Case Study Analysis of the OECD Pillar One and Pillar Two Allocations to Developing Countries: What Has Changed Since the 2020 Blueprints?

This article reviews the changes to the OECD’s Pillar One and Pillar Two solutions since the 2020 Blueprints by updating the case-study approach simulating the operation of the proposals under three profit-shifting schemes. The analysis reveals significant changes to Pillar One and Two integration and further increases tax revenue unpredictability.

1. Introduction

This article provides a review of the changes in the OECD’s Two Pillars framework since the Inclusive Framework (IF) statement of July 2021, as was reviewed in a case study published in the Bulletin for International Taxation in July 2021 (the “July 2021 model” or the “July 2021 article”). The July 2021 article concluded that the Two Pillars proposal, as framed at that time, could not provide a reliable and stable allocation of tax revenue, as the allocation discriminated against developing countries, did not correlate to the taxed real economic activity of multinational enterprises (MNEs) and was susceptible to manipulation by MNEs. Accordingly, this was a wasted opportunity to tax the profits transferred by MNEs to low-tax jurisdictions, which, with a more equitable allocation, could have helped developing countries in addressing extreme poverty, inequality and to adapt to climate change.

Since the original review of the Two Pillars in the July 2021 article, the OECD secretariat, with the support of 138 IF member countries, has continued to develop the Two Pillars solution, with Pillar Two rules, examples and a Commentary being released at the end of 2021 and beginning of 2022, respectively. In July and October 2022, the OECD also released most of the proposed Amount A rules regarding Pillar One for public comment. Given the significant work done on the Two Pillars during 2022, which affects the analysis in the July 2021 article, this article reviews how the updates in the Two Pillars solution have affected the allocation of tax revenue in the case study used in the July 2021 model, and if, and how, the design flaws of the Two Pillars have been addressed.

The article begins by setting out a summary of the changes by the OECD to the main Two Pillars components (see section 2.). The article then revises the case study to reflect the changes in Two Pillars (see section 3.1.) and recalculates each of the three scenarios and their variations (see section 3.2.). After completing the calculations, the changes in the effect of the Two Pillars on the tax revenue of each jurisdiction in the model are analysed (see section 3.3.). Next, the results are discussed (see section 4.). Finally, the author’s conclusions on the effects of the changes are presented (see section 5.).

2. The Two Pillars Solution

2.1. The structure

There have been no significant changes in the overall Two Pillars structure made since the Two Pillars’ October 2020 Blueprints (the “2020 Blueprints”). The rules on Amount A and Amount B form Pillar One (see section 2.2.), and those on the Global Anti-Base Erosion (GloBE) form the major part of Pillar Two (see section 2.3.). Amount A,
which is the main Pillar One rule, forms a new tax nexus in the market jurisdictions. Pillar Two still uses the 2020 Blueprints terminology and consists of a set of GloBE rules that permit different jurisdictions to tax the income of some MNE group members up to a Global Minimum Tax (GMT) rate, but differ in how this top-up tax is allocated.

2.2. Pillar One

Amount A creates a novel taxing right (tax nexus) and then allocates it to eligible market jurisdictions. The rule is still not finalized, with some of its components remaining unclear. The OECD plans to implement it using a multilateral convention and domestic legislation, and intends to provide an explanatory statement and model rules for domestic legislation and related commentary. Though there are no final Pillar One rules as yet, most of the Pillar One elements can be found in a series of public consultation documents published by the OECD in 2022.9

The current Amount A rules allocate 25% of the MNE’s profit in excess of 10% of its revenue to each jurisdiction where the MNE derives profits. The profit allocation is made in proportion to the revenue derived by the MNE in these jurisdictions.10 The allocated Amount A is taxed at the local domestic corporate income tax rate. The nexus for the Amount A is at least EUR 1 million in-scope revenue in a jurisdiction, and is applied to MNEs with a global turnover threshold in excess of EUR 20 billion and profitability of more than 10%.11 The in-scope revenue for smaller jurisdictions with a GDP of less than EUR 40 billion is reduced to EUR 250,000.12

Amount A continues to exclude regulated financial services and extractive industries. The extractive industries exclusion includes a set of rules to determine the extractive activity and the non-extractive activity, which is still subject to Amount A. The new extractive exception narrowly defines the extractive income, while applying the entire Amount A rules to the remaining profits. This narrower definition fails to capture the mining activity in the case study under the extractive exception, and, therefore, does not exempt it from the Amount A application.14

In addition to Amount A, Pillar One contains a rule based on the arm’s length standard (ALS), “Amount B”. The OECD was expected to complete the work on Amount B by the end of 2022,15 which later extended to mid-2023,16 and a short time prior to the publication of this article, on December 2022, the OECD released Amount B main design features for public consultation.17 Amount B is designed to simplify the tax administration and reduce compliance costs for pricing of certain “baseline” marketing and distribution activities in order to prevent transfer pricing disputes, and streamline the ALS tax liability calculations.18

2.3. Pillar Two

2.3.1. The GloBE

The first GloBE proposal encompasses the following two main components that top up the profit of an MNE’s “low-taxed constituent entities” to the GMT rate (the top-up tax): (i) the Income Inclusion Rule (IIR); and (ii) the Undertaxed Payment Rule (UTPR), both of which apply to low-taxed constituent entities. Only one of these rules can apply at a time. The GloBE is intended to act as a common approach, meaning IF members may elect not to implement the rules but only to accept the application of the GloBE rules by other jurisdictions.

The Subject to Tax Rule (STTR), the second Pillar Two rule, applies to low-taxed intra-group transactions and is structured as an independent treaty provision.19 The STTR is still more likely to benefit some developing countries, as was noted in the July 2021 article.20

The blending used to calculate the top-up tax remains jurisdictional.21 The analysis of jurisdictional blending found that it may increase the volatility of the consolidated effective tax rate (CETR) of the MNE group, and could prompt MNEs to adjust their activities and corporate structure to reduce the CETR, thereby negatively affecting the neutrality of the Two Pillars. On the other hand, the jurisdictional blending advantage over global blending is that it permits generating larger tax revenue.22
The calculation of the top-up tax, as stipulated in the GloBE rules, has not changed much since the July 2021 model.23 The profits and taxes in each jurisdiction must be aggregated to enable the calculation of the effective tax rate (ETR), and those jurisdictions that paid less than GMT are determined to be low-tax jurisdictions. Subsequently, the top-up amount for all of the entities from the low-tax jurisdiction is calculated and allocated between the entities according to their share of the jurisdiction’s total income. This top-up amount is paid on the basis of the IIR and the UTPR.24 The IIR remains essentially the same as under the new GloBE rules and allocates the top-up tax to the residence jurisdiction of the ultimate parent company (UPE). The top-down approach that allocates the top-up tax to intermediate parent companies when the UPE does not apply the IIR continues to apply.25 Contrary to the IIR, the UTPR design was changed significantly.

Instead of allocating the top-up tax according to proportion in deductible payments to low-tax entities and the UTPR payers proportion in intra-group expenditure (as was done by the old UTPR two-stage allocation key), the new UTPR allocates the top-up tax to the jurisdictions that have the tax capacity to reduce tax deductions, which are assumed to be where tangible assets and employees are located.26 The allocation is made according to a two-factor apportionment formula consisting of the value of tangible assets and the number of employees, both having equal weight in the formula. As in practice, the locations of employees and tangible assets are used to generate profits and transfer them to low-tax jurisdictions using deductible payments, the rule should not make a too significant change to the allocation pattern compared to allocating the revenue to where the deductible payments were made (the old UTPR). However, the new UTPR might reduce tax revenue allocation to market jurisdictions, as the sales factor is not included in the UTPR allocation formula, while tangible assets and employees are less likely to be located in market jurisdictions.

The new UTPR still operates by denying the deduction in order to increase the cash tax expense up to the top-up tax amount, but it can apply to any deduction in the jurisdiction and is not limited, like the old UTPR, to denial of deduction for intragroup payments.27 The wider scope of deduction denial of the new UTPR, which is also paired with a carry-forward regime in case there would not be sufficient cash tax expense in the same tax year where the top-up tax was calculated, acts as a substitute for the old UTPR allocation key, which was narrower in its first stage but applied a wider back-stop in its second stage.

