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1\_1\_2 Incentives

1\_1\_22 Rates

2\_12\_11 State Aid / Harmful Tax Competition

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**The Anticipated Impact of the Global Minimum Tax on Tax  
Competition for Developing Countries**

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This article analyses the effectiveness of the OECD Pillar Two GloBE Rules in curtailing tax competition. It explains how tax incentives fuel harmful tax competition and the race to the bottom. It explores the constraints of using tax incentives as a tax competition tool under the GloBE Rules and provides recommendations to protect countries' tax bases.

**1. Introduction**

The notion of "tax competition" has been described as the rivalry among countries to implement tax policies that attempt to outdo one another by offering "tax incentives" to attract

foreign investors.<sup>1</sup> Often such tax policies are based on government perceptions that foreign investors would choose to invest in neighbouring countries,<sup>2</sup> thus triggering strategic reactions as they compete to offer better tax incentives that lure investors away from other countries or discourage the exodus of investors from their countries.<sup>3</sup>

Tax competition may not be counter-productive if, for example, it reduces the size of inefficient governments by preventing excessive public expenditure or if it prevents the tendency of governments to overtax by ensuring that tax rates are kept at optimum levels.<sup>4</sup> Tax competition may however be counter-productive if it changes the geographical location of trade and investment. It is trite that states are sovereign jurisdictions that have a right to determine their own tax policy. However, a country's tax policies can result in harmful tax competition if they impact on another country's ability to determine how its tax policies determine its

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1 F. De Lillo, *A Global Minimum Effective Tax Rate in Global Minimum Taxation? An Analysis of the Global Anti-Base Erosion Initiative*, vol. 4, p. 8 (A. Perdelwitz & A. Turina eds., IBFD Tax Research Series 2021).

2 M.P. Devereux, *Will Pillar 2 Halt Tax Competition?* (23 November 2021), available at <https://oxfordtax.sbs.ox.ac.uk/article/will-pillar-2-halt-tax-competition> (accessed 31 July 2025).

3 AP. Morriss & L. Moberg, *Cartelizing Taxes: Understanding the OECD's Campaign Against Harmful Tax Competition*, 14 *Columbia Journal of Tax Law*, p. 9 (2012).

4 G-20 Development Working Group by the IMF, OECD, UN and World Bank, *Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment* p. 29 (2015).

economic development.<sup>5</sup> Consequently, tax competition may become harmful when it undermines other countries' sovereignty by competing them to adopt lower tax rates to remain competitive.<sup>6</sup>

It therefore becomes essential for countries to come up with measures to eliminate harmful tax competition so as to ensure international tax equity.<sup>7</sup> The underlying tax policy concern is that harmful tax competition can lead to a "race to the bottom", which can ultimately drive tax rates to zero for all countries, whether or not this is the tax policy those countries wished to pursue.<sup>8</sup> The competing reactions of countries and the fact that investors are generally attracted to invest in countries that offer better tax incentives may seem like the optimal strategy for a country to follow. However, as in the "prisoner's dilemma," the "race to the bottom" with the resultant low tax rates impacts on the tax revenues all countries without gaining any meaningful foreign investment.<sup>9</sup> The low tax rates and lower tax revenues result in

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5 A.W. Oguttu, *International Tax Competition Harmful Tax Practices and the 'Race to the Bottom': A Special Focus on Un-strategic Tax Incentives in Africa*, 51 *The Comparative and International Law Journal of Southern Africa* 3, p. 294 (2018).

6 R. Thomas, *Tax Competition and Inequality - The Case for Global Tax Governance* 17 *Global Governance: A Review of Multilateralism and International Institutions* p. 4 (2011).

7 J. Roeleveld, P. Pistone, J. Hattingh, JF Pinto Noueira & C. West, *Principles of Taxation*, in *Fundamentals of Taxation, An Introduction to Tax Policy, Tax Law and Tax Administration* para 2.1.2.1 (IBFD 2019).

8 OECD/G20 BEPS Project, *Counter Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance - Action 5*, p. 23 (OECD 2015).

9 M. Herzfeld, *Defining Multinationals' Fair Share of Tax*, *Tax Notes International* 24 July 2017 p. 284; OECD, *Principles to Enhance the Transparency and Governance of Tax Incentives for Investment in Developing Countries* (2014), available at <http://www.oecd.org/ctp/tax-global/transparency-and-governance-principles.pdf> (accessed 31 July 2025).

collective harm for all countries even if each of them might have preferred to keep its tax rates higher.<sup>10</sup>

Indeed, over the last few decades, there has been a decrease in statutory corporate tax rates globally, which may in part be driven by the economic viewpoint that corporate taxes are harmful in the sense that the incidence of the tax is borne also by labour and/or consumers and countries. On that basis, some countries have gradually lowered their corporate income tax rates to enable job creation and to make market prices more competitive.<sup>11</sup> The global race to the bottom in statutory corporate tax rates has also been fuelled by increasing competition among countries to offer corporate “tax incentives”. In 1980, corporate statutory tax rates around the world averaged 40.18% but it has consistently decreased in every region over the years.<sup>12</sup> By 2024, the average corporate statutory rate was 21.27% among EU Member States; 23.85% in OECD countries; 19.74% in Asia; 28.38% in South America and 25% in Africa.<sup>13</sup> Consequently, multinational companies are in

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10 IMF, *Kenya, Uganda, & United Republic of Tanzania: Selected Issues*, IMF Country Report No. 08/353 p. 8 (2008).

11 C. Fuest, A. Peichl & S. Siegloch, *Do Higher Corporate Taxes Reduce Wages? Micro Evidence from Germany* (July 2011), available at <https://www.ifo.de/DocDL/wp-2017-241-fuest-peichl-siegloch-corporate-taxes.pdf> (accessed 31 July 2025); R. Winter, P. Dörrenberg, F. Eble, D. Rostam-Afschar & J. Voget, *No Incidence Left Behind – Towards a Complete Understanding of Tax Incidence*, available at [https://www.bwl.uni-mannheim.de/media/Lehrstuehle/bwl/Doerrenberg/Incidence\\_WDERV\\_20240604.pdf](https://www.bwl.uni-mannheim.de/media/Lehrstuehle/bwl/Doerrenberg/Incidence_WDERV_20240604.pdf) (accessed 31 July 2025).

12 Tax Foundation, *Corporate Tax Rates Around the World, 2024* (17 December 2024), available at <https://taxfoundation.org/data/all/global/corporate-tax-rates-by-country-2024/> (accessed 31 July 2025).

13 Id.

particular increasingly paying lower taxes in the countries they operate in as the take-up of tax incentives lowers their “effective tax rates” (ETRs), which inevitably impacts on countries’ tax revenues.<sup>14</sup> The term ETR has been defined as the average rate of tax at which a taxpayer is taxed on pre-tax profits. The ETR is normally contrasted with the “marginal tax rate”, which refers to a tax rate based on the income tax bracket.<sup>15</sup> As the ETR is normally lower than the marginal tax rate, the ETR accurately represents a company’s tax liability. The differences between the ETR and the statutory rate can be due to the granting of tax incentives, for example in countries that offer preferential tax regimes for certain sectors where ETRs have fallen to almost zero.<sup>16</sup>

Internationally, concerns about harmful tax competition were brought to the forefront in 1998 when the OECD issued a Report on “Harmful Tax Competition”,<sup>17</sup> which highlighted the fact that harmful tax practices by tax-haven jurisdictions<sup>18</sup> and preferential tax regimes<sup>19</sup> distort financial and investment

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14 P. Bachas, A. Brockmeyer, R. Dom & C. Semelet, *Effective Tax Rates and Firm Size World Bank Group Policy Research Working Paper 10312* p.1 (2023).

15 Id.

16 SA. Abbas & A. Klemm, *A Partial Race to the Bottom: Corporate Tax Developments in Emerging and Developing Economies*, 20 *International Tax and Public Finance* pp. 596-617 (2013).

17 OECD, *Harmful Tax Competition: An Emerging Global Issue* (1998).

18 The OECD describes a tax haven as a jurisdiction actively making itself available for the avoidance of tax that would have been paid in high-tax countries, and that tax havens are characterized by imposing no or only nominal taxes, high levels of secrecy in the banking and commercial sectors, the lack of transparency and effective exchange of information with other governments and the absence of a requirement that the activity be substantial. See OECD, *supra* n. 17, at paras. 79 & 80.

19 The OECD explains that preferential tax regimes, which can occur in both tax haven and high-tax jurisdictions, are characterized by no or low effective tax rates on income from geographically mobile

flows among countries.<sup>20</sup> However, in successive years, the OECD placed focus on eliminating harmful tax practices among tax haven jurisdictions,<sup>21</sup> but it ignored addressing the "lack of economic substance" among preferential tax regimes that fuelled harmful tax competition.<sup>22</sup> Thus, over the years, many countries set up preferential tax regimes,<sup>23</sup> to attract foreign investment without substantial commercial activities,<sup>24</sup> which encouraged harmful tax competition.<sup>25</sup> In 2015, when the OECD issued its 15 Actions to address "base erosion and profit shifting (BEPS)",<sup>26</sup> it acknowledged in Action 5 (Countering Harmful Tax Practices More Effectively<sup>27</sup>) that even though more than 15 years had passed since its 1998 Report was issued, the underlying policy concerns about harmful tax practices were still relevant as the ensuing "race to the bottom" could ultimately drive applicable tax rates to zero for all countries, whether or not this was the tax policy a country wished to pursue.<sup>28</sup> Action 5 recommended minimum standards

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financial and other service activities, tax regimes that are ring-fenced from the domestic economy, lack of transparency on how the regime applies, inadequate regulatory supervision or financial disclosure as well as lack of effective exchange of information with regard to the regime. *See OECD Harmful Tax Competition supra* n. 17, at para. 79.

20 OECD *Harmful Tax Competition supra* n. 17, at paras. 79 & 80.

21 G. Makhlouf, *The OECD List of Un-cooperative Tax Havens: A Statement by the Chair of the OECD's Committee on Fiscal Affairs* 51 PAC/COM/NEWS (2002).

22 OECD, *Towards Global Tax Co-operation – Report to the 2000 Ministerial Council Meeting and Recommendations by the Committee on Fiscal Affairs: Progress in Identifying and Eliminating Harmful Tax Practices*, para. 12 (OECD 2000).

23 M. Herzfeld, *News Analysis: Political Reality Catches Up With BEPS*, Tax Analysts (3 Feb. 2014).

24 OECD/G20, *BEPS Project Action 5 supra* n. 8, at p. 20.

25 OECD/G20, *BEPS Project Addressing the Tax Challenges of the Digital Economy, Action 1* (OECD 2025), para. 223.

26 OECD, *Addressing Base Erosion and Profit Shifting*, pp. 7-8 (OECD 2013).

27 OECD/G20, *BEPS Project Action 5 supra* n. 8, at pp. 37-39.

28 *Id.*

regarding substantial activities and tax transparency measures for countries to comply with but it did not recommend a headline corporate tax rate nor did it consider that low or zero tax rates were particularly harmful.<sup>29</sup> However, the OECD's 2018 "Interim Report on the tax challenges of the digital economy" noted that harmful tax practices that circumvented the substantial activity test were still common.<sup>30</sup>

As part of its Two Pillar solution to address the tax challenges of the digital economy, the OECD came up with the latest international initiatives to address tax competition. Under Pillar Two (of the two-pillar solution), on 20 December 2021, the OECD published the Pillar Two "global anti-base erosion" (GloBE) Model Rules, which set out a coordinated tax system for implementing domestic rules that set a global minimum corporate tax to assist countries in putting a floor on tax competition and the "race to the bottom" of corporate income tax rates.<sup>31</sup> It should be noted that Pillar Two also includes provisions that can enable developing countries to further protect their tax base through a treaty-based subject-to-tax rule (STTR) that will allow them to retain their taxing

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29 OECD/G20, *BEPS Project Action 5 supra* n. 8, at p. 24; J. Chen & W. Chow, *Global Minimum Tax Reform and the Future of Tax Competition* 77(8) Bull. Intl. Taxn. p. 309 (2023), Journal Articles & Opinion Pieces IBFD.

30 OECD, *Tax Challenges Arising from Digitalisation – Interim Report*, p. 3 (OECD 2018).

31 OECD, *OECD Releases Pillar Two Model Rules for Domestic Implementation of 15% Global Minimum Tax* (20 December 2021), available at <https://www.oecd.org/tax/beps/oecd-releases-pillar-two-model-rules-for-domestic-implementation-of-15-percent-global-minimum-tax.htm> (accessed 31 July 2025).

right, which they may have otherwise ceded under a tax treaty, on certain payments made to related parties abroad which often pose BEPS risks.<sup>32</sup> However, the STTR is outside the scope of this article.

The focus of this article is on the effectiveness of the Pillar Two GloBE Rules in curtailing tax competition. In this regard, the author first explains how tax incentives contribute to tax competition and the race to the bottom; then the author describes the constraints countries will face in using tax incentives as a tax competition tool under the GloBE Rules. After that, the author considers whether tax competition can actually be done away with and provides policy recommendations to prevent increased tax competition even as some countries and MNEs seem to be taking strategic positions that could manipulate the GloBE Rules to their benefit.

## **2. Tax Incentives and the Race to the Bottom**

Tax incentives can be defined as favourable tax provisions that countries offer to attract local or foreign investments in qualified investment projects that deviate from those that apply to investment projects in general.<sup>33</sup> Tax incentives may

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32 OECD, *Inclusive Framework on BEPS, Tax Challenges Arising from the Digitalisation of the Economy – Subject to Tax Rule (Pillar Two)* (OECD 2023), available at <https://doi.org/10.1787/9afd6856-en>.

