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# Global Sustainable Tax Governance in the OECD-G20 transparency and BEPS initiatives

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## 1. Introduction

Since 2009, the OECD with the political support of the G20 has introduced initiatives to tackle tax evasion, tax fraud and aggressive tax planning on a global scale. These include, first, the introduction of the global standard of exchange of information (mainly on request) and the creation of the Global Transparency Forum. Second, the global standard on automatic exchange of financial accounting information. Third, the Base Erosion and Profit Shifting (BEPS) Project to tackle aggressive tax planning by multinationals[3]. The BEPS Project has introduced 15 Actions which consists of 4 Minimum Standards[4], 10 Best Practices and 1 Multilateral Instrument to modify bilateral tax treaties.

These initiatives have been widely adopted by non-OECD, non-G20 countries including many developing countries. At the time of writing (September 2019), the Global Transparency Forum has 157 members, the Common Reporting Standard on Automatic Exchange of Financial Accounting Information has been endorsed by more than 108 jurisdictions, 134 jurisdictions have committed on an equal footing to the implementation of the BEPS 4 Minimum Standards and 89 jurisdictions have signed the Multilateral Instrument[5]

Following the implementation of the BEPS 4 Minimum Standards, the OECD, in February 2019, launched a public consultation to address the tax challenges of the digitalization of the economy.[6]

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[3] According to the OECD, BEPS refers to "tax planning strategies that exploit gaps and mismatches in tax rules to make profits 'disappear' for tax purposes or to shift profits to locations where there is little or no real activity but the taxes are low, resulting in little or no overall corporate tax being paid." See the OECD website https://www.oecd.org/tax/beps/bitesize-beps/ (Accessed 1 September 2019).

[4] The BEPS 4 minimum standards that should be implemented are countering of harmful tax practices and exchange of rulings (Action 5), preventing of treaty abuse (Action 6), re-examining transfer pricing documentation including Country by Country Reporting (Action 13), and enhancing resolution of disputes (Action 14).

[5] For the participation of non-OECD and non-G20 countries in these initiatives and problems of legitimacy see I.J. Mosquera Valderrama, *Legitimacy and the Making of International Tax Law: The Challenges of Multilateralism*, 7 World Tax J. 3 (2015), Journals IBFD. For an evaluation of the BEPS Inclusive Framework see also A. Christians & L. van Apeldoorn, *The OECD Inclusive Framework*, 72 Bull. Intl. Taxn. 4/5 (2018), Journals IBFD.

[6] The Digital Economy had already been addressed in BEPS Action 1, however, no consensus regarding this Action was reached and therefore, this Action was outside the BPES 4 Minimum Standards. See the OECD *Public Consultation Document: Addressing the Tax Challenges of the Digitalisation of the Economy* (OECD 2019). Available at: https://www.oecd.org/tax/beps/public-consultation-document-addressing-the-tax-challenges-of-the-digitalisation-of-the-economy.pdf (Accessed 1 September 2019).

This consultation has two pillars. One dealing with taxation of the digital economy (Pillar 1) and a second one introducing a global anti-base erosion proposal for multinational enterprises beyond the digital economy consisting of two elements: an income inclusion rule and a global minimum effective tax rate[7] (Pillar 2). In March, public consultations were held including all key stakeholders. The input received was processed by the OECD secretariat, which released a "Work Programme" to implement these two Pillars in May 2019.[8] According to the OECD, these two Pillars have been developed by the countries participating in the BEPS Inclusive Framework[9]. Nevertheless, the Pillar 1 provides for 3 proposals which reflects the divergences in approach of countries within the BEPS Inclusive Framework.[10]

This chapter analyzes the OECD-G20 Transparency and BEPS Initiatives in the light of global sustainable tax governance, and from a multidisciplinary perspective i.e. tax law and international political economy[11]. We will use the definition of sustainability adopted in the introduction to this book: sustainable tax rules are ones that do not burden future generations[12]. To link the OECD transparency and BEPS agenda to the needs of developing countries, we will define 'not burdening future generations' in light of the UN Sustainable Development Goals (SDGS). We will especially pay attention to SDG 17.1 on domestic resource mobilization (DRM) and 17.16 on global partnerships for sustainable development.

Even though there are no reliable numbers on the amount of revenue that the BEPS project has generated[13], it is important to evaluate whether it, or other international tax initiatives, are the answers to what developing countries need or whether, by implementing BEPS, the attention of these countries is deviated from more important challenges they face, for example: tackling the informal economy, preventing corruption, and improving taxpayer service and tax collection, which are also related to sustainable tax governance. Since the BEPS Inclusive Framework is taking up two new challenges linked to the digital economy, the evaluation of these initiatives in

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[7] "(i) an income inclusion rule that would tax the income of a foreign branch or a controlled entity if that income was subject to a low effective tax rate in the jurisdiction of establishment or residence; and (ii) a tax on base eroding payments that would deny a deduction or treaty relief for certain payments unless that payment was subject to an effective tax rate at or above a minimum rate" OECD *Public Consultation supra* n. 6, at p. 25.

