UN Tax Pillars to Address Capital Concentration (through Inheritance Levies) and Wealth Flight (through Exit Taxes) – Implications for the European Union

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UN Tax Pillars to Address Capital Concentration (through Inheritance Levies) and Wealth Flight (through Exit Taxes) – Implications for the European Union

Domenico Imparato*

The article investigates the rising concentration of capital ownership, drawing evidence from the United States, Germany and other European states, and its impact on widening wealth inequality. It warns of modern economies morphing into an "inheritocracy", where corporate equity and financial assets concentrate across generations. The analysis sheds light on the limitations of income tax systems in addressing wealth inequality in the context of high capital mobility. To tackle these challenges and building on the OECD's experience with a global minimum tax for large corporations, the article advocates for a UN-led multilateral approach supporting Global Minimum Inheritance Taxes and a Global Minimum Exit Tax to prevent a race to the bottom in taxing high-net-worth individuals and deter wealth flight. By coordinating these taxes at a supranational level, the article supports a fairer tax burden distribution and emphasizes the revenue potential of inheritance levies. Additionally, drawing from the US Expatriation Tax, it explores the legal feasibility of the European Union harmonizing an EU-wide exit tax to mitigate capital flight. Ultimately, these measures have the potential to enhance progressivity across tax systems.

1. A Fast-Changing (Inequality) World Playing Tag with Taxes

In January 2024, news surfaced in Davos, Switzerland, indicating that the world could witness its first trillionaire within the next 10 years, while it would take 230 years to eliminate poverty.[1] Despite the seemingly staggering nature of these figures, they come as no surprise.

Over the past few decades, under the umbrella of globalization, the rapid growth of countries such as China (and partially India) has successfully lifted millions of people out of poverty. However, this positive trend is anticipated to come to a halt by the end of the 2020s or early 2030s: inequality between countries is expected to be negatively affected as newly affluent nations pull away from poorer ones.[2] This shift will be compounded by the already rising inequality within countries, as per capita real changes in income plateaued for much of the middle class in developed nations between 1988 and 2008,[3] on top of private wealth being even more unevenly distributed than income (the "wealth gap").[4]

Rising economic inequality and pronounced imbalances in corporate equity appear to be interconnected, along with the role played by wealthy families. Financial assets tend to concentrate at the top, extending to the control of most public companies globally, whose corporate savings and booming share prices reflect more capital accruing to a few shareholders (i.e. households).[5]

Corporate control in the hands of long-standing family shareholders remains a common trait for several corporations listed across Continental Europe and in Asian financial hubs, such as Singapore and Hong Kong,[6] with the associated risk of extraction of exclusive private benefits of control. This corporate trend is less prevalent for stock markets in some common law jurisdictions such as the United Kingdom, although the concentration of control is increasingly observable in US corporations as well.[7]

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Funded by the European Union. Views and opinions expressed are, however, those of the author only and do not necessarily reflect those of the European Union or the European Research Executive Agency. Neither the European Union nor the granting authority can be held responsible for them.

1. Andrew Jeong, "World's First Trillionaire May Emerge in 10 Years, Disparity Report Finds", The Washington Post, 16 January 2024.
2. Ravi Kanbur, Eduardo Ortiz-Juarez, and Andy Sumner, The Global Inequality Boomerang, WIDER Working Paper 2022/27 (2022).
3. Branko Milanovic, "Global Income Inequality in Numbers: In History and Now", Global Policy 4, no. 2 (2013): 198-208.
4. In 2015, the OECD surveyed 18 countries and concluded that "the bottom 40% own only 3% of total household wealth … [whereas] their share of total household income is 20%". *See* OECD, In It Together: Why Less Inequality Benefits All (Paris: OECD Publishing, 2015).
5. IMF, Fiscal Policy and Income Inequality, IMF Policy Paper (Washington, D.C.: International Monetary Fund, 2014).
6. Marco Faccio, "The Ultimate Ownership of Western European Corporations", Journal of Financial Economics 65 (2002): 365-395. Also, OECD, OECD Corporate Governance Factbook 2023 (Paris: OECD Publishing, 2023).
7. Clifford G. Holderness, "The Myth of Diffuse Ownership in the United States", Review of Financial Studies 22 (2009): 1377-1408.

However, even in countries such as the United States and the United Kingdom, when control is not mostly family-owned, ownership concentration can be replicated by a handful of institutional investors, a phenomenon referred to as "common ownership" in the academic literature. As institutional investors are simply agents acting for their principals and given that the ownership of financial assets is extremely skewed towards the top, when big corporations either increase prices to drive up their markups or push wages down to boost profits,[8] whether controlled by families or not, the successful capitalists are those that benefit the most from it.

With the wealth gap on the rise, the chance for high-net-worth individuals (HNWIs)[9] to have disproportionate influence over governments also increases, as immense economic power makes it possible to wield political leverage, not least because more resources for lobbying become available.

Tax policy stands out as the most powerful tool to address economic inequality,[10] but the challenge is two-fold: (i) determining the most effective way to tax wealth; and (ii) ensuring that the wealthy actually pay those taxes. This is complicated by the risk that, as a country attempts to increase its taxes on the wealthy, they may choose to leave, taking both their money and valuable tax revenue with them – a phenomenon known as "wealth flight".

Hence, this paper is structured as follows to emphasize how a combined set of taxes – inheritance and exit taxes – should be coordinated at the supra-national level to help fight capital ownership concentration and wealth flight.

In section 2., the paper underscores the correlation between the wealth gap and the concentration of capital and corporate equity, particularly in thriving firms possessing significant market power.

Despite variations in control mechanisms – predominantly by controlling families in Germany, Italy, Sweden and France, whereas boards are more responsive to institutional investors in the United States – as their market power expands, they direct more returns to shareholders, essentially funnelling higher payoffs to those who own larger shares of corporate assets. Given that the latter predominantly occupy the top end of the household distribution curve, this further solidifies capital accumulation, posing risks associated with the economy becoming an "inheritocracy" upon this wealth being transferred through inheritance.

Building on the previous section, section 3. evaluates the options at hand (wealth taxes, increases in income tax progressivity and inheritance taxes) to address the growing concentration of capital ownership. It suggests that to prevent the global economy from turning into an inheritocracy, (better) inheritance taxes are necessary across countries.

Additionally, since almost all jurisdictions tie their taxing powers to the connecting criteria of residence, with the notable exception of the US that uses citizenship, taxes on financial and capital assets can often be eluded by the wealthy through cutting off their residence nexus by relocating to a low-tax state. This is where exit taxes can come into play, although international coordination is necessary to avoid them resulting in double taxation.

Section 4. delves into the need for a multilateral initiative capable of setting a floor for minimum inheritance taxes applicable to HNWIs (Global Minimum IHTs). While the OECD recently led the process for a 15% global minimum tax, it focused solely on corporations with more than EUR 750 million in revenue. Given that corporations are nothing more than legal fictions behind which shareholders lie, the taxation of individuals matters more than ever. Considering that rising economic inequality is a global problem, the task of proposing Global Minimum IHTs should be entrusted to the United Nations (UN).

However, HNWIs could still escape them by relocating offshore. But allowing someone who may have benefited for years from the public infrastructure of the country where they made or grew their business, including the protection afforded by its rule of law,[11] to change residence shortly before death occurs and pay nothing sounds like an unfair tradeoff. Therefore, any UN tax proposal in the field of Global Minimum IHTs should be complemented with a plan to tax the gains on unrealized assets upon relocation (Global Minimum Exit Tax). The United States does something similar for individuals who move abroad and renounce their citizenship, a regime known as the "expatriation tax". However, it contains some flaws that an UN-led pro-

8. José Azar, Martin C. Schmalz, and Isabel Tecu, "Anti-competitive Effects of Common Ownership", The Journal of Finance 73, no. 4 (2018): 1513-1565.
9. HNWIs are typically defined by a minimum level of wealth, above a certain threshold, measured in financial and investable assets, excluding the value of their primary residence. These minimum thresholds can vary depending on a country's specific tax policies and regulations' purposes. Thresholds can also be tiered, with higher or progressive levels for ultra-HNWIs (e.g. above EUR 50 million, EUR 100 million, EUR 200 million, etc.).
   For instance, the DAC8 EU Directive (Council Directive (EU) 2023/2226 of 17 October 2023 amending Directive 2011/16/EU on administrative cooperation in the field of taxation), which specifically targets HNWIs for the automatic exchange of information on crypto-asset transactions, sets its minimum threshold – and therefore its own definition of HNWIs – at EUR 1 million.
10. Alex Raskolnikov, "Law for the Rich", *Minnesota Law Review* 109 (2024): 1-37.
11. *Compania Gen. de Tobacos de Filipinas v. Collector of Internal Revenue*, 275 U.S. 87 (1927) (Holmes, J., dissenting).

posal for a Global Minimum Exit Tax should aim to prevent.

Section 5. explores how such a global tax initiative could unfold in the EU context, especially regarding an EU-wide exit tax. Article 5 of the ATAD Directive has introduced an exit tax on latent gains for companies relocating from one Member State to another.[12] Nevertheless, taxing the move of individuals is highly contentious within the European internal market (Single Market). The Court of Justice of the European Union (CJEU) has not had a final say on it, and different legal principles may come into play depending on whether relocations occur among Member States (within the European Union) or from Member States to third countries (outside the European Union). The paper develops arguments in support of an EU-wide exit tax with legitimate legal standing within the EU framework.

Section 6. concludes by emphasizing that better-functioning inheritance taxes and properly designed exit taxes, to the extent they avoid the peril of double taxation but help prevent no taxation, complement the revenue needs of modern states while preserving the goals of taxation.

In an era where states strive to find enough resources to invest in accessible education, robust furlough rules, good healthcare for aging populations and renewable technologies to mitigate emissions of greenhouse gases, evidence shows that inheritance tax, even when riddled with loopholes, can still generate non-trivial amounts of tax revenue.

If meticulously designed and implemented on an international scale, as suggested in sections 4.1.-4.3. of this article, Global Minimum IHTs and a Global Minimum Exit Tax could generate significant new revenue, which could then be used to promote redistributive goals by lowering income taxes on ordinary wages or increasing funding for public services.

2. Painting the State of the Art: Concentration of Wealth and Capital Ownership

The interaction between the wealth gap and the concentration of corporate ownership implies two underlying correlations that need consideration: one between the unequal distribution of income and wealth, and the other between wealth inequality and the concentration of business and financial assets.

According to some studies, the correlation between income and wealth is robust, though imperfect. It is strong for both wealthy and poor households but weaker for households in the middle of the wealth distribution. In other words, owners of capital income-generating financial assets at the top of the distribution tend to be high-income households, contributing to more accumulation. Meanwhile, those at the bottom relying exclusively on labour and with no saving power will generally be low-income households.[13]

Therefore, if income inequality grows, wealth inequality is to follow suit, likely at a faster rate, especially at the two extremes of the distribution. The first question to address, then, is whether or not income inequality has increased over the last years or decades.

