MASTER THESIS | MASTER'S THESIS

Titel | Title

Implementing the Global Minimum Tax under Pillar 2: Impacts on International Taxation and Comparative Insights for Kazakhstan and Central Asia

verfasst von | submitted by

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angestrebter akademischer Grad | in partial fulfilment of the requirements for the degree of

Master of Laws (LL.M.)

Wien | Vienna, 2025

Studienkennzahl lt. Studienblatt | Degree programme code as it appears on the student record sheet:	UA 999 082
Universitätslehrgang lt. Studienblatt | Postgraduate programme as it appears on the student record sheet:	Europäisches und Internationales Wirtschaftsrecht [Vollzeit Englisch]
Betreut von | Supervisor:	Dr. Dimitar Hristov

ABSTRACT

Umfang der Masterarbeit: 56 Seiten, 28 Quellen.

SCHLAGWÖRTER: INTERNATIONALE STEUERN, GLOBALE MINDESTSTEUER, PILLAR TWO, KASACHSTAN, MULTINATIONALE UNTERNEHMEN, STEUERWETTBEWERB, QUALIFIED DOMESTIC MINIMUM TOP-UP TAX (QDMTT), ZENTRALASIEN.

Ziel der Arbeit: ist eine rechtsvergleichende Analyse des OECD/G20-Rahmens zur globalen Mindestbesteuerung („Pillar Two") und dessen Auswirkungen auf kasachisches Steuerrecht sowie andere Staaten Zentralasiens.

Untersuchungsobjekt: internationale steuerrechtliche Beziehungen im Rahmen der BEPS-Initiative und deren Umsetzung in nationalen Rechtsordnungen.

Untersuchungsgegenstand: rechtliche Instrumente von Pillar Two – insbesondere IIR, UTPR und STTR, sowie ihre Wechselwirkungen mit Steuervergünstigungen und fiskalischer Souveränität in Kasachstan.

Ergebnisse der Arbeit: Umfassende Analyse des GloBE-Regelwerks, Bewertung der rechtlichen und wirtschaftlichen Herausforderungen für Kasachstan sowie praxisnahe Empfehlungen zur Einführung eines QDMTT und zur Anpassung der nationalen Steuerpolitik an internationale Mindeststandards.

ABSTRACT

Volume of the thesis: 56 pages, 28 sources.

KEYWORDS: INTERNATIONAL TAXATION, GLOBAL MINIMUM TAX, PILLAR TWO, KAZAKHSTAN, MULTINATIONAL ENTERPRISES, TAX COMPETITION, QUALIFIED DOMESTIC MINIMUM TOP-UP TAX (QDMTT), CENTRAL ASIA.

Purpose of the thesis: is to conduct a comparative legal analysis of the OECD/G20 global minimum tax framework (Pillar Two) and to evaluate its impact on Kazakhstan's tax policy and similar jurisdictions in Central Asia.

Object of the research: international tax law relations under the BEPS framework and their implementation in domestic legal systems.

Subject of the research: the legal instruments of Pillar Two, particularly the IIR, UTPR, and STTR, and their interaction with tax incentives and fiscal sovereignty in Kazakhstan.

Results of the thesis: a thorough analysis of the GloBE rules, identification of legal and economic challenges for Kazakhstan, and practical recommendations for introducing a QDMTT and aligning national tax legislation with international standards.

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List of Abbreviations

BEPS	Base Erosion and Profit Shifting
ETR	Effective Tax Rate
GAAP	Generally Accepted Accounting Principles
GloBE	Global Anti-Base Erosion
IFRS	International Financial Reporting Standards
IIR	Income Inclusion Rule
MNE	Multinational Enterprise
OECD	Organisation for Economic Co-operation and Development
PPT	Principal Purpose Test
QDMTT	Qualified Domestic Minimum Top-Up Tax
SLOB	Specific Limitation on Benefits
STTR	Subject-to-Tax Rule
UTPR	Undertaxed Profits Rule

1. Introduction

1.1. Background and significance of Pillar 2

International tax law is undergoing a paradigm shift in response to persistent base erosion and profit shifting (BEPS) by multinational enterprises (MNEs). The rise of highly digitalized business models and aggressive tax planning has exposed gaps in the century-old network of tax treaties and domestic laws. In 2019, the OECD/G20 Inclusive Framework, which is a coalition now exceeding 135 jurisdictions, converged on a two-pillar approach to address these challenges. Pillar One proposes new profit allocation rules for the digital economy, while Pillar Two introduces a Global Anti-Base Erosion (GloBE) regime establishing a global minimum corporate tax. The Pillar Two Blueprint makes clear that its aim is to design a worldwide minimum tax that addresses the "remaining BEPS issues" left by prior reforms. Agreed by 137 countries in October 2021, this two-pillar solution has been hailed as "historic" and "a once-in-a-generation accomplishment for economic diplomacy".[1] Such praise is largely attributable to Pillar Two's significance: it seeks to set a floor on tax competition and ensure that large MNEs cannot escape a baseline level of taxation anywhere in the world.[2]

Pillar Two's global minimum tax is calibrated as a 15 per cent effective tax rate (ETR) applied on a country-by-country basis to MNE groups with annual revenues over 750 million euro. In essence, if an in-scope MNE's income in any jurisdiction is taxed below 15 per cent, additional "top-up tax" will be due to bring the ETR up to the minimum taxation.[3] This top-up can be collected primarily by the MNE's home country under an Income Inclusion Rule (IIR), or secondarily by other countries through an Undertaxed Profits Rule (UTPR) if the home jurisdiction does not act.[4] To further safeguard source countries, the Pillar Two package a

[1] OECD, Tax Challenges Arising from Digitalisation – Report on Pillar Two Blueprint (2020)
[2] Devereux, Vella & Wardell-Burrus, 'Pillar 2's Impact on Tax Competition' (2022)
[3] European Commission, Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union COM(2021) 823 final.
[4] European Commission, Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union COM(2021) 823 final.

llows (and indeed incentivizes) each jurisdiction to adopt a Qualified Domestic Minimum Top-Up Tax (QDMTT), which is a domestic 15 per cent minimum tax that credits against any foreign top-up tax.[5] The policy rationale is clear: Pillar Two "strengthen[s] the ability of jurisdictions to tax profits where the other jurisdiction with taxing rights applies a low effective rate", thereby "set[ting] a floor to tax competition" at 15 per cent. If one country offers a tax break that lowers an MNE's ETR below 15 per cent, the MNE's tax savings will be nullified by a top-up tax in another country. In this way, Pillar Two attacks the "race to the bottom" in corporate taxation by removing the reward for profit-shifting to low-tax havens or aggressive tax incentive regimes.

The significance of this reform cannot be overstated. For decades, countries have vied to attract investment by undercutting each other's tax rates, often at the cost of eroding their tax base. Pillar Two represents a multilateral ceasefire in this tax competition battle. Proponents argue that a global minimum tax will promote fairness and restore stability to the international tax landscape. It aims to protect the tax bases of higher-tax countries and, by curtailing artificial profit shifting, to realign MNEs' tax burdens with real economic activity. The European Commission, for example, lauded the minimum tax as bringing "greater fairness and stability to the tax landscape … making it more modern and better adapted to today's globalised, digital world." By early 2024, EU Member States had unanimously transposed Pillar Two into a directive, to take effect for fiscal years beginning in 2024. [6] Dozens of other jurisdictions from the United Kingdom and Japan to South Korea and Canada have likewise introduced or finalized Pillar Two legislation, underscoring the broad momentum behind this coordinated reform.

At the same time, the global minimum tax must navigate complex legal and practical challenges. Sovereignty concerns have been pronounced: each state remains free not to adopt the GloBE rules (Pillar Two is a "common approach" rather than a minimum standard), yet if it abstains, its fiscal preferences can be overridden by other countries' top-up taxes.[7] Some scholars praise Pillar Two as a long-overdue mechanism to end harmful tax competition and ensure MNEs pay their "fair share" globally. They argue it will reduce the beggar-thy-neighbor strategies that

[5] Schoueri LE, 'The OECD/G20 Pillar Two and Developing Countries' (2020) Bulletin for International Taxation
[6] European Commission, Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union COM(2021) 823 final.
[7] Schoueri LE, 'The OECD/G20 Pillar Two and Developing Countries' (2020) Bulletin for International Taxation.

erode other countries' tax bases and undermine public confidence in the tax system. Indeed, Pillar Two's objective of addressing profit shifting and tax competition speaks directly to these concerns. By guaranteeing a minimum tax outcome, the Pillar Two regime aspires to a form of "global tax harmony" where nations can cooperate rather than race to the bottom.[8] Developing countries, in particular, face a policy dilemma. Many have historically relied on tax incentives (such as tax holidays or special economic zones) to attract foreign investment, often buttressed by tax sparing agreements to ensure the benefit accrues to investors. Pillar Two effectively caps the value of those incentives at the 15 per cent floor, since any lower tax rate will be topped up elsewhere. This could pressure developing economies to either sacrifice incentives or forfeit tax revenue to foreign jurisdictions. In response, measures like the Subject to Tax Rule (STTR), which is a treaty-based rule targeting certain intra-group payments and the option of QDMTTs were included to preserve source countries' taxing rights up to the minimum rate. Whether these tools sufficiently address developing countries' concerns is a point of active debate. More generally, experts caution that the political compromises made to achieve consensus (for example, carve-outs for substantive economic activities and deferred tax items) risk diluting Pillar Two's impact. The global minimum tax is expected to increase EU corporate tax revenues by approximately 7.1 per cent annually, or about 26 billion euro, though carve-outs and deferral mechanisms may significantly limit its effectiveness in developing countries.[9] Thus, while Pillar Two marks a watershed moment in international tax cooperation, its success in practice will hinge on robust implementation and the closing of remaining gaps in the global tax net.

In sum, the global minimum tax under Pillar Two is both a product of, and a response to, the evolution of international tax governance in the post-BEPS era. It builds upon earlier anti-avoidance instruments, including the widespread adoption of treaty-based general anti-abuse rules such as the Principal Purpose Test (PPT), introduced through the OECD's Multilateral Instrument pursuant to Action 6 of the BEPS Project, as well as specific anti-treaty-shopping mechanisms such as Limitation on Benefits (LOB) provisions. However, Pillar Two goes beyond these interpretive and denial-based approaches by establishing a legally coordinated minimum taxation

[8] Reuven S Avi-Yonah and Young Ran (Christine) Kim, 'Tax Harmony: The Promise and Pitfalls of the Global Minimum Tax' (2022) 43 Michigan Journal of International Law 505.

[9] European Commission, The Impact of the Global Minimum Tax on Corporate Tax Revenues (Joint Research Centre, 29 January 2025) JRC Technical Report JRC141119 https://publications.jrc.ec.europa.eu/repository/handle/JRC141119 accessed 6 July 2025.

threshold of 15 per cent, thereby imposing a structural constraint on tax competition among jurisdictions.

While the global design of Pillar Two aspires to universality, its practical implications are highly contingent upon regional legal systems, economic structures, and policy capacities. For developing and transition economies such as Kazakhstan and other Central Asian states, where tax incentives and preferential regimes have historically played a central role in investment attraction strategies, the implementation of Pillar Two raises distinct legal and fiscal challenges that merit specific examination.

In this context, legal scholars have emphasized that the structural design of Pillar Two represents a new phase of international tax constitutionalism. Unlike prior anti-avoidance tools that were largely reactive and interpretive, the global minimum tax proactively reshapes taxing rights through predefined computational rules. This shift implies that normative legitimacy now derives not only from domestic legal authority, but also from multilateral consensus procedures within the OECD/G20 Inclusive Framework. According to Avi-Yonah, the global minimum tax crystallizes a hybrid form of tax sovereignty, where states retain formal legislative discretion but operate under coordinated fiscal constraints. The rules governing top-up taxation, income allocation, and carve-outs, although formulated as soft law, generate binding outcomes through coordinated domestic implementation. This raises important questions about the legal nature of Pillar Two, its enforceability under international law, and the implications for the sovereignty of participating jurisdictions. Furthermore, as Schoueri and others have noted, the tension between global tax harmonisation and the developmental priorities of source countries will remain central to the long-term sustainability of the Pillar Two architecture. Thus, a rigorous legal analysis is required to assess not only the operational effectiveness but also the doctrinal coherence of this evolving regime.

The subsequent chapters of this thesis will examine the legal architecture and operational mechanics of Pillar Two in detail. Prior to this analysis, however, it is essential to define the research questions and objectives that underpin the present study.

1.2. Research Questions and Objectives

The present study seeks to conduct a structured legal analysis of the implementation and implications of the OECD/G20 Pillar Two framework on global minimum taxation. Rooted in public international law, tax treaty interpretation, and fiscal sovereignty, this thesis approaches Pillar Two not merely as an economic tool, but as a normative development reshaping the foundational architecture of international taxation.

Given the growing international consensus on the implementation of Pillar Two, the present study applies a doctrinal legal methodology, complemented by comparative analysis. It draws upon primary legal sources, including the OECD Model Rules, the EU Directive 2022/2523, and national implementing legislation in Austria and Germany, as well as academic and policy-oriented secondary literature. The objective is to evaluate the legal coherence, enforceability, and normative implications of the global minimum tax framework.

Special attention is devoted to Kazakhstan and other developing or transition economies that are members of the Inclusive Framework. These jurisdictions often rely on tax incentives as part of their investment attraction strategies and face considerable institutional and legislative constraints in implementing Pillar Two. This context underscores the need to assess how effectively such jurisdictions can align their domestic tax systems with the evolving international regime.