2.3.2. The integration of the GloBE and Amount A

With regard to the integration of the GloBE with Amount A, Amount A taxes are deemed to be covered taxes that increase the ETR for the purposes of calculating the top-up tax. The main question is which jurisdiction’s covered taxes are affected. The 2020 Blueprints, which were used as a basis for the July 2021 model, stipulated that the MNE’s income was to be assigned to the jurisdiction of the entity that earned the income (which would be the residence of the recipient entity). This state of affairs can be gleaned from the following formulation:

The jurisdictional ETR computation requires assignment of the income and taxes among the jurisdictions in which the MNE operates and to which it pays taxes. Generally, the income of the MNE is assigned to the jurisdiction of the Constituent Entity that earned the income with each permanent establishment being treated as a separate Constituent Entity. The corresponding covered taxes on that income are then assigned to the jurisdiction that has been allocated the income.28

With regard to Amount A, the corresponding covered taxes are assigned to the jurisdiction that has been allocated the income, which is the market jurisdiction.29 Similarly to the 2020 Blueprints, the new Commentary on the GloBE rules also provides a confusing explanation of the treatment of Amount A and note that the issue will be further addressed only in the future Administrative Guidance as part of the Implementation Framework.30 Though the new Commentary does provide a very brief explanation that appears to change the Amount A treatment for the GloBE’s covered taxes from the July 2021 model:

Tax on net income of a Constituent Entity under Pillar One would be treated as a Covered Tax under the GloBE Rules as a tax with respect to income or profits. Because Pillar One applies before the GloBE rules any income tax with respect to Pillar One adjustments will be taken into account by the Constituent Entity that takes into account the income associated with such tax for purposes of calculating its GloBE Income or Loss.31

This explanation changes the wording from referring to the jurisdiction that earned the income (as was the case in the 2021 Blueprints) to referring to a constituent entity that has to take into account the income associated with this tax (Pillar One) to calculate its GloBE income and loss. There is no constituent entity that takes into account the revenue to calculate the Amount A tax, as the tax is calculated on the basis of the entire MNE revenue, and then allocated in proportion to the revenue in each jurisdiction. The only place where the constituent entity has to account for the Amount A income is when the Amount A is paid by the Amount A paying entity. This position can also be followed from the ending of section 1 of Article 2: Charge to tax of the proposed Amount A rules:

This income is taxable as income of [one or more Group Entities of the Covered Group] for the Period identified under Title 5 of

23. OECD, Global Anti-Base Erosion Model Rules (Pillar Two), supra n. 4, at pp. 28-33.
24. Id., at pp. 11 and 12.
26. Id., at pp. 12-13 and OECD, Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two), supra n. 4, at pp. 32-34. For the UTPR rule in 2020 Blueprints on deduction denial see OECD, Pillar Two Blueprint, supra n. 1, at pp. 125-134, 172-173.
28. OECD, Pillar Two Blueprint, supra n. 1, at p. 45.
29. The Amount A tax is included in covered taxes that are used in the calculation of the jurisdictional ETR. See OECD, Pillar Two Blueprint, supra n. 1, at pp. 45, 47 and 65.
30. OECD, Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two), supra n. 4, at pp. 92-93.
31. Id., at p. 92.
this Act, and in accordance with the rules provided in [reference to domestic law provisions on income tax].

The taxable income applies on the Amount A paying entity, so the more likely interpretation of the aforementioned new Commentary on the Amount A treatment for GloBE covered taxes purposes, is that the Amount A tax is attributed to the Amount A paying entity, and subsequently will reduce the top-up tax of the jurisdiction of such paying entity.

The next question is which entity is liable for the Amount A payment. Unfortunately, such paying entity definition is still not finalized. That is:

the preferred approach for identifying the entity/entities liable to tax on Amount A income has yet to be decided.

There are two approaches to the determination of the liable entity. The first approach is the “multiple taxpayer approach”, and the second is the “single taxpayer approach”. Under the multiple taxpayer approach, the main criterion for the entity (or entities) is to be profitable and to be most likely to have the resources to be able to fund the payments. In the case study in the July 2021 article, such an entity was located where the profit is being shifted to — in the low-tax jurisdiction. This state of affairs creates the possibility that Amount A tax, if added to the covered taxes of the low-tax jurisdiction, could reduce the GloBE top-up tax. The first approach is closer to the description in the October 2021 statement, which said that the paying entities are drawn from those earning residual profits. The second, i.e. the “single taxpayer approach”, determines the Ultimate Parent Entity (UPE) as the liable entity. Under this approach, it appears that there still can be some flexibility provided to the MNE group to choose other liable entities in the group, which can also be located in the low-tax jurisdiction.

The treatment of Amount A for the purposes of calculation of the top-up tax is crucial for the scope and significance of the GloBE, and, as the formulation of the change in the treatment of Amount A is very limited and may be obscure, this article considers both forms of calculation, i.e. the new interpretation where Amount A tax is attributed to covered taxes of the paying entity (for the new Amount A rules, see section 3.1) and the old interpretation where Amount A tax is attributed to the covered taxes in the market jurisdiction (the old Amount A rules, see section 3.1. again).

2.3.3. The STTR

The most relevant current description of the STTR is the brief description in the October 2021 statement. According to this statement, the STTR completes the nominal corporate income tax rates on intra-group payments of interest, royalties and other defined set of payments, and it will confer a taxing right on the difference between the nominal rate and 9%. This description fits with the more detailed description of the STTR in the 2020 Blueprints. The 9% STTR rate stated in the October 2021 statement is higher than the 7.5% rate assumed by the author for the July 2021 model, the lowest of the 7.5%-9% range that was provided by the OECD at that time.

The 2020 Blueprints note that the STTR can demotivate profit shifting within the MNE structure, so it is crucial for developing countries that are struggling with even the current tax regime enforcement. The OECD now openly leaves this instrument to developing countries who request to include its provision in their tax treaties. The effectiveness of the STTR in increasing the tax revenue of developing countries is mostly limited to profit-shifting payments made from developing countries directly to tax havens, which have low nominal income tax rates.

The STTR is not excluded from the definition of covered taxes in the Pillar Two rules (article 4.2), and it is covered by article 4.2.1(C), as taxes that are imposed in lieu of generally applicable corporate income tax, thereby meaning it still applies before the other GloBE rules and after Pillar One. Accordingly, if the STTR applies to a transaction with a low-tax jurisdiction, it increases its ETR, and, therefore, reduces the GloBE top-up tax. The interaction between the STTR and the top-up tax can be regarded as sharing the same “pool” of at least 15% of the GMT rate. It results in the phenomenon described in the July 2021 article as the “STTR trade-off”.

2.4. The ordering rule

The ordering rule has not changed since July 2021, and still follows the “winner takes it all” approach, which only was reinforced under the new Amount A covered taxes rule. This approach benefits more the states that qualify for the first rules.

The ordering of the (five) rules under the Two Pillars is as follows:
- Amount A, which increases the ETR of the jurisdiction of the paying entity;
- the STTR, which increases the ETR of the payment recipient jurisdiction;
3. The Adjusted Case Study on the Two Pillars Solution

3.1. The design of the adjusted case study

In this section, the Two-Pillar proposal is assessed to determine how the changes in the Two Pillars rules compared to their state as reflected in July 2021 model affect the Two Pillars tax allocation, its volatility and the correlation between the place of allocation of tax revenue with the place of real economic activity. This assessment is carried out by way of a case study.

The case study is the same as in July 2021 model,\(^46\) with adjustments that reflect the changes in the Two Pillars rules. It is based on examining Two Pillars implementation under the following four popular profit-shifting methods in developing countries: (i) loan-based income-shifting transactions; (ii) intangible-based income-shifting transactions; (iii) income-shifting transactions involving related-party transactions encompassing services or tangible property; and (iv) related-party outbound sales of products.\(^48\) The case study constructs three simplified scenarios based on these four techniques, and compares the allocation of the rights to tax the corporate profits under the current ALS and the Two Pillars, i.e. the Amount A, the STTR and the GloBE proposals.

The first two scenarios are based on the first and second profit-shifting techniques set out in the preceding paragraph, while the third scenario is a combination of the third and fourth techniques. Each scenario has a basic setting and two variations. The variations are set to apply to all of the GloBE proposal’s major components, i.e. the IIR, the top-down approach and the UTPR. In addition, given the lack of clarity on the change in the GloBE rule on the Amount A tax attribution for the top-up tax calculation purposes (the new Amount A rules), the allocation under both the new and the old Amount A rules is examined, i.e. attribution of Amount A to the jurisdiction of the paying entity ETR (the new Amount A rules) and to the Amount A revenue receiving jurisdiction ETR (the old Amount A rules). The consequences of the change of the UTPR rule are also discussed, with some tables including the comparison of tax allocations under the old and the new UTPR. The STTR rate is increased from the 7.5% that was assumed in the July 2021 model to the current 9% rate.

Table 1 sets out the main assumptions of each scenario, and Figure 1 presents the general structure used in each of the three scenarios. There is no change from the July 2021 model.

For the purposes of clarity and simplification, all of the scenarios use small numbers of an unspecified general currency and all numbers are rounded up to two decimal places.

As the new UTPR uses an apportionment formula for allocation according to substance, Table 2 is included, which specifies the factors for each of the states. These factors represent the description of the business activity in the case study of the July 2021 article.\(^49\)

In the first variation, State A is not a 2P member and indirectly controls C Co through B Co. This structure gives rise to the IIR on a lower-level parent. In the second variation, State A is not a 2P member, but continues to control C Co directly. This structure triggers the UTPR. It is assumed that none of the variations affect the corporate income tax under the current tax regime.

In all of the scenarios, A Co, B Co, C Co and D Co manage themselves by purchasing management services from an unrelated third party. In order to simplify and focus on the chosen profit-shifting methods, these assumed transactions are not included in the case study.

All three scenarios use a similar MNE business model that permit a direct comparison of tax allocation among these scenarios, thereby demonstrating how changes not reflecting any business purpose affect the tax consequences through different holding and profit-shifting schemes. The MNEs in all three scenarios have the same aggregated third-party expenses and income, i.e. 80 and 150, respectively. They differ only by the intra-group transactions. It should be noted that scenario number 3 has a slightly different business model due to the tax planning often used for natural resources compared to consumer products.

