The compatibility of the Undertaxed Profits Rule (UTPR) of the Pillar Two Rules with Certain Principles of the International Tax Regime

Regard CFFP 2026/20e

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September 2026

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Acknowledgments

The *Chaire de recherche en fiscalité et en finances publiques* at the *Université de Sherbrooke* would like to thank the Quebec Ministry of Finance for its continued support and wishes to express its appreciation for the funding it receives to further its research activities.

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The authors thank the Chaire de recherche en fiscalité et en finances publiques for the financial support that made this study possible.

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To cite this text:
Gabriella SOBODKER and Lyne LATULIPPE (2026), « The compatibility of the Undertaxed Profits Rule (UTPR) of the Pillar Two Rules with Certain Principles of the International Tax Regime », Regard CFFP, nº 2026-20e, Université de Sherbrooke, Chaire de recherche en fiscalité et en finances publiques, 25 p.

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INTRODUCTION

The Pillar Two rules, also known as the “GloBE rules” or the “global minimum tax”, arise from a historical political agreement reached within the OECD/G20 Inclusive Framework (the “Inclusive Framework”), under which nearly 140 jurisdictions, including Canada, agreed to a two-pillar solution to address the challenges arising from the digitalization of the economy.[1] The second pillar of this solution, Pillar Two, established a 15% minimum corporate tax on profits of groups of multinational enterprises (MNEs) whose annual consolidated revenues exceed EUR 750 million.[2]

The Pillar Two rules, elaborated by the OECD and progressively adopted by multiple jurisdictions, are designed as a set of coordinated mechanisms to ensure that constituent entities of an MNE group are subject to the 15% minimum tax rate, regardless of the jurisdictions in which they operate. Under these rules, where a jurisdiction does not tax the profits generated by constituent entities of an MNE group at the prescribed minimum rate, foreign jurisdictions in which constituent entities of the group are located may be attributed a taxing right and collect a top-up tax on those profits. Although jurisdictions that have adhered to the principles underlying the GloBE rules generally agree on the overall structure of the regime, one of its rules, namely the Undertaxed Profits Rule (UTPR), stands out due to the debate and criticism it has sparked. Unlike the other two main rules of the Pillar Two regime, which assign a taxing right either directly to the jurisdiction in which the low-taxed profits are generated, or to the jurisdiction of a parent entity, the UTPR allows a jurisdiction to tax the profits of a non-resident entity earned in a foreign jurisdiction, even in the absence of a direct ownership or economic link between the taxing jurisdiction and the profits taxed.

In this respect, the UTPR departs from principles traditionally recognized in international taxation, under which the allocation of taxing rights to a jurisdiction is based on the existence of a sufficient connecting factor, such as the taxpayer’s residence or the source of income. This lies at the heart of the main criticisms raised against the UTPR, with several authors arguing that such a rule is incompatible with established principles of international tax law, whether grounded in customary international law or tax treaties.[3] The purpose of this paper is to provide an overview of this debate

1 In October 2021, nearly 140 jurisdictions, including the U.S., approved and signed the “Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy”. This historic statement, published by the OECD/G20 Inclusive Framework, the group leading the elaboration of the two-pillar international tax reform (thereafter, the “Inclusive Framework”), advocates for international tax cooperation to counter tax avoidance strategies employed by multinationals and provides the details of Pillar Two, namely the 15% global minimum tax.See OECD (2021, “Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy”, online: https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf

2 For the Pillar Two rules, see OECD (2021), Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS, OECD Publishing, Paris, https://doi.org/10.1787/782bac33-en (thereafter, the “GloBE rules”). For a discussion and presentation of the rules, see Marie-Maude LEFEBVRE and Lyne LATULIPPE, (2025), Implantation de l’impôt minimum mondial : perspectives d’ici et d’ailleurs. Cahier de recherche 2025/03, Chaire de recherche en fiscalité et en finances publiques, 34 p. https://cffp.recherche.usherbrooke.ca/wp-content/uploads/2025/04/cr_2025-03_implantation_impot_min_mondial.pdf

3 Beyond academic debates within the international tax community, the UTPR is also subject to political debates. It has met with strong opposition from the U.S. administration, which describes it as unfair and discriminatory towards U.S. corporations. This opposition initially was translated into the U.S.’ formal withdrawal from the Pillar Two agreement in January 2025 and then took the form of using potential retaliatory measures as a threat against jurisdictions implementing the UTPR. These measures included the proposal for Section 899 of the U.S. Tax Code, named the “retaliatory tax”, which provided for an additional tax on residents of jurisdictions applying a tax deemed “discriminatory” or “extraterritorial” against U.S. companies and citizens. This tax was specifically aimed at the UTPR and digital services taxes implemented by several jurisdictions. This pressure ultimately

The paper provides an overview of the Pillar Two rules and the evolution of the UTPR within that framework, to situate the context in which the debate emerged. It then examines the main aspects of the debate concerning the potentially extraterritorial and discriminatory nature of the UTPR, as well as the broader context that gave rise to these discussions. The paper subsequently outlines certain solutions that have been proposed in response to the concerns raised regarding the compatibility of the UTPR with the international tax regime. Lastly, the UTPR is analyzed within the context of the Canadian tax system.

led the Inclusive Framework to establish the terms of a "Side-by-Side System", initially proposed by the G7, which allows MNE groups whose ultimate parent entity is in the U.S. to be exempt from the two international rules of Pillar Two.

1. GloBE Rules – Brief Overview

To understand the criticisms of the UTPR, it is necessary to situate the rule within the broader Pillar Two framework. This section provides an overview of the principal Pillar Two rules and discusses the evolution of the UTPR within that regime.

The Pillar Two regime is composed of three main rules: a Qualified Domestic Minimum Top-Up Tax (QDMTT), and two international rules, namely the Income Inclusion Rule (IIR) and the Undertaxed Profits Rule (UTPR).[4] These rules interact in a coordinated manner to allocate taxing rights across different levels of an MNE group, with the objective of ensuring that a top-up tax is collected whenever the effective tax rate applicable to entities located in a given jurisdiction falls below the 15 percent minimum rate. The top-up tax represents the difference between the taxes paid and the tax computed at that minimum rate under the GloBE rules.

1. Qualified Domestic Minimum Top-up Tax (QDMTT)

This rule applies on a national level. It takes priority over the other two rules, which apply on an international level, to preserve sovereignty in matters of taxation.[5] A QDMTT grants a taxing right to the jurisdiction in which the low-taxed entity is located (that is, an entity subject to an effective tax rate below 15 percent), thereby allowing that jurisdiction to collect its own top-up tax to bring the effective tax rate up to 15 percent. There is therefore a clear nexus between the jurisdiction with a taxing right and the income being taxed, based on the residence of the entity in which the profits are earned.

Where the QDMTT does not fully eliminate the top-up tax, or where the relevant residence jurisdiction does not implement a QDMTT, the two international rules described below may apply.

2. The Income Inclusion Rule (IIR)

The IIR is the main international rule. The IIR grants a taxing right to the jurisdiction in which the ultimate parent entity (UPE) of the MNE group is located, on the profits of constituent entities located in low-taxed jurisdictions. The IIR follows a top-down approach: where the UPE is located in a jurisdiction that has not implemented an IIR, the taxing right is granted to the next entity in the ownership chain that is located in a jurisdiction which applies the IIR.[6] There is therefore a clear nexus between the jurisdiction with a taxing right and the income being taxed, based on a direct or indirect ownership link between the entity on which the tax is imposed and the entity in which the profits are earned.

3. The UTPR

The UTPR is the second international rule. It is designed as a backstop mechanism to the IIR. The UTPR applies where the top-up tax has not been collected under the IIR, for example because the UPE jurisdiction (and the jurisdiction of any intermediate parent entity) has not implemented the Pillar Two rules. In such circumstances, the taxing right is allocated among the jurisdictions in which constituent entities of the group are located, provided that

[4] In addition to these rules, Pillar Two includes a treaty-based rule, the Subject to Tax Rule (STTR), which allows source countries to impose a minimum tax rate of 9% on certain categories of intragroup payments that are subject to low levels of taxation in the State of the payee, such as interest and royalties. The purpose of this rule is to provide additional protection for developing countries against the erosion of their tax base. The STTR takes priority over the other Pillar Two rules. Accordingly, any withholding tax imposed under the STTR is considered before the application of the other Pillar Two rules. For further discussion of this rule, see M.-M. Lefebvre and L. Latulippe, supra note 2.

