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MULTILATERAL INSTRUMENTS IN INTERNATIONAL TAX LAW: LEGAL MECHANISMS FOR ADAPTING BILATERAL TAX TREATIES TO THE DIGITAL AGE

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Abstract

This paper examines the paradigm shift in international tax law from a strictly bilateral framework to an integrated multilateral architecture, driven by the rapid digitalization of the global economy. For nearly a century, the allocation of taxing rights relied on physical presence, primarily through the Permanent Establishment (PE) standard. However, the rise of borderless digital business models and the proliferation of unilateral Digital Services Taxes (DSTs) have rendered this traditional framework structurally obsolete, necessitating unprecedented, coordinated global reform. This research evaluates the legal mechanics, functional architecture, and comparative efficacy of key multilateral instruments designed to surgically adapt the existing network of over 3,500 bilateral double taxation treaties without requiring full renegotiation. It analyzes the pioneering 2017 BEPS Multilateral Instrument (MLI) and its complex compatibility clauses, the OECD's Pillar One Multilateral Convention (MLC) aimed at establishing a legal fiction of digital nexus, and the Pillar Two Subject to Tax Rule (STTR) MLI designed to protect the tax bases of developing nations. Furthermore, it contrasts these highly rigid, OECD-led initiatives with the United Nations' Fast-Track Instrument (FTI), which offers a modular, pro-developing nation alternative. Ultimately, the analysis highlights the systemic tensions,



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interpretative challenges, and severe geopolitical hurdles — particularly concerning United States domestic ratification — that currently threaten the global viability of these innovative multilateral legal mechanisms.

Introduction to the Shifting Paradigm of International Tax Law

For nearly a century, the global architecture of international tax law has rested upon a foundational compromise conceptualized by the League of Nations in the 1920s, which established a division of taxing rights between the jurisdiction of residence and the jurisdiction of source. This delicate equilibrium has been globally maintained through a vast, decentralized, and highly bespoke network of over 3,500 bilateral double taxation treaties (DTTs) (Baker, 2024). Within this framework, the legal threshold for a source state to tax the active business income of a foreign enterprise has been strictly tethered to the physical concept of a “Permanent Establishment” (PE), an inherently tangible metric requiring a fixed place of business, a physical office, or a dependent agent operating within the territory (IMF, 2019; OECD, 2017; Homa, 2024).

However, the rapid and pervasive digitalization of the global economy has fundamentally disrupted this physical-centric model, rendering it increasingly obsolete (IMF, 2019). Multinational enterprises (MNEs) can now achieve significant market penetration, extract immense value from localized user data, and generate massive revenues in jurisdictions where they maintain absolutely no physical footprint (IMF, 2019; Homa, 2024; Gravelle, 2024). This decoupling of economic value creation from physical geographic presence has exposed unprecedented gaps, loopholes, and mismatches in the international tax system, facilitating widespread Base Erosion and Profit Shifting (BEPS) (OECD, 2015). Conservative estimates have indicated that these systemic flaws result in annual losses of anywhere from 4% to 10% of global corporate income tax revenues,



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translating to USD 100 billion to USD 240 billion annually (IMF, 2019; OECD, 2015). Traditional tax parameters, relying heavily on the arm's-length principle and the bilateral treaty network, have proven structurally ill-equipped to address the valuation of intangible assets, the monetization of active user participation, and the instantaneous delivery of automated digital services (IMF, 2019; European Commission, 2018).

In response to this existential threat to global tax sovereignty, the international community, coordinated primarily by the Organisation for Economic Co-operation and Development (OECD) and the G20, initiated a sweeping, multi-phased reform agenda (OECD, 2015). Recognizing that renegotiating 3,500 bilateral treaties individually via traditional diplomatic protocols would take decades and leave the global economy mired in uncertainty, policymakers developed a profoundly innovative legal mechanism: the Multilateral Instrument (MLI) (OECD, 2017). Initially deployed in 2017 to implement the treaty-related measures of the BEPS Action Plan (Action 15), the MLI concept has since evolved into the primary legal vehicle for operationalizing the historic “Two-Pillar Solution” to the tax challenges of the digital economy (OECD, 2015; OECD, 2021).

This exhaustive research report provides an in-depth analysis of the legal mechanisms underpinning multilateral instruments in international tax law. It establishes a methodological framework for evaluating comparative tax law, examines the foundational inadequacies of the bilateral system in the digital age, and dissects the highly technical architecture of the 2017 BEPS MLI. Furthermore, it extensively evaluates the next generation of multilateral conventions: the Multilateral Convention to Implement Amount A of Pillar One (MLC), the Subject to Tax Rule (STTR) MLI of Pillar Two, and the United Nations' Fast-Track Instrument (FTI). Through this analysis, the report uncovers



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the profound legal and geopolitical shift from strict bilateralism to an integrated, multilateral framework designed to preserve, rather than replace, the historic tax treaty network while aggressively adapting it to the realities of a borderless digital economy.

