

## **Triumph in Taxing Times?**

### **Transatlantic Reverberation and the Taxation of the Digital Economy<sup>1</sup>**

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In October 2021 136 countries reached a political agreement that has the potential to transform the global tax regime for the first time in a century. Although this development was in response to the increase in transnational production and particularly the development of the digital economy that had rendered the global tax system not fit for purpose it remains a puzzle as an attempt only a few years earlier had yielded disappointing results. This paper argues that the 2021 agreement was due reverberation between Europe and America with developments in one region altering the preferences in the other so as to make compromise more acceptable. The adoption of digital services taxes (DSTs) by EU member states (and others) gave the US an incentive to engage in talks so as to reduce the risk of double taxation of its firms. The 2017 US Tax Cut and Jobs Act (TCJA) created the precedent of a minimum tax on the foreign earnings, which altered the traditional reversion point that favored low-tax jurisdictions by reducing the advantages to US firms to shelter profits in low-tax jurisdictions. The conclusion of the talks, however, hinged on the linkage between the two issues, which gave the Biden administration an incentive to reinvigorate the digital services talks as it hoped that a multilateral agreement on a global minimum tax would improve the prospects for raising domestic corporate taxes. This paper, therefore, highlights the importance of reverberation, reversion points and issue linkage, sits at the intersection of Robert Putnam's metaphor of the two-level game and Henry Farrell and Abraham Newman's "new interdependence approach."

In October 2021 136 countries reached a political agreement that has the potential to transform the global tax regime. The two-pillar agreement modifies how taxing rights are allocated among jurisdictions to give markets and not just production sites taxing rights (Pillar 1) and establishes a

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global minimum tax for large transnational companies (Pillar 2). The implementation of Pillar 2 has been slow and imperfect (Bunn 2022)<sup>2</sup> and the negotiations of the multilateral convention to implement Pillar 1 are on-going at the time of writing (hence the question mark in the paper's title).

Although still incomplete, this political development is striking. It marks the most serious effort to reform the international tax regime since it was established a century ago. The effort was motivated by the increase in transnational production and particularly the development of the digital economy that had rendered the global tax system not fit for purpose. Large, profitable corporations were legally able to pay little or no tax to the jurisdictions within which they operated. That prominent companies were not paying their “fair share” was politically toxic in the wake of the global financial crisis and the ensuing fiscal austerity as governments struggled to balance their books. The economic impacts of the COVID-19 pandemic reinforced these pressures. There were, therefore, strong incentives for reforming the global tax regime. These concerns prompted negotiations in the Organization for Economic Cooperation and Development (OECD) beginning in 2013. The resulting 2015 agreement on Base Erosion and Profit Shifting (BEPS), however, fell short of addressing economic and political short-comings of the existing system. The question, therefore, is what changed to bring about a fundamental reform of the international tax regime only a few years later.

This paper argues that the answer lies in reverberation between Europe and the United States. Policy developments on each side of the Atlantic – particularly the adoption of unilateral digital services taxes by a number of European countries and the 2017 US tax reform – changed the reversion points for key actors on the other side. US digital companies confronted the

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<sup>2</sup> Video interview with a Commission official, 30 March 2023.

prospect of multiple unilateral taxes collected on the basis of where their customers and users were located rather than where their profits were booked. Some European jurisdictions faced the benefits of their low taxes for US transnational corporations (TNCs) being undermined by changes to the US tax regime. These developments got reluctant parties on both sides to engage. The successful conclusion of the negotiation, however, hinged on the linkage of the two issues and the Biden administration's willingness to compromise on Pillar 1 in order to secure a Pillar 2, which it hoped would have the way for higher domestic corporate taxes. This explanation is consistent with but goes beyond that developed in parallel by Crasnic, Heering and Newman (2013), which emphasizes the role of the proliferation of unilateral digital services taxes on the preferences of large US digital companies.

My argument, which highlights the importance of reverberation, reversion points and issue linkage, sits at the intersection of Robert Putnam's (1988) metaphor of the two-level game and Henry Farrell and Abraham Newman's (2014) "new interdependence approach." In doing so, it stresses that the US and EU are not impermeable, internally focused regulators as they are often assumed to be. Developments in one affect preferences in the other. It also underlines that EU member states need not act through the EU in order to have influence on the global stage.

This paper begins by describing the traditional global tax regime and how economic developments, particularly the rapid expansion of the digital economy, challenged that system, and why the status quo became politically unacceptable. It then establishes that these pressures, while necessary, were not sufficient to bring about agreement by describing the disappointing outcome of the 2015 Base Erosion and Profit Shifting (BEPS) agreement. The paper then outlines the political dynamics of international tax cooperation and develops the argument in the context of the existing explanations. The empirical portion of the paper involves a detailed

process tracing of the negotiations in each pillar. It concludes by reflecting on the international tax negotiations say about the EU's influence in international negotiations.

### **The global tax regime and pressures for reform**

The current global tax regime has its origins in the 1920s under the League of Nations, which subsequently informed the Organization for Economic Cooperation and Development's (OECD) and United Nations' (UN) model tax treaties (*Economist* 2022; Christensen and Hearson 2019: 1071). The central objective of that regime was to allocate taxing rights among jurisdictions so that the same profit is not subject to tax in more than one country; to avoid double taxation (Christensen and Hearson 2019: 1071; Devereaux et al 2021: 2).

In the 2010s this global tax regime came under pressure from two reinforcing sources: one economic and one political. Economic pressure came from the growth of the digital economy and the changes to business practices that it made possible. The existing tax system was not designed for such virtual and mobile businesses. Political pressure came from demands that prominent companies contribute more to government coffers depleted by responding to the global financial crisis and subsequently the COVID-19 pandemic.

#### *Economic pressure: A tax regime out of step with economic reality*

Under the established global tax regime, jurisdictions claimed taxation rights on the profits of a transnational corporation (TNC) because they are either the jurisdiction in which it is headquartered (residence state taxation) or because it generated profits within the jurisdiction (source state taxation) (Christensen and Hearson 2019: 1071; Lips 2020: 978). For a source jurisdiction to assert a right to tax the profits of a TNC, the TNC had to have a permanent

establishment in its jurisdiction, which traditionally was based on physical presence (Lips 2020: 978; Mason and Parada 2020: 176). Physical presence, however, is not necessary for companies in the digital economy to generate profits in a jurisdiction (Carpentieri 2019: 5; Christensen and Hearson 2019: 1081; Devereaux et al 2021: 6; Lips 2020: 978; Mason 2020: 357; Mason and Parada 2020: 176; Szczepański 2019: 2). The OECD (2018:24) referred to this situation as “cross-jurisdictional scale without mass.” The expansion of the digital economy, therefore, challenged a fundamental principle of the global tax regime.

Increasing digitization also greatly complicates how transnational profits are divided up between jurisdictions with taxing rights. The share of a company’s profits that each jurisdiction is eligible to tax is subject to the transfer pricing regime, an OECD guideline designed to prevent companies from booking profits in the lower tax jurisdiction (Lips 2020: 978). It stipulates that intra-company transactions within a company should be on the same terms as they would if they were with another company; the “arm’s-length principle.” Concerns about the abuse of transfer pricing have long been a concern, but the much greater use of highly mobile intangible assets, the value of which is very hard to assess, has enabled businesses to substantially shift profits to low-tax jurisdictions by assigning intangibles to their operations there (Devereaux et al 2021: 7; Lips 2020: 978; OECD 2018: 24; Szczepański 2019: 2). Digitalization also facilitated greater transnational production, which exacerbated the concerns about abuse of traditional transfer pricing (Carpentieri et al 2019: 4; Christensen and Hearson 2019: 1072; Devereaux et al 2021: 2; *Economist* 2022; Mason 2020: 357). Digitization, therefore, exacerbated the problem of tax avoidance by firms.