The originality of this research lies in its integrated examination of international tax coordination, treaty law, and domestic legal capacity. By presenting a jurisdiction-specific case study of Kazakhstan, the thesis seeks to bridge the normative framework established at the global level with the operational and legal realities of implementation at the national level.

The research is guided by the following overarching legal inquiries:

1. What are the principal legal objectives and mechanisms embedded within Pillar Two, and how are they intended to mitigate base erosion and profit shifting by multinational enterprise groups (MNEs)?
2. What implementation challenges arise across jurisdictions, particularly with respect to administrative capacity, domestic legal compatibility, and the preservation of fiscal sovereignty?
3. How do the Principal Purpose Test (PPT) and Specific Limitation on Benefits (SLOB) provisions interact with the minimum tax rules, and to what extent do they affect the legal certainty and enforceability of existing tax treaties under the Pillar Two regime?
4. What comparative insights can be drawn from the analysis of Pillar Two's implications for Kazakhstan and other Central Asian states, particularly in relation to their tax incentive policies, treaty positions, and capacity for legal harmonisation?

The core objective of this research is to evaluate the legal efficacy and systemic coherence of Pillar Two in addressing the deficiencies of the current international tax framework. In particular, the thesis aims to:

1. Critically examine the normative rationale and binding/non-binding nature of the Pillar Two rules within the broader context of international law and treaty obligations;
2. Assess the degree to which Pillar Two may alter existing rules of jurisdiction to tax, and how it interacts with treaty-based anti-abuse norms such as the PPT and SLOB;
3. Investigate potential legal and administrative barriers to implementation in different legal systems, particularly those of developing or transition economies;
4. Offer a comparative legal analysis of Kazakhstan and the Central Asian region to identify region-specific risks, gaps in legal capacity, and viable policy responses for aligning with the global minimum tax framework.

Ultimately, the thesis aims to contribute to the scholarly discourse on the constitutionalisation of international tax law through soft-law instruments, and to provide doctrinal insights into how emerging jurisdictions may safeguard their fiscal interests without disengaging from global reform efforts.

2. The Pillar 2 framework

2.1. Legal Background and the global consensus

The adoption of Pillar 2 within the OECD/G20 Inclusive Framework constitutes a normative departure from the traditional structure of international tax law. Rather than allocating taxing rights solely by reference to residence and source, Pillar 2 introduces a universal minimum level of taxation applicable to the global profits of large multinational enterprise (MNE) groups. This shift is justified by the need to curb residual base erosion and profit shifting (BEPS) strategies, particularly those not addressed by prior anti-avoidance reforms under the BEPS Action Plan, including transfer pricing rules and treaty-based instruments such as the Multilateral Instrument (MLI).[10]

The legal mechanism introduced under Pillar 2 is not treaty-based but rather functions through coordinated domestic legislation under a "common approach." Participating jurisdictions are not obliged to adopt the rules, but if they do, they must implement them consistently with the agreed model. The structure of Pillar 2 is enshrined in the Global Anti-Base Erosion Rules (GloBE) and comprises four main components:

(i) the Income Inclusion Rule (IIR),
(ii) the Undertaxed Profits Rule (UTPR),
(iii) the Qualified Domestic Minimum Top-Up Tax (QDMTT), and (iv) the Subject to Tax Rule (STTR).

Their combined effect is to ensure that MNEs pay a minimum effective tax rate (ETR) of 15 per cent in every jurisdiction in which they operate.[11]

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[10] OECD, Tax Challenges Arising from Digitalisation - Report on Pillar Two Blueprint (OECD Publishing 2020) ch 1.
[11] European Commission, Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union COM(2021) 823 final, recital 6.

2.2. Scope and Technical Foundations of the GloBE Rules

Pillar 2 applies to MNE groups whose consolidated annual revenue meets or exceeds 750 million euro in at least two of the four preceding fiscal years.[12] This threshold corresponds with that under BEPS Action 13, reflecting the intent to limit the application of the rules to the largest and most globally active corporate groups. By focusing on those entities most capable of engaging in complex tax planning across multiple jurisdictions, the rule seeks to maximise administrative efficiency while ensuring meaningful anti-avoidance impact[13]

The central analytical concept of the GloBE framework is the jurisdictional effective tax rate (ETR). This rate is calculated by dividing the amount of covered taxes paid or accrued by all constituent entities in a jurisdiction by the aggregate GloBE income earned in that jurisdiction during the fiscal year.[14] Covered taxes include both current and deferred income taxes, subject to specific exclusions and adjustments, such as the removal of uncertain tax positions and the disallowance of certain equity-related items.[15]

GloBE income is based on the consolidated financial accounts of the group. These must be prepared in accordance with a recognised accounting standard, most commonly the International Financial Reporting Standards (IFRS). However, the rules also permit the use of qualified local Generally Accepted Accounting Principles (GAAP), provided these are subject to an independent and credible standard-setting process and yield comparable, reliable outcomes.[16]

In Germany, large multinational groups typically prepare consolidated financial statements under IFRS, particularly when publicly listed or subject to EU regulations. However, individual legal entities generally report under the Handelsgesetzbuch (HGB), Germany's Commercial Code. For the purpose of GloBE computations, HGB-based financial statements are permitted, provided

[12] OECD, Tax Challenges Arising from Digitalisation – Report on Pillar Two Blueprint (n 1) para 63.
[13] Michael P Devereux, John Vella and Heydon Wardell-Burrus, 'Pillar 2's Impact on Tax Competition' (2022) Oxford University Centre for Business Taxation Policy Paper, 8–9.
[14] OECD, GloBE Model Rules (Pillar Two) (2021) art 5.1.
[15] Ibid, arts 4.3 and 4.5.
[16] OECD, Administrative Guidance on the GloBE Rules (February 2023) paras 1.2–1.4.

they meet the conditions established in the OECD's administrative guidance and are accepted under the domestic implementation of the Minimum Tax Act (Mindeststeuergesetz, MinStG).[17]

In Kazakhstan, entities generally prepare financial statements in accordance with National Accounting Standards (NAS). These standards differ from IFRS and require adjustments when applying GloBE calculations, particularly in the treatment of deferred taxes and intra-group eliminations. NAS remain in force pursuant to the Rules on the Preparation and Submission of Financial Statements, as amended.[18]

Where the jurisdictional ETR falls below 15 per cent, the group becomes liable to a top-up tax. The top-up tax is calculated using the following formula:

Top-Up Tax = (15 per cent – Jurisdictional ETR) × Excess Profit

The excess profit is the GloBE income of the constituent entities in a jurisdiction, reduced by the substance-based income exclusion, which will be examined separately in section 2.6.[19]

To illustrate, suppose Globex GmbH, a German-headquartered MNE, operates a subsidiary in Kazakhstan. The subsidiary earns 10 million euro in GloBE income and pays 1 million euro in covered taxes, yielding an ETR of 10 per cent. The difference of 5 per cent, applied to the 10 million euro of income, results in a top-up tax liability of 500,000 euro. Unless Kazakhstan has implemented a Qualified Domestic Minimum Top-Up Tax (QDMTT), the parent company in Germany must pay this amount under the Income Inclusion Rule (IIR).

This system introduces several structural innovations into international tax law. First, it replaces reliance on domestic nominal tax rates with a uniform effective rate test based on financial accounts. Second, it imposes taxation based on location-specific income, shifting the emphasis

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[17] Mindeststeuergesetz (MinStG), Gesetz zur Umsetzung der Richtlinie (EU) 2022/2523, Bundesgesetzblatt Teil I Nr 397, 27 December 2023 https://www.gesetze-im-internet.de/minstg/MinStG.pdf.
[18] Republic of Kazakhstan, Order of the Minister of Finance No. 468 dated 1 August 2017 on the Approval of the Rules for the Preparation and Submission of Financial Statements, as amended.
[19] Organisation for Economic Co-operation and Development (OECD), GloBE Model Rules (Pillar Two) (OECD Publishing 2021) art 5.3.

away from legal form or intra-group structuring. Third, it relies on neutral accounting principles to standardise the tax base, subject to regulatory guidance.

From a legal perspective, the use of financial accounting data to determine tax liability is a significant departure from traditional principles, which have long prioritised legal classification and taxable income determined under national law. Under Pillar 2, IFRS and qualified GAAP regimes serve not merely as reporting tools but as substantive foundations for calculating enforceable tax obligations. This fusion of financial reporting and legal tax base determination raises complex questions regarding accuracy, comparability, and enforceability, especially in jurisdictions with divergent accounting traditions.[20]

Moreover, the potential for manipulation through deferred tax timing, accelerated depreciation, or book-tax differences requires careful coordination between financial regulators and tax authorities. The OECD has attempted to mitigate these risks through administrative guidance and the development of safe harbour regimes, but full convergence is far from complete.[21]

In this context, the GloBE Rules establish a hybrid framework that straddles both tax law and financial accounting principles. Such hybridisation reflects a deliberate policy shift towards globally harmonised tax coordination, yet it also increases complexity in implementation. Jurisdictions must ensure that their financial reporting systems, tax administration infrastructure, and legal definitions are sufficiently aligned to deliver accurate, enforceable, and comparable ETR calculations.

This alignment is particularly challenging for jurisdictions such as Kazakhstan, where the coexistence of NAS and partial IFRS application creates inconsistencies in treatment of income, timing differences, and deferred tax positions. Without domestic adaptation of financial standards or the issuance of administrative guidance aligned with OECD expectations, these inconsistencies

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[20] Reuven S Avi-Yonah, 'Global Minimum Tax: Pros and Cons' (2022) 43 Michigan Journal of International Law 1, 6.
[21] OECD, Safe Harbours and Simplified Calculations under Pillar Two (OECD 2023).

risk undermining the integrity of ETR calculations and expose local entities to unintended foreign top-up tax liabilities.

Accordingly, the GloBE framework not only introduces substantive minimum taxation but also requires structural adaptation in accounting oversight, legal drafting, and cross-border information exchange. These systemic implications will be explored further in the sections that follow.

2.3. The Income Inclusion Rule (IIR)

The Income Inclusion Rule (IIR) constitutes the central mechanism of Pillar 2 designed to enforce the global minimum tax by allocating taxing rights to the jurisdiction of the ultimate parent entity (UPE). The rule obligates the parent entity to pay a top-up tax where the income of its constituent entities is subject to an effective tax rate (ETR) below the minimum rate of 15 per cent. This obligation arises by operation of law once the relevant jurisdiction has legislated to implement the IIR in accordance with the OECD's GloBE Model Rules.[22]

In essence, the IIR reflects a hybrid legal mechanism that combines elements of residence-based taxation and group-wide liability, imposing a fiscal obligation on the UPE in respect of profits earned in low-tax jurisdictions. It operates as a direct anti-avoidance provision, designed to deter base erosion by neutralising tax rate arbitrage within multinational enterprise (MNE) groups.

Under the GloBE framework, the IIR is activated when the jurisdictional ETR for any constituent entity within the group falls below 15 per cent. The top-up tax is calculated at the jurisdictional level, based on aggregated GloBE income and covered taxes. It is then apportioned to the UPE, which becomes the liable taxpayer for any shortfall in taxation across its subsidiaries.[23]

This mechanism introduces a juridical nexus between the parent company and foreign-source income, predicated not on the accrual of income but on the group's structural control and

[22] OECD, GloBE Model Rules (Pillar Two) (OECD Publishing 2021) arts 2.1–2.3.
[23] OECD, GloBE Model Rules (Pillar Two) (OECD Publishing 2021) art 5.3.

ownership. The liability is statutory and arises irrespective of whether the jurisdiction of the UPE has any direct connection to the economic activity that generated the low-taxed income. In this way, the IIR departs from traditional doctrines of source-based taxation, reasserting residence jurisdiction as the principal locus of enforcement.

In Germany and Austria, the IIR was transposed into domestic law via the Mindestbesteuerungsgesetz (MinStG) and its Austrian equivalent, aligning national legislation with the EU Minimum Tax Directive (Directive (EU) 2022/2523). Both jurisdictions apply the IIR from fiscal years beginning on or after 31 December 2023, and integrate OECD administrative guidance by reference.[24] The laws clarify that the IIR applies both to foreign and domestic constituent entities and that intermediate holding companies may also bear top-up tax liability in the event of non-compliant UPE jurisdictions.

In Kazakhstan and broader Central Asia, the IIR has not yet been legislated as of July 2025. Consequently, local subsidiaries of MNEs headquartered in countries that apply the IIR, such as Germany or Austria, may generate residual tax liability for their parent companies abroad. This has implications for tax sovereignty, as benefits from tax incentives or preferential regimes in Kazakhstan may be effectively clawed back through foreign IIR mechanisms.

The IIR also interacts with accounting frameworks. For the purpose of GloBE calculations, the income base is derived from consolidated financial statements, typically under IFRS or local GAAP (e.g. HGB in Germany, NAS in Kazakhstan). Where these standards are accepted under GloBE's administrative rules, deferred tax assets and liabilities are recognised to prevent timing mismatches that could distort the ETR calculation.[25]

From a legal-theoretical perspective, the IIR represents a shift toward substantive economic allegiance, reflecting a move away from form-driven taxation. It treats the MNE group as a unitary economic actor, imposing an obligation on the parent entity to ensure global compliance with

[24] Mindeststeuergesetz (MinStG), Gesetz zur Umsetzung der Richtlinie (EU) 2022/2523, BGBl. I Nr. 397, 27 December 2023 https://www.gesetze-im-internet.de/minstg/MinStG.pdf.
[25] OECD, Administrative Guidance on the GloBE Rules (February 2023) paras 1.3–1.5.

minimum taxation standards, regardless of the formal situs of income. This aligns with evolving norms of international fiscal law that prioritise anti-avoidance, equity, and tax base preservation across jurisdictions.

