OECD GLOBAL TAXATION & SDG ACHIEVEMENT: INSTITUTIONAL AND MATERIAL LAW CONSIDERATIONS

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ABSTRACT

This article focuses on Pillar Two global taxation for MNEs from the perspective of the Sustainable Development Goals (SDGs). It evaluates how the international tax cooperation framework, the OECD Inclusive Framework (IF)'s institutional architecture and normative outputs, aligns or not with SDGs. Attention is given to developing countries regarding their inadequate representation and the limited inclusivity of the IF decision-making process, which generates tax norms on global taxation that do not accommodate their sustainable development needs in terms of fiscal policies. Through a wide-ranging review, this article showcases through concrete examples the shortfalls of producing global taxation with sustainable development imperatives within the G20/IF framework. Finally, the article contends that shifting global taxation norms to the UN does not resolve per se these complexities, and advocates instead for a more inclusive and responsible global tax governance system.

Keywords - *Global South, global taxation, international tax cooperation, MNEs, OECD, SDGs.*

INTRODUCTION

In recent years, the international tax landscape has undergone significant changes, offered new challenges for norm-setting, and highlighted the need for a more inclusive and effective institutional framework to attain sustainable development. The 2030 Agenda on Sustainable Development Goals (SDGs), adopted by the UN in 2015, recognizes fiscal policies as major tools for implementing targets of sustainable development, pursues the broader participation of developing countries in institutions of global governance that reduce inequality between countries, and stresses the importance of domestic and additional financial resources for least-developed countries[1]. Moreover, the UN 2030 Agenda integrates the Addis Ababa Action Agenda[2] - signed the same year - which is dedicated to development financing, acknowledging the need for universality and inclusiveness to

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scale up international tax cooperation in a multi-stakeholder model for attaining sustainable development goals through additional resources for developing countries[3].

After the Addis Ababa declaration, the creation of a UN body with a full mandate to set global tax rules was not considered, and UN committees were not upgraded. Thus, the OECD took up the baton for advancing norms-setting, under two principal institutional stances: the Global Forum and the Inclusive Framework (IF)[4]. The IF was given an extensive mandate to address matters of fiscal policy and tax norm-setting through the Base Erosion and Profit Shifting (BEPS) project. BEPS encompasses fifteen existing normative tax blocks, along with Pillar One tax blocks on digital taxation, and Pillar Two multinational enterprise (MNE) global taxation, both meant to respond to the Addis Ababa agenda. However, because OECD efforts raise questions about political consensus, its BEPS projects resuscitated the G77 effort at the UN to create an intergovernmental tax body. With Resolution 78/230 from 2023[5], the General Assembly established an open-ended ad hoc inter-governmental committee to draft terms of reference for a United Nations framework convention on international tax cooperation.

This paper analyses the key points of contention that prompted the G77 to challenge the OECD's IF in its role as global tax legislator, the norms it sets to promote SDGs, the IF's institutional rules, and the substantive law produced under Pillar Two. Primary criticisms relate to the principles of universality, and the allocation of taxing rights between developing and developed countries, with emphasis added on the treatment of withholding taxes and source taxation. The rules settlement between the UN and the OECD is perceived as falling short of ensuring additional resources, a core SDG in the Addis Ababa Agenda.

This article does not provide an exhaustive evaluation of the OECD's work on SDGs, nor does it extend to the Global Forum's output regarding Pillar One. Section 2 describes the theoretical background, methodology, and data collection. Section 3 examines the institutional architecture of the IF and assesses its (mis-)alignment for attaining SDGs. Section 4 reviews the tax norms produced under IF and entails specific examples at odds with SDGs. Section 5 concludes with considerations related to shifting tax norm-setting to the UN, and a way forward. The significance of this paper resides in dealing with a crucial topic, the exercise of global fiscal powers, and its legitimation.

THEORETICAL BACKGROUND, METHODOLOGY AND DATA COLLECTION

This paper analyses the alignment between the OECD's institutional architecture for global taxation and sustainable development goals, with a focus on the experience of developing countries. The theoretical background explores the OECD's normative output on fiscal autonomy and resources of developing countries, and the broader quest for equitable global tax governance.

Methodologically, the study employs a variety of techniques to scrutinize the conceptual and legislative aspects of global tax governance, mainly through content analysis of scientific journals, tax reviews, public administrators' testimonies, input from business tax community experts, scientific papers of tax think tanks, and authoritative international documents sourced from the UN and the OECD. Apart from content analysis, a logical-formal method provides a proper analysis of the practical findings through deduction and induction. And the legal-comparative method is employed for relevant conclusions to be drawn. All listed methods are used alternatively and as a whole.

