TAX REFORMS BETWEEN SUCCESS AND FAILURE

FROM THE PAST THROUGH THE PRESENT TOWARDS THE FUTURE

Subtopic 6: Tax Reforms and National Sovereignty

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SPAIN

Author: Sonia E. Díaz Español

Supervisor: Dr. Alfredo García Prats

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1. INTRODUCTION

Tax reforms are like "the never-ending story[1]*, they always come back to the forefront of our reality.* Looking at the past and present and considering the goals and objectives of major tax reforms (e.g., eliminating inequalities, increasing equity, combating climate change and environmental pollution, combating tax abuse, increasing fairness, achieving more simplicity and less administrative burdens): Which major tax reforms have been successful in this perspective, and which have not?

The aim of this report is to analyse the tax reforms in Spain, in the EU and in the world.

Financial crises, fiscal policy and monetary policy have been the focus of global attention in recent years, but, as Benjamin Franklin said, there are only two things certain in life, "death and taxes", i.e. the discussion on the configuration of the tax system has been the backbone of the situation. We would all agree that the tax system is an essential instrument of modern economies that has a direct influence on the day-to-day life of society.

In the European Union, in the United States, in South America, in the East and in Asian countries, various aspects of tax systems are being discussed, such as how to treat the profits made by large multinationals, how to achieve redistribution through personal income tax, the harmonization of taxes, the introduction of extra-fiscal taxes to combat climate change, and, of course, the fight against tax avoidance and evasion.

In our country, Spain, a deep reform of the tax system is needed. The economic crises suffered since 2007, the current crisis caused by the Covid 19 pandemic, the invasion of Russia in Ukraine, among other painful events, the demands for harmonization that are being born in the EU in recent years and of course, the territorial-federal structure of our State.

[1] Reformas tributarias: una historia interminable que vuelve al primer plano (caixabankresearch.com)

Abstract:

Tax Tightrope Walk: Spain in a Globalized World

The report explores the delicate balance between national sovereignty and achieving equitable, effective tax systems in a globalized world. Spain's active participation in international organizations like the OECD, EU, and G20 is crucial for knowledge sharing, policy influence, and tackling tax evasion. However, safeguarding national interests requires careful navigation.

While commending Spain's implementation of key BEPS project actions and recognizing the ATAD Directives' contribution to fairness, the report emphasizes the need for ongoing evaluation and acknowledges their complexity. Similarly, Spain's commitment to the Global Minimum Tax and the proposed BEFIT initiative requires cautious assessment due to potential impacts on businesses and investment.

Challenges in defining taxable entities, calculating obligations, and ensuring enforcement necessitate open dialogue and collaboration. The report stresses the importance of balancing concerns about sovereignty, business harm, and investment reduction with active participation in international discussions and advocating for improved reforms with safeguards. By strengthening international cooperation, Spain can contribute to shaping a more equitable and efficient global tax landscape.

Key words: international tax policy, tax policy, limits, fiscal sovereignty, coordination, effectiveness, leverage, reciprocity, spillover effects, international tax cooperation, balanced solutions, dialogue, needs, priorities.

2.SPANISH TAX REFORMS

2.1. What happened in 2011 in Spain?

We were facing a very critical economic situation, with a high public deficit and a growing debt. To reduce the deficit, the government had two options, either to reduce public spending or to increase public revenues, specifically taxes, but to achieve the objective using the revenue channel, it was necessary to change the paradigm of the existing tax system, which was perceived as unfair, inefficient and ineffective.[2]

In this context, and following the decision to increase public revenues, the need for a comprehensive tax reform to address the shortcomings of the system was raised. A more equitable, efficient, and less distorting system for economic activity was sought.

The main points of the debate, at that time, and we could say, that would be applicable to the current situation in Spain, are the following:

- Economic context: The need to reduce the deficit and balance public accounts.
- Objective of the reform: To modernize the system, making it more equitable, efficient and less distorting.
- Insufficient revenues: The existing tax system was not capable of generating the revenues needed to sustain high public spending, because the idea of reducing spending was not valued at the time and is not valued now.
- Injustices in the tax system, especially for the salaried middle classes, which are the ones that bear the greatest tax burden.
- Inefficiency of the tax system, with disincentives to investment and a significant burden on job creation.

Tax reforms, which were needed in 2011 and are now essential, should focus on the following objectives of *equity, efficiency and economic growth.*

[2] https://s.libertaddigital.com/doc/una-reforma-fiscal-para-el-crecimiento-y-el-empleo-41912986.pdf

- The tax system must be equitable, i.e., it must tax taxpayers' income proportionally and comply with the principle of economic capacity.
- The tax system must be efficient, i.e. it must minimize compliance costs and distorting effects on economic activity. It is about doing the right things right, achieving the effectiveness of the system that combines efficiency and efficacy.
- The tax system should promote economic growth, i.e., it should encourage investment and job creation.

The challenge of reform is very high, as it must reconcile long-term objectives (efficiency and equity) with short-term objectives (increasing revenue and stimulating growth). Tax theory and the experience of other countries provide useful references for this challenge.

We could propose two strategies for tax reform in Spain:

- Reducing labour costs to stimulate investment and employment.
- The broadening of tax bases by eliminating tax benefits, in order to increase tax collection and equity.

The report on taxation in the EU prepared by the Committee on Economic and Monetary Affairs of the European Parliament (EP), published on December 14, 2021 (2021/2074(INI)) makes a series of recommendations to improve the European tax system, and let's not forget that Spain is inside.

The European Parliament highlights the need for greater tax harmonization to reduce distortions in competition and facilitate investment and trade in the EU single market. It proposes clarifying tax residency criteria, coordinating measures for digitalization and progressively eliminating international imbalances.

It highlights the relevance of reforming indirect taxation and tax authorities, promoting fairness in tax arrangements and respecting taxpayers' rights, especially on the issue of data protection. In addition, it suggests addressing the distortion in public procurement due to bidders from non-cooperative jurisdictions.

In general, the EP's recommendations aim at a more harmonized, efficient and fairer European tax system.

Committee on Economic and Monetary Affairs, in his general remarks[3]:

"1. Member States have autonomy to decide their economic and taxation policies within the limits of the EU Treaties. However, this freedom may cause fragmentation and unequal competition in the EU, although it allows for fair competition and reduces distortions in the single market.

2. The single market and the free movement of factors of production have generated significant trade, investment and financial flows between Member States. This deep interdependence makes the tax bases and tax rates of each country sensitive to those of other countries, especially in the case of corporate taxation, magnifying its spill-over effects."

One of the latest tax reforms in Spain, without entering into consideration of wealth taxation, which is the subject of another analysis (the wealth tax and the temporary solidarity tax on large fortunes), the transposition of the ATAD 1 and ATAD 2 directives has been very relevant and, in my opinion, will bear the desired fruits.

The Anti-Tax Avoidance Directive (ATAD) aims to protect the European Union from aggressive tax planning by companies. To do this, it requires Member States to implement measures that ensure a minimum level of protection. These measures include the limitation on the deductibility of financial expenses, which has been the subject of debate in Spain.

Law 11/2021 of July 9th adapted Spanish regulations to ATAD 1 but maintained the possibility of adding exempt dividends to the 30% EBITDA limit. This exception, incompatible with ATAD, had an expiration date that forced its elimination from 2024 onwards.

The recent Law 13/2023 of May 24th modifies article 16 of the Corporate Income Tax Law to align it with ATAD 1. The new wording establishes that income not included in the tax base cannot be computed as part of the operating profit.

In Spain, the transposition of the rules on hybrid mismatches has been carried out in two phases:

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[3] https://www.europarl.europa.eu/doceo/document/A-9-2021-0348_ES.html

- **Royal Decree-Law 4/2021:** Transposed most of ATAD 2, including hybrid mismatches (except inverted ones).
- **Royal Decree-Law 18/2022:** Transposes inverted hybrid mismatches, with retroactive effects from January 1, 2022.

Inverted hybrid mismatches occur when an entity is considered fiscally transparent in its State of incorporation, but not in the State of its partners or shareholders. This can create a "tax limbo" where no one pays taxes on the entity's income.

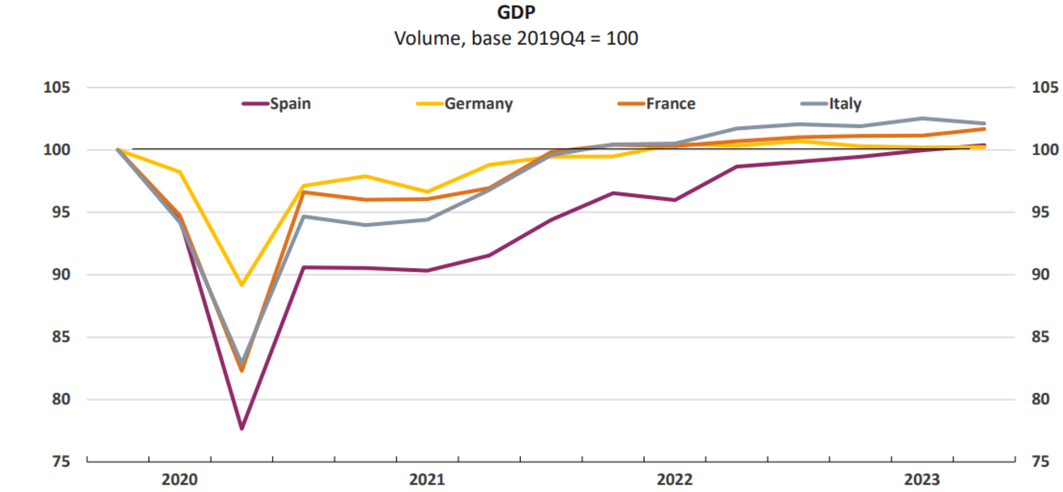
The main novelty introduced by Royal Decree-Law 18/2022 lies in the consideration of the entity in attribution of income as a taxpayer of the Corporate Income Tax (IS). This measure seeks to avoid the non-taxation that occurs in the "tax limbo" characteristic of inverted hybrid mismatches.

It has been a step forward in the fight against aggressive tax planning. However, there are still some aspects that could be improved, such as clarity of regulations and coordination with international conventions.

What would an x-ray of Spain be like? What situation are we in in 2023?[4]

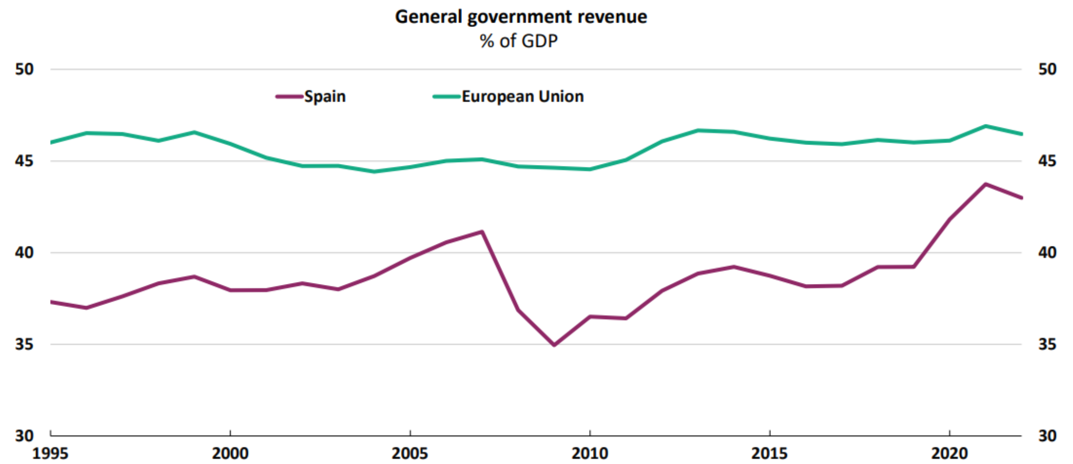
[4] https://issuu.com/oecd.publishing/docs/ppt-spain_en_web-osgrev_clean

Recovery from the COVID-19 pandemic has been steady following the large fall of GDP in 2020



Note: Seasonally and calendar adjusted data.
Source: OECD Economic Outlook.

There is room to increase tax revenues



Note: Revenue for the European Union is the unweighted average of 22 OECD-EU countries.
Source: OECD (2022), National Accounts database; OECD Economic Outlook database.

Spain implemented sizable measures to cushion the impact of the pandemic and of the inflationary shock after Russia's war of aggression against Ukraine.

The economy has held up well, but public debt, which was already high, has increased because of the pandemic, making it urgent to step up the pace of fiscal consolidation.

Public policy should continue to address Spain's structural weaknesses. Growth potential is low and will weaken with the rapid ageing of the population.

Fulfilling the country's objectives to fight climate change will require a strong and broad commitment in favour of a cleaner energy mix and a more environment-friendly tax regime.

Unemployment remains the highest in the OECD and the integration of young people into the job market remains challenging, although recent reforms have reduced the high share of temporary contracts.

Improving educational and labour market outcomes among the young should entail strengthening the connection between the educational system and the labour market, supporting students at risk of falling behind, improving career counselling, and providing a more efficient public employment service. Boosting the low level of entrepreneurship among young people requires additional financial and educational support. More social rental housing in stressed areas would facilitate access to housing for young people.[5]

2.2. Elements have contributed to its success or failure.

In my opinion, there are four strategic lines of tax reform and the elements that have participated in their success or failure are the following:

Eliminate inequalities and increase equity:

Reforms that have implemented progressive taxes have succeeded in reducing inequality gaps and increasing equity. However, in some cases, these reforms have not had the expected impact due to loopholes, tax evasion or avoidance, or changes in the economic environment.

Fight against climate change and environmental pollution:

- [5] https://youtu.be/BCGA3PegKBs?si=rHwgOMXWAqQPtfvc

Reforms that have created taxes on emissions and incentivized eco-friendly practices have achieved sustainable behaviours. However, lack of rigorous enforcement or resistance from polluting industries may have limited the success of these reforms.

Fight against tax abuse:

Reforms that have eliminated tax loopholes, strengthened enforcement and increased transparency have helped to combat tax abuse. However, the complexity of the tax system sometimes allows new evasion strategies to surface.

Simplicity and reduction of administrative burdens:

Reforms that have simplified the tax system and reduced the administrative burden for individuals and businesses have been well received by the public. However, the introduction of new regulations without adequately simplifying the system can increase complexity.

It is important to keep in mind that the evaluation of the success of a tax reform will depend on several factors, including effective implementation, public acceptance and adaptability to changes in the economic environment. In addition, successful tax reforms often require time for their impacts to fully materialize.

If tax reform is focused on clear, well-designed and effectively implemented strategic lines, the chances of success increase exponentially.

2.3. The conditions for future major tax reforms to succeed.

The elements that can contribute to the success or failure of fiscal reforms can be grouped into two main categories: internal factors and external factors. We should not forget the recommendations outlined in the first question, already from 2021 we have the cards to start the game, let's start playing.

Internal factors, *controlled by legislators and policy makers*, encompass a number of aspects that pave the way for the effective implementation of fiscal reforms:

- *Political consensus and public support*: Strong political backing and deep-rooted public support are crucial foundations for the successful implementation of fiscal reforms.

- *Effective implementation*: Meticulous planning and execution are critical. Effective management, staff training, and adequate infrastructure technology are guarantees for efficient implementation.

- *Transparency and citizen participation*: Openness in the process and active public participation can build trust and support, while reducing resistance and avoidance.

- *Flexibility and adaptability*: The ability to adapt reform as economic and social conditions evolve can be vital to its effectiveness and long-term success.

- *Well-calibrated incentives*: Offering effective incentives to promote desired behaviours, such as sustainable investments or tax compliance, can improve the acceptance and effectiveness of reform.

External factors, *uncontrollable by legislators and policy leaders*, comprise a vital sphere for the effectiveness of fiscal reforms. These key aspects are:

- *Tax evasion and loopholes*: If not properly managed, tax evasion and loopholes can undermine the impact of reforms, eroding their effectiveness.

- *Unexpected impacts*: Changes in the economic environment, both nationally and globally, can cause unforeseen impacts that undermine the effectiveness of reforms.

- *Failed implementation*: Lack of resources, capacity and political will to enforce the new regulations may result in an outright failure of the reform.

- *Over-complexity*: The introduction of overly convoluted tax regulations can generate confusion and resistance, especially if not accompanied by efforts to simplify and educate the public about the changes.

- *External economic pressures*: Factors such as global economic crises or unpredictable events can hinder the success of fiscal reforms, putting additional pressures on the economy and their implementation.

Ultimately, the success or failure of a tax reform often depends on the interaction of these elements and how they are addressed and managed during implementation and beyond.

3. SPAIN'S PARTICIPATION IN INTERNATIONAL ORGANIZATIONS

In recent decades there have been many developments at the international and EU level in tax matters that led to tax reforms in Spain. We have to study tax reforms that were triggered by international and EU developments.

This analysis is structured in two main parts: one focusing on international developments and a second part on developments at the EU level.

3.1. Institutional issues: Spain as a member of international organizations that have an impact on national tax reforms.

Spain’s membership in international tax organizations is a positive factor that allows it to improve its tax system and contribute to global tax justice. It is important that Spain continues to participate actively in these organizations and that it finds a balance between the benefits of international cooperation and the protection of national sovereignty.

Spain actively participates in various international tax organizations, such as the OECD, the EU, and the G20. This participation allows Spain to **share knowledge and experiences, influence international policies and combat tax evasion and avoidance.**

a) Spain, the OECD and the Inclusive Framework[6].

In 1959, Spain joined the Organization for European Economic Cooperation (OEEC), which later became the Organization for Economic Cooperation and Development (OECD). The OECE reports influenced the implementation of the 1959 Stabilization Plan, marking the beginning of economic liberalization in Spain. Since the signing of the Convention in 1960, Spain has been committed to the objectives of the OECD. In its first decades, Spain's focus in the OECD was on economic modernization, but with the transition to democracy, its

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6 https://www.exteriores.gob.es/RepresentacionesPermanentes/ocde/es/Organismo/Paginas/Espa%c3%b1a-y-la-OCDE-.aspx

participation became more active. The Spanish Administration is actively involved through its Permanent Representation in Paris and the contribution of ministerial experts in specific working groups, following the model of other Member States.

