

A Global Digital Service Tax: Cutting Off Corporate Tax Avoidance

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I. INTRODUCTION

The extent to which corporations avoid taxes within the international system is “mind boggling.”¹ The current international tax infrastructure incentivizes profit shifting,

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1. Joseph E. Stiglitz, *The International Tax System is Broken: But the UN Can Fix It—If Washington Gets Out of the Way*, FOREIGN AFFS. (July 3, 2024), <https://www.foreignaffairs.com/world/international-tax-system-broken> [https://perma.cc/Z9PV-4BEW].

which allows corporations to shelter their profits in tax havens.² As a result, the estimated loss of revenue for countries that would have been able to tax that revenue had it remained in the corporation's home country is estimated to be between \$240 billion and \$600 billion per year.³ This extreme loss of revenue has contributed to rising rates of income inequality, and it has crippled lower-income nations struggling to combat climate change, humanitarian crises, and infrastructure needs.⁴

In response, the Organization for Economic Co-Operation and Development (OECD) has enacted sweeping tax reforms, including a global minimum tax on large multinational corporations.⁵ However, sharp divides between wealthier, higher-income nations and lower-income, tricontinental nations have threatened to stall these reforms before they are fully implemented.⁶ Individual countries are taking it upon themselves to combat corporate profit shifting and tax avoidance by enacting DSTs.⁷

This Note explores the pitfalls of the current international tax system and the shortcomings of recent proposals aimed at addressing tax havens and profit-shifting loopholes. It also argues that a global system of DSTs offers promising reforms that address the root causes of tax evasion.

Part II of this Note provides a brief history and overview of how the modern international tax framework originated. It also explores the current international system and explains how countries determine the corporations and the types of income they can tax. It discusses how the "race to the bottom" phenomenon has driven the rising number of corporate tax havens and the practical consequences inflicted by tax havens on lower-income countries. Finally, Part II will introduce the various solutions that individual nations, the OECD, and the United Nations have introduced to try to address the negative consequences of tax havens.

Part III of this Note examines these proposals, evaluates their actual effects on corporate tax evasion, and highlights the tensions between higher-income and tricontinental countries in reaching an agreement on further tax reform. It will identify the flaws and strengths of each proposal, as well as the challenges involved in their implementation.

Part IV of this Note recommends the creation of a global digital service tax to target corporate profit shifting and tax evasion.

2. *Id.*

3. *Id.*

4. *Id.*

5. Beverly Moran, *Countries Must Work Together to Get Rid of Low-Tax Loopholes*, BLOOMBERG TAX (Aug. 26, 2024), <https://news.bloombergtax.com/tax-insights-and-commentary/countries-must-work-together-to-get-rid-of-low-tax-loopholes> [<https://perma.cc/V9ZY-LGPS>].

6. *Id.*

7. See, e.g., *U.S. Suspends 25% Tariffs on French Goods*, WASH. POST (Jan. 7, 2021), https://www.washingtonpost.com/business/economy/us-suspends-25percent-tariff-on-french-goods-as-it-widens-review-of-digital-taxes/2021/01/07/9f0bf5de-50de-11eb-b96e-0e54447b23a1_story.html (on file with the *Journal of Corporation Law*) (discussing such efforts in the United States); *Canada's Digital Services Tax Act Enters Into Force*, PWC (July 2024), <https://www.pwc.com/us/en/services/tax/library/canadas-digital-services-tax-act-enters-into-force.html> [<https://perma.cc/9UHU-YZMG>] (discussing the efforts employed by Canada) [hereinafter *Canada's Digital Services Tax*].

II. BACKGROUND

A. *Origins of the Income Tax and International Tax Law*

During the 1920s, the income tax was a new phenomenon.⁸ Income taxes for corporations began in 1909, with income taxes for individuals following shortly thereafter in 1913.⁹ Countries began taxing corporate income for two main reasons: The relative ease of administering such a tax and the fact that taxing corporate rents places the burden on foreign capital owners as opposed to employees.¹⁰ First, corporate income taxes are relatively easy to administer because corporations are theoretically required to hold proper books and records, which can be efficiently monitored by tax inspectors.¹¹ Compared to relying on individuals or consumers to pay taxes via filed tax returns, the corporate management and inspection structure lends itself to more efficient tax collection, which requires less costly enforcement procedures.¹² Additionally, corporate income taxes withhold tax on all profits as they accumulate.¹³ This effectively eliminates the difficulties of taxing capital gains, which can be difficult to value and often escape taxation altogether.¹⁴

Second, source countries have the primary right to tax multinational income.¹⁵ However, if the taxed income reflects a normal return, the tax burden would be shifted onto employees.¹⁶ Taxing economic rents, on the other hand, places the burden on foreign capital owners and is beneficial to the local governments in areas where multinational corporations are active in extracting natural resources.¹⁷ For example, ExxonMobil is one of the largest gas and oil producers in the world.¹⁸ It extracts these natural resources from a variety of locations in the United States, Brazil, and Canada.¹⁹ By taxing ExxonMobil's access to gas and oil reserves, the governments of these nations benefit from the revenue collected from these taxes.²⁰ Therefore, corporate income taxes provide an efficient means for local governments to tax large entities, while preventing the overall burden of such taxes from falling on employees.²¹ Corporate income taxes can also be

8. Michael J. Graetz, *Taxing International Income: Inadequate Principles, Outdated Concepts, and Unsatisfactory Policies*, 26 BROOK J. INT'L L. 1357, 1357 (2001).

9. *Id.*

10. RUUD A. DE MOOIJ, ALEXANDER D. KLEMM & VICTORIA J. PERRY, *CORPORATE INCOME TAXES UNDER PRESSURE: WHY REFORM IS NEEDED AND HOW IT COULD BE DESIGNED* 14 (2021).

11. *Id.*

12. *See id.* ("Relying on individuals or consumers to pay their tax, based on filed tax returns, would be considerably costlier to enforce.")

13. *Id.*

14. *Id.*

15. DE MOOIJ, KLEMM & PERRY, *supra* note 10, at 15.

16. *Id.*

17. *Id.*

18. *Global Operations*, EXXONMOBIL, <https://corporate.exxonmobil.com/who-we-are/our-global-organization/global-operations> [https://perma.cc/966T-CKQV].

19. *Our Business Presence*, EXXONMOBIL, <https://corporate.exxonmobil.com/locations/americas-region/Ourbusinesspresence> [https://perma.cc/24X5-EGGC].

20. *Global Operations*, *supra* note 18.

21. DE MOOIJ, KLEMM & PERRY, *supra* note 10, at 15–16.

highly profitable to local governments where corporations are harvesting natural resources and must pay rent to gain access to such resources.²²

As countries recognized the benefits of corporate income taxes and multinational corporations expanded their operations, these corporations became increasingly burdened by double taxation.²³ In response, the League of Nations undertook the issue of double taxation in a 1924 Report.²⁴ This report, commonly known as “The 1920s Compromise” became the foundation of the modern international tax regime.²⁵ The Report established the longstanding practice of taxing active business income in the source country and active business income in the residence country.²⁶

B. Modern International Tax Regime

Today, when corporate business activity crosses national borders, the major issue is: Where should the profits from a given corporate activity be taxed?²⁷ As the League of Nations Report of 1924 established, there are three possibilities for assigning a taxing right: the source, residence, or destination countries.²⁸ To determine whether a tax may be assigned in the source, residence, or destination country, a corporation’s income, residence, and the nexus of the activity to the source country must be assessed.²⁹

1. Active and Passive Income

The nature of a corporation’s income, for tax purposes, is classified as active or passive.³⁰ Theoretically, active income should be taxed in the country in which it originates, or the source country, while passive income should be taxed in the country where the recipient of the income resides, or the resident country.³¹ There are several explanations for how active and passive income can be distinguished.³² First, the taxation of active income represents the taxation of the profits of a corporation, while the taxation of passive income represents the taxation of the profits divided among the investors of the

22. See *id.* at 14–15 (noting that many of these countries have structures in place to ensure much of the revenue is returned to local governments).

23. Double taxation occurs when taxes are paid twice on the same income. For example, the United States’ tax code double taxes corporate income by taxing it once at the corporate income level and again at the individual income level. *Double Taxation*, TAX FOUND., <https://taxfoundation.org/taxedu/glossary/double-taxation/> [<https://perma.cc/7DHD-AYUS>]; Graetz, *supra* note 8, at 1358.

24. W. H. COATES, LEAGUE OF NATIONS REPORT ON DOUBLE TAXATION SUBMITTED TO THE FINANCIAL COMMITTEE BY PROFESSORS BRUINS, EINAUDI, SELIGMAN, AND SIR JOSIAH STAMP (1924).

25. Graetz, *supra* note 8, at 1358.

26. DE MOOIJ, KLEMM & PERRY, *supra* note 10, at 23. The “source country” is the country where production occurs, while the “residence country” is the country in where a corporation resides and the “destination country” is the country where sales take place. *Id.*

27. *Id.*

28. *Id.*

29. *Id.* at 24.

