

Louvain School of Management

**From the OECD's Pillar Two to the
Global Minimum Tax Directive**
Origins, Ambitions, and Shortcomings

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Introduction

In the last ten years, the top 1% of the income distribution gained 74 times more wealth than the bottom 50%. (Christensen et al, 2023) While the combined inflationary effects of the global pandemic and the Russian invasion of Ukraine hit the most vulnerable: a 2022 Oxfam report demonstrated that more than 260 million additional people could be pushed into extreme poverty. This put increased inequalities under the spotlight as one of the megatrends our societies face and will continue to face in the 21st century. (EC, 2023; Milotay, 2022) Along with a wealth tax, multinational enterprises (MNE) taxation has become a hot topic to put fiscal justice in the service of a more equal world. (Chancel et al, 2022) The COVID-19 crisis revealed the limits of some health systems and public infrastructures illustrating an underfunding of the welfare state in many countries, while at the same time, governments were financially supporting multinational enterprises (MNE). The latter if they do not use tax avoidance practices or worse still, tax evasion, they face effective tax rates that remain relatively low. (Lafitte et al, 2020; Turner, 2020) This accentuated again the civil society's call for a fairer tax system to sustain a strong welfare state. (Oulhaj, 2022) This is the ambition of the Organization for Economic Cooperation and Development (OECD) when they introduced in 2016 its Inclusive Framework to tackle Base Erosion and Profit Shifting (BEPS) based on a Two Pillar solution.

This master thesis aims to better understand Pillar Two, the 15% global minimum corporate tax: its origins, its ambitions, and its shortcomings. Chapter 1 provides a general context and explains how harmful tax competition can be, especially for the ability of states to respect the social contract. Chapter 2 looks back at a century of attempts to regulate corporate behaviors from an international perspective and explains the political and economic context in which the BEPS project was born. Chapter 3 focuses on the European Directive, explaining the different tax rules established by Pillar Two and the constraints inherent to the latter. Finally, Chapter 4 addresses the question of the credibility of such a global agreement in the light of the influences that states can face.

Chapter 1- A Call for Tax Justice?

1.1 Multinationals Pay Relatively Less Taxes

Besides the direct consequences of a contracted supply, driving energy and food prices up due to the Russian invasion of Ukraine, multinational enterprises (MNEs) were also suspected to hold a significant role in this inflation crisis. Some studies showed that big companies reported increased input prices on consumers using the inflation crisis as a smokescreen to charge higher prices. (Christensen et al., 2023) Another example of the unequal position of the MNEs can be illustrated by the GAFAM which saw their sales increase by between 10 and 38%, respectively for Apple and Amazon while in 2018 they were facing in Europe an average effective tax rate (ETR) twice as less as “traditional companies”. (EC, 2018; Oulhaj, 2022)

The current international tax system plays an important role in the position of MNEs as big winners of the last crises, it gives big companies enough discretion to reduce their tax payments by allocating profits to low-tax countries, leaving domestic firms, especially small and medium enterprises, facing higher ETRs. (ICRICT, 2019a)

This is why this first section will focus on MNEs because it illustrates well the ambivalence of the enrichment of large groups compared to their contribution to the welfare state and their impact on redistribution schemes. Multinational corporations (MNCs) can minimize their tax payments through two main channels reinforcing each other: first, by using strategies to optimize, avoid, or completely opt out from any tax burden, usually with impunity (Elbra & Mikler, 2017) and second by benefiting from the competitive environment between states. The first one refers to the different loopholes of the international tax system that MNEs exploit from the intense competition among states while the second describes the long-lasting decline of corporate income tax (CIT) rates, the so-called race to the bottom. Both will have direct and indirect effects on the fiscal resources of countries. As Woodward (2018) concluded, the ability of MNCs to curtail the capacity of individual sovereign states to regulate and tax them represents a major concern.

1.1.1 Tax Avoidance and Profit Shifting

The distinction between tax avoidance and tax evasion is often based on legal criteria, nevertheless, Cobham & Jansky (2020) reviewed in their book, a more complex definition of both concepts and insisted on the not-so-clear difference between the two categories. While tax avoidance is a complex concept remaining in a legal grey zone, tax evasion is not. The latter is a clear illegal way to escape from taxation. Corporate tax evasion refers to specific offshore tax abuses where non-residents can hide their identity and wealth from the rule of law thanks to financial secrecy. (TJN, 2023) This master thesis will focus on tax avoidance and its blurry legal line delimiting the playing field of MNEs.

Aggressive tax planning is part of the more general scheme of tax avoidance, it was defined by a Commission recommendation (2012) as the process through which an individual or a company will “take advantage of the technicalities of a tax system or a mismatch between two or more tax systems to reduce the tax liability.” Unctad (2022) qualified it as an unfair consequence of MNEs taking advantage of globalization and the extensive global value chain allowing them to have subdivisions all over the world. (Unctad, 2022)

Zucman (2015) described two strategies that MNEs are using to shift profit: intra-group loans and transfer pricing. As the first instrument consists of creating debt in branches located in high-tax countries and making profits appear in places like Luxembourg or Bermuda, where taxation remains low or nonexistent, transfer pricing will be preferred because of the ease of detecting intra-group loans. Transfer pricing refers to the technique that consists of shifting the profit from high-tax countries to low-tax countries using the pricing of intra-group transactions. It means they will manipulate transfer prices (prices at which branches buy their products from another branch of the same group) and make the sales appear at high prices in low-tax entities.

Faulkender et al. (2017) highlighted an additional practice of transferring intangible assets and intellectual property such as trademarks, patents, and algorithms produced/managed in high-tax countries to affiliates in low-tax jurisdictions, the latter will see their profits increase notably through royalties and interests.

Those three channels are also recognized by Cobham & Jansky (2020) as the main tools of profit shifting whose common characteristic remains the manipulation of prices for intra-group transactions. This explains why profits can appear in tax havens while losses are observed in the domestic country of the parent company. For example, in 2013, 18% of US profit was made in tax havens. (Zucman, 2015) Tørsløv et al. (2022) supported the same assumption and found that in tax havens, foreign firms were massively more profitable than local firms, shedding light on the misalignment between real economic activity and reported profits. This could result in situations where macro indicators are distorted, like the Irish GDP with its 12.5% corporate tax. (Zucman, 2015)

Tax avoidance is a large-scale dodging of tax obligations and has a massive impact as underlined by the Tax Justice Network in 2020: MNEs are responsible for a third of the global economic output, and almost half of the world exports. The gap between the amount of tax that would have been collected if the law was appropriately enforced and the amount collected given tax evasion, tax avoidance, and insolvency is called by Murphy (2019) the tax gap compliance. Garcia-Bernardo & Jansky (2021) estimated that \$1 trillion of profits were shifted to tax havens by MNEs in 2016. The impact in terms of tax revenue losses will be addressed in Section 1.2.2 but Tørsløv et al. (2022) gave an idea of the magnitude of profits shifted. They found that if profits were reallocated to their source countries,

domestic profits would increase by about 20% in high-tax countries of the EU, by 10% in the United States (US) and 5% in developing countries while it would fall by 55% in tax havens.

When talking about tax havens, we refer to a jurisdiction that deliberately creates legislation to ease transactions undertaken by non-residents of the country to avoid taxation and/ or regulations by providing a legal veil of secrecy to protect the users. (Palan et al., 2010) According to TJN (2020), \$556 billion of MNEs profits are shifted into the axis of tax avoidance which refers to the following tax havens: UK Spider's Web (UK and Overseas Territories and Crown Dependencies), the Netherlands, Luxembourg, and Switzerland. Making the axis of avoidance responsible for more than half of the tax losses suffered by countries taking into account corporate tax abuses and individual tax evasion.

Some solutions have been implemented to counter manipulative strategies such as the arm-length standard, whose purpose is to regulate transfer pricing. It is used to measure intra-group transactions as it would have been two independent entities, using market prices as a reference. Nevertheless, the allocation of profits is still not aligned with the economic activity producing the profits. The arm-length principle remains difficult to implement as it is complex to determine the correct market price. (Zucman, 2015) This principle also showed limits when it comes to the digital economy, where prices may not be determined in the same way as in the traditional economy. (Oulhaj, 2022)

The fact that those abusive practices exist leads many to think that income distribution is probably skewed and inequalities are then undermined, especially if we take into account the importance of tax evasion. (Betz & Wein, 2023)

1.1.2 Tax Competition

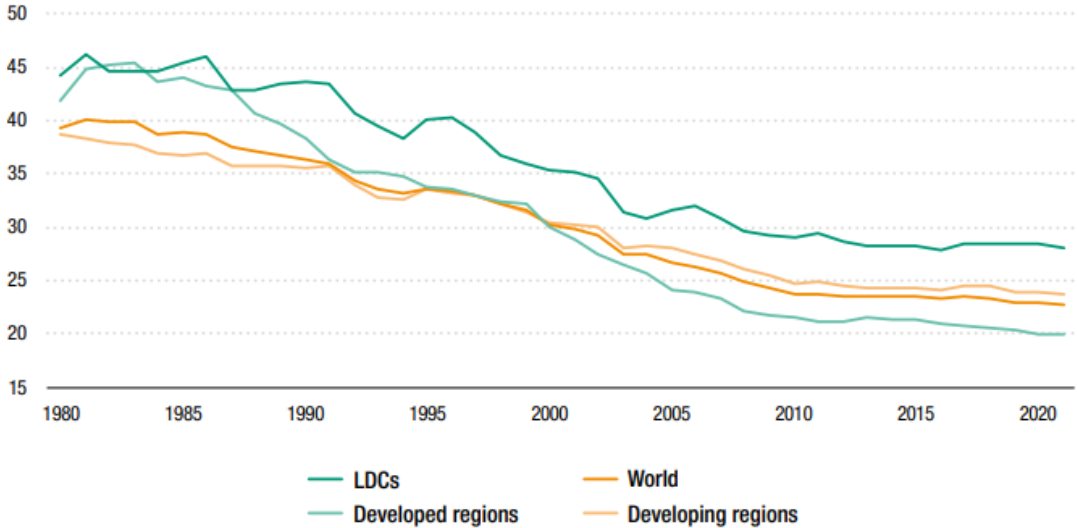
Kiekenbeld (2004) gave a clear definition of tax competition as a situation where a country is incentivized to improve its relative competition position compared to other countries “by reducing the tax burden on businesses and individuals to retain, gain or regain mobile economic activities and the corresponding tax base, whether at the expense of other countries or otherwise”. In a context where globalization allows countries to play on the international stage, they are becoming more and more vulnerable to foreign direct investment (FDI) mobility. Attracting FDI is one of the main factors that explains competition between states and the race to the bottom. (Abbas et al., 2012; Unctad, 2022)

Over the past three decades, a clear worldwide tendency has been drawn: statutory corporate income tax (CIT) has fallen. The latter can be defined as the taxation levied by the governments on business profits. The reduction of CIT is one of the most used instruments to attract FDI, particularly in developed countries. (Unctad, 2022) It has been shown that the location of MNEs highly depends on the average tax rate. (Devereux et al., 2008) In 2022, the worldwide average is around 25% corporate tax rate in both the developed and developing world even though the intensity of the decline occurred mainly in developed countries. (Unctad, 2022) There were 16 jurisdictions without general corporate income tax

including the most popular tax havens such as Bermuda, the Cayman Islands, and the British Virgin Islands, the majority of the top 20 highest statutory income rates (STRs) on corporate income were located in Africa. (Enache, 2022) The OECD countries saw their average CIT decrease from 47.5% in 1980 to 22.9% in 2022. (Bray, 2023)

We can see in Figure 1 this declining trend from the 80s with a steeper slope for developed regions. Europe was the region which has experienced the largest reduction, in 2021 they had a regional average of 19.1%. (Unctad, 2022) Whether this trend is keeping going is unsure: some OECD countries are planning to keep decreasing their STR such as Austria while the United Kingdom (UK) amended its CIT from 19% to 25% in 2023. (Enache, 2022)

Figure 1- Statutory CIT rates (%), regional and world averages, 1980-2021



Source: UNCTAD, based on Tax Foundation.

