

The Different Approaches of the OECD and the U.N. Regarding Global Tax Policies

Seowoo Jang

I. INTRODUCTION	306
II. BACKGROUND	309
A. <i>The Evolution of International Tax Policies</i>	309
B. <i>Importance of International Tax Policies</i>	310
C. <i>The Role of International Organizations</i>	311
III. THE CURRENT OECD'S GLOBAL TAX POLICIES	314
A. <i>Global Taxation, BEPS, & Cross-Border Tax Avoidance</i>	314
B. <i>Pillar One</i>	316
C. <i>Pillar Two</i>	317
IV. THE REASON BEHIND THE CALL FOR THE U.N.'S INVOLVEMENT IN GLOBAL TAXATION	318
V. THE U.N.'S CURRENT PLANS FOR IMPLEMENTING ITS OWN GLOBAL TAX POLICIES: THE THREE GENERAL APPROACHES	320
VI. THE DIFFERENT APPROACHES OF THE OECD AND THE U.N. TO THEIR GLOBAL TAX POLICIES	322
VII. CONCLUSION	323

I. INTRODUCTION

In the intricate terrain of global economics, the formulation of effective and equitable global tax policies poses an increasingly pressing challenge. This Note examines the distinct roles and strategies of two pivotal organizations: the Organisation for Economic Co-operation and Development (“OECD”) and the United Nations (“U.N.”). By exploring the historical contributions, current approaches, and evolving dynamics of global taxation employed by these organizations, a comprehensive understanding emerges regarding how these entities shape the trajectory of international fiscal frameworks.

In tracing the historical role of the OECD, the lack of agreement on guiding principles is examined.¹ Disagreements on said principles hindered the development of widely accepted policies, revealing the challenges inherent in international tax policy analysis.² This Note delves into the theoretical uncertainty surrounding global tax organizations by contemplating arguments on the necessity of a formal World Tax Organization beyond the OECD.³ Furthermore, it illuminates the OECD's role as an *informal* World Tax

¹ Ruth Mason, *The Transformation of International Tax*, 114 AM. J. INT'L L. 353, 355 (2020).

² *Id.*

³ *Id.*

Organization, serving as a platform that accommodates advanced industrial economies without imposing binding tax policies.⁴

Transitioning to exploring the current global tax policies of the OECD, this Note discusses global taxation and its relevance to multinational companies operating in multiple jurisdictions.⁵ Collaborative efforts of the OECD with Group of Twenty (“G20”) Member States to combat tax avoidance, through the Base Erosion and Profit Shifting (“BEPS”) project and Digital Services Tax (“DST”) proposals, are explored.⁶ The OECD Global Tax Deal, an agreement reached by over 130 countries to set a minimum global corporate tax rate, is also scrutinized.⁷ Specifics of OECD Pillar One and Pillar Two are outlined, detailing the strategies employed to extend taxing power and establish a global minimum tax.⁸

Shifting focus to the reasons behind the call for the U.N.’s involvement, disparities in the adoption of OECD guidance are examined.⁹ The uneven acceptance of guidelines across developed and developing countries are considered.¹⁰ Challenges in Pillar One and Pillar Two are outlined, addressing concerns from—and cautious approaches by—many countries.¹¹ Issues of procedure and participation in the Global Forum¹² are discussed through highlighting challenges faced by developing countries in international tax cooperation.¹³ Furthermore, this Note explores existing challenges in international tax cooperation by revealing the barriers to influencing decision-making that are faced by non-members of the OECD.¹⁴ The U.N.’s role in providing guidance is outlined by acknowledging the U.N.’s recognition of the need for guidance suitable for countries at different development levels.¹⁵ A

⁴ *Id.*

⁵ Christopher Ahn, *Taxing the Digital Giants: What the OECD Global Tax Deal Means for the U.S.*, FORDHAM J. CORP. FIN. L. (Oct. 8, 2024), <https://news.law.fordham.edu/jcfl/2024/10/08/taxing-the-digital-giants-what-the-oecd-global-tax-deal-means-for-the-u-s/> [<https://perma.cc/86DP-VEUJ>].

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ U.N. Secretary-General, *Promotion of Inclusive and Effective International Tax Cooperation at the United Nations*, ¶ 5, U.N. DOC. A/78/235 (Aug. 8, 2023).

¹⁰ *Id.*

¹¹ *Id.*

¹² The Global Forum refers to the Global Forum on Transparency and Exchange of Information for Tax Purposes, an initiative under the OECD. It serves as an international platform for tax cooperation, primarily focused on promoting transparency and combating tax evasion by facilitating the exchange of tax-related information between jurisdictions. The Global Forum includes both OECD and non-OECD countries, aiming to ensure that all nations, particularly developing ones, have the opportunity to participate in shaping global tax rules. *Putting an End to Offshore Tax Evasion*, OECD, <https://web-archiver.oecd.org/tax/transparency/index.htm> [<https://perma.cc/Y82B-Y9FS>] (last visited Feb. 26, 2025).

¹³ U.N. Secretary-General, *supra* note 9, ¶ 39.

¹⁴ *Id.* ¶ 47.

