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ASIA VOICES: PERSPECTIVES ON TAX POLICY SEMINAR 1 PROCEEDINGS DECEMBER 2022

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Asia Voices: Perspectives on Tax Policy Seminar 1 Proceedings December 2022

IPS Working Group

convenors
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YAP JIA HUI

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INTRODUCTION

ASIA VOICES: PERSPECTIVES ON TAX POLICY

BACKDROP

In January 2022, the paper “Asia Voices: Perspectives on Tax Policy” was published by an Institute of Policy Studies (IPS) Working Group. The group was convened to coordinate and encourage perspectives and actions from Asia regarding the Organisation for Economic Co-operation and Development (OECD)’s reform to address base erosion and profit shifting (BEPS) risks. The paper outlined the theoretical principles and debates that underpin international taxation. More specific to BEPS, it discussed issues of harmful preferential tax regimes in the Asian context as well as provided alternative views to the largely critical perspectives of tax incentives. The paper gave explanation and evidence about positive externalities of global investment hubs such as Singapore and the contribution of tax incentives to the economic transformation in Asia.

As discussions within the OECD progressed, it was increasingly clear that Pillar 2 of the Global Anti-Base Erosion Model Rules (GloBE or BEPS Pillar 2) was more likely to be implemented before the first pillar. Pillar 2 will impose a minimum effective tax rate of 15 per cent for all multinational enterprises (MNEs) that have revenues of 750 million euros or more. In principle, this move was meant to eliminate the “race-to-the-bottom” competition among countries that lower their tax rates against one another in a bid to attract investments.

On 7 December 2022, the Working Group convened its inaugural “Asia Voices: Perspectives on Tax Policy” seminar focused on discussing the impacts of Pillar 2 on developing Asia.

ASIA VOICES SEMINAR

The online event was held over Zoom and had about 85 participants at its peak. The participants comprised academics, business leaders and policymakers from public and private sectors in the region.

The seminar began with a keynote speech by Dr Jay Rosengard, Adjunct Lecturer in Public Policy at the Harvard Kennedy School. This was followed by two main sessions: paper presentations and a panel discussion. Three presentations were delivered by Mr Matt Andrew, Teaching Fellow at Auckland University; Dr Mona Barake, Post-Doctoral Fellow at the EU Tax Observatory; and Dr Ivan Lazarov and Ms Belisa Liotti, researchers at the Institute for Austrian and International Tax Law. The presentations and discussion that followed were moderated by Mr Christopher Gee, Senior Research Fellow at the IPS.

The later panel discussion brought together five panellists with perspectives as academics, corporate leaders and policymakers. Mr Michael Velten from Deloitte Singapore moderated the session, where the panellists were Mr Bruno Casella from the United Nations Conference on Trade and Development (UNCTAD); Mr Panayiotis Nicolaides from EU Tax Observatory; Ms Samantha King of Standard Chartered Bank plc; Mr Vaibhav Sanghvi from NortonLifeLock Inc; and Professor Thabo Legwaila from the University of Johannesburg.

The following sections document the content of the speech and presentations, as well as the key points that were discussed during the seminar.

KEYNOTE SPEECH: TRANSCRIPT

Dr Jay Rosengard

KEYNOTE SPEECH: TRANSCRIPT

Dr Jay Rosengard
Adjunct Lecturer in Public Policy, Harvard Kennedy School

Thank you for the very gracious introduction. Good afternoon, Singapore, from a very late night here in Boston. It is both an honour and a pleasure to deliver the keynote address for the IPS's research seminar on tax policy for two reasons. The first, having served as visiting faculty at National University of Singapore (NUS) for one year (at the Lee Kuan Yew School of Public Policy when it was on the main campus and the Faculty of Arts and Science), I feel that I am still a member of the NUS extended family and only wish that I could be in Singapore in person. And the second reason is that our topic, the OECD Global Anti Base Erosion model rules, also known as GloBE Pillar 2, and their impact on the role of tax incentives in Asian economic development is one of today's most complex and challenging global fiscal challenges.

OBJECTIVES AND SCOPE OF GLOBE PILLAR 2

I would like to start by being clear on terminology. When I refer to GloBE Pillar 2, I am talking about the 15 per cent global minimum tax on Multinational Enterprise (MNE) groups that have consolidated financial accounting income of more than 750 million euros in the previous four years. Pillar 2 comprises essentially three top-up taxes. These are the Income Inclusion Rule (IIR), the Undertaxed Payment Rules (UTPR), and the Qualifying Domestic Minimum Top Up Tax (QDMTT). The GloBE Pillar 2 is intended to back up Pillar 1, which is the new nexus and profit allocation rules that are to be implemented by the OECD G20. The Inclusive Framework created in 2016 currently has 141 members representing more than 95 per cent of global GDP.

If we go back to the underlying policy rationale for GloBE Pillar 2, it is based on two main principles. The first is that countries have the right to decide whether and how to impose corporate income tax. The second is that countries have the right to tax income from foreign sources. The objectives of GloBE Pillar 2 are to address the current race to the bottom to attract

Foreign Direct Investments (FDIs) and ensure that MNEs pay a fair share of tax wherever they operate, and generate profits in today's digitalised and globalised world economy. Pillar 2 has tremendous potential to be a real game changer in global taxation if it is implemented successfully. This is truly a remarkable achievement in international tax cooperation to improve tax efficiency and tax equity. A common minimum tax rate and common tax base would have been unthinkable a decade ago and this is a huge boost for multilateralism. A successful implementation could also have a significant impact on the use of tax incentives to attract FDI, which I will return to momentarily.

CHALLENGES AND CONSIDERATIONS FOR IMPLEMENTATION OF PILLAR 2

But first, it is important to know that policies are only aspirational unless they are well implemented. I believe that most tax policies are made during policy implementation, and this is why my Harvard Kennedy School executive education programme on taxation is called "Comparative Tax Policy and Administration". The devil truly is in the details and there are many risks to mitigate in implementing a global minimum tax. It is so complex that it takes 347 pages just to summarise it. It also must be applied in accordance with the commentary and what they call an "administrative guidance", which has yet to be issued. This is especially problematic given that it is not created in a vacuum. This is also especially important for the US with its 2017 tax reform provisions such as GILTI (Global Intangible Low Tax Income); BEAT (Base Erosion and Anti-Abuse Tax), and other colourfully named creations to counteract very effective tax avoidance practices. I think in the US, we think of catchy acronyms first, and then later figure out what the letters stand for. But the point is that this must coexist with other national initiatives that deal with the same problem.

It is also important to note that Pillar 2 raises many other unresolved implementation questions. For example, must it be incorporated into domestic law since it requires changes to bilateral tax treaties? Does it require a multilateral agreement? Can we develop an effective dispute resolution mechanism such as a peer review process or a global tax court? Is a 15 per cent global minimum tax worth the complexity of Pillar 2? Will this cause a downward global convergence in tax rates such that the minimum tax also becomes the maximum tax? How do we ensure equitable allocation of corporate tax revenue so that emerging markets receive their fair share? How can we prevent new tax avoidance techniques to replace old ones? Nonetheless, this is a work in progress, and we hope for the best. I strongly recommend that the inclusive framework monitors results carefully from today's baseline, and evaluate this endeavour in five, rather than the planned seven years.

TAX INCENTIVES AS TOOLS OF COMPETITION

Now I return to the potential impact on tax incentives. I am looking forward to the subsequent papers on the possible effects on tax revenue, foreign investment, vertical equity, taxing rights and alternatives to tax incentives. I will therefore not dwell on these topics. Instead, I will be instructively provocative in suggesting that GloBE Pillar 2 is a blessing in disguise for most lower-income countries, which is essentially all of ASEAN except for Singapore. I hope this might compel them to address the binding constraints to attracting foreign investment rather than continuing to pursue a conceptually flawed and empirically unsuccessful policy of offering general generous tax incentives to attract FDI.

I laud the policy objectives of tax incentives such as the aims of stimulating the economy, creating jobs, increasing competitiveness, helping disadvantaged regions, and so on. But they are seldom the appropriate policy tool to achieve these policy objectives. Instead, tax incentives often needlessly erode tax bases because they are mistargeted and ineffective; they create economic inefficiency to the distortion of resource allocation; they increase administrative burden on tax authorities and provide opportunities for rent seeking and corruption — all without increasing net investment. Although MNEs have never seen a tax incentive they do not like, they have in multiple IMF and World Bank surveys, consistently ranked other factors as being more important in attracting foreign investments. These factors include political stability; prudential macroeconomic management; quality of hard infrastructure (like roads and ports and power and telecommunications); quality of soft infrastructure (like good government, and good governance); quality of human resources (such as human capital, labour productivity); the importance of rule of law and enforceability of contracts; and access to markets. Things like these are much more important than a tax incentive. Furthermore, the dismal performance of tax incentives for the last four or five decades is widely understood by fiscal policy decision-makers and supporting technocrats.

However, you have the political economy that makes this much more challenging because decision-makers must demonstrate to political leaders that they are taking the initiative to attract investments. The easiest way to appear proactive and responsive to political concerns is to promote tax incentives because they can be enacted quickly and in a highly visible manner. Therefore, it is the political imperative that is often driving the creation of tax incentives rather than a sound economic rationale. To address and resolve underlying structural problems that make a country unattractive without tax incentives, would take much longer. Further, the efforts often come to fruition under subsequent administrations. In other words, you incur all the pain now for someone else’s future gain. The enactment of tax incentives is also facilitated by duelling power centres with different objectives and metrics for success, which are often contradictory. For example, an investment board is evaluated on investments generated or sometimes just investment pledges. However, the finance ministry would focus on the fiscal cost of tax incentives, which is the foregone revenue essential to funding crucial public infrastructure and services due to these tax expenditures, which is a fancy way of saying tax breaks.

