



## **Tax Cases and Interpretation webinar**

***Tax Practice on the Move Series***

***YOUR KEY TO THE TAX COMMUNITY***

## Keitumetse Sesana



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She specialises in international corporate tax and related matters. She presently manages stakeholder relations by driving and facilitating meaningful engagement with Government departments regarding legislative design and policy on the varying areas of taxation.

## Carmen Westermeyer



Carmen Westermeyer is a Chartered Accountant based in South Africa. She has specialised in tax matters and presents training for various professional bodies and to professional firms

**GLOBAL MINIMUM TAX**  
**Pillar Two – What is all the fuss about?**

## Poll

What do Google and Starbucks have in common (multi selection)

- They're both global brands
- They both have their head offices in Seattle
- They have both been found guilty of tax avoidance/profit shifting activities
- They're both considered highly ethical companies

## Let's start at the very beginning

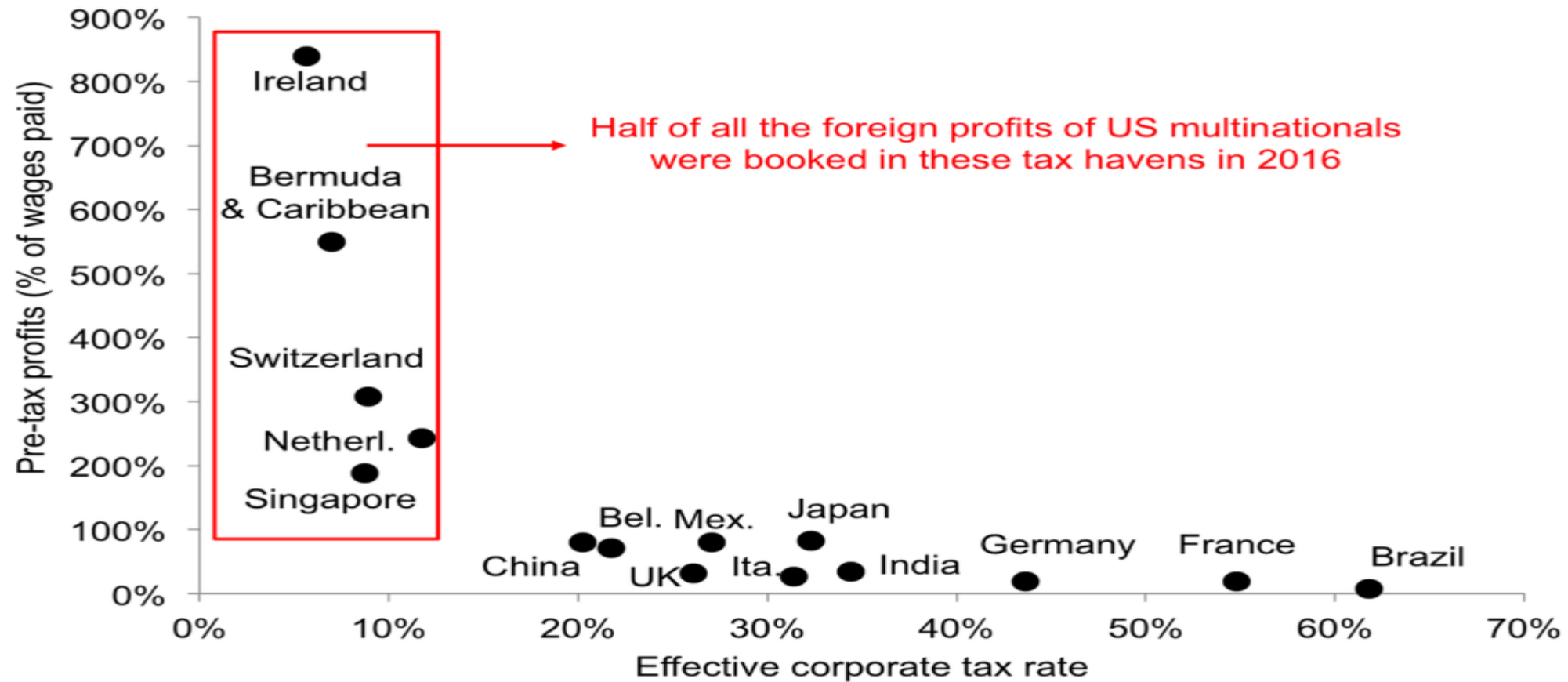


## Clearly there's a problem

- UNCTAD estimate that effective avoidance enabled by thin capitalization results in \$70-120 billion of annual tax revenue losses for developing countries
- A study by the IMF makes an indicative estimate that developing countries currently lose somewhere between \$100-300 billion of tax revenue through base erosion, profit shifting and tax competition to tax havens.
- BEPS activities cost nations 100-240 billion dollars in lost revenue each year, which is 4-10 percent of worldwide corporate income tax collection.
- In June 2018 an investigation by tax academic [Gabriel Zucman](#) (et alia),<sup>[9]</sup> estimated that the figure is closer to \$200 billion per annum.<sup>[10]</sup>
- The [Tax Justice Network](#) estimated that profits of \$660 billion were "shifted" in 2015 due to Apple's Q1 2015 [leprechaun economics](#) restructuring, the largest individual BEPS transaction in history.
- Research in June 2018 identified Ireland as the world's largest BEPS hub.<sup>[30]</sup> Ireland is larger than the *aggregate* Caribbean tax haven BEPS system, excluding [Bermuda](#).

# Global Minimum Tax – Profit shifting?

**Where do US multinationals book their profits?**  
(majority-owned affiliates of US multinationals, 2016)



## Only solution – International co-operation

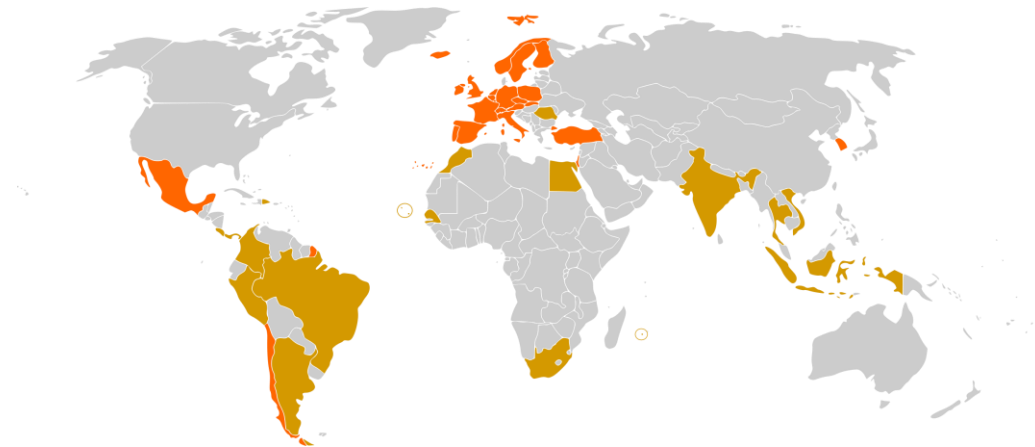


