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# CARIBBEAN TAX LAW JOURNAL

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Curaçao's Struggle for Fiscal Legitimacy and International Recognition



International Fiscal Association  
Curaçao-Aruba-Sint Maarten

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**International Fiscal Association**  
**Curaçao-Aruba-Sint Maarten**

# LETTER FROM THE EDITORS

Dear Reader,

We open this edition by noting the bold announcement from Curaçao regarding its implementation of the Global Minimum Tax (Pillar Two). With parliamentary treatment concluding just last month in January 2026, the jurisdiction has proceeded unperturbedly, even amid the turbulent period marked by the OECD's presentation of the Side-by-Side (SbS) Package.

While the immediate implications of the SbS Package for Curaçao may appear limited at first glance, they offer Curaçao an important opportunity to reconsider its strategic position, not only regarding the design of Pillar Two in the country, but also with respect to the future of corporate income tax incentives. This is a crucial moment considering the position of the country in the region and its strategic investment coming from the United States.

In this edition, Lucas de Lima Carvalho sheds some light on the Global Minimum Tax in Latin America, in particular Colombia, Brazil and Uruguay. He concludes that Pillar Two is less about sovereign control of domestic tax policies and more about the reputational gains of joining such a big, sprawling policy initiative alongside developed countries.

In his contribution, Leopoldo Parada offers an interesting perspective on the impact of the SbS regime in developing countries and how this can be perceived as an opportunity to reshape their strategic landscape, predicting a selective defection from QDMTT as a dominant strategy worldwide.

Leaving the topic of the OECD Pillar Two aside, Ria Mohammed presents in this edition of the CTLJ a case analysis on the recent JCPC decision in *Methanex Trinidad Unlimited vs The Board of Inland Revenue*, a case where the themes of reality and illusion take centre stage in the context of corporate tax law.

In her contribution, Remke Beerens analyses the tax measures currently applied in Curaçao, Aruba and Sint Maarten to address youth brain drain. She examines the limitations imposed by the OECD and the UN Model Conventions and concludes that push measures are largely ineffective. Beerens calls for a better alignment with the dynamics of youth brain drain by strengthening the link between local education and early employment.

Finally, Germaine Rekwest elaborates on Curaçao's struggle for fiscal legitimacy and international recognition. Prioritizing its international position and staying out of any list of non-cooperative jurisdictions may contribute to shaking off its image of tax haven.

We trust that this edition provides both the technical depth and the strategic perspective necessary to navigate these uncertain times. As the world digests the SbS Package, certainly, the conversation is far from over.

Sincerely,

*Germaine Rekwest*

*Leopoldo Parada*

Editors of the Caribbean Tax Law Journal



# THE GLOBAL MINIMUM TAX IN LATIN AMERICA: MIRRORING, TAILORING, AND WAITING

*By Dr. Lucas de Lima Carvalho, Founder of the Latin American Tax Policy Forum (LATPF)*

On December 20, 2021, the OECD released the model rules of its most ambitious project in global tax policy. It is a part of something called “Pillar Two”, and its goal is to put a floor on tax competition among developed and developing countries. To encourage worldwide adoption, the OECD has proposed it as a set of interlocking “top-up tax” provisions: if one country fails to tax a multinational group at a minimum of 15%, other countries can use Pillar Two to pick up the tab.

Some public policy challenges are too massive for any one country to tackle, and corporate tax is one of those areas in which a race to the bottom can deprive constituencies of much-needed public services. It can also increase income inequality, which is the sort of issue that Latin American countries have had to contend with for many years. On a Gini coefficient scale of 0 to 1 – where 1 indicates the highest level of inequality – Panama scored a 0.5 in 2024. Brazil had a score of 0.52 and Colombia of 0.54. For comparison, the U.S. was at 0.42 the year prior.<sup>1</sup>

Most Latin American countries are not members of the OECD – which is not to say that they haven’t engaged with it in projects tailored to their needs. Countries like Ecuador, Paraguay, and Uruguay are members of the OECD’s Global Forum on Transparency and Exchange of Information for Tax Purposes.<sup>2</sup> Argentina, Brazil, and Peru are on the accession path to becoming OECD members like Chile, Colombia, Costa Rica, and Mexico.<sup>3</sup> They are also a part of what is called the “Inclusive Framework”, a broader group of OECD members and non-members that made a commitment to adopt the standards of the Organization’s Base Erosion and Profit Shifting (BEPS) Action Plan.<sup>4</sup> Tackling aggressive tax incentives offered without substance requirements is one of them. Adopting anti-abuse rules in bilateral income tax treaties is another.

As for Pillar Two, the project was never a winning proposition in Latin America. It has been largely ignored by countries in the region, with three notable exceptions. Colombia, which decided to adopt a domestic minimum tax loosely inspired by the OECD rules; Brazil, which so far has adopted one of those rules; and Uruguay, which followed in Brazil’s footsteps as of January 2026. The story of each of those countries with Pillar Two says a lot about the behavior of Latin America in relation to external, and in this case pervasive, tax policy initiatives.

## THE COLOMBIAN DEVIATION

Colombia was the first country in Latin America to react to Pillar Two, and it did it via a tax reform passed in December 2022.<sup>5</sup> The key difference between the OECD rules and what Colombians legislated is in their scope: while the OECD proposes Pillar Two for multinational groups with revenues exceeding €750 million, Colombia imposes a minimum tax on most local companies, irrespective of whether they are part of a multinational group or the revenues they earned in the relevant fiscal year. The minimum tax rate is like the OECD's at 15% –a recent bill proposed by President Gustavo Petro would have raised it to 20%, but it was rejected by parliament in December of last year.<sup>6</sup>

Colombia had been an OECD member for two years before it enacted its domestic minimum tax, and the Pillar Two rules had been out for a whole year. The reason they are different is party politics. The bill that became Law 2277 of 2022 was proposed the day after Gustavo Petro took office as the President of Colombia. He succeeded his right-wing opponent Iván Duque on August 7th of that year and promised sweeping administrative and tax reforms.

The Colombian minimum tax was born as a correction of domestic inequality, not global tax competition. You can see it in the bill's explanatory statement,<sup>7</sup> where it says that it would change the country in two fundamental ways: it would reduce "inequitable exemptions" for high net-worth individuals and some companies (and close down pathways for tax evasion and avoidance) and it would also increase tax revenues "to strengthen the system of social protection." These reasons for adopting a minimum tax are not that distant from the rationale behind Pillar Two, but the point is that Colombia never reformed its tax system to adapt to Pillar Two.

Since 2022, Colombia has engaged with the OECD and other Inclusive Framework countries in trying to make the global minimum tax work as intended. If Colombia ever decides to adjust the scope of its domestic minimum tax and align it with Pillar Two, it will likely have an easier time doing so than other countries implementing the OECD model rules. Colombians' minimum tax of 15% on most companies, local and multinational, is far more aggressive than the OECD's 15% on select multinational groups. Petro's government is unlikely to pass a law reducing the scope of the local tax, but if it did, it would actually be a relief for local taxpayers.

## BRAZIL IS PLAYING BY THE RULES

On October 4th, 2024, Claudia Pimentel, subsecretary of tax and litigation of the Federal Revenue of Brazil, said during a press conference<sup>8</sup> that the country would adopt the minimum tax of Pillar Two because it was a part of the “rules of the game”, and that Brazilians would have to play by those rules “as they are laid down.” This was the start of a speedy legislative process that resulted in the approval of the Pillar Two bill by the House and the Senate in symbolic voting sessions. The President of the Senate even said, “those that approve the bill, remain as they are,” and the bill was officially approved a second later.<sup>9</sup>

Not only did Brazil adopt a minimum tax in line with the OECD model rules (which the OECD labels as a “qualified domestic minimum top-up tax”), but it did so by giving immense regulatory power to its local tax authorities, to the point that future amendments to its Pillar Two regulations may very well never have to go through the Brazilian Congress. Aspects of the taxable base, exemptions, and collections of the minimum tax are all in the hands of the OECD and the Brazilian tax authorities, which is a positive for ease of implementation, no doubt, but raises important questions as to fairness and legitimacy. How can taxpayers be affected by those changes and not have a voice on their acceptance by Brazilian law?

Brazil is yet to become a member of the OECD, but the country is a member of the G20 and is the most powerful economy of South and Latin America. You would think that this sort of gravitas would lead to a more combative stance against the

OECD, which is what Brazil used to do in relation to a number of international tax policy matters. Now it seems that the Brazilian government is following a more pragmatic approach regarding the Organization, seeking alignment even if it means a loss of control over its own tax policy design choices.

To be clear, this is not a partisan move. Transfer pricing, the area of taxation concerned with adequately pricing transactions between related parties, was a field of law in which Brazil defended objective rules as opposed to the OECD’s functional, multifaceted “arm’s length” approach. Bolsonaro’s right-wing government proposed the bill that would overhaul local transfer pricing rules and align them to the OECD guidelines. Lula, his left-wing opponent, not only sanctioned the bill after he took office, but has overseen the new transfer pricing regime for two years now.



