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After Pillar One

Reuven S. Avi-Yonah
University of Michigan Law School, aviyonah@umich.edu

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In the declaration issued at the meeting of the leaders of the G20 at Bali on November 16, 2022, they said as follows:

> We are committed to the swift implementation of the OECD/G20 two-pillar international tax package. We welcome the progress on Pillar One. We also welcome progress on Pillar Two Global Anti-Base Erosion (GloBE) Model Rules, which pave the way for consistent implementation at a global level as a common approach, and we look forward to the completion of the GloBE Implementation Framework. We call on the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) to finalize Pillar One, including remaining issues and by signing the Multilateral Convention in the first half of 2023, and to complete the negotiations of the Subject to Tax Rule (STTR) under Pillar Two that would allow the development of a Multilateral Instrument for its implementation.

This declaration is remarkable for its optimism, because at this point it is highly unlikely that Pillar One can be finalized in 2023 (Pillar Two, on the other hand, is progressing because it does not depend on a multilateral tax convention (MTC)). But the rush is understandable because on January 1, 2024 countries that have suspended their Digital Services Taxes (DSTs) (e.g., France) can reinstate them and other countries that have enacted but never implemented DSTs (e.g., Canada) can implement them.

Pillar One is unlikely to succeed for three reasons. First, it requires an MTC to be implemented because Amount A requires overriding Articles 5 (Permanent Establishment, PE), 7 (Business Profits) and 9 (Associated Enterprises) of every tax treaty to abolish the PE and Arm's Length Principle (ALP) limits enshrined therein. But negotiating an MTC is hard, especially when over 100 countries are involved and there are fundamental disagreements among them.[2]

Second, because Pillar One (despite its October 2021 expansion) is still aimed primarily at taxing the US digital giants (Big Tech), it is hard to envisage it being implemented without the United States. But despite the support of the Biden administration, since the Republicans are adamantly opposed, an MTC implementing Pillar One cannot be ratified by the Senate (which requires 67 votes) or enacted as a Congressional Executive Agreement (which requires passage in the Republican controlled House). In theory other countries can adopt a Pillar One MTC without the US, but as discussed below that could lead to massive double taxation and a trade war, so that seems implausible.

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[1] Irwin I. Cohn Professor of Law, the University of Michigan.

[2] While many countries may sign a Pillar One MTC next year, ratification is much harder.

Third, Pillar One is premised on all the countries that have adopted DSTs repealing them. But DSTs are popular politically and, in some cases (e.g. the UK), brought in significant revenue. The only reason countries agreed to suspend DSTs was US pressure, and now that the US cannot ratify an MTC, there is no reason for those countries not to implement their DSTs as scheduled in January 2024.

What will happen then? This article discusses what options countries have to tax Big Tech without Pillar One, and then addresses the US response.

1. Taxing Big Tech without Pillar One

The reason Pillar One came into existence was that following the financial crisis of 2008-10 it became politically untenable in the EU and elsewhere not to impose tax on Big Tech, who were deriving billions of profits from market jurisdictions but not paying any tax because of the PE limit in the treaties. The UK was a pioneer in enacting the Diverted Profits Tax (DPT) in 2015, followed in 2016 by Australia with the Multinational Anti-Tax Avoidance (MAAL) rule and India with the Equalization Levy (which is similar to a DST).[3] France was the first country to enact a DST in 2019, followed by over 25 other countries. Pillar One, as agreed upon in October 2021, requires suspension of the DSTs until January 2024.

Countries have three options to tax Big Tech if Pillar One collapses: DSTs, withholding taxes and income taxes.

a. DSTs

DSTs are gross-based taxes on the provision of digital services into a market jurisdiction and the use of data from a market jurisdiction to sell advertising. They are aimed at taxing Big Tech on profits derived from consumers or users in the market jurisdiction without being subject to corporate income taxes.

If Pillar One collapses, the existing DSTs will automatically come into force in 2024, and it is likely that many more countries will enact DSTs. DSTs generally have low rates (below 5%), are politically popular, and have significant revenue generating potential (the UK DST brough in more revenue than expected before it was suspended).[4]

b. Withholding Taxes

The UN has adopted Article 12B (digital services) in its model tax convention, which imposes a withholding tax (at a rate to be negotiated bilaterally) on the provision of digital services

[3] See Avi-Yonah, Reuven S., Three Steps Forward, One Step Back? Reflections on 'Google Taxes', BEPS, and the DBCT (May 24, 2016). U of Michigan Law & Econ Research Paper No. 16-016, U of Michigan Public Law Research Paper No. 516, Available at SSRN: https://ssrn.com/abstract=2783858 or http://dx.doi.org/10.2139/ssrn.2783858.

