Chapter 27

Slovenia: Challenges of Sovereignty, Lukewarm Implementation of EU Taxation Rules

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Abstract

This chapter provides an in-depth exploration of the intricate relationship between tax policy, national sovereignty, and competition in Slovenia, with a specific focus on relevant case law and court decisions. As an European Union (EU) Member State, Slovenia grapples with the dual challenges of harmonising its tax policies with EU directives and preserving its national sovereignty and economic competitiveness. Similar to other EU members, Slovenia is deeply influenced by supranational tax regulations that aim to create a unified market and prevent harmful tax practices. These regulations have led to significant national legal developments, with court decisions related to the interpretation and implementation of EU tax directives shaping the country's tax policy landscape. For instance, the Court of Justice of the European Union (CJEU) has rendered judgments that impact Slovenia's approach to tax policy, making it necessary for the country to navigate EU legal interpretations while preserving its national sovereignty. Furthermore, domestic courts in Slovenia have played a crucial role in shaping tax policy through their interpretation of national tax laws and alignment with EU principles. Case law on issues such as transfer pricing, cross-border taxation, and tax evasion has significantly influenced the way Slovenia frames its tax regulations. Court decisions often play a pivotal role in defining the extent to which national sovereignty can be preserved while adhering to EU directives. Simultaneously, the Slovenian government acknowledged the importance of tax competitiveness in attracting foreign investment and promoting

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domestic entrepreneurship. This chapter examines the multifaceted nature of tax policy in Slovenia by considering the roles of case law and court decisions in shaping the landscape. By examining relevant case law, this study aims to provide a comprehensive analysis of the legal dynamics that underpin Slovenia's tax policy, offering insights into the country's economic future and ability to navigate the challenges of EU membership.

Keywords: *tax sovereignty, tax competition, tax harmonisation, property taxes, income taxes, global minimum tax, corporate income tax*

1. Elements of Slovenian Tax Sovereignty

1.1. Theoretical foundations of Slovenian tax sovereignty

'Tax sovereignty' refers to a government's exclusive authority to levy taxes within its territorial jurisdiction.[1] This principle is crucial for a state's effective operation, enabling it to generate the requisite revenue to provide public services and goods. Tax sovereignty is usually firmly established within a state's constitution, forming a part of its broader sovereign rights.[2]

The basis of tax sovereignty in the Republic of Slovenia can be found in Arts. 146 and 147 of its Constitution (Ustava RS).[3] The first paragraph of Art. 146 stipulates that both the Republic of Slovenia and local communities fund their obligations through taxes, compulsory fees, and income from their assets. Art. 147 mandates that Slovenia establish taxes, customs duties, and other obligations through legislation, with local communities enacting such measures within the confines set by the constitution and laws. These articles underpin Slovenia's tax sovereignty and serve as the legal foundation for key tax laws enacted under the authority of the Slovenian Constitution, including the Corporate Income Tax Act (Zakon o davku od dohodkov pravnih oseb – ZDDPO-2)[4], Personal Income Tax Act (Zakon o dohodnini – ZDoh-2)[5],

1 For more about tax sovereignty, see: Dagan, 2021, pp. 319–320; Mota Lopes and dos Santos, 2016.

2 Rocha and Christians, 2017.

3 Constitution of the Republic of Slovenia (Ustava Republike Slovenije), Official Gazette of the RS, no. 33/91–I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99, 75/16 – UZ70a and 92/21 – UZ62a).

4 Corporate Income Tax Act (Zakon o davku od dohodkov pravnih oseb), Official Gazette of the RS, no. 117/06, 56/08, 76/08, 5/09, 96/09, 110/09 – ZDavP–2B, 43/10, 59/11, 24/12, 30/12, 94/12, 81/13, 50/14, 23/15, 82/15, 68/16, 69/17, 79/18, 66/19, 172/21 and 105/22 – ZZNŠPP.

5 Personal Income Tax Act (Zakon o dohodnini), Official Gazette of the RS, no. 13/11, 9/12 – odl. US, 24/12, 30/12, 40/12 – ZUJF, 75/12, 94/12, 52/13 – odl. US, 96/13, 29/14 – odl. US, 50/14, 23/15, 55/15, 63/16, 69/17, 21/19, 28/19, 66/19, 39/22, 132/22 – odl. US in 158/22.

Value Added Tax Act (Zakon o davku na dodano vrednost – ZDDV-1)[6], and Tax Procedure Act (Zakon o davčnem postopku – ZDavP-2).[7] However, it is essential to consider Slovenia's tax sovereignty in the context of EU and international law. Although Slovenia has the authority to independently shape its tax policies and manage its tax system, its tax sovereignty is not absolute.

Art. 3a of the Slovenian Constitution lays the foundation for international engagement, such as EU or NATO membership. This article permits Slovenia to delegate sovereign rights to international organisations through ratified treaties, provided they uphold human rights, democracy, and the rule of law. More importantly, the third paragraph of the same article states that legal acts and decisions from these international bodies should be integrated into Slovenian law, respecting the regulations of these organisations. This arrangement implies that the extent of Slovenia's sovereignty is defined not only by its laws but also by international organisations, especially the EU, to which Slovenia belongs. In the EU, tax sovereignty balances the Member States' autonomy in shaping tax policies with the need for coordination to prevent unfair tax practices and facilitate a single market.

Within the realm of taxation, various EU regulations and directives aim to ensure fair competition and discourage harmful tax practices. Key examples include the VAT Directive 2006/112/EC and Directives 91/680/EEC, 92/111/EEC, 2008/8/EC, 2008/9/EC, 92/77/EEC, 2008/118/EC, 92/83/EEC, 92/84/EEC, 2011/64/EC, 2003/96/EC, and exceptions to directives 2004/74/EC and 2004/75/EC. Directives 90/434/EEC (now 2009/133/EC), 90/435/EEC (now 2011/96/EU), and 90/436/EEC pertain mostly to corporate income tax. These measures aim to prevent member states from using their tax policies to gain unfair advantages or to erect trade barriers. Recent discussions within the EU have revolved around enhanced tax coordination, including proposals for minimum effective tax rates, digital services taxation, and a common corporate tax base, all geared toward combating tax avoidance and ensuring equitable taxation across member states. In the future, as the EU looks to extend its tax law regulations, concerns about tax sovereignty, especially among smaller member states, are likely to arise.