¹⁵ *Id.* ¶ 48.

proposal for enhancing the U.N.'s role is presented through suggesting ways to leverage the U.N.'s experience in multilateral agreements.¹⁶

Additionally, this Note explores the U.N.'s current plans for implementing its own global tax policies, by presenting the three general approaches under consideration.¹⁷ Option One, the Multilateral Convention on Tax, is discussed as a legally binding treaty that could potentially cover a wide range of tax issues.¹⁸ Option Two, the Framework Convention on International Tax Cooperation, is explored through highlighting its flexibility and ability to address various problems.¹⁹ Lastly, Option Three, the Framework for International Tax Cooperation, is outlined by focusing on its non-binding nature, flexibility, and potential for recommending binding agreements when needed.²⁰

The final section of this Note offers a thorough examination of the contrasting approaches adopted by the OECD and the U.N. in shaping their global tax policies. Specifically, it scrutinizes how the OECD and the U.N. tackle the challenges posed by multinational enterprises ("MNEs") in the realm of global taxation. The crux of their differing strategies lies in the instruments they employ for reforming and regulating taxation on a global scale.²¹ While the OECD opts for the use of legally binding mechanisms like Pillars One and Two, primarily targeting very large MNEs,²² the U.N. provides a spectrum of options, including non-binding coordination, to accommodate corporations of varying sizes.²³

The OECD's introduction of a global minimum tax through Pillar Two, aimed at MNEs with substantial revenues, stands in contrast to the U.N.'s approach, which does not explicitly emphasize a global minimum tax but offers alternative solutions.²⁴ When it comes to coordination efforts, the OECD emphasizes the importance of reallocation and restructuring to ensure a more equitable distribution of taxes.²⁵ In contrast, the U.N. presents options that

¹⁶ *Id.* ¶ 50.

¹⁷ *Id.* ¶ 52.

¹⁸ *Id.* ¶ 53–54.

¹⁹ U.N. Secretary-General, *supra* note 9, ¶ 55–57.

²⁰ *Id.* ¶ 58–59.

²¹ See, e.g., Grant Wardell-Johnson, *OECD's Pillar One and Pillar Two – A Question of Timing*, BLOOMBERG TAX, <https://news.bloombergtax.com/daily-tax-report-international/oecd-pillar-one-and-pillar-two-a-question-of-timing> [https://perma.cc/93C4-P8VL] (June 14, 2022, 2:00 AM); Lee Hadnum, *Interaction Between OECD Pillar 1 and Pillar 2*, OECDPILLARS, <https://oecdpillars.com/interaction-between-oecd-pillar-1-and-pillar-2/> [https://perma.cc/RHJ9-5FYM] (last visited Oct. 13, 2024); see generally *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*, OECD (Oct. 8, 2021), <https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf> [https://perma.cc/S4VH-F266] [hereinafter *Two-Pillar Solution Statement*].

²² Wardell-Johnson, *supra* note 21.

²³ U.N. Secretary-General, *supra* note 9, ¶ 53–59.

²⁴ *Id.*

²⁵ Wardell-Johnson, *supra* note 21.

range from legally binding commitments to non-binding coordination, reflecting a more flexible approach.²⁶ These disparities underscore the diverse perspectives and priorities of the OECD and U.N. in navigating the intricate landscape of international taxation.²⁷ Through a detailed exploration of these differences, this section aims to shed light on the fundamental variances in their methodologies, with particular emphasis on their use of legally binding rules and their attention to the needs of multinational corporations.

Ultimately, this Note seeks to unravel the intricacies of global tax policies and provide insights into how the OECD and U.N. contribute uniquely to shaping the future of international taxation.

II. BACKGROUND

The history of international tax policies is a journey that spans the entire 20th Century, made by evolving concepts, complexities, and the emergence of organizations such as the U.N. and the OECD. This section explores the evolution of international tax policies, their significance, and the roles played by international organizations in this realm.

A. *The Evolution of International Tax Policies*

In the 20th Century, the international tax system operated based on the interplay of source and residence concepts.²⁸ This system established connections between different domestic tax regimes through bilateral tax treaties' formation.²⁹ Corporate tax residency was typically determined by one of two factors: 1) the jurisdiction in which a company was legally incorporated; or 2) the location from which it was managed and controlled.³⁰ Importantly, states previously had the authority to tax nonresident corporations on income generated within their jurisdiction.³¹ To prevent double taxation between source and resident states, tax treaties and international customs regarding taxation were developed.³² The *OECD Model Tax Convention on Income and on Capital*³³—commonly referred to as the 'OECD Model Tax Treaty'—along with its "Commentary" and "Transfer Pricing Guidelines," has emerged as a significant force in setting global standards.³⁴

²⁶ U.N. Secretary-General, *supra* note 9, ¶ 53–59.

²⁷ *Id.*

²⁸ Mason, *supra* note 1, at 355.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 355–56.

³³ *Tax Treaties*, OECD, <https://www.oecd.org/en/topics/policy-issues/tax-treaties.html> [<https://perma.cc/XR23-W7NF>] (last visited Apr. 5, 2025).

³⁴ Mason, *supra* note 1, at 356.

During much of the 20th Century, corporate tax avoidance was not a major concern.³⁵ However, as various factors—including legal changes, economic shifts, and technological advancements—came into play, corporate tax avoidance became more widespread and intricate.³⁶ Attempts to address this issue through unilateral measures, like “check-the-box” regulations,³⁷ often proved ineffective due to competitive pressures and corporate opposition.³⁸ In addition to these challenges, various barriers to international corporate taxation were already existent, such as conflicting state interests, monitoring complexities, concerns about national tax sovereignty, and a general reluctance to limit tax competition.³⁹

A turning point came in 2008 when the global financial crisis struck.⁴⁰ This crisis, coupled with public revelations of information leaks uncovering corporate tax avoidance, stirred public dissatisfaction.⁴¹ It led to heightened scrutiny and calls for action.⁴² The G20 assigned the OECD the responsibility of coordinating international efforts to combat corporate tax avoidance.⁴³ This marked the genesis of the BEPS Project.⁴⁴ This alignment of G20 and OECD countries, combined with a growing emphasis on transparency, compliance, and the increased role of European Union (“EU”) institutions in shaping international tax policy, paved the way for collaborative solutions.⁴⁵

B. Importance of International Tax Policies

Disagreements on guiding principles in international tax policy analysis are common, primarily due to varying economic conditions among nations.⁴⁶ Differing preferences of capital-exporting and importing nations, as well as the inclination of developing nations towards source-based taxation, require a common framework to avert double taxation and maintain economic growth.⁴⁷

³⁵ *Id.* at 356.