[8] These countries also agree "that the technical work must be complemented by an impact assessment of how the proposals will affect government revenue, growth and investment". See OECD *Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy, OECD/G20 Inclusive Framework on BEPS* (OECD 2019), at pp. 35-36. Available at: http://www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.pdf (Accessed 1 September 2019).

[9] See the OECD website http://www.oecd.org/tax/beps/international-community-agrees-on-a-road-map-for-resolving-the-tax-challenges-arising-from-digitalisation-of-the-economy.htm (Accessed 1 September 2019).

[10] The February 2019 Public Consultation included 3 proposals to create nexus and to allocate profits of highly digitalized business (Pillar 1). The proposals are (i) user participation presented by most OECD-G20 countries ; (ii) marketing intangibles presented by the United States, and (iii) significant economic presence presented by G24 (developing countries).

[11] The reason is that from tax law, the developments in international tax cooperation can be presented and evaluated, but international political economy provides the role of the actors in this framework of cooperation and also their interests. Therefore, both disciplines can be useful to the analysis provided in this chapter.

[12] Reference to book introduction once page number is available.

[13] This has been also highlighted in the Addis Tax Initiative – International Tax Compact Conference that took place on 2-4 July 2019. At said conference, the Platform for Collaboration on Tax stated that they are building such database. See the Tax Compact website: https://www.taxcompact.net/conference/atiitc-tax-and-development-conference-2019-en. (Accessed 1 September 2019).

the light of sustainable tax governance is timely and relevant for the countries participating in the BEPS Inclusive Framework including developing countries.

Against this background, the question addressed in this chapter *is: Are the OECD transparency and BEPS Framework the right framework for a global and sustainable tax governance that benefits not only OECD and G20 countries but also non-OECD, non-G20 countries including developing countries?*

In order to answer this question, this chapter will provide an analysis of sustainable tax governance taking into account the Sustainable Development Goals (SDG's) that the global tax initiatives aim to address and the mechanisms to achieve these goals.[14] This analysis will take place in two parts.

Section 2 addresses the issue of domestic resource mobilization in light of SDG 17.1. The aim is to assess whether the G20 and OECD's tax agenda can help developing countries to raise their DRM in order to close their public spending gap which is needed to achieve the SDGs. We examine whether the specific needs of developing countries are acknowledged when they implement this agenda. We also discuss tailored partnerships for dealing with DRM, including the new medium-term revenue strategies of the platform for collaboration on tax.

Section 3 discusses the downsides of the Global Forum and BEPS Inclusive Framework as global partnerships for sustainable development (SDG 17.16). We discuss the diverging interests of OECD and developing countries and their difficulties in participating in the OECD meetings. Other goals addressed in this part are (i) Ensuring responsive, inclusive, participatory and representative decision-making at all levels (SDG 16.7) and (ii) Developing effective, accountable and transparent institutions at all levels (SDG 16.6). The main question of this section is to assess whether the OECD institutions are pressuring developing countries to adopt measures that may be good for global tax governance but not necessarily entirely in the interest of sustainable development of developing countries.

Following this analysis section 3 of this chapter will evaluate the BEPS inclusive Framework and its contribution to sustainable tax governance and section 4 will offer conclusions and recommendations.

## 2. The OECD-G20 Transparency and BEPS agenda and sustainable domestic resource mobilization

### 2.1. Domestic Resource Mobilization

#### A. General

[14] In the past, this analysis has been done by one of the authors to assess the (output) legitimacy of OECD-G20 in international tax law making vis-à-vis developing countries. See Mosquera Valderrama, *supra* n. 5 at p. 352. See also I. J. Mosquera Valderrama, *Output Legitimacy Deficits and the Inclusive Framework of the OECD/G20 Base Erosion and Profit Shifting Initiative*, 72 Bull. Intl. Taxn. 3 (2018).

The global tax initiatives for exchange of information and BEPS have been created to generate more revenue for countries by tackling (i) tax evasion, (ii) tax fraud and (iii) aggressive tax planning through profit shifting by multinationals. To help implement these initiatives, amongst other tax-related problems, international organizations such as the International Monetary Fund, the World Bank, the OECD and the United Nations have addressed the issue of domestic resource mobilization in the Platform for Collaboration on Tax ("PCT")[15] while development donor countries have formed the Addis Tax Initiative.[16]

In an October 2018 meeting in Bali, Indonesia, the PCT examined the challenges that countries are facing to mobilize taxes and other domestic resources for meeting their development goals. For the PCT, "strengthening tax systems – policy and administration – is a key development priority, and a core part of the Sustainable Development Goals (SDG) framework and the Addis Ababa Action Agenda. Together they set a challenge to raise significant additional tax revenues, in fair and efficient ways".[17] For the PCT, this objective is achieved by supporting "country-led efforts through policy dialogue, technical assistance and capacity building, knowledge creation and dissemination, and input into the design and implementation of standards for international tax matters". [18]

Both developed and developing countries have taken several measures to comply with the international commitments (i) to exchange information including automatic exchange of financial accounting information and (ii) with the BEPS Minimum Standards. For instance, the modernization of the IT system in tax administrations, the creation of one specialized unit for exchange of information including exchange of rulings, the hiring of more personnel to deal with more specialized issues e.g. tax treaty negotiation, tax auditing and transfer pricing. These measures are costly in terms of money and time, and also require long term investment in the tax officials.