The same tendency is observed if we look at effective tax rates (ETRs). While STRs for corporate income measure the marginal tax paid on an additional unit of income in the absence of other provisions in the tax code that represent the rate imposed by law (OECD, 2022), ETRs take into account instruments used by states to lower the real tax paid by enterprises. Common tax breaks include loopholes, deductions, exemptions, credits, and preferential rates. Even if sometimes ETR and STR can be equal, on average the ETR is lower. (PGPF, 2022) According to Bachas et al. (2021), the global effective average corporate tax rate fell from almost 30% in the 60s to about 25% in 1980 and 18% in 2018. Unctad (2022) found a global average ETR of 19% by excluding jurisdictions with a 0% rate. In the European Union (EU), between 2011 and 2015, the ETR for corporate income was at the level of 14% while the legal theoretical rate stood at 23%. (Jansky, 2019) The decline is less dramatic than the fall in STRs, and one possible explanation highlighted by the authors is the parallel decrease in interest rates. Firms were thus deducting a more and more restricted amount from their tax base. The difference

between STRs and ETRs is called by Murphy (2019) the tax gap policy as it results from a government decision. The fact that ETRs are lower than STRs illustrates the diversity of tools that governments can implement to enter into the tax competition, not only relying on the statutory corporate income tax rate but also on other tax incentives to support businesses.

The rationale behind the competition is that even if a higher CIT rate could raise tax revenue, it is more likely to negatively hurt the fiscal stance through a reduction of the tax base. (Unctad, 2022) Keuschnigg (2009) also highlighted the ambiguous impact on the total fiscal stance by taking into account the business losses and the potential triggers it will cause such as losses in wage tax revenue and an increase in the cost of social spending, which could result in a growing pressure on the welfare state. In the EU, reducing the CIT is thus widespread either for smaller countries which are desperate to attract FDI or for larger countries trying to limit a capital drain. (Cugusi, 2022)

When a country decides unilaterally to offer reduced rates to attract inward profit shifting, this hurts other countries, which are left with a smaller tax base. This means that limiting the downward race could benefit every country if they decide to coordinate their tax policies. As in a Prisoners 'Dilemma game, they could all gain from coordination. (Devereux, 2023) The financial crisis of 2008-2009 represented that coordinated momentum for countries as it resulted in a slowing down of the race to the bottom since then. (Hakelberg & Rixen, 2021)

1.2 A Regressive Tax System?

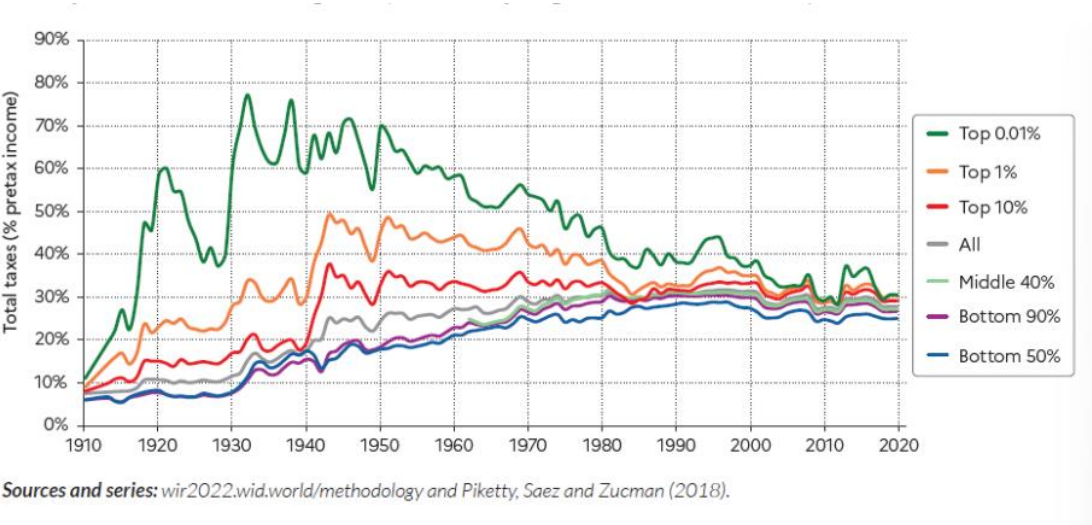
In the first section, we saw that MNEs are paying increasingly less tax given the fact that they use the globalized economy to choose where they want to pay tax or shift their profits to tax havens where they do not pay tax at all and that they benefit from a long-lasting decline of their CIT.

The main consequence of that phenomenon is that it leaves governments with two options if they want to deal with decreasing fiscal revenues: they can either cut back on public spending or they can compensate for that loss by shifting the tax burden towards more regressive taxes such as value-added tax (VAT). (Byanyima, 2019) The second option towards indirect taxes allows governments to tax less mobile capital due to the habits and inertia of private consumption (Aristovnik et al., 2022)

Labor has become increasingly more politically difficult to tax as it can discourage work and lead to an important wealth impact for households. (Aristovnik et al., 2022) Another reason to turn away from an increased labor tax is the aging society and the expected decreasing working-age population which will not be reliable enough to compensate for corporate taxation loss. Taking into account that the EU is already heavily relying on labor taxation. (Petropoulos et al., 2019) The latter accounts for more than half of all tax revenues in the EU in a given year. (EC, 2023)

We can see in Figure 2 from the World Inequality Report of 2020 that, unlike CIT, individual taxes increased for the bottom 50% of the income distribution while the graph depicts a convergent tendency with a decreased taxation burden for the highest income groups, which illustrates well the fact that the tax system is becoming less and less progressive. A tax is progressive when it applies higher rates to higher levels of income. This resulted in over the past 40 years, the rich paying less tax compared to the middle or working class as a share of their income in some countries like France and the UK. (Piketty & Saez, 2007; Chancel et al., 2022) This also explains the increasing public pressure for the introduction of a wealth tax in many European countries. (EC, 2023)

Figure 2- Total taxes paid by income group in the US between 1910 and 2020



Source: Chancel, L., Piketty, T., Saez, E., Zucman, G. et al. World Inequality Report 2022, World Inequality Lab wir2022.wid.world. Figure 8.1. p. 148.

The progression of a more regressive tax system can be explained by an overall international promotion of a certain “tax consensus”, notably by the International Monetary Fund (IMF). Cobham (2019) denounced the increasing institutional pressure towards less progressive tax policies such as the elimination of trade taxes, the introduction and expansion of VAT, and the erosion of direct taxes on income and profits. The author also emphasized the role of the lobbying of multinationals and the biggest audit firms: the Big Four (Deloitte, EY, KPMG, PwC). This rise of neoliberal policies and institutions can be considered as explaining factors in the growth of inequality over the past half-century. (Hearson & Tucker, 2021) Diamond & Saez (2011) explained how a progressive tax system can shape the fairness perception of taxpayers. This also explains the surge for more tax justice as tax systems are getting more and more regressive.

The decline of CIT rates also has a direct impact on progressivity given the fact that corporate profits tend to be concentrated at the top of the income distribution. (Chancel et al., 2022) Incorporation is becoming increasingly attractive for the wealthy allowing them to shift their income from a personal

income tax burden to a corporate income tax. (Saez & Zucman, 2019) This is why governments remain careful to limit the gap between top-income tax and corporate tax. The decrease in the personal income tax (PIT) for top earners could be partly explained by the downward pressure of the CIT, which can be considered as the indirect effect of CIT decreasing rates on progressivity. (IMF, 2017; Gerber et al., 2018) As stated by Zucman (2014) taxing corporations must be a requirement to tax the wealthy: PIT rises with the rate of the alternative.

Both CIT and PIT are direct taxes and are considered to have an important impact in reducing inequalities. (Dianov et al., 2022) The World Bank (2022) also stated that direct taxes and transfers are the main channels for redistribution, especially in developed countries. On another hand, indirect taxes such as VAT are associated with more inequality and are regressive, especially in rich economies.

1.3 Weakening of the Welfare State

As Byanyima (2019) emphasized, the important role played by governments in succumbing to corporate pressure and creating more regressive tax systems has led to the intensification of existing inequalities. Putting the social contract in jeopardy. She followed by affirming the important role of “taxation as the most dignified, reliable, and accountable way of ensuring the funding of human rights fulfillment for all”. A well-functioning tax system will determine whether or not the state will be able to support public funding and social support sustainably and fairly, to fulfill its duty to its community. (EC, 2023) The World Bank (2022) also supported the major role of fiscal policy as a tool for governments to influence income distribution and implement the social contract.

