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THE IMPACT OF DIGITALIZATION ON THE CHOSEN PRINCIPLES OF TAX LAW[1]

Abstract

Digitalization is revolutionizing various aspects of our lives, including the tax law. The article examines how digital economy is influencing the chosen principles of tax law. Digital technologies have the potential to make tax systems more transparent and efficient, simplifying tax compliance and administration for both taxpayers and authorities. However, they also introduce new challenges, such as ensuring equitable treatment for both digital and traditional businesses and avoiding double taxation of certain income or revenue. The article highlights how digitalization is reshaping the chosen principles of tax law and discusses the implications for future legal frameworks. The findings emphasize the need for forward-thinking tax policies to effectively adapt the evolving digital landscape.

Key words: digitalization, BEPS, tax principles, tax fairness

JEL Classification: K34

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1. Introduction

Digitalization fundamentally transforms various aspects of our lives, and its impact is particularly evident in the realm of tax law. Traditional methods of taxation, administrative cooperation, and tax collection currently lag behind technological advancements in some areas. However, certain aspects of tax law are witnessing significant progress and the implementation of new rules aimed at ensuring effective taxation while preventing tax evasion or double taxation due to outdated legislative frameworks.

The principles of tax law can be perceived as the foundational ideas upon which tax law is built, irrespective of whether they are explicitly stated in legislative texts or can be implicitly derived from them. It is essential to ensure these principles are upheld and updated as necessary, in response to societal and technological developments. Digitalization, with its efficient and simplifying solutions, simultaneously introduces new challenges in tax law, such as the preferential treatment of digital companies over traditional businesses and inadequate consideration of their activities for tax purposes. This can be observed in the increased likelihood of tax evasion and profit shifting to countries with lower tax burdens.

In the context of current global economic and technological changes, it is evident that there is a need to at least explore the potential necessity for updating tax law principles to ensure fair and effective taxation in the digital economy. Initiatives like Base Erosion and Profit Shifting (BEPS) and the associated proposal for a global minimum tax rate of 15% represent significant steps toward addressing profit shifting issues and maintaining alignment with the principle of tax fairness. These measures are designed to ensure that multinational corporations pay a fair share of taxes in the countries where they genuinely operate, thereby reducing opportunities for aggressive tax planning and optimization.

It appears necessary to examine whether the principles of tax law are being adhered to in the present day. This article aims to verify whether the principle of tax fairness and the principle of elimination of double taxation still find their application in light of the developments and changes in society brought about by globalization and digitalization. The article focuses on analyzing international measures designed to ensure these principles remain relevant and effective. Special attention is given to multilateral cooperation and new

taxation rules aimed at ensuring the fair distribution of tax revenues among countries, thereby strengthening the integrity of the global tax system.

2. The impact of Digitalization on Tax Law

The impact of digitalization is evident in most areas and can be perceived both positively and negatively. The opportunities brought by digitalization are often described as "efficient" or "simplifying." Digitalization is expanding rapidly, facilitating cross-border trade and blurring the lines between goods and services by transforming products into their digital forms. However, it is also necessary to consider how this advancement creates opportunities that, for instance, increase the likelihood of digital companies being prioritized over traditional ones in terms of tax advantages. The prioritization or preferential treatment of digital companies is evident in that, unlike traditional companies physically located in a specific place, digital companies are capable of providing a wide range of services without the full need for physical presence, or only with partial presence, in the countries where their customers are located.

It is important to note that digital companies achieve a scope of operations incomparable to traditional business models and have the ability to penetrate foreign markets at a much faster pace with minimal physical infrastructure. Due to digitalization, it is not uncommon for businesses to operate in certain countries, offer services to consumers, and enter into contracts with them while fully utilizing the available infrastructure and institutions of the rule of law. However, their activities are not considered for tax purposes. This advantageous position provides them with a more favorable standing compared to companies that have their headquarters in the respective country [Communication from the Commission to the European Parliament and the Council: A Fair and Efficient Tax System in the EU for the Digital Single Market].

