

GLOBAL MINIMUM TAXATION: A STRATEGIC APPROACH FOR DEVELOPING COUNTRIES

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Abstract

The world has seemingly embraced the altruistic idea of ensuring a minimum level of corporate income taxation worldwide, consolidating a “benefits for all” narrative by which both developed and developing countries apparently gain. However, this altruistic narrative proves to be quite unrealistic for many developing countries. As argued in this article, the perceived benefits of a global minimum corporate income tax in developing countries rest exclusively upon three unconvincing premises. These include the assumption that all corporate income tax incentives provided by developing countries are equally inefficient, the idea that all developing countries can seamlessly transition from corporate income tax competition to alternative forms of tax and non-tax competition, and most notably, the notion that supporting or opposing a global minimum corporate income tax could either boost or diminish tax revenue for developing countries. This article urges a departure from these premises and elaborates upon three strategic recommendations for developing countries, which include: first, viewing a global minimum corporate income tax as a concept divorced from the assumption of revenue gain or loss; second, using the global minimum corporate income tax as an opportunity to reassess their tax and non-tax incentives, encompassing alternative competitive strategies; and third, striving for simplicity and ease of administration in designing and implementing a minimum tax approach. In doing so, developing countries could perhaps find an opportunity to refine their general action plan to attract foreign direct investment (FDI) more effectively while they still try to ride the wave of minimum global corporate income taxation that the world seems to be in.

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I. INTRODUCTION

More than five years have passed since the creation of the OECD Inclusive Framework (IF), and the world appears to have embraced, if not officially, at least de facto, the altruistic idea of ensuring a minimum level of corporate income taxation worldwide. The OECD Model Rules and their commentaries are the best examples of this acceptance.¹ Indeed, beyond their technical analysis, the purpose of which is outside the scope of this contribution, they consolidate what some scholars have denominated as a “fiscal fail-safe” approach, or, which is the same, the idea that if one country does not impose a minimum level of taxation, another country will react imposing taxation up to the minimum.² This approach should presumably benefit all countries involved as they would all act as a sort of “default revenue collector” for corporate income tax purposes while also establishing a minimum floor for corporate income tax competition worldwide.³ Essentially, therefore, the dual benefits of enhancing revenue collection and shielding countries

¹ See OECD, *TAX CHALLENGES ARISING FROM THE DIGITALISATION OF THE ECONOMY – GLOBAL ANTI-BASE EROSION MODEL RULES (PILLAR TWO): INCLUSIVE FRAMEWORK ON BEPS (2021)* [hereinafter OECD, *Model Rules*]; see also OECD, *CHALLENGES ARISING FROM THE DIGITALISATION OF THE ECONOMY: COMMENTARY TO THE GLOBAL ANTI-BASE EROSION MODEL RULES (PILLAR TWO) (2022)* [hereinafter OECD, *Model Rules Commentaries*].

² In this regard, see Ruth Mason, *The Transformation of International Tax*, 114 AM. J. INT’L LAW 353, 357 (2020). More recently, see also Ruth Mason, *A Wrench in GLOBE Diabolical Machinery*, 107 TAX NOTES INT’L 1391 (2022). For a normative criticism of the concept of fiscal fail-safe and its ultimate policy aim, which is the consolidation of the idea of “full taxation,” see Leopoldo Parada, *Full Taxation: The Single Tax Emperor’s New Clothes*, 24 FLA. TAX REV. 729, 732 (2021).

³ This idea can be traced back to the origins of the OECD Pillar 2 where the OECD insisted on the fact that a global minimum effective corporate income tax rate would establish a floor for tax competition among jurisdictions, implicitly suggesting that this new scenario would benefit all countries equally. See, e.g., Pasquale Pistone et al., *The OECD Public Consultation Document ‘Global Anti-Base Erosion Proposal (GloBE)- Pillar Two’: An Assessment*, 74 BULL. INT’L TAX’N 62 (2020). For a policy analysis regarding the aim of Pillar 2 setting a floor for tax competition, see Michael P. Devereux et al., *The OECD Global Anti-Base Erosion (“GloBE”) Proposal*, OXFORD UNIV. CTR. BUS. TAX’N 1, 5 (2020); Joachim Englisch, *GloBE Rules and Tax Competition*, 50 INTERTAX 859 (2022).

from “excessive tax competition” emerge as the immediate gains from a global minimum corporate income tax.

There is no doubt that the altruistic “benefits for all” narrative behind a global minimum corporate income tax is appealing.⁴ However, it is also far from the reality of many developing countries around the world.⁵ As argued in this Article, the perceived benefits of global minimum effective corporate income taxation for developing countries rest exclusively upon three unconvincing premises. These premises are the assumption that all corporate income tax incentives provided by developing countries are equally inefficient,⁶ the idea that all developing countries can easily make a transition from corporate income tax competition to alternative forms of tax and non-tax competition, and most notably, the notion that supporting or opposing a global minimum corporate income tax could either boost or diminish tax revenue for developing countries. This Article makes a plea to depart from these premises and elaborates upon three strategic recommendations for developing countries, which include: first, viewing a global minimum corporate income tax as a concept divorced from the assumption of revenue gain or loss; second, using the global minimum corporate income tax as an opportunity to reassess the countries’ tax and non-tax incentives, encompassing alternative competitive strategies; and third, striving for simplicity and ease of administration in the design and implementation of a minimum tax approach. In doing so, developing countries could perhaps find an opportunity to refine their general action plan to attract foreign direct investment (FDI) more effectively while they still try to ride the wave of minimum global corporate income taxation that the world seems to be in.

The Article is divided into five sections. Section 2 briefly explains the main characteristics of the global minimum corporate income tax deal and how these characteristics help devise the “benefits for all” narrative under which the whole minimum tax proposal seems to be based. Section 3 delves into the three questionable assumptions that underpin the perceived advantages for developing

⁴ Indeed, the rhetoric of mutual benefits for all parties involved has been constantly and historically used in tax circles to promote international cooperation most generally. As explained by Tsilly Dagan: “[C]ooperation still seems to enjoy a positive reputation as an all-benefiting strategy, and countries are often encouraged to pursue cooperative strategies such as promoting neutrality, signing tax treaties, sharing information, and cur- tailing base erosion and profit shifting.” TSILLY DAGAN, *INTERNATIONAL TAX POLICY: BETWEEN COMPETITION AND COOPERATION* 143 (2019).

⁵ This article follows the traditional United Nations (UN) classification of developing countries, which includes at least 159 countries around the globe. UN, *COUNTRY CLASSIFICATIONS, WORLD ECONOMIC SITUATION AND PROSPECTS* (2014) https://www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_country_classification.pdf [https://perma.cc/DKY6-DTR4]. Accordingly, the article does not distinguish between developing and least developed countries, which is a sub-classification used by the UN, and which is based on gross national income (GNI) per capita. Therefore, all further references to developing countries in this article must be understood as including both developing and least developed countries. For the controversies of using the term developing countries, see, e.g., Tariq Khokhar & Umar Serajuddin, *Should We Continue to Use the Term “Developing World”?*, *WORLD BANK BLOGS* (Nov. 16, 2015) <https://blogs.worldbank.org/opendata/should-we-continue-use-term-developing-world> [perma.cc/AGR3-3R7G].

⁶ The term “inefficient” used in this article refers exclusively to the amount of FDI that can be linked to a specific tax incentive. In this regard, the lower the amount of FDI, the more “inefficient” the incentive.

countries supporting a global minimum corporate income tax. These include the assumption that all corporate income tax incentives provided by developing countries are uniformly inefficient, the idea that all developing countries can seamlessly transition from corporate income tax competition to alternative forms of tax and non-tax competition, and the notion that supporting or opposing a global minimum corporate income tax could either boost or diminish tax revenue for developing countries. Section 4 provides specific advice for developing countries based on three main recommendations: i) understanding minimum corporate income taxation worldwide as an idea divorced from the presumption of revenue gain/loss; ii) taking the minimum global corporate income tax wave as an opportunity to review their tax and non-tax incentives, including alternative forms of competition, and; iii) aiming for simplification and ease of administration in the minimum tax approach. Section 5 concludes.

II. THE GLOBAL TAX DEAL ON MINIMUM TAXATION

This Section briefly explains the main characteristics of the global minimum corporate tax deal and how these characteristics have helped devise a “benefits for all” narrative on which the whole minimum tax proposal seems to be based.

A. Minimum Taxation in a Nutshell

The objective of the OECD minimum tax is to guarantee that all profits of a large multinational enterprise (MNE) are taxed at a minimum level of effective corporate income tax somewhere, without much concern about where that should be.⁷ The system basically consists of a “top-up” approach that operates through two domestic rules that act in a coordinated manner, ensuring minimum taxation.⁸ This very much resembles what we have already seen in the context of anti-hybrid provisions and the OECD BEPS Action 2.⁹

⁷ Leopoldo Parada, *Taxing Somewhere, No Matter Where: What is the Globe Proposal Really About*, MULTINATIONAL GROUP TAX & TRANSFER PRICING NEWS (Sep. 2, 2020) <https://mnetax.com/taxing-somewhere-no-matter-where-what-is-the-globe-proposal-really-about-39996> [perma.cc/R9ED-2PJR] (arguing that the GloBE proposal appears to be all about taxing somewhere, no matter where, i.e. disconnected from a concrete distributive rule); see also Parada, *supra* note 2, at 749–757 (stressing the normative concerns behind taxing completely divorced from a clear distributive rule); Belisa F. Liotti et al., *The Treatment of Tax Incentives Under Pillar Two*, 29 TRANSNAT'L CORPS. 26 (2022).