IF INSTITUTIONAL FRAMEWORK AND SDGS

In later Sections, this article will assert under which terms the OECD IF institutional arrangement was perceived as falling short of fulfilling the SDGs entailed in the Addis Ababa and 2030 Agendas in terms of universality and inclusivity, multi-stakeholders' participation theorized to promote inclusive institutions, and the broad participation of developing countries in global fiscal policies.

IF institutional architecture and SDGs

As an initial perspective, the IF was established by the OECD in 2016. Thus, its legitimacy to reform the governance of international tax cooperation was not formulated within the framework of UN resolutions. Instead, the institution emerged as an enterprise of developed countries (US, UK, Japan, France).

The IF is controversial for a number of reasons. First, the inclusiveness and accountability of its institutions are contrasted to the principles entailed in the Addis Ababa Agenda, "efforts in international tax cooperation should be universal in approach and scope and should fully take into account the different needs and capacities of all countries, in particular least-developed countries, landlocked developing countries, small island developing States, and African countries; we emphasize the importance of inclusive cooperation and dialogue among national tax authorities on international tax matters".[6]

The IF institutional arrangement has raised concerns since inclusiveness was reached by imposing the same standards on all participating jurisdictions. BEPS minimum standards reached consent without any previous participation of new entrants in decision-making on those standards. Also, in order to reach the broadest number of members, the IF has made use of counter-incentive measures: stringent monitoring, screening, and blacklisting of non-compliant jurisdictions; and high rate withholding taxes on outbound payments to non-IF jurisdictions. These measures had significant impact on some States' decisions to join the forum, while consent to IF minimum standards was not always genuine. In addition, the IF's inclusiveness has been challenged through the composition of its staff, and the involvement of non-OECD members in its working groups. The OECD IF staff remains dominated by OECD-member nationals. Permanent staff is recruited from them, while non-OECD nationals are not involved in setting standards. Instead, the latter serve as liaisons to non-OECD states. Their work never extends to updating the OECD standards on the Model tax convention or Transfer Pricing. This undermines the capacity of non-OECD staff to effectively defend their interests under dispute resolution mechanisms for BEPS and Global Tax dispute cases. In general numbers, non-OECD nationals are little involved in working groups (Oguttu, 2022, p.5).

By the same token, IF alignment to political accountability[7] has been questioned. The IF was initially created by OECD members, later extended to include all G20 countries, and finally made available to all jurisdictions. The IF, by remaining intrinsically linked to the G20, has pushed academics and segments of society to criticize that it is not accountable to all Member States and participating jurisdictions, but instead reports only to the OECD Secretariat and G20 countries. The OECD counterargues that the Co-Chair and two Vice-Chairs are from developing countries, as are half of the Steering Group (OECD, 2023a, p.2). Thus, the IF political accountability model has not been well perceived.

IF procedural framework and SDGs

The IF institutional process was contested by the Pillar Two negotiation. Its procedural scheme proved unconvincing on many levels regarding the merits of ensuring responsive, inclusive, participatory, transparent, representative decision-making, and its supposed broadening and strengthening of the participation of developing countries in the institutions of global governance (Norwegian Academy of International Law, 2022, p. 9).

Primary criticisms noticed the insufficient attention given to public consultation in the assessment of legislative, technical, and administrative needs of all IF member countries. Indeed, not all members had engaged fully with their internal stakeholders, government ministries, business communities, and civil societies. This perception was reinforced by the limited involvement of developing countries in discussions, primarily consisting of OECD Secretariat, Committee on Fiscal Affairs (CFA), and Bureau members, with the participation of only selected developing nations. The processes involved in the Pillar Two agreement came with an ambitious timetable, perceived as unrealistic because of outstanding issues that led to further negotiations, the complexity of the rules developed, and the lack of consideration for the capacities of some IF members. Whereas all IF members needed to evaluate their legislative frameworks considering the changes stemming from Pillar Two, as well as needing to assess their human resources and technological capabilities for introducing such a legislative package, the tight timeline impeded developing countries from doing that work properly (Nembhard Parker 2022, p. 22).

The OECD decision-making process did not facilitate their task. According to IF rules, tax work is steered by the CFA, through specialized groups of national experts organized technically in Working Parties and Task Forces. These working groups formulate international tax standards and guidelines, while executing technical undertakings through discussions and consensus-building. Final decisions on working groups' out-comes are determined by senior officials of member countries within the CFA in a consensus-driven approach. This dual layer IF operating structure did not allow for the participation of developing countries at all stages. The discussions and formulations of rules were led by the Secretariat, the IF Steering Group, the Task Force on the Digital Economy, and various Working Parties, with developed countries dominating all discussions. Meetings of the CFA and its BEPS Working Groups generally convened in Paris, with the CFA gathering twice a year, and Working Groups assembling two to four times annually. With respect to international tax cooperation, the OECD CFA generally set the agenda and approved the technical products developed by its Working Parties (OECD, 2017, point 2.2).