A growing issue is the profit shifting by multinational companies. Prior to 2013, global losses due to tax avoidance were estimated to be between 100 and 240 billion USD [Balancing on two Pillars: Global corporate tax reform]. Studies indicate that in 2022, multinational enterprises shifted approximately 1 trillion dollars in profits to tax havens, representing up to 35% of all profits reported outside the countries where they are headquartered [Alstadsæter, Godar, Nicolaides, Zucman, 2024]. The need to address this phenomenon is underscored by the initiative to find a solution accepted

at the international level. The growing necessity to achieve fair taxation within the digital economy has compelled countries to collaborate on resolving this issue and to find a compromise solution that would be uniformly applied and accepted across as many of the world's economies as possible.

The proposed solution currently appears to be the implementation of the Two-Pillar Solution, with Pillar 2 introducing the concept of a global minimum tax rate of 15%. This aims to establish conditions under which the principle of tax fairness is respected and maintained. This agreement is regarded as a significant achievement in the realm of multilateral cooperation on tax matters. However, it also raises concerns about its ability to significantly curb profit shifting if it remains in its current form, particularly due to insufficient tax transparency [Aliprandi, Borders, 2024, p. 4]. On the other hand, Pillar 1 is intended to ensure that multinational enterprises (MNEs) conducting business in the digital economy pay taxes in the jurisdictions where the users of their services are located. These measures are expected to be pivotal in maintaining alignment with the principle of tax fairness and the principle of eliminating double taxation. Whether there is a realistic prospect of this being achieved, based on the response and feedback from states, is the subject of research in the following text.

3. The impact of Digitalization on the Principle of Tax Fairness

The principle of tax fairness is considered to be a fundamental principle of tax law. As Babčák states, the principle of tax fairness does not seek to answer the question of whether the collection of taxes is fair in itself. Rather, it emphasizes that the method of tax collection and imposition should meet the requirement of fairness by ensuring that each taxpayer contributes an appropriate and adequate amount towards the payment of common expenses [Babčák, 2019, 53]. At both the national and international levels, it is essential to uphold the principle of tax fairness to prevent the emergence of undesirable disparities among entities subject to taxation. One way to achieve these goals is through the participation of states in the OECD project known as BEPS, which stands for Base Erosion and Profit Shifting. This initiative aims to combat the artificial reduction of the tax base and the shifting of profits from countries where value is created to countries with favorable tax regimes, with the intent of avoiding tax payments [PWC BEPS].

Intensive negotiations within the OECD/G20 Inclusive Framework culminated in the presentation of 13 BEPS action reports. These reports addressed various aspects and issues of international tax rules relating to corporations and proposed a range of measures against base erosion and profit shifting that countries should implement to fill potential tax gaps and enhance cooperation among tax authorities at the international level. Pierre Moscovici, who served as the European Commissioner for Economic and Financial Affairs, Taxation and Customs until 2019, expressed his satisfaction with the adoption of the BEPS project at the *Finance Ministers and Central Bank Governors of the G20 group news conference during the 2015 IMF/World Bank Annual Meetings in Lima, Peru*. He described it as *"a reaction of people who cannot stand anymore that they pay their fair share of taxes, that they contribute to fiscal consolidation while companies, especially multinationals, can avoid tax."* [Carrel, 2015].

It is natural for large multinational companies to strive to utilize all available means to achieve the lowest possible tax burden by exploiting differences between various tax systems or taking advantage of inconsistencies and gaps in the tax legislation of individual countries, while simultaneously acquiring and maintaining the highest possible volume of profits. Companies can achieve this aim through various methods, some of which are perceived as more legal and moral, while others are considered illegal and immoral. This distinction pertains to the difference between *tax optimization* and *aggressive tax planning*, which can be seen as strategies targeting corporate income tax. Currently, there is no legal definition or statutory establishment of these terms, but it can be said that they involve actions carried out by tax entities with the intention of reducing or even eliminating their tax liabilities [Babčák, 2020]. The core issue, however, is not the utilization of available options permitted by a state's legislation, but rather the exploitation of the state's tax system or the inconsistencies and gaps between two or more tax systems. This includes, for example, creating artificial arrangements without economic justification to artificially reduce or eliminate tax liabilities. While such actions may not directly violate existing legislation, they clearly contradict the intentions, purposes, and principles of the legal framework within the state.