⁸ OECD, *Model Rules*, *supra* note 1, at 11–4; see also OECD, *Model Rules Commentaries*, *supra* note 1, at 24–42.

⁹ OECD, NEUTRALIZING THE EFFECTS OF HYBRID MISMATCH ARRANGEMENTS, ACTION 2-2015 FINAL REPORT (2015); cf. Leopoldo Parada, *Double Non-Taxation and the Use of Hybrid Entities: An Alternative Approach in the New Era of BEPS*, 66 KLUWER LAW INT'L (2018) (providing a critical view of the effect of linking rules regarding hybrid entity structures); Leopoldo Parada, *Hybrid Entity Mismatches and the International Trend of Matching Tax Outcomes*, 46 INTERTAX 971 (2018) (providing a critical view of the effect of linking rules regarding hybrid entity structures); Felix Martínez Laguna, *Hybrid Financial Instruments, Double Non-Taxation and Linking Rules*, KLUWER INT'L TAX BLOG (Nov. 25, 2019) <https://kluwertaxblog.com/2019/11/25/hybrid-financial-instruments-double-non-taxation-and-linking-rules-only-some-issues-stemming-from-the-apparent>

The first of these rules is known as the Income Inclusion Rule (IIR), and it is triggered with priority in the country of the ultimate parent entity (UPE) of an MNE group or that of the intermediary parent entity under certain circumstances in cases in which a minimum effective level of corporate income tax of 15% is not achieved in the country where the foreign subsidiaries of the MNE group are located.¹⁰ In other words, the IIR allows the country of the UPE to tax the residual undertaxed foreign profits to ensure that a minimum level of taxation occurs.¹¹ For these purposes, the effective tax rate (ETR) is calculated on a jurisdictional basis considering all the entities of the group in a specific country and based upon financial accounting rules.¹² The second rule, known as the Undertaxed Profit Rule (UTPR), is triggered only in those cases in which the IIR does not apply and would allow a country to impose a top-up tax on an MNE domestic subsidiary when the profits of the other foreign subsidiaries of the MNE group are subject to low tax.¹³ In practice, this should be materialized by higher taxation of the subsidiaries in the country executing the UTPR.¹⁴

In addition to the IIR and the UTPR, the proposal also contemplates the possibility of excluding from the scope of the rules' substantive activities represented by a percentage of tangible assets and payroll activities.¹⁵ This is technically known as substance-based income exclusion (SBIE). In essence, SBIE represents a carve-out from the global minimum tax rules for companies that require a substantive number of employees and tangible assets to generate profits.¹⁶ In other words, one could also say that it appears as a subsidy for companies of this

-solution/ [perma.cc/L4FU-3UZQ] (explaining double non-taxation in the context of hybrid financial instruments).

¹⁰ OECD, *Model Rules*, *supra* note 1, at 11–2; *see also* OECD, *Model Rules Commentaries*, *supra* note 1, at 26–28.

¹¹ *Id.*

¹² OECD, *Model Rules*, *supra* note 1, at 7, 29–30; OECD, *Model Rules Commentaries*, *supra* note 1, at 9–10.

¹³ OECD, *Model Rules*, *supra* note 1, at 12–14; OECD, *Model Rules Commentaries*, *supra* note 1, at 32–41.

¹⁴ Originally, the rule was denominated “Undertaxed Payment Rule” and operated more like an anti-base erosion rule since it gave the country from where a base-eroding payment originated the possibility to deny the deductibility of such payment to the extent that this was not recognised as income in the recipient country. In simple words, it shifted the tax base back to the payor country. However, this changed with the modification of the name since the UTPR seems to offer now a sort of “pot of undertaxed profit when other countries fail to adequately tax such profit.” Wei Cui, *Strategic Incentives for Pillar Two Adoption* 8 (July 13, 2022) (unpublished manuscript) (on file with Allard Research Commons, Peter A. Allard School of Law, The University of British Columbia); Jinyan Li, *The Pillar 2 Undertaxed Payments Rule Departs from International Consensus and Tax Treaties*, 174 TAX NOTES FED. 1695, 1696 (2022) (stressing the importance of the change in the wording of the UTPR from payments to profits); *See* discussion *infra* Section III.C.

¹⁵ OECD, *Model Rules*, *supra* note 1, at 30–31. OECD, *Model Rules Commentaries*, *supra* note 1, at 119–27.

¹⁶ Some commentators argue that this should be inspired by the Qualified Business Asset Investment (QBAI) of the US Global Intangible Low-Tax Income (GILTI) regime, and it would represent a “political compromise” between the different views regarding the purpose of a global minimum tax. Englisch, *supra* note 3, at 6; UNITED NATIONS CONFERENCE ON TRADE AND DEV., *World Investment Report 2022, International Tax Reforms and Sustainable Investment*, 107–108 (2022) [hereinafter UNCTAD, *World Investment Report*]; Treas. Reg. § 1.250(b)-2 (qualified business asset investment regulation).

kind vis-à-vis companies that rely more upon intangibles or lower numbers of employees to generate business profits.¹⁷

Finally, the OECD Model Rules also contemplate an interesting alternative for countries to introduce their own domestic minimum tax or “qualified domestic minimum top-up tax” (QDMTT). However, this alternative has two main caveats.¹⁸ First, the domestic version of the minimum tax must resemble the OECD minimum tax rules to be considered as a “qualified” domestic minimum tax. Second, the revenue collection that the domestic minimum tax generates cannot be used to grant any “collateral benefits” associated with it.¹⁹ Although the OECD Model Rules do not provide any further guidance regarding the design of the domestic minimum tax, the advantages of this option appear to be quite intuitive since a domestic minimum tax that is considered a QDMTT would be prioritized in the hierarchy of the global minimum tax rules, preventing the promised revenues derived from the application of the global minimum tax from ending up in the country of the UPE.²⁰ In contrast, a domestic minimum tax that is not considered a QDMTT but which meets the characteristics of a “covered tax” under the global minimum tax rules

¹⁷ Whether this is the right incentive or even the role of the OECD Pillar 2 is something that has been already discussed in the tax literature. See, e.g., Mindy Herzfeld, *Tax Credits and Incentives under a Global Minimum Tax Regime*, 106 TAX NOTES INT’L 1605 (2022).

¹⁸ Article 10.1.1 of the OECD Model Rules defines a qualified domestic minimum top-up tax as “a minimum tax that is included in the domestic law of a jurisdiction and that: (a) determines the Excess Profits of the Constituent Entities located in the jurisdiction (domestic Excess Profits) in a manner that is equivalent to the GloBE Rules; (b) operates to increase domestic tax liability with respect to domestic Excess Profits to the Minimum Rate for the jurisdiction and Constituent Entities for a Fiscal Year; and (c) is implemented and administered in a way that is consistent with the outcomes provided for under the GloBE Rules and the Commentary, provided that such jurisdiction does not provide any benefits that are related to such rules.” OECD, *Model Rules*, *supra* note 1, at 64.

¹⁹ This prohibition prevents countries from using revenues associated with the domestic minimum tax for the purpose of benefiting the same companies subject to minimum taxation in their jurisdictions. The potential collateral benefits include but are not limited the granting of direct subsidies. See OECD, *Model Rules Commentaries*, *supra* note 1, at 212. The *OECD Model Rules Commentaries* do not provide a comprehensive definition of “collateral benefits.” However, the *Commentaries* hint when a benefit could be considered a collateral benefit. For instance, the *Commentaries* state, “[t]he word ‘benefits’ is comprehensive enough to cover any kind of advantage provided by a jurisdiction, including tax incentives, grants, and subsidies and the phrase ‘related to such rules’ is intentionally drafted with broad language to take into account different mechanisms through which the benefit is provided.” *Id.*, at 213. Similarly, the *Commentaries* provide an example of what should not be regarded as a “collateral benefit.” *Id.*, at 213. In the words of the *Commentaries*: “For instance, assume a jurisdiction has adopted all of the provisions of the GloBE Rules in its legislation [...] However, it provides a tax credit equivalent to a portion of the tax paid under the IIR to be used against other taxes.” *Id.* This should not be considered a collateral benefit. More on the analysis of collateral benefits is provided in Noam Noked, *Designing Minimum Taxes in Response to the Global Minimum Tax*, 50 INTERTAX 678, 681–2 (2022).

²⁰ Unfortunately, there is little guidance in the OECD Model Rules and its commentaries regarding the specific design of a domestic minimum tax to be considered as a QDMTT. Mindy Herzfeld, *How Does the Qualified Domestic Minimum Top-Up Tax Fit Into Pillar 2?*, 106 TAX NOTES INT’L 315, 316 (2022); Noked, *supra* note 19 (addressing specific policy and design questions regarding domestic minimum taxes).

would reduce the top-up tax under these rules.²¹ Therefore, the introduction of a domestic minimum tax may ultimately become a quite sensitive decision from a developing country's perspective.