In tax matters, it is worth highlighting Spain's participation in the Inclusive Framework on BEPS (base erosion and double taxation) since the signing of the agreement in 2017.

b) Spain, the EU and other international organizations.

Spain belongs to the European Union (EU) and, therefore, participates in the design and elaboration of the EU's common commercial policy, a competence transferred to the Union by its Member States. At the same time, Spain is a member or participant in other international organizations and bodies whose activities have a significant commercial dimension, such as the World Trade Organization (WTO), the Organization for Economic Cooperation and Development (OECD), the United Nations Conference on Trade and Development (UNCTAD) and the G-20, the main informal forum for international political and economic cooperation.

In these institutions, always in permanent coordination with the European Union, Spain develops an intense work to defend the multilateral trade system, in compatibility with the defence of our national interests[7].

- WTOWorld Trade Organization

- OECD Organization for Economic Cooperation and Development

- UNCTADUnited Nations Conference on Trade and Development

[7] https://www.exteriores.gob.es/es/PoliticaExterior/Paginas/G20OCDE.aspx

c) Spain and the G20.

The G-20, founded in 1999, includes G-8 countries along with the European Union and other major nations. Comprising economies representing 90% of the world's GDP, 80% of global trade and two-thirds of the world's population, its initial focus was to coordinate growth policies and manage financial crises.

In its early years, the G-20 met as a group of economic authorities to improve coordination and address illicit financial activities. Over time, it evolved into a summit of heads of state, replacing the G8 and G8+5 as the forum for global discussion, especially after the 2008 crisis.

Spain is not a member of the G-20, but has participated in extraordinary summits and regular meetings, being considered a permanent guest. Its first participation was at the November 2008 summit in Washington, and it was subsequently officially invited to the April 2009 summit in London. Through these interventions, Spain consolidated its position in the G-20, reflecting its political and economic importance at the international level.

3.2. The process of joining such international organizations in Spain[8]

The King in Spain assumes the highest representation of the State in international relations and has symbolic functions, such as accrediting ambassadors and authorizing the declaration of war or peace, always endorsed by the Cortes Generales. In addition, the King gives consent to commit the State in international treaties according to the Constitution and the laws.

On the other hand, the Government is responsible for directing domestic and foreign policy, the civil and military administration, and the defence of the State. Among its functions,

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[8] https://es.wikipedia.org/wiki/Organizaci%C3%B3n_internacional

https://es.gowork.com/blog/16-organizaciones-internacionales-a-cuales-pertenece-espana-hechos-y-curiosidades/

https://www.exteriores.gob.es/RepresentacionesPermanentes/ocde/es/Organismo/Paginas/Espa%C3%B1a-y-la-OCDE-.aspx the direction of foreign policy includes negotiating international treaties, most of which require the prior authorization of the Cortes Generales for their ratification, although the Government has broad discretion for negotiations.

The role of the Spanish Parliament in foreign policy is significant and is regulated in the 1978 Constitution. This document establishes three procedures by which the Congress of Deputies and the Senate participate in the authorization of international treaties.

First, the Cortes Generales may authorize treaties granting competences to international organizations by means of an **Organic Law**. This procedure was used for Spain's accession to the European Union and its subsequent modifications. It also applies to treaties such as the Statute of the International Criminal Court, where absolute majority approval is required in a final overall vote in both chambers.

Secondly, certain political, military, territorial, financial or law amending treaties require the prior authorization of the Cortes Generales. These agreements go through a specific parliamentary procedure, where the Chambers pronounce on the authorization of the ratification proposal as defined in the Constitution and the regulations of the Congress and the Senate.

For these treaties, the process begins when the Government sends to Congress the agreement of the Council of Ministers, the text of the treaty, a justificatory report and the reservations proposed by the Executive. The Congress has 60 days to pronounce itself, and amendments may be presented, which are considered as such if they go against the authorization or propose changes to the reservations proposed by the Government.

If both Chambers agree, the treaty can be initialled. If there is no agreement, a Joint Commission is formed to try to reach one, and if the disagreement persists, the Congress decides by absolute majority.

Thirdly, other treaties not included in the two previous procedures do not require authorization by the Cortes Generales. However, the Chambers are informed of the conclusion of these treaties, and if they contain stipulations contrary to the Constitution, a constitutional review is required.

These processes ensure that treaties and agreements negotiated by the government and initialled by the head of state have the approval of the parliamentary body. They also ensure the conformity of treaties with the Constitution through the possibility of constitutional revision, as was done in cases such as the Maastricht Treaty and the Treaty establishing a Constitution for Europe.

Spain, ¿a monist or dualist country?

Spain follows a ***moderate monist regime***, which implies that treaties do not need to be transposed but require publication in the BOE to guarantee their knowledge for reasons of legal certainty. If a treaty is self-executing, citizens can demand its application from the administration and have recourse to the courts.

In short, in Spain, treaties are incorporated into the legal system through their publication in the BOE, provided that they are clear and easily applicable.

In the reception of acts of international organizations, the application varies according to the type of organization:

1. International Cooperation Organizations, such as the UN: The resolutions of these organizations are applied in Spain when published in the BOE (Official State Gazette).

2. International Integration Organizations, such as the European Union: Since Spain has ceded sovereign powers, the resolutions do not need to be transposed or published in the Spanish legal system. They can be applied after their publication in the Official Journal of the Autonomous Communities (DOCE). Publishing them in another gazette would be contrary to Community Law.

In the Spanish legal framework, the Constitution does not specifically address the reception of customary rules. However, the case law of the Supreme Court establishes that international custom does not require any act of transposition to be incorporated into the Spanish legal system. Once it is shown that Spain is bound by an international customary rule, i.e., that it has given its consent, this rule becomes a direct part of the Spanish legal system without the need for any other requirement. In short, international custom is directly transposed into the Spanish legal system once its link with Spain is established.

3.3. Hierarchy of sources of tax law in Spain

In the Spanish legal system, the hierarchy of international norms is divided into three types:

1. Constitutive rules:

- International custom is below the Constitution (infra-constitutional) but above the law (supra-legal). This means that custom has a lower rank than the Constitution but higher than ordinary law.

2. Conventional norms (treaties):

- In case of conflict between a treaty and the Constitution or a domestic law, the Constitution must be amended (Article 95.1 of the EC). The Constitution prevails over the treaty due to its infra-constitutional rank.

3. Acts of international organizations:

- Resolutions of International Cooperation Organizations: They are below the Constitution but above the law, following a treatment like that of international norms.

- Resolutions of International Integration Organizations: Community Law cannot conflict with the Constitution, since it acts in the fields ceded by the Constitution to Community Law. These norms of European Union Law are metaconstitutional and have fields of matter beyond the Constitution.

International organizations: Are their decisions legally binding? Analysis of the BEPS case[9].

The final reports of the Base Erosion and Profit Shifting (BEPS) project of the Organization for Economic Co-operation and Development (OECD) **are not binding** on member states. However, they are considered as reference instruments in international taxation and have been adopted by most countries in the world.

The BEPS reports address a range of issues related to base erosion and profit shifting, such as aggressive tax planning, tax transparency, and harmonization of international tax rules. The recommendations in the BEPS reports are intended to help countries address these challenges and ensure that their tax systems are fair and equitable.

The non-binding nature of the BEPS reports means that member states are not obliged to implement them. However, most countries have decided to adopt the recommendations of the reports, as they consider them necessary to address international tax challenges.

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[9] https://www.uria.com/documentos/publicaciones/5092/documento/art02.pdf?id=6753&forceDownload=true

In the case of Spain, the Government has approved a series of measures to implement the BEPS recommendations, *such as the reform of the corporate tax, the introduction of a new tax on digital services, and the improvement of tax transparency.*

The legal quality of BEPS reports has been the subject of debate. Some experts consider that the reports should be binding, as they are necessary to ensure that countries take measures to address international tax challenges. Other experts consider that the non-binding nature of the reports is an advantage, as it allows countries to tailor them to their particular circumstances.

Ultimately, the legal quality of BEPS reports is a political issue. Countries must decide whether they are willing to adopt the recommendations of the reports, even if they are not binding.

4. NATIONAL FISCAL SOVEREIGNTY

4.1. The Spanish State defends its fiscal power through the law.

There are norms in national law that prescribe the protection of national sovereignty.[10] These norms are found in the Spanish Constitution, in the laws and in the international treaties ratified by Spain.

Article 1 of the Spanish Constitution establishes that Spain is a social and democratic State governed by the rule of law, which is based on national sovereignty. *Article 2*, for its part, establishes that sovereignty resides in the Spanish people, from whom the powers of the State emanate.

These norms establish that national sovereignty is the basis of the Spanish political organization. Sovereignty resides in the Spanish people, who exercise it through their representatives, elected in free and democratic elections.

Laws also establish rules to protect national sovereignty. For example, Organic Law 5/2005, of November 17, 2005, on National Defence, establishes that the defence of national sovereignty is one of the fundamental objectives of the Armed Forces.

International treaties ratified by Spain also establish rules to protect national sovereignty. For example, the United Nations Charter of 1945 establishes that member states must respect the sovereignty and territorial integrity of other states.

Specifically, the rules prescribing the protection of national sovereignty in Spanish national law are as follows:

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10 https://www.lamoncloa.gob.es/espana/leyfundamental/Paginas/titulo_preliminar.aspx#:~:text=La%20soberan%C3%ADa%20nacional%20reside%20en,espa%C3%B1ol%20es%20la%20Monarqu%C3%ADa%20parlamentaria.

- **Spanish Constitution**:
    - Article 1: Spain is a social and democratic State governed by the rule of law, based on national sovereignty.
    - Article 2: Sovereignty resides in the Spanish people from whom the powers of the State emanate.
- **Organic Law 5/2005, of November 17, 2005, on National Defence:**
    - Article 1.1: The Defence of Spain is a right and a duty of all Spaniards.
    - Article 2.1: The fundamental objective of National Defence is the protection of national sovereignty, territorial integrity and the security of the State.
- **Charter of the United Nations, 1945:**
    - Article 2.4: All Members of the Organization shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

These rules establish that national sovereignty is a fundamental principle of Spanish law that must be protected by all public authorities.

There is a discussion about whether other states and/or international organizations are infringing on national fiscal sovereignty. This discussion centers around two main issues:

- *Tax harmonization*: Some States consider that tax harmonization, i.e. the adoption of common tax rules by States, infringes on their fiscal sovereignty. They argue that tax harmonization limits their ability to set their own tax policies according to their particular needs and circumstances.
- *The imposition of fiscal sanctions*: Other States consider that the imposition of fiscal sanctions by international organizations, such as the European Union or the OECD, infringes on their fiscal sovereignty. They argue that these sanctions can be used to pressure States to adopt tax policies that are not in their interest.

In the case of Spain, this discussion has centred around the introduction of a *digital tax at the European level*. Some Spanish economic sectors have argued that this tax violates Spanish fiscal sovereignty, as it limits its ability to establish its own fiscal policies on digital taxation.

In general, the discussion on whether other states and/or international organizations are infringing on national fiscal sovereignty is complex and there is no clear consensus on the issue. However, it is a discussion that is likely to continue in the future, as trends in globalization and international cooperation continue to evolve.

We can indicate some arguments for and against the thesis that other States and/or international organizations are infringing on national fiscal sovereignty:

Arguments in favour:

- Tax harmonization may limit the ability of States to establish their own tax policies, depending on their needs and circumstances.
- The imposition of fiscal sanctions by international organizations can be used to pressure States to adopt fiscal policies that are not in their interest.

Arguments against:

- Tax harmonization may be necessary to avoid tax base erosion and profit shifting, which can be detrimental to States.
- The imposition of tax penalties by international bodies may be necessary to ensure the application of international tax rules.

Ultimately, the question of whether other states and/or international bodies are infringing on national fiscal sovereignty is a political question. States must decide whether they consider that tax harmonization and the imposition of tax penalties are necessary to protect their interests, notwithstanding the possible limitations that these measures may place on their fiscal sovereignty.

4.2. Global tax harmonization: Challenges and opportunities for federal states.

The influence of subunits in a federal country when participating in an international organization depends on the federal system in question. In general, federal subunits have more influence in international organizations when the federal system is more decentralized.

In a decentralized federal system, subunits have a greater ability to set their own policies and make their own decisions. This gives the subunits greater influence in international organizations, as they can negotiate directly with representatives of other member states.

In a centralized federal system, the federal government has a greater ability to set policy and make decisions. This limits the influence of subunits in international organizations, as subunits must rely on the federal government to represent them.

In the case of Spain, the federal system is relatively decentralized. The autonomous communities have a broad capacity to establish their own policies in a number of areas, including education, health and culture. This gives the autonomous communities greater influence in international organizations dealing with these areas.

Spain's autonomous communities have been active participants in the Organization for Economic Co-operation and Development (OECD). The autonomous communities have worked with the OECD to develop policies to promote education, health and culture.

Coordination between sub-units and the national level on international tax reforms is a complex challenge. In a federal country, subunits have varying capacity to set their own tax policies. This can lead to conflicts between subunits and the national level, as each may have different interests and objectives.

To coordinate international tax reform in a federal country, it is important to establish a mechanism for cooperation between sub-units and the national level. This mechanism should allow the subunits to participate in the decision-making process and ensure that reforms are compatible with the interests of the subunits.

The following are some recommendations for coordinating international tax reform in a federal country:

- Create a forum for dialogue between the sub-units and the national level: This forum should enable the sub-units to participate in the decision-making process and ensure that their interests are considered.
- Establish consultation and participation mechanisms: These mechanisms should allow subunits to express their opinions and proposals on international tax reforms.

- Develop coordination mechanisms: These mechanisms should ensure that international tax reforms are compatible with the fiscal policies of the subunits.

In relation to Spain, the autonomous communities have a broad capacity to establish their own fiscal policies. This can lead to conflicts with the central government, as each may have different interests and objectives.

To coordinate international tax reform in Spain, it is important to establish a mechanism for cooperation between the autonomous communities and the central government. This mechanism should allow the autonomous communities to participate in the decision-making process and ensure that the reforms are compatible with the interests of the autonomous communities.

The Spanish central government is currently collaborating with the autonomous communities to develop a mechanism for cooperation on international tax reform. This mechanism will be based on a forum for dialogue between the central government and the autonomous communities, as well as consultation and participation mechanisms.

The establishment of a cooperation mechanism between the sub-units and the national level is an important step to ensure that international tax reforms are compatible with the interests of all stakeholders.

The question of whether international tax initiatives limit the sovereignty of subunits is a political question. Sub-levels of government must decide whether they consider tax harmonization and the imposition of tax penalties necessary to protect their interests, notwithstanding the possible limitations these measures may place on their fiscal sovereignty.

There is a debate about what is an infringement of national sovereignty in tax matters. This debate centers around two main issues:

- The scope of fiscal sovereignty: Some States consider that fiscal sovereignty is absolute, and that States have full capacity to establish their own fiscal policies, independently of the actions of other States or international organizations. Other States consider that fiscal sovereignty is relative, and that States must respect the rights of other States and international bodies.

- The limits of tax harmonization: Some States consider tax harmonization, i.e. the adoption of common tax rules by States, to be an infringement of tax sovereignty. Other States consider that tax harmonization may be necessary to avoid tax base erosion and profit shifting, which may be detrimental to States.

In general, the debate on what constitutes an infringement of national sovereignty in tax matters is complex and there is no clear consensus on the subject. However, it is a debate that is likely to continue in the future, as trends in globalization and international cooperation continue to evolve[11].

Speaking of national fiscal sovereignty, we must also deal with the prohibited extraterritorial tax.

The **definition of prohibited extraterritorial tax** does not exist in international law. However, it is generally considered that a prohibited extraterritorial tax is one that:

- It requires the payment of taxes to persons who are not subject to the jurisdiction of the taxing State.
- It requires the payment of taxes on activities that are not carried out in the territory of the taxing State.
- It requires the payment of taxes on goods that are not located in the territory of the taxing State.

The application of prohibited extraterritorial taxes can lead to conflicts between States. For example, in 2020, the European Union adopted a law imposing a tax on digital services provided by technology companies with an annual turnover exceeding €750 million. This law has been challenged by the United States, which considers that the tax infringes on US fiscal sovereignty.

In the end, the question of whether an extraterritorial tax is prohibited is a matter of interpretation of international law. States must decide whether they consider an extraterritorial

[11] https://hj.tribunalconstitucional.es/es-ES/Resolucion/Show/3447

tax to be necessary to protect their interests, notwithstanding the possible negative consequences it may have for other States.

4.3. The road to tax harmonization: An examination of the legal basis and legislative procedure for direct taxation in the EU.

On the integration and challenges of tax harmonization in the European Union, we can indicate the following aspects.

In the integration process, a tax system must minimize tax distortions, correct market failures and avoid conflicts between countries' tax systems. As European integration progresses, clear links between tax policy and other aspects of the Union become evident.

Tax harmonization has evolved throughout the history of the EU, but many current tax systems are based on outdated fundamentals, designed in an era of divisions between countries.

While indirect taxes are partially harmonized in the EU, there is no consensus on the need for further cooperation to eliminate harmful competition between Member States' taxes.

The single market has intensified the need for tax harmonization in direct taxes to avoid distortions due to different treatments and tax rates. Capital and corporate taxes require adjustments to eliminate distortions in the allocation of income and capital investment.

Tax policy is rooted in the sovereignty of countries, which makes it difficult to reach agreements when it comes to tax manipulation.

At present, tax harmonization in the EU requires a gradual and careful implementation, which is not attractive for some countries due to the increased governmental control and cooperation required[12].

The economic crisis has led countries to modify their tax structures to support growth by shifting revenue from distortionary taxes to less harmful taxes, such as consumption taxes.

Reducing corporate taxes can stimulate investment in R&D and increase productivity, which would contribute to economic growth if a favourable tax structure were designed.

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12 https://www.europarl.europa.eu/factsheets/es/sheet/80/los-impuestos-directos-la-fiscalidad-de-las-personas-fisicas-y-de-las-sociedades

Improving tax collection efficiency and preventing tax evasion are also key challenges for member states, and greater cooperation on tax matters between EU countries could significantly improve these aspects.

The relevant legal basis for the harmonization of direct taxes in the EU is Article 115 of the Treaty on the Functioning of the European Union (TFEU). This article states that the European Union may adopt measures to harmonize direct taxes, provided that these measures are necessary to ensure the proper functioning of the internal market.