[4] https://www.nao.org.uk/wp-content/uploads/2022/11/Investigation-into-the-digital-services-tax.pdf

(including user data). If Pillar One collapses, various countries may negotiate treaties that include Article 12B.

Article 12B provides in part that:

1. Income from automated digital services arising in a Contracting State, underlying payments for which are made to a resident of the other Contracting State, may be taxed in that other State.
2. However, subject to the provisions of Article 8 and notwithstanding the provisions of Article 14, income from automated digital services arising in a Contracting State may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the income is a resident of the other Contracting State, the tax so charged shall not exceed ____ percent (the percentage is to be established through bilateral negotiations) of the gross amount of the payments underlying the income from automated digital services…
3. The term "automated digital services" as used in this Article means any service provided on the Internet or another electronic network, in either case requiring minimal human involvement from the service provider.
4. The term "automated digital services" includes especially:
   - Online advertising services;
   - Supply of user data;
   - Online search engines;
   - Online intermediation plaform servies;
   - Social media platforms;
   - Digital content services;
   - Online gaming;
   - Cloud computing servies; and
   - Standardized online teaching services…
5. For the purposes of this Article and subject to paragraph 10, income from automated digital services shall be deemed to arise in a Contracting State if the underlying payments for the income from automated digital services are made by a resident of that State or if the person making the underlying payments for the automated digital services, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to make the payments was incurred, and such payments are borne by the permanent establishment or fixed base.
6. For the purposes of this Article, income from automated digital services shall be deemed not to arise in a Contracting State if the underlying payments for the income from automated digital services are made by a resident of that State which carries on business in the other Contracting State through a permanent establishment situated in that other State or performs independent personal services through a fixed base situated in that other State and such underlying payments towards automated digital services are borne by that permanent establishment or fixed base.

c. Income Taxes

There are several ways in which countries can apply net-based income taxes to Big Tech despite the PE and ALP limits of the treaties.

i. DPTs

First, countries can adopt a DPT like the UK. The DPT was intended primarily to address structures like Google's Double Irish Dutch Sandwich, which is contained in the guidance published by HMRC as Example 3.[5]

Under Example 3, the US parent of a multinational group (company A) owns a subsidiary incorporated in Ireland that is treated under Irish law as resident in a tax haven (company D) which owns the IP for the rest of the world. Company D licenses the IP to Company C in the Netherlands, which in turn licenses it to Company B in Ireland. Company B owns Company E which provides sales and service support in the UK, with all sales contracts being finalized by Company B in Ireland.

Under this structure, UK tax is only applied to the cost-plus profits of company E, which are minimal. Companies B, C and D do not have a PE in the UK and are not subject to tax. Company B is taxable in Ireland, but most of its profits are payable as a royalty to Company C, which it turn pays most of its profits to Company D in the tax haven. There is no withholding tax on the payment from Company B to C (because of the Ireland--- Netherlands tax treaty) or from C to D (because the Netherlands does not tax outbound royalties). The U.S. CFC rules do not apply because other than Company D, all the other entities in the group are disregarded under check the box, and their activities attributed to Company D (regarded under the US rules as resident in Ireland).

The DPT subjects this arrangement to UK tax because Company B's affairs are arranged to avoid a UK PE. The section 86 charge will apply where there is a non---UK resident company (Company B) that is carrying on a trade; a UK resident (Company E, the "ävoided PE") that is carrying on activities in the UK in connection with the supply of goods or services by Company B; it is reasonable to assume that the activity of Company E or Company B was designed to avoid Company B being subject to UK CIT; there is a "tax mismatch" in that the tax paid by Company B in Ireland is less than 80% of the tax avoided by Company E; and tax reduction was one of the main purposes of the arrangement.[5]

If these conditions are satisfied, a 25% DPT applies to the diverted profits (i.e., the profits that would have been taxable to Company B in the UK had it had a PE), measured initially as 30% of the deductions taken by Company B, with later adjustments (and credits for any foreign tax).

