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International Taxation, Globalization, and the Economic Digital Divide

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1. Introduction

The past decade has witnessed the creation of a new international tax regime (ITR). The original ITR was created a century ago by the League of Nations. Until the 1980s, it functioned reasonably well, and prevented most instances of double taxation and double non-taxation by allocating cross-border income between home and host jurisdictions based on a compromise reached in 1923.

However, since the advent of globalization in the 1980s and digitalization in the 1990s, the original ITR ceased to function as intended. The main problems were the increased mobility of capital related to increased intangibility and digitalization, together with a relaxation of capital controls and increased tax competition.

These developments posed a problem for countries that wished to leave their borders open to reap the benefits of globalization and to engage in tax competition to attract investment. The outcome was a significant fall in tax revenues that threatened the social safety net of the modern welfare state.

The trilemma of open borders, tax competition, and satisfying voters' demand for social insurance culminated in the financial crisis of 2008-9, where many countries were forced to implement austerity measures at the same time that parliamentary hearings, leaks, and media reports revealed that rich individuals and large corporations were paying very little tax on cross-border income. The result over the past decade has been the creation of a new ITR designed to curb both tax evasion by the rich and tax competition.

The key question going forward is how will the new ITR deal with inter-nation equity i.e., the economic digital divide. In what follows, I will first discuss the decline of the original ITR from 1980 to 2009, then the creation of the new ITR from 2010 on, and finally the implications of the new ITR for the economic digital divide.

2. Globalization and the Decline of the International Tax Regime, 1980-2009[1]

[1] This section and the following one are based in part on Avi-Yonah, *Globalization, Tax Competition and the Fiscal Crisis of the Welfare State: A Twentieth Anniversary Retrospective,* in Thinker, Teacher, Traveler: Reimagining International Tax, Essays in Honor of H. David Rosenbloom (Georg Kofler, Ruth Mason Alexander Rust, eds.), 39 (2021)

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Before the 1980s, the international tax regime (ITR) functioned as an adequate protective device against tax competition and therefore protected the social safety net. The ITR is based on two principles, the benefits principle and the single tax principle. The benefits principle states that active (business) income should be taxed primarily by the source jurisdiction and passive (investment) income should be taxed primarily by the residence jurisdiction. The single tax principle states that the goal of the ITR is to prevent both double taxation and double non-taxation, and therefore that the secondary taxing jurisdiction (residence for active income and source for passive income) should impose tax in situation where the primary taxing jurisdiction does not do so.[2]

Before the 1980s, residence jurisdictions were able to impose tax on most passive income because exchange controls made it difficult to invest offshore, and because source jurisdictions imposed withholding taxes on such income. Active income was in turn taxed by source jurisdictions because it was less mobile, and CFC rules imposed residence-based tax on it in cases where it was more mobile and therefore escaped source-based taxation.[3]

As "Globalization" explains in detail, this situation changed in the 1980s and 1990s. Globalization led most countries to relax their exchange controls and portfolio investments overseas became common. In addition, starting with the US in 1984, most OECD members unilaterally abolished withholding taxes on outbound interest payments, thereby aiding and abetting tax evasion by residents of other OECD members. For active income, the increased mobility of multinational enterprises (MNEs) led source jurisdictions to offer targeted tax holidays, and the fear of tax competition for headquarters of MNEs led residence jurisdictions to relax their controlled foreign corporation (CFC) rules. The result was that neither the residence jurisdiction of the multinational nor the production jurisdiction typically taxed its income on a current basis. The only jurisdiction that was not subject to this type of tax competition was the market jurisdiction, but after the creation of the Internet and the rise of the digital economy in the 1990s, it became possible for MNEs to earn billions in income from market jurisdictions without being subject to tax because of the permanent establishment limitation (which states that a country may not tax active income in the absence of a physical presence of the multinational).[4]

In the first decade after I wrote "Globalization" things only got worse. On the passive income front, it became possible to avoid withholding taxes not just on interest (because of unilateral abolition), royalties (because of the treaties) and capital gains (because of the source rules), but also on portfolio dividends because of the rise of derivatives, which enabled portfolio investors to receive the economic equivalent of the dividend without being subject to withholding taxes. In addition, it became clear that limits on the exchange of information such as bank secrecy, dual criminality, and the requirement that

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[2] Avi-Yonah, *International Taxation of Electronic Commerce,* 52 Tax L. Rev. 507 (1997); Avi-Yonah, *Who Invented the Single Tax Principle? An Essay on the History of US Treaty Policy*, 59 NYLS L Rev 305 (2015).

