GUEST EDITORIAL

Has the Time Come for the US to Adopt an Excess Profits Tax?

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In recent years, many countries have enacted or proposed excess profit taxes (EPTs) targeting profits that corporations earn as a result of extraordinary events beyond their control.[1] Prominent examples include the European Union's tax on energy companies' windfall profits arising from the war in Ukraine,[2] national-level excess taxes imposed or proposed in Europe[3] and Israel on financial-sector profits linked to higher interest rates,[4] and US proposals aimed at profits generated during the COVID-19 pandemic and periods of elevated gasoline prices.[5] These modern measures draw heavily on historical EPTs introduced in Europe and North America during the First and Second World Wars.[6]

The current conflict between the US and Iran has significantly raised oil and gas prices and has therefore resulted in increased profits for the US fossil fuel industry.[7] The predictable result has been a revival of calls for an EPT on the industry.[8]

This column discusses the application of the EPTs (also referred to as windfall taxes) that have gained renewed interest and popularity over the past several years. The revival of these windfall taxes gained renewed interest following the COVID-19 outbreak, which led to a sharp in corporate revenues of medical equipment and pharmaceutical industries.[9] However, the revival of such taxes was also used following the recent rise in energy prices mainly in Europe, leading to a sharp increase in corporate revenues of energy corporations and the recent surge in borrowing interest rates that was not accompanied by a corresponding increase in lenders' interest rates which, in turn, led to a sharp increase in the corporate revenues of the banking sector.[10]

Notes

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1 Shafik Hebous, Dinar Prihardini & Nate Vernon, *Excess Profit Taxes: Historical Perspective and Contemporary relevance* (International Monetary Fund 2022) (hereinafter: 'The IMF Report'); Reuven S. Avi-Yonah & Tamir Shanan, *Rethinking Excess Profits*, 77 Taxes 269 (2023), doi: 10.2139/ssrn.4792580; Reuven S. Avi-Yonah, *Taxes in the Time of Coronavirus: Is It Time to Revive the Excess Profits Tax?* (University of Michigan Public Law Research Paper No. 671 2020), https://ssrn.com/abstract=3560806.

2 European Commission, 2022, *Proposal for a COUNCIL REGULATION on An Emergency Intervention to Address High Energy Prices*, COM/2022/473 final. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A473%3AFIN; *see also* European Parliament, The effectiveness and distributional consequences of excess profit taxes or windfall taxes in light of the Commission's recommendation to Member States, https://www.europarl.europa.eu › etudes › STUD.

3 Cristina Enache, *What European Countries Are Doing about Windfall Profit Taxes* (Tax Foundation 2022), available at https://taxfoundation.org/windfall-tax-europe/; *also*, Windfall Profit Taxes – Track the Implementation Across the Globe (Apr. 2023), available at https://research.ibfd.org/#/hdoc?url=/home/content/windfall-profit-taxes.

4 *See* Bank profits surcharge (UK); Smotrich Speech on Bank Excess Profits, Haaretz (30 May 2023).

5 The IMF Report, *supra* n. 1; Manon Francois, Carlos Oliveira, Bluebery Planterose § Gabriel Zucman, *A Modern Excess Profit Tax* EU (Tax Observatory Working Paper No. 5 2022).