[5] See M.-M. Lefebvre and L. Latulippe, supra note 2.

[6] *Id.*

those jurisdictions have implemented a UTPR. The top-up tax that is allocated among those jurisdictions is by reference to a substance-based allocation key, based on the proportion of net tangible assets and total employees located in a given jurisdiction relative to the total employees and net tangible assets situated in jurisdictions applying the UTPR.[7] Accordingly, the top-up tax attributable to profits earned in low-taxed jurisdictions is allocated to jurisdictions where the group carries on economic activities. Where the UTPR applies, constituent entities liable for the top-up tax under the rule are subject to a denial of deduction for otherwise deductible expenses or are subject to an equivalent adjustment under the domestic tax regime of the applicable jurisdiction.[8]

The UTPR differs from the IIR and QDMTT in that it does not allocate taxing rights on the basis of the group's ownership structure or traditional nexus factors such as the taxpayer's residence or the source of income. Rather, it relies on group-wide indicators of economic substance, namely payroll and tangible assets, to determine the allocation of taxing rights. As a result, a jurisdiction may collect top-up tax from local entities in respect of profits earned by other group entities located in foreign jurisdictions, notwithstanding the absence of a traditional nexus between the jurisdiction imposing the tax and the income subject to that tax.

This was not always the case, as the initial version of the rule, then known as the Undertaxed Payments Rule, allocated the top-up tax on the basis of intragroup payments.[9] As explained in the *Report on Pillar Two Blueprint*[10], the objective of the UTPR was then "to protect jurisdictions against base erosion through intra-group payments to low-taxed entities while ensuring that, in aggregate, the application of the GloBE rules does not result in the MNE Group being subject to tax on its income in those jurisdictions where it operates in excess of the minimum rate".[11]

In the original version of the rule, the UTPR applied only in situations where a UTPR taxpayer made deductible intragroup payments to a low-taxed constituent entity or other entities within the group. The top-up tax on income earned by the low-taxed entity was first to be allocated to group entities in UTPR jurisdictions that made direct deductible payments to the low-taxed entity, in proportion to the total deductible payments made to that entity by all UTPR taxpayers. If the entire top-up tax was not fully allocated, the remainder was allocated proportionally based on net intra-group expenditure.[12]

The rule was subsequently modified to take its current form, as outlined in the GloBE Rules, which no longer relies on the existence of intra-group payments from a UTPR jurisdiction as a condition for allocating taxing rights over income earned by low-taxed constituent entities in other jurisdictions.[13]

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7 *Id.*

8 *Id.*

9 This rule was part of the initial version of the proposed rules, published by the OECD in 2020. See OECD (2020), Tax Challenges Arising from Digitalisation – Report on Pillar Two Blueprint: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/abb4c3d1-en. ("*Report on Pillar Two Blueprint*")

10 *Id.*

11 *Report on Pillar Two Blueprint*, supra note 9, paragraph 457.

12 See Report on Pillar Two Blueprint, supra note 9, paragraph 477: "The second allocation key fulfils part of the UTPR's function in providing a backstop to the IIR and seeks to neutralize any advantage an MNE Group may obtain from structuring around the first allocation key. A rule that allocated the top-up tax only in proportion to direct payments made by UTPR Taxpayers could be circumvented by routing intercompany transactions through an entity that is not subject to the UTPR so that there are no direct payments made to any low-tax Constituent Entity from a UTPR Taxpayer. The second allocation key provides a relatively simple way to address these conduit structures by allocating a proportionate share of the top-up tax of a low tax Constituent Entity against a Constituent Entity's net related party expenditure without the need to trace the destination of all the payments made by UTPR Taxpayers within the MNE Group."

13 For a discussion on the initial Undertaxed Payments Rule and the modified Undertaxed Profits Rule, see Jinyan Li, "Pillar 2 Undertaxed Payments Rule Departs From International Consensus," *Tax Notes Int'l*, Mar. 21, 2022, p. 1401.

It is following this development that criticisms regarding the potentially extraterritorial and discriminatory nature of the UTPR have primarily emerged.

2. Main criticisms of the UTPR

The UTPR has raised significant concerns regarding its compatibility with fundamental principles of international tax law. These critiques generally fall into two main categories: first, the extent to which the UTPR departs from established nexus principles under customary international law and tax treaty provisions, potentially resulting in taxation that is extraterritorial in nature; and second, its possible discriminatory effects under the non-discrimination provisions included in tax treaties.[14]

These two issues are examined in the following section.

2.1. Extraterritorial nature of the UTPR

Extraterritorial taxation – legislative background

The debate surrounding the extraterritorial nature of the UTPR is grounded in two legal frameworks: customary international law and treaty law. In general terms, customary international law consists of unwritten international rules that derive from a general practice accepted as law (*opinio* juris)[15], whereas treaty law, in tax matters, stems from bilateral tax treaties formally concluded by States.[16]

Under principles established by these two legal frameworks, a tax is considered extraterritorial when there is no sufficient link between the income taxed and the state of residence of the entity in which the UTPR is collected. In general, these principles limit a jurisdiction's ability to tax profits earned by a foreign entity in the absence of such a sufficient link.

Under customary international law, the taxpayer's residence and the source of income are generally accepted as sufficient connecting factors for the exercise of taxing jurisdiction, thereby reflecting the *opinio juris* concerning the allocation of taxing rights among jurisdictions. Residence typically allows a jurisdiction to subject a taxpayer to taxation on a worldwide basis, whereas the sourcing of income within a given jurisdiction generally allows that

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[14] For arguments that the UTPR is largely compatible with international law and/or bilateral tax treaties, see Allison Christians and Tarcísio Diniz Magalhães, "Undertaxed Profits and the Use-It-or-Lose-It Principle," *Tax Notes Int'l*, Nov. 7, 2022, p. 705; Tarcísio Diniz Magalhães, "Give Us the Law: Responses and Challenges to UTPR Resisters," *Tax Notes Int'l*, Dec. 5, 2022, p. 1257; Tarcísio Diniz Magalhães and Allison Christians, "UTPR, Normative Principles, and the Law: A Rejoinder to Nikolakakis and Li," *Tax Notes Int'l*, Feb. 27, 2023, p. 1137; Reuven S. Avi-Yonah, "Is the UTPR Extraterritorial or Discriminatory?", *Tax Notes Int'l*, Mar. 17, 2025, p. 177; Allison Christians and Stephen E. Shay, "The Consistency of Pillar 2 UTPR With U.S. Bilateral Tax Treaties," *Tax Notes Int'l*, Jan. 23, 2023, p. 445.
For arguments that the UTPR is largely incompatible with international law and/or bilateral tax treaties, see Jefferson VanderWolk, "The UTPR Disregards the Need for Nexus," *Tax Notes Int'l*, Oct. 31, 2022, p. 545; Robert Goulder, "Confessions of a UTPR Skeptic," *Tax Notes Int'l*, Nov. 14, 2022, p. 907; Lucas de Lima Carvalho, "The UTPR: A Symptom of Malleable Sovereignty?"; Angelo Nikolakakis and Jinyan Li, "UTPR: Unprecedented (and Unprincipled?) Tax Policy Response," *Tax Notes Int'l*, Feb. 6, 2023, p. 743; Angelo Nikolakakis, "Yes, the UTPR Is Extraterritorial and Discriminatory!", *Tax Notes Int'l*, Apr. 21, 2025, p. 393; Li, supra note 13.
See also Sjoerd Douma and al., "The UTPR and International Law: Analysis From Three Angles," *Tax Notes Int'l*, May 15, 2023, p. 857 for an overview of the main arguments on both sides of the debate.

[15] "Customary international law is comprised of two elements: (1) consistent and general international practice by states, and (2) a subjective acceptance of the practice as law by the international community (*opinio juris*)." Canada, Department of Justice. "Polygyny and Canada's Obligations under International Human Rights Law." Government of Canada, 2006. Note 325. https://www.justice.gc.ca/fra/pr-rp/autre-other/poly/notes.html#edn325.