Estimating income variations over time and across countries presents several challenges, including how to adjust for underreported income, allocate business losses, and account for tax-deferred income in retirement accounts and transfer payments (e.g. social security benefits). Inevitably, such complexity leads to partially different options, with some scholars suggesting that incomes have increased in "all income groups rather than stagnated for lower-and middle-income households".[14] However, the consensus among most economists is that there has been a long-term upward trend in pre-tax income concentration in both Europe and the United States since the 1970s,[15] with effects on social mobility and a decline in social aspirations.[16]

Importantly, while this does not necessarily seem to have translated into lower overall intergenerational mobility (i.e. the chances of moving up in the income distribution) for some countries, it has likely accentuated the significance of the so-called "birth lottery".[17] Growing up in areas with higher income inequality[18] or in families with fewer available resources can

12. Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

13. OECD, Taxation of Household Savings, Tax Policy Studies (Paris: OECD Publishing, 2018). Also, Martine Durand and Fabrice Murtin, "The Relationship between Income and Wealth Inequality: Evidence from the New OECD Wealth Distribution Database", Paper for the IARIW Sessions at the 2015 World Statistics Conference (2016; International Statistical Institute).
14. Gerald Auten, "Recent Research on Income Distribution: An Overview of the Field", Capitalism & Society 15, no. 1 (2021): 1-11. *See also* Gerald Auten and David Splinter, "Income Inequality in the United States: Using Tax Data to Measure Long-Term Trends", Journal of Political Economy (2023): 1-121.
15. Thomas Piketty and Emmanuel Saez, "Income Inequality in the United States, 1913–1998", Quarterly Journal of Economics 118, no. 1 (2003): 1-41.
16. Alexander S. Browman, Mesmin Destin, Melissa S. Kearney, and Phillip B. Levine, "How Economic Inequality Shapes Mobility Expectations and Behaviour in Disadvantaged Youth", Nature Human Behaviour 3 (2019): 1-29.
17. Raj Chetty, Nathaniel Hendren, Patrick Kline, Emmanuel Saez, and Nicholas Turner, "Is the United States Still a Land of Opportunity? Recent Trends in Intergenerational Mobility", American Economic Review 104, no. 5 (2014): 141-147.
18. Raj Chetty, Nathaniel Hendren, Patrick Kline, and Emmanuel Saez, "Where Is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States", Quarterly Journal of Economics 129, no. 4 (2014): 1553-1623.

impede equality of opportunities, thereby limiting social mobility.[19]

Once it is accepted that income inequality is high, the next step is to check whether wealth inequality is similarly elevated, as would be expected due to the strong correlation between the two, at least at the extremes of the distribution curve.

Unsurprisingly, wealth is even more skewed and unevenly distributed towards the top than income, capital accumulation has grown faster than income,[20] and not-for-profit organizations claim that the wealthiest 1% of the population owns 43% of all global financial assets.[21]

One of the main factors behind the surge in the wealth gap is the unequal distribution of corporate equity. In the United States, for example, the top 20% holds 13 times as much corporate equity as the bottom 60%.[22] As large corporations, especially public ones, gain more significant market shares, they can engage more frequently in anti-competitive behaviours. Their heightened market power, driving up their markups, coupled with inflating stock exchange values, benefits equity holders. However, since equity is predominantly concentrated at the top, the increased capital return over labour disproportionately benefits the wealthy compared to the poor.[23]

This applies to both Europe and the United States, although from different angles. In Europe a significant portion of public companies is subject to some form of control, e.g. from private equity firms, but mostly from controlling founders or their families.

Based on the author's own calculations, considering the blue-chip index DAX 40 in Germany, and without counting those firms under state influence, 32% of its listed companies are subject to control.[24] Once financial institutions (e.g. banks) are excluded, this ratio goes up to 34%.

The situation is similar for the benchmark indexes of Italy, Sweden and France: excluding state-owned companies, 35% of Italian public companies whose shares are traded on the FTSE MIB are subject to control, which rises to 46% once banks are excluded. Numbers are similar for the OMX Stockholm 30 index in Sweden, being, respectively, 38% and 44%.

The CAC 40 Index in Paris falls between the figures for Frankfurt on the one hand, and those for Milan and Stockholm on the other, with 34% of its companies subject to control, increasing to 37% when excluding financial institutions,[25] as illustrated in Figure 1.

The pronounced prevalence of corporate control in blue-chip companies, characterized by their larger size, prompts significant questions about potential implications for smaller public firms across Continental Europe. If control is widespread or extensive among major public corporations, it is reasonable to hypothesize that smaller European public companies may be subject to an even higher degree of control. This hypothesis arises from the assumption that maintaining a substantial share of equity or voting rights tends to be more challenging for larger enterprises than for smaller ones.

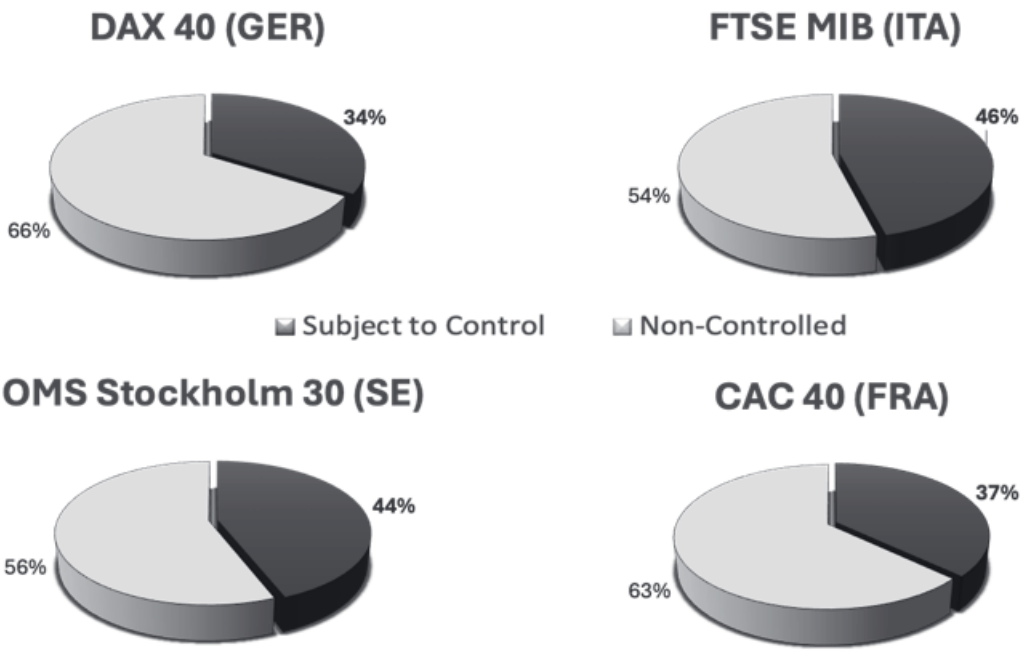
Some studies seem to confirm this intuition. A report from the CONSOB, the Italian SEC-equivalent, reveals that families maintain majority ownership and ultimate control in 63.4% of Milan-listed firms, with a quarter of the total capitalization attributed to firms in pyramidal groups.[26]

A similar scenario holds for Germany as well. A 2020 IMF study notes that 65% of its publicly listed firms are controlled by a family, "either directly [...] or through cross-holdings in a multiple control chain of interlinked entities".

One might then be led to believe that at least the ownership of private business assets would be more widespread among the general population, given that private firms tend to be smaller than public ones on average. Yet the same IMF paper also notes that "many Mittelstand firms remain in private, often family-controlled ownership, even when they expand internationally and grow into large multinationals",

19. Daniel Engster, "Equal Opportunity and the Family: Levelling Up the Brighouse-Swift Thesis", Journal of Applied Philosophy 36, no. 1 (2019): 34-49.
20. OECD, The Role and Design of Net Wealth Taxes in the OECD, OECD Tax Policy Studies No. 26 (Paris: OECD Publishing, 2018).
21. Oxfam International, Inequality Inc. (Oxford: Cowley, 2024).
22. Joshua Gans, Andrew Leigh, Martin Schmalz, and Adam Triggs, Inequality and Market Concentration: When Shareholding Is More Skewed Than Consumption, NBER Working Paper No. 25395 (Cambridge, MA: National Bureau of Economic Research, 2018).
23. In this sense, also Elhauge. In his view, "because richer people have more invested in the stock market and spend proportionally less of their income on consumption, the fact that anticompetitive conduct increases returns to capital relative to returns to labor will increase economic inequality." *See* Eric Elhauge, "Horizontal Shareholding", Harvard Law Review 129 (2016): 1267-1317.
For the argument that business income is being redirected away from workers and towards capital returns, allowing high-level executives and shareholders to siphon off the lion's share of firms' economic surplus, *see* Matthew T. Bodie, "Income Inequality and Corporate Structure", Stetson Law Review 45 (2015): 69-90.
24. Control is defined as where the ultimate interest of one shareholder or the family (jointly as members) collectively exceeds a 25% threshold.
25. The author conducted his analysis on the DAX 40, FTSE MIB, OMX Stockholm 30, and CAC 40 using and matching data retrieved from Orbis, FactSet and CapitalIQ. Annual reports of selected listed companies were also reviewed for validation.
26. CONSOB, Report on Corporate Governance of Italian Listed Companies (Rome: CONSOB, 2022).

Figure 1. Proportion of blue-chip companies in Germany, Italy, Sweden and France subject to control



to the extent that "the 10% wealthiest households in Germany own around 60% of the aggregate net wealth in the economy, and 40% of this wealth is in the form of private business ownership".[27] As a consequence, regardless of whether corporate savings (i.e. after-tax profits) are retained in private, closely held firms or distributed as dividends or share buybacks, the top end of the distribution would still benefit the most from it, further widening economic inequality.

The situation is not significantly different worldwide. According to the OECD, strategic individuals and families collectively owned 9% of globally listed equity by the end of 2020. However, the same OECD report also points out that 11% of global listed equity is held by "private companies and holding companies", with incomplete details regarding their ultimate owners, likely due to a lack of transparent data. Given that companies are legal fictions created by law, the probability that individuals hide behind them is almost certain. Hence, it is conceivable that around 20% of listed equity is concentrated in the hands of (a few) strategic shareholders on a global scale.[28]

It is worth noting that when a public corporation is under control, the fact that the capital return on its equity or the increase in its share value primarily benefits the controlling shareholder(s) (e.g. founders) is not the only outcome. Often, the latter can manage to extract private benefits from corporate control. These benefits can be: (i) monetary (e.g. tunnelling), representing an additional gain on the already high corporate profits reserved for the controlling shareholder; (ii) non-marketable, meaning non-pecuniary but highly valuable for the social and/or political leverage they provide;[29] or (iii) a combination of both, such as using the controlled company as a sub-optimal diversification vehicle.[30]

Still, in some countries, large controlling shareholders are less visible in companies listed on their stock exchanges, as the majority of their holdings are now held by institutional investors – typically, in the United Kingdom and the United States.[31] And yet, institutional owners are not *personas* per se; thus, what

27. Mai C. Dao, Wealth Inequality and Private Savings: The Case of Germany, IMF Working Paper (Washington, D.C.: International Monetary Fund, 2020).
28. Alejandra Medina, Adriana De La Cruz, and Yun Tang, Corporate Ownership and Concentration, OECD Corporate Governance Working Paper No. 27 (Paris: OECD Publishing, 2022).
29. Pargendler suggests that "nonpecuniary private benefits of control, such as the prestige of controller status or the influence over global politics and culture, go a long way in explaining the persistence of concentrated ownership". *See* Mariana Pargendler, "Controlling Shareholders in the Twenty-First Century: Complicating Corporate Governance Beyond Agency Costs", *The Journal of Corporation Law* 45, no. 4 (2020): 953-975.
30. In Reddy's words, "the controlling shareholder may dictate a diversification of the company's businesses in order to mitigate the risks of being personally undiversified. […] and such diversification may not necessarily be in the best interests of the minority shareholders, who can themselves self-diversify by maintaining a varied portfolio." *See* Bobby Reddy, "The Fat Controller: Slimming Down the Excesses of Controlling Shareholders in UK Listed Companies", Oxford Journal of Legal Studies 38, no. 4 (2018): 733-763.
31. Adriana De La Cruz, Alejandra Medina, and Yun Tang, Owners of the World's Listed Companies, OECD Capital Market Series (Paris: OECD, 2019).

actually matters is for whom (i.e. which individuals) they invest.