Reducing corporate profit shifting, through implementing BEPS provisions, should help close the public investment gap in developing countries[19] that is needed to achieve the SDGs domestic revenue mobilization goals. Precise estimates of revenue losses in developing countries through tax avoidance are unfortunately hard to come by. Cobham and Jansky[20] show that low and lower-middle income countries suffer much more revenue losses in relation to their GDP than OECD

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[15] The Platform for Collaboration on Tax is a joint effort launched in April 2016 by the International Monetary Fund (IMF), the Organization for Economic Co-operation and Development (OECD), the United Nations (UN) and the World Bank Group (WBG). The Platform is designed to intensify the co-operation between these International Organizations (IOs) on tax issues. See OECD website: https://www.oecd.org/ctp/platform-for-collaboration-on-tax.htm (Accessed 1 September 2019).

[16] "The Addis Tax Initiative (ATI) is a multi-stakeholder partnership that assembles more than 50 countries and organizations committed to step up their efforts to enhance the mobilization and effective use of domestic revenues in partner countries. See International Tax Compact website: https://www.taxcompact.net/worklines (Accessed 1 September 2019).

[17] See the OECD website https://www.oecd.org/tax/platform-for-collaboration-on-tax-to-discuss-domestic-resource-mobilisation-challenges-on-9-october.htm (Accessed 1 September 2019).

[18] See the OECD website, *supra* n. 17.

[19] The investment gap is the difference between current investment and the level of investment needed to achieve the SDG's. Believed by UNCTAD to be $2.5 Trillion. The share of domestic government resources in this gap is believed to be between 50 and 80 percent by the World Bank. See United Nations Development Programme website: http://www.undp.org/content/undp/en/home/blog/2017/7/13/What-kind-of-blender-do-we-need-to-finance-the-SDGs-.html (Accessed 1 September 2019).

[20] A. Cobham & P. Jansky, *Global distribution of revenue loss from tax avoidance*, UNU-WIDER working paper 55 (2017).

and high-income countries. Schimanski[21] on the other hand finds no evidence that profit shifting is more intense in developing countries, although the author herself points out that this is more probably caused by the complexity of profit-shifting schemes and a limited availability of data than the non-existence of profit shifting.

At the time of writing (September 2019), it is unclear what the costs incurred by developed and developing countries regarding these new measures are, and whether these measures create more burden for developing countries, due to the budgetary constraints on their tax administration. To help developing countries to finance the hiring of personnel, buying of technical equipment and training of personnel in IT systems we examine the introduction of a system of revenue sharing between developed and developing countries and the balancing of the need of countries to attract investment and at the same time to raise domestic revenue by avoiding "wasteful tax incentives".[22]

## B. Revenue Sharing between developed and developing countries

One of the authors of this chapter has argued in the past when addressing exchange of information that due to the costs incurred by developing countries to exchange information, "developing countries will need an additional motivation to exchange information, and this could for instance be by means of revenue sharing between developed and developing countries. Another motivation could be for developed countries to finance technological equipment and training for developing countries in order to deal with exchange of information".[23] For the purpose of this article revenue sharing means that countries will share the revenue obtained for instance if the tax information provided by one country was substantial and relevant for the tax collection of the other country.

However, neither the exchange of information initiatives nor BEPS provide for a mechanism for revenue sharing between countries. In the past, the revenue sharing in international tax cooperation has been discussed by scholars. For instance for Turina, "it is relevant to design an incentive-based approach (i.e. revenue sharing) as a policy tool to ensure ex ante compliance with administrative assistance agreements".[24] Furthermore, an empirical study carried out by Paolini et al. (2014) states that "revenue sharing compensates the developing economy for the loss of tax base, the cost of implementing tax auditing and (in case of firm relocation) also for the

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[21] C. Shimanski, *Do Multinational Companies Shift Profits Out Of Developing Countries? How Data Availability May Hide The Evidence,* UNU-WIDER working paper 52 (2018).

[22] In a 2015 Working Paper reference was made to "wasteful incentives" stating that even though "this concept is not always well-defined, however. This paper adopts the framework of cost-benefit analysis to identify whether tax incentives are desirable or not". See IMF, OECD, UN and World Bank *A Report to the G-20 Development Working Group*: the Options For Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment. (IMF 2015) at p. 9, available at https://www.imf.org/external/np/g20/pdf/101515.pdf (Accessed 1 September 2019); OECD Ctr. For Tax Policy and Admin., *Principles To Enhance The Transparency And Governance Of Tax Incentives For Investment In Developing Countries,* available at http://www.oecd.org/ctp/tax-global/transparency-and-governance-principles.pdf (Accessed 1 September 2019).