Methodological Paradigms in Comparative International Tax Law

To critically evaluate the efficacy and legal mechanics of multilateral instruments, it is imperative to establish a rigorous methodological framework rooted in comparative law (Avi-Yonah, 2007). The study of international tax law, particularly when transitioning from a purely domestic or bilateral focus to a multilateral framework, requires specialized analytical tools.

Moving Beyond Functionalism

Historically, comparative legal research has relied heavily on the “functional method,” which compares how different legal systems solve the same practical problem (Avi-Yonah, 2007). However, in the context of the digital economy and the BEPS project, pure functionalism is often insufficient. The digitalization of the economy does not merely present a traditional problem to be solved; it challenges the foundational theories of taxation, particularly the “benefit theory” and the concept of “inter-nation equity” (European Commission, 2018).

Modern comparative tax scholars advocate for a “toolbox” approach that incorporates doctrinal analysis, political economy perspectives, and contextual frameworks (Avi-Yonah, 2007;). The shift from bilateral to multilateral tax instruments cannot be understood merely by analyzing legal text; it requires an examination of the systemic pressures driving the reform. Researchers must analyze how different jurisdictions (e.g., capital-exporting developed nations versus capital-importing developing nations) categorize and approach taxing rights (Baker, 2024;). The methodological challenge lies in assessing how a single



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multilateral instrument attempts to synthesize thousands of divergent bilateral policies into a coherent, functioning global framework without violating state sovereignty (Baker, 2024; OECD, 2017).

The Complexity Paradox and Path Dependency

The methodological analysis of multilateral tax treaties reveals a phenomenon known as the “complexity paradox” (Baker, 2024). From a purely theoretical standpoint, replacing a fragmented network of 3,500 bilateral treaties with a single, universally applicable multilateral tax code appears to be the most efficient solution for the globalized digital economy (Baker, 2024). However, comparative tax research demonstrates that such an approach is virtually impossible (Baker, 2024).

The existing bilateral system is characterized by intense path dependency (Baker, 2024). Bilateral treaties are heavily tailored to accommodate the structural nuances of highly non-uniform domestic tax systems. For example, countries utilize vastly different methods for corporate-shareholder integration, ranging from classical systems and split-rate systems to imputation systems and dividend exemptions (Baker, 2024). A bilateral treaty allows two specific states to negotiate precise adjustments — such as determining whether to impose a withholding tax or extend tax credits to non-residents — that reflect their unique domestic frameworks (Baker, 2024). Furthermore, bilateral negotiations allow states to strike a balanced bargain; if State A experiences a significant outflow of royalties to State B, State A can seek specific compensation in another area of the treaty to ensure a politically acceptable outcome (Baker, 2024).

Historically, attempts to bypass this path dependency and impose universal multilateralism have failed. The League of Nations’ 1933 Draft Convention for the Allocation of Business Income collapsed by 1935 because the major trading powers could not reconcile their divergent domestic interests (Baker, 2024).



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While multilateralism has succeeded on a regional scale where domestic systems share a high level of homogeneity — most notably the Nordic Pact involving Norway, Sweden, Finland, Denmark, and Iceland — global implementation requires a different legal mechanism (Baker, 2024). Consequently, modern multilateral tax instruments are methodologically designed not to replace the bilateral network, but to modify and preserve it, acting as an overlay that targets specific BEPS vulnerabilities while leaving the bespoke bilateral compromises intact (Baker, 2024).

The Erosion of the Bilateral Framework and the Physical Nexus Concept

The necessity of multilateral intervention stems directly from the structural collapse of the traditional bilateral nexus in the face of digital value creation.

The Obsolescence of the Permanent Establishment (PE) Standard

The cornerstone of traditional tax treaties is Article 5 of the OECD Model Tax Convention, which establishes the threshold for source-based taxation (IMF, 2019; OECD, 2017). It dictates that an enterprise must have a “fixed place of business through which the business of an enterprise is wholly or partly carried on” to constitute a Permanent Establishment (IMF, 2019). This standard was intricately designed for a 20th-century industrial economy reliant on factories, physical supply chains, warehouses, and tangible retail networks (Homa, 2024). Digital enterprises, conversely, operate on business models characterized by extreme scale without mass. Through automated digital services (ADS), multi-sided platforms, algorithms, and cloud computing infrastructure, highly digitalized MNEs engage in active and sustained economic life within a market jurisdiction entirely remotely (Gravelle, 2024; OECD, 2020; European Commission, 2018; OECD, 2015). Because these entities intentionally structure their operations to avoid triggering a physical PE, market jurisdictions are legally



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precluded under existing bilateral treaties from taxing the massive corporate profits generated within their borders (IMF, 2019; Gravelle, 2024).