The structural deficiencies of low-income countries have limited their potential for strengthening state capacity to produce coordinated and intergovernmental national policy. An African tax commissioner (Bloomberg Industry Group, 2023) noted that tax negotiations for these countries are driven by civil servants not well-vested in fiscal policy making, in contrast to richer countries that build negotiating teams with treasury officials. This difference enables wealthier countries to design fiscal policies around bilateral and multilateral tax instruments. “Developing countries already face issues in negotiating bilateral Double Tax Agreements [DTAs], such as foregoing taxing rights to gain foreign direct investments. Multilateral negotiations such as the ones on Pillar Two and the dispute resolution mechanism, are far more complex” (Logan Wort, 2023).

In addition, Steering Group functionality has been perceived as opaque, and it remains unclear how the output of Working Groups is processed. A lack of transparency has raised concerns about potential bias toward developing countries benefiting from Pillar Two[8]. It can be difficult for a country with a small international tax staff to influence an international decision-making process, or to analyze and critique IF technical reports. Sustaining political engagement and organization at the regional level should have been crucial for ensuring the inclusive participation of all countries in the Pillar Two negotiations, but that point was neglected. And according to IF procedural rules, a country is deemed to agree to a proposal unless it objects to it. No affirmative opt-in is necessary. Therefore, a country that cannot keep up with the pace of negotiations, and never expresses a view on a proposal, is viewed as agreeing to it (Logan Wort, 2023). As previously mentioned, non-OECD states joining the forum agreed to a largely pre-determined and continuing agenda. If one were to argue that new entrants should not apply different standards to already agreed upon matters, that argument should not apply in a continuing agenda.

Given the above, the OECD IF institutional framework has been criticized for not generating global solutions inclusively and transparently, and for producing tax rules that do not align with the interests of least-developed countries. Such criticisms question the OECD’s legitimacy as a global fiscal legislator. The material rules produced by Pillar Two have also been fiscally challenged as misaligned with sustainable development goals.

IF NORM-SETTING VERSUS SDGS

This section focuses on specific aspects of the substantive law produced by IF -Pillar Two and its alignment with SDGs in fiscal policy. The UN sustainable development agenda emphasizes that “significant additional domestic public resources, supplemented by international assistance as appropriate, will be critical to realizing sustainable development”[9]. In addition, principles of national ownership of fiscal policies, progressive taxation, and protection of poor and affected communities also comprise SDGs in fiscal affairs.

Pillar Two versus additional fiscal resources

Here, we can provide selective examples to highlight how Pillar Two could hinder the sustainable goal of “mobilizing additional financial re-sources for developing countries from multiple sources”[10] and “reducing inequality within and *among countries*”[11]. More specifically, the academic tax community (Schoueri & Nogueira dos Santos, 2023, p.386) challenged Pillar Two for not helping developing countries to levy additional fiscal resources, for shifting fiscal resources to the already-developed, and for generating double taxation to the detriment of less-developed countries.

Pillar Two enables jurisdictions where the MNE has a business presence as constituent entity (CE), intermediary parent company (IPE), or ultimate parent company (UPE), to apply a global minimum top-up tax for raising the MNE’s global effective tax rate (ETR) to 15% if it falls below that rate in a given jurisdiction. These global tax rules apply to MNEs that report financial accounting revenues exceeding €750 million in two of the prior four years. Under these rules, top-up taxes are imposed on the MNE's net global income, which is defined as financial income earned globally (OECD, 2024, art.3.1).

One outcome of these global tax rules is the transfer of fiscal resources from developing to developed economies. This results from the joint reading of the sequence order for fiscal rights allocation between the residence and source country, and the definition of adjusted covered taxes used to assert the ETR in a given jurisdiction.

Taxing rights allocation follows a sequence that prioritizes the source country, which can apply a Qualified Domestic Minimum Top-Up Tax (QDMTT) and impose it on the profits generated within its jurisdiction. Taxing rights next pass to the residency state of the UPE, where an Income Inclusive Rule (IIR) or a Qualified Income Inclusive Rule (QIIR) applies. The IIR and QIIR enable the residence state to levy taxes on profits generated abroad if the ETR remains below 15%. Insufficient taxation in the source state can arise from different scenarios: from the absence of a QDMTT, to an ETR that remains below 15% leaving fiscal space for additional top-up-taxes, in either case the source country’s domestic corporate tax base and rate rules mismatch with global net income computation. If neither the source nor the UPE residence state applies top-up taxes, taxing rights are allocated to the IPE ‘s jurisdiction. Whether any of the afore-mentioned top-up taxes applies, if the ETR remains below 15%, the source country has an additional right to tax under the Undertaxed Payment Rule (UTPR). A source country is also allowed to apply a withholding tax pursuant to the subject-to-tax rule (STTR), imposed before any of the previous global tax rules came into effect (OECD, 2023, point 1.6). Notably, each of the top-up taxes has different scope and computation rules.