[16] The existence of customary law in international taxation has been the subject of debate. See, for example Avi-Yonah, R. S. (2020). "Chapter 1: Does customary international tax law exist?". In Research Handbook on International Taxation. Cheltenham, UK: Edward Elgar Publishing. Retrieved Jun 12, 2026, from https://doi.org/10.4337/9781788975377.00011 et Broekhuijsen, Dirk and Mosquera Valderrama, Irma Johanna, Revisiting the Case of Customary International Tax Law (April 8, 2021). International Community Law Review 23 (2021) 79–103, Available at SSRN: https://ssrn.com/abstract=3822474

jurisdiction to tax income arising from its territory.[17] The central question is therefore whether taxation under the UTPR, which provides for the allocation of a taxing right to a constituent entity on profits earned by other entities in other jurisdictions, constitutes a general practice accepted as law. The literature appears to suggest that there is no clear *opinio juris* justifying a taxing right as provided for by the UTPR.[18]

Tax treaties impose additional restrictions on the allocation of taxing rights between contracting states. In the context of taxation under the UTPR, two treaty provisions are particularly relevant to the discussion. First, the existence of a permanent establishment generally constitutes the required nexus for the allocation of taxing rights with respect to business profits. More specifically, a jurisdiction may only tax the profits of a non-resident entity if that entity carries on business in that jurisdiction through a permanent establishment, and only to the extent that such profits are attributable to that permanent establishment.[19] Second, tax treaties generally prohibit the taxation of a non-resident company's undistributed profits, as well as the taxation of dividends paid by such a non-resident company where they are not paid to a resident of the relevant state (or are not attributable to a permanent establishment situated therein)[20]. The UTPR would be incompatible with these two provisions, insofar as it constitutes a tax on the profits of a non-resident entity where those profits are not attributable to a permanent establishment situated in the jurisdiction where the tax is collected, and it results in the taxation of either undistributed profits of the non-resident entity, or profits distributed to an entity resident in a jurisdiction other than the UTPR jurisdiction.[21]

On this basis, the UTPR is considered extraterritorial by some, as it is incompatible with traditional nexus principles under customary international law or tax treaties, in that it grants a jurisdiction taxing rights over profits earned by foreign entities in foreign jurisdictions, without the existence of a permanent establishment of the foreign entity in the UTPR jurisdiction or other sufficient link, to justify such taxation under these principles.[22]

Legitimacy of the UTPR – Main lines of Argument

Beyond the debate on the extraterritorial nature of the UTPR, which is grounded in the principles of customary international law and treaty law, discussions also concern the very justification for such a form of tax jurisdiction within the international tax regime. In this respect, the debate may broadly be summarized along three overlapping lines of argument:

[17] See Hongler et al., "UTPR — Potential Conflicts With International Law?" *Tax Notes Int'l*, July 10, 2023, p. 141.

[18] Although decisions made within international organizations may, in certain circumstances, serve as a sign of the existence of an *opinio juris*, the extent to which such an effect may arise from a political agreement under the Inclusive Framework remains contested. Moreover, the public opposition of certain jurisdictions to the UTPR may also constitute significant evidence weighing against the existence of an *opinio juris*. See Hongler et al., supra note 17.

[19] Taxable profits are determined in accordance with the arm's length principle, which seeks to align the allocation of taxing rights with the place of value creation. These principles are generally contained in Articles 5, 7 and 9 of tax treaties based on the OECD Model Tax Convention on Income and Capital (thereafter, the "OECD Model").

[20] Article 10(5) of the OECD Model. Although discussions regarding the compatibility of the UTPR with tax treaties have primarily focused on the provisions governing business profits, undistributed profits, and dividends, tax treaties also allocate taxing rights with respect to other categories of income, including interest and royalties. They generally provide for the allocation of taxing rights between the source state (which usually imposes a withholding tax) and the beneficiary's state of residence (see, for example, Articles 11 and 12 of the OECD Model Tax Convention).

[21] See Craig Elliffe, The Quiet Evolution in International Tax: Domestic Law and Double Taxation, World Tax Journal, 6 November 2024, note 125, https://doi.org/10.59403/1ksp3gb

[22] See Hongler et al., supra note 17 and Douma et al., supra note 14.

1. Comparison with analogous regimes

A central question within the debate is whether the UTPR may be justified by assimilating it to other rules in the international tax system, particularly those that provide for the taxation of income earned abroad, even in the absence of a permanent establishment in the jurisdiction imposing the tax. Analogies are drawn between the UTPR and certain provisions of the U.S. tax regime[23], as well as controlled foreign corporation (CFC) rules adopted in several jurisdictions, including Canada's Foreign Accrual Property Income (FAPI) regime. Broadly speaking, these rules aim to attribute to a parent entity certain foreign income earned by controlled foreign subsidiaries, to prevent tax deferral through the use of international corporate structures.

According to some authors, these regimes are widely accepted in international tax law and are not regarded as forms of extraterritorial taxation, despite effectively allowing the taxation of foreign-source income that is not attributable to a permanent establishment in the jurisdiction where it is taxed.[24] On this basis, the UTPR would be legitimate, as it would follow a comparable logic.

This argument is contested by other authors, who note that these regimes are generally based on a hierarchical structure that presupposes the existence of a control relationship between the parent company and the foreign entities whose profits are re-attributed and taxed at the parent level. Under this view, these regimes rest on the idea that the underlying income can, from an economic and functional perspective, be regarded as belonging to the shareholder.[25] Accordingly, the taxation of a parent entity on the undistributed profits of a subsidiary cannot be compared to the taxation of a company on the profits of a shareholder or a sister entity, insofar as, in the latter case, the taxed entity has no economic entitlement to the underlying income. An analogy between the UTPR and these regimes would therefore not be justified, as the underlying rationale for both is not comparable.[26]

2. The Unitary Enterprise Principle

Another line of argument considers whether the UTPR may be justified through the unitary enterprise principle, according to which an MNE group must be treated as a single economic unit, as opposed to a collection of legally distinct subsidiaries.

Under this approach, taxation under the UTPR would be legitimate insofar as each jurisdiction in which a constituent entity of a MNE group is located maintains, by virtue of its membership of the group, an economic link with the group's overall profits. According to this view, once an entity of the group is located in a jurisdiction, that jurisdiction maintains an economic link with the group's profits, thereby justifying that a constituent entity may collect a tax calculated on the basis of income generated by another entity elsewhere within the group. The existence of common ownership between the group entities, together with the centralized management of their

[23] Notably, the Subpart F rules and the Net Tested Income regime (formerly known as Global Intangible Low-Taxed Income, GILTI), which function as anti-deferral frameworks and aim to tax certain income earned through foreign corporations by attributing such income directly to the U.S. shareholder.

[24] See Avi-Yonah, supra note 14; Christians and Tarcísio Diniz Magalhães, supra note 14.

[25] See Nikolakakis, supra note 14. He also notes that CFC taxes also aim to target situations where income has been "diverted" through base-eroding payments and the use of international corporate structures. In that sense, an Undertaxed *Payments* Rule, as initially proposed, would have shared similar objectives as CFC taxes.

[26] See Douma et al, supra note 14, p. 872: "We also do not share the view that the UTPR might be likened to CFC rules, because they have quite different underlying concepts. CFC rules follow a top-down approach, typically require some form of control, and are conceptually based on indirect economic entitlement so that they might be viewed as leading to a direct tax on indirect income, none of which is true for the UTPR. Further, and unlike CFC rules, the UTPR is neither about traditional anti-avoidance or income shifting nor about base erosion (as could have been argued for a "payments rule")."

operations, would be sufficient to establish a nexus justifying the allocation of taxing rights provided for under the UTPR, even in the absence of direct or indirect control between the UTPR entity and the low-taxed profits.[27]

However, the very recognition of the unitary enterprise principle as an accepted principle of customary international law is contested. According to some authors, this principle is difficult to reconcile with other, established and accepted, principles of customary international law, particularly those with respect to territoriality and non-interference, which traditionally govern tax jurisdiction and the exercise of States' tax sovereignty.[28]

Furthermore, some authors argue that, even if the unitary enterprise principle was conceptually justified and accepted, it would not serve to justify taxation under the UTPR. In this view, arguments regarding the extraterritorial nature of the UTPR do not rest on the fact that it departs from the legal fictional notion of the separate legal entity (just like CFC taxes do), but rather that it "displaces the principle of aligning the location of taxation with the location of value creation".[29]

In this regard, a fundamental distinction must be drawn between CFC regimes and the UTPR. While CFC regimes may be justified on the basis that they attribute to a shareholder income earned by a foreign subsidiary, on the premise that such income is indirectly reflected in the value of the shareholder's interest, critics of the UTPR argue that it rests on a different rationale.[30] The UTPR does not operate as a consolidation regime aimed at attributing to one constituent entity the income of another constituent entity on the basis of ownership or control. Rather, it