The Brazilian Congress – a potpourri of right-wing, center, and left-wing politicians – never pushed back against Pillar Two. The statute that implemented it even references another part of the OECD model rules called the “income inclusion rule”, which President Lula was expected to propose by June but ultimately withheld after the United States threatened to retaliate with its so-called “revenge tax” (a threat it later paused, at least for now, following the side-by-side arrangement negotiated with the G7, which later became the side-by-side package released by the OECD this January).<sup>10</sup> As things stand, 2026 will be the first year in which Brazilian entities belonging to in-scope multinational groups will have to pay a minimum tax of up to 15%.

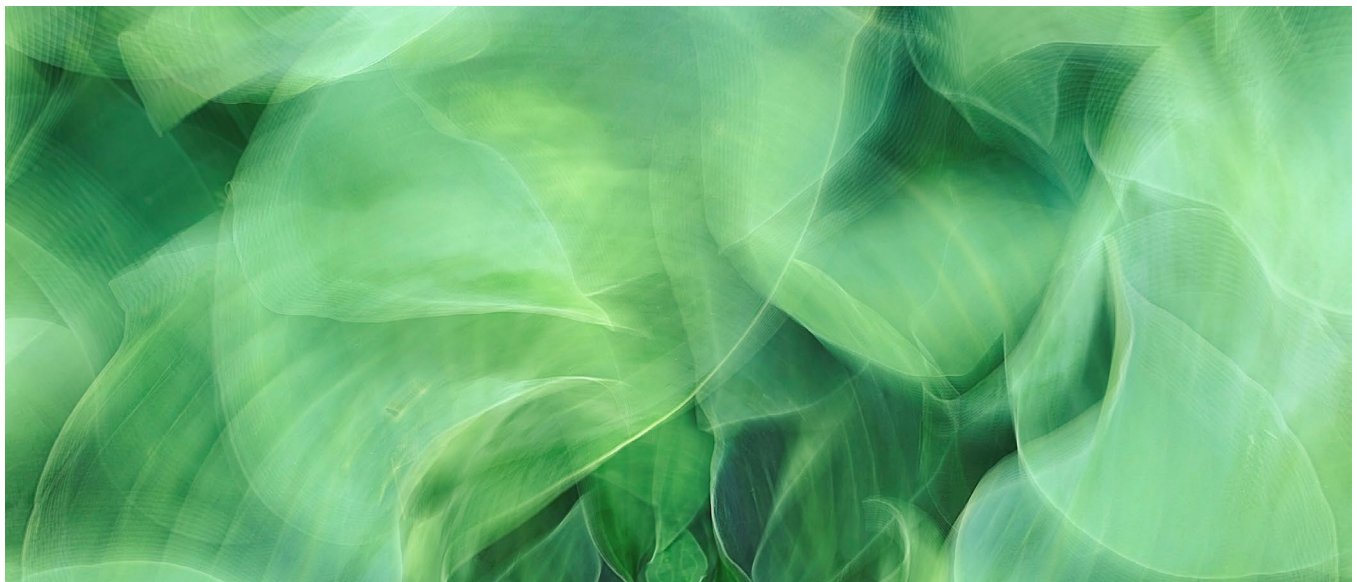
### **URUGUAY’S MIRRORING TACTICS**

Uruguay is neither a member, nor in the accession path to become a member of the OECD. It is a small country in South America with a GDP of around \$81 billion (though it has one of the highest GDP per capita in the region at roughly \$23,900).<sup>11</sup> While Uruguay participates in the OECD Inclusive Framework, it only signed and ratified twenty-odd tax treaties with other countries, many of which are not OECD

members themselves (such as Brazil, Ecuador, Paraguay, Singapore, and Viet Nam).

The reason Uruguay announced in September that it would adopt a minimum tax in line with Pillar Two may have more to do with President Yamandu Orsi. He is the political heir of a well-known leftist leader, Pepe Mujica, and he defeated the candidate of the previous right-wing President Lacalle Pou by a narrow margin. Like Colombian President Gustavo Petro, Orsi was elected on a platform of social justice and redistribution. He promised to reverse austerity-leaning policies and expand social spending, which naturally requires an increase in tax collections.

Perhaps timing is the best answer to why Colombia passed a broad minimum tax and Uruguay has decided to follow the OECD. 2022 seems like a decade ago in tax policy, and in 2025 far more countries have adopted a minimum tax along the lines of Pillar Two. Countries like Barbados, Indonesia, Thailand, Türkiye and Viet Nam are neither members of the OECD, nor the G20, but the OECD listed them as having passed a qualified domestic minimum top-up tax by December 2025.<sup>12</sup>



Uruguay would not be out of place on a list featuring those countries. It would also do what Brazil and other developing jurisdictions found to be the simplest, yet most defensive solution to Pillar Two: if they implement an OECD-based minimum tax, at least they will stop other countries from collecting a potential tax on the profits earned by Uruguayan entities. Doing so invites the OECD into their tax system, yes, but it is ultimately a pragmatic approach to taxing global businesses. It carries the institutional support of a respected Organization and secures a place for Uruguay at the table where its global tax policy solutions are discussed and agreed upon. This is ultimately what the Uruguayan National Budget Law of 2025-2029 did by adding a “domestic minimum top-up tax” (impuesto mínimo complementario doméstico) to the local tax code.<sup>13</sup>

This is perhaps the most important takeaway from the impact of Pillar Two in Latin America, and one could argue it translates well into other developing regions in the world. It is less about sovereign control of domestic tax

policies and more about the reputational gains of joining such a big, sprawling policy initiative alongside developed countries. The legislative report that accompanied the Brazilian bill even said that Brazil “needs to conform to the global landscape”, meaning Pillar Two, and that a future update of the Brazilian rules on taxing offshore profits should abide by “best international practices”,<sup>14</sup> meaning those sponsored by the OECD. Government representatives, and legislators among them, have accepted this sort of rhetoric as gospel. Time will tell whether they were right in doing so.



**Lucas de Lima Carvalho**

<sup>1</sup> See World Bank, [Gini Index](#) (last access on 21 January 2026).

<sup>2</sup> See OECD, [Global Forum on Transparency and Exchange of Information for Tax Purposes](#) (Global Forum members) (last update in October 2025).

<sup>3</sup> See OECD, [Members and partners](#) (last access on 21 January 2026).

<sup>4</sup> See OECD, [Members of the OECD/G20 Inclusive Framework on BEPS](#) (last update on 28 May 2024).

<sup>5</sup> See Colombia, [Ley 2277 de 2022](#). National Congress of Colombia, published on 13 December 2022 (in Spanish).

<sup>6</sup> See Juan Escobar Fernández, [Reforma tributaria de Petro: los colombianos no pagarán nuevos impuestos, pero muchos se quedarán sin empleo y sin subsidios](#). [Infobae](#), published on 09 December 2025 (in Spanish).

<sup>7</sup> See Colombia, [Reforma Tributaria para la Igualdad y la Justicia Social](#). Ministry of Finance and Public Credit, August of 2022, p. 3 (in Spanish).

<sup>8</sup> See Brazil, [Coletiva de imprensa Ministério da Fazenda](#). YouTube (Ministry of Finance of Brazil), live stream dated 04 October 2024, timestamp [1:09:39-1:09:58] (in Portuguese).

<sup>9</sup> See Brazil, [Sessão Deliberativa do Plenário – 18/12/24](#). YouTube (Brazilian Senate TV), live stream dated 18 December 2024, timestamp [6:16:32-6:16:33] (in Portuguese).

<sup>10</sup> See OECD, [Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules \(Pillar Two\), Side-by-Side Package](#). Published on 05 January 2026.

<sup>11</sup> See World Bank, [GDP \(Current US\\$\)](#) (last access on 21 January 2026). See also World Bank, [GDP per capita \(Current US\\$\)](#) (last access on 21 January 2026).

<sup>12</sup> See OECD, [Central Record for purposes of the Global Minimum Tax \(Qualified Domestic Minimum Top-up Tax Rules and QDMTT Safe Harbours\)](#) (last update on 01 December 2025).

<sup>13</sup> See Uruguay, [Ley N° 20.446 – Presupuesto Nacional 2025-2029](#). Legislative Power – General Assembly, Article 665. Published on 16 December 2025 (in Spanish).

<sup>14</sup> See Brazil, [Parecer N° de 2024](#). Legislative report authored by Senator Alan Rick, submitted on 18 December 2024, p. 6 (in Portuguese).