³⁶ *Id.* at 357–64.

³⁷ In the U.S. federal tax system, the “check-the-box” regulations allow certain business entities to elect how they will be classified for tax purposes (e.g., as a corporation, partnership, or “disregarded entity”) simply by checking a box on the relevant IRS form. This streamlined election process replaced more complex, fact-intensive tests for entity classification, but in the international arena, it also facilitated tax-avoidance strategies by enabling entities to exploit mismatches in classification rules across different jurisdictions. Treas. Reg. § 301.7701-3 (as amended in 2006).

³⁸ Mason, *supra* note 1, at 357–64.

³⁹ *Id.*

⁴⁰ *Id.* at 364.

⁴¹ *Id.*

⁴² *Id.* at 365.

⁴³ *Id.* at 366.

⁴⁴ Mason, *supra* note 1, at 366.

⁴⁵ *Id.* at 367.

⁴⁶ Arthur J. Cockfield, *The Rise of OECD as Informal Tax Organization Through National Responses to E-Commerce Tax Challenges*, 8 YALE J.L. TECH. 136, 175 (2005-2006).

⁴⁷ *See id.* at 176.

The world's growing economic integration, driven by globalization, technology, and multinational corporations, necessitates cooperation.⁴⁸ International tax policies are essential to prevent tax evasion, ensure fair taxation, and uphold fiscal stability in an increasingly interconnected world.⁴⁹

C. *The Role of International Organizations*

With the challenge of securing binding agreements in international tax policy due to concerns about tax sovereignty, the OECD has emerged as an informal global tax organization.⁵⁰ Although it does not impose *binding* rules, the OECD successfully addresses issues like harmful tax competition.⁵¹ By encouraging coordination to eliminate preferential tax regimes and tax havens,⁵² it exemplifies how informal institutions can tackle complex tax policy challenges without imposing binding agreements.⁵³

The history of international tax policy development is deeply rooted in the aftermath of the World Wars.⁵⁴ Following World War I and the 1918 influenza pandemic, early tax conventions began to take shape as nations sought economic stability.⁵⁵ By 1920, countries were still struggling to recover from the economic and human toll taken by both World War I and the deadly 1918 flu pandemic, which had claimed millions of lives.⁵⁶ In light of these global challenges, Western nations sought to establish an entity dedicated to fostering international stability and peace.⁵⁷ The nations founded the League of Nations ("the League"), aiming to foster diplomatic cooperation and stability.⁵⁸

The League soon recognized that fostering political stability required tackling the challenge of double taxation, which had the potential to disrupt diplomatic relations.⁵⁹ To address the problem, the League established a dedicated committee on double taxation, that played a key role in shaping tax

⁴⁸ See *id.* at 180–81.

⁴⁹ See *id.* at 181–82.

⁵⁰ *Id.* at 186.

⁵¹ *Id.* at 181.

⁵² A "tax haven" is a jurisdiction characterized by low or zero tax rates, financial secrecy, and limited regulatory oversight, which facilitates the shifting of income or assets for the purpose of minimizing tax liabilities in higher-tax jurisdictions. *Tax Havens and Secrecy Jurisdictions*, TAX JUST. NETWORK, <https://taxjustice.net/topics/tax-havens-and-secrecy-jurisdictions/> [https://perma.cc/D3QQ-MK33] (last visited Apr. 5, 2025).

⁵³ Cockfield, *supra* note 46, at 182.

⁵⁴ Nana Ana Sarfo, *How the OECD Became the World's Tax Leader*, FORBES (Aug. 11, 2020), <https://www.forbes.com/sites/taxnotes/2020/08/11/how-the-oecd-became-the-worlds-tax-leader/?sh=450c889a6628> [https://perma.cc/7FHP-VM99].

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

treaty frameworks long after its dissolution.⁶⁰ Unfortunately, the League's existence was short-lived, as it struggled to achieve its pacifist objectives and lost relevance after the onset of World War II.⁶¹ Similar to the period following World War I, the aftermath of World War II saw nations striving to rebuild through increased international collaboration and a renewed emphasis on multilateral agreements.⁶²

In April 1945, world leaders gathered in San Francisco to lay the foundation for the United Nations.⁶³ Three years later, European countries decided to collaborate through the predecessor of the OECD, the Organization for European Economic Cooperation ("OEEC"), to facilitate post-war recovery and economic rebuilding.⁶⁴ By then, the U.N. had already begun implementing measures to address double taxation and fiscal policy reforms.⁶⁵ The U.N. didn't begin its efforts from the ground up; the League had already developed two significant tax treaty models (commonly referred to as the Mexico model and the London model) and had specifically designated the U.N. to continue its work after its dissolution in 1946.⁶⁶ Designed with the needs of developing nations in mind, the Mexico model granted greater taxing authority to "source" countries—i.e., the jurisdiction where income is generated or derived.⁶⁷ In contrast, the London model favored already-developed economies, emphasizing taxing rights for "residence" countries—i.e., the jurisdiction where a taxpayer is legally considered a resident for tax purposes.⁶⁸

The OEEC, replaced by the OECD in 1961⁶⁹, lagged behind the U.N. in tackling double taxation but eventually formed its own fiscal committees and tax policy groups.⁷⁰ By 1956, with the dissolution of the U.N.'s fiscal committee, the OEEC—and later, the OECD—stepped into this leadership void, shaping multilateral tax policy until the U.N. reengaged in the late 1960s.⁷¹ During that intermittent period, OEEC working groups addressed various taxation challenges, including policies on patent royalties, dividend taxation, and strategies to mitigate double taxation.⁷² By the early 1960s, the OEEC played a

⁶⁰ Sarfo, *supra* note 54.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Sarfo, *supra* note 54.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ EUR. UNIV. INST., *Organisation for Economic Co-operation and Development*, EUR. UNIV. INST. ARCHIVES, <https://archives.eui.eu/en/isaar/41> [<https://perma.cc/F725-JSEA>] (last visited Apr. 5, 2025).