30. DE MOOIJ, KLEMM & PERRY, *supra* note 10, at 23.

31. *Id.*

32. Reuven S. Avi-Yonah, *The Structure of International Taxation: A Proposal for Simplification*, 74 TEX. L. REV. 1301, 1309–10 (1996).

corporation.³³ Second, the distinction between active and passive income also reflects the degree of control exercised over each type of income.³⁴ For example, activities, such as foreign direct investment are under the corporation's direct control and, therefore, would be taxed as active income.³⁵ Passive income is derived from activities where the corporation has very little control or from income received by a controlling shareholder who is paid dividends or interest from their corporation.³⁶ A third distinction between active and passive income lies in the entities receiving the income.³⁷ For example, almost all active income is earned by large, publicly traded corporations, which in the international sphere are multinational corporations.³⁸ Passive income is earned primarily by individuals within these multinational corporations.³⁹

2. Source of Income

After determining the nature of multinational corporate income, the source of the income needs to be identified. To identify the source of a multinational corporation's income, the current international tax system uses the arm's length principle.⁴⁰ The arm's length principle is defined in Article 9 of the OECD Model Tax Convention, it provides:

[Where] conditions are made or imposed between the two [associated] enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.⁴¹

Essentially, the goal of the arm's length principle is to avoid the erosion of the tax base and the transfer of multinational corporate profits to low tax jurisdictions or tax havens.⁴² When unrelated companies enter transactions, market forces will normally determine the terms of these commercial relationships.⁴³ However, when transactions take place between related companies, these transactions are insulated from external market forces due to corporate synergies, economies of scale, or tax planning.⁴⁴ Related parties are assumed when there is a pre-existing relationship between a company and an entity

33. *Id.* at 1309.

34. *Id.*

35. *Id.*

36. *Id.*

37. Avi-Yonah, *supra* note 32, at 1310.

38. *Id.*

39. *Id.*

40. DE MOOIJ, KLEMM & PERRY, *supra* note 10, at 26.

41. OECD TRANSFER PRICING GUIDELINES FOR MULTINATIONAL ENTERPRISES AND TAX ADMINISTRATIONS 2022 19 (2022), https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/01/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2022_57104b3a/0e655865-en.pdf [<https://perma.cc/S89V-GK7Q>] [hereinafter OECD TRANSFER PRICING GUIDELINES].

42. *Id.*

43. Juan Mosquera, *Arm's Length Principle in Transfer Pricing*, ARINTASS, <https://www.arintass.com/arms-length-principle-in-transfer-pricing/> [<https://perma.cc/DT2Y-S2PN>].

44. *Id.*

affiliated with that company.⁴⁵ For example, IKEA franchises and their transactions with the parent company, Inter-IKEA, are heavily scrutinized as related companies when they transact with one another.⁴⁶ A given transaction between Inter-IKEA and an IKEA franchise is more insulated from external market forces because the existing relationship between the two entities shelters them from the whims of a “free” market.

The application of the arm’s length principle assumes that the tax system treats each part of an integrated multinational business as a separate entity and is taxed on income collected by its separate accounts.⁴⁷ In reality, this makes determining the source of income for related entities incredibly difficult.⁴⁸ It also incentivizes profit shifting between associated entities to minimize their global income tax liability by allocating their income in jurisdictions that are more lightly taxed than others.⁴⁹

3. Corporate Residence

Determining the residence of a multinational corporation is often challenging.⁵⁰ When the residence requirement was first introduced in the 1920s, considering all residence possibilities was relatively straightforward.⁵¹ To determine corporate residence, the law formerly assessed a corporation’s “jurisdiction of incorporation, the place of management and control, the country where most of the assets and jobs were located, or the country in which the corporation’s main shareholders resided.”⁵² These indicators were used to establish a clear nexus between a corporation and a particular country.⁵³ However, in the modern world, almost all of these possible classifications for residency can be spread out among a variety of different countries, making corporate residence easily mutable.⁵⁴ Returning to the IKEA example, it is evident that IKEA is just one of the many multinational corporations that have been successful in shifting their profits to varying locations to avoid having to pay billions of dollars in taxes.⁵⁵ As such, its corporate structure and profit mutability has become popular among major multinational entities such as Apple and McDonald’s.⁵⁶

Today, there are two major approaches used to establish corporate residence: testing for a formal legal connection to a jurisdiction or establishing an economic or commercial connection of business with a taxing jurisdiction.⁵⁷ When testing for a formal

45. INTER IKEA GRP., HOLDING B.V. ANNUAL REPORT FY24 32 (2024), https://www.inter.ikea.com/-/media/interikea/igi/financial-reports/fy24-financial-reports/inter-ikea-holding-bv-annual-report-fy24.pdf?rev=2212fa15a98048f7b08b0c6a6be79421&sc_lang=en (on file with the *Journal of Corporation Law*).

46. Liz Alderman, *Ikea is Focus of European Inquiry Over Possible Skirting of Tax Bills*, N.Y. TIMES (Dec. 18, 2017), <https://www.nytimes.com/2017/12/18/business/ikea-tax-eu.html> [<https://perma.cc/6LB6-NWW5>].

47. DE MOOIJ, KLEMM & PERRY, *supra* note 10, at 26.

48. *Id.*

49. *Id.* at 26–27.

50. *Id.* at 25.

51. *Id.*

52. DE MOOIJ, KLEMM & PERRY, *supra* note 10, at 25.

53. *Id.*

54. *Id.*

55. Alderman, *supra* note 46.

56. *Id.*

57. DE MOOIJ, KLEMM & PERRY, *supra* note 10, at 25.

legal connection, authorities will primarily consider the place of incorporation or registration in a commercial register.⁵⁸ The focus is placed on these criteria because they cannot be easily changed by the corporations themselves.⁵⁹ To determine whether an economic or commercial connection has been established with a taxing jurisdiction, authorities consider the “place of effective management, place of substantial ownership and control, or the place where the board of directors meets.”⁶⁰ Different tests are used in a variety of countries, with a few listed in the table below:

Tests to Establish Corporate Residence in Select OECD Countries⁶¹

Country	Formal Legal Test	Economic or Commercial Connection
United States	Yes, a corporation is a resident if organized under the law of the United States.	No
Japan	Yes, a corporation is a resident if its head-quarters or principal office is organized in Japan.	No
Sweden	Yes, a corporation is a resident if registered under Swedish corporate law.	No

58. *Id.*

59. *Id.*

60. *Id.* (citation omitted).

61. *Id.* at 26 tbl.3.1.

Country	Formal Legal Test	Economic or Commercial Connection
United Kingdom	Yes, place of incorporation under UK law.	Yes, place of central management and control, considered the place where the board of directors meets.
Canada	Yes, place of incorporation under Canadian law.	Yes, place of meetings of the board of directors.
Australia	Yes, place of incorporation under Australian law.	Yes, place of central management and control; additionally, the residence of shareholders, if a majority of voting power is held by shareholders.
Germany	Yes, a corporation is a resident if its statutory seat is in Germany.	Yes, place of management, with focus on day-to-day management.

4. *Worldwide Systems and Territorial Systems*

Countries operating under what is known as the “worldwide tax system” tax active multinational corporate income that they have deemed to be sourced within themselves.⁶² This usually requires some degree of physical presence, such as legal incorporation or physical business locations in the country.⁶³ Some source countries also retain their right to tax passive income payments made by local corporations to foreign lenders, owners, or holders of intellectual property used by a corporation.⁶⁴ Other countries have also asserted taxing rights over the active corporate income of their corporate residents,

62. DE MOOIJ, KLEMM & PERRY, *supra* note 10, at 28.

63. *Id.*

64. *Id.*

even when the income is sourced outside of the resident country.⁶⁵ While this can cause a foreign-earned income to be taxed twice, (once in the source country and once in the resident country) most nations have domestic laws that give “foreign tax credits” to taxes paid to a source country to mitigate these consequences.⁶⁶

However, recently, almost all countries with advanced economies have abandoned the worldwide tax system and adopted elements of a territorial model.⁶⁷ A territorial tax system does not tax the foreign-sourced active income of corporate residents.⁶⁸ In reality, most countries have an international tax model that is a hybrid between the two systems.⁶⁹ Most recently, the United States transitioned towards a territorial system in its 2017 tax reforms.⁷⁰ Notably, this shift went against calls from tax scholars advocating for a worldwide, non-deferral system.⁷¹ However, Corporate America’s strong opposition to a global, non-deferral system stalled any further progress on tax reform following the territorial elements adopted in the Tax Cuts and Jobs Act of 2017.⁷²

These shifting tax policies and the wide variety of nation-specific tax regimes have made the international tax structure immensely complex and overlain with layers of bilateral and multilateral taxation treaties between various nations.⁷³ The increasing complexity, along with the rapid digitization of the corporate sphere and global economy, has created numerous loopholes in the international taxation system.⁷⁴ The consequences have been severe, and they are most evident in the impacts they have had on tricontinental nations.⁷⁵

65. *Id.*

66. Graetz, *supra* note 8, at 1390.

67. DE MOOIJ, KLEMM & PERRY, *supra* note 10, at 28.

68. *Id.*

69. *Id.*

70. *Id.*; *Tax Cuts and Jobs Act of 2017 (TCJA)*, CORNELL L. SCH.: LEGAL INFO. INST. (May 2022), [https://www.law.cornell.edu/wex/tax_cuts_and_jobs_act_of_2017_\(tcja\)](https://www.law.cornell.edu/wex/tax_cuts_and_jobs_act_of_2017_(tcja)) [<https://perma.cc/P58D-GJEL>]; Christopher H. Hanna & Cody A. Wilson, *U.S. International Tax Policy & Corporate America*, 48 J. CORP. L. 261, 285 (2023).

