

The BEPS Monitoring Group

Statement to the European Parliament Subcommittee on Tax Matters (FISC)

A NEW APPROACH TO COUNTERING HARMFUL CORPORATE TAX COMPETITION

The [BEPS Monitoring Group](#) (BMG) is a network of experts on various aspects of international tax, set up by a number of civil society organizations which research and campaign for tax justice including the Global Alliance for Tax Justice, Red de Justicia Fiscal de America Latina y el Caribe, Tax Justice Network, Christian Aid, Action Aid, Oxfam, and Tax Research UK. These remarks have not been approved in advance by these organizations, which do not necessarily accept every detail or specific point made here, but they support the work of the BMG and endorse its general perspectives. They have been prepared by Sol Picciotto, with comments from Christiana Panayi, on the basis of previous reports by the BMG.

Origins and Limitations of the Code of Conduct for Business Taxation

The Code of Conduct for Business Taxation originated in a joint initiative by the Commission and the Council in 1996, to focus on harmful tax competition. This occurred in parallel with a similar approach through the OECD, backed by the G7 at its Lyon summit of June 1996. Both resulted in the formulation of a set of broadly similar principles on ‘harmful tax practices’, combined with a procedure for peer review to evaluate specific measures, and a political commitment for ‘standstill and rollback’ of measures found to be harmful.

This approach has clearly been shown to have failed. Tax avoidance by multinational enterprises (MNEs) expanded exponentially from the mid-1990s. Although the Code group found some measures harmful, others were exonerated or fell outside the criteria. This led to their generalisation, as occurred notably with the ‘patent box’. Responding to the crisis in international corporate taxation, the OECD in 2012 launched the project on base erosion and profit shifting (BEPS). This was given political backing by the G20, with the mandate in the St Petersburg [Tax Declaration](#) of 2013 to align taxation of MNEs to where they have real activities. Under Action 5 of the BEPS project, the OECD code on Harmful Tax Practices was revised in 2015. However, it retains essentially the same principles and methodology. A better approach is clearly needed.

The Global Anti-Base Erosion Tax (GLOBE) and the Biden Proposals

Since 2018 the work in the BEPS project on harmful tax competition has refocused on the concept of a global minimum corporate tax. This originated in and was made possible by the

US tax reform of 2017, which reoriented US international tax rules so that they apply on a territorial basis. However, they also included two defensive walls against profit shifting: the GILTI (global intangible low-taxed income) tax, which applies to low-taxed foreign profits of US-based MNEs, and the BEAT (base erosion anti-abuse tax) applying to profits shifted out of the US by non-US MNEs. Together, they operate to apply a minimum level of taxation on MNEs in line with their real activities.

This approach has been taken up under Pillar Two of the recent work in the BEPS project. Like the US measures, the OECD's proposed GLOBE (global anti-base-erosion) tax has two main components, one for the MNE's home country to target low-taxed foreign profits (the income inclusion rule, IIR), and the other for host countries to block shifting of profits to low-tax jurisdictions (the undertaxed payments rule, UTPR). The basic building blocks for an international agreement have been provided in the [blueprint](#) published October 2020 by the OECD. This includes a detailed technical methodology to define the effective tax rate (ETR) on corporate profits and to identify low-taxed profits (profits taxed below the minimum agreed ETR). It also has some significant improvements on the US measures, in particular by applying the ETR on a country-by-country basis. The GILTI has been largely ineffective, largely because it allows 'global blending', i.e. profits taxed at very low or even zero ETRs can be combined with those taxed at high rates in measuring the overall ETR outside the US.

The debate has now been transformed again by Biden administration's recent [Tax Plan](#). This would give real teeth to the US measures, bring them more into alignment with the GLOBE, and provide an excellent basis for international agreement. First, the GILTI would apply on a per country basis (like the GLOBE), and the rate would double from 10.5% to 21%. Secondly, the BEAT would be replaced by the SHIELD (Stopping Harmful Inversions and Ending Low-tax Developments) tax, operating in tandem with the GILTI, and using the same methodology to specify the low effective tax rate.