The MNE in the first scenario has a taxable income under the current tax regime due to limitations on interest deductions, which reduces the shifted profit compared to the other two scenarios. The case study also includes a second modified version of the first scenario (a modified first scenario) that assumes that there is no restriction on deduction of interest, which results in a CETR of 0% and the same profit shifted as in the other two scenarios. This situation permits a comparison of the Two Pillars effects

---

\(^{46}\) See Fedan, supra n. 2, at sec. 3.

\(^{47}\) Id.


\(^{49}\) These factors were also used to assess the Global Minimum Tax Apportionment (GMTA) proposal. See A. Fedan, Harnessing the Power of International Taxation to Tackle Poverty, Inequality, and Climate Change: How the OECD’s Two Pillars and their Formulary Alternative, Tailor-Made to Prioritise Developing Countries, Compare under a Normative Analysis, PhD thesis, The University of Sydney (2022) at pp. 55–93.
in the first scenario with the other two versions, as they share the same amount of shifted profits, i.e. 70 and the same CETR as under the current regime, i.e. 0%.

The following assumptions are made to complete the gaps in the current state of Two Pillars rules and to simplify some of their technical aspects that would otherwise overcomplicate the case study model:

- the MNE’s revenue size and the values of its transactions satisfy all the threshold tests in Pillar One and Pillar Two;
- Pillar One consists of Amount A only;\(^{51}\)
- no tax at source applies to payments subject to the STTR due to a tax treaty, thereby allowing the STTR to apply at its full rate;\(^{52}\)
- the GloBE carve-outs are not included to avoid over-complication;
- no jurisdiction has effective controlled foreign company (CFC) rules that capture the profits shifted to State C in the three scenarios;

\(^{51}\) Amount B is based on the existing regime, and is intended to simplify and reduce disputes on sales transfer pricing valuation. Accordingly, it should not affect the allocation of taxing rights significantly. There are also no draft rules released yet, only general principles, which would require including more assumptions in the model, which would result in its overcomplication.

\(^{52}\) Under this assumption, the STTR is more effective, thereby maximizing the benefit to developing countries under the proposal.
– Amount A taxes are not included for the purposes of the STTR calculation;53
– the double taxation relief for Amount A is provided in the form of a foreign tax credit;54 and
– the Amount A treatment for the GloBE covered taxes is calculated under the following two possible interpretations: (i) the Amount A tax is attributed to the paying entity covered taxes under the multiple taxpayer approach (the new Amount A rules); and (ii) the Amount A tax is attributed to the covered taxes of the market jurisdiction (the old Amount A rules).55

Moderate values were assumed for all of these rates in the case study. These values, in order to avoid any disproportionate and unrealistic application of the Two Pillars, were based on the values in the examples included in the 2020 Blueprints.

53. As Amount A is not a nominal rate that applies on payments and without any particular rule saying otherwise, it is assumed that it is not deducted from the STTR rate.
54. Though there was no determination made to this date on the preferred tax relief method between the exemption or credit method, the credit method was slightly more endorsed in the 2020 Blueprints compared to the exemption method. See OECD, Pillar One Blueprint, supra n. 1, at pp. 155-157.
55. See section 2.4. regarding the change in the Amount A covered taxes rule.

### Table 2 – Economic activity factors

<table>
<thead>
<tr>
<th>State</th>
<th>Sales/consumption place (%)</th>
<th>Cost of employees (%)</th>
<th>Number of employees (%)</th>
<th>Tangible assets (%)</th>
<th>Collected data (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A(^1)</td>
<td>0</td>
<td>50 (0)</td>
<td>10 (0)</td>
<td>50 (0)</td>
<td>0</td>
</tr>
<tr>
<td>B(^1)</td>
<td>0</td>
<td>50 (100)</td>
<td>90 (100)</td>
<td>50 (100)</td>
<td>0</td>
</tr>
<tr>
<td>C</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>D</td>
<td>100</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>100</td>
</tr>
</tbody>
</table>

1 The numbers in brackets are the value for variations, where State A is excluded from the IF, so State B holds employee and asset factors exclusively.

### 3.2. Review of the scenarios

#### 3.2.1. Opening comments

This section calculates the tax revenue of each state in each scenario and variation under the current tax regime and under the Two Pillars.

#### 3.2.2. Scenario number 1: Loan-based income-shifting transactions

##### 3.2.2.1. Details of the scenario and calculation of corporate income tax under the current regime (basic setting)

The scenario in Figure 2 uses the first profit-shifting method, i.e. loan-based income shifting. The revenue of B Co is derived from manufacturing a product sold online in State D. Such a sales activity does not qualify as a permanent establishment (PE) under the State B-State D Income Tax Treaty. B Co’s revenue from the sales activity is 150, and the sales and manufacturing expenses incurred by B Co in State B are 80.

B Co’s sister company, C Co, which did not have employees, physical assets or any other activity, received a 1,000 equity investment from A Co. In this scenario, C Co provides a 1,000 loan to B Co for 7% interest (at market rate), and B Co deducts the interest paid for the loan, as well as...
the 80 manufacture and sales expenses, from its taxable income. Given interest deduction limitations in State B, B Co is permitted to deduct for the interest only 30% of its earnings before interest, taxes, depreciation, and amortization (EBITDA), i.e. 21, leaving State B’s total taxable income at 49.

That is to say, after a 25% corporate income tax rate, State B has a total tax revenue of 49 × 25% = 12.25. As the interest received in C Co is tax-exempted, the tax revenue in State C is 0. Meanwhile, State D does not earn any tax revenue due to the lack of a PE.

3.2.2.2. Taxation under Amount A (basic setting)

Amount A gives rise to a new tax nexus that grants market jurisdictions the right to tax the deemed residual profit from the sales income generated in their territory at their domestic corporate income tax rate. Calculating Amount A is a three-step process. First, the MNE Group’s residual profit must be isolated. Assuming the profitability threshold is 10%, and the MNE’s revenue, all of it being from sales in State D, is 150, the profit before tax (PBT) of the MNE is 70, being the total income minus total expenses (intra-group transactions can be excluded), i.e. 150 – 80 = 70. The residual profit is calculated as the PBT less the revenue multiplied by the 10% rate, i.e. 70 – (150 × 10%) = 55. Next, the attributable residual profit for the purposes of Amount A must be determined by residual profit multiplied by the relocation percentage (25%), i.e. 55 × 25% = 13.75. So, 13.75 is reallocated to the market jurisdiction. Then, Amount A must be attributed to particular market jurisdictions. As State D was the only state that had relevant sales, it is the only state that qualifies as a market jurisdiction nexus for Amount A. As to the determination of the Amount A paying entity, it can only be C Co because it is the only entity which generates profits.

Accordingly, it is likely to be classified as the paying entity. It does not receive a tax credit, as there is no tax paid in State C. Consequently, under the domestic corporate income tax rate of 25%, State D can tax C Co for 13.75 × 25%, which increases the total tax revenue of State D to 3.44.

3.2.2.3. Taxation under Pillar Two (basic setting)

Initially, the STTR grants State B the right to tax at an adjusted nominal rate of 9% on the 70 interest payment from B Co to C Co, which is not taxed in State B due to a tax treaty and is taxed at a 0% rate in State C. The STTR is not affected at all by the benefits State B already receives under the current regime from the denial of an interest deduction under Action 4 of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project. It would apply to the whole payment, even if the deduction for this payment was denied. As the STTR applies on a nominal basis, all of the 70 is taxed, resulting in 6.3 tax. The total tax revenue of State B increases to 18.55. The calculation follows the same interpretation of the STTR rule as was adopted following the analysis of the 2020 Blueprints in the July 2021 article and does not apply the denial of deduction in State B.

56. According to the best practice approach in Action 4 of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project that limits the interest deduction to 30% of the EBITDA. See OECD, Action 4 Final Report 2015 – Limiting Base Erosion Involving Interest Deductions and Other Financial Payments (OECD 2015), Primary Sources IBFD.


58. The STTR description indicates that the only deductions that are considered in the state of the destination of the payment. See OECD, Pillar Two Blueprint, supra n. 1, at p. 161.

59. See Fedan, supra n. 2, at sec. 3.2.2.3.
Then, the IIR applies to the state of the MNE’s UPE, i.e. State A, and allocates to it the top-up tax. Two calculations must be made to determine the top-up tax. First, the low-tax constituent entities in low-tax jurisdictions must be located, and their jurisdiction’s ETR must be calculated. Second, the top-up tax per each low-tax jurisdiction is calculated by subtracting the ETR from the GMT. State B is not deemed to be a low-tax jurisdiction, as its ETR rate is at 25%, calculated as the adjusted covered taxes assigned to the jurisdiction (12.25) divided by the profit (or loss) of all constituent entities in the jurisdiction (49). In this scenario, the only low-tax constituent entity is C Co in State C. Under the new rules, State C’s ETR is affected by the tax C Co pays for Amount A, which has to be added to the covered taxes of State C as the receiving jurisdiction. Accordingly, under the new Amount A, State C’s ETR increases to 4.91%, i.e. 3.44 / 70. The second adjustment to State C’s ETR is the STTR, which has to be added to the covered taxes of State C as the receiving jurisdiction. Consequently, State C’s ETR increases to 13.91%, i.e. (3.44 + 6.3) / 70, and, therefore, the top-up tax rate is 1.09%, i.e. 15% – 13.91%. Then, according to the IIR, the liable UPE must be determined. A Co’s full ownership of C Co makes it the UPE of the group. As there is no other constituent entity above A Co, the IIR applies the full 1.09% top-up rate on A Co, and, therefore, the top-up tax of A Co is 0.76, i.e. 1.09% × 70.