## Who is the OECD?

Created in the 1960's by 20 member countries to create an international framework for tax agreements

- Membership is now 37 countries
- <https://www.oecd.org/about/document/ratification-oecd-convention.htm>

The Development Centre was created in 1961 – which is open to non members as well, which focuses specifically on issues experienced by developing economies



# OECD 15 POINT ACTION PLAN

<https://www.oecd.org/tax/beps/beps-actions/>

- Action 1: Addressing the tax challenges of the digital economy
- Action 2: Neutralise the effects of hybrid mismatch arrangements
- Action 3: Strengthen controlled foreign companies rules
- Action 4: Limit base erosion via interest deductions and other financial payments
- Action 5: Counter harmful tax practices more effectively, taking into account transparency and substance
- Action 6: Prevent treaty abuse
- Action 7: Prevent the artificial avoidance of permanent establishment status
- Actions 8-10: Assure that transfer pricing outcomes related to intangibles are in line with value creation
- Action 11: Establish methodologies to collect and analyse data on BEPS and the actions to address it
- Action 12: Require taxpayers to disclose their aggressive tax planning arrangements
- Action 13: Re-examine transfer pricing documentation
- Action 14: Make dispute resolution mechanisms more effective
- Action 15: Develop a multilateral instrument

## THAT DOESN'T SOUND LIKE PILLARS?

Because they're not – those were the initial 15 points that needed to be addressed. Pillar One and Two were then created (often referred to as BEPS 2.0) to help implement some of the action points.

- Pillar One will deal with the digital market challenges and move taxing rights to sales jurisdictions rather than being limited to where companies have a “physical presence” or “place of effective management”.
  - Expected to move over \$125 billion of taxes per year to originating jurisdictions
  - Initial implementation scope is low – about 100 companies. Intent is to broaden scope in 7 years.
- Pillar Two is meant to be more immediate and will deal with the arbitrage incentive
  - OECD FAQ on the matter: <https://www.oecd.org/tax/beps/faqs-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2022.pdf>
  - All Guidance: <https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm>

# Poll

What are your views on tax arbitrage?