71. Hanna & Wilson, *supra* note 70, at 285.

72. *Id.*

73. DE MOOIJ, KLEMM & PERRY, *supra* note 10, at 24.

74. See, e.g., Esmé Berkhout, *Tax Battles: The Dangerous Global Race to the Bottom on Corporate Tax*, OXFA (Dec. 12, 2016), <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620159/bp-race-to-bottom-corporate-tax-summ-121216-en.pdf?sequence=2> (on file with the *Journal of Corporation Law*); Anna Gumpert, James R. Hines, Jr. & Monika Schnitzer, *Multinational Firms and Tax Havens*, 98 REV. ECON. & STAT. 713 (2016); Daniel Haberly & Dariusz Wójcik, *Tax Havens and The Production of Offshore FDI: An Empirical Analysis*, 15 J. ECON. GEOGRAPHY 75 (2015); Moran, *supra* note 5; Dhammika Dharmapala, *Do Multinational Firms Use Tax Havens to the Detriment of Other Countries?*, (Univ. Chi. L. Sch.: Coase-Sandor Inst. for L. & Econ., Rsch. Paper No. 910, 2020); Jannick Damgaard, Thomas Elkjaer & Niels Johannesen, *The Rise of Phantom Investments*, FIN. & DEV. MAG., Sept. 2019.

75. Berkhout, *supra* note 74, at 3; ROBERT J.C. YOUNG, POSTCOLONIALISM: A VERY SHORT INTRODUCTION 31 (2016) (defining tricontinental countries as “the nations of the three non-Western continents” including Africa, Asia, and Latin America).

5. The New International Tariff Regime

The pervasive use of tariffs as a bludgeon to destroy long-existing tax relationships between nations has thrown much of the existing international tax regime into chaos.⁷⁶ President Donald J. Trump's numerous and ever-changing tariffs targeting both trade behemoths, like China, and penguin habitats, like the Norfolk Islands, are largely unprecedented within the international tax system.⁷⁷ The wave of increasing tariffs began with an executive order on January 20, 2025, which initiated investigations into trade practices and requested tariff recommendations from several cabinet secretaries.⁷⁸ The resulting tariffs fall into several categories: country-specific tariffs, product-specific tariffs, and retaliatory tariffs.⁷⁹ Country-specific tariffs focus primarily on imports from certain countries, such as China, Mexico, and Canada.⁸⁰ Product-specific tariffs target goods such as automobiles, agricultural products, and pharmaceuticals.⁸¹ Retaliatory tariffs are those announced by countries that have been hit by country or product-specific tariffs.⁸² For example, China has retaliated by raising tariffs on U.S. exports up to 125%, although a recent reduction to 10% under a 90-day pause has been implemented while negotiations for future tariff rates continue.⁸³ Canada has also retaliated by imposing a 25% tariff on U.S. exports and a 25% tariff on U.S. automobiles.⁸⁴

Additionally, President Trump signed the "One Big Beautiful Bill" into law on July 4, 2025.⁸⁵ Section 899 of this bill targets nations that have imposed "digital services taxes" on large technology companies, such as Meta Platforms, Inc.⁸⁶ The bill also targets countries using provisions of the recent OECD deal to establish a minimum corporate tax rate.⁸⁷ This is a volatile shift in U.S. tax policy. Under the Biden Administration, the United States played an integral part in creating and supporting the passage of the

76. Lauren Aratani et al., *Trump's Chaos-Inducing Global Tariffs, Explained in Charts*, THE GUARDIAN (Apr. 3, 2025), <https://www.theguardian.com/us-news/2025/apr/03/trump-global-tariffs-charts> [https://perma.cc/PDX9-2UJB].

77. See Erica York & Alex Durante, *Trump Tariffs: Tracking the Economic Impact of the Trump Trade War*, TAX FOUND. (Sept. 2, 2025), <https://taxfoundation.org/research/all/federal/trump-tariffs-trade-war/> [https://perma.cc/K9YQ-B65Q] (noting the litigation that has ensued); Kate Lyons & Nick Evershed, *'Nowhere on Earth is Safe': Trump Imposes Tariffs on Uninhabited Islands Near Antarctica*, THE GUARDIAN (Apr. 2, 2025), <https://www.theguardian.com/us-news/2025/apr/03/donald-trump-tariffs-antarctica-uninhabited-heard-mcdonald-islands> [https://perma.cc/XY39-5C39].

78. Memorandum on America First Trade Policy, 90 Fed. Reg. 8471 (Jan. 30, 2025).

79. York & Durante, *supra* note 77.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. York & Durante, *supra* note 77.

85. Kennedy Andara, Corey Husak & Sara Partridge, *The Implementation Timeline of the One Big Beautiful Bill Act*, CTR. FOR AM. PROGRESS (July 29, 2025), <https://www.americanprogress.org/article/the-implementation-timeline-of-the-one-big-beautiful-bill-act/> [https://perma.cc/WQ5R-5M6F].

86. Melissa Shin, *'Revenge Tax': Trump Bill Hits Allies That Have Digital Taxes*, BLOOMBERG L. (May 26, 2025), <https://www.bloomberglaw.com/product/blaw/bloomberglawnews/bloomberg-law-news/XBBVP54C000000> [https://perma.cc/C9YD-M94N].

87. *Id.*

OECD tax agreement, which established a global minimum tax rate.⁸⁸ Now, the Trump Administration has not only withdrawn from the multinational deal but is actively targeting countries that have implemented the OECD's provisions.⁸⁹

C. Problems Stemming from Modern International Tax Structure

While the existing international taxation infrastructure is plagued by a myriad of problems, the issue that has received the most media attention in recent years is so-called “tax havens” or locations with very low tax rates designed specifically to appeal to foreign investors.⁹⁰ However, in order to understand how tax havens have come to permeate the international tax regime, it is first necessary to understand the driving principle that has led to the surge in tax havens: the race to the bottom.

1. Race to the Bottom Phenomenon

U.S. Supreme Court Justice Louis Brandeis is credited with coining the term “race to the bottom” in reference to the competition between states trying to entice companies to incorporate in their jurisdiction.⁹¹ In 1933, states were actively competing to loosen corporate regulations and relax rules to attract corporate investment in their respective states.⁹² A “race to the bottom” creates a negative feedback loop that further incentivizes lowering taxes until they virtually disappear.⁹³ Consequences driven by the “race to the bottom” manifest when corporations cut corners to keep lowering prices and governments reduce taxes and regulations to attract industry to stay in or relocate to their jurisdiction.⁹⁴ As the undercutting continues, businesses and governments race each other to the “bottom” in a destructive spiral.⁹⁵

On the international stage, a similar “race” has been underway for many years among nations competing to attract foreign investment.⁹⁶ To attract more business investment, countries change their taxation and regulation policies to favor corporate entities.⁹⁷ This, in turn, means that when a given multinational corporation invests in a country with favorable tax rates, that country loses out on potential revenues from taxing such a corporation, and fewer tax dollars are available to contribute to the country's infrastructure and social systems.⁹⁸

88. Stiglitz, *supra* note 1.

89. Shin, *supra* note 86.

90. William Minter, *The United States of Tax Havens*, INEQUALITY (Nov. 5, 2021), <https://inequality.org/article/the-united-states-of-tax-havens/> [https://perma.cc/V8HQ-TJYQ] (explaining that the “Pandora Papers” revealed that “the United States is second only to the Cayman Islands in facilitating illicit financial flows”).

91. James Chen, *What Is the Race to the Bottom?*, INVESTOPEDIA (Aug. 1, 2024), <https://www.investopedia.com/terms/r/race-bottom.asp> [https://perma.cc/L63L-2FLG]; *see also* Liggett Co. v. Lee, 288 U.S. 517, 559 (1933) (describing the race to the bottom between the states as “one not of diligence but of laxity”).

92. Chen, *supra* note 91.

93. *See id.* (describing consequences such as relaxing “regulations or cut[ting] taxes”).

94. *Id.*

95. *Id.*

96. Berkhout, *supra* note 74, at 5–6.

97. *Id.* at 5.

98. *Id.* at 6 (“Ultimately, the evidence shows that the only beneficiaries of this destructive race to the bottom are corporations and their wealthy shareholders and owners.”).