The Valuation Conundrum and Intangible Assets

Compounding the PE obsolescence is the failure of traditional transfer pricing mechanisms. The arm's-length principle requires that transactions between related entities within an MNE be priced as if they occurred between independent parties (IMF, 2019). However, modern MNEs derive a vast majority of their value from unique intangible assets — such as proprietary software, algorithms, and intellectual property — which lack comparable market transactions, making arm's-length pricing highly uncertain and easily manipulated (IMF, 2019; Homa, 2024). MNEs frequently shift the legal ownership of these highly mobile intangibles to low-tax jurisdictions, while the actual value is generated in high-tax consumer markets (IMF, 2019; Gravelle, 2024).

Furthermore, traditional frameworks completely fail to capture or value “user participation.” In models like social media or search engines, the active participation, content creation, and data generation by users in a market jurisdiction are demonstrably valuable components of the MNE’s profit engine (IMF, 2019; European Commission, 2018). Yet, traditional tax law does not attribute any profit to market jurisdiction user participation, resulting in significant base erosion (IMF, 2019).

Proposed Definitional Expansions: SEP and SDP

Recognizing these flaws, policymakers and scholars debated expanding the definition of PE prior to the consensus on Pillar One. Prominent proposals included the Significant Economic Presence (SEP) concept advanced by the OECD and the Significant Digital Presence (SDP) concept proposed by the European Commission (OECD, 2017; European Commission, 2018).



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The SEP concept attempts to evaluate an MNE's operation in a source jurisdiction based on a combination of revenue-based, user-based, and digital factors (such as a local domain name or localized payment options) (European Commission, 2018). The SDP version proposed by the EU focused on specific revenue thresholds, user thresholds, and contract thresholds (European Commission, 2018). However, implementing these concepts via traditional bilateral treaty renegotiation proved insurmountable, as it would require thousands of separate negotiations, inevitably leading to a highly fragmented and inconsistent global tax landscape (OECD, 2017; European Commission, 2018).

Unilateral Defenses and the Proliferation of Digital Services Taxes

Faced with the erosion of their corporate tax bases, immense political pressure from domestic businesses facing unfair competition, and the sluggish pace of bilateral renegotiation, numerous market jurisdictions abandoned international coordination and resorted to unilateral defensive measures, most notably Digital Services Taxes (DSTs) (Gravelle, 2024; OECD, 2015).

DSTs are fundamentally distinct from traditional corporate income taxes. They are generally designed as gross revenue taxes levied on specific digital activities, such as online advertising revenues, sales of localized user data, and revenue from digital intermediation services or online marketplaces (Gravelle, 2024). Crucially, from a legal design perspective, jurisdictions deliberately engineered DSTs to fall completely outside the scope of existing bilateral double taxation treaties (European Commission, 2018; OECD, 2023). Because DSTs are levied on gross revenues rather than net income or corporate profits, enacting states legally classify them as indirect taxes, excise taxes, or alternative levies (European Commission, 2018; OECD, 2023). This classification exempts them from the restrictive PE thresholds and the profit allocation rules codified in



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covered tax agreements, allowing states to bypass the treaty network entirely (OECD, 2023).

While DSTs effectively solved the immediate revenue and political problems for market jurisdictions, they introduced severe systemic risks to the international political economy. They inevitably lead to double taxation, as the gross revenue taxed by the market jurisdiction via the DST is simultaneously taxed as corporate income in the MNE's residence jurisdiction without the benefit of an offsetting foreign tax credit (OECD, 2015). More alarmingly, the highly targeted nature of DSTs—which apply revenue thresholds and scope restrictions that cause them to impact almost exclusively US-headquartered tech monopolies while insulating domestic businesses—triggered aggressive geopolitical blowback (Gravelle, 2024; OECD, 2023). The United States viewed DSTs as discriminatory trade practices and threatened massive retaliatory trade tariffs against countries implementing them (Gravelle, 2024;). The urgent need to de-escalate this looming trade war, stabilize the global economic environment, and replace chaotic unilateralism with a coordinated consensus provided the immediate impetus for the OECD's Pillar One and the associated multilateral convention (OECD, 2021; OECD, 2023;).