[23] Mosquera Valderrama, *supra* n.5, at p. 366.

[24] A. Turina, *Information-based Administrative Tax-Cooperation, Consolidating Standards, Emerging Actors and Evolutionary Perspectives*, (Bocconi University, 2013) Doctoral dissertation, cited in Mosquera Valderrama, *supra* n.5, at p. 366.

financial subsidy paid to firms to stay". [25] Therefore, this study concludes that it is possible for developing countries to voluntarily sign a tax treaty that includes exchange of information, tax audit and revenue sharing". [26]

In the June 2019 Report from the OECD to the G20 Finance Ministers and Central Bank Governors[27], the OECD stated that as result of automatic exchange of information "more than 4500 exchange of information agreements are in force with 90 jurisdictions implementing the CRS in 2018. As a result 47 million offshore accounts –with a total value of around 4.9 Trillion euros –have been exchanged for the first time."[28] Furthermore, as a result of the BEPS 4 Minimum Standards more than 21000 tax rulings have been exchanged (Action 5), 80 jurisdictions have engaged in the exchange of Country by Country Reports (Action 13), more than 250 preferential regimes have been reviewed and abolished if identified as harmful (Action 5), and more than 25 jurisdictions have already ratified the provisions of Action 6 to tackle treaty shopping.[29] However, one drawback of these numbers, is that they did not specify which countries benefit and whether developing countries are benefiting at all.

Countries that contribute to exchange of information, or to tackling BEPS, should also have numbers on the amount of revenue generated, and if the revenue is only for the developed country where the multinational or individual is located, while developing countries incur costs, then there should be a mechanism for revenue sharing. In our view it is important for the OECD and the PCT to provide numbers in the costs of implementing exchange of information and BEPS and also the benefits for countries in terms of revenue.

### C. Tax Incentives and Tax Competition

One of the issues that also need to be addressed in a discussion on domestic resource mobilization is how states react to tax competition, and also how they can create tax incentives to attract foreign direct investment that can produce beneficial outcomes (business profits, jobs created, larger tax revenues, etc.) without creating harmful tax competition. Developing countries face an economic dilemma when it comes to corporate taxation and BEPS practices.[30] On the one hand, lower-income countries have a need for increased public revenues, and the corporate income tax is one of the easier taxes to collect. On the other hand, there is a tangible pressure to limit corporate taxes - both through overall rate reductions and tax incentives - in order to attract foreign investments.

Therefore, to prevent wasteful tax incentives, the aforementioned 2015 IMF Working Paper stated the need for a cost benefit analysis that takes into account: "the 'effectiveness' of incentives in achieving their aims—and then at the cost side—their 'efficiency"[31]

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[25] D. Paolini et al., *Tax treaties with developing countries and the allocation of taxing rights*, in Eur. J. Law 38 Econ. 2, Springer (2014), cited in Mosquera Valderrama, *supra* n.5, at p. 366.
[26] D. Paolini et al., *supra* n. 25.
[27] See the OECD Secretary-General Report to G20 Finance Ministers and Central Bank Governors: June 2019 (OECD 2019), available at http://www.oecd.org/tax/oecd-secretary-general-tax-report-g20-finance-ministers-june-2019.pdf
[28] OECD 2019, *supra* n. 27, at p.7.
[29] OECD 2019, *supra* n. 27, at p. 8.
[30] M. Durst, *Poverty, Tax Competition and Base Erosion,* 89 Tax Notes International. 12, 1189-1201. (2018)
[31] IMF, OECD, UN, World Bank *A Report to the G-20 Development Working Group*, *supra* n. 27*;* IMF *Principles To Enhance The Transparency And Governance Of Tax Incentives For Investment In Developing Countries*, (IMF, N.D.) at p. 9.

Domestic politics, institutions and the economic situation determine how a state reacts to the competitive or cooperative dynamics in international taxation. While this implies that each country has its own optimum approach on how to interact with international companies and high net-worth individuals, there are some broad similarities that developing countries share.

Especially in lower-income countries, the aforementioned dilemma is aggravated by a tax structure that relies heavily on corporate income taxes as opposed to high income countries where the personal income tax is a more important source of revenue.[32] Overt reliance on big multinational companies for corporate tax revenue is another important issue. Forstater gives the example of Rwanda where "micro, small and medium-sized enterprises make up 98 percent of taxpayers but only provide 3 percent of the revenue. 70 percent of taxation comes from multinational enterprises and 0.3 percent of taxpayers pay 48 percent of the tax authority's revenue"[33] This mixture makes developing countries vulnerable to tax avoidance and profit shifting, but also to demands of multinational companies for favorable tax arrangements. The narrow tax bases mean small changes in investment can have significant effects on the tax revenues of a country.

This is also why tax incentives for attracting FDI usually have deteriorating effects on developing countries' revenues. These are tax arrangements for foreign companies in the form of temporary tax exemptions (tax holidays), tax-advantageous developing zones, or other tax advantages generally not available to domestic taxpayers.