1.3.1 Definition and Role

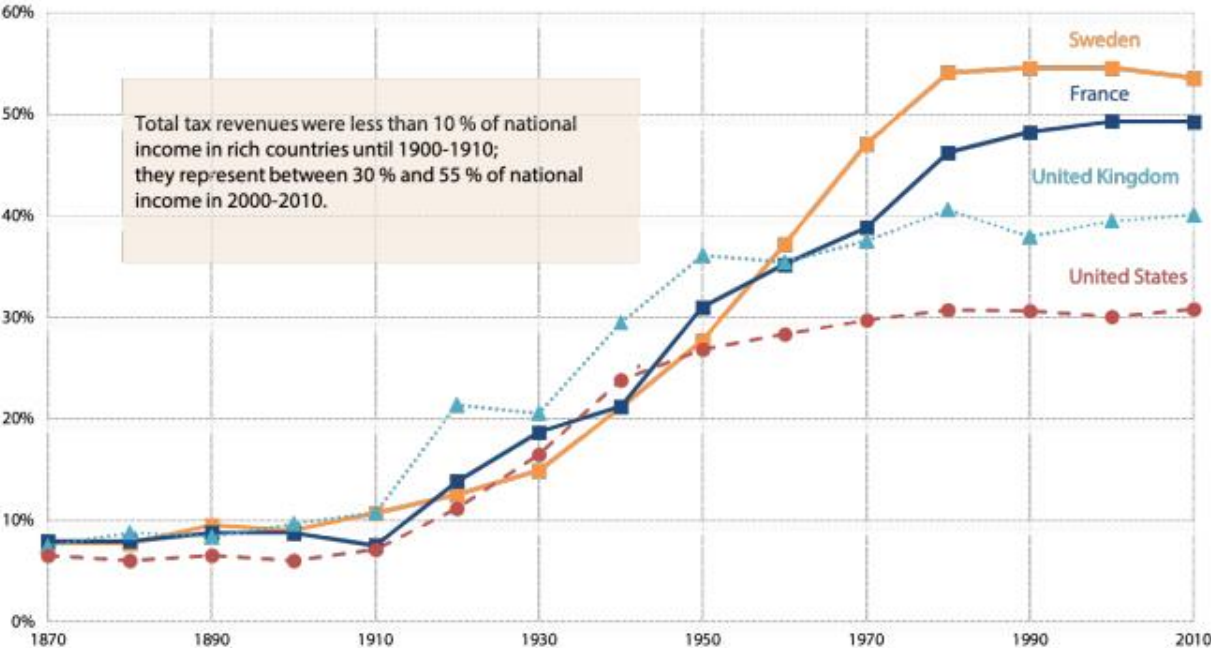
The welfare state refers to an important place of citizens’ well-being in a government’s decisions. As well as the existence of social protection against market dynamics and outcomes. (Kunißen, 2022) When talking about a strong welfare state, this work refers to a state having a well-developed and well-functioning social system and providing qualitative public services.

The welfare state’s peak occurred during the so-called social revolution in the 20th century when tax systems were getting more and more progressive. The development of the strong social state contributed to and benefited from the golden age of growth, observed in the West between 1950 and 1980. (Piketty, 2020: Piketty, 2022) Over the past 40 years, public wealth dropped, impoverishing governments while countries were getting richer: the share of wealth held by public actors is close to zero or negative while it accounted typically for 15 to 30% of total wealth in the 80s. (Chancel et al., 2022) As public wealth also includes the public debt, the booming of the latter continued to worsen that tendency. The effect of increasing debt even before the pandemic resulted in a convergent tendency towards austerity policies in the EU since 2010, even though the degree of intensity varied across countries. The increasing

pressure on tax revenue shortage could trigger a new step back of the welfare state after its moment of glory during the pandemic. (Murphy, 2019)

In Figure 3, we can see the booming of tax revenue in parallel to the development of the welfare state in the 20th century and stagnation since the 90s. Betz & Wein (2023) confirmed the step back of the welfare state since the mid-1990s with a decreasing redistribution effect and a reduction of state transfers. In 2021, tax revenue including social contributions represented 41.7% of the EU’s GDP and it accounted for almost 90% of the total revenue of states. (EC, 2023) The fact that governments are relying importantly on tax resources strengthens the accountability of taxation. (Prichard et al., 2018)

Figure 3- Tax revenues in selected rich countries (% of national income), 1870-2010



Source: Piketty (2014), The capital in the 21st century

The redistributive function of both the welfare state and taxation is an important feature of the reduction of inequalities, notably through taxes and transfers redistribution. As the effects that such tools have on inequalities have been globally accepted in the literature, Saez & Zuman (2019) noted that tax systems in Western countries have become less redistributive than in the Bretton Woods era. Moreover, the OECD (2011) underlined the responsibility of the weakening of the welfare state in the aftermath of the 2008 financial crisis as a major factor in the rising inequalities in disposable income in the 70s alongside globalization, technological change, and demographic change. The pandemic highlighted the key role of governments in limiting the impact of the crisis. (Clark et al., 2020; WB, 2022)

As the welfare state tries to respond to its economic and social reality, Betz & Wein (2023) argued that state activity would have to increase while the impact of megatrends is becoming visible, leaving states with important economic, demographic, digital, and environmental challenges. The latter is expected to

deeply impact the ability of current tax systems to generate enough revenue. (EC, 2023) Especially in the EU where the welfare states are very comprehensive and require significant funding. (Unctad, 2022)

1.3.2 Revenue Losses

In a post-Covid-19 crisis, where most governments increased their public debt, the consequences of both corporate tax avoidance and increasing downward pressure on CIT rates, leave them with a small room of maneuver to ensure the financial viability of their welfare states. (Keuschnigg, 2009)

It should be noted that even though CIT rates decreased, CIT revenue did not necessarily follow the same trend, Betz & Wein (2023) explained it through the widening of the tax base as a compensation effect.

Several studies tried to measure the scale of the phenomenon using different methods. No real consensus on the method has been identified in the literature yet as stated by the Fiscalis Tax Gap Projects which emphasized the still ongoing developing stage of the study field. The CIT revenue loss is defined as the additional amount of tax collected that source countries would gain if their profits were reallocated back there, in other words, if profit shifting did not exist. This corresponds to the direct effect of profit shifting and price manipulations from MNEs. A common observation is that in absolute terms, the revenue loss is bigger for high-income countries compared to low-income countries but if we look at losses about GDP, the lower-income countries are the most hit. (Cobham, 2019; TJN, 2020; Cobham & Janský, 2020) To focus on the EU, Member States lose on average 18% of their CIT revenue while the worldwide average stands at a 10% reduction. (Tørsløv et al., 2022) To illustrate the incidence of tax havens on the welfare state, the TJN (2023) estimated that high-income countries suffered from a loss of 9.3% of their public health budgets while it represents a loss of more than half of the public health budget of lower-income countries.

Direct losses have been estimated as rising from the misalignment between the location of profits and the location of productive economic activity. (TJN, 2020) Tørsløv et al. (2018) estimated a global corporate tax revenue loss of \$200 billion relying on 2015 data, while Garcia-Bernardo & Janský (2021) found a loss in the same range between USD 200-300 billion for the year 2016. The same magnitude was calculated by the Tax Justice Network (2020), which also outlined the prominent role of MNEs' profit shifting compared to individual tax abuses. Other studies globally confirmed that annual revenue losses due to aggressive corporate-tax planning range between \$90 and \$280 billion. (Clausing, 2016; Cobham & Janský, 2018; Janský & Palanský, 2019)

The indirect losses, as defined by TJN (2023), are the spillover costs and refer to the governments' reduction of CIT rates (both STR and ETR) to counter the direct losses of corporate tax abuse and keep attracting FDI. These losses were estimated as being at least three times larger than direct ones. (Crivelli et al., 2016) Other studies suggested an even greater scale: Cobham & Janský (2018) estimated indirect

losses to be in a range of 4-6 times larger, Garcia-Bernardo et al. (2021) gave a 2-15 range. Overall, the TJN (2020) found a combined loss of \$980 billion.

This section helped to understand the scale of tax abuses performed by MNEs, far from being marginal, the economic phenomenon has not always been that important. Some authors showed that it was a much smaller concern in the 90s and that profit shifting might not be an inevitable feature of the global economy. (Cobham & Janský, 2019; Tørsløv et al., 2018)

Chapter 2 - A Historical Overview of International Corporate Tax Regulation

As Ylonen (2017) underlined, some oblivion phenomenon happening through this later century of international initiatives in tax matters usually points out the OECD's 1998 Harmful Tax Competition report as the cornerstone in corporate tax regulation, under shadowing previous attempts, notably by the United Nations. This section aims to provide a broader historical and political context of the major developments during the 20th and 21st centuries, to understand the rebirth of the BEPS project in 2021 and its Two Pillar solution as a groundbreaking multilateral tax agreement. A review of the history of international tax governance will therefore facilitate the understanding of the evolution of drivers towards international tax reforms.

The achievement of international tax agreements in its complicated form usually tends to promote "weak common denominator standards" but as the scale of tax avoidance grew, it has become a source of international cooperation episodes. (Eccleston & Woodward 2014; Woodward, 2018)

2.1 Early Attempts at International Tax Cooperation (1920-1945)

After the First World War and the establishment of the League of Nations (usually referred to as the predecessor of the United Nations), economic liberalism was used as a prospect for peace, under the assumption that spreading wealth by removing trade barriers and investment obstacles would enhance economic ties between nations. (Woodward, 2018) The first collective initiatives were then focused on the problem of double taxation and the necessary arbitrage when both home and host states claim the right to tax. (Christensen & Hearson, 2019)

In 1923, four economists, appointed by the League of Nations Financial Committee, following the demands of the International Chamber of Commerce (ICC), detailed in a report the main principles of international business taxation. (Rixen, 2010)

1. The allocation of taxing rights between the source country (where the real economic activity is located also known as the host country) and the residence country (where the person/company is inhabited also known as the home country).
2. The assumption of independent entities within one single economic unit and the use of the arm's length principle to price these intra-group transactions, commonly called unitary taxation.
3. The negotiations of bilateral treaties to focus on avoiding double taxation.

In the post-war period, Palan et al. (2010) identified a new phase in the development of tax havens, with Switzerland assuming a prominent role. This development can be seen as a logical progression from the incorporation laws established in the late 19th century by some countries such as the United States (Delaware, New Jersey), Switzerland (Zug), and the United Kingdom.

After the Second World War, the influence of Keynesianism was still strong as it remembered the emergence of the welfare state as a response to the recession following the 1929 stock market crash. The post-crisis period saw the extension of the state's power notably in allocating public resources towards the military economy, known as "military Keynesianism". (Defraigne, 2013) Consequently, the post-WWII era was defined by an embedded liberalism, reaching its zenith in 1944 at the Bretton Woods Conference. At this pivotal moment, a gold exchange standard was established with a fixed exchange rate between the US dollar and other currencies, aiming to reinstate stability. (Helleiner, 1994) This followed Mundel's impossible trinity theory (1963) stating that a fixed exchange rate, free capital flow, and sovereign monetary policy cannot be achieved all three at the same time, only two of them. To afford the states' greater discretion to implement more interventionist policies and thereby safeguard the welfare state, the priority was accorded to keeping sovereignty over monetary and budgetary policies. (Defraigne, 2013) Following the aftermath of the creation of an increasingly more regulated environment, the birth of the Euromarket in London became an alternative for investors to access transnational markets currencies outside their domestic market. (Helleiner, 1994) The author also underlined the role of the UK and the US in tolerating their existence.

