The Nordic Tax Research Council has awarded its 2022 article prize to assistant professor Aitor Navarro of Carlos III University Madrid for his article "**Jurisdiction not to Tax, Tax Sparing Clauses, and the Income Inclusion Rule of the OECD Pillar 2 (GloBE) Proposal, (1)"** Below is a short summary.

The OECD proposal of the adoption of minimum taxation on certain MNEs, named GloBE (Global Base Erosion) or Pillar Two, aims at establishing a floor to tax competition. If the proposal is implemented, developing countries would be severely deprived of the possibility to grant tax incentives aimed at attracting FDI and potentially foster economic growth. This contribution emphasizes the importance of thoroughly reviewing the tax policy preferences that developing countries should undertake amidst the rapid adoption of GloBE, which the OECD is pushing to achieve. To illustrate this concern, an examination of implementation issues shows that a deficient enactment of the income inclusion rule proposed in GloBE could paradoxically trigger the applicability of tax sparing clauses, aimed at protecting the effectiveness of tax incentives, even when both sets of rules pursue opposing goals.

Tax sparing clauses have been assessed as an expression of the fiscal sovereignty of the jurisdictions demanding their adoption, mainly developing countries. Tax sparing prevents residence states from taxing all or a portion of the income that remained untaxed at source. These clauses, mainly present in tax treaties signed by developing countries, are a relevant expression of the jurisdiction not to tax of these states and allows them to undertake policy decisions accordingly.

Nonetheless, the approach to low or non-taxation through the adoption of tax incentives has changed significantly over the recent years due to BEPS and the new two-pillar proposal by the OECD. Specifically, GloBE aims at curbing tax competition at a comprehensive level by establishing a floor below which all cross-border income would be taxed at a minimum effective tax rate, meaning that the jurisdiction not to tax as a form of expression of tax sovereignty is sacrificed to rebuild the ability of other countries to effectively to tax cross-border income. However, it remains unclear whether the proposal is the best option available for all parties concerned. Specifically, from the perspective of developing countries, the adoption of GloBE implies losing tax incentives as a tax policy instrument to attract foreign direct investment. Therefore, every country involved –but especially developing countries– should undertake a thorough examination to determine whether such measures are convenient for their interests in the long run.

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