# THE SBS PACKAGE AND THE IRONY OF GLOBAL TAX COOPERATION

*By Dr. Leopoldo Parada, King's College London\**

## INTRODUCTION

On 5 January 2026, the OECD Inclusive Framework announced what many have heralded as a breakthrough: the Side-by-Side (SbS) Package. The package was presented as evidence of the maturity and adaptability of the global minimum tax (GMT) framework.<sup>1</sup> Yet, paradoxically, it may have created precisely the opposite effect it intended—a powerful incentive structure for developing countries to strategically opt out of the GMT system through selective adoption of either the Income Inclusion Rule (IIR) or the Undertaxed Profit Rule (UTPR), while entirely forgoing the Qualified Domestic Minimum Top-up Tax (QDMTT).

The SbS regime, by designating only the United States as a “Qualified SbS Regime”,<sup>2</sup> has inadvertently demonstrated a fundamental truth about global tax cooperation: when the rules systematically advantage one or only a few jurisdictions over others, the rational response for those excluded is not grateful compliance, but strategic withdrawal.

This article argues that while developing countries may keep endorsing the GMT

after the SbS package, they may opt for a more economically coherent strategy: selective defection. This outcome responds to two principal factors. First, the uncertain value of a QDMTT in the current scenario. Second, the strategic incentives offered by the SbS regime.

## THE CONTENT OF THE SBS PACKAGE

The technical architecture of the SbS regime is straightforward, and its core is the SbS Safe Harbour, which allows multinational enterprise (MNE) groups headquartered in qualifying jurisdictions—currently only the United States—to elect a deemed top-up tax of zero under both the Income Inclusion Rule (IIR) and the Undertaxed Profits Rule (UTPR) across all their domestic and foreign operations. In other words, it confirms what we already knew: US-parented MNE groups will not be affected either by the IIR or UTPR.<sup>3</sup>





The SbS package also introduces additional measures, including a UPE Safe Harbour, which basically protects profits in the ultimate parent's own jurisdiction from the UTPR, if that jurisdiction's domestic minimum tax system meets certain OECD conditions, a permanent Simplified Effective Tax Rate (ETR) Safe Harbour, a Substance-based Tax Incentive (SBTI) Safe Harbour that provides relief for qualifying expenditure-based incentives such as R&D tax credits, and extends the Transitional Country-by-Country Reporting Safe Harbour by one year. All these measures, as presented in the package, are intended to substantially reduce compliance complexity while maintaining the integrity of the GMT framework.<sup>4</sup>

Critically, the SbS Package explicitly preserved the Qualified Domestic Minimum Top-up Tax (QDMTT), meaning that even U.S.-parented MNEs remain subject to source-country top-up taxation in jurisdictions that have adopted or decide to adopt a QDMTT.

This preservation may be seen, in principle, as reflecting the OECD's stated commitment to protecting domestic tax bases in developing countries. However, the implicit message is rather different: the US system is recognised as equivalent and sufficient, while compliance by all other countries is encouraged but secondary.

### **DEVELOPING COUNTRIES AND SELECTIVE DEFECTION**

With the cards on the table, developing countries now confront a fundamental strategic question: why commit to the full complexity and compliance burden of the GMT architecture if the fiscal benefits are unevenly distributed and the compliance costs are uniformly high?

To understand a potential developing-country response to the SbS regime, two factors deserve close examination: the uncertain value of the QDMTT and the strategic position of developing countries in a global economy post-SbS regime. Let me analyse both separately.

## THE UNCERTAIN VALUE OF THE QDMTT

The QDMTT is a central element of the GMT architecture. Developing countries were promised that the QDMTT—the first line of collection mechanism under Pillar Two—would allow them to capture top-up tax revenue from low-taxed profits arising within their borders. However, even after all these years, it is still questionable whether a QDMTT implementation will contribute to generating any significant revenues in developing countries. After all, a QDMTT collection depends on several factors, including significant operations of in-scope CEs in the country, low-taxed profits after the application of the Substance-Based Income Exclusion (SBIE), and certainly an ETR below 15%.<sup>5</sup>

For many developing countries, particularly those with limited MNE presence or already-high effective tax rates, the QDMTT will apply rarely and generate negligible revenue. Yet the administrative cost of implementing a QDMTT—developing the technical capacity, training auditors, managing complex computations, and maintaining peer-review compliance—remains substantial regardless of revenue yield. For resource-constrained tax administrations, these costs may easily exceed expected benefits.

## THE POST-SBS STRATEGIC APPROACH

The SbS regime reshapes the strategic landscape for developing countries. With US-parented MNE groups now exempt from both IIR and UTPR, some developing countries may rationally question the value of maintaining the full GMT machinery. If the QDMTT is no longer

a reliable revenue source and the other mechanisms offer minimal benefit to (source) developing countries, a full Pillar Two implementation becomes difficult to justify on fiscal grounds alone.

In this environment, the alternative of partial defection emerges as strategically coherent. In other words, rather than exit the GMT framework entirely, developing countries might adopt a selective posture—implementing, for instance, only an IIR, without the QDMTT or UTPR, or only a UTPR, without QDMTT and IIR. To put it differently, the SbS regime inadvertently has offered developing countries an opportunity to become new investment hubs (“non-QDMTT hubs”), while still signalling international commitment with either an IIR or UTPR. Ironically, a new model of selective GMT-engagement with lower costs, and perfectly compliant with the new standards, is born.

Nevertheless, the above must be analysed in conjunction with the constraints associated with such a decision, including reputational risk, administrative capabilities to deal with IIR (UTPR is less of a problem), and internal political environments. That is, some developing countries may still consider that the reputational risk or the internal political commitment make a partial defection impossible, or too costly. Yet, developing countries with robust reputational standing, moderate administrative capacity, and political consensus on tax competitiveness may still find selective defection a rational path.

## THE COLLECTIVE ACTION PROBLEM REDUX

The SbS Package does not resolve the collective action problem inherent in global tax cooperation—it reconfigures it.<sup>6</sup> Under the original GMT framework, at least there was a pretence of universal obligation. Every country, theoretically, faced the same rulebook. Now, with the SbS regime’s explicit hierarchy, the pretence has crumbled.<sup>7</sup>

Developing countries, rationally viewing themselves as permanently excluded from SbS status, will be incentivised to optimise locally rather than cooperate globally. In other words, they will recognise that full GMT implementation yields minimal revenue benefit (the QDMTT is largely irrelevant; IIR/UTPR benefits only in upstream situations) while imposing a substantial compliance burden. If the global system designates one jurisdiction as “equivalent” and places others in a subordinate tier, the rational response is not grateful compliance, but strategic selectivity: adopt IIR or UTPR if politically expedient but abandon the fiction of full GMT participation.

This is the fundamental inversion of global tax cooperation philosophy. The OECD sought to establish a universal minimum standard. Instead, it has created a demonstrated hierarchy—the US system is explicitly recognised as superior and equivalent; all others are lesser. This implicit ranking, once made explicit through the SbS regime (approved by the IF), naturally triggers competitive responses from excluded jurisdictions. In other words, the OECD has inadvertently provided a roadmap for rational defection, and this is what is about to come.



## CONCLUSION

The SbS Package has been presented as a mechanism to keep the Pillar Two project intact and to demonstrate that global tax cooperation remains feasible. The intent is defensible. However, intent and effect may diverge. The selective SbS system may have, ironically, created a powerful incentive for developing countries to strategically adopt only those GMT elements that align with their national interests and administrative capacity, while abandoning the fiction of comprehensive participation.

Implementing only selective elements of GMT architecture—particularly an IIR or UTPR—while entirely abandoning QDMTT participation may emerge as a dominant strategy. Such jurisdictions can credibly signal responsibility to the international community through partial GMT adoption while simultaneously positioning themselves as competitive investment destinations in a minimum-tax-constrained world.

Whether developing countries will rationally respond in this manner remains an open question. But the institutional architecture now makes such a response strategically coherent and administratively feasible. If the OECD wishes to avoid further fragmentation of the GMT framework, it may need to broaden SbS access, redesign QDMTT support mechanisms for developing countries, or offer enhanced capacity-building and concessional treatment. Absent such measures, rational actors in the developing world may well choose selective defection over comprehensive compliance.



**Leopoldo Parada**

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OECD, Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two), Side-by-Side Package (OECD Publishing, 2026).

<sup>1</sup> OECD, Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two), Side-by-Side Package (OECD Publishing, 2026).

<sup>2</sup> Central Record for the Purpose of the Global Minimum Tax, <https://www.oecd.org/en/topics/sub-issues/global-minimum-tax/central-record-of-legislation-with-transitional-qualified-status.html>

<sup>3</sup> OECD, *supra* note 1, pp. 79-88.

<sup>4</sup> *Ibid.*, pp. 6-78 (other safer harbours) and 86-88 (UPE safe harbour).

<sup>5</sup> Some problems related to the 'revenue gain myth' derived from the QDMTT are addressed in Leopoldo Parada, 'Global Minimum Taxation: A Strategic Approach for Developing Countries', *Columbia Journal of Tax Law* 15:2 (2024), pp. 187-211. See also, e.g., Emmanuel Eze et al., 'The GloBE Rules: Challenges for Developing Countries and Smart Policy Options to Protect Their Tax Base', *South Centre* No. 35 (2023).