The Income Inclusion Rule represents not only a technical enforcement mechanism but also a conceptual reconfiguration of jurisdictional taxing rights. By enabling the jurisdiction of the ultimate parent entity to impose top-up tax on low-taxed income earned abroad, the IIR challenges traditional distinctions between source-based and residence-based taxation. It elevates the role of parent companies as fiscal guarantors for the compliance of the entire group, thereby shifting the burden of ensuring global tax neutrality from individual subsidiaries to the consolidated level.

In legal terms, the IIR can be viewed as a supranational instrument embedded within domestic law, reflecting a broader movement toward multilateral coordination in tax governance. This mechanism relies heavily on the ability of national tax systems to interface with common standards, particularly in relation to income determination, deferred taxes, and group structures. The proper implementation of the IIR requires clear legal definitions of constituent entities, accurate jurisdictional allocation of income and taxes, and effective dispute resolution tools for cross-border inconsistencies.

The introduction of the IIR has several important implications for countries like Kazakhstan that have not yet adopted Pillar Two legislation. In such jurisdictions, corporate income tax incentives offered to attract foreign investment may no longer deliver their intended net benefit. Where an entity is subject to a tax exemption domestically, its foreign parent may still be obliged to pay top-up tax under the IIR. This outcome can reduce the attractiveness of local tax relief measures and limit national fiscal autonomy in practice, even if formal sovereignty remains intact. It also creates a disconnect between economic activity and the location of taxation, which raises questions about fairness and transparency in international tax policy.

Furthermore, the interaction between the IIR and accounting standards introduces complex administrative challenges. Since the IIR relies on financial reporting data to calculate tax liabilities, jurisdictions using local accounting systems that differ from IFRS may face additional reconciliation burdens. These technical issues can affect the reliability of effective tax rate calculations and potentially lead to unintended exposures or disputes. Accordingly, alignment with international financial reporting standards and the development of robust administrative capacity are crucial for effective integration into the Pillar Two system.

From a policy perspective, the IIR serves as a catalyst for tax reform. It encourages jurisdictions to adopt Qualified Domestic Minimum Top-Up Taxes (QDMTTs) in order to retain taxing rights over domestic income that would otherwise be taxed abroad. In this way, the IIR not only functions as an enforcement tool but also as a legal and economic incentive for legislative convergence. As more countries integrate the IIR into their legal frameworks, non-adopting jurisdictions may find themselves under pressure to harmonise in order to maintain competitiveness and fiscal control.

Ultimately, the IIR is a key pillar of the new international tax architecture. It redefines the role of the parent entity, reallocates taxing rights, and establishes a framework for global tax accountability. Its successful implementation depends not only on legal drafting but also on institutional readiness, intergovernmental cooperation, and sustained political will. For countries outside the early adopter circle, the IIR presents both a challenge and an opportunity to rethink their position in the evolving landscape of international taxation.

2.4. The Undertaxed Profits Rule (UTPR)

The Undertaxed Profits Rule (UTPR) functions as a secondary rule within the Pillar 2 framework, designed to reinforce the minimum tax standard in cases where the Income Inclusion Rule (IIR) cannot be effectively applied. Where no parent jurisdiction imposes the IIR, or where an Ultimate Parent Entity (UPE) is located in a jurisdiction that does not implement Pillar 2, the UTPR reallocates top-up tax liability to other jurisdictions in which the MNE operates.

Unlike the IIR, which is grounded in the residence principle, the UTPR operates through source-jurisdiction taxation mechanisms, imposing additional tax burdens on the entities of the same multinational group located in compliant jurisdictions. Its function is not to tax low-taxed income directly, but rather to deny deductions or require equivalent adjustments until the effective group tax rate is restored to the minimum 15 per cent level.[26]

Legally, the UTPR is implemented through two primary methods:

(i) Denial of deductibility for intra-group payments; or

(ii) Equivalent adjustments to domestic tax bases of constituent entities.

The OECD permits flexibility in the manner of implementation, allowing jurisdictions to adopt either approach in line with their domestic legal traditions, provided the outcome results in a top-up tax collection equivalent to that which would have occurred under the IIR.[27]

The UTPR raises distinct legal and constitutional questions, especially in jurisdictions where tax sovereignty is tightly linked to territoriality. Since the UTPR does not rely on the taxpayer's own income but instead targets group-level foreign income, its enforcement can be challenged on the grounds of legal certainty, non-discrimination, or compatibility with constitutional tax principles. In the European context, the UTPR must also comply with EU fundamental freedoms, particularly the freedom of establishment and the prohibition of arbitrary tax discrimination between domestic and cross-border activities.[28]

In Germany, the UTPR has been transposed into national law alongside the IIR through the Mindeststeuergesetz (MinStG), effective from fiscal years starting after 31 December 2023. The statute authorises the denial of deductions for intra-group payments made to low-tax jurisdictions not covered by an IIR. The same principle is embedded in Austria's implementation via a parallel legal instrument.[29]

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[26] OECD, GloBE Model Rules (Pillar Two) (OECD Publishing 2021) art 2.4.

[27] OECD, Administrative Guidance on the GloBE Rules (OECD Publishing 2023) para 2.5.

[28] Reuven S Avi-Yonah, 'Global Minimum Tax: Pros and Cons' (2022) 43 Michigan Journal of International Law 1, 10.

[29] Mindeststeuergesetz (MinStG), Gesetz zur Umsetzung der Richtlinie (EU) 2022/2523, BGBl. I Nr. 397, 27 December 2023 https://www.gesetze-im-internet.de/minstg/MinStG.pdf.

Kazakhstan, as of July 2025, has not enacted any UTPR-equivalent provisions. Therefore, inbound investments made into Kazakhstan by multinational enterprises headquartered in compliant jurisdictions (such as Germany or Austria) may become subject to the UTPR in those home jurisdictions. For example, where a German MNE's Kazakh subsidiary benefits from a reduced tax rate below the global minimum, the German tax authorities may disallow deductions claimed by related German entities to compensate for the effective tax rate gap.

This introduces strategic uncertainty for jurisdictions offering preferential tax regimes or tax holidays, as the UTPR functionally neutralises such incentives in cross-border situations. It may lead to a reassessment of tax competition strategies and inbound investment policies, especially in developing economies, where such regimes are central to economic development objectives.[30]

While the UTPR enhances the enforcement capacity of the global minimum tax regime, it also highlights the tension between coordinated tax base protection and national fiscal autonomy. From a legal standpoint, its legitimacy depends on consistent application, transparent administration, and alignment with international treaty obligations.

In addition to its enforcement role, the UTPR functions as a powerful policy signal. It creates a strong disincentive for jurisdictions to remain outside the Pillar Two system by exposing low-taxed income to reallocation mechanisms beyond their control. Jurisdictions that neither implement a Qualified Domestic Minimum Top-Up Tax (QDMTT) nor participate in the IIR framework effectively relinquish taxing rights over profits generated within their borders, allowing other states to exercise residual taxation. This creates systemic pressure toward legal harmonisation and convergence with the global minimum tax standard.

From a comparative legal standpoint, the UTPR also reveals asymmetries in capacity and institutional readiness. High-income jurisdictions with robust tax authorities are more likely to implement and administer the UTPR in a consistent and enforceable manner. In contrast,

[30] Luís Eduardo Schoueri, 'The OECD/G20 Pillar Two and Developing Countries' (2020) 74(4) Bulletin for International Taxation 195.

developing countries may struggle to anticipate or counteract the indirect effects of UTPR enforcement abroad. For these countries, the rule may result in unintended erosion of domestic tax incentives and undermine investment strategies designed to attract foreign capital. This poses questions about distributive fairness and whether the architecture of Pillar Two adequately reflects the differentiated needs of jurisdictions at various stages of fiscal development.

Moreover, the technical complexity of UTPR implementation requires substantial administrative preparation. National tax authorities must be able to identify low-taxed income within multinational structures, allocate top-up liabilities proportionately, and apply corresponding adjustments in accordance with the OECD Model Rules. The risk of disputes and double taxation is heightened if jurisdictions interpret the rules differently or lack clear coordination mechanisms. As such, the rule's success depends not only on legal adoption but also on robust exchange of information, competent tax administration, and the effective resolution of inter-jurisdictional conflicts.

In the long term, the UTPR may contribute to a gradual reshaping of international tax norms. It strengthens the collective enforcement of minimum taxation standards and incentivises the adoption of domestic top-up taxes. However, it also challenges the conventional understanding of nexus and tax jurisdiction, as it permits taxation in states that may have no direct link to the underlying income. This extraterritorial aspect of the rule remains a subject of legal debate and may face constitutional or treaty-based scrutiny in the years to come.

Ultimately, the UTPR reinforces the global minimum tax not as a voluntary instrument, but as a coordinated system of legal and economic consequences. It operates as both a safeguard and a deterrent, compelling jurisdictions to either conform to the Pillar Two regime or risk forfeiting tax revenues and fiscal sovereignty. For policymakers in Kazakhstan and comparable economies, the decision not to implement a QDMTT or IIR may have ripple effects far beyond their borders, as global enforcement mechanisms fill the regulatory vacuum.

2.5. The Subject-to-Tax Rule (STTR)

The Subject-to-Tax Rule (STTR) is a treaty-based provision within the OECD/G20 Inclusive Framework on BEPS Pillar Two. It allows a source jurisdiction to impose limited taxation on certain intra-group payments when those payments are taxed at a nominal rate below nine per cent in the recipient jurisdiction. The STTR applies only to defined categories of income, such as interest, royalties, and some service payments between connected persons. Unlike the IIR and UTPR, which rely on domestic implementation, the STTR requires express incorporation into tax treaties, either bilaterally or through a multilateral instrument.[31]

The STTR responds to concerns from capital-importing jurisdictions, particularly developing countries, which experience base erosion through reduced or exempted withholding taxes under treaty networks. By permitting a minimum level of source taxation, the STTR seeks to preserve fiscal sovereignty and secure domestic revenue from mobile income streams. This is especially relevant where the residence jurisdiction offers preferential regimes, tax holidays, or operates as a low-tax jurisdiction.

The legal effect of the STTR is to modify treaty obligations that would otherwise limit or eliminate withholding taxes on covered payments. Its activation is contingent upon two conditions. First, the income must fall within a covered category. Second, it must be subject to a nominal tax rate below the nine per cent threshold in the recipient jurisdiction. Once triggered, the source state may apply domestic tax at a limited rate, notwithstanding the treaty reduction.[32]

Schoueri and Santos argue that the STTR, while narrow in application, serves as a necessary corrective to the effective tax rate (ETR) standard that underpins Pillar Two. They observe that the ETR-centric model may unintentionally erode source-based taxing rights by deeming traditional withholding mechanisms inefficient or distortive. In their analysis, this undermines the legitimacy of tax policy choices in developing economies, many of which rely on such mechanisms as essential tools for fiscal mobilisation and investment protection.[33]

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[31] OECD, GloBE Model Rules (Pillar Two) (OECD Publishing 2021) arts 10.1–10.3.
[32] OECD, Progress Report on the Administration and Implementation of the GloBE Rules (OECD Publishing 2023) section V.
[33] Luis Eduardo Schoueri and B C Fettermann Nogueira dos Santos, 'Effective Tax Rate Criteria and Source Taxation under the OECD's Pillar Two Proposals' (2023) 77(9) Bulletin for International Taxation 386 https://doi.org/10.59403/qqsxjs.

In Kazakhstan, tax treaties with jurisdictions such as Luxembourg, the Netherlands, and the United Arab Emirates commonly provide for zero or significantly reduced withholding tax rates on outbound payments. In the absence of a treaty-based STTR, such income may be exempt both in the source and in the recipient state, leading to double non-taxation. The prospective adoption of a multilateral STTR instrument could partially restore taxing rights over these flows and mitigate base erosion through treaty networks.

The legal implementation of the STTR remains subject to the principles of public international law. In particular, its integration must respect obligations under the Vienna Convention on the Law of Treaties, including the rule of pacta sunt servanda and the principle of mutual consent. Additional legal challenges arise in relation to potential conflict with non-discrimination provisions, stability clauses in investment agreements, and the risk of juridical double taxation in the absence of coordinated dispute resolution mechanisms.

Although not a full solution to the imbalance in taxing rights, the STTR offers a practical and targeted mechanism to defend the source tax base. It reflects a compromise between the political goal of equitable tax allocation and the legal constraints imposed by the treaty framework. For developing jurisdictions with limited capacity to apply IIR or UTPR, the STTR remains a strategically valuable component of the global minimum tax architecture.

Beyond its fiscal rationale, the STTR also carries important normative implications for the evolution of international tax law. It embodies a partial rebalancing of taxing rights in favour of source jurisdictions—especially relevant in an era where capital is increasingly mobile, while regulatory and administrative capacities remain uneven across countries. For many developing economies, withholding taxes represent one of the few effective means of collecting tax on outbound payments, particularly where transparency frameworks and audit enforcement mechanisms are underdeveloped.

In this context, the STTR can be viewed as a safeguard clause aimed at mitigating the structural bias of traditional treaty rules, which often favour residence-based taxation. Although its application is narrow, it empowers source states to protect their tax bases without fully dismantling the bilateral treaty framework. The design of the STTR thus reflects an important compromise: it restores a measure of taxation at source, while maintaining adherence to internationally agreed limits and requiring clear, objective conditions for its activation.

Another important dimension of the STTR is its potential role as a transitional tool. For jurisdictions that lack the institutional infrastructure to implement complex Pillar Two rules such as the Income Inclusion Rule or the Undertaxed Profits Rule, the STTR provides an alternative means of participation in the global minimum tax architecture. Its relatively simple operational logic and targeted scope allow for incremental engagement with the OECD framework, even in the absence of large-scale domestic legislative reform.