[3] Avi-Yonah, *Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State*, 113 Harv. L. Rev. 1573 (2000) ("Globalization").

[4] Globalization, supra.

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information only be exchanged on request meant that in most cases residence jurisdictions could not effectively tax foreign source portfolio income (earned primarily by the rich). In 2005, Joe Guttentag and I estimated that the US was losing $50 billion a year to such tax evasion, and that most other countries were in worse shape because the shadow economy was larger.[5]

On the active income front, the decade 1998-2008 saw the enactment of check the box and IRC section 954(c)(6), which meant that the US CFC rules became incapable of enforcing residence based taxation of US-based multinationals. Deferral, which is defined as a tax expenditure in the US, exploded from less than $20 billion in the mid 1990s to the second largest tax expenditure in the US budget, worth $1.348 trillion for the decade 2017-2026.[6] This was justified in the name of preserving the competitiveness of US-based MNEs, but it resulted in shifting of massive amounts of income from the US to low tax jurisdictions: By 2017 US MNEs had close to $3 trillion in profits "trapped" in low-taxed jurisdictions offshore. Ireland, Luxembourg, and many other jurisdictions enacted low-tax regimes designed to attract such active income, as well as the headquarters of multinationals.[7] Over thirty US-based MNEs "inverted" to Ireland and other low-taxed jurisdictions, primarily in order to reduce the US tax rate on US source income and to enable the distribution of low-taxed foreign-sourced income to shareholders.[8]

Thus, a decade after "Globalization", the problem it described was significantly worse than when it was written. Both the individual income tax (designed primarily to preserve progressivity) and the corporate income tax (designed primarily to regulate MNEs) were under tremendous pressure, and the resulting decline in revenues and the inability of most jurisdictions to raise consumption taxes (because they were already prohibitively high) meant that the social safety net was under severe pressure as well. And then came the financial crisis of 2008 and the Great Recession, and all hell broke loose.

3. The Creation of the New International Tax Regime, 2010-2022

The crisis and the Great Recession that followed led to millions losing their jobs and their homes, and frequently their families as well. Moreover, in Europe the governments reacted to the pressure on the Eurozone by imposing austerity and sharply cutting the social safety net. While the Obama Administration made no such cuts, and the Affordable Care Act was a meaningful move toward bolstering the safety net, the size of the US fiscal stimulus was too limited, and while the banks were saved millions of Americans suffered a decade of low growth and unemployment.[9]

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[5] Avi-Yonah, "Closing the International Tax Gap," in Max B. Sawicky (ed.), Bridging the Tax Gap: Addressing the Crisis in Federal Tax Administration (2005), 99 (with J. Guttentag).
[6] US Treasury, Tax Expenditure Budget, 2017.
[7] See Edward Kleinbard, "Stateless Income," 11 *Florida Tax Review* 699 (2011) and Edward Kleinbard, "The Lessons of Stateless Income," 65 *Tax Law Review* 99 (2011).
[8] Avi-Yonah, *Inversions and Competitiveness: Reflections in the Wake of Pfizer-Allergan*, 41 Int'l Tax J. 39 (2015) (with O. Marian).
[9] Avi-Yonah, *Be Careful What You Wish For: Reducing Inequality in the 21st Century*, 116 Mich.L. Rev. 1001 (2018) (with O. Avi-Yonah).

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The political reaction on both sides of the Atlantic was dramatic. It led directly to Brexit, the election of Donald Trump in the US and of other right-wing populists in the EU, and the prospect of serious limits to globalization in the form of immigration restrictions, tariffs, and the re-enactment of exchange controls.[10] The nation state was reasserting itself, and one of the instruments it used was taxation.[11] In the US the focus on taxation was limited to the first couple of years after the crisis, since the Republican takeover of the House in 2010 meant that no tax measures could be enacted before 2017. But in Europe austerity meant a continued political focus on taxing both the rich and MNEs. In the US, the "Double Irish Dutch Sandwich" was once described in detail in 2010 on the NBC Evening News, but the topic faded thereafter. In Europe, taxes became front-page matter for the whole period after 2008, and this political attention is still ongoing.

The result has been a series of developments that led to a significant enhancement in the ability of the ITR to capture cross-border income.