This order of taxation has been perceived as shifting fiscal resources from developing economies to the treasury of developed countries, thus misaligning with SDGs. The priority order allocates taxing rights to the residence state of the headquarters/ regional headquarters under IIR and QIIR rules. The source country has prevalence under the QDMTT and regains taxing rights by enforcing the UTPR. SDGs should require additional fiscal resources to accrue in the source state where the UTPR has priority over the IIR, but the IIR enables the residence state to tax profits generated in the source country. In that context, the sequence of taxation priorities is of questionable value for SDGs.

Regarding the definition of “adjusted covered taxes” in Article 5.1.1 of Pillar Two, the ETR is computed on a jurisdictional basis by dividing the taxes paid from each CE by its

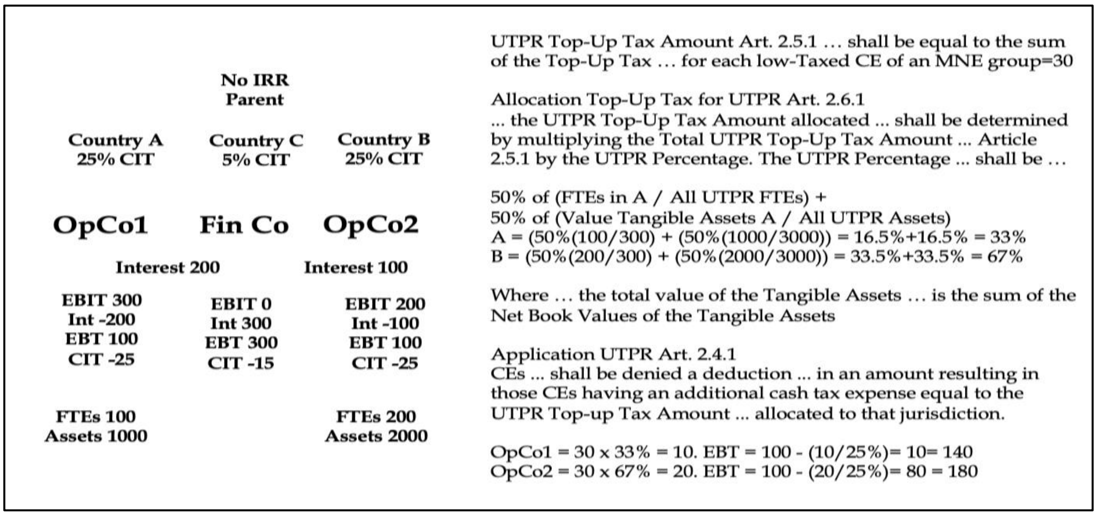
Global Anti-Base Erosion Model Rules (GloBE) Income. The latter is defined as the financial accounting net income or loss of each CE for a fiscal year, adjusted according to Pillar Two Rules. This entails tax outcomes derived from financial accounting profits, modified by specific adjustments. However, adjusted covered taxes do not include withholding taxes paid in the source country. Thus, the ETR of a constituent entity in the source state remains low, while symmetrically, the residence state's top-up tax increases under the IIR, or QIIR. Indeed, withholding taxes in developing countries increase a MNE's domestic tax liability, with no relief. Consequently, source countries are pushed to give up their withholding taxes, whether they adopt Pillar Two rules or not. This outcome is infringing on DTAs, where double taxation is set off at the expense of the residence state. Conversely, Pillar Two uses source country taxation to set off residence state taxation (Schoueri & Nogueira dos Santos, 2023, p.391).

Similarly, adjusted covered taxes exclude QDMTT charges from the ETR jurisdiction-al computation; and QDMTT is not deductible under the IIR offset mechanism, as per Pillar Two Article 2.3.2. Since QDMTT does not amount to an "adjusted covered tax", the ETR in a source country may remain below 15%, and additional top-up taxes are chargeable under the IIR. Within this legal set-up, the same profits are taxed at least twice, under the QDMTT and IIR. This outcome may discourage MNEs from investments in jurisdictions other than those of their head or regional headquarters, in which one single top-up tax is charged.

QDMTT non-deductibility results in double taxation that is difficult to reverse. A source country may offer QDMTT credits against its corporate taxes to grant relief for IIR additional top-up tax. Yet, the QDMTT credit does not help. It decreases the ETR paid in the developing country under domestic corporate tax and is recaptured under the IIR abroad. As a result, fiscal resources forgone for the developing countries are collected instead by developed jurisdictions (Schoueri & Nogueira dos Santos, 2023, p.389).