The US has also tabled proposals on Pillar Two, although they have not been published yet. The Biden administration has a strong commitment to its proposed corporate tax reforms, as they would fund the proposed American Jobs Plan. It also has a strong incentive to reach an international agreement, to help ensure adoption of its proposals by the Congress, which would otherwise be attacked for making US MNEs uncompetitive. At the same time, the US initiative creates an impetus for a strong and effective version of the GLOBE. In particular, the Biden administration's commitment to a minimum ETR of 21% sets a much higher bar than has been considered until now for Pillar 2. This creates a real prospect for strong and effective international measures to finally halt the beggar-thy-neighbour tax competition that damages all states.

Improving the Design of the GLOBE

A significant flaw in the Pillar Two blueprint is that it proposes to give priority to MNE home countries to tax undertaxed profits. Host country measures would only be a fall-back, even though they are the source of these undertaxed profits. The blueprint recognises that this would be grossly unfair, particularly to smaller and poorer countries that are mainly or only hosts to MNEs. So, a third measure is proposed, but this would require changes to tax treaties, effectively handing a veto to countries that have designed their treaties and other measures to enable sheltering of low-taxed income. The likelihood is that the GLOBE would go forward on the basis that it would be implemented by willing states in a coordinated way regardless of treaty changes. This makes it essential to ensure that the GLOBE itself provides a balanced allocation of taxing rights for all states, to facilitate its wide acceptance and adoption.

To provide a fairer and more effective solution, a revised version of the GLOBE has been put forward by a group of researchers affiliated to [Tax Justice Network](#), the [BEPS Monitoring Group](#), and the Independent Commission for the Reform of International Corporate Taxation ([ICRICT](#)): **a minimum effective tax rate (METR) for multinationals**. This would combine the two elements of the GLOBE into a single formulary apportionment rule (FAR), that could be applied by all countries to both inward and outward investment alike. Dispensing with the need for priority rules would ensure fairness between countries, and non-discrimination between home-based and foreign-based MNEs, as well as greatly simplifying administration of the measure. The METR would allocate profits that have been taxed below the agreed minimum effective tax rate among countries, using factors reflecting the MNE’s real presence in each country (employees, physical assets and sales to customers). Each such country could apply its own tax rate to these apportioned undertaxed profits, whether it is above or below the agreed minimum rate.

This would of course not provide a complete solution. Although the METR could go ahead without the need for a treaty, some important changes should be made to treaties as soon as possible to facilitate its application. A mechanism for monitoring and coordinating its implementation would be needed. This should include procedures to resolve possible conflicts. In the longer term, countries could still compete to attract investment by offering low tax rates, but it would be to attract real activities and not paper profits. The METR’s formulary global minimum tax should point the way forward to a more comprehensive reform of international tax rules based on unitary taxation of MNEs and formulary apportionment.

The METR’s reallocation of undertaxed profits should be widely welcomed, as our estimates suggest that almost all countries would benefit (for the full data see [here](#)). As the Table shows, compared to the GLOBE the METR would bring greater revenues to countries with a per capita GDP below \$40,000.

**Tax revenue gains by country groups from the METR and the GLOBE
(at a 25% minimum rate)**

GDP per capita USD	Number of countries	METR (USD billion)	GLOBE (USD billion)	% difference between METR and GLOBE
<1,000	11	7.7	4.8	60.1%
1,000-3,000	18	20.7	13.1	57.7%
3,000-10,000	37	25.7	19.7	30.5%
10,000-40,000	39	35.4	32.8	8.0%
over 40,000	31	36.0	43.0	-16.2%
Totals	136	125.5	113.4	