Digitalization, therefore, both undermines the nexus underpinning the allocation of taxation rights and facilitates tax avoidance by TNCs. The OECD (2018: 18) thus concluded that

“digitalisation and some of the business models that it facilitates present important challenges for international taxation.” Christensen and Hearson (2019: 1081) went further calling the rise of the digital economy “the Achilles heel of the century-old international tax rules.” The disconnect between territorially based taxation and global business, therefore, had become acute in the early 21<sup>st</sup> century.

*Political pressure: Making business pay its “fair share”*

The increased ability of prominent companies to lower their tax bills by exploiting weaknesses in the international tax regime coincided with the aftermath of the global financial crisis. During the 2010s many governments were adopting fiscal austerity measures to address the debts they had taken on in responding to the financial crisis and the subsequent economic contraction. The sense that prominent, large corporations had not been paying their “fair share” resonated with publics and politicians (Devereaux et al 2021: 4; Eccleston and Smith 2016: 175-7; Hackelberg 2020: 110; Mason 2020: 364-5). Subsequently, concerns about addressing the debt burdens accrued by governments responding to the COVID-19 pandemic and its economic consequences reinforced these sentiments (Fortnam 2020; OECD 2020b: 7).

This sense of unfairness was fueled by a series of a series of leaks documenting tax avoidance and tax evasion – including LuxLeaks (2014), the Panama Papers (2016) and Paradise Papers (2017) -- as well as by news stories about large corporations – including Apple, Google, and Starbucks – paying little tax in countries where they had significant economic activity (Christensen and Hearson 2019: 1079; Eccleston and Smith 2016: 180; Hackelberg 2020: 110; Mason 2020: 355; Roland and Römgens 2022: 362). The ability of some digital technology companies – such Facebook, TikTok, Twitter, and YouTube -- to avoid paying tax in jurisdictions in which they operated was seen as additionally problematic as much of their value

generation comes from their users within the jurisdiction sharing their content and data (Lips 2020: 978; OECD 2018: 24 and 25; Szczepański 2019: 3; White 2018). Digital services companies also drew particular attention as they had thrived during the COVID-19 pandemic (Fortnam 2020; Nardon and Rust 2021: 2). There was, therefore, political pressure on both sides of the Atlantic (and elsewhere) to act to address corporate tax avoidance.<sup>3</sup>

### **Insufficient change**

In response to this political pressure two agreements were concluded in the OECD: the 2014 Common Reporting Standard (CRS) and the 2015 Base Erosion and Profit Shifting' (BEPS) package.<sup>4</sup> The CRS sought to address tax evasion by individuals by obliging financial institutions to automatically share information on bank accounts held by foreign citizens. The BEPS package aimed to address the perceived excesses of TNCs' tax planning (Devereux et al 2021: 106).

BEPS consisted of 15 Actions to counter tax avoidance, although only four resulted in minimum standards that are subject to peer review: countering harmful tax practices, preventing tax treaty abuse, improving transparency through country-by-country reporting, improving dispute resolution between jurisdictions. In 2016 over 100 jurisdictions concluded the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and

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<sup>3</sup> In 2013, the finance ministers of France, Germany and the UK (Osborne et al 2013), for instance, in a letter to the editor of the *Financial Times*, noted that they were taking unilateral action to address tax avoidance, and spelled out their division of labor in shaping the OECD's then nascent negotiations on the BEPS package. In 2012, 2013 and 2014 the Permanent Subcommittee on Investigations of the US Senate's Homeland Security & Government Affairs Committee published a series of reports detailing how US transnational corporations -- Apple, Caterpillar, Hewlett-Packard and Microsoft -- had used "complex transactions and licensing agreements with offshore affiliates to exploit tax loopholes, shift taxable income away from the United States to tax haven jurisdictions, and indefinitely defer paying their U.S. taxes, even when using some of that offshore income to run their U.S. operations" (US Senate 2014: 1).

<sup>4</sup> For accounts of these negotiations, see Lips (2019) and Hackelberg (2020: 106-136).

Profit Shifting, which allows participating states to amend all existing bilateral tax treaties to align with the BEPS minimum standards without having to renegotiate each one.

The BEPS project, however, did not address discontent over the allocation of taxing rights (Devereux et al 2021: 106; Hackelberg 2020: 137; Lips 2019: 107),<sup>5</sup> although it did modify them slightly by making it harder for jurisdictions to be allocated taxing rights over profits if there is no real activity (Deveraux et al 2021: 111; Eccleston and Smith 2016: 180). In addition, the BEPS Action 1 “Addressing the Tax Challenges of the Digital Economy” did not make any recommendations about direct taxation (OECD 2015),<sup>6</sup> apparently due to opposition from the US under the Obama administration (Kahn 2018; Nardon and Rust 2021: 3). Moreover, having been unable to secure domestic tax reforms, which would have permitted international concessions, the Obama administration ended up watering down efforts to curb profit shifting so as to avoid harming US TNCs and US tax revenues (Hackelberg 2020: 118). In the wake of the BEPS Package, therefore, “key issue for the international tax community” remained, including how to address the tax challenges arising from digitalization. (OECD 2018c: 3).

### **The politics of international tax negotiations**

Under the traditional international tax regime based on residence and permanent establishment, action against tax avoidance suffered from reversion point favoring lower-tax economies (Lips 2019: 111; see also Christensen and Hearson 2019: 1072). Small jurisdictions, with small markets and little capital of their own, can increase their tax take by attracting foreign capital

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<sup>5</sup> Video interview with a Commission official, 30 March 2023.

<sup>6</sup> The BEPS Action 1 did agree guidelines and VAT collection mechanism for goods and services purchased online by private consumers from foreign suppliers. It recommended implementing the destination principle contained in the 2017 OECD International VAT/GST Guidelines, as well as the mechanisms for effective collection of VAT/GST on cross-border supplies of services and intangibles also included in the guidelines (OECD 2019c: 5).



with low tax rates (Devereaux et al 2021: 6). Larger jurisdictions want to preserve their tax revenue from domestic capital but are also concerned about maintaining the international competitiveness of that capital and about taxable profit being allocated elsewhere. Even if this situation did not encourage a race to the bottom in corporate taxation, it certainly created a disincentive to unilaterally raise taxes. Thus, coordinated action would be required to raise taxes globally, but the lower-tax jurisdictions had no incentive to agree. The question, therefore, is what changed after 2015 that enabled an agreement to be reached. The emerging literature on the 2021 political agreement and the more extensive analyses of the BEPS negotiations provide some insights, but an incomplete picture.