33 *Definition of Tax Incentives in the IBFD International Tax Glossary*, available at [Glossary - Tax Research Platform - IBFD](#) (accessed 1 May 2024).

take the form of grants, subsidies, reduced tax rates, tax credits, tax exemptions, depreciation allowances or tax holidays (complete exemption from tax for a limited duration).<sup>34</sup>

In some countries, tax incentives are offered under "preferential tax regimes", which are special fiscal regimes that offer lower tax rates, preferential tax treatment and simpler tax compliance requirements compared to those that apply to other taxpayers. The favourable fiscal conditions that preferential tax regimes offer can distort the global investments, result in harmful tax competition and undermine other countries tax bases.

Other countries have "special economic zones" (SEZs), which are "spatially delimited areas within an economy that function under administrative, regulatory and fiscal regimes that are more liberal than those that apply to the rest of the economy".<sup>35</sup> SEZs can be in the form of free trade zones, free ports, foreign trade zones, export processing zones, free export zones, trade and economic cooperation zones or economic processing zones. SEZ state-sponsored tax incentives can range from tax reductions, tax holidays to flexible terms for the

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34 *Supra* n. 4, at p. 8.

35 T. Farole, *Special Economic Zones in Africa: Comparing Performance and Learning from Global Experience*, p. 17 (World Bank Group 2011).

payment of taxes, which can distort the global economy and result in harmful tax competition<sup>36</sup>

In general, developed countries tend to grant tax incentives to promote research and development activities, export activities and support the competitiveness in the global market while developing countries tend to grant tax incentives to attract foreign investors and national industries.<sup>37</sup>

Tax incentives can be divided into two categories: "profit-based tax incentives" and "cost-based tax incentives".

"Profit-based tax incentives" are those that directly lower the amount of tax regardless of actual investments, examples being tax exemptions and reduced tax rates.<sup>38</sup> Since profit-based tax incentives target a company's income through exemptions or reduced corporate tax, their tax benefits to investors are low for projects with low profitability. For highly profitable projects, offering "profit-based tax incentives" is often redundant as the investment would have been undertaken even without the tax incentive, thus countries end up losing tax revenues. In addition, "profit-based tax

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36 A. Laukkanen, P. Pistone & J. de Goede, *Special Tax Zones in the Era of International Tax Coordination* ch. 2 and para. 12.2.1. (IBFD 2019).

37 IMF, OECD, UN and World Bank, *Options for Low Income Countries' Effective and Efficient Use of Tax Incentives: A Report to the G-20 Development Working Group*, p. 3 (2015).

38 HSH. Adriansyah & B. Nam, *Policy Considerations in Using Tax Incentives for Foreign Investment*, p. 6 (2021), available at <https://www.amro-asia.org/wp-content/uploads/2021/10/Policy-Considerations-in-Using-Tax-Incentives-for-Foreign-Investment-1.pdf> (accessed 1 Mar. 2025).

incentives" tend to attract mobile investments and only incentivize short-term investments, they provide windfall gains to investors and may create profit shifting opportunities due to their generous provisions.<sup>39</sup>

"Cost-based tax incentives" are those where the investment cost is deducted from either the taxable income or tax amount. Examples are accelerated depreciation, tax allowances and tax credits.<sup>40</sup> Since the tax benefit to the company is directly linked to the size of the investment undertaken, "cost-based tax incentives" are generally recommended for countries to grant as they target specific activities by attaching requirements to incentive provisions. This incentivizes new investments that would not have been made by making the project profitable at the margin and linked to economic substance.<sup>41</sup>

### **3. How the GloBE Rules Operate to Curtail the Use of Tax Incentives in Driving the Race to the Bottom**

The Pillar Two GloBE Rules recognize that although jurisdictions are free to determine their own tax systems by for instance granting tax incentives, other jurisdictions also

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39 *Supra* n. 38, at p. 6.

40 *Id.*

41 *Id.*

have the right to protect their tax bases.<sup>42</sup> The tax incentives can result in tax competition and a harmful race to the bottom in reducing corporate tax rates, which can undermine the tax sovereignty of other nations.<sup>43</sup> Developing countries, with smaller markets, tend to lose out more from such a race as they rely heavily on offering tax incentives to attract foreign investment and yet studies have found that tax incentives may not be that effective in attracting investment in developing countries.<sup>44</sup>

The GloBE Model Rules provide a multilateral solution to prevent the detrimental effects of uncoordinated and unilateral tax incentives, which can have adverse effects on all countries, regardless of size or status of development.<sup>45</sup> The GloBE Rules could improve the global allocation of capital and prevent distortions in international investments by ensuring that companies do not choose investment destinations solely based on tax incentives that lower the ETR of corporate income tax.<sup>46</sup> The Rules will also discourage the exploitation of low ETR by shifting profits from intangible assets to low-

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42 OECD/G20, *Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy – Inclusive Framework on BEPS*, para. 50 (OECD 2019).

43 *Supra* n. 41, at para. 54.

44 *Supra* n. 5, at pp. 293-319.

45 OECD/G20, *Public Consultation Document – Global Anti-Base Erosion Proposal (“GloBE”) – Pillar 2 (8 November 2019 - 2 December 2019)* p. 7 (2019).

46 V. Perry, *Pillar Two, Tax Competition, and Low Income Sub-Saharan Countries*, p. 2 (2022), available at <https://oxfordtax.sbs.ox.ac.uk/wp-22/12-pillar-2-tax-competition-and-low-income-sub-saharan-african-countries-victoria-perry> (accessed 12 May 2025).

tax jurisdictions, thereby ensuring sufficient taxation of profits from intangibles.<sup>47</sup>

The GloBE Rules operate as a “common approach” and are not compulsory for countries to implement. If a country adopts the Rules, it is required to implement and administer them in line with the GloBE Model Rules and the Commentary (including the agreement on rule order, which is explained in section 4.5.) so as to ensure consistency and predictable outcomes across countries.<sup>48</sup> The GloBE Rules operate by using a “fiscal fail safe” compliance and enforcement mechanism, which is a designed feature with a safety net to prevent fiscal risk by linking tax treatments across jurisdictions, such that if one country does not exercise its right to tax, another country steps in to impose tax.<sup>49</sup> In effect, even if a given country does not adopt the Rules, in-scope MNEs that operate within its jurisdiction with an ETR less than the global minimum rate will not be shielded from taxation, as the tax will be levied by another country that implements any of the recommended domestic rules (discussed in section 4.5.) that can enable levying of the global minimum tax. Knowing that the MNEs will

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47 O. Silva, *Pillar Two and Tax Incentives in Developing Countries as Low-Taxed Jurisdictions* p. 21 (2023), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5046892](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5046892) (accessed 1 Mar. 2025).

48 OECD, *Tax Challenges Arising from Digitalization of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two)* p. 8 (2022).

49 R. Mason, *The Transformation of International Tax*, 114(3) *American Journal of International Law* p. 376 (2015); see also R. Manson & A. Wrench, in *GLOBE's Diabolical Machinery* (2022), available at <https://www.taxnotes.com/special-reports/digital-economy/wrench-globes-diabolical-machinery/2022/09/16/7f3pt> (accessed 26 Mar. 2025).

be taxed anyway, some countries have implemented, and others are considering to implement, the recommended domestic rules for levying the GloBE Rules so that they do not lose tax revenue to other countries. Thus the “fiscal fail safe” design mechanism of the GloBE Rules ensures the global ETR of in-scope MNEs is capped at 15% regardless of the country in which the MNE chooses to operate. There are, however, some developing countries that are choosing not to implement the GloBE Rules but are considering changing their tax incentive rules to stop other countries from imposing top-up tax, but at the same time they wish to offer alternate government benefits to MNEs, such as cash subsidies and grants provided by governments.<sup>50</sup>

If adopted broadly and in a coordinated manner, the global minimum tax could establish a “floor” on corporate income tax rates and reduce harmful tax competition. Since businesses must invest somewhere, the total global investments would not necessarily increase because of the GloBE minimum tax. Top-up tax will not increase the tax burden of in-scope MNEs, as they will simply be subject to the same tax liability in another jurisdiction that implements the rules. The OECD asserts that GloBE Rules will, in particular, shield developing countries

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50 OECD, *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on Article 9.1 of the Global Anti-Base Erosion Model Rules*, p. 6 (2025), available at [Administrative Guidance on Article 9.1 of the Global Anti-Base Erosion Model Rules](#) (accessed 31 July 2025).

from the pressure to offer inefficient incentives to attract MNEs to locate in their jurisdictions without gaining meaningful economic development.<sup>51</sup> Others assert that the GloBE Rules will reverse the decades-long “race to the bottom” on corporate taxation particularly in sectors such as mining, manufacturing and telecommunications, thus enabling developing countries to mobilize domestic resources better.<sup>52</sup> These assertions have, however, been criticized by those who argue that developing countries may not benefit much from the GloBE Rules due to various reasons, including the reduction in future investments and the costs of implementing the rules.<sup>53</sup>

#### **4. The Effectiveness of the Design Features of the GloBE Rules in Curbing Tax Competition**

##### **4.1. Introductory remarks**

There are, however, some design features of GloBE Rules that could impact on their effectiveness in addressing tax competition.

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51 OECD, *Tax Incentives and the Global Minimum Corporate Tax: Reconsidering Tax Incentives after the GloBE Rules*, p. 6 (OECD 2022).

52 IISD, *What Does the Global Minimum Tax Deal Mean for Developing Countries?* (10 Feb. 2022), available at <https://www.iisd.org/articles/global-minimum-tax-deal> (accessed 31 July 2025); OECD Press Release, *New Treaty Advances Pillar Two Global Minimum Tax Subject to Tax Rule Design to Protect Tax Bases in Developing Countries* (19 Sept. 2024), available at <https://www.oecd.org/en/about/news/press-releases/2024/09/new-treaty-advances-pillar-two-global-minimum-tax-subject-to-tax-rule-designed-to-protect-tax-bases-in-developing-countries.html> (accessed 31 July 2025).

53 T. Legwaila, *Global Minimum Corporate Tax – Developing Countries Beware*, 45 *Obiter* 4, p. 966 (2024).

#### **4.2. Background to the development of the GloBE Rules**

The background to the development of GloBE Rules started off with a general intention of addressing the remaining BEPS issues that emanated from the OECD BEPS 1.0 Project, particularly those relating to profits derived by MNEs from intangibles and intra-group financing activities in low-tax jurisdictions.<sup>54</sup> There was initially no clear approach as to how this was to be done. As deliberations progressed on how the remaining BEPS issues could be addressed, the OECD developed the GloBE Rules around an internationally coordinated minimum tax to help curb international tax competition.<sup>55</sup>

*Impact on Preventing Tax Competition:* The design of the GloBE Rules with the intension of addressing tax competition may not have been given much thought during its development process. There is, therefore, limited evidence to show that the design of GloBE Rules will be very effective in preventing tax completion.

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54 *Supra* n. 42, at p. 53.

55 J. Englisch, *GloBE Rules and Tax Competition*, available at: <https://ssrn.com/abstract=4199543> (accessed 31 July 2025).

### **4.3. The global minimum rate**

In terms of article 1.1 of the GloBE Rules, the global minimum tax is set a rate of 15% for MNE groups with an annual revenue of EUR 750 million or more in the consolidated financial statements of the ultimate parent entity.

*Impact on Preventing Tax Competition:* The “minimum rate” set for the GloBE Rules is central to curtailing tax competition. The OECD had originally proposed that the “minimum rate” would be 12.5% after its initial impact assessment of the GloBE Rules.<sup>56</sup> A minimum rate of “at least 15%” was announced in the October 2021 Political Agreement on the “Two-pillar solution to address the tax challenges arising from the digitalisation of the economy” of the OECD Inclusive Framework.<sup>57</sup> The minimum rate of “at least 15%” appears to have been based an average of the OECD’s survey of corporate income tax rates of OECD member countries and various selected economies (excluding tax havens).<sup>58</sup> Although some countries would have preferred a rate higher than 15%, an average of “at least 15%” was agreed upon as a compromise to meet the competing interests of diverse

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56 M. Geiger & S. Baynham, *Global Minimum Tax: An Easy Fix?* KPMG Insights (May 2021), available at <https://kpmg.com/xx/en/home/insights/2021/05/global-minimum-tax-an-easy-fix.html> (accessed 5 July 2024).

57 OECD, *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy* p. 4 (2021).

58 OECD, *Tax Policy Reforms: OECD and Selected Partner Economies* (2018); OECD, *Corporate Tax Statistics* p. 9 (2019).

jurisdictions.<sup>59</sup> However, Ireland vehemently opposed the use of the phrase "at least 15%" arguing that it left room for negotiation of a higher rate that would be detrimental to the Irish economy and create uncertainties for taxpayers.<sup>60</sup> Ireland's Finance Minister argued that the long-established Irish corporate tax rate of 12.5% was a fair rate to enable healthy tax competition that is central to stimulating investment and innovation in light of Ireland's industrial policy.<sup>61</sup> Ireland's Finance Minister further remarked that: "small countries should be allowed to use lower taxes to compensate for advantages of scale' enjoyed by larger economies, as other small territories such as the UK's offshore crown dependencies and overseas territories also use low or zero corporation tax rates to attract business."<sup>62</sup> A compromise was therefore reached to set the GloBE minimum rate at a "15% minimum rate" so as to appease low-tax jurisdictions.<sup>63</sup>

The GloBE minimum rate of 15% may deter tax competition for

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59 *Supra* n. 57, at p. 4.

60 Reuters, *Ireland Fails to Back Global Corporate Tax Proposal Over 15% Rate* (2 July 2021), available at <https://www.reuters.com/business/ireland-declines-back-oecd-corporate-tax-agreement-due-rate-2021-07-01/> (accessed 30 Dec. 2024).

61 *Department of Finance Speech by Minister for Finance, Paschal Donohoe TD, to Virtual Seminar on International Taxation with the Department of Finance (2021)*, available at <https://www.gov.ie/en/speech/3dc0d-speech-by-minister-for-finance-paschal-donohoe-td-to-virtual-seminar-on-international-taxation-with-the-department-of-finance/> (accessed 3 July 2024).

