PROTECTING U.S. TAX SOVEREIGNTY AGAINST PILLAR TWO

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"Taxes are what we pay for a civilized society, including a chance to insure."[1]

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1. Compania General de Tabacos de Filipinas v. Collector of Internal Revenue, 275 U.S. 87, 100 (1927) (Holmes, J., dissenting).

I. INTRODUCTION

As the global economy becomes increasingly digitalized in the twenty-first century, taxing multinational enterprises ("MNEs") has grown more complex in determining how to tax revenues where they are earned. Most MNEs generate revenues in multiple countries and continents, so naturally the question becomes: who should collect the tax on those revenues? In response, the G20[2] and OECD emerged as the global (nonbinding) authority and promulgated a two-pillar framework aimed at reducing base erosion and profit shifting ("BEPS").[3] BEPS refers to international tax planning strategies that MNEs use to shift profits to low or no-tax jurisdictions.[4] Pillar One seeks to reallocate taxing rights over large MNEs to market jurisdictions by shifting tax revenues from countries where companies are headquartered to countries where they generate sales.[5] Pillar Two establishes a 15% global minimum tax on MNEs through various charging provisions, allowing foreign jurisdictions to impose top-up taxes on companies

2. The G20 refers to the 20 largest countries by nominal Gross Domestic Product ("GDP"). The G20 countries represent around 85% of the global GDP, and over 75% of global trade. *See About G20*, G20, http://g20.in/en/about-g20/about-g20.html [https://perma.cc/5LLX-CJ6E] (last visited Nov. 16, 2025).

3. *About the OECD*, OECD, https://www.oecd.org/en/about.html (on file with the *Stetson Business Law Review*) (last visited Nov. 16, 2025); *see Base Erosion and Profit Shifting (BEPS)*, OECD, https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html (on file with the *Stetson Business Law Review*) (last visited Nov. 16, 2025).

4. *Base Erosion and Profit Shifting (BEPS)*, *supra* note 3.

5. Christopher Ahn, *Taxing the Digital Giants: What the OECD Global Tax Deal Means for the U.S.*, FORDHAM J. OF CORP. & FIN. L. BLOG (Oct. 8, 2024), https://news.law.fordham.edu/jcfl/2024/10/08/taxing-the-digital-giants-what-the-oecd-global-tax-deal-means-for-the-u-s/ [https://perma.cc/K9G5-ENC2].

operating in countries with lower effective tax rates ("ETR").[6] Similar to other international agreements, the BEPS two-pillar framework is only effective after it has been adopted into domestic law by a given jurisdiction.[7] Together, the Pillar One and Two framework is known colloquially as "The Global Tax Deal."[8]

Part I of this Comment will outline and discuss the background of OECD's BEPS initiative, the United States' ("U.S.") Involvement, and similar tax policies promulgated by the U.S. Part II will address the problems the U.S. faces with Pillar Two adoption and discuss counterarguments favoring adoption of the framework due to the implications of Pillar Two without U.S. adoption. Part III will address the U.S.'s current response of rejection and retaliation. Part IV addresses the proposed solution of strategic non-compliance. Lastly, Part V concludes that a strategic response to Pillar Two through revision of domestic tax frameworks offers the best path forward.

Pillar Two threatens U.S. tax sovereignty by allowing foreign jurisdictions to impose taxes on U.S. MNE's foreign profits under Pillar Two's charging provisions: the Income Inclusion Rule and Undertaxed Profits Rule.[9] While Pillar Two is harmful to U.S. interests, ignoring it is worse than responding strategically. To ensure that the U.S., rather than foreign governments, collects tax on domestic MNEs, the U.S. should adopt a limited response either by reforming its Global Low Intangible Taxed Income framework to function as a compliant Income Inclusion Rule, modifying the Base Erosion Anti-Abuse Tax to function as a compliant Undertaxed Profits Rule, or modifying the Corporate Alternative Minimum Tax to function as a Qualified Domestic Minimum Top-up Tax, or a combination of all three.

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6. Top up taxes are taxes that arise if a group or entity pays insufficient income tax at a jurisdictional level. *See* Irina Ipatova, *Global Minimum Top-Up Tax*, KPMG (Sep. 29, 2023), https://kpmg.com/xx/en/our-insights/ifrg/2024/beps-proposed-amendments-deferred-tax-ias12.html [https://perma.cc/5VKQ-289A].

7. Ahn, *supra* note 5.

8. *OECD Pillar Two (Global Minimum Tax)*, TAX FOUND., https://taxfoundation.org/taxedu/glossary/oecd-pillar-2-global-minimum-tax/ [https://perma.cc/46P4-9C7Y] (last visited Nov. 16, 2025) (explaining the deal within Tax Foundation's Glossary of Terms and Concepts).

9. *See* discussion *infra* Section (I)(ii).

II. LANDSCAPE AND HISTORICAL CONTEXT

The global debate of corporate taxation did not arise in a vacuum. For decades, countries, with their respective tax systems, competed to attract foreign direct investment by lowering their corporate tax rates, which gradually eroded the tax bases of higher-tax jurisdictions.[10] This phenomenon, known as the "race to the bottom," had been addressed by the OECD's earlier iterations of the two-pillar framework such as the BEPS Project through anti-avoidance measures.[11] Pillar Two moves beyond these anti-avoidance measures and directly challenges the longstanding assumption that sovereign states will always undercut each other to attract foreign direct investment.[12]

A. Background of the OECD's BEPS Initiative and U.S. Involvement

The initial negotiations for the OECD's two-pillar framework emerged as a byproduct from the BEPS Project launched in 2013.[13] In May 2019, Germany and France jointly proposed a global minimum ETR to prevent the race to the bottom in corporate taxation where companies shift profits to low-tax jurisdictions.[14] By October 2021, over 130 countries and jurisdictions had agreed to implement the two-pillar framework adopting a 15% ETR for certain MNEs, marking a pivotal moment in Pillar Two negotiations.[15] The rules proposed as Pillar One and Pillar Two are

10. John Mullin, *Corporate Taxes Across Borders*, FED. RSRV. BANK OF RICHMOND, https://www.richmondfed.org/publications/research/econ_focus/2021/q2-3/feature2 [https://perma.cc/J6Z9-8HRT] (last visited Nov. 16, 2025); *see also Foreign Direct Investment (FDI)*, TAX FOUND. GLOSSARY, https://taxfoundation.org/taxedu/glossary/foreign-direct-investment-fdi/ [https://perma.cc/N8JC-C9YG] (last visited Nov. 16, 2025) (explaining FDI and its macroeconomic impacts on a forum country, as well as the general practice of a significant portion of global FDI flows through jurisdictions with relatively low corporate tax rates).

11. *See OECD/G20 Base Erosion and Profit Shifting Project*, OECD/G20, https://www.oecd.org/en/publications/serials/oecd-g20-base-erosion-and-profit-shifting-project_g1g46cef.html (on file with the *Stetson Business Law Review*) (last visited Nov. 16, 2025).

12. *World Investment Report 2022: The Impact of a Global Minimum Tax on FDI*, UNITED NATIONS CONF. ON TRADE AND DEV. 100-01 (July 2022), https://unctad.org/system/files/official-document/wir2022_ch03_en.pdf [https://perma.cc/S529-D575].

13. Ahn, *supra* note 5.

14. *Id.*; *see* Lilian V. Faulhaber, *Taxing Tech: The Future of Digital Taxation*, 39.2 VA. TAX REV. 145, 170–75 (2019).

15. *Tax Challenges Arising from the Digitalisation of the Economy - Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023)*, OECD/G20 3 (Apr. 25,

also collectively known as the Global Anti-Base Erosion Model Rules ("GloBE Rules").[16] The GloBE rules are meant to tackle the issues presented by BEPS practices.[17] The net effect of BEPS practices is that some of the world's most profitable MNE's pay little to no corporate income tax.[18]

i. Pillar One

Pillar One seeks to reallocate taxing rights over a portion of residual profits by MNEs to market jurisdictions, which are the countries where a sale takes place, regardless of corporate headquarters or physical location.[19] Traditional tax rules relied on physical presence to allocate taxing rights, which has grown more difficult in the digital age, giving rise to the proposal of Pillar One.[20] French politicians referred to Pillar One in its inception as "The GAFA Tax," a label reflecting its aim to tax American tech giants —Google, Apple, Facebook, and Amazon.[21] While BEPS practices had eroded the tax base of market jurisdictions for decades, the emergence of tech giants with never-before-seen revenues exacerbated the problem and led to action.[22]

The Trump White House immediately pushed back against President Macron and the French government, threatening a "Trump Tarriff" on French wine.[23] The GAFA tax proposal gained

2024), https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/04/tax-challenges-arising-from-the-digitalisation-of-the-economy-consolidated-commentary-to-the-global-anti-base-erosion-model-rules-2023_68ae5d21/b849f926-en.pdf [https://perma.cc/DV2R-SKJM] [hereinafter *OECD Consolidated Commentary*].

16. *Id.* at 332.

17. *Id.*

18. *E.g.*, *Base Erosion and Profit Shifting (BEPS)*, *supra* note 3.

19. *See generally* Mimi Song, *Pillar One: One Tough Hill to Climb for Global Tax Reform*, EXACTERA (Apr. 19, 2024), https://exactera.com/resources/pillar-one-one-tough-hill-to-climb-for-global-tax-reform/ [https://perma.cc/4KE6-VKU6] (explaining Pillar One has narrowed in scope since its inception in coverage of MNEs and that residual profit refers to profits exceeding 10% in a respective jurisdiction).