Another layer of complexity is added under UTPR computation rules. Pillar Two "top-up "taxes have separate calculation sets: UTPR and QDMTT are the two rules that enable tax at the source. UTPR allocates income based on the MNE's tangible assets and payroll expenses in a given jurisdiction. The tax industry (Better Tax. 2022) has suggested that UTPR on intra-group outbound payments disregards income subtractions: for example, a 200-euro outbound payment raises a 140-euro tax liability, while a 100-euro interest payment generates a 180-euro tax charge. This outcome misaligns with developing countries' need to levy taxes on outbound payments such as interest or royalties, and it results in a fiscal revenue loss when compared to a legal set of withholding taxes in the developing country with tax relief granted by the residence state.

Figure 1: Pillar II – UTPR applied in more than one jurisdiction



Source: Better Tax, 2022.

Without exhausting the tax literature on the topic, these examples have shown how Pillar Two shifts fiscal revenue from developing to developed economies and narrows the fiscal space of jurisdictions where no MNEs have their headquarters. Beyond criticism on the allocation of taxing rights, Pillar Two does not promote progressiveness.

Pillar Two versus Progressive Taxation

Tax rates and tax bases are emphasized by SDGs, which call for "enhancing revenue administration through modernized, progressive tax systems"[12]; adding, the need for "work to improve the fairness, transparency, efficiency and effectiveness of our tax systems, including by broadening the tax base"[13].

As the promise of progressive taxation was worked out, the agreement reached was a 15% flat tax rate, which stands as the maximum rate. Developing countries' headline corporate tax rates are often far higher than 15%, thus undertaxed profits are typically generated either by tax incentives or because of mismatches in tax base design between domestic corporate taxes and Pillar Two rules. In this situation, not much fiscal revenue accrues in developing countries.

In a different sense, national fiscal tax policies customized to domestic needs are inherently redundant: the income foregone in the source state is tax payable in the MNE's headquarters or regional HQ jurisdiction. The SDG imperative for national fiscal policies is to be further discussed in the subsequent section.

Pillar Two versus National Ownership Fiscal Policies

In light of the Addis Ababa Action Agenda pursuing sustainable development, national ownership of fiscal policies is highlighted: "*We welcome efforts by countries to set nationally defined domestic targets and timelines* for enhancing domestic revenue as part of their national sustainable development strategies and will support developing countries in need in reaching these targets"[14].

One key criticism of Pillar Two has been that it does not support developing countries' ability to elaborate their national fiscal policies because it disallows the introduction of other domestic tax legislation alongside its implementation which enables the levy of global taxes on MNEs. In addition, Pillar Two is made available under the principle of "take it or leave it". The rules' design encompasses some optional components that are not material, but the rules need to be transposed as a whole. This relies on evidence that domestic law mismatches give ground to international tax avoidance. The principle is justified and generally worthwhile, since intergovernmentalism requires that single states benefiting from international cooperation not enforce national legislation that undermines the common effort. In this context, single state's decisions to step away from Pillar Two also means they will forego additional fiscal resources.

One may counter that Pillar Two offers the option for a national system of global minimum taxation under QIIR. Nevertheless, this rule only enables the UPE's jurisdiction to apply supplemental global taxes beyond Pillar Two. Considering it is uncommon for developing countries to have MNE headquarters sited in their jurisdiction, (Alstadsæter, Godar, Nicolaides, & Zucman, 2024, p. 75), the QIIR option is not relevant for source states.

In addition, the design of national global taxes requires the appropriate tools and data. The OECD exchange of information platform – Common Reporting Standard (CRS) – has these add-ins. Previously, any use of this data necessitated the adoption of Pillar Two, even though many developing countries are still in the process of implementing such matching systems. In practice, CRS confidentiality requirements may require developing countries to keep its information completely sequestered from their domestic tax records[15] (Mehboob, D. 2023). Thus, CRS cannot be used for enforcing national global taxation and increasing single state's revenue. The impact on a developing country's tax sovereignty can be measured in terms of policy-making and fiscal resources. It has been shown to be "difficult for many developing countries to comply with the reciprocity requirements or meet the high confidentiality standards to participate" (Mambwe, 2022, p.15).

Therefore, it is unlikely for developing countries to advance their norm-setting capacity for taxing MNEs in the field of global taxation. National ownership of fiscal policies is not limited to taxation, but also entails the capacity to provide incentives. The section below reviews the impact of Pillar Two on that expression of fiscal power, the ability to provide favorable tax treatment schemes to MNEs.

Pillar Two versus tax incentives for sustainable development

The United Nations SDG agenda includes: "Tax incentives can be an appropriate policy tool. However, to end harmful tax practices, countries can engage in voluntary discussions on tax incentives in regional and international forums"[16]. Following this, the link between tax incentives, green transition plans, and state subsidies is addressed: "We reaffirm the commitment to rationalize inefficient fossil-fuel subsidies that encourage wasteful consumption by removing market distortions, in accordance with national circumstances, including by restructuring taxation and phasing out those harmful subsidies, where they exist, to reflect their environmental impacts"[17]. Further, "the transfer of environmentally sound technologies to developing countries on favorable terms"[18] is sought, which extends the debate to innovation and intellectual property.