On the passive income front, a key development was the UBS scandal of 2006-8, which led directly to the enactment of FATCA in 2010. The UBS hearing before the PSI revealed that UBS sent bankers directly to the US to solicit rich individuals to set up shell companies in the Caymans and then reinvest the money through UBS into the US. UBS claimed that even though it was a "qualified intermediary" (QI) and knew who the real owner of the shells was, it was justified under the QI regulations in relying on a form W8BEN that stated that the owner of the income was the Caymans shell and that it was foreign.[12]

The result was the enactment of the Foreign Account Tax Compliance Act (FATCA) in 2010, which imposes a 30% withholding tax on the US income of any foreign financial institution (FFI) that knows or has reason to know it holds accounts of US residents or citizens and does not reveal such information to the IRS. Because FFIs are frequently prohibited from directly revealing financial information to the IRS, the Obama Administration negotiated over 100 intergovernmental agreements (IGAs) that enable the FFI to turn over the information to its own government, which then exchanges it with the IRS under tax treaties and tax information exchange agreements (TIEAs). Many of the IGAs are reciprocal, so that the US is also obligated (at least on paper) to exchange information about foreign residents.

[10] See Kim Clausing, Open: The Progressive Case for Free Trade, Immigration, and Global Capital (2019).

[11] "The current political priorities in international taxation highlight the need for ensuring that tax is paid where profits and value are generated. It is thus imperative to restore trust in the fairness of tax systems and allow governments to effectively exercise their tax sovereignty." COUNCIL DIRECTIVE (EU) 2016/1164 of 12 July 2016 (ATAD).

[12] Avi-Yonah, Testimony on Banking Secrecy Practices and Wealthy American Taxpayers, US House Committee on Ways and Means, Subcommittee on Select Revenue Measures (March 31, 2009); Avi-Yonah, Testimony for Hearing on Offshore Tax Evasion, U.S. Senate Finance Committee (May 3, 2007); Avi-Yonah, Testimony for Hearing on Offshore Transactions, U.S. Senate Permanent Subcommittee on Investigations (Aug. 1, 2006).

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The IGAs in turn made countries develop a Common Reporting Standard (CRS) for the automatic exchange of financial information, and the OECD then negotiated a Multilateral Agreement on Administrative Cooperation in Tax Matters (MAATM), which relies on the CRS to provide for automatic exchange without the ability to rely on bank secrecy or dual criminality provisions. Most countries in the world, and all OECD members except the US have ratified the MAATM.[13]

The result has been that it is much more difficult to evade income taxation now than it was ten years ago. A potential evader has to worry that in almost every country information about her income may be collected and transmitted to her residence jurisdiction. In addition, she has to worry that the information may either be leaked by a whistleblower (as in the Panama Papers) or hacked (as in the Paradise Papers). I would estimate that FATCA alone has led to a significant decrease in the international tax gap in the US, well below my $50 billion estimate from 2005.

On the active income front, there have also been dramatic developments in the last decade. The first was the OECD Base Erosion and Profit Shifting (BEPS 1.0) project (2013-15), which was led by the G20 and resulted in fifteen action steps designed to enhance both source and residence based taxation of active income. For example, BEPS 1.0 Action 2 bars a deduction for payments to hybrid entities, thereby eliminating the impact of check the box.[14]

BEPS 1.0 was introduced in the EU as the Anti-Tax Avoidance Directive (ATAD), which generally came into effect in January 2019 and which among other measures requires all EU members to adopt strict CFC rules (e.g., generally requiring residence-based taxation if the effective tax rate of the source jurisdiction is below 50% of the tax rate in the residence jurisdiction). This measure, in addition to the enactment of BEPS 1.0 Action 2[15], means that it is much harder now to shift profits artificially out of EU member states.[16] Another important measure in BEPS 1.0 and ATAD is the primary purpose test (PPT), which requires that all tax treaties incorporate language that the treaty will not apply to transactions if a primary purpose of the transaction was tax avoidance.[17]

Until 2017, it could be argued that the US was a laggard in terms of combating tax avoidance, because it took the position that it was already compliant with BEPS 1.0, rejected the PPT, and did not sign the MAATM. But the 2017 tax reform (TCJA) dramatically changed that. TCJA includes three measures that significantly increase

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[13] Avi-Yonah, *And Yet It Moves: Taxation and Labor Mobility in the Twenty-First Century*, 67 Tax L. Rev. 169 (2014); Avi-Yonah, *IGAs vs. MAATM: Has Tax Bilateralism Outlived Its Usefulness?* 66 CCH Global Tax Weekly 11 (Feb. 13, 2014) (with G. Savir).