B. The “Benefits for All” Narrative

If one considers the basic features described above, the idea of a global minimum corporate income tax is quite appealing.²² Firstly, countries penalize each other for not taxing sufficiently, ensuring that a minimum level of corporate income taxation occurs somewhere.²³ In other words, an ideal of “full taxation” is achieved through a specific mechanism of “fiscal fail-safe” rules, exactly as some scholars have noted already in the tax literature.²⁴ Secondly, the minimum tax approach offers protection for countries, preventing them from what one could call an “excessive” tax competition that could precipitate the so-called “race to the bottom” in corporate income taxes.²⁵ Overall, therefore, a minimum global

²¹ See OECD, *Model Rules Commentaries*, *supra* note 1, at 95; Noked, *supra* note 19, at 680. A “covered tax” is loosely defined in the *OECD Model Rules Commentaries* as any tax of the following types: “(a) taxes recorded in the financial accounts of a Constituent Entity with respect to its income or profits or its share of the income or profits of a Constituent Entity in which it owns an Ownership Interest; (b) taxes on distributed profits, deemed profit distributions, and non-business expenses imposed under an Eligible Distribution Tax System; (c) taxes imposed in lieu of a generally applicable corporate income tax; and (d) taxes levied by reference to retained earnings and corporate equity, including a Tax on multiple components based on income and equity.” OECD, *Model Rules Commentaries*, *supra* note 1, at 91–4 (discussing Article 4.2.1); see also Noked, *supra* note 19, at 680. For further policy analysis on these issues, see Noam Noked, *Defense of Primary Taxing Rights*, 40 VA. TAX REV. 341 (2021) (explaining that a domestic tax that is not considered a QDMTT but a covered tax would increase the ETR, which would reduce the GloBE top-up tax).

²² This may be explained because the narrative behind a global minimum corporate income tax is not very different from other international cooperative efforts led by the OECD, which are based upon the same premise, that is, cooperation presupposes a default benefit for those actors involved. However, as Dagan convincingly argues, this is not always the case, and it misses the fact that some states may decide to cooperate even in cases where cooperation is not the best option for them. See Dagan, *supra* note 4, at 183. In the same order of ideas, although in the specific context of tax treaties and developing countries, Eduardo Baistrocchi explains that the rationale behind these countries' decision to sign a tax treaty goes beyond the benefits of the treaty itself and is also part of being part of the club as well as the potential competition that may arise from peer countries. See Eduardo Baistrocchi, *The Structure of the Asymmetric Tax Treaty Network: Theory and Implications* (Bepress Legal Series Working Paper, Paper No. 1991, 2007) <https://law.bepress.com/expresso/eps/1991/> [<https://perma.cc/VUT3-FVWV>]. See also, Dagan, *supra* note 4, at 167 (elaborating on Baistrocchi's arguments). In the specific context of global minimum taxation, see Eduardo Baistrocchi, *Global Tax Hubs: Theory and Evidence*, FLA. TAX REVIEW (forthcoming spring 2024) (manuscript at 66) (arguing that “Pillar Two is effectively creating a cartel because it is explicitly establishing a minimum price to join and remain a member of the tax treaty global network”).

²³ Although without regard on where that “where” should be. See Parada, *supra* note 2, at 749–57; Parada, *supra* note 7.

²⁴ Ruth Mason defines “full taxation” as a “norm that dictates that all of a company's income should be taxed in places where it has real business activities.” Mason, *The Transformation of International Tax*, *supra* note 2, at 370. For a normative criticism of the notion of full taxation, see Parada, *supra* note 2.

²⁵ The terminology of “race to the bottom” has been widely used both by academics and activists to explain how a decrease in corporate income taxes worldwide could lead countries to reduce their general welfare. This is generally associated with the traditional debate on tax competition. See, e.g., Esmé Berkhout, *Tax Battles: The Dangerous Global Race to the Bottom on Corporate Tax*, Oxfam

effective corporate income taxation is presented as a win-win scenario in which revenue collection and “fair” tax competition appear as the two immediate trophies behind an ostensibly altruistic “benefits for all” narrative.²⁶

However, although the magnanimous narrative of all countries benefiting from a cooperative worldwide action to increase their effective corporate income tax rates can be attractive, it does not work for all countries equally.²⁷ The remaining part of this work will focus on demonstrating how the rationale of “benefits for all” not only imposes important limitations and administrative costs for developing countries willing to attract FDI but also how this rationale is an illusion in which tax competition is transferred from corporate income tax competition to other forms of tax and non-tax competition, ultimately revealing the fragility of the premises underlying the altruistic narrative behind a global minimum corporate income tax.

III. MINIMUM TAXATION AND DEVELOPING COUNTRIES

This Section elaborates on the three unconvincing premises on which the alleged benefits for developing countries under a worldwide minimum corporate income tax seem to be based. These include the assumption that all corporate income tax incentives provided by developing countries are uniformly inefficient, the idea that all developing countries can easily make a transition from corporate income tax competition to alternative forms of tax and non-tax competition, and the notion that supporting or opposing a global minimum corporate income tax could either boost or diminish tax revenue for developing countries. This Section concludes that these premises, which serve to justify the global narrative of “benefits for all,” also force developing countries to assume further administrative costs, ultimately reinforcing a traditional international paternalism upon these countries.

A. The Presumed Inefficiency of All Tax Incentives

Tax competition and the use of tax incentives to attract FDI is not a novel discussion in the tax literature.²⁸ However, what is relatively new is the switch in the global rhetoric, at least from the OECD perspective. Indeed, while the original approach to tax competition was based upon the clear distinction between harmful and non-harmful tax competition, the current message is blunter and more straightforward: tax competition shall be counteracted comprehensively, no matter

Briefing Paper 9 (2016); see also S.M. Ali Abbas et al., *A Partial Race to the Bottom: Corporate Tax Developments in Emerging and Developing Economies* 3 (IMF Working paper, 2012). But see, Vera Troeger, *Tax Competition and the Myth of the “Race to the Bottom”: Why Government Still Tax Capital*, 4 CAGE-CHATHAM HOUSE SERIES 1, 3 (2013). As for the OECD Pillar 2 project, we find the use of the term “race to the bottom” and “harmful race to bottom” in some passages of the public consultation of November 2019. See Devereux, *supra* note 3, at 7–8.

²⁶ On the discussion on fairness regarding the OECD Pillar 2, see, e.g., Rita de la Feria, *The Perceived (Un)Fairness of the Global Minimum Corporate Tax Rate*, in THE “PILLAR 2” GLOBAL MINIMUM TAX (W. Haslehner et al. ed., 2024).

²⁷ Dagan, *supra* note 4, at 183.

²⁸ See, e.g., OECD, HARMFUL TAX COMPETITION: AN EMERGING GLOBAL ISSUE 8 (1998). See also Michael Keen & Kai A. Konrad, *The Theory of International Tax Competition and Coordination* 12 (Max Planck Inst. for Tax Law and Pub. Fin., Working Paper No. 06, 2012).

how harmful it may or may not be.²⁹ Let me take the example of IP box regimes. In the OECD BEPS Action 5, there was a clear distinction between harmful and non-harmful regimes based on whether the R&D activities giving rise to income were performed in the country offering the incentive, specifically the IP box regime.³⁰ This distinction becomes irrelevant under the OECD Pillar 2 approach on minimum effective corporate income taxation.³¹ In fact, a closer look at the proposed rules to ensure minimum corporate income taxation worldwide demonstrates that any sort of IP box regime, which aims to ensure a low corporate income taxation regime to incentivize R&D, will lead to an effective tax rate (ETR) below the minimum of 15%.³² In other words, the premise that all corporate income tax incentives do not work, meaning that corporate income tax competition shall be counteracted in any form, turns out to be accurate.³³

Changing the global narrative regarding corporate tax competition from a harmful/non-harmful distinction to a non-distinction involves evident challenges for developing countries. First, it creates a false presumption that any form of corporate tax incentive is incapable of attracting substantive FDI. However, this idea contrasts with the reality of many developing countries that offer incentives reliant upon both corporate and non-corporate tax features to generate real and substantive investment, employment, and economic growth. For instance, the Central Bank of Malaysia released a study in 2017 that involved six MNEs working in the electrical and electronics industry, which encompassed the period 2013–15. These MNEs were recipients of investment incentives in the form of tax foregone, namely tax exemptions and allowances. The cost of the incentives was an average of MYR 0.6 billion per annum (approximately USD 170 million), which was

²⁹ In this regard, too, see Michael Devereux et al., *Pillar 2's Impact on Tax Competition 4–5* (Oxford Univ. Cen. for Bus. Tax'n, Working Paper No. 11, 2022) (arguing that targeting tax competition without distinctions deviates from the long-standing policy of permitting countries to compete for real economic activities). In addition, counteracting corporate tax competition in any form ultimately contradicts the original message of the OECD BEPS project, which was that “[n]o or low taxation is not *per se* a cause of concern, but it becomes so when it is associated with practices that artificially segregate taxable income from the activities that generate it.” OECD, ACTION PLAN ON BASE EROSION AND PROFIT SHIFTING 10 (2013). In other words, while corporate tax competition was considered permissible if the low tax outcome derived from countries where the economic activities were generated, today it is targeted without any distinctions of this kind.

³⁰ OECD, COUNTERING HARMFUL TAX PRACTICES MORE EFFECTIVELY, TAKING INTO ACCOUNT TRANSPARENCY AND SUBSTANCE, ACTION 5: 2015 FINAL REPORT 23–37 (2015).

³¹ Although, as suggested by some commentators, this is surprising since some work of the OECD in 2019 suggested the possibility of excluding IP box regimes—compliant with Action 5 OECD BEPS—from the context of the global minimum tax rules. See Englisch, *supra* note 3, at 5. See also Liotti et al., *supra* note 7, at 43 (arguing that a substance-based income exclusion—SBIE—could shield an IP box regime from the global minimum tax rules).