Given that SDGs explicitly spelled out the need for tax incentives to be gradually phased out, IF Pillar Two encompasses stringent rules on them. However, three technical rules have fostered controversy: the allocation of taxes collected under Controlled Foreign Companies (CFC) rules; the treatment of ordinary credits compared to refundable tax incentives; and the substance exemption. In the first two cases, developing countries apply favorable tax regimes to attract foreign investment, and the foregone fiscal revenue is recaptured in the headquarters' jurisdiction. The third rule, the substance exemption, gives corporations an incentive to engage in genuine economic activity in developing countries, to invest in infrastructure and employment, but it seems insufficient to attain these aims.

First, as background information, CFC anti-abuse rules enable the shareholder's residence jurisdiction to impose additional taxes on profits generated by the controlled entity when those profits are insufficiently taxed. In this context, insufficient taxation results from developing countries tax systems that employ specific regimes such as income exemptions, base reductions, and low tax rates. The fiscal resources forgone by the developing country suffer additional taxation under CFC rules imposed at the level of the headquarters or IPE's jurisdiction. Despite CFC charges accruing in developed countries' treasuries, for Pillar Two purposes, the tax liability is assumed to be settled in the low-taxed jurisdiction. This tax policy results in QDMTT reduced by the CFC tax payable abroad, hence lower QDMTT and symmetrically higher IIR charges. Consequently, the fiscal resources forgone in the developing countries are not recaptured under the QDMTT. On the contrary, the top-up-tax increases in the developed country's jurisdiction. In summary, the same profits are taxed twice- under both CFC and IIR – but no portion of that revenue is allocated to the developing country.

Second, tax incentives are managed in ways that can favor wealthier jurisdictions. Refundable tax credits with a four-year duration, monetized credits, and state subsidies provide more favorable benefits than the income exceptions used in smaller scale economies. Technically, refundable tax credits and state subsidies are included in GloBE Income, and in adjusted covered taxes, but they have a minor effect on ETR. In contrast, income tax exemptions only reduce the adjusted taxes amount and lower the source state's ETR. Consequently, the tax benefit is reversed. The same applies to tax sparing and tax matching mechanisms, exclusively used by developing counties in DTAs. Here, the developing country consents to lower taxes on profits generated in their jurisdictions, provided that the same profits remain untaxed in the MNE's headquarter jurisdiction. Favorable treatment of State subsidies allocated either directly or through refundable or monetized tax credits, enables developed economies to maintain their tax attractiveness to MNEs. No specific arrangements are provided to enhance the transfer of IP developed technologies to developing countries, as prescribed by SDGs. On the contrary, IP tax incentives are disfavored. Therefore, tax competition is only available for developed economies.

One could argue that SDGs advocate for genuine economic activity, and the substance exemption steers in that direction. Pursuant to such exemptions, the adjusted global income is reduced by 5% of the value of tangible assets and payroll expenses located in a given jurisdiction. This rule gives an incentive to MNEs to invest in tangible assets and employment in developing economies. The tax rate deduction is progressively reduced and sunsets in a decade. This argument can be critiqued in two ways. First, the substance rate of 5% is low compared with accelerated depreciation scheme rates used in developed economies. Consequently, the substance exemption is an immaterial incentive. Second, in a globalized economy where intangibles attract a considerable share of worldwide value, it is difficult to suggest that economic value is predominantly linked to tangible assets and payrolls. Instead of incentivizing MNEs to develop and relocate intangibles in developing countries where they might promote inclusive and sustainable industrialization, the substance exemption promotes the transfer of other segments of business activity to developing countries, keeping them lagging behind in the progress of technological innovation (Hebous, S., Hillier, C., & Mengistu, A.2024, p. 5).

The table below (Apostolidou, 2024, p.12) depicts the impact of Pillar Two on tax incentives used by developing countries compared to tax schemes offered in developed economies tax systems.

Table 1: Tax incentives schemes and GloBE treatment in USA-EU

Tax incentive instrument		Ordinary Tax Credits (OTCs), patent boxes, R&D reduced rate credits, non-marketable transferable **tax credits (MTTCS)**	Refundable, transferable (indefinitely) tax benefit equity credits (investor-side), MTTCS	R&D expenditu re-based credits (SBIE)	Deferred tax credits, loss carry forwards, accelerated depreciation or expensing Year 1 - Year 2	
Income		1,000	1,000	1,000	100	100
CIT rate		15%	15%	10%	25%	25%
Total tax due	A*B	150	150	100	25	25
Tax credit		100	100	0	7	7
Total tax liability (pre-Globe)	C-D	50	50	100	17	18
Globe income		1,000	1,100	1,000		
SBIE		0	0	100		
Jurisdictional excess profit	F-G	1,000	1,100	900		
Top-up tax	15%-(E/F)	10%	1.36%	5%		
Jurisdictional top-up tax	I*H	100	14.96	45		
Total tax liability (post-Globe)	E+J	150	64.96	145	0	0
Effective tax rate	K/A	15%	6.50%	14.5 %	17%	18%

Source: Apostolidou, 2024

Based on this kind of analysis, the aim to "bridge the infrastructure gap between developing and developed countries for the promotion of inclusive and sustainable industrialization"[19] may already have been compromised.