Some data indicate that the wealthiest 10% of Americans own "92% of directly held shares of public companies, and 93% of stock mutual funds", prompting calls to make all firms 30% employee-owned to redistribute more wealth to the bottom 90% of households.[32] Further estimates on stock ownership concentration in the US are no rosier: a 2021 study found that the wealthiest 1% owned 38.9% of all stock held by US households in 2019, up from 33.5% in 2001. Meanwhile, the share owned by the richest 5% of Americans increased to 71.8% from 62.3%.[33] To put it another way, prima facie institutional ownership and de facto capital ownership concentration are not mutually exclusive but (can) coexist.[34]

This increasing concentration of capital and, as a result, of money and power, has also to grapple with the dimension of time. In other words, over time, this wealth is either to be redistributed among many or passed on to the next generations (i.e. heirs) of the few current owners. With the latter scenario appearing more probable, the world could be on the brink of becoming an inheritocracy, perpetuating inequality rather than eradicating it. The following section explores how this shift towards inheritocracy could soon be unfolding and discusses some available tax policy tools to address this trend.

3. A Looming Inheritocracy and Potential Tax Countermeasures

Section 2. concludes by underscoring that due to the high concentration of capital ownership and given that such wealth sooner or later gets inherited, this situation can lead to inequality in inherited wealth. This, in turn, is likely to play a significant role in shaping the "overall structure of inequality in the twenty-first century".[35]

Translating this into numbers, according to the Swiss bank UBS, new billionaires acquired greater wealth through inheritance than entrepreneurship in 2023 – USD 151 billion vs. USD 141 billion – and approximately 1,000 billionaires are expected to pass USD 5.2 trillion to their heirs over the next 20 to 30 years.[36]

In the United Kingdom alone, the inheritance economy is projected to be around GBP 5.5 trillion over the next 30 years as estimated by Kings Court Trust and the Centre for Economics and Business Research. Again, as wealth is drastically skewed towards the top, this implies that most of these intergenerational transfers will benefit heirs from wealthy families.[37]

Hence, the use of tax regulations on capital and inheritance becomes crucial in preventing a looming inheritocracy. Options such as implementing a wealth tax, increasing the progressivity of the income tax system or doubling down on inheritance taxes emerge as the main strategies available for consideration.

A wealth tax can be defined as an annual levy on taxpayers' net worth, calculated as total assets minus liabilities, paid above a tax-free amount – essentially, a minimum threshold above which someone is considered wealthy enough to be subject to the tax. This tax can be structured as either flat or progressive, depending on whether it is implemented with a fixed rate or a scale of rates.

A progressive wealth tax structure, with rates increasing as wealth levels rise, could be justified on the basis of the principle of diminishing marginal utility (DMU). Simply put, DMU means that the benefit derived from additional units of gain is inversely proportional to their quantity: the benefit declines as the quantity increases. Translated into fiscal jargon and replacing "units of gain" with legal tender (e.g. dollars or euros), this principle implies that each additional dollar left untaxed for low-income earners (through lower tax rates or government benefits) provides a greater benefit than the extra dollar taken in taxes from high-income earners.[38] While traditionally

32. Thomas Dudley and Ethan Rouen, "Employee Ownership and Wealth Inequality: A Path to Reducing Wealth Concentration", Harvard Business School Working Paper 22-021 (Cambridge, MA: 2021).
33. In terms of income, the trend persists, with the top income bracket (out of seven) seeing their stock ownership surge from 40.6% to 60.7% between 2001 and 2019. *See* Edward N. Wolff, "Household Wealth Trends in the United States, 1962 to 2019: Median Wealth Rebounds ... But Not Enough", NBER Working Papers 28383 (2021), National Bureau of Economic Research. Available at https://www.nber.org/papers/w28383.
34. This conclusion is reasonable, especially considering Saez and Zucman's calculations, which show that the top 0.1% of the population's share of private wealth in the United States has tripled from 7% in the late 1970s to about 18% in 2018. *See* Emmanuel Saez and Gabriel Zucman, "The Rise of Income and Wealth Inequality in America: Evidence from Distributional Macroeconomic Accounts", Journal of Economic Perspectives 34, no. 4 (2020): 3-26.
35. Thomas Piketty and Gabriel Zucman, "Capital Is Back: Wealth-Income Ratios in Rich Countries 1700–2010", The Quarterly Journal of Economics 129, no. 3 (2014): 1255-1310. Piketty and Zucman's study confirms that, across eight countries, total net wealth increased between 1980 and 2010. More significantly, due to a long-term shift in relative asset prices, coupled with a slowdown in productivity, the growth of private wealth outpaced that of national income, as evidenced by private wealth-to-national income ratios doubling in the same stint. Private wealth is defined by the authors as the sum of non-financial assets + financial assets – financial liabilities. The eight countries under observation are the United States, Japan, Germany, France, the United Kingdom, Italy, Canada and Australia.
36. UBS, Billionaire Ambitions Report 2023: Changing of the Guard (Zurich: UBS, 2023).
37. Kings Court Trust, Passing on the Pounds: The Rise of the UK's Inheritance Economy (London: Kings Court Trust, 2017).
38. Mark S. Stein, "Diminishing Marginal Utility of Income and Progressive Taxation: A Critique of The Uneasy Case", Northern Illinois University Law Review 12, no. 2 (1992): 373-397.

applied to income taxes, DMU might also be relevant to wealth taxes. Since, as noted in section 2., wealth is even more concentrated than income, it follows that just as the benefit of each additional dollar earned diminishes for high-income earners, the same principle should hold when the wealth of HNWIs increases more significantly than their income.

Beyond the choice between a fixed rate or a scale of rates, some commentators argue that a wealth tax might better complement a free economic model that rewards the potential of capitalism compared to a capital gains tax regime. They posit that capital gains taxes may penalize optimal investment choices by taxing only the incremental growth in holdings' value (net of losses), whereas a wealth tax is independent of the return on capital, thereby rewarding capitalists who are consistently capable of selecting and making better investments.[39]

However, a wealth tax introduces potential challenges related to liquidity and valuation uncertainty. Regarding the liquidity problem, the argument goes that taxpayers whose wealth is tied up in their companies may lack sufficient liquid resources to meet payments resulting from a wealth tax burden. This concern is more pronounced for those owning stakes in fast-growing but loss-making ventures, such as cash-poor, young tech firms that have not gone public yet, and is less relevant for shareholders of large, listed companies, whose securities are inherently liquid and can be sold to generate cash or pledged as security for borrowing. Controlling shareholders could choose to sell stakes in noncore units of their companies and subsidiaries or arrange for them to pay out (more) dividends. In that regard, a wealth tax could inadvertently favour investments in traditional, well established enterprises over riskier investments in young ventures capable of generating cash returns (only) over long-term horizons.

But the main obstacle to implementing a comprehensive wealth tax lies in the uncertainty of appraising the value of assets that lack easily ascertainable market prices, such as the corporate equity of partnerships and limited liability companies not traded on public stock exchanges.

Since a wealth tax is levied annually, recurring valuations are required, which would introduce ongoing appraisal costs, thereby adding to the overall tax burden. In contrast, inheritance taxes, though requiring valuation, are a one-time event: they assess the entire estate's value at death, whereas a wealth tax effectively demands annual appraisals.[40]

To work around the valuation and liquidity challenges associated with a wealth tax, some even propose structuring it as a tax on annually accruing gains without waiting for realization events (e.g. sales of stock),[41] rather than as a levy on a year-end snapshot of total assets. Under this alternative "mark-to-market" approach, taxpayers with illiquid assets could provide the government with: (i) promises to pay in the future (IOUs) instead of immediate cash payments; (ii) each IOU would represent a proportional share in the taxpayer's underlying asset(s) subject to the tax (meaning that the government's stake would increase or decrease in line with the asset's internal rate of return); and (iii) the IOU would then be settled upon the eventual sale of the asset.[42] However, in doing so, the valuation problem is not solved but merely "shifted" from valuing the entire asset portfolio annually to appraising specific hard-to-value assets (whenever the portfolio composition changes) to determine their IOU-related proportional share owed to the government.

Compared to a wealth tax, a more progressive income tax is more easily within reach, but it is crucial to recognize that certain indirect taxes (e.g. sales taxes) within the broader tax system will persist in being regressive.[43] At the same time, studies from the IMF show a slight decline in the average redistributive capacity of OECD countries' tax systems over time, due to progressive tax rates on high earners being partially offset by the preferential treatment of capital income (e.g. interest, dividends and capital gains), which is frequently taxed at lower rates than wages despite being predominantly concentrated among high earners.[44]

Moreover, while income represents money earned at a specific point in time, wealth is a stock measure, net of liabilities, reflecting cumulative economic accumulation, including unexpended income, over a long period. Therefore, it follows that an income-based tax does not directly tackle the skewed accumulation of wealth. In particular, it does not address intergenerational wealth transmissions that disproportionately benefit the wealthy, resulting in no effective brake applied to the widening wealth gap.

39. Martin Sandbu, "Why the Toughest Capitalists Should Root for a Wealth Tax", The Financial Times, 9 May 2021.
40. Hemel underlines that a tax that "treats death as a realization event reintroduces many of the valuation challenges … [of a wealth tax], but to a much lesser extent: the task of assigning values to illiquid assets once per lifetime is not nearly as daunting as the challenge of annual valuation." *See* Daniel Hemel, "Taxing Wealth in an Uncertain World", National Tax Journal 74, no. 4 (2019): 755-776.
41. Julie Roin, "Changing Places, Changing Taxes: Exploiting Tax Discontinuities", Theoretical Inquiries in Law 22 (2021): 335, 378.
42. Brian Galle, David Gamage, and Darien Shanske, "Money Moves: Taxing the Wealthy at the State Level", California Law Review 112 (2025): forthcoming. Available at https://ssrn.com/abstract=4722043.
43. Ian Crawford, Michael Keen, and Stephen Smith, "Taxing Goods and Services", in *Tax by Design*, ed. James Mirrlees et al. (Oxford: Oxford University Press, 2011), 148, 156.
44. Charles Vellutini and Juan Carlos Benítez, Measuring the Redistributive Capacity of Tax Policies, IMF Working Paper, Fiscal Affairs Department (October 2021).

That role of a brake is precisely what modern inheritance tax regimes should be called upon to fulfil. However, as control of a large swath of financial assets passes from the elderly to their offspring within families, the intended levelling function of inheritance taxes has recently dwindled globally.

This happens because some countries either offer an effective zero tax rate (e.g. China, India), ditched inheritance levies decades ago during a frenetic race-to-the-bottom spell (e.g. Austria, Sweden) or, even when retained, their current levies tend to be riddled with exceptions that HNWIs can easily exploit (e.g. the United Kingdom, Germany, Italy).

For instance, Sweden abolished its inheritance and gift tax effective from 1 January 2005. In the United Kingdom, the inheritance tax has a flat rate as high as 40%, but substantial exemption thresholds, along with various allowances and reliefs, are in place. First, the tax is applicable only over a standard nil-rate band set at GBP 325,000 (GBP 650,000 for a couple), supplemented by a residence nil-rate band consisting of a GBP 175,000 allowance when the main property home is left to lineal descendants.[45] While the amount of these allowances can make them proportionally more appealing to the upper-middle class than to the ultra-HNWIs, conversely, the business property reliefs (BPRs) enshrined in the UK Inheritance Tax Act 1984 (IHTA 1984) are set to benefit owners of corporate equity assets. Specifically, these BPRs provide 100% relief on the value of inherited interest or unquoted shares in an undertaking and 50% relief on the value of inherited quoted shares or securities that ensure control of a listed firm.[46]

In Germany, the inheritance tax regime follows similar principles. Its tax rates vary between 7% and 50%, depending on the relationship between the deceased and the heir but, similarly to the United Kingdom, it provides substantial business-related relief. To simplify, 85% of the business assets' value is excluded from the inheritance tax base if both the business and most of the jobs (the retention requirement) are maintained for the following five years after the succession. A full exemption from the tax base is even possible if the heirs commit to keeping the business and meeting the retention requirement for seven years instead of five.[47]

In Italy, benefiting from the business relief is often even easier, given the absence of any retention requirement, unlike Germany. Its 4%-to-8%-wide scale of tax rates can be entirely avoided by the heir if they receive enough shares that grant voting control (i.e. the majority of votes in the company's general meeting) and simply commit to retaining the inherited control for at least the next five years.[48]

Therefore, it becomes evident that if a country wants to prevent the concentration of capital ownership within its economy from becoming persistently more entrenched, it should start taxing intergenerational transfers among HNWIs more efficiently.