From a legal perspective, the STTR's inclusion in bilateral or multilateral treaties poses certain interpretive challenges. Questions may arise regarding how the STTR interacts with pre-existing provisions on elimination of double taxation, non-discrimination, and mutual agreement procedures. For example, the application of an STTR surcharge may be contested by foreign investors under bilateral investment treaties (BITs) or stability clauses, particularly if it is perceived as discriminatory or retroactive. Such disputes may further test the resilience of the STTR framework and underscore the need for coordinated dispute prevention mechanisms.

Despite these uncertainties, the adoption of the STTR signals a growing consensus that the protection of source-based taxing rights requires proactive treaty innovation. If incorporated through a multilateral instrument or standardised protocol, the STTR could help close long-standing loopholes that have allowed income from developing jurisdictions to escape taxation altogether. For Kazakhstan, where outbound payments to treaty partners are often taxed at concessional rates, a well-designed STTR offers an opportunity to defend revenue streams while remaining aligned with international norms.

In sum, the STTR serves both a corrective and enabling function within the broader Pillar Two regime. It corrects imbalances in treaty practice that have historically disadvantaged source countries, and it enables incremental participation in global tax reform by jurisdictions with limited administrative capacity. Its strategic relevance lies in its ability to protect domestic tax sovereignty while preserving the legitimacy and coherence of the international tax system as a whole.

2.6. Carve-outs, substance-sased exclusions, and safe harbours

A core design feature of the Pillar Two framework is the substance-based income exclusion, commonly referred to as the "carve-out". This exclusion operates as a formulaic deduction from the GloBE income base, intended to preserve tax sovereignty over certain substantive economic activities. Specifically, the rules permit an exclusion equal to a fixed percentage of eligible payroll and tangible assets in each jurisdiction. The exclusion percentage is subject to a phased reduction over time, from 10 per cent of payroll and 8 per cent of tangible assets in the initial years, declining to 5 per cent for both after a transitional period of ten years.[34]

The legal rationale for the carve-out lies in recognising that low effective tax rates attributable to real economic substance, such as actual employment or physical investment should not be penalised. By contrast, income shifted to low-tax jurisdictions absent real activity is deemed artificial and subject to top-up taxation under the GloBE rules. However, the mechanistic application of the carve-out has been criticised for enabling renewed forms of tax competition.

Noopur Trivedi, in her critical analysis of the carve-out mechanism, argues that the exclusion operates asymmetrically. She notes that the carve-out only reduces the denominator (GloBE income), without requiring parallel adjustments to covered taxes in the numerator. This distortion may result in an understated ETR that triggers unnecessary top-up taxation or, conversely, enable tax planning to strategically manipulate the carve-out formula.[35] Trivedi contends that unless recalibrated to ensure proportionality, the carve-out may erode the policy coherence of the global minimum tax regime.

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[34] OECD, GloBE Model Rules (Pillar Two) (OECD Publishing 2021) art 5.2.
[35] Noopur Trivedi, Pillar Two Substance-Based Carve-Out – 'To Be, or Not to Be' (SSRN, 2024) https://ssrn.com/abstract=3864705.

From the perspective of developing countries, Schoueri and Santos argue that the carve-out mechanism, in combination with the ETR standard, disproportionately weakens source-based taxation. They assert that countries offering legitimate tax incentives for manufacturing, infrastructure, or employment creation may be penalised if such incentives reduce the ETR below the 15 per cent threshold. In their view, the carve-out is insufficiently protective of domestic tax policy autonomy, especially in economies reliant on investment-linked tax holidays or regional development zones.[36]

Safe harbours, which serve as simplified compliance or deferral mechanisms, are another important administrative component of Pillar Two. The OECD provides for transitional Country-by-Country Reporting (CbCR) safe harbours, which allow jurisdictions to forego full GloBE calculations if certain CbCR indicators demonstrate that no top-up tax would arise. These include thresholds for ETR, profit before tax, and substance. While designed to reduce initial compliance burdens, safe harbours are inherently temporary and subject to expiration or revision based on administrative guidance.[37]

The interaction between carve-outs and safe harbours presents both strategic and legal complexity. On the one hand, these mechanisms mitigate the immediate impact of Pillar Two, especially for jurisdictions with limited capacity to implement full GloBE calculations. On the other, they may incentivise behavioural responses from multinational groups, such as reallocation of payroll or asset functions, that distort real economic activity for tax optimisation purposes.

In the context of Kazakhstan, the potential benefits of carve-outs may be undermined by the rigidity of the formulas and the absence of jurisdiction-specific flexibilities. For example, tax holidays for new manufacturing zones, if not structured to preserve payroll or asset thresholds, may not qualify for the exclusion. This creates legal uncertainty regarding the compatibility of Kazakhstan's tax incentive regime with the minimum tax framework, particularly if Kazakhstan seeks to adhere to global standards without abandoning its regional development model.

[36] Luis Eduardo Schoueri and B C Fettermann Nogueira dos Santos, 'Effective Tax Rate Criteria and Source Taxation under the OECD's Pillar Two Proposals' (2023) 77(9) Bulletin for International Taxation 386 https://doi.org/10.59403/qqsxjs.
[37] OECD, Administrative Guidance on the GloBE Rules (OECD Publishing 2023) section 8.

The practical application of carve-outs and safe harbours also raises questions about horizontal equity among jurisdictions. High-income countries with robust reporting infrastructure and detailed financial accounting may be better positioned to claim and document carve-out benefits, while low- and middle-income countries may struggle to meet the technical requirements for substantiating eligible payroll or asset bases. This could result in asymmetric outcomes, whereby multinational groups operating in countries with weaker administrative capacity face disproportionately higher top-up taxes, despite engaging in real economic activity.

Furthermore, there is a risk that reliance on formulaic exclusions and simplified compliance thresholds may create blind spots for tax administrations. If taxpayers reallocate headcount or capital assets purely to meet carve-out thresholds, without corresponding changes in operational substance, the policy goals of the global minimum tax could be compromised. The OECD has issued guidance to address potential manipulation and has encouraged jurisdictions to conduct risk assessments and audit readiness reviews. However, effective enforcement remains resource-intensive and may be difficult to implement uniformly across all members of the Inclusive Framework.

From a legal drafting perspective, the challenge lies in balancing objectivity with contextual nuance. While fixed carve-out percentages offer clarity and predictability, they may not accommodate legitimate economic variations, such as capital intensity in infrastructure projects or labour-concentrated service sectors. This has prompted suggestions that future iterations of the Globe Rules could introduce sector-specific carve-outs or discretionary adjustments administered through peer review mechanisms or bilateral advance pricing agreements (APAs).

Safe harbours, though conceptually distinct from carve-outs, present parallel concerns. By offering administrative relief based on aggregate indicators like country-by-country reporting data, they implicitly favour jurisdictions with strong statistical systems and consistent tax reporting practices. The transitional nature of safe harbours also raises questions about long-term compliance strategy. Once these temporary regimes expire, jurisdictions and MNEs alike may face abrupt increases in compliance obligations and top-up exposures, unless full alignment with the GloBE model has already been achieved.

In the case of Kazakhstan, policymakers must therefore consider how to structure tax incentives and reporting systems to maximise compatibility with carve-out formulas and safe harbour conditions. This may require reforms to accounting standards, the introduction of payroll-based tax metrics, or the strategic use of QDMTTs to preserve domestic taxing rights. Without such adjustments, Kazakhstan risks losing fiscal control over its own incentive regimes, as top-up taxes may be triggered abroad despite substantive local investment.

In summary, carve-outs and safe harbours play a dual role in the GloBE framework: they offer essential legal safeguards for economic substance and administrative feasibility, but they also introduce new forms of strategic behaviour, legal ambiguity, and jurisdictional inequality. For developing and transition economies, the challenge will be to operationalise these rules in ways that protect national interests without undermining the integrity of the global minimum tax regime.

3. Kazakhstan and Central Asia - Pillar 2 readiness and regional impact

3.1. Comparative Overview of the regional tax environment

Kazakhstan and its Central Asian neighbours have historically relied on relatively moderate statutory corporate income tax (CIT) rates and a wide array of tax incentives to attract foreign direct investment. Kazakhstan's standard CIT rate stands at 20 per cent, yet its effective tax burden is often significantly reduced through a system of tax preferences, including full or partial exemptions for companies operating in Special Economic Zones (SEZs), under Investment Priority Projects, or within the Astana International Financial Centre (AIFC).[38] These incentives are codified in the current Tax Code of the Republic of Kazakhstan and are implemented through instruments such as investment contracts and special exemptions issued by the Government.[39]

In neighbouring countries, the approach is broadly similar: Uzbekistan applies a base CIT rate of 15 per cent (with recent reforms reducing rates for exporters), while Kyrgyzstan maintains a flat 10 per cent rate for most companies.[40] Tajikistan has a more complex rate structure with a headline CIT rate of 23 per cent, but offers numerous exemptions and zero-tax Free Economic Zones.[41] Thus, in all these jurisdictions, tax incentives form a central part of national economic development strategies. This aligns with the broader interpretation of the term "tax sovereignty" as the exclusive and independent legal capacity of a state to design and implement its own fiscal policies, as defined in Black's Law Dictionary.[42]

By contrast, countries such as Germany and Austria exhibit more consolidated and structurally robust tax regimes. Germany's combined corporate tax burden, including municipal trade tax and the solidarity surcharge can reach up to 30 to 33 per cent.[43]Austria, after recent

[38] Tax Code of the Republic of Kazakhstan (2017), arts 290–296.
[39] Tax Code of the Republic of Kazakhstan (2017), arts 300–303.
[40] PwC, 'Uzbekistan Corporate Tax Summary' (2025) https://taxsummaries.pwc.com/uzbekistan/corporate/taxes-on-corporate-income.
[41] IMF, 'Tajikistan: Selected Issues' (2019), IMF Country Report No 19/199.
[42] Bryan A Garner (ed), Black's Law Dictionary (11th edn, Thomson Reuters 2019) s.v. 'Tax Sovereignty'.
[43] PwC, 'Germany Corporate Tax Summary' (2025).

reforms, applies a federal CIT rate of 23 per cent as of 2024.[44] Unlike Central Asia, these jurisdictions do not rely on tax holidays or free zones to attract investment. Instead, they preserve competitiveness through selective R&D deductions and accelerated depreciation schemes. Their effective tax rates generally remain above the 15 per cent global minimum threshold introduced by the OECD Inclusive Framework, thus minimising the exposure of domestic companies to Pillar Two's top-up taxes.[45]

A further divergence lies in the treatment of financial accounting standards. Pillar Two's Global Anti-Base Erosion (GloBE) rules determine effective tax rate (ETR) on the basis of consolidated financial statements, with a strong preference for International Financial Reporting Standards (IFRS). Kazakhstan mandates IFRS for listed entities and large enterprises, while non-public companies may report under National Accounting Standards (NAS), partially harmonised with IFRS.[46] According to several tax experts, one foreseeable technical challenge relates to reconciling NAS-derived profits with the GloBE-calculated ETR. Nevertheless, in practice, most in-scope multinationals already use IFRS or compatible systems in Kazakhstan, thereby reducing this gap.

Additionally, none of the Central Asian states currently include the Subject to Tax Rule (STTR) in their treaty networks, which poses a vulnerability in terms of source taxation. The STTR allows source jurisdictions to apply a limited withholding tax where certain payments are taxed below a minimum rate abroad. Under current Kazakh treaty practice, interest, royalties, and other mobile income can often be paid out at reduced rates, creating BEPS vulnerabilities.[47] This absence has been acknowledged by Kazakh officials, and a government resolution authorising the signing of the Multilateral Convention for STTR was introduced in July 2024.[48] However, until ratification and entry into force occur, Kazakhstan's tax base remains partially exposed to treaty shopping and artificial income shifts.

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44 PwC, 'Austria Corporate Tax Summary' (2025).
45 OECD, Tax Challenges Arising from the Digitalisation of the Economy - Global Anti-Base Erosion (GloBE) Rules (2021).
46 IFRS Foundation, Kazakhstan (Jurisdiction Profile, 2023) https://www.ifrs.org/use-around-the-world/use-of-ifrs-standards-by-jurisdiction/view-jurisdiction/kazakhstan/ accessed 6 July 2025.
47 OECD, Model Rules for Pillar Two (2021), art 4.3.
48 Government of Kazakhstan, Draft Resolution No 487-p, July 2024.

