

Series Editor's Preface

The LL.M. program in International Tax Law at WU (Vienna University of Economics and Business) is available as either a 1-year full-time or a 2-year part-time program. Students not only attend a vast number of courses for which they prepare papers and case studies as well as sit numerous examinations but also write their master's theses. These theses are a prerequisite for the academic degree Master of Laws (LL.M.).

The program follows a scheme under which the master's theses of one particular program all examine various aspects of the same general topic. Previous general topics have included:

- Electronic Commerce and Taxation (1999/2000 full-time program)
- Partnerships in International Tax Law (2000/2001 full-time program)
- Transfer Pricing (1999/2001 part-time program)
- Exemption and Credit Methods in Tax Treaties (2001/2002 full-time program)
- Permanent Establishments in International Tax Law (2002/2003 full-time program)
- Non-Discrimination Provisions in Tax Treaties (2001/2003 part-time program)
- Triangular Cases (2003/2004 full-time program)
- Tax Treaty Policy and Development (2004/2005 full-time program)
- Source versus Residence in International Tax Law (2003/2005 part-time program)
- The Relevance of WTO Law for Tax Matters (2005/2006 full-time program)
- Conflicts of Qualification in Tax Treaty Law (2006/2007 full-time program)
- Taxation of Artistes and Sportsmen in International Tax Law (2005/2007 part-time program)
- Fundamental Issues and Practical Problems in Tax Treaty Interpretation (2007/2008 full-time program)
- Dual Residence in Tax Treaty Law and EC Law (2008/2009 full-time program)
- Taxation of Employment Income in International Tax Law (2007/2009 part-time program)
- The EU's External Dimension in Direct Tax Matters (2009/2010 full-time program)
- History of Tax Treaties (2010/2011 full-time program)
- Permanent Establishments in International and EU Tax Law (2009/2011 part-time program)
- International Group Financing and Taxes (2011/2012 full-time program)
- Limits to Tax Planning (2011/2013 part-time program)
- Exchange of Information for Tax Purposes (2012/2013 full-time program)
- Tax Policy Challenges in the 21st Century (2013/2014 full-time program)

- Global Trends in VAT/GST (2013/2015 part-time program)
- Non-Discrimination in European and Tax Treaty Law: Open Issues and Recent Challenges (2014/2015 full-time program)
- Preventing Treaty Abuse (2015/2016 full-time program)
- Limiting Base Erosion (2015/2017 part-time program)
- Taxation in a Global Digital Economy (2016/2017 full-time program)
- Arbitration in Tax Treaty Law (2017/2018 full-time program)
- Transfer Pricing and Value Creation (2017/2019 part-time program)
- Special Features of the UN Model Convention (2018/2019 full-time program)
- Hybrid Entities in Tax Treaty Law (2019/2020 full-time program)
- Concept and Implementation of CFC Legislation (2019/2021 part-time program)
- Access to Treaty Benefits (2020/2021 full-time program)
- Justice, Equality, and Tax Law (2021/2022 full-time program)
- Multilateral Cooperation in Tax Law (2021/2023 part-time program)
- Tax and Technology (2022/2023 full-time program).

The respective master's theses were published in edited volumes.

The general topic for the 2023/2024 full-time program was The Global Minimum Tax – Selected Issues on Pillar Two. Alexander Rust introduced the students to the subject matter at the beginning of the program. Valentin Bendlinger and Pedro Schoueri held workshops in which the structure of the papers and the preliminary results were critically analysed. It was with great commitment that they supported the students who were preparing their theses. Their numerous suggestions helped to improve the quality of those theses and, as a consequence, the quality of the present volume. In my function as both the scientific director of the LL.M. program and the editor of this series, I would like to not only thank those two colleagues for their excellent engagement and efforts but to also express my gratitude to them.

Finally, I am also grateful to the students themselves. They pursued the program with great enthusiasm. This LL.M. program not only gave them the opportunity to interact with academics and scientifically qualified interns from all over the world and to acquire a wealth of knowledge, but they also learned how to effectively address and solve complex issues using a structured approach. The master's theses that are now available bear witness to this. I hope that the results of these papers will both influence scientific discussion and be of use to tax practitioners.