In theory, these incentives resemble the tradeoff between foreign investment and public revenues. That's why they were regularly advised by the IMF and World Bank as development tools in the 1980's and 90's during the period of the 'Washington consensus'.[34] However, recent evaluations of tax incentives have been less positive. Brauner observes significant academic rejection of tax incentives as an effective tool[35]. One reason is that it can trigger a specific form of tax competition between developing countries, resulting in a race to the bottom. Powerful multinationals can exploit this dynamic and play off countries against each other in a demand for more favorable tax conditions.[36] They appear to be a pervasive instrument for developing countries. This is why transparency, parliamentary control and multilateral cooperation are recommended by both the IMF and the OECD.[37]

Another fundamental issue is that their effect on development, and thus their effectiveness as a tool for reaching the SDG's, is being called into question. One study by the IMF finds a positive effect on FDI, but not on total investment or economic growth which might imply a crowding-out

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[32] The corporate tax in African countries for example counts for 13 to 18% of the total tax revenue as opposed to the OECD average of 8%. See OECD website: http://www.oecd.org/tax/rising-tax-revenues-are-key-to-economic-development-in-african-countries.htm (Accessed 1 September 2019).

[33] M. Forstater, *Can Stopping 'Tax Dodging' by Multinational Enterprises Close the Gap in Development Finance?,* CGD Policy Paper 069 (2015).

[34] J. Stiglitz, *From the Washington Consensus Towards a 21st Century Consensus on Development,* (SIDA, 2016), available at: https://www.sida.se/globalassets/sida/sve/aktuellt-press/stiglitz-stockholm-september-2016.pdf, (Accessed 1 September 2019).

[35] Y. Brauner, *The Future of Tax Incentives for Developing Countries,* in *Tax Lax and Development* (Y. Brauner & M. Stewart, Edward Elgar Publishing 2013).

[36] E. Zolt, *Tax Incentives: Protecting the tax base,* Paper for Workshop on Tax Incentives and Base Protection (New York, 23-24 April 2015).

[37] IMF, OECD, UN, World Bank *Report To The G-20 Development Working Group, supra* n.27*;* IMF N.D., *supra* n. 31, at p. 9.

effect.[38] Another recent study confirmed this, but also found a negative effect on public finances and development objectives such as school attendance. It concludes that research should focus on ways of phasing out tax incentives and of decreasing pressures of tax competition.[39] Brauner also sees a role for high-income countries in this regard and discusses steps they could take to support developing countries, including re-evaluating tax sparing clauses in double tax treaties and breaking the competition trap through international coordination[40].

In sum, a cautious approach to tax incentives – perhaps including intergovernmental discussions on a code of conduct - has to be part of the discussion on how international taxation can help realise the SDG's. The BEPS Inclusive Framework could be a fitting forum for this discussion due to the broad number of jurisdictions taking part in this Framework.

## 2.2. Tailored Partnerships for Domestic Resource Mobilization

### A. General

In order to assist developing countries to implement exchange of information and BEPS, the OECD has created the Pilot Projects and the Twinning Projects and it has engaged with the United Nations Development (UNDP), in the Technical Assistance Project Tax Inspector Without Borders. These projects result in technical assistance delivered by a developed country or international organization to a developing country aimed at the implementation of the global standards.[41]

Furthermore, the OECD is participating with the International Monetary Fund, the World Bank and the United Nations in the implementation of these global tax initiatives mainly through the Platform for Collaboration on Tax ("PCT") and the discussion on Domestic Resource Mobilization challenges, and the publication of Toolkits for Developing countries.[42]

At the EU level, the EU adopted in the 2017: The New European Consensus on Development, providing support to "the Addis Tax Initiative and the OECD/G20 work to address base erosion and profit shifting, including country-by-country reporting and tax information exchange, to ensure that companies pay tax appropriate to their commercial activities and profits. The EU and its Member States support the participation of developing countries in global tax governance and relevant international discussions and standard-setting processes, including

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[38] A. Klemm & S. Van Parys, *Empirical Evidence on the Effects of Tax Incentives,* IMF Working Paper 136 (IMF 2009).

[39] S.N. Stausholm, *Rise of ineffective incentives: New empirical evidence on tax holidays in developing countries.* (Socarxiv, 2017, December 13).

[40] IMF, OECD, UN, World Bank *Report To The G-20 Development Working Group, supra* n.27; IMF N.D., *supra* n. 31, at p. 9.

[41] For an overview of these projects see I. Mosquera Valderrama, D. Lesage & Lips W., *Tax and Development: The Link between International Taxation, the Base Erosion Profit Shifting Project and the 2030 Sustainable Development Agenda*, UN-CRIS working paper W-2018/4 (2018), available at http://cris.unu.edu/tax-and-development-link-between-international-taxation-base-erosion-profit-shifting-project-and (Accessed 1 September 2019); and the OECD website http://www.oecd.org/tax/beps/about/#tools. (Accessed 1 September 2019).