Under the old Amount A rules, the ETR of State C would not be affected by the Amount A tax. Accordingly, only the STTR would have been included in its covered taxes resulting in a 6% top-up rate, i.e. 6.3 / 70, and 4.2 top-up tax, i.e. 6% × 70.

3.2.2.4. First variation: The IIR under the top-down approach

The first variation of scenario number 1 demonstrates the GloBE’s IIR under the top-down approach. Under this variation, it is assumed that State A is not a 2P member, and, therefore, does not collect the top-up tax. A Co also controls C Co indirectly through B Co. As such, in this scenario, the top-down ordering rule should be followed, which requires State B to tax B Co on C Co’s income in State C. So, eventually, under the new Amount A B Co pays the 1.09 top-up tax in State B, thereby increasing its corporate income tax revenue to 19.31. Under the old Amount A, the 4.2 top-up tax would increase the total tax revenue of B Co to 22.75.

3.2.2.5. Second variation: The UTPR

The only difference from the basic setting in this second variation is that State A is not a 2P member. Under this variation, the 4.2 under the new Amount A and the 0.76 under the old Amount A, as discussed in the basic setting in section 3.2.2.3., i.e. as the top-up tax of A Co in the basic setting and, in the first variation, as the top-up tax allocated to B Co, can be allocated to other constituent entities under the UTPR by denying the deduction of intra-group payments or equivalent adjustments. In the case study, there was one 70 deductible payment made from B Co to C Co, 21 of which was deducted by B Co, and could be allocated according to the UTPR. The reduction in the permitted deduction from the 21 is calculated by dividing the desired increase in tax by the tax rate, i.e. 4.2 / 0.25 = 16.8 for the old Amount A and 0.76 / 0.25 for the new Amount A. Accordingly, in order to increase B Co’s tax revenue by 4.2, the permitted deduction for interest is reduced from 21 to 16.8. With regard to the new Amount A rules, the permitted deduction for interest is reduced from 21 to 17.95. In the new UTPR, the allocation of the top-up tax is allocated to jurisdictions according to the location of employees and tangible assets. In the case study, the employees are located in States A and B, but, as State B is not a UTPR jurisdiction in this variation, the entire allocation of the UTPR is attributed to State B, exactly as it was under the former UTPR rule (where it was attributed to jurisdictions that made payments to the low-tax jurisdiction). As a result, the old UTPR calculation for deduction denial in State B will be applied, resulting in the same allocation under the new UTPR, i.e. State B receives a total of 22.75 in tax revenue under the old Amount A rules or 19.31 under the new Amount A rules.

3.2.2.6. Modified first scenario: The effect of no interest deduction denial in State B

Assuming that there is no interest deduction denial in State B, B Co’s PBT is 0, so there are no taxable profits in State B under the current regime. In such a case, the calculations in respect of the Two Pillars tax change as follows. There is no change in Amount A, as there is no difference in State D’s sales, which results in the same allocation for State D of 3,4375. The STTR applies to the same profit-shifting payment and remains the same. The ETR of State C that affects the top-up tax does not include the deduction for State B, and, therefore, is affected by Amount A and the STTR. With regard to Amount A, State C’s ETR increases to 4.91%, i.e. 3.44 / 70. Consequently, the STTR adjustment applies, thereby increasing State C’s ETR to 13.91%, i.e. (3.44 + 6.3) / 70, and, therefore, the top-up tax rate is 1.09%, i.e. 15% – 13.91%. The IIR applies the full 1.09% top-up rate on A Co, and, therefore, the top-up tax of A Co is 0.76, i.e. 1.09% × 70.

Under the old Amount A, the total tax revenue of State B consists only of the STTR (6.3). The top-up tax remains the same (4.2) if the old Amount A rules apply and 0.76 if the new Amount A rules apply. In the basic setting, it results in 4.2 or 0.76 attributed to State A under the IIR (depending on which of the Amount A rules apply). The first variation entails the IIR being paid to State B under the top-down approach, so it results in a total tax revenue of 7.06 in State B under the new Amount A rules and 10.5 under the old Amount A rules. State A revenue remains 0. There is no difference between the first and second variation, as the UTPR attributes the top-up tax only to State B, which requires State B to tax B Co on C Co’s income in State C. So, eventually, under the new Amount A B Co pays the 1.09 top-up tax in State B, thereby increasing its corporate income tax revenue to 19.31. Under the old Amount A, the 4.2 top-up tax would increase the total tax revenue of B Co to 22.75.

60. OECD, Global Anti-Base Erosion Model Rules (Pillar Two), supra n. 4, at pp. 12-13.
61. Id., at p. 13.
### Table 3 – Tax revenue and CETF of the Two Pillars in scenario number 1 under the assumption of the old Amount A rules (1)

<table>
<thead>
<tr>
<th>State</th>
<th>Current regime</th>
<th>Basic setting: The IIR</th>
<th>First variation: The IIR under the top-down approach</th>
<th>Second variation: The UTPR (old)</th>
<th>Second variation: The UTPR (new)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>0.00</td>
<td>4.20</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>B</td>
<td>12.25 (0.00)</td>
<td>18.55 (6.30)</td>
<td>22.75 (10.50)</td>
<td>22.75 (10.50)</td>
<td>22.75 (10.50)</td>
</tr>
<tr>
<td>C</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>D</td>
<td>0.00</td>
<td>3.44</td>
<td>3.44</td>
<td>3.44</td>
<td>3.44</td>
</tr>
<tr>
<td>CETF (%)</td>
<td>17.50 (0.00)</td>
<td>37.41 (19.91)</td>
<td>37.41 (19.91)</td>
<td>37.41 (19.91)</td>
<td>37.41 (19.91)</td>
</tr>
</tbody>
</table>

1. The modified scenario figures that differ from the original scenario are in brackets.
2. The CETF is calculated by adding the sum of all the taxes paid in each scenario variation divided by the total MNE consolidated profit of 70, computed by subtracting the total expenses paid to third-parties from the total income received from third-parties, which is identical in all three scenarios, i.e. 150 – 80.

### Table 4 – Tax revenue and CETF of the Two Pillars in scenario number 1 under the assumption of the new Amount A rules (2)

<table>
<thead>
<tr>
<th>State</th>
<th>Current regime</th>
<th>Basic setting: The IIR</th>
<th>First variation: The IIR under the top-down approach</th>
<th>Second variation: The UTPR (old)</th>
<th>Second variation: The UTPR (new)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>0.00</td>
<td>0.76</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>B</td>
<td>12.25 (0.00)</td>
<td>18.55 (6.30)</td>
<td>19.31 (7.06)</td>
<td>19.31 (7.06)</td>
<td>19.31 (7.06)</td>
</tr>
<tr>
<td>C</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>D</td>
<td>0.00</td>
<td>3.44</td>
<td>3.44</td>
<td>3.44</td>
<td>3.44</td>
</tr>
<tr>
<td>CETF (%)</td>
<td>17.5 (0.00)</td>
<td>32.5 (15.00)</td>
<td>32.5 (15.00)</td>
<td>32.5 (15.00)</td>
<td>32.5 (15.00)</td>
</tr>
</tbody>
</table>

1. The modified scenario figures that differ from the original scenario are in brackets.

i.e. 0.76 for the new Amount A rules and 4.2 for the old Amount A rules.

#### 3.2.2.7. Summary

Table 3 compares the nominal tax revenue under two tax regimes, the current regime and the Two Pillars regime, based on the assumption that the old Amount A rules apply, and Table 4 compares the nominal tax revenue under two tax regimes, the current regime and the Two Pillars regime under the assumption that the new Amount A rules apply.

According to Table 3, the Two Pillars regime significantly increases the CETF from 17.5% to 37.41% in the original scenario and from 0% to 19.91% in the modified scenario in all three variations. If the old Amount A rules apply, there is no significant change from the July 2021 model, with only a minor increase to CETF by approximately 1%. The top-up tax under the old Amount A rules were slightly reduced, and the STTR and Amount A was slightly higher after the increase in the STTR rate and the increase in the relocated residual profit for Amount A. The situation changed dramatically under the new Amount A rules. It created an additional trade-off, with three taxes, i.e. the STTR, Amount A and the GloBE top-up tax are sharing the same 15%. It resulted in a near elimination of the top-up tax, as it is the last to apply, reducing it (in the first scenario) from 4.2 to 0.76.

#### 3.2.3. Scenario number 2: Intangible-based income-shifting transactions

##### 3.2.3.1. Details of the scenario and the calculation of corporate income tax under the current regime (basic setting)

This scenario is illustrated by Figure 3.