Vienna, September 2024

Michael Lang

Preface

The postgraduate LL.M. program in International Tax Law at WU (Vienna University of Economics and Business) has an excellent reputation not only because of its outstanding curriculum and excellent faculty but also because of its competitive nature and exceptional students. It has become a tradition that each year's master theses are written on a general timely topic, and the results are published in a book. The fantastic thing about this concept is that the students work as a team to create an academic book in the field of international tax law.

This year's volume of the renowned "Series on International Tax Law" is dedicated to the general topic of "Pillar Two" and for a good reason: hardly any other topic has been discussed as intensively in recent times as the OECD's global minimum tax. Following the momentum of the OECD's BEPS Project, the OECD is attempting to establish a new global tax system based on two pillars, and the second pillar is the subject of this book. However, given the novelty of the topic, only limited academic literature is at hand – and there is a dire need for further inquiry on the foundations and technical aspects of this new system. For this reason, this book aims to comprehensively analyze the legal framework of Pillar Two from several different angles. It strikes a balance between addressing general topics and specific technical issues of the global minimum tax.

Part I of the volume is devoted to selected "general issues" starting with a chapter on the legal status of the GloBE Model Rules, the OECD Commentary, and the OECD's recently published administrative guidance. This is followed by several contributions on the relationship between Pillar Two and tax treaties including the STTR, its relationship with EU law, and some conceptual issues such as the OECD's decision to adopt a jurisdictional blending approach. Finally, separate contributions are devoted to the impact of Pillar Two on tax competition and tax incentives.

Part II of the book is devoted to the scope of the GloBE. As the global minimum tax only applies to MNE groups exceeding a threshold of EUR 750 million, many legal questions arise with respect to the definition of what a "group" actually is and how the revenue threshold is to be calculated. Separate chapters are devoted to the determination of group income; the definition of "MNE group" and "consolidated financial accounts"; the territorial allocation of "constituent entities"; and the notion of "excluded entities".

Parts III to VI are devoted to the charging provisions; the calculation of the GloBE income or loss; the calculation of the amount of adjusted covered taxes; and, finally, the calculation of the ETR, respectively. It is in the nature of a minimum tax that a given level of taxation is compared to a politically agreed minimum. In the absence of a proper corporate tax level, the OECD had to define a

framework for calculating the ETR to be compared with the minimum tax rate as well as how to collect a potential minimum tax liability. Several chapters attempt to shed light on the complex ramifications of these technical issues of Pillar Two. The book contains specific contributions on the general rule of order within the GloBE Model Rules, the treatment of split-ownership structures, and technical chapters on base determination. Practically essential topics such as the substance-based income exclusion and the QDMTT are also dealt with in separate chapters. However, particular technical issues such as the treatment of investment entities and minority-owned constituent entities are addressed as well. The last and final part of the book is dedicated to administrative topics of Pillar Two including a discussion of Pillar Two's Safe Harbors, the qualified status of rules implemented by different jurisdictions, and the question of which legal person is liable to tax within the framework of Pillar Two.

This (by the way, non-exhaustive) list of topics in the previous paragraphs already shows the complexity that the students had to deal with in the course of their LL.M. journey in Vienna. But there is nothing more satisfying for a teacher than to see students grow beyond themselves (and probably also their teachers). This book is a testament to a highly qualified and enthusiastic group of incredible students willing to sacrifice time and energy to contribute to the academic debate of the global minimum tax. We, the editors, are more than proud to have been part of the LL.M. story of WU's International Tax Law class of 2023/2024. We would also like to thank *Barbara Ender* (Akademie der Wirtschaftstreuhänder) and Linde for their valuable support in publishing this volume.

Finally, a short disclaimer at the end: It goes without saying that the opinions expressed in this book are, of course, the personal views of the authors of each chapter and do not reflect the position of any organization to which the authors or editors may be affiliated. And given the pace of guidance published by the OECD on the topic, note that the final drafts were submitted in May 2024 – and thus the analyses are current and up to that date.

We are confident that this volume will be of help to any reader interested in Pillar Two! Enjoy the dive into the delicate issues of the global minimum tax!

Vienna, September 2024

*Valentin Bendlinger
Pedro Schoueri*