The preferences of the US as the world's largest economy are widely seen to be key to the success of international tax cooperation.<sup>7</sup> Hackelberg (2020: 19), based on his analysis of Foreign Account Tax Compliance Act (FATCA) and the BEPS negotiations, argues that “[w]hether international rules against tax evasion and avoidance are tightened or not, essentially depends on the domestically defined preferences of the United States.” He contends that the US's preferences depend on the interaction of the party in power and the level of hostility of US TNCs (Hackelberg 2020: 19). More specifically, he contends that Democratic control of government is a necessary condition for international tax cooperation given the party's ideological support for progressive taxation, which implies action against tax avoidance by companies (Hackelberg 2020: 17). It is not sufficient, however, as vigorous business opposition can undermine even Democratic support for action (Hackelberg 2020: 18). Explanations of the 2021 agreement seem to support both parts of this argument.

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<sup>7</sup> Remarks by Thomas Rixen, “Global Tax Coordination: Is There Hope?” The State of the Union 2021 - Europe in a Changing World, European University Institute, 6 May 2021.

A number of scholars and commentators attribute the successful conclusion of the negotiations to the change from the Trump to the Biden administrations (and, not mentioned, Democratic control of Congress) (Politi et al 2021; Scott and Birnbaum 2021; Szczepański 2021: 6 and see also Crasnic, Heering and Newman 2023).<sup>8</sup> While Biden's decision to rejoin the Pillar 1 negotiations in early 2021 was necessary for reaching an agreement, an exclusive focus on change from Trump to Biden, while fitting a broader narrative about their different views about the desirability of international cooperation, misses important parts of the story. First, the US entered the Pillar 1 negotiations under Trump, displaying more willingness to engage than the Obama administration had (Nardon and Rust 2021: 3). Moreover, the 2017 Tax Cuts and Jobs Act (TCJA) adopted under Trump gave impetus to the Pillar 2 talks from which the US did not withdraw. Thus, Trump's engagement in the negotiations was much more constructive than would have been expected.

Trump's more constructive engagement in the Pillar 1 talks has been attributed to the support of US digital technology companies, which saw the talks as a way to forestall the proliferation of unilateral digital services taxes (Crapo 2021; Crasnic, Heering and Newman 2023: 23; Gelepithis and Hearson 2022: 719; Lips 2020: 976; Rappaport, et al 2020; Scott and Birnbaum 2021). Crasnic, Heering and Newman (2023: 23) advance the most explicit and nuance version of this argument, contending that the prospect of the proliferation of unilateral digital services taxes altered the reversion point for US digital companies, making them more willing to accept a negotiated agreement. That in turn precipitated a change in the US government's position, a position that had bi-partisan support (Crapo 2021).<sup>9</sup> Crasnic, Heering

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<sup>8</sup> Remarks by Ioana Petrescu, Thomas Rixen, and Pascal Saint-Amans, "Global Tax Coordination: Is There Hope?" The State of the Union 2021 - Europe in a Changing World, European University Institute, 6 May 2021.

<sup>9</sup> "Ways & Means Members Show Bipartisan Support for OECD Digital Tax Solution," *Inside U.S. Trade*, 38/10, 6 March 2020.

and Newman (2023: 24), however, acknowledge that their argument cannot explain why the U.S. government's position hardened in 2020 even as more and more jurisdictions adopted digital services taxes. This line of argument alone also cannot explain why the US returned to the talks in 2021.

US preferences are considered key to international negotiations on tax avoidance in part because the European Union, the only market of comparable size and thus power in negotiations does not have competence for tax issues and thus does not articulate a common position (Hackelberg 2020: 5). Arguably, more important than the allocation of competence are the differences in the member states' preferences regarding corporate taxation. While the larger, higher-tax member states – most notably France and Germany, but also Italy and Spain – have favored EU action on corporate taxation, smaller, lower-tax member states – most notably Ireland, Luxembourg, and, until recently, the Netherlands – have opposed them. These internal differences, amplified by the need for unanimity, put paid to EU efforts on corporate tax reform for decades and blocked the Commission's 2018 proposal for an EU digital services tax. The focus on explaining US preferences also leaves unasked (let alone answered) the question of why (European) low-tax jurisdictions would be willing to agree to a minimum corporate tax.

While the EU's member states recognized the benefits of them all accepting the negotiated agreement together and there were regular contacts among member state and Commission officials, there was no formal coordination of positions.<sup>10</sup> This paper, therefore, underlines that European preferences and policies can matter even absent a formal role for the EU.

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<sup>10</sup> Video interview, Commission official, 30 March 2023.

The analysis here, as with most accounts of international of international tax negotiations in general and the recent negotiations in particular (Hackelberg 2020; Rappaport et al 2020); Scott and Birnbaum 2021),<sup>11</sup> will focus on the interaction between the US and Europe. This is a simplification,<sup>12</sup> but the main fault-lines, certainly at the higher level of aggregation, in the discussions were between the US and EU with major developing economies lining up on either side – China broadly with the US (Christensen and Hearson 2022: 174; Dai 2019: 1302 and 1304) and Brazil, India, and others roughly with the EU (G-24 2019) -- although they had distinct preference on important details.

The argument here is that unilateral policy developments – one primarily in Europe and one in the US – altered the reversion points in ways that greatly increased the incentives for cooperation. The impact of unilateral digital services taxes, adopted early and primarily in Europe, on the reversion point and thus the preferences of large US technology TNCs, as discussed above, has received considerable attention in the literature. The impact of the TCJA on the negotiations has received much less attention (a partial exception is Lips 2020: 983).

The TCJA had two major impacts. First, it transformed the US tax system from a “worldwide” system, under which US TNCs were taxed on income earned abroad, although they could avoid the tax by not repatriating the profits (Carpentieri et al 2019: 10), to a “territorial” system (Boumans et al 2020: 1610; Carpentieri et al 2019: 10; IMF 2019: 53), more akin to the other OECD members. Under the “worldwide” system the US gave US TNCs credit for taxes paid abroad. The less tax US TNCs paid abroad, the more tax the US could claim. This gave the

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<sup>11</sup> For exceptions, see Christensen and Hearson 2022; Dai 2019; Gelepithis and Hearson 2022; Hearson and Prichard (2018); Hearson, Christensen, and Randriamanalina 2022.

<sup>12</sup> Video interview with a Commission official 30 March 2023.

US an incentive to preserve its TNCs' ability to engage in aggressive tax planning abroad (Lips 2019: 115-16). That incentive largely disappeared with the TCJA.

The TJCA also included some “novel measures of considerable importance” to the global tax discussions (IMF 2019: 53). Particularly significant was the Global Intangible Low Taxed Income (GILTI) tax, which established a minimum tax rate of 10.5 percent on overseas income if no tax were paid abroad (IMF 2019: 53). This change had the potential to affect the reversion for low-tax jurisdictions by reducing the tax advantage that US TNCs would gain by assigning profits to them.<sup>13</sup> Moreover, GILTI informed the 2018 German-French proposal for a Global minimum tax, known as global anti-base erosion (GLOBE) (Klein cited in Soong 2018).<sup>14</sup>

The unilateral digital services taxes and GILTI, therefore, transformed the bargaining dynamics of cooperation to curb tax avoidance. The digital services taxes, by taxing income from consumers and users within a jurisdiction, undermined tax competition between jurisdictions and gave large markets leverage. GILTI implied that governments could unilaterally reduce the benefits to their TNCs of assigning profits to low-cost jurisdictions. The digital services taxes gave the US a reason to come to the negotiating table. GILTI gave the (European) low-tax jurisdictions an incentive to compromise.