Beyond the EU, tax sovereignty operates in the context of international agreements, treaties, and organisations, particularly in the field of double taxation.[8] Nations often engage in international efforts to address tax-related issues, striking a balance between sovereignty and cooperation, while preventing harmful tax practices. In turn, these agreements impose constraints on states' tax sovereignty.

6 Value Added Tax Act (Zakon o davku na dodano vrednost), Official Gazette of the RS, no. 13/11, 18/11, 78/11, 38/12, 83/12, 86/14, 90/15, 77/18, 59/19, 72/19, 196/21 – ZDOsk, 3/22, 29/22 – ZUOPDCE in 40/23 – ZDavPR-B.

7 Tax Procedure Act (Zakon o davčnem postopku), Official Gazette of the RS, no. 13/11, 32/12, 94/12, 101/13 – ZDavNepr, 111/13, 22/14 – odl. US, 25/14 – ZFU, 40/14 – ZIN–B, 90/14, 91/15, 63/16, 69/17, 13/18 – ZJF–H, 36/19, 66/19, 145/20 – odl. US, 203/20 – ZIUPOPDVE, 39/22 – ZFU–A, 52/22 – odl. US, 87/22 – odl. US, 163/22 in 109/23 – odl. US.

8 Kostanjevec, 2014, p. 29.

1.2. Problems, peculiarities, and reforms of Slovenian tax law concerning tax competition

This subsection analyses the key problems and peculiarities of Slovenian tax law, considers tax competition, and higlights the key elements thereof, which are more or less the subject of most tax reforms but which have not yet been addressed by solid, long-term, and effective solutions.

1.2.1. Tax competition

In general, it is important to emphasise that tax competition is a question for which no definite answer has been given.[9] Tax competition occurs when countries adjust their tax policies strategically to attract businesses, investments, and individuals. This involves reducing tax rates or offering tax incentives to make their tax policies more appealing than those of other jurisdictions. Tax sovereignty allows countries to adopt tax policies that they believe will best serve their interests. This includes implementing tax measures to attract investments, encourage business activities, and promote economic growth. Therefore, tax competition can be viewed as a manifestation of tax sovereignty.[10]

However, tax competition can challenge tax sovereignty. Intense tax competition among countries can lead to a 'race to the bottom', in which countries continuously lower their tax rates or provide excessive tax incentives to compete with each other. The most recognisable manifestations of Slovenia's wish to develop a competitive tax system are its recent tax reforms, which were intended to address critical tax issues. The most important reforms are presented below.

1.2.2. Property taxes

One of the main issues with Slovenia's tax system is its low property tax rates – put simply, it imposes minimal taxes on real property. Compared to other EU members, Slovenia has the fifth-lowest property tax rate as a percentage of GDP among the EU 27.[11] On average, property taxes in the EU account for 1.8% of GDP, with France having the highest rate at 4.0%. Slovenia's rate is much lower, at 0.6% of GDP[12], which yield EUR 280 million annually. Most of this revenue comes from the Tax on the Use of Building Land (Nadomestilo za uporabo stavbnega zemljišča – NUSZ), which amounts to about 0.15% of a property's value.[13] Notably, this tax applies to all properties regardless of how they are used.

9 Wilson, 1999, pp. 269–304.

10 Genschel and Schwarz, 2011, p. 340–342.

11 *Tax on Property* [Online]. Available at: https://data.oecd.org/tax/tax-on-property.htm (Accessed: 30 October 2023).

12 Ibid.

13 Finančne Uprave Republike Slovenije, 2023.

International organisations such as the OECD,[14] IMF,[15] European Commission, and local businesses have been urging Slovenia to increase property taxes and reduce labour-related taxes and contributions for over 15 years. Accordingly, Slovenia has made several attempts to address its property taxation system. The first effort was the 2013 tax reform, which led to the Real Property Tax Act (Zakon o davku na nepremičnine – ZDavNepr)[16]. Unfortunately, the Constitutional Court of Slovenia declared this law unconstitutional.[17] In late 2017, a new Real Property Mass Valuation Act (Zakon o množičnem vrednotenju nepremičnin – ZMVN-1)[18] was introduced as a step toward implementing a real property tax again. Other regulations, such as the Real Property Registration Act, support this goal.

Until now, the only real property tax paid by property owners was the aforementioned Tax on the Use of Building Land. However, in the current system, some property owners do not pay for the use of building land, whereas others – mainly those in the business sector – pay excessively. Local communities have significant discretion in these matters, and their decisions often depend on local needs.

Even now, the question of the real property tax remains significant. The current government plans to implement tax reforms on real property by 2024. Interestingly, representatives of the Slovenian government plan to maintain existing taxes on building land use. This suggests that the upcoming regulations may not be sufficiently comprehensive.[19] Some oppose the introduction of the tax, while others question its model; however, representatives of the real business sector support it.[20]

Taxation affects not only real property but also corporate assets. Until the end of 2023, bank balance sheets were not subject to taxation. However, the taxation of bank balance sheets at 0.6% was proposed as a temporary measure to support the state budget during the period of high inflation and catastrophic floods that occurred in Slovenia in August 2023. This means that reform is not a strategic move but rather a move to improve and solve[21] temporary budget problems.

Individual deposits are also tax-free, and interest on deposits is currently untaxed, especially when interest rates are 0%. Gains from securities are also not taxed as long as no profits are realised upon sale. When buying automobiles, a one-time motor vehicle tax (DMV) is imposed, and there is no further ongoing taxation.

