

# THE SBS PACKAGE AND THE IRONY OF GLOBAL TAX COOPERATION

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## 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.



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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.