The Genesis of Multilateralism: The 2017 BEPS MLI

The breakthrough of the OECD BEPS Action 15 was the conceptualization and deployment of a multilateral instrument that operates not as a standalone, replacement tax code, but as an intricate, synchronized modification tool (Baker, 2024; OECD, 2017). The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS MLI) entered into force on July 1, 2018, and has fundamentally altered the trajectory of international law (OECD, 2015). With over 100 signatory jurisdictions covering approximately 1,950 bilateral tax treaties, the MLI acts as an overlay,



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modifying thousands of treaties simultaneously without requiring states to execute individual, resource-intensive amending protocols (OECD, 2015; Andersen, 2024).

The Mechanism of Covered Tax Agreements (CTAs)

A critical feature ensuring the preservation of state sovereignty is that the MLI does not automatically apply to all treaties of its signatories. It applies exclusively to "Covered Tax Agreements" (CTAs) (Baker, 2024; OECD, 2023). A pre-existing bilateral treaty becomes a CTA only when both contracting jurisdictions explicitly notify the OECD Depository that they wish to designate that specific treaty to be modified by the MLI (OECD, 2017). If State A lists its treaty with State B, but State B fails to list its treaty with State A, the bilateral agreement remains unmodified (OECD, 2017). This meticulous matching mechanism ensures that modifications occur strictly on a mutual-consent basis.

Flexibility, Reservations, and Effectiveness

To achieve broad political consensus among more than 100 highly diverse jurisdictions, the architects of the 2017 BEPS MLI prioritized flexibility over strict uniformity (OECD, 2017; Starkov & Jin, 2022). Aside from the core minimum standards — specifically Action 6 (Prevention of Treaty Abuse) and Action 14 (Dispute Resolution) — parties were granted extensive, unilateral rights to lodge reservations, effectively opting out of specific MLI articles (OECD, 2017). For instance, numerous countries opted out of the provisions designed to prevent the artificial avoidance of PE status (Action 7) or the complex hybrid mismatch rules (Action 2) (OECD, 2017; OECD, 2023).

While this flexibility successfully generated a massive volume of signatories, empirical and doctrinal analyses of the MLI's effectiveness between 2018 and 2025 indicate significant functional limitations (Starkov & Jin, 2022; ICTD, 2024). Due to the widespread utilization of opt-outs and the asymmetrical



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matching of choices between treaty partners, the BEPS MLI ultimately failed to uniformly zero out treaty shopping (Starkov & Jin, 2022). The optional articles were hardly taken up in a coordinated manner, leaving substantial regulatory gaps that sophisticated digital enterprises and their tax planners continued to exploit (Starkov & Jin, 2022). This structural weakness—the prioritization of consensus via dilution—directly informed the much more rigid, mandatory design of the subsequent Pillar One and Pillar Two multilateral instruments (Hadi, 2025).

Pillar One: Reallocating Taxing Rights via the Multilateral Convention (MLC)

Recognizing that the initial BEPS 1.0 measures implemented by the 2017 MLI primarily addressed artificial profit shifting and treaty abuse but left the fundamental, physical-presence-based allocation of taxing rights fully intact, the OECD launched the BEPS 2.0 initiative (IMF, 2019; OECD, 2015). Pillar One of this initiative directly and aggressively tackles the tax challenges of the digitalized economy by fundamentally rewriting the core nexus rules of international taxation (OECD, 2020; OECD, 2023).

Amount A: Creating a Legal Fiction of Digital Nexus

Pillar One is structurally and functionally divided into two components: Amount A and Amount B. While Amount B seeks to simplify and stabilize the application of the arm's-length principle for baseline marketing and distribution activities in the tangible world—a major concern for developing countries seeking certainty—Amount A represents a revolutionary departure from historical international tax doctrine (OECD, 2021).

Amount A reallocates a calculated portion of the residual profits of the world's largest and most highly profitable MNEs (specifically those with global revenues exceeding EUR 20 billion and profitability margins above 10%) from their



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residence and production jurisdictions to the market jurisdictions where their users and customers are physically located (Gravelle, 2024; OECD, 2023; OECD, 2015). This monumental shift is projected to reallocate taxing rights on more than USD 125 billion of profit globally each year (OECD, 2021).

To achieve this, Amount A creates a legal fiction: an economic nexus that operates entirely independent of any physical presence requirement (OECD, 2020; KPMG, 2023). The new nexus rules establish a market jurisdiction's legal right to tax a portion of Amount A based strictly on the MNE crossing a specific local revenue threshold derived from that market (OECD, 2020; KPMG, 2023). This acknowledges the modern reality that user participation, data harvesting, and targeted algorithmic engagement constitute an "active and sustained participation in the economic life" of a jurisdiction, rendering the traditional PE requirement entirely moot for these mega-corporations (OECD, 2020; OECD, 2015).