Given the forum here and the host of the forum, I think it is also important to note that Singapore is an exception to this dismal global experience with tax incentives. Singapore has consistently developed well designed and carefully targeted incentives in the context where it is already a competitive foreign investment destination. It is also already a low-tax jurisdiction that meets the other prerequisites, which were summarised earlier. However, Singapore is the only ASEAN country in this category.

BENEFITS OF A GLOBAL MINIMUM TAX

To be a little more specific, what are the key implications of GloBE Pillar 2 for resident and source countries in Asia? For resident countries, the minimum tax does not eliminate the incentive for resident companies to earn low-tax, foreign-source income, where the minimum tax rate is significantly lower than the residence country tax rate. For example, if the resident country rate is 32 per cent and the minimum rate is 15 per cent, resident companies still save 17 per cent by investing in the lower tax jurisdiction.

However, I would like to focus more on source countries, which includes most lower-income countries and most of ASEAN.

The minimum tax paid to the residence country increases the tax costs of an MNE’s investment in the source country. As such, the source country becomes a less attractive place to invest for MNEs that are subject to the minimum tax. However, if investments in all countries are subjected to taxation at the minimum rate, then countries will have more revenue to fund other expenditure priorities, which is especially important in the aftermath of the COVID-19 pandemic. More importantly, source countries are limited in using tax incentives to attract foreign investment. Here then is the key objective of GloBE Pillar 2: source countries can in fact raise their tax rates to the minimum rate without any adverse impact on foreign investment. In other words, source countries can and should increase their tax rate to 15 per cent without increasing the tax cost for foreign investors. Otherwise, the tax will be collected by the resident countries through the minimum tax. In addition, all countries should adopt a QDMTT to prevent loss of tax revenue to other countries through the IIR and UTPR.

In short, GloBE Pillar 2 can be viewed as a blessing in disguise for both resident and source countries. This is especially since the most ineffective tax incentives are those most easily targeted by GloBE Pillar 2, namely, reducing the corporate income tax rate especially via tax holidays. This will perhaps give policymakers the political cover necessary to resist the temptation of offering counter-productive and self-defeating tax incentives to attract foreign investment. They can instead devote the resources to more effectively increasing their country's international competitiveness.

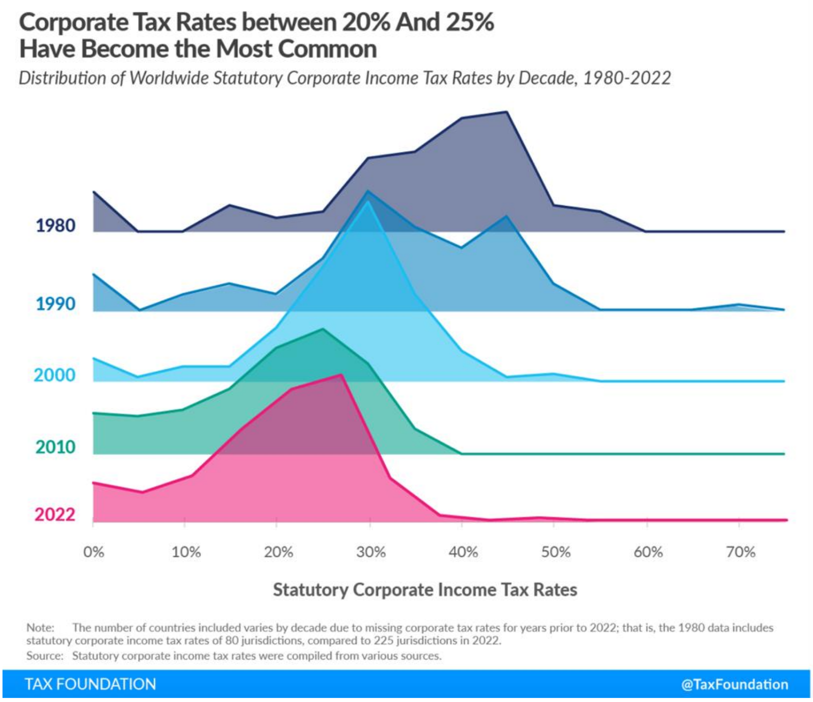
COMMENTARY BY WORKING GROUP

Finding consensus as a region

Dr Rosengard pointed out that most of Asia are developing countries, which are mainly source countries rather than resident ones. He analysed then that source countries can raise their tax rates to the minimum rate without any adverse impact on foreign investment if all countries are also on board. This is especially so if the resident jurisdiction of the investor company has a substantially higher tax rate than the source country even after the latter raises its rates to 15 per cent.

However, this might not apply if trends continue, such that countries converge towards the 15 per cent. Figure 1 shows the distribution of worldwide statutory corporate income tax rates over time and how rates between 20 to 25 per cent have become most common. Within Asia, countries are already lowering their corporate income tax rates towards the lower threshold. For example, from 2021 to 2022, Myanmar dropped its tax rate from 25 to 22 per cent whilst Bangladesh's also went from 32.5 to 30 per cent (Tax Foundation, 2022). Within Asia, how can countries avoid destructive competition with one another whilst remaining competitive in relation to other countries?

FIGURE 1. RANGE OF CORPORATE TAX RATES OVER TIME



Source: Tax Foundation (2022)

Post-COVID challenges and opportunities

The COVID-19 pandemic and consensus about the need for strong recovery may provide the political impetus that Dr Rosengard mentioned is needed to carry out tax reforms. For example, the pandemic might have brought out the importance of strong domestic resources such as infrastructure and governance. However, although the economic impacts of COVID-19 have driven developed countries to be more determined about implementing Pillar 2 for the revenue benefits, the social and political aspects remain relatively muted. More work could be done to flesh out some of the new domestic and international impetuses that the pandemic has brought about, and how the development of BEPS should relate to them.

PAPER PRESENTATIONS

The GloBE and International Vertical Equity

THE GLOBE AND INTERNATIONAL VERTICAL EQUITY

Matt Andrew
Auckland University

Given the explicit aim of OECD to eliminate tax planning strategies that undermine the fairness and integrity of tax systems, the potential impact of the framework should be evaluated according to these goals. Even more specifically, the OECD had aimed for BEPS to be particularly impactful for developing countries by reforming the current tax agenda "to ensure that they receive support to address their specific needs" (OECD, n.d.b).

In the IPS paper (Gee & Woo, 2022), principles of taxation such as horizontal and vertical equity were explained as long-recognised considerations when imposing tax. In the context of global standards such as BEPS 2.0, the authors asked if developing Asia is in similar circumstances as other jurisdictions where tax systems are more mature, and what that means when applying vertical equity to global tax rules. Matt Andrew, Teaching Fellow at Auckland University, emphasised this principle of vertical equity and argued that it has been neglected in the current GloBE framework. He further offered a proposal that putting vertical equity into practice could mean allowing certain tax incentive regimes of developing countries to be exempted from the GloBE framework.

CURRENT GLOBE FRAMEWORK DOES NOT ADDRESS CONCERNS OF VERTICAL EQUITY

First, the place of vertical equity in the GloBE framework is better understood by contrasting it to the competing principle of efficiency. The GloBE has characteristics that appeal to policymakers that favour economic efficiency as the dominant criterion in international tax policy development. This is because it potentially reduces the influence of tax on business decision making, and thereby increases tax neutrality (OECD, 2021b). It also appeals to the traditional concept of horizontal equity in the international corporate tax setting, as it puts nations on a more equal footing in terms of applying a floor to the level of tax that needs to be charged to multinational entities with turnover over 750 million euros (OECD, 2020).

However, the GloBE framework does not address vertical equity issues connected to developing countries' right to apply incentives in order to compete for foreign direct investment. Tax incentives have always been important for developing countries, such as those in Asia, to attract multinational corporations' investment. Such countries have limited ability to compete with developed countries on other factors such as educated workforce, quality of infrastructure, technology, supply chain integrity, etc. While the intention to encourage developing countries to mobilise these domestic resources are good, these are at variance with the principle of equity and may exacerbate the wealth gap between developed and developing countries. As such, vertical equity has largely been ignored in the context of developing this international tax policy. While not arguing for it to be given the same credence as efficiency or even horizontal equity, it should still have an important role to play in the context of tax policy setting to protect developing country interests.

INTERACTION OF GLOBE PILLAR 2 WITH TAX INCENTIVES

As mentioned, tax incentives are especially important for developing countries that have less capabilities to compete for investments on other fronts. A proposal to better take into consideration vertical equity is for the GloBE framework to provide exemptions for developing countries to continue certain tax incentive regimes. This is better explained by first showing the interactions between Pillar 2 and use of tax incentives in the existing framework; and therefore, how vertical equity is compromised.

Pillar 2 has been designed to ensure that large multinationals pay at least 15 per cent on a jurisdictional basis, through the application of top-up taxes. It is therefore expected to impact income-based taxes and therefore exemptions and tax holiday schemes that are aimed at temporarily eliminating income taxes. Supposing that a firm falls within the scope of the GloBE rules, the corporate income tax incentives that might be impacted include tax holidays, deductible qualified incentives, intellectual property regimes, tax credit refunds, capital gains tax that are below 15 per cent, and green incentives.