14 OECD, 2014.

15 *Republic of Slovenia: Staff Concluding Statement of the 2022 Article IV Mission*, 2022.

16 Real Property Tax Act (Zakon o davku na nepremičnine), Official Gazette of the RS, no. 101/13 in 22/14 – odl. US.

17 Constitutional Court Decision about repeal of Real Property Tax Act and Real Property Mass Valuation Act, p. 2549, no. U-I-313/13-86.

18 Real Property Mass Valuation Act (Zakon o množičnem vrednotenju nepremičnin), Official Gazette of the RS, no. 77/17, 33/19, 66/19 in 54/23 – odl. US.

19 Kozorog Blatnik and Daugul, 2023.

20 Gospodarska zbornica Slovenije, 2023.

21 *Prispevek bank za obnovo Slovenije*, 2023.

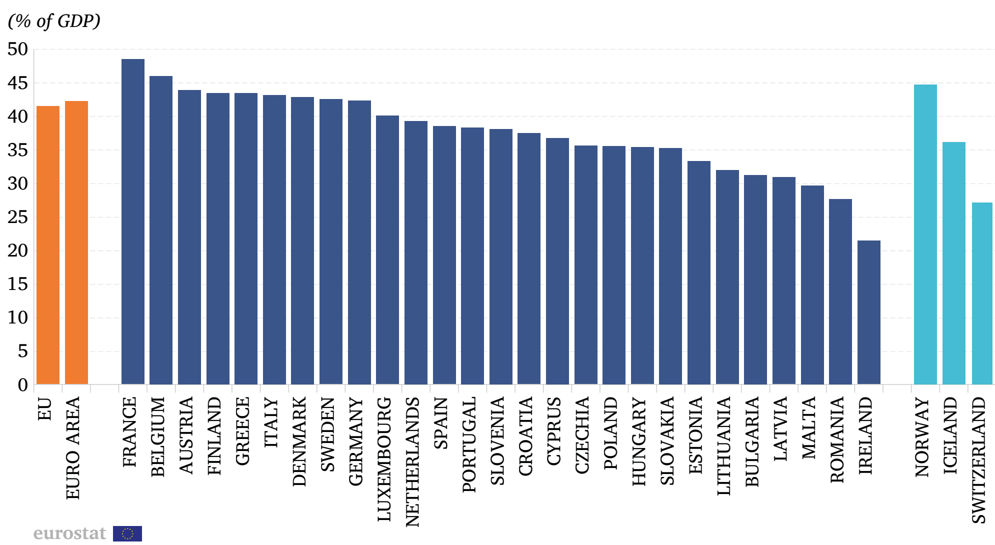
Overall, it is clear that Slovenia has no long-term strategy for property taxation, especially regarding real property – however, property taxation remains an important category for improving Slovenia's tax competitiveness.

1.2.3. Income taxes

1.2.3.1. A general overview of income taxes in Slovenia

In Slovenia, revenues from employment relationships in 2023 are subject to various contributions and taxes at rates of 6.36% for health insurance, 15.5% for pension insurance, 0.14% for unemployment, and 0.10% for parental care (22.10% in total). Additionally, wages are subject to income tax depending on the salary and a proportional progressive 5-tier tax scale (ranging from 16% for a net annual tax base of EUR 8,755 to 50% for an annual net tax base exceeding EUR 74,160). This calculation considers general tax relief, as well as personal and specific tax exemptions. Employers pay social, pension, and health contributions and taxes at a combined rate of 16.1%. Labour costs (from the 2022 table) will further increase in 2023, leading to an additional increase in the burden on labour.

Table 1: Revenue from taxes and social contributions in 2022[22]



22 *Main national accounts tax aggregates* [Online]. Available at: https://ec.europa.eu/eurostat/databrowser/view/GOV_10A_TAXAG/default/table?lang=en (Accessed: 30 October 2023).

1.2.3.2. Income tax reforms in Slovenia

As we can see from the previous section, another challenge in Slovenia's tax competitiveness is its relatively high personal income tax burden, particularly concerning the taxation of personal income. Accordingly, the OECD has consistently urged Slovenia to reduce its personal income tax rate.[23]

Consequently, personal income taxation has been a focal point in Slovenian tax reform efforts, with varying degrees of success. Specifically, over the past decade, Slovenia has revised its income tax regulations multiple times to establish a comprehensive and stable framework.[24] However, this work has faced the significant challenge of the susceptibility of tax regulations to shifting political landscapes. For instance, in 2021, the Slovenian government initiated a tax reform that encompassed changes in income tax rates; an increase in the general tax allowance; a reduction in the tax rate for the fifth income bracket (from 50% to 45%); and adjustments to tax-free allowances for business performance rewards, capital income, and income from property rents. However, after political changes resulting from elections the following year, the new Slovenian government revised the income tax system, reversing some of the prior adjustments; indeed, the government stated that its objective was eliminating or rectifying certain measures that were enacted in 2021 and 2022.[25]

In 2023, the Slovenian government announced a third iteration of income tax reform, aiming to comprehensively address previous challenges and simplify the existing system, which has often been criticised for its complexity. Specifically, the government proposed a uniform system of tax deductions applicable to all taxpayers.[26] Notably, reforms of this style often affect tax stability and competition; accordingly, representatives from the real sector have consistently raised concerns about the adverse effects of such practices on Slovenia's tax competitiveness and reputation.

1.2.4. Other tax reforms

The third example of Slovenian tax reform is corporate income taxation. Specifically, the aforementioned tax reforms made in 2021 also involved reforms of the Corporate Income Tax Act. The primary goal of the amendment was to ensure stricter tax treatment in countries that promoted harmful tax practices or were unwilling to cooperate for tax purposes.[27] This was not meant to name and shame countries, but rather to promote positive changes through sustained and dynamic action.

