Universität St.Gallen
Institut für Law and Economics

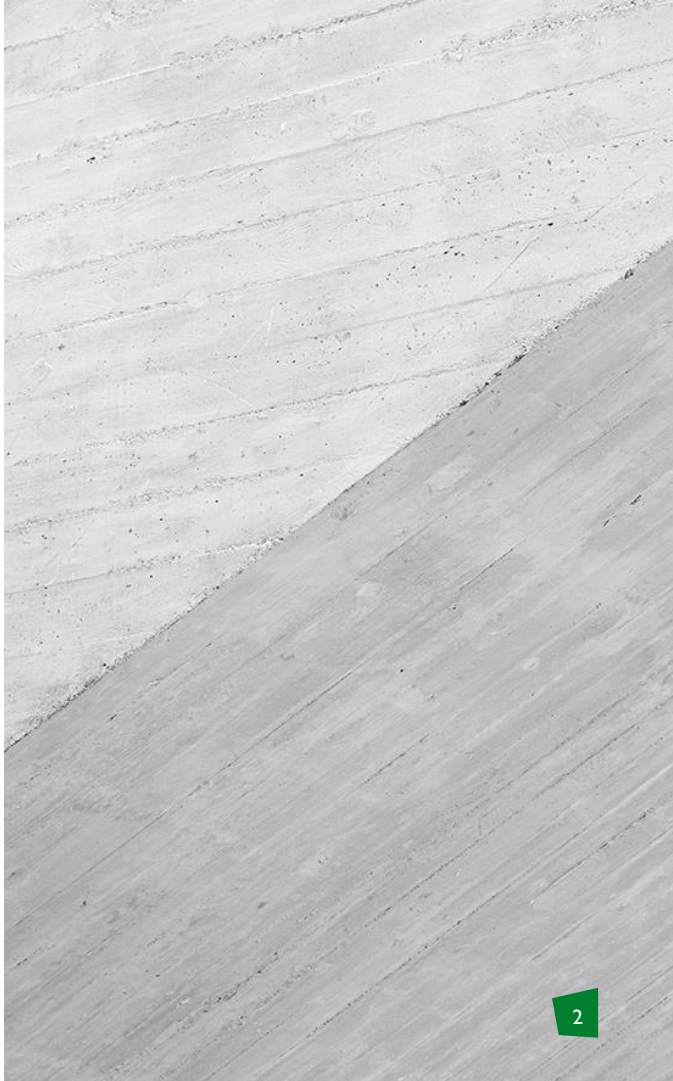
Side-by-Side – An Academic Perspective

Peter Hongler

From insight to impact.

Overview

1. The Big Picture
2. European Competitiveness – A Tax Focus
3. Side-by-Side – What does it mean?
4. The Future – Legal and Fiscal Risks



The Design Failures



The design failures of Pillar Two and their longlasting impact

1. The rule of law problem – neither an international treaty nor a genuine domestic base in many countries – only a common standard
    1. Dynamic application of the «the guidelines»
    2. Unknown number of accounting standards (and dynamic application)
2. The treaty question – no international treaty
    1. IIR in PE situations / IIR in case of subsidiaries
    2. UTPR
3. The competence question (in particular in the EU)
4. The missing institutional base

Judicial control

All of the four design failures might lead to judicial proceedings:

1. The rule of law problem → depends on the constitutional framework
2. The treaty question → depends in particular on the interaction between domestic law and treaty law
3. The competence question → depends on how Pillar 2 was implemented
4. The missing institutional base → the "Q" status is a means of realpolitik

Article 8.2. Safe Harbours

8.2.1. At the election of the Filing Constituent Entity, and notwithstanding Chapter 5, the Top-up Tax for a jurisdiction (the safe harbour jurisdiction) shall be deemed to be zero for a Fiscal Year when the Constituent Entities located in this jurisdiction are eligible for a GloBE Safe Harbour, pursuant to the conditions provided under the GloBE Implementation Framework and applicable for that Fiscal Year.