There are several policy options that may be adopted by countries that have no corporate income tax or a corporate income tax of less than 15 per cent, in order to avoid the top-up tax. One option is for countries to adopt a corporate income tax system or change the existing ones to impose or increase the (effective) rates to the minimum of 15 per cent. Another option would be for countries to retain the reduced rate in their current systems, but to increase the rate only for in-scope companies. This would also require some restructuring of their systems but would also avoid the application of the GloBE rules and having the top-up tax levied in relation to in-scope companies located in their territory by the Ultimate Parent Entity (UPE) jurisdiction (OECD, 2021a).

Countries that wish to retain elements of their tax incentives regimes will need to tread carefully in terms of ensuring their compliance with the GloBE rules and that they implement a system that is either a IIR, QDMTT, or UTPR. If tax incentive regimes are not implemented in a way that is qualified, this may mean top-up tax is collected in another jurisdiction (i.e., if the regime is not a qualified IIR or qualified domestic minimum top-up tax), or that the top-up tax is increased (i.e., if the UTPR is not qualified).

The details in the commentary have clearly indicated that new incentives implemented should not circumvent GloBE rules. Paragraph 126 of Chapter 10 of the GloBE commentary states that “a tax benefit or grant provided to all taxpayers is not related to the GloBE rules” (OECD, 2021a). This paragraph reiterates the point made in the previous paragraph that a factual assessment is critical as to whether a benefit is being provided, and specifically facts connected to the following:

- Whether the tax benefit or grant benefits only taxpayers subject to the GloBE rules;
- Whether the benefit is marketed as part of the GloBE rules; and
- If the regime was introduced after the OECD/G20 Inclusive Framework started discussing the GloBE rules.

Therefore, it is clear from the qualified IIR rules that tax incentives cannot be developed specifically for the GloBE rules. Any tax incentives must also be available to all taxpayers, whether they are in scope of the GloBE rules.

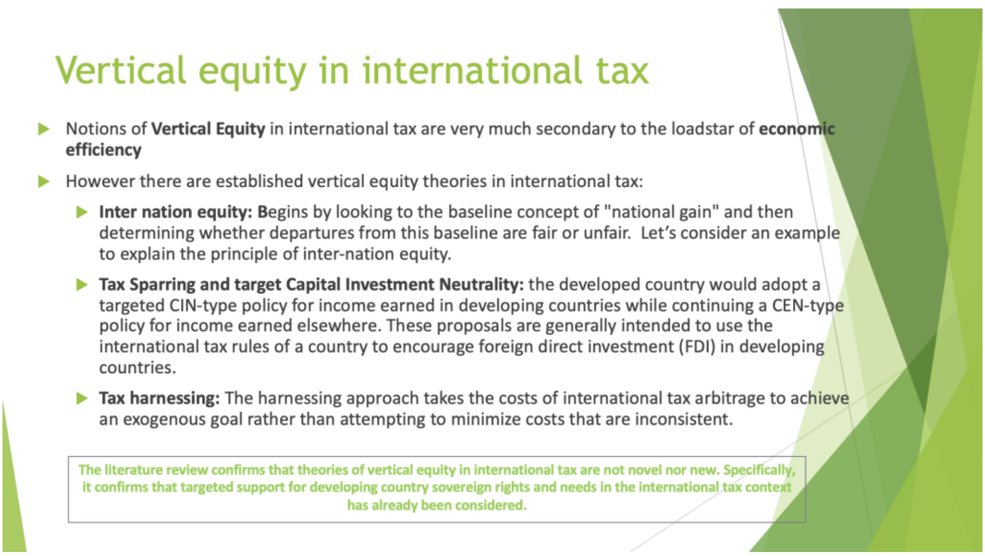
The purpose of these rules is to ensure jurisdictions do not develop incentive regimes that circumvent the implementation of the GloBE rules, or specifically respond to these rules. Paragraph 127 of Chapter 10 also confirms that the Inclusive Framework will implement a process to assist tax administrations in determining whether a country has introduced a qualified IIR.

Again, what these emphasise is that the GloBE rules had been designed based on an efficiency driver. The rules on tax incentives seek to eliminate tax competition by using a minimum tax to reduce the factor of tax as one that motivates multinational investments. The principle of equity is absent in the construction of these rules.

EQUITY IN INTERNATIONAL TAX POLICY

Having shown how the minimum tax rules have been primarily aimed at reducing tax driven economic inefficiency, we can return to the notions of vertical equity and its importance in international tax.

FIGURE 2. OTHER EXAMPLES OF HOW VERTICAL EQUITY HAS ALREADY BEEN EMBEDDED IN TAX POLICIES



Credit: Matt Andrew

First, it should be noted that vertical equity theories are not novel but have already been embedded in international tax. More specifically, there are examples of vertical equity in the construction of GloBE Pillar 1, which has granted greater flexibility in their approach to developing countries' positions.

For example, the proposed draft Article 20 of the Pillar 1 Multilateral Convention (MLC) outlines the *elective* binding dispute resolution panel mechanism for developing countries (OECD, 2022a). That is, if a country is classified as a developing country as per Article 20, then the mandatory and binding dispute resolution process does not apply to this jurisdiction. This is a significant concession to developing countries, as many OECD countries see tax certainty for issues related to Amount A as a fundamental requirement for the successful implementation and operation of Pillar 1.

Furthermore, flexibility has also been shown in relation to the nexus rule for smaller economies. In this regard, jurisdictions with a GDP of less than 40 billion euros only need to have revenue sourced in their jurisdictions of 250,000 euros to be eligible for Amount A. This is opposed to larger nations (with a GDP greater than 40 billion euros), which require 1 million euros in source revenue. This concession was requested by smaller jurisdictions based on vertical equity concerns. That is, many smaller and developing jurisdictions were concerned they would not receive Amount A based on a higher threshold and therefore sought a differentiated approach that considered their smaller market size (OECD, 2022b).

What these examples prove is that greater flexibility has already been built into the elements of the Pillar 1 framework. This flexibility is an outcome of the concerns expressed by developing countries, smaller nations, and even low-capacity countries in terms of how Pillar 1 should be applied to their circumstances. All these design concessions reflect vertical equity concerns that the treatment of groups of nations need to be differentiated for sovereignty, size, and capacity reasons. This should give the Inclusive Framework cause to consider the tax incentive rights of developing nations as it relates to Pillar 2.

EXEMPTING DEVELOPING COUNTRY INCENTIVE REGIMES FROM GLOBE MINIMUM TAX

More specifically, the existing GloBE framework could be altered such that developing country incentive regimes could be exempted from the GloBE minimum tax if it qualifies via the following three elements.

1. *Developing country qualification:*

   For ease of reference and consistency purposes, the same developing country criteria would be applied as in Article 20 of the Pillar 1 draft Multilateral Convention (MLC):
   a) The country is classified by the World Bank as a low-income, lower-middle-income or upper-middle-income jurisdiction by reference to Gross National Income (GNI) per capita, calculated using the World Bank Atlas method; and
   b) The country is not a member of the Organisation for Economic Co-operation and Development nor a member country of the G20 (OECD, 2022b).

2. *An incentive regime that qualifies under the Action 5 Harmful Tax Practices minimum standard:*

   BEPS Action 5 is one of the four BEPS minimum standards applicable to all members of the Inclusive Framework on BEPS. For more than 20 years, the Forum on Harmful Tax Practices (FHTP) has reviewed preferential regimes to ensure that they do not contain features that can negatively impact the tax base of other jurisdictions. This process includes a detailed review of applicable legislation and an open dialogue between FHTP members, including the jurisdiction providing the relevant regime. The focus of the work is on preferential regimes that provide benefits to geographically mobile business income (such as income from the provision of intangibles, and financial services), which present a risk of BEPS activity (OECD, 2021c).

   Inclusive Framework members have committed to ensuring that their preferential regimes do not implicate any of the key factors used in the review process, and if they are found to do so, commit to ensure they are amended or abolished. These factors consist of the following five key factors and five other factors, as noted in Figure 3.

FIGURE 3 CRITERIA FOR ASSESSING PREFERENTIAL TAX REGIMES

Five key factors
The regime imposes no or low effective tax rates on income from geographically mobile financial and other service activities.
The regime is ring-fenced from the domestic economy.
The regime lacks transparency.
There is no effective exchange of information with respect to the regime.
The regime fails to require substantial activities.[1]
Five other factors
An artificial definition of the tax base.
Failure to adhere to international transfer pricing principles.
Foreign source income exempt from residence country taxation.
Negotiable tax rate or tax base.
Existence of secrecy provisions.

Credit: Matt Andrew

3. *Incentives that would not otherwise disqualify a qualified IIR regime:*

A third qualification criteria would be to select the incentive regimes that do not disqualify an IIR from being a *qualified* IIR. This refers to paragraph 126 of Chapter 10 of the commentary, which state that a tax benefit will not be related to the GloBE rules if it is available to all taxpayers — not just those impacted by the GloBE. In reverse, paragraph 126 confirms that tax benefits will disqualify an IIR regime from being "qualified" if it connected through the following factors:

- The tax benefit or grant only benefits taxpayers subject to the GloBE rules;
- The tax benefit is marketed as part of the GloBE rules; and
- The regime was introduced after the OECD/G20 Inclusive Framework started discussing the GloBE rules (OECD, 2021a).

The key point of this section is to ensure that tax incentive regimes that qualify for the proposed Pillar 2 exemption cannot be developed specifically for the GloBE rules and must be available to all taxpayers, whether in-scope of the GloBE rules or not.