- This should be each country's choice
- Developed countries are taking advantage of developing countries and are forcing beneficial tax breaks in exchange for investment
- It's one of the key features of a free market economy
- It will be impossible to implement – if not illegal in many jurisdictions
- Undecided

## So what is Pillar 2?

**Primary aim: Take away the incentive for profit shifting by taking away the arbitrage – ie: make every country in the world implement a 15% corporate tax rate.**

- Initial scope is for all companies with global turnover of EUR750 million per annum to be subject to this requirement.
- Specific exclusions:
  - government entities,
  - international organisations and non-profit organisations (preserving domestic tax exemptions for sovereign, non-profit and charitable entities),
  - entities that meet the definition of a pension, investment or real estate fund (preserving the widely shared tax policy of not wishing to add an additional layer of taxation between the investment and the investor)
- In any jurisdiction where the entities effective tax rate is below 15%, a surcharge tax will be levied and paid to that government. This surcharge tax must result in a minimum of 15% tax payable on profits.
- **Added benefit? Pillar Two is expected to generate an addition \$150 billion in tax revenues worldwide.**

# How will this work?

- **Who is bound by this? All 138 Inclusive Framework members**

- Full list available here: <https://www.oecd.org/tax/beps/>

**Glossary:**

- Income Inclusion Rule (IIR)
  - Undertaxed Payments Rule (UTPR)
  - Subject to Tax Rule (STTR)
- Additional OECD Guidance on the admin requirements:  
<https://www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two-july-2023.pdf>

# Process

## Step 1 – Constituent Entities within scope

- Identify Groups within Scope and the location of each Constituent Entity within the Group

## Step 2 – GloBE Income

- Determine Income of each Constituent Entity

## Step 3 – Covered taxes

- Determine taxes attributable to Income of a Constituent Entity

## Step 4 – Effective Tax Rate and Top-up Tax

- Calculate the Effective Tax Rate of all Constituent Entities located in the same jurisdiction and determine resulting Top-up Tax

## Step 5 – IIR and UTPR

- Impose Top-up Tax under IIR or UTPR in accordance with agreed rule order

- Refer to OECD Fact Sheet for more detail: <https://www.oecd.org/tax/beps/pillar-two-GloBE-rules-fact-sheets.pdf>

# Poll

## Who was the primary driver of the minimum tax?

- Africa
- European Union
- Australia
- India
- Ireland

## Quick aside – Africa Tax Administration Forum

<https://www.ataftax.org/>

- Created to look at issues from an Africa specific context
- Was one of the key bodies involved in the creation of Pillar 2
- Very interesting read on how to take Pillar 2 principles and apply to local legislation available on their website:  
[https://events.ataftax.org/index.php?page=documents&func=view&document\\_id=216](https://events.ataftax.org/index.php?page=documents&func=view&document_id=216)
- Also has a great read on Policy implications of Pillar 2:  
[https://events.ataftax.org/index.php?page=documents&func=view&document\\_id=215](https://events.ataftax.org/index.php?page=documents&func=view&document_id=215)

# Timeframe?

## **Very aggressive:**

- Pillar One – 2024 legislation effective 2025
- Pillar Two – global policy released in 2021, comments closed early 2022. Suggested effective date of 2024 for legislation, implementation of “UPTR” in 2025
- Check each Country’s implementation status here: <https://www.pwc.com/gx/en/services/tax/pillar-two-readiness/country-tracker.html>

# Will this be the end of profit-sharing by MNE's via tax havens?

Yes.

All countries are sovereign and can set the tax policy of their choice, but harmful tax competition and aggressive tax planning need to end. Tax havens have thrived over the years by offering secrecy (like bank secrecy) and shell companies (where the company doesn't need to have any employees or activity in the jurisdiction) and no or low tax on profits booked there. The work of the G20 and the OECD-hosted Global Forum on Transparency and Exchange of Information for Tax Purposes has ended bank secrecy (including leading to the automatic exchange of bank information) and the OECD Base Erosion and Profit Shifting (BEPS) Project requires companies to have a minimum level of substance to put an end to shell companies along with important transparency rules so that tax administrations can apply their tax rules effectively. Pillar Two will now ensure that those companies pay a minimum effective tax rate of 15% on their profits booked there (subject to carve outs for real, substantial activities). The cumulative impact of these initiatives means that “tax havens” as people think of them would no longer exist. Those jurisdictions that offer international financial services may continue to find a market for their services, but on the basis that they add real economic value for their customers and support for commercial transactions that are not tax-driven.