These negative impacts of the “race to the bottom” phenomenon have been primarily felt by lower-income countries.⁹⁹ For example, there is intense competition among lower-income countries to attract foreign direct investment (FDI).¹⁰⁰ To attract FDIs, low-income countries implement tax-labor standards that favor large manufacturers and corporate entities.¹⁰¹ However, because the regulations for labor standards are so minimal, there have been disastrous consequences.¹⁰² In 2013, the Rana Plaza disaster in Bangladesh was a striking example of the dangers driven by the fierce competition for foreign investment.¹⁰³ After setting low minimum wage standards and significant tax breaks to corporations that set up manufacturing centers in its country, Bangladesh had become the second-largest garment manufacturing stronghold in the world.¹⁰⁴ But these relaxed labor standards and regulations led to the construction of the Rana Plaza garment factory, which violated several building codes.¹⁰⁵ As a result, the building collapsed and killed over 1,000 workers.¹⁰⁶

The consequences of relaxed labor standards are not the only negative impact of the pervasive global “race to the bottom.” In fact, the amount of tax revenue that many lower-income countries are losing to maintain low enough tax rates to attract FDI is arguably more destructive.¹⁰⁷ Collecting taxes, especially from large multinational corporate entities, is one of the primary ways for governments to generate revenue that can be used to address poverty, invest in education, healthcare, and infrastructure, and promote job growth.¹⁰⁸ This revenue is especially important in tricontinental or low-income countries. However, for these lower-income countries to compete and attract FDIs, they must substantially reduce the tax burdens for large corporations. To lower taxes, many of these countries reduce investments in infrastructure and cut social welfare programs.¹⁰⁹ In addition, they often levy higher taxes on the general population.¹¹⁰ Oftentimes, these additional taxes are value-added taxes (VAT) which disproportionately fall on poorer people.¹¹¹ For example, in sub-Saharan Africa, 67% of the tax revenues are derived from VATs.¹¹² Meanwhile, the lower corporate tax rates benefit the shareholders and owners

99. *Id.*

100. Chen, *supra* note 91.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. Chen, *supra* note 91.

106. Elizabeth Paton, *A Grim Anniversary for Survivors of the Rana Plaza Disaster*, N.Y. TIMES (Apr. 24, 2023), <https://www.nytimes.com/2023/04/24/fashion/rana-plaza-anniversary.html> [<https://perma.cc/79AV-8AS9>].

107. Berkhout, *supra* note 74, at 3.

108. *Id.* at 1.

109. *See id.* at 2 (“[W]hen governments reduce the tax burden for large corporations, they . . . tend to cut back on the essential spending needed to reduce inequality and poverty.”).

110. *Id.*

111. *Id.*; *see also* *Who Would Bear the Burden of a VAT?*, Tax Pol’y Briefing Ctr., <https://taxpolicycenter.org/briefing-book/who-would-bear-burden-vat> [<https://perma.cc/WNB3-KVW9>].

112. Berkhout, *supra* note 74, at 2.

of corporations who are already wealthy.¹¹³ Therefore, the “race to the bottom” only continues to make the rich richer and the poor poorer.¹¹⁴

2. Corporate Tax Havens

Tax havens are a product of the low corporate taxation policies incorporated in many governments’ growth strategies for their countries.¹¹⁵ The theory behind these policies is that economies with lower corporate tax rates will attract investors and businesses to operate in a given country.¹¹⁶ The consequence of these policies is that many of the world’s economies are now pitted against each other in a downward spiral to see who can offer the most favorable tax environments to attract FDI.¹¹⁷ Additionally, the low tax rates are usually offered to corporations along with a promise of anonymity from interested tax authorities.¹¹⁸ The combination of these policies facilitates a tax regime that incentivizes corporations to shift their profits and investment to the preferred state to avoid tax collection in higher taxing states.¹¹⁹

Countries actively structure their tax policies to facilitate profit shifting and create tax havens.¹²⁰ Tax havens often share common features, including low tax rates, tax loophole incentives, financial secrecy, and relaxed tax enforcement procedures.¹²¹ Global corporations rely on these tax havens to significantly reduce their taxable profits by shifting these profits to low-tax operations where there is no profit-making activity actually taking place.¹²²

In 2016, Oxfam created a list of the top 15 corporate tax havens in the world.¹²³ The list included Bermuda, the Cayman Islands, the Netherlands, Switzerland, Singapore, Ireland, Luxembourg, Curacao, Hong Kong, Cyprus, the Bahamas, Jersey, Barbados, Mauritius, and the British Virgin Islands.¹²⁴ These tax havens, among others, contribute to the loss of large amounts of valuable tax revenues.¹²⁵ At least 90% of the world’s largest multinational corporations have a residence in at least one tax haven.¹²⁶

3. Proposals for Future Solutions

The proliferation of tax havens, a result of the perpetual “race to the bottom” is not a new phenomenon. In fact, the international community has tried numerous times to

113. *Id.*

114. *Id.*

115. *See id.* at 4 (“Tax havens are the ultimate expression of the global corporate tax race to the bottom.”).

116. *Id.* at 2.

117. Berkhout, *supra* note 74 at 1.

118. *Tax Havens*, GLOB. FIN. INTEGRITY, <https://gfintegrity.org/issue/tax-havens/> [<https://perma.cc/9HKC-9BR4>].

119. *Id.*

120. Berkhout, *supra* note 74 at 4; *Tax Havens*, *supra* note 118.

121. *See generally Tax Havens*, *supra* note 118; Berkhout, *supra* note 74 at 6.

122. *Tax Havens*, *supra* note 118.

123. Berkhout, *supra* note 74 at 4.

124. *Id.*

125. *Id.* at 3.

126. *Id.* at 4.

target the problem and combat its dangerously negative impacts. However, most of these targeted efforts have failed to make any significant headway. The G20 enacted the OECD-led Base Erosion and Profit Shifting (BEPS) action plan in 2016 to help governments address tax avoidance.¹²⁷ The central aim of the project was to force multinational corporate entities to pay taxes where they conduct the majority of their business.¹²⁸ However, the plan was limited in its reach, and it did not address many of the fundamental issues within the global tax system.¹²⁹ As a result, it has done little to end the competitive lowering of tax rates, and the race to the bottom has continued in a downward spiral.¹³⁰

Additionally, individual countries also took action to address the consequences of international profit shifting. The United States, for example, enacted the 2017 U.S. Tax Cuts and Jobs Act, which included provisions targeting companies that avoid taxes by shifting their profits overseas, often to tax havens like Ireland.¹³¹ The European Commission also attempted to address the issue by proposing DSTs.¹³² These taxes allowed EU member states to tax companies that generated profits in their country, even if that company did not have any physical presence in the country.¹³³ However, the EU proposal was never adopted, and instead, several EU member states adopted their own versions of the digital tax.¹³⁴ The burden of these digital taxes was felt mainly by U.S. technological firms.¹³⁵ In retaliation for what the United States saw as unfair and illegal targeting of major U.S. corporations, the United States imposed retaliatory tariffs on countries like France, which had implemented such DSTs.¹³⁶

4. OECD Pillars

The prevalence of unilateral DSTs, followed by retaliatory tariffs created a global incentive for a new tax agreement. The result was a Two-Pillar Solution, an agreement reached on October 8, 2021.¹³⁷

127. *Base Erosion and Profit Shifting (BEPS)*, OECD, <https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html> [https://perma.cc/9UX7-R845].

128. *Id.*

129. Berkhout, *supra* note 74, at 5–6.

130. *Id.* at 6.

131. H.R. Res. 1, 115th Cong. (2018) (enacted).

132. Daniel Bunn, *DSTs: Is There an End in Sight?*, TAX FOUND. (Dec. 21, 2022), <https://taxfoundation.org/blog/digital-services-taxes-pillar-one/> [https://perma.cc/8C3L-SFYQ].

133. *Id.*

134. *Id.*

135. *U.S. Suspends 25% Tariff on French Goods as It Widens Review of Digital Taxes*, WASH. POST (Jan. 7, 2021), https://www.washingtonpost.com/business/economy/us-suspends-25percent-tariff-on-french-goods-as-it-widens-review-of-digital-taxes/2021/01/07/9f0bf5de-50de-11eb-b96e-0e54447b23a1_story.html (on file with the *Journal of Corporation Law*).

136. *Id.*

137. OECD/G20 INCLUSIVE FRAMEWORK ON BEPS: PROGRESS REPORT 2 (Sept. 2021–2022), https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/10/oecd-g20-inclusive-framework-on-beps-progress-report-september-2021-september-2022_11f26d7f/be3a31f1-en.pdf [https://perma.cc/3K68-7Q79]; Rupan Bharanidaran, Comment, *Ending the Race to the Bottom: Analyzing a Recent Global Agreement on Corporate Taxation*, 3 CHI. J. INT'L L. 36, 51 (2024).