[5] HMRC, Diverted Profits Tax: Interim Guidance (March 2015), 37.

The DPT has been criticized as in substance contradicting the UK tax treaties, which require an actual PE. HMRC has defended it as a new tax that is not subject to the treaties, but this issue is unlikely to arise because UK treaties are not "self-executing" and have not been applied to the DPT by legislation. This means that a UK taxpayer cannot challenge the DPT as inconsistent with a UK tax treaty.

ii. Anti-Abuse Rules

Countries may also adopt anti-abuse rules in their corporate income tax, like the Australian MAAL. The MAAL was designed to "prevent foreign corporations from using complex, contrived and artificial schemes that enable them to have substantial sales activities in Australia, but pay little or no tax anywhere."[6] Unlike the DPT, this is not a new tax, but an amendment to Australia's GAAR (part IVA of the Income Tax Assessment Act 1936). The MAAL became effective on January 1, 2016 for enterprises with annual income over AUD 1 billion.

New ITAA Section 177DA applies if a non---resident of Australia sells good or services to an unrelated Australian resident, income from such sales is not attributable a a PE, and activities are undertaken by an Australian associate of the provider in connection with the sale. Under these circumstances, if it is reasonable to conclude that the scheme is designed to avoid income attributable to a PE and tax reduction was a principal purpose, the ATO is free to disregard the arrangement.

Like the DPT, this rule was likewise designed to address structures like the "Double Irish Dutch Sandwich". The Explanatory Materials contain an example of B Company that provides supplies in Australia and owns SubCo in Australia to provide support, but all contracts are entered into with B Co. B Co. Pays a large royalty to C Co., located in a non---tax jurisdiction, with no withholding tax. Under those circumstances, B Co would be treated as having a PE in Australia and the royalty from B to C Co. Treated as an expense incurred by the PE and subject to withholding tax.[7]

The MAAL has been defended as consistent with Australia's tax treaties because it is an anti---avoidance rule, and the PE limit should not apply when the business profits are not taxed by the country of residence.[8] In addition, in Australia treaty overrides are possible, so a treaty-based challenge to the MAAL is unlikely.

iii. Fractional Apportionment

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[6] AU, Exposure Draft Explanatory Material, Para. 1.10.

[7] Draft EM, para. 1---40 and Examples 1.14, 1.15.

[8] Michael Butler And Marianna Danby, Draft Legislation Released for Anti---Google Tax, Int'l Transfer Pricing Journal 349 (Nov. 2015); Douglas Fone, 16 Transfer Pricing Int'l J. 24 (2015); David Richardson, Corporate Tax Avoidance, the Australia Institute, Submission 62 (Feb. 2015).

Before Pillar One was agreed to, India proposed to tax MNEs operating in India on a portion of their profits derived from sales into India without regard to the PE and ALP limitations.[9] What has been proposed is a "fractional apportionment" method, based on profits derived from India. It differs from FA since it limits itself to India related information; it does not require consolidating profits from all tax jurisdictions. The proposed method relies primarily on information relating to Indian operations and adopts a 3-factor formula (based on the CCCTB), according equal weight to sales, employees (manpower and wages), and tangible assets. In addition, the proposal suggests a formula for calculating the profits derived from India, which relies on the non-resident's revenue derived from India and its global operational profit margin. The proposal also offers a solution to tax the digital economy; it allows user participation to count as the 4th factor in the fractional apportionment method; the relative weight of the user participation may range from 10% to 20%, depending on the user intensity of the business enterprise concerned. The proposal does not rely on either the PE limit or the ALS.[10]

This proposal could be adopted by some countries unilaterally if Pillar One collapses. It is clearly inconsistent with the tax treaties but can be adopted by countries that can override treaties, which includes the UK and countries that derive their laws from the UK (Australia, Canada, India, New Zealand etc.) as well as some European countries (Austria, Germany). Even in the case of EU countries that cannot override treaties (e.g., Italy), an EU directive can override treaties (but must be adopted unanimously).[11]

2. The US Response

a. DSTs

In the case of DSTs, the US response is well known: To impose trade sanctions on the offending countries. In addition, Itai Grinberg (currently the Deputy Assistant Secretary of Tax Policy for multilateral tax negotiations) has in the past advocated using section 891 of the Code to impose retaliatory taxes on corporations from countries imposing DSTs because they are discriminatory.[12]

In my opinion, DSTs are not discriminatory because their purpose is to tax large MNEs who are able to derive profits from a market jurisdiction without having a PE, and the fact that all of these MNEs (Big Tech) are US based is irrelevant since the DST would also apply e.g. to Alibaba or Tencent if they went global. But the US disagrees and therefore may retaliate even to DSTs like

[9] See Reuven Avi-Yonah and Ajitesh Kir, *India's New Profit Attribution Proposal And the Arm's-Length Standard, 93 Tax Notes Int'l 1183 (June 17, 2019).*

[10] See also UN Model Art. 12B(3), which includes a similar proposal.