The linking of these two issues, therefore, was crucial (see also Crasnic, Heering and Newman 2023).<sup>15</sup> Particularly as securing agreement on GLOBE at a relatively high rate of tax, and thus potentially paving the way for domestic corporate tax increases, gave the Biden administration a reason to reengage in the Pillar 1 talks (Nardon and Rust 2021: 7; Politi et al

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<sup>13</sup> Video interview with a Commission official, 30 March 2023.

<sup>14</sup> Video interview with a Commission official, 30 March 2023. “German FinMin Proposes Global minimum Corporate Tax – Handelsblatt,” *Reuters*, 19 October 2018.

<sup>15</sup> Crasnic, Heering and Newman stress the importance of issue linkage but they are more interested in explaining why it happened than what effects it had on the agreement.

2021; Rappeport 2021; Stein 2021; Tankersley and Rappeport 2021). The rest of this paper substantiates this argument by process tracing the negotiations.

### **Getting to the political agreement**

The negotiations that led to the “Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy” began in earnest after March 2017 when the G20 Finance Ministers tasked the OECD/G20 Inclusive Framework on BEPS, working through its Task Force on the Digital Economy (TFDE), to produce an Interim Report on the subject in March 2018 (OECD 2018: 3-4).<sup>16</sup> (See Table 1 for an overview of key developments).

#### TABLE 1 ABOUT HERE

The talks initially focused on the taxing right issues associated with digital companies, but negotiations to address profit shifting were soon added. While the two issues are distinct, the view was that they intersected and that a solution that addressed both would be mutually reinforcing (OECD 2019a: 1). In line with the Inclusive Framework’s January 2019 Policy Note (OECD 2019a: 1) and May 2019 Program of Work (OECD 2019c: 6), the negotiations on the two issues, therefore, occurred in parallel with participants insisting that agreement had to be reached on both together (US Treasury 2021).<sup>17</sup> These parallel negotiations thus formed the basis of the “two-pillar solution” with Pillar 1 addressing taxing rights and Pillar 2 profit sharing.

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<sup>16</sup> Nardon and Rust (2021) date the start of negotiations from the OCED’s January 2019 “Policy Note,” but others treat the 2018 interim report as sketching out the different views of the participants on key issues (Becker and Englisch 2019; OECD 2018c: 9) and Lips (2020: 983-4) views the negotiations as underway in 2018. The OECD (2021: 17) states that “active discussions” occurred during 2017-2020.

<sup>17</sup> French Finance Minister Bruno Le Maire stated, “We won’t adopt Pillar 1 without Pillar 2, and we won’t adopt Pillar 2 without Pillar 1.” (quoted in Politi et al 2021)

Although the two strands of negotiations were politically linked, each addressed its own set of issues and was characterized by different patterns of reverberation between Europe and the US.

*Pillar 1: European taxes changing American minds*

As the literature addresses, a key puzzle is why would the US return to the negotiating table so shortly after the Obama administration had resisted international efforts to address the taxation of digital companies and why under a Republican president famously suspicious of international cooperation in particular. The crucial factor seems to have been the serious consideration and subsequent adoption of unilateral digital services taxes, which began in Europe (see Table 2) (see also Crasnic, Heering and Newman 2023). Lips (2020) identifies the Commission's March 2018 proposal for an EU-wide digital services as the key trigger, although as that proposal was effectively blocked by a number of EU member states that December (Lamer 2018), it seems unlikely that the EU's action was the key driver. Rather, the actions of individual EU member states, particularly France, seem to have been crucial.

TABLE 2 ABOUT HERE

France's digital services tax was justified on the grounds that allocating taxing rights based on physical presence alone was unfair because consumer markets are sources of business profits.<sup>18</sup> Crucially, France was not alone in adopting this idea. In September 2017, the Ministers of Finance of France, Germany, Italy, Spain issued a joint statement stating, "We should no longer accept that these companies do business in Europe while paying minimal

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<sup>18</sup> This idea had been circulating in international tax community since the late 1990s but got little traction even when advanced by India and China in the G20 (Gelepithis and Hearson 2022: 715-16).

amounts of tax to our treasuries.” and calling for “‘equalization tax’ on the turnover generated in Europe by the digital companies” (Le Maire et al 2017). The G-24, a group of 28 developing countries including Brazil, India, Mexico, and South Africa also endorsed the idea taxing rights should be allocated on more than physical presence and that factors, such as revenue generated on a sustained basis, the user bases and associated data input, and the volume of digital content collected from users and customers should provide grounds for a share of taxation as well (G-24: 2019: 3-4). Given the political unacceptability of large corporations appearing not to pay their fair share in the wake of the global financial crisis, governments in Europe and beyond began to seriously consider unilateral measures to tax profits where they are generated (Gelepithis and Hearson 2022: 718).

France’s adoption of a digital services tax and the credible threat that others would follow suit meant that US digital technology companies faced the alarming prospect of a proliferation of unilateral tax measures.<sup>19</sup> Such measures increased the risk of multiple taxation and threatened considerable uncertainty and complexity, given differences in the measures adopted (see Table 2).<sup>20</sup> Given this extremely unappetizing scenario, US technology companies backed a negotiated, common solution in the OECD.<sup>21</sup> These concerns were shared by the US government prompting

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<sup>19</sup> Rufus Yerxa, National Foreign Trade Council; Gary Sprague, Baker & McKenzie, LLP (representing Airbnb, Amazon, Expedia, Facebook, Google, Microsoft, Salesforce, Stripe, and Twitter); Jennifer McCloskey, Information Technology Council; Peter Hiltz, Amazon; Nicholas Bramble, Google; Matthew Schruers, Computer & Communications Industry, in USTR (2019: 9, 15, 23, 46, 53, 121-2).

<sup>20</sup> Rufus Yerxa, National Foreign Trade Council; Jennifer McCloskey, Information Technology Council; Peter Hiltz, Amazon, in USTR (2019: 12, 23, 46).

<sup>21</sup> Rufus Yerxa, National Foreign Trade Council; Gary Sprague, Baker & McKenzie, LLP (representing Airbnb, Amazon, Expedia, Facebook, Google, Microsoft, Salesforce, Stripe, and Twitter); Jennifer McCloskey, Information Technology Council; Peter Hiltz, Amazon; Nicholas Bramble, Google; Alan Lee, Facebook, Stephanie Holland, Computing Technology Industry Association; Matthew Schruers, Computer & Communications Industry Association, in USTR (2019: 9, 15, 20, 43, 46, 49-50, 56, 99, 107).



it to reengage on addressing taxation of the digital economy (Crasnic, Heering and Newman 2023; Lips 2020: 984; OECD 2018: 159).<sup>22</sup>

While the US agreed to engage in talks, it also sought to deter the unilateral adoption of DSTs by launching a Section 301 investigation against France's DST in October 2019 and subsequently against other jurisdictions that had adopted or were considering adopting unilateral DSTs. While not entirely deterring the adoption of unilateral DSTs (see Table 2), the US actions gave at least some of its partners pause. Concerns about US retaliation, for instance, are thought to have undermined German (and other) government's support for the Commission's digital services tax proposal (Hackelberg 2020: 145; Lamer 2018; Lips 2020: 982). In addition, in February 2020 the French government reached an agreement with the Trump administration that it would postpone the collection of its DST until the end of 2020 (the target deadline for the OECD talks) if the US would refrain from imposing Section 301 tariffs.<sup>23</sup> The US's actions, therefore, were also intended to keep other jurisdictions interested in a common solution (USTR 2021-I: 7).<sup>24</sup>

Given the prospects for the fragmentation of international taxation and mounting trade tensions, there was, according to the OECD's secretariat, a "political imperative" to reach an agreed solution (OECD 2019c: 7; also OECD 2018: 159). Even France viewed its unilateral measure as second best, agreeing to withdraw it once an agreement was reached.<sup>25</sup> Most of the jurisdictions that were seriously considering unilateral DSTs in mid-2020, particularly the European ones, were doing so explicitly as fallback options in case the multilateral negotiations

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<sup>22</sup> US Treasury Secretary Steven Mnuchin quoted in Harding (2019).