Pillar One creates a territorial tax system, and Pillar Two enacts a minimum tax on corporate profits.¹³⁸ Pillar One focused on achieving an international tax system that would ensure companies paid taxes even if they did not have a physical presence in a state.¹³⁹ This differs significantly from the longstanding international taxation system, which relies heavily on physical presence to determine taxation rights for different countries.¹⁴⁰ The goal of Pillar One was to eliminate the need for unilateral DSTs by providing a taxation mechanism that does not require physical presence for taxation.¹⁴¹ The Pillar One mechanism is limited to corporations with revenues over €20 billion and a profit margin higher than 10%.¹⁴² For example, under Pillar One, Country A can tax a company that meets the prior revenue and profit margin agreements if that company generates more than €1 million in revenue from Country A. Once Pillar One was implemented, countries with DSTs agreed to phase out these programs.¹⁴³

Pillar Two focused on eliminating profit shifting practices that enable multinational companies to avoid paying the minimum level of taxes altogether. It imposes a 15% minimum tax for companies that have more than €750 million in revenue.¹⁴⁴ If a company falls below that threshold, it will not be subject to that basic minimum tax.¹⁴⁵ Along with the minimum tax provision, Pillar Two provides an international coordination mechanism to enforce the minimum tax.¹⁴⁶ If a country joins this agreement, it must impose additional taxes on companies in its jurisdiction if those companies meet the revenue threshold but fall below a 15% tax rate in any other jurisdiction.¹⁴⁷

The OECD is planning to further supplement Pillar Two's enforcement provisions by creating a standardized information return on which countries would report their tax rates in each country where they pay taxes.¹⁴⁸ Amidst concerns that Pillar Two will create greater administrative burdens on governments, the OECD plans to add provisions that would make certain companies automatically subject to taxation above a minimum rate, so that governments will not have the burden of determining whether a company is subject to Pillar Two.¹⁴⁹

While this agreement received considerable news attention and seemed to signal a shift in global acceptance for a baseline taxation rate for large and wealthy multinational corporations, the deadline for the final agreement has passed, with no signs that further progress is being made.¹⁵⁰ The agreements between the United States and several nations with digital tax services, meant to cover the period before the agreement's

138. Bharanidaran, *supra* note 137, at 40.

139. *Id.* at 40–41.

140. DE MOOIJ, KLEMM & PERRY, *supra* note 10, at 23.

141. Bharanidaran, *supra* note 137, at 40–41.

142. *Id.* at 40.

143. *Id.* at 53.

144. *Id.* at 54–55.

145. Bharanidaran, *supra* note 137, at 55.

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. Daniel Bunn & Sean Bray, *The Latest on the Global Tax Agreement*, TAX FOUND. (Aug. 15, 2015), <https://taxfoundation.org/blog/global-tax-agreement/> [<https://perma.cc/6H9N-CUYD>].

enforcement, have also lapsed.¹⁵¹ Other countries, such as Canada, have begun to implement their own DSTs.¹⁵² As agreements fracture, some countries have moved forward with the implementation of Pillar Two, beginning in 2024.¹⁵³ The implementation of Pillar One remains impossible unless all countries adopt the proposed rules.¹⁵⁴ With only limited implementation of Pillar Two underway, critics have argued that the exciting new OECD Proposal has left the international community back where it began.¹⁵⁵ The international tax system remains outdated, fractured, and continues to support a downward spiral toward “the bottom.”

5. United Nations Treaty

In response to what appears to be the failing OECD Two-Pillar Proposal, the United Nations has approved a broad outline for a new tax treaty.¹⁵⁶ The approved outline will be sent to the UN General Assembly for approval by 2027.¹⁵⁷ It contains provisions that commit the UN to establishing a new “system of governance for international tax cooperation.”¹⁵⁸ This would include commitments to a fair allocation of taxing rights and tackling illicit financial streams of revenue.¹⁵⁹ The treaty appears to overlap with the OECD Pillars, but higher-income nations pushed the UN to adopt language that would make the treaty a complement to the OECD Pillars, rather than replace them.¹⁶⁰ However, the UN treaty seems to have more support from tricontinental nations who feel as though they were unfairly pushed out of OECD negotiations.¹⁶¹ Regardless of the intention behind the UN treaty, there is no clear framework for how the OECD Pillars and a potential UN tax treaty will interact with each other within the international sphere. The UN treaty is still at the very early stages of its implementation, and specific details about how it will operate remain unclear.

III. ANALYSIS

The overarching goal of recent international tax reform has been to address the problems posed by numerous tax avoidance strategies, especially those utilized in the age

151. *Id.*

152. *Canada’s Digital Services Tax*, *supra* note 7.

153. Bharanidaran, *supra* note 137, at 63–64.

154. *Id.* at 63 (“The implementation of the agreement largely relies on countries to pass laws domestically.”).

155. *Id.* at 65–66.

156. James Munson, *UN Greenlights Work on Global Tax Treaty Amid Tensions with OECD*, BLOOMBERG TAX (Aug. 16, 2024), https://www.bloomberglaw.com/product/tax/bloombergtaxnews/daily-tax-report-international/XDABQ0A4000000?bna_news_filter=daily-tax-report-international#jcite [https://perma.cc/UT2U-4MMA].

157. *Id.*

158. *Id.*

159. *Id.*

160. Golden Matonga, *Wealthy Countries Push Back as UN Moves Ahead with Global Tax Plan*, INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (June 3, 2024), <https://www.icij.org/investigations/paradise-papers/wealthy-countries-push-back-as-un-moves-ahead-with-global-tax-plan/> [https://perma.cc/6Q3J-Y3GY].

161. *Id.*

of digitized economies.¹⁶² As mentioned above, these tax avoidance strategies have drastic consequences for the international community, damaging tricontinental countries that rely on tax revenues to invest in their own economies.¹⁶³ They also propel the “race to the bottom” which in turn drives the creation of corporate tax havens.¹⁶⁴ However, owing in large part to a significant disagreement and fallout from the recent OECD tax reform proposal, the international taxation sphere has returned to a state of confusion, harmful competition, and layered complexity.¹⁶⁵ The core issues with the current international tax infrastructure remain unsolved, with little certainty about any clear solution for the future.

A. OECD Proposal

When it was initially proposed, the OECD Two-Pillar Proposal or Inclusive Framework (IF) was lauded as “remarkable” because the world’s nations, especially hostile nations, such as the United States, China, and Russia, had come together and agreed on major tax reforms.¹⁶⁶ The headlining reform of the agreement was the global minimum tax.¹⁶⁷ The idea of a global minimum tax, on its face, is appealing because the estimated benefits of its implementation are significant.¹⁶⁸ For example, with a global minimum tax rate of 15%, an estimated \$150 billion in additional global tax revenues are likely to be generated each year.¹⁶⁹ Additionally, the other corrective measures embedded in the OECD proposal addressing problems with source and residence-based taxation would reduce the motivation for multinational corporations to engage in profit shifting.¹⁷⁰ If a corporation is paying a substantial “single tax” no matter where they are located, incorporated, or have their principal place of business, then there is no incentive to shift profits into corporate tax havens to avoid higher tax rates.¹⁷¹

A second benefit, other than an increase in the amount of income countries would be able to raise by taxing corporate activity in their country, would be the achievement of “full taxation.”¹⁷² Scholar 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

162. Katherine E. Karnosh, Comment, *The Application of International Tax Treaties to DSTs*, 21 CHI. J. INT’L L. 513, 516 (2021); see also DE MOOIJ, KLEMM & PERRY, *supra* note 10, at 175; see generally Moran, *supra* note 5 (discussing why it is imperative for countries to work together to address the “race to the bottom” problem); Stiglitz, *supra* note 1 (“[L]ast November, 125 countries led by the African Group, the UN’s largest regional organization, voted in favor of the resolution to overhaul the global tax system.”).

163. Berkhout, *supra* note 74, at 2.

164. *Id.*

165. Bunn & Bray, *supra* note 150.

166. Liz Alderman, Jim Tankersley & Eshe Nelson, *U.S. Proposal for 15% Global Minimum Tax Wins Support From 130 Countries*, N.Y. TIMES (July 1, 2021), <https://www.nytimes.com/2021/07/01/business/global-minimum-tax.html> [<https://perma.cc/6WXT-NNAC>].

167. *Id.*

168. Leopoldo Parada, *Global Minimum Taxation: A Strategic Approach for Developing Countries*, 15 COLUM. J. TAX L. 187, 193–94 (2024).

169. Reuven Avi-Yonah & Young Ran (Christine) Kim, *Tax Harmony: The Promise and Pitfalls of the Global Minimum Tax*, 43 MICH. J. INT’L L. 505, 510 (2022).