Following the Second World War, the principal multilateral forum for the discussion of international tax issues was transferred from the League of Nations to the Organization for Economic Co-operation and Development (OECD). From the mid-50s to the early 60s, the OECD's Committee on Fiscal Affairs (CFA) was in charge of consolidating prior versions of model convention. (Rixen, 2010) In contrast to the Keynesian mainstream of the early post-WWI period, the OECD was advocating for more laissez-faire economic policies. (Williams, 2008)

2.2 The Rise of Tax Havens (60s-70s)

As Woodward (2018) underlined, if the premises of international corporate tax regimes were established in the interwar period, the core would become increasingly institutionalized in the second half of the 20th century. Rixen (2010) analyzed it as a shift from dealing with the double taxation problem to the issue of under-taxation.

In 1963, the responsibility of establishing a multilateral agreement on double taxation (sponsored by the ICC) was superseded by the OECD, a forum where the US economy is a dominant member. This decision aligned with the concern of the US Treasury (under the Kennedy administration) to deal with their globalized MNEs escaping their tax liabilities at home and abroad. This process led to the creation of the OECD Model Tax Convention in 1963 as a baseline model for the negotiation of bilateral tax treaties, composed of the previously mentioned principles developed during the interwar period. (Woodward, 2018)

The most significant development during this period was the exponential growth of multinational corporations (MNCs). While there were only a few hundred MNCs in existence following the Second World War, by the early 1970s, Hood & Young (1979) had identified over 9,000. Their structures became also more complex as they extended to the manufacturing and services sectors. They became globally integrated entities with centralized decision-making power over subsidiaries. Moreover, the growing reliance on global capital markets with intangible assets represented a shift in strategy compared to an initial focus on foreign trade and portfolio investments. (Woodward, 2018)

Furthermore, the technological progress in communication and transportation did not only accelerate the trade volume of MNEs but it also facilitated the access to tax havens. (Palan et al., 2010) While in the 1960s, the gains in productivity were fueling the wages' growth without reducing the firm's profits, in the 1970s, the social policies' pressures on wages intensified, creating a misalignment between wages and productivity. (Defraigne, 2013) As the private investment's profits were slowing down, new alternatives for better profitability started to emerge. Fueled by the slowing down of the economy, the rejection of Keynesianism grew with the emergence of new movements such as monetarism (Friedman), anti-Keynesianism, and Hayekism. All promoted a limited involvement of the state in the economy under the priority of the freedom of markets. (Helleiner, 1994; Defraigne, 2013) The 1970s were marked by the end of the Bretton Woods system, first by the US and the UK, resulting in a failed attempt to regulate the capitalist system and establishing *de facto* the international mobility of capital. (Helleiner, 1994; Defraigne, 2013)

The opportunity was then taken by some jurisdictions to specialize in offshore centers (OFCs) by offering attractive fiscal reliefs for non-residents. Palan et al. (2010) identified it as "the beginning of tax havens' golden age". Park (1982) underlined the different types of tax havens: capital offshore centers refer to the financial hubs of New York, and London, while emerging banking centers include smaller jurisdictions like the Bahamas, Singapore, or Bahrein. The decolonization process is also pointed out as an explaining factor in the rise of tax havens with the new entrants to the tax haven game. Nevertheless, the major drivers were the Euromarkets and the "laissez-faire" policy of the Bank of England and the British banks. (Palan et al., 2010) Under the neoliberal ideas, the phenomenon is not considered harmful, due to its virtual form without any impact on real investment. On the contrary, tax havens represented a means to limit the expansionist tendencies of governments. The mainstream thinking is therefore promoting international tax competition and fueling the race to the bottom. (Palan et al., 2010) However, the authors find it more appropriate to call it a race to the minimal in regards to the fact that other factors, besides regulation laws, play a role in defining an investment location.

Tax havens can offer tax residency without requiring the physical relocation of people or business functions to allow highly mobile capital to exploit the loopholes of the international tax system. (Christensen & Hearson, 2019) We can cite the famously known "double Irish with a Dutch sandwich"

tax avoidance technique that refers to the shift of profits between Irish and Dutch subsidiaries. (Clyne, 1977) These mechanisms of tax planning promoted by consulting companies like the Big Four were tacitly allowed by the home countries of the MNEs, to strengthen their competitive position by minimizing their costs. This phenomenon of “sovereignty commercialization” mainly refers to developed countries, given the fact that they disproportionately benefit from this taxing rights allocation. (Rixen, 2008; Zucman, 2015)

2.3 Globalization and Race to the Bottom (1980s-1990s)

After the failure of maintaining the Bretton Woods system and capital controls, the shift from a more restrictive financial order due to the post-1929 market crash, to more liberal policies rose in the 1980s as illustrated by the arrival in power of the liberal leaders, Thatcher and Reagan. The liberalized economic model was also promoted by institutions like the IMF through the so-called Washington Consensus. (Williamson, 1990) Therefore, entering an era of lower taxation rates. (Helleiner, 1994)

The fall in corporate tax rates, a result of the tax competition among states, holds the interwar tax consensus as responsible, the latter states the primacy of the assumption of separate entities for multinational taxation. In practice, this means a MNE can only be taxed in a country where it generates profits with economic substance if it meets a certain significant presence threshold, determined by the concept of permanent establishment (PE). Under that threshold, no tax liabilities were imposed by the host country. (Gelepithis & Hearson, 2022) A growing disconnection between the international corporate tax regime and the reality faced by MNEs intensified the downward pressure on effective corporate tax rates. (OECD, 1998)

Growing concerns were made about the revenue losses incurred by countries as a consequence of the hidden wealth in OFCs leaving space for new initiatives towards more international tax transparency and reforms of “outdated” principles. (Woodward, 2018) As illustrated by the optimistic dawn of the OECD’s Harmful Tax Competition (HTC) initiatives, under the impulse of G7 economies in 1996. The objective of this agreement has to be understood under the light of the neoliberalism context in which reregulation was seen as the solution to market distortion by creating a level playing field. (Palan et al., 2010) Three years later, the agreement had stalled due to resistance to the primacy of international agreements over the fiscal sovereignty of states. (Webb, 2004; Eden & Kudrle, 2005; Sharman, 2006) Nevertheless, the analysis presented in the OECD Report on Harmful Tax Competition (OECD, 1998) was considered as a turning point in the fight against the problems of evasion and avoidance. This led to a growing public awareness around the topic, especially the detrimental effects of globalization in generating a system of highly mobile income. This report aimed to point out the role played by tax havens and countries offering preferential tax regimes (PTRs) and the need to foster global coordination at the scale of the global nature of the problem. (Picciotto, 2022) As both tax havens and PTRs seek to

attract international investment, the first one does not meet transparency standards and usually offers low or no tax rates while the second uses tax inducement as a competitive advantage. (Woodward, 2018)

Despite the initial ambitious revisions of the international tax system, the states' collaboration resulted in a very modest change of the existing rules, with most of them considered too small to be implemented by countries. (Cockfield, 2005) Another outcome of the HTC project is the choice of the "name and shame" method to dress a list of jurisdictions not complying with the standards. Regardless of the choice of the OECD to denounce abusive behaviors through a "name and shame" list of jurisdictions, many accused the organization of double standards by not including countries like Luxembourg and Switzerland in that tax havens list or any other OECD members. In addition to these critics, the tax planning industry and pro-market lobbies supported the dismantling of the legitimacy of the OECD. (Webb, 2004)

Even though the HTC initiative was backed up by the G7, the election of President George W. Bush and its change in the US policy favored unilateral measures over multilateral ones. This resulted from an ideology change towards the primacy of national sovereignty on tax matters. (Webb, 2004) The sovereignty narrative was similarly used by small island states to resist the OECD's attempts at reforms. (Sharman, 2006)

2.4 Response to the Financial Crisis and the Beginnings of the BEPS Initiatives (2000s-2010s)

The promotion of the Celtic Tiger and its 12.5% corporate tax rate as an example of success in embracing the deregulation race by institutions like the IMF, the World Bank (WB), and the European Commission (EC), helped to reinforce the risk of social dumping with the flexible and cheap labor force. The Irish case lays down how an important dependency on FDI can turn out to be a dangerous strategy, especially in an environment increasingly competitive with the 2004 enlargement. (Defraigne, 2013) The author also observed the same pattern in other East-central European countries.

After the failure of the HTC initiative with the withdrawal of the US in 2001 (US Department of the Treasury, 2001), the tackle of corporate tax avoidance lost strike force, leaving the OECD endorsing large-scale tax competition by allowing companies to separate legal and physical locations in their investments. (OECD, 2001) The principles of this project resurrected in 2009 as the financial crisis shed light on the consequences of highly mobile capital investments and the lack of regulation of abusive practices. As stated by many, the financial crisis of 2008 was a political momentum behind the reform of the international tax regime and renewed engagement in the fight against tax avoidance. (Eccleston, 2013; Graetz, 2016; Pogge & Mehta, 2016; Christensen & Hearson, 2019) "While tax havens did not create the financial crisis, they were intimately involved in many of the complex structures at its roots". (Christensen & Hearson, 2019)

Picciotto (2022) associated this decade with rapid policy changes due to the new political conjecture characterized by three main factors: the rise of publicity given to tax avoidance issues, the need for the OECD to come up with a proposal more connected to booming profit volumes of large multinationals and the growing room given to developing countries to speak out their tax mobilization challenges. Christensen & Hearson (2019) also added the return to more interventionism and austerity measures as direct consequences of the financial crisis.

2.4.1 Rise of Public Awareness Around Tax Avoidance

The financial crisis shed light on the unfairness of the system as Picciotto (2022) stated “the public saw that wealthy financiers and bankers were able to appropriate fortunes, while public funds were used to rescue the financial sector from its regulatory failures and frauds”.