Paper Presentation

Revenue Implications of the Global Minimum Tax under Pillar 2 on Asia

REVENUE IMPLICATIONS OF THE GLOBAL MINIMUM TAX UNDER PILLAR 2 ON ASIA

Dr Mona Barake
EU Tax Observatory

At the conclusion of Briefing Note 2 in the IPS paper (2022), it was suggested that further work is needed to explore the tangible and intangible benefits that developing Asia gets from investment hubs such as Singapore. Better establishing these links is important to achieve more complete evaluation of the impact of the global minimum tax on issues on tax incentives, investment hubs, and thereby developing countries. This call for more research on the direct and indirect effects of the GloBE rules is not surprising given the relatively sparse information available. For example, the OECD only presented a broad estimation that the minimum tax would generate an additional US$150 billions of tax revenues annually without breaking it down to each jurisdiction.

From there, the EU Tax Observatory team sought to provide more specific estimations of on the potential gains and losses of each country from the global minimum tax. In October 2021, Mona Barake, Paul-Emmanuel Chouc, Theresa Neef and Gabriel Zucman published their analysis, which found that high-income countries stood to gain the most from the global minimum tax. The EU and US would receive the most revenue gains compared with other countries and regions (Barake et al., 2021, p.3).

METHODOLOGY

Before the EU Tax Observatory's study, Tørsløv et al. (2018) published their working paper, which provided estimations on the amount of profits assumed to have been shifted away from each country. Whilst the paper did not deal directly with revenue impacts of GloBE rules, the estimation of shifted profits gives a rough idea of how each country would gain or lose when Pillars 1 and 2 are implemented. It is also based on the database publicised by Tørsløv et al. from which the EU Tax Observatory team had derived their own revenue estimates. The main data sources that the study had relied on were the OECD's 2016 and 2017 aggregated country-by-country report statistics (CbCR).

The revenue effects of the global minimum tax were calculated for two different scenarios. The first is one where all headquarter countries choose to collect top-up taxes from their multinationals' foreign affiliates under the Income Inclusion Rule (IIR). The second scenario is where host countries collect the same from foreign affiliates through Qualified Domestic Minimum Top-up Tax (QDMTT).

The calculation also took into consideration the substance-based carve-out provision, which consists of a reduction in the tax base on which the minimum tax would be applied. The reduction is determined based on employee compensation and tangible assets. In a transition period of 10 years, this carve-out will decrease from 8 per cent on the value of tangible assets and 10 per cent of payroll in the first year to a constant rate of 5 per cent on payroll and assets after 10 years. For this study, the substance-based carve-out was modelled as a share of total tangible assets as recorded in the CbCR report statistics plus a share of estimated payroll. The estimated payroll is the product of the number of employees with the local mean nominal earnings as per data from the International Labour Organization. The calculated carve-outs are subtracted from profits for each country pair in the country-by-country report data.

FIGURE 4. CALCULATION OF REVENUE IMPACTS WITH SUBSTANCE-BASED CARVE-OUTS

Methodology

Introducing the substance-based income exclusion

- In the July 1st statement of the Inclusive Framework (IF), substance-based carve-outs of at least 5% of the carrying value of tangible assets and 5% of payroll are mentioned. On October 8th, IF members agreed on a transition period of 10 years, from 8%/10% to 5%/5% carve-out rates.
- From there, we model substance-based carve-outs as:
  - **A share of total tangible assets** as recorded in country-by-country report statistics. This differs significantly from the OECD's Economic Impact Assessment of October 2020;
  - **Plus a share of estimated payroll**, obtained as the product of the number of employees (included in country-by-country report statistics) with the local mean nominal earnings as per data from the International Labour Organization (ILO). Earnings are uprated by 20%.
- Carve-outs are subtracted from profits for each country pair in country-by-country report data and do not affect the ETRs; their average impact on tax bases is also applied to TWZ data.

Credit: Mona Barake

IIR SCENARIO: THE EU AND US WOULD COLLECT THE MOST REVENUE

As mentioned, one of the key findings was that in a scenario where headquarter countries adopt the IIR and collect revenues from multinationals around the world, developed countries stand to gain significantly more than developing countries. More specifically, the EU and US would collect the most with 67 and 58 billion euros, respectively, when carve-outs are not yet included.

Amongst the Asian countries covered by the study, China and Japan would collect about 6.2 and 6.0 billion euros, respectively. Including the carve-out provision would decrease the numbers to about 3.4 and 4.8 billion. For most of the other countries in Asia such as Indonesia, South Korea, Malaysia and Singapore, less than half a billion euros will be collected with carve-outs in place.

FIGURE 5. REVENUE COLLECTABLE UNDER THE IIR/HQ SCENARIO (BILLION EUROS)

Country	No. Of MNE's	Without Carve-outs	Carve-outs (8%, 10%)	Carve-outs (5% 5%)
France	176	4.0	3.3	3.6
Germany	343	13.3	8.0	10.1
Greece	14	2.2	1.5	1.7
Hungary	-	0.6	0.3	0.4
Ireland	41	12.6	11.1	11.7
Italy	115	3.1	2.4	2.7
Luxembourg	70	5.9	4.6	5.1
Romania	3	0.1	0.0	0.1
EU	-	67.1	47.4	55.2
Argentina	15	0.1	0.1	0.1
Australia	112	1.8	1.4	1.6
Brazil	71	1.5	1.3	1.4
China	231	6.2	3.4	4.4
India	146	0.6	0.4	0.4
Indonesia	25	0.1	0.1	0.1
Japan	606	6.0	4.8	5.2
Korea	187	0.0	0.0	0.0
Malaysia	34	0.5	0.3	0.3
Singapore	49	0.7	0.5	0.6
South Africa	43	3.0	2.4	2.6
Switzerland	60	3.5	3.0	3.2
United Kingdom	301	7.0	5.1	5.9
United States	1,094	58.1	52.1	54.4
Full sample	**-**	**179.1**	**139.2**	**154.5**

Source: EU Tax Observatory

QDMTT SCENARIO: LOW-TAX JURISDICTIONS WITH MANY AFFILIATES WILL GAIN THE MOST REVENUE

The second key finding deals with the scenario where host countries collect revenues through applying the QDMTT. In such a scenario, low-tax jurisdictions that attract affiliates of many multinationals appear among the main beneficiaries. This is the case of the Cayman Islands (11 billion euros), Switzerland (8 billion euros), Bermuda (8 billion euros), Singapore (8 billion euros) or Puerto Rico (5 billion euros), for instance.

Contrasting with the findings in the above scenario, revenues collected by the US would fall significantly from 54 billion euros to 3 billion euros. This is because US multinational companies have mainly booked sizeable earnings in foreign low-tax judications whilst those booked in the US are generally taxed at a rate higher than 15 per cent.

FIGURE 6. REVENUE COLLECTABLE IN IIR AND QDMTT SCENARIO (BILLION EUROS)

Country	IIR (HQ)	QDMTT (Host country)
France	3.6	0.2
Germany	10.1	5.5
Greece	1.7	0.1
Hungary	0.4	0.5
Ireland	11.7	4.5
Italy	2.7	0.8
Luxembourg	5.1	12.5
Romania	0.1	0.1
EU total	55.2	54.1
Argentina	0.1	0.0
Brazil	1.4	0.3
China	4.4	0.5
India	0.4	0.0
Indonesia	0.1	0.1
Japan	5.2	0.0
Korea	0.0	0.0
Singapore	0.6	7.9
Malaysia	0.3	0.1
Australia	1.6	2.4
South Africa	2.6	0.0
Switzerland	3.2	8.1
United Kingdom	5.9	7.3
United States	54.4	3.4

Full sample	154.5	154.5*

Source: EU Tax Observatory

COMPARING IIR AND QDMTT IN ASIA'S CONTEXT

With the revenue figures derived for the countries under both scenarios, one conclusion is that revenues are rebalanced in favour of developing countries under the QDMTT scenario. If all countries were to adopt the IIR, developed countries would account for 86 per cent of the aggregate revenue gains, whereby G7 member countries collect 58 per cent. Under QDMTT however, developing countries get a larger 32 per cent share of all aggregate revenue gains.

Focusing on Asia however, the difference between the two scenarios is less significant. Under IIR, it was estimated that the revenues collectible by the eight countries listed below are about 12.5 billion euros. Under QDMTT, the amount is about 12.7 billion euros.

FIGURE 7. REVENUE COLLECTABLE UNDER IIR AND QDMTT FOR COUNTRIES IN ASIA

Country	No. of MNEs	ETR of MNEs abroad	IIR scenario	QDMTT scenario	No. of foreign MNEs	ETR
China	231	11.8%	4.4	0.5	1919	18.8%
Indonesia	25	6.5%	0.1	0.1	691	27.5%
Japan	606	14.3%	5.2	0.0	928	22.8%
Malaysia	34	12.4%	0.3	0.1	1041	17%
Korea	187	18%	0.0	0.0	1051	20%
Singapore	49	5%	0.6	7.9	1477	5%
India	146	22%	0.4	0.0	1289	35%
Hong Kong	109	18.5%	1.5	4.1	1448	7%

Source: EU Tax Observatory

OTHER FACTORS THAT CAN AFFECT REVENUE IMPLICATIONS

In conclusion, an important caveat is that the revenue implications estimated thus far do not consider the behavioural changes of stakeholders. Although the revenue estimated were adjusted according to the different levels of substance-based carve-out allowed, it has not anticipated and measured how firms and jurisdictions would change their behaviours considering this provision. For examples, firms might concentrate both their profits and their assets or employees in low-tax jurisdictions. Governments might also alter their policies given that they now have more incentive to provide preferential tax treatments that are conditional on the economic activity generated. Such actions will affect both aggregate revenue gains and their distribution.