[42] OECD website, *supra* n.17.

in the Global Forum on Transparency and Exchange of Information for Tax Purposes and G20/OECD discussions. They commit to pursuing coherence between their tax policies and their effects on developing countries".[43]

In 2019, the European Commission reinforced this approach in the report from the European Commission on the SDGs[44] having stated that "since 2015, the EU and its Member States have strengthened their support to developing country partners to take account of the SDGs in their national planning, budgeting and implementation. This has been done in an increasingly diversified and tailored manner, targeting countries where the needs are greatest, especially countries that are least developed, or in a situation of fragility and conflict, where the potential to raise finance is the lowest".[45]

In addition, since the pilot projects for Automatic Exchange of Information and BEPS Twinning Project are limited[46], both in the number of initiatives and in their reduced scope, one way to also help developing countries has been through direct technical assistance which results in developing countries in Africa, Latin America and Asia engaging directly with partners (e.g. Development Cooperation Agencies in Norway (NORAD), the Netherlands (Ministry of Foreign Affairs) and Germany (German Development Cooperation GIZ)). Therefore, countries can approach several partners in an uncoordinated way. [47] This may result in excessive assistance (and sometimes in different approaches to the same problem), that may undermine the effectiveness of the technical assistance. This calls for more coordination in technical assistance, and for this purpose, the Medium-Term Revenue Strategy MTRS was developed by the Platform of Collaboration on Tax, as a possible solution (see C. below).

## B. One solution does not fit all

The assistance and support to developing countries should consider the institutional differences in capacity of developing countries to implement these global tax initiatives. In our view, it is not yet clear how these global tax initiatives, and tailored partnerships mentioned above, take into account the approach that 'one solution does not fit all'.

For instance, in a study of Automatic Exchange of Information (AEOI) in developing countries, Sawyer and Sadiq found that "developing countries are not all facing the same degree of challenges with respect to AEOI, and indeed for many, AEOI is not a high priority. Furthermore,

[43] See EU COUNCIL *Joint Statement by the Council and representatives of the governments of the member states meeting within the Council, the European Parliament and the European Commission: The New European Consensus of Development 'Our World, Our Dignity, Our Future',* at p. 49, available at https://ec.europa.eu/europeaid/sites/devco/files/european-consensus-on-development-final-20170626_en.pdf. (Accessed 1 September 2019).

[44] European Commission Report: *Supporting the Sustainable Development Goals across the world: The 2019 Joint Synthesis Report of the European Union and its Member States*. COM(2019) 232 final.

[45] European Commission Report, *supra* n. 44, at p.10.

[46] For instance, regarding pilot projects: AEOI, the Global Forum Annual Report mentioned seven bilateral pilot projects (five ongoing and two already concluded). See the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes *Report on progress: Tax Transparency* (OECD 2018), available at https://www.oecd.org/tax/transparency/global-forum-annual-report-2018.pdf (Accessed 1 September 2019); the BEPS Twinning Project has also a limited scope since only few countries participate in it (e.g. the Netherlands-Georgia and Canada-Jamaica).

[47] For instance, while participating in the ADI-ITC Conference (see *supra* n.12), two partners realized that the same country has asked for technical assistance, but they did not know that they both have been approached by the same country.

the focus on AEOI by the OECD has largely been on African countries, where work is beginning with ..in full.. (AFTA)". [48] Following a case study in the Asia-Pacific Area, the authors argue that "many of the Asia-Pacific developing countries are among the least developed, and therefore expected to face greater challenges in grappling with understanding the implications of the common reporting standard for AEOI for their tax administrations and what they need to do to modify their domestic laws to enable effective AEOI."[49]

This is also valid for BEPS initiatives that should also take into account the countries' needs and priorities. For instance, in September 2016, in a regional meeting of the inclusive framework of BEPS for non-OECD countries in Latin America and the Caribbean, some participant countries expressed their "concerns on the consequences of not being able to partially or fully implement the BEPS measures contemplated in the inclusive framework, considering their own priorities and specific country features". [50]

One of the authors of this chapter has argued in the past, that the differences between developed vs. developing countries can result in output legitimacy[51] deficits of these initiatives. [52] Developing countries have already expressed in regional consultations from BEPS that there are other priorities such as tackling informal economy, tackling illicit money flows, and enhancing tax compliance and tax enforcement at domestic level. Developing countries are also wary of the speed of these global tax initiatives. For countries with limited resources (technical, budget, personnel), these initiatives constitute a challenge despite the toolkits provided by international organizations and the pilot projects (AEOI), the twinning projects (BEPS) and the introduction of the Addis Tax Initiative. As rightly stated by Bird, the need for tailored solutions in tax policy also "emphasizes the extent to which sustainable reforms must be developed 'in house' by countries themselves".[53] This is also true for the implementation of the Medium Term Revenue Strategies that has to be also tailored to each country.[54]