This second scenario uses the second profit-shifting method – an intangible-based income-shifting transaction. In this scenario, C Co used some of A Co’s capital to purchase intellectual property (IP) for product design and branding and to hire local employees for IP maintenance with costs of 30. To the extent that other states have typical CFC regimes, this arrangement usually prevents C Co from being classified as a passive income CFC of A Co. B Co employs local manufacturers and salespersons in State B to manufacture the product, and, then, sells it online in State D. B Co’s income from this business activity is 150, while B Co’s costs are 50 for manufacturing and sales and 100 for royalties paid to C Co. Consequently, B Co’s taxable income in State B is 0, and it does not pay taxes in State B, nor in State D or any other state due to lack of a PE. A Co does not pay tax where it has no profits. Although C Co has 70 PBT, it does not pay tax on this income, as the State C domestic corporate income tax rate is 0%. Other details are the same as in the first scenario.

##### 3.2.3.2. Taxation under Amount A (basic setting)

Amount A figure is identical to the previous scenario. The MNE’s revenue and PBT are the same as in the former scenario, i.e. 150 and 70, respectively. The residual profit is...
55, i.e. 70 – (150 × 10%). The attributable residual profit to Amount A that is reallocated to a market jurisdiction is 13.75, i.e. 55 × 25%. State D is the only state that qualifies as a market jurisdiction nexus for Amount A, as it is the only state with sales to the final consumers. Accordingly, under the domestic corporate income tax rate of 25%, the total tax to be paid by C Co (the paying entity) to State D is increased to 3.44, i.e. 13.75 × 25%.

3.2.3.3. Taxation under Pillar Two (basic setting)
The STTR applies first. The calculation is the same as in the previous scenarios, so 100 in royalties paid from B Co to C Co is not taxed in State B due to a tax treaty and is taxed at a 0% rate in State C. The STTR grants State B the right to tax this payment at the adjusted nominal rate of 9%. As the STTR applies on a nominal basis, it results in 9 of tax, i.e. 100 × 9%.

The IIR should be applied next. It allocates the top-up tax to the UPE jurisdiction. In order to calculate the top-up tax, a constituent entity that can be considered to be a low-tax jurisdiction due to an ETR of less than the 15% GMT must be found. C Co is located in a low-tax jurisdiction with 0% tax. After accounting for the STTR, State C's ETR is 12.86%, i.e. 9 / 70. If the old Amount A rules apply, the corresponding top-up tax would be 2.14%, i.e. 15% – 12.86%. The allocated IIR to the state of the UPE jurisdiction, State A, is 1.5, i.e. 70 × 2.14%. However, if the new Amount A rules apply, the Amount A tax should be included in State C's covered taxes, increasing them further to 12.44, i.e. 9 + 3.44. This action brings State C's ETR to 17.77%, i.e. 12.44 / 70, which exceeds the 15% GMT rate, making the top-up tax inapplicable in this scenario. Accordingly, if the new Amount A rules on covered taxes apply due to the lack of the top-up tax, there is no difference in tax revenue allocation under each of the two variations.

3.2.3.4. First variation: The IIR under the top-down approach
The first variation of the second scenario differs from the basic setting only under the assumption of the old Amount A rules. The first variation activates the IIR under the top-down approach. Under this variation, State A is a non-2P member, and, therefore, cannot collect the top-up tax and controls C Co through an intermediate subsidiary B Co. In this case, the IIR top-down approach must be followed. The top-down approach requires State B to tax B Co on the income of C Co in State C. As a result, B Co pays 1.5 more tax in State B, i.e. 70 × 2.14%, thereby bringing the total corporate income tax in State B to 10.5. There are no other differences from the basic setting.

3.2.3.5. Second variation: The UTPR
The second variation differs from the basic setting only under the use of the old Amount A rules. The second variation of the second scenario activates the UTPR. In contrast to the basic setting, in this scenario, State A is not a 2P member, so the IIR cannot apply to A Co as a UPE. Other intermediate parents must be found to apply the IIR under the top-down approach. If such intermediate parents cannot be found, the UTPR is applied, thereby reallocating the 1.5 top-up tax to all other constituent entities by denying deductions of payments. In this case, there was one such payment to C Co – the payment of 100 royalties by B Co, which is deducted from B Co's taxable income. According to the UTPR, the permitted deduction of the intergroup payment must be reduced, so the final tax to be paid by B Co increases by 1.5, i.e. 70 × 2.14%. The deduction is calculated by dividing the desired increase in tax by

---

**Figure 3 – Intangible-base income-shifting transaction (basic setting)**

State A
- 2P member
- Corporate income tax 25%

State B
- 2P member
- Corporate income tax 25%

State C
- 30 cost of purchase and maintenance of IP
- Corporate income tax 0%

State D
- 2P member
- Corporate income tax 25%

A Co
- Employees
- Management

B Co
- Assets
- Employees

C Co
- Intellectual property (IP) hub
- IP (brand design)

Target market
- 150 sales income
- 50 costs of production and sales
- Digital sales
- Data collection
- No permanent establishment (PE)

Exported / Printed on 11 Aug. 2023 by t.groen@ibfd.org.
the tax rate, i.e. 1.5 / 25% = 6. By reducing B Co’s allowed deduction to 94, State B increases the tax of B Co by 1.5 to a total of 10.5. The allocation under the new UTPR is the same as the old UTPR, as all of the employees and tangible assets are located in State B, the same state that made a payment to low-tax jurisdiction C. Consequently, the same calculation of denial of deduction will apply under the new UTPR. The tax paid by the MNE on the consolidated level is no different from the basic setting.

3.2.3.6. Summary

Table 5 summarizes the findings of this scenario under the assumption of the old Amount A rules. Then, Table 6 summarizes the findings under the assumption of the new Amount A rules.

In this scenario, the STTR and Amount A exceed together the 15% ETR in the low-tax jurisdiction, thereby resulting in the elimination of the GloBE and its components, the IIR and the UTPR, with no allocation at all to the UPE (State A) and allocation of the entire Two Pillars tax revenue to State B and State D, which does not change in any of the variations.

If the old Amount A rules apply, there are still some notable differences compared to the former July 2020 model. As demonstrated in Table 5, the STTR tax in this scenario is much higher than Amount A and the top-up tax, and due to the increase of the STTR rate and the effect of the STTR trade-off, the STTR doubled after the Two Pillars changes (from 1.5 in the July 2021 model). Consequently, the allocation to State B is much higher than that to State A. The top-up tax further increased State B’s tax revenue in both the first and second variations.

3.2.4. Scenario number 3: Income-shifting transactions involving tangible property and outbound sales of products

3.2.4.1. Details of the scenario and the calculation of corporate income tax under the current regime (basic setting)

The last two examined profit-shifting methods are integrated into this scenario. The third method, tangible property income shifting, involves inflating the cost of equipment provided to a subsidiary from a tax haven, and the fourth method, the outbound sales, encompasses discounting a product’s price sold to a marketing subsidiary in a target state. The latter method is common in the natural resources and agricultural sectors.63 This type of planning mainly succeeds in states where governments have weaker transfer pricing capabilities, such as less developed countries.

Based on the difficulty of evaluating commodities and equipment under existing transfer pricing rules, this scenario assumes that the ALS value of the payments was determined by the relevant jurisdictions as equivalent to the value of their nominal payment. The scenario is presented in Figure 4.

Under this scenario, the MNE structure is identical to the structures in scenarios numbers 1 and 2, except that A Co has a subsidiary, D Co, in State D. In this example, A Co injects 30 of capital into C Co. C Co employs these funds to procure the use of mining equipment for 30. C Co leases the equipment to B Co for 50, and B Co employs the equipment to mine, and then sells the minerals back to C Co for 100. For B Co, the local labour cost, i.e. 50, in combination with equipment costs, reduces its taxable income to 0. In turn, C Co sells the minerals to D Co for 150, and

63. M.C. Durst, Improving the Performance of Natural Resource Taxation in Developing Countries, Institute of Development Studies (2016).
D Co resells them in State D for 150. D Co does not incur any costs, as the minerals are supplied directly by B Co. Accounting for all its expenses, the overall taxable income of D Co is 0. The outcome is that the MNE as a whole Group does not pay any corporate income tax in earning a global net income of 70, i.e. 150 – 50 – 30.

3.2.4.2. Taxation under Amount A (basic setting)

The 2020 Blueprints excluded extractive industries from the scope of Amount A. Accordingly, the July 2021 model did not apply Amount A in the third scenario. However, the public consultation document on Amount A includes a new Schedule B for extractives exclusion and outlines a more detailed exclusion rule that affects the application of Amount A in the third scenario, which must be carefully examined.

Section 20 of Schedule B in the Amount A rules defines the Qualifying Extractives Group as a group that engages in exploitation, development and extraction, and it derives extractive revenues, which, in aggregate, have a substantial connection with its exploitation, development or extraction. The MNE in this scenario engages in “extraction”, by mining the minerals in State B. It also derives revenue from selling the same minerals in State D, thereby satisfying the substantial connection requirement.

Nevertheless, there is a difficulty in applying the “Extractives Revenue”, as it refers not to the revenue of a group but, rather, to the revenue of an entity that is resident in the jurisdiction where extraction is undertaken, from extractives activity, sale of an extractive product, and sale of an extractive asset. As noted in section 3.2.4.1., the revenue, in the third scenario, was derived from selling the minerals from B Co to C Co, which is an intra-group transaction that is being excluded when calculating the Amount A.