It is also important to emphasise the latest changes and proposals made in late 2023. These included the introduction of an additional tax on salaries for long-term

23 OECD, 2018.
24 Slovenia has made few reforms to personal income taxes in the last five years.
25 Simič, 2022.
26 Kozorog Blatnik and Daugul, 2023.
27 Bučar, 2021.

care, amounting to 2.94%; tightening taxation on legal entities; and implementing the aforementioned special taxation on bank balance sheets. There is also consideration, especially from the business sector, of revising the policies for asset taxation (the 'thousandth tax') based on warnings from the OECD. Some of these reforms were successful, such as reform of the Fiscal Validation of Receipts Act (Zakon o davčnem potrjevanju računov – ZDavPR)[28], which effectively solved issues with the grey economy.

Given these considerations, it is evident that Slovenia's tax system requires comprehensive review and reform to align with international standards and ensure a fair and sustainable revenue structure. Over time, the country has made periodic adjustments to its tax system, albeit with varying degrees of success. Notable examples include the unsuccessful introduction of a real property tax, liberalisation of tax rates in 2022, and an increase in property taxes in 2023. The effectiveness of these changes often depends on the political landscape. Calls for reform from international bodies and the need for greater fiscal sustainability indicate that Slovenia's tax system may evolve further in the coming years.

A stable and predictable tax environment is crucial for an economy. However, the current situation, with various fragmented and uncoordinated duties related to real estate, particularly compensation for the use of building land and frequent tax reforms on personal income, lacks stability and predictability. This uncertainty undermines trust in the Slovenian tax system and, consequently, Slovenian tax competition.

1.3. Relationship between national tax policy and EU law

Slovenia has largely adhered to the principles enshrined in EU tax policies. For the most part, the nation's domestic tax system has aligned with EU directives. This commitment to implement EU tax policies underscores Slovenia's unwavering dedication to the principles of the European Union and its single market.

Notwithstanding its overall alignment with EU tax policies, Slovenia has encountered challenges in effectively implementing certain directives, especially in the field of value-added tax (VAT). Several instances have arisen in which Slovenia has struggled to interpret and apply these directives in real-world cases, resulting in discrepancies and misunderstandings.

Meanwhile, Slovenia has also grappled with misinterpreting and misapplying EU tax directives. In some cases, Slovenian authorities inaccurately understood or implemented specific provisions, leading to conflicts with EU tax laws. For example, in Case *X Ips 201/2016-23*, a Slovenian court sought a preliminary ruling from the CJEU; the third question posed to the CJEU was, 'Does the first paragraph of Article 90 of the VAT Directive have a direct effect, even in cases where a Member State's

28 Fiscal Validation of Receipts Act (Zakon o davčnem potrjevanju računov), Official Gazette of the RS, no. 57/15, 69/17, 3/22 – ZDDV-1M in 40/23.

legislator has exceeded the framework of permissible exceptions, as defined in the second paragraph of Article 90 […] ?' The CJEU's response in Decision C-146/19[29] clarified that 'Article 90(1) of Directive 2006/112 must be interpreted such that a national court is obligated to interpret national law in accordance with this provision and should not apply any national provision that would yield a result contrary to this directive.'[30] This underscores that the Slovenian legislature did not correctly implement the VAT Directive, prompting the CJEU to intervene and prevent the use of Slovenian law in this regard.

Furthermore, misunderstandings of the terms derived from the directive have led to legal disputes within Slovenia's legal system, resulting in decisions from both the Supreme and Constitutional Courts. In the case of U-I-492/20-22, the interpretation of Art. 74 of the Tax Procedure Act (ZDavP-2) was disputed, and the Constitutional Court, in the aforementioned judgment, found that the article was inadequately regulated and consequently declared the entire Act unconstitutional. Meanwhile, in Case *X Ips 61/2021*, among other findings, the Supreme Court of the Republic of Slovenia concluded that the Financial Administration of the Republic of Slovenia misinterpreted the issue of impermissible tax avoidance. From the perspective of tax competitiveness, this situation poses challenges because it results in two state bodies interpreting EU law differently within a single member state. Both cases are explored in detail in subsequent sections. Therefore, we briefly summarize their impacts on tax competition here.

2. Tax harmonization and Slovenian sovereignty

2.1. A general overview of tax harmonization and Slovenian sovereignty

Slovenia has a tax system compliant with the EU, meaning that its tax laws are generally in accordance with EU tax directives; therefore, Slovenia has no open political or legal issues that may affect the harmonisation of tax law and tax sovereignty. This is most evident in the positions of the National Assembly of the Republic of Slovenia (the highest political body in the Republic of Slovenia in the majority of cases), which has not voiced reservations when providing opinions on proposals for EU acts related to tax policies.[31]

29 CJEU, 11 June 2020, C-146/19, *SCT d.d. v. Republic of Slovenia*, ECLI:EU:C:2020:464.
30 C-146/19.
31 *Zadeve Evropske unije v Državnem zboru* [Online]. Available at: https://shorturl.at/roL0i (Accessed: 30 October 2023).

2.2. The Slovenian approach to qualified decision-making in the field of taxes, global minimum tax, BEFIT, and ATAD 3

2.2.1. Qualified decision making

Qualified decision-making in the context of tax issues assumes a distinct character when viewed from the perspective of Slovenia as a smaller member of the EU. The viability of such decision-making mechanisms in the sphere of taxation is imbued with multifaceted considerations chiefly revolving around the preservation of Slovenia's tax sovereignty. Given their augmented economic prowess and consequential fiscal contributions, larger Member States tend to perceive qualified decision-making as an instrument that affords them greater leverage over tax policies. This argument also relates to the need for the EU to function efficiently in tax matters; however, this efficiency cannot be realized in exchange for the tax sovereignty of smaller countries.[32]

Nonetheless, for Slovenia, adopting a circumspect stance is a requisite due to the conceivable ramifications that such decision-making mechanisms may have on the country's ability to exercise autonomous control over its tax regime. Slovenia's stance in this matter underscores the principle of equity within the EU framework, recognising the concomitant need to balance the interests of both larger and smaller member states.