[14] See Avi-Yonah, *Evaluating BEPS: A Reconsideration of the Benefits Principle and Proposal for UN Oversight*, 6 Harv. Bus. L. Rev. 185 (2016) (with H. Xu).

[15] See COUNCIL DIRECTIVE (EU) 2017/952 of 29 May 2017 (ATAD II), applying the anti-hybrid rules to third countries.

[16] ATAD, supra. Another measure included in ATAD is a 30% of EBITDA limit on interest deductions, similar to IRC 163(j).

[17] See Avi-Yonah, *BEPS, ATAP and the New Tax Dialogue: A Transatlantic Competition?* 46 Intertax 885 (2018) (with G. Mazzoni)

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taxation of US-based as well as foreign-based MNEs. First, TCJA imposed a one time, hefty transition tax on the $3 trillion of past, accumulated earnings of US-based MNEs. Second, while TCJA provided for an exemption for certain future dividends from CFCs to their US parents, this exemption is strictly limited to a deemed 10% return on tangible property, which for most US-based MNEs is close to zero (because they rely heavily on intangibles). For any amount that exceeds this deemed return, TCJA imposes a current minimum tax of 10.5% (13.25% if foreign tax credits are included) on worldwide earnings of the MNE. Third, TCJA imposes an alternative minimum tax of 10% on both US- and foreign based MNEs by disregarding interest, royalty and some other payments from the US to the related foreign entity.[18]

The result of these developments (BEPS 1.0, ATAP ad TCJA) is that both US and foreign MNEs are likely to be subject to significantly higher levels of tax on cross-border active income than they were before 2008.[19]

To give an example: The structure used by most US-based MNEs before 2017 for their foreign operations was to have a top level CFC in a low-tax jurisdiction, with lower-tier CFCs in high tax jurisdiction. The parent would transfer intellectual property to the top CFC via a cost sharing agreement, and the top CFC would in turn would license the IP to the lower-tier CFCs. The key to this structure was that under check the box, only the top CFC would be treated as a corporation, while all the lower CFCs would be disregarded (i.e., treated as branches of the top CFC).[20] As a result, while for foreign tax purposes deductible royalties from the lower CFCs to the top CFC would be effective in shifting profits to the low-tax jurisdiction of the top CFC (and not subject to withholding under treaties), for US tax purposes these royalties did not exist and so did not trigger a deemed dividend to the US parent. In addition, deductible cost sharing payments could be made from the US parent to the top CFC.

This structure does not work any more, for three reasons. First, under BEPS Action 2, as implemented by the EU ATAP, the royalties from the bottom CFCs to the top CFC would not be deductible because they are to a hybrid entity.[21] Second, the cost sharing payments from the US parent to the top CFC would be subject to the BEAT minimum tax. And finally, the top CFC as well as all the disregarded entities below it would be subject to the GILTI minimum tax (10.5% or 13.25% with foreign tax credits) on a current basis.[22] The result is that US-based MNEs need to restructure their foreign operations and are likely to be subject to a significantly higher worldwide effective tax rate than before 2018, despite

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[18] Avi-Yonah, *BEPS, ATAP, supra.*

[19] See Clausing, *Profit Shifting Before and After the Tax Cuts and Jobs Act* (2019) ("Estimates suggest that, once adjustment to the legislation is complete, it should reduce the U.S. affiliate corporate tax base in haven countries by about 20 percent, increasing the tax base in both the United States and in higher-tax foreign countries.")

[20] Under IRC 954(c)(6), the payments would not trigger a deemed dividend even if they were not disregarded.

[21] The same rule applies in the US after TCJA; see IRC 267A.

[22] This assumes, as would be true in most cases, that the top CFC has no tangible assets that would entitle the parent to exempt dividends under IRC 245A.

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the fact that both check the box and IRC section 954(c)(6) have not been affected by the TCJA.

Despite these achievements, BEPS 1.0 had some acknowledged limits. Specifically, consensus was not reached about taxing the digital economy (i.e., primarily the US and potentially the Chinese tech giants). In addition, transfer pricing was not meaningfully reformed and the PE threshold and arm's length standard (ALS) remained in place despite both being obsolete in a digital economy context. In addition, relatively few of the BEPS 1.0 actions were minimum standards that had to be adopted by all participants.

