2023. The divergent views of the US's executive and legislative branches are notorious.

[143] Diane M. Ring and Shu-Yi Oei, 'The conflictual core of global tax cooperation', *Boston College Law School Legal Studies Research Paper*, (2024), no. 633. On GloBE and fairness more generally see Rita de la Feria, 'The Perceived (Un)fairness of the Global Minimum Corporate Tax Rate', in Haslehner and others n 14 above.

too complex to implement.[144] These feelings were amplified by reforms agreed post-October 2021 to address the concerns of powerful jurisdictions, particularly the US.[145] Earlier versions of GloBE had also been criticised on distributional grounds because the first claim to the top-up tax was given to parent company jurisdictions through the IIR.[146] The QDMTT changed this.[147] Still, some developing jurisdictions felt that GloBE did not go far enough[148] and several commentators agreed.[149]

---

[144] The UN Secretary General's July 2023 report sums up these views succinctly: '…the substantive rules developed through these OECD initiatives often do not adequately address the needs and priorities of developing jurisdictions and/or are beyond their capacities to implement.' Report by the United Nations Secretary-General, *Promotion of inclusive and effective international tax cooperation at the United Nations*, released, (2023), < https://digitallibrary.un.org/record/4019360?ln=en&v=pdf >

[145] The UTPR safe harbour and the MTTR rules were widely perceived as having been introduced to address US concerns. See for example Alexander Rifaat, 'OECD Eases Pressure on US Companies with Pillar 2 Measure' *Tax Notes International* 18 July 2023. As discussed in the Introduction above, the G7 agreed to exclude US parented groups from the IIR and the UTPR.

[146] This was justified on administrative grounds. Blueprint n 15 above 18.

[147] It is unclear if the QDMTT was agreed or merely announced *after* agreement on Pillar 2 was reached in November 2021. The latter would be odd, the former would be worrying.

[148] Jayati Ghosh, chair of the Independent Commission for Reform of International Corporate Taxation (ICRIT), for example, described GloBE as 'a pillar of ice that has been kept out in the sun for too long' and that has 'melted down to practically nothing.' Elodie Lamer, 'Developing countries helped to build two-pillar plan, OECD says' *Tax Notes International* 26 October 2023.

[149] See for example, statements by ICRIT, including: ICRIT, 'EU Agreement to implement the global minimum tax is a step forward, but not enough', *ICRIT Press Release*, 14 December 2022. < https://www.icrict.com/presse/2022-12-14-eu-agreement-to-implement-the-global-minimum-tax-is-a-step-forward-but-not-enough/>

On the other hand, some jurisdictions argued that GloBE went too far. In their view GloBE should have addressed profit shifting but not competition over real activity. The guiding principle throughout the BEPS process was that tax competition over real activity was fair game,[150] and these jurisdictions argued that it remained a jurisdiction's prerogative to tax profit earned through real activities within its border at low rates.[151]

Counterarguments have been made to this point. Some agree that it is Jurisdiction A's sovereign right to tax a company resident in Jurisdiction B on its profit arising in A at any rate of A's choosing. But they argue that it is Jurisdiction B's sovereign right to top up the tax.[152] There can be different views on the persuasiveness of this argument, but it does not meet all sovereignty concerns arising under GloBE. Consider a company resident in Jurisdiction C with no foreign operations. C does not implement GloBE and the company enjoys a low ETR. If the company sets up permanent establishments in

[150] This was best encapsulated in the BEPS Action Plan: 'no or low taxation is not per se a cause of concern, but it becomes so when it is associated with practices that artificially segregate taxable income from the activities that generate it'. OECD, *Action Plan on Base Erosion and Profit Shifting* (Paris: OECD Publishing, 2013), 10.

[151] *OECD/G20 Base Erosion and Profit Shifting Project, Addressing the Tax Challenges of the Digitalisation of the Economy – Policy Note, As approved by the Inclusive Framework on BEPS on 23 January 2019*. <https://www.oecd.org/tax/beps/public-consultation-document-global-anti-base-erosion-proposal-pillar-two.pdf.pdf>

[152] The Inclusive Framework has stated: 'We acknowledge that jurisdictions are free to determine their own tax systems, including whether they have a corporate income tax and the level of their tax rates, but also consider the right of other jurisdictions to apply an internationally agreed Pillar Two regime where income is taxed below an agreed minimum rate.' Blueprint n 15, 11-12.

Jurisdictions D and E,[153] D and E can tax the undertaxed profit in C through the UTPR, even if the company's activities there constitute a fraction of its global activities.[154] This may be considered a disproportionate incursion into C's sovereignty.

A second counterargument is that GloBE protects the sovereignty of jurisdictions – in particular less developed jurisdictions - against the corrosive effects of tax competition.[155] While one may be persuaded of the corrosive effect of tax competition in the medium to long run,[156] this argument requires careful consideration in the shorter run. It may be argued that GloBE favours developed over less developed jurisdictions because tax effectively allowed the latter to better compete with the former for investment. Developed jurisdictions enjoy considerable advantages on factors critical to investment.[157] Less developed jurisdictions offer lower costs to help redress this competitive imbalance, including low corporation taxes, but GloBE limits their ability to

[153] Model Rules n 80 above art 9.3.

[154] This is subject to Article 9.3 of the Model Rules which exclude the UTPR in the initial phase of MNEs international activity. Ibid.

[155] OECD, *Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy,* (Paris: OECD Publishing, 2019) 25. Ironically, although the OECD cited these concerns to justify the GloBE initiative, it was not evident—until the release of the Model Rules in December 2021—that GloBE would be designed in a way that safeguards developing countries from the adverse effects of tax competition. See Michael P. Devereux, Martin Simmler, John Vella, and Heydon Wardell-Burrus. 'What is the Substance-Based Carve-Out under Pillar 2? And How Will it Affect Tax Competition?' *EconPol Policy Brief* (2021) no 39.

[156] Devereux and Vella n 14 above.

[157] Eg infrastructure, legal systems, political stability, and educated workforce.

do so.[158] Even worse, GloBE favours expensive ways of attracting investment through the corporation tax – such as grants and favoured credits - that can be more easily offered by rich jurisdictions.

These are complex questions. Incentives may be wasteful because they are designed poorly, or because the investment would have gone to the developing jurisdiction anyway. Developing jurisdictions may also find themselves in a race to the bottom with one another. This suggests that curtailing competition through GloBE may help developing jurisdictions. Clearly, in the long run tax competition is a problem for all jurisdictions.[159] But GloBE's impact over a shorter time horizon merits careful consideration too. In a simple setting where developed jurisdictions compete with developing jurisdictions over investment, the latter may give up even substantial tax revenues to attract investment if the likely alternative is not attracting investment at all. Investment brings positive spillovers, including revenues from other taxes. Once

[158] See, for example, the discussion in Victoria Perry, 'Pillar 2, Tax Competition, and Low Income Sub-Saharan African Countries' (2023) 51 *Intertax* 105; Leopoldo Parada, 'Global Minimum Taxation: A Strategic Approach for Developing Countries' (2024) 15 *Columbia Journal of Tax Law* 187; and Błażej Kuźniacki and Edwin Visser, 'Tax and Non-Tax-Related Challenges of Pillar 2 for Non-Advanced Economies' *Tax Notes International* 6 May 2024.