Tax optimization and aggressive tax planning have become even more intense in the current era, as digitalization enables easier and more sophisticated

methods of utilizing and potentially combining various tax systems. Companies take advantage of the available opportunities and favorable tax conditions offered by individual states, thereby ensuring a reduction of their tax burden to the lowest possible level. BEPS Pillar 2 aims to ensure that multinational enterprises (MNEs) falling within the specified framework pay a minimum effective tax rate of 15% worldwide. This is intended to limit tax optimization, aggressive tax planning, and profit shifting, which should lead to greater alignment of tax rules with the principle of tax fairness [Tax Challenges Arising from Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)]. As stated in point (2) of Directive 2016/1164(29) [Council Directive (EU) 2016/1164] of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market]: *„It is essential for the good functioning of the internal market that, as a minimum, Member States implement their commitments under BEPS and more broadly, take action to discourage tax avoidance practices and ensure fair and effective taxation in the Union in a sufficiently coherent and coordinated fashion.“*. Specifically, the Directive highlights the need to establish rules to enhance the overall level of protection against aggressive tax planning within the internal market.

At the European Union level, the OECD initiative was swiftly implemented through the adoption of *Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union* (hereinafter referred to as the "Directive"). With the adoption of this Directive, EU member states are required to incorporate the Global Minimum Tax into their national legal systems, and multinational companies operating within EU member states are obliged to adhere to a minimum effective corporate income tax rate of at least 15%. The Directive set a deadline of 31 December 2023 for EU member states to transpose the Directive into their legal systems in the form of laws and other legal regulations and measures. The Slovak Republic transposed the Directive by adopting *Act No. 507/2023 Coll. on the top-up tax to ensure a minimum level of taxation for multinational enterprise groups and large-scale domestic groups and amending Act No. 563/2009 Coll. on tax administration (Tax Code) and amending and supplementing certain laws, as amended*, which was passed by the National Council of the Slovak Republic on 8 December 2023.

For many years, individual tax systems have tended to reduce tax rates and offer various forms of benefits to taxpayers, such as exemptions for certain types of income or other forms of indirect state aid. This has resulted in a reduction of the overall effective tax burden on taxpayers, motivating them to allocate their taxable income under the tax jurisdiction of states with the lowest possible effective tax burden [Babčák, 2020, p. 85]. The Slovak Republic was no exception in this regard, and in 2004, it implemented a significant tax reform. This tax reform represented a major shift in the functioning of the previously existing tax system, as, effective from January 1, 2004, *Act No. 595/2003 Coll. on Income Tax* introduced a flat corporate income tax rate of 19% instead of the previous rate of 25%. Unlike in previous periods, this tax was specific in that it did not take into account the income level of a legal entity, meaning the tax rate did not increase or decrease based on the amount of profit earned. One of the assumptions was that the tax reform would support the business sector in Slovakia and attract foreign investors, or encourage some companies to relocate their headquarters from neighboring countries to Slovakia.

Despite initial concerns from critics, the results were positive and, in many respects, exceeded expectations. Statistics show that "*economic growth continuously increased from 4.2% in 2003 to 10.4% in 2007. The unemployment rate during the same period decreased from 18.2% to 11.1%. Tax revenues in the first four years of the new tax system (2004–2007) rose by 44.8% in current prices and by 28% in constant prices compared to 2003. The most dynamic growth was in corporate income tax revenue, which increased by 70.9% in current prices and by 54.1% in constant prices. In the first year of the reform alone, more was collected from this tax than in the last year before the reform, despite the reduction in the tax rate from 25% to 19%.*" [University for a Modern Slovakia: Flat Tax in Slovakia – It Works!]. With the implementation of the tax reform, Slovakia became one of the fastest-growing European economies. The Slovak Republic gradually became the headquarters for several automotive companies, such as Kia Slovakia s.r.o.[2] and PCA Slovakia, s.r.o.[3], with their numbers steadily increasing. In 2015, Jaguar Land Rover Slovakia s.r.o. also joined them. However, the Ministry of Economy did not stop at the tax reform alone; to retain investors within Slovakia, it took additional measures. For instance, in 2004, it granted Peugeot Citroën Automobiles Slovakia, s.r.o.