Another factor that could affect the distribution of revenue gains is the treatment of US multinational companies' GILTI top-up tax payments. If these are included in the "taxes covered" of the model rules, this would raise the ETRs computed for US multinationals and thereby reduce the top-up taxes to be collected by host countries under the QDMTT.

Paper Presentations

The Impact of the Global Minimum Tax Under Pillar 2 on Common Tax Incentives Adopted in Asia-Pacific

THE IMPACT OF THE GLOBAL MINIMUM TAX UNDER PILLAR 2 ON COMMON TAX INCENTIVES ADOPTED IN ASIA-PACIFIC

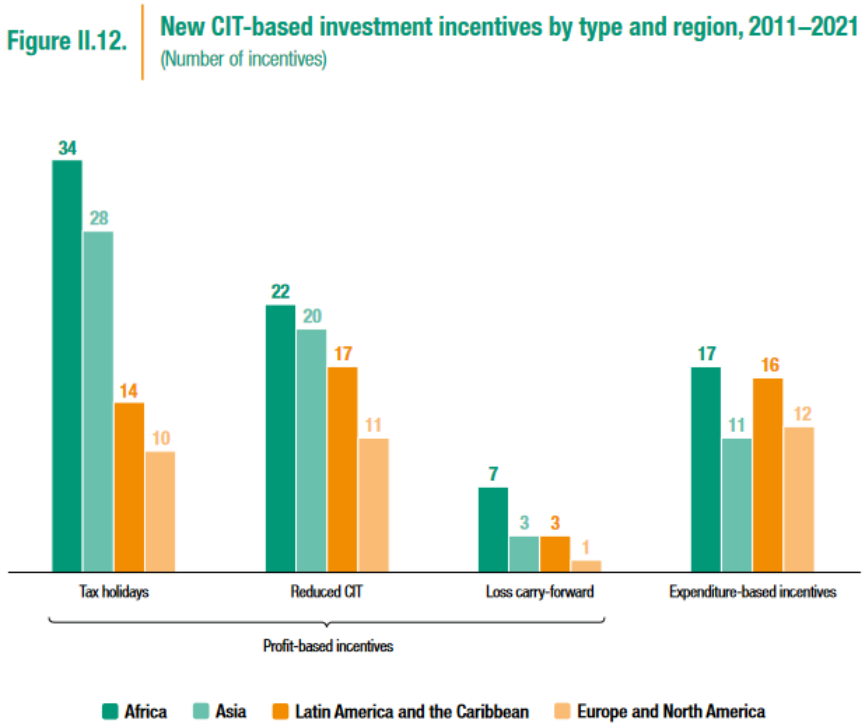
Belisa Liotti
Dr Ivan Lazarov
WU Global Tax Policy Center

Moving from revenue implications, understanding how the global minimum tax affects existing tax incentives could be said to be especially important since the estimation of revenue impact hinges on the extent and kinds of incentives that will be affected. As mentioned, earlier, how firms and jurisdiction react and change their tax incentives structures would change the aggregate revenue gains of each country. In other words, while the GloBE rules radically change the traditional use of tax incentives, it has not explicitly prohibited the use of them. Understanding the impact of GloBE therefore requires stakeholders to understand how their tax incentives are impacted as well as how their own and other parties' policy responses would alter the impacts.

ANALYSING IMPACT OF GLOBE PILLAR 2 ON DIFFERENT TAX INCENTIVES

First, the importance of understanding the impact of Pillar 2 on tax incentives should be emphasised for countries in the Asia Pacific, given its dependence on profit- and income-based incentives. In the World Investment Report 2022 published by the UNCTAD, it showed that from 2001 to 2021, Africa and Asia amongst other regions were most generous in granting incentives such as tax holidays and reduced corporate income tax rate (see Figure 8).

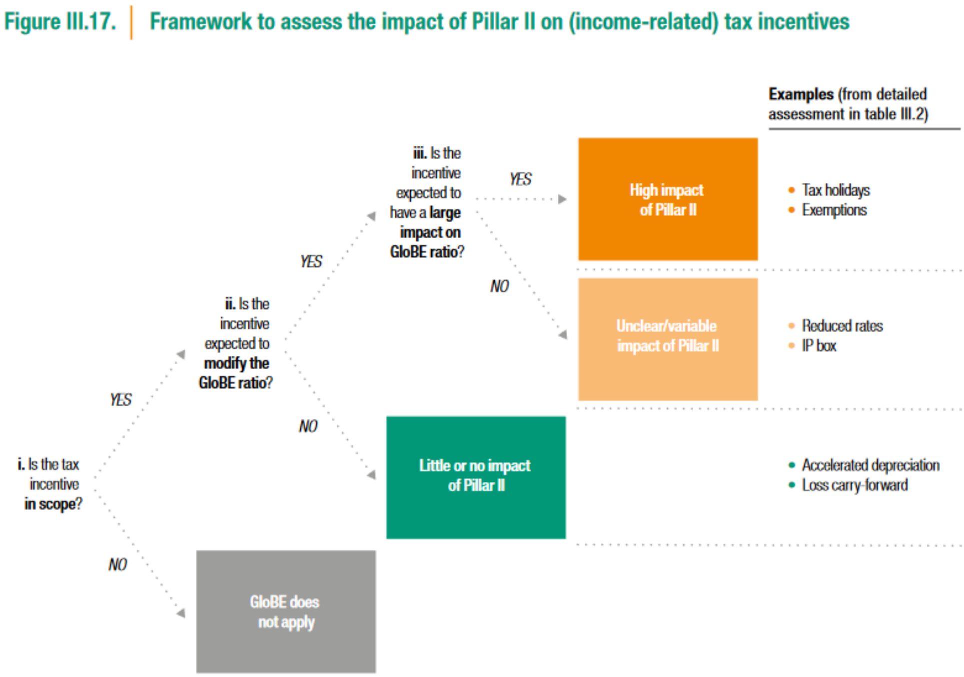
FIGURE 8. CORPORATE INCOME TAX BASED INCENTIVES BY TYPE AND REGION



Source: UNCTAD (2022)

Having shown that countries in the Asia Pacific seem particularly reliant on corporate income tax incentives, it is necessary to return to a more basic point of how one evaluates the kind of tax incentives that are impacted by Pillar 2. This is to explain how one's dependence on a certain kind of incentive would cause one to be significantly affected by the GloBE rules. Citing again from the UNCTAD paper, the framework in Figure 7 shows some questions which stakeholders can check in order to identify how and whether certain incentives are affected.

FIGURE 9. PROPOSED FRAMEWORK TO EVALUATE THE IMPACT OF PILLAR 2 ON TAX INCENTIVES

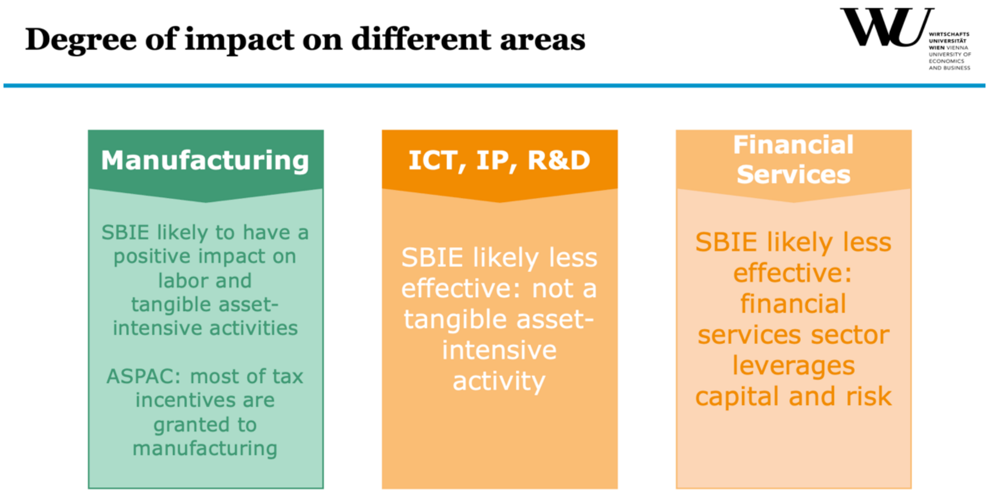


Source: UNCTAD (2022)

Importantly, there are two factors that affect how much the global minimum tax impacts different tax incentives. The first is the magnitude of the substance-based income exclusion (SBIE) carve-out. The second is the category and design of the tax incentives themselves.

First, the carve-out would be significant in causing one type of tax incentive to be more strongly impacted by another. For example, countries using most tax incentive in manufacturing sectors might find themselves being least affect by the minimum tax compared with those in financial services, where there are fewer tangible activities.