As a smaller member state, Slovenia demonstrates a palpable affinity for the concept of voting by consensus on multiple occasions in the domain of tax-related decisions[33]. This predilection aligns with the country's aspiration to preserve fiscal sovereignty and ensure that its unique economic circumstances are duly acknowledged. Voting by consensus acts as a mechanism through which smaller member states, such as Slovenia, can participate in the EU's policy formulation process while mitigating the risk of encroachment on their tax prerogatives.

Slovenia's predilection for a consensus-driven approach to tax-related decision-making reflects the nuanced legal framework within the EU and emphasises the imperative of harmonising tax policies across the EU while concurrently accommodating the idiosyncratic economic dynamics and interests of its smaller member states.[34] In this intricate interplay of legal constructs and pragmatic considerations, the EU continues its commitment to harmonise tax policies while preserving the sovereignty and distinct economic circumstances of its smaller member states.

32 Mintel and von Ondarza, 2022.

33 Positions repeatedly expressed through public statements by Slovenian ministers and prime ministers.

34 Luja, 2019, pp. 343–465.

2.2.2. Global minimum tax

On 12 December 2022, EU Finance Ministers adopted the Commission's proposal for the Council Directive to ensure a global minimum level of taxation for multinational enterprise groups and large – scale domestic groups in the EU with combined financial revenues of more than EUR 750 million a year.[35] Minimum corporate taxation is one of the two work streams agreed upon by members of the OECD/G20 Inclusive Framework, a working group of 141 countries and jurisdictions focused on the two-pillar approach to addressing the tax challenges of the digital economy.[36]

Slovenia has not yet implemented the Global Minimum Tax Directive (GloBE), but has announced the final draft[37] version, from which we can see that the minimum tax will not affect all international corporate groups, but only those with revenues year exceeding EUR 750 million in the consolidated financial statements of the parent entity of the international group in at least two out of the four business years preceding the test business year. Based on the proposed law, it is possible to determine that Slovenia did not have specific objections to this directive, and that the issues it highlighted were mostly administrative in terms of the effective implementation of the law's provisions.

2.2.3. BEFIT

The Base Erosion and Profit Shifting Inclusive Framework (BEFIT), is a transformative initiative within EU tax policy. This framework was born out of a global effort to address the challenges posed by multinational corporations engaging in aggressive tax planning strategies that erode the tax base of individual countries and shift profits to low-tax jurisdictions.

The BEFIT framework is a collaborative endeavour in which EU Member States, along with other countries, work together to develop and implement measures aimed at preventing base erosion and profit shifts. This is a response to the recognition that in an increasingly globalised and digital economy, traditional tax rules often fall short of ensuring that companies are taxed fairly and equitably.

The primary objective of BEFIT is to establish a harmonised and coordinated approach to international taxation within the EU. This involves addressing issues such as transfer pricing, hybrid mismatches, and preferential tax regimes, which multinational corporations can exploit to reduce tax liabilities. The framework aims

35 Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union, OJ L 328, 22.12.2022, 1–58.

36 OECD, 2020.

37 *Predlog Zakona o minimalnem davku, EVA 2023-1611-0064* [Online]. Available at: https://e-uprava.gov.si/.download/edemokracija/datotekaVsebina/622849?disposition=inline (Accessed: 30 October 2023).

to protect the tax revenues of EU member states, ensuring that they can continue funding public services and infrastructure.

Moreover, BEFIT aligns with broader international efforts, including those led by the OECD, to create a fair and transparent global tax system. It acknowledges the need for a multilateral approach to tackle tax avoidance and improve the integrity of the international tax system. The EU's involvement in BEFIT reflects its commitment to these principles.

In summary, BEFIT is a crucial component of EU tax policy that addresses the challenges posed by multinational corporations' tax practices in an era of global economic integration. By fostering international cooperation and adopting comprehensive tax reforms, the framework seeks to ensure a fair and sustainable tax environment that benefits governments and the broader public interest.

Regarding Slovenia, in the public and academic spheres, we were unable to find any particular opinions or potential suggestions from their perspective. In the open debate ('have your say') about BEFIT on the European Commission's website[38], Slovenian stakeholders did not make any suggestions. Therefore, we can conclude that Slovenia does not currently have any specific opinion on the BEFIT and that the BEFIT will be implemented in Slovenian legislation.

2.2.4. ATAD 3

The European Commission, in its Communication[39] dated 17 June 2015 presented an action plan for the fair and efficient taxation of corporate income in the EU due to the need for fairer taxation. Based on this plan, the EU adopted Directive (EU) 2016/1164 on 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market – the Anti-Tax Avoidance Directive (ATAD) – which established five measures to prevent erosion of the tax base in the internal market and profit shifting from the internal market. These include the interest limitation, exit taxation, general anti-abuse, controlled foreign company, and hybrid mismatch rules, the latter of which was introduced by the ATAD 2 as an amendment to the ATAD 1.

ATAD 1 and ATAD 2 were implemented in Slovenia through changes to the ZDDPO-2 law, which has been revised several times in recent years. Most of these changes were necessary to implement rules for tax avoidance and evasion. While these rules make the system more complex, they align with Slovenia's goals and commitment to implementing and respecting them through their legislation.

The most recent changes to ZDDPO-2 were required for the implementation of reverse hybrid mismatches and were included in the ATAD 2 of the EU. Slovenia transposed all measures specified in the ATAD directive into its legal framework,

38 European Commission, no date.
39 European Commission, 2015.

except for the interest limitation rule for tax purposes.[40] The ATAD allows a deferral of the implementation of this rule until 1 January 2024 if a country has implemented equally effective targeted rules to prevent the erosion of the tax base and profit shifting. Slovenia is one of the Member States that exercised this deferral, as confirmed by the European Commission.