[2] Originally Kia Motors Slovakia s. r. o.
[3] Originally Peugeot Citroën Automobiles Slovakia, s.r.o.

a corporate tax relief amounting to 4.521 billion Slovak crowns (approximately 150 million euros). This step may have been one of the reasons why these companies continue to operate in Slovakia, creating jobs and thereby reducing the unemployment rate in the country.

The aim of Pillar 2 is to ensure that multinational companies pay their fair share of taxes in all countries where they operate and that each jurisdiction receives a fair share of taxes based on the extent of business activities conducted in that country. This approach forces states to find other, alternative incentives to attract companies, making the jurisdiction appealing not solely due to a low or zero tax rate. However, the question arises whether this restriction places some countries at a disadvantage by assuming that states can easily shift from tax competition to other forms of competition, particularly through non-tax incentives. The new taxation rules affect not only developed economies but also developing countries. It is essential not to overlook the reality of the development level of these countries, which often lack a competitive advantage not based on tax incentives or have it at a significantly lower level. In a press release from July 2021, during the initial phase of the global minimum tax project, OECD Secretary-General Mathias Cormann emphasized that *"After years of intense work and negotiations, this historic package will ensure that large multinational companies pay their fair share of taxes everywhere,"* and also noted that *"this package does not eliminate tax competition, nor should it, but it does set multilaterally agreed limitations on it."* [130 countries and jurisdictions join bold new framework for international tax reform.].

The established rules, however, may lead to a situation where the potential benefits for developing countries associated with reducing profit shifting could ultimately be offset by increased costs of competition in the form of non-tax incentives, such as direct subsidies. Differences between economies may thus cause greater inequity among states and give rise to new and unforeseen issues, including questions of trade discrimination and inadequate regulation, which could negatively impact the welfare of the country providing the incentives [Parada, 2024, p. 197]. Moreover, this may also lead to more aggressive competition in other areas of taxation, such as excise and personal taxes [Parada, 2024, p. 197]. Developing countries often suffer from political and financial instability, underdeveloped infrastructure, and other issues that deter investors from investing in those countries. If countries are to compete

for tax revenues, such states find themselves at a disadvantage, which can be considered unfair. Furthermore, the implementation of global minimum tax rules is administratively costly and technically challenging, which will be an initial hurdle that many countries will need to overcome.

It is undeniable that the implementation of Pillar 2 will not deter global multinational companies from seeking the most favorable conditions for locating their business activities. Incentives will therefore continue to exist; however, the question remains as to what form they will take. One of the previously mentioned options is the provision of direct subsidies. Although a direct subsidy can be perceived as a direct financial benefit for multinational companies and may provoke political and social controversies, its effectiveness in attracting foreign investments can be as high as that of more sophisticated tax incentives, if properly implemented and communicated [Kostić, 2024]. However, it cannot be overlooked that direct subsidies may be perceived as an unfair advantage for selected businesses, potentially disrupting the competitive environment and harming smaller enterprises that do not have access to such subsidies. Moreover, the provision of direct subsidies may conflict with the provisions of double taxation treaties and other international tax agreements and commitments, which prohibit discrimination and require fair treatment of all businesses. Therefore, potential forms of providing benefits to selected companies must be thoroughly examined for compliance not only with the rules of Pillar 2 but also with the international commitments applicable to the given state before their implementation.

Some countries are currently adopting new strategic forms of incentives, which they believe could be attractive to companies and have the potential to create favorable conditions for the country. Japan, in an effort to enhance its attractiveness, has decided to implement a new tax incentive known as the “Innovation Box,” which will be effective from April 1, 2025, for a period of seven years [Masuda, 2024]. This measure allows for a 30% deduction on qualified income from domestic transfers or domestic and international licensing of intellectual property rights, provided that the company conducts research and development activities within Japan [BDO Corporate Tax News]. Capital gains from the sale of intellectual property to foreign entities and domestic related parties, as well as royalty income received from related parties, will be excluded from taxation under the “Innovation Box.” However, the question remains whether this new incentive can position Japan

as a country with a competitive advantage over others. A barrier to the country's attractiveness appears to be the fact that Japan has historically applied relatively high corporate tax rates, which have been around 30% in recent years [Enache, 2024]. It is therefore reasonable to assume that Japan's tax rate will not drop to 15% in the coming years, as its percentage level has been approaching this figure only very slowly in recent years. Even after the introduction of a global minimum tax of 15% and the implementation of the "Innovation Box" regime, multinational companies may still be motivated to establish their research and development centers outside of Japan in order to ultimately achieve a lower tax rate than that offered by Japan.