The Multilateral Convention to Implement Amount A (MLC)

To operationalize Pillar One and bypass the impossibility of bilateral renegotiation, the OECD published the text of the Multilateral Convention to Implement Amount A of Pillar One (MLC) in October 2023 (OECD, 2023). Unlike the 2017 BEPS MLI, which modified the text of existing treaties through complex compatibility clauses, the MLC establishes an entirely new, self-standing legal architecture that sits above the existing bilateral treaty network (OECD, 2023). When an MNE falls within the scope of Amount A, the MLC effectively suspends the contrary provisions of underlying bilateral treaties, establishing a supreme allocation mechanism (OECD, 2023).

The MLC contains highly intricate sourcing rules to determine the geographic origin of revenue (OECD, 2023). The drafting distinguishes sharply between Automated Digital Services (ADS) and Consumer-Facing Businesses (CFB)



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(OECD, 2020; OECD, 2015). Sourcing ADS revenue relies heavily on tracking user location data, IP addresses, and active digital engagement metrics, which poses unprecedented compliance, technological, and data privacy challenges for in-scope MNEs (OECD, 2020). The justification for this division is that ADS businesses inherently operate remotely and have sustained engagement without physical infrastructure, whereas CFB models traditionally have lower profit margins and slightly more tangible interactions, justifying different analytical approaches (OECD, 2020; OECD, 2015).

The Legal Elimination of DSTs and Relief from Double Taxation

A paramount, non-negotiable geopolitical objective of the MLC is the mandatory removal and permanent prohibition of unilateral Digital Services Taxes (Gravelle, 2024; OECD, 2023). The MLC contains extraordinarily strict legal provisions requiring all contracting parties to immediately repeal existing DSTs upon the convention's entry into force and to permanently refrain from enacting any "digital services tax or relevant similar measure" in the future (Gravelle, 2024; OECD, 2023).

The MLC text explicitly defines a prohibited DST as any tax whose application or amount is determined primarily by reference to the location of users or other market-based criteria, applies exclusively or almost exclusively to non-resident or foreign-owned businesses, and is explicitly treated by the enacting state as outside the scope of existing double tax treaties (OECD, 2023). If a jurisdiction attempts to stubbornly retain a DST while ratifying the MLC, they are severely legally penalized: they will be entirely disallowed and stripped of their share of the Amount A profit allocation (Gravelle, 2024).

Furthermore, to prevent the catastrophic economic outcome of double taxation—a scenario where a market jurisdiction taxes a slice of profit under the newly



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created Amount A rules, while the MNE's residence jurisdiction simultaneously taxes the entire global profit under traditional rules—the MLC establishes highly complex relief mechanisms (OECD, 2023; KPMG, 2023). It mandates that residence jurisdictions provide a designated "Relief Amount" via exemptions or foreign tax credits (OECD, 2023). Critically, it includes specific mathematical formulas (Step 4.1 in the blueprint) to convert any local withholding taxes collected abroad into equivalent profit amounts, which are then utilized as a downward adjustment to the jurisdictional profit that forms the basis for allocating the obligation to relieve double taxation (OECD, 2023; KPMG, 2023).

Pillar Two: The STTR MLI and Defending the Global Tax Base

While Pillar One predominantly addresses the reallocation of taxing rights toward market jurisdictions in the digital economy, Pillar Two addresses the remaining, aggressive BEPS risks by imposing a hard floor on global corporate tax competition (IMF, 2019; Tax Justice Network, 2025). Pillar Two is designed to generate approximately USD 150 billion in new tax revenues globally per year by establishing a Global Minimum Tax rate of 15% (OECD, 2021). This is achieved primarily through the Global Anti-Base Erosion (GloBE) rules, comprising the Income Inclusion Rule (IIR) and the Under-Taxed Profits Rule (UTPR) (IMF, 2019; OECD, 2021; Tax Justice Network, 2025).

Because the GloBE rules are primarily implemented through synchronized domestic legislation rather than international treaties, the multilateral treaty focus of Pillar Two centers entirely on a vital complementary mechanism: the Subject to Tax Rule (STTR) (Tax Justice Network, 2025; OECD, 2023).

The Mechanics of the Subject to Tax Rule (STTR)

The STTR is a specialized, treaty-based rule designed explicitly to protect the vulnerable tax bases of developing countries (PwC, 2023; OECD, 2023).