[11] See Avi-Yonah, Reuven S., Sunt Pacta Servanda? The Problem of Tax Treaty Overrides (May 2, 2022). U of Michigan Public Law Research Paper No. 22-022, Available at SSRN: https://ssrn.com/abstract=4098235 or http://dx.doi.org/10.2139/ssrn.4098235.

[12] See Mindy Herzfeld, News Analysis: What Is a Reciprocal Tax? Tax Notes (Mar. 6, 2017).

the Canadian one that also apply to Canadian companies (because the revenue threshold is much lower).

But is the US response important? I do not think so, because applying section 891 seems improbable (it has never been applied) and the trade sanctions are minimal compared to other trade disputes (e.g., on subsidies to Boeing and Airbus and potentially on the US subsidies to EVs manufactured domestically and on FDII). Even though DSTs were the stated reason for Pillar One, DSTs are far less important than other reactions to Big Tech, and even the affected corporations may not care too much because the rates are low and the incidence may be shifted to consumers or advertisers (after all, Big Tech are quasi monopolists). DSTs are really a VAT add on, and the fuss about them is a classic example of much political ado about very little.

b. Withholding Taxes

The US will presumably never agree to incorporate Article 12B in any of its future tax treaties. That does not matter to other countries that may include the article, but it means that Article 12B is unlikely to apply to Big Tech who are presumably able to avoid it by operating from jurisdictions that have not agreed to it (including the US). Article 12B is a good alternative to Pillar One but if Pillar One collapses it will not achieve the same purpose (taxing Big Tech).

c. Income Taxes

In 2021, the US adopted new final foreign tax credit (FTC) regulations. Treas. Reg. 1.901-2(b)(5) imposes a new attribution requirement to obtain the FTC as follows (emphases added):

> **(5)** ***Attribution requirement.*** A foreign tax satisfies the attribution requirement if the amount of gross receipts and costs that are included in the base of the foreign tax are determined based on rules described in paragraph (b)(5)(i) of this section (with respect to a separate levy imposed on nonresidents of the foreign country) or paragraph (b)(5)(ii)of this section (with respect to a separate levy imposed on residents of the foreign country).
>
> **(i)** ***Tax on nonresidents.*** The gross receipts and costs attributable to each of the items of income of nonresidents of a foreign country that is included in the base of the foreign tax must satisfy the requirements of paragraph (b)(5)(i)(A), (B), or (C) of this section.
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> **(A)** ***Income attribution based on activities.*** The gross receipts and costs that are included in the base of the foreign tax are limited to gross receipts and costs that are attributable, under reasonable principles, to the nonresident's activities within the foreign country imposing the foreign tax (including the nonresident's functions, assets, and risks located in the foreign country). For purposes of the preceding sentence, attribution of gross receipts under reasonable principles includes rules similar to those for determining effectively connected income under section 864(c) **but does not include rules that take into account as a significant factor the mere location of customers, users, or any other similar destination-based criterion, or the mere location of persons from whom the nonresident makes purchases in the foreign country.** In addition, for purposes of the first sentence of this paragraph

(b)(5)(i)(A), **reasonable principles do not include rules that deem the existence of a trade or business or permanent establishment based on the activities of another person** (other than an agent or other person acting on behalf of the nonresident or a pass-through entity of which the nonresident is an owner), **or that attribute gross receipts or costs to a nonresident based upon the activities of another person** (other than an agent or other person acting on behalf of the nonresident or a pass-through entity of which the nonresident is an owner).