The interest limitation rule in the thin capitalisation rule focuses solely on limiting interest from loans, considering the taxpayer's debt-to-capital ratio, whereas the EBITDA rule restricts all types of interest based on the taxpayer's business performance. Slovenia has not chosen to include independent entities within the scope of interest limitations or to apply interest limitations at the level of international groups of companies. Additionally, Slovenia excluded regulated financial institutions and insurance companies from the EBITDA rule, following the provisions of the ATAD directive.[41]

The ATAD provides an option for EU Member States to exclude financial institutions or insurance companies from the interest limitation rules. This is because these entities operate in a sector with specific characteristics that may require a more tailored approach to addressing tax base erosion and profit-shifting risks.

Given that the ATAD 3 is still in the proposal stage, it can be inferred that there are no specific positions regarding its potential adoption and implementation in Slovenia. However, based on the previous implementation of the ATAD 1 and ATAD 2, we can also make assumptions about Slovenia's stance on the ATAD 3.

3. The tools of the fight against tax avoidance in Slovenia

3.1. Tax avoidance in Slovenia

Before we explain the harmonisation of the fight against tax avoidance, it is important to mention that in Slovenian tax law, the term 'tax avoidance' is not explicitly mentioned anywhere. However, when the term 'tax avoidance' is mentioned in the context of judicial practice, it is usually accompanied by the term 'illegitimate' or 'unfair'. This suggests that Slovenian legal practices generally accept the term 'legitimate tax avoidance'. In the context of tax law, the terms 'tax optimisation' and 'tax planning' are often used to describe actions taken to legally reduce taxable income.[42] In addition, there is also the Slovenian implementation of the General

40 *Predlog Zakona o spremembah in dopolnitvah zakona o davku od dohodkov pravnih oseb, EVA 2020-1611-0129* [Online]. Available at: https://e-uprava.gov.si/si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=15481 (Accessed: 30 October 2023).

41 Ibid.

42 Kastelic, 2017, p. 11.

Anti-Avoidance Rule ('GAAR') introduced in Art. 74 para. 4 of the Tax Procedure Act; however, as mentioned, it was unconstitutional. Meanwhile, Slovenian tax law recognises the term 'tax evasion' as the illegal act of evading taxes by concealing income, earned either legally or illegally, from detection and collection by the tax authorities.

3.2. BEPS action plan and harmonization of tools of the fight against tax avoidance

Like many nations, Slovenia faces the challenge of ensuring that individuals and businesses contribute their fair share to public finances. In particular, as a member of the EU and OECD, Slovenia must implement key mechanisms to prevent tax avoidance.

One of the most important initiatives in the field of tax avoidance is the OECD's BEPS action plan, which resulted in 15 measures being adopted in 2015 and, at the EU level, encouraged the harmonisation of certain measures against tax avoidance in corporate taxation. As a member of the OECD, Slovenia committed to implementing BEPS measures in May 2013 The 15 BEPS measures represent a new tax regime. Some notable measures are related to limiting interest deductions (BEPS Action 4) and addressing the avoidance of abuse involving permanent establishments (PEs; BEPS Action 7). Some of these adopted measures have also been incorporated into EU legislation (e.g. rules on interest limitations, controlled foreign companies, and hybrid mismatches), with EU member states (e.g. Slovenia) subsequently transposing them into their national legislation.

Broadly, the objective of the BEPS Project was to create a different, globally inclusive tax policy to establish a stronger, more effective, and fairer tax framework; more specifically, the framework ensures that economic entities pay at least a minimum tax wherever they operate and that tax is paid where value is created.

The purpose of BEPS Action 7[43] is to prevent the artificial avoidance of PE status by expanding the definition of a commissionaire or dependent agent for a non-resident entity, thus preventing erosion of the tax base and profit shifting. Changes introduced by BEPS Action 7 have been incorporated as updates to Art. 5 of the OECD Model Tax Convention on Income and Capital, which defines a 'PE'. This measure addresses situations in which a non-resident company conducts sales in a specific jurisdiction through a commissionaire or dependent agent who does not officially conclude contracts in that jurisdiction, with the contracts concluded by the non-resident company. In this case, the non-resident company does not have a recognised permanent establishment for tax purposes in that jurisdiction, meaning that the income generated from the transaction is not subject to taxation in the jurisdiction where it originates. Other minor adjustments addressed by BEPS Action 7 relate

43 OECD, 2015.

to clarifying the treatment of auxiliary activities as permanent establishments and amending rules to prevent activity fragmentation.

The purpose of BEPS Action 4[44], which established the so-called 'anti-abuse' rule, is twofold: (i) To prevent taxpayers from diverting profits from higher tax jurisdictions to lower tax jurisdictions due to differing tax treatments of various income types (e.g. one jurisdiction treats income as interest, while another treats it as dividends); (ii) To protect the tax base (indirectly safeguard public revenue) by limiting the deductibility of interest for tax purposes (debt financing is generally more tax-favourable than equity financing because of the deductibility of interest expenses for tax purposes). The measure addresses all types of interest (not just loan interest) and all transactions (both related and unrelated), with riskier transactions in terms of profit shifting and tax base erosion typically involving related parties.[45]

Some BEPS measures have been incorporated into the ATAD directive, whereas others from the OECD Action Plan have enhanced international double taxation avoidance agreements. Addressing the challenges of globalisation and digitalisation in the realm of taxation is an ongoing process, with intensive work taking place at the OECD level to develop further measures that address the allocation of taxation rights and the determination of minimum taxation levels. This work is part of a two-pillar global tax reform involving more than 140 jurisdictions.