<sup>23</sup> "U.S. to Announce, but Defer, Retaliation Over French Digital Tax: USTR," *Reuters*, 9 July 2020. Available at: <https://www.reuters.com/article/us-usa-trade-france-digital/u-s-to-announce-but-defer-retaliation-over-french-digital-tax-ustr-idUSKBN24A377>.

<sup>24</sup> See, for instance, "IMF Director: Global Tax Agreement Needed to Avoid 'Chaotic' Trade War," *Inside U.S. Trade*, 5 May 2021.

<sup>25</sup> "France promises to lift digital services tax once OECD finds solution" *Inside U.S. Trade*, 37/16, 19 April 2019.

failed (see Table 3). There was thus broad acceptance of the need for an agreement to reform the international tax regime to address the challenges posed by the digital economy.<sup>26</sup>

### TABLE 3 ABOUT HERE

While the need to create a new taxing right based on market presence was relatively quickly agreed, a key difference was the basis on which that taxing right would arise. Once that issue was settled, the question of the thresholds for which companies would be subject to the new taxing right came to the fore. The US and the Europeans had different preferences with respect to both issues.

A central issue at the outset was the scope of the problem. The Inclusive Framework's 2018 Interim Report identified three coalitions (OECD 2018c: 9). One saw the problem as limited to highly digitized business models and so only they should be the focus of the new nexus. A second saw digitalization creating issues affecting a much wider array of businesses and so wanted a more far-reaching change to tax rules. The third thought that the reforms already agreed under BEPS were sufficient to limit double non-taxation and so there was little need for further change. The first group included France, Germany, Italy and Spain, as well as the UK (Becker and Englisch 2019).<sup>27</sup> The US, by contrast, insisted that the reform must apply to more companies than just the highly digitalized ones – automated digital services – so as to

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<sup>26</sup> Even US digital companies stated that they accepted the need. See, Rufus Yerxa, National Foreign Trade Council; Jennifer McCloskey, Information Technology Council; Peter Hiltz, Amazon; Nicholas Bramble, Google; Alan Lee, Facebook; Matthew Schruers, Computer & Communications Industry Association, in USTR (2019: 8; 22, 43, 49, 56).

<sup>27</sup> Becker and Englisch named only the UK and EU member states that supported the Commission's DST proposal. That list includes France, Italy and Spain (Plucinska et al 2018). Although Germany was on the fence over the EU's DST proposal, Becker and Englisch subsequently identify it as being opposed to a general shift of taxation to the market jurisdiction because of its huge and persistent export surplus – as such a reform would probably be costly for jurisdictions that produce more than they consume and invest.

not discriminate against US-based companies and to enable the US Treasury to offset some of the tax revenue that it expected to lose by reallocating taxing rights on digital services (Fortnam 2020; Mnuchin 2020:1). Thus, the US and Europe, while accepting the need for reform, had very different understandings of its desired scope.

The Inclusive Framework's May 2019 Program of Work identified three proposals for creating a new taxing right (OECD 2019c: 11): user participation, marketing intangibles and significant economic presence (see Box 1). The European Commission's 2018 digital tax proposal (Commission 2018-147: 16) and the digital service taxes being contemplated by EU member states focused on the user participation basis. The US rejected user participation as the basis for a new taxing right and promoted basing it on marketing intangibles, which apply to a wider scope of economic activity (Parker 2019). The developing countries, favored, significant economic presence (G-24 2019: 3). Thus while there was agreement that a new taxing right based on the market jurisdiction was warranted (OECD 2019c: 11; Parker 2019), there were competing preferences about the basis on which that right would be allocated.

#### BOX 1 ABOUT HERE

In October 2019, the OECD Secretariat circulated a proposal – a “unified approach” -- that was based on the commonalities between the three rival proposals (OECD 2019d: 5). The proposal was designed to cover highly digital business models and consumer-facing businesses, although precisely which ones was left open.

This compromise proposal was too far-ranging for the US (Finley and Johnston 2019; Parker 2019). In December US Treasury Secretary Steve Mnuchin (2019) wrote to his

counterparts in France, Italy, Spain, and the UK insisting that Pillar 1 be implemented on a “safe harbor” basis, which would make compliance by American TNCs voluntary (Finley and Johnston 2019; Nardon and Rust 2021: 6; Politi et al 2021; Stein 2021). Each TNC could choose, on a global basis, whether to be subject to Pillar 1 (OECD 2020c: 12). A “safe harbor” approach had not previously been raised (Finley and Johnston 2019; Parker 2019) and was unacceptable to those pushing to tax digital service providers (Finley and Johnston 2019; Parker 2019),<sup>28</sup> which led many to assume that Mnuchin’s demand was intended to scale back the OECD’s proposal.

If scaling back the talks was the US’s aim, it failed. In January 2020, the Inclusive Framework agreed to the unified approach (OECD 2020a). During the first half of 2020, in part influenced by the success of digital companies during the COVID-19 pandemic, the negotiations had again begun to focus on singling out digital companies.<sup>29</sup> Negotiators were discussing a British, French, Italian, and Spanish proposal to phase in Pillar 1 outcomes with the new tax structure to apply to automated digital services first (Fortnam 2020; Mnuchin 2020). This was unacceptable to the US. At the same time, the Europeans had rejected the US demand for implementing the agreement on a “safe harbor” basis (Mnuchin 2020; Nardon and Rust 2021: 6). At loggerheads with the Europeans, the US withdrew from the Pillar 1 talks in June 2020 (Mnuchin 2020).

The US’s withdrawal did not immediately halt progress. The Inclusive Framework released its “blueprint” for the Pillar 1 talks in October 2020. The blueprint, however, acknowledged that the scope of the new taxing rights remained to be settled (OECD 2020c: 12).

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<sup>28</sup> Video interview with a Commission official, 30 March 2023.

<sup>29</sup> “Before U.S. Walked Out, OCED Talks Were Focused on American Tech Giants,” *Inside U.S. Trade*, 38/26, 26 June 2020.

Many other issues also remained to be resolved and the negotiations stalled, failing to meet the deadline of an agreement by the end of 2020.

The US's withdrawal from the Pillar 1 talks came despite the continuing proliferation of unilateral DSTs and serious DST proposals (see Tables 1 and 2). Thus, the disruptive implications of unilateral DSTs for US technology companies alone are not enough to explain why the US eventually reached agreement (as acknowledged by Crasnic, Heering and Newman 2023).