62 J. Jolly, *Ireland Will Resist Global Corporate Tax Rate, Says Finance Minister* *The Guardian* 21 April 2021, available at <https://www.theguardian.com/business/2021/apr/21/ireland-will-resist-global-corporate-tax-rate-says-finance-minister> (accessed 1 May 2024).

63 J. Englisch & J. Becker, *International Effective Minimum Taxation – The GLOBE Proposal*, 11 *World Tax J.* 4, pp. 483-529 (2019), *Journal Articles & Opinion Pieces IBFD*.

in-scope MNEs as it will no longer be beneficial for countries to offer in-scope MNE tax incentives that result in an ETR of less than 15% since the tax will be collected by countries that adopt the rules. As more countries implement the GloBE Rules, their coalition will compel others to adopt rules so that they do not lose out on the taxes which will in any case be collected by the other countries that implement the rules.

However, the "minimum rate" of 15% has been criticized for being so low that it may institutionalize a competitive race to the lowest tax rate, where jurisdictions may decrease their tax rates to the point that the minimum rate of 15% becomes the highest rate. This would be contrary to the objective of the GloBE Rules to curb tax competition.<sup>64</sup>

This is particularly so for developing countries in the Global South, where the 2024 statistics show that the average statutory corporate tax hovered around 19.74% in Asia, 28.38% in Latin American countries and 25% in Africa.<sup>65</sup> It is acknowledged that while statutory corporate tax rates in developing countries may be much higher, the real issue is the ETR in these countries. In the absence of tax incentives that

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64 I. Ovonji-Odida, V. Grondona & SV. Makwe, *Assessment of the Two-Pillar Approach to Address the Tax Challenges of the Digital Economy: An Outline of Positions Favourable to Developing Countries Report by the South Centre Tax Initiative's Developing Country Expert Group* August 2020 at 19; EU Tax Observatory, *Global Tax Evasion Report*, p. 54 (2024), available at [https://www.taxobservatory.eu/website/uploads/2023/10/global\\_tax\\_evasion\\_report\\_24.pdf](https://www.taxobservatory.eu/website/uploads/2023/10/global_tax_evasion_report_24.pdf) and (accessed 20 Dec. 2023).

65 *Supra* n. 12.

lower the ETR, the 15% rate may not be effective in deterring tax competition in countries where corporate tax rates are above that rate.<sup>66</sup> During the discussions concerning the rate, the Independent Commission for the Reform of International Corporate Taxation (ICRIT)<sup>67</sup> argued for a 25% corporate statutory tax rate, which is slightly higher than the average corporate statutory tax rate of 23.85% in OECD member countries<sup>68</sup> but considerably lower than the average statutory rate in developing countries.<sup>69</sup> Developing countries in the G24 indicated that the 15% is way too low and they also contended that a 25% rate would be better.<sup>70</sup> The ATAF also contended that the 15% global minimum tax rate was too low to effectively deter harmful tax competition and that it will place developing countries that generally levy high tax rates at a competitive disadvantage as they significantly depend on corporate tax income to raise government revenues.<sup>71</sup> The ATAF indicated that the global minimum tax rate should have been

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66 *Supra* n. 55.

67 Independent Commission for the Reform of International Corporate Taxation (ICRICT), *Taxing Multinationals: ICRICT Calls for an Ambitious Global Minimum Tax to Stop The Harmful Race to The Bottom* Press Release (9 December 2019), available from <https://www.icrict.com/press-release/2019/12/9/m9fwynyj7krhupqbasqygn9kkx9msai>.

68 *Supra* n. 12.

69 *Supra* n. 67.

70 G24, *Argentina Says 15% Global Minimum Corporate Tax Rate 'Too Low'* (28 June 2021), available at <https://g24.org/argentina-says-15-global-minimum-corporate-tax-rate-too-low/> (accessed 31 July 2025).

71 ATAF, *OECD/G20 Inclusive Framework Releases Outcome Statement on the Two Pillar Solution – What does this Mean for Africa?* (22 January 2024), available at <https://ataftax.org/news/oecd-g20-inclusive-framework-releases-outcome-statement-on-the-two-pillar-solution-what-does-this-mean-for-africa/> (accessed 31 July 2025).

set to at least 20% for it to be effective in disincentivized MNEs from profit shifting in Africa.<sup>72</sup>

Low-tax jurisdictions will most likely benefit more from the global minimum tax rate of 15%.<sup>73</sup> Ireland, for example, applies its low 12.5% domestic corporate tax rate for MNE groups below the EUR 750 million threshold for GloBE in-scope MNEs and yet it also collects the 15% tax from MNEs that it has adopted within the scope of the GloBE Rules. Several other low-tax jurisdictions, such as Barbados, Bulgaria, Hungary and Lichtenstein<sup>74</sup> that levy corporate taxes below 15%, have followed Ireland's approach of continuing to offer low tax rates for out-of-scope MNEs (below the EUR 750 million threshold) while also benefiting from the 15% tax rate for in-scope MNE groups. It is thus clear that unlike other developing countries with high corporate tax rates, low-tax jurisdictions will benefit more from implementing the GloBE Rules, which open up a new source of tax revenue that they did not have.

Developing countries that levy corporate tax rates that are

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72 ATAF, *A New Era for International Taxation Rules: What does this Mean for Africa?* (8 October 2021), available at <https://ataftax.org/news/a-new-era-of-international-taxation-rules-what-does-this-mean-for-africa/> (accessed 31 July 2025).

73 F. Hugger, AC. Gonzalez Cabral & Pierce O'Reilly, *Effective Tax Rates of MNEs: New Evidence on Global Low-Taxed Profit*, OECD Taxation Working Papers No. 67 p. 34 (OECD 2022), available at <https://dx.doi.org/10.1787/4a494083-en> (accessed 31 July 2025).

74 *Supra* n. 12.

higher than the 15% minimum tax are unlikely to derive tangible benefits from implementing the GloBE Rules if they do not offer tax incentives that lower the ETR to 15%.<sup>75</sup> A report by the South Centre issued in 2022, which used data-focused analysis, indicates that the average ETR of select South Centre Member States (most developing countries) is 25%, which is 10% points above the minimum rate of 15%.<sup>76</sup> In contrast, the South Centre report indicates that in tax countries with a non-zero corporate statutory rate (which is lower than 15%) the average ETR low is 12%, which is 3% points lower than the minimum rate of 15%.<sup>77</sup> This indicates that an in-scope Irish MNE that pays tax at an average ETR of 12% would have a competitive advantage over an in-scope MNE in a developing country that pays an average of 25%.<sup>78</sup> If the global minimum tax rate had been at a 25% ETR rate as advocated by the G24, both low-tax countries like Ireland and developing countries would face fairly similar tax burdens.<sup>79</sup> This would eliminate any previous competitive advantage that the Irish MNE could have had. The low rate will therefore continue to encourage MNEs to shift profits out of developing countries by reducing their global ETR rates below the standard rates applicable in

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75 *Supra* n. 73, at p. 34.

76 SB. Diasso, *Global Minimum Tax Rate: Detached from Developing Country Realities* South Centre Tax Cooperation Policy Brief No. 23 p. 3 (11 Feb. 2022), available at [https://www.southcentre.int/wp-content/uploads/2022/02/TCPB23\\_Global-Minimum-Tax-Rate-Detached-from-Developing-Country-Realities\\_EN-1.pdf](https://www.southcentre.int/wp-content/uploads/2022/02/TCPB23_Global-Minimum-Tax-Rate-Detached-from-Developing-Country-Realities_EN-1.pdf) (accessed 31 July 2025); *see also supra* n. 73, at p. 34.

77 *Supra* n. 76, at p. 4; *supra* n. 73, at p. 34.

78 *Supra* n. 76, at p. 4; *supra* n. 73, at p. 34.

79 *Supra* n. 70.

most countries. A higher global minimum rate would have contributed to higher resource mobilization in developing countries.

It is recommended that the OECD Inclusive Framework should include in the GloBE Rules a mechanism for changing the minimum rate in future. However, the GloBE Rules only provide for the amending of “agreed administrative guidance” on the interpretation or administration of the GloBE Rules.<sup>80</sup>

Flexibility to change the minimum tax rate in future would ensure that it is designated as the minimum threshold, rather than the fixed ETR of 15% (as is the case currently).<sup>81</sup> It is also feared that initiatives to increase the “minimum rate” would still be opposed by low-tax jurisdictions like Ireland which have historically benefited from low rates by luring MNEs to invest in those jurisdictions, thus encouraging harmful tax competition.<sup>82</sup>

#### **4.4. Top-up tax**

In terms of article 5 of the GloBE Rules, the global minimum tax operates as a “top-up tax” on the income of in-scope MNEs

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80 *Definition of Agreed Administrative Guidance in Article 10.1 of the OECD GloBE Model Rules.*

81 A.W. Oguttu, *Preventing International Tax Competition and the Race to the Bottom: A Critique of the OECD Pillar Two Model Rules for Taxing the Digital Economy – A Developing Country Perspective* 76 Bull. Intl. Taxn., 11, p. 552 (2011), Journal Articles & Opinion Pieces IBFD.

82 Oxfam International, *EU Minimum Tax Deal: European Countries Bowed to EU Tax Havens Demands* Press Release (13 December 2022), available at <https://www.oxfam.org/en/press-releases/eu-minimum-tax-deal-european-countries-bowed-eu-tax-havens-demands> (accessed 31 July 2025).

arising in each jurisdiction they operate, where the ETR is below the 15% minimum rate. The GloBE Rules provide jurisdictions a right to “tax back” where other jurisdictions have not exercised their primary taxing rights or where payments are subject to low levels of effective taxation. From the perspective of the headquarter countries of MNEs, the GloBE Rules allow those countries to claim a top-up tax if profits reported by the MNEs’ subsidiaries in other countries are taxed at an ETR below 15%. From the perspective of countries that host affiliates of MNEs that pay low taxes, the top-up tax allows those host countries to raise their ETRs to match the global minimum tax rate without raising the overall tax burden of the MNEs but merely redistributing the minimum tax gains from the residence country to the host country.<sup>83</sup>

*Impact on Preventing Tax Competition:* The imposition of top-up-tax has the potential to discourage tax competition for in-scope MNE groups, as the tax will not alter a MNE’s overall after-tax cost of the investment but will merely ensure the same tax liability in the jurisdictions that apply the GloBE Rules.<sup>84</sup> Tax competition will therefore be curtailed as all countries that have in-scope MNEs operating within their borders will be impacted by the rules even if they do not implement the rules. Since the tax burden of in-scope MNE

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83 *Supra* n. 14, at p. 14.

84 OECD/G20, *BEPS Project “Minimum Tax Implementation Handbook (Pillar Two)”* p. 10 (OECD 2023).

groups will remain the same, this will prevent such entities from transferring their profits to low-tax jurisdictions.

#### **4.5. Scope**

The global minimum rate of 15% applies to constituent entities (CEs) (as defined in article 1.3 of the GloBE Model Rules as all entities included in an MNE group and permanent establishments) with annual revenues of EUR 750 million or more in the consolidated financial statements of the ultimate parent entity (UPE) in at least two of the four fiscal years immediately preceding the tested fiscal year.<sup>85</sup> In terms of article 1.5 of the GloBE Model Rules, the scope of the rules does not however apply to government entities, international organizations, non-profit organizations, pension funds, investment funds and real estate investment vehicles that are the ultimate parent entities.

*Impact on Preventing Tax Competition:* Although high-income countries are the ones that host most UPEs and CEs, these entities also operate in upper-middle and lower-middle income countries. As the scope of GloBE Rules is limited to MNEs with annual revenue above the EUR 750 million threshold, tax

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85 OECD/G20, *BEPS Project Tax Challenges Arising from Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)* (20 December 2021), art. 1.1.

competition will continue for MNEs below the EUR 750 million threshold.<sup>86</sup> This is particularly so for developing countries with small economies that are generally hosts of subsidiaries of “MNE groups” with lower revenue thresholds. Tax competition will therefore continue in countries where MNEs with annual revenues below the EUR 750 million invest. This will particularly benefit low-tax jurisdictions that have historically encouraged harmful tax competition as they will attract investments from MNEs with incomes below that threshold.<sup>87</sup> Since the threshold of the GloBE Rules does not set out a purist model of effective minimum taxation of all business profits, this creates doubts as to what extent the GloBE Rules will actually be effective in reducing international tax competition.<sup>88</sup>

#### **4.6. Rule order**

The GloBE Rules were initially designed to impose the top-up tax in accordance with two interrelated domestic rules: the “income inclusion rule” (IIR) and the “undertaxed payment rule” (UTPR), which would be buttressed with complementary tax treaty rules.

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86 M.P. Devereux & J. Vella, *More on Pillar 2 and Tax Competition* (Oxford University Centre for Business Taxation 2021), available at <https://oxfordtax.sbs.ox.ac.uk/article/more-on-pillar-2-and-tax-competition> (accessed 31 July 2025).

87 S. Bray & CP. Weigel, *How Bermuda’s New Corporate Income Tax Could Negatively Impact Some OECD Member States* Tax Foundation (29 August 2023). Available at <https://taxfoundation.org/blog/bermuda-corporate-tax/> and accessed 29 June 2024.

88 *Supra* n. 55.

In terms of article 2.1 of the GloBE Rules, the IIR was designed as the primary allocation rule. It imposes top-up tax on the ultimate parent entity of the MNE group in respect of the low taxed income of a constituent entity by requiring the ultimate parent entity to account for its share of the income of each constituent entity located in a low-tax jurisdiction and then tax that income up to the minimum rate. The IIR curtails tax competition by establishing a floor on tax rates by ensuring that an MNE is taxed on its global income at the minimum rate, regardless of where it is headquartered.<sup>89</sup> The minimum rate reduces the incentive for MNEs to allocate income to low-taxed entities, thus protecting the tax base of the parent jurisdiction and other jurisdictions where the group operates.<sup>90</sup> Since most parent entities have their tax residence in developed countries, the IIR is considered to be more favourable for such countries.