170. *Id.*

171. *Id.*

172. Parada, *supra* note 168, at 193.

business activities.”¹⁷³ This is a core principle underlying the construction of both Pillars of the OECD proposal.¹⁷⁴ By allowing countries to tax corporate activities under their jurisdiction, the OECD is effectively eliminating any incentive for corporations to shift all their profits to tax havens.¹⁷⁵

While the OECD Pillars promise “benefits for all,” there are several major weaknesses with the current proposal.¹⁷⁶ The first of these includes the numerous carve-outs and exceptions embedded within the proposal.¹⁷⁷ For example, the financial services exclusion allows regulated financial institutions, including “mortgage institutions, investment banks, [and] insurance companies” to be exempt from territorial tax requirements.¹⁷⁸ All a given financial institution needs to qualify for this exception is the appropriate licensing from its home country and a showing that it is subject to a capital reserve requirement.¹⁷⁹ Any financial institution that falls under this exception will still only be taxed under the worldwide taxation system, meaning, if they have a residence in a tax haven, this remains their primary place of taxation.¹⁸⁰ The financial institution’s activity cannot be taxed by the country in which it conducts such activity.¹⁸¹

A second exception is the Extractive Exclusion.¹⁸² To fall within the boundaries of the Extractive Exclusion, a company must meet the product test and activities test.¹⁸³ The product test qualifies companies if they derive “revenues from the sale of extractive products such as oil and gas, minerals, and hydrocarbons.”¹⁸⁴ The activities test qualifies companies involved in activities such as exploration, development, or extraction.¹⁸⁵ Any company that falls within the parameters of the Extractive Exclusion is also exempt from Pillar One of the OECD proposals.¹⁸⁶

The OECD has justified these exceptions, among others, by emphasizing that banks are regulatorily constrained within their jurisdiction. Additionally, extractive industries are location-specific by nature because they often depend on natural resources. Therefore, both banks and extractive industries are relatively easy to tax in the source jurisdiction.¹⁸⁷ While these exceptions theoretically appear justified, the potential impacts

173. *Id.* at n.24 (citing Ruth Mason, *The Transformation of International Tax*, 114 AM. J. INT’L L. 353, 370 (2020)).

174. *See id.* at 188 (explaining that the IF is founded on the idea that “if one country does not impose a minimum level of taxation, another country will react imposing taxation up to the minimum”).

175. *Id.* at 188–89.

176. *Id.* at 201–02; Bharanidaran, *supra* note 137, at 62–64; Avi-Yonah & Kim, *supra* note 169, at 510; Willem VanderMeulen, *OECD Two-Pillar GloBE Rules: Is It Time to Abandon Hope for International Cooperation on a Global Minimum Corporate Income Tax?*, 38 EMORY INT’L L. REV. 233, 243–44 (2024).

177. Bharanidaran, *supra* note 137, at 62–64.

178. *Id.* at 64.

179. *Id.*

180. DE MOOIJ, KLEMM & PERRY, *supra* note 10, at 28.

181. *Id.*

182. Bharanidaran, *supra* note 137, at 65.

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. Bharanidaran, *supra* note 137, at 65.

are far more consequential for tricontinental countries as compared to higher-income countries.¹⁸⁸

The primary critique of the OECD is the unequal “benefits” it offers to lower-income and higher-income countries.¹⁸⁹ First, the agreement completely leaves out tricontinental countries.¹⁹⁰ Excluding so many countries that participate in the international tax regime severely limits the likelihood of global buy-in for the implementation of the OECD’s policies.¹⁹¹ Lower-income nations have criticized the undemocratic process by which the G20 nations reached the Two-Pillar Proposal.¹⁹² The proposal was drafted primarily by countries that are members of the G20, with almost no representation or input from any lower-income countries.¹⁹³

Additionally, some estimates suggest that 60% of the increased tax revenues generated from the implementation of the OECD’s Pillars would go directly to G-7 developed economies.¹⁹⁴ These estimates seem to suggest that while the OECD’s Pillars have been marketed as a way to benefit those lower-income countries suffering from the race to the bottom amid FDI attraction, the increased tax revenues will primarily benefit already wealthy nations.¹⁹⁵ Lower-income countries benefit more from DSTs than higher-income nations, and the implementation of the OECD Pillars is premised on the promise that DSTs will end.¹⁹⁶

Lower-income countries are frustrated by these terms of the agreement, in part because many were not included in the negotiation process, but also because an impact assessment of Pillar One found that “developing countries would earn \$1.66 billion less from Pillar One than they would have earned from a 3% digital service tax.”¹⁹⁷ Kenya and Nigeria specifically have expressed skepticism, and the African Tax Administration Forum (ATAF) argued that Pillar One’s implementation of a territorial taxation system reallocates too few company profits.¹⁹⁸ Lower-income nations have also criticized Pillar Two, saying a 15% global minimum tax rate is far too low.¹⁹⁹ These nations support a

188. *Id.* at 66–68.

189. *Id.* at 66.

190. *Id.* at 66–67.

191. *Id.* at 67 (“A more fundamental criticism of the Inclusive Framework . . . is that the process by which it was created was undemocratic and lacks legitimacy.”).

192. Bharanidaran, *supra* note 137, at 65–67.

193. *Id.* at 67. South Africa is the only African nation represented in the G20. *Id.*

194. *Id.* at 66; The G-7 is an informal group of industrialized and democratic nations. *What Does the G7 Do?*, COUNCIL ON FOREIGN RELS. (July 8, 2025), <https://www.cfr.org/background/what-does-g7-do> [<https://perma.cc/D6SF-SANE>]. This group includes the United States, Canada, France, Germany, Italy, Japan, and the United Kingdom. *Id.* Russia belonged to the group until 2014 when it was suspended following the annexation of Ukraine’s Crimea region. *Id.*

195. See Avi-Yonah & Kim, *supra* note 169, at 510 (reiterating concerns that the structure of the OECD Pillars is “skewed toward the interests of the G20 countries over those of developing countries”).

196. Bharanidaran, *supra* note 137, at 66–67.

197. *Id.* at 67.

198. *Id.*; *OECD/G20 Inclusive Framework Releases Outcome Statement on the Two Pillar Solution—What Does this Mean for Africa?*, AFRICAN TAX ADMIN. F. (Jan. 22, 2024), <https://www.ataftax.org/oecd-g20-inclusive-framework-releases-outcome-statement-on-the-two-pillar-solution-what-does-this-mean-for-africa> [<https://perma.cc/3MG4-6D63>] [hereinafter *OECD/G20 Outcome Statement*].

199. *OECD/G20 Outcome Statement*, *supra* note 198.

25–35% minimum global tax rate to effectively address corporate profit evasion in African countries.

Given the strong objections and skepticism leveled by lower-income countries against the G20 nations that largely developed the OECD Pillars, there has been a breakdown in the implementation of the Pillars.²⁰⁰ This has been especially detrimental to the active implementation of the OECD because it relies on a complicated set of domestic policy reforms and international treaty agreements to take full effect.²⁰¹ The political feasibility, or lack thereof, is another critique of the OECD Pillars.²⁰² This has been a major roadblock in the United States; the United States Senate is currently unable to reach any agreement on passing spending proposals that would implement the agreement on the international stage.²⁰³ Additionally, the Trump Administration released a memorandum denouncing the OECD Pillars, saying that “any commitments made by the prior administration on behalf of the United States with respect to the Global Tax Deal have no force or effect within the United States”²⁰⁴ It is unlikely the United States will implement the agreement any time in the near future, but other large economies, such as the European Union, China, and India, have signed on to the Pillars.²⁰⁵

B. UN Treaty

The dissatisfaction of lower-income nations with the OECD’s undemocratic forum and the creation of the Two-Pillar Proposal manifested in the approval by a UN committee of a broad outline for a tax treaty on August 16th, 2024.²⁰⁶ The push for a UN tax treaty officially began in November of 2023 when 125 countries, led by the African Group, voted in favor of the resolution to overhaul the global tax system.²⁰⁷ However, higher-income countries, such as South Korea, the United Kingdom, and the United States, have actively tried to derail these efforts, arguing that the Two-Pillar Solution, created by the OECD, would be undermined by any UN treaty that also addresses taxation reform.²⁰⁸ The battle between the developed and lower-income nations over tax reform has continued as the UN debates tax reform proposals.²⁰⁹ Lower-income countries maintain that there are fundamental problems with the OECD framework. For instance, an analysis by the EU Tax Observatory predicted that under the current OECD framework, “the least developed countries [would] gain no or very limited revenues.”²¹⁰ In

200. Stiglitz, *supra* note 1.

201. See Bharanidaran, *supra* note 137, at 63.

202. *Id.* at 63–64.

203. *Id.* at 63.

204. *The Organization for Economic Co-Operation and Development (OECD) Global Tax Deal*, THE WHITE HOUSE (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/the-organization-for-economic-co-operation-and-development-oecd-global-tax-deal-global-tax-deal/> [<https://perma.cc/CBL5-GXB9>].