The global turn towards austerity measures as supported by international organizations (IMF and WB) pushed forward the era of fiscal consolidation. It refers to the new end goal of debt reduction leading to more public spending cuts and was a response to the explosion of the State's debt to boost the economy and fund post-crisis counter-cyclical policies. (Defraigne, 2013) As Streeck emphasized, “the debtors’ obligations overrode the political obligations to citizens”. This also explained the lack of major progress after the financial crisis in financial regulation of capital mobility focusing on blaming the public budget’s mismanagement. (Leaman, 2013)

As austerity measures were implemented as a response to the crisis, the taxation of less mobile income became an attractive alternative for governments. The latter particularly affects the lower parts of the income distribution (as seen in Chapter 1). The cumulative effect of the overall context, in conjunction with the different tax scandals, served to exacerbate public indignation and the global clamor for a fairer tax system. The leaked stories such as the 2014 Lux Leaks, the 2016 Panama Papers, and the 2017 Paradise Papers highlighted the ability of the wealthy to exploit the loopholes of the global economy. (Woodward, 2018)

Moving away from the state’s vulnerability/taxpayers responsibility narrative, previously portrayed in the media, the indirect role of the states in facilitating tax avoidance has been made visible through these leaks. (Cobham, 2019) As Woodward (2017) quoted “The cats were sabotaging their mousetrap”, the role of states in creating corporate-friendly environments became a more visible phenomenon especially thanks to cases brought by the EC showing the complicity of Ireland, the Netherlands, and Luxembourg to facilitate tax avoidance by respectively Apple, Starbucks, and Fiat. (Alston & Reisch, 2019)

This context of post-crisis austerity politics led to populism surges with an increasing thematization of tax by leading politicians (Leaman & Waris, 2013): as Grinberg (2017) demonstrated, it could partly explain the political push to initiate later the BEPS project but at the same time, keeping it as a shallow reform to “placate public anger with political responses to perceived problems”. Palan et al. (2010)

confirmed this by qualifying the attitude of governments as laxist. Nonetheless, if the politicization of tax avoidance issues is a by-product of the politics of austerity, it remains a depletion of state budgets, hence contributing to feeding the inequalities. (Christensen & Hearson, 2019)

While the absence of a strong non-governmental sector did not help to avoid the failure of the HTC project, the early 21st century is marked by the growth in influence of NGOs notably under the lead of the Tax Justice Network (TJN), created in 2002. (Houlder, 2004; Woodward, 2018) Meinzer (2019) corroborated that the role held by transnational civil society activists in policy debate helped to develop a “counter expertise”. The TJN’s work can be cited in their fight against financial secrecy with the Financial Secrecy Index, the first indicator based on objective verifiable variables compared to the previous blacklists produced by the OECD. (Cobham, 2019) Another example is the Publish What You Pay campaign gathering several civil society groups that also supported country-by-country reporting (CBCR). (Palan et al., 2010) The creation of role bodies such as the Independent Commission for the Reform of International Corporate Taxation (ICRICT) played a key role in advocating for unitary taxation. (Meinzer, 2019) Leaman & Waris (2013) added that the contemporary weaker weight of Keynesian welfarism within the OECD was certainly a hindrance to the spreading of tax justice among the international tax policy agenda.

2.4.2 The Digitalization of the Economy

The global economy is being reshaped by the digitalization process and the fourth industrial revolution, creating a new type of globalization. (Schwab, 2017) The latter is quickly pointed out as a major change in the economy, shedding light on the incompatibility with the established taxing norms and its effect on accentuating distributional conflict, notably between the EU and the US. The fracture created with the physical economy blurs as tax competition turns virtual with the growing weight of intangible assets. The result is the enormous untaxed profits of digital firms held in OFCs. (Christensen & Hearson, 2019) One explaining factor is the application of a limited definition of PE, giving primacy to the residence country if the threshold is not met. (Gelepithis & Hearson, 2022; Leaman & Waris, 2013) The OECD (2005) went further and stated that digitalization not only allows MNEs to make enormous profits thanks to their consumer market access but essentially “profit from” the activities of their consumers. Christensen and Hearson (2019) underlined that the public concerns were mainly focused on the fairness side of transnational corporations having huge consumer bases in countries where they pay low levels of taxation.

2.4.3 The Return of State

With the outbreak of the financial crisis, the state had to step up with different policy responses to face the consequences of the latter. The literature observed a return to state interventionism through fiscal

stimulus packages or state regulations for example. This rising power of states against the abuses of capital mobility and tax competition led to an increasing number of unilateral actions.

This can be illustrated with the example of the USA and its unilateral tax policy strategy which introduced in 2010 the FATCA (Foreign Account Tax Compliance Act). The act required that foreign financial institutions report on the worldwide accounts held by US taxpayers. (Picciotto, 2022) This created *de facto* an international minimum standard for the exchange of tax information (Christensen & Hearson, 2019) and unlocked a path for the OECD to negotiate reciprocal exchange agreements, turning a unilateral measure into a broader multilateral framework. The result is, in 2014, the Common Reporting Standards (CRS) developed by the OECD to organize the exchange of financial information between countries without prior suspicions of fraud by the tax administrations. (Chancel et al., 2022) Eccleston (2013) attributed this success (compared to the failure of the HTC project) to the credibility of the threats by individual states.

The sovereignty-constraining developments can also be observed outside the area of bank secrecy with unilateral anti-avoidance measures to deal with the digitalization of the economy. (Christensen & Hearson, 2018) Nevertheless, the role of the state remained more prominent in the financial secrecy as it can be considered a direct provider of that type of environment. (Cobham, 2019) The author showed the difference with tax avoidance, as the responsibility usually falls on the taxpayers.

2.4.4 The “Base Erosion and Profit Shifting” Project

The G20 mandated the OECD to investigate the different gaps and mismatches created by the international tax system such as the arm’s length principle. This is how the Base Erosion and Profit Shifting project was initiated in 2013, as the first opportunity to re-examine the international tax rules designed during the interwar period by the League of Nations. (Woodward, 2018)

The 2015 OECD’s final report with its 15 actions plan pointed out the digitalization of the economy as an accelerator of the problems linked to the current tax rules. (Unctad, 2022) While it also reaffirmed the shift in the international tax consensus and the acknowledgment of the limits of the current taxing rights allocation, the report remained dismissive of the need to move away from significant physical presence. (Gelepithis & Hearson, 2022) Other authors agreed, qualifying the BEPS project as a “patch-up of existing rules and principles”. (Avi-Yonah & Xu, 2016) The BEPS Monitoring Group (2015) qualified the rules as “even more complex and in many cases contradictory”. Cobham (2019) also underlined the difficulty of dealing with individual interests to keep competitive measures, like the UK with its patent box mechanism. The BEPS Action Plan is therefore deemed to have fallen short of expectations in terms of its intended role as a transformative reform.

Nevertheless, the overall BEPS project did achieve one major step towards taxation transparency by establishing CBCR. The latter can be considered as an extension to the voluntary initiatives born in the

early 2000s in the extractive industry, notably by the EU. (EP, 2016) Christensen (2019) underlined the important role of the EU tax policy networks, especially the TJN in bringing this idea to the international level after a first rejection by the OECD. This time, it gave tax administrations access in every sector to each MNE's (as well as its affiliate's) financial information such as their income, assets, employees, tax paid and due in each country. (Ylonen, 2017; Picciotto, 2022)

At the EU level, the EC introduced in 2016 an Anti-Tax Avoidance Package to transpose BEPS actions into EU law but also to complement them. This included an amendment of the former CBCR system (the Administrative Cooperation Directive) and a proposal for an Anti-Tax Avoidance Directive (ATAD) introducing Controlled Foreign Company (CFC) rules. (EP, 2016) This rule allows the parent company's member state the right to tax some profits shifted in a foreign company or a PE located in a low-tax jurisdiction. The EC decided to relaunch the Common Consolidated Corporate Tax Base (CCCTB) proposal, which follows the same logic as the formulary apportionment system applied at the state level in the US. This would mean a shift away from the concept of separate entities within one single corporation. (Picciotto, 2022)

2.4.5 The Emergence of Developing Countries in Global Tax Governance

The fact that BEPS is a joint initiative with non-OECD members highlighted the new central role of the G20, rather than the G7 in tax policy and the role of the crash in leaving room for key emerging countries to enter discussions at the global governance table. (Picciotto, 2022) This was illustrated by the creation in 2016 of the OECD/G20 Inclusive Framework (IF) on BEPS allowing any country willing to work with the aforementioned organizations on developing standards on BEPS issues and reviewing their implementation, under the condition to accept the OECD 15 Actions Plan. The adoption by the OECD of alternatives to give non-members some participation rights results from a global power shift towards large emerging markets. (Christensen & Hearson, 2019) While it partly answered the legitimacy concerns about the OECD and its "Global North experts' groups" as leaders of the international tax debate (Rixen, 2011), it also undermined the probability of achieving an effective and timely reform. (Clifton & Diaz-Fuentes, 2011) Although this increased visibility on developing countries tax issues, their concrete contribution to the processes remained limited. (ATAF, 2019)

2.5 Adoption of BEPS 2.0 Pillar Two

The BEPS project took a new direction in January 2019 under a more favorable political context with on one hand the international tax rules reforms of the US, the Tax Cuts and Jobs Act, signed under Trump's administration in 2017, and on the other hand, the continuous pressure created by the multiplication of unilateral measures by states. (Picciotto, 2022) The latter phenomenon illustrated the "return of the state" observed by Christensen and Hearson (2019).

The OECD consultation paper (2019) included different reforms to address the new challenges linked to the digitalization of the economy: a new definition of taxable presence, new allocation rules, and a global anti-base erosion tax (the global minimum tax for MNEs). The main striking difference compared to the 2013 proposal was that it would go “beyond the limitations on taxing rights determined by reference to a physical presence” and reform the standards of taxing rights allocation. (OECD, 2019)

After balancing the G24 interests to implement an apportionment proposal and the US willingness to make it a safe harbor, the IF on BEPS agreed in January 2020 to continue with a revised proposal to achieve an agreement within the year. (G24, 2019) They agreed on the fact that international tax norms should “allocate a portion of the residual profit of the in-scope business to market/user jurisdictions, even in the absence of a physical presence”. (OECD, 2020)

The step forward was helped by the withdrawal of the French tax on the US digital service companies (GAFAM) under the condition of finding a solution at the OECD level. (Picciotto, 2022) Gelepithis & Hearson (2022) similarly highlighted the role of other Digital Services Taxes already enforced in a dozen countries in the international full embracement of the new taxing norm linking corporate tax liabilities with consumer market presence. The European Commission’s 3% digital tax proposal can be cited as an example of countries' determination towards this direction. (EC, 2018) Even though this proposal did not pass given the unanimity requirement in the EU Council for tax matters, it is an example of growing demands for fundamental reform. (Gelepithis & Hearson, 2022) Therefore, pushing this idea of fairer multinational taxation in the digital age at the front of the international tax policy agenda.

In October 2021, the IF on BEPS endorsed the OECD Two-Pillar solution. To date, 147 jurisdictions have joined this new international negotiation of the BEPS initiative, BEPS 2.0. (OECD, 2024b)

The Pillar One focuses on unitary taxation and taxing rights allocation following the nexus rule and is considered a major achievement in corporate taxation. (Ylonen, 2017) To follow the OECD/G20 international tax agreement in regards to Pillar One, the European Commission proposed a directive in 2023, the Business in Europe: Framework for Taxation (BEFIT) to compute the tax bases of company groups across the EU. (EC, 2023) While its adoption is not yet confirmed, Pillar One will not be the focus of this master’s thesis, the latter will mainly discuss the global minimum of 15% corporate tax rate, also known as the OECD Pillar Two.