Article 2.4 of the GloBE Rules sets out the UTPR, which operates as a backstop to the IIR in that it ensures that top-up tax is paid where a company's tax that is below the 15% global minimum tax is not collected under an IIR. The UTPR generally works by allocating top-up tax to subsidiaries in different countries through an adjustment (such as denial of a

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89 *Supra* n. 42, at p. 61.

90 *Supra* n. 42, at p. 63.

deduction) that increases the tax liability of such subsidiaries.

*Impact on Preventing Tax Competition:* The above GloBE Rule order gives the priority right to apply the top-up tax on undertaxed income to the home country of the ultimate parent company through the IIR and only a backup right to the host country to apply the UTPR. This rule order has been criticized for impacting on the effectiveness of the rules in preventing tax competition in host countries. This is aggravated by the fact that in terms of article 9.3 of the GloBE Rules, which provides for the transition rules, MNEs are excluded from the UTPR in the initial phase of their international activities for a fiscal year. In terms of article 9.3.2, this exclusion applies if the "MNE has Constituent Entities in no more than six jurisdictions; and the sum of the Net Book Values of Tangible Assets of all Constituent Entities located in all jurisdictions other than the Reference Jurisdiction does not exceed EUR 50 million". This exclusion can create opportunities for MNEs to abuse the rules by structuring their operations such that their tangible assets are kept below the EUR 50 million for MNEs considered to be in the initial phase of their international activities in at least six jurisdictions.

As “top-up tax” is the difference between the ETR in the jurisdictions the company operates in and the 15% rate, calculating whether a company’s income is undertaxed relative to the minimum tax at the company level, country level or global aggregate may, however, pose complexities. This is because the calculation may require relying on consistency and uniformity in calculating effective rates across various countries that have different approaches to corporate taxation.<sup>91</sup>

#### **4.7. Qualified Domestic Minimum Top-up Tax**

At the behest of developing countries, in 2023, the OECD introduced the “Qualified Domestic Minimum Top-up Tax” (QDMTT) as part of the GloBE Rules<sup>92</sup> (which initially entailed only the IIR and UTPR) to safeguard the right of developing countries to collect top-up taxes that would be lost due to their corporate tax incentives, so that the tax is not levied by other jurisdictions that apply the IIR or the UTPR.<sup>93</sup> Thus, the GloBE Rules also contemplate the possibility for countries to

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91 Tax Foundation, *Under Taxed Profits Rule*, available at

<https://taxfoundation.org/taxedu/glossary/undertaxed-profits-rule-utpr/> (accessed 31 July 2025).

92 OECD Inclusive Framework on BEPS *Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two) (February 2023)*, available at <https://www.oecd.org/tax/beps/agreed-administrative-guidance-for-the-pillar-two-globe-rules.pdf> (accessed 31 July 2025), para. 118.30.

93 *G20/OECD, Roadmap on Developing Countries and International Taxation Update 2023: OECD Report to the G20 Finance Ministers and Central Bank Governors*, pp. 20-21 (2023), available at [https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/07/g20-oecd-roadmap-on-developing-countries-and-international-taxation-update-2023\\_7f599269/4fc33451-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/07/g20-oecd-roadmap-on-developing-countries-and-international-taxation-update-2023_7f599269/4fc33451-en.pdf) (accessed 31 July 2025).

have their own QDMTT as long as it is consistent with the GloBE Rules or they can enact a Domestic Minimum Tax (DMT) as a defensive mechanism that aligns with the recommended safe harbour rules. The QDMTT would be treated as a covered tax and can be fully credited against tax liability under GloBE, thereby preserving a jurisdiction's primary right of taxation over its own income. Implementing a QDMTT will prevent top-up tax arising from a jurisdiction from being collected in other jurisdictions.<sup>94</sup> The OECD recommends that jurisdictions consider introducing a QDMTT as an interim measure to protect their local tax base.<sup>95</sup>

If countries enact the QDMTT, it effectively changes the order for countries to charge top-up tax in that the QDMTT takes priority over the IIR or the UTPR.<sup>96</sup> The priority right to levy DMT means source states can collect additional revenue under the GloBE Rules. If a jurisdiction does not have a QDMTT, that revenue would be taxed by another country in terms of the GloBE Rule order. Ultimately, the agreement on the order of collection of the top-up tax is as follows:

- If a source/host jurisdiction enacts a QDMTT and there arises low-tax income within that jurisdiction, it will

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94 OECD, *Tax Incentives and the Global Minimum Corporate Tax: Reconsidering Tax Incentives after the GloBE Rules* p. 47 (2022).

95 *Supra* n. 94, at p. 47.

96 *Supra* n. 86.

have the primary right to impose a top-up tax on the MNE's excess profits to bring the ETR on those profits up to the 15% minimum rate.<sup>97</sup>

- If the source jurisdiction does not have a QDMTT, the jurisdiction in which the UPE of the MNE group is resident can impose top-up tax on that UPE using the IIR. If the UPE is located in a jurisdiction that has not adopted the IIR, the top-up tax will be levied on the next highest entity in the ownership chain that is located in a jurisdiction with the IIR.<sup>98</sup>
- Where the IIR cannot be applied by a jurisdiction's low-taxed income, the top-up tax will be levied by all jurisdictions that have implemented a UTPR by using a substance-based allocation key. Each jurisdiction will levy the top-up tax using the UTPR by denying a deduction under its corporate income tax or by using an equivalent mechanism.<sup>99</sup>

*Impact on Preventing Tax Competition:* If enacted, the QDMTT has the potential to curtail tax competition for in-scope MNEs source countries as they can prevent any "top-up tax" that arises in a source country from being collected elsewhere.<sup>100</sup> Although the QDMTT puts source countries in the forefront of

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97 *Supra* n. 84, at p. 9.

98 *Supra* n. 84, at p. 10.

99 *Id.*

100 *Supra* n. 94, at p. 47.

levying top-up-tax, most source countries that are predominantly developing countries are unlikely to obtain significant revenue from enacting a QDMTT because their ETRs are on average about 25% (as indicated in a South Centre report) and therefore exceed the global minimum tax rate of 15%.<sup>101</sup> In South Africa, however, the National Treasury indicated that the adoption of the GloBE Rules (under the Global Minimum Tax Act 46 of 2024) would increase corporate tax collection by ZAR 8 billion in 2026/27.<sup>102</sup>

There are also concerns that while the global minimum rate of 15% would establish a floor to tax competition, the QDMTT would establish a ceiling for all states and encourage continued tax competition, which is contrary to the GloBE's aims. As there are many companies outside the scope of GloBE Rules, countries may end up competing for inward investment from those companies, safe in the knowledge that at least the QDMTT can be levied on in-scope MNEs.<sup>103</sup>

The QDMTT has encouraged some countries that did not previously levy corporate income tax to begin levying the same to benefit from the rules. For example, in 2023, the United

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101 *Supra* n. 76, at p. 4.

102 National Treasury, *Budget Review (2024)*, available at <https://www.treasury.gov.za/documents/national%20budget/2024/review/FullBR.pdf> accessed 28 March 2025 (accessed 31 July 2025).

103 *Supra* n. 86.

Arab Emirates introduced a 9% federal corporate income tax so that it can impose a minimum top-up tax of 15% on large MNEs operating in the country with effect from 1 January 2025.<sup>104</sup> In May 2023, the governments of Guernsey, Jersey and the Isle of Man agreed on a joint internal approach on the GloBE Rules, starting in 2025.<sup>105</sup> In December 2023, Bermuda introduced a 15% corporate income tax on MNEs with annual revenues of EUR 750 million or more,<sup>106</sup> effective from 1 January 2025.<sup>107</sup> Although Bermuda took a policy decision to not implement a QDMTT (as yet) reasoning that the QDMTT does not allow it the flexibility to design its tax policies, the effects of the Bermuda Corporate Income Tax Provisions Act essentially achieve the same outcome as a QDMTT.<sup>108</sup> With this move, Bermuda is expected to collect corporate income tax that had previously gone untaxed and to also reduce the potential for top-up tax being levied in other jurisdictions on profits arising from Bermuda.<sup>109</sup>

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104 Reuters, *UAE to Impose 15% Minimum Top-Up Tax on Large Multinationals from January*, 9 December 2024, available at <https://www.reuters.com/markets/uae-impose-15-domestic-minimum-top-up-tax-large-multinationals-jan-1-2024-12-09> (accessed 31 July 2025).

105 GOV.GG, *Guernsey Aligns with Jersey and Isle of Man on Approach to OECD's Pillar Two Framework*, available at <https://gov.gg/Guernsey-Jersey-IoM-align-OECD-Pillar-Two> (accessed 31 July 2025).

106 Government of Bermuda Ministry of Finance, *Public Consultation: Introduction of Corporate Income Tax in Bermuda* (8 August 2023) p. 5.

107 PwC, *Worldwide Tax Summaries – Bermuda 2024*, available at <https://taxsummaries.pwc.com/bermuda/corporate/significant-developments> (accessed 31 July 2025).

108 *Supra* n. 106, at p. 5.

109 *Supra* n. 87; J. Deacon, *Benefits of Bermuda Domicile will Endure Despite Corporate Tax* The Royal Gazette (24 January 2024), available at <https://www.royalgazette.com/international-business/business/article/20240124/benefits-of-bermuda-domicile-will-endure-despite-corporate-tax/> (accessed 31 July 2025).

#### **4.8. The substance-based income exclusion**

Article 5.3 of the GloBE Rules provides for a “substance-based income exclusion” (SBIE), which has to be taken into consideration before top-up tax is computed.<sup>110</sup> The policy rationale of the SBIE is to exclude profits relating to economic substance from the GloBE tax base of the relevant jurisdiction.<sup>111</sup> The SBIE comprises two components: the “payroll” carve-out and the “tangible asset” carve-out for each constituent entity<sup>112</sup> as these factors are considered to be less mobile and less prone to artificial profit shifting.<sup>113</sup>

The “payroll” carve-out is equal to 5% of the eligible payroll costs for “eligible employees”<sup>114</sup> that perform substantial activities for the “MNE groups” in the jurisdiction.<sup>115</sup> The GloBE Rules include a transition provision, which substitutes the 5% threshold with a 10% rate starting in 2023 and

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110 *Supra* n. 85, at p. 30.

111 *Supra* n. 48, at para. 25.

112 *Supra* n. 85, at art. 5.3.2.; *supra* n. 48, at para. 30. Payroll costs and carrying values of tangible assets connected to international shipping income are excluded from the SBIE computation in line with the exclusion of international shipping income from GloBE income. *See also* art. 5.3.3. of the GloBE Rules; *supra* n. 48, at para. 36.

113 *Supra* n. 48, at para. 25.

114 Art. 10.1 of the GloBE Rules defines eligible employees to mean “employees, including part-time employees, of a Constituent Entity that is a member of the “MNE group” and independent contractors participating in the ordinary operating activities of the “MNE group” under the direction and control of the “MNE group”.

115 *Supra* n. 85, at art. 5.3.3.; *supra* n. 48, at para. 31. Eligible payroll costs, as defined in art. 10.1 of the GloBE Rules, include expenditures for salaries and wages as well as for other employee benefits or remuneration such as medical insurance, payments to a pension fund or other retirement benefits, bonuses and allowances payable to eligible employees, stock-based compensation, payroll taxes (or other employee expense-related taxes such as fringe benefits taxes), as well as employer social security contributions.

decreases over a ten-year period to 5.8% in 2032.<sup>116</sup> “Eligible payroll costs” do not include payroll costs that are capitalized and included in the carrying value of eligible tangible assets and also those attributable to a constituent entity’s international shipping income<sup>117</sup> (as explained below).

The “tangible asset” carve-out subtracts a fixed return on the carrying value of “eligible tangible assets” located in a jurisdiction, equal to 5% of the carrying value of tangible assets located in the jurisdiction. The 5% threshold is subject to a transitional provision that replaces the 5% rate with 8% in 2023 and it is ultimately decreased over a ten-year period to 5.4% in 2032.<sup>118</sup> “Eligible tangible assets” are defined in article 5.3.4 of the GloBE Rules to cover property, plants, equipment and a lessee’s right of use of tangible assets located in that jurisdiction, as well as a licence or similar arrangement from the government for the use of immovable property or exploitation of natural resources that entail significant investment in tangible assets.<sup>119</sup> The concept of “tangible assets” indicates that the assets are used for substantive business activities and are unlikely to worsen BEPS risks.<sup>120</sup> Excluded from “tangible assets” are land

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116 *Supra* n. 85, at art. 9.2.1.

117 *Supra* n. 85, at para. 5.3.4.

118 *Supra* n. 85, at art. 9.2.2.

119 *Supra* n. 85, at art. 5.3.4.

120 *Supra* n. 48, at para. 37.

and buildings held for investment or capital appreciation purposes that could be acquired with the intention of artificially increasing benefits from the SBIE.<sup>121</sup> The “tangible asset” carve-out does not extend to property used directly or indirectly by the entity in the production or supply of goods and services,<sup>122</sup> not does it cover the carrying value of ships and other maritime equipment infrastructure that is used to generate “international shipping income”.<sup>123</sup>

The SBIE applies automatically to each jurisdiction the “MNE group” operates in unless the group elects out of the SBIE in a specific jurisdiction.<sup>124</sup> This is an annual election<sup>125</sup> that seeks to alleviate administrative and compliance burdens where “the costs of obtaining information to calculate the exclusion exceed any potential reduction in top-up-tax as a result of the exclusion.”<sup>126</sup>

*Impact on Preventing Tax Competition:* Overall, where a constituent entity has an ETR that is below 15% and it has payroll expenses or tangible assets that are covered by the

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121 *Supra* n. 85, at art. 5.3.4; *supra* n. 48, at para. 46.

122 *Supra* n. 48, at para. 46.