The introduction of a global minimum tax of 15% may contribute to the realization of the principle of tax fairness by limiting the ability of multinational companies to shift profits to countries with favorable tax regimes. This approach ensures that the affected companies pay a fair share of taxes in the countries where they conduct their business activities, thereby reducing tax optimization and profit shifting. However, it is also necessary to consider that some countries, not only developing ones, may find themselves at a disadvantage, as they lack sufficient alternative incentives to attract investments. Therefore, it is crucial that the implementation of the global minimum tax is accompanied by measures that take into account the differences between economies and ensure that the principle of tax fairness is upheld on a global level.

4. The Impact of Digitalization on the Principle of Elimination of Double Taxation

A characteristic feature of the principle of elimination of double taxation is that it addresses the issue of international double taxation. The elimination of double taxation is manifested in the requirement that the same income or the same asset of the same person should be taxed only once and through only one tax [Babčák, 2019, p. 54]. The issue of preventing double taxation has been addressed for many years by organizations such as the OECD[4] and the UN[5], based on which individual states enter into bilateral or multi-

[4] E.g. The OECD Model Tax Convention on Income and on Capital 2017 https://www.oecd.org/en/publications/model-tax-convention-on-income-and-on-capital-2017-full-version_g2g972ee-en.html

[5] E.g. UN Model Convention Double Taxation Convention Between Developed and Developing Countries, 2017 https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf

lateral treaties to avoid double taxation. In relation to defining the principles of fairness and efficiency in taxation, the OECD states that *"Taxation should produce the right amount of tax at the right time, while avoiding both double taxation and unintentional non-taxation. In addition, the potential for evasion and avoidance should be minimized."* [Addressing the Tax Challenges of the Digital Economy, OECD/G20 Base Erosion and Profit Shifting Project]. Double taxation is often linked to the phenomenon of double non-taxation, and therefore, they should be examined in relation to each other [Babčák, 2019, p. 809]. The phenomenon of double non-taxation is considered one of the manifestations of aggressive tax planning [Koroncziová, 2016, p. 164]. It undermines legal certainty in taxation, tax fairness, the effectiveness and transparency of the tax system [Babčák, 2020, p. 137], and leads to significant tax evasion.

Business activities in the form of providing digital services by large multinational companies continue to expand, both through an increase in the number of companies offering such services and through the growth of various types of digital services. It is also not uncommon for companies that have traditionally conducted their business in conventional ways to transition into the digital economy. This transformation and evolution of business forms often result in an increased extent of tax losses, tax evasion, or avoidance of tax obligations.

While work was underway at the OECD level to achieve a global consensus on the Inclusive Framework, many countries implemented unilateral measures to protect their tax base and began taxing income derived from selected digital activities conducted within their jurisdiction. One such measure is the introduction of digital services taxes (DST) [The OECD and Digital Services Taxes]. The primary argument for why countries proceeded with the implementation of DST was the fact that digital companies were not paying sufficiently high income taxes despite the value being created by users [The OECD/G20 Pillar 1 and Digital Services Taxes: A Comparison, p.4]. DSTs are distinct in that they apply to revenues generated from specified digital services, unlike traditional tax frameworks, which focus on taxing profits or income. Consequently, while DSTs are not categorized as income taxes, their introduction was a reaction to the difficulties associated with taxing the income of digital companies.