[159] Devereux and Vella n above 14. On tax competition more generally see Michael Keen and Kai Konrad, 'The Theory of International Tax Competition and Coordination', in Alan J. Auerbach, Raj Chetty, Martin Feldstein, and Emmanuel Saez, (eds), *The Handbook of Public Economics* vol 5, (Amsterdam: Elsevier, 2013); and Tsilly Dagan, *International Tax Policy: Between Competition and Cooperation*(Cambridge: Cambridge University Press, 2017).

developing jurisdictions catch up on infrastructure and other relevant factors, a GMT becomes more attractive to them.

Ease of Administration

Critical parts of the existing system – in particular transfer pricing and profit attribution rules - are malfunctioning to the point of inoperability.[160] More broadly, the system is creaking under the weight of the sheer volume of its rules and its extreme complexity. Together, these two problems threaten the viability of the system going forward. GloBE does not address the former and exacerbates the latter.

GloBE does not address – and is not directly designed to address – major problems in the existing system, such as those with the Arm's Length Principle and profit attribution. Some of the pressure on these rules may be lifted if GloBE reduces profit shifting. But even if the reduction were significant, problems remain because these rules are also needed where no profit shifting is involved. GloBE's doubling down on the existing system must be viewed in this context. As these rules are at the heart of this system, if GloBE makes it harder to move away from it (as argued below), fixing them becomes even more important. But the latest attempts at reform do not support much optimism; if anything, they made the problems worse.[161]

[160] See, for example, Richard Collier and Ian Dykes, n 50 above; and Richard Collier and John Vella n 50 above.

[161] Collier and Dykes n 50 above.

GloBE adds to the volume of rules in the system and its overall complexity, thus making it even harder to administer and to comply with. This is GloBE's most immediate and irrefutably negative impact. It must not be shrugged off as regrettable but inevitable. GloBE adds to complexity[162] both in terms of substantive rules and procedures. Substantively, it adds a heavy layer of complex rules and guidance: currently 1,099 pages long[163] and euphemistically described as 'necessarily rather technical'.[164] The basic structure of the rules is easy to grasp but the detail is extremely challenging to anyone not engaged with it full time.[165] Particular rules have already gained notoriety for their complexity.[166]

The IF recognises the significant compliance costs imposed by GloBE, in particular the need for multinationals to undertake complex ETR calculations in each jurisdiction in which it operates even if there is only a low risk of undertaxation. To this end, it has

[162] Note that the aspiration was to keep these rules as simple as possible: 'Also mindful of compliance and administrative burdens, members will strive to make any rules as simple as the tax policy context permits, including through the exploration of simplification measures.' OECD n 166 above 3.

[163] The length of the various documents at the time of writing is: Model Rules 68 pages, Commentary 375 pages, Administrative Guidance 413 pages, Safe Harbour and Penalty Relief guidance 30 pages, GloBE Information Return 97 pages, Examples 110 pages, and Qualified Status under the Global Minimum Tax – Questions and Answers 6 pages.

[164] OECD, *Minimum Tax Implementation Handbook (Pillar Two)*, (Paris: OECD Publishing, 2023).

[165] Anecdotally, GloBE has led some in-house tax staff to take early retirement.

[166] Examples include the adjustments to financial accounts required for GloBE purposes, and the relationship between GloBE and the US's GILTI regime. The latter may require up to four ETRs to be calculated per jurisdiction. On the latter see Heydon Wardell-Burrus, 'GloBE Administrative Guidance – The QDMTT and GILTI Allocation', *Oxford University Centre for Business Taxation Policy Brief* (2023).

introduced temporary and permanent safe harbours. Whether the permanent safe harbours reduce the compliance burden significantly is yet to be seen. Details of the Simplified Calculation Safe Harbour are yet to be released, but guidance on the QDMTT safe harbour has already raised concerns.[167] It is telling – even damning - that complex rules had to be introduced in December 2023 to counter arbitrage opportunities in the Country by Country Reports temporary safe harbour.[168]

In principle, the increase in rules and complexity brought about by GloBE could be somewhat offset by a removal of existing rules.[169] If GloBE successfully reduces profit shifting, existing anti-avoidance rules could be removed, but this is unlikely to happen to a meaningful degree. Anti-avoidance rules are still needed for businesses falling outside GloBE's scope and to offer a higher level of protection.[170] Even if there were no real *need* for these anti-avoidance rules, jurisdictions are likely to want to adopt a belt and braces approach to counter behaviour that has caused them so much grief over the years.

[167] Including the uncertainty caused by the additional three standards that a jurisdiction's QDMTT needs to meet in addition to the existing QDMTT rules and guidance to qualify as a QDMTT Safe Harbour. These are the QDMTT Accounting Standard, the Consistency Standard, and the Administration Standard. OECD, *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two) OECD/G20 Inclusive Framework on BEPS* (Paris: OECD Publishing, 2023).

[168] *Ibid.*.

[169] Stephanie Soong, 'Time to Declutter Tax Systems Amid Pillar 2 Adoption, Pross Says' *Tax Notes International* 12 June 2023.

[170] For example, CFC rules may top up to more than 15% of Excess Profit.

Conclusion on GloBE's impact on the system

This necessarily preliminary analysis of GloBE suggests that its overall impact on the existing system is mixed. On balance, it should reduce profit shifting and this may even be material. GloBE should also have an impact on tax competition, but this is likely to be weaker than hoped or expected. It could be significantly undone through grants and favoured credits, and counterbalanced by increased competition through other taxes and regulation. GloBE's impact on efficiency is ambiguous at this stage, but, if anything, some pointers indicate greater overall inefficiency. Again, it will take time to get a better sense of the magnitude of any such increase. While GloBE should lead to considerable revenues, it will unlikely satisfy the goal set to much fanfare by politicians: that multinationals pay a 'fair share' of tax. Also, while some jurisdictions may believe that GloBE has made the system fairer, others clearly believe it has made it less fair. Finally, GloBE does not address significant problems at the heart of the existing system, and undoubtedly adds significant complexity making it harder to administer and comply with overall.

The promise and reality of a Global Minimum Tax

What explains these mixed results? This section argues that they stem not from deficiencies in GloBE's implementation, but from the very policy of shoring up an origin-based system with a GMT. The policy is poor, not its implementation. It seeks to

mitigate some of the undesirable consequences of an origin-based system's incentive incompatibility, including profit shifting and tax competition, but the incentive incompatibility persists, undermining both the design and operation of the GMT, and continuing to destabilise the system as a whole.

It is possible to design a GMT that performs materially better than GloBE in a theoretical setting, but only if the incentive incompatibility of the origin-based system is abstracted away. Taking incentive incompatibility into account requires adding a condition that the GMT being designed must be agreed by jurisdictions with different preferences. The addition of this condition makes it virtually impossible to design a GMT that performs materially better than GloBE. In other words, GloBE's failings are not due to its departure from an ideal GMT, because an ideal GMT does not perform materially better in a rich theoretical setting either. The contrast with VAT is illuminating. VAT is incentive compatible and, therefore, when considering its design in a theoretical setting one can focus on a single jurisdiction without concern for other jurisdictions. VAT performs well in a theoretical setting, and, therefore, VATs often perform poorly in practice because they are a poor implementation of a good policy option.