Article 115 TFEU allows the European Union to adopt measures to:

- Avoidance of economic double taxation.
- Avoid tax base erosion and profit shifting.
- Ensure uniform application of direct taxes in the European Union.

The legislative procedure for the adoption of tax harmonization measures in the EU is as follows:

- The European Commission submits a legislative proposal to the Council of the European Union and the European Parliament.
- The Council of the European Union, acting on a proposal from the European Commission, adopts the legislation unanimously.
- The European Parliament may adopt a position different from that of the Council of the European Union. In this case, conciliation is initiated between the Council and the European Parliament to reach an agreement.

If the Council and the European Parliament do not reach an agreement, the legislation is not adopted.

In practice, tax harmonization in the EU has been a slow and complex process. Member States have been reluctant to give up their fiscal sovereignty and have defended the need to maintain room for manoeuvre to set their own fiscal policies.

However, in recent years, the European Union has intensified its efforts to promote tax harmonization. In particular, the European Union has taken steps to:

- Harmonize corporate taxation.
- Harmonize the taxation of individuals.
- Fight against tax base erosion and profit shifting.

Tax harmonization is expected to remain a priority for the European Union in the coming years.

4.4. The unanimity rule: a guarantor of fiscal sovereignty or a brake on progress?

4.4.1. How does the unanimity rule work in practice? An analysis of the decision-making process in the EU.

The ***unanimity rule*** is a voting system where all members of the organization must agree on the decision to be adopted. In the European Union (EU), the unanimity rule is used in certain areas, including taxation.

The unanimity rule **works** as follows:

- *Member State veto*: If a Member State disagrees with a decision, it can block its adoption.

- *Legislative proposal of the European Commission to the Council*: The European Commission has the power to propose legislation to the Council of the European Union.

- *Legislative adoption by the Council*: At the request of the Commission, the Council adopts the legislation unanimously.

- *Divergent position of the European Parliament*: If the European Parliament adopts a position opposed to that of the Council, a conciliation process is initiated between the two parties to reach an agreement.

If no agreement is reached between the Council and the Parliament, the legislation is not approved.

The **background of the** unanimity rule in the EU dates back to the 1957 Treaties of Rome; the Treaty establishing the European Economic Community (EEC) and the Treaty establishing the European Atomic Energy Community (Euratom or EAEC). In the EEC, the unanimity rule applied in all policy areas.

With the 1992 Maastricht Treaty, the unanimity rule was limited to a number of specific policy areas, including taxation. The 2007 Lisbon Treaty maintained this position.

The unanimity rule has a number of advantages and disadvantages.

Advantages:

- Ensure that all member states are in agreement with the decisions to be adopted.
- To protect the fiscal sovereignty of the Member States.

Disadvantages:

- Make it difficult to adopt decisions, since a single member state can block them.
- Lead to results that are not beneficial to all member states.

Qualified majority voting (QMV) is a voting system where the decision is taken by a majority of the members. In the EU, QMV applies to a number of policy areas. There is a proposal from the Commission to move certain tax issues to this voting system, but it does not yet have a favourable vote from all Member States.

Qualified majority voting works as follows:

- *NO veto by a member state*: If a member state disagrees with a decision, its adoption is not hindered.

- *Legislative proposal of the European Commission to the Council*: The European Commission has the power to propose legislation to the Council of the European Union.

- *Legislative adoption by the Council*: At the request of the Commission, the Council adopts legislation by qualified majority.

- *Divergent position of the European Parliament*: If the European Parliament adopts a position opposed to that of the Council, a conciliation process is initiated between the two parties to reach an agreement. If they do not agree, the decision is taken according to the majority in the Council.

Qualified majority voting has a number of advantages and disadvantages.

Advantages:

- Facilitate decision-making, since it is not necessary for all member states to agree.
- Lead to results that are beneficial to all member states.

Disadvantages:

- Reducing the protection of Member States' fiscal sovereignty.

4.4.2. European Commission initiatives to overcome the unanimity rule in the tax area.

As we have commented in this analysis, the unanimity rule plays a very important role in the process of updating tax legislation. Unanimity protects the fiscal sovereignty of member states, but it can also hinder decision-making. Are we sure to prevent progress on tax matters by wanting to anchor the sovereignty of member states as an irrefutable maxim.

In recent years, the EU has intensified its efforts to promote tax harmonization and has proposed to reduce the use of the unanimity rule in this area.

The European Commission has launched several initiatives to move from the unanimity rule to qualified majority voting in the tax field. These initiatives have focused on the following topics:

- *Harmonization of corporate taxation*: In 2011, the European Commission presented a new structure for corporate tax harmonization. The new framework would have established a minimum tax rate of 25% and a common set of rules on the taxation of multinationals. However, a group of member countries, led by Ireland and Luxembourg, blocked the proposal.

- *Fight against tax base erosion and profit shifting*: In 2016, the European Commission proposed an action plan to combat tax base erosion and profit shifting. The plan included measures such as the introduction of a minimum tax rate for multinational companies, the revision of dividend taxation rules and the fight against tax havens. The action plan was approved by the Council of the European Union in 2017 but was implemented using the unanimity rule.
- *Digital tax*: In 2020, the European Commission proposed to promote the creation of a tax on digital services provided by technology companies with an annual turnover of more than €750 million. Several Member States have taken the initiative, such as Spain, and have already created their own tax. The debate in the EU is still open.

The European Commission's initiatives to move from the unanimity rule to qualified majority voting in the tax area have had little success. The unanimity rule remains the predominant voting system in this area, making decision-making difficult.

There are indications that Member States are increasingly willing to give up some of their fiscal sovereignty to facilitate action in the tax area, but they are just that, indications.

The agility in tax decision-making, and this includes the incorporation of the qualified majority system, is necessary to achieve tax harmonization and to meet the challenges posed by globalization, such as the fight against tax evasion and avoidance.

It is time to ask ourselves some questions and look for possible answers.

What legal basis do we have to continue on this path?

- The Treaty on the Functioning of the European Union (TFEU) covers the harmonization of business, excise and other indirect taxes, as well as provisions on free movement, environment and competition.

- Enhanced cooperation may apply to tax matters, and the Council decides unanimously on the basis of proposals from the Commission, in consultation with the Parliament.

What initiatives and developments have taken place?

- There are directives and proposals that seek to address tax avoidance, such as the Anti-Tax Avoidance Directive, the revision of the Administrative Cooperation Directive and tax packages to promote tax fairness and adaptation to the digital economy.

- Rules have been implemented to facilitate tax authorities' access to money laundering data and additional measures have been proposed to combat money laundering and terrorist financing.

What role does the European Parliament play?

- The Parliament has supported the Commission's tax programs and has prioritized the fight against tax fraud and evasion, forming special committees such as TAXE, PANA and TAXE 3 to investigate and recommend legislative action.

- The Fiscal Affairs Subcommittee (FISC) has been created to continue the fight against tax avoidance and to promote fair taxation at the national, EU and global levels.

Parliament's legislative actions and reports seek to achieve the fight against tax avoidance, promote tax justice and, of course, improve international cooperation in tax matters. If these steps are not taken, third countries will win the tax game.

4.4.3. - The debate on qualified majority in tax matters: A view from Spain.

The Government of Spain supports initiatives aimed at moving from unanimity rule to qualified majority voting in the tax area and believes that qualified majority voting is key to promote tax harmonization and to meet the tax challenges posed by globalization.

Specifically, the Spanish Government, and on its behalf the Secretary of State for Finance, has supported the European Commission's proposal to reduce the topics approved unanimously for tax reforms that are urgent to undertake, a demand that implies "*ineffectiveness, waste of time, inefficiency and lack of credibility*".

Spanish tax experts have expressed various opinions on the initiatives aimed at moving from the unanimity rule to qualified majority voting. Some authors consider that qualified majority voting is necessary to facilitate the adoption of measures in the tax field, while other authors consider that qualified majority voting may reduce the protection of Member States' tax sovereignty.

We could say that, in general terms, the position of the Spanish Government and the Spanish tax doctrine are in favour of moving from the unanimity rule to qualified majority voting.

At last, the decision whether or not to adopt the change is a political one. Member States must weigh the benefits and drawbacks.

As announced in the Spanish press at the beginning of the six-month Spanish Presidency of the Commission, the aim was the one mentioned above[13]

During the EU presidency (second half of 2023), Spain will promote a proposal to change the voting system from unanimity to qualified majority in key foreign policy and common security matters. This initiative, supported by Germany and several countries, seeks to avoid deadlocks in crucial decisions, such as sanctions negotiations against Russia, in order to allow the EU to act more efficiently and quickly in the midst of crises such as the war in Ukraine. Despite support for this idea, the need for unanimity among all partners, something that countries such as Hungary reject, makes its implementation difficult. Spain's Foreign Minister, stressed the importance of "*Europe's voice being agile and efficient, especially in a context where strategic decision-making among the EU-27 faces obvious difficulties, as seen in discussions on sanctions on Russia and EU enlargement during a recent Foreign Affairs Council.*"

The so-called **"Group of Friends"** proposes an alternative strategy to achieve significant changes in EU decisions without the need for a total reform of the treaties. In addition to the bridging clauses that allow a change from unanimity to qualified majority with prior unanimous approval, a more extensive use of constructive abstentions is proposed. This initiative seeks to explore options that respect national interests and avoid obstacles when a decision touches on sensitive issues for a Member State. The promoters of this idea see a

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[13] https://elpais.com/internacional/2023-05-22/espana-impulsara-la-reforma-del-voto-en-politica-exterior-europea-para-acabar-con-los-vetos.html

feasible shift from unanimity to qualified majority voting in areas such as sanctions or human rights declarations, allowing qualified majority decisions to be taken once the initial decision has been endorsed by all member states. This proposal may be the gateway for qualified majority rule to enter the tax area.[14]

4.5. Subsidiarity and national sovereignty: A delicate balance in EU tax harmonization.

The principle of subsidiarity is a general principle of European Union law which states that Union action should be taken only when the objectives of the Union cannot be achieved by the Member States and that action by the European Union can be achieved more effectively.

In the fiscal area, the principle of subsidiarity **is interpreted as** follows:

- The European Union should only become involved in the tax area when it is indispensable to ensure the proper functioning of the internal market, to promote tax equity or to protect the general interests of the European Union.
- The European Union must adopt measures that are more effective in achieving the objectives it intends to achieve, otherwise its action should not exist.

The principle of subsidiarity is **related to the national sovereignty** of the Member States as follows:

- The principle of subsidiarity protects the fiscal sovereignty of the Member States, since the intervention of the Union only occurs when it is necessary and most effective.
- The principle of subsidiarity may limit the fiscal sovereignty of the Member States, since the intervention of the Union takes place when it is indispensable and more effective, even if the Member States could achieve the objectives on their own.

[14] https://www.aedaf.es/es/documentos/descarga/42951/editorial-rtt124

The subsidiarity control mechanism: a tug-of-war between the EU and the Member States[15]

In the end, the application of the principle of subsidiarity in the tax area is a matter of interpretation. Member States and EU institutions must assess whether the objectives of a tax action can be sufficiently achieved by the Member States, or whether EU action is necessary and more effective.

To ensure that this principle is complied with, the EU has a control mechanism, which allows the national parliaments of the Member States to object to the European Commission's legislative proposals.

The subsidiarity control mechanism is triggered when the national parliaments of at least one third of the Member States consider that a Commission legislative proposal does not respect the principle of subsidiarity. Within eight weeks, the national parliaments can send an opinion to the Commission, setting out their arguments.

The Commission considers these opinions and decides how to proceed. If the Commission considers that the objections of the national parliaments are justified, it must reconsider the proposal. However, the Commission is free to maintain the proposal, modify it or withdraw it, explaining its decision.

If the majority of national votes are against the proposal, the Commission must justify its proposal to the European Parliament and the Council. If a simple majority of the European Parliament or 55% of the Council believes that the proposal violates subsidiarity, it is rejected.

This procedure has been activated three times so far. In 2012, the Commission withdrew a proposal for the regulation of payment services after receiving objections from 17 national parliaments. In 2013, the Commission maintained a proposal for the regulation of organic food

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[15] https://www.europarl.europa.eu/factsheets/es/sheet/7/el-principio-de-subsidiariedad

https://commission.europa.eu/law/law-making-process/adopting-eu-law/relations-national-parliaments/subsidiarity-control-mechanism_es products, despite objections from 11 national parliaments. In 2016, the Commission maintained another proposal for the regulation of payment services, despite objections from 14 parliamentary chambers in 11 countries.

5. BEPS AS A FIRST EXAMPLE

The Base Erosion and Profit Shifting (BEPS) Project ended in 2015 with the publication of all final reports on the 15 BEPS Actions[16]. Some of these actions were to be implemented through changes in domestic legislation[17].

16 https://www.oecd.org/ctp/beps-nota-explicativa-2015.pdf

17 https://www.oecd.org/ctp/beps-resumenes-informes-finales-2015.pdf

https://www.ief.es/docs/destacados/publicaciones/documentos_trabajo/2015_05.pdf

5.1. Analysis of Spain's participation in the OECD/G20 BEPS initiatives.

Spain actively participated in the OECD/G20 debate on BEPS actions and was one of the first countries to support the 15 BEPS actions plan.

Spain played an important role in the following actions:

- *Action 1: Establishment of an inclusive framework for the resolution of international tax disputes*. Spain supported the creation of a new multilateral framework for the resolution of international tax disputes based on the principle of reciprocity.

- *Action 5: Prevent tax avoidance through aggressive tax planning*. Spain supported the adoption of new rules to prevent tax avoidance through aggressive tax planning, such as the introduction of a new mechanism for registering aggressive tax planning schemes.

- *Action 13: Combating tax base erosion and profit shifting.* Spain supported the adoption of an overall minimum tax rate of 15% for multinational companies, as a measure to combat tax base erosion and profit shifting.

Spain has reacted swiftly to the BEPS Plan, approving significant changes in direct taxation, showing a receptive and proactive stance towards per share reporting. However, it remains to be determined whether the recent regulations, including those on corporate taxation, were sufficiently thought through or seek an exemplary impact that might not translate into the expected results in terms of domestic revenue collection. This uncertainty will only be resolved over time, beyond the development of the BEPS Plan, and will depend on the interaction with other states and their respective responses to the BEPS Plan.

It is interesting to discover the PwC tool to track the implementation of the global minimum tax (Pillar 2) in your country.[18]

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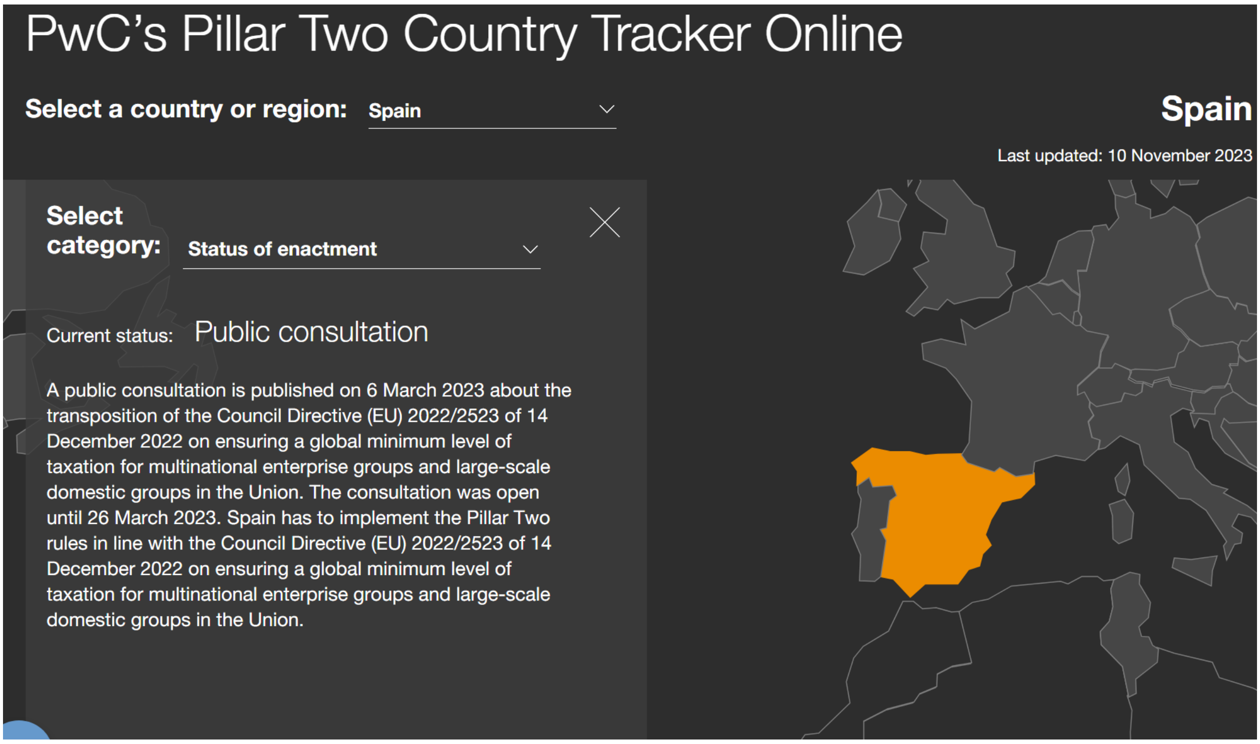
[18]https://www.pwc.com/co/es/pwc-insights/herramienta-implementacion-pilar.html#:~:text=El%20Pilar%20Dos%20introduce%20una,en%20jurisdicciones%20de%20baja%20tributaci%C3%B3n.

https://www.ey.com/es_mx/tax/transfer-pricing-planning-ome/implicaciones-importe-b-beps-2-0-precios-



[19]

5.1.1. Implementation of BEPS minimum standards in Spanish legislation.

5.1.1.1. Modified Nexus Approach (Action 5 BEPS)

Spain has implemented the minimum standard of Action 5 regarding the so-called "Modified Nexus Approach".

Law 27/2021, of December 28, of the General State Budget for the year 2022, introduced a series of amendments to Spanish tax legislation for the implementation of the minimum standard of Action 5. These amendments include the introduction of a new transfer pricing regime for intra-group transactions, based on the "Modified Nexus Approach".