Pillar Two versus the protection of poor and affected communities

Pillar Two alignment with the SDG aim to "minimize the possible adverse impacts on poor and affected communities and their developments", could be questioned. The IF enables the least developed countries to apply withholding taxes on intragroup out-bound payments, under STTR, after amending their existing tax treaties appropriately.[20] According to STTR, withholding taxes apply if the recipient of the payment is subject to a nominal corporate income tax rate below 9%, and if the aggregate sum of the in-come under scope paid in a fiscal year exceeds a certain threshold.

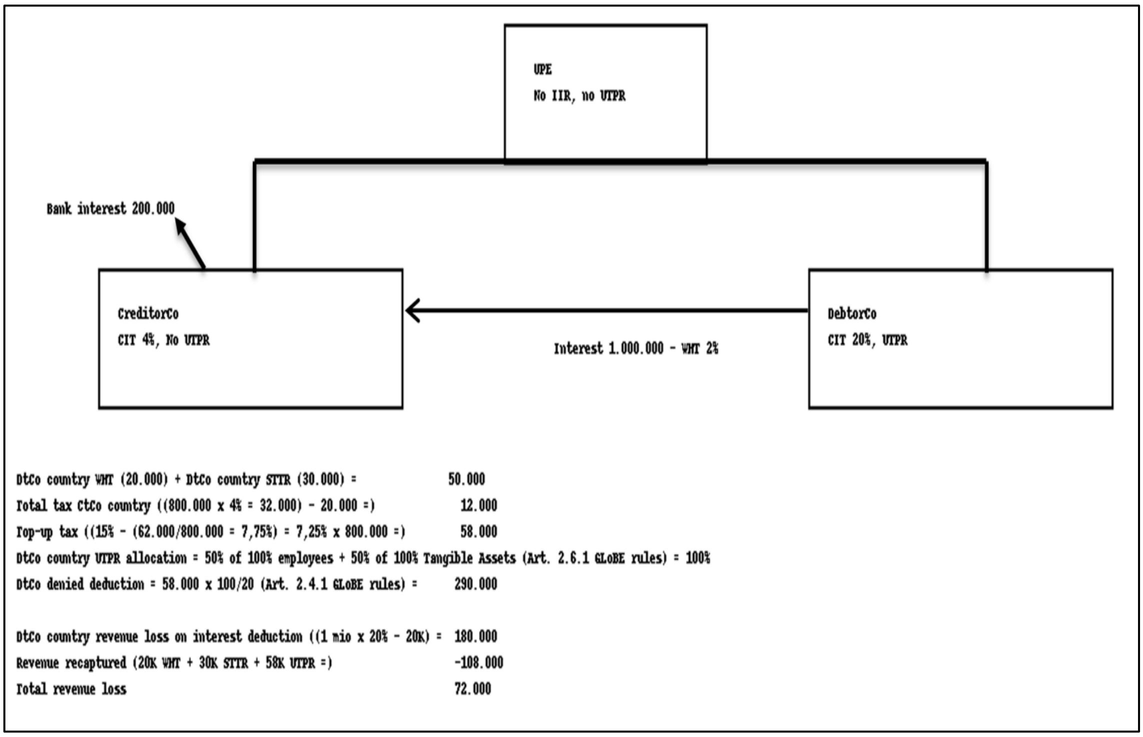
Under STTR, the income items covered are notably interest, royalties, guarantees or financing fees, and insurance premiums. Treaties already enable source countries to apply withholding taxes on those types of income. Conversely, payments on software services and capital gains are not subject to this rule. Still, jurisdictions able to apply STTR are few. In fact, the IMF has stated that "we find that in total, the STTR would apply to 101 treaties for 32 developing countries, concluded with 13 countries (6.9 per cent of the total number of treaties). Based on the current design, the revenue effects of the STTR will likely be limited. Among the 101 treaties that are identified as in scope, 20 treaties for which we have detailed information on service imports will give rise to positive STTR for seven developing countries. The amount of STTR revenue varies substantially, ranging from near zero to 0.14 per cent of current CIT revenue for individual treaties" (IMF, 2023, p.14). Moreover, the tax rate settled is not in terms of ETR, but in terms of corporate statutory tax rate. Yet, the nominated corporate rate may be much higher than the ETR, narrowing the scope of the transactions covered.