6 Reuven S. Avi-Yonah, *COVID-19 and US Tax Policy: What Needs to Change?,* 48 Intertax 790 (2020), doi: 10.2139/ssrn.3584330*;* T. Baunsgaard & N. Vernon *Taxing Windfall Profits in the Energy Sector*, IMF Note (2022/002) International Monetary Fund. Available at: https://www.imf.org/en/Publications/IMF-Notes/Issues/2022/08/30/Taxing-Windfall-Profits-in- the-Energy-Sector-522617; C. Busby, M. Creigthon & G. Bernier, *Cost Estimate of an Excess Profits Tax* (2021), available at https://www.pbo-dpb.ca/en/publications/RP-2122-002-M–cost-estimate-an-excess-profits-tax– montant-estimatif-un-impot-benefices-exceptionnels; E. Dubinina. J. Garcia-Bernardo & P. Janský, *Excess Profits Tax – Estimating the Potential Tax Revenue Gains for the European Union* (2021) available at: https://left.eu/content/uploads/2021/11/FISC-v1.pdf; S. Lazzari, *The Crude Oil Windfall Profit Tax of the 1980s: Implications for Current Energy Policy*, CRS Report for Congress (2006) available at: https://liheapch.acf.hhs.gov/pubs/oilwindfall.pdf; Oxfam America, 2020, *Pandemic Profiteers Exposed*, Oxfam Briefing Paper. Available at: https://www.oxfamamerica.org/explore/research-publications/pandemic-profits-exposed; N. L. Rao, *Taxes and US Oil Production: Evidence from California and the Windfall Profit Tax,* 10(4) Am. Econ. J.: Econ. Pol'y 268–301 (2018), doi: 10.1257/pol.20140483 available at: https://doi.org/10.1257/pol.20140483; R. Vosslamber, *Tax failure: New Zealand's Short-Lived First World War Excess Profits Tax*, 29 (1) Acct. Hist. Rev. 79–102 (2019), doi: 10.1080/21552851.2019.1590215 available at https://doi.org/10.1080/21552851.2019.1590215; Wissenschaftlicher Dienste des deutschen Bundestages, 2021, *Übergewinnsteuer – historische Hintergründe, aktuelle Diskussion und rechtliche Fragen*, WD 4-3000-023/21, available at https://www.bundestag.de/resource/blob/838958/eaa79ffafc735d702c68efccc5c12d40/WD-4- 023-21-pdf-data.pdf; D. Langenmayr, 2023, *Die Einführung einer Übergewinnsteuer – Übergewinnsteuern: Das falsche Instrument in der Krise, aber als langfristige Weiterentwicklung der Gewinnbesteuerung sinnvoll*, Steuer und Wirtschaft (1): 70–72. Available at: https://doi.org/10.9785/stuw-2023-1000109.

7 *See* e.g., Tristan Bove, *Oil and Gas Profits Surge as Drivers Face Higher Fuel Prices* (Fortune, Fortune 1 Jan. 2026); Malcolm Moore, *Shell's Profits Jump as Iran War Delivers Windfall* (Financial Times 5 Jul. 2026).

8 *See* e.g., *Blockbuster Oil Company Profits Revive Calls for Windfall* (New York Times 1 Jan. 2026).

9 Reuven S. Avi-Yonah, *Taxing the Digital Economy: The Effect of Coronavirus on Pillar 1,* 98 Tax Notes Int'l (30 Mar. 2020)*;* Allison Christians & Tarcisio Diniz Magalhaes, *It's Time for Pillar 3: A Global Excess Profits Tax Covid-19 and Beyond*, 98 Tax Notes Int'l 507 (2020), doi: 10.2139/ssrn.3882142; Avi-Yonah & Shanan, *supra* n. 1.

10 *Ibid.*

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Not only are these taxes viewed as a means to finance governmental needs, but they also assist the government in supervising large-scale and sophisticated cross-border taxpayers that possess significant economic and political powers.[11] The main criticism is that the corporations that become exceptionally profitable do not hesitate to exploit their monopolistic powers and inflate their prices.[12]

EPTs were first introduced during World War I by over a dozen countries, not all of whom were active belligerents. Denmark, which was neutral, imposed an EPT on food exporters that received a permit to trade with Germany.[13] Other countries followed by imposing similar taxes.[14] EPTs were regarded as minimizing the unjust enrichment of taxpayers who profited from the world`s misery, and as a contribution to revenue as government expenditures increased because of the war. These EPTs were generally repealed at the end of the war.[15]

In his war budget speech, then Great Britain Chancelor of the Exchequer David Lloyd George justified the imposition of 'war taxes' in the following remarkable statement:

> During the war and during the period of reconstruction … I think we can look forward to something like four or five years when the industries of this country will have the artificial stimulus which comes from these **abnormal conditions** … I want to impress upon the Committee with all the earnestness at my command that it is desirable that the nation, during **this period of inflation**, should raise as much money out of taxation as it can be induced to contribute. **It is easier to raise taxes in a period of war and to lower them in a period of peace than it would be to raise even lower taxes in a period of peace. War is the time for sacrifice, and that makes a difference.** It is a time when men know that they are expected to give up comforts, possessions, health, limb, life, all that the State requires in order to carry it through the hour of its trial. It is a time of danger, when men part willingly with anything in order to avert evils impeding on the country they love. Every twenty million raised annually by taxation during this period means four or five million taken off the per thereafter imposed on the country. Inflation is a nasty by-product of war, a result of war spending, and of the errors of war finance. Inflation spreads its influence unevenly from class to class and from man to man, enriching some and impoverishing others. It is undoubtedly less disturbing, at a time when the least possible disturbance of industry is highly essential, to gather some of the needed extra revenues from those who profit by the irregular rise in prices than it would be to increase the general taxes. **Those who get rich from war inflation can certainly well afford to pay war taxes. To use the phrase of the street, 'a good way to get money for the government is to take it from those who have it'.**[16]

Historically and contemporarily, EPTs aim to tax profits exceeding a benchmark 'normal' return. Two principal methods have been used to identify such excess profits. The first defines a standard return to capital (and sometimes labour) and taxes only profits above that threshold. Modern examples include the US GILTI regime and Pillar One of the OECD's Base Erosion and Profit Shifting (BEPS) project, both of which focus on profits exceeding an arbitrary fixed percentage return, although the GILTI rule was repealed in 2025.[17] The second method compares profitability during an extraordinary period – such as wartime or crisis conditions – to profitability in a prior, ostensibly normal period, taxing only the increase.[18]

Despite their long history, neither approach has proven satisfactory. The 'normal return' methodology requires defining an appropriate benchmark, a task that is inherently arbitrary and varies widely across industries. Simple formulas ignore differences in scale, risk, and capital intensity, while complex formulas invite manipulation, impose significant enforcement costs, and generate litigation. Measuring excess profits based on absolute profit levels is particularly problematic, as larger firms naturally earn higher profits regardless of their true profitability rates. Conversely, relying on profitability ratios introduces distortions across industries and can incentivize inefficient behaviour designed to reduce reported profitability.[19]

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[11] Kimberly A. Clausing, *Capital Taxation and Market Power* (21 May 2024), Available at SSRN: https://ssrn.com/abstract=4419599; Sara Calligaris, Chiara Criscuolo, & Luca Marcolin, *Mark-Ups in the Digital Era*, OECD Science, Technology and Industry Working Papers, 2018/10 (2018) Matias Covarrubias, Germán Gutiérrez & Thomas Philippon, *From Good to Bad Concentration? US Industries over the Past 30 Years* (NBER Macroeconomics Annual 2019); Carl Shapiro, *Protecting Competition in the American Economy: Merger Control, Tech Titans, Labor Markets*, 33(3) J. Econ. Persps. 69–93 (2019), doi: 10.1257/jep.33.3.69; David Elkins & Christopher H. Hanna, *Taxation of Supernormal Returns,* 62 Tax L. 93 (2008); Jan De Loecker & Jan Eeckhout, *Global Market Power*, Update of NBER Working Paper 24768 (2021).

[12] Avi-Yonah & Shanan, *supra* n. 1.

[13] The IMF Report, *supra* n. 1.

[14] Rob Vosslamber, *Tax failure: New Zealand's short-lived First World War Excess Profits Tax*, 29 ACCOUNTING HISTORY REVIEW 79 (2019).

[15] The IMF Report, *supra* n. 1.

[16] Carl C. Plehn *War Profits and Excess Profits Taxes* 10 THE AMERICAN ECON. REV. 283, 284–285 (1920) (emphasis added).

[17] S. 951A. On the repeal of QBAI in the OBBBA, *see* Reuven S. Avi-Yonah, *The End of Territoriality?* 52 Int`l Tax J. 15 (Feb. 2026).

[18] The IMF Report, *supra* n. 1.

[19] Shanan and Avi-Yonah, *supra* n. 1.

These technical challenges reflect a deeper conceptual problem. EPTs rest on the premise that 'normal' profits are deserved because they result from managerial effort, while excess profits are undeserved because they arise from external events. This distinction is flawed. A large body of economic literature shows that many high corporate profits are economic rents attributable to monopoly power, political conditions, or luck rather than superior managerial performance. Moreover, imposing EPTs may discourage socially valuable risk-taking and innovation, particularly in research-intensive industries where high returns compensate for substantial uncertainty and failure risk.