The difficulty stems from the high mobility of the wealthy; they can leave and relocate overseas before a transfer of wealth (e.g. by death or gift) occurs, as detailed in section 4.

The risk of wealth flight exists not only for inheritance taxes, but also for income taxes. The one-way journey of high-income earners from high-tax states like California and New York to the state income tax-free states of Texas and Florida is already underway in the United States.[49]

But spontaneous compliance is not simpler for wealth taxes either, as seen in Norway. Although the country abolished its inheritance tax in 2014, it still imposes a wealth tax on the financial value of an individual's assets less debt. In 2022, at least 30 billionaires and millionaires were reported to have fled to Switzerland and low-tax jurisdictions due to concerns over increases in its tax rates.[50]

Realistically, wealth flight can expose revenue to as many repercussions as income shifting across borders by individuals, if not worse. The use of tax havens to conceal assets, whether through offshore banking or more sophisticated means such as employing "shell companies, trusts, holdings, and foundations as nominal owners of assets",[51] is a strategy primarily exploited by the wealthy. Since some research suggests that wealth hidden in tax havens tends to be extremely concentrated to the point that "the probability of hiding assets offshore rises sharply and significantly with wealth, including within the very top groups of the

45. These exemption thresholds are different from *inter-vivos* transfers that qualify as "potential exempt transfers" (PETs). Under the PET regime, a lifetime transfer occurs between a donor and donee, with any inheritance tax charge suspended, pending the donor's survival for seven years from the transfer. If the donor survives, the gift becomes tax-exempt.
46. Respectively, section 105(1)(a)-(bb) and section 105(1)(cc) of IHTA 1984.
47. The retention requirement means that the total sum of salaries in the subsequent five or seven years must not be lower, respectively, than 400% or 700% of the "sum of salaries in the year of succession for companies with more than 15 employees". *See* Andreas Perdelwitz, Germany - Individual Taxation, Country Tax Guides (Amsterdam: IBFD, 2023).
48. Article 3, paragraph 4-ter of Italian Legislative Decree No. 346 of 1990.
49. Janelle Fritts, "Americans Moved to Low-Tax States in 2022", Tax Foundation, 10 January 2023 (Washington, D.C.).
50. Rupert Neate, "Super-Rich Abandoning Norway at Record Rate as Wealth Tax Rises Slightly", The Guardian, 10 April 2023. Also, Richard Milne, "Rich Norwegians Flee to Low-Tax Switzerland as Wealth Levy Bites", The Financial Times, 15 December 2022.
51. Gabriel Zucman, "Taxing Across Borders: Tracking Personal Wealth and Corporate Profits", Journal of Economic Perspectives 28, no. 4 (2014): 121-148.

wealth distribution",[52] it can be reasonably argued that these are the same individuals who are mobile enough to relocate anywhere at any time.

And yet when HNWIs shift income or covertly move assets overseas but remain physically in the jurisdiction of origin, only some of their wealth may escape taxation. Whatever income is not hidden remains subject to tax (setting aside potential foreign tax credits), given that the country of origin and the country of residence still coincide. However, when the wealthy contemplate leaving and subsequently relocate their residence abroad, the jurisdiction of origin – now the departure state – loses authority over most of the leaver's income and assets (excluding, for example, real estate located in its territory).[53]

In other words, remaining as a resident but hiding some assets causes the state of origin, which at this time equates to the country of residence, to lose some but not all of the tax revenue connected to that individual. On the other hand, severing the residence nexus while retaining a few assets in the country of origin (no longer the country of residence) causes the state to lose almost all the revenue associated with that individual, except for *that* revenue connected to those few assets left within its jurisdiction.

This is also supported by economic studies that emphasize the correlation between globalization-induced geographical mobility and constraints on optimal taxes for affluent individuals, on the ground that "as long as mobility is not infinitely costly, an arbitrarily small non-compliant state can limit the ability of a [large] country to tax its wealthiest residents".[54]

As even large nations can face challenges in enforcing their own inheritance and exit taxes, and given that wealth is unequally distributed globally, a multilateral intervention becomes necessary. This intervention should aim to ensure that each state receives its fair share of revenue and to prevent the wealthy from escaping their rightful burden of contribution at the expense of the entire society. The next section is exactly on how to pursue such multilateral coordination.

4. A UN-Led Dual-Tax Pillar Plan for the Ultra-Wealthy

Global tax challenges necessitate global tax responses, or at the very least, international tax cooperation. There is little doubt that the surge in economic inequality is a worldwide phenomenon, as capital and assets tend to concentrate almost everywhere, as demonstrated in sections 2. and 3.

Wealth flight can occur within a country and between countries. When it happens within a country, it is often because the country is a federation composed of states or provinces, some with a state-based (or province-based) inheritance tax and others without (as in the United States), prompting the wealthy to move from one of its states or provinces to the other.

However, when a move occurs from one sovereign jurisdiction (e.g. Norway) to a foreign one (e.g. Switzerland) and one wealthy individual is capable of exploiting loopholes in their tax system, that can open the gates for many to follow.

This shift has the potential to escalate from a few individuals' voluntary exile to a broader exodus or, even worse, to the wealthy threatening to leave *en masse* if any capital tax reform detrimental to them is passed, forcing nations to refrain from taking any action and thus translating into a global problem.

The same holds true for multinational enterprises involved in corporate-profit shifting. Recognizing this, the OECD, consisting of 38 high-income economies at the end of 2023, proposed two international tax pillars – Pillar One and Pillar Two – to tackle the race to the bottom on corporate taxation.[55] In essence, Pillar One aims to allocate corporate profits above a certain threshold to jurisdictions where customers and users are located, preventing the proliferation of digital services taxes.

Pillar Two seeks to establish a global minimum tax floor of 15% for large companies with annual revenues exceeding EUR 750 million. If an entity, as part of a multinational group falling within the scope of Pillar Two, ends up being taxed below the global min-

52. Annette Alstadsæter, Niels Johannesen, and Gabriel Zucman, "Tax Evasion and Inequality", American Economic Review 109, no. 6 (2019): 2073-2103.

53. A peculiar trend in determining individuals' tax residence status is the increasing weight assigned to personal and family ties. A notable example is Italy: beginning in 2024, under Legislative Decree No. 209 of 2023, the main focus shifts from economic ties to personal and family relations when establishing tax residency. This move departs from the traditional civil law interpretation based on *economic activity* to define "domicile" as the location where an individual's primary *personal and family ties* are concentrated.
This new emphasis on family relations over economic ties presents a double-edged sword. For taxpayers seeking tax avoidance strategies without significantly altering their lifestyle or behaviors (e.g. due to difficulties in materially relocating their families), this focus on personal ties can make establishing residency elsewhere more challenging. Consequently, their country of origin might more easily retain taxing authority.
Conversely, for highly mobile HNWIs (e.g. those with flexible jobs or families open to relocation), this new emphasis offers a potential loophole. They might be able to camouflage a move abroad (e.g. by relocating their primary dwelling and closest relatives) even when substantial business and investment assets remain in their country of origin.

54. Augustin Landier and Guillaume Plantin, "Taxing the Rich", The Review of Economic Studies 84, no. 3 (2017): 1186-1209.

55. OECD, Two-Pillar Solution to Address the Tax Challenges Arising from Digitalization of the Economy (Paris: OECD Publishing, 2021).

imum tax in its source country, the country where the ultimate parent company of the entity is located can impose a top-up tax levy. If the latter country fails to do so, any other country can increase its effective tax rate on entities of the multinational group established within their borders, with the goal of preventing a multinational firm from benefiting from a tax rate lower than the global minimum tax.

While a discussion of the OECD two-pillar solution is beyond the scope of this paper, and although not all countries, including the United States,[56] have yet to embrace it (in contrast to the European Union[57] and other nations such as the United Kingdom, Japan and South Korea), the key point here is that the OECD, in an effort to address a global issue – i.e. corporate profit shifting by multinational enterprises – has attempted to elevate the discourse to a multilateral level.

The drawback of such an approach arises from the higher adoption pace of OECD-led tax rules in developed nations compared to developing ones, assuming the latter still adopt them. A paper from the International Bureau for Fiscal Documentation (IBFD) reveals that, likely due to their technical complexity "compounded by the limited capacity of local tax administrations", developing jurisdictions are less receptive to adopting OECD tax recommendations; if they do, it is often because they are members of the G20, which is still a limited pool of nations.[58]

Consequently, to align the taxation of wealth and capital accumulation with modern economic models, the alternative to an OECD-level debate is to shift it to the UN floor. The two subsequent questions then become: (i) which type of international tax reform to embark on; and (ii) what type of UN multilateral arrangement to follow through to achieve that reform.

Doubling down on taxing (better and more) intergenerational transfers among the wealthy emerges as the primary candidate for at least two more reasons, in addition to those already mentioned in section 3.

First, when the size and relevance of bequests provide information about a person's potential ability to pay and consume at a level that is not otherwise observable from their labour income alone, a tax targeting these bequests can effectively help distinguish "between high- and low-ability individuals".[59]

Second, even a country like the United States, traditionally less enthusiastic about spearheading a global tax campaign against tech giants (since it would mostly turn into a crusade against its own companies), could *theoretically* become more receptive to increased taxation on wealth concentration among HNWIs if agreed upon internationally. This is because, based on recent evidence, "more than half of all intergenerational transfers go to the top 10% of [its] wealth distribution, while only 8% of intergenerational transfers go to the bottom half of the wealth distribution".[60] In other words, the United States, in this aspect, finds itself in the same basket as other nations, as its skewed intergenerational wealth transmission contributes to skewed wealth concentration.

On this common ground, and once the discussion is brought to the UN level, the next question pertains to the type of multilateral arrangements suitable for intervention in this field.

4.1. Envisioning a new global tax architecture

Considering the task and borrowing from the wording of the UN itself, one available option is a "standard multilateral convention".[61] Fundamentally, a multilateral legally binding treaty setting the technical rules of the game for jurisdictions to tax high-value intergenerational transfers among the affluent, particularly when they entail cross-border implications.

However, this option would likely reintroduce the same issue highlighted by IBFD when the OECD took the lead in global tax reforms: navigating through the drafting of several technical rules adds complexity. It draws a line between jurisdictions with tax administrations constrained by limited resources and those that are not.

Moreover, such a multilateral convention would likely necessitate coordination with the OECD Model Double Taxation Convention concerning Inheritances and Gifts, Report of the Fiscal Affairs Committee of the OECD, 1982 (OECD Model DTC on Inheritances and Gifts), as well as with the tax treaties that states

56. Congressional Research Service, The Pillar 2 Global Minimum Tax: Implications for U.S. Tax Policy, Report prepared for Members and Committees of the U.S. Congress (Washington, D.C.: Congressional Research Service, 22 September 2023).
57. Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.
58. IBFD, Promotion of Inclusive and Effective Tax Cooperation at the United Nations (Amsterdam: IBFD, 1 June 2023), 47.
59. Wojciech Kopczuk, "Economics of Estate Taxation: A Brief Review of Theory and Evidence", Tax Law Review 63, no. 1 (2009): 139-157.
60. Laura Feiveson and John Sabelhaus, "How Does Intergenerational Wealth Transmission Affect Wealth Concentration?", FEDS Notes (Washington: Board of Governors of the Federal Reserve System, June 1, 2018). Also, this Note shows that "the probability of receiving an inheritance for those in the top 10% of the income distribution is twice the probability of receipt for those in the bottom half of the distribution".
61. United Nations, General Assembly, Promotion of Inclusive and Effective International Tax Cooperation at the United Nations, Report of the Secretary-General (New York: United Nations, 20 August 2023).

have signed bilaterally in its aftermath. While the number of these bilateral tax treaties is not extensive – based on the Internal Revenue Service's website, as of April 2023, the US had only 15 estate and gift tax treaties (but over 60 bilateral tax conventions related to income)[62] – existing treaties would still require coordination in the event of creating a new, comprehensive multilateral convention.