[27] See Christians and Magalhães, supra note 14: "[…] this perspective ignores the single economic unit that the entities form by virtue of being under the common control of Company A. If all the entities were within one jurisdiction, consolidating their income and making each jointly and severally liable for taxes owed by any one of them would be uncontroversial. Further, it is just as accurate to say that what the UTPR shifts is not Company B's income to Company C at all, but rather Country A's unexercised taxing right to Country C. The taxing right in question pertains to profits that are under Company A's full control, but Company A's control of both Company B and Company C means that, economically, all the entities' respective tax attributes pertain to and affect the entire group. With the support of 137 countries, the new global tax framework largely superseded the consensus that arose from deliberations among a few key players in 1920s and 1930s, when it was generally thought that physical connection was essential to establish nexus. The 2021 multi-country consensus for a global (and digitalized) economy is that any country that hosts an MNE member has a sufficient link with the group's income and is therefore entitled to jump in to fill fiscal voids left by other countries"

[28] See Douma et al., supra note 14: "common ownership or control between the UTPR taxpayer and the LTCEs is arguably a plausible justification for the UTPR jurisdiction's exercise of tax jurisdiction. However, even if this is accepted as a link that complies with the principle of territoriality — which at a minimum is an unsettled issue — it should also satisfy the principle of noninterference. Considering the principle of noninterference, in order for the UTPR to apply, the jurisdiction in which the LTCE is located and the jurisdictions in which the parent entities are located will have decided to abstain from introducing, and therefore subjecting their own nationals or residents to, rules similar to the OECD model rules. These jurisdictions may regard the application of the UTPR by the UTPR jurisdiction as an impermissible interference in their sovereignty because the UTPR effectively leads to taxation of income generated by one of their own nationals or residents, even if these taxpayers are not nationals or residents of the UTPR jurisdiction and the taxed income is not being generated from sources in the UTPR jurisdiction. Therefore, the legitimacy of the UTPR would depend on the extent to which the jurisdictions in which the LTCEs are located would be prepared to accept the UTPR jurisdiction's extended exercise of tax jurisdiction in a way that goes beyond the current status quo".

[29] As provided notably by Article 9 of tax treaties based on the OECD Model. See Nikolakakis and Li, supra, note 14: "CFC regimes and the UTPR each have a completely different relationship with the separate-entity principle. CFC rules effectively "look through" a low-tier corporation's separate-entity status to determine the indirect passive and diverted income of its shareholders. […] In that sense, the shareholder can be considered subject to direct taxation on its indirect income. That simply cannot be said in the context of the UTPR. The problem with the UTPR is not that it displaces the legal fiction of the separate legal entity, like CFC taxes do; the problem is that the UTPR displaces the principle of aligning the location of taxation with the location of value creation."

[30] *Id*.

functions as a mechanism designed to reallocate taxing rights over low-taxed profits among jurisdictions, without the existence of a sufficient (or genuine) link between the taxing jurisdictions and those profits.[31]

In other words, the main issue does not lie in the recognition of the MNE group as a collection of single economic entities, but in the legitimacy of attributing taxing jurisdiction to a country that does not maintain a sufficient link with the income it seeks to impose, or the place of value creation.[32]

3. The Single Tax Principle

Under this principle, income earned by an entity should be subject to taxation at least once, somewhere. Accordingly, where the jurisdiction holding the primary taxing right chooses not to tax that income at a "sufficient" level, another jurisdiction may step in to impose a top-up tax.

Some authors consider that this principle alone is sufficient to justify extraterritorial taxation under the UTPR.[33] Others, however, argue that it cannot, on its own, provide such a justification, insofar as such an interpretation would undermine core principles of the international tax system, which require a sufficient nexus between the taxing jurisdiction and the income subject to tax.[34]

Moreover, others point out that the principle does not establish any clear threshold or tax rate for determining when income is insufficiently taxed, which makes it difficult to justify the imposition of a top-up tax designed to reach an arguably arbitrary minimum rate of 15%.[35]

2.2. Discriminatory taxation under the UTPR

The UTPR is also criticized with respect to its compatibility with the non-discrimination clause contained in many bilateral tax treaties.[36] This provision, generally found in Article 24 of the OECD Model, is designed to prevent tax discrimination in situations where differences in tax treatment arise solely on the basis of one of the specific grounds enumerated in the article.[37] Some authors argue that taxation under the UTPR would be prohibited on the basis of certain clauses contained in the non-discrimination article, specifically the ownership nondiscrimination clause and the permanent establishment nondiscrimination clause.[38]

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[31] *Id*.

[32] See Nikolakakis and Li, supra note 14: "To suggest that any country that hosts an MNE member has a sufficient link with the group's income to justify a UTPR goes well beyond any reasonable attempt to link the location of taxation with the location of value creation. Indeed, assuming that appropriate transfer pricing practices have been observed, there is no more functional connection between the UTPR jurisdiction and the foreign income than there would be if the nonresident's only connection to that jurisdiction were the holding of a non-interest-bearing government bond issued by that jurisdiction, or even no connection at all. To rely on the presence of a CE located within the UTPR jurisdiction as a justification for taxing the foreign-source income of a nonresident is nothing but a sophistic attempt to dress up an abject lack of functional connection in the clothing of substantive nexus."

[33] See Avi-Yonah, supra note 14 "The [Single Tax Principle or STP] requires that MNEs be taxed at an adequate rate (15 percent) and that if the residence country of the MNE does not tax it adequately, then any source country should tax it instead. The UTPR must apply to the entire MNE to satisfy the STP". See also Christians and Magalhães, supra note 14.

[34] Nikolakakis, supra note 14.

[35] *Id*.

[36] Generally included in article 24 of tax treaties based on the OECD Model.

[37] See paragraph 3 of the commentary on article 24 of the OECD Model: "The various provisions of Article 24 prevent differences in tax treatment that are solely based on certain specific grounds (e.g. nationality, in the case of paragraph 1).Thus, for these paragraphs to apply, other relevant aspects must be the same. The various provisions of Article 24 use different wording to achieve that result (e.g. "in the same circumstances" in paragraphs 1 and 2 carrying on the same activities" in paragraph 3; "similar enterprises" in paragraph 5)."

[38] Generally, these provisions are respectively included in articles 24(5) and 24(3) of the OECD Model convention.

Ownership Nondiscrimination Clause

The ownership nondiscrimination clause provides that enterprises carried on by residents of a contracting state, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other contracting state, shall not be subjected in the first-mentioned state to any taxation that is "other or more burdensome" than the taxation to which other similar enterprises whose capital is held by residents of the first-mentioned state (or, depending on the model on which the treaty is based, by residents of a third state) are subject to.

According to some, the UTPR would be incompatible with the ownership nondiscrimination provision, as it effectively only applies to entities held by non-resident parent entities.[39] However, this conclusion is challenged by certain authors, who argue that any difference in tax treatment resulting from the application of the UTPR would not rest on a criterion of foreign ownership, but rather on whether an entity belongs to a MNE group whose ultimate parent entity's jurisdiction applies the IIR or not.[40] Taxation under the UTPR would therefore not be discriminatory under this provision, as any difference in tax treatment would not be based solely on foreign ownership.

It should be noted that this provision applies only to enterprises that are in "similar circumstances". In this regard, some argue that a constituent entity of an MNE group owned by a parent entity located in a jurisdiction that does not apply the Pillar Two rules is not in similar circumstances to a constituent entity of an MNE group owned by a parent entity located in a jurisdiction that does apply such rules.[41] On that basis, the UTPR would not contravene the ownership nondiscrimination provision.

Furthermore, some argue that the UTPR does not impose "more burdensome" taxation to UTPR entities, since jurisdictions that have implemented the UTPR generally apply a corporate tax rate above the 15% minimum rate. These jurisdictions also subject their own entities held locally to this minimum rate through the IIR.[42] Other authors contend, however, that the issue does lie in the applicable tax rate, but rather the tax base. Indeed, it is generally agreed upon that UTPR jurisdictions would not subject their own locally owned entities to tax on income that is not attributable to them under traditional nexus principles, such as residence or source. From this perspective, entities subject to taxation under the UTPR would be subject to a broader tax base, solely on the basis of their ownership by a foreign entity established in a jurisdiction that does not apply the IIR, which would make the UTPR incompatible with the ownership non-discrimination clause.[43]

Permanent establishment nondiscrimination clause

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39 Jinyan Li, "The Pillar 2 Undertaxed Payments Rule Departs From International Consensus and Tax Treaties," *Tax Notes Int'l*, Mar. 21, 2022, p. 1401

40 See Christians and Shay, supra note 14, and Masuda, Takato, The Compatibility of the UTPR and Japan's Tax Treaties (May 20, 2024). Tax Notes International, Volume 114, No. 8. pp. 1127-1145, p. 1127.