This section argues that four critical problems in GloBE's design and operation ultimately stem from the incentive incompatibility of the origin-based system it seeks to prop up. These problems were not caused by GloBE's particular implementation - they arise when designing a GMT in a rich theoretical setting, and reflect the weakness of GMTs to prop up an origin-based system as a policy choice.

Mechanism to punish non-cooperative jurisdictions

A single jurisdiction can introduce a GMT to backstop its origin-based system; indeed, the United States introduced GILTI in 2017. However, such unliteral action places multinationals headquartered in that jurisdiction at a competitive disadvantage relative to those headquartered in jurisdictions without a minimum tax. This incentivises multinationals to headquarter in the latter, which, in turn, incentivises these jurisdictions *not* to adopt a minimum tax themselves. These concerns subside if the minimum tax is adopted by a critical mass of jurisdictions and a mechanism is introduced to punish non-cooperating or defecting jurisdictions.[171] But, to be effective, this mechanism must be of a strength and reach that makes it problematic.

At the time GloBE negotiations were underway, scepticism regarding their prospects was well-founded, given the structural incentives for jurisdictions to withhold support. While mechanisms were proposed to address these incentives, they largely adhered to traditional norms - particularly by focusing on intra-group payments[172] - and

[171] This explains why the Biden administration included a *global* minimum tax as a central pillar of its 2021 tax plan: US Department of the Treasury, *Made in America Tax Plan*, (2021). See the discussion in: Michael P. Devereux, 'Made in America Tax Reform', *Oxford University Centre for Business Taxation Blog*, (2021).

[172] It denied deductions or imposed a source-based tax for undertaxed payments to related parties.

were therefore too weak.[173] To address the incentives effectively a strong mechanism was required that departed from traditional norms , but such a mechanism did not appear to be on the table at the time. In fact, such strong mechanisms were not even contemplated in the various OECD and Inclusive Framework documents published before the Model Rules were released, including those released when the political agreement on Pillar Two was announced in October 2021.[174] But one found its way in the Model Rules: the UTPR.

The UTPR is unconstrained by traditional norms. If a top-up tax is due on profit earned in Jurisdiction A and is not collected by A through a QDMTT, or by the Ultimate Parent Entity or Intermediate Parent Entity jurisdictions through the IIR, it can be collected by jurisdictions where the multinational has a permanent establishment or a subsidiary through the UTPR. There need be no transaction or direct ownership link between entities in A and those collecting the UTPR, being part of the same multinational group suffices. The UTPR is a gamechanger. Once enough jurisdictions commit to adopting a UTPR, other jurisdictions' incentives not to adopt an IIR and a QDMTT are significantly

[173] See, for example, the conclusion reached in Michael P. Devereux, François Bares, Sarah Clifford, Judith Freedman, Irem Güceri, Martin McCarthy, Martin Simmler and John Vella, 'The OECD Global Anti-Base Erosion Proposal', *Oxford University Centre for Business Taxation Report* (2020) 13-14: '[i]n conclusion, it is not at all clear that tax on base erosion payments rules can be designed to create incentives for uncollaborative jurisdictions to adopt the GloBE. This is so even if it is a strong version of the rule which harnesses some of the strengths of a destination based approach.'

[174] As discussed by Li, a UTPR with the present characteristics was only revealed when the Model Rules were released. Jinyan Li, 'The Pillar 2 Undertaxed Payments Rule Departs From International Consensus and Tax Treaties' *Tax Notes International* 21 March 2022.

weakened.[175] Its strength is made possible by its departure from the norms and practices of international taxation, but this departure also gives rise to concerns.

One set of concerns relates to the difficulty in administering the UTPR in practice. Clearly, the UTPR will not be administered if it incentivises jurisdictions to adopt QDMTTs and IIRs. But for these incentives to arise, jurisdictions must be able and willing to challenge other jurisdictions' implementation and enforcement of QDMTTs and IIRs, backing this up with a willingness to enforce the UTPR.

Consider, the example above where MNE shifts profit from a subsidiary in Jurisdiction A to another subsidiary in Jurisdiction B, making use of a QRTC offered by the latter. Assume that A takes the view that the credit is a non-QRTC and B should collect a higher top-up tax through its QDMTT. Assume also that MNE has its Ultimate Parent Entity in Jurisdiction C and another subsidiary in Jurisdiction D, but C and D agree with B's characterisation of the credit as a QRTC and therefore do not seek to collect additional top-up tax through the IIR or UTPR respectively. The GloBE rules will be undermined if A is not able and willing to challenge B's characterisation of the credit and to assert its rights to collect the top-up tax through the UTPR. This would incentivise B to offer aggressive credits and even collude with MNE. On the other hand, one can easily see the operational problems that arise if A seeks to collect the top-up tax through the UTPR.

[175] Compare Cui n 88 above.

The larger the number of jurisdictions that are given potential taxing rights over the same profit, the greater the potential for disputes to arise. Under traditional norms and practices two or three jurisdictions generally have potential taxing rights over specific profit. The UTPR broadens the list to a great many jurisdictions. It grants potential taxing rights to jurisdictions which may have different interests and incentives to those that may impose the IIR and QDMTT, and this is bound to create difficulties. These taxing rights are conditional on other jurisdictions not exercising their rights (under the QDMTT and IIR), but the exercise of these rights involves judgement, which other jurisdictions may dispute. The UTPR thus puts pressure on the system, particularly on the peer-review and dispute resolution processes, which, as discussed below, will be challenging to design and operate. The larger the number of jurisdictions that adopt the UTPR the weaker jurisdictions' incentives not to join GloBE or defect. But that which strengthens GloBE also makes it weaker, as the larger the number of jurisdictions that adopt the UTPR the harder it is to administer.

A second set of concerns relates to the compatibility of such a strong mechanism with bi-lateral tax treaties, EU law, public international law, human rights law, and constitutional law.[176] This article does not offer a view on these controversial matters,[177]

[176] The American Free Enterprise Chamber of Commerce filed a legal challenge against Belgium's implantation of the UTPR before the Belgian Constitutional Court. This challenge has been supported by other US business groups and Republican lawmakers. See Stephanie Soong, 'US Business Group's UTPR challenge gains traction' *Tax Notes International* 17 October 2024.

but even if a legal challenge to a jurisdiction's adoption of the UTPR is successful it is not clear that this would derail the GloBE project – as successful challenges would have to be launched in other jurisdictions too. Nonetheless, it is certainly less than ideal that reform of this significance was agreed with questions hanging over its compatibility with existing law. If nothing else, this feeds into a third set of concerns relating to fairness.

The UTPR's long arm has been criticised on fairness grounds because it effectively constrains jurisdictions' policy options.[178] A related but separate fairness question is whether the UTPR will be applied against powerful jurisdictions and what the repercussions of doing or not doing so will be. The UTPR safe harbour[179] was introduced during the Biden administration to temporarily side-step the issue with respect to the US,[180] but, as noted, the Trump administration was quick to warn other jurisdictions

[177] The literature on this issue has grown in a short space of time. For an excellent entry into the literature see Sjoerd Douma, Alexia Kardachaki, Georg Kofler, Peter Bräumann and Michael Tumpel', 'The UTPR and International Law: Analysis From Three Angles' *Tax Notes International* 23 May 2023.