<sup>6</sup> For understanding the collective action problem in the context of global tax reforms, see Shmuel Nili, 'Global Taxation, Global Reform, and Collective Action' *Moral Philosophy and Politics* 1 (1) (2014), pp. 83-103.

<sup>7</sup> I have already argued this in the past, specifically in the EU context. Leopoldo Parada, 'Pillar Two in Europe: Tax Justice or Strategic Misstep?' *Kluwer International Tax Law Blog*, 16 July 2025.



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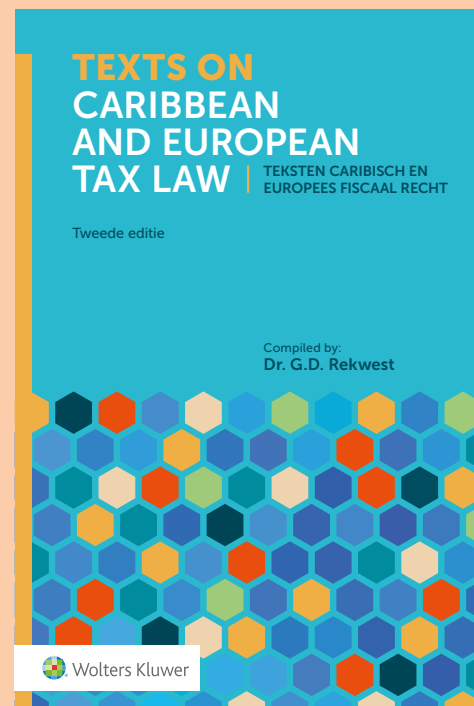
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# REALITY VS ILLUSION: LESSONS IN ANTI- AVOIDANCE FROM THE CARIBBEAN

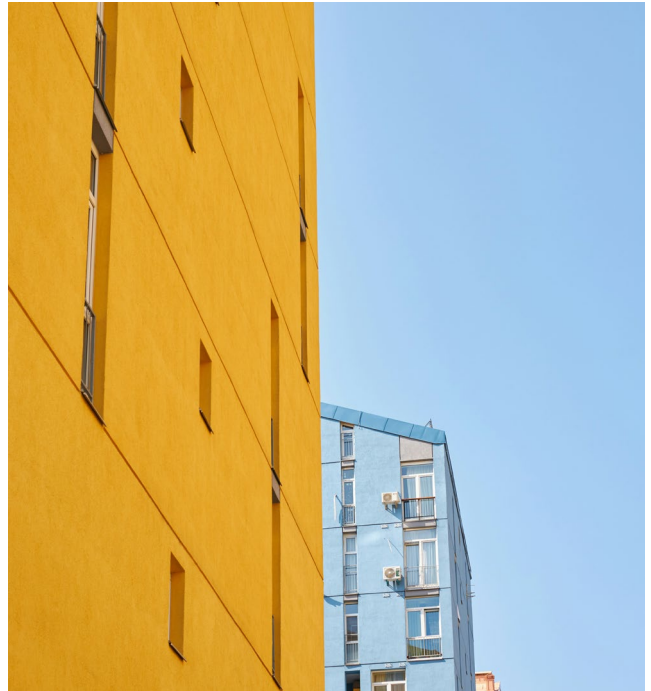
*By Ria Mohammed, The Chambers of  
Mr. Rolston Nelson, S.C., Trinidad and  
Tobago*

## INTRODUCTION

“If I had a world of my own, everything would be nonsense. Nothing would be what it is, because everything would be what it isn't.” These words from Alice’s Adventures in Wonderland set the perfect tone for examining the decision of the Judicial Committee of the Privy Council delivered on April 22, 2025 in *Methanex Trinidad (Titan) Unlimited v The Board of Inland Revenue* [2025] UKPC 20; a case where the themes of reality and illusion take centre stage in the context of corporate tax law.

## A TALE OF THREE COMPANIES

The case arose out of a multi-stage dividend payment between three companies– one incorporated in Trinidad and Tobago called Methanex Trinidad (Titan) Unlimited (‘Methanex Trinidad’), one incorporated in Barbados called Methanex Trinidad Holdings Limited (‘Methanex Barbados’) and one incorporated in the Cayman Islands called Methanex International Holdings Ltd (‘Methanex Cayman’). Methanex Trinidad is a wholly-owned subsidiary of Methanex Barbados which in turn is a wholly-owned subsidiary of Methanex Cayman which in turn is a wholly-owned subsidiary of Methanex Canada. Over the period July to November 2007,



Methanex Trinidad declared and paid dividends totalling US\$85.4 million to Methanex Barbados in three tranches of US\$25.4 million, US\$20 million and US\$10 million. Shortly thereafter, Methanex Barbados declared and paid dividends in identical amounts to Methanex Cayman, which then declared and paid these dividends to Methanex Canada. The payment of dividends by a subsidiary to its parent company is a routine matter of profit distribution. Furthermore, under the 1994 CARICOM Double Taxation Treaty, to which both Trinidad and Tobago and Barbados are parties, dividend payments made by a company resident in a CARICOM Member State to a resident of another Member State are taxable only in the first Member State at a rate of 0% withholding tax. How then did these dividend payments become the precursor to an epic legal battle spanning six years, ultimately engaging the attention of the apex appellate court for Trinidad and Tobago? The answer lies in section 67 of the Income Tax Act of Trinidad and Tobago.

## **SECTION 67 OF THE INCOME TAX ACT OF TRINIDAD AND TOBAGO]**

Section 67 of the Income Tax Act, ('ITA') provides that where the Board of Inland Revenue ('BIR') is of the opinion that any transaction which reduces or would reduce the amount of tax payable by any person is artificial or fictitious, it may disregard any such transaction and the persons concerned shall be assessable accordingly. This general anti-avoidance provision finds expression in income tax legislation throughout the Caribbean.<sup>1</sup> It requires an evaluative assessment by the BIR as to whether a transaction aimed at reducing tax should be deemed fictitious or artificial. Both are distinct concepts, courts having long rejected the notion of pleonastic drafting.<sup>2</sup>

A fictitious transaction is one which is a sham. In *Snook v London and West Riding Investments*<sup>3</sup> Lord Diplock explained a fictitious transaction as one which is intended to give the appearance of creating between the parties legal rights or obligations which are different from the actual legal rights and obligations which the parties intend to create. Think the caucus race in Alice's Adventures in Wonderland which gives the illusion of a formal race but in reality the animals run in a circle, starting and stopping wherever they please.

Artificiality is a term of wider import, describing a transaction which has unusual features as compared with normal transactions of a similar type. In *Commissioner of Taxpayer Audit and Assessment v Cigarette Company of Jamaica Ltd* Lord Walker described it as evoking "features which are abnormal and appear to be part of a plan. They are the sort of features of which a well informed bystander might say 'This simply would not happen in the real world'."<sup>4</sup> Think the Cheshire Cat who disappears leaving behind only his grin, causing Alice to exclaim that she has often seen a cat without a grin but to see a grin without a cat is the most curious thing she ever saw in all her life.

Although both artificiality and fictitiousness are distinct notions, in essence they both require a judgment call on where illusion ends and reality begins. It is a fundamental principle of law that a taxpayer is entitled to structure his/her affairs to minimise tax liability.<sup>5</sup> Anti-avoidance rules rest, somewhat uneasily, alongside this foundation. They enable the BIR to deem certain arrangements as artificial or fictitious based on an evidential evaluation of substance over form; an assay which is no tall order. And therein lies the conundrum. This is patently evident in the stark divergence between the local courts and the Privy Council's treatment of the dividend payments in *Methanex*.



### **METHANEX AT THE LOCAL COURTS**

In Methanex, the BIR invoked section 67 of the ITA after forming the view that that the dividend payments though purporting to be made in Methanex Barbados were in fact paid to Methanex Canada. It therefore determined that the payments should attract 5% withholding tax pursuant to the Double Taxation Relief (Canada) Order 1996, rather than the 0% under the 1994 CARICOM Double Taxation Treaty. Methanex unsuccessfully challenged this assessment before the Tax Appeal Board ('TAB'). The TAB similarly found the payments to Methanex Barbados to be artificial and fictitious. This conclusion was driven by the facts and evidence, chief amongst these being an email sent by Methanex Canada to Methanex Trinidad prior to the second and third dividend payments requesting cash repatriation of those exact sums by specific dates. The TAB also found that the board of directors of Methanex Trinidad and Methanex Barbados did not exercise any independent discretion in resolving to declare and pay the dividends which was done as part of a preconceived plan. Other significant factors included that within

days of the dividends being received from Methanex Trinidad, dividends in those exact amounts were declared by Methanex Barbados and paid to Methanex Cayman and that the dividends were paid into accounts in the name of Methanex Barbados and Methanex Cayman but which were under the sole control of Methanex Canada.