The context in which the negotiations were (not) taking place deteriorated further after the US withdrew. Just before withdrawing in June, the US launched Section 301 negotiations against the DSTs that had been adopted by Austria, India, Italy, Spain, Turkey, and the UK and were being considered by Brazil, the Czech Republic, the EU, and Indonesia.<sup>30</sup> In July 2020, the USTR announced tariffs of 25 percent on selected French goods in response to France's DST, although it also announced suspending those tariffs for 180 days.<sup>31</sup> In January 2021, just as the Trump administration was leaving office, the USTR ruled that all of the DSTs that had been adopted did discriminate against US companies, clearing the way for the imposition of tariffs.<sup>32</sup> Not only had more countries adopted unilateral DSTs, but some of those rules would soon begin to bite. France announced that it would resume collecting taxes in December 2020 and the UK's digital tax was due to begin being collected in April 2021 (Simmons 2020). The Pillar 1 negotiations, therefore, were at an impasse and the context in which they were situated was fraught as the Trump administration left office.

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<sup>30</sup> *Federal Register*, 85/109, 5 June 2020: 34709.

<sup>31</sup> *Federal Register*, 85/137, 16 July 2020: 43292.

<sup>32</sup> See USTR "Section 301 – Digital Services Taxes" Available at: <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-digital-services-taxes>.

The negotiations were revived by the entry into office of the Biden administration. At the G20 Finance Ministers meeting in February 2021 US Treasury Secretary Janet Yellen dropped the Trump administration's insistence that Pillar 1 be implemented on a "safe harbor" basis. This move was viewed as a "major concession" and an indicator of US seriousness about reaching an agreement (Stein 2021). On 6 April 2021 the Biden administration tabled its proposal for concluding the talks in both pillars.<sup>33</sup> This proposal is widely seen as paving the way for the October agreement.<sup>34</sup>

Although the Biden administration's approach was much more constructive than its predecessor's, it allowed the Section 301 process to continue to run its course, culminating in determinations to impose tariffs of 25 percent on selected products from Austria, India, Italy, Spain, Turkey, and the UK in June 2021, although application of those tariffs was suspended for 180 days.<sup>35</sup> In addition, the US continued to stress that it "cannot accept any result that is discriminatory towards U.S. firms" (US Treasury 2021: 9). It also continued to argue that it is very difficult to establish clear principles to distinguish automated digital services from consumer-facing-businesses and from the rest of the economy (US Treasury 2021: 10). Rather, the US proposed restricting the scope of the new taxing rights to only the largest and most profitable TNCs regardless of industry classification or business model, although it was open to sector-based scope limitations if they were principled and based on fundamental policy mismatches (US Treasury 2021: 12). In short it proposed that the new provisions should apply to no more than 100 TNCs (US Treasury 2021: 12). The criteria it proposed for identifying

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<sup>33</sup> The US's April 2021 proposal suggests that the Biden Administration's primary interest was securing agreement in Pillar 2. The proposal begins with Pillar 2 and argues that Pillar 2 cannot be "fully successful absent a stable multilateral international tax architecture." It also notes that "Pillar 1 provides the opportunity to stabilize the architecture." It also acknowledges that the two pillars are linked by politics (US Treasury 2021: 7).

<sup>34</sup> Remarks by Ioana Petrescu, Thomas Rixen, and Pascal Saint-Amans, "Global Tax Coordination: Is There Hope?" The State of the Union 2021 - Europe in a Changing World, European University Institute, 6 May 2021.

<sup>35</sup> See, for example, *Federal Register*, 86/107, 7 June 2020: 30364.

TNCs within the scope of the agreement were a total revenue threshold and a profit margin threshold (US Treasury 2021: 15). The US proposal thus collapsed the scope and threshold questions, using the threshold to resolve the scope question.

In addition, the US continued to insist that unilateral DSTs be addressed, proposing a “standstill and rollback” approach (US Treasury 2021: 7). This proposal was broadly acceptable to the Europeans (Böcking et al 2021; Meyers 2021; Politi and Williams 2021). Sequencing, however, was controversial with the US wanting the rollback to come before implementation and the Europeans and the developing countries insisting, successfully, that they need repeal their unilateral DSTs only once Pillar 1 has been implemented.<sup>36</sup>

The negotiations progressed swiftly after the Biden administration’s proposal, although the developing countries were unhappy with restricting the agreement to only the 100 largest TNCs (G-24 2021a: 1). At the G7 Finance Ministers and Central Bank Governors meeting in June, the parties agreed to awarded taxing rights on at least 20 percent of profit exceeding a 10 percent margin for the largest and most profitable TNCs (G7 2021). By the July 2021 G20 Summit the agreement was broadly in place. At French insistence, the agreement was modified so that Amazon, which had profit margins below the threshold, would be included by capturing its respective business units, such as its the highly profitable Amazon Web Services (Smith-Meyer and Scott 2021). The United Kingdom sought to exclude its financial services sector from the agreement, but the US rejected such a carve-out (Scott and Birnbaum 2021).

The last area of contention in the Pillar 1 talks was over the percentage of multinationals’ profits that can be taxed in countries where they do business (Agyemang et al 2021). The July draft agreement proposed a range of 20 to 30 percent. Countries that are home to many TNCs

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<sup>36</sup> Video interview with a Commission official, 30 March 2023.

wanted the bottom of the range, while developing countries, which are hosts to but not homes of TNCs, sought 30 percent (G-23 2021b: 1). The French government supported a compromise rate of 25 percent, which was adopted in the final deal.

The main challenge of getting countries, particularly EU member states, on board with the final agreement had to do with issues to Pillar 2 rather than Pillar 1. The final Pillar 1 agreement seems to closely reflect the US's April proposal (see Box 2).

## BOX 2 ABOUT HERE

### *Pillar 2: American taxes changing European minds*

The Pillar 2 negotiations were considerably more straight forward, although still contentious. In addition, rather than pitting the US against Europe, the key cleavage was between the US and large EU member states on the one hand and small European states on the other.

The Pillar 2 negotiations were kick started by the Trump Administration 2017 tax reform, the Tax Cuts and Jobs Act (TCJA) (Lips 2020: 983). The tax reform did three things with significant bearing on the global tax negotiations. It lowered the US's corporate tax rate from 35 percent to 21 percent, greatly improving the US's position in global tax competition (Carpentieri et al 2019: 11; Stein 2021). More fundamentally, it changed the basis of US corporate income tax from a "worldwide" system, under which US TNCs were taxed on income earned abroad, although they could avoid the tax by not repatriating the profits (Carpentieri et al 2019: 10), to a "territorial" system (Boumans et al 2020: 1610; Carpentieri et al 2019: 10; IMF 2019: 53). In addition, the reform included some "novel measures of considerable importance" to the ongoing



global tax discussions (IMF 2019: 53): Global Intangible Low Taxed Income (GILTI); Foreign Derived Intangible Income (FDII); and the Base Erosion Anti-Abuse Tax (BEAT).

The switch to a territorial system of taxation meant that the US's approach to taxation was much more similar to that of the other OECD countries, which made finding common ground easier. The adoption of BEATS, which aimed to prevent US-based companies from shifting profits to low-tax jurisdictions both indicated discontent with the existing international tax regime and went beyond what had been agreed in BEPS (Lips 2020: 984). GILTI was even more important. It represented an important qualification to the shift to the territorial basis of taxation as it established a minimum tax rate of 10.5 percent on overseas income if no tax were paid abroad (IMF 2019: 53). This approach – establishing a minimum tax on overseas income – would provide the basis for the Pillar 2 agreement.