20. JANE G. GRAVELLE, CONG. RSCH. SERV., R47988, THE OECD/G20 PILLAR 1 AND DIGITAL SERVICES TAXES: A COMPARISON 1 (2024). For an interesting discussion regarding traditional taxing rights and nexus—and how the concept is strikingly similar to extraterritorial regulation and a state's ability to reach nonresidents through long-arm statutes and personal jurisdiction, see also Allan Erbsen, *Wayfair Undermines Nicastro: The Constitutional Connection Between State Tax Authority and Personal Jurisdiction*, 128 YALE L. J. F. 724, 728-36 (2019).

21. Andrew Chatzky, *France's Tech Tax: What to Know*, COUNCIL ON FOREIGN REL. (July 17, 2019, at 9:00 ET), https://www.cfr.org/in-brief/frances-tech-tax-what-know [https://perma.cc/5HD3-XCBA].

22. *Id.*

23. *Id.*; *see* Faulhaber, 39.2 VA. TAX REV., *supra* note 14, at 147–48.

significant international support and led to extensive discussions among G20 countries for an adoption of a global tax framework aimed at discouraging BEPS practices.[24] For example, imagine a U.S. based tech giant, like Apple, earns profits from online services and local sales in Brazil, Germany, and India. Under current rules, most of the tax revenue goes to the U.S.[25] This is the standard practice in a world without Pillar One.[26] However under Pillar One, a share of the residual profit would be taxed in countries like Brazil, Germany, or India.[27] The argument for Pillar One is that since the sale took place in Brazil, Germany, or India, that country ought to be able to tax the entity collecting that revenue.[28]

While Pillar One is a vital component of GloBE rules, Pillar One and its progeny, such as Amount A allocations and revised Nexus rules, are not at issue in this Comment.[29] The U.S. has bipartisan opposition to Pillar One, and it is unlikely to be adopted into law because the proposal would take away large tax revenues from the U.S. Department of Treasury ("Treasury").[30] The Global Tax Deal is projected to increase the ETR of MNEs globally by 0.7% in the aggregate across all jurisdictions.[31] Pillar Two's global minimum tax is projected to account for 0.6% of the increase, while Pillar One's reallocation rights are projected to account for only

24. Faulhaber, 39.2 VA. TAX REV., *supra* note 14, at 154.
25. *Id.* at 171.
26. *E.g.,* GRAVELLE, *supra* note 20 (explaining long-standing international tax rules and allocation methods based on physical assets).
27. *See Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*, OECD/G20 BASE EROSION AND PROFIT SHIFTING PROJECT 2-3 (Oct. 8, 2021), https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf [https://perma.cc/9WVN-3ET8].
28. *Id.*
29. For a detailed overview of Pillar One and its components, including Amount A and revised nexus rules, see *Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint: Inclusive Framework on BEPS*, OECD/G20 122-31 (Oct. 9, 2020), https://www.oecd.org/en/publications/2020/10/tax-challenges-arising-from-digitalisation-report-on-pillar-one-blueprint_6034ca99.html [https://perma.cc/SHC7-WLYN]. For academic commentary and examples of Amount A calculations and the interaction with revised nexus rules, see Assaf Harpaz, *International Tax Reform: Who Gets a Seat at the Table?*, 44 U. PA. J. INT'L L. 1007, 1019-20 (2023).
30. Richard Asquith, *OECD Tax Reforms Unlikely Following US Election; DST & Trade Retaliation Risks*, VAT CALC (Jan. 15, 2025), https://www.vatcalc.com/global/digital-services-tax-dst-to-continue-and-threaten-new-trade-battles/ [https://perma.cc/6VW3-VJ7Z].
31. *OECD Pillar Two (Global Minimum Tax)*, *supra* note 8; *see* Tibor Hanappi & Ana Cinta González Cabral, *The Impact of the Pillar One and Pillar Two Proposals on MNE's Investment Costs: An Analysis Using Forward-Looking Effective Tax Rates* 42 (OECD Tax'n Working Papers No. 50, 2020).

0.1%.[32] Thus, Pillar One does not warrant the amount of discussion that Pillar Two demands.[33]

ii. Pillar Two and Pillar Two Charging Provisions

To achieve a 15% global minimum tax, Pillar Two subjects MNEs to top-up taxes, which are additional taxes to ensure that income earned within their jurisdiction meets the requisite 15% ETR.[34] Top-up taxes are calculated using Pillar Two charging provisions, which are the Income Inclusion Rule and the Undertaxed Profits Rule.[35] The charging provisions and respective rules dictate who collects the top-up tax and how much is owed.[36] These provisions give Pillar Two its enforcement power and ensure compliance with the GloBE initiative to fight against the practice of BEPS.[37] The two charging provisions are "interlocking rules" that operate in tandem with each other to encourage all MNEs within the scope of Pillar Two to pay a minimum level of tax on their profits.[38]

To be within the scope of Pillar Two charging provisions, an MNE must have consolidated revenues of at least 750 million euros in at least two of the last four years.[39] Effectively, an MNE that does not reach this threshold in two of the last four years is outside the scope of GloBE rules.[40] By excluding smaller MNEs, the GloBE rules aim to reduce compliance burdens on these MNEs, which are less likely to engage in complex cross-border tax avoidance BEPS practices.[41]

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32. *Id.*
33. While this comment focuses primarily on Pillar Two, some commentators such as Professors Reuven Avi-Yonah and Ajitesh Kir have argued that Pillar Two cannot operate effectively without Pillar One, since without a corresponding reallocation of taxing rights to market jurisdictions, the global minimum tax may result in double taxation and fail to achieve equitable distribution of tax revenues. *See* Reuven S. Avi-Yonah & Ajitesh Kir, *Building the Gateway: Why the Two Pillars Need Each Other*, 52 INTERTAX 591, 591-593 (2024).
34. *OECD Consolidated Commentary, supra* note 15, at 9.
35. *Id.*
36. *Id.* at 34.
37. *Id.*
38. *Id.*
39. *Global Anti-Base Erosion Model Rules (Pillar Two): Frequently Asked Questions*, OECD 2 (May 2025), https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/faqs-on-model-globe-rules.pdf [https://perma.cc/GNE3-QK4A].
40. *Id.*
41. *Id.* at 2, 4-5.

Signatories and proponents of Pillar Two champion the idea that Pillar Two cannot work without U.S. adoption.[42] After the change from the first Trump administration to the Biden administration, the White House supported adopting Pillar Two into law in the U.S., but the initiative failed due to the majority of House Republicans voicing concerns over maintaining U.S. sovereignty in their own tax system.[43] Understanding the super-majoritarian constraints of the Senate, the Biden administration opted to sponsor the Corporate Alternative Minimum Tax ("CAMT") to forward the same underlying policy of ensuring corporations pay their fair share of taxes, while keeping taxation sovereignty in the hands of U.S. policy makers.[44]

Whatever support the U.S. showed to Pillar Two was then again rejected by the second Trump administration.[45] When Trump took office for his second term, he quickly signed a Presidential Memorandum addressed to the Secretary of the Treasury notifying the OECD that any commitments made by the previous administration regarding the Global Tax Deal "have no force or effect within the United States absent an act by the Congress adopting the relevant provisions of the Global Tax Deal," citing concerns over its impact on American MNEs. [46] As of August, 2025, more than 140 countries have agreed to enact Pillars One and Two.[47]

The Income Inclusion Rule ("IIR") requires the parent entity of an MNE to pay a top-up tax on the low-taxed income of its subsidiaries to the parent company's home country.[48] The IIR

42. Ahn, *supra* note 5.

43. Press Release, U.S. Congressman Ron Estes, Rep. Estes Publishes Op-Ed Rejecting Biden Admin's Pillar 2 Push (Jan. 15, 2025) (on file with author).

44. *How Biden's Last Corporate Tax Aims to Transform Business Taxation*, THE GLOB. TREASURER (Sep. 13, 2024), https://www.theglobaltreasurer.com/2024/09/13/74411/ [https://perma.cc/7K8K-34H3].

45. *Pillar Two: A U-Turn for US-Parented Groups?*, PFK (July 21, 2025), https://www.pkf-l.com/insights/pillar-two-us-parented-groups-u-turn/ [https://perma.cc/52WM-646Z].

46. Proclamation No. 02043, 90 Fed. Reg. 8483, 8483 (Jan. 20, 2025).

47. *Pillar Two Country Tracker,* PWC (Aug. 2025), https://www.pwc.com/gx/en/services/tax/pillar-two-readiness/country-tracker.html [https://perma.cc/TE6C-VJ5J].

48. *OECD Consolidated Commentary*, *supra* note 15, at 10-11; *see Tax Challenges Arising from the Digitalisation of the Economy- Global Anti-Base Erosion Model Rules (Pillar Two) Examples*, OECD/G20 BASE EROSION AND PROFIT SHIFTING PROJECT 9-10 (May 2, 2025) https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-erosion-model-rules-pillar-two-examples.pdf [https://perma.cc/VYR5-8J4M] [hereinafter *Pillar Two Examples*].

applies a top-down approach, where the ultimate parent entity ("UPE") of an MNE is responsible for paying the top-up tax if any subsidiary is taxed below the 15% minimum ETR. [49] Below is a simplified step-by-step formula and calculation:

Step 1: Calculate ETR:

$$ETR = \frac{Covered\ Taxes\ Paid}{GloBE\ Income}$$ [50]

Covered Taxes Paid include corporate income tax and other qualifying taxes.[51] GloBE Income is based on financial accounting income, adjusted for specific taxable events and differences in accounting standards.[52]

Step 2: Determine if the ETR is Below 15%. If the MNE's ETR is below 15% for that jurisdiction, a top-up tax is paid to that jurisdiction's government.[53]

Step 3: Calculate the Top-Up Tax:

$$TopUpTax = (15\% - Jurisdictional\ ETR) * GloBE\ Income$$

The top-down approach is intended to ensure that the overall tax paid on income in a jurisdiction meets the 15% minimum ETR.[54] The IIR is applied at the Ultimate or Intermediate Parent level.[55] If the UPE is located in a jurisdiction that *has* adopted the IIR, it applies the IIR and pays the top-up tax on behalf of the low-

49. *See Pillar Two Examples*, *supra* note 48, at 11-13 (example of the application of Pillar Two's top-down approach).