41 Christians and Shay, supra note 14.

42 Avi-Yonah, supra note 14.

43 See Nikolakakis, supra note 13: "The domestic rate is entirely beside the point. The point is not the rate — it is the base. The fact that UTPR jurisdictions may tax their own parent companies on their indirect foreign profits (in other words, a legitimate assertion of residence nexus) or may tax profits properly attributable to PEs located therein (a legitimate assertion of source nexus) at a rate that equals or exceeds the UTPR rate is irrelevant because the taxation of their own parent companies on their indirect foreign profits, or the taxation of profits properly attributable to PEs located therein, is not the taxation of profits that have neither residence nor source nexus to those jurisdictions. UTPR jurisdictions do not ordinarily tax their own taxpayers on other income, at any rate. The only reason UTPR taxpayers are exposed to this tax is foreign ownership — or rather, ownership by a foreign entity based in an IIR nonparticipating jurisdiction"

The permanent establishment non-discrimination clause provides that a contracting state may not impose taxation on a permanent establishment of an enterprise resident in the other contracting state in a way that is less favourable than the taxation levied on enterprises resident of the first-mentioned state carrying on the same activities.

According to some authors, the UTPR would be incompatible with this provision since a purely domestic enterprise would not be subject to the UTPR, whereas a permanent establishment carried on by a non-resident may be subject to the rule.[44] This argument rests on an interpretation whereby the object of comparison should be a domestic enterprise carrying on similar activities, rather than a subsidiary held by a non-resident entity.[45]

Other authors, however, reject this interpretation, arguing that the comparison should instead be made between a permanent establishment carried on by a non-resident entity and a subsidiary held by a non-resident entity. In that situation, since both the permanent establishment and the subsidiary could be subject to the UTPR, the latter would not contravene the non-discrimination clause relating to permanent establishments.[46]

Some authors further note that taxation under the UTPR would not necessarily be "less favorable," as required by the provision. The fact that a non-resident is subject, with respect to its permanent establishment located in a UTPR jurisdiction, to different tax rules than those applicable to a purely domestic enterprise would not, in itself, be sufficient to establish discrimination. Under this approach, there would be no less favorable treatment insofar as the tax under the UTPR to which a non-resident would be subject on its permanent establishment would not exceed that which could be borne by a domestic entity when it is itself subject to the IIR.[47]

2.3. Preliminary notions – Tax treaties

As mentioned above, the UTPR raises several criticisms regarding its extraterritorial nature. These criticisms rest on two legal foundations, namely customary international law and treaty law. The arguments regarding the incompatibility of the UTPR with tax treaties are based on the assumption that tax treaties may apply to limit taxation under the UTPR. However, this assumption is itself contested. In this regard, the discussions focus on the one hand on the scope of application of tax treaties, and on the other hand on the effect of the saving clause contained in most of these treaties.

Scope of Application of Tax Treaties

A preliminary issue in the debate over the compatibility of the UTPR with tax treaties is whether the top-up tax imposed under the UTPR qualifies as a "covered tax" for treaty purposes. Tax treaties typically contain a provision defining the scope of application of the treaty, generally by listing the types of taxes covered by the treaty.[48] This generally includes taxes on income and on capital in force at the time of signature of the treaty. The provision also provides that taxes that are "identical or substantially similar" to those specifically enumerated also constitute covered taxes. The question is therefore whether the UTPR constitutes a tax that is "identical or substantially similar" to those identified.

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44 See Chand, Vikram et Turina, Alessandro and Romanovska, Kinga, Tax Treaty Obstacles in Implementing the Pillar Two Global Minimum Tax Rules and a Possible Solution for Eliminating the various challenges (November 19, 2021). Available at SSRN: https://ssrn.com/abstract=3967198 or [http://dx.doi.org/10.2139/ssrn.3967198 p . 30](http://dx.doi.org/10.2139/ssrn.3967198). See also Masuda, supra note 40, p.1140

45 Masuda, supra note 40, p. 1139 et 1140

46 Vikram et al., supra note 44, and Masuda, supra note 40, p. 1139 et 1140.

47 See the example illustrated in Masuda, supra note 40, p. 1141.

48 Article 2 of the OECD Model. It is important to note that Article 24 of the Model Convention, which contains the non-discrimination provision, generally also applies to taxes that are not covered by the treaty.

According to one view, the top-up tax should be regarded as a covered tax since, regardless of the mechanism through which it is collected (i.e., whether through the IIR, the UTPR, or a QDMTT), it is ultimately a tax based on income, designed to "top up" the amount of corporate income tax paid by low-taxed entities. As such, it should be treated as a covered tax in the same manner as the income tax that it is designed to supplement.[49]

Conversely, some authors argue that the UTPR more closely resembles an excise tax imposed as a result of an entity's status as a member of an MNE group, insofar as the tax liability arising under the UTPR is not linked to the UTPR entity's income, nor to any attributes other than those used as allocation factors (namely, payroll and tangible assets).[50] Others consider that the UTPR is more akin to a Pigouvian tax, insofar as it is designed to eliminate targeted behaviour, namely the decision by certain jurisdictions to not implement an IIR or a QDMTT. Based on this view, the UTPR may be perceived more as an economic sanction intended to compel jurisdictions to adopt an IIR or QDMTT.[51]

The Saving Clause

Certain tax treaties, notably those concluded by the United States, contain a provision which provides that no other provision of the treaty, subject to certain expressly enumerated exceptions, shall be construed as preventing the right of a contracting state to tax the income of its own residents.[52] This provision, commonly referred to as the "saving clause," thus allows a state to "preserve" its taxing right with respect to its own residents. Consequently, for a rule such as the UTPR to be considered incompatible with a tax treaty, it must be both in conflict with one of the provisions of the treaty and not protected by the saving clause.[53]

The debate primarily revolves around how the saving clause should be interpreted, and whether it can be relied upon to justify taxation under the UTPR or not. Some authors favour a "restrictive interpretation", under which the saving clause would apply only to tax measures that are considered consistent with the objectives of the tax treaty itself. On this view, the clause must be interpreted as a way to ensure that tax treaties are not construed as preventing the application of domestic anti-abuse rules designed to combat tax avoidance, such as CFC rules. It would therefore aim to preserve a form of "top-down" taxing right for states, allowing them to tax profits earned by foreign subsidiaries in which they hold an economic interest.[54] In this sense, as the UTPR is not considered an anti-abuse rule, such a restrictive reading of the saving clause would not provide justification for the UTPR.[55]

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49 See Douma et al., supra note 14, p. 869: "irrespective of the formal aspects of how the tax is collected, the UTPR top-up tax is de facto a tax on the foreign income of a foreign LTCE (or, to be more precise, a substance-based share of a potentially multijurisdictional pool of foreign top-up taxes arising because of the low profit taxation of foreign MNE group entities) charged to the UTPR taxpayer.".

50 Christians and Shay, supra note 14.

51 Nikolakakis and Li, supra note 14.

52 This provision is generally found in Article 1(3) of tax treaties based on the OECD Model. Of course, the UTPR is not among the exceptions provided for, since applicable tax treaties were signed before the implementation of the UTPR.

53 See Masuda, supra note 40. As discussed above, the UTPR is subject to several criticisms regarding its compatibility with various provisions of tax treaties, notably Articles 5, 7, 9, and 10(5) of treaties based on the OECD Model.

54 See Douma et al., supra note 14: "A teleological interpretation of article 1(3) of the OECD model convention leads to the conclusion that it is aimed at providing the "real" or "economic" residence jurisdiction, in a top-down approach, with a taxing right on income earned in another jurisdiction. This is clearly evidenced by the fact that neither article 7(1) nor article 9(1) of the OECD model convention is listed among the exceptions from the saving clause."

55 See comments by Maarten F. de Wilde, as cited in Douma et al., supra note 14:
"Indeed, a different reading would mean that a saving clause would enable states 'to subject any taxable group entity to corporate tax on effectively the worldwide profits of the multinational firm involved … on any arbitrarily founded taxable basis … without any restriction under the tax treaties concluded.'"