(B) ***Income attribution based on source.*** The amount of gross income arising from gross receipts (other than gross receipts from sales or other dispositions of property) that is included in the base of the foreign tax on the basis of source (instead of on the basis of activities or the situs of property as described in paragraphs (b)(5)(i)(A) and (C) of this section) is limited to gross income arising from sources within the foreign country that imposes the tax, and the sourcing rules of the foreign tax law are reasonably similar to the sourcing rules that apply under the Internal Revenue Code. A foreign tax law's application of such sourcing rules need not conform in all respects to the application of those sourcing rules for Federal income tax purposes. For purposes of determining whether the sourcing rules of the foreign tax law are reasonably similar to the sourcing rules that apply under the Internal Revenue Code, the character of gross income arising from gross receipts is determined under the foreign tax law (except as provided in paragraph (b)(5)(i)(B)(*3*) of this section), and the following rules apply:

(1) *Services.* Under the foreign tax law, gross income from services must be sourced based on where the services are performed, as determined under reasonable principles (**which do not include determining the place of performance of the services based on the location of the service recipient**).

(2) *Royalties.* A foreign tax on gross income from royalties must be sourced based on the place of use of, or the right to use, the intangible property.

(3) *Sales of property.* Gross income arising from gross receipts from sales or other dispositions of property(including copyrighted articles sold through an electronic medium) must be included in the foreign tax base on the basis of the rules in paragraph (b)(5)(i)(A) or (C) of this section, and not on the basis of source. In the case of sales of copyrighted articles (as determined under rules similar to § 1.861-18), a foreign tax satisfies the attribution requirement of paragraph (b)(5) of this section only if the transaction is treated as a sale of tangible property and not as a license of intangible property.

(C) ***Attribution based on situs of property.*** A foreign tax on gains of nonresidents from the sale or disposition of property, including shares in a corporation or an interest in a partnership or other pass-through entity, based on the situs of property satisfies the attribution requirement only as provided in this paragraph (b)(5)(i)(C). The amount of gross receipts from the sale or disposition of property that is included in the base of the foreign tax on the basis of the situs of real property(instead of on the basis of activities as described in paragraph (b)(5)(i)(A) of this section) may only include gross receipts that are attributable to the disposition of real property situated in the foreign country imposing the foreign tax (or an interest in a resident corporation or other entity that owns such real property) under rules reasonably similar to the rules in section 897. The amount of gross receipts from the sale or disposition of property other than shares in a corporation, including an interest in a partnership or other pass-through entity, that is included in the base of the foreign tax on the basis of the situs of property other than real property may only include gross receipts that are attributable to property forming part of the business property of a taxable presence in the foreign country imposing the foreign tax under rules that are reasonably similar to the rules in section 864(c).

(ii) ***Tax on residents.*** The base of a foreign tax imposed on residents of the foreign country imposing the foreign tax may include all of the worldwide gross receipts of the resident. **The foreign tax law must provide that any allocation to or from the resident of income, gain, deduction, or loss with respect to transactions between such resident and organizations, trades, or businesses owned or controlled directly or indirectly by the same interests (that is, any allocation made pursuant to the foreign country's transfer pricing rules) is determined under arm's length principles, without taking into account as a significant factor the location of customers, users, or any other similar destination-based criterion.**

(iii) ***Examples.*** The following examples illustrate the rules of paragraph (b)(5) of this section.

(A) ***Example 1*** -

(1) *Facts.* Country X imposes a separate levy on nonresident companies that furnish, from a location outside of Country X, specified types of electronically supplied services to users located in Country X (the "ESS tax"). The base of the ESS tax is computed by taking the nonresident company's overall net income related to supplying electronically supplied services, and deeming a portion of such net income to be attributable to a deemed permanent establishment of the nonresident company in Country X. The amount of the nonresident company's net income attributable to the deemed permanent establishment is determined on a formulary basis based on the percentage of the nonresident company's total users that are located in Country X.

(2) *Analysis.* The taxable base of the ESS tax is not computed based on a nonresident company's activities located in Country X, but instead takes into account the location of the nonresident company's users. Therefore, the ESS tax does not meet the requirement in paragraph (b)(5)(i)(A) of this section. The ESS tax also does not meet the requirement in paragraph (b)(5)(i)(B) of this section because it is not imposed on the basis of source, and it does not meet the requirement in paragraph (b)(5)(i)(C) of this section because it is not imposed on the sale or other disposition of property.