205. Bharanidaran, *supra* note 137, at 63–64.

206. Munson, *supra* note 156.

207. *Id.*

208. Matonga, *supra* note 160.

209. *Id.*

210. Stiglitz *supra* note 1.

addition, signing on to the OECD framework would require these same lower income countries to remove their digital service tax regimes, resulting in an overall loss of revenue.²¹¹

Lower-income nations are now promoting the UN Framework Convention as a new way to repair the global tax system.²¹² These countries claim that the convention will recognize the strengths of the OECD Framework but will also build on and address the inequities embedded within it.²¹³ The framework approved for a treaty outline states that it would “commit the UN to establishing a ‘system of governance for international tax cooperation.’”²¹⁴ The treaty will address the allocation of taxing rights, address tax evasion and avoidance, and tackle illicit financial flows.²¹⁵ While the UN Framework appears to have admirable goals, it faces similar challenges to the OECD framework. Given the animosity that exists between higher-income and lower-income nations over tax reform agreements, it appears unlikely that even if an agreement is fleshed out, enough nations will agree to its terms for the agreement to have a tangible impact. The fact that large countries, including the United States, the United Kingdom, Canada, Australia, and others cast nay votes on the proposal²¹⁶ signifies that the UN Framework will face significant difficulties moving forward.

However, while the UN Framework may be promising, it is difficult to evaluate whether the UN as a body will be able to produce any result that will differ from the OECD Two-Pillar Solution. Some scholars are now advocating that the OECD should work together with the UN to revive portions of the Two-Pillar Solution, and supplement them with provisions approved by the UN General Assembly.²¹⁷ It remains to be seen whether such cooperation will succeed, and regardless of what the UN Framework Convention can produce, it will take multiple years to reach the same level of agreement and multinational buy-in that the OECD Pillars had achieved.

C. Unilateral Action

In the vacuum created by the fallout of the OECD Inclusive Framework and the uncertainty about a potential UN Framework, individual nations have continued their policies of taking unilateral actions against multinational corporations, primarily via the enactment of digital service taxes (DSTs).²¹⁸ DSTs have become highly controversial, with some legal scholars arguing that they violate international and domestic laws.²¹⁹ They have also been contentious on the domestic stage, with individual states experimenting

211. *Id.*

212. Munson, *supra* note 156.

213. *Id.*

214. *Id.*

215. *Id.*

216. Munson, *supra* note 156.

217. Stiglitz, *supra* note 1.

218. CRISTINA ENACHE, DIGITAL TAXATION AROUND THE WORLD 1 (2024), <https://taxfoundation.org/wp-content/uploads/2024/04/FF833.pdf> [<https://perma.cc/M9KD-9HZG>].

219. Ruth Mason, *Legal Problems with Digital Taxes in the United States and Europe*, in INTERNATIONAL TAX AT THE CROSSROADS 265 (Craig Elliffe ed., 2023); Karnosh, *supra* note 162, at 158.

with their implementation as well.²²⁰ For example, Maryland tried to enact DSTs modeled on those implemented by the European Union, but these were struck down as a violation of the Internet Tax Freedom Act.²²¹ The legality of DSTs remains open for debate, but their persistence on the international stage to combat corporate tax evasion is undeniable.²²²

DSTs have been enacted by 18 countries, with Canada being the newest nation to adopt them.²²³ DSTs are gross revenue taxes.²²⁴ They tax revenues from certain digital goods and services based on the number of digital users within the country.²²⁵ The goal of DSTs is to target multinational corporate activity that, under the current international tax regime, was out of reach of taxation, partially because digital services are not tangible, physical objects, and partially because of the residence and source-based taxing foundations referenced above.²²⁶

There is an extensive academic debate concerning the growing prevalence of DSTs internationally, with some scholars convinced that DSTs are harmful, and others arguing they can provide many benefits to an international tax infrastructure riddled with digitized loopholes.²²⁷ Proponents of digital taxation often argue that DSTs can account for the value of users on social media platforms or e-commerce websites because the data that users provide is then utilized by corporations for targeted advertising campaigns.²²⁸ The baseline argument of proponents is that corporations benefit when users are active on digital platforms because they collect data from these users, and this data informs future ad campaigns.²²⁹ Countries with DSTs want to be able to tax this “value” that users bring to corporations when they use their online platforms.²³⁰ This varies from current international tax rules, which require multinational corporations to pay a corporate income tax in the production location, rather than where their users are located.²³¹

²³²The proliferation of DSTs has spurred retaliatory measures, particularly by the United States. There is evidence that suggests DSTs fall disproportionately on U.S.

220. See generally Young Ran (Christine) Kim & Darien Shanske, *State Digital Services Taxes: A Good and Permissible Idea (Despite What You Might Have Heard)*, 98 NOTRE DAME L. REV. 741 (2022) (exploring Maryland’s attempt to implement a state-wide digital service tax and the legal challenges that followed).

221. *Id.* at 741.

222. ENACHE, *supra* note 218, at 4.

223. *Id.* at 1; *Canada’s Digital Service Tax*, *supra* note 7.

224. ENACHE, *supra* note 218, at 4.

225. *Id.*

226. *Id.* at 13.

227. Compare Mason, *supra* note 219, at 265 (considering various legal challenges to digital taxes in the European Union and the United States and their likelihood of being held unconstitutional), with Karnosh, *supra* note 162, at 513 (analyzing the legality of a French law which imposed a 3% tax on revenue earned from digital services and concluding the tax did not violate any existing tax treaty between France and the United States), and Kim & Shanske, *supra* note 220, at 741 (arguing states should continue to pursue DSTs as they can be a promising solution to the taxation gap created by the digitization of the economy).

228. Kim & Shanske, *supra* note 220, at 746.

229. *Id.* at 745.

230. *Id.* at 746.

231. DE MOOIJ, KLEMM & PERRY, *supra* note 10, at 24.

232. See Kim & Shanske, *supra* note 220, at 747 (explaining pushback ensuing from the United States as it is a host to many “tech giants,” resulting in a proposed framework “as part of the OECD/G20 global tax deal to address the digital economy”); Bharanidaran, *supra* note 137 at 39.

firms.²³³ However, some scholars contest this conclusion, arguing that the United States is home to the most tech firms in the world, meaning that since tech firms are the targets of DSTs, these taxes appear to target U.S. firms more aggressively than others.²³⁴ Regardless of the lack of consensus in the scholarly debate, using the targeting of U.S. firms as justification, the United States has opened investigations via the United States Trade Representative (USTR) into DSTs in Austria, India, Italy, Spain, Turkey, the United Kingdom, and Canada.²³⁵

Several scholarly analyses have also disproven opposition claims that DSTs violate existing international tax treaties.²³⁶ For example, after France enacted its DSTs in 2019, the United States claimed they violated the U.S.-France Treaty for the Prevention of Double Taxation.²³⁷ However, scholar Katherine Karnosh argues that the French digital service tax does not violate the treaty because it is a consumption tax, which is outside the scope of the treaty.²³⁸

The nations that have implemented unilateral DSTs include Austria, Canada, France, India, and the United Kingdom.²³⁹ Austria's digital service tax applies a 5% rate on revenue generated from online advertising if businesses' worldwide revenues exceed defined thresholds.²⁴⁰ This digital service tax is limited only to online advertising.²⁴¹ Comparatively, France's digital service tax imposes a 3% tax on gross revenues generated from digital services, targeted online advertising, and the sale of data collected about users for advertising purposes.²⁴² The United Kingdom's digital service tax has a 2% tax rate applied to revenues from social media platforms, online search engines, and online e-commerce forums.²⁴³ This digital service tax is unique in that it includes a tax exemption for the first \$31 million of taxable revenues.²⁴⁴ It also includes a "safe harbor" exception for businesses that have low profit margins for activities that fall within the scope of the tax.²⁴⁵

IV. RECOMMENDATION

While there is no simple solution to the many complex issues of international tax law, implementing a standard minimum digital service tax against multinational corporations could address some of the consequences afflicting lower-income nations and

233. Bharanidaran, *supra* note 137, at 39.

234. *Cf.* Kim & Shanske, *supra* note 220, at 747 (reporting that "the U.S. and the big tech firms argue that DSTs in effect target U.S. tech giants, and are thus discriminatory," thereby emphasizing that scholars who contest the conclusion do so in part on the premised acknowledgement that the United States bolsters a higher proportion of large tech firms than do most other countries).

235. ENACHE, *supra* note 218, at 18.

236. Karnosh, *supra* note 162, at 513; Mason, *supra* note, 219 at 4–5.

237. Karnosh, *supra* note 162 at 518.

238. *Id.* at 519.

239. ENACHE, *supra* note 218, at 14.

240. *Id.* at 15.

241. *Id.*

242. *Id.*

243. *Id.* at 16.

244. ENACHE, *supra* note 218, at 16.

245. *Id.*

those resulting from the “race to the bottom.” A minimum DST should be structured similarly to Pillar Two of the IF, the Global Minimum Tax. However, by specifically targeting digital service providers, it will build on a tax infrastructure that already exists in many countries.²⁴⁶ Additionally, a minimum DST will target activity that is not sourced based and thus eliminate incentives for corporate profit shifting while also creating a mechanism that can evolve with the increasing digitization of the global economy.