50. The calculation of Covered Taxes Paid is a challenging and onerous calculation which has become the main duty of tax departments of MNEs. The calculation is done primarily using the OECD's Inclusive Framework ("The Guidance"), as well as the OECD's Consolidated Commentary. *See OECD Consolidated Commentary*, *supra* note 15.

51. *Id.*, at 117–21; *see* Lee Hadnum, *Covered Taxes*, OECD PILLARS, https://oecdpillars.com/pillar-tab/covered-taxes/ [https://perma.cc/JR6H-G6U2] (last visited Nov. 16, 2025).

52. *Frequently Asked Questions About "Pillar Two"*, DELOITTE (Nov. 8, 2024), https://dart.deloitte.com/USDART/home/publications/deloitte/financial-reporting-alerts/2024/faq-pillar-two-international-tax-oecd [https://perma.cc/7W3C-XAZQ].

53. *See* JANE G. GRAVELLE & MARK P. KEIGHTLEY, CONG. RSCH. SERV., R47174, THE PILLAR 2 GLOBAL MINIMUM TAX: IMPLICATIONS FOR U.S. TAX POLICY (2023).

54. *Id.* at 6–7.

55. Pedro Guilherme Lindenberg Schoueri & Ricardo André Galendi Júnior, *Who Is the "Taxpayer" for the IIR and Why It Does Matter*, KLUWER INT'L TAX BLOG (Aug. 16, 2022), https://legalblogs.wolterskluwer.com/international-tax-law-blog/who-is-the-taxpayer-for-the-iir-and-why-it-does-matter/ [https://perma.cc/9G5N-YKND].

taxed subsidiaries.[56] If the UPE is in a country that *has not* adopted the IIR, then an intermediate parent entity (if located in a compliant country) may have to apply the rule.[57]

The Undertaxed Profits Rule ("UTPR") allows a country's treasury to deny deductions or impose additional taxes on companies that have subsidiaries in low-tax jurisdictions that do not meet the 15% minimum rate.[58] The UTPR acts as a backstop or secondary rule to the IIR, coming into effect only in scenarios where the IIR is not applicable, or where the top up tax is not "brought into charge under an IIR."[59] A simplified framework for understanding the UTPR calculations has 4 essential steps:

Step 1: An MNE identifies the low-taxed income of each jurisdiction where an MNE operates by calculating its ETR by jurisdiction.[60] If the ETR is below 15%, a top-up tax is determined.[61]

Step 2: Check if the IIR applies: If the UPE (or the intermediate parent) is located in a Pillar Two compliant country, the IIR applies first, and that country collects the top-up tax.[62] If the UPE is in a non-compliant jurisdiction, the UTPR applies instead.[63]

Step 3: Allocate the top-up tax: The top-up tax is reallocated to other jurisdictions where the MNE operates based on a

56. Lee Hadnum, *Income Inclusion Rule: UPEs, POPEs and Intermediate Parent Entities*, OECD PILLARS, https://oecdpillars.com/pillar-tab/ascertain-the-parent-entity-liable-for-top-up-tax-under-the-income-inclusion-rule/ [https://perma.cc/6ANX-8KRJ] (last visited Nov. 16, 2025).

57. *Id.*

58. *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): The Pillar Two Rules in a Nutshell*, OECD/G20 BASE EROSION AND PROFIT SHIFTING PROJECT 4 (May 2025), https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/pillar-two-model-rules-in-a-nutshell.pdf [https://perma.cc/8LM2-AH5M].

59. *Id.*

60. *Overview of the Key Operating Provisions of the GloBE Rules*, OECD, https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/pillar-two-globe-rules-fact-sheets.pdf [https://perma.cc/53AW-8BCK] (last visited Nov. 16, 2025).

61. *Id.*

62. *Pillar Two Examples*, *supra* note 48, at 16.

63. *See id.*; *see Minimum Tax Implementation Handbook (Pillar Two)*, OECD/G20 BASE EROSION AND PROFIT SHIFTING PROJECT 10 (2023) https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/minimum-tax-implementation-handbook-pillar-two.pdf [https://perma.cc/8PF2-BR9G].

formula.[64] This amount depends on the MNE's employee headcount and tangible assets in those countries.[65]

Step 4: Enforce the UTPR and the top-up tax: To enforce the UTPR, countries where the MNE operates are denied a deduction for otherwise deductible expenses from operations.[66] This operates by increasing the taxable income in that jurisdiction, thereby increasing tax liability.[67]

B. Example Applying the IIR and UTPR

An MNE has its UPE in the Cayman Islands, which does not implement an IIR. The MNE has subsidiaries in France, Germany, and Japan, which all have adopted the UTPR. The MNE also has a subsidiary in the U.S., which has not adopted the IIR nor the UTPR. The U.S. subsidiary has an ETR of 5%, which is below the requisite 15% ETR, therefore triggering a 10% top-up tax.

The IIR does not apply because the UPE is incorporated in the Cayman Islands, which has not adopted the IIR. Instead, the backstop UTPR applies, and because the U.S. is not Pillar Two compliant, the top-up tax is allocated to France, Germany, and Japan based on their share of the group's employees and tangible assets. The subsidiaries in France, Germany, and Japan will be denied certain deductions on their tax returns for the end of that fiscal year, increasing tax liability. If the Cayman Islands were an IIR compliant country, the UTPR would not apply, and the IIR would instead apply at the UPE level.

C. Qualified Domestic Minimum Top-Up Tax

A Qualified Domestic Minimum Top-Up Tax ("QDMTT") is a key element of Pillar Two under GloBE rules but is not a freestanding charging provision.[68] Unlike the IIR and UTPR, which reallocate tax liabilities across jurisdictions, the QDMTT allows a country to collect the top-up tax itself before a foreign

64. *Minimum Tax Implementation Handbook (Pillar Two)*, *supra* note 63, at 21.
65. *OECD Consolidated Commentary*, *supra* note 15, at 49.
66. *Id.* at 42-44.
67. *Id.*
68. Lee Hadnum, *Qualifying Domestic Minimum Top-Up Tax*, OECD PILLARS, https://oecdpillars.com/pillar-tab/qualifying-domestic-minimum-top-up-tax/ [https://perma.cc/YGH2-QWNW] (last visited Nov. 16, 2025).

jurisdiction can impose an IIR or UTPR.[69] The QDMTT is designed to give priority to the source country by allowing it to impose a domestic minimum tax before another jurisdiction applies Pillar Two's charging provisions.[70] Therefore, a QDMTT does not alleviate the calculations of Pillar Two's charging provisions but instead is creditable against the top-up taxes assessed.[71] A simplified step-by-step calculation of a QDMTT requires 3 steps.

Step 1: Determine if the QDMTT Applies: An MNE within a country implementing a QDMTT calculates the ETR of subsidiaries operating within the jurisdiction's borders.[72] If the ETR is below 15%, a top-up tax applies at the domestic level.[73]

Step 2: Compute the QDMTT: The top-up tax is calculated just like an IIR under GloBE rules.[74]

$$Top\ Up\ Tax = (15\% - Jurisdictional\ ETR) * GloBE\ Income$$

Step 3: Block the IIR and UTPR from applying. If a jurisdiction has a Pillar Two compliant QDMTT, then the IIR does not apply to the entities in that jurisdiction, and the UTPR does not apply, since there is no "undertaxed profit" left after applying the QDMTT.[75] For example, a French MNE has a subsidiary in Ireland. The ETR for the subsidiary in Ireland is 10%, meaning a 5% top-up tax is required to meet the requisite 15%. With a QDMTT, Ireland imposes its own top-up tax on the subsidiary to bring the total ETR to 15%. Since Ireland collects the tax, France cannot apply the IIR, and no other country can impose the UTPR. The result is Ireland keeps the tax revenue instead of losing it to France or another country. Therefore, a QDMTT helps domestically to preempt Pillar Two charging provisions from applying.[76] A QDMTT also must go through a peer review before

69. *OECD Consolidated Commentary*, *supra* note 15, at 46.
70. Joachim Englisch, *Pillar 2*: *QDMTT or Safe Harbour Domestic Minimum Top-Up Tax (SHDMTT)?*, KLUWER INT'L TAX BLOG (Nov. 2, 2023), https://kluwertaxblog.com/2023/11/02/pillar-2-qdmtt-or-safe-harbour-domestic-minimum-top-up-tax-shdmtt/ [https://perma.cc/T5AD-Y7CC].
71. *Id.*
72. *Minimum Tax Implementation Handbook (Pillar Two)*, *supra* note 63, at 5.
73. Englisch, *supra* note 70.
74. *Minimum Tax Implementation Handbook (Pillar Two)*, *supra* note 63, at 9.
75. *See id.*, at 5; *see* Englisch, *supra* note 70.
76. *OECD Consolidated Commentary*, *supra* note 15, at 289; *see* Englisch, *supra* note 70.

becoming domestic law to determine whether the proposed tax actually complies with GloBE rules.[77]

Calculations of GloBE Income and Covered Taxes Paid are complicated processes. The examples and calculations used in this comment are synthesized, generalized, and simplified.