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Historically, developing nations have frequently signed bilateral tax treaties that cede their sovereign right to levy withholding taxes on outbound intragroup payments — such as royalties, interest, and technical service fees — in exchange for the promise of increased foreign direct investment (Hadi, 2025; OECD, 2023). However, highly digitalized MNEs have systematically exploited these zero or extremely low withholding rates by artificially routing payments for intellectual property and digital services to affiliated entities located in zero-tax or ultra-low-tax jurisdictions (IMF, 2019; OECD, 2023).

The STTR acts as a powerful legal circuit breaker. It allows the source state (the developing country where the payment originates) to unilaterally recover its taxing right if the related-party payee's jurisdiction subjects that specific income to a nominal corporate income tax rate below 9% (PwC, 2023; OECD, 2023).

The additional tax right recovered by the source state is legally calculated based on specific mathematical mechanisms. The STTR Minimum Rate is strictly set at 9.0%. The STTR Top-Up Tax Rate is calculated as the precise difference between this 9.0% minimum rate and the nominal corporate income tax rate applied to the payee in their residence jurisdiction (OECD, 2023). Furthermore, regarding the priority of application, the STTR applies in strict priority to the GloBE Rules. Any supplementary tax collected by a source country under the STTR mechanism is legally treated as a covered tax for the purpose of subsequently calculating the MNE's effective tax rate under the overarching 15% GloBE minimum tax framework (OECD, 2023).

The 2023 STTR Multilateral Instrument

To ensure the rapid, synchronized integration of the STTR into the global treaty network without forcing developing nations into decades of bilateral negotiations, the OECD released the Multilateral Convention to Facilitate the Implementation of the Pillar Two Subject to Tax Rule (STTR MLI) in September 2023, officially



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opening it for signature on October 2, 2023 (OECD, 2023; PwC, 2023). By late 2024, multiple jurisdictions, including Albania, had executed the instrument, with numerous others indicating their formal intention to sign (OECD, 2023; PwC, 2023).

The legal design of the STTR MLI features profound architectural differences from the 2017 BEPS MLI, reflecting a definitive shift toward stricter multilateral enforcement and the closure of optional loopholes:

Mandatory Compliance upon Request: Members of the Inclusive Framework that apply nominal tax rates below 9% to covered intragroup payments are politically and legally bound to implement the STTR into their bilateral treaties whenever formally requested to do so by a developing country (defined as jurisdictions with a GNI per capita of USD 12,535 or less) (OECD, 2023). The STTR MLI serves as the designated vehicle for this mandatory compliance.

Prohibition of General Opt-Outs: Unlike the 2017 BEPS MLI, which permitted sweeping reservations that critically diluted its anti-abuse effectiveness (Starkov & Jin, 2022), the STTR MLI explicitly contains no general opt-out reservations (Hadi, 2025). The model commentary emphasizes that unilateral reservations are not permitted; once a jurisdiction commits to the MLI, it cannot selectively shield certain highly profitable treaties from the STTR if the treaty partner legally qualifies as a developing economy (Hadi, 2025).

Dynamic Circuit-Breakers (Annex V): Recognizing the fluidity of global macroeconomic status, Annex V of the STTR MLI introduces a highly innovative optional "circuit-breaker" provision. This mechanism automatically switches off the application of the STTR if a developing country's Gross National Income rises sufficiently to reclassify it as a developed country, and, conversely, automatically switches the taxing right back on if their economic status subsequently reverts (OECD, 2023).



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Pension Fund Customization (Annex IV): To accommodate minor domestic policy variations without undermining the core STTR taxing right, the instrument permits jurisdictions via Annex IV to formally adopt specific, localized definitions of "recognised pension funds" for the purpose of granting STTR exclusions (OECD, 2023).

The Global South Perspective and the UN Fast-Track Instrument (FTI)

While the OECD's BEPS 2.0 project, encompassing Pillar One and Pillar Two, represents a monumental diplomatic and legal advancement, severe structural criticisms have emerged, particularly from the Global South and developing nations. Critics argue forcefully that Pillar One's Amount A provides severely limited additional revenue to developing countries because of the exceptionally high EUR 20 billion global revenue threshold, which restricts the scope to roughly the top 100 most profitable MNEs globally (Tax Justice Network, 2025; South Centre, 2022). Furthermore, the mandatory legal abolition of all DSTs deprives these developing nations of an immediate, easy-to-administer, and highly lucrative revenue stream (Tax Justice Network, 2025; South Centre, 2022). Moreover, the sheer administrative complexity of executing the Amount A MLC calculations is deeply daunting for resource-constrained tax administrations (Tax Justice Network, 2025).

In response to these systemic inequities, the United Nations Committee of Experts on International Cooperation in Tax Matters has advanced alternative legal frameworks explicitly tailored to the fiscal interests of capital-importing developing nations (Baker, 2024).