FIGURE 10. DIFFERENCES IN IMPACTS ON DIFFERENT TAX INCENTIVES DUE TO SUBSTANCE-BASED CARVE-OUT RULES

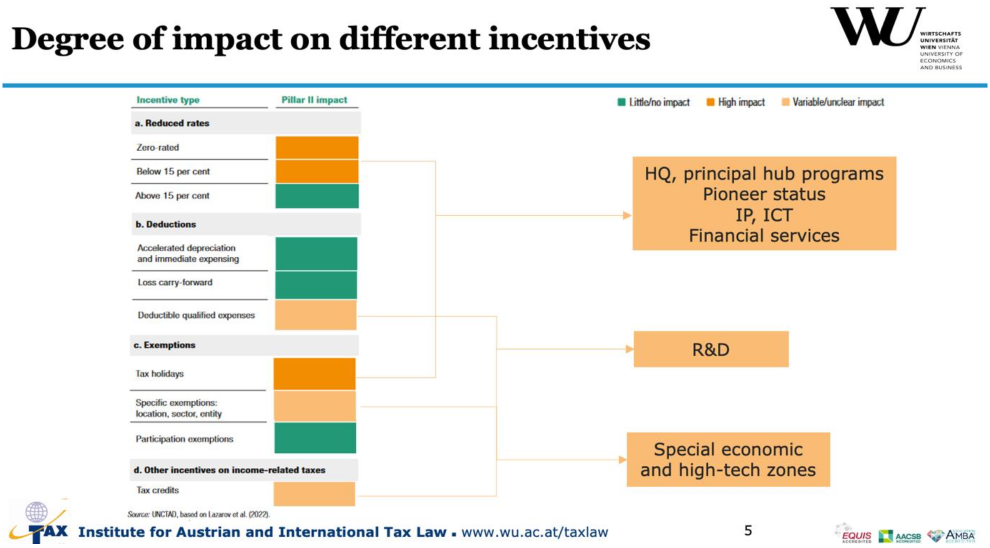


Source: WU Global Tax Policy Center

Second, understanding the extent of Pillar 2 implications also requires corporations and countries to examine the incentive types. Following the UNCTAD report, four broad incentive types were identified: reduced rates, deductions, exemptions, and other incentives on income-related taxes. Within each category, there are different incentive types that will be differently impacted by the global minimum tax.

In the Asia Pacific, incentive schemes identified pertain to headquarter and principal hub programmes, financial services, research and development where special economic and high-tech zones are commonly employed. It could be postulated that these incentives will likely be adversely impacted by GloBE rules.

FIGURE 11. DEGREE OF IMPACT OF PILLAR 2 ON DIFFERENT TAX INCENTIVES



Sources: UNCTAD (2022) and WU Global Tax Policy Center

POLICY RESPONSES AND ALTERNATIVE SOLUTIONS

Having outlined the factors to consider in evaluating the impact of GloBE Pillar 2 on tax incentives, the following three potential policy responses and their various trade-offs could be considered.

1. Two-Tier Evaluation

The first and most basic policy response is to conduct a two-tier evaluation. First, countries ought to decide if the area of incentive is substantially affected. Referring to Dr Barake's research findings for example, many least developed countries could find that they have little in-scope MNEs and hence will not be substantially affected by Pillar 2. For such countries, responses to Pillar 2 should be minimal. However, if a country finds that the area of incentive will be substantially affect, the next step would be to figure out the specific type of incentive that would be substantially affected.

If one finds that both the area and type of incentives are substantially affected, the next policy response would be to consider whether a QDMTT or a more general reform of the tax structure should be carried out.

2. QDMTT vs Corporate Tax Reform

The former option of implementing a QDMTT is sensible if it is evaluated that the incentive has low risk of falling under Pillar 2.

However, if there is much more certainty that an area or type of incentive were to be significantly impacted by Pillar 2, a general tax reform is more advisable. This means bringing all incentives up to the minimum 15 per cent effective tax rate, including those that might not have been affected by Pillar 2. This could also play out in switching the incentives to other types, such as qualified refundable tax credits.

The rationale for preferring a general corporate tax reform as opposed to the QDMTT is better understood when considering the effects that CFC rules can introduce.

3. Interaction between CFC rules and QDMTT[1]

In considering the various policy options, it should be noted that the Controlled Foreign Company (CFC) rules takes priority over the QDMTT. To elucidate by example, suppose that a CFC has zero per cent corporate tax rate and is under a jurisdiction that implements QDMTT. The jurisdiction would not necessarily be able to collect anything with QDMTT as the parent company of the CFC could first collect revenues from the CFC. The amount collected by the parent company would be attributed to effective tax rate of the CFC, making it possible for the CFC to have an ETR above the minimum tax, and therefore render little or no revenues collectable under QDMTT.

POST-PRESENTATION DISCUSSION

Bringing developing countries on board GloBE Pillar 2

Reflecting on Mr Andrew's vertical equity argument and Dr Barake's findings of revenue implications, a key issue was the approach developing countries ought to take regarding implementing the global minimum tax. More

[1] This point was presented before the OECD Administrative Guidance on Pillar Two was published in February 2023. Under paragraph 118.30 of the document, it was clarified that a QDMTT will exclude tax paid by an entity under a CFC regime. In other words, QDMTT takes priority over taxation under CFC.

specifically, the estimates showed that GloBE Pillar 2 would require immense effort for developing countries to implement but would have minimum net revenue impact in return.

One perspective that was offered challenged the assumption that developing countries would necessarily receive negligible gains from implementing Pillar 2. The argument mainly relies on emphasising the uncertainties that lie in estimating behavioural effects on firms and jurisdictions, and hence the eventual impact of Pillar 2. Dr Lazarov referred to the final point of his presentation where he described the interactions between CFC rules and QDMTT[2], which influence different decisions by corporates. Dr Barake similarly mentioned that factors such as the carve-outs and existing US tax laws would also change the aggregate revenue estimates and distributions.

Given these uncertainties, it is not only that developing countries should be less distracted by their negligible gains, but as Dr Lazarov urged, the present time should be seized as the best opportunity to implement reforms; while the dust has yet to settle and various parties are still making decisions, countries should protect their revenues with a general corporate tax reform. Dr Lazarov reiterated his point that implementing a QDMTT would not be sufficient given that revenues could still be diverted away when other jurisdictions implement a CFC or IIR regime.[3] However, this could be considered a more radical step. Acknowledging the many uncertainties, a more conservative approach offered by Ms Liotti was to adopt the QDMTT and continue to "wait and see" how other parties are responding.

Space for influencing changes to existing BEPS framework

Whilst the policy options discussed had manly focused on responses towards the rules and frameworks that are already or expected to be established, some attention has also been given to the possibility of influencing the development of BEPS. This deals more specifically with proposals such as Mr Andrew's, which suggested exemptions to be made for developing countries on grounds of vertical equity.

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[2] Refer to footnote 1. From February 2023 onwards, this interaction between the two crediting mechanisms has been clarified such that CFC taxes will be excluded under QDMTT.

[3] Refer to footnotes 1 and 2.

An optimistic view would have one consider the other vital issues that have yet to be incorporated into or considered by the GloBE rules. For example, Mr Andrew observed that environmental incentives are increasingly important given the global commitment to sustainability goals. The existing GloBE rules, however, have yet to consider how to complement this commitment and ensure that the eradication of tax competition does not work in opposition to environmental incentives. As such, continual reviews of the GloBE framework could be expected, which would also present opportunities for exemptions and for new provisions to be incorporate.

COMMENTARY BY WORKING GROUP

BETTER UNDERSTANDING AND PORTRAYING OF PREFERENTIAL TAX REGIMES

The recommendation set out by Mr Andrew shows how preferential tax regimes could be consistent with GloBE. As mentioned at the end of Briefing Note 1 of the IPS paper (2022), preferential tax regimes are not necessarily harmful, and more work should be done on documenting and publicising the positive effects of properly run regimes.

Therefore, just like tax incentives, preferential tax regimes are not prohibited under GloBE rules. The rules have only set restrictions on the kinds of incentives and how they are being used. Following WU Global Tax Policy Center's example of systematically evaluating different types of tax incentives and the extent to which they would be affected by Pillar 2, the same could be done for preferential tax regimes. Furthermore, the evaluation and design of these preferential regimes should also not be a one-size-fits-all solution for all developing countries. Instead, the specific circumstances of each region and even each country ought to be taken into account.

ESTIMATING TANGIBLE AND INTANGIBLE EFFECTS

The work by EU Tax Observatory and the WU Global Tax Policy Center estimated the effects of GloBE Pillar 2 on the revenue and foreign investments in each country. The calculations required broad assumptions such as assuming that all countries will adopt the rule by implementation of the same policies (e.g., all countries apply QDMTT). The reality, however, will be far from clear. Countries and firms adopt different official policy responses and will shift their behaviours and structures, with the timing of which these shifts differing and resulting in different impact. On a pragmatic point, the task of arriving at any accurate estimate of the effect is immensely difficult. This then raises the question as to what extent then should affected parties be pursuing this endeavour to put precise numbers to the effects of GloBE and make decisions based on these estimates.

On a related note, understanding the complexities of this space should also raise awareness of the need to shift attention beyond tangible and direct impact such as on revenues and investments to indirect and intangible implications that may affect the entire economy of countries and regions. These should also be identified and given attention.

QUALIFIED DOMESTIC MINIMUM TOP-UP TAX (QDMTT) VERSUS A GENERAL TAX REFORM

The WU Global Tax Policy Center suggested that jurisdictions may have two or more main policy options should they find their existing tax incentives having a high possibility of being affected by the global minimum tax. The Center advocates further explanation and analyses to draw out the meaningful difference between the two.

For example, the Center cites a Wardell-Burrus (2022) article on QDMTT as providing useful explanations of the different ways QDMTT could be interpreted and how it differs in substance from a general tax reform of bringing tax rate to the 15 per cent. In short, Wardell-Burrus fleshed out the subtle but important difference that the top-up tax percentage under QDMTT is only applied to excess profits. Excess profits refer to the adjusted income less the Substance-Based Income Exclusion (SBIE) amount. Since a jurisdiction that apply QDMTT effectively raises its Effective Tax Rate (ETR) to the minimum 15 per cent rate, and this means that they can retain their income tax rates below 15 per cent on profits that are covered by SBIE. This difference might be particularly important for developing countries that, as pointed out by Dr Rosengard, are more likely to be source rather than resident countries.