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transferencia#:~:text=En%20este%20sentido%2C%20BEPS%202.0,para%20los%20grandes%20grupos%20multinacionales.

[19] https://www.pwc.com/gx/en/services/tax/pillar-two-readiness/country-tracker.html

The "Modified Nexus Approach" is a new transfer pricing approach that aims to avoid tax avoidance through aggressive tax planning. Transfer pricing should reflect the market value of intra-group transactions, considering the economic nexus between the parties to the transaction.

Specifically, Law 27/2021 introduced the following changes to Spanish tax legislation:

- A new article 16 of the Commercial Code was introduced, which defines the concept of "economic nexus". The economic nexus is the set of economic factors that justify the existence of an intragroup transaction.
- Article 16 of the Corporate Income Tax Regulations, which establishes the rules for determining the market price of intragroup transactions, was amended. The new rules are based on the "Modified Nexus Approach".

The application of the "Modified Nexus Approach" in Spain began on January 1, 2023.

5.1.1.2. Implementation of the BEPS Action 5 minimum standard in Spain: A step towards greater tax transparency.

Spain has implemented the minimum standard of Action 5 on the spontaneous exchange of tax rulings.

Law 27/2021, of December 28, of the General State Budget for the year 2022, introduced a series of modifications to Spanish tax legislation for the implementation of the minimum standard of Action 5.

The new regime of spontaneous exchange of tax rulings is based on the following principles:

- Obligation: Spanish tax authorities are obliged to exchange tax rulings with tax authorities in other countries.
- Automaticity: The exchange of tax rulings is done automatically, without the need for the tax authorities of the two countries to request the exchange.
- Risk-based approach: The exchange of tax rulings focuses on transactions that present a higher risk of tax evasion.

Specifically, Law 27/2021 introduced the following changes to Spanish tax legislation:

- A new article 142 bis of the General Tax Law was introduced, which establishes the obligation of the Spanish tax authorities to exchange tax rulings with the tax authorities of other countries.
- Article 142 of the General Tax Law, which establishes the requirements for the exchange of tax rulings, was amended. The new rules are based on the principles of obligation, automaticity and risk-based approach.

The application of the new regime of spontaneous exchange of tax rulings in Spain began on January 1, 2023.

5.1.1.3. Implementation of the minimum standard of Action 13 BEPS in Spain: A step towards greater tax transparency

Spain has implemented the minimum standard of Action 13 (Country-by-Country Reporting).

Law 27/2021, of December 28, on the General State Budget for the year 2022, introduced a series of modifications to Spanish tax legislation for the implementation of the minimum standard of Action 13. These modifications include the introduction of a new country-by-country reporting obligation for multinational companies with an annual turnover of over €750 million.

Country-by-country reports must contain information on the economic activities, revenues, expenses, profits and taxes paid by a multinational group in each country in which it operates. This information is intended to help tax authorities identify operations that may give rise to tax evasion.

Specifically, Law 27/2021 introduced the following changes to Spanish tax legislation:

- A new article 183 bis of the General Tax Law was introduced, which establishes country-by-country reporting obligations for multinational companies.
- Article 183 of the General Tax Law, which establishes the requirements for country-by-country reporting, was amended. The new rules are based on the OECD guidelines for the preparation and submission of country-by-country reports.

The application of the country-by-country reporting obligation in Spain began on January 1, 2023.

In addition to the implementation of the minimum standard, Spain has gone further and adopted a number of additional measures to improve tax transparency for multinational companies. For example, Spain has introduced an obligation to register aggressive tax planning schemes and has strengthened tax transparency rules for financial entities.

5.1.2. Tax reforms in Spain in light of BEPS initiatives: Full or partial adoption?

In general, Spain has followed the minimum standards of the BEPS actions. However, there are some areas where Spain has adopted similar, but not identical, reforms.

In the case of Action 5, Spain has adopted the "Modified Nexus Approach" for the determination of the market price of intragroup transactions but has adapted it to its tax legislation. A significance threshold has been established for intra-group transactions, below which the "Modified Nexus Approach" does not apply.

In the case of Action 13, Spain has adopted the country-by-country reporting obligation for multinational companies with an annual turnover of more than 750 million euros but has adapted it to its tax legislation. It has established a deadline for the submission of country-by-country reports and has provided for penalties for non-compliance with the obligation.

Spain has adopted the minimum standards of the BEPS actions and has gone further in some cases. However, Spain has modified some of the reforms to adapt them to its tax legislation. There have been some variations that are justified on the following grounds:

- Adaptation to Spanish tax legislation. Spain has established a significance threshold for intra-group transactions, below which the "Modified Nexus Approach" does not apply, justified by the need to avoid it being too complex or costly for companies that carry out minor intra-group transactions.
- Practical considerations. Spain has established a deadline for the submission of country-by-country reports, due to the need to ensure that the tax authorities have adequate access to the information contained in the country-by-country reports.

In terms of the attention that should be refocused on the minimum standards mentioned above, it is important to keep in mind that these standards are a starting point. The minimum standards can be adapted or improved as more information becomes available or new vulnerabilities are identified, and always in line with the implementation needs of the country.

In Spain, the BEPS reforms have been positive.

5.2. Spain and the OECD Peer Reviews on BEPS: Collaboration and Engagement

Spain welcomes the OECD peer reviews. These reviews are an opportunity to evaluate its fiscal framework and identify areas for improvement.[20]

It provides detailed information on its fiscal framework and collaborates with OECD experts to answer their questions. Spain is also committed to implementing OECD recommendations and has gone further in some cases.

Specifically, our country has taken the following measures to respond to the OECD's BEPS recommendations:

- Action 5: Spain has adopted the "Modified Nexus Approach" for determining the market price of intra-group transactions, establishing a significance threshold for intra-group transactions, below which it is not applied.
- Action 13: Spain has adopted mandatory country-by-country reporting for multinational companies with an annual turnover of more than 750 million euros but has established a deadline for the submission of country-by-country reports and has provided for penalties for non-compliance with the obligation.

[20] https://www.oecd-ilibrary.org/sites/85c6a9b3-es/index.html?itemId=/content/publication/85c6a9b3-es

Spain has gone further by adopting additional measures to improve tax transparency for multinational companies. An obligation to register aggressive tax planning schemes has been introduced, and tax transparency rules for financial entities have been strengthened.[21]

5.3. Analysis of the implementation in Spain of BEPS measures not included in the minimum standard.

Spain has implemented recommendations of the BEPS project that were not part of the minimum standard.

The following recommendations have been accepted:

- Action 2: Spain has introduced a new regime for taxation of hybrid entity income to avoid double non-taxation of hybrid entity income.
- Action 4: Spain has introduced a new regime for the taxation of income derived from the exploitation of intangibles to avoid tax avoidance through the transfer of intangibles to entities located in countries with low taxation.

The reasons for implementing BEPS actions that were not part of the minimum standard are as follows:

- Achieve a higher level of tax transparency and fairness: Action 2 can help avoid double non-taxation, and Action 4 can help avoid tax avoidance through the transfer of intangibles.
- Adapt the national tax framework to new economic realities: Action 2 can help adapt to the growing importance of hybrid entities, and Action 4 can help adapt to the growing importance of intangibles.

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[21] https://www.oecd-ilibrary.org/sites/85c6a9b3-es/1/2/5/index.html?itemId=/content/publication/85c6a9b3-es&_csp_=a6602fe0b79c6749f88b73a1c284c056&itemIGO=oecd&itemContentType=book#component-d1e515

5.4. Evaluation of the impact of the BEPS project in Spain: A path towards fairer taxation.

The BEPS project has been a success in our country. Spain has implemented the minimum standards of the BEPS actions, and has gone further in some cases, adopting additional measures to improve the tax transparency of multinational companies.

These reforms have helped to improve tax transparency and fairness and have contributed to reducing the risk of tax evasion and avoidance.

The reasons for the success of the BEPS project in Spain are as follows:

- Political commitment: The Government of Spain has been committed to implementing the recommendations of the BEPS project.
- Corporate collaboration: Multinational companies have collaborated with tax authorities to implement the BEPS tax reforms.
- OECD support: The OECD has provided technical and financial support to Spain to implement the BEPS tax reforms.

These standards have helped to reduce the complexity of international tax rules and have made it easier for multinational companies to comply with their tax obligations.

However, it is important to note that the BEPS project is not a definitive solution to the problem of international tax evasion. Multinational companies continue to look for new ways to avoid taxes, and tax authorities must be prepared to adapt to these new challenges.

It is necessary to continue evaluating the impact of the BEPS tax reforms. It is important to check whether these reforms have had the desired effect, and whether further measures are needed to further improve tax transparency and fairness.

5.5. The BEPS initiative and the ATAD Directives: Towards greater tax harmonization in the European Union.

We are now going to analyse what path the European Union has followed to take on BEPS actions. We will take a trip through the main lines of the Anti-Tax Avoidance Directives.

The member states are adapting to the new rules, but their implementation is being different, both in pace and form.

5.5.1. The role of the ATAD 1, 2, 3 Directives in the implementation of BEPS standards in the European Union.[22]

5.5.1.1. ATAD 1 DIRECTIVE

-Directive (EU) 2016/1164, (ATAD 1 Directive) of 12 July 2016, has as its main objective to strengthen the average level of protection against abusive tax planning practices in the national corporate tax systems of all Member States.

The ATAD 1 Directive develops and coordinates, at the EU level, Actions 2 ("Neutralize the effects of hybrid mechanisms"), 4 ("Limit base erosion through deductions on interest and other financial payments") and 5 ("Combat harmful tax practices, taking into account transparency and substance") of the OECD BEPS Project.

The measures that the Council has adopted in its fight against tax evasion are as follows:

- *Limitation on the deductibility of financial expenses*: in summary, a limitation is established on the deductibility of financial expenses up to a maximum of 30 percent of EBITDA, although deductibility is allowed, in any case, of such expenses up to an amount of three million euros.
- *Exit tax*: this is intended to ensure that, in those cases in which a taxpayer transfers its assets or its tax residence outside the jurisdiction of a given State, the latter may tax the unrealized capital gains related to such assets, generated in its territory and not yet realized at the time of exit.

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[22] https://www.oecd.org/ctp/10-preguntas-sobre-beps.pdf

https://www.uria.com/documentos/publicaciones/5092/documento/art02.pdf?id=6753&forceDownload=true

https://www.consilium.europa.eu/es/policies/anti-tax-avoidance-package/

- *General rule against abusive practices*: Member States are prohibited from using distorting mechanisms that distort the purpose of the tax rule, i.e. that do not respond to valid commercial reasons that reflect the economic reality of a given transaction.
- *International tax transparency rule*: Member States are allowed to reallocate the income of a controlled subsidiary subject to low levels of taxation to its parent company, the latter being taxed on the reallocated income in its State of residence.
- *Anti-hybrid rule*: the aim is to neutralize the impact of the so-called hybrid mechanisms, financial instruments that receive a different qualification and tax treatment in two jurisdictions and that, therefore, may generate situations of double deduction or de-taxation.

The Spanish legislator went ahead of the European legislator and approved, while the negotiations and drafts of the final reports of the BEPS Project were taking place, a large part of the measures now contemplated by the ATAD.

Therefore, the measures now introduced by the European legislator are in no way alien to the Spanish legislator, which will not need to implement substantial modifications to its domestic legislation to transpose them.

However, it should be borne in mind that the ATAD establishes "minimum standards of protection", i.e., it binds the Member States to achieve its objectives but leaves them, nevertheless, a certain margin for adaptation and development.

The ATAD 1 Directive is an important step in the fight against tax base erosion and profit shifting. The Directive has been adopted by all EU Member States and is to be implemented as of January 2020. In the case of Spain, many of the measures are already included in domestic legislation, so the transposition of the Directive should not involve a great effort. However, it will be necessary to wait for the Directive to be applied in practice to assess its real impact.

5.5.1.2. ATAD 2 DIRECTIVE

Directive (EU) 2017/952 of 29 May 2017 (ATAD 2 Directive), The ATAD 2 Directive aims to strengthen the measures of the ATAD 1 Directive to combat tax base erosion and profit shifting.

The ATAD 2 Directive introduces new measures to combat tax base erosion, including:

- A new anti-hybrid rule with global reach: The new anti-hybrid rule of the ATAD 2 Directive has a global reach, meaning that it applies to transactions involving entities resident in European Union countries as well as entities resident in third countries.
- A new rule on the allocation of profits to non-resident entities: The new rule on the allocation of profits to non-resident entities in the ATAD 2 Directive aims to prevent companies from shifting profits to non-resident entities that do not engage in real economic activities.
- A new rule on the obligation to report income earned by non-resident entities: The new rule on the obligation to declare income earned by non-resident entities in the ATAD 2 Directive aims to ensure that companies declare all income they earn, regardless of where it is generated.

What is new in the ATAD 2 Directive compared to the ATAD 1 Directive?

The ATAD 2 Directive introduces a number of new features compared to ATAD 1, including:

- A global scope: The ATAD 2 Directive has a global scope, which means that it applies to transactions involving entities resident in European Union countries, as well as entities resident in third countries. The ATAD 1 Directive, on the other hand, only applies to transactions involving entities resident in EU countries.
- A new anti-hybrid rule: ATAD 2 introduces a new anti-hybrid rule with a broader scope than the anti-hybrid rule in ATAD 1. The new anti-hybrid rule in ATAD 2 aims to prevent companies from using hybrid mechanisms to obtain tax advantages.
- A new rule on the allocation of profits to non-resident entities: The ATAD 2 Directive introduces a new rule on the allocation of profits to non-resident entities that aims to prevent companies from shifting profits to non-resident entities that do not engage in real economic activities.
- A new rule on the obligation to report income earned by non-resident entities: The ATAD 2 Directive introduces a new rule on the obligation to declare income earned by non-resident entities that aims to ensure that companies declare all income they earn, regardless of where it is generated.

5.5.1.3. ATAD 3 DIRECTIVE

The proposed directive pursues the neutralization of abusive tax planning through shell companies (i.e. third iteration of Directive 2016/1164). Since it is still pending approval, we are going to give only a small brushstroke:

- Objective: to prevent companies from using shell companies to obtain tax advantages.
- Application: companies that meet the following criteria:
    - More than 75% of their income is relevant income (mainly passive or non-corporate income).
    - They carry out a cross-border activity.
    - In the previous two years, day-to-day management and decision making for relevant functions have been outsourced.
- Reporting obligation: companies that meet the above criteria must report in their annual tax return whether they meet the following indicators:
    - They have their own facilities in the Member State or facilities for their exclusive use.
    - They have at least one active bank account of their own in the EU.
    - At least one qualified manager is resident in the Member State, or the majority of the company's full-time employees are resident.
- Consequences of the lack of minimum substance:
    - Loss of the right to obtain a residence certificate, of the benefits provided for in the IDCs and in the EU Directives.
    - Taxation of income obtained by the shell company in the Member State of the shareholders or of the payer of the income.
    - Monetary fine of at least 5% of the turnover of the shell company.
- Potential impact:
    - Companies making cross-border investments should take into account the minimum indicators of substance when undertaking new investments.
    - It could have a significant impact on companies that use shell companies to obtain tax advantages.

Substantial differences with related **BEPS actions**

In general, ATAD 1 and 2 are in line with the related BEPS actions. However, there are some substantial differences.

In the case of ATAD 1, the main differences with Action 5 of the BEPS project are the following:

- The ATAD 1 Directive does not include default transfer pricing rules for low value-added intragroup transactions.
- The ATAD 1 Directive establishes a significance threshold for intra-group transactions, below which the default transfer pricing rules do not apply.

In the case of ATAD 2, the main differences with Action 2 of the BEPS project are the following:

- The ATAD 2 Directive establishes a significance threshold for hybrid asymmetries, below which the neutralization rules do not apply.
- The ATAD 2 Directive establishes specific rules for hybrid entities with non-resident entities.

5.5.2. The approval of the ATAD Directives: A road full of obstacles and resistance.

The Directives were to be adopted unanimously by the Member States. We are to develop the process of establishing the three Directives and focus in particular on the Member States that were against the adoption of the Directive at stake.

The process of establishing the ATAD Directives began in 2013, when the European Commission published an action plan to combat Base Erosion and Profit Shifting (BEPS). The action plan included 15 actions, 11 of which became directives.

The ATAD Directives were adopted unanimously by the Council of the European Union. The adoption process began with the submission of a proposal by the European Commission. The proposal was then examined by the Council and the European Parliament.

Member States opposed to the approval of the Directives.

Some Member States opposed the adoption of the ATAD Directives. The reasons of these Member States were as follows:

- Concern about the economic impact of the Directives: Some Member States feared that the Directives would have a negative impact on their economy. For example, Member States with low taxation feared that the Directives would lead to a loss of foreign direct investment.
- Concern about loss of national sovereignty: Some Member States feared that the Directives would lead to a loss of national sovereignty. For example, Member States with complex tax systems feared that the Directives would force them to simplify their tax systems.

The role of the possible loss of national sovereignty

The potential loss of national sovereignty was an important factor in the opposition of some Member States to the ATAD Directives. These Member States feared that the Directives would force them to adopt tax rules that were not in line with their national interests.

For example, some Member States with low taxation feared that the Directives would force them to increase their taxes. These Member States argued that the Directives would lead them to lose competitiveness vis-à-vis other countries with lower taxation.

Other Member States with complex tax systems feared that the Directives would force them to simplify their tax systems. These Member States argued that the Directives would lead them to lose tax flexibility.

In general, the potential loss of national sovereignty was a major factor hindering the adoption of the TTIP Directives. However, the European Commission and the Member States supporting the Directives were able to overcome these objections and achieve unanimous approval.

5.5.3. The ATAD Directives: A step forward in the fight against tax avoidance or an encroachment on tax sovereignty?

The evaluation of the ATAD Directives in the academic literature is heterogeneous. Some scholars consider the Directives to have been a success, while others consider them a failure.

The arguments in favour of considering the Directives as a success are as follows:

- The Directives have contributed to reducing tax base erosion and profit shifting. A study by the European Commission (2022) estimates that the ATAD Directives have contributed to reducing tax base erosion and profit shifting by 25%.
- The Directives have increased the tax transparency of multinational companies, as multinational companies are required to provide more detailed information on their intra-group transactions. This information makes it easier for tax authorities to detect tax evasion.
- The Directives have contributed to creating a fairer and more equitable tax environment. They have sought to minimize the tax advantage of multinational companies shifting their profits to low-tax countries.