### C. Medium-term revenue strategies

[48] A. J. Sawyer & K. Sadiq, *Developing Countries and the automatic exchange of information standard - a "one-size-fits-all" solution?* 31 Australian Tax Forum 1 (2016), at p.129.
[49] Sawyer & Sadiq *supra* n. 48, at p. 129.
[50] Example of a priority for these countries is the possibility to attract investment by means of tax incentives. See OECD *Regional Meeting of the Inclusive Framework on BEPs for Latin America & the Caribbean, Co-Chair's Summary (*OECD 2016)*,* available at http://www.oecd.org/tax/beps/beps-regional-meeting-co-chairs-summary-lac-september-2016-montevideo.pdf (Accessed 1 September 2019).
[51] As explained by one of the authors elsewhere the definition of output legitimacy takes into account the approach of Scharpf (political scientist). "For Scharpf, 'output legitimacy' results in the capacity to solve problems that require collective solutions because they could not be solved through individual action, through market exchanges, or through voluntary cooperation in civil society." Under the concept of output legitimacy, an action will be perceived legitimate if it is effective in achieving citizens' goals and if it can provide solutions to citizens' problems. See F. Scharpf, *Governing in Europe: Effective and Democratic*, (Oxford University Press 1999) at p. 11.
[52] These challenges have been discussed in Mosquera Valderrama, *supra* n.14.
[53] R. Bird, *Taxation and Development: What Have We Learned from Fifty Years of Research?*, Institute of Development Studies Working Paper 427 (2012), available at https://www.ids.ac.uk/files/dmfile/Wp427.pdf
[54] One example to illustrate this country analysis is: L. Breuer, J. Guajardo, & T. Kinda., *Implementing a Medium-Term Revenue Strategy.* In Realizing Indonesia's Economic Potential (IMF, 2018).

One recent high-profile attempt at coordination from tailored partnerships came from the PCT in the form of Medium-term revenue strategies.[55] These were introduced in 2016 and rely heavily on recipient country input to determine which revenue needs should be tackled in a 4-6 year period. The PTC and other capacity delivering partners can then organize their work around these strategies.

These country and partner commitment notes can forward the ownership of countries in the coordination of the support they receive from the international community. The revenue strategies go beyond international taxation and also comprise domestic taxes. It looks both at tax policy, the revenue agencies and the legal framework of a national tax system, in an explicit effort to link tax revenue to the SDG's.[56] Because MTRS are country-specific, their added value to BEPS is to differentiate the capacity needs of low, and middle-income developing countries with regard to the implementation of BEPS measures. Since the OECD is a partner in the PCT and a main task of the PCT is to develop BEPS toolkits, this link is a logical step.

Key features of an MTRS are high-level political support over an extended period, with revenue goals being aligned with spending/development needs. It also serves as a vehicle to align the efforts of multiple capacity building partners active in the reforming country[57]. According to the PCT's progress report, around 20 countries are in the process of formulating an MTRS, although only Papua New Guinea[58] is in the stage of implementation.

The concept certainly has potential value in light of DRM support in developing countries. It is too early to evaluate the possible outcome of the MTRS in countries, but despite the laudable aims behind the concept some criticism can be formulated.

A first possible criticism is that the aim of a societal consensus on revenue goals in the medium run of 5-7 years is a tall order. One that most high-income countries don't adhere to. As such, the MTRS can become a case of 'do as we say, not as we do'. As Tom Hart[59] rightly points out, neither the recent US nor UK tax reforms remotely resemble any approach to what is set out in the MTRS concept. As such, the realism of such a consensus might be put into question.

The same author also warned against the dangers of blueprint. Something development partner institutions have suffered from in the past. It could be tempting for the PCT institutions to push their own preferred approaches to tax reform onto developing countries. To be fair, the 2019 PCT progress report also contains a warning against cookie-cutter, one size-fits-all, approaches, where templates are simply transferred from country to country. This links with another point of criticism i.e. that the MTRS is basically negotiated with the same developing partner institutions of the past, mainly the IMF and World Bank. These institutions have a history of development programs that

[55] Platform for Collaboration on Tax *Concept Note on the Medium-Term Revenue Strategy (MTRS),* (PTC, 2016), available at https://www.oecd.org/ctp/concept-note-platform-for-collaboration-on-tax.pdf (Accessed 1 September 2019).

[56] Platform for Collaboration on Tax Concept Note, *supra* n.55.

[57] Platform for Collaboration on Tax *Progress Report 2018-2019* (PTC, 2019), available at: https://www.oecd.org/ctp/tax-global/platform-for-collaboration-on-tax-progress-report-2018-2019.pdf (Accessed 1 September 2019).

[58] C. Abel, *Medium Term Revenue Strategy 2018-2022*, (Papua New Guinea, 2017). http://www.treasury.gov.pg/html/media_releases/files/2018/MTRS%202018-2022.pdf (Accessed 1 September 2019).

[59] T. Hart, *Supporting domestic revenue mobilisation: we must learn from the failures of the past.* (ODI, 2017), available at https://www.odi.org/blogs/10626-supporting-domestic-revenue-mobilisation-we-must-learn-failures-past (Accessed 1 September 2019).

were not country-owned, blueprinted and/or even compulsory[60]. It is unfair to just assume that they will make the same mistakes of the past but it might also be naïve to assume that this time will be different without scrutiny.