A separate but related issue concerns the interaction between EPTs and the corporate income tax. Corporate income taxation was originally introduced to regulate corporate power and to facilitate tax collection at the source.[20] EPTs, by contrast, were designed to prevent firms from exploiting exceptional circumstances to extract extraordinary profits. While the incidence of the corporate income tax remains contested, there is broad consensus that taxes on monopoly rents are borne primarily by shareholders except when such goods or services demand is inelastic, when there may be no substitution for the goods or services consumed, and especially when the consumers may not freely determine whether to continue to purchase the goods or services.[21] As a result, EPTs on excess profits can be both efficient and progressive. Nonetheless, layering EPTs on top of existing corporate taxes complicates tax administration and raises difficult questions about tax incidence, revenue allocation, and cross-border coordination.

Globalization intensifies these challenges. Unlike a century ago, capital and labour today are highly mobile, making EPT tax bases particularly vulnerable to erosion through profit shifting and corporate restructuring.[22] Domestic consolidation rules alone are insufficient in a cross-border context.[23] For this reason, EPTs provide an opportunity to revisit the flaws of the arm's-length transfer pricing regime and to consider a unitary or formulary apportionment approach, particularly for multinational enterprises (MNEs). While multilateral coordination would be ideal, unilateral adoption with limited international alignment may still be feasible.

1 Historical experience with EPTs

EPTs were first introduced during the early phases of World War I, when numerous European and North American governments sought to finance war efforts and curb perceived unjust enrichment. Early examples include Danish and Swedish 'war profit' taxes on traders benefiting from wartime shortages. These measures shared common features: they were temporary, imposed on profits exceeding pre-war benchmarks, applied territorially, and were often levied at high rates without eliminating post-tax profitability.[24]

Historical data demonstrate that EPTs generated substantial revenue while allowing firms to remain profitable. In the United Kingdom, EPT revenues accounted for nearly one-third of total government receipts in 1918.[25] In the United States, excess profits taxes during World War II generated over one-fifth of total federal revenue in some years.[26] Contemporary EPTs, such as the United Kingdom's energy profits levy introduced in 2022, continue this tradition, raising significant revenue with limited behavioural impact due to inelastic demand and strong market power.[27]

While most historical EPTs were temporary, their recurrence during successive crises suggests enduring

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[20] Reuven S. Avi-Yonah, *A New Corporate Tax*, Tax Notes 653 (27 Jul. 2020); Reuven S. Avi-Yonah & Lior Frank, *Antitrust and the Corporate Tax: Why We Need Progressive Corporate Tax Rates,* 167 Tax Notes 1199 (2020), doi: 10.2139/ssrn.3549006*;* Reuven S. Avi-Yonah, *Antitrust and the Corporate Tax 1909–1928*, in *Antimonopoly and American Democracy* (Daniel A. Crane & William J. Novak eds, 2023); Steven A. Bank, *Taxing Bigness,* 66 Tax L. Rev. 379 (2013).

[21] On the incidence of the corporate tax *see* Arnold C. Harberger, *The Incidence of the Corporation Income Tax*, 70 J. Pol. Econ. 215 (1962), doi: 10.1086/258636; Arnold C. Harberger, *The ABCs of Corporation Tax Incidence: Insights Into the Open-Economy Case*, in Charla E. Walker (ed.), Tax Policy and Economic Growth 53 (Am. Council for Capital Formation 1995); Arnold C. Harberger, *Corporation Tax Incidence: Reflections on What Is Known, Unknown, and Unknowable*, in *Fundamental Tax Reform: Issues, Choices, and Implications* 283, 283–317 (John W. Diamond & George R. Zodrow eds, 2008); Jane G. Gravelle & Kent A. Smetters, *Does the Open Economy Assumption Really Mean That Labor Bears the Burden of a Capital Income Tax?*, 6 Advances Econ. Analysis & Pol'y, No. 1 (2006), doi: 10.2202/1538-0637.1548; Jennifer C. Gravelle, *Corporate Tax Incidence: Review of General Equilibrium Estimates and Analysis* (Cong. Budget Office, Working Paper 2010–03 2010), Alan J. Auerbach, *Who Bears the Corporate Tax? A Review of What We Know*, 20 Tax Pol'y & Econ. 1, 33–34 (2006), doi: 10.1086/tpe.20.20061903; Kimberly A. Clausing, *In Search of Corporate Tax Incidence*, 65(3) Tax L. Rev. 433–72 (2012); Mihir A. Desai, C. Fritz Foley & James R. Hines Jr., *Labor and Capital Shares of the Corporate Tax Burden: International Evidence* (2007); Arnold C. Harberger, *The Incidence of the Corporation Income Tax*, 70 J. Pol. Econ. 215 (1962), doi: 10.1086/258636; Jane G. Gravelle & Kent A. Smetters, *Does the Open Economy Assumption Really Mean That Labor Bears the Burden of a Capital Income Tax?*, 6 Advances Econ. Analysis & Pol'y, No. 1 (2006), doi: 10.2202/1538-0637.1548; Jennifer C. Gravelle, Corporate Tax Incidence: Review of General Equilibrium Estimates and Analysis (Cong. Budget Office, Working Paper 2010-03 2010).