A. *Advantages of Existing Infrastructure*

A global minimum DST would still face the challenge of mutual buy-in and agreement from various nations, but for many, it would eliminate the roadblock of having to significantly alter existing domestic and international policies. For example, 18 countries have already adopted and implemented—or are about to implement—DSTs.²⁴⁷ Therefore, there is a clear framework to evaluate which DSTs have proven to be the most effective, and a framework for setting up effective digital service tax policy. By assessing the current DST regimes and determining which digital activities they primarily focus on, countries can discern ahead of time what the specific characteristics of a global minimum DST should look like. The countries with DSTs provide excellent case studies.

The countries with DSTs can also use their experience to inform policy discussions and debates surrounding the specific characteristics of a potential global DST. Drawing on countries with current DST regimes to inform a global minimum DST discussion would inherently involve more lower-income countries, such as tricontinental countries, who were left out of the OECD Framework entirely, and African countries, who had only a single representative in negotiations.²⁴⁸ For example, Chile, Colombia, Ecuador, and Nigeria²⁴⁹ are just a few of the nations with current DSTs who were left out of the OECD discussions.²⁵⁰

B. *Targets Activity that Cannot Hide in a Tax Haven*

Another benefit of a global minimum digital service tax is that it still targets key corporate activities that have long been untaxed because digital services are not tangible or physical products.²⁵¹ The prevalence of corporate profit from intangible digital products has also fueled the rise of tax havens. A multinational corporation can establish a “residence” in a tax haven and make most of their income in other countries where they receive data from digital users for their product, thus avoiding most taxes completely.²⁵² By establishing that each multinational corporation must pay some minimum amount for its digital activities, a global minimum digital service tax will further discourage profit-shifting to tax havens, because corporations will no longer be able to avoid some level of taxation on digital products.

246. See KPMG, TAXATION OF THE DIGITALIZED ECONOMY 5–8 (2025), <https://kpmg.com/kpmg-us/content/dam/kpmg/pdf/2023/digitalized-economy-taxation-developments-summary.pdf> [https://perma.cc/X5S8-FX26] (summarizing the tax infrastructures of various countries).

247. ENACHE, *supra* note 218, at 1.

248. Bharanidaran, *supra* note 137, at 67.

249. KPMG, LLP., TAXATION OF THE DIGITALIZED ECONOMY 5–21 (2024).

250. Bharanidaran, *supra* note 137, at 67.

251. ENACHE, *supra* note 218, at 2.

252. *Id.*

Additionally, a global minimum DST would function similarly to Pillar Two of the OECD's IF, which also targets profit-shifting.²⁵³ A global minimum DST would be the most effective if it were adopted in conjunction with the OECD Pillars; however, if the Pillars fail to be implemented fully, a global minimum DST could provide some basic bottom line to stymie the “race to the bottom” and the development of corporate tax havens. While a global minimum DST is unlikely to completely halt the “race to the bottom” or eliminate all tax havens, it can be a first step in the right direction and encourage future cooperation for future tax proposals.

C. More and More Digitization

Finally, the global economy and corporate entities are only becoming more digitized.²⁵⁴ A global minimum DST, by focusing on digital entities, provides room to adapt and fluctuate as global trade continues to shift online. For example, France implemented its own DSTs directed at provisions of digital interfaces and advertising based on user data in 2019.²⁵⁵ However, it joined a 2021 statement promising to repeal its current DST regime following the implementation of Pillar One of the OECD IF.²⁵⁶ While France has now reinstated its 3% DST,²⁵⁷ this example demonstrates that most DST regimes are flexible and open to changes in the broader international tax community. If a global minimum DST is modeled off the most effective modern DST regimes, then ideally, it will also be better equipped to adapt to an ever-changing global economy.

This is in stark contrast to the Pillar Two Global Minimum Tax, which targets only multinational corporations that meet a certain revenue threshold.²⁵⁸ There are still opportunities for these same multinational corporations to shift to digitized platforms where, without some form of DST, their corporate activity will remain beyond the reach of assessment to meet Pillar Two's threshold for taxation.²⁵⁹ By not addressing digital services explicitly, Pillar Two leaves open a potential loophole whereby some multinational corporations that receive most of their revenue from digital sales or advertising may engage in profit shifting to try to avoid being subject to the Pillar Two minimum tax. A global minimum tax levied on digital services itself squarely avoids this problem.

D. Challenges to Implementation

However, there are still several challenges to implementing a global minimum DST. First, any type of “global standard” requires widespread agreement and buy-in by many different countries. While the fact that so many countries already have an

253. Avi-Yonah & Kim, *supra* note 169, at 510.

254. See e.g., TAXATION OF THE DIGITALIZED ECONOMY, *supra* note 249.

255. *Id.* at 41.

256. Press Release, Joint Statement from the United States, Austria, France, Italy, Spain, and the United Kingdom, Regarding a Compromise on a Transitional Approach to Existing unilateral Measures During the Interim Period Before Pillar 1 is in Effect (Oct. 21, 2021), <https://home.treasury.gov/news/press-releases/jy0419> [<https://perma.cc/F8C9-VHQJ>].

257. France: Digital Services Tax Upheld (Constitutional Court Decision), KPMG (Sept. 15, 2025), <https://kpmg.com/us/en/taxnewsflash/news/2025/09/france-dst-upheld-constitutional-court-decision.html> [<https://perma.cc/2NL8-UHJT>] (“DST remains enforceable and constitutionally valid.”).

258. Bharanidaran, *supra* note 137, at 54–55.

259. *Id.*

infrastructure for DSTs is promising, any type of global minimum DST will require many hostile nations to agree to a variety of different elements of a given DST. For example, countries will need to agree on the specific digital services that should be targeted, how the tax will be administered, whether a governing body should be established to monitor international compliance, and which types of corporations will qualify or be exempt from the tax. Reaching a consensus will be challenging, but it is not insurmountable. An important step in the right direction would be for the United States to embrace a proposal for a global minimum DST.

Of all the developed nations, the United States has maintained its hostility and disfavor of individual DSTs.²⁶⁰ This is in part because the United States feels that corporations located within the country have been unfairly targeted by individual DSTs.²⁶¹ However, scholars Young Ran (Christine) Kim and Darien Shanske argue against this theory, writing that U.S. corporations are not unfairly targeted, but rather the United States is home to the most corporations with primarily digitized markets.²⁶²

Additionally, supporting a global minimum DST would also be in the interests of the United States. The United States has already backed itself into a corner on international tax policy by publicly supporting the OECD Framework, while refusing to adopt its policies, and publicly condemning the efforts at the United Nations to develop a new tax agreement.²⁶³ However, if the United States were to lead the charge in establishing a global minimum DST, it could minimize the impact of individual nation-level DSTs on its own corporations. By embracing such a proposal, the United States can have a more active role in guiding its implementation, rather than digging its heels in behind a proposal it will not adopt itself and becoming ostracized within the international community.

The problem with the United States' leadership in the arena of DSTs is that the current administration has largely been hostile to country-specific DSTs and international cooperation in general regarding tax reform policies. If the United States continues to pursue an "America First" approach to its tax policies, there is almost no plausible way to establish a global digital service tax (beyond one that would exist virtually in name only).

With the passage of the "One Big Beautiful Bill," the United States now officially opposes DSTs and actively punishes countries implementing these taxes and countries abiding by the Pillars of the OECD Tax Deal. This behavior will only further polarize the international community, making any future cooperation on reform incredibly unlikely. However, regardless of the immeasurable consequences of pursuing an "America First" policy, it is likely the current administration will dismiss this Note's recommendation out of hand, finding that it subverts American interests and resolves to subject multinational technology corporations to unfair levels of taxation.

While the current administration may be hostile to the development of a global digital service tax, this Note recommends that such a reform would be the best path forward. A global digital service tax can salvage what remains of the OECD Framework, recognize effective taxation methods for lower-income nations, and update a centuries-old international tax system that desperately needs to catch up with the digitization of the modern global economy. Without such reform, the familiar cliché "the rich become

260. Stiglitz, *supra* note 1.

261. Kim & Shanske, *supra* note 220, at 747.

262. *Id.*

263. Stiglitz, *supra* note 1.

richer, and the poor become poorer” will continue, a symptom of the endless race towards the bottom.

V. CONCLUSION

Without a shift in how multinational corporations are taxed, digital profits will remain out of reach, and if more businesses incorporate digital platforms, there will be no end to the proliferation of tax havens and the loss of important tax revenues. The consequences of tax havens and the “race to the bottom” are already being felt by lower-income nations, which are missing out on integral tax revenues to help support influential infrastructure development. This in turn only continues to drive the rapidly developing wealth disparity between higher-income and lower-income economies. Fundamental changes to international tax law are necessary to combat the spiral of the “race to the bottom” and the proliferation of tax havens. The OECD’s Inclusive Framework is a promising beginning, but its failing support and the division between the IF and the UN Resolution do not promise enough international cooperation to make such resolutions effective. Digital service taxes have proven to be an effective and attractive means to target one large legal loophole in international tax law. Instead of further complicating the system with individual country DSTs, the international community should rally behind establishing a minimum global DST to combat corporate tax evasion while reforming the international tax regime to meet the demands of a more digitized society.