⁷⁰ Sarfo, *supra* note 54.

⁷¹ *Id.*

⁷² *Id.*

significant role in negotiating and finalizing 54 bilateral tax agreements.⁷³ Shortly after its establishment, the OECD began drafting its own model tax convention, incorporating elements from the League's London model, and officially released it in 1977.⁷⁴

In the late 1960s, the U.N., under its Economic and Social Council ("ECOSOC"), resumed its involvement in treaty discussions by forming the Ad Hoc Group of Experts on Tax Treaties Between Developed and Developing Countries.⁷⁵ The group's initial focus was on drafting a guide to aid developing nations in treaty negotiations with wealthier counterparts.⁷⁶ In 1980, the group introduced a model tax treaty influenced by the League's Mexico model, reflecting a stronger focus on developing nations.⁷⁷ In its early post-World War II efforts to address double taxation, the OECD did not initially aim to establish itself as the dominant authority in international tax policy.⁷⁸ Instead, its focus was on fostering economic cooperation among Member States and supporting their financial development.⁷⁹ For instance, the OECD's early tax and development initiatives included analyzing fiscal incentives in developing countries, with a focus on how such policies could serve the interests of OECD Member States.⁸⁰ Given that the OECD has historically been composed of the world's wealthiest economies, its tax policies gradually gained recognition as the prevailing international standard.⁸¹

While the U.N. also contributed significantly to this field, its efforts reflected its broader responsibility to address the needs of a more diverse and extensive group of countries.⁸² In 2000, the then-U.N. Secretary-General Kofi Annan explored the idea of creating a tax cooperation body within the U.N.⁸³ To evaluate this, he appointed a panel of global leaders (e.g., former Mexican President Ernesto Zedillo) to analyze its feasibility and alignment with development financing efforts.⁸⁴ In 2002, the U.N. expanded its focus on global development finance by organizing the inaugural International Conference on Financing for Development in Monterrey, Mexico.⁸⁵ Strengthening international tax cooperation and enhancing multilateral coordination were key

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Sarfo, *supra* note 54.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Sarfo, *supra* note 54.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

priorities of the initiative.⁸⁶ As discussions progressed after 2005, the U.N.'s focus broadened beyond treaties to include tackling tax evasion, developing transfer pricing frameworks for emerging economies, and improving tax administration capabilities in developing nations.⁸⁷ Over time, there was increasing support for the idea that the U.N. should establish a tax-focused intergovernmental body with inclusive representation of its Member States to ensure equitable participation across all regions and income levels.⁸⁸ In 2009, the U.N. Committee of Experts on International Cooperation in Tax Matters initiated efforts to create a transfer pricing guide tailored for developing nations.⁸⁹

The evolution of international tax policies is a testament to the dynamic nature of the global economic landscape. Cooperation and consensus-building are essential for developing effective international tax policies that balance the interests of all nations. The roles of international organizations, particularly the OECD and U.N., have been pivotal in this pursuit. As the 21st Century unfolds, international tax policies will continue to evolve to meet the challenges of an interconnected world. The ability to create effective tax policies that address issues of fairness, tax avoidance, and double taxation will remain central to international economic stability, with international organizations leading the way.

III. THE CURRENT OECD'S GLOBAL TAX POLICIES

A. *Global Taxation, BEPS, & Cross-Border Tax Avoidance*

Global taxes pertain to the taxation of both U.S. and international multinational corporations.⁹⁰ While these companies may have their headquarters in one country, they conduct operations such as manufacturing or sales in other nations, leading to multiple tax jurisdictions.⁹¹ Certain MNEs strategically organize their operations to minimize corporate income tax ("CIT") obligations in the countries where they operate. Often, these strategies involve leveraging tax havens to reduce CIT liability.⁹²

The BEPS project, initiated by the OECD in 2013, aimed to reform tax regulations for multinational corporations and tackle cross-border tax avoidance.⁹³ In response to growing concerns about taxation in the digital economy, several countries introduced Digital Services Tax ("DSTs") as a

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Sarfo, *supra* note 54.

⁸⁹ *Id.*

⁹⁰ Ahn, *supra* note 5.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

unilateral measure to tax digital companies benefiting from their markets.⁹⁴ However, these efforts led to international disputes that prompted global negotiations, resulting in the OECD Global Tax Deal, which was finalized in 2021.⁹⁵

Cross-border tax avoidance occurs when multinational companies exploit differences in tax systems or seek out low-tax jurisdictions to decrease their overall tax burdens.⁹⁶ Countries heavily reliant on CIT are particularly affected by such avoidance as it directly reduces their tax revenues, weakens public funding, and creates competitive disadvantages for domestic businesses.⁹⁷ To address these challenges, international cooperation is necessary to amend tax codes and restrict the use of tax havens.⁹⁸ The OECD's Pillar Two framework, that sets a global minimum corporate tax rate of 15%, aims to prevent profit shifting and create a more balanced international tax system.⁹⁹