India was the first country to unilaterally implement a DST into its legal framework, doing so as early as 2016 [India has significantly expanded its equalization levy, 2023]. A 6% tax was applied to non-residents engaged in online advertising and related activities, such as online advertising services, provision of digital advertising space, or facilities for online advertising, with Indian customers. In subsequent years, India expanded the scope of the DST to include other business activities related to digital commerce [Finance Act, 2016, no. 28 of 2026, REGISTERED NO. DL—(N)04/0007/2003—16]. However, India remained the only country to implement a DST for only a short period, as other countries gradually began to follow suit, including France, the United Kingdom, Turkey, and Austria, as well as non-OECD countries such as Nepal, Tanzania, and Kenya [Taxation of the digitalized economy, 2024]. According to the data obtained, the digital services tax in the United Kingdom generated £567 million for the state treasury in 2023, representing a significant increase compared to the £380 million collected in 2022 and exceeding the original forecast by the UK government, which anticipated revenues of £465 million [DST revenues up as Pillar One deadline expires, 2024].

The European Union also proposed the introduction of a DST, presenting it as a temporary measure until a consensus on adopting a comprehensive global solution could be reached. The EU's DST proposal suggested implementing a 3% tax on revenues from the sale of user data, online advertising space, and digital intermediary services. The proposal was criticized by the United States, which viewed it negatively and as discriminatory, expressing concern that the tax was almost exclusively targeted at companies headquartered in the US. Ultimately, the DST did not come into effect across the European Union. However, as mentioned earlier, various EU member states proceeded to implement this tax unilaterally, with varying degrees of focus.

The unilateral implementation of measures against tax evasion in the digital economy raised concerns in the United States, prompting the U.S. Trade Representative to investigate the DST adopted by France. The U.S. concluded that the French DST was discriminatory against U.S.-based companies and violated international tax principles. If France insisted on maintaining its DST, the U.S. was prepared to impose tariffs of up to $2.4 billion on selected French products, such as cheese, cosmetics, and wine. Under

the threat of U.S. tariffs on French products, the European Commission committed to “stand together with France” and “explore all options” should the U.S. impose any tariffs [Balancing on two Pillars: Global corporate tax reform, 2024]. Subsequently, the U.S. Trade Representative initiated a series of investigations into the DSTs in the Czech Republic, Spain, Italy, Austria, and the United Kingdom, as well as the DST proposed by the European Commission. These actions raised concerns about the potential outbreak of a trade war between the EU and the United States.

The primary impetus for the intensive negotiations of the OECD/G20 Inclusive Framework from the outset was to eliminate the unilateral application of DSTs and other similar measures, and to replace them with a consensual reallocation of taxing rights among the members of the Inclusive framework [Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy from 8 October 2021, p. 6]. The effectiveness of Pillar 1 is intended to ensure that multinational enterprises (MNEs) engaged in the digital economy pay taxes in the jurisdictions where their service users are located. Pillar 1 of the OECD’s Two-Pillar Solution consists of three sets of rules, referred to as 1) the rules for “Amount A”; 2) the rules for “Amount B”; and 3) the rules concerning tax certainty and dispute resolution. The first set of rules, those for “Amount A,” are designed to supersede the DSTs unilaterally implemented by individual countries, as indicated by the published proposal of *The Multilateral Convention to Implement Amount A of Pillar One (MLC)* dated October 11, 2023. Amount A provides a new taxing right over a portion of the residual profits of the world’s largest and most profitable multinational enterprises to market jurisdictions. The MLC is designed to enhance market stability and certainty through the application of various measures, which include:

I. Prevention of the application of DSTs and other related measures to all companies, regardless of whether they fall within the scope of “Amount A”,
II. Coordination of the allocation of taxing rights (“Amount A”) to market jurisdictions based on a share of the excess profits (i.e., profits exceeding the threshold of 10% of revenues) of the largest and most profitable multinational enterprises (MNEs) operating in that market, with an emphasis on the obligation to eliminate double taxation [The Multilateral Convention to Implement Amount A of Pillar One, 2023].

The MLC also includes an annex ("Annex A"), which lists existing measures and DSTs that are subject to removal and must not be applied to any company subject to the rules of Pillar 1, to prevent the double taxation of the same income.