The IMF report forecast poor results in terms of fiscal resources. Such results are due to the narrow scope of the provisions, but also due to the ceiling placed on the additional tax, capped at the result of a specified rate multiplied by the gross amount of the covered income. The specified rate is equal to the difference (with a floor of zero) between the agreed minimum rate of 9% and the tax rate applied to the covered income in the residence state. Moreover, any tax revenue that arises under STTR is linked to the source jurisdiction. This means it is subtracted from the UTPR imposed by the source countries. More importantly, the income does not qualify as insufficiently taxed in the source state, and QDMTT is expected to remain low. Consequently, if additional income were to accrue under STTR, it would be under the IIR or QIIIR, and allocated to the treasury of developed countries (Lebovitz, 2022, p.8).

The tax industry provides a scheme where STTR interacts with UTPR on a back-to-back financial transaction that highlights material revenue loss for the source country (Better Tax, 2022). In the example, the payer's jurisdiction/source state applied both UTPR and STTR top-up taxes, on the income qualified as interest payments on loan, or royalties under back-to-back agreements. Nonetheless, the fiscal revenue recaptured remains low, compared to the tax liability to arise had the income been qualified as profits and taxed at the source state's regular corporate rate instead. In the illustration below, on a transfer of

1 million euros, the fiscal revenue after top-up taxes is limited to 108,000 euros, instead of 180,000 euros.

Figure 2: MLC on STTR – interaction with UTPR



Source: Better Tax, 2022

Considering these conditions, a South Centre statement addressed to G24 in October 2022 urged for extending the STTR scope to cover transactions on services and capital gains, (South Centre, 2022, p.2), for developing countries to recover loss of revenue for software services, and the UN issued its own STTR model rule (United Nations Committee of Experts on International Cooperation, 2023, p. 52).

CONCLUSIONS

This paper has analyzed, by use of tax administrators' testimonies on the IF institutional framework, tax academic exegeses on Pillar Two norm-setting, and business cases on global taxation effect on MNEs, how the current international tax cooperation governance structures, predominantly instituted by the G20, autogenously may not have served SDGs in the tax area, in terms of institutional, procedural, and material law.

This research has primarily focused on the IF Pillar Two operational and normative outputs, without providing a detailed evaluation of the other bodies acting in the area of tax

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cooperation and SDGs, such as the Global Forum and the UN tax committee. This exclusion suggests that further research could explore alternative international frameworks (Council of the European Union, 2023, p.3) and their effectiveness in promoting global tax justice, considering the similarities in institutional rules on decision-making between the IF and the UN tax committee; with possibly unique insights from the UN Economic and Social Committee reports on revising the UN tax cooperation framework.[21]

Future research could also involve empirical studies into the effects of tax norms from these unstudied bodies[22], and theoretical work on alternative global tax cooperation frameworks that offer greater inclusivity and fairness (Norwegian Academy of International Law, 2022, p.14; High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda, 2021, p.11). For bodies not explicitly studied, the lessons learned have direct implications for shaping the Terms of Reference for a United Nations Framework Convention on International Tax Cooperation (UN Ad hoc Tax Committee, p.4) to better align with SDG imperatives. The main difficulty relates to the inequality of arms: developing countries claim moral arguments to make their case; while the OECD warns against jurisdictions taking actions that undermine its current tax developments. For example, jurisdictions have been warned not to pursue the introduction of Digital Service withholding taxes (Mehboob, D. 2023).

Finally, achieving SDGs in cross-cutting aims requires a tax system that is not only technically sound and efficient but also fair and equitable, with MNEs carrying more tax responsibility (Bunn, 2023, p. 3) and public officers knowledgeable and devoted to progress. Only through a truly inclusive approach can the international tax system become the tool wished for sustainable development.[23]

NOTES

1 UN General Assembly, 2015a, goals 10, 16 and 17.

2 UN General Assembly, 2015b, points 10, 27, 28, 29.

3 UN General Assembly, 2015b, point 20.

4 UN General Assembly, 2015b, point 28.

5 UN General Assembly, 2023b, point 3.

6 UN General Assembly, 2015b, points 10, 28, 29.

7 UN General Assembly, 2015a, goal 16.

8 UN General Assembly, 2015a, goal 16.6.

9 UN General Assembly, 2015b, point 22.

10 UN General Assembly, 2015a, goal 17.3.

11 UN General Assembly, 2015a, goal 10.

12 UN General Assembly, 2015b, point 22.

13 UN General Assembly, 2015a, goal 10.

14 UN General Assembly, 2015b, point 7.

15 UN General Assembly, 2023a, point 39.

16 UN General Assembly, 2015b, point 26.

17 UN General Assembly, 2015b, point 31.

18 UN General Assembly, 2015b, point 120.

19 UN General Assembly, 2015b, points 14, 15.

20 OECD, 2023b, point 1.

21 UN General Assembly, 2023a, point 11.

22 OECD, 2023a, point 4.

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