The fact that the payments were in the exact amounts requested, were made by the specific dates requested, were made pursuant to a request from Methanex Canada and were rapidly declared and paid between the three companies led the TAB to conclude that the payments, though purporting to be made to Methanex Barbados, were in reality made for the ultimate benefit of Methanex Canada as part of a preconceived plan. The TAB reasoned that Methanex Barbados was used merely as a conduit to achieve a tax-free result. Thus viewed, the payments were properly disregarded under section 67 and withholding tax correctly applied.

The decision of the TAB was upheld on appeal. The Court of Appeal ('CA') held that the factual findings of the TAB were not plainly wrong. Much store was placed on the rapidity of the dividend payments and the email correspondence predating their initial declaration. Whilst acknowledging that that Methanex Trinidad was entitled to use its corporate structure to facilitate tax planning and efficiency and that Methanex Canada was entitled to request dividend payments from its subsidiaries, the CA emphasised that the tax consequences of the actual transaction would apply that and not that of any disguised or fictitious one.

### **METHANEX AT THE PRIVY COUNCIL**

The Privy Council took a different view, driven by driven by corporate realities of a multi-jurisdictional group of companies. Lord Richards, delivering the opinion of the Board, deftly manoeuvred the fact that the appeal involved concurrent findings of fact by the lower courts. His Lordship reasoned that the conclusions of the TAB and CA that the dividend payments were artificial and fictitious were evaluative judgments based on the primary facts found by the TAB. Furthermore, where such evaluative judgments have no proper basis in the findings of fact, they constitute errors of law warranting appellate intervention. His Lordship found that the evidence was incapable of supporting the findings that the payments were artificial and fictitious.

On the question of whether the payments were artificial, the Privy Council focused on the practicalities underlying the dividend payments. It noted that Methanex Trinidad could not lawfully declare and pay a dividend directly to Methanex Canada; a fact which was conceded by BIR. Therefore, in reality, the only way to facilitate the payment

was by the declaration and payment of dividends up the corporate chain from Methanex Trinidad to Methanex Barbados to Methanex Cayman and ultimately to Methanex Canada. Lord Richards explained that "it cannot be artificial to execute a legitimate commercial decision by the only available legal means."<sup>6</sup> His Lordship also noted that the payments did not lack a sound commercial purpose, noting that "the payment of dividends up a corporate chain at the request of the ultimate holding company is a commercial commonplace in national and international groups, not least because it is the only lawful means by which distributable profits can be brought up from subsidiaries."<sup>7</sup>

On the question of whether the payments were fictitious, the Privy Council again grounded its analysis in the practical realities of the operations of an international group of companies. It emphasised that there was no evidence showing that the payments made were not in fact dividends. Furthermore, the fact that a payment is made by A to B with the intention to be paid by B to C does not render the payment fictitious. Additionally, there was nothing unusual about the ultimate holding company requiring subsidiaries to pay dividends up the corporate chain. Moreover, the fact that the payments were made into accounts held by Methanex Canada did not mean it was the beneficial owner of the sums and could do with it as it wished. In the case of Methanex Cayman, the payments were first applied to debt obligations and investments. In making the payments, the authorised signatories on the accounts, who were employees in the treasury department of Methanex Canada were to be taken as acting as the agents of the subsidiary companies. Ultimately, the Privy Council concluded

that “the evidence was incapable of supporting the conclusion that the dividend payments were fictitious.”<sup>8</sup> Thus, the appeal was allowed.

## CONCLUSION

What then can we learn from the Methanex saga? First, on a philosophical level, it is evident that there is a divergence in judicial philosophy as between local courts, on the one hand and the foreign based apex court on the other, given their diametrically opposed conclusions on the same transaction. It appears that the Privy Council leans in favour of upholding the right of taxpayers to utilise legitimate corporate structures for the upstreaming of profits; hardly surprising given London’s reputation as a top-tier global financial hub.

Second, on a macro level, the case raises questions about legislative reform such as whether targeted anti-avoidance rules should be enacted in the Commonwealth Caribbean such as exists in the United Kingdom.<sup>9</sup> There is also the issue of the CARICOM Double Taxation Treaty which has not been revised in over 30 years. Recent engagement with regional tax and financial sectors by the CARICOM Secretariat signals that reform is underway.<sup>10</sup> It is hoped that such efforts

bear fruit and that they account for the rapidly changing landscape of regional legislation promoting international trade and business such as the International Business Companies Act of Barbados which featured heavily in Methanex.

Third, on a micro level, the case underscores the fact that a transaction with a valid commercial purpose and which has actually occurred is not artificial or fictitious merely because it involves multi-stage payments through several subsidiary companies. Put simply, the corporate structure of a group of companies and the consequent tax advantages cannot make illusory that which is real.



**Ria Mohammed**

<sup>1</sup> Antigua and Barbuda: Income Tax Act s 53(3); Barbados: Income Tax Act s 29(2); Dominica: Income Tax Act s 23; Grenada: Income Tax Act s 23; Guyana: Income Tax Act s 74; Jamaica: Income Tax Act s16(1); St. Kitts and Nevis: Income Tax Act s 55; St. Lucia: Income Tax Act ss23 and 99; St. Vincent and the Grenadines: Income Tax Act s 23.

<sup>2</sup> *Seramco Ltd Superannuation Fund Trustees v Income Tax Commissioners* [1976] 2 All ER 28 at 35.

<sup>3</sup> [1967] 2 QB 786, 802.

<sup>4</sup> [2012] UKPC 9 at [22].

<sup>5</sup> *Bradford (City) v Pickles* [1895] A.C. 587 and *Inland Revenue Commissioners v Duke of Westminster* [1936] A.C. 1.

<sup>6</sup> *Methanex*, note 1 at [43].

<sup>7</sup> *Ibid* at [48].

<sup>8</sup> *Ibid* at [38].

<sup>9</sup> Dr. Claude Denbow SC, *Income Tax Law in the Commonwealth Caribbean* 2nd Edition at para. 8.7 (Bloomsbury 2013). See also Elizabeth Keeling 'Wide of the Mark: Are Targeted Anti-Avoidance Rules in UK Legislation Doing Their Job?' (2022) *Statute Law Rev* 43(2) 153.

<sup>10</sup> CARICOM Secretariat 'CARICOM aligning tax treaty with international standards' (Press Release, March 31, 2025) <https://caricom.org/caricom-aligning-tax-treaty-with-international-standards/>

# YOUTH BRAIN DRAIN AND TAX INCENTIVES IN THE CAS COUNTRIES, LIMITS AND OPPORTUNITIES

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*“We have to start thinking of incentives to bring our professionals and our students that finalize their studies in a way that it becomes attractive to get them here on the island.”*

## INTRODUCTION

Curaçao, Aruba and Sint Maarten (hereinafter, the ‘CAS countries’) face a loss of young human capital. The outflow of students from Curaçao to the Netherlands has remained high, and not all graduates return. Aruba is confronted with a similar emigration trend. The government introduced a policy proposal granting returning students a partial reduction of their student loan. High levels of student debt and a small labor market continue to constitute an obstacle to remigration. Sint Maarten likewise identifies brain drain as one of the country’s most pressing challenges. Considering the specific pattern of ‘youth brain drain’, targeted tax measures can form part of the policy response. Against this background, this article examines how tax measures are used and how they can address ‘youth brain drain’. The article first sets out the distinction between tax push and pull measures. It then analyzes the tax measures currently applied in the CAS countries, examines the limitations imposed by the OECD and

UN Model Conventions, and concludes with a discussion of possible domestic tax measures that could be applied in the CAS countries to counteract ‘youth brain drain’.

## TAX-BASED PUSH AND PULL MEASURES IN THE CONTEXT OF ‘YOUTH BRAIN DRAIN’

Tax policy is often presented as a possible response to brain drain. Whether, and to what extent, it can meaningfully address the specific dynamics of ‘youth brain drain’ requires a distinction between different tax-based push and pull measures. Given the limited taxable income and ties of young individuals, not all tax measures are effective. The analysis first examines push measures in more detail. Push measures aim to discourage or compensate departure. Two tax-based push approaches are examined, namely (1) compensatory and (2) restrictive tax measures.

**Compensatory measures** (1) accept that individuals may emigrate but seek to compensate for part of the lost tax revenue through the host state. By relying on tax credits, double taxation can be avoided.<sup>2</sup> This approach raises two questions in the light of ‘youth brain drain’. First, it is uncertain whether the new state of residence would be willing to cooperate. It would have to cede part of its own tax revenue, even though the taxpayer now resides within its jurisdiction and makes use of its public services. Second, it is questionable whether these measures have any meaning. For individuals who choose to pursue further education, it is not unlikely that they have not yet generated taxable income in their state of origin. They no longer make use of public services, and they begin their (adult) lives elsewhere.



