Optimal policy responses to the EU MTD by third countries not aligned with Pillar Two

Aitor Navarro

Max Planck Institute for Tax Law and Public Finance

The EU Minimum Corporate Tax Directive and its Impact on Non-Member Countries

Grand Hall of the Serbian Academy of Arts and Sciences, Belgrade, 24.11.23

Pillar Two rationale

Explicit rationale

- Address "remaining BEPS challenges" and "the continued risk of profit shifting to entities subject to no or very low taxation" – IF Policy Note, 23 January 2019
- "Global action is needed to stop a harmful race to the bottom" (Programme of Work, 29 May 2020, para. 54)
- P2 "Could effectively shield developing countries from the pressure to offer inefficient incentives" (id.)
- "Ensure that the income of the MNE group is subject to tax at a minimum rate thereby reducing the incentive to allocate returns for tax reasons to low taxed entities" (ibid., para. 60)

Pillar Two rationale

Implicit rationale

- The main purpose is to limit tax competition
- Better understood as a regulatory tax (countries as addresses)
- Needed remarks:
  - Adjectives such as “harmful” or “abusive” or the existence of double taxation are not relevant policy aspects below the 15% ETR
  - If the aim of a country is to immediately increase tax collection, P2 is a bad policy choice
  - Adoption by a few relevant countries impacts many
  - Major design nuances: SBIE, treatment of incentives

Pillar Two adoption

Final legislation	
Jurisdiction	**Rules covered**
European Union	QDMTT, IIR, UTPR
Japan	IIR
Mauritius	QDMTT
South Korea	IIR, UTPR
United Kingdom	QDMTT, IIR

Draft legislation	
Jurisdiction	**Rules covered**
Austria	QDMTT, IIR, UTPR
Belgium	QDMTT, IIR, UTPR
Bulgaria	QDMTT, IIR, UTPR
Canada	QDMTT, IIR
Croatia	QDMTT, IIR, UTPR
Cyprus	QDMTT, IIR, UTPR
Czech Republic	QDMTT, IIR, UTPR

Draft legislation	
Jurisdiction	**Rules covered**
Denmark	QDMTT, IIR, UTPR
Finland	QDMTT, IIR, UTPR
France	QDMTT, IIR, UTPR
Germany	QDMTT, IIR, UTPR
Hungary	QDMTT, IIR, UTPR
Ireland	QDMTT, IIR, UTPR
Italy	QDMTT, IIR, UTPR
Liechtenstein	QDMTT, IIR, UTPR
Lithuania	Filing obligations
Luxembourg	QDMTT, IIR, UTPR
Malaysia	QDMTT, IIR
Netherlands	QDMTT, IIR, UTPR
New Zealand	IIR, UTPR
Norway	QDMTT, IIR
Romania	QDMTT, IIR, UTPR
Slovakia	QDMTT
Slovenia	QDMTT, IIR, UTPR
Sweden	QDMTT, IIR, UTPR
Switzerland	QDMTT, IIR, UTPR
United Kingdom	UTPR
Vietnam	QDMTT, IIR

Intention to implement Pillar Two
Australia
Bahamas
Barbados
Belgium
Gibraltar
Guernsey
Hong Kong
Indonesia
Isle of Man
Jersey
Malta
Qatar*
Singapore
South Africa
Spain
Taiwan
Thailand
United Arab Emirates

Acronyms: IIR (Income Inclusion Rule), UTPR (Undertaxed Profits Rule), QDMTT (Qualified Domestic Minimum Top-up Tax).

*Qatar has enacted a law incorporating a placeholder for the introduction of Pillar Two. Detailed laws and regulations regarding how Qatar will implement Pillar Two are expected to be developed in the future.

**The United States is not included in the implementation overview above since this jurisdiction does not yet have final or draft legislation and has not yet indicated an intention to implement Pillar Two into domestic law. Additionally, the OECD is not included as it does not possess legislative authority.

Note: Developments Tracker cut-off date - As at 17 November 2023

Source: EY

Against Pillar Two

Tax + Add to myFT

'It's a sovereignty issue': Bermuda digs in against global tax deal

Tax haven faces uncertainty after G7 nations move to back minimum corporate levy

© Akil Simmons/FT

Switzerland plans subsidies to offset G7 corporate tax plan

Aim is to maintain competitiveness for host of multinationals based in low-tax cantons

Zug is one of 18 of Switzerland's 26 cantons that levy less than the 15 per cent minimum proposed by the G7 © EThamPhoto/Alamy

Global minimum tax could eat up US green subsidies, say companies

Multinationals warn of 'massive' transfer of American taxpayer money into foreign government coffers

Developing countries and Europe in dispute over global tax role for UN

Proposals by states frustrated at OECD processes are being 'rubbished' by EU and UK, critics say

Source: FT

MAX PLANCK INSTITUTE
FOR TAX LAW AND PUBLIC FINANCE

Against Pillar Two

Reasons not to be aligned with P2

- In favor of tax competition
- Against limiting the "jurisdiction not to tax" of other countries
- In favor of minimum taxation, but not through P2 (deficient policy instrument)
- Concerns around the conformity of P2 with international (tax) law
- Against adopting measures designed by an institution with a perceived lack of legitimacy (OECD)

Non-aligned options

Price makers

- Power to influence the design and adoption of P2
- Political pressure, threat to adopt retaliatory measures

Price takers

- React to P2 as given
- Queries when choosing an alternative:
  - How much should ETRs be raised? Surgical cut or detached increase?
  - Should the modifications mimic P2?
  - Level of complexity?
    - Compliance
    - Assessment
  - Alternative tax incentives / subsidies?

Non-aligned specific measures

Countries not willing to curtail tax competition

- Avoid adoption of measures that prevent “jurisdiction not to tax”
  - No IIR/UTPR adoption (e.g. Barbados)
  - Alternative: IIR adoption to block UTPRs, accompanied by measures to return amounts to the MNE (subsidies?)

Non-aligned specific measures

Countries not willing to curtail tax competition

- Need for measures to impede the collection of P2 liabilities in other countries
    - QDMTT tailored to exactly match P2 liabilities and to safe harbours
    - Other DMTT (SHDMTT proposal by Englisch)
    - Minimum tax on accounting profits (AMT)
    - Raise corporate tax rate or expand base to achieve ETR > 15%

Takeaway

- Every country should react to Pillar Two in line with its policy choices
- Non-aligned countries count with a wide array of options
- Special attention to:
    - Collecting P2 liabilities and adapting incentives
    - Simplification

Thank you

-

aitor.navarro@tax.mpg.de