The arguments against considering the Directives as a success are as follows:

- The Directives are too complex and difficult to implement. The documentation requirements of the ATAD Directives can be complex and difficult for multinational companies to comply with.
- The Directives have not been sufficient to address all BEPS risks, such as the use of complex contractual structures to reduce the tax burden.
- The Directives may have a negative impact on foreign direct investment. Some academics that may lead to increased tax costs for multinational companies.

It is important to note that the evaluation of the ATAD Directives is an ongoing process. Academics and researchers are conducting research to assess the long-term impact of the Directives.

5.5.4. The OECD and the ATAD Directives: A boost to the fight against tax avoidance or an imposition on European fiscal sovereignty?

The fact that the OECD launched the European initiatives to combat Base Erosion and Profit Shifting (BEPS) has had a significant impact on the success or failure of the ATAD Directives.

First, the OECD provided a global framework for the fight against BEPS. The OECD BEPS actions were the starting point for the ATAD Directives and therefore benefit from the OECD's work to identify BEPS risks and develop solutions to address them.

Second, the OECD helped promote international consensus on the need to fight BEPS. The OECD brought together representatives from more than 130 countries to work on BEPS actions.

Third, the OECD provided technical support to member states for the implementation of the ATAD Directives. The OECD developed guides and tools to help member states comply with the standards of the Directives. This technical support has been essential to the successful implementation of the Directives.

In conclusion, the fact that the OECD launched the European initiatives to fight BEPS has been an important factor in the success of the ATAD Directives.

However, it is also important to note that the success of the ATAD Directives does not depend solely on the OECD. Member States have also played an important role in the adoption and implementation of the Directives.

6. GLOBAL MINIMUM TAX (GLOBE/PILLAR 2) AND BEFIT AS SECOND EXAMPLE

6.1. Spain joins the fight against international tax avoidance with the implementation of the Global Minimum Tax[23].

Spain is committed to implement the global minimum tax in accordance with the Two-Pillar Solution to address the tax challenges arising from the digitalization of the economy. The Spanish government has approved a Royal Decree-Law transposing the EU Directive implementing the global minimum tax.

Council Directive 2022/2523, adopted in December 2022, adapted the OECD's Pillar 2 proposals to the specific EU context. It seeks to establish a minimum level of taxation for large corporate groups and to stop tax practices that allow profits to be shifted to jurisdictions with little or no taxation.

The new paradigm of GloBE (Global Anti Base Erosion) rules raises uncertainties, and the complexity of the Directive and the OECD documents does not reduce them. Despite this, the Directive has been well received in the major EU economies, marking a change in tax avoidance and tax competition between jurisdictions.

The Implementation of the Global Minimum Tax in Spain: An Essay

The fight against aggressive tax planning by multinational corporations has become a priority in the international arena. In recent years, several countries have implemented measures

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[23] https://www.oecd.org/tax/la-ocde-presenta-las-normas-modelo-del-segundo-pilar-para-facilitar-la-aplicacion-interna-del-impuesto-minimo-global-del-15-por-ciento.htm

https://www.grantthornton.es/perspectivas/fiscal/principales-actualizaciones-sobre-la-aplicacion-global-del-segundo-pilar/

https://fiscalblog.es/?p=8194

https://www2.deloitte.com/mx/es/pages/tax/articles/ocde-guia-administrativa-reglas-globe-pilar-II.html to ensure that these companies pay their fair share of taxes. One of the most significant developments in this area is the introduction of a global minimum tax (GMT).

The GMT is a set of rules agreed upon by over 130 countries under the OECD/Inclusive Framework on Base Erosion and Profit Shifting (BEPS). The aim of the GMT is to ensure that multinational enterprises with revenues above EUR 750 million are subject to a minimum effective tax rate of 15% wherever they operate.

Spain has been at the forefront of the implementation of the GMT. In 2022, the Spanish government introduced a national minimum tax of 15% on the taxable base of large companies. This measure was compatible with the GMT, as it applied to a different tax base.

When Law 22/2021[24], of December 28, proposed a minimum taxation of 15% in the Corporate Tax Law[25] for certain taxpayers, it did so under the announcement that said measure is introduced under the auspices of the consensus supported by 130 countries of the OECD to achieve a global minimum tax[26]. Although this measure was still far from the OECD proposals for minimum global taxation, its intentions have become a premonition.

The announcement of minimum taxation in Spain did not come out of nowhere. It is part of a global effort led by the OECD to reform the international tax system. A journey that began in 2021 and that now reaches its destination in Spain.

In July 2021, more than 130 countries, including Spain, agreed to implement the OECD two-pillar solution[27]. Pillar 2, focused on large multinational companies (MNEs), sought to ensure a minimum level of taxation of 15% for these companies.

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[24] Ley 22/2021, de 28 de diciembre, de Presupuestos Generales del Estado para el año 2022 (BOE núm 312, de 29 de diciembre de 2021).

[25] Ley 27/2014, de 27 de noviembre, del Impuesto sobre Sociedades (BOE núm. 288, de 28 de noviembre de 2014).

[26] This was stated in the Press Release of the Ministry of Finance when making public the General State Budget Bill for the year 2022.
https://www.hacienda.gob.es/Documentacion/Publico/GabineteMinistro/Notas%20Prensa/2021/S.E.%20PRESUPUESTOS%20Y%20GASTOS/07-10-21-NP-CM-PRESUPUESTOS-GENERALES-DEL-ESTADO-2022.pdf

[27] https://www.oecd.org/espanol/noticias/beps-if-impuestos-digitales.htm

To achieve this objective, the OECD developed the GloBE (Global Anti Base Erosion) standards, reflected in the "Model Rules"[28]. These rules served as the basis for the European Commission's proposed Directive in December 2022[29].

The European Commission's proposal sparked an intense debate within the European Finance Council (ECOFIN). After almost a year of discussions and uncertainty, Council Directive 2022/2523 was finally approved on December 15, 2022.

Recital 2 of the Directive summarizes the need for effective minimum taxation to curb practices that allow multinational companies to avoid taxes. Shifting profits to jurisdictions with low or no taxation creates unfair tax competition between States, eroding tax bases and depriving governments of the resources necessary to finance public services.

It is a path begun towards European Tax Harmonization.

Minimum taxation is part of a global effort led by the OECD and the European Union to combat BEPS. The BEPS project, the ATAD I and II Directives, and the saga of DAC Directives[30] are milestones on this path towards tax harmonization. Minimum taxation represents a crucial step, consolidating this effort and strengthening the capacity of States to protect their tax bases.

It is important to recognize that minimum taxation is not a magic solution. It must coexist with the primary law of the European Union, which protects fundamental freedoms, and with bilateral agreements to avoid double taxation. Furthermore, its implementation presents

[28] OECD (2021), Tax Challenges Arising from Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/782bac33-en

[29] Directiva (UE) 2022/2523 del Consejo de 15 de diciembre de 2022 relativa a la garantía de un nivel mínimo global de imposición para los grupos de empresas multinacionales y los grupos nacionales de gran magnitud en la Unión (DOUE núm. 328, de 22 de diciembre de 2022, páginas 1 a 58).

[30] Directiva 2011/16/UE del Consejo, de 15 de febrero de 2011, relativa a la cooperación administrativa en el ámbito de la fiscalidad, y sus sucesivas modificaciones.

technical and administrative challenges that require close collaboration between Member States.

In December 2023, the Spanish government approved a draft law to implement the GMT in line with the EU Directive on the matter. The new law will introduce a complementary tax that will apply to large groups located in Spain that pay taxes below 15%. The tax will have three different components:

- A national complementary tax: Spanish companies that are part of a national or multinational group and that pay less than the 15% minimum will have to pay the difference.
- A tax on the foreign income of Spanish multinationals: The tax will apply if the parent company of a multinational located in Spain receives income from subsidiaries abroad that are taxed at a rate lower than 15%.
- A "closing system": If some of the companies in the multinational group obtain profits abroad that are taxed below the established threshold, the difference will be assumed by the group's subsidiaries located in Spain.

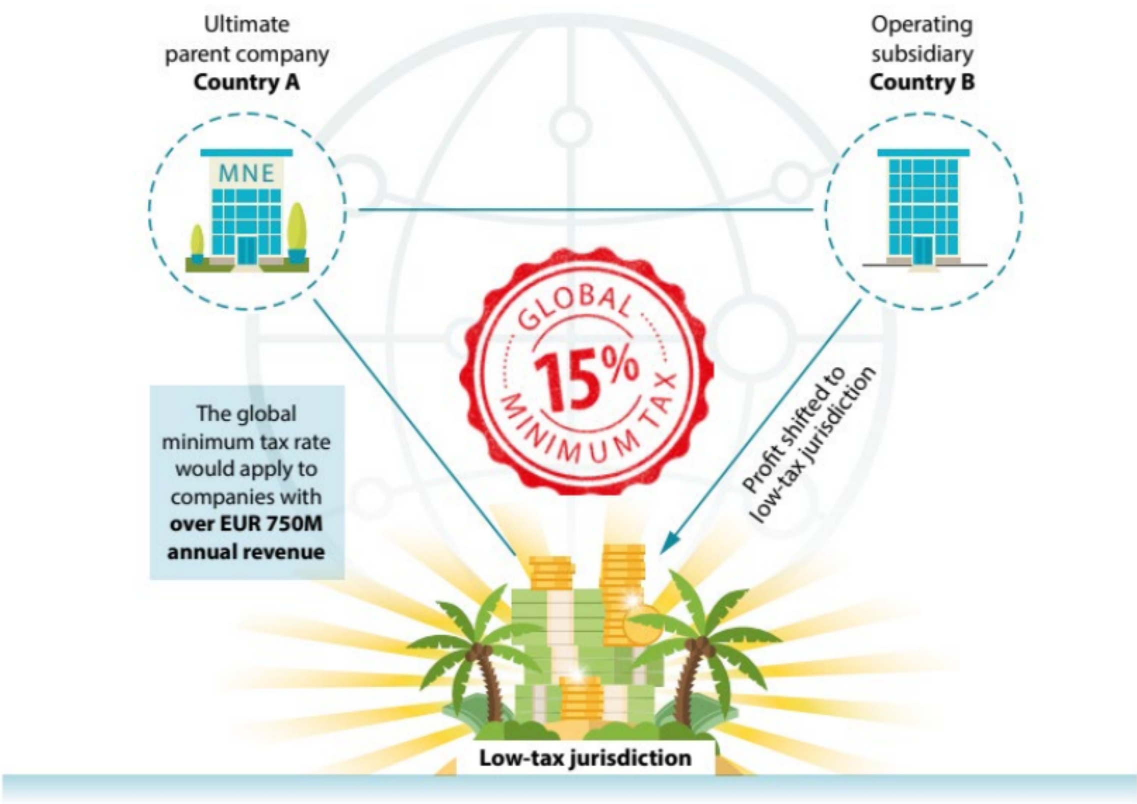
The implementation of the GMT in Spain is a significant step towards a fairer and more efficient international tax system. The new measures are expected to increase tax revenues and reduce tax avoidance by multinational companies.

However, there are some challenges that need to be addressed. *One challenge* is the complexity of the rules, which could make it difficult for companies to comply. *Another challenge* is the need for international cooperation to ensure that the GMT is effectively implemented and enforced.

This essay provides a brief overview of the implementation of the GMT in Spain. Further research is needed to fully understand the implications of this measure.[31]

[31] https://elpais.com/economia/2023-12-19/el-gobierno-da-luz-verde-al-impuesto-minimo-global-del-15-a-las-grandes-sociedades.html

The global minimum tax is an important measure to combat base erosion and profit shifting (BEPS). The global minimum tax will help ensure that multinational companies pay their fair share of taxes, regardless of where they operate[32].



Fuente: OECD/G20 Base Erosion and Profit Shifting Project Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy OCTOBER 2021

The Spanish government has reported that the implementation of the global minimum tax will have a positive impact on Spanish public finances. The global minimum tax is expected to generate additional revenues of €1 billion per year for the Spanish government.

[32] https://www.ucm.es/jeanmonnetchair/file/img-ucm-febrero-2023?ver

6.2. Timeline for the introduction of the Global Minimum Tax in EU and Spain[33]

The EU Directive provides that Member States may choose to apply a top-up tax to multinational or large national groups resident in their territory that do not achieve a minimum tax rate of 15% in the jurisdiction of that Member State. In other words, if a Spanish group pays, for example, 11% on its accounting results in another country, Spain would be entitled to tax the remaining 4% in the parent company. And vice versa. "The aim of this bill is to adapt to the Spanish legal framework the international tax agreements reached in global forums and institutions, such as the G20, the OECD or the EU, in order to combat aggressive tax planning by multinational companies," the Ministry of Finance said in a note. "The implementation of Pillar 2 will complete and advance this path in coordination with more than a hundred countries," it adds.

On 20 December 2023[34], the Ministry of Finance published **draft legislation (pdf)** to introduce into Spanish domestic legislation the Pillar Two effective tax rate of 15% for multinational enterprises and large-scale domestic groups for public consultation.

The draft legislation is generally aligned with the European Union (EU) Minimum Tax Directive[1] and the Pillar Two **Model Rules[2] (OECD Model Rules)(pdf)** as approved by the Organisation for Economic Co-operation and Development (OECD)/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS). The draft legislation is structured as a separate tax law that is not intended to be embedded in the existing Spanish Corporate Income Tax Law.

The draft legislation incorporates an Income Inclusion Rule (IIR) and an Undertaxed Profits Rule (UTPR). The draft legislation makes use of the option provided in the EU Global Minimum Tax Directive to introduce a Qualified Domestic Minimum Top-up Tax (QDMTT), allowing Spain to collect top-up tax on the excess profit of a low-taxed Spain entity that is part

[33] https://www.legaltoday.com/portada-2/portada-5/espana-ante-la-directiva-de-imposicion-global-minima-retos-y-efectos-de-una-trasposicion-tardia-2023-02-09/#_ftn7

[34] https://www.ey.com/en_gl/tax-alerts/spain-publishes-draft-legislation-on-implementation-of-eu-minimu

of an in-scope group. Further, the draft legislation includes an interpretative clause stating the dynamic interpretation of the Spanish domestic rules in accordance with the OECD Model Rules, Commentary and Administrative Guidance.

The IIR and the QDMTT will be effective retroactively for fiscal years starting on or after 31 December 2023. The UTPR will apply for Fiscal Years starting on or after 31 December 2024. The draft legislation also includes a Transitional Country-by-Country Reporting (CbCR) Safe Harbor, a QDMTT Safe Harbor and a transitional UTPR Safe Harbor.

The draft legislation was open to public consultation until 19 January 2024.

The schedule for the introduction of the global minimum tax is as follows:

- October 8, 2021: G20 countries agreed on the Two-Pillar Solution to address the tax challenges arising from the digitalization of the economy. The Two-Pillar Solution includes the global minimum tax.
- April 1, 2022: The OECD published the final guidelines for the implementation of the global minimum tax.
- July 1, 2022: The European Union adopted the Directive implementing the global minimum tax.
- January 1, 2023: European Union countries must transpose the Directive into their national legislation.
- January 1, 2024: The global minimum tax will come into force in the European Union.

In Spain, the schedule is as follows[35]:

- May 11, 2023: The Spanish Government approved a Royal Decree-Law transposing the European Union Directive implementing the global minimum tax.

[35] https://www.legaltoday.com/portada-2/portada-5/espana-ante-la-directiva-de-imposicion-global-minima-retos-y-efectos-de-una-trasposicion-tardia-2023-02-09/#_ftn7

- Decembre 20, 2023[36]: Preliminary draft law on the introduction of a complementary tax to ensure a global minimum level of taxation for multinational and large national groups.
- January 1, 2024: The global minimum tax will come into force in Spain.

Therefore, the global minimum tax will enter into force in the European Union on January 1, 2024. In Spain, the global minimum tax will enter into force on the same day.

The global minimum tax will apply to multinational companies with an annual turnover of more than 750 million euros. The overall minimum tax rate will be 15%.

The global minimum tax is an important measure to combat base erosion and profit shifting (BEPS). The global minimum tax will help ensure that multinational companies pay their fair share of taxes, regardless of where they operate.

Origin and evolution. From where and to where?

On July 1, a multilateral agreement is reached by of members of the Inclusive Framework (IF) on BEPS of the OECD and the G20 to adapt international regulations to the challenges of a globalized and digitalized economy.

On October 8, 2021, the agreement was renewed and formalized policy reached in July, with 136 of 140 countries already signing members of the IF (currently 137 of 141). The solution based on two pillars was presented to the G-20 finance ministers in Washington DC, on 13 October, and at the G-20 Summit in Rome, 30-31 October

Timeline of Key Milestones of the Two-Pillar Solution

Milestones:

1996:

- G7 makes tax evasion and avoidance a priority.

1998:

- OECD report: Harmful Tax Competition: An Emerging Global Issue.

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36 https://www.hacienda.gob.es/Documentacion/Publico/NormativaDoctrina/Proyectos/20122023-apl-impuesto-complementario.pdf

2000-2007:

- Development of international standards on tax transparency and securing commitments for a global level playing field.

2008-2009:

- Global financial crisis: G20 commits to end bank secrecy and establishes the Global Forum on Transparency and Exchange of Information for Tax Purposes.

July 2013:

- G20 identifies tax avoidance as a priority.

October 2015:

- Adoption of the BEPS (Base Erosion and Profit Shifting) package of 15 actions to combat tax avoidance.
  - Action 1 addresses the digitalization of the economy.

June 2016:

- Establishment of the OECD/G20 Inclusive Framework on BEPS, which now has 140 members.

2017-2020:

- Active discussions in the Inclusive Framework on how to address the tax challenges of the digitalization of the economy culminating in the release of "blueprints" for a Two-Pillar Solution in October 2020.

July 2021:

- Over 130 countries and jurisdictions join the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy.

October 2021:

- 136 members of the Inclusive Framework join the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy with a Detailed Implementation Plan.

2022:

- Deadlines for the development of model legislation, a Multilateral Convention, and a multilateral instrument for the implementation of the Two-Pillar Solution.