The OECD and G20 countries collaborated to adopt an action plan to combat BEPS with an emphasis on limiting tax avoidance capabilities.¹⁰⁰ The BEPS initiative included fifteen key action points designed to address tax avoidance while ensuring that taxation rights were appropriately distributed among countries.¹⁰¹

DSTs were initially intended as temporary measures directed at prominent, digitalized business models.¹⁰² By targeting the digital presence rather than the physical location of multinational tech companies, governments aimed to capture lost global corporate income tax revenue generated by companies operating worldwide, but technically owing taxes only in their home country.¹⁰³ Despite these efforts, BEPS did not fully resolve taxation disparities and in some cases, contributed to new trade tensions between countries.¹⁰⁴

In recent years, the OECD has discussed a more impactful and long-lasting plan to amend tax rules for large companies and persistently curb targeted tax planning by multinationals.¹⁰⁵ This comprehensive plan is comprised of two pillars: Pillar One, which focuses on altering where companies pay taxes, and Pillar Two, which aims to establish a global minimum tax.¹⁰⁶

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Ahn, *supra* note 5.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Sarfo, *supra* note 54.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ See generally *Two-Pillar Solution Statement*, *supra* note 21.

¹⁰⁶ *Id.*

B. Pillar One

Pillar One encompasses a significant overhaul in profit allocation for very large MNEs with revenues surpassing 20 billion euros.¹⁰⁷ The proposal recommends reallocating 25% of profits exceeding a 10% profitability threshold to market jurisdictions, addressing challenges posed by MNEs strategically minimizing tax burdens.¹⁰⁸ While the initial implementation target for Pillar One was set for 2023, it is now anticipated to be postponed until 2024.¹⁰⁹

The process follows a structured approach to determine the portion of profits subject to reallocation.¹¹⁰ This method incorporates three primary components: the total group revenue of the multinational group, the revenue attributed to each jurisdiction, and the adjusted profits of the company.¹¹¹ Specifically, profits that exceed a 10% profitability threshold are reassigned to market jurisdiction, with the allocation determined by the proportion of local revenue to the group's overall revenue.¹¹²

For instance, if an MNE group generates 50 billion euros in revenue, with 10 billion euros in adjusted profits and 5 billion euros sourced from a particular jurisdiction ("Jurisdiction A"), the profitability threshold is determined as 5 billion euros.¹¹³ The reallocation percentage, which corresponds to 25% of the profits exceeding this threshold, results in 1.25 billion euros.¹¹⁴ To determine the initial sum reallocated to Jurisdiction A, the proportion of local revenue to total group revenue is applied, yielding an allocation of 125 million euros.¹¹⁵

To mitigate double taxation and account for physical business operations within a jurisdiction subject to domestic tax laws, a reduction is applied to the allocated profits under the marketing and distribution profits safe harbor.¹¹⁶ Following this adjustment, the remaining profits are subsequently assigned to the respective jurisdiction for taxation.¹¹⁷

The significance of Pillar One lies in its endeavor to reshape the global tax landscape by fostering a more equitable distribution of profits among market jurisdictions, particularly for large multinational corporations.¹¹⁸ This initiative seeks to discourage tax avoidance tactics and establish a fairer system for taxing

¹⁰⁷ Wardell-Johnson, *supra* note 21; *see generally Two-Pillar Solution Statement*, *supra* note 21.

¹⁰⁸ Wardell-Johnson, *supra* note 21.

¹⁰⁹ *Id.*

¹¹⁰ Hadnum, *supra* note 21; *see generally Two-Pillar Solution Statement*, *supra* note 21.

¹¹¹ Hadnum, *supra* note 21.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Wardell-Johnson, *supra* note 21; Hadnum, *supra* note 21; *see generally Two-Pillar Solution Statement*, *supra* note 21.

¹¹⁵ Wardell-Johnson, *supra* note 21; Hadnum, *supra* note 21.

¹¹⁶ Hadnum, *supra* note 21.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

digitalized businesses operating internationally.¹¹⁹ The consensus on Pillar One also entails a commitment from countries to withdraw or abstain from introducing digital services taxes, thus emphasizing the crucial role of global cooperation in averting the proliferation of such taxes and potential trade disputes.¹²⁰

C. Pillar Two

Pillar Two establishes a global minimum tax of 15% for MNEs with annual revenues exceeding 750 million euros.¹²¹ This measure ensures that corporations are taxed at a minimum rate within each jurisdiction in which they operate.¹²² If the effective tax rate in a given country falls below this threshold, a ‘top-up tax’ is imposed to meet the requirement.¹²³ Over 130 countries endorsed this framework in agreements reached on July 1 and October 8, 2021.¹²⁴ While this commitment does not mandate universal enforcement, it aims to prevent conflicting national tax policies from undermining the system’s effectiveness.¹²⁵

The top-up tax under Pillar Two can be applied at three different levels.¹²⁶ The first mechanism, known as the Qualifying Domestic Minimum Top-up Tax (“QDMTT”), allows countries to impose a minimum tax on multinational entities operating within their jurisdiction.¹²⁷ At the second level, the Income Inclusion Rule (“IIR”) ensures that if a multinational’s parent company (whether ultimate or intermediate) is based in a jurisdiction enforcing this rule, it will be responsible for paying additional tax to meet the minimum threshold.¹²⁸ The third level, the Undertaxed Profits Rule (“UTPR”), functions as a safeguard, enabling jurisdictions to levy additional tax if neither the QDMTT nor the IIR has been effectively applied, to thus ensure that all multinational profits are taxed at least at the agreed minimum rate.¹²⁹

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Wardell-Johnson, *supra* note 21; *see generally Two-Pillar Solution Statement*, *supra* note 21, at 4.

¹²² Wardell-Johnson, *supra* note 21.