The political pressure to do something about BEPS in the EU and in the developing world has not lessened, as manifested by the fast rise and adoption of digital services taxes (DSTs) and equalizations levies (ELs) designed to bypass the treaty limits on taxing the digital economy. This in turn has led the OECD and G20, working with an inclusive framework of over 100 countries, to propose BEPS 2.0, which has been finalized in October 2021.[23]

BEPS 2.0 consists of two pillars, Pillar One and Pillar Two. Pillar One is designed to address the problem of taxing corporate income at source in accordance with the Benefits Principle (BP). Pillar One allows source jurisdictions to tax a limited amount of income without regard to the PE and ALS limits, and to tax an additional amount in the market jurisdiction subject to the PE and ALS limits. Pillar Two then directly implements the STP by ensuring a minimal level of tax in the residence jurisdiction if the source country tax is insufficient, and if that is not enough, by ensuring a minimal level of tax in the source jurisdiction of the residence country tax is insufficient. These provisions are based on but represent an improvement over GILTI and the BEAT.

The main conceptual innovation in Pillar one is Amount A, which is 25% of residual profit (defined as profit in excess of 10% of revenue) of in-scope MNEs (MNEs with revenues over 20 billion euros and a pre-tax profit margin of 10%). Amount A will be allocated to market jurisdictions with nexus (at least 1 million euros in revenue) using a revenue-based allocation key, i.e., a single factor sales formula.[24]

Amount A eliminates the two features of the international tax regime that have long been identified as obsolete: The requirement that a MNE have a permanent establishment (PE) in a source jurisdiction and the arm's length standard (ALS) for calculating the amount of income attributable to the PE. The PE requirement is obsolete in a word in which MNEs can earn billions in a market jurisdiction with no physical presence. The ALS is unworkable for the residual profits of MNEs (defined here as profits above 10%) because there are typically no comparables, so that a formula is the best way to allocate them. The

[23] OECD, Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (8 October 2021) (the "Statement").

[24] These features are similar to the proposals in Avi-Yonah, Electronic Commerce, supra; Avi-Yonah, *Between Formulary Apportionment and the OECD Guidelines: A Proposal for Reconciliation*, 2 World Tax J. 3 (2010); Avi-Yonah, *Allocating Business Profits for Tax Purposes: A Proposal to Adopt a Formulary Profit Split*, 9 Fla. Tax Rev. 497 (2009) (with K. Clausing and M. Durst).

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PE requirement and the ALS were both introduced into the international tax regime at an early stage, primarily through the work of Mitchell Carroll in the 1930s. It is high time for both to go in a way that ensures that large MNEs like Amazon, Apple, Facebook and Google pay tax in the source country they derive billions of profits from.

Amount A is fully consistent with the Benefits Principle. While it can be argued that residence country should also get a share since typically the algorithms that underlie the business model were developed there, this is reflected by the fact that 75% of the residual profit is not taxed in the market jurisdiction and therefore should be taxed in other jurisdictions based on Pillar Two.

Pillar Two fully implements the single tax principle (STP). The STP was already envisaged in the original League of Nations Model from 1927 but was first implemented in the 1960s and then gradually accepted (with some steps back like the US portfolio interest exemption in 1984 and check the box in 1997) and implemented in BEPS 1.0 (2013-15) and the TCJA (2017).[25]

The IIR reflects the ability of residence countries to implement the STP by taxing their MNEs on a residence basis. Since 95% of large MNEs are resident in G20 countries, this is expected to be highly effective. The UTPR and STTR are designed to enable residual source taxation when residence taxation is ineffective.

The minimum tax rate of 15% is low but was the best that can be expected from including so many countries. The G20 can be expected to use a higher rate for the IIR, especially if the US takes the lead in raising the GILTI rate. The substance carve out is unfortunate (since it allows for some double non-taxation in violation of the STP) but is quite limited.

Together with the CRS regime that implements the STP for individuals, Pillar Two will ensure that the STP will apply to large MNEs as well.

4. The New International Tax Regime and the Economic Digital Divide

The key question in regard to the new ITR is how it will apply to inter-nation equity, i.e., the economic digital divide. Specifically, how will the new ITR apply to developing countries?

As far as tax evasion and the CRS regime are concerned, the answer is clearly that the new ITR will help developing countries curb massive tax evasion by their rich residents. As documented by recent leaks like the Paradise Papers and the Pandora Papers, rich individuals in the developing world are very prone to use tax havens to hide their income from

[25] For antecedents to Pillar Two see Avi-Yonah, Electronic Commerce, supra; Avi-Yonah, *Who Invented the Single Tax Principle? An Essay on the History of US Treaty Policy*, 59 NYLS L Rev 305 (2015); Avi-Yonah, *Stanley Surrey, the 1981 US Model, and the Single Tax Principle*, 49 Intertax 729 (2021) (with G. Mazzoni).