During 2018 Germany, in close coordination with France, tabled a proposal for a new minimum tax on corporate profits (OECD 2018c: 9; Soong 2018).<sup>37</sup> That proposal called for creating a backstop that would enable the home jurisdiction to tax the profits of its TNCs if the taxes rate host jurisdictions fell below an agreed threshold (Becker and Englisch 2021). This proposal, therefore, was very similar to the US's new GILTI (Soong 2018). As a result, the US was “supportive but unfazed” by the Franco-German proposal (Crapo 2021). One major advantage of this approach for high-tax economies was that defection in the form of tax competition would be muted; cutting one's tax rate would not attract foreign investment if the reduction would be offset at least partially by taxes collected by the TNC's home jurisdiction.

By early 2019 the Inclusive Framework was focusing on this approach (OECD 2019a: 2). The Pillar 2 blueprint in October 2019 proposed two rules to realize the objective of ensuring

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<sup>37</sup> “German FinMin Proposes Global Minimum Corporate Tax – Handelsblatt” Reuters, 19 October 2018.

that large TNCs pay a minimum level of tax regardless of where they are headquartered or the jurisdictions in which they operate (OECD 2020d: 14): the income inclusion rule (IIR) and the undertaxed payments rule (UTPR) acting as a backstop, applying only where a TNC's constituent entity was not subject to the IIR. These are the Global Anti-Base Erosion (GloBE) rules. Under the proposal, the rules would apply only to businesses that make at least €750 million in annual gross revenue.<sup>38</sup> Although the US was still keen to pursue the Pillar 2 talks (Mnuchin 2020), the linkage between the two pillars meant that the Pillar 2 talks stalled in the wake of the US withdrawal from the Pillar 1 discussions.

The Biden Administration's April 2021 proposal therefore jumpstarted the Pillar 2 talks. Rather than advance a proposal for Pillar 2 (as it had for Pillar 1), the US Treasury's intervention focused on the domestic tax reforms that the administration hoped to implement (US Treasury 2021: 5-6). The Biden Administration appears to have viewed an international agreement on minimum corporate tax as creating room for to raise the US corporate tax rate without having to worry about being undercut by other countries (Nardon and Rust 2021: 7; Politi et al 2021; Rappeport 2021; Stein 2021; Tankersley and Rappeport 2021).<sup>39</sup> The US indicated that its intention was to raise the US the GILTI minimum tax on foreign earnings to 21 percent (US Treasury 2021: 5). This was widely taken to be the US's preference for the minimum tax rate to be agreed in the Inclusive Framework. The appropriate minimum tax rate would become the central issue in the negotiations.

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<sup>38</sup> This was the threshold set under the BEPS for the country reporting requirement (OECD 2020c: 58). Companies above this threshold must provide an annual return that reports key financial information by jurisdiction.

<sup>39</sup> This was certainly the interpretation of Republicans in Congress, who objected to the administration's proposal on the grounds that it was trying to secure domestic political objectives through international negotiations (see Crapo and Brady 2021).

Although the US's 21 percent proposal was welcomed by the large EU member states, notably France, Germany and Italy (Politi et al 2021),<sup>40</sup> it faced stiff opposition from low-tax jurisdictions, not least Ireland (Rappeport 2021). The Biden administration's intention to raise the GILTI rate threatened to erode the advantages for low-tax European countries with respect to US TNCs, which are particularly important to them and thus put pressure on them to compromise (Barnes quoted in Smith-Meyer and Scott 2021). The credibility of this threat, however, diminished as Biden's ambitious Build Back Better agenda ran into trouble in the US Senate. In an effort to keep the talks going, the US agreed in May to language that the minimum global tax rate would be "at least" 15 percent (Rappeport 2021).

The US and the other higher-tax jurisdictions ultimately had to accept a global minimum tax of 15 percent in order to get Ireland to sign on to the agreement (Giles et al 2021; Rappeport 2021; and see Box 3). Hungary secured a 10-year transition period for its low rate of tax for tangible investments in its jurisdiction (Giles et al 2021). These small EU member states exercised a degree of outsized importance because they could keep the EU from implementing the agreement collective, which was the EU member states' first preference (Agyemang et al 2021).<sup>41</sup> Thus, small EU member states were able to leverage the economic importance of the EU to secure an international agreement with a lower global tax rate than that sought by the US and preferred by the larger EU member states.

### BOX 3 ABOUT HERE

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<sup>40</sup> "France and Germany Back 21% Minimum Corporate Tax Proposal" *Deutsche Welle*, 27 April 2021.

<sup>41</sup> Video interview with a Commission official, 30 March 2023.

## Conclusions

These global tax negotiations show clear evidence of reverberation across the Atlantic. Developments on each side of the Atlantic created incentives for the other to reach agreement. In Pillar 1, European digital services taxes threatened a chaotic system of multiple taxation for large US digital service providers giving the US an incentive to reach an agreement. Crucially, the creation of a market nexus for taxing TNCs changed the nature of tax competition enabling governments to compete by raising taxes (on revenue from consumers) not just by lowering them (on profits). In Pillar 2, the Trump tax reform advanced a new approach that undermined the benefits to US TNCs of assigning their profits to low-tax jurisdictions provided the impetus for a common solution. The Biden administration's intention to raise the GILTI rate threatened to erode the advantages for low-tax European countries with respect to US TNCs, putting pressure on them to compromise although the credibility of the US's threat was undermined by the difficulty adopting the Biden administration's ambitious agenda. Thus uncoordinated developments on each side of the Atlantic changed the reversion points for key actors on the other, paving the way for an agreement. Securing that agreement, however, hinged on the linking of the two issues. Securing cover for domestic corporate tax increases gave the Biden administration an incentive – in addition to impeding the imposition of unilateral DSTs – to return to the Pillar 1 talks with a proposal that paved the way for a remarkable political agreement.

Despite the extensive literature on the EU's role in governing the global digital economy, the EU was absent in global tax negotiations. Its inability to agree common positions on either digital services taxes or corporate taxation due to disagreements among its member states prevented it from being a protagonist. It, nonetheless, shaped the outcome of the Pillar 2

negotiations, albeit largely inadvertently, by amplifying the importance of its small, low-tax member states. This paper, therefore, provides a cautionary note both about the EU's ability to shape global rules for the digital economy and its influence always being progressive.