Others advocate a broader interpretation, under which the scope of the saving clause should not be limited to measures aimed at combating tax avoidance. Rather, this clause would seek to prevent a tax treaty from restricting residence-based taxation "in an unintended way.[56]

Furthermore, some point out that the debate surrounding the saving clause is inconsistent with the other criticisms leveled against the UTPR, insofar as such a clause is designed to preserve a State's right to tax its own residents.[57] Thus, if the UTPR is considered to target the income of non-residents, the saving clause would be inapplicable. Conversely, if the UTPR is considered to constitute the taxation by a state of its own residents, the saving clause could come into play, but it would be necessary to demonstrate incompatibility with another provision of the tax treaty in order to invoke the saving clause. In that case, if the UTPR is viewed as a taxation of a resident of the jurisdiction implementing the UTPR, it would be difficult to reconcile this interpretation with the criticisms regarding the extraterritorial nature of the UTPR.[58]

[56] See Masuda, supra note 40: "according to a piece believed to have inspired the OECD to insert the saving clause into its model, when the saving clause in the U.S. model "is read together with these exceptions, it becomes clear that the true purpose of the saving clause, as regards residence taxation, is to prevent the treaty from restricting residence taxation in an unintended way" (emphasis in original). [...] These explanations suggest that the saving clause is guided by the principle that a tax treaty should limit the domestic taxation of resident taxpayers "only in very rare circumstances" and it would be fair to say that the scope of the saving clause "is not limited to situations that raise tax avoidance concerns.".

[57] It is generally agreed that such a clause would not apply where the entity located in the jurisdiction implementing the UTPR is a permanent establishment rather than a resident entity. See Nikolakakis and Li, supra note 14.

[58] The criticisms regarding the discriminatory aspect of the UTPR remain relevant, since the non-discrimination clause applies regardless of the saving clause. See Masuda, supra note 40.

3. Underlying causes of the debate and proposed solutions

The UTPR creates tensions with tax treaties and certain principles of customary international law due to the novel and complex challenges it raises in the effort to adapt the international tax system to the realities of an increasingly globalized and digitalized economy. As raised by many authors, these tensions stem from the fact that the Pillar Two regime pursues objectives that are fundamentally different from those traditionally underlying tax treaties.[59]

Historically, tax treaties were developed to avoid double taxation and to allocate taxing rights between states based on connecting factors considered real and genuine, such as residence and source, and in accordance with the arm's length principle (under which profits should be taxed where value is created). The Pillar Two rules, and particularly the UTPR, are primarily aimed at limiting international tax competition through the imposition of a minimum tax rate.[60]

The coexistence of these distinct objectives therefore necessarily gives rise to friction between the UTPR and certain traditional principles of international tax law, raising important questions as to the compatibility of the UTPR with these principles. These debates generally seek to interpret the operation of the UTPR through existing concepts of the international tax regime, such as traditional nexus principles based on residence or source, the value creation principle, or, conversely, to propose new analytical frameworks to justify the legitimacy of the UTPR. However, as Allison Christians and Tarcísio Diniz Magalhães point out[61], none of these frameworks constitutes, in itself, a norm of international law with the authority to create tax obligations (or legal prohibitions) for all states. Rather, these principles act as analytical tools enabling the UTPR (along with the other Pillar Two rules) to be understood and contextualized within the international tax system.

Several solutions have been proposed in response to the criticisms leveled against the UTPR. Notably, Chidozie Chukwudumogu proposes adopting the UTPR under a separate tax regime based on a formulary apportionment approach, implementing it as a civil penalty rather than as a tax, or limiting its application to payments made by a resident to a non-resident.[62]

Other authors also propose the adoption of a multilateral instrument expressly aimed at coordinating the application of the UTPR with existing tax treaties.[63]

59 See Douma et al., supra note 14, and Christians and Magalhães, supra note 14.
60 *Id*.
61 Supra note 14.
62 See Chidozie Chukwudumogu, "The Awkward Implications of an Undertaxed Profits Rule", *Tax Notes Int'l*, March 2, 2026, P. 1583.
63 See Douma et al., supra note 14.

4. The Case of Canada

Canada implemented the global minimum tax through legislation separate from the Income Tax Act (ITA)[64], namely the Global Minimum Tax Act (GMTA).[65] The Global Minimum Tax Act establishes the parameters for the implementation of the IIR and a QDMTT. While the currently enacted legislation does not include a UTPR, a new bill was introduced by the federal government to amend the GMTA and include a UTPR.[66]

The UTPR allocates to Canadian constituent entities a taxing right over profits generated by entities in other jurisdictions, without there being any ownership interest or economic link between the Canadian entity being taxed and the entity in which the profits are earned. This approach departs significantly from the fundamental principles of the Canadian tax regime. Generally speaking, Canada exercises its taxing jurisdiction according to two fundamental principles, namely source-based taxation of Canadian-source income earned by non-residents, and worldwide taxation of Canadian residents.[67] Section 3 of the ITA sets out the basic rules for computing income from a source inside or outside Canada, including income from an office, employment, business, or property, as well as capital gains.

The Canadian regime provides for certain situations in which the taxable income of a Canadian entity is adjusted to include certain amounts that result from transactions with related entities. These rules notably include transfer pricing rules[68] and other anti-avoidance mechanisms provided for under the ITA.[69] In addition, the foreign accrual property income (FAPI) regime provides for the taxation, at the level of the Canadian parent corporation, of passive income earned by its controlled foreign affiliates (CFAs). However, these rules generally rest on the existence of an economic or control link between the Canadian entity and the income in question: transfer pricing rules presuppose a transaction between related entities, and the FAPI regime presupposes control exercised by the Canadian parent corporation over the CFA.

By contrast, the UTPR does not require such a link and would allow a Canadian entity to be taxed on profits generated by non-resident entities on income not derived from a Canadian source, thereby departing from traditional Canadian tax principles.

The GMTA thus constitutes a distinct statutory regime, grounded in concepts developed by the OECD rather than in the traditional notions of income and source specific to the ITA. In this respect, it may be argued that the GMTA, to the extent that it implements rules developed within the OECD, pursues objectives that are fundamentally different from those of the ITA, in that it is designed to ensure the application of a minimum level of taxation to Canadian constituent entities belonging to an in-scope MNE group.[70]

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64 Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.) (hereinafter the "ITA")

65 S.C. 2024, c. 17. Bill C-69 (Budget Implementation Act, 2024, No. 1), which enacts the Global Minimum Tax Act (GMTA) under section 81, was introduced on May 2, 2024, and received royal assent on June 20, 2024.

66 Bill C-31, *A second Act to implement certain provisions of the budget tabled in Parliament on November 4, 2025,* was introduced by the federal government on May 6, 2026. Among other measures, the bill would implement the UTPR in Canada by adding a new Part 2.1 to the GMTA. The UTPR would apply to in-scope MNE groups for fiscal years beginning after December 30, 2025.

67 Section 2 of the ITA.

68 Section 247 of the ITA.

69 For example, the rules under sections 17 and 90 of the ITA.

70 By announcing its intention, in the 2022 Budget, to implement Pillar Two in Canada, the Department of Finance expressed its support towards “international efforts to end the corporate tax race to the bottom, ensure that all corporations pay their fair share, and level the playing field for Canadians and Canadian businesses” Government of Canada, Department of Finance. (2022). Budget 2022: Chapter 9 – Tax fairness and effective government. https://budget.canada.ca/2022/report-rapport/chap9-en.html

Canada's choice to adopt the GMTA as a stand-alone legislation, rather than integrating its provisions into the ITA, raises important questions regarding its interpretation. In particular, it raises the question of whether it should be interpreted as ordinary domestic legislation or whether it instead presents characteristics more akin to those of an international treaty. This question is particularly relevant given a provision in the GMTA which provides that the legislation is to be interpreted consistently with the GloBE Model Rules, the GloBE Commentary and the administrative guidance published by the OECD, including subsequent amendments thereto.[71]

This approach appears to acknowledge both the novel nature of the Pillar Two regime[72], and the specific character of the GMTA as domestic legislation implementing an international political consensus developed within the OECD.[73] It can also be interpreted as an implicit recognition of the fact that the top-up tax provided for under Pillar Two, notably by virtue of the UTPR, does not sit comfortably within the traditional framework of the Canadian tax regime, which is grounded in classic principles of residence and source, and that it therefore necessitates a distinct statutory basis.

A list of jurisdictions that have implemented the Pillar Two rules, including the UTPR, along with the modalities of their implementation, namely whether they have been incorporated into domestic income tax legislation or enacted through separate legislation, is presented in Appendix A.