3.3. The General Anti-Avoidance Rule and Slovenia's Tax Procedure Act

In the Slovenian legal system, the general prohibition of tax avoidance arises in the fourth paragraph of Art. 74 of the Tax Procedure Act (ZDavP-2). It determines that one cannot circumvent the application of tax regulations through avoidance or abuse of other regulations. If such avoidance or abuse is identified, it is considered that tax liability has arisen, as it would have arisen had the relationships formed based on economic events been taken into account. [46] This provision was derived from the principle of material truth in tax matters from the second paragraph of Art. 5 of ZDavP-2 and can only be applied to the detriment of the taxpayer.[47]

The provisions that serve as the basis for disregarding legal transactions constituting unlawful tax avoidance can be collectively referred to as the GAAR (and also known as the General Anti-Abuse Rule). This general rule is intended to be more than a procedural provision; it aims to establish different (or higher) tax liabilities.

Unlawful tax avoidance refers to legal transactions through which parties evade the tax consequences of the law. The ultimate effect of such transactions is illegal because they provide the taxpayer with an unjustified benefit using a different provision or allow the taxpayer to circumvent tax regulation. The legal consequences

44 OECD, 2016.
45 See: footnote 36.
46 See: footnote 7.
47 Constitutional Court of the Republic of Slovenia, Case no. U-I-492/20-22.

of unlawful tax avoidance vary; therefore, the tax authority must conduct an assessment of the economic and, above all, legal consequences of the concluded legal transaction and determine which legal transaction in specific circumstances would represent a reasonable way of conducting business events and be entered into by reasonable persons as well as what the tax liability would be in such a case. Therefore, the significance of the consequences of the identified tax avoidance is crucial for the practical application of it. As the name suggests, the general rule must be operationalised in practice; that is, in specific cases. A rule must have concrete effects on taxpayers when unlawful tax avoidance is identified.

The aforementioned article also brought many complications that, as mentioned earlier, even required intervention by the Constitutional and Supreme Courts of Slovenia. In the case U-I-492/20-22, the petitioner contended that ZDavP-2 contains an unconstitutional legal gap (in the context of Art. 2 of the Constitution of the Republic of Slovenia[48]). The legislature did not constitutionally or clearly regulate the consequences of identified unlawful tax avoidance. In this regard, they believed that the legislator must, for the protection of constitutional and human rights as well as the public interest, regulate the prevention of tax abuse in a manner that complies with the principles of legality in tax regulations. Given the petitioner's claims, the Constitutional Court of the Republic of Slovenia conducted an examination of ZDavP-2 in light of Art. 147 of the Constitution and decided that the whole Tax Procedure Act was unconstitutional.

3.4. The Global Minimum Tax Act as a tool of the fight against tax avoidance in Slovenia

3.4.1. Introduction and foundations of the Global Minimum Tax Act

The income taxation system for legal entities in Slovenia has been based on and implemented international tax standards since its establishment, especially those adopted by the OECD. Slovenia, as a member of the OECD and of the inclusive framework of the OECD/G20, follows current OECD efforts to eliminate the tax practices of international corporate groups that allow them to shift profits to jurisdictions with very low or zero taxation.

The EU Tax Observatory, an independent research laboratory conducting innovative tax research, contributes to democratic and inclusive discussions about the future of taxation and promotes dialogue between the scientific community, civil society, and policy-makers in the EU and around the world. The Tax Observatory notably published a working document on tax avoidance and the complex structure of international corporate groups, which examines the impact of the complex ownership structures of international corporate groups on tax avoidance. They found that companies belonging to complex structures, where the parent company owns

48 See: footnote 1.

subsidiary companies through chains, predict lower profits than similar companies in the same country or sector.[49]

Furthermore, only international companies with more complex ownership structures transfer profits from their higher-taxed units, whereas those with simpler ownership structures do not exhibit profit-shifting practices for tax purposes. In 2016, an important step was taken to obtain information on ownership structures by introducing country-by-country reports (CbCR). This measure was also implemented in Slovenia, with all international companies with consolidated revenues exceeding EUR 750,000,000 to disclose certain financial information for each country in which they have units; however, there is a gap in the disclosure of ownership information.[50]

Subsequently, on 14 December 2022, the EU Council adopted Directive (EU) 2022/2523 concerning the establishment of a global minimum tax rate for international corporate groups and large domestic groups in the EU. States, including Slovenia, were required to transpose this directive into their national legislation by 31 December 2023. The goal of the directive is to establish a common framework for a global minimum tax rate in the EU based on the common approach outlined in the OECD model rules. All member states must achieve this goal through proper implementation, incorporation into national laws, and enforcement. This is crucial for member states to fulfil their commitment to achieving a global minimum tax rate.

According to the OECD's latest economic impact assessment, the implementation of minimum taxation rules is expected to result in approximately EUR 220 billion in additional annual tax revenue.[51] Once the rules are implemented, the actual revenues will be influenced by the responses of international corporate groups affected by the rules and their adaptation, as well as the responses of jurisdictions. Most importantly, the responses of international corporate groups and jurisdictions affect the distribution of additional tax revenue among jurisdictions.

3.4.2. The Application of the Global Minimum Tax Act in Slovenia

Like other EU member states, Slovenia recently implemented rules and measures in its Corporate Income Tax Act (ZDDPO-2) to combat base erosion and profit-shifting schemes. These measures are currently in effect. However, it has become evident that these measures and provisions address specific situations and are ineffective. To effectively address and prevent inappropriate tax practices, a sustainable and comprehensive approach is necessary to tackle the root causes of base erosion and profit shifting.

Based on OECD and EU activities, the Minimum Tax Act (ZMD)[52] was proposed. Taxation under this law applies above a certain threshold, regardless of the tax

49 François and Vicard, 2023, p. 23.
50 Ibid.
51 O'Reilly et al., 2023.
52 See: footnote 36.

regimes or incentives offered by individual countries or the business decisions of individual companies. If the threshold is exceeded, the rules for minimum taxation, which are the rules of the second pillar, come into effect. Their goal is to effectively address, prevent, or eliminate existing tax gaps.