CONTROLLED FOREIGN CORPORATION (CFC) RULES

BEPS Action 3 explores CFC rules in seeking to reform the existing international tax rules to tackle base erosion and profit shifting more effectively. The OECD 2015 Action 3 report had set out recommendations such as introducing a definition of a CFC, exemptions and threshold, computation of CFC income, and more (OECD, n.d.a). According to OECD's 2020 Corporate Tax Statistic publication, 49 of the 122 Inclusive Framework members who were surveyed have CFC rules in operation. Other than that, no other information or analysis on CFC has been provided.

As the WU Global Tax Policy Center advocates, CFC rules could significantly influence the policy responses which firms and jurisdictions would take, as well as the impact of such responses. Further work should therefore be done to explore the impact of CFC rules as they evolve and as more countries adopt them. Since the developments within BEPS Action 3 has not been extensive, research enquiry could also be launched into how developing countries could seek to influence changes to the GloBE rules if the CFC rules have significant effect on the former.

PANEL DISCUSSION

Asia Voices: Perspectives on Tax Policy Working Group

TAX INCENTIVES AND FOREIGN DIRECT INVESTMENTS

The panel discussion brought together five panellists with perspectives as academics, corporate leaders and policymakers. Mr Michael Velten from Deloitte Singapore moderated the session, where the panellists were Mr Bruno Casella from the United Nations Conference on Trade and Development (UNCTAD); Mr Panayiotis Nicolaides from EU Tax Observatory; Ms Samantha King of Standard Chartered Bank plc; Mr Vaibhav Sanghvi from NortonLifeLock Inc; and Professor Thabo Legwaila from the University of Johannesburg.

There were two main divergent views about tax incentives' role in countries' development and BEPS' aim of reducing tax incentive competition amongst countries.

The first aligns with the motivations behind BEPS, which takes a critical view of the effectiveness of tax incentives. From the EU Tax Observatory, Mr Panayiotis Nicolaides said that existing literature found no strong link between growth and lower tax rates. Instead, the effect of the latter had caused an increase in global inequality. Given this view, the global minimum tax rule is not only unavoidable but also overdue as an intervention, given the unprecedented decline in statutory tax rates over the years.

The resistance to this view came in two forms. Speaking from the perspective of the African region, Professor Legwaila disagreed with the argument about the ineffectiveness of tax incentives to drive growth as less developed countries often have no other policy tools that would be more feasible to attract foreign investments. This is in a parallel vein as Mr Andrew's argument that expecting developing countries would be able to mobilise domestic resources to compete with the rest of the world for investment is inequitable. Second, without considering the link between growth and tax incentives, Professor Legwaila was also unenthusiastic about GloBE Pillar 2 as it requires the implementation of even more complex rules to tax systems of developing countries, which are already struggling to administer their tax systems effectively.

Mr Nicolaides, in responding to the first point about developing countries not having any other tools to compete for investments, emphasised that Pillar 2 does not eradicate all tax incentives. He reiterated that countries could and would still compete, but on a higher 15 per cent base rate rather than the existing zero per cent as the lowest point. As such, as long as there are some activities even in the developing countries, revenues could be expected, which will enhance their abilities to compete on other fronts. Mr Bruno Casella responded more directly to Professor Legwaila's concerns where he suggested that there might be an overstatement on the importance of tax incentives as a tool to attract investment. He also pointed out that one ought to consider the special context of Africa when considering the broad issue of tax competition. Whilst African countries may worry about losing their ability to compete on a global scale, their practices in reality are predominantly about competition with one another within the African context. Therefore, recognising the importance of tax incentives for developing countries does not necessarily mean that such incentives would be just as important for all countries across the globe.

The example of developing Asia could serve as an example to show that the concerns about the impact of Pillar 2 on tax incentives and growth are unique to Africa. Mr Casella acknowledged that the minimum tax could indeed increase pressure on attracting efficiency-seeking FDI for all developing countries. However, for regions like Asia, which leverage more on lower labour costs rather than tax incentives, Pillar 2 is not necessarily problematic. Instead, geopolitical trends of nationalism, protectionism and anti-globalisation should serve as greater concerns for these Asian developing countries. On these, both Mr Casella and Mr Nicolaides shared the view that BEPS, being an ambitious multilateral initiative, could reverse those trends towards unilateralism. In this regard, the success of multilateralism and BEPS implementation work hand in hand. A strong multilateral process is needed for coordinated implementation of the global minimum tax.

DOUBLE TAXATION AND OTHER IMPLEMENTATION CONCERNS

Moving from issues of equity of the global tax rule, practical challenges about the implementation of the rule were also discussed. One of the greatest risks and concerns that corporates anticipate is the possibility of double taxation.

Ms Samantha King described the inevitable trade-off between efficiency and accuracy when it comes to achieving policy goals. For the GloBE rules, she observed that certain aspects of the framework (e.g. transfer pricing rules and rules on how losses are calculated) had been simplified for efficiency's sake. Such simplification will cause problems in the coming years. One of her key points was the need for policymakers to ensure that both double taxation and double non-taxation are avoided.

Mr Vaibhav Sanghvi emphasised the need to avoid double taxation, which he believed the current developments were heading towards. He made specific reference to the current US regulations, which are "not in sync with what the Pillar 2 model rules look like."

The other point that Ms King emphasised was on the importance of ensuring that the policy objectives of Pillar 2 do not exacerbate the financial stress of corporates during difficult times. She referred to an example from the banking sector, where banks may incur losses on government bonds which they are required to hold by regulation. During such times, Pillar 2 might cause additional stress on banks as their effective tax rates are further lowered. Ms King ended her comments urging that a "safe harbour" set of rules is required to ensure better trade-offs between efficiency and accuracy in the GloBE framework.

The general compliance costs and challenges that Pillar 2 would bring about have been the main concerns of corporations. Mr Sanghvi delved into the computational aspect of the Pillar 2, which he pointed out differed from other tax systems in that it is determined based on adjusted consolidated accounting profits. This method requires tax authorities to take into consideration many adjustments to be made, which in turn, demand more skills, resources and knowledge from tax-paying firms to comply and to understand the impact of these rules on them. To this, Ms King shared two points that would help corporates minimise the compliance costs that they would incur. The first was to minimise the variations between the GloBE rules in relation to existing domestic rules. Should the GloBE rules mirror the domestic rules, fewer changes and revisions will be required. The second is for the OECD to publish details about the rules in advance so that firms would avoid incurring high costs with a quick transitional process.

LACK OF RESEARCH IN DEVELOPING AND ASIAN CONTEXTS

A last point that found agreement with the panellists was the general dearth of research in GloBE and its impact on developing and Asian countries. From Dr Barake's presentation, which showed only estimates of eight Asian countries when there are more than 40 Asian countries, it is evident that present research lacks sufficient data to generate more robust estimates on the impact of GloBE rules on Asia countries. Mr Nicolaides shared that the EU Tax Observatory will be expanding their research scope to investigate the policy impact on developing countries. Rigorous participation by Asian countries in the discussions and responses to the global tax reform process was also noted to be lacking. Echoing a point mentioned in the IPS paper (2022), Mr Sanghvi reminded that most of these countries do not speak either English or French, the working languages of OECD. These have likely presented and continue to present significant challenges for these non-English and French speaking countries to effectively interpret the rules and partake in the discussions.

COMMENTARY BY WORKING GROUP

What BEPS could mean for developing countries

From Dr Rosengard's sharing in the paper presentations and panel discussions, a common point made was that developing countries stand to gain very little in terms of tangible aspects such as revenues. Dr Rosengard suggested that developing countries should not be putting too many resources into deliberating and influencing the course of BEPS. Ms King also suggested that efforts by developing countries would deliver better results when looking at the area of transfer pricing rules and how they deal with the recharging of expenses. At present, the transfer pricing principles do not consider the economic purchasing power of a country in deciding how much expense should be distributed to that country and hence, could be an area to bring about changes in the transfer pricing principles.

To this end, the conversation on developing countries and BEPS should be broadened to identify other areas that are more directly and meaningfully related to developing countries. In November 2022, the UN approved the African Tax Administration Group's proposal for inclusive and effective tax cooperation. The objectives appear to be similar to that of GloBE and hence could be seen as efforts by the developing countries to shift this agenda away from the OECD to a platform that is more favourable and conducive for them. Whether or not this is a productive step and how the UN could be used as a platform to identify specific areas that deliver better results for developing countries could be further explored.

Effects of BEPS on progress of countries in upgrading themselves in the global value chain

The importance of countries upgrading themselves in the global value chain is generally recognised, especially in the areas of economic growth and development. For countries to move towards higher value-added activities, more efficient and higher standards of R&D, technology, headquarters management, etc., are vital. Mr Casella emphasised the importance of developing countries focusing on upgrading themselves in the global value chain, but was more reserved in suggesting that BEPS would be problematic for such an objective. Whilst the global minimum tax rate increases the costs of foreign investments, he believed that it will not be the most critical factor that would hinder progress of developing countries in this aspect of upgrading themselves.