[178] See, for example, Angelo Nikolakakis and Jinyan Li, 'UTPR: unprecedented (and unprincipled?) tax policy response' *Tax Notes International* 6 February 2023.

[179] Administrative Guidance 2 n 118 above.

[180] Some US senators have threatened to respond to GloBE's incursion into the US's sovereignty: *Ways and Means Republicans Introduce Bill to Combat Biden's Global Tax Surrender*, 25 May 2023, <https://waysandmeans.house.gov/ways-and-means-republicans-introduce-bill-to-combat-bidens-global-tax-surrender>

against applying the UTPR to US headquartered groups.[181] Accommodating the US – as the G7 have been willing to do - may be the least bad option for jurisdictions keen on the GloBE project, but it may heighten the sense of unfairness as well as undermining GloBE's effectiveness.

Need for compromise undermines GloBE design and operation

Once a mechanism of sufficient reach and strength is agreed, a small group of economically powerful jurisdictions could implement an effective GMT. In practice, having a larger number of jurisdictions agreeing to a GMT is preferable for two reasons. The first is political. The broader the coalition of jurisdictions that agrees a GMT, the more legitimate and politically acceptable it is. The second is practical. While a handful of large jurisdictions would have constituted a critical mass because of the UTPR's reach, in practice this would have been difficult to operate. Collecting the top-up tax through the UTPR is hard, which is 'one of the reasons the UTPR is a backstop rather than the primary rule.'[182] Furthermore, potential legal challenges based on EU law and treaties[183] would have been more concerning if only a small handful of jurisdictions had agreed to GloBE.

[181] ''See the discussion in the Introduction.

[182] OECD, *The Pillar 2 Rules in a Nutshell*, (2023) p. 4. < https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/pillar-two-model-rules-in-a-nutshell.pdf>

[183] See, for example, the discussion in n 194 above and others.

Agreement among a small handful of jurisdictions - such as the G7 - is not necessarily straightforward because of differences in preferences within this select group. But it is harder among a larger group of jurisdictions, because preferences are even more diverse. Bridging them requires compromises that inevitably make the GMT less principled and less able to achieve its objective of buttressing an origin-based system.[184]

The need for political compromise among a large group of countries resulted in GloBE lacking a clear guiding principle. This is not of mere academic interest as it creates important practical difficulties too. The politically sensitive and critically important peer review process 'assesses whether the legislation of an implementing jurisdiction achieves consistent outcomes with the GloBE Rules'. '.[185] The delicate question of whether a grant or a favoured credit is a 'related benefit' to a QDMTT also ultimately turns on whether it is consistent with the 'outcomes provided for under the GloBE Rules'. [186] [187] But this test is circular because of GloBE's lack of principle.

[184] Different preferences over key aspects of GloBE were manifest throughout the negotiations. For example, the 2020 Blueprint noted: '[t]he finalisation of Pillar Two also requires political agreement on key design features of the subject to tax rule and the GloBE rules including carve-outs, blending, rule order and tax rates where, at present, diverging views continue to exist.' Blueprint n 15 above 15. Some differences in preferences had not been resolved even when agreement was announced in 2021, including, for example, US the co-existence of the US's Global Intangible Low-Taxed Income regime with GloBE.

[185] OECD, *Qualified Status under the Global Minimum Tax - Questions and Answers*, (2025).

[186] Model Rules n 80 above art 10.1.1.

During GloBE negotiations some jurisdictions wanted a GMT that merely addressed profit shifting, others wanted a more expansive GMT that also addressed tax competition over real activity. In the end, a political compromise was reached. GloBE goes beyond addressing profit shifting, but stops short of eliminating tax competition, it merely sets 'multilaterally agreed limitations on it.'[188] Critically, these limitations do not flow from a clear principle but arise out of political compromises and are set out in the OECD Model Rules. In other words, tax competition over real activity was permissible pre-GloBE, but post-GloBE it is allowed *up to the point IF members agreed to allow it* (ie up to the 'multilaterally agreed limitations'). The problem is that this leads to circularity and an interpretative impossibility. If 'outcomes provided for under the GloBE Rules' are to allow competition unless it has been disallowed, circularity arises because the interpretative doubt arose in the first place because it is not clear whether a form of competition has been disallowed.

Ultimately, critical lines such as that between permissible and impermissible grants / favoured credits cannot be drawn in a principled manner. Furthermore, jurisdictions with different interests may have different views on what is permissible. As discussed

[187] Furthermore, the Commentary notes: 'If those jurisdictions that adopt the common approach identify risks associated with the treatment of tax credits and government grants that lead to unintended outcomes, the relevant jurisdictions could be asked to consider developing further conditions for a Qualified Refundable Tax Credit or, if necessary, explore alternative rules for the treatment of tax credits and government grants. This analysis would be based on empirical and historical data with respect to the tax credit regime as a whole, and not on a taxpayer specific basis.' Commentary n 118 above 216.

[188] Brochure n 16 above .2.

below, it will be difficult to set up peer review and dispute resolution processes to make such determinations that are accepted by the most powerful jurisdictions and deemed fair by less powerful ones.

The need for compromise also led to several design features that make GloBE less able to buttress the existing system. First, a higher rate, as advocated by GloBE's proponents,[189] including NGOs and several countries, including the US,[190] would have provided greater support for the system.[191] Second, the SBIE weakens GloBE's impact significantly. [192] The influential EU Tax Observatory lamented the inclusion of the SBIE - calling it a 'loophole' – but it is not. It is an unsurprising policy choice given that a GMT requires agreement among jurisdictions with different preferences. Third, GloBE would have had a stronger impact on tax and incentive competition if grants and preferred credits were deemed a reduction in the Covered Tax (the numerator) when calculating a multinational's ETR in a particular jurisdiction. From public documents it is unclear whether jurisdictions had diverging views on this, but one can surmise that jurisdictions with a preference to compete would have objected to this treatment. Finally, an entity-by-entity approach would have led to a stronger GMT than jurisdictional blending, but,

[189] For example, the EU Tax Observatory called for a 25% minimum tax. EU Tax Observatory, *Tax Evasion Report 2024*, (2024) < https://www.taxobservatory.eu//www-site/uploads/2023/10/global_tax_evasion_report_24.pdf>.

[190] The US, Germany, France and other countries are reported to have pushed for a minimum tax rate of 21%. David Lawder, 'U.S. Treasury floats global corporate tax of at least 15%' *Reuters* 20 May 2021.

[191] As the OECD Secretariat explained, '[w]hile many members may have been happier with a higher minimum rate, Pillar Two is the result of compromises on all sides.' Brochure n 16 above 20.

[192] Devereux and Vella n 14 above.

given that some jurisdictions favoured world-wide blending, jurisdictional blending could be seen as a compromise.