This raises the question of whether, and to what extent, the state of origin can claim any form of tax compensation. A very broad approach which counts all public expenditure from birth onwards appears disproportionate, since individuals had no choice as children regarding their place of residence. A more targeted option is to limit the calculation to the concrete support for higher education provided by the state of origin, and to request compensation solely for that. In cases of ‘normal brain drain’,<sup>3</sup> by contrast, compensatory measures may be more coherent as individuals chose to reside in the state of origin during their adult lives, generated taxable income there, and made conscious use of public services before emigrating.

**Restrictive measures** (2), on the other hand, aim to limit the outflow by attaching conditions, requirements or sanctions to emigration. Framed in terms of reciprocity and the pursuit of a return on public investment, they raise concerns in relation to the free

movement of persons. Safeguarding a balanced allocation of taxing powers between states may, in principle, justify a restriction. Such justification is subject to proportionality. Immediate taxation, for example, without the possibility of deferral or payment in installments goes beyond what is necessary to protect the taxing rights of the exit state. Where emigration occurs after graduation or entry in the labor market, restrictive measures may be more defensible within the limits of proportionality. As already noted in the context of compensatory measures, restrictive measures are likewise difficult to justify where individuals leave to pursue education abroad and have not yet generated any meaningful taxable income.

Taken together, the analysis of push measures demonstrates that, although such instruments may be more defensible in cases of ‘normal brain drain’, they are difficult to justify in the context of ‘youth brain drain’. The analysis next turns to pull

measures. Pull measures seek to attract and retain talent through favourable tax treatment. Three types of tax-based pull measures can be distinguished: (3) attraction-oriented measures, (4) return-oriented measures, and (5) diaspora-oriented measures.

**Attraction-oriented measures** (3) are instruments through which a state seeks to attract or retain individuals by granting favorable tax treatment. These instruments operate within the context of international tax competition.<sup>4</sup> While such measures can enhance a state's appeal, they may raise concerns about unequal treatment compared with the domestic workforce.<sup>5</sup> For the CAS countries, attraction-oriented measures can be geared towards addressing 'youth brain drain' by creating incentives for both local students and foreign students.

**Return-oriented measures** (4) aim to encourage highly educated emigrants to re-establish themselves in their country of origin by providing (temporary) tax benefits.<sup>6</sup> Such measures are relevant for the CAS countries, where students complete their studies abroad and are weighing their options to return or not.

**Diaspora-oriented measures** (5) target individuals who reside (permanently) abroad but maintain links with their original 'home' country. They offer tax advantages without requiring physical remigration and recognize the diaspora as a potential contributor to development.<sup>7</sup> In the case of 'youth brain drain', individuals leave their country of origin to pursue higher education abroad at a stage where they have not yet developed durable economic, social or institutional anchoring in the home state which offers limited points of departure for tax measures to build upon. Diaspora-oriented measures may include favorable tax treatment of remittances sent by young professionals to family members in their country of origin, tax relief for investments made by emigrants in domestic start-ups or innovation projects, or targeted incentives for domestic businesses that collaborate with or provide services to diaspora-based professionals. While such measures can also be deployed in cases of 'normal brain drain', they may be of relevance for 'youth brain drain', as they constitute one of the few remaining policy instruments capable of fostering economic engagement and preserving ties where pre-existing attachments are weak or still in formation.



Overall, pull measures are better suited to address ‘youth brain drain’, as they work with, rather than against, the mobility decisions of young individuals and can be targeted at key moments in their educational and early career paths.

## MEASURES ADOPTED BY THE CAS COUNTRIES

Against this background, the question arises whether the CAS countries have already adopted tax-based push and pull measures that are effective in practice, and relevant to the specific dynamics of ‘youth brain drain’.

In Curaçao, the main ‘pull measure’ for young individuals appears in the study-financing system. Under the ‘Studiefinancieringsregeling’, public study grants create a recoverable claim for the government. It is initially granted as a loan and is converted into a grant if the graduate resides in Curaçao for at least five years within two years following graduation.<sup>8</sup> It is a ‘pull measure’ insofar as it rewards remigration through debt cancellation, yet it contains a mild ‘push factor’ because failure to return results in the loss of an (expected) advantage. Moreover, a full exemption from wage tax and social security contributions for employees aged 18 to 29, should be regarded as one of the most effective instruments to counter ‘youth brain drain’. It strengthens early-career net income at the moment when mobility decisions are formed.<sup>9</sup> Besides all of this, Curaçao offers a range of tax incentives that lower business costs and attract internationally mobile capital and talent.<sup>102</sup> These company-level measures affect return and retention only indirectly,

though they do help sustain a dynamic business environment, which is important as indicated earlier given that students are seeking long-term prospects for their future.

In Aruba, the clearest link to ‘youth brain drain’ appears as well in the study-debt policy. In 2011, a 30% remission became available to those who completed their studies within the required timeframe, returned to Aruba within three years, registered locally and entered employment. The benefit was conditional and became final after five years of work in Aruba. This measure combines a ‘pull element’ (debt remission) with a ‘push element’ (the withdrawal of the remission in case of non-compliance). A second 30% remission was available for graduates who chose to repay the remaining balance in a single instalment.<sup>11</sup> Aruba also applies an expatriate regime under which employees receive tax-free allowances for benefits in kind, school fees and housing.<sup>12</sup>

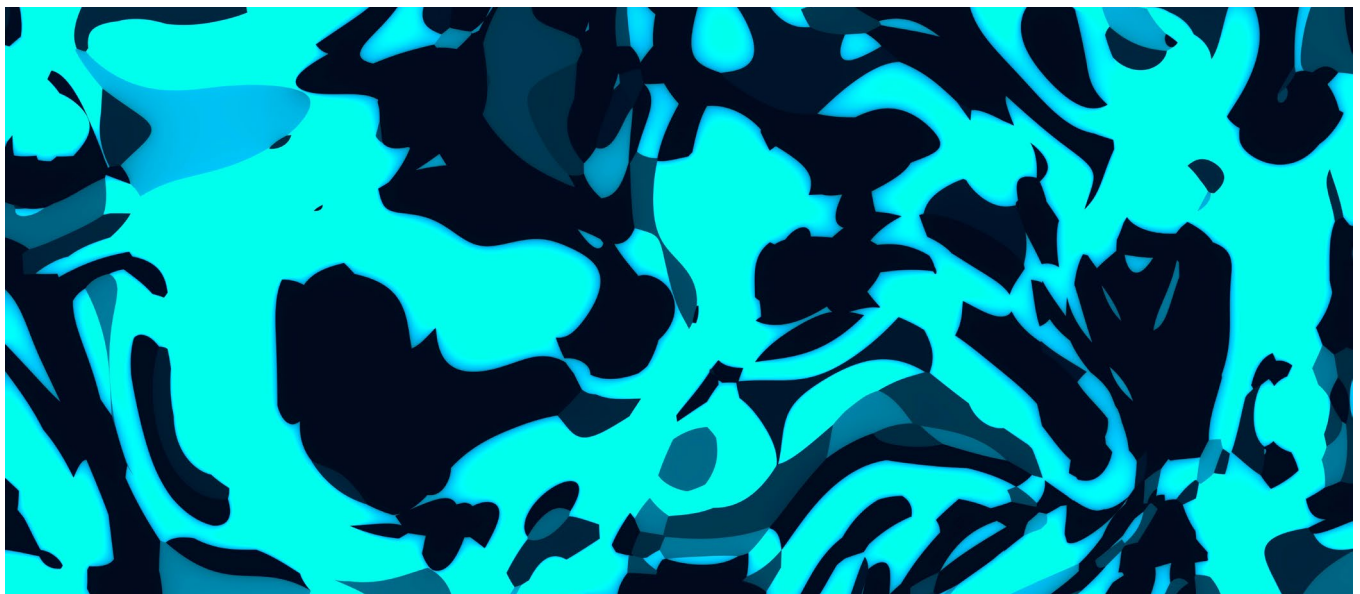
In April 2025, the Prime Minister of Sint Maarten announced a broad remigration program. It offers returning professionals and graduates relocation allowances, paid flights, temporary housing, funded shipment of belongings, a salary-adjustment allowance and government support for repaying student loans.<sup>13</sup> This package is a pull measure, removing concrete financial obstacles to return and strengthening the expected net benefit of resettlement for young ‘Sint Maarteners’ abroad.

The review of incentives in the CAS countries shows that several effective measures are already in place, particularly in the areas of debt remission and return support. These instruments, however, operate primarily after outward mobility has already occurred. Another response to 'youth brain drain' requires a shift in emphasis towards earlier intervention, focusing on the period before students leave to study abroad, alongside return policies and an attractive domestic labor market. Additional incentives could thus focus on three key moments shaping 'youth brain drain': encouraging local education and early career formation (1), promoting return after foreign study by incentivising employers (2) and strengthening employment and entrepreneurial opportunities upon return (3).