The ZMD addresses the tax practices of international companies, which enable them to shift their profits to jurisdictions with very low or zero taxation. This proposal introduces a minimum tax rate to prevent competition in corporate income tax rates. By eliminating a significant portion of the advantages of profit shifting to low-tax or zero-tax jurisdictions, the new system will contribute to levelling the playing field for companies worldwide, preventing aggressive tax planning and allowing countries to better protect their tax bases and, consequently, their tax revenues.

The proposal represents a standalone law separate from that of ZDDPO-2. Transferring the directive's provisions to ZDDPO-2 would be much more complicated because the minimum tax is calculated differently from corporate income tax. Minimum taxation will not function as a tax calculated directly on a subject's income but will be applied to excess profits based on a standardised base and a special mechanism for tax calculation to identify low-taxed income within groups. Groups within the scope are those with annual revenues reported in the consolidated financial statements of the ultimate parent entity of at least EUR 750,000,000 in at least two of the four business years. The minimum rate is the internationally agreed-upon tax rate of 15%.

In the transfer of the directive's elements, including the scope, individual rules, technical details, and other aspects of new international tax rules, to domestic legislation, the ZMD proposal will closely follow the directive. This prevents the fragmentation of the internal market and enhances the efficiency of the new system owing to consistent implementation throughout the EU and potential global adoption. This approach simplifies compliance for taxpayers and tax authorities, especially in the early stages of implementing the new system, in line with the commitments of the international tax community for expected widespread global implementation.[53]

As allowed by the directive, the ZMD proposal sets out the most permissible options. The most important is the use of the option to define obligations for domestic qualified excess profit taxes. This will allow Slovenia to benefit from the revenue generated by the excess tax collected from its low-taxed entities within the country. The ZMD proposal will also establish a transitional safe harbour CbCR regime. The directive generally provides a basis for member states to use the OECD model rules and explanations, as well as examples in the document 'Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)'[54] issued by the OECD/G20 Inclusive Framework on BEPS. The safe harbour

53 See: footnote 36.

54 *Global Anti-Base Erosion Model Rules (Pillar Two)* [Online]. Available at: https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm (Accessed: 30 October 2023).

CbCR simplifies the use of data by using existing data to calculate the categories relevant to taxation. These safe-harbour rules apply to international corporations and large domestic groups.

Based on CbCR data, 412 international corporate groups with parent companies in Slovenia or abroad and subsidiary companies in Slovenia were identified in 2019, with global annual revenues of at least EUR 750,000,000. Of these, 144 international groups in Slovenia had effective tax rates of less than 15% in 2019. The average weighted effective tax rate was 8.72%.

3.5. The Common Consolidated Corporate Tax Base (CCCTB) as a tool of the fight against tax avoidance in Slovenia

The Common Consolidated Corporate Tax Base (CCCTB) is a set of rules proposed for calculating taxable profits in the EU. The CCCTB was first proposed by the European Commission in 2011, but is still not accepted. With the CCCTB, cross-border companies will only have to comply with a single EU system for computing their taxable income, rather than with many different national rulebooks. Companies can file one tax return for all their EU activities and offset losses in one Member State against profits in another. The consolidated taxable profits are shared between the Member States in which the group is active, using an apportionment formula. Each Member State taxes its share of the profits at its national tax rate.

In essence, the idea of the CCCTB is to improve the EU single market; however, the CCCTB is also a tool in the fight against tax avoidance. In other words, it is mandatory for the largest groups in the EU. This prevents companies with the greatest capacity from making tax plans by avoiding taxation. The CCCTB eliminates mismatches between national systems, preferential regimes, and hidden tax rulings that tax avoiders exploit. This eliminates the need for transfer pricing, which is the primary route of profit shifting. The CCCTB contains robust anti-abuse measures to defend Member States against base erosion and profit-shifting to non-EU countries.

However, Slovenia does not completely support this solution. For example, the opinion of the Slovenian parliament on the Proposal of the Directive of the CCCTB evidences a few reservations emphasised by parliamentarians. More specifically, Slovenia believes that the proposal presents significant challenges to implementation and execution, particularly for small economies. At a systemic level, the proposal has both positive and negative effects, depending on the eventual solutions that will be put in place. Slovenia maintains that its Proposal for a Directive on a CCCTB lacks clear and proven arguments for unconditional support. Nonetheless, Slovenia is willing to engage in discussions regarding the impacts of the CCCTB Directive and the effects of the Common Corporate Tax Base (CCTB), with special attention paid to how the CCTB is determined. Second, Slovenia emphasises that the financial impact of Slovenia in the case of the CCCTB is unclear. Companies would benefit significantly only in the case of consolidation, which is unlikely to be the final solution.

This proposal, particularly for small economies, poses significant challenges in terms of implementation and execution.[55]

4. Conclusions

In conclusion, the Republic of Slovenia demonstrates its tax sovereignty within the boundaries set by its constitution while also considering how it transfers its sovereignty at the EU level. Consequently, it is of utmost importance to preserve Slovenia's tax sovereignty by interpreting EU rules on tax legislation harmonisation in a way that does not excessively encroach on the tax sovereignty of EU Member States. In pursuit of tax sovereignty, Slovenia seeks to regulate the taxation of assets and reduce the tax burden on labour income. It follows the rules of the EU and international organisations (BEFIT and ATAD 3) and, within the limits of its tax sovereignty, shapes tax regulations. Moreover, Slovenia prepared a proposal for a minimum tax law considering the requirements for combating and preventing tax avoidance; this aligns with its commitment to maintain a balance between EU directives and its own fiscal autonomy.

55 See the Opinion of the Slovenian Parliament on the Directive on CCCTB: *Državni zbor, Ljubljana, 54924-12/2011/4* [Online]. Available at: https://shorturl.at/NUWQf (Accessed: 30 October 2023).

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