

EDITORIAL NOTE

Editorial Note

This is the second special issue on Pillar Two organized by Intertax. In this issue, the reader will find three articles and one policy note on the topic. 'GloBE Rules and Tax Competition' is an article by Joachim Englisch that focuses on the foreseeable effects that a (relatively) comprehensive implementation of the Pillar 2 Global Anti-Base Erosion Model Rules (GloBE) international effective minimum tax would have on international tax competition for investment.

The author takes into account possible effects on tax competition resulting from the carve-out for Substance-Based Routine Profits (the so-called SBIE), and the additional possibility for source countries to collect any eventual minimum tax through a Qualified Domestic Minimum Top-up Tax (QDMTT). He concludes that taking into account fiscal, legal, and political constraints, a full replacement of traditional business taxation with a domestic minimum tax is not likely to occur. Instead, according to the author, a broad GloBE implementation should reduce incentives to use an effective tax rate below 15% (on overall profit) in order to attract high-margin investment. However, certain features of the GloBE Model Rules imply that some forms of business tax competition will continue as before or even increase. GloBE might moreover lead to intensified competition for investment through other channels.

Luc de Broe analyses 'Some EU and tax treaty law considerations on the draft EU Directive on Global Minimum Taxation for Multinationals in the Union'. The author examines whether the draft EU Directive on Global Minimum Taxation for Multinationals complies with primary Union and whether the GloBE Model rules comply with the commitments undertaken by jurisdictions under their bilateral tax treaties that follow the OECD Model. The author also suggests how the prevention and resolution of disputes under the GloBE Model rules can be improved.

In her article, titled 'Do GILTI + BEAT + BMT = GloBE?' Mindy Herzfeld questions how the global intangible low-taxed income (GILTI), the base erosion and anti-abuse tax (the BEAT) and the recently approved (August 2022) book minimum tax (BMT) interact with the global minimum tax (GloBE Model Rules), agreed to by over 135 countries under an OECD framework. The author raises questions concerning the hierarchy in application of different regimes, and examines the technical differences between the different minimum taxes outlined in the GloBE model rules and the US GILTI, BEAT, and BMT. Although the GloBE model rules fail to provide

clear guidance on the hierarchy between different regimes, the author contends that there are good reasons to conclude that taken as a whole, the minimum taxes enacted by the United States are at least equivalent to the GloBE rules.

Filip Debelva and Luc De Broe in their article titled 'Pillar 2: An analysis of the IIR and UTPR from an international customary law, tax treaty law and European Union law perspective', discuss potential jurisdictional conflicts between the Pillar 2 rules and international customary law. In addition, the authors assess whether the Pillar 2 rules can be justified in the same way as Controlled Foreign Company (CFC)-rules, thereby referring to the principle of personality. Part three of the article evaluates how conflicts between the Pillar 2 rules and international law are to be resolved. The authors conclude by providing potential solutions to resolve jurisdictional conflicts from arising.

'The DEBRA directive and its interplay with Pillar 2', by Dieter Bettens focuses on the Debt-Equity Bias Reduction Allowance (DEBRA) directive, which seeks to reduce the distortionary bias towards debts on the part of companies seeking investment. Two measures are introduced to achieve that purpose, i.e., the deduction of a deemed interest expense on capital (DEBRA) and the further restriction of the deductibility of actual interest expense. However, according to the author, a Pillar 2 Directive might undermine the effectiveness of the two aforementioned measures, because where the DEBRA directive provides a benefit, the Pillar 2 directive might eliminate it and, where the DEBRA directive introduces a disadvantage, the Pillar 2 directive may neutralize it.

In her policy note titled 'Assessing the impact of Pillar Two on developing countries', Suranjali Tandon contends that the OECD disregards the constraints on developing countries resulting from the wide objective of increasing the effective tax rates across jurisdictions to 15%. This article demonstrates that the immediate revenue gains of developing countries remain limited, and the tax will restrict the ability to offer tax incentives and will undermine the sovereignty of states in its application to some extent.

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