¹²³ *Id.*

¹²⁴ *Id.*; *see Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*, OECD 1, 1 (July 1, 2021), <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf> [https://perma.cc/N6V4-PH23] (last visited Apr. 10, 2025); *see generally Two-Pillar Solution Statement*, *supra* note 21.

¹²⁵ Wardell-Johnson, *supra* note 21.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*; *see generally Two-Pillar Solution Statement*, *supra* note 21.

The 2021 agreements initially scheduled the implementation of the IIR for 2023 and the UTPR for 2024.¹³⁰ However, subsequent discussions within the EU led to a revised timeline, delaying the IIR to 2024 and the UTPR to 2025.¹³¹ Further postponements may occur for EU countries with a limited number of MNEs, particularly those with twelve or fewer qualifying firms.¹³²

Pillar Two applies a structured method to determine top-up tax, utilizing a jurisdiction-by-jurisdiction calculation rather than a group-wide assessment.¹³³ Unlike Pillar One, which focuses on profit reallocation, Pillar Two evaluates the effective tax rate of entities operating within each jurisdiction.¹³⁴

IV. THE REASON BEHIND THE CALL FOR THE U.N.'S INVOLVEMENT IN GLOBAL TAXATION

The call for the U.N. to take on a more prominent role in global taxation stems from the need to establish fully inclusive and effective international tax cooperation that accommodates the diverse needs of all countries.¹³⁵ The U.N., embodying 193 Member States and grounded in the principle of sovereign equality, plays a central role in international tax cooperation through its General Assembly and ECOSOC, with crucial support from the U.N. Tax Committee ("UNTC").¹³⁶

The genesis of this call can be traced back to historical concerns that the existing frameworks for international tax cooperation were inadequately designed to address the requirements of all countries, particularly those in the developing world.¹³⁷ In response, the UNTC, inaugurated in 1967, sought to provide an alternative to the predominantly "residence country taxation rules" embedded in the OECD Model Tax Convention.¹³⁸ The development of the U.N. Model Double Taxation Convention and the Negotiation Manual aimed to strike a balance between preserving the taxing rights of developing countries and fostering an environment conducive to investment.¹³⁹

While the OECD, encompassing thirty-eight Member States, has been instrumental in formulating international tax guidance, there exists a pronounced asymmetry in the adoption of the OECD's guidance between

¹³⁰ Wardell-Johnson, *supra* note 21.

¹³¹ *Id.*

¹³² *Id.*

¹³³ Hadnum, *supra* note 21; *see generally Two-Pillar Solution Statement*, *supra* note 21.

¹³⁴ Hadnum, *supra* note 21; *see generally Two-Pillar Solution Statement*, *supra* note 21.

¹³⁵ U.N. Secretary-General, *supra* note 9, ¶ 6; *see* Joanna Robin, *OECD 'Disappointed' Over 'Surprising' UN Global Tax Report*, INT'L CONSORTIUM INVESTIGATIVE JOURNALISTS (Aug. 11, 2023), <https://www.icij.org/investigations/paradise-papers/oecd-surprised-and-disappointed-over-un-global-tax-plan/> [<https://perma.cc/8XH4-BHXN>].

¹³⁶ U.N. Secretary-General, *supra* note 9, ¶ 20.

¹³⁷ *Id.* ¶ 5.

¹³⁸ *Id.* ¶ 23.

¹³⁹ *Id.*

developed and developing nations.¹⁴⁰ The reasons for this discrepancy include the complexity of provisions, a dearth of capacity in developing countries, and perceived missed opportunities during the BEPS project.¹⁴¹

The ongoing OECD/G20 Inclusive Framework on BEPS, specifically Pillar One, has elicited concerns among participating countries.¹⁴² The proposed formulary approach under Amount A¹⁴³, which allocates profits to market jurisdictions, has faced criticism for its limited scope and low quantum assigned to these jurisdictions.¹⁴⁴ Moreover, the intricate rules and the prerequisites for multilateral conventions have raised reservations among participating countries.¹⁴⁵

Pillar Two of the BEPS project aspires to institute a global minimum effective tax on “excess profits” to curtail tax competition.¹⁴⁶ However, many countries are exercising prudence by expressing reservations about the potential compliance burdens, the perceived impact on tax sovereignty, and the consequences for attracting investment through tax credits.¹⁴⁷

The Global Forum on Transparency and Exchange of Information for Tax Purposes, boasting 168 Member jurisdictions, addresses challenges related to information exchange.¹⁴⁸ However, persisting difficulties include compliance with reciprocity requirements and confidentiality standards, particularly for developing nations still in the process of developing matching systems.¹⁴⁹ The comprehensive analysis concludes that existing international and multilateral arrangements, spearheaded by the OECD, fall short of meeting the criteria for fully inclusive and effective international tax cooperation.¹⁵⁰

Consequently, the call for greater U.N. involvement advocates for an intergovernmental process that takes into account the varying levels of development among participating nations.¹⁵¹ By leveraging the U.N.'s extensive experience in forging and implementing multilateral agreements, this proposal

¹⁴⁰ *Id.* ¶ 33.

¹⁴¹ *Id.*; see Robin, *supra* note 135.

¹⁴² U.N. Secretary-General, *supra* note 9, ¶ 34.

¹⁴³ “Amount A” is a key component of the OECD’s Pillar One international tax framework, which is designed to address tax challenges arising from the digitalization of the economy. Specifically, Amount A aims to reallocate a portion of MNEs’ residual profits to market jurisdictions where they generate significant revenue, even if they do not have a physical presence there. See *Fact Sheet Amount A*, OECD, <https://www.oecd.org/tax/beps/pillar-one-amount-a-fact-sheet.pdf> [https://perma.cc/LYR6-NJYC] (last visited Mar. 15, 2025).