It is noted that issues such as the substance-based carve-out rules were not mentioned by the delegates. These provisions in Pillar 2 come with different incentives and disincentives for firms to pursue higher value activities that are important to growth. On the one hand, SBIE might put highly productive technologies at a disadvantage and dissuade firms from adopting these intangible activities. On the other hand, SBIE can also be seen to encourage investment in tangible assets such as factories and machineries, which are also key factors in driving productivity. Given that the position of each country in the global value chain could greatly influence the ecosystem of the region, it is important that countries seeking growth through developing intangible areas are not penalised when complying with GloBE rules.

Evaluating the success and unintended consequences of a global minimum tax

Amongst the many potential impact of GloBE that have been discussed, it is helpful to evaluate the efficacy and necessity of the tax policies by turning one's attention to the OECD's original aim of eliminating tax avoidance.

Better understanding and putting out concrete measures of tax avoidance in the pre- and post-BEPS 2.0 world is needed to evaluate the progress of the GloBE initiative. This might be particularly important when it comes to justifying the costs and unintended consequences which in-scope corporations around the world have to bear, in complying with GloBE.

REFERENCES

Barake, M., Neef, T., Chouc, P.E., & Zucman, G. (2021, October). *Revenue Effects of the Global Minimum Tax: Country-by-Country Estimates*. https://www.taxobservatory.eu/wp-content/uploads/2021/10/Note-2-Revenue-Effects-of-the-Global-Minimum-Tax-October-2021-1.pdf

Gee, C., & Woo, J. (2022). *Asia Voices: Perspectives on Tax Policy.* IPS Exchange Series Number 21. Institute of Policy Studies, Singapore.

OECD. (n.d.a). *Action 3 Controlled Foreign Company.* https://www.oecd.org/tax/beps/beps-actions/action3/

OECD. (n.d.b). *What is BEPS?* https://www.oecd.org/tax/beps/about/

OECD. (2020). Statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy, OECD, 2020. https://www.oecd.org/tax/beps/statement-by-the-oecd-g20-inclusive-framework-on-beps.htm

OECD. (2021a). Tax Challenges Arising from the Digitalisation of the Economy — Global Anti-Base Erosion Model Rules (Pillar Two) : https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm

OECD. (2021b, October). Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. https://www.oecd.org/tax/beps/brochure-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-octob

OECD. (2021c, December). Harmful Tax Practices — 2020 Review Reports on the Exchange of Information on Tax Rulings. https://www.oecd.org/tax/beps/harmful-tax-practices-2020-peer-review-reports-on-the-exchange-of-information-on-tax-rulings-f376127b-en.htm

OECD. (2022a). Public Consultation Document Pillar One — Tax Certainty for Issues Related to Amount A. https://www.oecd.org/tax/beps/public-consultation-document-pillar-one-amount-a-tax-certainty-issues.pdf

OECD. (2022b, July 11). Progress Report on Amount A of Pillar One — Two-Pillar Solution to the Tax Challenges of the Digitalisation of the Economy. https://www.oecd.org/tax/beps/progress-report-on-amount-a-of-pillar-one-two-pillar-solution-to-the-tax-challenges-of-the-digitalisation-of-the-economy.htm

Tax Foundation. (2022, December 13). *Corporate Tax Rates Around the World, 2022*. https://taxfoundation.org/publications/corporate-tax-rates-around-the-world/#Regional

Tørsløv, T. R., Wier, L., & Zucman, G. (2018). *The Missing Profits of Nations.* National Bureau of Economic Research.

UNCTAD. (2022). *World Investment Report 2022.* https://unctad.org/publication/world-investment-report-2022

Wardell-Burrus, H. (2022, June 27). Should CFC Regimes Grant a Tax Credit for Qualified Domestic Minimum Top-Up Taxes? *Tax Notes*. https://www.taxnotes.com/special-reports/digital-economy/should-cfc-regimes-grant-tax-credit-qualified-domestic-minimum-top-taxes/2022/06/24/7dl9b

Appendix

Asia Voices: Perspectives on Tax Policy Working Group

ASIA VOICES: PERSPECTIVES ON TAX POLICY WORKING GROUP

The Asia Voices: Perspectives on Tax Policy Working Group is formed by the Institute of Policy Studies to contribute meaningful, policy-relevant research on important cross-border and regional tax issues as they relate to Asia and especially the developing countries in the region.

The Institute welcomes comments from tax practitioners, academics and policymakers with an interest in corporate tax policies in Asia. Those interested to collaborate with or join this working group may apply by contacting Christopher Gee at christopher.gee@nus.edu.sg.

The biographies of the working group members responsible for the publication of this report are set out here (by alphabetical order of their surnames).

Matt ANDREW is a Teaching Fellow at Auckland University and also currently a PHD Candidate. Prior to this, Matt was the head of the OECD's Tax Treaty, Transfer Pricing and Financial Transactions Division. There, Matt was responsible for overseeing the OECD tax policy developments in relation to tax treaty and transfer pricing matters.

Christopher GEE is Senior Research Fellow at the Institute of Policy Studies, National University of Singapore (NUS) where he leads the Governance and Economy Department. Christopher has published several papers on retirement financing, strengthening old-age income support and aspects of fiscal policy. Christopher previously worked in investment banking, leading equity research teams covering Singapore and Malaysia, and the Asian real estate sector. He has a BA (Law) from the University of Nottingham and holds the CFA charter. Christopher also holds a joint appointment with the NUS Department of Real Estate.

Darren KOH is one of the editors of *The Law and Practice of Singapore Income Tax* (LexisNexis, 2020, third edition). He is both a Barrister and a Chartered Accountant of England and Wales. His career has taken him around the world from London to Hong Kong, Kobe, Geneva, Singapore and Cincinnati, and back again to Singapore. His career stretches from tax advisory roles to in-house, client-side regional and global tax roles as well as handling war reparation claims filed against Iraq after the first Gulf War. He obtained his Master of Laws and joined the School of Business of SIM University (now the Singapore University of Social Sciences) as Head of Area — Taxation and Business Law. He is now the Vice-Dean of the School of Law as well as the Head of Programme — Master of Taxation.

Paul LAU is a partner at PwC Singapore. With over 25 years of experience in practising tax, Paul has advised financial institutions, investment funds and multinationals in a broad range of transactions, including corporate restructuring, mergers and acquisitions, transfer pricing, treasury operations and capital markets instruments. Paul has written widely on taxation matters. Among others, he co-authored the capital market transactions chapter in *The Law and Practice of Singapore Income Taxation* (LexisNexis, 2013) and authored the capital allowances chapter for the 3rd edition of the said publication, as well as the taxation chapter in *Theory and Practice of Islamic Finance* (Saw Centre for Financial Studies, 2008). Paul chairs the Tax and Levies Committee at Singapore Chartered Tax Professionals. He holds a bachelor's degree in accountancy from Nanyang Technological University and a master's degree in international taxation from University of Sydney Law School.

Justin TAN is a Senior Lecturer at the Faculty of Law, NUS, where he teaches cross-border taxation. He holds an LLB (NUS, First Class Honours), BBA (NUS) and an LLM in tax from New York University, where he was a Vanderbilt Scholar. He practised tax law at Baker & McKenzie Wong & Leow, advising on the international tax aspects of cross-border transactions. He continues to act as a consultant with Baker & McKenzie Wong & Leow's tax practice group.

Samantha TANG is a Sheridan Fellow at the Faculty of Law, NUS. She received a LLB from NUS, and is a PhD candidate at Melbourne Law School. Samantha's research interests are the corporate law of Commonwealth jurisdictions, with a special focus on shareholder stewardship, and environmental, social and governance (ESG) investing.

Chris WOO is the Tax Leader for PwC Singapore and Myanmar, and a member of the firm's leadership team and the Asia Pacific tax leadership team. He is a board member of the Singapore Chartered Tax Professionals and an Accredited Tax Advisor in Income Tax. Chris has over 30 years of experience particularly in deals tax and corporate restructuring to meet the tax needs of strategic, financial and private equity clients from Asia, the United States and Europe. He has led many regional and global projects in various industries to maximise long-term value and tax efficiency for multinationals engaged in realigning their global business structures, supply chains, assets and key personnel. He has been active in moderating and speaking in various discussions regarding recent international tax developments. Chris brings practical industry experience from his work as international tax director for a large US MNC based in the US and Singapore.

Michael VELTEN is a financial services tax partner with Deloitte Singapore and is the firm's Southeast Asia Financial Services Tax Leader. He also leads Investment Management and Real Estate for Deloitte Southeast Asia. From 2106 to 2021, Michael was the firm's Asia Pacific Financial Services Tax Leader. He has 35 years of finance, legal, tax and management experience; almost 30 years of which have been spent working in Asia having been based in Kuala Lumpur, Hong Kong and Singapore. Michael started his career in Melbourne, where he was a senior associate with a leading Australian law firm. He holds a Bachelor of Commerce, Bachelor of Laws and Master of Taxation from the University of Melbourne. He holds a Master of Laws from the National University of Singapore and a Master of Business Administration from the University of New England. More recently, Michael completed an Executive Certificate in Public Policy at the Harvard Kennedy School.

WOO Jun Jie is a Senior Research Fellow in the Governance and Economy Department at the Institute of Policy Studies, NUS. His research interests include urban policy, economic development and crisis management in Asia. He has published several books on Singapore's development as a global financial centre. His research has also been published in leading SSCI journals. Jun Jie received his PhD from the Lee Kuan Yew School of Public Policy, NUS. He holds an MSc in International Political Economy from the S. Rajaratnam School of International Studies at Nanyang Technological University and a BSc (First Class Honours) in Economic and Management from the London School of Economics.