(B) ***Example 2*** **-**

(1) *Facts.* The facts are the same as those in paragraph (b)(5)(iii)(A)(*1*) of this section (the facts in *Example 1*), except that instead of imposing the ESS tax by deeming nonresident companies to have a permanent establishment in Country X, Country X treats gross income from electronically supplied services provided to users located in Country X as sourced in Country X. The gross income sourced to Country X is reduced by costs that are reasonably attributed to such gross income, to arrive at the taxable base of the ESS tax. The amount of the nonresident's gross income and costs that are sourced to Country X is determined by multiplying the nonresident's total gross income and costs by the percentage of its total users that are located in Country X.

(2) *Analysis.* Country X tax law's rule for sourcing electronically supplied services is not based on where the services are performed and is instead based on the location of the service recipient. Therefore, the ESS tax, which is imposed on the basis of source, does not meet the requirement in paragraph (b)(5)(i)(B) of this section. The ESS tax also does not meet the requirement in paragraph (b)(5)(i)(A) of this section because it is not imposed on the basis of a nonresident's activities located in Country X, and it does not meet the requirement in paragraph (b)(5)(i)(C) of this section because it is not imposed on the sale or other disposition of property.

DSTs are already not creditable because they are not income taxes. The attribution requirement will deny FTCs to withholding taxes under Article 12B (although they are unlikely to be imposed on Big Tech) and will also deny FTC to taxes like the DPT, the MAAL, and taxes imposed under fractional apportionment, because they are all “extraterritorial” under the regulation and ignore the PE and ALP limits.

This is the most significant US response because it will create a lot of double taxation. The question is whether it is tenable. In this case Big Tech will complain and since this is just a regulation (with no basis in the Code or in Supreme Court precedent)[13] one can imagine either a future administration reversing course or Congress overriding it or a court declaring that it is void (e.g., because Treasury ignored adverse comments during the now essential notice and comment period, like the Tax Court reviewed opinion in *Altera*).[14]

3. Conclusion

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[13] See Avi-Yonah, Reuven S., Should the US Dictate World Tax Policy? Reflections on PPL Corporation v. Commissioner (January 29, 2013). U of Michigan Public Law Research Paper No. 308, Available at SSRN: https://ssrn.com/abstract=2208524 or http://dx.doi.org/10.2139/ssrn.2208524. PPL itself applied the 1.901-2 regulation but did not address its validity.

[14] See Avi-Yonah, **Fixing Tax Law’s APA Problem, Tax Notes (Nov. 14, 2022).**

The OECD maintains that if Pillar One does not happen the international tax regime (ITR) would collapse. But that seems to me unlikely. Among the potential US responses, the response to DSTs is unimportant and irrelevant to the ITR; any withholding taxes under 12B will not result in double taxation under the FTC regulation because they are unlikely to apply to Big Tech; and the denial of FTC to DPTs, MAALs and fractional apportionment is not very likely to survive.

In addition, Pillar Two is likely to be implemented, and it will assure that all large MNEs will pay a tax at 15% of book profits (with some exceptions for substantive investment and refundable credits that are unlikely to benefit Big Tech internationally). This tax will apply to Big Tech who are in any case already subject to the CAMT. It is still somewhat unclear how the revenue from Pillar Two will be divided because of the convoluted ordering rules and country and taxpayer responses, but source jurisdictions where Big Tech are operating could get some of it via the UTPR and/or QDMTT. That would not apply to pure market jurisdictions since the PE and ALS limits remain under Pillar Two, but in many cases they would still get some revenue from Pillar Two (because they will have a subsidiary or a PE in the taxing jurisdiction), and that plus the DSTs will alleviate the political pressure to tax Big Tech more heavily under income tax measures.

Finally, it may not be disastrous if the OECD domination of the ITR would end. The OECD is very unrepresentative, and the IF is a fig leaf for OECD/G20 domination of the BEPS process. If the OECD domination ends, the obvious alternative is the UN, and the EU and other rich countries (not the US) may then be persuaded to shift adequate resources to the UN so that it can resume the role of the League of Nations in developing the ITR.[15]

[15] See Philip Baker, The reform of the institutional structure of international taxation, in Craig Elliffe (ed) *International Tax at the Crossroads* (forthcoming); Avi-Yonah, Reuven S. and Xu, Haiyan and Xu, Haiyan, Evaluating BEPS (January 15, 2016). U of Michigan Public Law Research Paper No. 493, Available at SSRN: https://ssrn.com/abstract=2716125 or http://dx.doi.org/10.2139/ssrn.2716125.