³² This is more or less evident since IP box regimes offer low corporate income effective tax rates for income derived from qualified intellectual property. These rates are generally below 15%. Therefore, IP box regimes will necessarily reduce the ETR of a country. For instance, the UK patent box regime offers an effective 10% corporate tax rate on certain qualifying IP profits. For a brief explanation of the UK regime, see, e.g., Sarah Lord & Andy Jacott, *A New Era for the UK Patent Box*, 1538 TAX J. 8 (July 9, 2021). For a comprehensive study of IP box regimes around Europe, see PALOMA SCHWARZ MARTINEZ, *IP BOX REGIME IM EUROPÄISCHEN STEUERRECHT* (2017). See also Lisa Evers et al., *Intellectual Property Box Regime: Effective Tax Rates and Policy Considerations*, 22 INT’L TAX PUB. FIN. 502, 504 (2015).

³³ Devereux et al., *supra* note 29.

equivalent to 0.4% of the Malaysian government's total tax revenue.³⁴ However, during the same period, 2013–15, these MNEs “invested [MYR] 1.2 billion (approximately USD 350 million) per year and generated average annual exports of [MYR] 46 billion” (approximately USD 13.4 billion), which represented 6.1% of total gross exports.³⁵ They also “registered a trade surplus of [MYR] 16.5 billion” (approximately USD 4.8 billion) after considering gross imports; “they employed around 48,000 Malaysians, with a total wage bill of [MYR] 3.3 billion (approximately USD 960 million) per year,” and “collectively engaged with about 5,700 local suppliers, resulting in an overall spending on domestic inputs and services amounting to MYR 13.3 billion (approximately USD 3.87 billion) per annum.”³⁶ It is hard to say that the tax incentives granted in this case were ineffective in attracting substantive FDI to Malaysia. Indeed, between 2010 and 2015, the FDI in Malaysia “made up close to 60% of the value of manufacturing investments that were given tax incentives . . . in the form of corporate tax exemptions, tax allowances for capital expenditure, and financial assistance such as training and R&D grants.”³⁷ Second, the presumed inefficiency of tax incentives also disregards the reality of developing countries, especially those with a lack of competitive advantages, for which the attractiveness of their tax systems plays a major role. In this sense, it should not be a surprise to anyone that some developing countries with poor political stability, an average infrastructure, an insufficient amount of skilled workers, or very limited natural resources decide to promote their corporate tax system to be competitive on the global scale. After all, capital is still mobile, and it will keep being so.³⁸ Third, this premise may increase the trade-off between cooperation and competition, which is a permanent dilemma for developing countries.³⁹ Indeed, it is evident that tax incentives create tension between those promoting international cooperation under the rhetoric of “benefits for all” and those defending the benefits of more investment under tax competition. This tension may ultimately increase the pressure on developing countries to cooperate while disregarding both the source of the cooperative rhetoric as well as the cost of it. In other words, if one agrees on the prominent role of the OECD in setting up the international tax agenda thus far, as well as the fact that international cooperation may not necessarily be inherently desirable for all since it promotes the interests of only a few within the group, it is evident that some developing countries may finally cooperate even though that cooperation will work against

³⁴ Mohd Shazwan Shuhaimen et al., *Rethinking Investment Incentives*, CEN. BANK OF MALAYSIA 9 (2017).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 5.

³⁸ If this proves to be correct, the effect of restricting corporate tax competition may have just the effect of diverting competitive advantages from low-tax countries to high-tax countries, although assessing the real strength of that diversion may become a complicated task. See UNCTAD, *World Investment Report*, *supra* note 16, at 130.

³⁹ This could lead some developing countries to cooperate but not necessarily in their best interest. See Dagan, *supra* note 4, at 166.

their competitive interest, for example, affecting efficient corporate income tax incentives.⁴⁰

B. Moving Away from CIT Tax Competition

As well as the presumed inefficiency associated with all sorts of corporate income tax incentives, the global narrative of “benefits for all” is based upon the assumption that all developing countries can easily switch from corporate income tax competition to other forms of competition, especially using non-tax incentives.

There is no doubt that some developing countries will make the switch smoothly. This will particularly be the case for those countries with solid competitive advantages from both an individual as well as a regional perspective.⁴¹ However, others will simply be incapable of doing so. Moreover, even for those countries capable of making the switch, this will not come without costs.⁴² Indeed, any potential benefits for developing countries associated with a reduction in their levels of profit shifting may ultimately be offset by the cost of competing with non-tax incentives, particularly with direct subsidies.⁴³ This may bring new and unforeseen problems, including issues related to trade discrimination as well as under-regulation that may affect the general welfare in the country providing the incentive.⁴⁴ Moreover, it is important to consider whether the incentive imposed upon developing countries, forcing them to move out from corporate income tax competition, may be the wrong one, generating more aggressive competition in other areas of taxation, such as consumption and personal income taxes.⁴⁵ If this is

⁴⁰ *Id.* Dagan also states, “The OECD has consistently pushed non-member countries to join these initiatives, using powerful pro-cooperation rhetoric that invokes the classic strategy for overcoming collective-action problems—that it is to the benefit of all actors involved.” *Id.* at 180. See Baistrocchi, *The Structure of the Asymmetric Tax Treaty Network: Theory and Implications*, *supra* note 22, at 26.

⁴¹ See Afton Titus, *Pillar Two and African Countries: What Should Their Response Be? The Case for a Regional One*, 50 *INTERTAX* 711 (2022) (elaborating on the idea of East African countries acting together).

⁴² Most of the costs will be related to the traditional trade-offs of cooperation, even against their own interests. For a deeper analysis on the dynamics of cooperation and competition, see Dagan, *supra* note 4.

⁴³ In reference to East African countries, Titus also stresses the administrative costs associated with the switch from tax to non-tax incentives and argues for a strict monitoring of these costs in the future. See Titus, *supra* note 41, at 719. See also Noam Noked, *From Tax Competition to Subsidy Competition*, 42 *U. PA. J. INT’L L.* 445, 479 (2020) (“Welfare losses may occur where non-harmful tax benefits that increase welfare cannot be replaced with equivalent non-tax subsidies, or where they can be replaced but at a high cost.”).

⁴⁴ Titus, *supra* note 41, at 718. See also Noked, *supra* note 43, at 450 (arguing that there is a risk of replacing harmful tax benefits for equally harmful non-tax subsidies); Eckhard Janeba & Guttorm Schjelderup, *The Global Minimum Tax Raises More Revenues than You Think, or Much Less* (CESifo Working Paper No. 9623, 2022) (warning that the reduction in profit shifting derived from the global minimum tax could be offset by the costs associated with non-tax subsidies).

⁴⁵ See Cui, *supra* note 14, at 21. See also Feria, *supra* note 26, at 9–10. Part of this competition outside corporate income taxation can already be seen in the context of personal income taxes. In this regard, see, e.g., Rita de la Feria & Giorgia Maffini, *The Impact of Digitalisation on Personal Income Taxes*, 2 *BRITISH TAX REV.* 154 (2021). Other authors have already warned us regarding the potential competition that can be created still in the context of CIT, especially due to the interplay between a domestic minimum tax (QDMTT) and the global minimum tax rules. This is because a

the case, the remedy may ultimately prove to be worse than the illness, especially considering the importance of corporate income taxes as a revenue generator in developing countries vis-à-vis consumption or personal income taxes.⁴⁶

C. The Revenue Gain/Loss Presumption

Perhaps the strongest premise under which the whole idea of global corporate effective minimum taxation, and especially the narrative of “benefits for all,” is based, could be called “revenue gain/loss presumption”; this is the idea that while an active endorsement of a global effective minimum corporate income tax may increase developing countries’ tax revenue collection, the countries’ inaction on these matters may reflect an important revenue loss.⁴⁷

A presumption of gaining or losing revenues underlines the whole project, and perhaps the best illustration of this is the dynamic between domestic minimum taxes and the global minimum tax rules. As noted already in this work, one of the possibilities contemplated in the OECD Model Rules is that countries introduce a domestic minimum tax that resembles the OECD minimum tax rules.⁴⁸ The advantage of this option is that a domestic minimum tax would revert the priority in the hierarchy of the global minimum tax rules, ensuring that any potential revenues derived from the application of the global minimum tax do not end up necessarily in the country of the UPE but rather in the country where the undertaxed subsidiary is located.⁴⁹ This argument holds true, as it is noteworthy that most of the countries of UPEs are developed countries with effective tax rates way over the minimum threshold. Consequently, implementing a domestic minimum tax mirroring the global minimum tax emerges as a perfect mechanism for developing countries to counteract this trend, offering them a priority in the collection of tax

QDMTT, which applies on excessive profits only, could incentivize countries to reduce even more their CIT rates for those profits that are not “excessive,” even to zero or very close to zero. For this argument, see Devereux et al., *supra* note 29. See also Ana Paula Dourado, *Pillar Two Model Rules: Inequalities Raised by the GloBE Rules, the Scope, and Carve-Outs*, 50 INTERTAX 282 (2022). In contrast, see, e.g., Englisch, *supra* note 3, at 16–20.

⁴⁶ However, one must be careful to measure the revenue importance of corporate income taxes (CIT) in relation to other taxes in a specific country. Indeed, if we consider a classic approach of determining CIT revenues as a percentage of GDP, it is evident that the numbers will be rather insignificant. See, e.g., OECD, REVENUE STATISTICS 2021—THE INITIAL IMPACT OF COVID-19 ON OECD TAX REVENUES 3 (2021). Yet, these amounts can be different when they are considered in relation to the total revenue collected in a particular country and not as percentage of GDP. For instance, according to the Malaysian Finance Ministry’s 2022 fiscal outlook and federal government revenue estimates published in October 2021, in the year 2020, the total tax revenue collected amounted to RM 154,398 million (approximately USD 33.3 billion), whereas CIT revenue collected represented RM 50,065 million (approximately USD 10.8 billion). This amounts to, approximately, 32.4% of the total tax revenue collected that year in Malaysia. See MALAYSIA MINISTRY OF FINANCE, 2022 FISCAL OUTLOOK AND FEDERAL GOVERNMENT REVENUE ESTIMATES 136 (2021).