The Big Picture

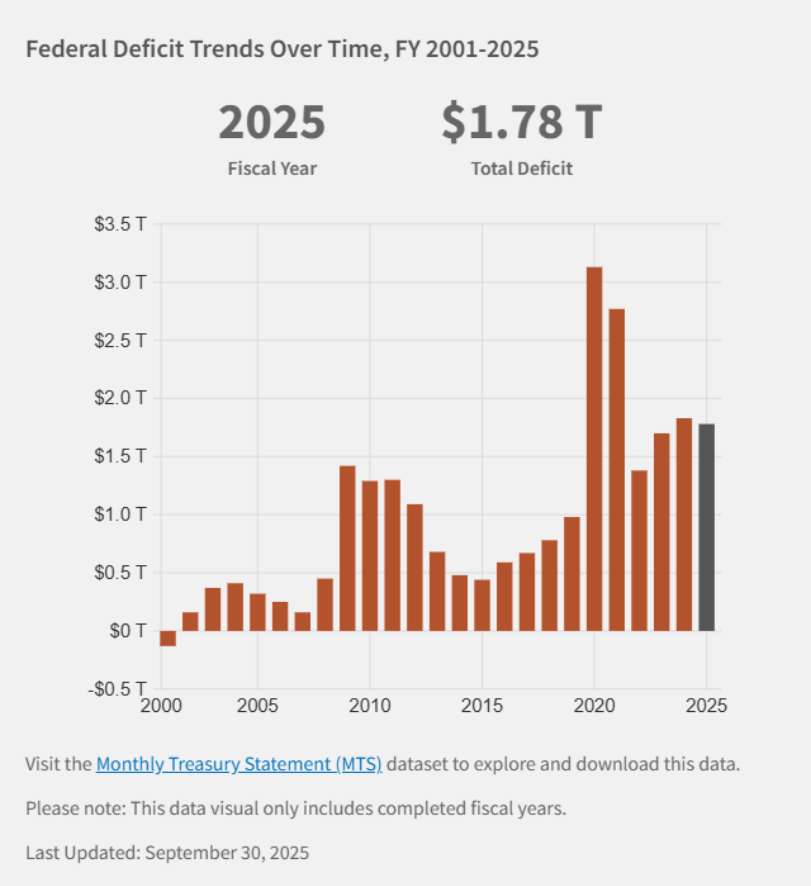


Pressure on spending will increase / or growth-friendly policies



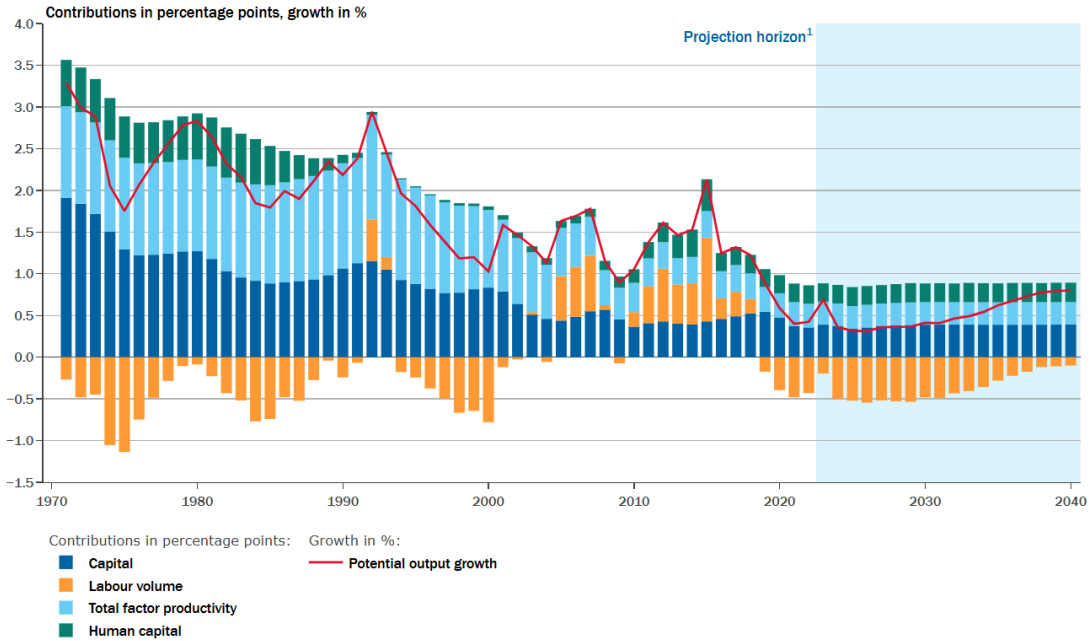
TradingEconomics

Pressure on spending will increase



Treasury – Fiscal DATA

The growth problem



The Role of the US



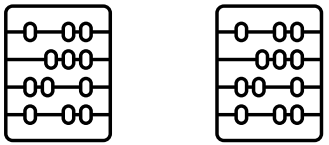
US Tax System – Post-OBBBA

FDDEI

Particularly relevant for the tech industry.
Mixed company regime “on steroids”

Accelerated Depreciation

Most widely used. Probably highest impact on cash tax at Federal Level.

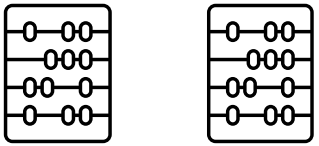


Tax credits

10-K show significant impact of R&D Tax Credits

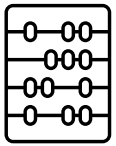
CAMT

Certain reliefs through executive guidelines
No jurisdictional blending



Immediate expensing

Most widely used. Probably highest impact on cash tax at Federal Level



US Tax System – Post-OBBBA

The components of the provision for income taxes, net are as follows (in millions):

	Year Ended December 31,		
	2023	2024	2025
U.S. Federal:			
Current	$ 8,652	$ 9,039	$ 1,220
Deferred	(5,505)	(4,101)	11,134
Total	3,147	4,938	12,354
U.S. State:			
Current	2,158	2,109	2,067
Deferred	(498)	(453)	984
Total	1,660	1,656	3,051
International:			
Current	2,186	2,765	4,330
Deferred	127	(94)	(648)
Total	2,313	2,671	3,682
Provision for income taxes, net	$ 7,120	$ 9,265	$ 19,087

U.S. and international components of income before income taxes are as follows (in millions):