The origin-based system's incentive incompatibility will also cause difficulties for GloBE rule-making going forward. Consider two examples. As discussed above, simplification procedures are universally acknowledged as necessary.[193] But jurisdictions' incentive to compete makes their design difficult. To be meaningful, these procedures must lead to a material reduction in compliance and administrative costs, but this is counterbalanced by concerns that jurisdictions' incentive to compete will lead to exploitation of these procedures if too lax. Incentive incompatibility will also cause difficulties in addressing avoidance opportunities as they are identified. Ideally, such opportunities are addressed through coordinated responses,[194] but these can be slow, watered down, or even blocked by some jurisdictions. Unilateral domestic responses – such as domestic General Anti-Avoidance Rules - do not face such concerns, but it is unclear whether they can and should be used.[195]

[193] See the discussion in Cedric Döllefeld and others, 'Tax Administrative Guidance: A Proposal for Simplifying Pillar Two' 2021 50 *Intertax*231.

[194] In 2023, strategies involving the asymmetric treatment of dividends and distributions and strategies that arbitrage the transitional CbCR Safe Harbour rules were identified and addressed multilaterally through new guidance. OECD, *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)*, (February 2023), OECD/G20 Inclusive Framework on BEPS, sec 2.3. and 2.6.

[195] Unilateral responses could entail a significant administrative burden on taxpayers as well as posing a threat to the consistency of interpretation and application of the rules, and thus to GloBE's overall

The use of financial accounts

Given the origin-based system's incentive incompatibility, if a GMT were to set a global minimum *nominal* corporation tax rate, jurisdictions would have an incentive to compete through their tax bases. Two options then arise: either agree on a global tax base or use financial accounts, at least, as a starting point. The former is difficult to achieve politically. Even if achieved, it would likely include problematic compromises. The latter is easier to achieve, and is the option pursued in GloBE, but it gives rise to serious concerns.[196] Leading accounting academic Michelle Hanlon noted that 'while it is very tempting for people outside of financial accounting to want to use financial accounting income as part of the tax base, a backstop to the tax base, or a common tax base across jurisdictions, rarely, if ever, will anyone who is a financial accountant think this is a good idea.'[197] Concerns include the likely harm to the quality of financial accounting and the capital markets, the unaccountability of bodies that set financial accounting standards and the temptation for governments or even the OECD to exert influence on these bodies,[198] and possible competition over GAAP.[199] The use of

---

success. See a discussion on this issue in Heydon Wardell-Burrus (2022) *British Tax Review n 118 above* 648 et seq.

[196] For a critical discussion of these issues see, for example, Eva Eberhartinger and Georg Winkler, 'Pillar 2 and the Accounting Standards'(2023) 51 *Intertax*, 134; and Michelle Hanlon, 'The use of accounting information in the tax base in the Pillar 2 global minimum tax: a discussion of the rules, potential problems, and possible alternatives'(2022) 44 *Fiscal Studies* 37, and the references therein.

[197] *ibid*35.

[198] *ibid*.

[199] Eberhartinger and Winkler n 213 above.

financial accounting also leads to complexity, not least because of the adjustments and difficult judgements required. Countering that a global tax base would have been even harder to achieve and would have also created problems does not alleviate any of these serious concerns. This is yet another fundamental weakness of a GMT and ultimately arises because of the incentive incompatibility of the origin-based system.

Peer review and dispute resolution

Finally, as a GMT does not eliminate the incentive incompatibility of an origin-based system, jurisdictions still have an incentive to obtain a competitive advantage by pushing at the boundaries of what is permitted under any agreement reached, be it through the way the rules are implemented or enforced.[200] This means that effective peer review[201] and dispute resolution mechanisms are necessary. But these

[200] Peer review and dispute resolution processes would also be necessary if jurisdictions did not have an incentive to compete with one another, as differences may arise in the interpretation and application of the rules. But the pressure on these processes is greater because of jurisdictions' incentive to compete.

[201] 'Peer review provides for a common assessment of the qualified rule status of the IIR, UTPR and DMTT, as well as the eligibility for the QDMTT Safe Harbour, in each implementing jurisdiction.... The peer review process consists of a full legislative review and ongoing monitoring by the IF. The full legislative review assesses whether the legislation of an implementing jurisdiction achieves consistent outcomes with the GloBE Rules. The ongoing monitoring ensures that rules are in practice applied and administered consistently with the GloBE Rules.' OECD, *Qualified Status under the Global Minimum Tax - Questions and Answers*, (2025).

mechanisms are problematic to design and operate.[202] The more inclusive, legitimate, and procedurally fair these processes are the more cumbersome and slow they are likely to be. They also must work, and be seen to work, when reviewing the strongest jurisdictions. As noted above, given the genuine uncertainty around some provisions in the Model Rules and the lack of clarity in GloBE's objectives, the outcome of peer review or dispute resolution processes may ultimately be determined by political considerations. Knowing this makes the task of jurisdictions negotiating over the design of these processes even harder.[203]

THE FUTURE OF INTERNATIONAL TAXATION

What next for the international corporate tax system? Following the tremendous political and technical work involved in GloBE, one could have assumed that there would be limited appetite for meaningful substantive reform beyond Pillar One and

[202] In January 2025 the OECD explained that 'in the short term it will not be possible to conduct and finalise a full legislative review for each implementing jurisdiction that is implementing IIR and/or DMTT legislation effective as of 2024.' Instead, the Inclusive Framework developed 'a simplified procedure for an initial transitional qualification mechanism that allows the swift recognition of the qualified status of implementing jurisdictions' legislation on a temporary basis'. This procedure relies on a self-certification process. It certainly reflects the difficulties involved in designing the full peer review processes. OECD, *Qualified Status under the Global Minimum Tax - Questions and Answers*, (2025).

[203] See, for example, Tatiana Falcão, 'Can GLOBE Rule's Pillar 2 Dispute Resolution Deliver Legal Certainty?' *Tax Notes International* 16 May 2024.

alternatives.[204] The bold initiative launched by developing jurisdictions at the UN in 2023 suggests otherwise.[205]

One question is whether the Two Pillars experience makes future *cooperative* tax reform more or less likely. Some have hailed the Two Pillars a triumph for multilateralism[206] and even a blueprint for future cooperation in and beyond tax. But developments since October 2021 cast doubt on such claims. Can a multilateral agreement be deemed a triumph if half the package agreed – Pillar One – is not implemented? Can a multilateral agreement be deemed a triumph if many (developing) countries were so dissatisfied with the process and outcome that they took steps towards a potentially historic shift of international tax rule-making from the OECD to

[204] Indeed Benjamin Angel (Director 'Direct taxation, tax coordination, economic analysis and evaluation' at the European Commission) has suggested that this is also true of less meaningful reform: 'The [EU pillar 2] directive is not something that can be easily changed. Let's be honest, the last year has been quite a roller coaster, so I think the political appetite to reopen [the directive] will be close to zero. In that sense, it is important that member states and the commission, when participating [in] the OECD work, keep always relying on the directive [and] make sure that the development of the administrative guidance remains at all times compatible with what is foreseen in the directive.' Sarah Paez, 'Five EU Member States Pursuing Delayed Pillar 2 Implementation' *Tax Notes International* 27 October 2023.

[205] UN General Assembly Resolution of 23 November 2023 on *Promotion of inclusive and effective international tax cooperation at the United Nations*, A/C.2/77/L.11/Rev.1 <https://documents.un.org/doc/undoc/ltd/n22/697/88/pdf/n2269788.pdf?token=fZ85vTctCHKhZPgjbo&fe=true>.