In summary, Kazakhstan and its neighbours operate in a context of lower nominal tax rates, investment-driven incentives, and a less mature treaty network. These factors contrast sharply with the higher-tax, more harmonised systems of Germany and Austria. As noted by several Kazakh tax policy specialists during recent policy discussions, Kazakhstan's existing incentive-based framework may inadvertently result in fiscal benefits accruing to foreign jurisdictions rather than to the domestic treasury, should no local top-up mechanism be implemented. In practical terms, where the effective tax rate on Kazakh-source profits falls below the 15 per cent Pillar Two threshold, the difference may be taxed abroad under the Income Inclusion Rule. This situation highlights the increasing tension between formal tax sovereignty and economic substance in international tax coordination.[49]

3.2. Legal and Policy Status of Pillar Two in Kazakhstan

Kazakhstan has not yet formally enacted legislation implementing the OECD's Global Anti-Base Erosion (GloBE) Model Rules. However, the country is taking gradual steps toward alignment, both administratively and legislatively. As of July 2025, no Qualified Domestic Minimum Top-up Tax (QDMTT) has been codified, but legal developments surrounding the forthcoming Tax Code suggest that the government is actively evaluating the feasibility of integrating such a mechanism.[50]

The current Tax Code, adopted in 2017, does not include provisions that mirror the GloBE rules.[51] Kazakhstan is a member of the OECD/G20 Inclusive Framework on BEPS and has formally endorsed both Pillar One and Pillar Two blueprints.[52] The latest publicly available statements by the Ministry of Finance indicate that Kazakhstan supports the principle of a global

[49] Pillar 2: Global Minimum Corporate Tax - Seminar, seminar recording (YouTube, 27 May 2025) «Глобальный минимальный корпоративный налог: семинар» https://www.youtube.com/watch?v=xyi9rtYw_4s accessed 6 July 2025.
[50] Ministry of Finance of Kazakhstan, 'Tax Code Reform Working Plan (2025–2026).
[51] Tax Code of the Republic of Kazakhstan (2017), chs 19–21.
[52] OECD, 'Members of the Inclusive Framework on BEPS' (2024) https://www.oecd.org/tax/beps/inclusive-framework-membership/ accessed 6 July 2025.

minimum effective tax rate and acknowledges the fiscal risks posed by non-implementation, particularly the exposure of domestic groups to top-up taxes abroad.[53]

To mitigate this risk, policymakers have commenced drafting sections of the new Tax Code (planned for 2025–2026) with reference to international minimum taxation standards. According to several internal working documents and legal consultations, a QDMTT is one of the primary instruments under review.[54] However, due to legislative complexity and the need to balance domestic tax preferences with international obligations, full legal implementation remains at a preliminary stage.

One of the central considerations is the country's extensive use of tax incentives for strategic sectors and zones. Kazakhstan's legal framework includes broad exemptions, tax holidays, and reduced rates across SEZs and other investment regimes.[55] These provisions are not inherently incompatible with Pillar Two, but they significantly reduce the effective tax rate and therefore increase the likelihood of a top-up tax under the GloBE rules if no QDMTT is in place. In this context, failure to introduce a domestic top-up mechanism may effectively nullify the economic benefits of these preferences, as the forgone revenue would be captured by another jurisdiction through the Income Inclusion Rule (IIR) or the Undertaxed Payments Rule (UTPR).[56]

Kazakhstan's participation in recent international dialogues reflects growing awareness of this issue. At the May 2025 Pillar Two seminar in Astana, legal specialists noted that without domestic implementation of QDMTT, the country may face reputational and fiscal disadvantages, particularly in the eyes of multinational enterprises seeking tax certainty.[57] In this context, the question is no longer whether Kazakhstan should adopt Pillar Two rules, but when and how they should be integrated into national legislation.

[53] Ministry of Finance, 'Official Comment on OECD Pillar 2 Alignment' (Government Portal, 12 March 2025).
[54] Government of Kazakhstan, 'Preliminary Explanatory Note to the Draft New Tax Code' (May 2025).
[55] Tax Code of the Republic of Kazakhstan (2017), arts 290–303.
[56] OECD, Global Anti-Base Erosion Model Rules (Pillar Two) (2021), arts 4–6.
[57] Pillar 2: Global Minimum Corporate Tax - Seminar, seminar recording (YouTube, 27 May 2025) «Глобальный минимальный корпоративный налог: семинар» https://www.youtube.com/watch?v=xyi9rtYw_4s accessed 6 July 2025.

The legal infrastructure for doing so is gradually being prepared. As of mid-2025, Kazakhstan has undertaken several technical assessments of its accounting and reporting systems to determine their compatibility with the GloBE rules.[58] Moreover, a dedicated working group under the Ministry of Finance has been tasked with evaluating legal amendments required to introduce QDMTT provisions, and has reportedly reviewed comparative legislation from Germany, Austria, and Singapore.[59]

Although no final bill has been tabled in Parliament, legal readiness appears to be progressing. Should Kazakhstan delay the adoption of QDMTT, it risks ceding taxing rights over local profits to other jurisdictions under the Inclusive Framework. From a sovereignty perspective, this would effectively limit the state's discretion over corporate taxation without formal delegation of such power. Therefore, the introduction of QDMTT is not merely a technical compliance issue, but a structural choice about the future shape of Kazakhstan's tax sovereignty and legal order.

3.3. Case example: impact of the absence of QDMTT on a Kazakh entity

To illustrate the practical implications of Kazakhstan's current legal position under Pillar Two, consider a simplified case of a Kazakh subsidiary (KZ Sub) of a multinational group headquartered in Germany. KZ Sub operates within a Special Economic Zone and benefits from a full corporate income tax exemption in accordance with national investment legislation.

The company earns annual profits of approximately 40 million euro. Due to tax incentives, its effective tax rate is around 7 per cent. Under the OECD's Global Anti-Base Erosion (GloBE) rules, Germany, as the jurisdiction of the ultimate parent entity, is entitled to apply a top-up tax to achieve the global minimum of 15 per cent.[60]

Because Kazakhstan has not yet enacted a Qualified Domestic Minimum Top-up Tax (QDMTT), the remaining 8 per cent, equivalent to 3.2 million euro, may be collected by the

[58] IFRS Foundation, Kazakhstan (Jurisdiction Profile, 2023) https://www.ifrs.org/use-around-the-world/use-of-ifrs-standards-by-jurisdiction/view-jurisdiction/kazakhstan/ accessed 6 July 2025.
[59] Ministry of Finance, 'Comparative Legal Analysis on QDMTT Implementation' (internal report, 2024).
[60] OECD, Global Anti-Base Erosion Model Rules (Pillar Two) (2021), arts 3–5.

German tax authorities.[61] In legal terms, Kazakhstan retains the formal power to impose corporate income tax on this profit, yet cedes the residual taxing right in economic substance. This outcome exemplifies the tension between de jure sovereignty and de facto fiscal displacement.

Moreover, from a commercial perspective, the structure undermines the practical effect of Kazakh tax preferences. Although the exemption remains in law, it fails to deliver the intended net benefit to the enterprise. In the absence of a domestic top-up mechanism, the incentive becomes a subsidy to the treasury of another state.[62]

This scenario reflects concerns raised by several tax specialists during recent policy discussions.[63] Unless QDMTT is introduced in domestic legislation, Kazakhstan risks losing not only fiscal revenue but also legal and economic control over the effectiveness of its own tax instruments.

This example aligns with the concerns raised in the literature regarding the unintended redistribution of taxing rights under Pillar Two. As Devereux, Vella, and Wardell-Burrus note, in the absence of coordinated implementation, the global minimum tax may disproportionately benefit residence jurisdictions while weakening the fiscal autonomy of source states, especially those offering legitimate investment incentives to stimulate development. A domestic QDMTT would serve as a corrective, allowing Kazakhstan to collect the incremental top-up and preserve the economic rationale of its incentive regimes without violating international tax norms.

3.4. Treaty structuring risks: the Dutch holding example

The absence of a Qualified Domestic Minimum Top-up Tax (QDMTT) in Kazakhstan creates not only a fiscal gap, but also structural incentives for multinational groups to reroute profit

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[61] Tax Code of the Republic of Kazakhstan (2017), arts 290–303.
[62] Devereux MP, Vella J and Wardell-Burrus H, ‘Pillar 2’s Impact on Tax Competition’ (2022) Oxford University Centre for Business Taxation.
[63] Pillar 2: Global Minimum Corporate Tax - Seminar, seminar recording (YouTube, 27 May 2025) «Глобальный минимальный корпоративный налог: семинар» https://www.youtube.com/watch?v=xyi9rtYw_4s accessed 6 July 2025.

flows through low-tax or treaty-favourable jurisdictions. A particularly salient example involves the widespread use of Dutch intermediate holding companies to consolidate income from Kazakh operations. This practice exploits favourable withholding tax rates under the Kazakhstan - Netherlands double taxation treaty, combined with the Netherlands' historically lenient treatment of passive income and extensive treaty network.

In typical structures, a Kazakh subsidiary (KZ OpCo) is wholly owned by a Dutch holding company (NL HoldCo), which is in turn owned by an EU-based ultimate parent. Dividends, interest, and royalties are paid from Kazakhstan to the Netherlands, benefiting from reduced withholding tax rates (often 5 per cent or lower) under the 2002 treaty.[64] Due to the absence of Subject to Tax Rule (STTR) clauses, these outbound payments may be subject to little or no taxation in the Netherlands if further routed through other jurisdictions or offset via tax planning.

Under the OECD's Pillar Two framework, however, these flows are increasingly visible to tax authorities. The Global Anti-Base Erosion (GloBE) rules require effective tax rate (ETR) calculations on a jurisdictional basis.[65] Where the ETR in Kazakhstan is below 15 per cent and no QDMTT is in place, the top-up tax may be collected in the parent company's jurisdiction under the Income Inclusion Rule (IIR), bypassing both Kazakhstan and the Dutch intermediary.

The legal consequence is a threefold erosion of Kazakhstan's tax position. First, the state loses direct revenue due to tax exemptions and reduced withholding under treaties. Second, it forfeits top-up taxation by failing to introduce a QDMTT. Third, it effectively subsidises another jurisdiction's fiscal base through unrecaptured tax advantages granted to multinationals.[66]

Furthermore, these structures present legal asymmetries that contradict the principles of tax fairness and neutrality promoted by the OECD. As observed by Schoueri and Santos, the lack of STTR provisions allows capital-exporting states to appropriate taxing rights over income that

[64] Convention between the Republic of Kazakhstan and the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital (signed 1 July 2002, entered into force 31 December 2003).
[65] OECD, Global Anti-Base Erosion Model Rules (Pillar Two) (2021), ch 5.
[66] Devereux MP, Vella J and Wardell-Burrus H, 'Pillar 2's Impact on Tax Competition' (2022) Oxford University Centre for Business Taxation.

economically accrues in source jurisdictions.[67] In the Kazakh context, this undermines the effectiveness of incentives under Special Economic Zones, Investment Contracts, and the Astana International Financial Centre (AIFC), since the after-tax return to the investor is unaffected by local exemptions if foreign top-up tax fully offsets them.

While recent EU directives on Pillar Two implementation (such as Council Directive (EU) 2022/2523) do not apply directly to Kazakhstan, they significantly affect outbound tax flows.[68] Multinational groups with EU-based parents are now subject to the GloBE rules regardless of the position taken by Kazakhstan. Unless the Kazakh legal system adopts counterbalancing measures, notably QDMTT and renegotiated treaties with STTR clauses, its de facto tax sovereignty may be diminished.

In sum, the treaty structuring example via the Netherlands demonstrates that international tax law now operates in a layered fashion, where jurisdictional choices by one state (or lack thereof) affect the fiscal outcome in another. For Kazakhstan, non-alignment with the GloBE rules not only risks revenue loss, but also curtails its legal discretion over the outcomes of its own tax policy instruments.

Recent academic analysis confirms that such treaty-based profit diversion mechanisms are no longer immune from scrutiny under the OECD's Pillar Two framework. As Cipollini notes in the World Tax Journal, the introduction of jurisdictional ETR tests and the neutralisation of low-taxed outcomes through top-up taxes represent a functional override of treaty entitlements when viewed through the lens of domestic implementation. While not formally repealing bilateral treaty obligations, the Pillar Two system shifts the practical locus of taxation from the source to the parent jurisdiction, unless the source state enacts its own QDMTT aligned with the OECD criteria. This doctrinal shift raises unresolved questions under the Vienna Convention on the Law of Treaties regarding the precedence of multilateral soft-law norms over binding bilateral treaty rights, particularly where the latter lack STTR safeguards.

[67] Schoueri LE and Santos BCFN, 'Effective Tax Rate Criteria and Source Taxation under the OECD's Pillar Two Proposals' (2023) 77 Bulletin for International Taxation 386.
[68] Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational groups in the Union [2022] OJ L328/1.

The comparative and doctrinal analysis presented in this chapter confirms that Kazakhstan currently finds itself in a legally vulnerable position with respect to the international tax standards developed under the OECD/G20 Inclusive Framework. Despite being a member of the Inclusive Framework and publicly supporting the principles of fair taxation and global minimum effective tax rates, Kazakhstan has not yet transposed the key provisions of Pillar Two into its domestic legal order. This gap generates serious legal and fiscal implications.

First, the absence of a Qualified Domestic Minimum Top-up Tax (QDMTT) means that any difference between Kazakhstan's effective tax rate and the 15 per cent threshold may be taxed by foreign jurisdictions under the Income Inclusion Rule (IIR) or the Undertaxed Payments Rule (UTPR). As demonstrated through the structured example in section 3.3, this results in the loss of fiscal revenues and undermines the strategic intent behind investment tax incentives. From the perspective of tax sovereignty, this outcome reflects a growing disconnection between the formal authority to tax and the actual ability to retain taxing rights over domestic profits.

Second, the widespread use of treaty-based structures, particularly those involving the Netherlands or Luxembourg, continues to facilitate the reallocation of profits from Kazakhstan to jurisdictions offering more favourable treaty protection or lower transparency obligations. These structures not only exploit gaps in Kazakhstan's treaty network, especially the absence of the Subject to Tax Rule (STTR), but also place domestic tax policy at the mercy of foreign top-up mechanisms. The lack of legislative response to this trend risks converting Kazakhstan into a mere transit jurisdiction for multinational group income, which is ultimately taxed elsewhere.

Third, the ongoing application of national accounting standards and the co-existence of multiple financial reporting regimes create significant uncertainty regarding the determination of effective tax rates for GloBE purposes. While IFRS is required for listed companies and large enterprises, many other entities continue to report under local standards that diverge in important respects from GloBE-compliant principles. This technical fragmentation further complicates any future implementation of the Pillar Two rules.