[22] *See* e.g., Reuven S. Avi-Yonah, *Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State*, 113 HARV. L. REV. 1573 (2000), doi: 10.2307/1342445; Reuven S. Avi-Yonah, *Globalization, Tax Competition and the Fiscal Crisis of the Welfare State: A Twentieth Anniversary Retrospective*, in *Thinker, Teacher, Traveler: Reimagining International Tax, Essays in Honor of H. David Rosenbloom* 39 (Georg Kofler, Ruth Mason Alexander Rust eds, 2021); Reuven S. Avi-Yonah & Doron Narotzki, *Deglobalization, Tax Competition, and the Potential Revival Of the Welfare State*, 118 Tax Notes Int`l 849 (12 May 2025), doi: 10.2139/ssrn.5284740.

[23] The original version of s. 482 was enacted during World War I to address profit shifting to avoid the EPT. *See* Reuven S. Avi-Yonah, *The Rise and Fall of Arm's Length: A Study in the Evolution of US International Taxation*, 15 Va. Tax Rev. 89 (1995); Avi-Yonah & Shanan, *supra* n. 1.

[24] Plehn, *supra* n. 16.

[25] Avi-Yonah & Shanan, *supra* n. 1.

[26] *Ibid.*

[27] The IMF Report, *supra* n. 1.

political and fiscal appeal. According to IMF data, dozens of countries currently impose some form of EPT, typically triggered when profits exceed specified thresholds. Average rates are moderate, but top marginal rates can be quite high, reflecting governments' preference to capture rents without fully eliminating corporate incentives. Based on the IMF Report, the average EPT rate among these countries is 25%, with a threshold of 14%. Notably, the average top marginal EPT rate reaches 58%, and the top profitability threshold is 28%. These figures explain why EPTs generally carry a limited behavioural impact and are viewed primarily as a fiscal revenue tool. The IMF Report further finds that most EPTs are enacted on a temporary rather than permanent basis. In our view, this approach is distortive and invites manipulation. While permanent EPTs may be less politically popular, particularly when they contribute to price increases, they would provide greater certainty and reduce arbitrariness. Accordingly, to the extent EPTs are adopted, they should be structured on a permanent basis and not on a temporary basis.[28]

2 Conceptual and practical difficulties

Despite their revenue potential, EPTs pose persistent design problems. Determining a 'normal' return remains inherently arbitrary and varies widely across sectors. Differences in risk profiles, capital structures, and competitive conditions complicate any uniform benchmark. Firms can also manipulate reported profits through restructuring, income shifting, or transfer pricing strategies, particularly within multinational groups.

More fundamentally, the distinction between 'deserved' and 'undeserved' profits collapses under scrutiny. High returns may stem from monopoly power created by innovation, patents, or network effects rather than opportunistic behaviour during crises. Taxing such returns indiscriminately risks undermining incentives for investment in research, development, and long-term growth – activities that generate substantial social benefits.

At the same time, EPTs often fall on goods and services with inelastic demand, enabling firms to pass costs on to consumers and as such these taxes operate regressively. This regressive effect contradicts the egalitarian rationale often invoked to justify windfall taxation. Without compensatory mechanisms, EPTs may exacerbate inequality rather than mitigate it.