[206] See quotes at n 6 and 7 above and Kysar n 8 above.

the UN?[207] This process left jurisdictions divided on the forum in which multilateral cooperation over tax matters should take place and whether decisions within such forum should be consensus- or majority-based. At the time of writing, it is unclear how these issues will be resolved and whether multilateral tax cooperation will emerge stronger. Critically, however, one senses that the Two Pillars process led to a breakdown of trust among jurisdictions.

The US's economic and political power make it central to multilateral tax collaboration. Its actions throughout the Two Pillar process are thus particularly significant for the future of multilateral tax cooperation. At different times throughout the process, the US paused or changed the music all jurisdictions were dancing to.[208] Unsurprisingly, this caused widespread frustration. More importantly, the US executive vigorously promoted – even pushed onto others[209] – policies, which it agreed to multilaterally but

[207] On the other hand, Itai Grinberg, the former US Treasury Deputy Assistant Secretary for Multilateral Tax recently raised eyebrows when he commented that OECD member states should hold some talks without the 'additional noise' created by other jurisdictions. Elodie Lamer, 'Ex-Treasury Official Urges OECD to Restore Members-Only Meetings' *Tax Notes International* 25 October 2024.

[208] See for example, Ryan Finley and Stephanie Soong, 'The US 'Safe Harbour' Proposal: Rocking the OECD's Pillar 1 Boat' *Tax Notes International* 10 December 2019.

[209] 'In recent days pressure from Washington to agree a deal has intensified. US ambassadors around the world have been told to garner supports for the plan by stressing President Joe Biden sees it as a 'top priority issue', a person close to the negotiations told the Financial Times. Countries with objections are being told by US representatives that 'this is not a tax issue; this is about our [countries'] relationship''. Chris Giles, Victor Mallet, and Emma Agyemang, 'Optimism rises over G7 deal on global corporate tax regime' *Financial Times* 4 June 2021.

did not implement itself.[210] As seen, the US went further under the Trump administration by reneging on the commitments it gave by threatening retaliation on jurisdictions that seek to enforce elements of the multilaterally-agreed GloBE rules. The US has thus thwarted Pillar One's implementation and has plunged GloBE's future into doubt. Its conduct throughout must surely have an impact on whether and how jurisdictions participate in multilateral tax cooperation in the future.

Overall, therefore, it is not clear whether the Two Pillar experience had a net positive or negative impact on the future of multilateralism in international tax matters. This section addresses a different, if somewhat related, issue.[211] It argues that GloBE significantly constrains the ability of a single jurisdiction—or even a coalition of jurisdictions—to pursue fundamental tax reform,[212] because this would – at a minimum - require other jurisdictions to amend the Model Rules[213] and their domestic GloBE

[210] Pillar One and GloBE were not adopted by the US under the Biden administration effectively because of opposition in the legislative branch.

[211] The issue is related to whether GloBE has had a net positive or negative impact on the future of multilateralism. If it is has had a net negative impact, it would appear to make it less likely that jurisdictions would be willing to make the necessary changes to the Model Rules and their domestic law to facilitate fundamental reform by others.

[212] Modest reform may also create issues due to interaction with existing GloBE rules, but the focus here is on significant reform.

[213] The processes to amend GloBE Model Rules, the Commentary and Guidance to address issues which arise once GloBE is in operation raise interesting questions in their own right. The IF has resorted to issuing guidance rather than amending the Model Rules. This is presumably because of political convenience but merits further exploration. Questions certainly arise when there is inconsistency

rules.[214] If this is not done, some fundamental reform options simply will not work, and others may work in a dysfunctional way. Of course, ultimately, powerful jurisdictions may force others into such amendments, but the point stands. At a minimum, GloBE is likely to make fundamental reform more difficult to achieve, and it may even make it prohibitively difficult. As explained below, the latest developments at the time of writing lend support to this prediction.

This section examines two sets of fundamental reform options. The first includes reforms that allocate taxing rights to the location of consumers (i.e. a destination basis)[215]or of shareholders.[216] These reforms substitute origin-based taxation with taxation in a different location. They are radical and challenging, but, as explained above, they also have significant promise as they tax multinationals in the location of

---

between the two, and this is particularly pronounced in the EU where the Model Rules have been incorporated in a directive which can only be amended with difficulty due to the unanimity requirement. The questions addressed here are different.

[214] On the danger of lock-in more generally, see Tsilly Dagan, 'GloBE: the potential costs of cooperation' 2023 51 *Intertax* 638. Dagan warns against 'future risks such as lock-in and cartelistic effects that might benefit the leaders of this initiative (the OECD in this case) at the expense of others.'

[215] See Devereux and others n 11 above.

[216] Eric Toder and Alan D. Viard, *Major Surgery Needed: A Call for Structural Reform of the US Corporate Income Tax* (2014), Peter G. Peterson Foundation; Harry Grubert and Rosanne Altshuler, 'Shifting the burden of taxation from the corporate to the personal level and getting the corporate tax rate down to 15 percent' (2016) 69 *National Tax Journal* 643.

relatively immobile factors.[217] Significant work has already been done on such systems.[218] This author's preference would have been for a shift towards destination based-taxation because – depending on their specific design - such systems can perform better than the existing system on a standard set of evaluative criteria. Post-GloBE, jurisdictions may still tax in a different location, but, effectively, they cannot remove origin-based taxation.

Consider Jurisdiction A shifting from an origin to a destination basis of taxation by adopting a DBCFT. The DBCFT employs a border-adjustment mechanism, taxing imports but not exports, which would break down in the presence of GloBE. If MNE manufactures goods in A which it sells to consumers in Jurisdiction B there is no DBCFT charge in A, but top up tax is due on the 'undertaxed' profit in A, to be collected through

[217] See Devereux and others n 11 above 168-174 and chapters 6 and 7 for destination-based systems, and 163-168 for taxation in the location of shareholders. On destination-based tax systems see also, Richard Collier, Michael Devereux, and John Vella, 'Comparing Proposals to Tax Some Profit in the Market Country' (2021) 13 *World Tax Journal* 405; and Michael Devereux and John Vella, 'Gaming destination based cash flow taxes' (2018) 71 *Tax Law Review* 477.

[218] The author does not have a clear view on systems that tax in the location of shareholders. Such systems give rise to significant administrative challenges, but they have important strengths too, including those that flow from taxing in the location of a relatively immobile factor. See Devereux and others n above 11 163-168.

the IIR or the UTPR. In fact, A has an incentive to collect the top-up tax itself through the QDMTT. GloBE thus effectively impedes the DBCFT's border adjustment - one of its defining features. By doing so it lessens the DBCFT's attractive properties and weakens the incentives for A to adopt a DBCFT in the first place.

Before GloBE, the interaction between a unilaterally-adopted DBCFT and the existing origin-based system would have produced a different outcome. As noted above, A had an incentive to introduce a DBCFT partly because that would give multinationals an incentive to locate in A, whether they were selling to consumers in A or B,[219] and to shift profit from B to A. Depending on A's economic strength and related factors, other jurisdictions may then also have had an incentive to shift from an origin-basis of taxation to a DBCFT, ultimately leading to a stable equilibrium without the need of complex coordination. GloBE weakens, if not eliminates, these incentives.[220] A's incentives to introduce a DBCFT are also weakened because it cannot benefit as fully from the simplification brought about by shifting to a DBCFT. In the presence of GloBE, A is incentivised to operate GLoBE rules (to collect the top-up tax under a QDMTT), but

[219] See the discussion at pp.XX above. .