⁴⁷ This is a direct effect of the design of the minimum tax as fiscal-fail safe rules. That is, if one country does not impose a sufficient taxation, another country can step in and fill the void. For the concept of fiscal-fail safe and the global minimum tax rules, see Mason, *The Transformation of International Tax*, *supra* note 2; Mason, *A Wrench in GLOBE Diabolical Machinery*, *supra* note 2. For a normative criticism of the concept of fiscal fail-safe and its ultimate policy aim (“full taxation”), see Parada, *supra* note 2.

⁴⁸ *Supra* Section II.A.

⁴⁹ OECD, *Model Rules Commentaries*, *supra* note 1, at 95. See also Noked, *supra* note 19.

revenues.⁵⁰ In other words, the revenue gain presumption appears on the scene. On the contrary, a potential inaction by developing countries to the introduction of a domestic minimum tax is presented in the inverse in terms of potential costs. If developing countries decide not to introduce a domestic minimum tax, they would be giving up revenues since the priority to collect whatever is generated from the application of the global minimum tax rules would be allocated to the country of the UPE.⁵¹

Nevertheless, and as argued already, the alleged revenue gain or loss that developing countries would incur should they decide to introduce a domestic minimum tax that runs in parallel to the global minimum tax rules is relative and depends, among other factors, upon the elasticity of investment as well as the competitive advantages that may exist in the country vis-à-vis other relatively similar countries nearby.⁵² In simple words, the less elastic the investment in a specific sector within the country and the more competitive advantages that country possesses, the more likely it is that this country benefits from an additional revenue collection derived from a domestic minimum tax.⁵³ On the contrary, the more elastic the investment in the country and the worse the infrastructure, political stability, or any other competitive advantage the country has vis-à-vis its neighboring competitors, the more likely it is that any potential revenue gain/loss becomes illusory.⁵⁴ Let me illustrate this with a simple example. Let us assume an MNE group with a UPE in Country A invests through subsidiaries in Countries B and C, both developing countries. While Country B offers an effective corporate income tax rate of zero, Country C offers an effective corporate income tax rate of ten percent. In addition, let us presume that Country B was chosen as a place to invest regardless of the fact that, in comparison to other neighboring countries, including Country C, it possesses quite an unstable political environment, its infrastructure is certainly not the best in the region, and its judicial system does not seem very trustworthy either. The investor chose Country B rather than Country C because it regarded the tax savings as more than sufficient to compensate for the differences between Countries B and C. Now, let us assume that all the countries in this example implement the global minimum tax rules. However, only country B implements a domestic minimum tax that resembles the global minimum tax rules.⁵⁵

If the main premise underlying the global minimum tax works in this case, Countries B and C would be forced under the global minimum tax rules to increase their effective tax rates up to the minimum unless they want Country A to collect

⁵⁰ Noam Noked, *The Case for Domestic Minimum Taxes on Multinationals*, 105 TAX NOTES INT'L 667, 672 (2022) (providing suggestions for developing countries as to what to do with these revenues). See also Leopoldo Parada, *Tailoring Developing Country Advice: A Response to Noam Noked*, 105 TAX NOTES INT'L 783, 784 (2022).

⁵¹ Noked, *supra* note 50 (suggesting that countries would be better off implementing a domestic minimum tax than just adopting a global minimum tax alone).

⁵² Parada, *supra* note 50 (arguing that elasticities of investment and competitive advantages must be considered to determine who is better off). Considering this argument in the specific context of African countries, see Titus, *supra* note 41, at 715–16.

⁵³ Parada, *supra* note 50.

⁵⁴ *Id.*

⁵⁵ This example is based on Parada's illustration, *supra* note 50, at 783–84.

the residual tax revenues. Similarly, if we compare Countries B and C, Country B would be hypothetically better off since the tax revenues would remain at home rather than being transferred to Country A. In other words, the revenue gain/loss presumption derived from an active or passive endorsement of a domestic minimum tax would prove to be true thus far.⁵⁶ However, the premise disregards that Country B may lack other competitive advantages apart from its attractive corporate income tax system.⁵⁷ In that case, it is questionable that highly elastic investors have a strong incentive to remain in Country B rather than reallocating entirely their activities to Country C, assuming both countries are neighbors and equally attractive for business purposes. In simple terms, the revenue gain attributed to the introduction of a domestic minimum tax in country B can be diluted in the long term or simply becomes illusory.⁵⁸

Another example to understand the fragility of the revenue gain/loss presumption can be taken from the application of the UTPR.⁵⁹ As noted already in this Article, the UTPR will be triggered only in those cases in which the IIR does not apply, allowing a country to impose a top-up tax on an MNE domestic subsidiary when the profits of the other foreign subsidiaries of the MNE group are subject to low tax on their profits.⁶⁰ In other words, the UTPR is presented as a backstop rule that promises a country to get the revenues derived from under taxation in another country in the absence of the application of an IIR in the country of a UPE. However, in practice, the country willing to access those alleged new revenues is prevented from doing so unless this country decides to tax its own subsidiaries more heavily.⁶¹ In other words, what is presented as a new revenue source derived from the active endorsement of the global minimum tax rules—more precisely, the UTPR—is not such. This is because the option for a country to tax its own subsidiaries more heavily has always existed, even predating the implementation of the global minimum tax rules.⁶² Therefore, the new revenue source becomes again more illusory than real.

Finally, it is perhaps important to note that the whole premise of gain/loss revenues simply overestimates the importance of corporate income taxation worldwide, especially in developing countries.⁶³ Indeed, with some exceptions, corporate income taxation plays a less important role as a revenue collector in comparison to consumption and personal income taxes. For example, in some of these countries, the tax revenues from corporate income taxation represent less than five percent of the total GDP of the country, a phenomenon that is generally explained by factors such as the different levels of sophistication of tax administration in developing countries or the political powers of the richest segments of the population, among others.⁶⁴ Whatever the reasons for this

⁵⁶ Parada, *supra* note 50.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Supra* Section II.A.

⁶⁰ *Id.*

⁶¹ Cui, *supra* note 14, at 7–8.

⁶² *Id.*

⁶³ However, we must consider the caveats in measuring the revenue importance of corporate income taxes (CIT) in relation to other taxes in a specific country. *See* discussion *supra* note 47.

⁶⁴ *Id.*

phenomenon are, what is important to understand at this point is that the relative lack of importance of corporate income taxes in developing countries certainly contrasts with the narrative constructed behind the idea of a global minimum effective corporate income tax, especially when that narrative embraces the idea that an active or passive endorsement of the project will directly impact the revenue collection in developing countries.

D. The Costs of a “Benefits for All” Narrative

The narrative of “benefits for all” underlying the project for a global minimum tax is persuasive but also misleading, especially from the perspective of developing countries. Indeed, it does not only start from the basis that all corporate income tax incentives offered by developing countries do not—and will not—work, but it also assumes that all developing countries have the same capabilities to adapt to the new standards of non-corporate income tax competition, offering them the holy grail of more revenues if they accept the terms of the new global deal or the hell of losing money if they do not.⁶⁵ This can prove to be tremendously costly for many developing countries for various reasons.

Firstly, developing countries are forced to assume very high administrative costs related to the implementation of rules that are highly technical only under the assumption that they will act as “default revenue collectors” for those cases in which other countries decide to tax under the new minimum.⁶⁶ However, as argued already in this Article,⁶⁷ this premise is very fragile, especially when one digs into the technicalities of the rules, such as the case of the application of the UTPR or the introduction of domestic minimum taxes resembling the global minimum tax.⁶⁸ In both cases, the alleged “benefits for all” narrative proves to be unclear when additional economic factors are considered⁶⁹ or when one realizes that what is presented as a new revenue source derived from the active endorsement of the global minimum tax rules already existed in the absence of the rules.⁷⁰

Secondly, this narrative is quite worrisome, particularly from the perspective of the global tax dynamics between developed and developing

⁶⁵ *Supra* Sections III.A, III.B., and III.C.

⁶⁶ Englisch, *supra* note 3, at 18 (warning that not all developing countries’ tax administrations are in a capable position to fully cope with the “inherently complex GloBE rules”). *See also* Titus, *supra* note 41, at 717 (doubting whether the administrative burden of the GloBE rules can be offset with the alleged new revenues); Leopoldo Parada, *El Acuerdo Fiscal Internacional: Impacto en Economías Emergentes [The Global Tax Agreement: Impact Upon Emerging Economies]*, 46 ESTUDIOS DE DERECHO TRIBUTARIO, DERECHO ADUANERO Y COMERCIO EXTERIOR 267, 290 (2022) (arguing that emerging economies will not only deal with the complexities of Pillar Two, but also with the increased sophistication of the taxpayers willing to be out of the scope of it).

⁶⁷ *Supra* Section II.C.

⁶⁸ *Supra* Section II.A.

⁶⁹ This is the case of elasticities of investment and competitive advantages as two dynamic factors to be considered in the implementation of a domestic minimum tax that resembles the global minimum tax rules. Parada, *supra* note 50.