Still drawing from the UN wording, an available alternative is to opt for and work on a UN "framework convention".[63] This would be a legally binding covenant, but it would be limited to establishing the core tenets of future international tax cooperation. Light regulatory aspects could be reserved for "protocols", also binding, supported by "recommendations" that are, by definition, not legally compulsory but carry the force of soft power.

First, among other considerations, the framework convention could include the reduction of capital concentration in the hands of, and the prevention of purely tax-driven wealth flight from, the ultra-HNWIs as key objectives of global tax governance.

Second, a specific protocol could establish baseline measures to address these two key objectives (UN Protocol). Designed for individuals (in contrast to the OECD two-pillar plan intended for companies), the UN Protocol could also be dubbed as a "UN two-pillar solution", but it should only impose well defined and precise commitments on the signing jurisdictions, not rattling off technical regulations. In relation to the taxation of intergenerational transfers among the wealthy, this UN two-pillar solution could require signing states to commit to establishing a minimum tax floor(s), the Global Minimum IHT(s). Its tax floor(s) could be either flat or structured with a scale of minimum rates. If flat, it might, e.g. impose a minimum 15% tax rate on intergenerational wealth transfers above a USD (or EUR) 50 million threshold. Alternatively, if structured as a scale of minimum rates, it could mandate a 15% minimum tax rate on wealth transfers above USD (or EUR) 50 million and a higher minimum tax rate of 25% on wealth transfers in the size of billions (> USD/EUR 1 billion) or quasi-billions (> USD/EUR 750 million).

Third, the recommendations would represent the technical work, providing a forum for discussion among states on how to implement these minimum tax floors, for example, whether as an inheritance or an estate tax, and whether, in its application, the connecting factor of residence should take priority over domicile or vice versa. While an inheritance tax falls on the beneficiaries of the bequeathed wealth, paid after its division, estate taxes fall on the deceased's estate and are paid prior to its transfer. From a distributional perspective, an inheritance tax is preferable: assuming a progressive scale of tax rates instead of a flat one, what matters to subject a recipient to a higher tax over a lower one is the amount of wealth they actually receive, not the pre-distribution estate value bequeathed by the donor. Across the OECD, most jurisdictions levy inheritance taxes, with only four (Denmark, Korea, the United Kingdom and the United States) having estate taxes.[64]

Connecting factors govern the taxing powers between two (or more) jurisdictions when deceased persons shared links with them all. Aside from a few states that mainly rely on nationality (e.g. Hungary), most states use residence as their primary connecting criterion. Nonetheless, others still prefer domicile (e.g. the United Kingdom)[65] or use a definition of residence that de facto relates to domicile, combined with a reliance on the nationality link as well (e.g. the United States).[66]

Likely, a gradual harmonization in this matter through internationally based technical recommendations could help reduce the risks of double taxation, complementing the OECD Model DTC on Inheritances and Gifts, similar to what the European Commission attempted in the past, precisely relying on recommen-

62. Source: Estate & Gift Tax Treaties (International), IRS Website (April 2023), https://www.irs.gov/businesses/small-businesses-self-employed/estate-gift-tax-treaties-international [accessed 9 January 2024].
63. According to Resolution 78/230 adopted by the United Nations General Assembly on 22 December 2023, a UN framework convention on international tax cooperation should explicitly aim to: (i) establish a system of effective governance for international tax cooperation capable of addressing existing and future tax-related challenges on an ongoing basis, while respecting the tax sovereignty of each member state; and (ii) establish a fully inclusive, fair, transparent, efficient, equitable and effective international tax system to promote sustainable development, with a view to enhancing the legitimacy, certainty, resilience and fairness of international tax rules, while addressing challenges to strengthening domestic resource mobilization.
See also the "Introductory Note to the Bureau's Proposal for the Revised Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation by the Chair of the Ad Hoc Committee, Mr. Ramy M. Youssef, 18 July 2024".
64. OECD, Inheritance Taxation in OECD Countries, OECD Tax Policy Studies No. 28 (Paris: OECD Publishing, 2021).
65. For UK estate tax purposes, "domicile" is a common law concept referring to the place where an individual has their own permanent place of abode, with the intention to not leave, so that "the domicile of origin remains till a new one [domicile of choice] is acquired animo et facto". *See J. Coller v The Commissioners for His Majesty's Revenue and Customs*, First-Tier Tribunal (Tax Chamber), TC/2020/01327.
66. Article 2001 of the US IRC states that: "A[n] [estate] tax is hereby imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States." But Regs. Sec. 20.0-1(b)(1) defines a "resident" as "a decedent who, at the time of his death, had his domicile in the United States (…) A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal".

dations to streamline reliefs for foreign inheritance taxes among EU Member States.[67]

4.2. Closing exit gates to prevent an exodus: Some takeaways from the US Expatriation Tax

As noted in section 3., the risk of wealth flight appears to be unrelated to any specific form of levy. Any tax perceived as high by the wealthy, whether it be income tax or wealth tax, could potentially be a consideration behind a decision to relocate. Their high mobility hinges on deep-pocket access to financial and capital resources, resulting in a diminished attachment to a specific job location.

This observation is not solely derived from accounts of stories reported by newspapers (e.g. the relocation of several affluent individuals from Norway to Switzerland is certainly not the only case) but is also supported by economic studies.

Despite a few of them finding a low responsiveness of millionaire migration to income tax across state lines within the same nation, most economic research provides robust evidence of tax-induced mobility for income purposes. The location choice of high-earning individuals (e.g. star inventors and scientists) is found to be sensitive to top tax rates both among countries and within a country (e.g. the United States),[68] including when tax hikes to state marginal income tax rates in a state (i.e. California), part of a wider union (i.e. the United States), are not matched by its peer states.[69]

Inheritance and estate taxes may well share a similar fate. Indeed, a 2023 study highlights that, in the aftermath of a US federal tax reform in 2001 that made estate tax liability "highly dependent on state of residence" by eliminating federal credits against state estate taxes, after nine years approximately 20% of the Forbes 400 richest Americans had moved from states that imposed their own estate taxes to states that did not, concluding that "the geographical location of billionaires is highly sensitive to state estate taxes".[70]

This implies that, assuming Global Minimum IHTs were to be adopted but that certain jurisdictions, despite signing the UN Protocol, chose not to implement it (although improbable on the premise that it would be legally binding) or, worse, avoided any commitment by not signing it, ultra-HNWIs could respond by relocating from their states of origin to more tax-friendly locations. If one were to take this step, others might follow suit, rendering the adoption of Global Minimum IHTs pointless.

An old solution to the threat of wealth flight is outlined in the Commentaries on Articles 4, 7, 9A, and 9B of the OECD Model DTC on Inheritances and Gifts, whose anti-avoidance arsenal allows states of origin to adopt an estate (or inheritance) "continuation tax" that sunsets after a maximum period of 10 years from the time a national or resident, in anticipation of their death, transfers their residence to a low-tax state. Through this mechanism, the departure state can tax the estate of the expatriate if the death occurs within the specified time (though a shorter period can be chosen instead of 10 years), but its taxing power is "subsidiary", indicating that tax credits should be provided for estate taxes charged by the decedent's last state of domicile.

Upon entering into double taxation agreements, some countries have made recourse to this subsidiary taxing right, as the United Kingdom and the Netherlands did in 1980.[71] Slightly differently, the bilateral treaty between Germany and the United States grants the latter a ten-year power to tax its former citizen or long-term resident whose loss of such status had as one of its principal purposes the avoidance of US estate tax.[72]

For the United States, this is foreseeable, given that since 1966, section 2107 of its Internal Revenue Code (IRC) has been imposing US estate tax rates on the transfer of taxable estates of non-resident expatriates who were formerly citizens of the United States and died within 10 years following the tax-motivated surrender of their US citizenship.

And yet the main concern with the OECD-induced approach is that it can lead to a particular form of arbitrariness and unfairness. Arbitrariness arises as the maximum length of the subsidiary taxing right is chosen *à la carte blanche*. Nothing ensures that a ten-year maximum sunset provision is better than one of, for example, 11 years.

67. EU Commission Recommendation of 15 December 2011 regarding relief for double taxation of inheritance (2011/856/EU), OJEU L 336/81.
68. Respectively, Ufuk Akcigit, Salomé Baslandze, and Stefanie Stantcheva, "Taxation and the International Mobility of Inventors", American Economic Review 106, no. 10 (2016): 2930-2981; and Enrico Moretti and Daniel Wilson, "The Effect of State Taxes on the Geographical Location of Top Earners: Evidence from Star Scientists", American Economic Review 107, no. 7 (2017): 1858-1903.
69. Joshua Rauh and Ryan Shyu, "Behavioral Responses to State Income Taxation of High Earners: Evidence from California", American Economic Journal: Economic Policy 16, no. 1 (2024): 34–86.
70. Enrico Moretti and Daniel Wilson, "Taxing Billionaires: Estate Taxes and the Geographical Location of the Ultra-Wealthy", American Economic Journal: Economic Policy 15, no. 2 (2023): 424-466..
71. Double Taxation Relief (Taxes of Deceased Persons and Inheritances and On Gifts) between the United Kingdom and the Netherlands, Order 1980 (Article 11).
72. Convention between the Federal Republic of Germany and the United States of America for the Avoidance of Double Taxation with respect to Taxes on Estates, Inheritances, and Gifts, adopted in 1980, modified in 1998 (Article 11).

Even if the ten-year length were the optimal choice, a fixed deadline could time-discriminate the estate tax treatment by just a few days – e.g. an estate could be subject to taxing powers in two jurisdictions if death happens before ten years minus one day but not if it occurs after ten years plus one day.

A more up-to-date alternative to a continuation tax is a tax applied on the "exit", that is, when an individual exits a jurisdiction by cutting off any residence connection. Such a tax can be designed to "mark to market" property interests held by the leaver, deeming them to be sold at the fair market value (*minus* the tax basis, usually the acquisition cost) on the day before the termination of residency.

To broaden its application as much as possible, it can also be legally constructed to include the entire estate of the leaver, as it would be if the latter had died just before leaving.

Since 17 June 2008, section 877A of the US IRC has been doing precisely that, although for US citizens it replaces the residence requirement with that of citizenship. To be caught in its net, citizens who relinquish their US citizenship and long-term residents[73] (known as "green card holders") who cease to be lawful permanent residents in the United States can potentially end up paying what is defined as the "Expatriation Tax" if they either: (i) own more than USD 2 million of assets; (ii) have been high earners for the last five years (i.e. above an income threshold adjusted for inflation, which was USD 201,000 for 2024); or (iii) simply fail to comply with all US federal tax obligations for the same five-year window period.

Unless expressly excluded under IRC s 877A(c) (e.g. some deferred compensation items, distributions from non-grantor trusts), all property interests of the expatriate in excess of an inflation-adjusted standard exclusion (amounting to USD 866,000 in 2024) that would have been part of their US gross taxable estate are deemed as immediately realized (even if actually they are not) for their fair market value.[74]

The US Expatriation Tax has three main advantages: it applies once and for all at the time the individual expatriates, thereby not suffering from a sunset deadline as a continuation tax does. It is completely independent from any subjective anti-avoidance purpose test, not requiring consideration of any hidden intent and thus making its administrative application easier.[75]

More importantly, deferral of its payment is possible upon request (deferral election), subject to the provision of adequate security and the charge of interest, until the taxable year in which property is disposed of or the year of death of the expatriate, whichever is earlier (IRS s 877A(b)).

Hence, the second leg of a UN two-pillar solution aimed at addressing wealth flight should more closely resemble a US-equivalent expatriation tax than an OECD-equivalent continuation tax, in the form of a Global Minimum Exit Tax.