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investments in developed countries from the tax administration. CRS should significantly limit this possibility, although it is not enough. Despite CRS and MAATM, I do not think the solution can depend entirely on exchange of information and residence based taxation. There are too many residence countries to cooperate effectively, and there will always be some non-cooperative tax havens to attract evaders. But the key point is that portfolio investments are limited to a small number of large jurisdictions. If the US, EU and Japan could cooperate to re-institute withholding taxes on interest, a large part of the problem could be resolved.[26]

In regard to BEPS 2.0 and the two Pillars, the answer is more complicated. Pillar 1 shifts some of the tax revenue from where goods and services are produced to where they are consumed. This will help large developing countries like China and India but not smaller developing countries that are not a large market jurisdiction. However, Pillar 1 is unlikely to harm developing countries because they will remain able to tax MNEs based on the location of production (75%) as well as sales (25%)

Pillar 2 is potentially more problematic because it eliminates the ability of developing countries to engage in tax competition by setting the minimum corporate tax rate at 15%, and by giving primacy to the IIR, which is based on residence and therefore favors developed countries where most MNEs are resident. However, developing countries should still be able to tax MNEs based on their local production activities and such taxes will be creditable against the IIR.

The deeper question is whether Pillar 2 limits developing countries' autonomy by curbing tax competition.[27] The standard advice by economists to small open economies is that they should refrain from taxing foreign investors, because such investors cannot be made to bear the burden of any tax imposed by the capital importing country. Therefore, the tax will necessarily be shifted to less mobile factors in the host country, such as labor and/or land, and it is more efficient to tax those factors directly.

But while this argument seems quite valid as applied to portfolio investment, it seems less valid in regard to FDI, for two reasons. First, the standard advice does not apply if a foreign tax credit is available in the home country of the investor, which frequently would be the case for FDI. Second, the standard advice assumes that the host country is small. However, an extensive literature on multinationals suggests that typically they exist in order to earn economic rents. In that case, the host country is no longer "small" in the economic sense. That is, there is a reason for the investor to be there and not elsewhere. Therefore, any tax imposed on such rents (as long as it is below 100%) will not necessarily drive the investor to leave even if it is unable to shift the burden of the tax to labor or landowners.

This argument clearly holds in the case of rents that are linked to a specific location, such as natural resources or a large market. But what if the rent can be earned in a large number of

[26] Avi-Yonah, What Goes Around Comes Around: Why the USA is Responsible for Capital Flight (and What It Can Do About it), Haifa L. Rev. (2019).
[27] For the following, see Avi-Yonah, *Bridging the North-South Divide: International Redistribution and Tax Competition*, 26 Mich. J. Int'l L. 371 (2004).

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potential locations? In this case, the host country will not be able to tax the rent if the multinational can credibly threaten to go elsewhere, although once the investment has been made the rent can be taxed. This situation, which is probably the most common, would require coordinated action to enable all host countries to tax the rent earned within their borders. This is precisely what Pillar 2 enables.

This point relates to the final argument, which is that host countries need to offer tax incentives to be competitive. An extensive literature has demonstrated that taxes do in fact play a crucial role in determining investment location decisions. But all of these studies emphasize that the tax incentives are crucial *given the availability of such incentives elsewhere.* Thus, it can be argued that given the need for tax revenues, developing countries would in general prefer to refrain from granting tax incentives, if only they could be assured that no other developing country would be able to grant such incentives.

Thus, restricting the ability of developing countries to compete in granting tax incentives does not truly restrict their autonomy or counter their interests. That is the case whenever they grant the incentive only for fear of competition from other developing countries, and would not have granted it but for such fear. Whenever competition from other countries drives the tax incentive, eliminating the competition does not hurt the developing country, and may aid its revenue raising efforts (assuming it can attract investment on other grounds, which is typically the case).

5. Conclusion

In this article, I have attempted to briefly survey the developments in international taxation from 1980 on, focusing on the decline of the original ITR and the creation of the new ITR in the last decade. I then attempted to evaluate the impact of the new ITR on the economic digital divide, concluding that on balance it helps rather than hurts developing countries.

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