D. The Corporate Alternative Minimum Tax

The Corporate Alternative Minimum Tax ("CAMT") was passed as a portion of the Inflation Reduction Act in 2022, aimed at setting an effective minimum tax rate of 15% in the U.S.[78] The CAMT applies to domestic companies with an average adjusted financial statement income exceeding one billion dollars.[79] The CAMT applies for tax years beginning after December 31, 2022.[80] When an entity is within the parameters of the CAMT, the entity is an applicable corporation.[81] The 15% number is no coincidence, the Biden Administration and Congress passed the CAMT aiming to ensure that businesses pay their fair share of tax understanding the inability of the administration to pass Pillar Two into law.[82]

Unlike Pillar Two, the CAMT is designed only to impact "businesses in the United States."[83] As a general idea, the CAMT was meant to bridge the gap between the large profits reported on financial statements to the Securities and Exchange Commission and the small profits reported to the Internal Revenue Service for

77. Avi-Yonah & Kir, *supra* note 33, at 596.

78. *Corporate Alternative Minimum Tax*, IRS (May 29, 2025), https://www.irs.gov/inflation-reduction-act-of-2022/corporate-alternative-minimum-tax [https://perma.cc/B28T-AKM6].

79. I.R.C. § 56(a). Adjusted Financial Statement Income is the net income (loss) of the taxpaying entity set forth on the taxpayer's applicable financial statement for such taxable year, adjusted for special taxable events. This is contrasted with the income (loss) reported on a taxpaying entity's corporate tax return for the year; *see IRS Clarifies Rules for Corporate Alternative Minimum Tax*, IRS (Dec. 15, 2023), https://www.irs.gov/newsroom/irs-clarifies-rules-for-corporate-alternative-minimum-tax [https://perma.cc/MYS8-V2ZQ].

80. Perry Hatch & Caroline Huggett, *Minimum Tax Regulations for Multinational Corporations in the U.S.: Corporate Alternative Minium Tax (CAMT) vs. BEPS Pillar Two*, WOLTERS KLUWER (May 7, 2024), https://www.wolterskluwer.com/en/expert-insights/minimum-tax-regulations-for-us-corporations-camt-beps [https://perma.cc/TEQ6-P5MF].

81. *See Corporate Alternative Minimum Tax*, *supra* note 78.

82. *See* Hatch & Huggett, *supra* note 80; *see* Raymond Wynman & Andrew Wai, *The Inflation Reduction Act of 2022 and the Status of Pillar Two in the US*, GLOB. TAX MGMT. (Sep. 30, 2022), https://gtmtax.com/tax-insights/articles/the-inflation-reduction-act-of-2022-and-the-status-of-pillar-two-in-the-us/ [https://perma.cc/EB7U-FJ9D].

83. Hatch & Huggett, *supra* note 80.

a given tax year.[84] Importantly, for Pillar Two purposes, the CAMT does not count as a compliant IIR, UTPR, or QDMTT; therefore, the CAMT and its imposition of tax liability does not credit against Pillar Two tax liability because adjusted financial statement income is not the same concept as GloBE Income.[85] The CAMT calculates a tax base using U.S. aggregated profits whereas a Pillar Two QDMTT calculates a top-up tax on a jurisdictional level and is applied extraterritorially.[86]

E. The Tax Cuts and Jobs Act and its Impending Successor

The Tax Cuts and Jobs Act of 2017 ("TCJA") was a major overhaul of the Internal Revenue Code ("the Code") signed into law in 2018.[87] The TCJA changed how individuals and businesses calculated deductions, depreciation, expenses, and qualifying tax credits.[88] Some provisions of the TCJA are set to sunset in 2025, unless extended by Congress.[89] A key result of the TCJA was the weighted average corporate income tax rate in the U.S. falling below that of OECD-adopting countries for the first time since 1998.[90] Under the same premise as the TCJA, the Trump Administration passed a successor piece of legislation, coined the TCJA 2.0 by tax and political professionals, aiming to extend the TCJA and further extend tax cuts.[91]

The most pervasive tax regime passed within the TCJA was the Global Intangible Low-Taxed Income ("GILTI") framework.[92] The GILTI is another special way to calculate U.S. MNE's foreign

84. *See e.g.*, *id*.
85. *Id.*
86. *Id.*
87. David Floyd, *What is the Tax Cuts and Jobs Act (TCJA)?*, INVESTOPEDIA (Jan. 31, 2025), https://www.investopedia.com/taxes/trumps-tax-reform-plan-explained/ [https://perma.cc/6WSG-XKWQ].
88. *Id.*
89. *Id.*
90. *Tax Cuts and Jobs Act (TCJA)*, TAX FOUND. GLOSSARY, https://taxfoundation.org/taxedu/glossary/tax-cuts-and-jobs-act/ [https://perma.cc/5TTP-LEW8] (last visited Nov. 16, 2025).
91. Cécile Beurrier et al., *TCJA 2.0: The One, Big, Beautiful Bill Arrives*, DEBEVOISE & PLIMPTON (June 13, 2025), https://www.debevoise.com/insights/publications/2025/05/tcja-2-0-one-big-beautiful-bill-arrives [https://perma.cc/V889-M86W]; *see also infra* note 189 (explaining the One Big Beautiful Bill Act and its' implications for U.S. tax policy toward Pillar Two).
92. *Global Intangible Low-Taxed Income (GILTI)*, TAX FOUND. GLOSSARY, https://taxfoundation.org/taxedu/glossary/global-intangible-low-tax-income-gilti/ [https://perma.cc/BT2U-LFC5] (last visited Nov. 16, 2025).

earnings to ensure it pays a minimum level of tax.[93] GILTI functions as a global minimum on foreign tax earnings of U.S. MNEs and is primarily aimed at discouraging profit shifting to low-tax jurisdictions.[94] Although GILTI is normally focused on income derived from intangible assets, such as intellectual property, GILTI applies to a wide array of foreign income activity and is calculated using a formulaic method that taxes earnings exceeding a 10.5% return on a company's intangible assets.[95] The calculation of an MNEs' GILTI tax liability is calculated using their "foreign income," which are earnings from countries other than the U.S.[96] GILTI tax liability is also calculated using top-up taxes, similar to Pillar Two's charging provisions.[97] Some members of Congress and practitioners believe that the U.S. has already adopted Pillar Two through GILTI because it is viewed as a close equivalent of an IIR.[98] The GILTI tax level is scheduled to increase in 2026, and Congress will have to decide whether to allow that increase to take effect, or whether to keep current GILTI policy.[99]

The other major framework of the TCJA is the Base Erosion and Anti-Abuse Tax ("BEAT") framework.[100] The U.S. has already addressed the main concerns of BEPS through the adoption of BEAT, which the U.S. adopted moving from a worldwide system to a territorial system, similar in nature to Pillar Two's UTPR charging provision.[101] BEAT is intended to act as a "backstop" to

93. *Id.*

94. *Id.*

95. GILTI currently allows a corporation to deduct 50% of their GILTI inclusion, resulting generally in a 10.5% U.S. effective tax rate on GILTI. The deduction is scheduled to decrease to 37.5% starting in 2026. *See* Ayana Martinez & Lynn Dayan, *Executive Summary: U.S. International Taxation Under Trump Administration and Republican Congress*, RSM (Nov. 20, 2024), https://rsmus.com/insights/services/business-tax/pillar-two-compliant-legislation-in-doubt-under-second-trump-adm.html [https://perma.cc/W346-5ADJ].

96. *See generally id.* (providing calculation of GILTI tax base).

97. *See* Ethan Kroll, *QDMTT for Me, No Allocation for Thee: Recent Guidance on Allocating GILTI Taxes Under Pillar Two*, 52 TAX MGMT INT'L J. 1, 1 (Mar. 3, 2023).

98. *E.g.*, *id.* at 1–2.

99. Andrew Lautz, *The 2025 Tax Debate: GILTI, FDII, and BEAT Under the Tax Cuts and Jobs Act*, BIPARTISAN POL'Y CTR. (Apr. 8, 2025), https://bipartisanpolicy.org/explainer/the-2025-tax-debate-gilti-fdii-and-beat-under-the-tax-cuts-and-jobs-act/ [on file with the *Stetson Business Law Review*].

100. *Id.*; *see Base Erosion and Anti-Abuse Tax (BEAT)*, TAX FOUND. GLOSSARY, https://taxfoundation.org/taxedu/glossary/base-erosion-anti-abuse-tax-beat/ [https://perma.cc/5E9G-5T5W] (last visited Nov. 10, 2025).

101. *Id.*

prevent BEPS when the primary country does not tax the income.[102]

III. THE PROBLEMS WITH PILLAR TWO & COUNTERARGUMENTS

While Pillar Two has been promoted as a solution to BEPS and tax competition, its consequences for the U.S. warrant discussion. The framework's uniform and extraterritorial design clash with existing domestic law and policy objectives. These conflicts raise questions about sovereignty, fiscal stability, and effectiveness of domestic incentives. The following subsections explore the primary ways in which Pillar Two disadvantages the U.S., as well as addressing counter-arguments favoring full adoption.