[220] A's incentive to move from an origin-based tax to a DBCFT is weaker post-GloBE because this move would not improve A's attractiveness as an investment location. Multinationals would not be better off investing in A under a DBCFT than they would under an origin-based tax, whether the investment leads to sales to consumers in A or B. Sales to consumers in B would be subject to a top-up tax (and therefore subject to origin-based tax in A) and sales to consumers in A would essentially have the same treatment a

s an origin-based tax.

also other rules, such as transfer pricing, that are otiose for a jurisdiction operating a DBCFT[221] but necessary for GloBE purposes.

Similarly, if Jurisdiction X moved to a system whereby it taxed the profit of companies in the location of shareholders, issues would arise for companies with financial profit in X that have foreign shareholding. No tax would be due in X, if a company reporting accounting profit in X is wholly owned by foreign shareholders. But in such a case a top-up tax would be due in X, thus defeating the switch to taxation in the location of shareholders.

The second set of reforms maintain origin-based taxation but depart from the current computation of the tax base. As seen, the GloBE tax base starts with financial accounting profit, but then makes a series of adjustments to align more closely with conventional corporate tax bases. It follows, that if Jurisdiction Y were to radically alter its origin-based corporate tax base, there would be potential misalignments between GloBE income and its taxable profit in Y, thus triggering top-up tax charges. Assume, for example, that Y introduced a unitary tax system with a two-factor formula comprising labour and assets. The taxable profit under this system may be more or less than GloBE income, and in the latter case, depending on the tax rate in Y, there may be a top-up tax due even if there would have been none under the existing system, although this would be reduced by the SBIE. Top-up tax liabilities may arise in an unpredictable and

[221] Alan Auerbach, Michael P. Devereux, Michael Keen, and John Vella 'International tax planning under a destination based cash flow tax' (2017) 70 *National Tax Journa*l 783; and Michael P. Devereux and John Vella n 234 above.

haphazard way, thus creating uncertainty and reducing the attractiveness of this reform.

Some attractive reform proposals have features of both sets of proposals. Residual Profit Allocation systems and unitary tax systems with a standard three factor formula,[222] allocate taxing rights both on an origin and a destination basis, but the tax base in origin jurisdictions is different to that under a conventional corporate tax system. As these systems do not depart as radically from the current system as the DBCFT or proposals that allocate taxing rights to the location of shareholders, they are not completely undermined by GloBE. But they operate less well in its presence, and their attractiveness is diminished.

Consider Residual Profit Allocation systems first.[223] Under a simple Residual Profit Allocation system, taxing rights over routine profit are allocated to jurisdictions where

[222] There is extensive literature on such systems, including, for example, Richard Krever and François Vaillancourt (eds), *The Allocation of Multinational Business Income: Reassessing the Formula Apportionment Option* (Alphen aan den Rijn: Kluwer Law International, 2020). This author does not have a strong view on whether this system is preferable to the current one, but it is worth emphasising that unitary tax systems do away with the separate entity approach which causes extensive and systematic problems in the current system, and, critically, that such a system must be compared to a current system which is hopelessly and irredeemably flawed.

[223] Residual Profit Allocation by Income systems perform better overall than the existing across a standard set of evaluative criteria, see Devereux and others n 11 above ch 6. See also Reuven Avi-Yonah, Kimberly A. Clausing, and Michael C. Durst, 'Allocating business profits for tax purposes: A proposal to adopt a formulary profit split'(2009) 9 *Florida Tax Review* 497.

functions and activities take place, and the residual is allocated on a destination basis. Assume that MNE manufactures goods in Jurisdiction M and sells them remotely to consumers in Jurisdiction N. Top-up tax may be due in M under the RPAI even if the total tax paid in M and N is more than 15% of GloBE income in M. This could be because the residual is allocated to N, but also because the origin-based tax in M has a different base to that in conventional corporate tax bases and GloBE.[224] The SBIE would reduce the top-up tax due in M, but top-up taxes could still be due. It is hard to predict how often top-up taxes would be due under such a system even if the total tax paid in the origin and destination jurisdiction is more than 15% of GloBE income in the origin jurisdiction, creating uncertainty and reducing the attraction for that jurisdiction to adopt such a system. And, as with the DBCFT, the simplification benefits of these systems are also diminished by GloBE.

A unitary tax system with a formula including assets, labour and sales, also sits uncomfortably with GloBE. Two issues are considered here. First, a top-up tax may be due in a participating jurisdiction because the taxable profit allocated under the formula may be less than GloBE income. If Jurisdictions G and H operate a unitary tax system, a top-up tax would be due in H, for example, if MNE has GloBE income of $100 in both G and H, but they are allocated $130 and $70 respectively under the formula.[225]

[224] Routine profit is calculated in different ways under different RPA proposals. It is closer to the existing system in some proposals – for example the Residual Profit Allocation by Income – but it is still a departure from a conventional corporate tax base.

[225] Assume that the tax rate in both G and H is 15%. If they did not operate a unitary tax system, no top up tax would be due as the MNE pays $15, meaning a 15% ETR in each. Adopting a unitary tax system may

Second, a top-up tax may be due because GloBE applies on a jurisdictional basis, but profits and losses are netted across participating jurisdictions under a unitary system. If MNE has profit of $100 in G and a loss of $90 in H, the maximum profit allocated to G under the unitary system is $10. GloBE would thus impose a top-up tax on the 'undertaxed' profit in G even if G had a 100% corporate tax rate.[226]

The fundamental issue here is that there is misalignment between GloBE, which is designed to buttress an origin-based system on a jurisdictional basis, and a unitary tax system that partly allocates on a destination basis. Triggering top up taxes because of the unitary tax system could undermine the attainment of the system's goals (eg netting of profits and losses across participating jurisdictions) or lead to higher overall taxes paid (thus affecting the competitive position of the participating jurisdictions and therefore the attractiveness of the system).

Fixes could be designed, at least for some of these fundamental reform proposals. For example, it has been suggested that the EU's unitary tax proposal – the Business in

---

trigger top-up taxes. If G and H are allocated $130 and $70 respectively under the formula, MNE pays $19.5 in G and $10.5 in H. Despite the total tax paid in G and H remaining the same ($30), a top-up tax would be due in H of $4.5, thus bringing the total tax paid by the MNE to $34.5.

[226] Under the unitary tax system, the tax base in G is $10 and with a 100% tax rate MNE will pay $10 in tax in G. To determine whether the profit in G is undertaxed the tax paid in G is divided by GloBE income – which we can here take to be $100 – producing an ETR of 10%. Therefore, a top-up tax will be due in G.