#### **ROLE OF THE UN/OECD**

The limitations of domestic tax measures invite consideration of whether 'youth brain drain' could be addressed at the level of international tax law, more specifically through the OECD and UN Model Tax Conventions. Under both the OECD and UN Model Tax Conventions, taxing rights are primarily allocated to the

state of residence. When an individual emigrates and acquires residence in the host state, the state of origin generally loses the ability to tax that person's worldwide income. This is because the Model Tax Convention allocates the taxing right over the income to the individual's state of residence, which in this case is the immigration state (the host state). As a result, a so-called 'brain drain tax' understood here as a tax imposed by the state of origin on income earned after emigration solely based on former residence, levied after emigration is in principle incompatible with the treaty framework. Compatibility is limited to three situations identified in the literature: (1) where a dual-residence conflict is resolved in favour of the emigration state, (2) where the conflict remains unresolved and the emigration state retains treaty residence, or (3) where no tax treaty applies. Although the UN Model grants broader source-state taxing rights than the OECD Model, this distinction does not affect the position of brain drain taxes, as such measures are not grounded in the source principle but in the fact of emigration. By contrast, domestic measures designed to retain or attract talent are fully compatible with both



models. The conventions determine how taxing rights are allocated, but they do not oblige states to exercise those rights. States therefore remain free to introduce positive incentives that encourage individuals to stay or return.<sup>14</sup>

The OECD and UN Models are not designed with ‘normal brain drain’ in mind. The question then arises whether, even if the treaty framework were adapted, it would provide any meaningful tools to counter ‘youth brain drain’. A ‘brain drain tax’ is difficult to justify when no prior income has been generated, and even amendments to Article 4 would not overcome this limitation. Residence under that provision depends on both states maintaining a link to the individual, yet for young emigrants such links are inherently weak. Their tax link to the home state is minimal, which means that a revised tie-breaker would not meaningfully strengthen the state of origin’s position. Consequently, effective responses must therefore lie in domestic measures rather than in adjustments to the treaties.

This conclusion is further reinforced by the treaty position of the CAS countries themselves. The relevance of tax treaties for addressing brain drain in the CAS countries is limited.<sup>15</sup> The CAS countries have only small treaty networks and rely on internal arrangements or unilateral mechanisms to mitigate double taxation. Moreover, tax treaties typically involve lengthy negotiation processes that are difficult to amend and are largely shaped by standardized model

conventions, leaving small jurisdictions with limited bargaining power. Against this background, domestic tax measures emerge as the most realistic and effective avenue for responding to ‘youth brain drain’ in the CAS countries.

### **ADDITIONAL YOUTH-FOCUSED TAX INCENTIVE PROPOSALS FOR THE CAS COUNTRIES**

Considering the limitations identified above, further domestic tax measures may be envisaged to address ‘youth brain drain’ in the CAS countries. A first measure builds on the attraction-oriented logic discussed above but goes beyond the measures currently applied in the CAS countries. The first proposed measure focuses on keeping graduates in the CAS countries by linking tax relief to local education and a first job at home. Graduates who obtain a (higher) degree in a CAS country and start working locally within a set period after graduation could receive a time-limited tax credit. Since many young graduates have little taxable income at the start of their careers, the credit should be partly refundable. This individual measure could be supported by an employer-side incentive, such as a limited reduction in wage tax or social contributions for employers who offer paid work placements to locally enrolled students.

A second measure, directly addressing the risk of non-return after foreign study, is a credit targeted at graduate-level employment. Domestic employers who hire returning graduates within a defined timeframe after completion of foreign studies could benefit from a temporary and capped reduction in wage tax or social contributions, provided that the employment is substantive.



A third measure is for returnees who do not find attractive salaried career paths in a small labor market. A start-up and innovation track could provide time-limited relief on initial business profits for returning graduates who establish a self-employment activity or start-up after remigration, complemented by accelerated depreciation for qualifying start-up investments. In addition, domestic start-ups or innovation projects that attract funding from young diaspora members could benefit from a targeted allowance at the level of the domestic recipient, if diaspora funding is matched by local co-financing and supported by minimum substance requirements.

These measures address different stages of youth mobility: (1) they encourage young individuals to pursue their education and first employment in the CAS countries, thereby preventing initial outflow; (2) they promote return after foreign study by incentivising employers to hire returning graduates; (3) and they strengthen entrepreneurship by supporting returning and local initiative.

## CONCLUSION

This article examined whether and to what extent tax incentives can contribute to addressing 'youth brain drain' in the CAS countries. First, the distinction between tax-based push and pull measures highlights an imbalance. Push measures, whether compensatory or restrictive, are largely ineffective in the context of 'youth brain drain'. Young individuals typically emigrate before entering the labor market, before generating taxable income and before establishing a durable tax link with the home state. In such circumstances, there is little tax base to protect or recoup, while restrictive mechanisms raise serious proportionality concerns. Pull measures, by contrast, offer greater potential as they work with rather than against the mobility decisions of young individuals.

Second, the review of measures currently applied in the CAS countries confirms a mismatch. Existing instruments mainly focus on debt remission, return packages and broad youth employment incentives. Although these measures reduce financial barriers to return, they tend to intervene after departure and do not sufficiently address the initial decision to study abroad or the uncertainty surrounding reintegration after foreign education. Third, international tax law provides limited additional leverage. The OECD and UN Model Tax Conventions allocate taxing rights primarily to the state of residence and leave little room for post-emigration taxation based on former residence. Even a recalibration of treaty rules would not overcome the weak tax links typical of young emigrants. Effective responses must therefore be sought primarily at the domestic level.

Against this background, the proposed youth-focused tax measures illustrate how tax policy can be better aligned with the dynamics of ‘youth brain drain’ by strengthening the link between local education and early employment, facilitating return after foreign study and supporting entrepreneurship where labor markets are small.



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<sup>1</sup> Prime Minister Dr. Luc Mercelina (Sint Maarten), Council of Ministers Press Briefing, 2 April 2025.

<sup>2</sup> See, for example, Matthew Lister, ‘A Tax-Credit Approach to Addressing Brain Drain’ (2017) 62 Saint Louis University Law Journal, 73

<sup>3</sup> Understood here as the emigration of highly educated individuals who leave their country of origin after completing their education and entering the labor market, or at a later stage of their professional career.

<sup>4</sup> G. Beretta, ‘Cross-Border Mobility of Individuals and the Lack of Fiscal Policy Coordination Among Jurisdictions (Even) After the BEPS Project’, *Intertax* 47/1, 2019, p. 93; E. Addarii, ‘The Race for New Residents: Preferential Regimes and Rethinking Tax Residency under the New Phase of Tax Competition’, *World Tax Journal* May 2024, p. 352, n. 12.

<sup>5</sup> T. Nagato, ‘Unilateral Tax Policy for Attracting High-Skilled Individuals in a Globalized Economy’ in I. Lazarov and S. Van der Vlugt (n.5, p. 29) (eds.), *Blueprint for Individual Income Taxation Reform in a Globalized World*, IBFD 2024, p. 188-189.

<sup>6</sup> B.B. Kristijaji, ‘TAX AND BRAIN DRAIN: JUSTIFICATION, POLICY OPTIONS AND PROSPECT FOR LARGE DEVELOPING ECONOMIES’, *Annals FLB – Belgrade Law Review* LXVII/4, 2019, p. 49-51.

<sup>7</sup> Y. Brauner, ‘Brain Drain Taxation as Development Policy’, *St Louis ULJ* 2010, p. 235 and p.266-267.

<sup>8</sup> Art. 4.2 STICHTING STUDIEFINANCIERING CURAÇÃO, *Algemene Voorwaarden Studiefinancieringsregeling Nederland, Regio en Plaatselijk*, 29 April 2025.

<sup>9</sup> Landsverordening bevordering arbeidsparticipatie jongeren en jong volwassenen, 8 July 2025, no. 95.

<sup>10</sup> CURAÇÃO CHAMBER OF COMMERCE, *Overview Tax Incentives Curaçao 2024*, <https://www.curacaochamberofcommerce.com/business-affairs/tax-incentives/> (accessed on 5 December 2025).

<sup>11</sup> Landsverordening houdende machtiging van de minister, belast met financiën, om kwijtschelding van studieschuld te verlenen, 25 October 2011, 2011, no.70; In 2017 the remission rate was increased to 35%, see LANDSVERORDENING van 14 juli 2017 tot wijziging van de Landsverordening houdende machtiging van de minister, belast met financiën, om kwijtschelding van studieschuld te verlenen, 8 augustus 2017, 2017, no.47.

<sup>12</sup> Ministeriële Regeling van de Minister van Financiën en Overheidsorganisatie van 25 september 2017 tot wijziging van de Regeling fiscale behandeling secundaire arbeidsvoorwaarden (AB 2003 no. 96), 3 October 2017, no. 63.