⁷⁰ This is the case of the UTPR, as Wei Cui correctly argues: “many discussions . . . perpetuate the idea that the UTPR gives the adopter country a right to dip into a pot of undertaxed profit when other countries fail to adequately tax such profit.” Cui, *supra* note 14, at 23. However, such an understanding makes more sense when the UTPR was designed as an under-taxed *payment* rule rather than as an undertaxed profit rule. *See, e.g.*, Li, *supra* note 14 (stressing the relevance of the change in the terminology of the UTPR, i.e., from *payment* to *profit*).

countries. Indeed, in the Author's view, the "benefits for all" narrative underlying the global minimum tax rules just consolidates a well-known international paternalism towards developing countries; the message of which can be interpreted as follows: *if you (developing capital importer countries) do not want to tax sufficiently, we (the rich capital exporter countries) will punish you by taking those revenues that you did not want in the first place.*⁷¹ That is how the global minimum tax rules operate before and after the idea of a domestic minimum tax resembling the global rules.⁷² Let me take the example of the domestic minimum tax and the prohibition on collateral benefits introduced in the OECD Model Rules to illustrate the above.⁷³ As explained already in this work,⁷⁴ the OECD Model Rules contemplate the possibility of countries introducing a domestic minimum tax that resembles the global minimum tax rules, turning back the priority in the collection of tax revenues.⁷⁵ However, this comes with an important restriction. Countries are not allowed to spend the revenue collected providing alternative or collateral benefits to the MNE groups subject to the domestic minimum tax.⁷⁶ Although the policy rationale of this prohibition is aligned with the technical design of the rules, it is undeniable that this prohibition also reinforces the same paternalistic message behind the whole project for a global minimum tax, which now aims not only to instruct developing countries on what rate they should tax corporate profits but also on how that money should be ultimately spent. If this is not considered paternalistic behavior, what could be?

IV. TAILORING SOME ADVICE FOR DEVELOPING COUNTRIES

Considering the precedent criticism against the design and the "benefits for all" narrative behind the idea of a global minimum corporate income tax, this Section elaborates on some recommendations for developing countries to design a strategic approach to cope with a global minimum tax. This strategic approach is based upon three main recommendations: i) understanding that a global minimum corporate income tax is an idea divorced from the presumption of revenue gain/loss; ii) taking the minimum global corporate income tax wave as an opportunity to review their tax and non-tax incentives, including alternative forms of competition, and iii) aiming for simplification and ease of administration in the

⁷¹ See, Leopoldo Parada, *La Propuesta de un Impuesto Mínimo Global: Una Mirada Crítica* [The Global Minimum Tax Proposal: A Critical View], in TRANSFORMACIÓN DIGITAL Y JUSTICIA TRIBUTARIA 205 (F. A. García Prats ed., 2022) (arguing that a global minimum tax will perpetuate the traditional international paternalism toward poor countries). In addition, the idea of punishing developing countries for not taxing sufficiently could be compared as the opposite policy motivation of tax sparing where developed countries agree not to tax their residents who benefit from a developing country's tax incentive. For more on the interaction between global minimum taxation and tax sparing in developing countries, see Aitor Navarro, *Jurisdiction Not to Tax, Tax Sparing Clauses and the Income Inclusion Rule of the OECD Pillar 2 (GloBE) Proposal: The Demise of a Policy Instrument of Developing Countries?*, (Copenhagen Bus. Sch., Law Research Paper Series 20–22, 2020).

⁷² *Supra* Section II.A. (explaining the basics of a domestic minimum tax in the context of the new global minimum tax rules).

⁷³ For the prohibition on collateral benefits, see *supra* note 19.

⁷⁴ *Supra* Section II.

⁷⁵ *Id.*

⁷⁶ *Id.*

design and implementation of a minimum tax approach. In doing so, developing countries could perhaps find an opportunity to reshape their general action plan to attract FDI more effectively while they still try to ride the wave of minimum global corporate income taxation that the world seems to be in.

A. Departing From the Revenue Gain/Loss Narrative

As stressed already in this work,⁷⁷ the narrative of “benefits for all,” and particularly, the premise under which an active endorsement of the global minimum tax rules may bring new and fresh revenues, while the inaction on these matters may condemn developing countries to lose such revenues, has proved to be very persuasive to achieve the “critical mass” needed to put this project into practical operation.⁷⁸ Indeed, I would dare say that most of the policy advice received by developing countries thus far—at least publicly—goes in the direction of the marginal benefits associated with this project. However, convincing developing countries that a marginal benefit might arise or be simply lost depending on the endorsement of the global project seems to be short-sighted, even though the revenue gain/loss presumption might prove to be true for some developing countries with strong competitive advantages and quite inelastic levels of investment, or for any other country but only in the short-term.⁷⁹

For this reason, a more sensitive approach devising any sort of advice for developing countries should start from an understanding that a minimum corporate income tax is not about generating revenues but about limiting corporate income tax competition.⁸⁰ After all, the whole design of the global minimum corporate income tax rules responds to the fact that if one country does not impose a minimum level of taxation, another country will pull the trigger and get the part that is necessary to complete that minimum.⁸¹ That is, the revenue effect comes

⁷⁷ *Supra* Section III.C.

⁷⁸ It is difficult to determine the true origin of the use of the expression “critical mass” in the context of Pillar 2. Some commentators have attributed this to the intervention of a senior OECD official being asked about countries deciding to step out of the global deal, to which he allegedly replied: “We don’t care, actually... we don’t need them.” Feria, *supra* note 26, at 20 n.103 (citing Doug Connolly, *Global Minimum Tax Will Work, if Implemented, OECD’s Saint-Amans says*, MNE TAX (Nov. 4, 2021), <https://mnetax.com/global-minimum-tax-will-work-if-implemented-oecd-saint-20amans-says-46122%20> [perma.cc/JB9N-3DJD]). However, whatever the origin is, one must recognize that it has clearly taken a privileged place in the global minimum tax narrative among tax scholars. *See, e.g.*, English, *supra* note 3, at 19. *See*, Mason, *A Wrench in GLOBE Diabolical Machinery*, *supra* note 2. In the Author’s view, this expression is not as innocuous as it appears and represents an important element of the narrative of “benefits for all” and the ultimate success of Pillar 2. After all, the expression seems to demonstrate that the greater the number of countries cooperating, the better their individual interests are satisfied, which is ultimately false. For a deeper analysis of the dynamics of international cooperation, see Dagan, *supra* note 4, at 152, 184 (arguing that “[e]ach [international] initiative should be evaluated according to its concrete results and not the number of states that endorse it...”).

⁷⁹ *See* Noked, *supra* note 19; Parada, *supra* note 50.

⁸⁰ This was at least the original intent expressed in the beginning of the project for a global minimum corporate tax. *See* Pistone, *supra* note 3. *See also* Devereux et al., *supra* note 3; English, *supra* note 3.

⁸¹ *See* Mason, *The Transformation of International Tax*, *supra* note 2; Mason, *A Wrench in GLOBE Diabolical Machinery*, *supra* note 2 (explaining the concept of fiscal-fail safe rules). *See also* Parada, *supra* note 2.

only as a sort of penalty to incentivize the country that taxes under the minimum to increase its level of effective corporate income tax, or, in some cases, the revenue gain/loss simply becomes an illusion, as demonstrated in this work already.⁸²

B. Sensitive Review of Tax and Non-Tax Incentives

As well as departing from the revenue gain/loss premise, developing countries should focus on adopting a strategic plan regarding their tax and non-tax incentives.⁸³ In other words, they should take the minimum global corporate income tax wave as an opportunity to review their tax and non-tax incentives, including alternative forms of competition, especially related to activities that may either generate positive externalities or that may reinforce their competitive advantages globally, such as renewable energies or high-tech development.⁸⁴ In particular, this approach should involve at least three fundamental steps.

The first step is understanding the scope of the global minimum tax rules and adopting a strategic approach regarding their tax incentives. “This is crucial for developing countries because it is evident that the new rules on minimum corporate income taxation will not affect all tax incentives equally.”⁸⁵ Indeed, some tax incentives will be excluded from the scope of the new rules either because they will not be considered for purposes of the calculation of the tax base under which the minimum taxation is determined or simply because being considered for calculation purposes, they will not reduce the ETR below the minimum required.⁸⁶ In other words, developing countries shall act strategically, keeping tax incentives without the elements of corporate income tax, or they shall try to make these incentives as efficient as possible for purposes of the calculation of the ETR.⁸⁷ Let me take the example of refunding negative corporate tax in the form of a refundable credit to illustrate the foregoing. Many developing countries offer the possibility of refundable credits as an alternative to a loss carry-forward for the obvious reason that a refundable credit offers some available cash for the specific business.⁸⁸ This can be quite important either to incentivize some specific new business activities or simply to promote investment in R&D activities in general, especially in times of crisis.⁸⁹ The OECD Model Rules make a clear distinction between *qualified* and

⁸² *Supra* Section III.C. (explaining how the presumption of revenue gain/loss proves to be very fragile in the case of domestic minimum taxes and the UTPR).

⁸³ A strategic approach regarding tax incentives seems also to be promoted by the World Bank although focused almost exclusively on the compatibility of tax incentives with the global minimum tax rules. See David O’Sullivan & Ana C. Gómez, *The Global Minimum Tax: from agreement to implementation*, WORLD BANK GRP., 33–5 (2022). See also OECD, TAX INCENTIVES AND THE GLOBAL MINIMUM CORPORATE TAX: RECONSIDERING TAX INCENTIVES AFTER THE GLOBE RULES, 50–2 (2022) (recognizing that countries will continue using tax incentives after a global minimum tax is adopted worldwide).

⁸⁴ Parada, *supra* note 50, at 784.