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71 See subsection 3(1) of the GMTA. See also Olivier Fournier and Shawn D. Porter, "Selected Interpretive Issues Under the Global Minimum Tax Act" (2025) 6:1 *Perspectives on Tax Law and Policy* 12-15. https://taxfind.ca/taxfind/document/2025_PTLP_6(1)_article_6/taxfind/document/2025_PTLP_6(1)_article_6

72 Jinyan Li, "Pillar 2 as a New International Fiscal Law", *Tax Notes Int'l*, Jan. 26, 2026, p. 637

73 Fournier and Porter, supra note 71.

CONCLUSION

The UTPR forms part of a broader set of international tax rules developed by the OECD to address the challenges posed by globalization and digitalization of the economy. It constitutes a backstop mechanism, applying only where the other rules of the global minimum tax regime fail to operate, to ensure a minimum level of taxation on the profits generated by large MNE groups. Despite the criticisms leveled against it, the UTPR has been implemented by nearly thirty jurisdictions, including Canada.

The rationale underlying this rule has given rise to debate concerning its legitimacy under traditional conceptual frameworks of international tax law. These debates illustrate not only the continuing evolution of the international tax regime, but also the emergence of new tax policy objectives that do not always fit within the continuity of the principles that have historically shaped that same regime.

From this perspective, the Pillar Two rules, and the UTPR in particular, lead the international tax community to question whether they have the capacity to redefine the very foundations of the international tax regime. Some authors argue, for example, that the Pillar Two rules reflect the emergence of a new international fiscal law governing states' tax policies, particularly with respect to tax expenditures and incentive regimes. Under this view, the Pillar Two rules contribute to the emergence of a new form of fiscal sovereignty exercised within a multilateral framework[74]. Along the same lines, some authors contemplate the possibility that the Pillar Two rules could, in time, come to be recognized as customary international law.[75] These hypotheses find support, among other things, in the notion of a "common approach" underlying the development of Pillar Two[76], in the growing adoption of these rules by an increasing number of jurisdictions, as well as in the OECD's expanding role within international tax governance, considered by many to act as an informal global tax organization.[77]

The extent to which the Pillar Two rules, and particularly the UTPR, will continue to evolve, and the way this regime may contribute to striking a balance between preventing international tax competition and preserving state sovereignty remains uncertain.

[74] See Li, supra note 72: "Pillar 2 can be understood as establishing a new international fiscal law regime regarding the "spending" side of corporate tax policy […] Before pillar 2, there was no legally enforceable mechanism to limit a sovereign state's use of tax expenditures by another state. […]. It takes the form of a global minimum tax to achieve the result of changing the fiscal policies of sovereign states, establishing a new international fiscal legal order. Through the enforcement mechanism of the UTPR, pillar 2 "forces" source states to levy a QDMTT or modify its tax incentive policies or the residence state of UPEs to impose the IIR tax. This interlocked multilateral system of interfering with fiscal sovereignty is unprecedented; it could affect relations between states and legal relations between states and MNEs."

[75] For arguments in favour of this view, see Avi-Yonah, "UTPR's Dynamic Connection to Customary International Tax Law," Tax Notes Int'l, Nov. 21, 2022, p. 951 and Tarcísio Diniz Magalhães, "Give Us the Law: Responses and Challenges to UTPR Resisters," Tax Notes Int'l, Dec. 5, 2022, p. 1257. For arguments against, see Debelva and De Broe, supra note 34; VanderWolk, "The UTPR Is Far From Becoming Part of Customary International Tax Law," Tax Notes Int'l, Nov. 28, 2022, p. 1069. For a general discussion, see Douma et al, supra note 14.

[76] See OECD (2021), supra note 1: "The GloBE rules will have the status of a common approach. This means that IF members: are not required to adopt the GloBE rules, but, if they choose to do so, they will implement and administer the rules in a way that is consistent with the outcomes provided for under Pillar Two, including in light of model rules and guidance agreed to by the IF; accept the application of the GloBE rules applied by other IF members including agreement as to rule order and the application of any agreed safe harbours."

[77] Cockfield, Arthur, "The Rise of the OECD as Informal 'World Tax Organization' Through National Responses to E-Commerce Tax Challenges". *Yale Journal of Law and Technology*, Vol. 8, p. 136, Spring 2006, Available at SSRN: https://ssrn.com/abstract=916555

Appendix A – Implementation status and effective dates of the main global minimum tax rules (IIR, QDMTT, UTPR) by country[78]

Country	Implementing legislation	Adoption status of the legislation	IIR effective date	QDMTT effective date	UTPR effective date
Australia	Separate legislation: *Imposition Act, Assessment Act, Consequential Amendments Act*	Enacted legislation	January 1 2024	January 1 2024	January 1 2025
Austria	Separate legislation	Enacted legislation	January 1 2024	January 1 2024	January 1 2025
Bahamas	Separate legislation: *Domestic Minimum Top-Up Tax Act 2024*	Enacted legislation	Not applicable	January 1 2024[79]	Not applicable
Bahrain	Separate legislation	Enacted legislation	Not applicable	January 1 2025	Not applicable
Barbados	Separate legislation: *Corporation Top-up Tax Act 2024*	Enacted legislation	Not applicable	January 1 2024	Not applicable
Belgium	Separate legislation	Enacted legislation	December 31 2023	December 31 2023	December 31 2024
Brazil	Separate legislation: Amendment to the *CSLL (Contribuição Social sobre o Lucro Líquido*)	Enacted legislation	Not applicable	January 1 2025	Not applicable
Bulgaria	Integrated in Corporate Income Tax Act	Enacted legislation	January 1 2024	January 1 2024	January 1 2025

[78] ERNST & YOUNG LLP, *BEPS 2.0 – Pillar Two Developments Tracker: As at 30-oct.-24*, en ligne : https://app.powerbi.com/view?r=eyJrIjoiZDI2MDIwM2QtODZjMS00ZmJkLWFjMGQtM2VkMmU0ZTY4NjliIiwidCI6IjViOTczZjk5LTc3ZGYtNGJlYi1iMjdkLWFhMGM3MGI4NDgyYyIsImMiOjh9; OECDPILLARS, *Pillar Two Navigator*, en ligne : https://oecdpillars.com/pillar-two-navigator/; PWC, *PwC's Pillar Two Country Tracker*, en ligne : https://www.pwc.com/gx/en/tax/international-tax-planning/pillar-two/pwc-pillar-two-tracker-full-data-v2.pdf); WTS GLOBAL, *Pillar Two: Country-by-Country Implementation Status*, avril 2024, en ligne : https://wts.com/cache-buster-1773746980/static/external/map-02-2022/map/build/public/viewer/web/viewer.html?file=/wts.com/hot-topics/pillar-two/implementation-status/wtsglobal-pillar-two-country-by-country-implementation.pdf#page=59

[79] The effective date of the Qualified Domestic Minimum Top-up Tax (QDMTT) is deferred for fiscal years beginning on or after January 1, 2025 for constituent entities located in The Bahamas that are not subject to the IIR or UTPR in another jurisdiction for 2024. PWC, The Bahamas' enactement of a Domestic Minimum Top-Up Tax, December 20, 2024, online: https://www.pwc.com/bs/en/services/tax/assets/bahamas-enactment-dmtt.pdf.

Country	Implementing legislation	Adoption status of the legislation	IIR effective date	QDMTT effective date	UTPR effective date
Cabo Verde	Separate legislation : through *the Loi du budget de l'État 2026 (Law No. 69/X/2025)*	Enacted legislation	Not applicable	January 1 2026[80]	Not applicable
Canada	Separate legislation: *Global Minimum Tax Act*	Enacted legislation	December 31 2023	December 31 2023	December 31 2025[81]
Cyprus	Separate legislation through Law 151(I)/2024	Enacted legislation	December 31 2023	December 31 2024	December 31 2024
Czech Republic	Separate legislation	Enacted legislation	December 31 2023	December 31 2023	December 31 2024
Denmark	Separate legislation: *Minimum Tax Act*	Enacted legislation	December 31 2023	December 31 2023	December 31 2024
Estonia	Separate legislation	Enacted legislation	Uncertain	Not applicable	Uncertain[82]
Finland	Separate legislation	Enacted legislation	December 31 2023	December 31 2023	December 31 2024
France	Incorporated into*Code général des impôts*	Enacted legislation	December 31 2023	December 31 2023	December 31 2024
Germany	Separate legislation: the Mindeststeuergesetz (Minimum Tax Act)	Enacted legislation	December 31 2023	December 31 2023	December 31 2024
Gibraltar	Separate legislation: the *Global Minimum Tax Act 2024*	Enacted legislation	December 31 2024	December 31 2023	Not applicable
Greece	Separate legislation: *Law number 5100/2024*	Enacted legislation	December 31 2023	December 31 2023	December 31 2024
Guernsey	Separate legislation	Enacted legislation	January 1 2025	January 1 2025	Not applicable
Hong Kong	Incorporated into *Inland Revenue Ordinance*	Enacted legislation	January 1 2025	January 1 2025	Uncertain
Hungary	Separate legislation	Enacted legislation	December 31 2023	December 31 2023	December 31 2024

80 The introduction of Pillar Two was proposed in the State Budget; at this stage, only a domestic minimum tax (QDMTT/DMTT) has been enacted, while the other rules remain to be specified.