123 *Supra* n. 85, at art. 5.3.4.; *supra* n. 48, at para. 48. The exclusion is targeted at the amounts capped under art. 3.3.4, which provides a limitation of up to 50% on the amount of ancillary income that qualifies for the international shipping income exclusion.

124 *Supra* n. 48, at para. 28.

125 *Supra* n. 85, at art. 5.3.1.; *supra* n. 48, at para. 29.

126 L. Hadnum, *Substance-Based Income Exclusion OECD Pillars*, available at [Substance-Based Income Exclusion – oecdpillars.com](https://www.oecd.org/tax/substance-based-income-exclusion/) (accessed 31 July 2025).

SBIE, the amount of income that is subject to GloBE top-up tax will be reduced.<sup>127</sup> Essentially, the SBIE addresses the concerns of some countries that would like to continue to set low taxes in order to attract inward investment that portrays economic substance. The SBIE allows “substantive” activities to be exempt from the global minimum tax, thereby allowing developing countries to continue offering tax incentives for substantial business activities. Although the SBIE has been criticized for reducing the impact of the GloBE Rules and encouraging tax competition,<sup>128</sup> the exception to the SBIE with regard to “tangible assets” of investment entities ensures that only substance-based incentives are covered by the SBIE.<sup>129</sup> This exception to the SBIE ensures that in-scope MNEs that invest in properties in various jurisdictions cannot claim the SBIE, thereby protecting countries from exploitative property investment practices that pose harmful tax competition.

However, the formulaic nature of the SBIE means that some tax incentives that portray economic substance may still be negatively impacted if, for example, the actual payroll expense is higher than the substance-based allowance. An example is a mine that employs thousands of people and where

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127 *Supra* n. 48, at p. 120.

128 *Supra* n. 2.

129 *Supra* n. 81, at p. 556.

there is very significant capital investment in equipment.<sup>130</sup> This is because the SBIE is not sector specific but applies generally regardless of the type of industry or economy (industrialized or not).<sup>131</sup>

Overall, the SBIE gives an indication that the GloBE Rules adhere to the principle of tax neutrality by ensuring that economic decisions are based on commercial rather than tax considerations, thereby mitigating the risk of artificial tax avoidance arrangements that distort investment and business decisions.

#### ***4.9. Exclusion of international shipping income from the GloBE Rules***

Under article 3.3.5 of the GloBE Rules, international shipping income is excluded from the computation of GloBE income or loss for the fiscal year.<sup>132</sup> The concept of international shipping implies that voyages must cross borders. This exclusion is based on the policy that most national tax systems have adopted, whereby shipping income is generally taxed based on international rules that are independent of the

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130 *Supra* n. 73, at p. 34.

131 OECD, *Tax Challenges Arising from Digitalization of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two)* (2022) paras. 31-33; *supra* n. 73, at p. 34.

132 Article 5.3.3 of the GloBE Rules *supra* n. 85.

domestic corporate tax systems.<sup>133</sup> For a constituent entity to qualify for international shipping income exclusion, article 3.3.6 of the GloBE Rules requires that the strategic and commercial management of all relevant ships be effectively carried on in the jurisdiction where the constituent entity is located.

*Impact on Preventing Tax Competition:* The exclusion of international shipping income from the GloBE Rules has been criticized because shipping MNEs have been a major cause of base erosion and tax competition in tax havens and benefit flags of convenience nations.<sup>134</sup>

#### **4.10. Covered taxes**

The covered taxes in terms of the GloBE Rules include "taxes imposed in lieu of a generally applicable corporate income tax".<sup>135</sup> The phrase "in lieu" refers to taxes that operate as substitutes for a generally applicable income tax in a jurisdiction, such as withholding taxes on interest, rents, dividends and royalties. However, taxes that apply in addition to the generally applicable income tax laws of a jurisdiction are not covered taxes.<sup>136</sup> This means that any tax that is

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133 KPMG, *Pillar Two – Impact on the Shipping Industry*, available at <https://www.meijburg.com/pillar-two-impact-maritime-industry> (accessed 31 July 2025).

134 A.W. Oguttu, *International Tax Law: Offshore Tax Avoidance in South Africa* p. 135 (Juta 2015).

135 *Supra* n. 85, at art. 4.2.1. (c).

136 *Supra* n. 48, at p. 93.

levied in addition to the corporate income tax (for example, digital service taxes) will not be recognized as a covered tax and will not be included in the numerator of globe calculation, which could lead to a decrease in the ETR and trigger of top-up tax.

#### **4.11. ETR calculation**

The ETR of in-scope MNE entities is calculated on a jurisdictional basis (in other words, top-up tax is levied in each jurisdiction where profits are taxed below the minimum rate). If the ETR in a specific jurisdiction is less than 15%, a top-up tax will be levied equal to the difference between the ETR and 15%. The top-up tax is applied to the "excess profit", which is defined as "Net GloBE Income" (from financial accounts) less the "substance-based income exclusion".<sup>137</sup>

It should be noted that even though a country may have a statutory corporate tax rate that is above 15%, the ETR may be below the 15% global minimum due to corporate tax incentives but also because the calculation of the ETR under the GloBE Rules differs from the ETR calculated under the country's domestic tax laws. Under the GloBE Rules, the ETR is

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137 *Supra* n. 85, at art. 5.

calculated by referring to covered taxes that are subject to certain adjustments and exclusions for the relevant period.

The starting point for the ETR calculation is the financial accounts of each local constituent entity of the MNE group, which are used in the preparation of the MNE groups' consolidated financial statements.<sup>138</sup> However, calculating the ETR by first determining taxable income (as is normally done in countries' income tax legislations) is not the starting point. The primary objective of consolidated financial statements is to provide information about the financial position, financial performance and cashflows of an entity.<sup>139</sup> Although using financial statements to establish the GloBE tax base is a prudent approach, it poses challenges due to the diverse accounting standards and tax systems of countries.<sup>140</sup> Consequently, the GloBE Rules provide for certain adjustments to align the income or loss of the local constituent entity with the local tax base and to ensure a correct allocation of income between jurisdictions.<sup>141</sup> The adjusted income and taxes are then used to calculate the ETR of a group in that jurisdiction. Where the ETR calculation results in an ETR

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138 *Supra* n. 85, at p. 28.

139 International Accounting Standards Board, *Conceptual Framework for Financial Reporting* IFRS Foundation p. A19 (2018); M. 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* Fiscal Studies 44/1, pp. 37-51 (2023).

140 E. Eberhartinger & G. Winkler, *Pillar Two and the Accounting Standards* Intertax 51/2 p. 135 (2023).

141 *Supra* n. 84, at p. 9.

below 15%, the MNE group would be liable to pay a top-up tax, to bring the total amount of tax in that low-tax jurisdiction up to the 15% rate. The adjustments seek to address certain “book to tax differences” that cause disparities between financial accounting and taxable income results.<sup>142</sup> A “book to tax difference” could give rise to either permanent differences, such as a fine, which will not reverse in a future period or timing, or to temporary differences, such as interest revenue, depreciation and development costs,<sup>143</sup> which will reverse in a future period.<sup>144</sup>

*Impact on Preventing Tax Competition:* Basing the starting point for the calculation of ETR on the consolidated financial statements of MNE groups creates inherent risks to the prevention of tax competition. This is because the final outcome of the ETR that MNEs report in a jurisdiction could be based on their discretion since they control the transfer prices in the intra-group transactions.<sup>145</sup> An MNE with an ETR that is below the 15% global minimum rate could engage in intra-group hybrid financial mismatch strategies that can artificially raise the numerator for calculating the ETR to the required 15% minimum without altering the taxes due.<sup>146</sup>

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142 *Supra* n. 48, at para. 17.

143 IFRS Foundation, *International Accounting Standard (IAS) 12 Income Taxes* p. A1100.

144 *Supra* n. 48, at para. 17.

145 M. de Wilde, *Is there a Leak in the OECD’s Global Minimum Tax Proposals (GLOBE; Pillar Two)* Kluwer International Tax Blog, 1 Mar. 2022, available at <https://kluwertaxblog.com/2021/03/01/is-there-a-leak-in-the-oecd-s-global-minimum-tax-proposals-globe-pillar-two/> (accessed 31 July 2025).

146 *Id.*

#### **4.12. Qualified refundable tax credits**

Under article 3.2.4 of the GloBE Rules, the calculation of the ETR provides for an adjustment relating to “qualified refundable tax credits”, which are refundable within four years in the form of cash or cash equivalents<sup>147</sup> that have not been yet been applied to reduce “covered taxes”.<sup>148</sup> The “qualified refundable tax credits” are similar to government grants that are offered to attract economic activity in their jurisdictions.<sup>149</sup> A common example of a “qualified refundable tax credit” is a “research and development” refundable tax credit provided to companies conducting eligible research and development activities.<sup>150</sup> Such refundable tax credits are adjusted for as they do not erode the tax base. Consequently, they are included in the income of a “constituent entity” as opposed to being used to set off its tax liability, as is typical of tax credits.

However, if the credit is only available to reduce “covered taxes” and is not refunded in cash or credited against another tax, that credit will not be considered refundable. In terms of article 3.2.4 of the GloBE Rules, such credits are referred to as “non-qualified refundable tax credits” and are excluded

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147 *Supra* n. 85, definition of Qualified Refundable Tax Credit in art. 10.1 of the GloBE Rules.

148 *Supra* n. 48, at para. 135.

149 *Supra* n. 95, at p. 11.

150 ACG. Cabral, S. Appelt & T. Hanappi, *Corporate Effective Tax Rates for R&D: The Case of Expenditure-based R&D Tax Incentives* OECD Taxation Working Papers 54, pp. 39-40 (2021).

from income for GloBE purposes.

*Impact on Preventing Tax Competition:* From the above, it is clear that if a tax incentive is classified as “qualified refundable tax credit”, MNEs will be allowed an adjustment under the GloBE Rules. However, this can create risks for tax competition as some countries may manipulate the system and find ways they can utilize qualified refundable tax credit incentives to compete for investments.<sup>151</sup> Since developing countries tend to face challenges in administering refundable tax credits, they will have to carefully consider how the QDMTT will operate with regard to refundable tax credits that will offset taxes paid by MNE for covered taxes. Besides the administrative challenges, refundable credits are also expensive for developing countries as they are essentially cash refunds/subsidies that developing countries may not be able to afford. Refundable credits may therefore be viewed as favouring developed countries to continue competing against developing countries, as the former can generally afford the cash refunds.

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151 Bloomberg Tax, *Tax Havens Race to Lure Companies as 15% Global Levy Looms* (6 December 2023), available at <https://news.bloombergtax.com/daily-tax-report-international/tax-havens-race-to-lure-companies-as-15-global-levy-looms> (accessed 31 July 2025).

## 5. Constraints that Countries Might Face in Using Tax Incentives as a Tax Competition Tool

### 5.1. *Impact of GloBE Rules on tax incentives*

The fundamental challenge for countries that offer tax incentives in light of the GloBE Rules is that they may lose twice. First, if the jurisdiction provides tax incentives that reduce the ETR tax rate to below 15% (for example, if it grants tax holidays or other tax exemptions) and does not enact a QDMTT that allows it to tax in-scope MNEs at the 15% minimum rate, the "top-up tax" may be collected by other countries under the IIR or the UTPR. Second, if a country enacts a QDMTT and it offers tax incentives that reduces the jurisdictional ETR to 15%, but those tax incentives are not covered by the SBIE, it will forego potential tax revenue.<sup>152</sup>

The GloBE Rules may render some countries' tax incentives redundant or ineffective while some may not be impacted. The tax incentives that may not be impacted are those that are outside the GloBE scope in that the ETR rates are above the 15% minimum tax rate.<sup>153</sup> In addition, "qualified refundable tax credits" and tax incentives that are covered by the "substance-based income exclusion" to the GloBE Rules will not

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152 *Supra* n. 47, at p. 24.

153 B. Liotti, J. Ndubai, R. Wamuyu & J. Owens, *The Treatment of Tax Incentives under Pillar Two*, *Transnational Corporations Journal* 2(2) p. 34 (2002).

be impacted by the rules.<sup>154</sup> An example is “accelerated depreciation” and “immediate expensing” which are considered to be compatible with the GloBE Rules as they have a direct link to substantive business activities in a jurisdiction and not prone to taxpayer manipulations. The tax incentive rules regarding “accelerated depreciation” allow for expensing the cost of an asset faster than its expected economic depreciation while the rules for “immediate expensing” allow for the deduction of the entire cost of the asset in the year of purchase.<sup>155</sup> Both tax incentives result in a lower taxable profit for the years they are applied and they normally give rise to timing differences when compared with financial accounts.<sup>156</sup> This timing difference between the domestic tax law (which grants immediate expensing of the cost of the asset) and financial accounting standards (which require a straight-line depreciation over the assets useful life) creates a temporary difference that give rise to deferred tax assets and liabilities. This can distort MNEs’ ETRs in the first year that the immediate expensing tax advantage was granted under the GloBE Rules, which could result in an ETR that is lower than 15% minimum tax because their starting point is the financial accounting and not the tax treatment of

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154 D. O’Sullivan & AC. Gómez, *The Global Minimum Tax: From Agreement to Implementation Policy Considerations, Implementation Options and Next Steps*, p. 35 (International Bank for Reconstruction and Development / The World Bank 2022).

155 UNCTAD, *World Investment Report: International Tax Reforms and Development* p. 138 (UN 2022).

156 Id.

depreciations. In effect, this can trigger top-up tax via the IIR or UTPR in a jurisdiction.<sup>157</sup> To prevent these distortions, the GloBE Rules allow companies to adjust for (temporary) timing differences when calculating their ETRs, so that tax incentives that are affected by the timing of taxes paid, for example, accelerated depreciation,<sup>158</sup> and immediate expensing of the tangible property of the constituent entity are taken into account in the computation of the ETR as deferred taxes.<sup>159</sup> Deferred tax attributes (deferred tax assets and deferred tax liabilities) are therefore taken into account in the calculation of the ETR for GloBE purposes. In effect, the deferred tax amount is added to the adjusted covered taxes of the constituent entities, which increases the ETR.<sup>160</sup> This means that the entire cost of qualifying assets is deducted upfront in a single year of assessment rather than being spread over multiple years. Consequently, the company's taxable income is substantially reduced for that year which produces an immediate tax benefit for the company. For these reasons, accelerated depreciation and immediate expensing are covered by the "substance-based income exclusion" to the GloBE rules. This approach ensures equity by preventing the

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157 *Supra* n. 47, at p. 27.