The proper setting of the rules for Amount A is crucial for the functioning of the entire system. In simple terms, Amount A aims to address the questions of (a) who has the right to tax, (b) what is subject to taxation, and (c) where the tax is paid. The rules are technically and administratively complex, but they can be simplified by breaking the process into five steps: (a) determine whether a multinational group is within the scope of the rules, (b) identify the eligible market jurisdictions, (c) calculate the Amount A profit, (d) allocate this profit to each jurisdiction, and (e) ensure relief from double taxation [Song, 2024]. To achieve this goal, the member states of the Inclusive Framework agreed and declared in the *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy from October 8, 2021*, that no new DSTs or other similar measures would be unilaterally introduced by these states until the anticipated effective date of the MLC, which was December 31, 2023, or an earlier date if the MLC came into effect sooner. This date was subsequently changed and adjusted with the publication of the document *"Update to Pillar One Timeline by the OECD/G20 Inclusive Framework on BEPS"* on December 18, 2023, by moving it to the end of March 2024, with the justification that work on finalizing the MLC is still ongoing [Update to Pillar One timeline by the OECD/G20 Inclusive Framework on BEPS, point 2]. However, this announcement did not provide any information regarding the status of the moratorium on DSTs. As a result, countries were relieved of the obligation to refrain from introducing new DSTs. The signing of the final consensus text of the MLC was expected by June 2024, but despite intense negotiations and the extended deadline, no consensus was reached among the participating parties regarding Pillar 1.

It appears that a global consensus remains distant for now, and it is therefore possible to anticipate that, in addition to increasing trade tensions between the EU and the USA, there will be a continued unilateral implementation of DSTs and other similar measures as countries seek to prevent the loss of potential tax revenues. As the date of June 30, 2024, passed without consensus being reached by the individual countries, Canada decided to proceed unilaterally with the implementation of a DST and enacted the Digital

Services Tax Act [An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023] on June 20, 2024, which came into effect by government order on June 28, 2024. This new legislation imposes a 3% tax on digital services revenues exceeding 20 million Canadian dollars. The Canadian DST applies from January 1, 2024, and has retroactive effect from January 1, 2022. This tax applies to both domestic and foreign businesses with global revenues exceeding 750 million euros [Pillar One deadline has passed: new Digital Services Taxes on the horizon?].

Unlike Pillar 2, Pillar 1 is a tax treaty that would require ratification by at least 30 jurisdictions, including those that are the headquarters of at least 60% of MNEs, meaning that the United States is currently a key player, and without its participation, an agreement is unlikely to be reached. The United States is currently hindering the adoption of the proposed rules for Pillar 1. The first issue is that ratification of any tax treaty requires a two-thirds majority vote in the U.S. Senate, which, according to experts, is considered rather utopian given the current political situation, despite the fact that one of the leaders supporting the adoption of Pillar 1 was U.S. Treasury Secretary Janet Yellen [Song, 2024]. At a press conference preceding the G7 Finance Ministers and Central Bank Governors' Meeting in Stresa, Italy, on May 23, 2024, Janet Yellen stated that her effort is to salvage part of the global corporate tax agreement focused on highly profitable multinational companies. However, India is refusing to cooperate on issues important to U.S. interests [Lawder, 2024].

India holds a negative stance towards Pillar 1 for several reasons. It argues that the current proposal for profit reallocation rules under Pillar 1 favors developed countries where large multinational enterprises (MNEs) are headquartered, primarily including the United States. In contrast, developing countries, where significant economic activities and consumer markets exist, are placed at a disadvantage. India asserts that the reallocation rules should be fairer, which could be achieved by reflecting the contributions of market jurisdictions to the global profits of MNEs. According to India, the current draft's high thresholds for revenues and profitability are also a shortcoming, as they mean that only a limited number of MNEs will be subject to the new rules, ultimately excluding many companies that generate substantial revenues from digital and consumer activities within its territory. India has

also expressed concerns that the reallocation of taxing rights under Pillar 1 could lead to a significant loss of tax revenues, as the proposed rules are likely to reduce the country's ability to tax the profits of MNEs that derive significant income from the Indian market [Bhuyan, 2024]. Moreover, since India currently has a DST implemented in its legal system, and the adoption of Pillar 1 would require the removal of such measures as per the MLC, this removal could lead to revenue losses that are not sufficiently compensated by the new reallocation rules.