Taken together, these legal and structural issues illustrate that Kazakhstan's current system is not fully prepared to respond to the demands of the global minimum tax regime. However, recent signals from national authorities, including the preparatory work on the new Tax Code and ongoing expert consultations, suggest that reform is both necessary and politically recognised.

The following chapter will examine in detail the legal and administrative barriers to implementing the GloBE rules in Kazakhstan. It will consider the compatibility of national tax laws with the OECD model, the institutional and technical capacity required to administer a QDMTT, and potential constitutional and legislative constraints. In addition, comparative references to early adopters in Europe, including Germany and Austria, will be used to illustrate viable pathways for domestic legal adaptation.

4. Critical analysis and legal recommendations

4.1. Legal and policy criticism of Pillar 2

The OECD/G20 Pillar Two framework has been subject to increasing legal and policy criticism, particularly in relation to its complexity, normative uncertainty, and its interaction with existing international treaty obligations. Although the initiative aims to create a harmonised minimum tax standard of 15 per cent for multinational enterprises, the practical application of the rules has revealed significant ambiguities. Core terms such as covered taxes, adjusted income, and qualified domestic minimum top-up tax remain technically defined, but operationally vague when applied across jurisdictions with diverse accounting and tax regimes. In particular, the calculation of effective tax rates (ETRs) under the GloBE Model is based on consolidated financial statements, prepared either under IFRS or equivalent local GAAP. However, in countries such as Kazakhstan, where national standards (NAS) still diverge from IFRS in areas such as deferred tax treatment and consolidation, legal uncertainty emerges as a key concern.[69]

This legal indeterminacy has practical consequences. For multinational groups operating in jurisdictions with developing or dual financial reporting systems, the ETR computation may not align with actual tax outcomes or may invite competing interpretations. As observed by tax scholars and practitioners, this uncertainty imposes compliance risks and undermines Pillar Two's declared purpose of international tax predictability and fairness.[70] In addition, ambiguity in the scope of application, especially regarding the euro 750 million consolidated revenue threshold, further complicates enforcement. These technical issues may disproportionately affect developing countries, which often lack the administrative capacity to interpret and enforce such intricate global rules effectively.[71]

Furthermore, the lack of unified dispute resolution mechanisms under Pillar Two exacerbates the problem. Although some implementing jurisdictions, such as Germany and

[69] Svetislav V Kostić, 'Pillar 2 and alternatives for attracting foreign investments' (Kluwer International Tax Blog, 14 August 2024).
[70] Intertax, vol 51(2) (2023), 174.
[71] OECD, Tax Challenges Arising from the Digitalisation of the Economy – Pillar Two Blueprint (2020), ch 5.

Austria, have adopted administrative guidance or interpretive decrees, others have not. The absence of a central adjudicatory authority leaves multinational taxpayers and national authorities exposed to inconsistent interpretations, which could ultimately lead to double taxation, or worse, investment deterrence.

Kazakhstan's situation reflects this tension clearly. As of July 2025, the draft of the new Tax Code still does not contain direct legal transposition of the GloBE Model or the adoption of a qualified domestic minimum top-up tax. Although public consultations and ministerial proposals signal intent to align with Pillar Two principles, no final legislative instrument has yet clarified how Kazakhstan will calculate, apply, or administer top-up taxes in practice. Without such clarity, the legal environment for inbound investment remains unpredictable.

Another substantial area of legal concern relates to the interaction between domestic implementation of Pillar Two and the obligations of states under international tax treaties. A growing body of legal doctrine has raised the issue of potential treaty override, whereby states might apply domestic top-up tax rules that contradict or operate beyond the provisions of existing bilateral tax conventions. This raises fundamental questions under the Vienna Convention on the Law of Treaties 1969 (VCLT), especially Articles 26 and 27. The former enshrines the principle that treaties must be performed in good faith (pacta sunt servanda), while the latter prohibits a party from invoking its internal law as justification for failure to perform a treaty.[72]

The concern is that implementation of the Income Inclusion Rule (IIR) or the Undertaxed Payments Rule (UTPR) could result in taxation of income that, under a bilateral treaty, is allocated to another jurisdiction. This may occur, for example, where a multinational group has intra-group payments that enjoy reduced withholding tax rates under a tax treaty, but a top-up tax is applied by the jurisdiction of the parent company regardless. Some legal scholars argue that this situation could amount to a de facto treaty breach, particularly in countries that constitutionally prohibit legislative acts from overriding treaty obligations.[73]

[72] Vienna Convention on the Law of Treaties 1969, Articles 26–27.
[73] Maarten F de Wilde, 'Why Pillar Two Top-Up Taxation Requires Tax Treaty Modification' (Kluwer International Tax Blog, 12 January 2022).

In Kazakhstan, treaties ratified by the Parliament form part of the national legal system and generally prevail over conflicting domestic laws. As of mid-2025, Kazakhstan has not adopted an interpretive position clarifying whether Pillar Two rules would be exempt from the general principle of treaty primacy. This uncertainty poses legal risks. Unless top-up tax mechanisms are clearly coordinated with existing treaties, their enforcement may face constitutional or judicial challenge. In contrast, countries such as Germany and Austria, whose legal systems permit legislative override of treaties under defined conditions, have proceeded with Pillar Two implementation without formal treaty renegotiation.[74]

The OECD has proposed a multilateral instrument (MLI) to implement a limited component of Pillar Two, namely the Subject to Tax Rule (STTR), through treaty modification. However, no comprehensive multilateral instrument has yet been developed to align bilateral treaties with the GloBE rules. This absence creates a legal vacuum in which national implementation of Pillar Two could produce conflicting obligations under international law.[75] Unless coordinated treaty mechanisms are introduced, the risk of fragmentation in the international tax regime will persist, undermining the legal stability of long-standing treaty networks.

A further point of criticism relates to the limited effectiveness of the so-called carve-out provisions and the non-binding status of the Subject to Tax Rule (STTR). While the OECD has incorporated a substance-based carve-out in the GloBE Model Rules, this mechanism excludes only a fraction of income from top-up taxation, calculated as a percentage of eligible payroll costs and tangible assets. Initially set at 10 per cent for payroll and 8 per cent for assets, these percentages are designed to phase down to 5 per cent over ten years.[76] From a legal perspective, this carve-out recognises the legitimacy of taxation based on substantive activity. However, the exclusion is both time-limited and quantitatively narrow, rendering it of limited practical utility for jurisdictions that rely on tax incentives to attract investment.

[74] European Commission, Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union, COM(2021) 823 final.
[75] OECD, Subject to Tax Rule – Multilateral Instrument: Explanatory Statement (2023).
[76] OECD, Global Anti-Base Erosion Model Rules (Pillar Two) (2021), para 4.3.2.

In Kazakhstan and other resource-based economies, the inability to fully exclude income derived from real economic activity may significantly undermine the domestic effectiveness of tax incentives. Multinational enterprises receiving tax holidays or reduced rates under investment agreements may nonetheless be subject to foreign top-up taxation. The result is that the intended fiscal preference is neutralised, not by domestic repeal, but by the extraterritorial operation of another country's Pillar Two rules.[77] In this respect, the legal form of the tax incentive remains intact, but its economic substance is largely eroded. This creates a tension with the sovereign right of each state to structure its tax base and incentive regime.

The situation is further complicated by the current non-binding nature of the STTR. This rule, developed under the Inclusive Framework, was introduced to safeguard the taxing rights of source jurisdictions by enabling them to impose a limited withholding tax on certain cross-border payments taxed below 9 per cent. However, the STTR is not part of the binding GloBE rules and must be implemented separately via bilateral or multilateral treaty modification.[78] As of July 2025, Kazakhstan has publicly expressed interest in joining the OECD's STTR multilateral instrument, but the convention has not yet been ratified and remains subject to treaty negotiations.[79]

Legal experts have cautioned that without the STTR in force, many developing countries may lose the ability to tax outbound payments such as interest, royalties and service fees. Since the IIR and UTPR allocate taxing rights to residence jurisdictions, source states like Kazakhstan may be left with little or no residual tax authority.[80] The asymmetric allocation of taxing rights under Pillar Two is therefore seen as structurally biased toward capital-exporting states, and the limited availability of carve-outs and STTR mechanisms has been criticised as insufficient to restore balance.

In summary, the legal architecture of Pillar Two, while ambitious in scope, has attracted consistent doctrinal criticism. The framework's technical ambiguity, its reliance on domestic

[77] Luis E Schoueri and B C Santos, 'Effective Tax Rate Criteria and Source Taxation Under the OECD's Pillar Two Proposals' (2023) 77 Bulletin for International Taxation 386.
[78] OECD, Subject to Tax Rule – Model Treaty Provision and Multilateral Instrument (2023).
[79] Kazakhstan Ministry of Finance, 'Draft Proposal on Joining the STTR MLI' (4 July 2024), public consultation version.
[80] Brian J Arnold, 'You Must Be Joking – The STTR of Pillar Two' (2024) 78 Bulletin for International Taxation 42.

legislation with possible treaty override implications, and its incomplete integration of protective tools such as the STTR all raise concerns about its fairness and enforceability. While developed economies may possess the legal infrastructure to navigate these complexities, developing jurisdictions face heightened risks of unintended fiscal erosion and legal conflict.

These concerns are particularly relevant for Kazakhstan, which currently lacks binding legislative instruments to implement Pillar Two and remains dependent on treaties that do not yet incorporate the new allocation rules. At the same time, European Union Member States such as Germany and Austria have enacted national legislation that transposes the GloBE rules directly, often through mechanisms designed to accommodate legal certainty and administrative practicality. The following section will examine these comparative experiences and identify key lessons for Kazakhstan and other Central Asian states seeking to align domestic policy with the global minimum tax standard.

4.2. Comparative Perspectives: EU vs Kazakhstan

The implementation of Pillar Two in European Union Member States has revealed a structured and legally coherent approach to incorporating the OECD's minimum tax principles within domestic legal frameworks. In accordance with Council Directive (EU) 2022/2523, Member States were required to transpose the provisions of the GloBE Model Rules into national law by 31 December 2023. Germany and Austria offer pertinent examples of jurisdictions that have fulfilled this obligation through comprehensive statutory reforms.

Germany enacted the Mindeststeuergesetz (MinStG) in December 2023, thereby incorporating the Income Inclusion Rule (IIR), the Qualified Domestic Minimum Top-up Tax (QDMTT), and the Undertaxed Profits Rule (UTPR) into its domestic legal system.[81] The legislation applies to fiscal years commencing on or after 1 January 2024 for IIR and QDMTT, and from 2025 for UTPR. The MinStG establishes a coherent link between the OECD Model and national enforcement by referencing the GloBE Administrative Guidance and adopting

[81] Gesetz zur Umsetzung der Richtlinie (EU) 2022/2523 zur Gewährleistung einer globalen Mindestbesteuerung [MinStG], BGBl I 2023, 3946.

standardised computational mechanisms. The statute further mandates reporting obligations for the Minimum Tax Group Head, who must submit a formal notification within two months following the end of the group's financial year.[82] This legislative technique contributes to legal certainty, reduces interpretive fragmentation, and mitigates compliance risks under German law.

Austria followed a similar path with the enactment of the Mindestbesteuerungsgesetz (MinBestG), published in December 2023.[83] The Austrian legislation not only implements the core GloBE rules but also amends pre-existing statutes to ensure legal coherence. Notably, Austria revised its Controlled Foreign Corporation (CFC) provisions under paragraph 10a of the Corporate Income Tax Act to accommodate interactions between foreign QDMTTs and Austrian tax base calculations.[84] This legislative harmonisation avoids overlapping assessments and potential double taxation. Furthermore, the Austrian Ministry of Finance issued interpretive guidance and administrative instructions to assist with compliance, illustrating the importance of soft law instruments in the successful application of Pillar Two.

By contrast, Kazakhstan has not yet enacted domestic legislation implementing the GloBE Model Rules. Although policy discussions and regulatory consultations have acknowledged the importance of alignment with international tax standards, no binding legal instrument has been promulgated as of July 2025. This legal lacuna generates significant uncertainty. The absence of a QDMTT exposes Kazakhstan to the extraterritorial application of the IIR and UTPR by other jurisdictions, thereby forfeiting potential domestic revenue. Moreover, Kazakhstan's treaty network has not been amended to reflect the Subject to Tax Rule (STTR), and existing CFC rules remain conceptually disconnected from Pillar Two structures.

While the constitutional status of tax treaties in Kazakhstan grants them precedence over conflicting legislation, the absence of synchronised reform may produce legal conflict or inconsistent application in practice. Unlike EU Member States that benefit from a harmonised

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[82] German Federal Ministry of Finance, Hinweise zur Mindestbesteuerung – Mindeststeuer-Mitteilung nach § 90 EGAO (2024).
[83] Mindestbesteuerungsgesetz [MinBestG], BGBl I 2023, Nr 227.
[84] WTS Global, 'Austria Amends CFC Rules to Avoid Double Taxation under Pillar 2' (August 2024) https://www.wts.com accessed 7 July 2025.

directive and centralised technical support, Kazakhstan must navigate implementation without supranational coordination. These structural differences necessitate a tailored legal response.

From a comparative perspective, several legislative strategies employed by Germany and Austria may inform Kazakhstan's future regulatory design. These include the codification of QDMTT provisions that mirror OECD definitions, the adoption of structured administrative reporting obligations, and the reconciliation of domestic anti-avoidance rules with global minimum tax mechanisms. Such measures, if properly adapted, could enhance Kazakhstan's fiscal autonomy, legal predictability, and compliance with emerging international tax norms.