<sup>13</sup> ‘2K relocation allowance, loan forgiveness among ways to attract students, professionals back home’, *The Daily Herald* 2 April 2025, <https://www.thedailyherald.sx/islands/2k-relocation-allowance-loan-forgiveness-among-ways-to-attract-students-professionals-back-home> (accessed 10 December 2025)

<sup>14</sup> F. De Man, ‘TAX MEASURES TO COMBAT BRAIN DRAIN: (IN) COMPATIBILITY ISSUES WITH DOUBLE TAX CONVENTIONS AND A POTENTIAL WAY FORWARD’, *Annals FLB – Belgrade Law Review* 2019/4, p. 249.

<sup>15</sup> Aruba has not concluded any double tax treaties; Curaçao has concluded double tax treaties with Cyprus, Malta, San Marino and signed a double tax treaty with Suriname on 1 July 2024. Within the Kingdom of the Netherlands, Curaçao applies the Tax Arrangements for the Kingdom. For Curaçao, see among others, G. Rekwes, ‘The DTT Suriname: A New Path in Curaçao’s Tax Treaty Network’, *Caribbean Tax Law Journal* 6/2024, p.25, G. Rekwes, ‘A TAX TREATY POLICY FOR CURAÇÃO’, *Caribbean Tax Law Journal* 2/2022, p.11 and Ministry of Finance, *Curacao 2023 Tax Treaty Policy*, <https://minfin.cw/en/curacao-tax-treaty-policy/>; Sint Maarten has concluded only one double tax treaty with Norway, and has also a ‘Belastingregeling’ (tax arrangement) with the Netherlands. See Sint Maarten 2024 (Second Round, Combined Review): Peer Review Report on the Exchange of Information on Request, OECD Publishing, Paris, p. 131, <https://doi.org/10.1787/f97c97df-en> and *Belastingregeling Nederland Sint Maarten*, 23 December 2015, 2015.

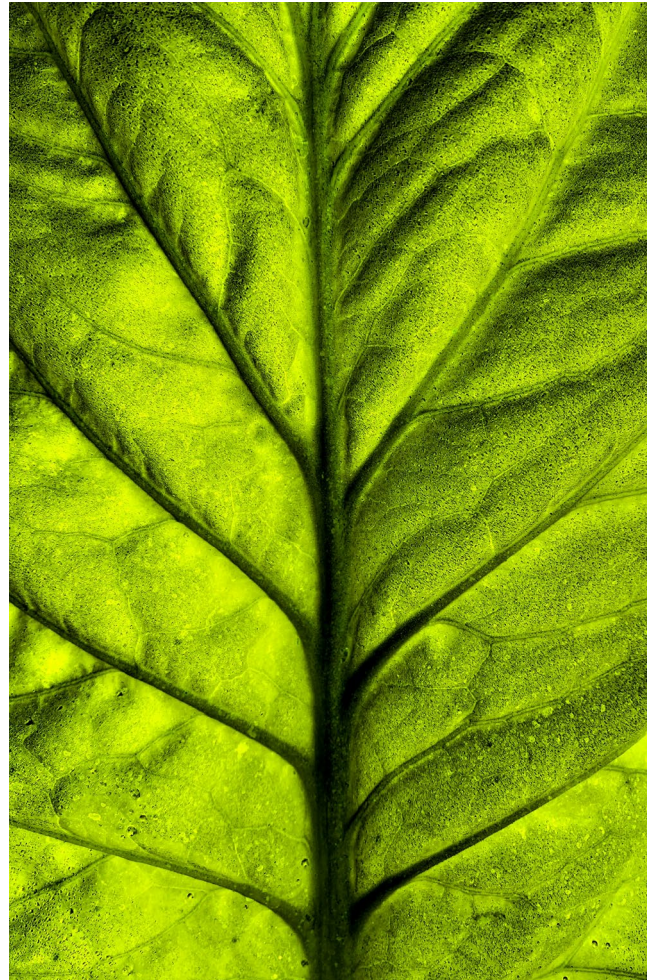
# CURAÇAO'S STRUGGLE FOR FISCAL LEGITIMACY AND INTERNATIONAL RECOGNITION

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## INTRODUCTION

For decades, Curaçao has struggled with the "black," "grey," and "white" lists maintained by powerful international bodies like the European Union (EU) and the Organisation for Economic Co-operation and Development (OECD). Being listed carries significant consequences beyond reputational damage; it empowers the EU and its member states to enact defensive fiscal and non-fiscal measures. These can impact foreign policy, development cooperation, and economic relations, while also blocking access to various European funding streams.


To avoid these lists, Curaçao has primarily focused on legislative amendments to align with EU and OECD tax standards. However, less attention is paid to a persistent legacy issue: as a former part of the Netherlands Antilles, Curaçao remains on the "blacklists" of several countries, including Brazil and Portugal and is classified as a "tax haven." Why is it so difficult for Curaçao to shake off this label?



## THE PERSISTENCE OF BLACKLISTING AND THE NEW COMPLIANCE CYCLE

A quarter-century ago, the OECD listed Curaçao as a "tax haven" due to transparency and data-exchange issues. The OECD urged its members to terminate tax treaties with listed jurisdictions and refrain from signing new ones. Although Curaçao was removed from the OECD blacklist shortly after 2000, the global perception of the island as a tax haven has lingered.

Today, Curaçao remains on the blacklists of various countries. Without proactive measures from Curaçao, these listings will not change. A removal request seems futile unless Curaçao consistently meets international OECD standards, particularly regarding the Automatic Exchange of Information (AEOI).



Meeting the standards for AEOI has been quite a challenge for Curaçao for some time now. Legislative deficiencies regarding AEOI were not resolved until late 2024, leading to Curaçao's removal from the EU grey list in Spring 2025. In spite of that, there are looming risks: there is a realistic scenario where Curaçao could return to the EU grey list in 2027. This depends on the OECD's assessment of 'the effectiveness in practice' of the AEOI legislation. In other words, Curaçao still needs to demonstrate to be at least "largely compliant" during the peer review to maintain its status, that is, to be out of any list of non-cooperative jurisdictions.

Since Curaçao initiated its audit activities for the Common Reporting Standard (CRS) among financial institutions at a very late stage, demonstrating significant progress to the OECD in a short timeframe will prove to be very challenging.

## **INTERNATIONAL POSITIONING AND BRANDING**

The "on-again, off-again" relationship Curaçao has with these lists undermines efforts to shed its tax haven image. However, there is a broader issue at play, recently highlighted by the Social and Economic Council (SER). In its advice on the 2024 Minimum Tax Ordinance, the SER urged the government to "work on good positioning within international networks and economic partnerships."

This analysis is spot on. A broad, active presence on an international tax stage is essential to convey that Curaçao is no longer a tax haven and that Curaçao has taken a clear position regarding the Global Minimum Tax (Pillar Two).

Curaçao should promote its strategy to building a tax treaty network that complies with all international standards more actively. Effective international positioning requires a long-term strategy involving teamwork between the Department of Foreign Relations (DBB), the Ministry of Foreign Affairs (The Hague), Plenipotentiary Ministers in The Hague and Washington, the Ministry of Finance, and the private sector.

In addition, in 2024, Curaçao engaged with Brazil regarding removal from its blacklist—imperative to negotiating a tax treaty. However, Brazil's requirements are stringent. According to Brazilian Instrução Normativa RFB No. 1.530 (2014), jurisdictions requesting reclassification must provide evidence of tax laws that justify a reassessment and evidence that this legislation is actively applied, including applicable tax rates. Brazil will also analyse the most recent report from the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. Simply sending a diplomatic letter requesting removal is insufficient; the burden of proof is substantial and technical.

### FINAL REMARKS

The process of "de-listing" requires endurance. Ending the cycle of moving between EU and OECD lists should be Curaçao's priority. Hence, Curaçao must enter into a dialogue with these countries through diplomatic and non-diplomatic channels and participate

actively in international fiscal forums. This demands not only a sustainable investment in human capital but also unwavering political commitment. This commitment should not depend on which Minister of Finance is currently in office; it must be embedded in long-term policy. This presents a clear mandate for all stakeholders to collectively take up the gauntlet and secure Curaçao's fiscal future.



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<sup>1</sup> OECD (2024), Peer Review of the Automatic Exchange of Financial Account Information 2024 Update, OECD Publishing, Paris, <https://doi.org/10.1787/1aa02413-en>.

<sup>2</sup> <https://www.consilium.europa.eu/en/press/press-releases/2025/02/18/taxation-member-states-update-eu-list-of-non-cooperative-tax-jurisdictions/>; Two jurisdictions, Costa Rica and Curaçao, fulfilled their commitments by addressing the deficiencies in their automatic exchange of tax information system, and have been removed from the state of play document.

<sup>3</sup> G. Rekwes, AEOI Standard and Tax Transparency: A New Positive Scenario For Curaçao, Caribbean Tax Law Journal (2025), Edition 7, p. 40-45.

<sup>4</sup> <https://normasinternet2.receita.fazenda.gov.br/#/consulta/externa/59597>.

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