158 Lexology, *Pillar Two: The Future of Incentives* (30 October 2024), available at [https://www.lexology.com/library/detail.aspx?g=58c94de4-89ca-4364-8e84-2d2e83aeec02&utm\\_source=Lexology+Daily+Newsfeed&utm\\_medium=HTML+email+-+Body+-+General+section&utm\\_campaign=Lexology+subscriber+daily+feed&utm\\_content=Lexology+Daily+Newsfeed+2024-11-04&utm\\_term=](https://www.lexology.com/library/detail.aspx?g=58c94de4-89ca-4364-8e84-2d2e83aeec02&utm_source=Lexology+Daily+Newsfeed&utm_medium=HTML+email+-+Body+-+General+section&utm_campaign=Lexology+subscriber+daily+feed&utm_content=Lexology+Daily+Newsfeed+2024-11-04&utm_term=) (accessed 31 July 2025).

159 *Supra* n. 153, at p. 35.

160 *Supra* n. 48, at p. 101.

regressive effects of the rules, thereby enabling developing countries to use their tax system to offer some tax incentive to encourage economic development.

The GloBE Rules will, however, impact on jurisdictions that offer tax incentives in the form of "tax holidays",<sup>161</sup> which are government-incentive programmes that offer a temporary reduction or elimination of corporate income taxes.<sup>162</sup> The GloBE Rules will effectively nullify the benefits of the tax holidays where they apply to all income, as opposed to a narrow tax base. The GloBE Rules will also impact on specific tax-exemption regimes that exempt in-scope MNEs from tax if they invest in certain sectors, thereby reducing their ETRs to below 15%.<sup>163</sup> Jurisdictions with zero corporate taxes and special economic zones or tax-free zones<sup>164</sup> with tax rates of below 15% will also be impacted by the GloBE Rules. Although article 4.2.1(c) of the GloBE Model Rules provides that covered taxes imposed in lieu of corporate income tax – such as withholding taxes on gross payments of passive income – are included, the rules do not cover withholding tax incentives granted to non-resident investors that reduce the ETR of a

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161 *See* definition of "Tax Holiday" in the IBFD International Tax Glossary, available at [Glossary - Tax Research Platform - IBFD](#) (accessed 31 July 2025).

162 *Supra* n. 4, at p. 8.

163 *Supra* n. 155, at p. 39.

164 *See* definition of "Tax-free zone" in the IBFD Tax Glossary, available at [Glossary - Tax Research Platform - IBFD](#) (accessed 31 July 2025).

constituent entity below the 15% global minimum rate.<sup>165</sup> Thus, countries that offer withholding tax incentives could lose the intended benefits of that incentive if top-up tax is levied by the jurisdiction of the ultimate parent entity.<sup>166</sup>

## **5.2. Impact of the GloBE Rules on MNEs' investment decisions**

The GloBE Rules will have an impact on business investment decisions, especially for in-scope MNEs whose ETRs are below 15% that benefit from tax incentives. Vietnam is an example in this regard. Vietnam's corporate income tax is set at 20%, but UNCTAD reports that for years it offered low ETRs to large foreign investors and some of these ETRs were as low as 2.75% due to lengthy tax exemptions and tax reduction periods.<sup>167</sup> For example, in 2019, South Korea's Samsung company paid as little as 5.1% in tax in one of the Vietnamese provinces where it owns factories that assemble half its smartphones. In November 2023, Vietnam adopted the global minimum tax, which would raise the ETR on in-scope MNEs, including Samsung, to 15% from 1 January 2024.<sup>168</sup> The Korean Chamber of Commerce indicated that the global minimum tax could impact on Korea's

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165 *Supra* n. 153, at p. 41.

166 *Supra* n. 155, at p. 140.

167 UNCTAD, *Vietnam Approves New Minimum Corporate Income Tax (CIT) for Multinational Enterprises*, available at <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/4490/approves-new-minimum-corporate-income-tax-cit-for-multinational-enterprises> (accessed 31 July 2025).

168 The National Assembly of Vietnam approved the Global Minimum Tax under Resolution No. 39/2023/UNTVQH15; see also Vietnam Brief *Global Minimum Tax (GMT) in Vietnam*, available at <https://www.vietnam-briefing.com/doing-business-guide/vietnam/taxation-and-accounting/gmt-global-minimum-tax-vietnam> (accessed 31 July 2025).

investments in Vietnam unless the country offered “adequate alternative economic benefits” to entities that were impacted by the tax. The Vietnamese government indicated that it would come up with a compensation plan whereby companies with large investments in Vietnam would be granted after-tax cash handouts or refundable tax credits to support their manufacturing or research projects. However parliamentary approval of this proposal was hampered by that fact that it could be contrary to GloBE Rules.<sup>169</sup>

Another deterrent for investors is that complying with the GloBE Rules will entail a considerable amount of administration for in-scope MNEs, which will need significant resources to comply with the rules.<sup>170</sup> MNEs will have to carry out various calculations in order to determine their liability under the Model Rules.<sup>171</sup> The starting point would be to determine whether the MNE is within the scope of the rules; then they have to work through the mechanics of a jurisdictional ETR calculation in order to determine the amount of any top-up tax that may be due; and thereafter they have to determine the jurisdiction where such tax is

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169 Reuters, *Exclusive: Vietnam Eyes Multi-Million-Dollar Handouts to Samsung, Others to Offset Global Tax (30 May 2023)*, available at <https://www.reuters.com/world/asia-pacific/vietnam-eyes-multi-million-dollar-handouts-samsung-others-offset-global-tax-2023-05-30/> accessed (accessed 31 July 2025).

170 EY, *OECD Releases Commentary and Illustrative Examples on Pillar Two Model Rules (21 March 2022)*, available at <https://taxnews.ey.com/news/2022-0458-oecd-releases-commentary-and-illustrative-examples-on-pillar-two-model-rules> (accessed 5 Sept. 2025).

171 Deloitte, *OECD Pillar Two - Global Minimum Tax (2022)*, available <https://www2.deloitte.com/global/en/pages/tax/articles/oecd-pillar-two.html>. (accessed 5 Sept. 2025).

payable.<sup>172</sup> These compliance obligations may be aggravated if there are variations in how different countries apply the rules.<sup>173</sup> MNEs will also have to grapple with the practical complexities of applying the rules due to timing differences and the difficulties in aligning accounting policies within the MNE group.<sup>174</sup> A lack of consistency in the way countries will implement and administer the GloBE Rules may make it difficult for MNEs to comply, increase uncertainties and create risks of double or over-taxation.<sup>175</sup>

### **5.3. Tax sparing provisions in tax treaties**

The GloBE Rules will impact on countries that have signed tax sparing provisions in their “double taxation agreements” (DTAs) to encourage foreign investment. The rationale for “tax sparing” provisions is as follows. When countries (particularly developing countries) grant tax incentives to foreign investors, the benefit of the tax incentive may be limited if, for instance, their treaty partner grants a tax credit (for taxes actually paid in a foreign country) to relieve their residents from double taxation. Since foreign

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172 OECD, *Pillar Two Rules in a Nutshell*, available at <https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/pillar-two-model-rules-in-a-nutshell.pdf> (accessed 31 July 2025).

173 *Supra* n. 170.

174 U. Ved & W. Soni, *Consequences of BEPS and the GloBE Rules under Pillar Two (27 June 2022)*, *International Tax Review*, available at <https://www.internationaltaxreview.com/article/2aaa5hiiweysnd7xygk5c/sponsored/consequences-of-beps-and-the-globe-rules-under-pillar-two> (accessed 31 July 2025).

175 *Supra* n. 48, at para. 1.

investors would not have paid foreign taxes because of a tax incentive, they would not avail themselves of a tax credit in their home country. To prevent the benefit of the tax incentive being lost in increased tax payments in the investor's home country, developing countries often insist on having a "tax sparing" provision in their DTAs,<sup>176</sup> which requires the investor's residence country to allow their residents to retain the advantages of the tax incentive, by pretending that tax was levied and thus sparing the taxation of foreign-source income of such a resident.<sup>177</sup>

The GloBE Rules will impact on the tax sparing provisions as spared taxes are not considered as covered taxes for calculating the ETR of the constituent entity. This may result in DTA disputes that will impact on the ability of developing countries to use tax sparing provisions to encourage foreign investment. It is therefore important for developing countries that wish to adopt the GloBE Rules to ensure that they renegotiate their DTAs to address the risks posed by tax sparing provisions.

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176 United Nations, *Handbook on Selected Issues on Administration of Double Tax Treaties for Developing Countries*, p. 35 (UN 2013).

177 A.W. Oguttu, *The Challenges of Tax Sparing: A Call to Reconsider the Policy in South Africa* 65 Bull. Intl. Taxn. 1 (2011), Journal Articles & Opinion Pieces IBFD; J. Hines, *Tax Sparing and Direct Investment in Developing Countries*, in *International Taxation and Multinational Activity* p. 40 (J. Hines ed., University of Chicago Press 2001).

#### 5.4. Implication for bilateral investment treaties and state-to-investor investment agreements

Some countries have entered into “bilateral investment treaties” (BITs), which are treaties signed between two states and are aimed at promoting and protecting investments by one state’s investors in the other state.<sup>178</sup> BITs typically include provisions that give foreign investors certain protection for their investments.<sup>179</sup> If those protections are breached, BITs include “alternative dispute resolution” mechanisms, whereby an investor can seek international arbitration, for example under the International Centre for the Settlement of Investment Disputes (ICSID),<sup>180</sup> rather than suing the host state in its own courts. For example, BITs normally contain protections against “expropriation without compensation”.<sup>181</sup> Although BITs generally carve out tax matters,<sup>182</sup> there are some BITs with partial tax carve-outs that can be viewed as “expropriatory” if they are “discriminatory” and “confiscatory” in that the state involved intended to divest

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178 K. Vandevelde, *The Economics of Bilateral Investment Treaties* Harv. Int’l. L. J. (United States) vol. 41 (2000).

179 For example, fair and equitable treatment, protection against expropriation without compensation, national treatment and the most favoured nation (MFN) treatment – for details, see J. Lang & B. Gilfillan, *Bilateral Investment Treaties – a Shield or a Sword?* p. 2, available at [https://www.bowmanslaw.com/wp-content/uploads/2016/09/PPI-article\\_mailshot\\_08112013\\_1038389\\_1-1.pdf](https://www.bowmanslaw.com/wp-content/uploads/2016/09/PPI-article_mailshot_08112013_1038389_1-1.pdf) (accessed 31 July 2025).

180 S. Castagna, *ICSID Arbitration: BITs, Buts and Taxation – An Introductory Guide* 70 Bull. Intl. Taxn. 7, p. 372 (2016).

181 *Supra* n. 179.

182 P.G. Córdoba, *The Tax Carve-Out Clause in International Investment Law*, in *Redefining Global Governance A Tax, Trade and Investment Perspective in the EU and Beyond* p. 40 (Johanna et al. eds., Springer 2025).

an investor of its possessions.<sup>183</sup> For such BITs, if investors were granted tax incentives that lowered their ETR to below 15%, they could claim that the introduction of a QDMTT that requires them to pay a minimum tax of 15% is an indirect expropriation. This is particularly so if there is no compensation, alternative relief or damages given to the investors and if they can demonstrate that they have been substantially deprived of the value of their investment.<sup>184</sup> This could create disputes regarding a country's investment regime and that may lead to investors seeking arbitration in forums such as the ICSID. However, developing countries are generally not keen on arbitration due to the costs involved and the lack of experience in investment arbitration procedures, which often take place in the residence states of the investors.<sup>185</sup> It is therefore important that countries that wish to adopt the QDMTT consider reviewing their BIT policies to address the above risks.

Some countries have signed "state-to-investor investment agreements", which are contracts that countries sign with investors with the aim of encouraging foreign investment. Like BITs, "state-to-investor investment agreements" also contain legal protections for investors to ensure a stable and

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183 *Supra* n. 180, at p. 375.

184 *Id.*

185 *Supra* n. 179, at p. 2.

predictable environment for their investments.<sup>186</sup> They also contain “investor-state arbitration” clauses that allow foreign investors to resolve disputes with host governments through international arbitration, bypassing domestic courts. Foreign investors often require that “stabilization” clauses are included in “state-to-investor investment agreements” to insulate their investment projects from adverse changes to the legal and fiscal environment.<sup>187</sup> Sometimes, investors enter into tax deals in their investment agreements with host country governments, where they are granted tax incentives that lower their ETRs to less than 15%.<sup>188</sup> If a country that has signed a “state-to-investor investment agreement” implements a QDMTT so that it levies tax on in-scope MNEs at a rate of 15%, such a country may be in breach of the stabilization clause in the investment agreements it signed.<sup>189</sup>

The QDMTT may also be considered to be in breach of the “fair and equitable treatment” (FET) clause that is normally found in such agreements. This clause is intended to ensure that a state does not introduce measures that violate the investor’s

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186 For example, fair and equitable treatment, protection against expropriation without compensation, national treatment and the most favoured nation (MFN) treatment – for details, *see supra* n. 179, at p. 2.

187 H. Mann, *Stabilization in Investment Contracts: Rethinking the Context, Reformulating the Result* (2011) Investment Treaty News, available at <http://www.iisd.org/itn/2011/10/07/stabilization-in-investment-contracts-rethinking-the-context-reformulating-the-result/> (accessed 5 Mar. 2025).