However, the implementation of these measures in Kazakhstan would require careful consideration of domestic legal culture, administrative capacity, and political economy constraints. As Cipollini has noted, the flexibility afforded by GloBE carve-outs may offer only limited protection for developing countries that rely heavily on preferential tax regimes.[1] In Kazakhstan's case, regional incentives and special economic zones continue to play a strategic role in attracting foreign direct investment, yet many of these instruments risk being neutralised under Pillar Two top-up mechanisms in the absence of a Qualified Domestic Minimum Top-up Tax (QDMTT).

The legal framework must therefore be designed not only to comply with the OECD Model Rules but also to preserve Kazakhstan's policy space. This may entail aligning national definitions of financial reporting standards and effective tax rate (ETR) computation with the Inclusive Framework's administrative guidance, while also introducing legislative safeguards to prevent unintended consequences of automatic top-up taxation.[2]

Furthermore, as Andrade Rodríguez argues, developing states must critically evaluate the interaction between existing tax treaties, investment incentives, and Pillar Two's redistributional logic.[3] Kazakhstan's current network of bilateral treaties, many of which include tax sparing clauses or static definitions of withholding rights, may require renegotiation or accession to the multilateral STTR instrument to restore source-based taxation in line with GloBE expectations.

Ultimately, Kazakhstan's ability to adopt a functional Pillar Two regime depends on the interplay between legal harmonisation, administrative readiness, and political will. While the EU provides an institutional model of directive-based transposition and legal alignment, Kazakhstan must rely on its sovereign legislative process and judicial interpretation. A phased approach, starting with QDMTT legislation and followed by administrative capacity building and treaty alignment, may represent a pragmatic pathway.

4.3. Case Study: Pillar Two Implementation for an Austrian MNE with a Kazakhstan Subsidiary

4.3.1. Group structure and scope of application

The following case study presents a hypothetical multinational enterprise (MNE) headquartered in Austria with a wholly owned subsidiary operating in Kazakhstan. While the corporate group described below is fictional, all assumptions are based on legally binding sources and current administrative guidance as of July 2025, including the OECD GloBE Model Rules, the EU Directive 2022/2523, and the Austrian Mindestbesteuerungsgesetz (MinBestG).[85]

The MNE group, referred to as ParentCo AG, prepares consolidated financial statements in accordance with IFRS and reports total revenue of approximately euro 800 million and consolidated profit before tax of euro 200 million for fiscal year 2024. The Austrian parent directly owns 100 per cent of KazSub LLP, a resident legal entity registered in Kazakhstan. KazSub operates in a designated Special Economic Zone in Kazakhstan and is fully exempt from corporate income tax under national tax legislation. This exemption is granted pursuant to Articles 242–246 and 306 of the Tax Code of the Republic of Kazakhstan No. 120-VI dated 25 December 2017, which provide tax incentives to resident entities engaged in priority activities within SEZs.

KazSub generates IFRS profit before tax of approximately euro 50 million. Due to the exemption, its current tax expense and covered taxes under the OECD framework amount to zero.

[85] Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational groups in the Union [2022] OJ L328/1 (hereinafter: 'Pillar Two Directive'); Bundesgesetz über eine Mindestbesteuerung von Unternehmensgruppen (Mindestbesteuerungsgesetz, MinBestG), BGBl I 2023/XXX; OECD, Global Anti-Base Erosion Model Rules (Pillar Two) (OECD Publishing 2021, updated 2023).

The remaining euro 150 million in consolidated profit is attributable to operations in Austria and other jurisdictions where the statutory corporate income tax rate exceeds 20 per cent. Therefore, although the group-wide effective tax rate (ETR) is relatively high, the low-taxed jurisdiction of Kazakhstan falls below the 15 per cent minimum threshold established under Pillar Two.[86]

Austria implemented Pillar Two domestically through the MinBestG, which entered into force on 1 January 2024. The law introduced an Income Inclusion Rule (IIR) applicable to ultimate parent entities located in Austria, empowering the Austrian tax authorities to collect top-up taxes attributable to the low-taxed profits of foreign subsidiaries.[87] As of July 2025, Kazakhstan has not adopted a Qualified Domestic Minimum Top-Up Tax (QDMTT). Accordingly, under Article 2 MinBestG and Articles 2.1 and 5.2 of the OECD GloBE Rules, the Austrian parent is liable for a top-up tax on KazSub's profits in order to ensure compliance with the 15 per cent minimum ETR requirement.[88]

In accordance with Article 5.3 of the GloBE Model Rules, the top-up tax is calculated by reference to the excess profit over a jurisdictional carve-out, multiplied by the top-up tax percentage. The formula is expressed as:

Top-Up Tax = (15 per cent – ETR) × (GloBE Income – Substantive Carve-Out)

Since KazSub's effective tax rate is zero, the entire difference between 15 per cent and 0 per cent applies. The carve-out amount is calculated based on 5 per cent of payroll and 5 per cent of the carrying value of tangible assets, both averaged over the previous fiscal year.

Assume that KazSub employs 250 staff with annual payroll expenses of euro 4 million, and owns qualifying tangible assets (machinery, production equipment) valued at euro 30 million. The carve-out equals:

[86] OECD, Tax Challenges Arising from the Digitalisation of the Economy: Global Anti-Base Erosion (GloBE) Model Rules (Pillar Two) (OECD Publishing, 2021) arts 4.1, 5.2–5.3; Avi-Yonah RS, 'Global Minimum Tax: Pros and Cons' (2022) 43 Mich J Intl L 377, 385–387.
[87] MinBestG (n 1) §§ 2(1), 6(1); Austrian Ministry of Finance, Erläuternde Bemerkungen zum Ministerialentwurf MinBestG (2023) 3–7.
[88] OECD, GloBE Model Rules (n 3) arts 2.1, 5.2–5.3; Pillar Two Directive (n 1) art 2(8)–(9); see also PwC, 'General Overview of Pillar Two: Country Tracker' (2025) https://www.pwc.com/gloBe-tracker accessed 7 July 2025.

5 per cent × euro 4 million = euro 0.2 million (payroll)

5 per cent × euro 30 million = euro 1.5 million (tangible assets)

Total carve-out = euro 1.7 million

GloBE income for KazSub is equal to its pre-tax IFRS income of euro 50 million. Therefore, the excess profit is:

euro 50 million – euro 1.7 million = euro 48.3 million

The Austrian tax authority will apply a 15 per cent top-up tax on this excess:

Top-up liability = 15 per cent × euro 48.3 million = euro 7.245 million

This amount is due under Article 2 MinBestG and must be paid by ParentCo AG in Austria, unless Kazakhstan enacts a QDMTT in time to absorb the liability domestically.

From a legal perspective, this scenario illustrates the extraterritorial fiscal reach of the IIR and raises questions about the effectiveness of tax incentives granted at the domestic level when not aligned with Pillar Two rules. It also underscores the need for Kazakhstan to adopt legislative instruments that safeguard its tax base, particularly through the enactment of a QDMTT and harmonisation of national accounting standards with OECD principles.

4.3.2. Implementation in Austria and Kazakhstan

Austria enacted the Pillar Two rules through the Mindestbesteuerungsgesetz (MinBestG), which entered into force on 1 January 2024 in accordance with the EU Directive 2022/2523. The statute applies to multinational groups and large domestic groups whose consolidated revenue exceeds euro 750 million. It incorporates the Income Inclusion Rule (IIR), the Qualified Domestic

Minimum Top-up Tax (QDMTT), and the Undertaxed Profits Rule (UTPR). The IIR and QDMTT provisions apply from 2024, while the UTPR is scheduled to take effect from 2025.[89]

The Austrian Ministry of Finance has issued official guidance to support implementation, which includes clarifications on jurisdictional effective tax rate (ETR) calculations, timing differences, and mechanisms for applying safe harbours.[90] These administrative measures reflect a comprehensive and harmonised approach to Pillar Two compliance. They also integrate OECD guidance, ensuring coherence with supranational standards and avoiding interpretive uncertainty.

Kazakhstan, by contrast, has not implemented domestic legislation transposing the GloBE Model Rules as of July 2025. While the jurisdiction has acknowledged its participation in the OECD Inclusive Framework, no statute introducing a QDMTT or UTPR has been adopted. Consequently, Austrian parent companies remain responsible for applying the IIR to income generated by subsidiaries in Kazakhstan, including low-taxed entities such as those operating within special economic zones.[91]

The legislative inaction in Kazakhstan leads to asymmetrical outcomes. The absence of a QDMTT means that Kazakhstan forfeits taxing rights over incremental top-up tax that would otherwise be collected locally. This has fiscal consequences for domestic public finance and could create reputational risks for Kazakh subsidiaries of multinational groups. Furthermore, Kazakhstan has not incorporated the Subject to Tax Rule (STTR) in its treaty practice nor acceded to the OECD's Multilateral Instrument (MLI) for Pillar Two.

The current legal framework also complicates coordination between Pillar Two and existing tax measures in Kazakhstan. Controlled Foreign Corporation (CFC) rules under domestic law are not calibrated to interact with GloBE requirements, and the prevailing financial reporting standards, which include elements of NAS and IFRS, require careful reconciliation in ETR

[89] Mindestbesteuerungsgesetz (MinBestG), BGBl I 2023/227; Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational groups in the Union [2022] OJ L328/1.
[90] Austrian Federal Ministry of Finance, Erläuternde Bemerkungen zum Ministerialentwurf des Mindestbesteuerungsgesetzes (December 2023), paras 2–4.
[91] OECD, Global Anti-Base Erosion Model Rules (Pillar Two) (OECD Publishing, 2021, updated 2023), arts 2.1 and 5.2; see also MinBestG (n 1), section 2.

computations. In the absence of local legislative or administrative clarification, compliance risks remain significant.

This divergence in legal implementation reflects broader structural asymmetries between OECD Member States and developing jurisdictions within the Inclusive Framework. As observed by Avi-Yonah, while Pillar Two aims to enhance global tax equity, its legal architecture disproportionately favours residence-based taxation and administratively capable states, thereby exacerbating the very inequalities it seeks to address. Moreover, as Schoueri has noted, the Effective Tax Rate (ETR) methodology embedded in the GloBE rules systematically disadvantages jurisdictions that rely on tax incentives to attract foreign direct investment. Without timely adaptation through instruments such as QDMTT or treaty amendments incorporating the STTR, Kazakhstan risks both revenue loss and erosion of its sovereign tax policy space.

4.3.3. Effective Tax Rate computation and carve-out implications

According to Article 4 of the GloBE Model Rules and Section 4 MinBestG, the computation of the jurisdictional effective tax rate (ETR) is based on the ratio between covered taxes and net GloBE income, both determined in accordance with specific OECD adjustments. For the purposes of the present case, the Kazakh subsidiary generated a GloBE income of euro 50 million and paid zero covered taxes due to full exemption under national law. Consequently, its jurisdictional ETR is calculated as 0 per cent.

Under Pillar Two, a top-up tax becomes due if the ETR in a jurisdiction falls below the minimum rate of 15 per cent. Applying Article 5.2 of the GloBE Rules and Section 6 MinBestG, the minimum tax required is 15 per cent of euro 50 million, amounting to a top-up of euro 7.5 million. This liability is attributed to the Austrian parent entity under the Income Inclusion Rule.[92]

In accordance with Article 5.3 of the GloBE Model Rules, Austria applies a substance-based income exclusion (carve-out), which deducts a fixed percentage of eligible payroll and tangible assets located in the low-tax jurisdiction. For fiscal year 2024, the applicable rate is 5 per

[92] OECD, Global Anti-Base Erosion Model Rules (Pillar Two) (OECD Publishing, 2021, updated 2023), arts 4.1–4.3 and 5.2; MinBestG, sections 4–6.

cent for both components. Based on the financial profile of the Kazakh subsidiary, the following calculation applies:

Component	**Amount**	**Carve-out rate**	**Excluded from GloBE income**
Payroll	euro 4,000,000	5 per cent	euro 200,000
Tangible assets	euro 30,000,000	5 per cent	euro 1,500,000
Total carve-out			**euro 1,700,000**

The GloBE income of euro 50 million is thus reduced by euro 1.7 million. The adjusted amount of euro 48.3 million is subject to the 15 per cent minimum tax, resulting in a top-up liability of euro 7.245 million payable in Austria.

Because Kazakhstan has not implemented a QDMTT, the entire amount will be payable in Austria. Had Kazakhstan enacted a domestic minimum tax conforming to OECD standards, the tax liability could have been collected locally, thereby preserving taxing rights and fiscal neutrality. The absence of such a regime results in a jurisdictional asymmetry that adversely affects Kazakhstan’s fiscal sovereignty.

This example highlights the importance of timely and coordinated adoption of QDMTT provisions to protect local revenue streams. It also illustrates the legal and fiscal interdependence created by Pillar Two and the potential for top-up tax reallocations among jurisdictions.

Furthermore, this mechanism underscores the centrality of reliable financial data under IFRS or equivalent standards, as inaccurate asset or payroll reporting could directly affect the carve-out and, thus, the tax obligation.

While the substance-based income exclusion offers partial relief for genuine economic activity in low-tax jurisdictions, its limited scope has been subject to academic criticism. As noted in the World Tax Journal, the carve-out mechanism under Pillar Two does not account for intangible assets, research and development incentives, or other non-tangible investment tools commonly employed by developing countries to stimulate growth. This design flaw imposes structural disadvantages on jurisdictions that rely on broader fiscal instruments to attract capital.