81 Current Canadian legislation does not contain an Undertaxed Profits Rule (UTPR). However, on May 6, 2026, the federal government introduced Bill C-31, Budget Implementation Act, 2025, No. 2, to amend Canadian legislation to incorporate the UTPR. The UTPR would apply to in-scope MNE groups for taxation years beginning after December 30, 2025.

82 Estonia chose to defer the effective date of the IIR and UTPR pursuant to Article 50(1) of the European Minimum Tax Directive. This Directive allows Member States in which only a limited number of ultimate parent entities of groups within the scope of the global minimum tax rules are headquartered to defer their application for a maximum of six consecutive years. Although Estonia has not yet announced the date on which these rules will apply, they must apply no later than December 31, 2029. COUNCIL OF THE EUROPEAN UNION, "Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union", (2022), Official Journal of the European Union 1, art. 50 ("Directive 2022/2523").

Country	Implementing legislation	Adoption status of the legislation	IIR effective date	QDMTT effective date	UTPR effective date
Iceland	Uncertain	Draft legislation	December 31 2025	December 31 2025	Not applicable
Indonesia	Separate legislation	Enacted legislation	January 1 2025	January 1 2025	January 1 2026
Ireland	Separate legislation: *Finance Act 2023*	Enacted legislation	December 31 2023	December 31 2023	December 31 2024
Isle of Man	Separate legislation	Enacted legislation	January 1 2025	January 1 2025	Not applicable
Israel	Separate legislation	Enacted legislation		January 1 2026	Not applicable
Italy	Separate legislation: *Decreto legislativo 209/2023*	Enacted legislation	December 31 2023	December 31 2023	December 31 2024
Japan	Incorporated into Corporate Income Tax Law	Enacted legislation	April 1 2024	April 1 2026	April 1 2026
Jersey	Separate legislation Multinational Corporate Income Tax	Enacted legislation	January 1 2025	Not applicable	Not applicable
Kenya	Icorporated into Income Tax Act through the *Tax Laws Amendment Act 2024*	Enacted legislation	Not applicable	January 1 2025	Not applicable
Kuwait	Separate legislation	Enacted legislation	Not applicable	January 1 2025	Not applicable
Latvia	Uncertain	Draft legislation	Uncertain[83]	Uncertain[84]	Uncertain[84]
Liechtenstein	Separate legislation: *GloBE law and ordinance*	Enacted legislation	January 1 2024	January 1 2024	Uncertain[84]
Lithuania	Uncertain	Draft legislation	Uncertain[84]	Uncertain[84]	Uncertain[84]
Luxembourg	Separate legislation	Enacted legislation	December 31 2023	December 31 2023	December 31 2024
Malaysia	Incorporatedinto *Income Tax Act 1967*	Enacted legislation	January 1 2025	January 1 2025	Not applicable
Malta	Separate legislation	Enacted legislation	Uncertain[85]	Not applicable	Uncertain
Mauritius	Incorporatedinto the Income Tax Act	Enacted legislation	Not applicable	January 1 2025	Not applicable

[83] Latvia and Lithuania have chosen to defer the entry into force of the global minimum tax rules pursuant to Article 50(1) of Directive 2022/2523, officially setting the end of the deferral period at December 31, 2029, with the rules to apply from 2030 onward.

[84] Liechtenstein has enacted legislation providing for the potential application of the Undertaxed Profits Rule (UTPR). However, unlike the Qualified Domestic Minimum Top-up Tax (QDMTT) and the Income Inclusion Rule (IIR), which have been in force since 1 January 2024, the UTPR had not yet entered into force and its implementation date remained undetermined.

[85] Malta chose to defer the effective date of the IIR and UTPR pursuant to Article 50(1) of Directive 2022/2523. It has not yet announced the date on which these rules will apply.

Country	Implementing legislation	Adoption status of the legislation	IIR effective date	QDMTT effective date	UTPR effective date
Montenegro	Separate legislation	Enacted legislation	Not applicable	January 1 2026	Not applicable
Netherlands	Separate legislation	Enacted legislation	December 31 2023	December 31 2023	December 31 2024
New Zealand	Incorporated into *Income Tax Act 2007*	Enacted legislation	January 1 2025	Not applicable[86]	January 1 2025
North Macedonia	Separate legislation : *Law on Minimum Global Corporate Income Tax*	Enacted legislation	January 1 2024	January 1 2024	January 1 2025
Norway	Separate legislation : The Norwegian top up tax act- *Suppleringsskatteloven*	Enacted legislation	January 1 2024	January 1 2024	January 1 2025[87]
Poland	Separate legislation	Enacted legislation	January 1 2025	January 1 2025	January 1 2025
Portugal	Separate legislation	Enacted legislation	January 1 2024	January 1 2024	January 1 2025
Qatar	Incorporated through *Income Tax Law (No. 24 of 2018)*	Enacted legislation	January 1 2025	January 1 2025	Not applicable
Romania	Separate legislation	Enacted legislation	December 31 2023	December 31 2023	December 31 2024
Singapore	Separate legislation	Enacted legislation	January 1 2025	January 1 2025	Not applicable
Slovakia	Separate legislation	Enacted legislation	Uncertain	January 1 2024	Uncertain[88]
Slovenia	Separate legislation	Enacted legislation	December 31 2023	December 31 2023	December 31 2024
South Africa	Separate legislation: *The Global Minimum Tax Act, 2024*	Enacted legislation	January 1 2024	January 1 2024	Not applicable
South Korea	Incorporated into *Law for Coordination of International Tax Affairs (LCITA)*	Enacted legislation	January 1 2024	January 1 2026	January 1 2025

86 Although New Zealand has not adopted a QDMTT, it has implemented a domestic Income Inclusion Rule that operates similarly where the income of a multinational enterprise is undertaxed in its territory. This rule will take effect on January 1, 2026.

87 Only the IIR and QDMTT have been enacted into law. The UTPR is expected to take effect on January 1, 2025. PWC, PwC's Pillar Two Country Tracker, supra, note 56.

88 Only the QDMTT has been enacted into law. Slovakia chose to defer the effective date of the IIR and UTPR pursuant to Article 50(1) of Directive 2022/2523. It has not yet announced the date on which these rules will apply

Country	Implementing legislation	Adoption status of the legislation	IIR effective date	QDMTT effective date	UTPR effective date
Spain	Separate legislation: *Ley 7/2024*	Enacted legislation	December 31 2023	December 31 2023	December 31 2024
Sweden	Separate legislation	Enacted legislation	January 1 2024	January 1 2024	January 1 2025
Switzerland	Separate legislation	Enacted legislation	January 1 2025	January 1 2024	Uncertain[89]
Thailand	Separate legislation	Enacted legislation	January 1 2025	January 1 2025	January 1 2025
Türkiye	Separate legislation	Enacted legislation	January 1 2024	January 1 2024	January 1 2025
United Arab Emirates	Separate legislation	Enacted legislation	Not applicable	January 1 2025	Not applicable
United Kingdom	Separate legislation	Enacted legislation	December 31 2023	December 31 2023	December 31 2024
Uruguay	Separate legislation	Enacted legislation	Uncertain	December 16 2025	-
Vietnam	Separate legislation	Enacted legislation	January 1 2024	January 1 2024	Not applicable
Zimbabwe	Separate legislation	Enacted legislation		Uncertain[90]	

[89] On 4 September 2024, the Federal Council decided to bring the income inclusion rule (IIR) into force with effect from 1 January 2025 but decided not to bring the UTPR into force. https://www.admin.ch/en/nsb?id=102345

[90] Zimbabwe introduced a 15% domestic minimum tax through Finance Act No. 13 of 2023 (effective in 2024); however, this tax does not appear to be based on the OECD Pillar Two rules and may not be considered a qualified QDMTT.