A. The Problems with Pillar Two for the U.S.

The OECD's Pillar Two initiative poses significant risks to U.S. fiscal policy and tax sovereignty. If implemented domestically, it would harm the U.S. in two main ways: (1) Pillar Two would erode U.S. control over its own tax policy, effectively outsourcing key elements of corporate taxation to a multinational framework; and (2) Pillar Two would reduce U.S. corporate tax revenues.

i. Extraterritorial Enforcement and the Loss of Tax Sovereignty

The most direct threat to U.S. tax sovereignty comes from Pillar Two's extraterritorial design. Pillar Two is enforced through its charging provisions, the IIR and UTPR, which permit foreign countries to tax the low-taxed profits of U.S. MNEs, even if the U.S. itself does not adopt Pillar Two.[103] This creates a coercive incentive for the U.S. to comply, or else it forfeits tax revenues to foreign jurisdictions.[104] This finding is supported by Jane G. Gravelle and Mark P. Keighley writing for the Congressional Research Service:

102. *Id.*
103. Alan Cole & Cody Kallen, *Risks to the U.S. Tax Base from Pillar Two*, TAX FOUND. (Aug. 30, 2023), https://taxfoundation.org/research/all/federal/global-minimum-tax-us-tax-base/ [https://perma.cc/7EYY-AC3M]; *see* Ahn, *supra* note 5.
104. Cole & Kallen, *supra* note 103.

> GLoBE could increase taxes on multinationals' operations in the United States, even absent U.S. action with respect to the GLoBE proposal. Other countries could impose taxes on U.S. earnings of multinational firms triggered by a low U.S. effective tax rate through the UTPR or IIR. Thus, GLoBE could reduce the benefit of domestic tax incentives such as tax credits. Major tax credits include the research credit, the low-income housing tax credit, and credits for renewable energy.[105]

This threat means that even if the U.S. chooses not to adopt Pillar Two domestically, U.S. based MNEs may still face increased tax burdens abroad, without any benefit to the U.S. tax base or Treasury.[106] Many commentators see this as a sufficient reason to adopt Pillar Two wholesale, without any modification, as a means to keep the U.S. on equal footing compared to low or no-tax jurisdictions and encourage U.S. MNEs to stay in the U.S.[107]

ii. Pillar Two Undermines Domestic Policy and Incentives

Since Pillar Two calculates ETRs using standardized international rules, the U.S. cannot change or modify domestic tax incentives, such as research and development, affordable housing, and clean energy tax credits to the extent that such changes would cause the MNE's U.S. ETR to fall below the 15% Pillar Two threshold.[108] That shortfall could then be taxed abroad through top-up taxes using a UTPR, effectively frustrating the purpose of the legislature in granting the tax credits.[109] The net effect is discouraging companies from investing in qualified activities in the U.S. for fear of unfavorable tax consequences.[110] This dynamic has drawn criticism from scholars like Professor Lilian Faulhaber, who argues that Pillar Two's design, including its substance-based income exclusion, creates structural incentives that undermine its stated policy goals and allow multinationals to sidestep its core tax base protections.[111]

105. GRAVELLE & KEIGHTLEY, *supra* note 53.
106. *Id.* at 11.
107. Ahn, *supra* note 5.
108. GRAVELLE & KEIGHTLEY, *supra* note 53, at 11–12.
109. *Id.*
110. Cole & Kallen, *supra* note 103, at 3.
111. *See generally* Lilian V. Faulhaber, *Pillar Two's Built-In Escape Hatch*, 76 NAT'L TAX J. 167, 169 (2023) (arguing that Pillar Two's substance-based income exclusion invites tax competition and undermines the coherence of a global minimum tax by allowing income from tangible assets and payroll to escape top-up taxation, thereby weakening domestic

iii. GILTI and Pillar Two are Incompatible as Enacted

Pillar Two is incompatible with the Global Intangible Low Taxed Income ("GILTI") regime as currently enacted. GILTI establishes a 10.5% ETR whereas Pillar Two establishes a 15% global ETR.[112] Although GILTI is a domestic tax enacted within the TCJA, it was passed anticipating the policy goals conceptualized in the OECD's Pillar Two framework.[113] Both GILTI and Pillar Two are global tax regimes aimed at the same result: addressing BEPS and preventing U.S. MNEs from shifting profits to low-or no-tax jurisdictions.[114] This means that even U.S. MNEs already subject to GILTI could face additional foreign taxation under a scenario where the U.S. fails to adopt or address Pillar Two, simply because GILTI's basis does not align with the OECD model.[115] In other words, GILTI is similar to Pillar Two in substance, but not in form. GILTI only addresses the IIR aspect of GloBE rules and does not address low ETRs paid by a subsidiary entity in another jurisdiction where the UTPR could be triggered.[116] Without reforming GILTI, it will not shield U.S. MNEs from foreign top-up taxes.

iv. Pillar Two Means Revenue Loss for Treasury, Not Just Sovereignty Loss

Another problem that the U.S. faces, if it conforms to Pillar Two, is a loss of corporate tax revenues. Under Pillar Two compliant systems, U.S. MNEs would be allowed to claim larger foreign tax credits for taxes paid abroad, reducing their U.S. tax liability.[117] Assuming an adoption date of January 1, 2026, this change is projected to decrease U.S. corporate tax revenues by $67

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policy tools and perpetuating the very base erosion practices the framework seeks to address).

112. Thomas Brosy, *How Pillar Two and International Tax Reforms Affect U.S. Multinational Taxes*, TAX POL'Y CTR., at ii (Apr. 23, 2025), https://taxpolicycenter.org/sites/default/files/2025-04/How%20Pillar%202%20and%20International%20Tax%20Reforms%20Affect%20US%20Multinational%20Taxes_April2025_Final.pdf [https://perma.cc/7MJD-WL57].

113. Kroll, *supra* note 97, at 1.

114. Brosy, *supra* note 112, at iii.

115. *International Tax in the Age of Pillar 2*, THE BUDGET LAB AT YALE (Apr. 7, 2025), https://budgetlab.yale.edu/research/international-tax-age-pillar-2 [https://perma.cc/33DY-ELHT].

116. Kroll, *supra* note 97, at 1.

117. Cole & Kallen, *supra* note 103, at 1.

billion over the first ten years of adoption.[118] At the same time, failure to adopt Pillar Two could invite another problem assuming the rest of the world adopts the framework. If the U.S. does not comply with Pillar Two, foreign jurisdictions will impose top-up taxes on the low-taxed income of U.S. MNE's, diverting revenues away from the Treasury.[119] Pillar Two also results in a reduced tax competitiveness for the U.S. by decreasing the ways the U.S. can adopt favorable tax policies to encourage investment.[120]

Together, these policy considerations place the U.S. in a bind. Adopting Pillar Two leads to domestic revenue loss and a dilution of U.S. tax incentives.[121] However, refusing to adopt Pillar Two leads to foreign governments taxing U.S. companies.[122] This finding was voiced by Jane G. Gravelle and addressed by the Congressional Research Service:

> GLoBE could increase taxes on multinationals' operations in the United States, even absent U.S. action with respect to the GLoBE proposal. Other countries could impose taxes on U.S. earnings of multinational firms triggered by a low U.S. effective tax rate through the UTPR or IIR. Thus, GLoBE could reduce the benefit of domestic tax incentives such as tax credits. Major tax credits include the research credit, the low-income housing tax credit, and credits for renewable energy. The overarching goal of GLoBE is to address profit shifting, where multinational enterprises (MNEs) use techniques such as transfer pricing and location of debt to reduce income in high-tax countries and increase income in low-tax countries. About 69% of the foreign profits of U.S. multinationals are located in eight identified tax haven jurisdictions and in "stateless entities and other countries" generally subject to low or no local taxes.[123]

Thus, although Pillar Two is detrimental to U.S. interests and will result in higher taxes paid by U.S. MNEs, doing nothing will result in even higher taxes paid by U.S. MNEs with foreign governments collecting the tax.[124] The goal of GloBE Rules is to instill the minimum tax framework in countries that historically

118. *International Tax in the Age of Pillar 2*, *supra* note 115; *see* Ahn, *supra* note 5.
119. Faulhaber, 76 NAT'L TAX J., *supra* note 111, at 177.
120. *Id.* at 180.
121. GRAVELLE & KEIGHTLEY, *supra* note 53.
122. *Id.*
123. *Id.*
124. *Id.*

have offered low to no tax advantages for MNEs.[125] As the number of countries adopting the GloBE framework increases, other countries will be more inclined to comply due to game theory aspects. If a jurisdiction stands its ground to not comply with GloBE rules, it has to cope with the fact that other countries' QDMTT and UTPR provisions may be triggered if the UPE is located in a tax-haven, shifting profits away from that jurisdiction.[126] These game-theory aspects will encourage and perhaps force the hand of jurisdictions, like the Cayman Islands and other tax-havens, to eventually support adoption of Pillar Two and consider other Pillar Two compliant tax credits.