Furthermore, OECD documentation, including the 2020 Blueprint, indicates that the carve-out percentage is designed to decrease over time. This deliberate reduction undermines its long-term efficacy and reduces the policy space available to states like Kazakhstan that apply targeted tax exemptions to promote strategic sectors. Consequently, the carve-out provision, while presented as a neutrality-preserving mechanism, in practice reinforces a narrow model of taxable substance based on labour and tangible capital. This creates legal tension with domestic incentive structures and necessitates a forward-looking review of national tax policy to ensure alignment with GloBE parameters while maintaining economic sovereignty.

4.3.4. Treaty interaction, financial reporting and legal risks

The application of Pillar Two rules within the current tax treaty framework gives rise to interpretative tension. Neither the OECD Model Tax Convention nor Kazakhstan's bilateral double tax treaties contain explicit references to top-up taxes or global minimum taxation. Under the Vienna Convention on the Law of Treaties (VCLT), treaty terms must be interpreted in good faith in accordance with their ordinary meaning in context and in light of their object and purpose. However, the introduction of top-up taxes through domestic legislation, such as Austria's MinBestG, may arguably constitute a form of treaty override in circumstances where it results in taxation not envisaged by the bilateral treaty.

This risk is particularly relevant in cases where the source state does not impose corporate income tax, but the residence state applies an IIR. The affected income may effectively be taxed twice, first through the imputation of income under Pillar Two and then through traditional tax mechanisms. Although Austria maintains that the IIR is not a direct tax on the foreign entity but rather on the parent, the legal separation is formalistic and could be challenged under treaty non-discrimination principles. Article 24 of the OECD Model stipulates that nationals and residents of the other contracting state shall not be subject to more burdensome taxation than nationals in comparable circumstances. It remains unclear whether top-up taxes breach this standard.

From a financial reporting perspective, the implementation of Pillar Two presents further challenges. Under Article 3.2 of the OECD Model Rules, the applicable accounting standard is the one used in the preparation of consolidated financial statements, typically IFRS for publicly listed MNEs. However, local subsidiaries may report under different frameworks. In Germany, for example, consolidated statements are often prepared under IFRS, whereas individual legal entities report under the Handelsgesetzbuch (HGB), the national commercial code.[93] In Kazakhstan, most entities still apply the National Accounting Standards (NAS), although IFRS adoption is gradually increasing among large taxpayers. Reconciliation adjustments are therefore required to translate local financial results into GloBE-compliant figures, particularly regarding deferred tax, permanent differences and intra-group eliminations.

The absence of harmonisation in financial reporting creates both legal uncertainty and administrative cost. Furthermore, in jurisdictions that have not enacted Pillar Two-compliant legislation, such as Kazakhstan, tax authorities lack clear administrative capacity to audit or challenge top-up computations. This may hinder cooperation in cross-border enforcement and complicate bilateral dispute resolution.

As of July 2025, Kazakhstan has not signed the OECD Multilateral Convention on Pillar Two, and there is no domestic legal mechanism for recognising top-up taxation within local corporate tax returns. This legal vacuum introduces risks of both unrelieved double taxation and procedural inconsistency. In contrast, Austria's domestic law recognises GloBE obligations as part of its comprehensive tax compliance system, and Austrian taxpayers are required to file Pillar Two returns by 30 June following the end of the fiscal year.

4.3.5. Practical impact and synthesis

The case study demonstrates how Pillar Two reallocates taxing rights through domestic top-up taxation when the host jurisdiction has not enacted a Qualified Domestic Minimum Top-

[93] Linde Verlag, Tax Treaty Case Law around the Globe 2022 (Series on International Tax Law, vol 13, 2023), 83–85.

Up Tax. In the present scenario, Austria asserts the taxing right under the Income Inclusion Rule, leading to a top-up liability of euro 7.245 million in respect of profits earned by a Kazakh subsidiary that benefits from full exemption under national law.

This outcome has several legal and practical implications. First, the inability of Kazakhstan to collect the top-up tax reduces its fiscal sovereignty and foregoes potential revenue. Had a compliant QDMTT been introduced, the full amount of euro 7.245 million could have been taxed locally, consistent with Article 5.2 of the GloBE Model Rules and the principle of source-based taxation. Second, the Austrian parent is required to compute and report the top-up obligation on a jurisdictional basis, triggering compliance duties even in the absence of local tax liability in the foreign jurisdiction.

Third, the interaction between accounting standards becomes central. As the GloBE income is derived from consolidated IFRS financials, while Kazakh entities often report under NAS, a legally sound reconciliation process is essential. Any misalignment in temporary differences, covered taxes or asset valuations could lead to over- or under-assessment of the ETR, exposing the group to legal disputes and penalties. According to public OECD administrative guidance, adjustments relating to deferred taxes and local accounting mismatches remain among the most complex compliance issues for MNEs operating in hybrid jurisdictions.

Fourth, treaty law remains in tension with Pillar Two implementation. While Austria justifies its domestic legislation through policy objectives and OECD coordination, its legal status under existing double tax treaties is uncertain. The potential for discrimination or treaty override has not yet been tested in international litigation, but scholars argue that a normative justification alone may not suffice to reconcile treaty-based limitations with unilateral compliance mechanisms.[94]

Finally, the case illustrates how multinational groups with operations in jurisdictions that provide extensive tax incentives face new risks. In the past, such incentives would result in reduced

[94] Devereux MP, Vella J and Wardell-Burrus H, 'Pillar 2's Impact on Tax Competition' (2022) Oxford University Centre for Business Taxation Working Paper No. 22/11, 14–16.

global tax burdens. Under the current framework, the benefit is neutralised through top-up taxation in the residence state. This reduces the competitiveness of low-tax jurisdictions unless they align domestic law with Pillar Two requirements.

For Kazakhstan and other Central Asian states, the key lesson is to prioritise timely and technically robust implementation of QDMTT legislation, backed by administrative guidance and international cooperation. Without this, such jurisdictions will remain fiscally exposed and legally peripheral in the post-BEPS global order.

5. Conclusion

The implementation of the Global Anti-Base Erosion (GloBE) Rules, commonly referred to as Pillar Two, represents a transformative development in the international tax framework. It is the first coordinated global effort to ensure that large multinational enterprises (MNEs) are subject to a minimum level of effective taxation in each jurisdiction where they operate. The legal structure of Pillar Two, as articulated by the OECD/G20 Inclusive Framework and reflected in the GloBE Model Rules, creates an unprecedented blend of domestic legislation and internationally coordinated norms. The regime establishes a minimum effective tax rate of 15 per cent, enforced through a multi-layered mechanism comprising the Income Inclusion Rule (IIR), the Undertaxed Profits Rule (UTPR), and the Qualified Domestic Minimum Top-Up Tax (QDMTT).

This thesis has undertaken a doctrinal and comparative legal analysis of Pillar Two, with particular attention to its legal design, interpretive risks, interaction with public international law, and implications for countries both within and beyond the European Union. The legal discussion began in Chapter 1 with an examination of the policy rationale behind global minimum taxation. The need to address profit shifting and aggressive tax planning has gained increased urgency in a digitalised global economy, where value creation often transcends traditional nexus principles. The Inclusive Framework emerged as a multilateral compromise designed to bring coherence to the international tax system while preserving domestic legislative sovereignty. However, that coherence is not without legal complexity.

In Chapter 2, the legal architecture of Pillar Two was analysed. The Model Rules rely on jurisdictional effective tax rate computations and assign top-up taxing rights through a defined order of application. While the rules are designed to be administratively neutral, they raise interpretive challenges when applied alongside existing treaty law. The relationship between Pillar Two and bilateral tax treaties, including provisions on business profits, non-discrimination, and tax sovereignty, remains unsettled. In particular, the enforceability of domestic IIR or UTPR provisions against entities in non-implementing jurisdictions raises questions about potential treaty override and the limits of extraterritorial jurisdiction under the Vienna Convention on the Law of Treaties.

Chapter 3 examined the interface between financial accounting and the legal operation of the GloBE regime. Unlike traditional tax systems that rely on taxable income, GloBE calculations are based on adjusted financial statement income. The selection of financial accounting standards is therefore fundamental. While countries such as Germany apply IFRS for consolidated reporting, many legal entities still report under local standards such as HGB. In other jurisdictions, such as Kazakhstan, national accounting frameworks (e.g. NAS) are partially aligned with IFRS but require reconciliation. This divergence increases compliance costs and introduces legal uncertainty. The use of deferred tax adjustments and safe harbour mechanisms, although intended to ease transition, adds to the technical complexity of implementation.

Chapter 4 provided a comparative analysis through the implementation example of Austria and the legal position of Kazakhstan. Austria, having transposed Directive (EU) 2022/2523 into national law, represents a jurisdiction that has proactively aligned with the GloBE Model. In contrast, Kazakhstan has not yet adopted domestic Pillar Two legislation. The absence of a local QDMTT results in Austria collecting the top-up tax under its domestic IIR, thereby redirecting tax revenue from the source to the residence jurisdiction. The illustrative case study showed that such a shift creates a disconnect between the place of value creation and the location of tax collection. This raises normative concerns about fiscal equity and the allocation of taxing rights under both domestic and international law.

The observed asymmetry in the adoption of Pillar Two highlights critical vulnerabilities for jurisdictions that have not introduced a Qualified Domestic Minimum Top-Up Tax (QDMTT). In the case of Kazakhstan, the absence of a QDMTT mechanism means that tax preferences provided domestically may not achieve their intended effect. Multinational groups benefiting from such incentives remain subject to top-up taxation under the Income Inclusion Rule (IIR) or the Undertaxed Profits Rule (UTPR) imposed by other jurisdictions. Consequently, corporate income arising in Kazakhstan may be taxed in the residence state of the parent company, thereby diverting the fiscal benefit away from the source country. From a legal and policy perspective, the timely implementation of a domestic QDMTT is essential to preserve Kazakhstan's taxing rights and to prevent erosion of its tax base through foreign enforcement of Pillar Two mechanisms.

A second area of concern relates to the interaction between Pillar Two and domestic accounting standards. The GloBE framework relies on financial accounting income as the starting point for tax base computation. Although many large entities in Kazakhstan prepare their consolidated financial statements in accordance with IFRS, the statutory financial reporting obligations remain based on the National Accounting Standards (NAS). These standards differ from IFRS in multiple respects, including the treatment of deferred tax assets and liabilities, which are relevant for GloBE ETR calculations. In the absence of harmonisation, the application of Pillar Two rules may require additional reconciliation efforts and increase the risk of interpretive inconsistencies. From a legal certainty standpoint, the development of administrative guidance or legislative clarification concerning the treatment of NAS under GloBE rules would be advisable.

The position of Kazakhstan under its current tax treaty network also deserves attention. At present, Kazakhstan's treaties do not incorporate the Subject to Tax Rule (STTR) as proposed under Pillar Two. The absence of this provision may enable base erosion through cross-border intragroup payments that are subject to low or zero taxation in the residence jurisdiction. Joining the forthcoming STTR multilateral instrument could allow Kazakhstan to safeguard its source taxing rights over specified payments such as interest, royalties, and service fees, and to align its tax treaty policy with the evolving international legal framework.

The effectiveness of Kazakhstan's broader tax policy must also be re-evaluated in light of Pillar Two. The country has traditionally relied on reduced tax rates, exemptions, and holidays to attract foreign direct investment. Under the GloBE system, however, such incentives may lose their practical value if the jurisdictional effective tax rate falls below the 15 per cent threshold. In such cases, the corresponding benefit is neutralised through top-up taxation in the jurisdiction of the parent entity. It is therefore necessary for policymakers to consider alternative incentive structures that are compatible with the substance-based income exclusion mechanism under GloBE. Targeted incentives linked to qualifying payroll and tangible assets may continue to provide benefits without triggering reallocation of taxing rights.

Finally, the implementation of Pillar Two presupposes a high degree of administrative capacity, which may not be uniformly available across developing or transition economies. For Kazakhstan, this implies the need for investment in institutional capacity, including the training of tax personnel, modernisation of IT systems, and alignment of domestic law with OECD administrative guidance. Without such measures, the risk of ineffective or inconsistent application of GloBE rules will remain, potentially undermining the legitimacy of the regime and exposing the jurisdiction to legal disputes.

Furthermore, the legal effects of non-implementation are not confined to lost revenue. Countries that do not adopt Pillar Two rules forfeit control over top-up tax computation, enforcement, and dispute resolution. They also face legal and reputational risks if treaty obligations are perceived to be disregarded by counterparty jurisdictions. The multilateral instrument on Subject to Tax Rule (STTR), currently under negotiation, may address some of these concerns. However, its effectiveness will depend on the extent of global ratification and legal integration into domestic systems.

The analysis throughout this thesis identified three core legal challenges. First, the potential conflict between GloBE implementation and treaty obligations under bilateral double tax agreements. Second, the reliance on non-harmonised financial accounting standards, which creates interpretive difficulties and increases the risk of litigation. Third, the legal uncertainty resulting from partial or non-existent implementation in developing and transition economies.

Nevertheless, Pillar Two marks a significant development in global tax governance. It promotes international coordination, limits harmful tax competition, and introduces a minimum standard of tax compliance. Its success, however, depends on the legitimacy of domestic implementation, the coherence of international legal interpretation, and the capacity of tax administrations to enforce complex rules with fairness and transparency.

For countries that have not yet implemented Pillar Two, the choice is no longer merely technical. It reflects a strategic legal and fiscal decision about participation in the post-BEPS international tax order. While the framework is not legally binding in the treaty sense, its political and economic implications make it difficult to ignore. Legal practitioners and scholars must therefore continue to assess its evolution, engage in doctrinal clarification, and contribute to the development of administrative practices that uphold the principles of legal certainty, equality of treatment, and rule of law.

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