According to section 6 of Schedule B, the non-extractive adjusted PBT for a group is calculated by adding together the non-extractive revenues of the group and the non-extractive intra-group revenues and deducting the sum of non-extractive costs and non-extractive intra-group costs. When applying this calculation to the scenario, it is necessary to isolate the extractive activities of B Co. The revenues are 350 (i.e. 150 + 150 + 50), and the expenses are 130 (i.e. 30 + 100 + 150). The PBT is 70, which is identical to the previous two scenarios and the group revenue remains at 150. Consequently, the new extractives exclusion does not apply in this case, as the extractive activity revenue was transferred to a low-tax jurisdiction using an intra-group payment.

The revenue and PBT of the MNE are the same as in the second scenario, i.e. 150 and 70, respectively. The residual profit is 55, i.e. 70 – (150 × 10%). The attributable residual profit to Amount A that is reallocated to a market jurisdiction is 13.75, i.e. 55 × 25%. State D is the only state that qualifies as a market jurisdiction nexus for the purposes of

64. OECD, Pillar One Blueprint, supra n. 1, at pp. 49-50.
66. Id.
68. The rules on non-extractive segment are not yet developed, so this scenario assumes that the rules on allocation of taxable profits apply in the same way as the general Amount A rules.
Amount A, as it is the only state from which the group revenues of the MNE were derived. Accordingly, under the domestic corporate income tax rate of 25%, the total tax to be paid by C Co (the paying entity) to State D increases to 3.44, i.e. 13.75 × 25%.

3.2.4.3. Taxation under Pillar Two (basic setting)

The STTR is applied first. According to the Pillar Two description in the 2020 Blueprints, the STTR applies to movable property leases, such as those for drilling rigs, so, in this case, it should apply to the lease of mining equipment. B Co pays 50 for leasing the mining equipment from C Co. This payment is not taxed in State B due to the exittance of the State B-State C Tax Treaty, and is taxed at a 0% rate in State C. The STTR grants State B the right to tax the payment at the adjusted nominal rate of 9%. Consequently, applying a nominal basis on the whole 50 results in a tax of 4.5, i.e. 50 × 9%. There is no other STTR payment in the scenario, as the other transaction in respect of the amount of 150 is for the sale of commodities by C Co to D Co, which the STTR does not cover.

The IIR is calculated in the same way as in the previous two scenarios by topping up the ETR of State C to the GMT rate and allocating it to State A. After accounting for the STTR, State C’s ETR increases to 6.43%, i.e. 4.5 / 70.

If the old Amount A rules apply, the corresponding top-up tax is 8.57%, i.e. 15% – 6.43%. The allocated IIR to the state of the UPE, State A, is 6, i.e. 70 × 8.57%. However, if the new Amount A rules apply, the Amount A tax should be included in State C’s covered taxes, increasing them further to 7.94, i.e. 3.44 + 4.5. This brings State C’s ETR to 11.34%, i.e. 7.94 / 70, which is less than the 15% GMT rate. The corresponding top-up tax rate is then 3.67%, i.e. 15% – 11.34% and the allocated IIR to State A is 2.56, i.e. 70 × 3.67%.

3.2.4.4. First variation: The IIR under the top-down approach

The MNE structure under the first variation activates the IIR under the top-down approach. In this variation, the top-down approach, which requires State B to tax B Co on the income of C Co in State C, is followed, as B Co now is an intermediate parent and A Co is no longer located in a 2P member jurisdiction. The tax consequence differs between the new and old Amount A rules. Under the new rule, where Amount A is attributed to the top-up tax of the paying entity, B Co pays 2.56 more tax in State B, thereby increasing the total corporate income tax payment in State B to 7.06. Under the old rule, B Co pays 6 more tax, thereby increasing the State B tax revenue to 10.5.

3.2.4.5. Second variation: The UTPR

The MNE structure under the second variation activates the UTPR. Because State A is not a 2P member, the IIR applies to other intermediate parents according to the top-down approach. As there are no intermediate parents, the UTPR is applied and allocates the top-up tax to all other constituent entities by denying intra-group deductible payments. Initially, this situation should be analysed under the new Amount A rules, according to both the old UTPR and the new UTPR. The old UTPR applies the denial of the deduction to the entities that made an intra-group payment to low-tax entity C Co. There were the following two such payments to C Co: (i) the payment of 150 for minerals from D Co, which is deducted from D Co’s taxable income; and (ii) the payment of 50 from B Co for the lease of mining equipment that is deducted from B Co’s taxable income. In this case, the allocation is split between two jurisdictions in the form of a reduced allowed deduction, and is calculated as a proportion of the direct intra-group payment from the UTPR taxpayer to the low-tax entity C Co, i.e. 50 / 200 for B Co and 150 / 200 for D Co. That is to say, State B can levy tax on B Co of 0.64, i.e. (50 / 200) × 2.56, and State D can levy tax on D Co of 1.92, i.e. (150 / 200) × 2.56. It should be noted that both amounts are less than the UTPR’s first cap, i.e. the multiplication of the deductible payment by the local corporate income tax rate.70 The reduction in the permitted deduction of B Co’s and D Co’s payments to C Co is calculated as follows: (i) 2.56 for State B, i.e. 0.64 / 25%; and (ii) 7.68 for State D, i.e. 1.92 / 25%. Accordingly, under the old UTPR, the allowed deduction for B Co is 47.44, i.e. 50 – 2.56 in State B, and, for D Co, 142.32, i.e. 150 – 7.68 in State D.

The new UTPR calculation is different, as it follows the relative number of employees and the value of tangible assets. As all of the employees and the tangible assets in the variation are located in State B, it is entitled to the entire allocation of the top-up tax. The total deducted expenses in State B by B Co are 100, so to achieve an additional tax expense in the amount of the top-up tax of 2.56, it will require denying a deduction of 10.24, i.e. 2.56/0.25%. It will result in the same State B total tax revenue of 7.06, as in the first variation.

Under the old Amount A rules, the allocation, in this case, the calculation is the same, but with a higher top-up tax of 6. Accordingly, State B can levy tax on B Co of 1.5, i.e. (50 / 200) × 6, and State D can levy tax on D Co of 4.5, i.e. (150 / 200) × 6. It should be noted that both amounts are less than the UTPR’s first cap, i.e. the multiplication of the deductible payment by the local corporate income tax rate.71 The reduction in the permitted deduction of B Co’s and D Co’s payments to C Co is calculated as follows: (i) 6 for State B, i.e. 1.5 / 25%; and (ii) 18 for State D, i.e. 4.5 / 25%. As a result, according to the old UTPR, the permitted deduction for B Co is 44, i.e. 50 – 6 in State B, and for D Co 132, i.e. 150 – 18 in State D.

The allocation, under the new UTPR calculation, is the same as before. It allocates all of the top-up tax to State B by denying the deduction of 10.24 out of 100 expenses in State B, thereby resulting in the same tax revenue as in the first variation, i.e. 10.5.

69. OECD, Pillar Two Blueprint, supra n. 1, at p. 156.

70. Id., at pp. 130-131.

71. Id.
3.2.4.6. Summary

Table 7 summarizes the findings of this scenario under the assumption of the old Amount A rules. Table 8 summarizes the findings under the assumption of the new Amount A rules.

In this scenario, Amount A applies, as the updated resources exclusion did not apply to the extractive activity. This results in a much lower allocation to State A, due to the lower top-up tax. This situation also affects the first and second variations, with much less top-up tax to allocate to States B and D.

With regard to the differences between the new UTPR and the old UTPR in the second variation, the old UTPR applies to constituent entities that have employees and tangible assets, while the definition under the old UTPR applies to all constituent entities that made payments to a low-tax jurisdiction. This state of affairs results in State D not receiving any allocation in any variation despite all the sales being conducted there.

3.3. Analysis of the case study data

In this section, the results from the three scenarios and their variations are analysed to understand the allocation pattern of the Two Pillars, especially for developing countries (State B in the case study). For a better comparison of the effect of the Two Pillars and in order to maintain clarity and simplicity of the analysis, only the modified first scenario figures are used. Table 9 summarizes the nominal increase in tax revenue of State B in each scenario and its variation.

The change in the Amount A treatment for the GloBE covered taxes, the new allocation method for the UTPR and the increase in the STTR and the Amount A allocated residual profit rate has mixed effects on the allocation to State B. There is a small increase in allocation in the basic setting compared to the July 2021 model due to the increase in the STTR rate, but the application of the new Amount A rules result in a significant reduction in the allocation to State B in both variations due to the elimination of the top-up tax. Under the old Amount A rules, the new UTPR results in a higher allocation to State B. That situation arises, as the change to align the allocation according to substance indicators of the type that are more prominent in developing countries increases their chance of receiving higher tax revenue allocation. On the other hand, the primary rule – the IIR – continues to allocate a significant amount of tax revenue to the state of the UPE. Though the increase in the STTR reduces the top-up tax received by the UPE’s jurisdiction, it ultimately depends on the application of the STTR (and the ultimate rule on how Amount A is treated with regard to covered taxes).