⁸⁵ *Id.* See also Liotti et al., *supra* note 7, at 30–1.

⁸⁶ *Id.*

⁸⁷ *Id.* Similarly, OECD, *supra* note 83, at 47.

⁸⁸ *Id.* at 36.

⁸⁹ MAX PLANCK INST. FOR TAX L. & PUB. FIN., *Tax Law Under Heavy Weather* (Sept. 2020), https://www.tax.mpg.de/en/news/news_details?tx_news_pi1%5Baction%5D=detail&tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Bnews%5D=113&cHash=b3e0ae8f879e640c8adbc1f

non-qualified refundable credits for purposes of the rules on minimum taxation, more specifically regarding the calculation of the ETR.⁹⁰ In this regard, while a “qualified” refundable credit is factored “into . . . the denominator of the ETR computation,” that is, not “reducing . . . [an] [e]ntity’s taxes [paid] in the year the refund or credit is claimed,” a “non-qualified” refundable credit is “excluded from income but treated as a reduction to [c]overed [t]axes in the period the refund or credit is claimed . . . [That is,] they reduce the numerator of the ETR” calculation instead.⁹¹ As per this distinction, it seems more strategically sensitive for developing countries to ensure that their tax incentives in the form of refundable credits are treated as qualified refundable credits under the OECD Model Rules.⁹² In fact, only in this case will they receive treatment like a government grant without a substantive investment impact, which can be quite relevant when we speak about new investment in, for instance, sensitive areas such as renewable energy or other socially desirable outcomes.⁹³

Second, developing countries shall make an exhaustive review of those corporate income tax incentives that need to be transformed into other forms of non-tax incentives, including direct subsidies.⁹⁴ This is evident since some corporate income tax incentives will simply not pass the new threshold established by the global minimum corporate tax standards, such as the case of tax holidays designed exclusively based upon corporate tax elements.⁹⁵ These tax incentives will necessarily be redrafted either in the form of direct subsidies or another type of corporate benefit. For example, many of these tax holidays could be replaced by grants or loans with preferential rates, which seems to be a desirable path for some African countries facing this challenge right now.⁹⁶ However, it is also evident that this process of transformation is not free of costs and will necessarily bring new challenges both from an administrative and regulatory perspective.⁹⁷ Therefore, it is important that developing countries pay enough attention to the process, supporting the use of automated data collection systems and other more advanced

5e662aff9 [perma.cc/FR5L-B9MY]. See also UNCTAD, *World Investment Report*, *supra* note 16, at 147.

⁹⁰ A refundable credit is considered a qualified refundable credit under the OECD Model Rules if it must be paid within four years of the taxpayer satisfying the conditions for receiving the credit under the laws of the jurisdiction that grants it. OECD, *Model Rules*, *supra* note 1, at 65 (describing the defined terms of Article 10.1).

⁹¹ OECD, *supra* note 1, at 215. See Herzfeld, *supra* note 17, at 1606.

⁹² However, the strategy of developing countries should not be limited to make their tax incentives compatible with GloBE only. That is, developing countries should take the chance to make a deeper review of their status quo, as argued in this work. In a similar view, see OECD, *supra* note 83, at 49.

⁹³ Herzfeld, *supra* note 17, at 1608 (arguing that it would be unfortunate if the global minimum tax ends up reducing private investment in renewable energy).

⁹⁴ *Supra* Section III.B.

⁹⁵ A “tax holiday” is a government incentive program that offers a temporary reduction or elimination of taxes, which can be corporate income taxes or other types of taxes. The new global corporate income tax rules do not prohibit the use of tax holidays. However, it is evident that a tax holiday that substantially reduces the CIT rate in a country may trigger a top-up tax somewhere else. For this opinion, see also Liotti et al., *supra* note 7, at 38.

⁹⁶ Titus, *supra* note 41, at 718–719.

⁹⁷ *Id.* at 719. See also Noked, *supra* note 43 (stressing the risks associated to the transition to non-tax subsidies).

technological tools to closely monitor the whole process of transformation.⁹⁸ In other words, the plea is simply to take the minimum global tax wave not only as a challenge but also as an opportunity to improve what they have, including their competitive advantages in areas of potential further development such as renewable energies and high-tech industry. Fortunately, this seems to be the approach already adopted by some developing countries around the world. For instance, according to the Malaysian Investment Development Authority (MIDA), the government agency responsible for promoting investments in Malaysia, the country has in recent years shifted its focus from using tax incentives to adopting what they denominate an “ecosystem approach.” This approach aims to ensure that Malaysia remains competitive as a preferred investment destination in the region.⁹⁹ In particular, MIDA plans to deploy high-speed broadband in selected industrial estates¹⁰⁰ to facilitate adoption of new technologies, such as cloud computing, remote monitoring, and predictive maintenance by businesses operating in these industrial estates.¹⁰¹ This certainly looks like one concrete step in the right direction that other developing countries may be willing to follow.

Third, and finally, developing countries should take the opportunity not only to be as compliant as possible with the newly imposed international standards on minimum corporate income taxation but also to revise the general effectiveness of their tax incentives to attract FDI. However, this should not be done as an isolated process. Indeed, developing countries should pay closer attention to what is done within their own region, understanding and taking the positive examples from neighboring countries, too.¹⁰² This may help create an informal common policy approach that ultimately serves to strengthen the position of a full region, representing more than one single developing country.¹⁰³ Similarly, and as noted already in this section, developing countries should accompany this process by

⁹⁸ See, e.g., MINISTRY OF FINANCE MALAYSIA, PUBLIC CONSULTATION PAPER FOR BUDGET 2023—THE IMPLEMENTATION OF GLOBE RULES IN MALAYSIA 34–35 (2022).

⁹⁹ MALAYSIA INVESTMENT DEVELOPMENT AUTHORITY, *Beyond Tax Incentives: Empowering Industrial Estates with High-Speed Broadband towards a Prosperous, Inclusive, and Sustainable Malaysia*, MIDA E-NEWSLETTER 4–5 (Jan. 2, 2022), <https://www.mida.gov.my/wp-content/uploads/2022/02/FINAL-MIDA-NEWSLETTER-1.pdf> [perma.cc/UL6X-W8HS].

¹⁰⁰ “Industrial estates” are designated plots of land in Malaysia that are developed to cater to the needs of specific industries. Examples of industrial estates include technology-intensive industries, halal industries, and biotechnology parks. Industrial estates house benefits like availability of land, infrastructure, quality services, and proximity to strategic markets. Malaysia currently houses more than 500 industrial estates. One example is the Kulim Hi-Tech Park, an industrial park that houses high-technology enterprises such as Intel. See *Investment in Malaysia*, MINISTRY OF INVESTMENT, TRADE AND INDUSTRY <https://www.miti.gov.my/index.php/pages/view/2460?mid=836> [perma.cc/7Q93-8ZTB]; *Our Tenants*, KULIM TECHNOLOGY PARK CORPORATION, <https://www.khtp.com.my/our-tenant/> [perma.cc/CCW2-CUFL].

¹⁰¹ MALAYSIA INVESTMENT DEVELOPMENT AUTHORITY, “Powering Resilience” *Malaysia Investment Performance Report 2021*, 121–3 (2021), <https://www.mida.gov.my/wp-content/uploads/2022/03/MIDA-IPR-2021-1.pdf> [perma.cc/ZX74-JTS4].

¹⁰² Titus provides a similar advice for African countries taking the example of South Africa and their Global Business Service Incentive, which has been quite successful creating employment as well as attracting around 190 million USD in FDI. Titus, *supra* note 41, at 719.

¹⁰³ A specific recommendation in this regard can be found in the public consultation of Malaysia on Pillar 2 (“Analyse approaches adopted by other ASEAN countries and undertake comprehensive study on the impact of Pillar 2”), MINISTRY OF FINANCE MALAYSIA, *supra* note 98, at 34.

strengthening the monitoring of their tax incentives, both in terms of compliance and FDI return, aiming for automated and centralized data collection systems.¹⁰⁴ This may help not only in understanding the profiles of the different foreign investors coming into the country prior to negotiations but also help with designing more targeted tax and non-tax incentives in the future.¹⁰⁵ Ultimately, and from a practical perspective, it can provide developing countries important information regarding the behaviours of investors associated with specific tax incentives in specific sectors, giving some important hints regarding the levels of elasticities that they possess.¹⁰⁶

All in all, understanding the scope of the global minimum tax project, making the switch from tax to non-tax incentives when needed, and projecting the future of FDI seem to be the three sensitive steps to be followed by developing countries at this point.

C. Aiming for Simplicity and Administrability

Despite the current uncertainty, there is a likelihood that the narrative of “benefits for all” ultimately prevails and that a global minimum corporate income tax ultimately rules the world. If that is the case, developing countries need to be prepared to cooperate in reducing the additional transaction costs that this process will impose on both taxpayers and tax administrations by providing a simple and strategic process of implementation. In this regard, two avenues of implementation could be explored, although both require the compromise of all actors involved, that is, not only from developing countries but also, and mostly, from developed countries actively supporting this global initiative.

The first avenue has already been discussed within the IF and consists of providing some guidance for countries to design their domestic minimum taxes (QDMTT), resembling the OECD rules.¹⁰⁷ If we recall, the OECD Model Rules contemplate an alternative for countries to introduce their own domestic minimum tax, which, to the extent it resembles the OECD minimum tax rules, it could be considered as a QDMTT, ensuring that the priority of the global minimum tax rules (IIR and UTPR) goes back to them.¹⁰⁸ However, there is very little about how these domestic minimum taxes should be structured to be regarded as a QDMTT. For instance, the 2021 OECD Model Rules commentaries simply state:

The tax must be implemented and administered in a way that is consistent with the outcomes provided for under the GloBE Rules and their Commentary, including the prohibition against the implementing jurisdiction providing any collateral or other benefits

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* See also Englisch, *supra* note 3, at 11 (recognizing that countries have preferences for certain investment profiles).