188 E-J. Quak, *IISD The Impact of State-Investor Contracts on Development (10 August 2018)* p. 6; IMF, *Options for low-income countries’ effective and efficient use of tax incentives for investment*. Available at <https://www.imf.org/external/np/g20/pdf/101515.pdf> (accessed 5 Sept. 2025).

189 B. Kuźniacki, *Pillar 2 and International Investment Agreements: ‘QDMTT Payable’ Seals An Internationally Wrongful Act* Tax Notes International p. 159 (9 October 2023).

legitimate expectations.<sup>190</sup> The QDMTT can be considered a breach of the FET as it is effectively a premature revocation of promised tax incentives.<sup>191</sup> This is because the investor may have committed to invest in the country based on the tax incentives and may face losses because of later changes in law, which may spur investors to seek "investor-state arbitration".

Some argue that these contentions against the QDMTT may not be warranted because even if the country in issue had not implemented the QDMTT, the top-up tax will be levied by other countries that apply the IIR or the UTPR.<sup>192</sup> However, the OECD also acknowledges the potential conflicts between the GloBE Rules and investment agreements in its 2022 report entitled "Tax Incentives and the Global Minimum Corporate Tax".<sup>193</sup> Thus, some critics have recommended that countries should delay their implementation of the GloBE Rules until they have considered the risks that implementation poses under their investment treaties.<sup>194</sup>

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190 C. Brown & E. Whitsitt, *Implementing Pillar Two: Potential Conflicts With Investment Treaties* 71(1) *Canadian Tax Journal* pp. 189-207 (2023).

191 *Supra* n. 189, at p. 163.

192 R. Avi-Yonah, *Pillar 2 and the BITs* (28 May 2023), available at SSRN: <https://ssrn.com/abstract=4461285> (accessed 31 July 2025).

193 *Supra* n. 94, at paras. 21-22.

194 *Supra* n. 190, at pp. 189-207.

## 6. Impact on Tax Competition of Uneven Implementation of GloBE Rules

Currently, more than 140 countries globally have agreed to implement the GloBE rules.<sup>195</sup> Various developing countries have indicated they will introduce the rules from 2025.<sup>196</sup> For example, Brazil promulgated Provisional Measure 2,265 of 2024, which adopts the OECD GloBE Rules, and sets a minimum income tax rate of 15% for in-scope MNEs that operate in Brazil. The measures were scheduled to come into effect in 2025.<sup>197</sup> In Russia, a law was drafted under which a minimum profit tax at the rate of 15% will apply to MNEs, starting from 2026, if the effective profit tax of Russian subsidiaries of the MNE is less than 15%.<sup>198</sup> However, India has not yet introduced the rules.<sup>199</sup> China has also not yet taken any legislative steps towards implementing the GloBE Rules.<sup>200</sup>

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195 *Supra* n. 12.

196 *Supra* n. 158.

197 Ecovis Global, *Global Minimum Tax Brazil: Government Proposes Additional Taxation*. Available at <https://www.ecovis.com/globalx24/global-minimum-tax-brazil-government-proposes-additional-taxation/#:~:text=Provisional%20Measure%20No.,in%20which%20business%20entities%20operate> (accessed 5 Sept. 2025).

198 Schneider Group, *Rules Established by Pillar Two Will Apply in Russia in 2026*. Available at <https://schneider-group.com/en/news/countries/rules-established-by-pillar-two-will-apply-in-russia-from-2026/#:~:text=Currently%20Russia%20has%20prepared%20the.rate%20to%20the%20Russian%20budget> (accessed 5 Sept. 2025).

199 A. Banerjee, *Global Minimum Tax and India's Response: A Double-Edged Sword? (9 April 2025)*, available at <https://www.taxtmi.com/article/detailed?id=14068#:~:text=This%20policy%20ensures%20that%20if,budgeting%20a%20stable%20fiscal%20environment> (accessed 5 Sept. 2025).

200 J. Chen, *The Silent Giant: China's Inaction on Global Minimum tax Legislation (17 June 2025)* 28 *Journal of International Economic Law* 2, pp. 242-259, gaf017, available at <https://doi.org/10.1093/jiel/jgaf017> (accessed 5 Sept. 2025).

In Africa, only four countries have implemented the Rules (some of them not in line with the GloBE Model Rules) while others have indicated that they will introduce them. South Africa's Global Minimum Tax Act 46 of 2024 (which came into effect on 1 January 2025) applies top-up tax by using the IIR and the DMTT, in line with the OECD GloBE Model Rules.<sup>201</sup> In June 2025, the Nigeria Tax Act was enacted in terms of which Nigerian companies that are members of a multinational group with aggregate group turnover of EUR 750 million and above will be subject to a minimum ETR of 15% of their net income.<sup>202</sup> In Kenya, the Tax Laws Amendment Act 2024, which came into effect on 27 December 2024, introduced a domestic minimum top-up tax and the minimum top-up tax is applicable to entities that are part of in-scope multinational groups to ensure that the ETR on the group's profits is at a 15% minimum rate. In Zimbabwe, section 7 of the Finance Act 13 of 2023 introduced a DMTT tax of 15%.<sup>203</sup> The Zimbabwean DMTT rules are codified in section 12B of the Income Tax Act [Chapter 23:06], which came into effect in 2024. In Mauritius, the Finance (Miscellaneous Provisions) Act 2022 introduced a 15% domestic minimum top-up tax for resident companies belonging to an MNE with annual revenue of at least EUR 750 million. The rules are now

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201 Global Minimum Tax Act 46 of 2024.

202 PWC, *The Nigerian Tax Reform Acts: Top 20 changes to know and top 6 things to do (6 June 2025)* p. 3, available at <https://www.pwc.com/ng/en/assets/pdf/the-nigeria-tax-reform-acts-top-20-changes-to-know-and-top-6-things-to-do-pwc.pdf> (accessed 5 Sept. 2025).

203 PWC, *Pillar Two Country Tracker Online* p. 368, available at <https://www.pwc.com/gx/en/tax/international-tax-planning/pillar-two/pwc-pillar-two-tracker-full-data-v2.pdf> (accessed 5 Sept. 2025).

imbedded in section 4 of Mauritius' Income Tax Act, 1995, but they are not yet in force.

Various developed countries have introduced the rules. In 2021, the United Kingdom introduced its Multinational Top-up Tax and/or the Domestic Top-up Tax, under Finance (No.2) Act 2023.<sup>204</sup> Australia implemented the GloBE Rules in 2024 under its Taxation (Multinational–Global and Domestic Minimum Tax) Act 2024.<sup>205</sup> In the European Union (EU), the European Commission issued a Directive on 14 December 2022, for the adoption of the GloBE Rules to be transposed into national law by 31 December 2023 to apply in respect of the fiscal years starting in January 2024.<sup>206</sup>

On 20 January 2025, the Trump administration issued an executive order withdrawing the United States from implementing the GloBE Rules.<sup>207</sup> The withdrawal of the United States undermines global efforts to curtail tax competition, creates significant uncertainty in the international tax

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204 HMRC, *Multinational Top-up Tax and Domestic Top-up Tax*, available at <https://www.gov.uk/government/collections/multinational-top-up-tax-and-domestic-top-up-tax> (accessed 5 Sept. 2025).

205 ATO, *Implementation of a global minimum tax and a domestic minimum tax*, available at <https://www.ato.gov.au/about-ato/new-legislation/in-detail/international/implementation-of-a-global-minimum-tax-and-a-domestic-minimum-tax> (accessed 5 Sept. 2025).

206 European Commission, *Minimum Corporate Tax Directive*, available at [https://taxation-customs.ec.europa.eu/taxation/business-taxation/minimum-corporate-taxation\\_en](https://taxation-customs.ec.europa.eu/taxation/business-taxation/minimum-corporate-taxation_en) (accessed 5 Sept. 2025).

207 The White House, *Presidential Actions, The Organisation for Economic Cooperation and Development Global Tax Deal (29 January 2025)* sec. 1, available at <https://www.whitehouse.gov/presidential-actions/2025/01/the-organization-for-economic-co-operation-and-development-oecd-global-tax-deal-global-tax-deal/> (accessed 5 Sept. 2025).

landscape, discourages countries that were planning to adopt the rules and emboldens countries that had sovereignty concerns about the GloBE Rules.<sup>208</sup> As if this was not enough, at the G7 meeting held in Canada in July 2025, the United States and G7 reached an agreement under which US MNEs will be exempt from GloBE Rules (the imposition of Income IIR or the UTPR) by other countries. Essentially, a parallel international tax system will apply, whereby the 15% global minimum tax will be applied to all countries that adopt the rules but the US MNEs will be only taxed under domestic US rules, such as the Global Intangible Low-Taxed Income (GILTI) rules. Ultimately, this agreement permits the United States to preserve its tax sovereignty while other countries' tax sovereignties have been disrupted. This gives US MNEs a competitive edge, in that they will have reduced tax burdens and compliance costs. In effect, EU Member States that have US MNEs that are tax resident there may experience reduced tax revenues as they will not be able to levy top-up tax on the low-taxed profits of US MNEs under their GloBE Rules. This will perpetuate a new wave of tax competition as there will be

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208 GIS, *What is next after Washington exits the OECD global tax plan?*, available at <https://www.gisreportsonline.com/r/trump-oecd-global-tax/> (accessed 5 Sept. 2025).

no level playing field between the United States and European MNEs, the latter remaining subject to the GloBE Rules.<sup>209</sup>

Despite these developments, many countries are committed to international tax reform as they recognize that harmful tax competition is detrimental to their economies.<sup>210</sup> However, the combined effect of the United States' withdrawal from the GloBE Rules, the United States' agreement with the G7 countries to exempt its MNEs from the GloBE Rules, the fact that major developing countries like India and China have not yet implemented the rules and the fact that few developing countries (a handful in Africa) have implemented rules creates uncertainties as to whether the GloBE Rules will be effective in curtailing tax competition.

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- 209 Lexology, *Global Minimum Tax? Perhaps Not for Uncle Sam's Multinationals - The Side-by-Side Tax Tango Begins!* (8 July 2025), available at [https://www.lexology.com/library/detail.aspx?g=7467ea94-8a76-41df-b7d6-01057657b7f0&utm\\_source=Lexology+Daily+Newsfeed&utm\\_medium=HTML+email+-+Body+-+General+section&utm\\_campaign=Lexology+subscriber+daily+feed&utm\\_content=Lexology+Daily+Newsfeed+2025-07-10&utm\\_term=](https://www.lexology.com/library/detail.aspx?g=7467ea94-8a76-41df-b7d6-01057657b7f0&utm_source=Lexology+Daily+Newsfeed&utm_medium=HTML+email+-+Body+-+General+section&utm_campaign=Lexology+subscriber+daily+feed&utm_content=Lexology+Daily+Newsfeed+2025-07-10&utm_term=) (accessed 5 Sept. 2025).
- 210 Andersen, *US Withdrawal from OECD: Strategic Impact on Global Taxation* (3 February 2025), available at <https://eg.andersen.com/united-states-withdrawal-oecd/> (accessed 5 Sept. 2025).

## 7. Policy Recommendations to Prevent Increased Tax Competition as Countries Adopt the GloBE Rules

### 7.1. *Develop measures to curtail new tax competition strategies*

As discussed above, although the GloBE Rules set a floor to the ability of countries to use their corporate income tax systems as a policy instrument to attract foreign investment,<sup>211</sup> there remains considerable scope for countries to perpetuate tax competition.

For in-scope MNEs, the global minimum tax is essentially a minimum tax cost incurred. Although not all investment decisions are tax motivated,<sup>212</sup> some MNEs may still find ways of coming up with new strategies to avoid paying the top-up tax. There are, however, some aspects of the GloBE Rules that make it practically difficult for MNEs to circumvent and many MNEs have come to realize that the days of moving to a jurisdiction for tax reasons are long gone. For example, the article 5.3.2 "substance-based income exclusion", which carves out payroll and tangible assets, may be difficult to manipulate as sending employees to low-tax jurisdictions to meet the substance requirements is becoming difficult to comply with due to the travelling constraints. With the global

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211 *Supra* n. 145.

212 *Supra* n. 5, at p. 293.

minimum tax, in future, establishing entities in low-tax jurisdictions will be for other reasons that are not necessarily tax related. Tax is important but it is not the main driver for investment.

It is therefore important that the OECD comes up with measures to curb any ensuing tax avoidance and harmful tax practices that are contrary to the policy rationale of the GloBE Rules to prevent a situation where the GloBE Rules inadvertently create new ETR tax planning strategies that will increase tax competition.<sup>213</sup>

### ***7.2. Countries should review their domestic tax-incentive regimes***

The GloBE Rules give an opportunity for countries to review their tax-incentive regimes and understand which incentives they offer will result in an ETR below the 15% global minimum tax (subject to the "substance-based income exclusion") and would trigger the application of the QDMTT, IIR and UTPR. It is recommended that countries reform their tax incentive regimes as the revenue foregone as a result of the tax incentive will be collected as a top-up tax in the parent

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213 *Supra* n. 145.

company's residence state or in the UTPR jurisdiction when the parent company's jurisdiction does not have an IIR.

**7.3. Countries in regional economic communities should coordinate their tax incentive regimes**

Tax completion can be curtailed in regional economic communities (RECs) if member countries can coordinate their tax incentive regimes when they implement the GloBE Rules. International bodies such as the UN, the IMF and the G20 Development Working Group recommend that tax coordination offers opportunities to address the harmful spillovers effects of tax competition that are induced by uncoordinated tax design, which can be resolved by common legislative framework regarding certain tax incentives.<sup>214</sup>

In the European Union, there are various measures in place that are aimed at coordinating tax incentives, for example, the EU Code of Conduct and the EU State Aid Rules.<sup>215</sup> In December 2021, the European Union,<sup>216</sup> through the European

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214 IMF, *Kenya, Uganda, and United Republic of Tanzania: Selected Issues (2018)* (IMF Country Report 08/353 2018); UN, *Outcome document of the Third International Conference on Financing for Development: Addis Ababa Action Agenda (2015)* (UN 2015); *supra* n. 4, at p. 31.