As stated in the Global Tax Evasion Report of 2024, Pillar Two represents a landmark agreement as it is the first time a coordinated floor tax rate on profits is decided within an international agreement. (Chancel et al., 2022; Devereux, 2023) The importance of the agreement can also be illustrated by the estimated revenues it is going to raise, about \$155-192 billion a year in additional corporate tax revenue, as stated by the OECD. (Hugger et al., 2024) Nevertheless, the “single tax principle” can be traced back to the double tax avoidance initiatives of the League of Nations during the late 1920s. (Avi-Yonah, 2021) The Pillar can be viewed as an extension of the CFC rules but applied to a broader tax base

(Laffitte et al., 2020), it also includes two safety nets to ensure that multinational companies pay at least 15% of profits in tax, even if the agreement does not reach a 100% coverage, the existence of a critical mass is sufficient. While Devereux (2023) warned about the administration costs and complexity of the international tax system by adopting Pillar Two, all countries that have signed the 2021 declaration have not already enacted the 15% minimum. The EU has started this year with the implementation of the EU directive on the global minimum for corporate taxation along with other countries. (Alstadsæter et al., 2023) The different details relative to the European directive will be discussed in the next chapter.

2.6 A Century of International Corporate Regulation

The first institution to lead the international tax debate is the League of Nations to avoid double taxation. They established in 1923 the current tax principles like unitary taxation, bilateral tax treaties, and the allocation of taxing rights.

The Great Depression exerted a significant impact on the adoption of capital controls during the Bretton Woods Conference. This was due to post-war Keynesian influence, which sought to construct a robust welfare state by mitigating the risk of capital flight, which could otherwise impede its development. However, Nixon's abandonment of the fixed exchange rate system paved the way for the advent of global liberalization processes.

The OECD took over in the 1960s-1970s as the principal forum for international tax discussions. The exponential growth of MNCs and the rise of tax havens were accelerating the practices of aggressive tax planning. The rules fixed in the early 20s created an environment propitious to multinationals and the proliferation of bilateral treaties did not manage to create rules consistency but allowed them to treaty shopping. (Woodward, 2018) The disconnection between the tax regimes and the practical commercial realities grew and left space for MNEs to exploit these loopholes.

The neoliberal shift in the 1980s brought liberal leaders at the head of the US and the UK, both promoting lower tax rates. Even though the detrimental effects of the tax competition were made visible through the OECD report in 1998, there remained very modest changes to the international tax systems.

While earlier rounds of negotiation resulted in incremental reforms, the recognition of the global problem of tax competition notably due to its detrimental effects made visible with the 2008-2009 financial crisis, and the position of major economies like the US, Germany, France, and Japan in favor of the BEPS project helped to achieve the OECD's international tax agreement in 2021. The fact that Pillar Two includes an enforcement mechanism also increases the incentives for governments to join the agreement. This is why Clausing (2023) qualifies it as the momentum of multilateralism in the tax debate.

Even though the position of the OECD has weakened throughout the years, as it has been challenged these last few years by strong unilateral measures, able to shape the international tax agenda as well as the growing weight of the EU in setting the tax standards, BEPS 2.0 can be considered the first global reform of the international tax rules designed by the League of Nations. (Christensen, 2019)

Chapter 3 – The European Directive and its Limitations

3.1 Background of the European Directive 2022/2523

To make the international standard, adopted by the Inclusive Framework in October 2021, legally binding and turning it into hard law, it has to be implemented by countries in their domestic legal order. (EP, 2016) That is why, the European Commission introduced a proposal for a Directive to ensure a minimum level of effective taxation of large multinational groups in December 2021. (EC, 2021) The proposal included a common set of rules applying to multinational enterprises and large purely domestic groups that have a combined annual turnover of at least €750 million based on consolidated financial statements. (EP, 2024)

As it follows the requested special legislative procedure for indirect tax harmonization (Article 113 TFEU), the Council is the only legislator while it is expected from the European Parliament (EP) and the Economic and Social Committee to provide a consultative opinion. In May 2022, the EP approved the EC's proposal and added a review clause, giving the responsibility to the EC to review the directive five years after its implementation. (EP, 2024)

The Council finally adopted the minimum tax directive in December 2022, after a bargaining game with notably Hungary and Poland to accelerate the delivery of money from EU funds (EU cohesion funds and pandemic recovery plan). (Allenbach-Ammann, 2022) This adoption made the EU a leader in implementing the international agreement on the 15% corporate tax rate. The Council also recalled the equal commitment to the OECD's Pillar One, which would be later enforced under the BEFIT proposal. (EP, 2024)

The rules came into effect on 1 January 2024. Still, Article 50 of the Directive provides that some Members States can delay, up to six consecutive fiscal years, the introduction of the Inclusive Income Rule (IIR) and the Undertaxed Payment Rule (UTPR) when the latter has no more than 12 ultimate parent entities (UPEs) within the directive's scope. This allows a deviation from the proposed implementation timeline, i.e., 31/12/2023 for the IIR and 31/12/2024 for the UTPR.

The EU minimum directive is part of the "business taxation for the 21st century" tax agenda, adopted in May 2021 to achieve a fairer and simpler taxation. The EU global minimum directive aims to support the overall development of fiscal transparency in the EU.

3.2 Functioning of the Global Minimum Tax Rate

Following the proposal for a Council Directive (2021) and the so-called Directive (2022), this section aims to provide an overall understanding of how Pillar Two is going to be implemented by reviewing

its main mechanisms to ensure that multinational groups in the Union are subjected to a global minimum of taxation.

3.2.1 Scope of the Directive

The scope of the directive is limited to constituent entities (CEs) of multinational enterprises groups and large-scale domestic groups that have combined annual group turnover of at least €750 million based on consolidated financial statements in at least two of the previous four fiscal years. The Commission's proposal added to the OECD's BEPS Pillar Two application scope, the large domestic groups to ensure compliance with the freedom of establishment, with respect to the principle of proportionality. (Council, 2021)

As defined by Article 3, a MNE group refers to any group that includes at least one entity or permanent establishment outside the UPE's jurisdiction.

Some entities are excluded from the application scope such as government entities, international organizations, non-profit organizations, pensions funds, and, when UPE, investment and real estate investment vehicles.

Tax authorities will be able to compute tax deficits through the information transmitted under the CBCR, also known as the BEPS Action 13. (Baraké et al., 2021) Nevertheless, countries are free to apply the IIR to multinationals headquartered in their country even if they do not reach the €750 million threshold. (Avi-Yonah, 2021)

There also exists a *de minimis* exclusion rule (Article 30) for jurisdictions where MNEs have less than an average of €10 million of qualifying revenue of all constituent entities in one jurisdiction and an average qualifying income/loss of less than €1 million. This means all CEs filling these criteria do not elect for any top-up tax.

3.2.2 Pillar Two in Practice

The mechanisms of Pillar Two can be divided into three steps, first, the computation of the effective tax rate, second, if the ETR is under the minimum tax rate (MTR), then a top-up tax will be calculated and the last step determines what jurisdiction is going to collect that complementary tax.

The European directive establishes domestic global anti-base erosion (GloBE) rules: an IIR and an UTPR to reach the 15% tax rate. The treaty-based rule, Subject To Tax Rule (STTR)¹, will be addressed in bilateral treaties. This rule allows source jurisdictions to collect an additional tax on certain payments

¹ As the Council Directive 2022/2523 does not address this rule, this work will not develop that aspect.

subject to a tax rate under a certain minimum tax rate. It is designed to protect developing countries' tax bases. (Oulhaj, 2022)

GloBE rules have the status of a common approach that describes a general tax-policy direction. (EP, 2016) This also means all members of the IF are not required to adopt the rules but if they choose to, then they have to implement and administer the rules consistently, following the model rules and the guidance agreed for Pillar Two. In addition, Member States agreed to the application of the GloBE rules applied by others. (Avi-Yonah, 2021)

A) Effective Tax Rate Calculation

The ETR is the ratio of the sum of adjusted covered taxes to the sum of net qualifying income of all constituent entities in that jurisdiction. (Article 26 of the Directive)

B) Top-up Tax Calculation

The jurisdiction's ETR is compared to the MTR of 15%, if it is under, then a top-up tax will be applied at a rate equal to the difference between the floor level and the ETR. The top-up tax will be applied to the excess profits (EP), based on a carved-out percentage.

A substance carve-out (Article 28) based on a formula is provided to decrease the tax base on which the 15% tax rate will be applied. This is called the Substance-Based Income Exclusion (SBIE) and has been included to promote real economic activities, as the SBIE excludes 5% of the carrying value of tangible assets and payroll. (Oulhaj, 2022) The SBIE rule will start to be implemented according to a transition period which starts with a 10% carve-out for payroll costs and one 8% mark-up for tangible assets and will follow a yearly decreasing rate. (Article 48)

C) Top-up Tax Collection

The minimum tax rate of 15% can be achieved through three different levies: the Qualified Domestic Top-up Tax (QDMTT), the Income Inclusive Rule (IIR), or the Undertaxed Profits Rule (UTPR).

The Qualified Domestic Minimum Top-up Tax, as laid down in Article 11, is the first rule to apply when it comes to defining which country is going to administer and collect the additional top-up tax, as a sign of the preservation of Member States sovereignty. This rule allows the jurisdiction where the profits are declared and undertaxed, to raise directly a domestic tax on the local CEs without any fiscal revenue to be transferred. This gives the right to the jurisdiction itself to capture the revenues from the top-up tax.

If the host country of the subsidiary does not raise that tax, then the Income Inclusion Rule can enter in force, therefore the country where the top of the ownership chain, usually the UPE², is located, can apply that additional tax on a portion of the profits made in the low-tax country.

And the last option is if neither the host country in which the profit is generated nor the home country of the UPE, is collecting the additional tax, then the UnderTaxed Profits Rule acts as a backstop (Article 12 of the Directive). The UTPR can be applied if the top-up tax has not been fully captured, for example, if the UPE is located outside the EU, somewhere the IIR was not applied. It means other CEs of the group located in the EU can be subject to an adjustment equal to the UTPR top-up tax or a denial of deduction.

3.3 Limitations of the Global Minimum Directive

3.3.1 A Disappointing 15% Rate?

Some expected that the initial ambition of President Biden to establish a 21% minimum tax rate would have opened a path to reach that level in the OECD's agreement. For example, a 25% minimum tax rate without any carve-out would have generated four times more global revenue, €479 billion per year, compared to €128 billion and it would have increased corporate tax revenue within the EU by more than half of what was collected in 2021. (Baraké et al., 2021b)

As the current average effective tax rate is higher than 15%, 20.2% in 2023 among 90 jurisdictions, according to OECD (2024a) (while the STR stands at 21.2%), many authors such as Stiglitz (2021) are concerned about the global minimum turning into a maximum rate. (ICRICT, 2019b) The latest announcement in Trump's campaign on his promise to cut the corporate tax rate to 15% shows how those concerns are not dull. This measure would result in billions of USD in tax cuts for the biggest digital companies. (Watson & York, 2024) The inequality economist, Lucas Chancel added during the Davos Forum 2024, that 15% corporate taxation is much lower than what small and medium businesses pay around the world.