2023:

- Deadline for the implementation of the Two-Pillar Solution.

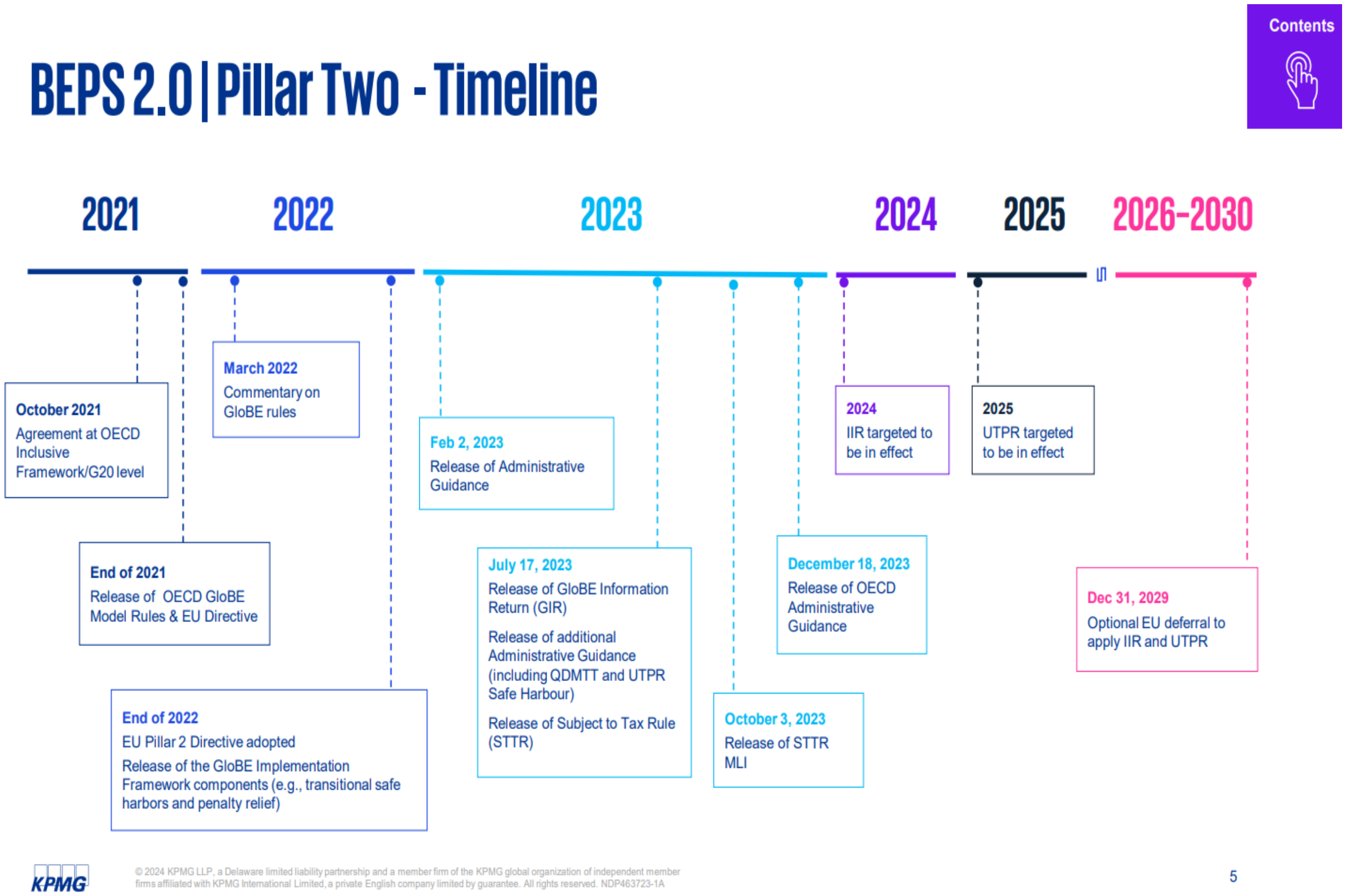
Implementation plan

TARGET DEADLINES

Pillar One	Pillar Two
Early 2022 – Text of a Multilateral Convention (MLC) and Explanatory Statement to implement Amount A of Pillar One	**November 2021** – Model rules to define scope and mechanics for the GloBE rules
Early 2022 – Model rules for domestic legislation necessary for the implementation of Pillar One	**November 2021** – Model treaty provision to give effect to the subject to tax rule
Mid 2022 – High-level signing ceremony for the Multilateral Convention	**Mid 2022** – Multilateral Instrument (MLI) for implementation of the STTR in relevant bilateral treaties
End 2022 –Finalisation of work on Amount B for Pillar One	**End 2022** – Implementation framework to facilitate co-ordinated implementation of the GloBE rules
2023 – Implementation of the Two-Pillar Solution	

Fuente: OECD/G20 Base Erosion and Profit Shifting Project Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy OCTOBER 2021

The planned schedule regarding the implementation of the Second Pillar BEPS 2.0 [37].



6.3. Implementation of IIR, UTR and QDMTT in Spain

The European Union's Global Minimum Tax Directive is shaking up the corporate tax landscape, and Spain is embracing this change with its draft legislation. This new framework introduces a minimum effective tax rate of 15% for large multinational companies (MNEs) and sizable domestic groups, aiming to level the playing field and ensure fair contributions. Let's delve into the key aspects of this implementation and its potential impact.

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37 https://translate.google.es/?sl=es&tl=en&text=El%20cronograma%20previsto%20respecto%20a%20la%0Aimplementaci%C3%B3n%20del%20Segundo%20Pilar%20BEPS%202.0.&op=translate

The new system rests on two main pillars: the Income Inclusion Rule (IIR) and the Undertaxed Payments Rule (UTPR). The IIR, effective retroactively *from December 2023*, acts as a top-up tax, ensuring a minimum 15% tax rate across the group, even if subsidiaries reside in low-tax jurisdictions. If a qualifying Qualified Domestic Minimum Top-up Tax (QDMTT) is already imposed in such jurisdictions, the IIR top-up tax is reduced accordingly.

The UTPR serves as a backstop, applicable *from December 2024 onwards*. If the ultimate parent entity (UPE) resides in a low-tax jurisdiction with no qualified IIR, any Spanish subsidiary within the group will be subject to an additional tax to reach the 15% minimum. This ensures fair taxation even in complex structures with UPEs located outside the EU.

The draft legislation also incorporates a QDMTT, imposing an additional tax on low-taxed profits within Spain. This applies to qualifying groups with consolidated revenues exceeding €750 million. Here, complexities arise with specific provisions excluded from the OECD's QDMTT design, creating a need for careful consideration and potentially requiring adjustments.

Fortunately, safe harbor rules offer some relief. Transitional CbCR rules and permanent QDMTT reductions are available under certain conditions, providing exemptions or tax reductions for specific scenarios. Additionally, a five-year exclusion for newly internationalizing MNE groups helps ease the transition.

Businesses affected by these changes face several challenges. Understanding the impact on their structures, processes, and data readiness is crucial. Proactive steps like data preparation, system updates, and seeking professional guidance are essential for smooth compliance. Moreover, staying informed about evolving regulations and their implications is vital.

The new tax landscape demands careful attention to accounting public disclosure rules for Pillar Two information. These disclosures may be required even before the actual tax filing, adding another layer of complexity.

While the EU Global Minimum Tax implementation in Spain aims for a fairer and more equitable tax system, its complexity presents challenges. Businesses need to be prepared to adapt and navigate the intricacies of the new rules.

Lastly, the success of this initiative hinges on its implementation and enforcement. While some aspects raise questions, the move towards a more level playing field in corporate taxation holds promise for a fairer and more sustainable economic future.

The EU Global Minimum Tax Directive brings a wave of change for large companies in Spain, and within it lies a beacon of hope – safe harbors. These provisions offer exemptions or reductions in top-up taxes under certain conditions, providing some solace amidst the new complexities. Let's explore the different types of safe harbors and their potential benefits.

For the initial years (2024-2026), companies can leverage the "transitional CbCR safe harbor." This relies on existing country-by-country data to calculate revenue and income, easing the transition to the new system. To qualify, companies must meet one of three criteria: low revenue and profits, exceeding a minimum effective tax rate, or having no excess profits after excluding routine ones. This simplifies compliance and offers temporary relief while companies adapt.

Looking beyond the initial phase, the "permanent QDMTT safe harbor" offers a lasting solution. If a jurisdiction already imposes a qualified QDMTT, the top-up tax for that specific jurisdiction is permanently reduced to zero. This rewards countries taking proactive steps towards fair taxation and allows companies to avoid double taxation.

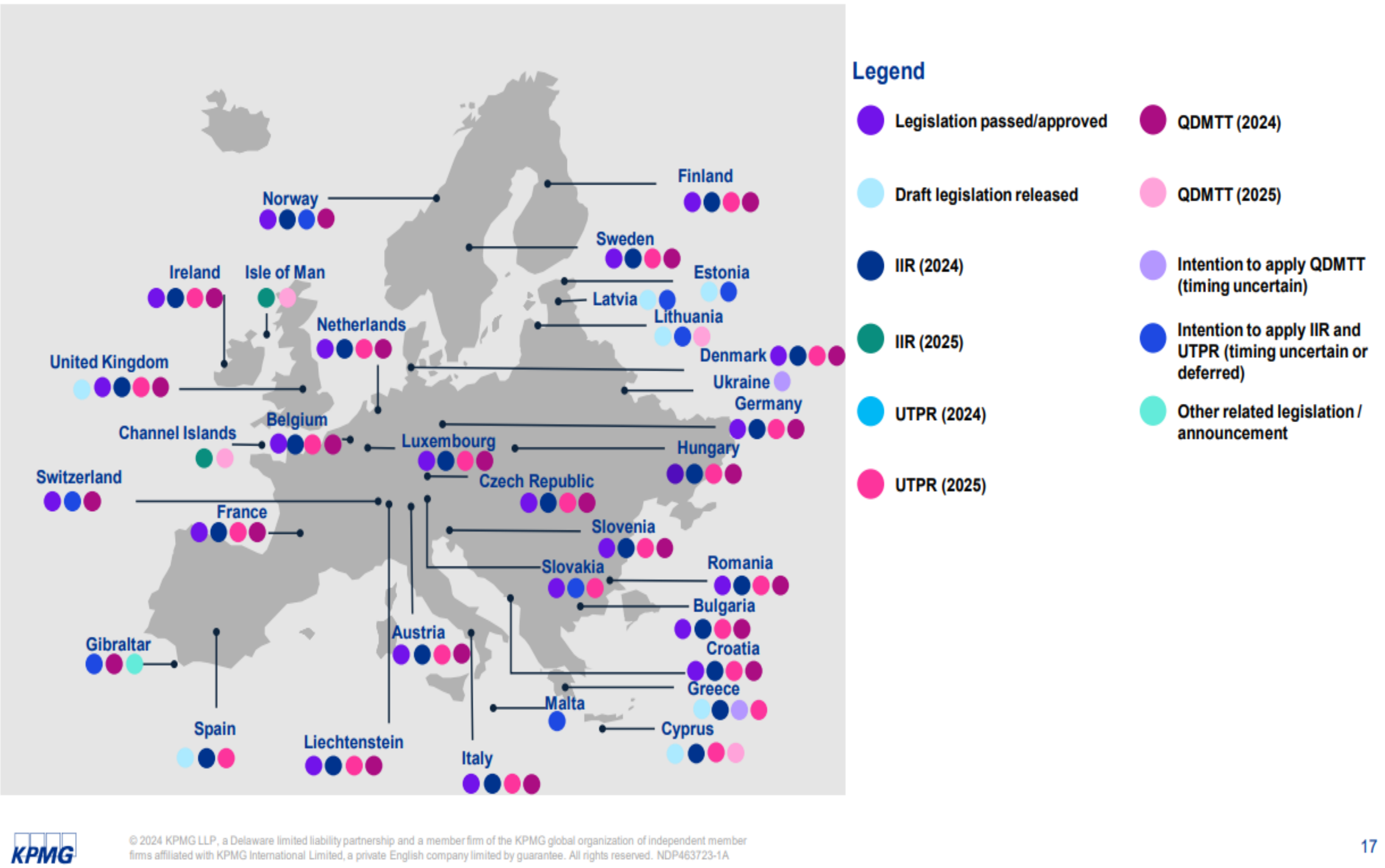
Newly internationalizing companies get a five-year grace period under the "exclusion for new MNE groups." This exemption from minimum tax allows them to focus on establishing their global presence without immediate tax burdens. This provision fosters growth and encourages international expansion.

While safe harbors offer relief, complying with the overall framework remains crucial. Spanish entities subject to top-up taxes must file returns within specific deadlines. Designation of a responsible entity for filing facilitates the process, and joint liability ensures collective responsibility. Compliance with GloBE information return requirements is also essential, albeit with some adaptations in the Spanish draft legislation.

With the draft legislation still under review, staying informed is key. Taxpayers should analyze the potential impact of these rules on their structures and processes. Assessing data readiness and addressing technical implications are crucial. Understanding the interaction of safe harbors with other aspects of the rules is also important. Finally, preparing for new accounting disclosure requirements for Pillar Two information is essential.

Safe harbors provide a vital safety net for companies navigating the new tax landscape. While complexities remain, these provisions offer opportunities for smoother transitions, permanent relief, and support for newcomers. As the implementation progresses, understanding these options and actively preparing for compliance will be paramount for businesses to navigate the changes and secure their future in the evolving global tax environment.

Pillar Two –State of play | Europe (EU & non-EU)[38]



		Income Inclusion Rule (IIR)	Undertaxed Profits Rule (UTPR)	Domestic Top-up Tax (QDMTT)
Spain	***Draft bill released***	2024	2025	uncertain

[38] BEPS 2.0 Pillar Two State of Play - Developments Summary (kpmg.com)

6.4. Deviations from the Inclusive Framework/OECD Model Rules in the Implementation of the Global Minimum Tax in Spain

The main deviations from the Inclusive Framework/OECD Model Rules in the implementation of the global minimum tax in Spain are as follows:

- Definition of multinational group: Spain has adopted a stricter definition of multinational group than that set forth in the Model Rules. The Spanish definition requires that the companies be under common control or have a significant shareholding.
- QDMTT calculation: Spain has adopted a QDMTT calculation method that is based on the economic benefits of the multinational company in Spain. This method is more complex than the calculation method established in the Model Rules, which is based on the tax profits of the multinational company in Spain.
- Exemptions: Spain has established a number of exemptions to the global minimum tax. These exemptions apply to multinational companies engaged in activities of public interest, such as research and development, or operating in strategic sectors, such as defence.

In general, the implementation of the global minimum tax in Spain is compatible with the Inclusive Framework/OECD Model Rules. However, there are some deviations and specific features that should be considered.

Below is a **more detailed** description of each of the above-mentioned deviations:

- *Spanish global minimum tax:* Applies to all companies with a global turnover of more than 750 million euros, regardless of their sector or activity.
- *OECD Pillar 2:* Applies to companies with a global turnover of more than 750 million euros that are part of a multinational group. Pillar 2 excludes certain entities such as investment funds, financial institutions, and shipping companies.

***Tax calculation**:*

- *Spanish global minimum tax***:** Calculated by applying a 15% tax rate to the taxable base of the Corporate Income Tax, with certain modifications. These modifications include the elimination of certain deductible expenses, such as interest and royalties paid to group entities.

- *OECD Pillar 2:* Calculated using two methods: the income inclusion rule (IIR) and the undertaxed profits rule (UTPR).

Income Inclusion Rule (IIR):

- The IIR applies to companies that have a participation in entities in low-tax countries (with a tax rate lower than 15%).
- Under the IIR, the parent company must include in its taxable base the untaxed or taxed profits at a rate lower than 15% of its entities in low-tax countries.

Undertaxed Profits Rule (UTPR):

- The UTPR applies to companies that have an effective global tax rate below 15%.
- Under the UTPR, the parent company must pay an additional tax in the jurisdiction where it resides to reach the global minimum rate of 15%.

***Enforcement mechanism**:*

- *Spanish global minimum tax:* Applied through a complementary tax that is paid in the jurisdiction where the company has a permanent establishment.
- *OECD Pillar 2:* Countries can choose to apply the IIR or the UTPR. Most countries have opted to apply the IIR.

Penalties:

- *Spanish global minimum tax:* Penalties are established for non-compliance with the formal and material obligations of the tax, such as the presentation of inaccurate information or the non-payment of the tax. Penalties can be up to 150% of the amount of the unpaid tax.
- *OECD Pillar 2:* Penalties for non-compliance with the Pillar 2 rules are set by individual countries. Penalties may include fines, interest, and denial of tax benefits.

Other differences:

- *Entry into force*: The Spanish global minimum tax entered into force in 2023, while the OECD Pillar 2 applies from 2023.
- *Collection:* The Spanish global minimum tax is estimated to raise 1.5 billion euros per year, while the OECD Pillar 2 is estimated to raise 150 billion euros per year globally.

Examples:

- *Spanish company with a subsidiary in a low-tax country*: The Spanish company would have to pay the Spanish global minimum tax on the untaxed or taxed profits at a rate lower than 15% of its subsidiary in the low-tax country.
- *Multinational company with an effective global tax rate below 15%:* The multinational company would have to pay an additional tax in the jurisdiction where it resides to reach the global minimum rate of 15%.

The Spanish global minimum tax is a national measure that implements the OECD Pillar 2, but there are some differences between the two. The main differences are in the scope, tax calculation, enforcement mechanism, penalties, and other areas.

6.5. Global Minimum Tax in Spain: Debate and Motivation

There is some debate in Spain as to whether the country should introduce the global minimum tax.

Some proponents of the global minimum tax argue that it is a necessary measure to combat base erosion and profit shifting (BEPS). BEPS is a phenomenon in which multinational companies shift profits to low-tax jurisdictions to reduce their tax burden. The tax will help ensure that multinational companies pay their fair share of taxes, regardless of where they operate.

Nevertheless, other critics of the global minimum tax argue that it is a measure that will hurt multinational companies and foreign direct investment. The tax will increase tax costs for multinational companies, which could lead to reduced investment and employment.

As to whether Spain is implementing the global minimum tax only because of economic pressure, it is difficult to say with certainty. It is possible that Spain has decided to implement the tax to avoid losing tax revenue. But, it is also possible that Spain has decided to implement the tax because it believes it is a necessary reform to combat tax base erosion and profit shifting.