To align its application with that of Global Minimum IHTs, as the two would complement each other in the scheme of a transnational dual-pillar plan, the Global Minimum Exit Tax could be designed to trigger at the same lowest wealth threshold envisaged for Global Minimum IHTs (e.g. USD 50 million or EUR 50 million).

Its tax rate(s) should not be set internationally but should equate to the ordinary capital gains tax rates of each signifying jurisdiction, in order to avoid domestic discrimination between those who stay and sell (i.e. realize their assets) and those who leave and do not sell, at least in terms of tax rates.

That said, the US Expatriation Tax presents certain drawbacks that a UN-led Global Minimum Exit Tax should mitigate. Aside from debates over its efficacy in deterring expatriations due to its taxation level (whether it is sufficiently high or too low)[76] and the presence of loopholes that still enable avoidance strategies, primarily contingent upon possessing adequate financial resources (e.g. irrevocable, self-settled, non-grantor discretionary US domestic trusts),[77] it features three main shortcomings.

The US Expatriation Tax applies to real property, even though the sale of real property interests by non-residents remains generally subject to tax in the US under IRC s 897. This complicates the system because, rather than taxing the whole gain upon disposition, it now taxes the deemed sale value upon expatriating and again taxes any future appreciation upon actual realization.[78]

Second, it can generate "phantom gains".[79] Whether the tax is paid immediately upon relocation or deferred upon election (which must be made on an "asset-

73. Under IRC s 877(e)(2), for the purposes of section 877A, the term "long-term residents" means any individual (other than a US citizen) who is "a lawful permanent resident of the United States in at least 8 taxable years" during the last 15 taxable years.
74. This includes individual retirement accounts (IRAs), which are treated as if the expatriate had taken a full distribution from them on the day before the expatriation date.
75. Alice G. Abreu, "Taxing Exits", U.C. Davis Law Review 29, no. 4 (1996): 1087-1162.
76. Reuven S. Avi-Yonah, "Reforming the Exit Tax", International Tax Journal 49, no. 4 (2023): 41-44.
77. Gary Forster and J. Brian Page, "Expatriation From the United States: The Exit Tax", Florida Bar Journal 94, no. 6 (2020): 60-75.
78. William Dentino and Christine Manolakas, "The Exit Tax: A Move in the Right Direction", William & Mary Business Law Review 3, no. 2 (2012): 341-417.
79. Marie-Therese Yates, Jacopo Crivellaro, and David Gershel, "Fare Well When Moving: Changing Tax Home and Expatriating", Estate Planning Journal (2017): 1-8.

by-asset basis"), these deemed gains are ultimately assessed on the day prior to expatriation. If, between that assessment day and the time of actual disposition, the value of an asset decreases, the amount of due tax could be higher than it would have been if the taxpayer had been taxed on the realization value at the sale, with limited venues to claim tax refunds outside of tax credit reliefs provided by bilateral tax conventions.

In turn, this leads to the third significant limitation: despite payments under the US Expatriation Tax constituting a form of income tax, IRC s 877A(b)(5) thwarts bilateral relief opportunities by subjecting the taxpayer's election deferral to an "irrevocable waiver of any right under any treaty".[80]

But if the US can impose taxes without regard to potential conflicts with its network of tax treaties, destination countries can likewise do the same.[81] The US Expatriation Tax is, in fact, calculated on the day immediately preceding the expatriation date. However, on *that* very day, the expatriate is not yet a resident in the destination jurisdiction – i.e. the transfer of residence occurs the following day. If the destination country denies taxpayers a stepped-up basis or a tax credit by asserting that they were not yet residents on the day the US tax was charged, it could lead to double taxation.[82]

Ostensibly, a Global Minimum Exit Tax should retain the strengths of the US Expatriation Tax while dodging its pitfalls. The next section delves further into this and examines how to reconcile its tax basis with that of Global Minimum IHTs, both with the primary aim of preventing a proliferation of double taxation spillovers.

4.3. The interplay between Global Minimum IHTs and a Global Minimum Exit Tax

Having established the rationale for incorporating Global Minimum IHTs and a Global Minimum Exit Tax in the UN two-pillar solution, effective coordination between the two is crucial for an efficient international tax cooperation. This necessitates defining their intertemporal application and reconciling their respective tax bases.

In scenarios where ultra-HNWIs relocate from their country of residence to low-tax jurisdictions, Global Minimum IHTs would not come into play, as the event of death has not yet occurred before the transfer of residence. However, the Global Minimum Exit Tax would be applicable, empowering the departure country to levy it, but bilateral coordination can be necessary with the destination state.

Conversely, if ultra-HNWIs pass away in the country of residence, the latter can impose Global Minimum IHTs. Upon the payment of these taxes, a wealth transfer takes place in favour of the deceased's heir(s). If the heir(s) subsequently decide to relocate overseas, the question arises regarding the ability of the same country to also apply the Global Minimum Exit Tax, i.e. after having previously applied the Global Minimum IHTs.

The answer to this question should be affirmative, not least because different purposes and economic activities are at stake, but the whole tax burden will hang on the coordination between their two tax bases.

In principle, both of them should be constructed as extensively as possible, utilizing "constructive ownership rules" – to include, e.g. assets transferred to related persons such as children and spouses, as well as to trusts and family-connected foundations.

However, it is essential to note that this does not imply that their tax bases will be identical: Global Minimum IHTs should apply to a broader base. This is because Global Minimum IHTs should be calculated on the fair market value of the entire breadth of the assets transferred from the decedent to the heirs.

On the other hand, the Global Minimum Exit Tax should exclusively apply to the appreciation of the leaver's gross taxable estate. Additionally, to mitigate the complexities associated with the US Expatriation Tax, real property interests located in the departure state should be exempt, as countries typically already include gains realized on direct and indirect disposals of domestic real estate by non-residents within the scope of their taxation reach.[83]

Likely, an automatic deferral from the Global Minimum Exit Tax would also be needed for two items: stock

80. Even statutorily deferred compensation items (e.g. employer-provided retirement plans), which are subject to a 30% withholding at the time of the actual payment, lose the benefit of automatic deferral in favor of the immediate taxation "of the present value [of the accrued benefit]" if any rights under double tax treaties are not irrevocably waived (IRC s 877A(d)(3)(B)). The same applies to distributions from non-grantor trusts under IRC s 877A(f)(4)(B).
81. For an examination of the legal arguments regarding the potential discriminatory aspects of exit taxes, *see* Reuven S. Avi-Yonah, "Are Exit Taxes Discriminatory?", Tax Notes Federal 183, no. 13 (June 24, 2024): 2349-2352.
82. Recognizing these concerns, paragraph 7 of article XIII of the Income Tax Treaty between the US and Canada, signed in 1980 but amended in 2007, now permits a specific election by the taxpayer to be treated by the destination state, "in the year [in which he is treated by the other state as having alienated a property for taxation purposes] and all subsequent years", as having sold and repurchased the property for its fair market value immediately before the taxable event in the state of origin.
83. Indirect confirmation can also be found in the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (known as MLI), which came into force in 2018. According to its article 9, subject to conditions, capital gains from the alienation of shares or interests in entities deriving their value principally from immovable property are recognized as chargeable in the source state.

options and carried interest. To simplify, options are not stock but contractual rights granted to a firm's executives and employees to buy its shares at a pre-set price ("strike price"). Upon exercising them (i.e. paying the strike price), subject to a vesting period, the holder can gain from the difference between the strike price and the shares' actual market price. But until the options vest, determining their current market value is not straightforward. Yet, assuming the company whose stock options have been granted is located in the departure state, the latter could easily tax them at the time the expatriate exercises the options after they vest, even if the expatriate is no longer a resident.

The case for carried interest is more complex. Carried interest is a significant source of earnings for the alternative fund asset management industry, especially in private equity and venture capital. It represents a share in the profits of their fund investments, mostly contingent on the proceeds from an exit price (i.e. total or partial sale of the investments), set to vary depending on whether it is paid on a fund or deal-by-deal basis.[84]

Computing the value of such carried interest when its holders change residency is challenging, not least because, absent a sale, there is no comparable on the market; thus, taxing it immediately could yield very little. Unlike stock options, carried interest is usually not held in the same jurisdiction where the investment is made: target investments can be located anywhere, but a few jurisdictions (e.g. Cayman, Ireland, Luxembourg, Singapore, the United States and the United Kingdom) specialize in the fund industry.

A deferral at the time of the exit should be associated with full disclosure from the expatriate of their own carried interests to the departure state, coupled with periodic (e.g. annual) reporting obligations to monitor their status and potential realization.

This brings back to the question of the potential application of a Global Minimum Exit Tax after the imposition of Global Minimum IHTs, as the practical outcome is contingent on whether a "step-up" in basis will be allowed on assets transferred to heirs.

Some countries, like the United States under IRC s 1014, allow a step-up in basis at the decedent's death for all assets. The rationale is that without it, the system would risk taxing the same assets twice, as those assets subject to estate tax were already purchased by the decedent with after-tax profits, whether from labour income or capital income.

However, this issue is less problematic for inheritance taxes compared to estate taxes, as the recipient is taxed for the first time on the inherited wealth. Nevertheless, the argument in favour of a step-up in basis, if applied universally, would limit the feasibility of several revenue-generating taxes. In fact, even VATs and sales taxes are imposed on consumption that taxpayers engage in with after-tax income. As a consequence, other countries such as Germany and Italy do not provide for a step-up in basis.

The significance of this difference becomes evident in a jurisdiction that grants a step-up in basis. The broader base of Global Minimum IHTs compared to a Global Minimum Exit Tax implies that, particularly if the heirs relocate shortly after receiving the assets (i.e. shortly after the payment of Global Minimum IHTs), the expatriation will de facto result in no taxation.

The same may not hold true absent a step-up in basis, particularly if, between the intergenerational transfer of wealth and the expatriation date, the inherited assets appreciate in value.

In the end, since these effects will be within the same country, namely the departure country, as a matter of domestic tax policy it can be left to each jurisdiction to decide without having to impose an international top-down rule.

Of course, the case is entirely different when both the departure state and destination state are involved, as is the situation when, upon the unfolding of a tax-driven expatriation, the departure country applies the Global Minimum Exit Tax. This poses the same issue faced under the US Expatriation Tax: the temporal misalignment between expatriating and selling entails that, assuming no losses, the unrealized gain charged by the departure country at the expatriation date will also account for (part of) the basis of the realized gain when the sale occurs in the destination country.

Unless the destination state allows a stepped-up basis or grants a tax credit, respectively, for the tax basis assessed by or the tax paid to the departure state, double taxation will certainly occur. In either case, as the tax basis assessment would be conducted by the departure country, mutual administrative assistance procedures should be ensured to overcome disagreements with the destination country.

In theory, under the OECD's view of residence as the primary connecting factor, it is conversely the departure country that should provide the foreign tax credit for taxes to be paid on the sale in the destination country. However, since an exit tax is technically structured as due on the day preceding expatriation, once a deferral is granted, the actual collection at the time the taxpayers reside abroad does not change the fact that they were residents in the departure state at the time the tax was charged.

84. Domenico Imparato, "Private Equity's Byzantine Tax Stand — An Untold and New Story of Carried Interest", British Tax Review 1 (2024): 104-132. *See also* Domenico Imparato, "The Skewed Playing Field between Private Equity and Family Ownership Hemmed in by Intra- and Inter-Country Tax Non-Neutralities", *World Tax Journal* 16, no. 1 (2024): 177-242. https://doi.org/10.59403/emtrqd.

On the other hand, if a loss occurs after the relocation – meaning a sale takes place in the destination jurisdiction for a market value resulting in a realized gain lower than the unrealized gain assessed at the time of expatriation – it will fall on the departure nation to reduce the tax burden accordingly, either through tax refunds if the payment had been made at exit or by adjusting the tax liability whose payment had been deferred.