¹⁴⁴ U.N. Secretary-General, *supra* note 9, ¶ 36.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* ¶ 38.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* ¶ 39.

¹⁴⁹ *E.g., id.*; see Robin, *supra* note 135.

¹⁵⁰ See Robin, *supra* note 135.

¹⁵¹ U.N. Secretary-General, *supra* note 9, ¶ 49.

envisions enhancing international tax cooperation inclusively and effectively.¹⁵² The suggestion emphasizes utilizing existing strengths, bridging gaps, and expanding upon the U.N.'s established collaboration with the OECD in the field of international taxation.¹⁵³

V. THE U.N.'S CURRENT PLANS FOR IMPLEMENTING ITS OWN GLOBAL TAX POLICIES: THE THREE GENERAL APPROACHES

The U.N. is currently engaged in discussions regarding its own global tax policies.¹⁵⁴ As there is no definitive policy in place yet, the U.N., according to the unedited version of the report released by its General Assembly titled "Promotion of inclusive and effective international tax cooperation at the United Nations," puts forward three options.¹⁵⁵ These options take into consideration the shortcomings of existing international tax policies.¹⁵⁶ This report explores three potential approaches: Option One, which proposes a legally binding multilateral convention to regulate tax issues comprehensively; Option Two, which suggests a constitutive framework convention to establish principles and governance for international tax cooperation; and Option Three, which advocates for a non-binding multilateral agenda aimed at coordinating actions to improve tax norms and capacity.¹⁵⁷

In order to secure a high level of certainty in international tax regulations, the first two options suggest conventions with legally binding aspects.¹⁵⁸ The main distinctions between these two options center around their scope and procedural aspects.¹⁵⁹ However, acknowledging that not all Member States may uniformly endorse an augmented norm-setting role for the U.N. in the tax domain, the third opinion emphasizes a coordinating function.¹⁶⁰ Despite not requiring a legally binding instrument, this option offers a diminished level of certainty that is crucial for establishing an adequately robust international tax system.¹⁶¹

Option One proposes the development of a legally binding multilateral convention, referred to as a "standard multilateral convention," regulating a wide range of tax issues.¹⁶² This regulatory option sets specific rules and

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.* ¶ 52.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ U.N. Secretary-General, *supra* note 9, ¶ 53–59.

¹⁵⁸ *Id.* ¶ 61.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.* ¶ 53–54.

obligations with the potential to limit exercising taxing rights.¹⁶³ The proposed convention includes objectives, definitions, and enforceable obligations crucial for domestic resource mobilization.¹⁶⁴ It further establishes a monitoring mechanism and dispute resolution procedures.¹⁶⁵ If Option One is chosen, the next steps involve establishing an intergovernmental ad hoc advisory expert group, drafting terms of reference, and negotiating the convention.¹⁶⁶

Option Two suggests a constitutive framework convention, establishing an “overall system of international tax governance.”¹⁶⁷ This legally binding instrument outlines the core tenets of future international tax cooperation, including objectives, key principles, and “the governance structure of the cooperation framework.”¹⁶⁸ Framework conventions may include protocols providing additional regulatory aspects, allowing countries to opt-in or opt-out based on priorities.¹⁶⁹ If Option Two is selected, similar steps to Option One are undertaken, starting with the establishment of a negotiating group or an advisory expert group, which may determine the negotiation of substantive protocols.¹⁷⁰

Option Three proposes a voluntary, non-binding multilateral platform designed to facilitate coordination across various levels to strengthen tax standards and build capacity.¹⁷¹ While substantively similar to Option Two, it does not entail legal obligations. Within this framework, Member States would collectively examine tax issues to identify effective avenues for joint action.¹⁷² If adopted, this Option would lead to the formation of an ad hoc, intergovernmental expert group led by Member States that would act as a preparatory body for a future conference tasked with drafting background documents and a preliminary outcome text.¹⁷³

In comparison, Options One and Two may involve longer timelines due to the pursuit of legally binding commitments and the extensive groundwork such agreements require.¹⁷⁴ Nonetheless, the resolution underscores that a careful and deliberate process is well-suited to the development of a stable international tax architecture.¹⁷⁵ Should the General Assembly encounter difficulties in

¹⁶³ U.N. Secretary-General, *supra* note 9, ¶ 55–57.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* ¶ 53.

¹⁶⁶ *Id.* ¶ 63.

¹⁶⁷ *Id.* ¶ 55.

¹⁶⁸ *Id.*

¹⁶⁹ U.N. Secretary-General, *supra* note 9, ¶ 55.

¹⁷⁰ *Id.* ¶ 64.

¹⁷¹ *Id.* ¶ 58.

¹⁷² *Id.*

¹⁷³ *Id.* ¶ 65.

¹⁷⁴ *Id.* ¶ 66.

¹⁷⁵ U.N. Secretary-General, *supra* note 9, ¶ 66.

achieving consensus, the resolution outlines a potential fallback: the establishment of a Member State-led, open-ended ad hoc committee to recommend measures for improving the inclusivity and effectiveness of global tax cooperation.¹⁷⁶

VI. THE DIFFERENT APPROACHES OF THE OECD AND THE U.N. TO THEIR GLOBAL TAX POLICIES

The OECD and the U.N. each employ distinct approaches to address the intricate challenges posed by MNEs. At the heart of their strategies lies the nature of instruments employed to reform and regulate global taxation. This section explores the fundamental differences in the OECD's and the U.N.'s approaches, shedding light on their varying perspectives on the implementation of legally binding mechanisms and the breadth of their focus on multinational corporations. Specifically, it explores the strategies employed by these entities to introduce a global minimum tax, scrutinizing the OECD's Pillar Two and the U.N.'s alternative options to it. Additionally, it examines the contrasting approaches to coordination; where the OECD emphasizes reallocation and restructuring, the U.N. offers a spectrum of options ranging from legally binding commitments to non-binding coordination. This exploration aims to unravel the intricacies of global tax policies, shedding light on the diverse perspectives and priorities of the OECD and the U.N. when navigating the challenging terrain of international taxation.