¹⁰⁶ For the argument of elasticities of investment, see Parada, *supra* note 50.

¹⁰⁷ Herzfeld, *supra* note 20, at 317. See Leopoldo Parada, *Response to the UN Resolution A/RES/77/244 on Promotion of Inclusive and Effective Tax Cooperation at the United Nations 8* (2023) <https://ssrn.com/abstract=4452268> [perma.cc/KS85-DT59].

¹⁰⁸ *Supra* Section II.A.

that are related to such domestic tax as discussed further in the Commentary to the definition of a Qualified IIR.¹⁰⁹

Similarly, the same commentaries provide a sort of implicit compromise or declaration of principles when they state:

GloBE implementation framework will develop process and provides guidance to facilitate co-ordinated implementation of the GloBE Rules. This will include implementing a process to assist tax administrations in determining whether a minimum tax is considered as a Qualified Domestic Minimum Top-up Tax. In order to facilitate compliance by MNEs and administration by tax authorities, the outcome of these determination would be released and made publicly available.¹¹⁰

This not only increases the uncertainty for developing countries willing to implement a domestic minimum tax, but it also may ultimately overcomplicate their potential design.

Some commentators have rightfully argued that the vagueness found both in the wording of the OECD Model Rules and the commentaries may not be fortuitous.¹¹¹ Indeed, the wording seems to respond to specific but contradictory incentives. On one hand, there is the need of some countries to have a tailored-designed domestic minimum tax that is as close as possible to a QDMTT, such as the case of the United States and its recently announced corporate alternative minimum tax (US AMT).¹¹² On the other hand, it is in the interest of some countries to establish a domestic minimum tax that is like a QDMTT but not close enough to be considered a QDMTT but a covered tax instead. In that way, these countries secure priority over other countries' CFC regimes.¹¹³ Whatever path is ultimately adopted, it is evident that clearer guidance would help avoid a proliferation of different versions of minimum taxes around the world, increasing the already complex scenario created under the OECD minimum tax proposal.¹¹⁴

The second avenue explored in the tax literature is the so-called "pre-emptive approach."¹¹⁵ The idea is to get countries out of the complexities of ETR calculations except when is truly needed.¹¹⁶ Most notably, a two-levels *ex ante* tests to determine full compliance under the new global minimum tax rules is

¹⁰⁹ OECD, *Model Rules Commentaries*, *supra* note 1, at 212.

¹¹⁰ *Id.*, at 212.

¹¹¹ Noked, *supra* note 21, at 685.

¹¹² *Id.* This matter is certainly not irrelevant since if the US AMT is considered a QDMTT, other countries would be prevented from imposing a UTPR (or an IIR) on US MNEs or US sourced earnings of foreign-parented multinationals. For an analysis of the US AMT, see, e.g., Mindy Herzfeld, *The Remade Corporate AMT Walks and Talks Like a Duck*, 176 TAX NOTES INT'L 1194 (2022) (raising the question of whether the US AMT can be considered a QDMTT).

¹¹³ Noked, *supra* note 21, at 685.

¹¹⁴ See Dylan Moroses, *U.S.' Shunning of Top-Up Tax Could Unwind Global Deal*, LAW360 TAX AUTHORITY (Aug. 26, 2022) (media article expressing the opinion of Leopoldo Parada).

¹¹⁵ See Cedric Döllefeld et al., *Tax Administration Guidance: A Proposal for Simplifying Pillar Two* (Acct. for Transparency, Working Paper Series No. 70, 2022).

¹¹⁶ *Id.* at 5.

promoted.¹¹⁷ In the first level, the tax rates, tax base, and deviations of it as well, are analysed to determine whether the country is either low or high-risk under the global minimum tax rules. This first test represents a pre-emptive filter to determine whether any ETR calculations are required or whether a subsequent test is needed at all.¹¹⁸ The second level test aims to determine the specific ETR at the MNE level. Therefore, this test is contingent on the fact that the country test (previously applied) raises some risks or features “red flags.”¹¹⁹ Nevertheless, the second-level test has a caveat, which is that the ETR calculation will only use the national tax law for the purpose of determining compliance with the new international standard, making it simpler than the ETR calculation under the Pillar 2 rules.¹²⁰ As a result, “[i]f the simplified calculation shows that an MNE benefits from the specific red flag, a full . . . calculation [of the global minimum tax] will be required.”¹²¹ Let me illustrate the foregoing with a simple example. Let us assume that the first test identifies that a specific country has a nominal corporate income tax rate of 15%. This might constitute a red flag that would require an MNE-level test, that is, a determination of whether a specific MNE benefits from an effective rate below 15%. However, rather than taking the calculation of the ETR according to the global minimum tax rules, the test would use only the national tax law. If this simplified calculation shows an ETR below 15%, then the full global minimum tax compliance would apply.¹²²

There are evident benefits and costs associated with the initiative explained in the paragraph above, especially for developing countries with no other alternative than implementing the global minimum tax rules.¹²³ As for the immediate benefits, these countries could avoid burdensome ETR calculations under the global minimum tax rules.

[This] can be particularly important for developing countries with high nominal corporate income tax rates as well as small deviations between their domestic tax base and the tax base calculated under the global minimum tax rules. Similarly, transaction costs for taxpayers may substantially be reduced since a multinational (MNE) operating in a specific developing country will be subject to the full global minimum tax compliance only to the extent that some of the red flags appearing under the first test bring

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 6.

¹²⁰ *Id.*

¹²¹ Parada, *supra* note 107 at 9; (citing Döllefeld et al., *supra* note 115 at 5–6). Döllefeld explains that such “red flags” can be either a tax rate below the minimum of 15% or certain deviations from the tax base. This is all country-specific analysis.

¹²² For a detailed explanation regarding the determination of red flags, see *id.*, at 8.

¹²³ It would not be a surprise at all if some developing countries ultimately decide to cooperate, even though that international cooperation plays against their own individual interest. See Dagan, *supra* note 4, at 183.

to the conclusion that the MNE was subject to an effective rate below the global minimum.¹²⁴

In this regard, it is almost impossible not to be sympathetic to such a proposal, at least from the perspective of simplicity and administrability. However, this proposal is not exempt from costs, and perhaps the most evident cost is also recognized by the promoters of this idea, that cost being the possibility of generating false positive and false negative results.¹²⁵ In fact, in these cases, the pre-emptive approach proposed would serve no purpose other than incrementing the legal uncertainty related to the application of the global minimum tax rules, either falsely preventing or falsely allowing their application. In both cases, there would be important costs associated with a wrong analysis. Yet, in the Author's view, these costs seem to be only minor when compared to the overall costs of implementing a global minimum tax without any such simplified options. In other words, in the classic cost-benefit economic analysis, it still appears more logical to embrace a simplified tax administrative practice both for the sake of taxpayers and tax administrations rather than doing nothing. Inaction in this case may bring a realistic loss for developing countries.

V. CONCLUSIONS

The apparently solid narrative of “benefits for all” erected behind the project for a global minimum corporate income tax is both appealing and persuasive. However, it also appears to be quite unrealistic for many developing countries. As argued in this article, the alleged benefits of global minimum taxation in developing countries seem to be exclusively based upon three unconvincing premises that simply reinforce the chosen altruistic rhetoric. Yet, all these premises prove to be either entirely disconnected from the reality of many developing countries, such as the case of presuming that all corporate income tax incentives are equally inefficient to attract FDI, or they simply fall apart when additional economic considerations are added into the analysis, such as the case of the alleged revenue gain/loss attributed to the active or passive participation of developing countries in the global tax deal. Either way, they all seem to hide the true motivation behind a minimum corporate income tax worldwide, which seems to be no other than changing the dynamics of tax competition globally, building up an unrealistic scenario in which zero-cost international cooperation appears as the new mantra. In this new scenario, the alternatives for developing countries seem to be very limited. After all, uncooperative countries will be punished in one way or another, at least to the extent the global tax narrative is still dominated by a narrow group of countries promoting their own interests behind the magnanimous rhetoric of benefiting all. For this reason, developing countries should take this time of

¹²⁴ Parada, *supra* note 107, at 9 (citing Döllefeld et al., *supra* note 115 at 5–6), In a survey conducted by Tax Foundation in 2021, and which involved 225 countries, 115 countries had CIT (nominal) rates above 20%. Similarly, all countries from a list with the 20th highest corporate income tax rates worldwide (Table 2) are developing countries. See Sean Bray, *Corporate Tax Rates around the World*, 2021, 783 FISCAL FACT 5 (2021).

¹²⁵ Döllefeld et al., *supra* note 115, at 17 (where the authors refer exclusively to “false positive” as those cases in which the pre-emptive approach finds an ETR below the minimum but then the GloBE ETR calculation reveals that the ETR is indeed over the minimum).

pressure and challenges as an opportunity to focus on sensitive reviews of their tax and non-tax incentives, including the search for new alternative forms of competition. In doing so, developing countries may perhaps reshape their general strategies to attract FDI more effectively¹²⁶ while they still try to ride this wave of minimum global corporate income taxation that the whole world seems to have embraced.

¹²⁶ The terms “effectively” and “efficiently” are used interchangeably in this work. *See also supra* note 7.