Last, it should be specified that if a wealthy individual moves from country A (original departure state) to become a resident in country B, and later further changes residence from country B to country C without realizing any gains before arriving in country C, even if country A does not apply any exit tax on the first move (i.e. from A to B), country B should still be empowered at the time of the second move (i.e. from B to C) to apply the Global Minimum Exit Tax on all unrealized gains that have accrued throughout the entire period (i.e. from A to C). Said otherwise, country B would impose a sort of "top-up" tax on those accrued gains that country A was allowed to tax on the first exit but did not do so.

Still, it remains to be seen whether such an internationally designed tax mechanism, aimed at preventing tax-induced relocation tactics, would be legally feasible for countries whose domestic taxing powers now have to contend with a set of liberties of movement for individuals and capital within the framework of a broader union, as is the case for EU Member States, as outlined in section 5.

5. *Assessing the (Legal) Odds of a Harmonized Exit Tax on Individuals within, and for, the European Union*

Any multilateral-led exit tax is likely to impose restrictions on the movement of both individuals and capital. If individuals who might have otherwise relocated across borders to exploit tax differences between countries refrain from doing so due to an exit tax, the associated flow of capital contingent on the wealthy moving would not occur either.

For the European Union, whose existence depends on the free movement of goods, persons, services and capital within its Single Market, any such tax would need to be justified on legal grounds, irrespective of whether the tax measure originates at the UN level or not.

In essence, if the UN were to propose a Global Minimum Exit Tax targeting the wealthy, the European Union would likely follow suit in implementing it. Alternatively, in the absence of a UN proposal, the European Union could autonomously establish its own scheme for a European Minimum Exit Tax, taking a unilateral stance similar to that of the United States with their Expatriation Tax.

Either way, ensuring compliance with the rights enshrined in the Treaty on the Functioning of the European Union (TFEU), as interpreted by the CJEU, would be crucial.

At its core lies the principle of free movement of persons under article 21 of the TFEU, which guarantees the right of EU citizens "to move and reside freely within the territory" of each Member State.[85] Comparatively, this is akin to asserting that the taxation of one US state cannot impede American citizens from changing their residence across the US federation, since their "right to travel" is protected under the Privileges and Immunities Clauses of article IV, section 2 and the Fourteenth Amendment of the US Constitution.[86]

The US Expatriation Tax is not by chance a nationality-based tax, applying to those who exit the external border of its federation, and not to those who move within it, across its 50 state lines.

However, the converse also holds true: if a tax is not meant to "impede" the free movement within the same union, whether it is the United States or the European Union, it follows that an exit tax applied by a state that is part of such a union but that does not inhibit the exercise of this freedom is likely to be upheld. For that, a similar tax would need to be "coherent" with the broader tax system of the entity imposing it, as the opposite of coherence is discrimination.[87]

In turn, for a tax system to be coherent, it should treat comparable situations similarly. In the context of an exit tax, this implies that those moving their residence from state one to state two within the same union should be treated similarly to those who remain in state one. If comparable treatment is not feasible, any restrictions should be proportionate to the objectives pursued, meaning they have to be "both appropriate and necessary".[88]

85. Another crucial legal aspect pertains to the principle of non-discrimination, as article 18 of the TFEU prohibits "any discrimination on grounds of nationality", implying that any exit tax should be applied uniformly to both domestic and foreign nationals. However, unlike the US tax system, which primarily depends on the connecting factor of nationality, EU Member States typically tax based on residency. Consequently, it is foreseeable that a harmonized EU-wide exit tax approach would also rely on residence, placing less (or no) emphasis on grounds of nationality.
86. Henry Ordower, "New York's Proposed Mark-to-Market Tax Decouples from Federal Tax", Tax Notes State 99 (2021): 795-801. Saint Louis University School of Law Legal Studies Research Paper Series.
87. By definition, in an "incoherent" tax system, comparable situations that should be treated similarly could be treated differently. If not reasonably justified, this would be discriminatory.
88. Ulrich Schreiber and Gregor Fuhrich, "European Group Taxation: The Role of Exit Taxes", European Journal of Law and Economics 27 (2009): 257-274.

While this applies to movements across internal borders of the same union (inward), restrictions could be different when movements occur outside that union (outward). First, depending on the specific constituent framework, constitutional guarantees or rights for outward moves over inward ones can simply be different. Second, since tax coordination inherently tends to be stronger within the same union than with third countries that are not members of it, the need to combat tax avoidance and evasion can justify additional restrictions when the exit happens to be in favour of non-cooperative tax jurisdictions.

Translating this into the European legal landscape requires distinguishing between two scenarios for any EU-wide harmonized exit tax on individuals: (i) residents moving from one EU Member State to another (e.g. from Denmark to Luxembourg), including to countries in the European Economic Area (EEA);[89] and (ii) individuals leaving the European Union to relocate their residence to third countries. Within the category of third countries, a further distinction should be made between those that do not engage in tax cooperation with EU Member States ("non-tax-cooperative") and those that do, such as those that have entered into mutual assistance agreements for tax recovery ("tax-cooperative").

This is because there are four cornerstone freedoms underpinning the Single Market – free movement of workers, freedom of establishment, free movement of goods, and free movement of capital and payments – but, among these, only the free movement of capital under article 63 of the TFEU applies to third countries.[90]

This overall complexity helps explain why the existing case law from the CJEU on the compatibility of national exit taxes applicable to individuals with EU freedoms has been indecisive and quite fraught. In turn, this clarifies why each Member State has taken a divergent domestic approach, with some adopting this type of tax and others, like Italy, not doing so.[91]

Not least, it is not surprising that the ATAD Directive, while introducing an exit tax at the EU level with a general reference to "taxpayers" in article 5, which "could in principle include both individuals and corporations", still makes it clear in its Preamble (paragraph 10) that it targets corporations only.[92]

And yet, while restricting its application to corporations, article 5 of the ATAD Directive also lays the legal foundation for establishing a EU-wide harmonized exit tax for individuals. Indeed, if the European Union's authority to "approximate" national laws in direct taxation can (and does) regulate the transfer of companies within and outside the European Union to maintain the proper functioning of the Single Market under article 115 of the TFEU, it must likewise encompass jurisdiction over individual relocations outside the European Union that can lead to outbound capital losses. In an era where valuable business assets are often digital and several firms with low tangible asset intensity share the same source of enrichment as their founders through soaring share prices, the traditional divide between companies moving *physical* assets and individuals transferring *financial* assets becomes obsolete. Moreover, considering that the European Union set up the playground that helps the wealthy create value by leveraging a market larger than what would be without the European Union itself,[93] the European Union would have a claim to tax their departure from the Single Market after having reaped its benefits, especially when this is more efficient and less distortive than each Member State acting uncoordinated.[94]

Returning to the complexity of the European regulatory framework, particularly to the non-uniform jurisprudence of the CJEU, it must be acknowledged that this lack of a definitive say on the matter does not fall entirely on the CJEU itself.

89. Iceland, Liechtenstein and Norway.
90. In the *Heirs of M.E.A.* case, which revolved around a relocation from the Netherlands to Switzerland with implications for the taxation of the leaver's estate upon her death, the CJEU concluded that, despite acknowledging inheritance as possessing characteristics of a movement of capital, such a transfer of residence did not enjoy the protection of article 63 of the TFEU. The CJEU's reasoning, asserting that the relocation "does not involve, in itself, financial transactions or transfers of property", appears debatable: either inheritance is not a movement of capital, making its relocation inconsequential; or if it is a movement of capital and accompanies an individual's move (due to the change in that person's residence altering the country with taxing powers over their inheritance), the capital itself also moves. *See Heirs of M.E.A. van Hilten-van der Heijden v Inspecteur van de Belastingdienst* (C-513/03), 23 February 2006. As unrealized gains partake of capital, they would inevitably move during a relocation. Consequently, an exit tax triggered by a relocation to a third country would likely fall under the purview of article 63 of the TFEU.
91. Frank P.G. Pötgens et al., "The Compatibility of Exit Tax Legislation Applicable to Corporate Taxpayers in France, Germany, Italy, The Netherlands, Portugal, Spain and The United Kingdom with the EU Freedom of Establishment – Part 3", Intertax 44, no. 3 (2016): 247-265.
92. Giulia Letizia, "The Recent Restrictive ECJ Approach to Exit Tax and the ATAD Implementation", EC Tax Review 2020/1 (2020): 33-37.
93. Johan Lindholm, "Squaring the Constitutional Circle: An Overview of EU Fiscal Powers", in The Power to Tax in Europe, ed. Johan Lindholm and Anders Hultqvist (Oxford: Hart Publishing, 2023), 3–18. Swedish Studies in European Law.
94. Agustín J. Menéndez, "Taxing Europe: Two Cases for a European Power to Tax (with Some Comparative Observations)", Columbia Journal of European Law 10 (2004): 297-338.
    Also, Luis M. Poiares Pessoa Maduro and Tomasz P. Wózniakowski, "Why Fiscal Justice Should Be Reinstalled Through European Taxes That the Citizens Will Support: A Proposal", STG Policy Briefs 2020/07 (2020).

In *Hughes de Lasteyrie du Saillant*,[95] for example, an individual with a substantial holding (above 25%) in a French-based company moved his residence from France to Belgium. It is true that, in this case, he had: (i) to pledge a guarantee to be granted a suspension from the otherwise immediate payment of the French exit tax; and (ii) to designate a representative for tax communications to be established on French soil, which obviously made him worse off compared to resident taxpayers capable of deferring their capital gains taxes until realization. But despite these conditions, the French exit tax, as in place at the time of this judgment in 2004, was not excessively harsh. It had: (i) a sunset period of 5 years from the date on which the taxpayer went abroad, after which it phased out; (ii) provided a deduction for the tax paid in the destination state; and (iii) accounted for decreases in value after the taxpayer's departure from France.

However, the interpretive question raised to the CJEU was mistakenly framed by the Conseil d'État, which asked whether the general purpose of preventing the risk of tax avoidance justified the French exit scheme under the principle of freedom of establishment (article 49 of the TFEU), which protects the right of taxpayers and businesses to establish themselves anywhere in the Single Market. Thus, the CJEU had to strike down the then-applicable French exit levy, not least because its regime was unrelated to any tax avoidance purpose, as its application disregarded any subjective intent test.

Indeed, once an exit tax is legally designed to be charged on the leaver's last day of residence before expatriation (aside from the deferral of payment), it should apply regardless of whether or not the leaver had any intention to avoid taxes upon leaving.

It is the fact that these profits accrued during the time when taxpayers were residents, on top of availing themselves of the benefits provided (e.g. the rule of law, infrastructure, supply of skilled labour through the educational system) by the departure jurisdiction, that allows the latter to tax them.

This would align the American "benefit theory" of taxation with the recognition that "the realization requirement is essentially a timing issue":[96] a state could simply abolish the realization requirement and tax any gains as they accrue on both the residents who stay and those who leave. At that point, their tax treatment would be completely equalized, and the leaver would be taxed anyway.

Thus, upon taking on a differently framed question, two years later in September 2006, the CJEU had the chance to provide a more refined answer in the ruling known as *N,* involving the transfer of a shareholder of Dutch companies from the Netherlands to the United Kingdom. In this case, the CJEU still held that the Dutch legislation was not in line with the freedom of establishment because it made the deferral of the exit tax payment subject to the provision of guarantees, on top of not accounting for decreases in value occurring after the transfer of residence. Nevertheless, the CJEU came closer to the American approach by underscoring that this tax's goal was to target accruals in value that arose throughout the time when the residency-grounded taxing powers were with the departure country, a tenet that the CJEU referred to as the "principle of fiscal territoriality, connected with a temporal component".[97]

Yet, some puzzlement was about to come, arising from a chain of actions: a Communication by the EU Commission, the decision in *National Grid Indus BV* by the CJEU and the ATAD Directive, respectively, in December 2006, in 2011 and 2016.