The nature of instruments employed by the OECD and the U.N. to address global tax policies reflects their distinct approaches. The OECD utilizes Pillars One and Two, both of which involve the implementation of legally binding mechanisms.¹⁷⁷ In contrast, the U.N. presents three options, with Options One and Two proposing the use of legally binding instruments, while Option Three opts for a non-binding approach, emphasizing flexibility and coordination without legal commitments.¹⁷⁸

When it comes to the focus on large corporations, the OECD takes a targeted approach. Pillars One and Two specifically aim at very large MNEs with "revenues [surpassing] 20 billion euros."¹⁷⁹ This precise targeting indicates the OECD's strategic focus on addressing challenges posed by the largest players in the global market.¹⁸⁰ On the other hand, the U.N.'s approach is more inclusive, addressing a broader scope that considers options applicable to multinational corporations of various sizes.¹⁸¹ This broader perspective recognizes the

¹⁷⁶ *Id.* ¶ 67.

¹⁷⁷ See, e.g., Wardell-Johnson, *supra* note 21; Hadnum, *supra* note 21; see generally *Two-Pillar Solution Statement*, *supra* note 21.

¹⁷⁸ See generally U.N. Secretary-General, *supra* note 9.

¹⁷⁹ See Wardell-Johnson, *supra* note 21.

¹⁸⁰ *Id.*

¹⁸¹ See generally U.N. Secretary-General, *supra* note 9.

diversity of multinational corporations and seeks to create a framework that accommodates different scales of economic operations.¹⁸²

In terms of implementing a minimum tax, the OECD introduces a global minimum tax through Pillar Two, targeting “multinational[] [corporations] with revenues exceeding 750 million euros.”¹⁸³ This approach aims to establish a common threshold for taxation, ensuring a “minimum of 15% tax determined on a jurisdiction-by-jurisdiction basis.”¹⁸⁴ In contrast, the U.N. does not specifically address a global minimum tax in its options.¹⁸⁵ Instead, it provides alternatives for coordinated actions without a specific focus on enforcing a minimum tax.¹⁸⁶ These different approaches reflect distinct strategies when addressing tax-related challenges for multinational corporations.

Finally, regarding the approach to coordination, the OECD emphasizes reallocation and restructuring as key elements to achieve a fairer distribution of taxes.¹⁸⁷ Pillars One and Two are designed to foster a more equitable distribution of profits among market jurisdictions by addressing challenges posed by strategic tax planning.¹⁸⁸ The U.N. offers a spectrum of options:¹⁸⁹ Options One and Two involve legally binding commitments, suggesting a regulatory approach to coordination.¹⁹⁰ In contrast, Option Three emphasizes non-binding coordination, allowing Member States to engage in coordinated actions without being legally bound.¹⁹¹ This flexibility acknowledges the complexities of international tax cooperation and seeks to strike a balance between effectiveness and adaptability.¹⁹²

In summary, the OECD and U.N. approaches to global tax policies differ significantly in the nature of their instruments, their focus on corporations, their approach to minimum tax, and their coordination strategies. These distinctions reflect the diverse perspectives and priorities of these international bodies as they navigate the complexities of global taxation.

VII. CONCLUSION

In conclusion, this Note has explored the multifaceted challenges of developing equitable global tax policies in today's interconnected economy.

¹⁸² *Id.*

¹⁸³ See Wardell-Johnson, *supra* note 21; see generally *Two-Pillar Solution Statement*, *supra* note 21.

¹⁸⁴ See Wardell-Johnson, *supra* note 21.

¹⁸⁵ See generally U.N. Secretary-General, *supra* note 9.

¹⁸⁶ *Id.*

¹⁸⁷ See, e.g., Wardell-Johnson, *supra* note 21; Hadnum, *supra* note 21; see generally *Two-Pillar Solution Statement*, *supra* note 21.

¹⁸⁸ See, e.g., Wardell-Johnson, *supra* note 21; Hadnum, *supra* note 21; see generally *Two-Pillar Solution Statement*, *supra* note 21.

¹⁸⁹ See generally U.N. Secretary-General, *supra* note 9.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

Examining the distinct roles of the OECD and U.N. has offered insights into their historical contributions, present strategies, and evolving impact on global taxation.

The OECD's historical challenges, rooted in disagreements over guiding principles, shed light on the complexities of international tax policy. This analysis also addressed the OECD's informal role as a key platform for developed nations, even in the absence of a formal World Tax Organization. The Note further delved into current OECD initiatives, particularly its efforts to combat tax avoidance through the BEPS project, the Global Tax Deal, and Pillars One and Two.

The discussion on the U.N. highlighted disparities in how its guidance is adopted across different countries, particularly in relation to OECD frameworks. It underscored the need for the U.N.'s involvement in providing more inclusive solutions, especially for developing nations, and outlined three potential approaches for the U.N.'s role in global taxation: a multilateral convention, a flexible framework, and non-binding cooperation.

Ultimately, this Note contrasted the OECD's legally binding mechanisms, primarily focused on large multinational corporations, with the U.N.'s more adaptable strategies. This comparison underscored the diverse approaches and priorities that shape global tax policy, reflecting the complexity of addressing international tax issues in a dynamic global economy.