Devereux et al. (2023) demonstrated that the real global minimum level is zero corporation tax and 15% of excess profit (EP) via the QDMTT rule. This possible substitution between corporate tax rates and the QDMTTs would result in lower ETRs.

Another loophole to the floor level is government grants and Qualified Refundable Tax Credits (QRTCs), as they allow countries to compete below the MTR. Both instruments are included in the GloBE income, the denominator of the ETR. (Devereux et al., 2022) Alstadsaeter et al. (2023) added

² This master's thesis will use the simplification of the UPE as the taxpayer but in some cases, if the UPE is also based in a low tax jurisdiction, then a POPE or a IPE could be subject to the top-up tax. For further information see Proposal for a COUNCIL DIRECTIVE (2021/0433(CNS)).

that even if non-refundable tax credits are outside the scope of the ETR calculation, they can be easily restructured into a “refundable” one. The same authors also underlined the multiplication of green tax credits after the enactment of the Inflation Reduction Act in the US in 2022, as a greenwashing practice.

However, as top-up taxes will be applied, the global minimum tax (GMT), is expected to shift to the right average ETRs distribution. The median before the introduction of Pillar Two is 16.7% while it is expected to increase to 19.2%, at the end of the SBIE transition phase. (Hugger et al., 2024) The OECD’s EIA (2020) found that ETRs are going to increase by 0.5 percentage points (pp). As the overall tax burden of MNEs increases, this will later affect their investment decisions. (Casella & Souillard, 2022) Using the FDI-level ETRs metric allows for the integration of profit-shifting practices by including the taxes levied on income shifted to OFCs, increasing the share of FDI taxes under 15%. Casella & Souillard (2022) found that when the average ETR faced by MNEs is 17%, the FDI-level ETR is 15%. Under that perspective, Unctad (2022) concluded that the proposed 15% might be more ambitious than it may seem, knowing that most tax rates are concentrated between 15-21%. This would mean an increase in corporate income tax liability for MNCs of 14% and an increase in the FDI-level ETRs of around 2 pp globally. The same authors concluded that the main channel is the reduction of profit shifting (increase of the tax base in non-haven countries) and not the introduction of top-up taxes in OFCs.

Generating more tax revenue and enhancing redistribution are important goals of corporate taxation, however, Avi-Yonah (2023) underlined the most important role of corporate taxation is to regulate corporate activities. The latter explains why the rate of 15% taxation was decided and not the level of the OECD’s average ETR. In the case of the United States, the difference between the domestic corporate tax of 21% and the global minimum gives to the Congress some room for maneuver to introduce deductions or credits to incentivize the corporate sector in its way. The same author expressed his deeper concern about the SBIE, enabling tax havens to offer low/zero ETRs by attracting real investments and jobs than on the level of the global minimum.

The 15% GMT represents then a trade-off between the pro-investment arguments and the ambitions of civil society towards a 25% tax rate. Nevertheless, taking into account FDI-level ETRs instead of ETRs allows a more optimistic perspective on the GMT. As the corporate tax rate remains an important tool of fiscal policies, it is not the only option to curb tax avoidance.

3.3.2 Ambitious but Ambiguous Impact?

While the OECD (2020) carried out an economic impact assessment (EIA) of the global minimum corporate income tax, the EC argued that it was not necessary to run a separate one. Nevertheless, a policy paper from liberal think tanks emphasized the importance of having a comprehensive impact

assessment of the effects of the directive while its scope of application is wider compared to the OECD's. (LFMI, 2024)

It is only recently that it has become easier to estimate the effects of the GMT due to the information opacity around the profits recorded in tax havens. Today's estimates usually rely on the CBCR published by the OECD or the foreign affiliate statistics, published by Eurostat. As it remains in its early development, those data sets still suffer from limitations. (Baraké et al., 2022) For example, in 2022, the OECD failed to publish it on time. (TJN, 2022)

Alstadsæter et al. (2023) simulated the amount of revenue generated if the GMT had been applied in 2023 by all countries and obtained a global result of \$220 billion. If we compare it to the revenue loss estimates displayed in Chapter 1, this amount only covers the direct losses of profit shifting, while the combined amount was estimated at \$980 billion. (TJN, 2020)

As the scope reduction of Pillar Two was also questioned, the Global Tax Evasion Report (2024) computed the gains lost from this decision, almost a 20% reduction for the first year. In addition to the limitation to the largest MNEs, the SBIE reduces the tax base. This mechanism allows profits to be taxed at an ETR under the global minimum rate, as long as they have sufficient genuine economic activity. (Baraké et al., 2022) Cobham (2021) highlighted the adoption of Pillar Two by reluctant countries like Ireland as the source of the carve-out concessions in the design of the BEPS 2.0 international agreement. Some authors believe that this scale of concessions is putting in jeopardy the essence of Pillar Two, which is tax harmonization to end tax competition. (Avi-Yonah & Kim, 2022)

Baraké et al. (2022) estimated that the EU would collect around €55 billion through the IIR under the long-run carve-outs and around €118 billion if the global minimum rate was settled at 21%. Because this measure will favor headquarters countries, western countries are expected to gain the most, especially the US with an estimated revenue of €58 billion. We can also cite other lower-tax jurisdictions that have become the headquarters country for many MNCs such as Ireland (€12 billion), Luxembourg (€6 b), or Switzerland (€3.5b).

When it comes to the subsidiary country tax collection through the QDMTT, low-tax jurisdictions that have attracted multinational affiliates will be the big winners. Tax haven countries like the Netherlands (€14 b), Luxembourg (€12.5 b) or Cayman Islands (€11b). However, Baraké et al. (2022) noted that it could be an overestimation as policy responses of tax havens could be otherwise than using the domestic top-up tax mechanism. Devereux et al. (2021) explained that in practice, it remains uncertain that QDMTTs are going to be implemented by host countries, as it also depends on implementation costs, the willingness of governments, or even their knowledge of the existence of a domestic top-up tax. (Baraké et al., 2022) Some countries are not expected to gain a lot from QDMTT since the majority of profits recorded there are taxed at a rate above the MTR. Which is the case for the US, China, France, Germany and Japan.

Concerning the domestic large-scale companies within the EU, the revenue effect is smaller, around €35 million. This is explained by the fact that the majority of corporations already face an average ETR of 25% and they are deeply impacted by the carve-out rule, which allows them to reduce their tax base by 22% in the long run. (Baraké et al., 2022)

As explained above, the OECD's (2020) EIA integrated into their computations the reduction of profit shifting intensity (through the FDI-level ETR metric). It follows the hypothesis that MNEs might have incentives to repatriate some of their profits to higher-tax jurisdictions, the latter would limit the amount of undertaxed corporate income, as it was illustrated earlier with the expected increase in ETRs. (Baraké et al., 2022) Hugger et al. (2024) found that revenues gained from the reduced profit shifting represent about one-third of the total revenue gain, \$155-192 billion. The other two-thirds will be generated through the QDMTT, IIR, and UTPR, depending on the implementation of each rule by jurisdictions.

Even though the EC (2023) remains confident in the capacity of Pillar Two to increase CIT-related tax revenues, some authors find that the overall effect could be more ambiguous. The GMT is expected to reduce the incentives of MNEs to shift their profits to low-tax jurisdictions given the fact that the rate differential will be reduced. The revenue impact of that remains uncertain as it means, on one hand, a higher share of MNEs will pay their tax where their profits originate, usually at rates higher than 15%. On the other hand, it means the revenue raised on shifted profit through IIR and UTPR will also be smaller. (Reitz, 2023) For example Bratta et al. (2021) showed that profits booked in a low-tax country would decrease by almost 6% if its tax rate increases by 1 percentage point. Johannesen (2021) emphasized the ambiguous effect on the welfare of non-haven countries of an overall increase in tax rates in tax havens. The balance between a loss of welfare through larger tax liabilities for MNEs which could result in a compression of private consumption and the positive impact that the narrowing of gap rates has on profit shifting and revenue raised. This could also lead to better allocation of capital, which would be driven by productive investments instead of low-rate attractiveness. (Hugger et al., 2024)

Some limitations can be mentioned about the different impact estimations. For example, Baraké et al. (2022) did not integrate in their computations, the behavioral responses of tax jurisdictions. Janeba & Schjelderup (2023) also suggested that governments could eventually enter a subsidy/tax credits competition, leaving MNEs as the big winners. This would allow low-tax jurisdictions to preserve their competitiveness. Even though the EU law provides limitations to discrimination practices through subsidies in the form of state aid rules (Article 92 TEU), the number of trade dispute cases where subsidies are used to attract market shares has risen over time. (Hoekman & Nelson, 2020) Cole (2024) confirmed the hypothesis of the creation of an alternative system to comply with Pillar Two and at the same time maintain attractiveness. For example, Switzerland chose to provide subsidies in response to the weakening of its tax comparative advantage. (Cobham, 2024) Cole (2024) warned against the danger of Goodhart's law stating that "when a measure becomes a target, it ceases to be a good measure". This

means aggressive tax planning practices could be used to manipulate the ETR and make that metric appear compliant without adhering to the spirit of the law. As an income tax rate is the result of the tax divided by the income, artificial increases in the denominator have an impact on ETRs. The economic reality remains the same, the positive revenue impacts for governments could be overstated.

Another point to consider is that the majority of these estimations are realized ex-ante, and remain predictions, some even before the adoption of the EU directive. Moreover, the complexity of the dynamics between the different BEPS measures makes it difficult to integrate them all in a model. (Janeba & Schjelderup, 2023) Most methodologies estimating the impact of Pillar Two rely on simplifications such as the absence of dynamic effect between Pillar One and Two, or the non-consideration of the *de minimis* exclusion rule, or else, the artificial reduction of ETRs through the double counting of intra-group dividends in CBCR. (Baraké et al., 2022) Nevertheless, it seems that a convergence in magnitude can be observed despite the methodological differences. (Alstadsæter et al., 2023)

3.3.3 A Bias Towards Developed Countries?

While the 2015 Addis Ababa Action Agenda reminded the importance of international tax cooperation being universal and reflecting the heterogeneity of needs and capacities across countries, Pillar Two is often criticized for being biased towards rich countries. (ICFD, 2015)

As the majority of MNE's headquarters are located in the Global North, the taxing rule allocation towards the home country/residence country favors OECD's members compared to developing countries. Cobham et al (2021) highlighted the fact that the IIR, as a central role of Pillar Two, reflects the OECD's viewpoint of favoring the residence countries rather than source countries. Another concern was raised by Devereux (2023) on the interaction between GLoBE rules and the existing Controlled Foreign Company (CFC) regime. This rule, introduced within the 2016 ATAD framework, allows a headquarters' country to raise a tax on the profits shifted to a low tax jurisdiction. If the headquarters country can raise a tax to the MTR, then the host country will not be able to apply a QDMTT. Both authors underlined the deprivation of taxing rights from host countries. This is perceived as unfair by the TJN, which demonstrated in their 2023 report that OECD countries were responsible for 70% of the corporate tax global losses.