215 J.H. Heckemeyer, *Tax Incentives and Investments in the EU: Best Practices and Ways to Stimulate Private Investments and Prevent Harmful Tax Practices* p. 12 (EU 2025), available at <http://www.europarl.europa.eu/supporting-analyses> (accessed 5 Sept. 2025).

216 Formed in terms of the Maastricht Treaty, which was signed in February 1992 and came into force in November 1993. See European Union, *Treaty on the European Union (1992)*, available at [https://europa.eu/european-union/sites/default/files/docs/body/treaty\\_on\\_european\\_union\\_en.pdf](https://europa.eu/european-union/sites/default/files/docs/body/treaty_on_european_union_en.pdf) (accessed 4 Aug. 2021).

Commission, issued a proposal for an EU Council Directive in support of the GloBE Rules.<sup>217</sup> The proposal called for the full adoption of the GloBE Rules, including the QDTT, which enables the source state to tax up to the required minimum of 15% before the operation of the IIR. On 14 December 2022, the European Union issued a Council Directive (EU - 2022/2523) on minimum corporate taxation ensuring uniform rules on a minimum effective corporate tax rate of 15% for global activities of large multinational groups in the European Union.<sup>218</sup> With the implementation of the GloBE Rules, the EU Parliament conducted a study in 2025 to examine best practices for designing sustainable research and development tax incentives in the European Union.<sup>219</sup>

In Africa, the African Continental Free Trade Area (AfCFTA), which creates a single market for goods and services across 55 African countries of the African Union (AU) and RECs (including the West African Economic and Monetary Union, (WEAMU), Southern African Development Community (SADC) and the East African Community (EAC)), provides African countries access to a huge growing market. With a population of about 13

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217 European Commission, *Proposal for Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union (2021)*, available at [https://taxation-customs.ec.europa.eu/system/files/2021-12/COM\\_2021\\_823\\_1\\_EN\\_ACT\\_part1\\_v11.pdf](https://taxation-customs.ec.europa.eu/system/files/2021-12/COM_2021_823_1_EN_ACT_part1_v11.pdf) (accessed 31 July 2025).

218 EU, *EU Council Directive 2022/2523 (2022)*, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022L2523&from=EN> (accessed 31 July 2025).

219 *Supra* n. 215.

billion people and a combined GDP of approximately USD 3.4 trillion, the AfCFTA has the potential of encouraging regional value chains and trade-driven industrialization, which could reduce reliance on tax incentives to attract investment.<sup>220</sup> The AfCFTA creates a massive opportunity for African countries to ensure that the tax incentives offered under their investment regimes are in line with the GloBE Rules. The Investment Protocol to the AfCFTA (which is currently not yet ratified)<sup>221</sup> indicates in article 2 that its objectives include encouraging intra-African investment flows to foster sustainable development of states parties, including “consolidating coordinated positions and cooperation on matters related to investment promotion, facilitation and protection within the continent”. Although article 3(4) of the Investment Protocol to the AfCFTA provides that the protocol shall not apply to “taxation measures” of state parties, article 8(1)(a) indicates that state parties may introduce fiscal incentives, such as concessionary rates in order to attract, retain and expand investments that foster sustainable development of state parties and that they may take measures to harmonize their tax incentives. Article 40(b) provides that investors and their investments shall conduct their operations in a

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220 African Union, *About the AfCFTA*, available at <https://au-afcfta.org/about/> (accessed 31 July 2025).

221 African Union, *Protocol to the Agreement Establishing the African Continental Free Trade Area on Investment adopted by the 36th Ordinary Session of the Assembly, Held in Addis Ababa, Ethiopia, on 19 February 2023*, available at <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/8533/download> (accessed 5 Sept. 2025).

manner that complies with domestic tax laws and international rules relating to base erosion and profit shifting. As discussed, a few African countries such as South Africa, Nigeria, Zimbabwe,<sup>222</sup> Kenya and Mauritius have introduced the GloBE Rules while others are in the processes of introducing them.<sup>223</sup>

For African countries to benefit from the GloBE Rules, it is important that measures are taken to review inefficient tax incentives at domestic level and to ensure coordination of the same at regional level.

Countries in the Caribbean Community (CARICOM),<sup>224</sup> which comprises 15 low-tax jurisdictions,<sup>225</sup> that rely on tax incentives to attract investment face the challenge of adapting their incentive regimes to comply with the GloBE Rules. A number of CARICOM countries that were previously not levying corporate taxes have introduced such taxes to benefit from the global minimum tax.<sup>226</sup> It is also indicated that

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222 Finance Act 13 of 2023.

223 *Supra* n. 203.

224 D. O'Brien & S. Morano-Foadi, *The Caribbean Court of Justice and Legal Integration within CARICOM: Some Lessons from the European Community*, 8 *The Law and Practice of International Courts and Tribunals*, p. 399 (2009).

225 CARICOM, *Member States and Associate Members* (2021). The CARICOM was formed in 1973 by the Treaty of Chaguaramas, available at <https://caricom.org/member-states-and-associate-members/> (accessed 4 Nov. 2021). The members are Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St Lucia, St Kitts and Nevis, St Vincent and Grenadines, Suriname and Trinidad and Tobago. *See* R. Warner & M. Anatol, *Caribbean Integration-Lessons for the Pacific?* 2(1) *Asia and Pacific Policy Studies*, p. 183 (2014).

226 *Supra* n. 12.

countries like Bermuda, Barbados, Bahamas and the British Virgin Islands have taken steps to introduce the GloBE Rules.<sup>227</sup> While doing so, it is important that these countries ensure that the implementation of those rules is in line with OECD GloBE Model.<sup>228</sup> To prevent the race to the bottom in the region, CARICOM countries need to coordinate their tax incentive policies.

#### **8. Will There Be New Forms of Tax Competition Even After Countries Have Adopted the GloBE Rules?**

From the above, it can be summarized that although the global minimum tax may put a floor on tax competition and the race to the bottom of offering the lowest corporate tax rates, it does not eliminate tax competition, but it does set limitations on it. For MNEs that fall within the scope of the Rules, corporate tax competition will be limited but this will not be the case for out-of-scope MNEs.

The GloBE Rules do not distinguish between real tax competition, which involves competing for real economic activities, and virtual tax competition, which involves competing for paper profits that are shown in financial

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227 *Supra* n. 203.

228 *Id.*

records but have not yet been realized by a company.<sup>229</sup> In many countries, MNE entities (especially public listed entities) are subjected to various non-tax regulations to prevent accounting manipulation. However, there is still considerable scope for MNEs to use paper profits to make projections about their financial strength that could give them a competitive advantage that can attract countries to lure them to invest in their jurisdictions.<sup>230</sup>

Although the GloBE Rules only address corporate tax competition that relates to tax incentives granted to attract investment,<sup>231</sup> tax competition may take on different forms other than corporate tax incentives. Countries may still compete for corporate taxes by, for instance, making use of timing differences and not necessarily tax base competition.

Tax competition may also be perpetuated when governments choose to grant MNEs alternate government benefits (instead of tax incentives) such as cash subsidies and grants.<sup>232</sup> For

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229 S. Hebous, *Has Tax Competition Become Less Harmful?* (2021), available at [https://www.elibrary.imf.org/configurable/content/book\\$002f9781513511771\\$002fch006.xml?t:ac=book%24002f9781513511771%24002fch006.xml](https://www.elibrary.imf.org/configurable/content/book$002f9781513511771$002fch006.xml?t:ac=book%24002f9781513511771%24002fch006.xml) (accessed 31 July 2025).

230 H. Kean, *The Use of Profitability in Competition Analysis: Role and Reasoning*, available at <https://www.compcom.co.za/wp-content/uploads/2016/07/1.-The-Use-of-Profitability-in-Competition-Analysis-Role-and-Reasoning-Competition-Commission-Conference-submission-Kean.pdf> (accessed 31 July 2025).

231 A. Titus, *Global Minimum Tax: A Death Knell for African Country Tax Policies?* (2021) p. 11, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3975331](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3975331) (accessed 31 July 2025).

232 OECD, *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on Article 9.1 of the Global Anti-Base Erosion Model Rules* (2025) p. 6. Available at [Administrative Guidance on Article 9.1 of the Global Anti-Base Erosion Model Rules](#) (accessed 31 July 2025).

example in South Africa, when the government announced the introduction of the global minimum tax in the 2024 Budget speech, it also announced a new direct tax incentive for the manufacture of electric vehicles in South Africa.<sup>233</sup> In 2024, South Africa enacted the global minimum tax rules, in terms of which top-up tax would be imposed on MNEs using the IIR and the DMTT.<sup>234</sup> During the public consultations, the government realized the impact of the IIR top-up tax on the proposed direct tax incentive for the manufacture of electric vehicles as some of the corporate tax foregone in South Africa could be topped up in other countries like Germany and Japan that are home to global automaker MNEs like Ford, Volkswagen, BMW and Toyota (despite the SBIE). The President announced in November 2024 that alternative government benefits such as subsidies would be considered.<sup>235</sup> Acknowledging the negative impact of top-up tax on the new EV corporate tax incentive, the government went ahead and legislated an incentive for manufacturers of electric and hydrogen-powered vehicles in South Africa under section 12V of the Income Tax Act 58 of 1962, which provides a 150% tax deduction on qualifying investments, effective from 1 March 2026.<sup>236</sup> This is a clear

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233 Reuters, *South Africa Mulls Tax Rebates, Subsidies to Boost Local EV Industry* (17 October 2024), available at <https://www.reuters.com/world/africa/south-africa-mulls-tax-rebates-subsidies-boost-local-ev-industry-2024-10-17/> (accessed 5 Sept.2025).

234 Global Minimum Tax Act 46 of 2024.

235 Parliamentary Monitoring Group, *President Cyril Ramaphosa: 2024 State of the Nation Address* (8 Feb. 2024), available at <https://pmg.org.za/briefing/38302/> (accessed 31 July 2025).

236 National Economic and Labor Council, *SA Rolls out Tax Incentives to Boost Electric Vehicle Manufacturing by 2026*, available at <https://nedlac.org.za/wp-content/uploads/2024/08/SA-rolls-out-tax-incentives-to-boost-electric-vehicle-manufacturing-by-2026.pdf> (accessed 5 Sept. 2025).

indication that the government wants to compete through the corporate tax regime to attract foreign investment in electric and hydrogen-powered vehicles despite implementing global minimum tax. This suggests that the race to the bottom is not quite over.

Besides being lured by the lowest corporate tax rates, potential investors also consider the general features of a country's tax system, such as its tax base and other taxes (like VAT and Customs duties), the general tax mix of which could have more consequences for investors than corporate income tax incentives. Indeed, some have argued that a more effective way to address tax competition is to change the location of taxation, so that the incentive to reduce taxes to attract productive investment is removed, by focusing on destination-based taxes like VAT.<sup>237</sup>

It is also important to note that although tax considerations are important in making business decisions, tax is not the main driver for making investment decisions. MNEs may establish entities in certain jurisdictions for other economic reasons, not necessarily tax. Before large-scale investments are made, investors also consider a country's economic and institutional situation, such as the country's infrastructure,

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237 *Supra* n. 2.

presence of skilled workforce, uncertainties in the policy stance of governments, security and the country's political stability.<sup>238</sup> The tax incentives that countries offer cannot overcome the negative impact of these factors in some developing countries.

It should also be noted that corporate tax competition is just one form of state competition.<sup>239</sup> Countries compete with one another in a number of ways. They can, for instance, compete for economic activities by offering different mixes of security of ownership and access to resources.<sup>240</sup> Competition may also be about the efficiency of regulatory climate and the demands placed on investors.<sup>241</sup> With the increased emphasis placed on MNEs to ensure global tax transparency, coupled with the associated compliance costs and the importance of ensuring confidentiality of taxpayer information, competition among countries may become more about the quality and efficiency of their tax administrations and tax certainty in attracting corporate investors. Given the mobility of taxpayers in a globalized digital economy, corporate tax residence will become more a choice based on the efficiency of the tax administration.

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238 *Supra* n. 38, at p. 6.

239 *Supra* n. 4, at p. 29.

240 *Supra* n. 3, at p. 5.

241 *Id.*

Due to the above, some critics have suggested that instead of relying on a global minimum tax to address tax competition, a less complicated tax system could have been developed. Some have suggested the use of cashflow taxes, formulary apportionment systems, residual profit splits and models that divide the global economic profits of business enterprises among countries on the basis of a destination-based revenue key.<sup>242</sup> It is argued that the use of these methods would ensure that countries remain autonomous with regard to what the contribution of corporate income tax should be to the tax mix composition.<sup>243</sup>

## 9. Conclusions

It can be concluded that the GloBE Rules have the potential to relieve pressure on countries, particularly developing countries, from providing excessively generous but ill-targeted tax incentives that drive the race to the bottom and tax competition. And yet the investment could have been done without the tax incentive. Thus, GloBE Rules provide developing countries an opportunity to take stock of their incentives and repeal ineffective tax incentive regimes without foregoing tax revenue.<sup>244</sup>

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242 M. de Wilde, *On the Future of Business Income Taxation in Europe*, 12 *World Tax J.* 1 (2020), *Journal Articles & Opinion Pieces IBFD*.

243 *Supra* n. 145.

244 *Supra* n. 94, at p. 47.

However, the GloBE Rules have several provisions that collectively reduce their effectiveness to reduce tax competition. The design of the rules with regard to the tax base on which the ETR is calculated, combined with the relatively low global minimum rate of 15%, still allows for considerable tax competition between countries for in-scope MNEs and tax competition will continue for out-of-scope MNEs.

The effectiveness of the rules in reducing tax competition will also depend upon how they are implemented in each country. Countries may have to balance their tax policies with regard to the impact of the GloBE Rules on their tax systems and the need to preserve their tax incentives to attract foreign investments.