In its 2006 Communication on exit taxes the EU Commission stated that: "Taxing residents on a realization basis and departing residents on an accruals basis is a difference in treatment which constitutes an obstacle to free movement." This generated confusion: taxing one person upon realization and a second one upon accrual while deferring (at no cost) the due tax until realization leads to economic indifference between the two taxpayers. Either way, assuming no evasion or avoidance occurs, they will hand over cash to the revenue when a sale happens. Therefore, contrary to the EU Commission's statement, it is not the accrual or realization principle per se that creates obstacles to free movement: it is the demand for immediate payment at the exit (with its liquidity problems) or subjecting deferral elections to guarantees (which are costly) that, by making the accrual system inferior to the realization system, discriminates against those who wish to move relative to those who do not.

Probably, this confusion was later factored into subsequent assessments. For example, the ruling in *National Grid Indus BV*, although dealing with corporations and not individuals (the case involved a Dutch company moving to the United Kingdom), is relevant because it set two precedents.[98]

First, the CJEU, in confirming that an entity that transfers its place of effective management to another Member State may rely on article 49 of the TFEU, explicitly allowed the application of interest upon deferral elections, de facto making a taxpayer's choice to leave more expensive than if they were to remain.

95. *De Lasteyrie du Saillant v Ministère de l'Économie, des Finances et de l'Industrie* (C- 9/02), 11 March 2004.
96. Andrew Appleby, "No Migration without Taxation: State Exit Taxes", Harvard Journal on Legislation 60, no. 1 (2023): 55-100.
97. *N v Inspecteur van de Belastingdienst Oost/kantoor Almelo* (C-470/04), 7 September 2006.
98. *National Grid Indus BV v Inspecteur van de Belastingdienst Rijnmond/kantoor Rotterdam* (C-371/10), 29 November 2011.

This outcome, unsurprisingly, has sometimes been labelled in the literature as a "Pyrrhic victory".[99]

Second, in denying, for companies, a duty on the departure state to account for decreases in value occurring after a firm's transfer, the CJEU drew a line between taxpayers who are individuals and those that are corporations on the grounds that: (i) "the assets of a corporation are assigned directly to economic activities that are intended to produce a profit"; and that (ii) "a company's taxable profits are partly influenced by the valuation of its assets in the balance sheet."[100]

Still, individuals moving their residence can do so for business motives as well, just like corporations. Additionally, an individual's unrealized gain deriving from holdings in a non-listed firm will depend on the business asset value as on the company balance sheet as well.

More importantly, the "temporal component" connected to the "principle of fiscal territoriality" should mean that, if a sale occurring after an exit led to a realized profit lower than the unrealized gain assessed by the departure state at the exit time, the supposed higher value had never actually accrued in the departure state. And if it was not, it is hard to imagine its taxing power *temporarily* extending to something that never came into existence.

Inevitably, the tax exit regime for corporations under the ATAD Directive suffers from inconsistencies. For example, its article 5 confines deferral alternatives for immediate payment to "instalments over five years", whereas the current French exit tax for individuals allows for permanent deferral upon request until realization when a resident relocates to a country that has a tax treaty with France containing administrative assistance clauses to combat tax evasion and avoidance, or a mutual assistance agreement for tax recovery.[101]

Moreover, whereas the ATAD Directive introduces charges on interest for instalment-based deferral options, even without an actual risk of non-recovery, and it also lacks mechanisms to account for *post*-exit losses, the current Dutch exit tax scheme for individuals considers decreases in value within a 10-year window *post*-exit and permits interest-free deferral elections until realization when expatriating to an EU Member State or EEA country.[102]

Navigating through these complexities highlights the incoherence of the overall European tax treatment of exit events, both at the EU level – between its case law and secondary legislation (i.e. directives) – and between EU regulations and those of its Member States.

Hence, any EU-wide harmonized exit tax intended to apply to individuals, whether as part of a UN-led Dual-Tax Pillar Plan or as an unilateral action within EU domestic tax policy absent any international lead, would need to address such complexities to contribute to a (more) coherent tax system.

To begin, for individuals relocating from one EU Member State to another or to EEA countries, a EU-wide harmonized exit tax scheme would need to provide ex officio deferral of payments until the assets underlying the assessed unrealized gains are actually disposed of. This deferral should be interest-free and subject to revision in case of *post*-exit losses or decreases in value, ensuring equal treatment between domestic relocations and those within the European Union or EEA. The same principles should apply if the individual's relocation is to countries that have signed agreements on the free movement of persons with the European Union, such as Switzerland.[103]

If the relocation is from an EU Member State to a third country, the distinction would need to be made based on the third country's status as either non-tax-cooperative or tax-cooperative.

If the third country is tax-cooperative, deferrals should be granted upon request but, under article 63 of the TFEU on the free movement of capital, the deferral election should not incur any interest charges.

99. Daniel Smit, "The National Grid Indus Case: A Pyrrhic Victory?", European Tax Studies 1 (2012): 14-25.
100. In the *Trustees of the P Panayi* ruling, after having deemed trusts as being legal entities (therefore, closer to undertakings than individuals), the CJUE reached the same conclusion for basically the same reason as regards the absence of any legal duty on the departure state to account for losses occurring after the transfer of their place of management. *See*, *Trustees of the P Panayi Accumulation & Maintenance Settlements v Commissioners for Her Majesty's Revenue and Customs* (C-646/15), 14 September 2017.
101. Emmanuel Joannard-Lardant, France - Individual Taxation, Country Tax Guides (Amsterdam: IBFD, 2023). The primary issue with the French exit tax scheme relates to its (extremely) time-limited applicability: it can only catch individuals who realize their gains shortly after leaving the country. This limitation arises because, in the absence of any sale, the tax sunsets after two or five years, depending on whether the taxpayer's assets upon leaving were worth more or less than EUR 2.57 million. In other words, it targets soon-to-happen abusive tactics such as "leaving and selling". However, absent any real liquidity concerns, the expatriate can simply avoid the tax by "leaving and waiting" for a few years. *See* D. Keohane, *France waters down its 'exit tax'* (15 September 2018), The Financial Times.
102. Marnix Veldhuijzen, Netherlands - Individual Taxation, Country Tax Guides (Amsterdam: IBFD, 2023).
103. In the case of *Martin Wächtler*, the CJEU found the German exit tax regime to be in breach of the agreement on the free movement of persons between the EU and Switzerland because it allowed no deferral of payment for relocations to Switzerland, unlike for transfers to EU Member States. *See Martin Wächtler v Finanzamt Konstanz* (C-581/17), 26 February 2019. Subsequently, the First Senate of the German Federal Fiscal Court (BFH) determined that the German Tax Authority's resolution to split the exit tax payment in instalments did not meet the requirements set forth in *Martin Wächtler*. Instead, an interest-free permanent deferral until actual realization was deemed necessary, with only the pledge of collateral remaining admissible against enforcement limitation risks. *See* BFH (I R 35/20), 6 September 2023.

National authorities may still demand collaterals, although only after assessing on a case-by-case basis whether there is a risk of non-recovery.

For relocations to non-tax-cooperative countries, the situation is different: as these jurisdictions lack mutual assistance agreements for tax recovery with the EU Member State of departure, tax authorities could impose both collaterals and interest as conditions to grant a deferral election, since these measures would be proportional to the risk of non-recovery.

In either case, contingent upon the filing of transaction disclosure statements detailing the final sale price upon realization to ensure robust tax monitoring (which could otherwise be jeopardized, especially for transfers to non-tax-cooperative countries), decreases in value and *post*-exit losses should be taken into account by the EU Member State of departure, in accordance with the "principle of fiscal territoriality, connected with a temporal component".

Finally, it is clear that in the hypothesis of two or more relocations within the European Union before a transfer to a third country occurs, there would be no need for any "top-up" tax between EU Member States, unlike the scenario illustrated in section 4.2. under a UN-led Global Minimum Exit Tax. For example, assuming an individual moves from country A to country B and subsequently from country B to country C, with both country A and country B being EU Member States and country C being a third country, country B would not be required to "top-up" any exit taxes that were not charged by country A, because country A would be legally mandated to levy such a tax under a EU-wide harmonized exit tax regime.

6. Closing the Gap

The concentration of capital ownership, particularly in the form of corporate equity assets, is increasing across borders. The article argues that whether this manifests as corporate control, as seen in Continental Europe, or as more diversified portfolios held by the ultra-wealthy, as observed in parts of the Anglo-Saxon world, the outcome remains largely consistent: wealth inequality is high, heavily skewed towards the top of the income distribution curve. As this wealth is passed down, much of the global economy could evolve into an inheritocracy.

If one believes that such levels of wealth concentration are simply undesirable, then the historical distinction between commutative taxation aimed at overcoming market failures and distributive taxation aimed at addressing distributive justice, even when markets may operate efficiently,[104] becomes *blurred*: markets would be perceived to have failed and resulted in injustices simultaneously.

The question becomes how to address such a double failure. States are accustomed to relying on the progressivity of the income tax system, whose redistributive function has long been established.[105] However, despite taxes being more efficient than other legal rules (e.g. the tort system) in redistributing income,[106] it has been observed that this argument is not necessarily inconsistent with an increase in inequality.[107]

It could not be otherwise: if wealth is more highly concentrated than income, income tax systems – even if progressive and including transfer payments based on income indicators – can by definition hardly solve wealth inequality on their own.

But given the high mobility of capital nowadays, neither can a single state solve it on its own, as wealth (aside from real estate) can easily fly away as their owners relocate.

To address these limitations, the article suggests moving beyond a single-state-based and income-exclusive approach. First, at the UN level, states could collaborate on implementing Global Minimum IHTs. Despite the general argument against inheritance taxes citing their limited revenue generation, they demonstrate high potential. For instance, although laden with exemptions, economic data from the United Kingdom reveals a steady increase in IHT receipts in the United Kingdom since 2009, rising from GBP 2.3 billion to GBP 6.7 billion in 2022. While this surge may be attributed to soaring property prices bringing more taxpayers into its net, it is conceivable that significantly more revenue could be generated if loopholes were eliminated.[108]

One of these loopholes involves wealth flight, with individuals' relocations targeting low-tax jurisdictions. An exit tax is a rational choice to counteract this risk.[109] It could be adopted internationally, at the UN level, under the umbrella of a Global Minimum Exit Tax. Nonetheless, its application is so flexible that, as the article shows, even macro-regional entities such as the European Union have the legal room to introduce it.

104. David Elkins, "Taxation and the Terms of Justice", *University of Toledo Law Review* 41, no. 1 (2009): 73-106.

105. Reuven S. Avi-Yonah, "The Three Goals of Taxation", Tax Law Review 60, no. 1 (2006): 1-28.

106. Louis Kaplow and Steven Shavell, "Why the Legal System Is Less Efficient than the Income Tax in Redistributing Income", Journal of Legal Studies 23, no. 2 (1994): 667-681.

107. David A. Weisbach, "Constrained Income Redistribution and Inequality: Legal Rules Compared to Taxes and Transfers", Coase-Sandor Working Paper Series in Law and Economics, No. 969 (2023).

108. UK Office for National Statistics, data available at: https://www.ons.gov.uk/economy/governmentpublicsectorandtaxes/publicspending/timeseries/acch/edp2

109. Darong Dai, "Is Exit Tax a Good Idea for the Taxman?", Journal of Economic Studies 45, no. 4 (2018): 810-828.

Finally, the implementation of Global Minimum IHTs and a Global Minimum Exit Tax would place a larger tax burden on HNWIs, making tax systems more equitable and extending progressivity beyond income taxes, with this enhanced fairness being felt not only within each adopting country but also globally if a critical mass of nations joins the initiative.[110]

110. Each individual country could theoretically tax wealth unilaterally as long as there were some international coordination on reporting and enforcement of legal judgments. However, it has been noted that a globally coordinated tax system might be more effective in achieving a fairer distribution of income, wealth, and resources across nations by counteracting the tendency of countries to prioritize their own citizens through their tax policies, which often leaves fewer resources and taxing rights for developing nations. For an analysis of this concept of global distributive justice and global progressivity, refer to Adam Kern, "Progressive Taxation for the World", Tax Law Review, forthcoming (2024). Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4746523.

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