3 EPTs and optimal tax theory

From an optimal tax perspective, taxation should satisfy principles of equity, certainty, neutrality, and efficiency.[29] EPTs can be viewed as corrective or Pigouvian taxes aimed at internalizing rents associated with market power or exceptional circumstances.[30] As such, they may be preferable to direct regulation in addressing certain domestic externalities. When it comes to address cross-border externalities, their effectiveness is much more doubtful.[31]

However, corrective taxes also risk distorting behaviour, particularly where demand is inelastic or where profits reflect socially valuable innovation rather than harmful conduct.[32] Optimal tax theory therefore suggests that EPTs should be carefully targeted and embedded within a broader system of taxation and redistribution that accounts for behavioural responses and distributional effects.[33]

4 A proposed framework for reform

We propose reconceptualizing EPTs as a permanent, economy-wide component of the corporate tax system rather than as ad hoc, sector-specific measures. EPTs should apply uniformly across industries but incorporate adjustments reflecting industry or sector unique characteristics, investment risk, capital intensity, and social contribution. The 'excess' element should be determined by allowing expensing, which exempts the normal return for capital from tax, rather than by an attempt to establish what the normal return is.[34]

To address regressivity, EPT revenues should be paired with redistributive mechanisms, such as targeted transfers or tax credits for low-income households. Earmarking revenues for such purposes can transform a regressive tax into a progressive fiscal instrument.

In the cross-border context, EPTs should be calculated on a consolidated basis and allocated using a formulary approach centred on destination-based factors, such as sales by market.

Notes

[28] *Ibid.*

[29] Adam Smith, *An Inquiry Into the Nature and Causes of the Wealth of Nations*, Book V, Ch. 2 (1776).

[30] Arthur C. Pigou, *The Economics of Welfare* (4th ed. 1932).

[31] Reuven S. Avi-Yonah, *The Three Goals of Taxation*, 60 Tax L. Rev. 1 (2006), doi: 10.2139/ssrn.796776; Avi-Yonah & Shanan, *supra* n. 1.

[32] Alan J. Auerbach, *supra* n. 21; Kimberly A. Clausing, *supra* n. 21.

[33] On optimal tax theory *see* Frank P. Ramsey *A Contribution to the Theory of Taxation*, 37 ECON. J. 47 (1927), doi: 10.2307/2222721; James A. Mirrlees, *An Exploration in the Theory of Optimum Income Taxation*, 38 Rev. Econ. Stud. 175 (1971), doi: 10.2307/2296779.

[34] Avi-Yonah, *supra* n.20.

A coordinated EPT would become a formulary apportionment approach, using sales by destination for allocating the tax base (except for location specific rents to be taxed at source). Such design shares the key characteristic of Pillar One under the 2021 Inclusive Framework agreement that consolidates a 'residual' profit of the MNE at the global level (defined as a predetermined profit margin of above 10% of global revenues) and allocates 25% of this residual to market countries (based on sales by destination). Thus, by going a step further from a unilateral EPT on the consolidated account of the multinational company to a coordinated EPT across countries (and allocating the tax base to market countries), we end up with a destination-based system that is similar in nature to the allocation idea of Pillar One.[35]

This approach would reduce opportunities for profit shifting and align EPTs with emerging international tax norms reflected in OECD's Pillar One framework. However, since applying such a reform universally to both small, medium-sized and large-scale businesses is politically unrealistic, we therefore recommend imposing such progressive EPTs reform on large-scale multinationals operating globally (at rates that equal or exceed the declining marginal cost of the goods or services supplied), allocated on a destination basis across markets. Such an approach could ultimately replace the arm's length principle and the transfer pricing regime with a unitary taxation model and multilaterally adopted formulary apportionment.[36]

5 Conclusion

EPTs have reemerged as a popular fiscal response to crisis-driven corporate windfalls. While historically effective in raising revenue, traditional EPT designs suffer from arbitrariness, susceptibility to avoidance, and adverse distributional effects. This column argues for a reimagined EPT framework that treats excess profit taxation as a permanent, corrective instrument aligned with optimal tax principles. Properly designed, EPTs can regulate corporate power, preserve innovation incentives, reduce inequality, and function effectively in a globalized economy.

Notes

[35] The IMF Report, *supra* n. 1, at 6.

[36] Avi-Yonah & Shanan, *supra* n. 1.