Some sectors consider it a necessary measure to combat tax avoidance and ensure greater tax fairness. Other sectors argue that it could have a negative impact on the country's competitiveness and foreign investment.

The Spanish government has expressed its support for the implementation of the Global Minimum Tax. It is argued that the measure is necessary to ensure tax fairness and prevent large multinational companies from paying a very low effective tax rate.

Primary Motivation:

The main motivation for the implementation of the Global Minimum Tax in Spain is not only economic pressure. The Spanish government also believes that the reform is necessary to ensure tax fairness and avoid unfair tax competition.

Additional factors:

International pressure: Spain has been one of the countries leading the Global Minimum Tax initiative at the international level.

Commitment to the OECD: Spain is a member of the OECD and has committed to implement the measures of the Inclusive Framework on BEPS.

Potential benefits: The Spanish government expects the Global Minimum Tax to generate increased tax revenue.

The global minimum tax is aligned with several arguments for and against, generating a complex and dynamic debate:

Arguments in favour of the Global Minimum Tax:

1. Combating Base Erosion and Profit Shifting (BEPS): Seeks to prevent multinational companies from shifting profits to low-tax jurisdictions to reduce their tax burden, thus slowing the erosion of the global tax base.

2. Tax Equity: Ensures that multinational companies contribute a fair share of taxes by establishing a minimum tax of 15% on their global profits, regardless of where they operate.

3. Increased Tax Revenues: Promotes the generation of additional tax revenues for countries, providing opportunities to finance public services and reduce national debt.

Arguments against the Global Minimum Tax:

1. Increased Costs for Multinational Companies: This additional tax could increase the fiscal costs for multinational companies, potentially leading to a decrease in investment and employment.

2. Administrative Complexity: The implementation of the tax can be complex and costly for both tax authorities and businesses, adding a layer of administrative difficulty.

3. Tax Competition Risk: There is a possibility that the global minimum tax will generate competition between countries to attract multinational companies, generating a dynamic of tax competition between nations.

This debate revolves around balancing tax fairness, administrative effectiveness and economic impact on multinational companies and countries and is a constantly evolving discussion in the search for a more equitable and efficient global tax system.

Implementation in domestic law:

The implementation of the global minimum tax in Spanish domestic law poses several challenges, such as:

- Definition of the multinational companies that are subject to the tax.
- Calculation of the tax using a fair and equitable method of calculation.
- Effective application of the tax.

Overall, the global minimum tax is a complex measure with arguments for and against it. The implementation of the tax poses a number of challenges that need to be carefully addressed.

6.6. The global minimum tax in general and its implementation considered a success or a failure in Spain?

It is too early to say whether the global minimum tax in general and its implementation in Spain are a success or a failure.

Anyway, there are some indications that suggest that the tax could be a success in Spain. First, the Spanish government has estimated that the tax will generate additional revenues of €1 billion per year. Secondly, the tax could help combat base erosion and profit shifting (BEPS), which could benefit the Spanish economy.

On the other hand, there are also some indications that suggest that the tax could be a failure in Spain. First, the tax could increase tax costs for multinational companies, which could lead to a reduction in investment and employment. Second, the tax could be complex and costly to implement, which could make it difficult for companies to comply.

In the end, only time will tell whether the overall global minimum tax and its implementation in Spain a success or a failure are. However, there is some evidence to suggest that the tax could be a success in Spain, as it could generate additional revenue for the government and help combat tax base erosion and profit shifting.

As for public opinion in Spain, there is a division between those who support the tax and those who reject it. Those who support the tax argue that it is necessary to combat tax base erosion and profit shifting. Those who reject the tax argue that it will increase tax costs for multinational companies and could lead to a reduction in investment and employment.

The Spanish Draft Bill establishing a Complementary Tax to guarantee a global minimum level of taxation for multinational and large domestic groups has recently been approved. This regulation, which aims to implement the ATAD2 Directive in Spain, presents similarities and differences with the Directive, as well as significant implications for the affected groups.

In general terms, the structure and wording of the Draft Bill closely resemble the ATAD2 Directive. However, there are notable differences in the numbering of the articles, which reflects the different approach taken by the EU legislator when approving a Directive for transposition by the Member States and the national legislator that transposes it into its domestic law. Additionally, the Spanish regulation introduces a novel element: a national complementary tax does not present in the Directive.

Another noteworthy aspect of the Draft Bill is the general reference to the criteria emanating from the OECD. The regulation establishes that the legal regime will be interpreted "primarily" by considering the criteria that emanate from the OECD Model Rules and interpretative documents that are in force at the time of the accrual of the Tax.

Although the relevance of the OECD's work is recognized in the ATAD2 Directive and has been confirmed by the ECOFIN, the reference to these criteria in the Spanish regulation raises questions from the point of view of the principle of legality and legal certainty. This legislative technique can generate legal uncertainty, especially due to the proliferation of documents and clarifications that the OECD constantly publishes.

Furthermore, the Draft Bill establishes that the relevance of the OECD's interpretative criteria is subject to the condition that they do not contradict what is expressly stated in the Law or in its implementing regulations. However, it is not clear how this conflict will be resolved if it arises.

The Draft Bill will have a significant impact on multinational and large domestic groups operating in Spain. It is estimated that the regulation will affect 126 international groups with Spanish parent companies, 30 purely domestic groups, and a large number of foreign parent companies operating in Spanish territory. The Tax Agency indicates that a significant portion of these groups present effective tax rates below the 15% agreed internationally.

In this context, it is essential that the affected groups closely monitor the processing of the Draft Bill and analyse its impact on their structures and tax strategies.

6.7. EU tax harmonization moves forward with the Minimum Tax Directive and the BEFIT proposal.[39]

The Second Pillar set in motion a positive integration process in the form of the EU Minimum Tax Directive. It could also be one of the triggers for (finally) arriving at a harmonized system of corporate income taxation. The so-called BEFIT proposal (Business in Europe: Framework for Income Taxation) actually aims at that goal.

6.7.1. Description of the main provisions of the EU minimum tax directive

Main provisions of the EU minimum tax directive

The EU Minimum Tax Directive, adopted on December 15, 2022, establishes an overall minimum tax of 15% for multinational companies with an annual turnover of more than €750 million. The tax will apply to the profits of multinational companies, regardless of where they are generated.

The Directive establishes the following main provisions:

- Definition of multinational enterprise: A multinational enterprise is a group of related companies under common control.

- Tax calculation: The tax is calculated as the sum of the tax paid in each country in which the MNE operates. If the tax paid in a country is less than 15%, the MNE must pay the difference to the country of tax residence.

- Exemptions: The Directive establishes a number of exemptions to the overall minimum tax. These exemptions apply to multinational companies engaged in activities of public interest, such as research and development, or operating in strategic sectors, such as defence.

Objectives of the Directive

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[39] https://www.consilium.europa.eu/es/press/pressreleases/2022/12/12/international-taxation-council-reaches-agreement-on-a-minimum-level-of-taxation-for-largest-corporations

The main objective of the Directive is to combat base erosion and profit shifting (BEPS). BEPS is a phenomenon in which multinational companies shift their profits to low-tax jurisdictions to reduce their tax burden.

The Directive also aims to ensure that multinational companies pay their fair share of taxes, regardless of where they operate.

Differences with the Pillar II agreement

The EU Minimum Tax Directive is like the Second Pillar agreement in many respects. However, there are some important differences:

- Application: The Directive applies to all multinational enterprises with an annual turnover of more than €750 million, regardless of their country of tax residence. The Pillar 2 agreement applies only to multinational companies that have their headquarters in a country that has ratified the agreement.
- Tax: The Directive establishes a minimum tax of 15%. The agreement on the Second Pillar establishes a minimum tax rate of 15% or 21%, depending on the country of tax residence of the multinational company.
- Exemptions: The Directive provides for a number of exemptions to the overall minimum tax. The agreement on the Second Pillar does not establish exemptions.

Overall, the EU Minimum Tax Directive is an important measure to combat tax base erosion and profit shifting. The Directive is like the Pillar 2 agreement, but also has some important differences. It is possible that these differences will be reduced in the future as the implementation of the Directive develops.

6.7.2. The EU Minimum Tax Directive: Unanimity, dissent and the specter of national sovereignty.

The process of establishing the EU Minimum Tax Directive began in 2021, when the European Commission presented a proposal for a Directive. The proposal was reviewed by the European Parliament and the EU Council, and finally approved on December 15, 2022.

The unanimous adoption of the Directive was necessary to ensure that all Member States agreed with its provisions. However, some Member States expressed their opposition to the Directive.

The main reasons of the Member States that were against the approval of the Directive were the following:

- Loss of national sovereignty: Some Member States, such as Ireland and Luxembourg, have low corporate tax rates, which attract multinational companies. These Member States argued that the Directive would force them to increase their tax rates, resulting in a loss of national sovereignty.
- Negative impact on multinational companies: Other Member States, such as the Czech Republic and Malta, argued that the Directive would have a negative impact on multinational companies, which could lead to a reduction in investment and employment.
- Administrative complexity: Some Member States, such as Poland and Romania, argued that the Directive would be complex to implement and administer, which could place a burden on tax authorities.

Ultimately, the Directive was approved unanimously, but the Member States that opposed its approval managed to introduce some amendments to the final text. For example, the Directive provides for a number of exemptions that apply to multinational companies engaged in activities of public interest or operating in strategic sectors.

The possible loss of national sovereignty was one of the main arguments used by the Member States that opposed the adoption of the Directive. These Member States argued that the Directive would force them to increase their tax rates, which would mean a loss of their ability to set their own tax policies.

6.7.3. The EU Minimum Tax Directive: Assessing its success or failure in light of the academic literature.

Assessing the introduction of the EU Minimum Tax Directive as a success or failure is a complex issue that depends on a number of factors, such as the objectives of the Directive, the effects it has had in practice and the prospects for the future.

The main objectives of the Directive are to combat base erosion and profit shifting (BEPS), to ensure that multinational companies pay their fair share of taxes, and to increase the tax revenues of Member States.

In general, the academic literature considers that the Directive has had a positive impact in the fight against BEPS. An OECD study estimates that the Directive could reduce overall BEPS by 40%.

However, the academic literature also points out that the Directive could have some negative effects, such as an increase in tax costs for multinational companies and a reduction in investment and employment.

As for the future outlook, the Directive is likely to remain a topic of debate in the coming years. It is possible that the Directive will be amended to address some of the negative effects that have been identified.

In conclusion, assessing the introduction of the EU Minimum Tax Directive as a success or failure is a complex issue that depends on a number of factors. The Directive is likely to remain a topic of debate for years to come.

Below are some specific examples of positive and negative evaluations of the EU Minimum Tax Directive in the academic literature:

Positive evaluation:

Ursula von der Leyen, the President of the European Commission uttered the following sentence in the speech on July 13, 2022, in which she presented the EU Minimum Tax Directive.

"The EU Minimum Tax Directive is an important step in the fight against BEPS. The Directive obliges multinational companies to pay a minimum tax of 15%, regardless of where their profits are generated. This will help prevent multinational companies from shifting their profits to jurisdictions with low tax rates."

Several economists and tax policy experts have advocated the global minimum tax as a beneficial measure. Some of them include Gabriel Zucman, Emmanuel Saez and Thomas

Piketty, who have researched and written extensively on economic inequality and tax avoidance by large corporations. In addition, Janet Yellen, former U.S. Treasury Secretary, has publicly endorsed the idea of a global minimum tax as a way to address international tax avoidance and ensure fairer taxation of large multinational corporations.

Negative evaluation:

Marcos de Quinto, the president of the Spanish Association of FMCG companies (Aecoc) said the following sentence in an interview granted to the newspaper El País on July 27, 2022.

"The EU Minimum Tax Directive could have some negative effects. The Directive could increase tax costs for multinational companies, which could lead to reduced investment and employment. In addition, the Directive could be complex to implement and administer, which could place a burden on tax authorities."

Several economists and tax policy experts have advocated the global minimum tax as a harmful measure. Charles McLure, professor of economics at the University of Virginia, argues that the global minimum tax will not prevent multinational companies from shifting profits to low-tax jurisdictions, as these companies will always find ways to avoid paying taxes. Stephen Shay, a law professor at Harvard Law School, argues that the global minimum tax penalizes companies operating in high-tax jurisdictions, while it benefits companies operating in low-tax jurisdictions.

6.7.4. Success or failure of the EU Minimum Tax Directive? The influence of the OECD's role in the initiative.

The fact that the OECD has launched the European initiative for a global minimum tax has a significant impact on the success or failure of the EU Minimum Tax Directive. Specifically, the OECD has provided the following elements:

- A global consensus framework: The OECD's Pillar 2 agreement establishes a global consensus framework for the global minimum tax. This framework has been fundamental to the success of the EU Minimum Tax Directive, as it has provided Member States with a common basis for negotiating the Directive.

- Empirical evidence: The OECD has provided empirical evidence on the effects of the global minimum tax. This evidence has been used by Member States to assess the pros and cons of the Directive.
- Technical support: The OECD has provided technical support to Member States for the implementation of the Directive. This support has been instrumental in ensuring that the Directive is implemented effectively.

In the absence of the OECD initiative, it is likely that the EU Minimum Tax Directive would have been much more difficult to pass and implement. It is likely that Member States opposed to the Directive would have been more reluctant to pass it in the absence of a global consensus framework.

The OECD has provided the necessary elements to make the Directive a success, including a global consensus framework, empirical evidence and technical support.

However, it is important to note that the success of the EU Minimum Tax Directive will also depend on other factors, such as the effective implementation of the Directive by Member States and the response of multinational companies.

6.7.5. BEFIT: Towards a fairer and more efficient European tax system. Differences with previous tax harmonization.

The **BEFIT Directive Proposal** (Business in Europe: Framework for Income Taxation) presented by the European Commission aims to address two main challenges: the complexity and costs associated with compliance with tax obligations for large cross-border companies in the European Union, and the need to harmonize transfer pricing rules within the single market.

The BEFIT Directive pursues four main objectives:

1. To simplify the practice and management of corporate income tax in the internal market.

Currently, companies operating in several EU Member States are faced with 27 different tax regimes, which generates significant complexity and compliance costs. The BEFIT Directive seeks to simplify this landscape by introducing a common framework for the calculation of the corporate income tax base.

2. To create a level playing field for companies operating in the EU.

Differences in Member States' tax regimes can create distortions in competition, favouring companies operating in countries with more lax regimes. The BEFIT Directive seeks to create a more harmonized tax framework that ensures a level playing field for all companies.

3. To strengthen legal certainty and reduce tax uncertainty.

The complexity of tax rules and the lack of harmonization between Member States can generate tax uncertainty for companies. The BEFIT Directive seeks to increase legal certainty by providing a clearer and more transparent tax framework.

4. To reduce compliance costs by up to 65% for large companies operating in more than one Member State.

Compliance with tax obligations in several Member States can be a costly and complex process for large companies. The BEFIT Directive seeks to reduce these costs by simplifying procedures and eliminating duplication of effort.

The BEFIT Directive will apply to **groups of companies** that:

- Operate in the European Union.
- Have **annual consolidated revenues exceeding 750 million euros**.
- The ultimate parent entity owns at least **75% of the ownership rights** or the rights that give entitlement to profits.

The BEFIT Directive is estimated to affect around 1,500 groups of companies in the EU, including large multinational companies and large domestic groups.

The proposed Directive introduces a **common framework for the calculation of the corporate income tax base** for the affected groups of companies. This framework is based on the following elements:

- A common set of **tax adjustments** to determine the tax base. These adjustments are based on the OECD Model Rules and the ATAD Directive, which will contribute to international harmonization of tax rules.

- The **aggregation of the tax bases** of the companies in the group into a single aggregated tax base. This will allow companies to offset their losses in one Member State with their profits in another.
- The **cross-border loss relief**. This measure will allow companies to use their losses in one Member State to reduce their tax base in another.
- The application of a **percentage of the aggregated tax base** to each Member State based on the **real economic activity** of the group in each territory. This system is known as the "apportionment formula".

It is important to note that the BEFIT Directive **does not entail a change or harmonization of corporate income tax rates** in the EU. Each Member State will remain free to set its own tax rate.

The BEFIT Directive is expected to be **approved in 2024** and to **enter into force in 2028**. Companies are advised to anticipate the tax changes and learn about the potential implications of the BEFIT Directive on their activity.

If BEFIT is approved and effectively implemented, it could help create a fairer and more efficient taxation system in the EU.

6.7.6. BEFIT in Spain: Opinions of politicians and academics.

The **BEFIT Directive** has sparked a debate in Spain with different perspectives. While large companies generally support it, some tax experts, social organizations, and small and medium-sized enterprises (SMEs) express concerns. The Spanish Government, for its part, welcomes it but calls for caution and advocates for a balance between tax simplification and social justice.

Arguments in favour:

- **Simplification and cost reduction:** CEOE, EY, and PwC highlight the simplification of tax compliance and the potential cost reduction for large companies, up to 65% according to EY. PwC adds that the BEFIT Directive could facilitate cross-border investment. Large Spanish companies, such as Repsol, Iberdrola, and Telefónica, could benefit significantly from this simplification.

- **Competitiveness:** CEOE believes that the BEFIT Directive would improve the competitiveness of large Spanish companies by harmonizing tax rules in the EU. Large Spanish companies could compete on an equal footing with large companies from other EU countries.
- **Modernization:** Some large companies see the BEFIT Directive as an opportunity to modernize the Spanish tax system and adapt it to the needs of the 21st century.

Arguments against:

- **Complexity:** The Institute of Fiscal Studies (IEF) warns about the complexity of the BEFIT Directive, especially for SMEs, which could struggle to adapt to the new rules.
- **Tax competition:** Gestha fears that the BEFIT Directive could lead to a "race to the bottom" in tax rates, harming countries with more progressive tax systems like Spain.
- **Equity:** CCOO criticizes that the BEFIT Directive could benefit large companies at the expense of SMEs and erode the corporate income tax base, reducing tax revenues and, consequently, the State's capacity to finance public services.
- **Lack of transparency:** Some experts have expressed their concern about the potential lack of transparency in the application of the BEFIT Directive, especially regarding the apportionment formula.