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Comparative Analysis of Multilateral Tax Instruments

The rapid evolution from the initial 2017 BEPS MLI to the current generation of sophisticated instruments (the MLC, the STTR MLI, and the FTI) demonstrates a profound maturation in international tax law. A comparative examination reveals distinctly varying approaches across four key features: primary objective, interaction with bilateral treaties, flexibility and reservations, and target beneficiary.

Regarding the primary objective, the 2017 BEPS MLI aims to neutralize BEPS, combat treaty abuse, and improve dispute resolution (OECD, 2017). The Pillar One MLC focuses on reallocating residual digital profits to market jurisdictions and permanently eliminating DSTs (OECD, 2023). The Pillar Two STTR MLI is designed to protect developing country tax bases from low-tax routing via a 9% minimum rate (OECD, 2023). Conversely, the UN FTI aims to rapidly update treaties with pro-developing UN Model provisions, such as Article 12B (Baker, 2024; Starkov & Jin, 2022).

In terms of interaction with bilateral treaties, the 2017 BEPS MLI modifies existing text via complex compatibility clauses alongside the treaties (Andersen, 2024). The Pillar One MLC supersedes treaties entirely, acting as an overlay, but strictly only for in-scope ultra-large MNEs (OECD, 2023). The Pillar Two STTR MLI modifies text by dynamically adding a specific 9% minimum tax top-up right (OECD, 2023). The UN FTI operates through protocol-based standardized boilerplate amendments (Baker, 2024).

When evaluating flexibility and reservations, the 2017 BEPS MLI offered high flexibility, permitting extensive opt-outs which led to uneven application (OECD, 2017; Starkov & Jin, 2022). The Pillar One MLC enforces a rigid framework with strict sourcing formulas and demands mandatory DST repeal without exception (Gravelle, 2024; OECD, 2023). The Pillar Two STTR MLI explicitly forbids



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general opt-outs and mandates adoption if requested by a developing state (Hadi, 2025; OECD, 2023). The UN FTI utilizes modular opt-ins via protocols, structurally protecting against broader renegotiation (Baker, 2024).

Finally, looking at the target beneficiary, the 2017 BEPS MLI targeted global tax coherence, applying to both developed and developing states (OECD, 2017). The Pillar One MLC primarily benefits large consumer market jurisdictions with significant user bases (OECD, 2020; OECD, 2015). The Pillar Two STTR MLI explicitly targets source jurisdictions, defined specifically as developing economies (OECD, 2023). The UN FTI is tailored for developing jurisdictions seeking gross withholding taxes (Baker, 2024).

This comparative landscape highlights a critical systemic tension in modern international law. The OECD instruments (the MLC and STTR MLI) are evolving toward highly binding, rigid architectures aimed at establishing universal minimum standards and aggressively eliminating unilateral deviations like DSTs. Conversely, the UN FTI acts as a democratizing legal toolkit, offering modular, high-revenue-yielding alternatives (like gross withholding on automated digital services) that allow developing nations to bypass the immense administrative complexity of the OECD framework (Baker, 2024; Tax Justice Network, 2025).

Implementation Challenges, Treaty Overrides, and the Hegemony of Domestic Law

Despite the highly sophisticated legal design of these multilateral instruments, their practical enforcement and ultimate survival remain heavily contingent upon domestic legal procedures, constitutional constraints, and highly volatile political realities.



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The Complexity of Interpretation and Language Mismatches

A significant, immediate practical challenge arising from the MLI approach is the distinct lack of singular, authoritative texts for tax authorities, courts, and taxpayers to rely upon (Andersen, 2024). Because instruments like the 2017 MLI and the STTR MLI sit alongside the Covered Tax Agreement and modify it via complex compatibility clauses, reading a tax treaty now requires a simultaneous analysis of the original treaty text, the MLI text, and the specific reservations, opt-outs, and notifications deposited by both respective jurisdictions (Andersen, 2024; OECD, 2017).

While some governments have attempted to mitigate this by publishing "consolidated texts" combining the CTA and the MLI for ease of reading by practitioners, these documents are generally issued with strict legal disclaimers explicitly stating they have absolutely no binding legal value in a court of law (Andersen, 2024). Furthermore, acute discrepancies arise from fundamental language issues; the legally authentic texts of the MLIs are exclusively in English and French, while the underlying bilateral treaties are often drafted and ratified in other domestic languages (OECD, 2015; Andersen, 2024). This linguistic dissonance leads to severe interpretative conflicts regarding highly technical definitions, such as the modified definitions of Permanent Establishments, dependent agents, or digital presence (Andersen, 2024).