The U.S.'s GILTI, BEAT, and CAMT frameworks are not compliant with Pillar Two and as global adoption progresses, the U.S. ought to strongly consider revising these regimes to reflect a Pillar Two compliant system. For example, Tax Foundation estimates that Pillar Two will result in a decrease to corporate tax revenues to the Treasury whether or not the U.S. adopts Pillar Two.[127] Although the U.S. would see increased reported income from MNEs by remaining non-compliant, the UTPR's extraterritorial reach will pressure other countries to comply, ultimately undermining Congressional fiscal policy.[128]

B. Other Arguments Favoring Pillar Two Adoption

The debate over whether the United States should comply with the OECD's Pillar Two framework reflects a fundamental policy divide between multilateralism and sovereign tax policy autonomy. While both sides recognize the economic and political stakes, they diverge sharply on the best path forward. The preceding discussion sets out the case against Pillar Two. While supporters of Pillar Two compliance argue that aligning U.S. tax law with the OECD framework is a necessary step in preventing double taxation, preserving global stability and cooperation, reducing trade and tax disputes, and ensuring a level playing field.[129] Without a U.S. compliant Pillar Two, there is a possibility for MNEs to trigger the Pillar Two charging provisions in other

125. *Id.*
126. *Id.* at 11.
127. Cole & Kallen, *supra* note 103, at 6.
128. *Id.* at 1.
129. *International Tax in the Age of Pillar 2*, *supra* note 115.

countries, such as the UTPR, while also triggering domestic U.S. tax provisions, such as the CAMT.[130] The U.S.'s current response, as seen in H.R. 591, is intended to address the double taxation issue and deter other countries to not apply the UTPR; however, the adoption of certain Pillar Two charging provisions could eliminate the complexity and uncertainty of whether those implementations will occur.[131]

Primary arguments of Pillar Two supporters also include global cooperation and stability.[132] As the global economy becomes more integrated, unilateral tax policies risk isolating the U.S. and undermining global efforts to curtail BEPS.[133] OECD compliance is seen as a way to maintain U.S. leadership in shaping international norms.[134] The U.S. has shaped international tax policy for years, and while the U.S. cherishes the idea of being different, congruency with allies can keep American interests at the forefront of future revisions to Pillar Two and the overall BEPS framework.[135] The predominant purpose of GloBE rules is to target against BEPS practices by large MNEs, and by adopting Pillar Two in every country, the framework is stronger (in theory).[136] The U.S. has shown commitment to these initiatives through the enactment of GILTI, BEAT, and the CAMT.[137]

The last main argument by advocates of Pillar Two is reminiscent of the prime function of GloBE rules, that Pillar Two would level the playing field by ensuring all large multinationals, regardless of nationality, are subject to a minimum ETR, reducing the underlying incentives and motivations for inversions or tax arbitrage.[138]

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130. *Id.*
131. H.R. 591, 119th Cong. (2025).
132. *International Tax in the Age of Pillar 2*, *supra* note 115.
133. *Id.*
134. Daniel F. Runde et al., *The OECD Faces a Decision Point in 2021*, CTR. FOR STRATEGIC & INT'L STUD. (June 9, 2020) https://www.csis.org/analysis/oecd-faces-decision-point-2021 [https://perma.cc/9WDE-65MV].
135. *Id.*
136. Ahn, *supra* note 5.
137. *International Tax in the Age of Pillar 2*, *supra* note 115.
138. Inversions are the process of incorporating in a different country for more favorable tax treatment and is within the umbrella of BEPS practices. For a longer discussion on inversion and its consequences *see* Julia Kagan, *Corporate Inversion: What It Is, How It Works, and Example*, INVESTOPEDIA (May 26, 2024), https://www.investopedia.com/terms/c/corporateinversion.asp [https://perma.cc/E58N-422W].

IV. THE CURRENT RESPONSE TO PILLAR TWO: REJECT AND TARIFF

The same memorandum addressed to the Secretary of the Treasury to notify the OECD of the rejection of Pillar Two has been named the "Global Tax Deal 'Executive Order" ("EO") and outlines several directives to assert U.S. sovereignty over tax policy and strategy.[139] Section Two of the memorandum outlines options for the Secretary, along with the U.S. Trade Representative ("USTR"), to investigate any foreign countries that have tax treaties with the U.S. and whether any of these countries have tax rules in place (or are likely to put tax rules in place) that would "extraterritorially or disproportionately" affect American companies.[140] The memorandum continued to direct the Treasury to identify any "extraterritorial or disproportionate" measures within sixty days and to propose protective measures as a response.[141] The memorandum reflects the overall idea expressed in this comment thus far; a skepticism for adoption of the Pillar Two framework because of its extraterritorial nature and succession of tax policy to a non-binding international collective headquartered across the world.

The trade tools used to counter the extraterritorial or disproportional impositions of taxes on U.S. companies has rested on Section 301 of the Trade Act of 1974.[142] The aftermath of this memorandum and proposed responses has been known around the world as the "Trump Tariffs," which, for the purposes of this comment, highlight a focus on countries that have adopted the UTPR and other Pillar Two systems.[143] The memorandum directed the Treasury and the USTR to conduct a Section 301 investigation and implement retaliatory tariffs against countries adopting

139. Proclamation No. 02043, 90 Fed. Reg. 8483 (Jan. 20, 2025).

140. *Id.*

141. *Id.*

142. 19 U.S.C. §§ 2411-20 (2025), Title III of the Trade Act of 1974 is titled "Relief from Unfair Trade Practices" and is usually referred to as "Section 301". Prior to 1995 and the establishment of the World Trade Organization ("WTO") and the Trump Administration, Section 301 was used to encourage and pressure other countries to remove trade barriers and open their markets to U.S. exports. *See* ANDRES B. SCHWARZENBERG, CONG. RSCH. SERV., IF 11346, SECTION 301 OF THE TRADE ACT OF 1974 (2024).

143. *Is Pillar Two Thriving or at Risk: What President Trump's U.S. Exit from Global Tax Deal Means for Multinationals*, THOMSON REUTERS (Mar. 7, 2025), https://insight.thomsonreuters.com/sea/business/posts/is-pillar-two-thriving-or-at-risk [https://perma.cc/C5L6-M2BW].

unfair tax measures.[144] Indeed, many of the pervasive "Trump Tariffs" have used Section 301 as the legislative measure to promulgate the tariff policy around the world.[145]

A second executive order, the America First Trade Policy EO, was signed by President Trump on the same day as the Global Tax Deal EO, attaching a memorandum that invoked the use of obscure Section 891 of the Internal Revenue Code ("the Code") to instill tariffs.[146] Section 891 empowers the President to double U.S. tax rates on citizens and corporations of a foreign country that imposes a "discriminatory or extraterritorial" effect on U.S. persons.[147] The statute itself does not define "extraterritorial" or "discriminatory", nor does it address how the use of the dormant code provision would interact with U.S. tax treaties.[148]

Congress has also moved in support of this strategy. The House Ways & Means Committee introduced the Defending American Jobs and Investment Act, also known as House Bill 591, to reinforce the Trump Administration's stance.[149] This bill would add a new Section 899 to the Code, imposing an automatic surtax on U.S.-sourced income of any individuals or companies from countries that enact "extraterritorial taxes or discriminatory taxes,"[150] such as UTPR provisions.[151] The surtax would increase tax liability between 5% to 20% on those foreign companies' U.S. earnings, and would remain in effect until the offending country withdraws its "unfair tax."[152] Essentially, this is a threat of a tax tariff. For example, if France taxes a U.S. MNE's income via a UTPR, then French entities would face higher taxes on their U.S.

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144. Proclamation No. 02043, 90 Fed. Reg. 8483 (Jan. 20, 2025); *see* SCHWARZENBERG, *supra* note 142.

145. *See generally $34 Billion Trade Action (List 1)*, OFF. OF THE U.S. TRADE REP., https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china/34-billion-trade-action [https://perma.cc/48SX-ZJKH] (last visited Nov. 10, 2025) (explaining the use of Section 301 for imposition of tariffs on technological component exports from China).

146. Proclamation No. 02032, 90 Fed. Reg. 8471, 8472 (Jan. 20, 2025).

147. I.R.C. § 891.

148. *United States-President Open to Doubling Tax Rates on Citizens*, *Corporations of Certain Foreign Countries*, KPMG (Feb. 21, 2025), https://kpmg.com/xx/en/our-insights/gms-flash-alert/flash-alert-2025-041.html [https://perma.cc/9X2B-RZBZ].

149. H.R. 591, 119th Cong. (2025).

150. The core provisions of H.R. 591, including section 899 to the Code were later incorporated into H.R. 1, the "*One Big Beautiful Bill Act." See infra* note 188.

151. Press Release, U.S. House Comm. on Ways & Means, Ways and Means Republicans Introduce Legislation to Reinforce Trump Administration's Rejection of Biden Global Tax Surrender (Jan. 22, 2025) (on file with author).

152. *Id.*

profits if Section 899's provisions were enforced. The proposal even includes a treaty override to deny treaty benefits to entities from such countries.[153] This approach underscores that the U.S. is contemplating both trade-and tax-based retaliation to deter other countries from enforcing Pillar Two charging provisions against U.S. MNEs.[154]

In early April 2025, the OECD/G20 held its seventeenth Plenary meeting in Cape Town, South Africa.[155] Nearly 450 delegates from 135 jurisdictions attended the four-day meeting.[156] This high-level gathering coincided with the tenth anniversary of the BEPS Pillar Two project.[157] The U.S. delegation was present and was led by newly appointed Deputy Assistant Secretary for International Tax Affairs, Rebecca Burch.[158] Most discussions occurred behind closed doors; however, a public outcome statement was issued on April 11, 2025, noting that all members, including the U.S., "recognized the critical importance of securing certainty and stability in the international tax system."[159] However, this diplomatically charged language masked an underlying agenda for the U.S., which came to Cape Town to openly distance itself from Pillar Two implementation, even as it remained at the table discussions following the America First Trade Strategy memorandum and to reaffirm its stance toward the initiative.[160]

The coordinated strategy of opposition to Pillar Two combines executive authority, dormant statutory provisions, and international diplomacy. The issuance of the Global Tax Deal EO, the America First Trade Policy EO, and accompanying memoranda reflect the administration's intent to reassert U.S. tax sovereignty

153. *Trump's Exec. Orders on Non-Reciprocal Trade and Discriminatory or Extraterritorial Measures*, PWC 2-3 (Mar. 12, 2025), https://www.pwc.com/gx/en/tax/newsletters/tax-policy-bulletin/assets/pwc-nonreciprocal-trade-and-discriminatory-extraterritorial-measures.pdf [https://perma.cc/4ATD-TMEM].

154. *Id.* at 3.