The new extractive industry exclusion rule results in a lower allocation to State B under both variations com-

### Table 7 – Tax revenue and CETR of the Two Pillars in scenario number 3 under the old Amount A rules

<table>
<thead>
<tr>
<th>State</th>
<th>Current regime</th>
<th>Basic setting: The IIR</th>
<th>First variation: The IIR under the top-down approach</th>
<th>Second variation: The UTPR (old)</th>
<th>Second variation: The UTPR (new)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>0.00</td>
<td>6.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>B</td>
<td>0.00</td>
<td>4.50</td>
<td>10.50</td>
<td>6.00</td>
<td>10.50</td>
</tr>
<tr>
<td>C</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>D</td>
<td>0.00</td>
<td>3.44</td>
<td>3.44</td>
<td>7.94</td>
<td>3.44</td>
</tr>
<tr>
<td>CETR (%)</td>
<td>0.00</td>
<td>19.91</td>
<td>19.91</td>
<td>19.91</td>
<td>19.91</td>
</tr>
</tbody>
</table>

### Table 8 – Tax revenue and CETR of the Two Pillars in scenario number 3 under the new Amount A rules

<table>
<thead>
<tr>
<th>State</th>
<th>Current regime</th>
<th>Basic setting: The IIR</th>
<th>First variation: The IIR under the top-down approach</th>
<th>Second variation: The UTPR (old)</th>
<th>Second variation: The UTPR (new)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>0.00</td>
<td>2.56</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>B</td>
<td>0.00</td>
<td>4.50</td>
<td>7.06</td>
<td>5.14</td>
<td>7.06</td>
</tr>
<tr>
<td>C</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>D</td>
<td>0.00</td>
<td>3.44</td>
<td>3.44</td>
<td>5.36</td>
<td>3.44</td>
</tr>
<tr>
<td>CETR (%)</td>
<td>0.00</td>
<td>15.00</td>
<td>15.00</td>
<td>15.00</td>
<td>15.00</td>
</tr>
</tbody>
</table>

### Table 9 – Comparison of allocation to State B in scenarios numbers 1, 2 and 3 and their variations

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Basic setting: The IIR</th>
<th>First variation: The IIR under the top-down approach</th>
<th>Second variation: The UTPR (old)</th>
<th>Second variation: The UTPR (new)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>6.30 (6.30)</td>
<td>7.06 (10.50)</td>
<td>7.06 (10.50)</td>
<td>7.06 (10.50)</td>
</tr>
<tr>
<td>2</td>
<td>9.00 (9.00)</td>
<td>9.00 (10.50)</td>
<td>9.00 (10.50)</td>
<td>9.00 (10.50)</td>
</tr>
<tr>
<td>3</td>
<td>4.50 (4.50)</td>
<td>7.06 (10.50)</td>
<td>5.14 (6.00)</td>
<td>7.06 (10.50)</td>
</tr>
</tbody>
</table>

1 The figures under the assumption of the old Amount A are in brackets.
Table 10 – Comparison of the CETR in scenarios numbers 1, 2 and 3 and their variations under old and new Amount A rules

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Current regime (%)</th>
<th>Two Pillars under old the Amount A rules (%)</th>
<th>Two Pillars under the new Amount A rules (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>0.00 (17.5)</td>
<td>19.91 (37.41)</td>
<td>15.00 (32.50)</td>
</tr>
<tr>
<td>2</td>
<td>0.00</td>
<td>19.91</td>
<td>17.77</td>
</tr>
<tr>
<td>3</td>
<td>0.00</td>
<td>19.91</td>
<td>15.00</td>
</tr>
</tbody>
</table>

1 The unmodified scenario figures are in brackets.

Table 11 – Comparison of the proportion of the tax of states A, B and D tax from the total MNE tax under the Two Pillars

<table>
<thead>
<tr>
<th>Scenario</th>
<th>State</th>
<th>Basic setting: The IIR (%)</th>
<th>First variation: The IIR under the top-down approach (%)</th>
<th>Second variation: The UTPR (old) (%)</th>
<th>Second variation: The UTPR (new) (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A</td>
<td>7.26 (30.13)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
</tr>
<tr>
<td></td>
<td>B</td>
<td>60.00 (45.20)</td>
<td>67.26 (75.34)</td>
<td>67.26 (75.34)</td>
<td>67.26 (75.34)</td>
</tr>
<tr>
<td></td>
<td>D</td>
<td>32.74 (24.66)</td>
<td>32.74 (24.66)</td>
<td>32.74 (24.66)</td>
<td>32.74 (24.66)</td>
</tr>
<tr>
<td>2</td>
<td>A</td>
<td>0.00 (10.76)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
</tr>
<tr>
<td></td>
<td>B</td>
<td>72.36 (64.57)</td>
<td>72.36 (75.34)</td>
<td>72.36 (75.34)</td>
<td>72.36 (75.34)</td>
</tr>
<tr>
<td></td>
<td>D</td>
<td>27.64 (24.66)</td>
<td>27.64 (24.66)</td>
<td>27.64 (24.66)</td>
<td>27.64 (24.66)</td>
</tr>
<tr>
<td>3</td>
<td>A</td>
<td>24.40 (43.05)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
</tr>
<tr>
<td></td>
<td>B</td>
<td>42.86 (32.29)</td>
<td>67.26 (75.34)</td>
<td>48.96 (43.05)</td>
<td>67.26 (75.34)</td>
</tr>
<tr>
<td></td>
<td>D</td>
<td>32.74 (24.66)</td>
<td>32.74 (24.66)</td>
<td>51.04 (56.95)</td>
<td>32.74 (24.66)</td>
</tr>
</tbody>
</table>

1 The figures under the assumption of the old Amount A are in brackets.

pared to the July 2021 model, especially under the new Amount A rules, which, given the inefficiency of the exclusion, continue to apply Amount A on the extractive activity and to reduce the top-up tax allocation to State B.

The updated Two Pillars solution succeeds in increasing the CETR in all three scenarios, with a slightly higher CETR compared to the July 2021 model. However, the CETR varies, and each scenario results in a different rate. Table 10 illustrates this comparison, and includes the unmodified first scenario for reference.

According to Table 10, as was explained in July 2021 article, the CETR under Two Pillars is not fixed to the GMT rate, i.e. 15%, which only serves as a minimum limit. The inclusion of a jurisdiction that has a high ETR (the unmodified first scenario) dramatically increases the CETR. The CETR figures are slightly higher than in the July 2021 model. When State B receives tax revenue under the current regime, the CETR of Two Pillars increases to 37.41%. When there is no such revenue, the CETR under Two Pillars is only 19.91%. The CETR is still higher than the GMT due to Amount A’s contribution if it is assigned to constituent entities that are not classified as low-tax jurisdictions. The switch to the new Amount A rules reduces the CETR, bringing it closer to the GMT rate, which can be higher than the GMT if the sum of the covered taxes that apply prior to the GloBE brings it above the GMT (as in the second scenario). This situation is in line with the author’s observations in the July 2021 article to the effect that the CETR can be lower, and, therefore, more equal to the GMT rate if Amount A is deducted from the ETR of the paying entity.37

The different CETR in each scenario makes it difficult to compare the nominal tax outcome of each scenario. Comparison of the share of the tax of States A, B and D in each version of each scenario can provide a better benchmark for the relative allocation to each state. This comparison is presented in Table 11.

It is evident from the data presented in Table 11 that, when the STTR is the only source of tax revenue for State B and the Amount A treatment for the GloBE’s covered taxes remains under the old rule, the proportion of State B’s tax revenue under the basic setting spans from 32% to 65%, which is an increase in volatility from the 36% to 57% range in the July 2021 model. This state of affairs and can be explained by the increase in the STTR rate and the inefficiency of the new minerals exclusion, which applied de facto the Amount A on the third scenario. The proportion of State B tax revenue under the subsequent second and third-order GloBE rules (under the new UTPR), i.e. the IIR under the top-down approach and the UTPR, which used to span from 52% to 100% range in the July 2021 model, is now constant at approximately 75%. The reduction from the 100% in the upper limit is due to the tax consequences of the third scenario, which are now similar to the first and second scenarios, thereby eliminating the circumstance in which State B was the only beneficiary of the Two Pillars scheme when Amount A did not apply, and the new UTPR allocated all the top-up tax only to State B. The lower limit also increased due to the change in the UTPR to a formula that represents economic active-

72. The CETR might fall below the GMT if there is a failure to apply the Two Pillars.

73. Fedan, supra n. 2, at sec. 4.2., at fn. 92.
ity, and, therefore, it effectively allocates the entire top-up tax to State B. Accordingly, there is a partial change in the conclusion from July 2021, as now only the IIR allocation ignores economic activity (and follows only the place of the UPE), while the subsequent UTPR rule follows some indicators for economic activity.

If the new rule in respect of the Amount A treatment for the GloBE’s covered taxes were to apply, under the tax allocation to State B in the basic setting, the IIR remains volatile but higher and ranges from approximately 43% to around 72%. That position is due to the sharp decrease in the top-up tax due to Amount A deducting the covered taxes in State C, where the top-up tax is being calculated, and allocates less to State D, thereby increasing the relative weight of State B tax revenue. The allocation to State B increases to a range of 67% to approximately 72% under the IIR in the basic setting and under the new UTPR, as both rules allocate the low top-up tax only to State B.