Domestic Ratification and the Crisis of United States Hegemony

The ultimate global viability of these multilateral instruments, most particularly the Pillar One MLC, hinges entirely upon domestic legislative ratification within the United States (Gravelle, 2024). The MLC explicitly requires ratification by a minimum of 30 states accounting for at least 60% of the ultimate parent entities of MNEs expected to be in-scope (OECD, 2023). Because the vast, overwhelming majority of the highly profitable, in-scope digital monopolies



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(e.g., Google, Amazon, Meta, Apple) are headquartered in the United States, American ratification is mathematically and legally indispensable for the MLC to ever enter into force (Gravelle, 2024;).

This reality poses an almost insurmountable constitutional hurdle. In the United States, ratifying a formal international tax treaty traditionally requires a two-thirds supermajority vote in the Senate (Gravelle, 2024). Given the highly polarized domestic political climate and the stark divergence in international tax policy perspectives across consecutive presidential administrations (e.g., the differing approaches of Treasury Secretaries Mnuchin and Yellen), securing a two-thirds majority to willingly cede billions of dollars in US taxing rights to foreign market jurisdictions is viewed by political analysts as highly improbable (Gravelle, 2024).

Legal scholars and policy advisors have intensely debated whether the US Executive Branch could hypothetically bypass the Senate supermajority requirement by implementing Pillar One via a congressional-executive agreement (Gravelle, 2024). However, doing so would likely trigger severe domestic legal challenges regarding the doctrine of "treaty overrides," where subsequent domestic legislative actions explicitly conflict with, and subsequently override, the international obligations assumed under the MLC (Gravelle, 2024).

Should the United States ultimately fail to ratify the MLC, the entire Pillar One framework will effectively collapse (Gravelle, 2024). Such a catastrophic diplomatic failure would invariably catalyze the immediate resurrection and rapid proliferation of unilateral Digital Services Taxes across Europe, Asia, and the Global South (Gravelle, 2024). This would almost certainly be met with immediate retaliatory tariffs by the United States, leading to a fractured, deeply hostile international economic order characterized by rampant double taxation and trade wars (Gravelle, 2024; Tax Justice Network, 2025). Consequently,



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leading legal scholars strongly advise functionally separating the legal implementation of Pillar One from Pillar Two, ensuring that the political failure of Amount A does not legally contaminate the successful, ongoing rollout of the Global Minimum Tax and the STTR MLI (Gravelle, 2024).

Conclusion

The architecture of the international tax system is currently navigating the most profound, structural transformation in its century-long history. The foundational legal assumption that tax jurisdiction strictly requires tangible, physical presence has been irreparably shattered by the realities of the digital economy, which relies entirely on remote automated services, massive user data monetization, and highly mobile borderless intangible assets. To prevent the complete fragmentation of global commerce through chaotic, unilateral retaliatory taxes and aggressive base erosion, the international community has been forced to pioneer unprecedented legal mechanisms.

The conceptualization and deployment of Multilateral Instruments—beginning with the highly flexible 2017 BEPS MLI and maturing into the rigorous Pillar One MLC, the protective STTR MLI, and the democratizing UN FTI—marks a permanent, evolutionary leap in Public International Law. These instruments ingeniously resolve the "complexity paradox." By utilizing highly sophisticated compatibility clauses, leveraging "later-in-time" VCLT doctrines, and deploying protocol-based boilerplate frameworks, these multilateral conventions surgically update and overlay the 3,500 bilateral treaties that govern global capital flows, without demanding their impossible erasure or triggering decades of bilateral renegotiation.

However, as the exhaustive comparative analysis reveals, this multilateral legal architecture is increasingly fractured along deep geopolitical fault lines. The



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OECD's highly complex Pillar One mechanisms prioritize net-profit allocation, stringent nexus algorithms, and the defense of corporate residence norms, effectively mandating the elimination of DSTs. Conversely, the UN's frameworks fiercely advocate for gross-basis withholding taxes on digital services that are vastly more administrable and revenue-positive for developing nations in the Global South. Furthermore, the absolute reliance on synchronous domestic ratification, particularly the constitutional bottlenecks within the United States, leaves the entire multilateral project deeply vulnerable to domestic political gridlock.

Ultimately, while bilateral double taxation treaties remain the historic and operational foundation of international tax law, their continued survival and relevance in the digital age are now entirely contingent upon the successful legal integration and enforcement of these multilateral overlays. The coming decade will rigorously test whether these innovative legal fictions of digital nexus and multilateral compatibility can withstand the immense, compounding pressures of national sovereignty, domestic politics, and global economic inequality.

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