- Source: OECD FAQ on Pillar One and Two: <https://www.oecd.org/tax/beps/faqs-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2022.pdf>

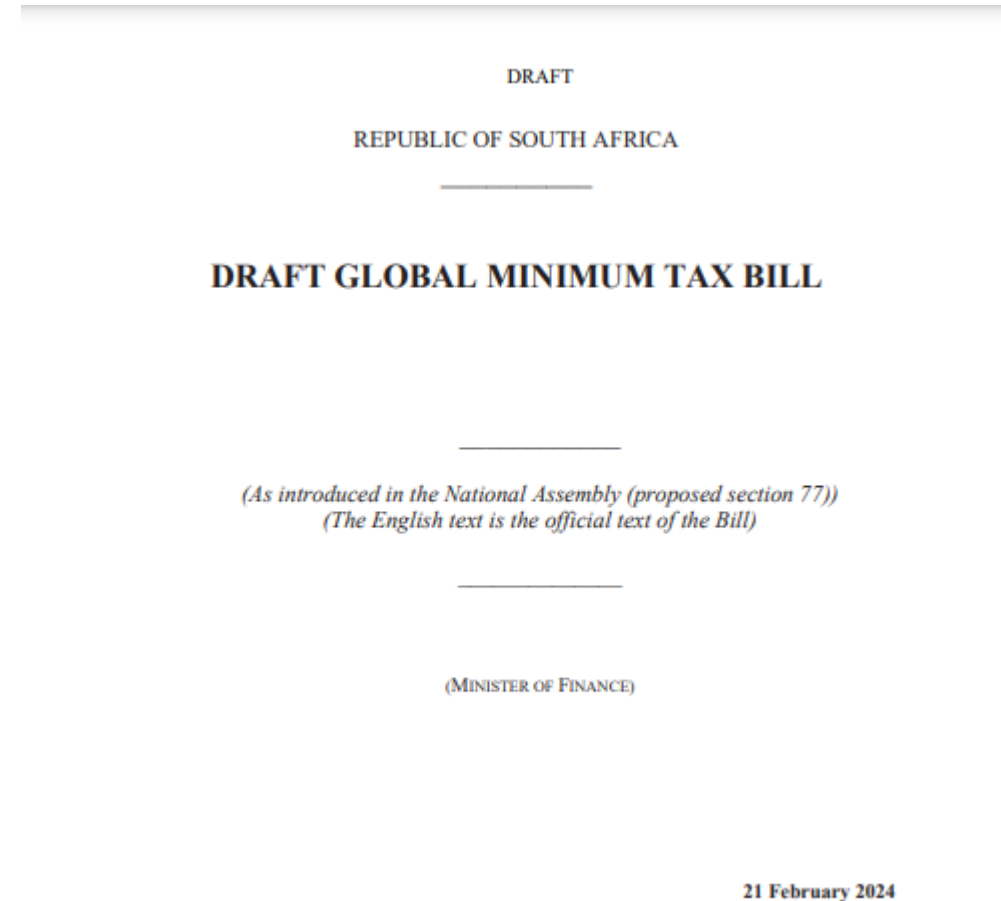
## Other reading material

<https://globtaxgov.weblog.leidenuniv.nl/2022/04/19/pillar-two-solution-and-the-impact-on-the-caribbean-sids/>

<https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm>

# What is South Africa doing?

- South Africa will implement a global minimum corporate tax, with multinational corporations subject to an effective tax rate of at least 15 per cent, regardless of where its profits are located.
- Multinational corporations with annual revenue exceeding €750 million will be subject to an effective tax rate of at least 15 per cent, regardless of where their profits are generated.
- The proposed reform is expected to yield an additional **R8 billion** in corporate tax revenue in **2026/27**.
- National Treasury and SARS are now considering commentary received.



# SAIT Submissions

[SAIT International Tax WG Submission\\_Global minimum tax bill \\_ 31 March 2024\\_Final](#)

[SAIT Mining Industry Tax WG Submission\\_Global minimum tax bill \\_ 31 March 2024\\_Final](#)

## Expert Guest Speaker Insights

***Key take aways for tax practitioners and potentially affected taxpayers?***



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