	Year Ended December 31,		
	2023	2024	2025
U.S.	$ 32,328	$ 61,947	$ 89,537
International	5,229	6,667	7,774
Income before income taxes	$ 37,557	$ 68,614	$ 97,311

Amazon – 10-K 2025

How can Pillar 2 be reversed?



Side-by-Side Safe Harbour / UPE Safe Harbour

- The more countries will qualify for the SBS Safe Harbour and the UPE safe harbour, the more economic pressure will be on the „remaining“ group of Pillar 2 countrie
- It becomes very expensive to be an EU MNE
- New wave of inversions
- This accelerates if countries start to abolish the QDMTT

- → Political pressure on EU countries will significantly increase

Qualified SbS Regimes

Jurisdiction	Domestic law	applicable for Fiscal Years commencing on or after
United States	Internal Revenue Code of 1986 (Pub. L. 99–514,100 Stat. 2085, enacted October 22, 1986) [1]	1 January 2026

1. The Inclusive Framework determination of the U.S. tax system took into account data provided by the United States delegation with respect to tax years 2019-2022.

Source: OECD • Get the data • Created with Datawrapper

Judicial control

- We will see several legal proceedings in different jurisdictions on any of the design failures

Conclusion

The global minimum tax is doomed to fail

Devilish combination between attractive US tax regime and Pillar Two

We need to create a growth friendly environment – tax plays an important role

Questions?
Feedback?
Inputs?



Vielen Dank.

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