In the context of the outlined challenges, it is evident that achieving global consensus on Pillar 1 is a complex matter that requires careful balancing of the diverse interests and needs of countries at different levels of economic development. It is important that the negotiations on Pillar 1 take into account the demands and potential obstacles of both economically developed and developing countries, ensuring that the new rules are fair and sustainable for all parties involved. In the meantime, until a consensus is reached at the global level, it is likely that countries will continue to seek and implement creative ways to protect their tax bases and ensure the fair taxation of digital activities. This may include adopting further unilateral measures, whether in the form of DSTs or other similar measures, allowing countries to claim a share of the revenues generated by digital companies operating within their territories.

Given the increasing dynamics of the global economy and the rapid development of digital technologies, it is essential for the international community to find effective solutions that enable fair and efficient taxation in the digital age. This process requires a comprehensive approach from the participating states, encompassing technical, legal, and political aspects. Technically, it is necessary to develop new taxation models that can reflect digital business models, where physical presence in a country is no longer a prerequisite for generating revenue, but which do not discriminate against any country and create suitable conditions that do not restrict economic competition while allowing countries at least partial autonomy.

5. Conclusion

The aim of this article was to verify whether the principle of tax fairness and the principle of elimination of double taxation still find their application in light of the developments and changes in society brought about by

globalization and digitalization The introduction of the article emphasizes that traditional tax systems currently lag significantly behind technological advancements, which can lead to tax evasion and double taxation if the legislation is not updated to address new challenges. Digitalization brings new opportunities but also challenges, such as the preference for digital companies over traditional businesses and the insufficient consideration of their activities for tax purposes, which can increase the likelihood of profit shifting to jurisdictions with lower tax burdens.

The article analyzed the role of international initiatives, such as BEPS, and the related proposal for a global minimum tax rate of 15%, which represent key steps towards addressing issues associated with profit shifting and maintaining adherence to the principle of tax fairness. The author's findings suggest that digitalization has a profound impact on tax law and tax law principles, as it changes the dynamics of taxation and requires new approaches to ensure fair and efficient taxation. On one hand, digitalization can contribute to increasing the efficiency and transparency of tax systems by simplifying tax administration and improving compliance with tax obligations. On the other hand, it presents new challenges, such as ensuring equal taxation approaches for digital and traditional businesses.

In the third chapter of the article, the author focused in detail on the impact of digitalization on the principle of tax fairness. The findings revealed that digitalization can disrupt and is disrupting the balance between different types of businesses, with digital companies potentially gaining undue tax advantages compared to traditional businesses under the current rules. This leads to the necessity of introducing new, updated rules that would ensure a level playing field for all companies operating in the international market. In this chapter, the author also emphasized the importance of strengthening international cooperation to ensure the fair distribution of tax revenues among countries and to minimize opportunities for tax optimization.

The fourth chapter of this article focused on the principle of elimination of double taxation in the context of digitalization, specifically analyzing how digitalization affects the risk of double taxation in the global economy. The findings suggest that digitalization significantly complicates traditional mechanisms for preventing double taxation, as digital companies can conduct economic activities in various countries without a physical presence. This necessitates a reevaluation of existing double taxation avoidance agreements

and the introduction of new rules that account for the digital nature of modern business. To support compliance with this principle, progress is essential, either at the international level by reaching a consensus on Pillar 1 or by moving away from a global solution and implementing unilateral measures by states. However, measures at both the international and unilateral levels cannot function simultaneously, and it is therefore crucial to find a solution that does not disrupt the principle of elimination of double taxation.

Based on the aforementioned critical findings, the author of the article proposes several key *de lege ferenda* suggestions. Firstly, it is essential to strengthen international cooperation and coordination among states to ensure that multinational companies pay a fair share of taxes in the countries where they actually operate and generate profits. This includes the introduction of a global minimum tax rate of 15%, which aims to help limit profit shifting and uphold the principle of tax fairness. Secondly, greater emphasis should be placed on the interests and challenges of developing countries, whose economic or political conditions often cannot keep pace with developed countries, placing them at a disadvantage. Thirdly, legislation should be flexible and capable of responding swiftly and effectively to technological advancements, ensuring that tax systems reflect the true economic activity of businesses, regardless of their physical presence. In this context, it is important for lawmakers and representatives of international state groupings to regularly review and update existing tax rules to account for new business models and technological innovations that may affect how profits are generated and taxed in the international economy.

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