155. *Inclusive Framework Concludes Successful Meeting in South Africa*, OECD (Apr. 11, 2025), https://www.oecd.org/en/about/news/announcements/2025/04/inclusive-framework-concludes-successful-meeting-in-south-africa.html [on file with the *Stetson Business Law Review*].

156. *Id.*

157. *Id.*

158. Press Release, U.S. Dept. of Treasury, Treasury Department Announces New Appointments (Apr. 7, 2025) (on file with author).

159. *Statement by the OECD/G20 Inclusive Framework on BEPS*, OECD (Apr. 11, 2025), https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/beps/statement-oecd-g20-inclusive-framework-on-beps-april-2025.pdf [https://perma.cc/R63M-UKQ8].

160. Press Release, EY, OECD/G20 Inclusive Framework Issues Statement Following Plenary Meeting (Apr. 14, 2025) (on file with author).

and resist what it views as extraterritorial encroachment on its domestic tax base by any means necessary.[161] By leveraging existing legislation like Section 301 of the Global Trade Act, dormant code provisions like Section 891, and diplomatic signaling in forums like Cape Town, the U.S. has reinforced its stance against implementation while maintaining its presence at the negotiating table.[162]

At its core, Pillar Two is designed not only to standardize corporate taxation, but also to mitigate international trade friction and diplomatic tensions among adopting countries.[163] Pillar Two compliance may reduce friction with allies and trading partners, especially in Europe, who have already begun implementing the rules. Without a Pillar Two compliant system, akin to France's initial policy objective of proposing Pillar Two, other countries could implement a "GAFA tax" or a tax that is meant to retaliate against U.S. MNEs for not adopting Pillar Two.[164] It is unclear whether this current response to avoiding Pillar Two adoption will be beneficial or harmful to U.S. MNEs and ultimate consumers. One thing is clear: rejection and retaliation does not curtail the effects of Pillar Two charging provisions.[165] Instead, it is like when a kid on the playground keeps throwing sand in your face, so you threaten to throw sand back — it might make them think twice, but you are still covered in sand.

V. THE PATH FORWARD FOR THE U.S.

The U.S. faces a crucial decision point in shaping the future of global tax policy, and therefore, its domestic economic strategy.[166] The rise of Pillar Two as a near-global standard adopted by more than 140 countries demands a response—one that both protects

161. Dave Strausfeld, *How Trump's Opposition to Global Tax Deal May Affect Businesses*, THE TAX ADVISOR (Mar. 26, 2025), https://www.thetaxadviser.com/news/2025/mar/how-trumps-opposition-to-global-tax-deal-may-affect-businesses/ [https://perma.cc/4XEA-F4FC].

162. *Id.*

163. *See* Ahn, *supra* note 5.

164. Daniel N. Erasmus, *The U.S. Executive Order to Leave the OECD: Implications and Impacts for Global Trade and Taxation*, TAX RISK MGMT. (Jan. 28, 2025), https://www.taxriskmanagement.com/us-withdrawal-oecd-global-tax-deal/ [https://perma.cc/X4MM-RLQZ].

165. Ahn, *supra* note 5.

166. Since Pillar Two is extraterritorial by nature, its adoption leads to a country's inability to enact fiscal policy measures that have the same effect as a country that has not adopted Pillar Two. *See generally* GRAVELLE & KEIGHTLEY, *supra* note 53.

the interests of U.S. MNEs and recognizes geopolitical realities. While outright adoption of the OECD's framework may compromise sovereignty, inaction could lead to foreign jurisdictions taxing U.S. MNEs and diminishing the U.S. tax base.

A. Strategic Non-Compliance with Safeguards

The U.S. should not adopt Pillar Two wholesale. Instead, it should pursue a strategy of strategic non-compliance, whereby it maintains autonomy over tax policy while implementing domestic safeguards to prevent revenue loss from Pillar Two. This strategy comes from modifying the TCJA's GILTI and BEAT frameworks, as well as modifying the CAMT to be Pillar Two compliant.

The GILTI, as it stands today, has two issues in regard to Pillar Two compliance: its basis and its percentage. First, the GILTI applies on a blended basis instead of a jurisdictional basis.[167] By operating on a blended basis, the GILTI's effect is "weaker" than a typical jurisdictional IIR because it allows income from low-tax jurisdictions to be shielded by income from high-tax jurisdictions.[168] For example, if a U.S. MNE earns income in Ireland at a 5% ETR and in Germany at a 25% ETR, the average might be above the GILTI minimum, shielding the Irish income from additional U.S. tax.[169] This scenario would not occur under Pillar Two, which applies its minimum tax calculation on a jurisdiction-by-jurisdiction basis; in that framework, the Irish income would remain exposed to a top-up tax regardless of German earnings.[170]

Second, the percentage of GILTI will have to be revised to be Pillar Two compliant. To be Pillar Two compliant, GILTI will have to operate at a 15% minimum rate, thereby functioning like an IIR charging provision.[171] As of today, the effective GILTI rate is anticipated to raise to 13.125%, assuming Congress extends the

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167. Christopher Feldman et al., *US GILTI and Pillar 2: A Closer Look at the Administrative Guidance*, DLA PIPER (Feb. 23, 2023), https://www.dlapiper.com/en/insights/publications/2023/02/us-gilti-and-pillar-2-a-closer-look-at-the-administrative-guidance [https://perma.cc/A5RV-JFP2].

168. *See* GRAVELLE & KEIGHTLEY, *supra* note 53, at 3; *see* Lautz, *supra* note 99.

169. *See* Lee Hadnum, *supra* note 56; *see Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): The Pillar Two Rules in a Nutshell*, *supra* note 58, at 4.

170. *Id.*

171. Feldman et al., *supra* note 167.

TCJA provisions and adopts the proposed increases.[172] While 13.125% is not the requisite 15%, policymakers ought to consider the advantages of compliance with Pillar Two when deciding whether the 1.875% is worth the cost of non-compliance.

Recent OECD guidance released in 2025 confirms that the U.S. GILTI regime will be considered a qualifying controlled foreign corporation tax for purposes of Pillar Two.[173] However, this recognition comes with an allocation key that assigns residual U.S. GILTI tax liability to jurisdictions based on their share of low-taxed income.[174] The allocation methodology incorporates the interaction with several domestic tax rules and incentives.[175] This allocation methodology means more of the U.S. GILTI tax will be attributed to jurisdictions with lower ETRs.[176] This allocation mechanism is set to end in 2027, creating implicit pressure on the U.S. to revise GILTI by 2027 to conform with OECD standards.[177]

The same logic holds for aligning BEAT with Pillar Two's UTPR. The U.S. ought to modify BEAT to allocate residual top-up tax liability to U.S. entities that are part of larger MNEs with constituent entities in jurisdictions that fail to impose a 15% ETR. A revised BEAT framework could be re-designed to deny deductions or impose surtaxes on U.S. entities proportionate to their share of low-taxed foreign affiliate income, effectively serving as a backstop to GILTI, exactly as Pillar Two's IIR and UTPR functions. A revised BEAT framework would fill the gap that is left when other countries do not adopt Pillar Two compliant top-up taxes and prevent the U.S. from ceding taxing rights to foreign

172. *See* Cole & Kallen, *supra* note 103 (Table 2).

173. Feldman et al., *supra* note 167.

174. *Id.*

175. The allocation accounts for the effect of I.RC. § 250 deductions and other foreign tax credits, as well as adjustments under the 20% haircut and I.R.C. § 861 expense allocation rules. *See generally Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)*, OECD/G20 BASE EROSION AND PROFIT SHIFTING PROJECT 67-70 (Feb. 1, 2023), https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/agreed-administrative-guidance-for-the-pillar-two-globe-rules.pdf [https://perma.cc/CSA7-289P] (explaining how transitional OECD guidance permits allocation of GILTI to constituent entities based on jurisdictional shares of low-taxed income for purposes of Pillar Two compliance); *see also* Memorandum from Peter H. Blessing on IRS Analyzes Income Limitation Application to GILTI, FDII to Kathleen M. Kruchten (Aug. 19, 2024) (on file with author) (explaining how Section 250 haircut deductions function for CFCs).

176. Feldman et al., *supra* note 167.

177. Pie Geelen et al., *OECD Releases Long-Awaited Pillar 2 GILTI Guidance*, DLA PIPER (Feb. 2, 2023), https://www.dlapiper.com/en/insights/publications/2023/02/oecd-releases-long-awaited-pillar-2-gilti-guidance [https://perma.cc/Y385-EVX5].

jurisdictions under their own UTPR. Ultimately, this revision would preserve U.S. tax sovereignty while maintaining minimum compliance with minimum GloBE rules.