Europe: Framework for Income Taxation proposal[227] - implies that 'the company, for the sake of calculating pillar 2, should be handled at Union level, not at national level, because of the cross-border compensation of losses.'[228] Such a move may address the problem of misalignment of tax bases to some extent, but it would only be possible if other jurisdictions agree to amend the GloBE rules. Clearly, they may have an interest not to. Averaging ETRs across EU Member States would provide some Member States with an advantage over non- Member States and could thus be opposed by the latter. In fact, Member States with high tax rates may also object because this would incentivise other Member States to lower their tax rates.[229] Other mechanisms have been proposed to address this misalignment,[230] but they too require amending the Model Rules. Again, non- Member States may oppose such amendments given that they could favour Member States.

---

[227] Proposal COM (2023) 532 for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0532&amp%3Bqid=1700565513879>

[228] Paez n 221 above.

[229] Assume G and H have tax rates of 20% and 15% respectively and both have GloBE income of $100. Setting aside the SBIE for the time being, H has no incentive to reduce its tax rate below 15% if G and H are considered separate jurisdictions for GloBE purposes. But H does have an incentive to do so if they considered one jurisdiction. If H drops its tax rate to 10%, in the first case it would pay a top up of $5, bring the total tax paid in G and H back up to $35. If the second case, G pays $20 on income of $100 and H pays $10 on income of $100. The total tax paid by MNE is reduced to $20 but no top up tax is due under GloBE because the ETR for G and H combined is 15% (30/200).

[230] See proposals in Stijn Blaakman and Jasper Korving, 'The Tax Base in Befit and Pillar Two: Harmony, Dissonance, or Off-Key?'(2024) 52 *Intertax* 361.

This leads to the more general issue of the extent to which GloBE fossilizes the existing tax system. Of course, jurisdictions can always agree to change the system, but GloBE makes this more difficult, perhaps even prohibitively so. The UTPR may be the most significant problem here. As discussed, it was designed to create incentives for jurisdictions around the world to adopt GloBE rules once a group of jurisdictions adopted it. That is its fundamental strength but also its weakness, because a group of jurisdictions can create hold-out problems for the rest if the latter wish to move away from the existing system.[231] Politics will be determinative in such situations, and strong jurisdictions favouring change can strong-arm others. But strong jurisdictions may have diverging views on fundamental reform and thus difficult hold out problems may arise among them too.

The latest developments at the time of writing lend support to this prediction. The US may or may not be successful in stopping jurisdictions from enforcing their UTPRs against US headquartered groups. But even if it is successful, it would have taken the most powerful country on earth significant effort and may come at a considerable international political cost.

GloBE seeks to shore up the existing origin-based system against the corrosive effect of tax competition and profit shifting. However, whether intended or not, it also has the effect of undermining attractive reform options that move away from the system. This is particularly troubling given that, as this paper argues, even when buttressed by a GMT

[231] On the lock in effect of EU Directives see, Wolfgang Schön, 'Robustness and resilience in international tax reform' in Craig Elliffe n 41 above.

the existing origin-based system continues to perform poorly overall. If this lock-in effect was a desired feature of GloBE rather than a bug, it was certainly misconceived.

CONCLUSION

GloBE is a seminal, ingenious, and technically impressive reform. It was also the wrong reform to pursue. GloBE seeks to shore up the existing origin-based system but its overall impact on the system is mixed. It should reduce profit shifting, although time is needed to determine by how much. It should also have some impact on tax competition, but probably less than what was expected or hoped, perhaps much less. GloBE's impact on the overall efficiency of the system is ambiguous, but, if anything, indications are that the system will be less efficient. Again, time is needed to determine by how much, if so. And while fairness is a difficult concept to employ in this context, it is unlikely that the public will find the system 'fair' following GloBE. Many jurisdictions have clearly concluded that it is less fair. Most damningly, GloBE layers further complexity on a system that was already creaking under its own weight. It also fails to address the serious malfunctioning of critical parts of the system. In this light, the hype around GloBE appears misplaced.

GloBE's mixed impact on the existing system was foreseeable. This impact is not due to the poor implementation of a good policy option. It is the policy of propping up an origin-based system with a GMT that is poor. This policy seeks to address some of the consequences of the incentive incompatibility of an origin-based system, but the

incentive incompatibility remains. It undermines the design and operation of the GMT itself and continues to undermine the system overall.

The conclusion that the existing origin-based system continues to perform poorly overall post-GloBE is particularly troubling because GloBE makes it more difficult – perhaps even much more difficult - to abandon the system. It is now much harder for jurisdictions to adopt comprehensive reform that moves away from the existing system, unilaterally or in a group. By doubling down on the existing system, therefore, GloBE may condemn us to a poorly functioning international corporate tax system for years to come. Comprehensive destination-based approaches present challenges, but also promise an all-round improved international tax system, one that performs better on all five criteria examined above than the existing system buttressed by GloBE. It is regrettable that the international tax community did not devote a fraction of the time and energy devoted to GloBE to consider these options.

If the existing system is a dilapidated building teetering on the brink of collapse, GloBE serves as an intricate superstructure of scaffolding and support beams that may stop it from doing so. But the building remains inhospitable, and once the superstructure is firmly in place it will be harder to tear the building down and replace with a new, fundamentally better building. What may appear as a stabilising intervention may, in fact, entrench an architecture long overdue for replacement.

Table 1

	a	b	c	d	e	f	g
Parameters							
CT rate in A	15%	15%	15%	15%	15%	15%	15%
CT Rate in B	0%	0%	15%	0%	0%	0%	15%
Labour cost in B	100	100	100	100	100	200	100
Revenue generated by labour in B as a % of labour cost	100%	100%	100%	0%	100%	100%	50%
QRTC Rate, % of labour cost	**0%**	**100%**	**1%**	**99%**	**150%**	**100%**	**80%**
Profit shifted from A to B	1000	1000	1000	1000	1000	1000	1000
Revenue attributed to Labour in B	100	100	100	0	100	200	50
Less Labour cost in B	100	100	100	100	100	200	100
Net profit in B	**1000**	**1000**	**1000**	**900**	**1000**	**1000**	**950**
CIT in B	0	0	150	0	0	0	142.5
QRTC	0	100	1	99	150	200	80
Denominator of ETR = Profit in B + QRTC	1000	1100	1001	999	1150	1200	1030
ETR in B	0%	0%	15%	0%	0%	0%	13.8%
Top Up Rate	15%	15%	0%[232]	15%	15%	15%	1.2%
SBIE (5% of labour cost)	5	5	5	5	5	10	5
Excess profit = net profit + QRTC - SBIE	995	1095	996	994	1145	1190	1025
QDMTT	**149.3**	**164.3**	**0.1**	**149.1**	**171.8**	**178.5**	**12.3**
MNE's perspective							
Total Tax paid in B	149.3	164.3	150.1	149.1	171.8	178.5	154.8
Total Tax net of QRTC	149.3	64.3	149.1	50.1	21.8	-21.5	74.8
Total cost (tax + net labour costs)	149.3	64.3	149.1	150.1	21.8	-21.5	124.8
Net saving from Profit Shifting	**0.7**	**85.7**	**0.9**	**-0.1**	**128.2**	**171.5**	**25.2**

[232] The top up rate is tiny. It is here rounded down to zero.

B's perspective							
Total tax collected	149.3	164.3	150.1	149.1	171.8	178.5	154.8
Total revenue (net of QRTC)	**149.3**	**64.3**	**149.1**	**50.1**	**21.8**	**-21.5**	**74.8**