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**Table 1 Key developments**

	<i>OECD/G20</i>	<i>US</i>	<i>EU and its member states</i>	<i>Rest of the World</i>
1/17	Inclusive Framework renewed TFDE's mandate to work on tax and digitalization			
3/17	G20 Finance Ministers requested TFDE deliver interim report			
7/17			Council High Level Working Party on tax issues launched	
9/17			Finance ministers from 10 EU member states call for an "equalization tax" on the turnover generated in Europe by the digital companies Commission communication on taxation in the digital single market	
12/17		Tax reform adopted		
3/18	Interim report		Commission DST proposal	
6/18			Germany and France propose effective minimum tax as part of EU reform	
10/18			German-French proposal on global minimum tax	

12/18			ECOFIN Council not endorse EU DST	
1/19	Policy note – two pillar approach			G-24 proposal on significant economic presence and profit attribution
3/19			French DST proposal	
5/19	Program of work agreed			
7/19			France implemented DST	
10/19	“Unified Approach” proposed	Launch of 301 investigations of French DST		
11/19			Czech DST proposal	
12/19		301 finding against French DST US “safe harbor” proposal for Pillar 1		
1/20	“Unified Approach” approved		Austria and Italy implemented DSTs France suspended DST collection	
3/20				India and Turkey implement DSTs
4/20				UK implements DST
5/20				Brazil DST proposal
6/20		Launch of 301 investigations of DSTs: Austria, Brazil, the Czech Republic, the EU, India, Indonesia, Italy, Spain, Turkey, and the UK	Belgian DST proposal	

		US withdrew from Pillar 1 talks		
7/20		Announcement of 25% tariffs on selected products from France.		
10/20	“Blueprints” published			
11/20			France resumed DST collection	
1/21		301 findings against Austrian, Indian, Italian, Spanish, Turkish, and UK DSTs Joe Biden inaugurated	Spain implemented DST	
4/21		US proposal		
6/21	G7 Finance Ministers and Central Bank Governors agreement	Announcement of 25% tariffs on selected products from Austria, India, Italy, Spain, Turkey, and the UK		
7/21	Statement on the Two-Pillar Solution ...			
10/21	Statement on the Two-Pillar Solution ... with Detailed Implementation Plan adopted			

**Table 2 Digital services taxes and similar measures effective or adopted as of mid-2020**

<i>Jurisdiction</i>	<i>Implemented</i>	<i>Threshold</i>	<i>Target</i>	<i>Rate</i>
<b>France</b>	January 2019	Global turnover: €750 million+, and National turnover of at least €25 million	Online advertising, the management and sale of user data for advertising and the connection of users through digital platforms	3%
<b>Hungary</b>	July 2019	In-country turnover: HUF 100 million	Advertising revenue	7.5%
<b>Italy</b>	January 2020	Global turnover: €750 million+, and National turnover of at least €5.5 million	Online advertising, allow users to buy/sell goods and services, transmission of user data	3%
<b>Austria</b>	January 2020	Global turnover: €750 million+, and National turnover of at least €25 million	Online advertising	5%
Tunisia	January 2020		Apps and digital services	3%
Turkey	March 2020	Global turnover: €750 million+, and National turnover of at least TRY 20 million	Online services including advertisements, sales of content, and services on social media websites	7.5%
UK	April 2020	Global turnover: €500 million+, and National turnover of at least £25 million	Social media platforms, internet search engine, online marketplaces	2%
India <sup>42</sup>	April 2020	In-country revenue of rupee 20 million	Online goods and services	2%
Indonesia <sup>43</sup>	July 2020		Intangible goods and services transacted through an electronic system	10%

Note: There is some disagreement among sources. I have taken OECD 2020e as the source of record. Bold indicates EU or EU member state

Source OECD 2020e: 181-2. Additional details, unless otherwise specified, from R. Asquith, “Digital Services Taxes – Global Tracker,” 12 August 2022, available at: <https://www.vatcalc.com/global/digital-services-taxes-dst-global-tracker/>. Accessed 24 March 2023.

<sup>42</sup> The US was concerned about India’s 2020 expansion of its 2016 digital advertising tax. This expansion the USTR considers a digital services tax (USTR 2021-I)

<sup>43</sup> <https://conventuslaw.com/report/indonesia-digital-services-tax/#:~:text=Effective%201%20July%202020%2C%20the,electronic%20system%20to%20Indonesian%20customers.>

**Table 3 Jurisdictions considering digital services taxes or similar measures as of mid-2020**

<i>Jurisdiction</i>	<i>Measure</i>	<i>Rate (if known)</i>
Australia	Tax on digital services or similar measure in the event of no international solution	
Brazil	Digital Services Tax	1 to 5%
<b>Czech Republic</b>	DST or similar measure at EU or national level in the event of no international solution	7%
<b>EU</b>	Tax on digital services or similar measure at EU level in the event of no international solution	3%
Israel	Tax on digital services or similar measure in the event of no international solution	3 or 5%
Kenya	Digital Services Tax	1.5%
<b>Latvia</b>	DST or similar measure at EU or national level in the event of no international solution	3%
New Zealand	Tax on digital services or similar measure in the event of no international solution	3%
Norway	Tax on digital services or similar measure in the event of no international solution	
Philippines	Digital Services Tax	
Russia	Tax on digital services or similar measure in the event of no international solution	
<b>Slovenia</b>	DST or similar measure at EU or national level in the event of no international solution	3%
<b>Spain</b>	DST or similar measure at EU or national level in the event of no international solution	3%
Zimbabwe	Tax on digital services or similar measure	

Note: There is some disagreement among sources. I have taken OECD 2020e as the source of record. Bold indicates EU or EU member state

Source OECD 2020e: 181-2.

**Box 1 Tax reallocation proposals (May 2019)**

User participation	Would arise based on the value created by certain highly digitalized businesses through developing an active and engaged user base and soliciting data and content contributions from them.
Marketing intangibles	Would arise based on value created by intangibles that relate to marketing activities, aid in the commercial exploitation of a product or service and/or have an important promotional value for the product concerned. (e.g., trademarks, customer lists, customer relationships, and proprietary market and customer data that is used or aids in marketing and selling goods or services to customers).
Significant economic presence	Would arise when a non-resident enterprise has a significant economic presence on the basis of factors that evidence a purposeful and sustained interaction with the jurisdiction via digital technology and other automated means.

Source: OECD 2019b: 9, 11, 16



**Box 2 The Pillar 1 agreement**

- Applies to transnational corporations (TNCs) with a global turnover above €20 billion and a level of profitability above 10% (profit before tax divided by revenue)
  - TNCs in the financial services and extractive industry sectors are exempted
- Taxing rights over 25% of TNCs' residual profits – profits in excess of 10% of revenue – are reallocated to the relevant market jurisdictions.
  - TNCs must generate at least €1 million in revenue from that jurisdiction. For jurisdictions with GDPs below €40 billion, this threshold is set at €250,000.
- Will establish a simplified and streamlined approach specifying how to apply the 'arm's length principle' to in-country baseline marketing and distribution activities.
- Abolish and standstill of DSTs and similar measures under the Multilateral Convention (MLC).
  - No new DSTs or other relevant similar measures may be enacted from 8 October 2021 to 31 December 2023.

Source: Based on Szczepański 2019: 7

**Box 3 The Pillar 2 agreement**

- Applies to all companies with an annual revenue above €750 million.
- Domestic Global anti-Base Erosion (GloBE) rules
  - *Income Inclusion Rule (IIR)*, which introduces a top-up tax on a parent entity in reference to low-taxed income of any of its constituent enterprises located in a low-tax jurisdiction. The global minimum tax rate is 15%.
  - *Undertaxed Payment Rule (UTPR)*, which denies tax deductions or requires an equivalent adjustment (a top-up tax), for example, when an enterprise makes payments back to its parent company established in a low-tax jurisdiction.
- Treaty-based rule
- *Subject to tax rule (STTR)*, which requires all jurisdictions applying a nominal corporate income tax rate below 9 % (to interest, royalties and a defined set of other payments) to incorporate the STTR into their bilateral treaties with developing countries that are also members of the Inclusive Framework.

No new DSTs or other relevant similar measures may be enacted from 8 October 2021 to 31 December 2023.

Source: Based on Szczepański 2019: 7