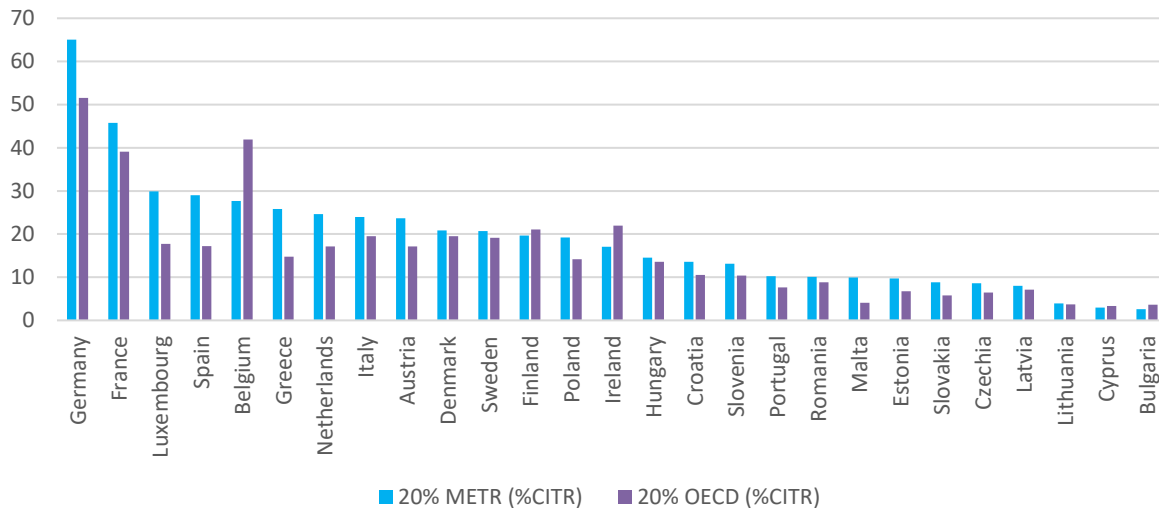
This results from both its fair apportionment method, and from allowing each country to apply its standard tax rate to its apportioned undertaxed profits. This would level the playing field between MNEs and domestic companies, and create an incentive for countries with low rates to increase them. Hence, it is important to set a suitable minimum rate. This should be

no lower than the US proposal of 21%, and preferably 25%, as proposed by the ICRICT, which is also the current global weighted average rate. The METR should also apply to all MNEs, subject only to a low threshold of perhaps €50m to exclude small and medium enterprises.

Implementation in the EU

The EU and all its member states would greatly benefit from introduction of such a tax, as shown by the Chart. Hence, they should join with the US and other willing states to adopt it.

Estimated Revenue Gains from a Global Minimum Tax (\$billion).



Source: Cobham et al (2021); full data available at <https://datawrapper.dwcdn.net/2BhFm/5/>

Adoption could be by those EU member states willing to do so, or by the EU as a bloc. The METR may be in some respects more compatible with EU law than the GLOBE, because it does not discriminate between home-based and foreign-based MNEs. It would face fewer legal hurdles in relation to non-EU states, and if adopted as a Directive for application within the EU (Englich 2021).

We would therefore urge consideration that the METR should be implemented by the EU in dual form, along the lines proposed by the Commission in its draft Directive of 2018 for corporate taxation of a significant economic presence (COM(2018) 147 final). This would entail (i) implementation within the EU of a common consolidated corporate tax base (CCCTB), and (ii) application of the METR to entities resident outside the EU. The Code of Conduct Group should be replaced with a body to coordinate the implementation of these rules.

Sources

[Cobham A, Faccio T, Garcia-Bernardo J, et al. \(2021\) A Practical Proposal to End Corporate Tax Abuse: METR, a Minimum Effective Tax Rate for Multinationals. IES Working Papers 8/2021.](#)

[Picciotto S, Kadet JM, Cobham A, et al. \(2021\) For a Better GLOBE: A Minimum Effective Tax Rate For Multinationals. Tax Notes International 101\(7\): 863-867.](#)

Englich J (2021) Is an METR Compatible With EU/EEA Free Movement Guarantees? *Tax Notes International* 102(2): 219-232.