The Spanish Government has welcomed the European Commission's proposal but has called for the concerns of the Member States to be taken into account, especially regarding social justice and the protection of SMEs. The Ministry of Finance has stated that the BEFIT Directive must be "fair and equitable," not erode the corporate income tax base, and protect SMEs.

Examples and analysis:

- **Impact on specific sectors:** The BEFIT Directive could significantly impact sectors such as financial, technology, and energy, operating internationally. Large Spanish companies in these sectors, such as Banco Santander, BBVA, Inditex, and Telefónica, could be affected by the BEFIT Directive.
- **Transparency concerns:** Some experts have expressed concern about the potential lack of transparency in applying the apportionment formula, which could allow large companies to shift profits to countries with lower tax rates.

- **Role of Member States:** The BEFIT Directive leaves room for Member States to establish certain aspects, such as the definition of "group of companies" or the method for calculating the tax base. The Spanish Government will have to decide how to implement these aspects in Spanish law.

Discussions on the BEFIT proposal are likely to continue in the coming months. The unanimous approval of the proposal by the Member States will be a challenge, but it is a challenge worth facing.

6.7.7. BEFIT: Factors that will determine its success. The role of OECD Pillar One and Pillar Two.

The success of the BEFIT proposal will depend on a number of factors, including the following:

- Political support: The BEFIT proposal must have the support of the majority of EU member states. This could be a challenge, as some member states, such as Ireland and Luxembourg, have low corporate tax rates, which attract multinational companies.
- Support from multinational companies: The BEFIT proposal could have a significant impact on multinational companies. It is important that multinational companies support the proposal, as their collaboration will be necessary for its effective implementation.
- Effectiveness of implementation: The BEFIT proposal is complex, and implementation will be challenging. It is important that the proposal is implemented effectively to avoid potential negative effects.

The OECD's work on Pillar One and Pillar Two has been fundamental to the development of the BEFIT proposal. Agreement on Pillar One, which establishes an overall minimum tax of 15%, has provided an overall consensus framework for the BEFIT proposal. Agreement on Pillar Two, which establishes an economic rights allocation mechanism, could complement the BEFIT proposal.

In particular, the work of the OECD has helped to create a basis for consensus on the principles of taxation of multinational enterprises. This consensus has facilitated negotiations between EU member states.

In addition, the OECD work has provided empirical evidence on the effects of the global minimum tax. This evidence has been used by member states to evaluate the pros and cons of the BEFIT proposal.

The following are some possible scenarios for the future of the BEFIT proposal:

- Optimistic scenario: The BEFIT proposal is approved unanimously by EU Member States and is effectively implemented. In this scenario, the BEFIT proposal would help reduce BEPS and ensure that multinational companies pay their fair share of taxes.
- Pessimistic scenario: The BEFIT proposal is not approved unanimously by the EU Member States. In this scenario, the BEFIT proposal would not be implemented, and BEPS would remain an issue.
- Intermediate scenario: The BEFIT proposal is approved unanimously by the EU Member States, but its implementation is incomplete or ineffective. In this scenario, the BEFIT proposal would have a limited impact on BEPS reduction.

The future of the BEFIT proposal is likely to be defined in the coming months.

6.7.8. Impact of the Minimum Tax Directive and BEFIT on fiscal sovereignty.

The adoption of the EU Minimum Tax Directive and the possible adoption of BEFIT in the future will have a significant impact on the fiscal sovereignty of EU Member States.

First, both proposals introduce an overall minimum tax of 15% for multinational companies. This means that Member States will no longer be able to set corporate tax rates below 15%. This limitation on Member States' tax sovereignty is necessary to combat base erosion and profit shifting (BEPS), a problem that affects all countries in the world.

Second, both proposals introduce an economic rights allocation mechanism for multinational companies. This mechanism allocates to the Member States in which multinational companies operate a share of the profits that these companies generate. This means that Member States will no longer be able to set their own rules for allocating the tax base of multinational companies. This limitation on the fiscal sovereignty of Member States is necessary to ensure that multinational companies pay their fair share of taxes, regardless of where they operate.

Overall, the adoption of the EU Minimum Tax Directive and the possible adoption of BEFIT in the future will place a significant limitation on the tax sovereignty of EU Member States. However, this limitation is necessary to combat BEPS and ensure that multinational companies pay their fair share of taxes.

Some specific arguments for and against the limitation on Member States' fiscal sovereignty imposed by these proposals are presented below:

Arguments in favour:

- Combat BEPS: Limiting the fiscal sovereignty of member states is necessary to combat BEPS, a problem that affects all countries in the world. BEPS consists of multinational companies shifting their profits to low-tax jurisdictions to reduce their tax burden.
- Ensures that multinational companies pay their fair share of taxes: Limiting member states' tax sovereignty helps ensure that multinational companies pay their fair share of taxes, regardless of where they operate.

Arguments against:

- It reduces the fiscal sovereignty of Member States: Limiting the fiscal sovereignty of member states reduces the ability of member states to set their own fiscal policies.
- May have negative effects on investment and employment: Limiting Member States' tax sovereignty could have negative effects on investment and employment, as it could reduce the competitiveness of Member States with low tax rates.

Ultimately, whether or not to accept the limitation on fiscal sovereignty imposed by these proposals is a political decision to be made by the EU Member States.

7. TAX REFORMS IN SPAIN: ADAPTING TO INTERNATIONAL TRENDS OR MAINTAINING FISCAL AUTONOMY?

There has been some debate in Spain about what could be done to improve tax reforms that are driven by international developments.

In general, the debate focuses on two main aspects:

- The impact of tax reforms on Member States' fiscal sovereignty: Some experts believe that tax reforms driven by international developments, such as the EU Minimum Tax Directive and BEFIT, pose a significant constraint on Member States' fiscal sovereignty. These experts argue that tax reforms should be designed by Member States, based on their own needs and priorities.
- Potential negative effects of tax reforms on investment and employment: Other experts believe that tax reforms prompted by international developments could have negative effects on investment and employment. These experts argue that tax reforms should be designed in a way that does not discourage investment and employment.

Specifically, some experts have proposed the following measures to improve tax reforms prompted by international developments:

- Incorporate a safeguard clause allowing Member States to set tax rates lower than the overall minimum tax in exceptional cases. This clause would allow Member States to protect their competitiveness in the event that the adoption of the overall minimum tax would have negative effects on investment and employment.
- Establish a compensation mechanism for Member States that lose tax revenues as a result of the adoption of the global minimum tax. This mechanism would allow Member States to compensate for the loss of tax revenues so that they can continue to provide the public services needed by their citizens.

The debate on tax reforms prompted by international developments is likely to continue in Spain in the coming months.

7.1. Spain's participation in international tax debates

Spain’s participation in international tax debates depends on a number of factors, including the following:

- Spain's interests: Spain should actively participate in international debates when these debates affect its interests. For example, Spain should actively participate in discussions on climate change and its taxation, as this is a problem that affects Spain significantly.
- Spain's capabilities: Spain should actively participate in international discussions when it has the capabilities to do so effectively. For example, Spain should actively participate in discussions on the global economy, since Spain has a significant economy.
- The costs of participation: Spain should actively participate in international debates when the costs of participation are reasonable. For example, Spain should actively participate in international security debates, but should be careful not to compromise its military resources.

In the specific case of tax reforms prompted by international developments, Spain should actively participate in the discussions to defend its interests. Spain must balance the defence of its fiscal sovereignty with the negative impact on investment and employment that international tax reforms may have.

Some specific measures that Spain could take to be more active in international discussions would be the following:

- Strengthen its diplomacy to be able to participate effectively in international discussions. This includes increasing investment in diplomatic personnel and diplomatic infrastructure.
- Develop their research capabilities in order to be able to participate in an informed way in international debates. This includes investing in research on topics relevant to international debates.
- Collaborate with other countries that share its interests. This can help Spain to have a greater influence in international debates.

Taking steps to become more active in international discussions can help Spain protect its interests and promote its values.

The international policymaking process could be modified in several ways to make the transformation of international tax policy development into domestic legislation smoother and more successful.

First, transparency and participation in the international policy formulation process could be increased. This would allow member states and other stakeholders to contribute to policy formulation from the outset, which could help ensure that policies are more acceptable and implementable at the national level.

Second, coordination between the different actors involved in the international policy formulation process could be improved. This could help ensure that policies are coherent and that all policy implications are taken into account.

Third, more support could be provided to member states for the implementation of international policies. This could help member states meet their international obligations and prevent policies from having unintended negative effects.

Some specific steps that could be taken to modify the international policy-making process:

- A permanent forum for the discussion of international fiscal policies could be created. This forum could provide a space for member states and other stakeholders to contribute to policy formulation.
- Public consultations could be held on international tax policy proposals. This would allow citizens and businesses to contribute to policy formulation.
- A cooperation mechanism could be created among member states for the implementation of international fiscal policies. This mechanism could provide technical and financial support to member states.

Taking steps to change the international policymaking process could help ensure that international fiscal policies are more effective and have a positive impact on the global economy.

7.2. The limits of fiscal action: Sovereignty, coordination and efficiency.

International fiscal policy and the fiscal policy of other states play an important role in regulating the global economy. However, these policies also have limits that must be considered.

Limits of international fiscal policy:

Fiscal sovereignty: States have the autonomy to determine their own fiscal systems, which limits the ability to impose fiscal measures internationally.

Difficulty of coordination: Reaching agreements between countries with different interests and priorities can be a complex and time-consuming process.

Effectiveness: The impact of international tax measures may be limited in some cases, due to the difficulty of implementation and control.

Limits of other states' fiscal policy:

Influence capacity: A state has limited ability to influence the fiscal policies of other countries.

Reciprocity: There is no guarantee that other countries will respond to a state's fiscal measures with similar measures.

Side effects: A state's fiscal measures may have a negative impact on the economy of other countries or on international relations.

Examples of the limits of fiscal policy:

Implementation of the Global Minimum Tax: Some countries have expressed concern about the implementation of the Global Minimum Tax, and its impact on competitiveness and the national economy.

Combating international tax evasion and avoidance: International tax evasion and avoidance remain a major problem, despite the efforts of the international community.

Global tax harmonization: Global tax harmonization is a complex objective that is still far from being achieved.

Reflections on international tax cooperation:

It is important to seek balanced and realistic solutions to international tax policy challenges. Cooperation and dialogue between countries should be strengthened, taking into account the needs and priorities of each state.

The limits of international fiscal policy and the fiscal policy of other states are as follows:

- Fiscal sovereignty: Member States have the right to set their own tax policies. This means that Member States can set the tax rates they deem appropriate, as well as the tax rules and procedures to be applied in their territory.
- Globalization: Globalization has caused multinational companies to operate in an increasingly international environment. This makes it difficult for Member States to apply their tax policies to these companies.
- International cooperation: Member States can cooperate with each other to formulate international fiscal policies. However, such cooperation may be difficult to achieve, as member states may have divergent interests.

Going deeper into the matter, the limits of international fiscal policy can be classified as follows:

- Legal limits: Member states are subject to a number of international legal rules, such as international law and trade treaties. These rules may limit the ability of member states to set their own fiscal policies.
- Economic limits: The global economy is increasingly interconnected. This means that the fiscal policies of one member state can have an impact on other member states.
- Political limits: Member states have different political priorities. This can make agreement on international fiscal policies difficult.

In order to overcome the limits of international fiscal policy and the fiscal policy of other states, member states may adopt the following measures:

- Strengthen international cooperation to develop international fiscal policies that are more effective and have a positive impact on the global economy.
- Incorporate safeguard clauses into international fiscal policies to take measures to protect their interests in the event that international fiscal policies have unforeseen negative effects.
- Develop compensation mechanisms that can help member states that lose tax revenues as a result of international tax policies.

The adoption of these measures can help member states achieve their fiscal objectives, even in an increasingly complex international environment.

8. CONCLUSION

Tax reforms: Where are we going? An analysis of the global, European and Spanish panorama.

Tax reforms are a major issue in today's world. Governments around the world seek to adapt their tax systems to the new needs and challenges of the 21st century, such as digitalization, climate change and inequality.

Context and challenges of tax reforms in the 21st century.

Global trends:

- ✓ Digitalization: Impact of the digital economy on tax collection and tax justice.
- ✓ Climate change: Implementation of environmental taxes to combat climate change.
- ✓ Inequality: Reducing inequality through reforms to the tax system.

Reforms in Europe:

- ✓ Tax harmonization: Implementation of measures to harmonize European tax systems.
- ✓ Global Minimum Tax: Implementation of the OECD Global Minimum Tax.
- ✓ Combating tax evasion and avoidance: Strengthening cooperation to combat tax evasion and avoidance.

Reforms in Spain:

- ✓ Modernization of the tax system: Adapting the tax system to new needs and challenges.
- ✓ Simplification of tax rules: Reducing the complexity of the tax system to facilitate compliance.
- ✓ Improving the efficiency of tax collection: Optimization of tax management to increase tax collection.

Globalization and modern technology have created new ways for individuals and firms to escape taxation. These issues have received considerable attention from the public and global policymakers. Over the last 10 years, governments acting cooperatively have launched major initiatives to address these challenges. These initiatives include the creation of a new form of international cooperation – an automatic, multilateral exchange of bank information, in force since 2017 – and an international agreement on a global minimum tax for multinational corporations, endorsed by more than 140 countries and territories in 2021. Yet little is known about the trends in global tax evasion and the effects of the recently implemented policies. For the public, for journalists, for civil society, and even for policymakers themselves, it can be difficult to disentangle what amounts to real progress from mere cosmetic changes. All offshore financial institutions claim that the era of bank secrecy is over, but are they truthfully cooperating with foreign tax authorities? Policymakers claim that "the race-to-the-bottom over corporate tax rates is over" and that multinationals will soon pay everywhere at least 15% in tax, but are we sure that companies are not finding new ways to keep tax rates closer to 0? Is global tax evasion falling or rising? Are new issues emerging, and if so, what are they? These questions are of tremendous importance in a context of rising income and wealth inequality, growing public debt in the post-Covid-19 context, and large government revenue needs for addressing climate change and for investing in health care, education, and public infrastructure[40]

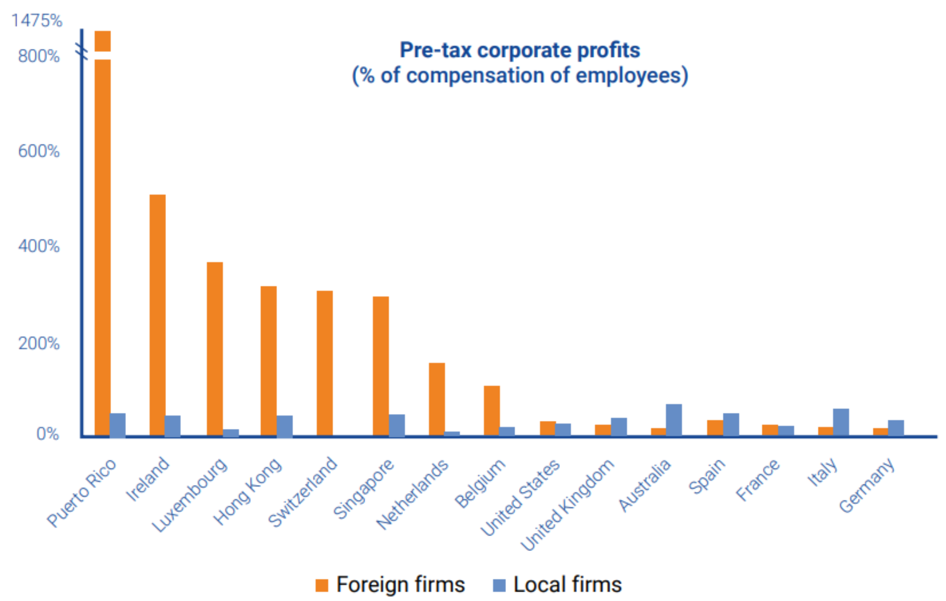
Figure 2.1 shows the result of this profitability comparison in 2019 (thus abstracting from the effects of the Covid-19 pandemic). Profitability is measured as the ratio of recorded pre-tax profits to wages paid; the literature has found similar results (in specific countries) using other measures such as the ratio of profits to assets.53 The results are spectacular. In tax havens, foreign firms are an order of magnitude more profitable than local firms. In Puerto Rico for example – which is distinct from the United States for tax purposes – for any dollar of wage paid, foreign firms (essentially US multinationals) record on average nearly $15 in profit. In Ireland, for any euro of wage paid, foreign firms record nearly €6 in profits on average. By contrast, for local firms in these havens (meaning firms that are not part of a foreign multinational group), the ratio of profits to wages is dramatically lower, around 0.5. In tax havens (on the left-hand side of the graph), the profit-to-wage ratio is vastly superior in foreign

[40] https://www.taxobservatory.eu/publication/global-tax-evasion-report-2024/ Pag 15.

firms than in local firms. By contrast in relatively high-tax countries (on the right-hand side of the graph), foreign profits are less profitable than local firms. This lower profitability in part also reflects the consequences of profit shifting: the profits that are recorded in tax havens are shifted out of high-tax places, depressing the recorded profitability of foreign firms in these countries. To take a concrete example, Microsoft may appear relatively unprofitable in Germany because it is abnormally profitable in Ireland.[41]

Figure 2.1

The excess profitability of foreign firms in tax havens



Notes: This figure shows the ratio of pre-tax profits to compensation of employees for local firms and foreign firms in eight large tax havens and seven large non-haven high-income countries in 2019. In tax havens, foreign firms are much more profitable than local firms, and vice-versa in high-tax countries. Sources: Ludvig Wier and Gabriel Zucman (2023), "Global Profit Shifting 1975-2020", EU Tax Observatory working paper.

[53]See Katarzyna Bilicka (2019), "Comparing UK Tax Returns of Foreign Multinationals to Matched Domestic Firms", *American Economic Review*, 109(8), p. 2921-2953.

Reflections on the future of tax reforms:

The future of tax reforms will be marked by the search for a fairer, more efficient and sustainable tax system. Governments will need to work together to address global challenges such as digitalization, climate change and inequality. It will also be important to foster social and political dialogue to reach consensus on tax reforms.

[41] Global Tax Evasion Report 2024 - Eutax (taxobservatory.eu), pag 38.

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