Another possible reform is expanding the CAMT or layering in a QDMTT to prevent top-up taxes from being imposed by foreign jurisdictions on U.S. earned income. This approach ensures that American tax policy remains sovereign while neutralizing the charging provisions of Pillar Two. The CAMT, though not Pillar Two compliant, can be modified to act as a jurisdictional safeguard. By integrating a QDMTT-style provision into the CAMT, the U.S. can impose a 15% ETR on domestic operations of MNEs.[178] This would preempt foreign top-up taxes, as GloBE rules defer to compliant QDMTTs.[179]

This strategy is defensive rather than cooperative. It preserves U.S. taxing rights and implements another portion of Pillar Two rules without full-fledged adoption of Pillar Two rules. Unlike the CAMT in its current form, which operates on an adjusted financial statement income standard, a QDMTT-style amendment would require jurisdictional effective ETR calculations and top-up tax assessments based on income earned by the MNEs, specifically within the U.S.[180] This would better align with the OECD framework while still allowing the U.S. to maintain control over its tax system. This system would also reduce the risk of double taxation. Since a revised CAMT would be Pillar Two compliant and operate as a QDMTT, the U.S. can ensure that the Treasury will collect the tax and create greater predictability regarding tax liability for U.S. based MNEs.[181] Revision would preserve the integrity of domestic policy tools like research and development credits and clean energy tax incentives, that might otherwise be rendered ineffective under Pillar Two's global calculation of Covered Taxes Paid. As Professor Mindy Herzfeld testified before Congress, conforming U.S. tax rules to align more closely with the GLoBE framework, particularly by implementing a QDMTT, would allow the U.S. to preserve tax revenues.[182] While Professor Herzfeld recognizes that alignment

178. Englisch, *supra* note 70.
179. *Id.*
180. *Id.*
181. *Id.*
182. *See generally Biden's Global Tax Surrender Harms American Workers and Our Economy: Hearing Before the Tax Subcomm. of H. Comm. on Ways and Means*, 118th Cong.

will not fully eliminate the challenges of Pillar Two, she emphasizes that conformity can help mitigate its extraterritorial effects.[183]

Most importantly, this approach is defensive rather than simply compliant. It does not require the U.S. to endorse the full scope of Pillar Two nor adopt its underlying policy assumptions. Instead, it leverages the deference built into the OECD's model to preempt foreign taxation of U.S. income, effectively using Pillar Two's mechanisms to preserve U.S. sovereignty. If left unaddressed amidst Pillar Two adoption in Europe and other countries, foreign jurisdictions could use Pillar Two's enforcement tools to collect revenue on income generated within the U.S. itself.[184] Modifying the CAMT to incorporate a QDMTT is a considerable policy option to allow the U.S. to comply without compromising its own fiscal policy.

This approach realizes and appreciates that the U.S. cannot remain fully insulated from Pillar Two's effects. As Professor Ruth Mason explains, the GloBE regime operates through a form of "diabolical machinery" that incentivizes participation through soft power and coordinated enforcement, making non-compliance an increasingly costly position.[185] Professor Mason argues that this diabolical machinery must be set into motion by enough jurisdictions adopting the deal in order to function.[186] Since more than 140 countries have agreed to adopt the deal to date, the diabolical logic is taking effect.[187]

B. The TCJA 2.0 Presents an Opportunity for Alignment

The anticipated TCJA 2.0 presents a legislative window to reframe U.S. international tax rules while responding

(2023) (statement of Mindy Herzfeld, Professor, Univ. Fla. Levin Coll. Of L.), https://gop-waysandmeans.house.gov/wp-content/uploads/2023/07/Herzfeld-Testimony.pdf [https://perma.cc/6VW5-7SXF] (explaining that U.S. conformity with Pillar Two through mechanisms like a QDMTT would preserve taxing rights and revenues, even though such conformity would not fully resolve the underlying tensions created by the global minimum tax framework).

183. *Id.* at 6.

184. GRAVELLE & KEIGHTLEY, *supra* note 53, at 7, 11.

185. Ruth Mason, *A Wrench in the GloBE's Diabolical Machinery*, TAXNOTES (Sept. 19, 2022), https://www.taxnotes.com/special-reports/digital-economy/wrench-globes-diabolical-machinery/2022/09/16/7f3pt [on file with the *Stetson Business Law Review*].

186. *Id.*

187. *Pillar Two Country Tracker*, *supra* note 47.

pragmatically to the global tax development of Pillar Two adoption in Europe.[188] Since the GILTI, BEAT, and overarching TCJA provisions are set to expire next year, some legislative response is expected in the coming months.[189] This finding was addressed by Alan Cole, a senior economist for Tax Foundation's Center for Federal Tax Policy:

> Tax legislation in 2025 may have good reason to address international corporate income taxes, because of scheduled changes slated to go into effect or because of international developments like the Pillar Two agreement. International tax policy is difficult to optimize, but it should attempt to improve competitiveness, protect the US tax base, and limit complexity.[190]

VI. CONCLUSION

The U.S. should adopt an approach of strategic non-compliance to Pillar Two. Adopting Pillar Two in full is not the answer, but neither is passive resistance through rejection and retaliation. A strategic response through revision of the GILTI, BEAT, and CAMT framework offers the best path forward. In doing so, the U.S. can safeguard its tax base, uphold fiscal sovereignty, and shape the future of global tax cooperation on its own terms. Since tax policy on Pillar Two is likely to be addressed by the 119th Congress, the TCJA 2.0 or its equivalent ought to consider adopting Pillar Two compliant strategies. Doing so will diminish the harsh effects of Pillar Two adoption by other countries on the U.S. tax base. The current legislative response

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188. The One Big Beautiful Bill Act [hereinafter "OBBBA"] (H.R. 1), introduced in May 2025 extends the key provisions of the TCJA. Notably, the bill introduces I.R.C. § 899 to the Code from H.R. 591imposing surtaxes on U.S. source income of entities from countries that adopt extraterritorial or discriminatory taxes, such as a UTPR. *See generally* SCHWARZENBERG, *supra* note 142. However, the bill does not incorporate Pillar Two-compliant mechanisms like a jurisdictional GILTI, a restructured BEAT, or a QDMTT. *See* H.R. 1, 119th Cong. (2025) (enacted); *see also* Amy E. Heller et al., *The One Big Beautiful Bill Act*: *An Initial Analysis of Key Tax Proposals*, SKADDEN (May 29, 2025) (providing an overview of the bill's key international tax provisions and its implications for U.S. competitiveness), https://www.skadden.com/insights/publications/2025/05/the-one-big-beautiful-bill-act [https://perma.cc/ZH32-4QF9].

189. Heller et al., *supra* note 188.

190. Alan Cole, *Considering Potential International Corporate Tax Reforms* in the U.S., TAX FOUND. (Mar. 13, 2025), https://taxfoundation.org/research/all/federal/us-international-tax-reform/ [https://perma.cc/5PXP-EYKS].

does not adequately protect U.S. MNEs from the harsh effects of Pillar Two's charging provisions.

As this comment goes to press, the OECD has released additional administrative guidance that, at least for now, GILTI in its blended form effectively qualifies as an IIR under Pillar Two.[191] The caveat has been named the "side-by-side" approach and remains subject to scrutiny by other countries' policymakers.[192] Yet, this "blessing" does not alter the core arguments in this comment; the U.S. still finds itself in a vulnerable position and the implicit pressure to reform GILTI is thus only temporarily diminished.

The shift in the OECD's posture reveals a reciprocal dynamic. Much of the analysis in this comment has emphasized how Pillar Two depends on a U.S. response, pressuring U.S. policymakers to conform. But the reverse is also true: the OECD faced significant pressure to adapt its standards to something the U.S. would tolerate, since the framework cannot function properly without U.S. participation.[193] The "side-by-side" compromise occurred against the backdrop of retaliatory measures like H.R. 591 which proposed adding §899 to the Code.[194] These retaliatory measures likely served as a bargaining chip for the U.S., and the U.S. scaled back the retaliatory measures after the "side-by-side" agreement was reached.[195]

191. *See* Pinar Solyali Gökalp, *Is Global Tax Deal a GILTI Victory?*, KLUWER INT'L TAX BLOG (July 18, 2025), https://legalblogs.wolterskluwer.com/international-tax-law-blog/is-global-tax-deal-a-gilti-victory/ [https://perma.cc/6DXU-Z6UK] (noting that GILTI's global blending is "more generous" than the IIR's jurisdictional blending, and that recent developments have positioned GILTI to enjoy some amount of privileged treatment).

192. *See* Pascal Saint-Armans, *The Implications of G7 Agreement on the Global Minimum Tax*, BRUEGEL (June 30, 2025), https://www.bruegel.org/first-glance/implications-g7-agreement-global-minimum-tax [https://perma.cc/GEN6-3JKH]; *see* Lauren Vella, *OECD's 'Side-by-Side' Tax Deal for US Critiqued by 28 Countries*, BLOOMBERG TAX (Aug. 25, 2025), https://news.bloombergtax.com/daily-tax-report/countries-list-host-of-qualms-about-us-side-by-side-tax-deal.

193. *See* Cara Griffith, et. al., *Pillar 2 at a Crossroads: U.S. Policy and What Comes Next*, TAXNOTES (Apr. 23, 2025), https://www.taxnotes.com/tax-notes-live/taxing-issues/pillar-2-crossroads-u.s-policy-and-what-comes-next/7s11n.

194. *See* SCHWARZENBERG, *supra* note 142; *see* Amy E. Heller et al., *supra* note 188; *see also* Warren S. Payne, et. al., *Congress Proposes A 'Big Stick' to Target Discriminatory Tax Measures,* MAYER BROWN (May 1, 2025) (explaining the competitiveness implications of proposed H.R. 591), https://www.mayerbrown.com/en/insights/publications/2025/05/congress-proposes-a-big-stick-to-target-discriminatory-tax-measures [https://perma.cc/HUR8-GXGM].

195. *See* Dustin Stamper, *Lawmakers Threaten to Resurrect 'Revenge Tax' Over Pillar Two Negotiations*, BDO (Sep. 16, 2025), https://www.bdo.com/insights/tax/lawmakers-

The economic heft of U.S. MNEs meant absent a U.S. adoption in some form, Pillar Two risked unraveling. The OECD's willingness to "bless" GILTI in its blended form reflects this reality. It is precisely this instability and shifting economic leverage that U.S. policymakers should resist and instead strive to lock in certainty and stability for U.S. MNE's tax obligations.[196]

threaten-to-resurrect-revenge-tax-over-pillar-two-negotiations [https://perma.cc/4RGV-5F3S].

196. Cara Griffith, et. al., *supra* note 194.