Moreover, other authors showed reservations towards the OECD's legitimacy as the international forum for tax matters given its double standards regarding its members. Woodward (2018) explained how tax reforms were slowed down because of the consensus decision-making rule, and the weight of some powerful members, notably as contributors to the budget. Cobham (2024) added that the lack of transparency helps to build disconnection with Member States' accountability, allowing corporate lobbies to influence publicly announced measures. That explains why experts from the TJN and ICRICT

expect a correction to this rich country's bias with the current negotiations for an International Tax Convention at the United Nations level. A resolution drafted by the African Group and backed by the G77 was therefore adopted by consensus at the UN General Assembly in November 2022. (TJN, 2023) Shifting international tax governance to the UN is expected to lead to a more transparent and inclusive decision-making process, following the United Nations General Assembly (UNGA) rules which leave room for decisions to be adopted by majority voting, or super-majority (two third) for most important matters. (Cobham, 2024)

Chapter 4 - Questioning the credibility of an umpteenth international tax reform

Chapter 2 emphasized how past attempts at corporate tax reforms were, back then, considered groundbreaking but later showed incremental changes in international tax systems. Chapter 3 underlined how Pillar Two (and the EU Directive) were designed with many loopholes and the uncertain outcome of the GMT raises additional concerns about the real commitments of states to regulate the aggressive practices of corporations.

One can wonder how credible governments' promises are about the OECD BEPS project while, in April 2009, President Sarkozy announced the “end of bank secrecy and tax havens”, five years before the outbreak of the Lux Leaks. The scandal shed light on the complicity of EU Member States, shaking up the legitimacy of the Commission and its president. The newly elected President of the Commission, Jean-Claude Juncker, as the former Prime Minister of Luxembourg was considered by many as the mastermind behind the tax system of his country. (Roland & Römgens, 2022) The issue of credibility can therefore be viewed through the lens of the independence and autonomy of state apparatus, both internationally and domestically.

Hakelberg (2020) pointed out the role of the US hegemony in shaping the politics of international tax. The US state was pressured by its MNEs to maintain a certain status quo at the international level when the tax burdens of the latter were at risk. This resulted in the US, using its coercive power to guide the international tax policy agenda. For example, the American pressure was strong enough to make Austria and Luxembourg abandon their bank secrecy and share information through FATCA. Or else, when the European Commission was discussing a digital service tax for US big tech companies, the strong opposition of the US Treasury Secretary deeply influenced the withdrawal of German support, under the threat of increased taxation on German sales in the US. This failed attempt of the EC resulted in a compromise (notably by France) to achieve an international agreement at the OECD level, BEPS 2.0. The author underlined the close links between international taxation politics and global financial regulation, the latter usually being a multilateral adoption of the US regulatory model. (Helleiner, 2014) Woodward (2018) concluded that “the potential conflicts between states over the allocation of profits is an enduring threat to international tax cooperation”.

Looking at the tax haven blacklists of the OECD also raises legitimacy concerns, as well as a lack of credible sanctions due to a reliance on soft law to coerce listed nations to implement more regulation. In an IFC Review article, Emmenegger et al. (2019) discussed the credibility of the EU Tax haven blacklist, published in December 2017. The first flaw is Brussels's focus on offshore financial centers, leaving outside the scope of its onshore jurisdictions such as Ireland, Malta, Luxembourg, and the Netherlands. Moreover, the absence of the US (including the Delaware tax regime) on that list illustrates a certain “realpolitik to pick on small islands”. Nevertheless, for these island financial centers, lacking

diplomatic, economic, and/or military power, the credibility of the list stigma is real. Pragnell & Hendy (2019) see it as a form of protectionism and anti-competitive measure under the instrumentalization of unfair taxation. Even though the former EU Commissioner for Economic Affairs, Pierre Moscovici stated “There are no tax havens in the EU, but it would be absurd to deny that there aren’t aggressive tax planning practices”, it remains a certain Manichean vision of tax evasion in the EU. (Pérez-Cejuela, 2018) The European Parliament started to put pressure on the Council and the Commission to recognize Belgium, Cyprus, Malta, the Netherlands, Ireland, Hungary, and Luxembourg as tax havens. (Bowers, 2019) The EP also launched a resolution to provide a better EU list of tax havens, but the 2024 list is still composed of twelve non-EU countries. (EP, 2021) On the other hand, the EC’s work focused on investigations led by the DG Competition, to publicly denounce the complicity of national governments and tax authorities in large-scale tax avoidance cases, as we previously discussed. (Roland & Römgens, 2022) The authors underlined how the ability of these countries to block meaningful tax reforms in the EU Council given the unanimity rule for the harmonization of direct taxation (Article 113 TFEU), was therefore restricted.

This resulted in agreements enacted with concessions. The Greens (2017) published a report on how Luxembourg attempted to block the Saving tax Directive (automatic exchange of information on private savings income) and was given a concession of withholding tax deducted from interest earned in Luxembourg instead of automatic exchange. To cite the words of the former MEP, Petr Ježek, the lack of political will to tackle tax avoidance and evasion, profits to some Member States unevenly and unfairly. This is also what Hakelberg (2020) accused of being the cause of the weak bargaining position of the EU in providing credible threats, unlike the US. As the author concluded that the “EU remains a taker of global tax norms”, their latest developments both in hard and soft law demonstrated an opposite tendency since 2013, especially in terms of tax transparency and corporate taxation. (Roland, 2018) The combined efforts of the European Parliament, the Commission, and civil society helped to create enough cooperation which resulted in their embracement of a leadership position in implementing the OECD’s Pillar Two. (Roland & Römgens, 2022)

Another factor influencing the international corporate tax system is the phenomenon of revolving doors between the public and private sectors, creating a certain shared tax culture and therefore accentuating the influence of business power on the rules’ design. (TJN, 2024) Picciotto (2015) emphasized the presence of this phenomenon at the upper echelons of the OECD’s tax bureaucracy. For example, the current director of the OECD Centre for Tax Policy and Administration, Manal Corwin, is a former member of the KPMG’s board of Directors. (TJN, 2024) In addition, her indirect role in Microsoft’s tax avoidance scheme raised even more concerns. (Kiel, 2023) As for the EU, the Corporate Europe Observatory (2018) highlighted a certain bias in some advisory groups to the institutions towards the Big Four due to their direct/indirect presence. Their public opposition to the initial EC’s proposal of CBCR in 2016 as a pioneer initiative, showed the position of the Big Four in terms of transparency. As

this was part of a co-decision procedure, the EP had a pivotal role. The CEO (2018) concluded that a corporate lobbying offensive resulted in the EP introducing a loophole through the gate-out clause of secrecy of “commercially sensitive” data. Many NGOs shed light on the conflict of interest at stake here, as the Big Four’s mission is to advise MNEs to minimize their tax burden, it is questionable that they influence the design of the tax laws.

Even though the EU has shifted its tax policy towards fairer corporate taxation, these last decades, there remain doubts about the true motives of states to deal with corporate tax avoidance. As concessions were made, under the pressure of the US, the veto threat of some EU tax havens, and the direct and indirect influence of the private sector, the final product, as it stands, suffers from many loopholes, making the MNEs the big winners of the story. Does it come from the prevalence of multilateralism reflecting a tendency towards the weak common denominator, or is it a consequence of a lack of political will to keep endorsing populist measures and achieve a successful global agreement on paper? This question could be subjected to further investigation. However, in light of the evidence presented in this study, it is clear that growing skepticism surrounding the BEPS 2.0 reform are well-founded.

Conclusion

In contrast with the assertions of experts such as Ring (2010) at the beginning of the century, the achievement of an international tax agreement on global minimum tax, BEPS Pillar Two in 2021, demonstrates how countries have subordinated their national sovereignty over direct taxation to multilateralism. The success of this agreement is driven by several factors, including the individual interests of US multinationals, the rise of public anger around inequalities and the abusive practices of MNEs, and the need to strengthen the welfare state's resources to cope with the megatrends of the 21st century.

This master's thesis attempted to provide a broad analysis of the global minimum tax to better understand its suitability in being the solution to end base erosion and profit shifting.

The first chapter motivated the selection of this topic, as multinational corporations stand to gain the most from this tax-competitive environment. They benefit from the race to the bottom and the expertise of a growing tax planning industry. This explains how this situation can be perceived as imbalanced, as it directly impacts the resources of welfare states. The latter plays a pivotal role in redistributing resources and the implementation of the social contract. The second chapter looked at how the environment has been regulated over the past century. The disconnection between the paper rules and the economic reality was already highlighted in the Harmful Tax Competition Report in 1988, nevertheless, it resulted in very few changes to the international tax rules. The BEPS Two Pillar Solution agreed in 2021, was therefore considered as a true change towards the limit of the race to the bottom and unitary taxation. The third Chapter entered in the details of the Pillar Two mechanisms, by elaborating the different tax rules. It also emphasized the limitations of the solution, with a focus on the substance and not on the form. And the last chapter questioned the credibility of states, in the defence of their welfare state.

The GTE report (2024) concluded that tax evasion is not inevitable and can be curbed with international cooperation, as it demonstrated the impact of the automatic exchange of information on the decrease of hidden wealth in tax havens, and that high levels of corporate taxation were achieved in the past. The new setting of globalization and digitalization in a capitalist world makes it extremely complex to reverse the winning position of multinational corporations as the interests of the latter and the industry of tax planning benefit from a status quo.

As this report concludes that the first-ever floor level to corporate taxation is a ground-breaking change in the international tax systems, the many flaws and limitations addressed in the previous chapters show how a less optimistic perspective of Pillar Two can be developed. As the European Directive is still in its early stages, the impact of the latter in increasing public revenue and solving the tax compliance and policy gaps is anticipated to be further assessed. These economic impact assessments could open the path to closing some loopholes in Pillar Two's design. This is notably what is expected to be achieved

at the UN level. The implementation of Pillar One through the BEFIT directive will also be instrumental in achieving the goals of the European Commission to ensure a fairer corporate tax system.

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