In any case, the share of State B tax revenue remains volatile, and can change with only administrative amendments to the MNE structure and tax planning, all the way from 43% to 72%. The limited design of the Amount A extractives exclusion only further increases the unrepeatability of the Two Pillars, and, if applied, would increase the upper limit up to 100%. Consequently, until the other Two Pillars rules are not reworked to represent economic activity in a harmonious way, and despite the progress made in respect of the UTPR to correlate tax revenue allocation with real economic activity, these factors still may not serve as a reliable source of income for developing countries that host significant foreign economic activities of MNEs, but cannot tax them at source as a result of profit shifting. Keeping the UTPR the same as in the 2020 Blueprints would result in a 49% to 67% range under the two variations (the same for both of the Amount A rules), which indicates that changing the UTPR did reduce the volatility (albeit to a lower range of 67% to 72%).

The tax revenue allocated to State D under the new Amount A rules now ranges from approximately 28% to around 33%, which is a reduction from the approximate range of 0% to 48% under the former July 2021 model. This change can be attributed primarily to the ineffective extractive exclusion and, to a lesser extent, to the new UTPR, which did not allocate to State D based on sales in the new UTPR of the third scenario. Under the old UTPR, State D could receive 51% of the allocation. The Amount A rules continue to provide the most stable allocation in all cases where they apply, thanks to their use of a formulary allocation according to the sales to third parties. However, there is a relative reduction in shares despite the higher relocated residual profit due to the more significant increase in the STTR rate. However, in the first two scenarios, where Amount A applied in the July 2021 model, the share of State D increased from 20.75% in the July 2021 model to 28% to 33%, which can be explained by the significant reduction in the top-up tax, thereby making Amount A under the new treatment rule for the GloBE covered taxes much more significant than before.

In order to demonstrate the reasons for the volatility of allocation under the top-up tax and the STTR and the effect of the change in Amount A covered taxes treatment rule, the relative contributions of the components of the Two Pillars to the tax revenue of States A, B and D is examined in Table 12. Here, Table 12 demonstrates the relative contributions of the components of the Two Pillars to the total tax revenue in each scenario.

There is no significant change in the allocation bias of the Two Pillars from the July 2021 model, with Amount A allocating solely to State D, the STTR to State B and the IIR to State A and to State B (under the top-down approach). The only change is caused by the update to the UTPR, which no longer allocates to State D, and only allocates to State B. After the UTPR update, there is no longer a

---

Table 12 – Comparison of the relative contributions of the components of the Two Pillars to the total Two Pillars tax revenue

<table>
<thead>
<tr>
<th>State</th>
<th>Scenario</th>
<th>Amount A (%)</th>
<th>The STTR (%)</th>
<th>The IIR (%)</th>
<th>The IIR under the top-down approach (%)</th>
<th>The old UTPR (%)</th>
<th>The new UTPR (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>1</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>7.26 (30.13)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>24.40 (43.05)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>12.56 (22.92)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
</tr>
<tr>
<td>B</td>
<td>1</td>
<td>0.00 (0.00)</td>
<td>60.00 (45.2)</td>
<td>0.00 (0.00)</td>
<td>7.26 (30.13)</td>
<td>7.26 (30.13)</td>
<td>7.26 (5.47)</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>0.00 (0.00)</td>
<td>72.36 (64.57)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>0.00 (0.00)</td>
<td>42.86 (32.29)</td>
<td>0.00 (0.00)</td>
<td>24.40 (18.39)</td>
<td>6.10 (10.76)</td>
<td>24.40 (43.05)</td>
</tr>
<tr>
<td>C</td>
<td>1</td>
<td>32.74 (24.66)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>27.64 (24.66)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>32.74 (24.66)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>0.00 (0.00)</td>
<td>51.04 (56.95)</td>
<td>0.00 (0.00)</td>
</tr>
</tbody>
</table>

1 The figures under the assumption of the old Amount A are in brackets.
difference in the allocation between the first and second variations. This situation is due to the UTPR's relative contribution having an identical effect to the IIR under the top-down approach. Though, this occurs due to the design of this particular case study, where State B is both the next-in-order intermediate parent and the place of all of the employees and tangible assets (after excluding the UPE in both variations), thereby making the IIR under the top-down approach and the UTPR allocate the top-up tax to the same jurisdiction. If there were employees or tangible assets located in State C or D, or if the next-in-line intermediate parent were not in State B, the allocation under these two rules would be different.

There is no change in the conclusion of the July 2021 article that the different methods of calculating each component, their different applications and interdependence give rise to a complex allocation mechanism that does not follow any clear principle.75 The interdependence and volatility only increased due to the change in the GloBE rule for Amount A treatment for covered taxes. When the exclusions and thresholds of Amount A are satisfied, the new Amount A rules make the GloBE taxes virtually insignificant, thereby reducing the top-up tax and the weight of the allocations under the IIR, the top-down approach and the UTPR. The IIR's share, which allocates to State A, is now significantly lower in the first two scenarios compared with the July 2021 model (where Amount A did not apply in the third scenario) and varies under the old Amount A rules between 11% and 43% and between 0% and 24% under the new Amount A rules (a reduction compared to the range of 23% to 40% in July 2021 model). This change increases the unpredictability and volatility of the overall tax revenue allocation of the Two Pillars. It adds up to the same problem that was identified for the STTR as an STTR trade-off, as now also Amount A has a trade-off with the top-up tax. Moreover, the application of Amount A exclusions and threshold rules can cause a sharp fall in the top-up tax, which completely change the Two Pillars allocation pattern.

4. Discussion

4.1. The consequences of the changes to the Two Pillars

The Two Pillars, as reviewed in the July 2021 model, suffered from volatility due to the prominence of the GloBE's top-up tax, which tax allocation is dependent on administrative changes in MNE structure and tax planning method. Now, under the new Amount A covered taxes treatment rule, the volatility is dependent on the exclusions and applicability of Amount A – then on exclusions and applicability of the STTR – for, if both apply, the amount of top-up tax is likely to be insignificant and does not play a significant role. The increased Amount A together with a higher rate of the STTR, together with other covered taxes, is likely to extinguish the entire amount of the top-up tax. However, if Amount A or the STTR does not apply, the top-up tax and its weaknesses in volatility and unpredictability reviewed in the July 2021 model become more prominent. The new UTPR may help to alleviate some of the volatility, as the allocation is tied to specific factors. However, the UTPR is less likely to apply, as it is the last in the Two Pillars ordering rule.

4.2. Primary lessons

The analysis in this article emphasizes the importance of the rule that governs the Amount A treatment for the GloBE's covered taxes. The subtle choice of which jurisdiction treats Amount A for covered taxes can change completely the Two Pillars tax outcomes. In more complex MNE structures with constituent entities in multiple low-tax jurisdictions, the choice of the new Amount A rules for GloBE's covered taxes treatment can result in even less predictability, as top-up tax might not be reduced by Amount A application in all of these jurisdictions, depending on the specific circumstances, thereby making the final tax outcomes even less predictable than in the case study in this article. If the IF members choose to revert to the old Amount A rules (or choose the second approach in the new rule – the UPE as the paying entity), the analysis will mostly remain the same as from the last model, i.e. still volatile and with a lower weight of Amount A, but still with a higher chance that allocation to developing countries will improve due to increase in the STTR rate and the new UTPR.

Another important lesson is the importance of possible loopholes and types of exclusions that can allow for avoiding Amount A and the STTR. If these rules are harder to apply to their respective type of transactions, it will increase the relative weight of the IIR, as took place in the third scenario.

Accordingly, as there are no final rules yet on Amount A, the STTR and the treatment of Amount A in respect of the GloBE's covered taxes, there is not enough information to draw on how the Two Pillars allocation pattern would be, and how exactly it will change in different circumstances. Yet, it is more likely than not that the allocation pattern will remain very unpredictable and volatile, and the Two Pillar's goal to restore confidence in the system and ensure that profits are taxed where economic activities take place and value is created slips even further away.

It should also be noted that the changes in the UTPR and the increase in the STTR rate on the surface indicate that some changes have been made to reduce discrimination against developing countries. Still, it is not clear how these rules will look after more of the components of the Two Pillars are settled.

5. Conclusions

The Two Pillars solution keeps increasing in its complexity with more rules and commentary. The added complexity in the form of uncertainty on the Amount A treatment in respect of the GloBE's covered taxes and the application of various exclusions from Pillar One and Pillar Two can

75 Fedan, supra n. 2, at sec. 5.
only further increase the volatility and unexpected consequences for the other components of the Two Pillars, as their tax consequences are affected by each other. The increase in volatility does not benefit the use of the instrument as a development financing instrument, despite the increase in the potential maximum levels of allocation to developing countries. This volatility also contradicts the Two Pillar’s goal to ensure that profits are taxed where economic activities take place and value is created. In the author’s opinion, an alternative to the Two Pillars that uses elements of a unitary formulary regime, with a combination of jurisdictional blending to boost the tax revenue, which can be simpler, with no trade-offs and no need for an ordering rule (which only increases the volatility), should be considered.76

76. With regard to the GMTA Proposal and the discussion of its advantages and disadvantages compared to the Two Pillars approach, see Fedan, Harnessing the Power of International Taxation to Tackle Poverty, Inequality, and Climate Change: How the OECD’s Two Pillars and their Formulary Alternative, Tailor-Made to Prioritise Developing Countries, Compare under a Normative Analysis, supra n. 51, at pp. 55-93.