A last point of worry with the MTRS comes from the 2019 progress report. It states clearly that the IMF and WB are most involved in the MTRS and that the OECD and UN are not involved in any MTRS work at country level[61]. It is worrisome that the most inclusive institutional partner, the UN, is not involved in this work. This means that the feedback loop of MTRS design at country level will be exclusively based on WB and IMF work. While these institutions do have the largest on the ground capacity in developing countries, they are also the institutions that have a track record of non-participatory programs. Excluding the UN, the most inclusive institution of the four, from the MTRS work means that one of the advantages of the PCT setup, learning and exchanging experiences between international institutions, is severely limited. The same goes for the OECD. By not helping implement MTRS at country level, the concept loses its direct link to the BEPS process and the OECD loses out on the feedback from the countries that could tie back to the BEPS Inclusive Framework and how it could help with domestic resource mobilization.

# 3. Building global partnerships for sustainable development in international tax governance

## 3.1. The interests of OECD countries versus those of developing countries

Prevalent taxation norms are a reflection of interstate power dynamics, and the technocratic formulation of those norms in transnational networks of expertise is also a determining factor. Hearson describes how cooperation in tax coordination has rested on a set of norms developed by experts in the 1920s in a 'quiet politics' scenario[62]. This process was directly conducted by senior tax officials in European countries in the League of Nations Committee of Technical Experts on Double Taxation and Tax Evasion. This transnational group of experts was supposed to speak in their own capacity as experts, despite being nominated by their governments[63]. International taxation then underwent a period of relatively low political salience up and until the 1970s when free movement of capital was reintroduced[64]. During this period, strong OECD dominance over the international tax rules was established, and its model treaty became a focal point that acts as a set of social conventions that are 'followed automatically because they have become self-evident'.[65]

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[60] For example, the now mostly discredited structural adjustment programs (SAPs) of the 90's.

[61] Platform for Collaboration on Tax *Progress Report, supra* n.57, at p. 41.

[62] M. Hearson, *Transnational Expertise And The Expansion Of The International Tax Regime: Imposing 'Acceptable' Standards,* 25 Review of International Political Economy 5, pp. 1-25. (2018).

[63] M. Graetz, & M. O'Hear. *The "Original Intent" of US International Taxation.* 46 Duke Law Journal. 1021–1109. (1997); Hearson, *supra* n. 62; S. Picciotto, *International Business Taxation (Second Edition),* (Cambridge University Press, 2013).

[64] P. Genschel & T. Rixen, *Settling and Unsettling the Transnational Legal Order of International Taxation*, In *Transnational Legal Orders and Business Law* (T.C Halliday & G. Schaffer, Cambridge University Press 2014).

[65] T. Rixen, *Bilateralism or multilateralism? The political economy of avoiding international double taxation,* 16 European Journal of International Relations 4, pp. 589–614 (2010).

This strong consensus is upheld by the international tax community, a group of experts that holds a monopoly claim on technical knowledge on international taxation[66]**.** International tax reform, and especially the technical details, is discussed within this international tax community. As they have been socialized to uphold the established OECD model consensus and defend its core norms, the community itself is very resistant against proposals that stray far from these norms[67].

That this community is OECD-centered leads to exclusionary mechanisms for developing countries' experts. Interviews that one of the authors of this chapter undertook show that those experts find it difficult to attend all relevant meetings, due to budget and time constraints[68]. Admittingly, the OECD acknowledges this and tries to webcasts its meetings. It also rotates the location of regional BEPS Inclusive Framework meetings. This structure also leads to knowledge and expertise generation on how to apply international tax rules that is more tailored towards OECD countries. There is for example a lack of transfer pricing comparables databases specifically tailored to African or Latin-American countries[69].

Fortunately, the BEPS and Automatic Exchange of Information processes, as well as the enlargement of the OECD's political principal with the G20 have allowed for the start of a transformation of this community. The OECD went through a series of institutional transformations, that most prominently consisted of setting up OECD-plus institutions, that allow the OECD to engage with states outside its membership: the Global Forum and the BEPS Inclusive Framework. These institutional innovations helped the OECD hold relevancy in the post-G8 world and undertake tax reform with far more legitimacy. A regrettable caveat in the literature of fiscal sociology is that the social interactions of the old members of the international tax regime and new actors in these fora hasn't been researched yet. Did they bring in radical new perspectives, or did they quickly adopt the conventional views on international taxation in the OECD? What are the mechanisms of socialization at play? How do they translate their experience in the OECD back to their domestic administrations?

Another development on this context that might be beneficial to developing countries is the forum rivalry on international taxation that has become more explicit after 2015, especially on corporate taxation. Organizations such as the EU and the IMF[70] have recently ventured in what previously was the monopoly territory of the OECD: international corporate taxation. Especially the IMF has hammered on reforming the international tax rules for developing countries. First, the IMF released a highly critical paper on double tax treaties, the OECDs preferred instrument, and warned developing countries to really asses the wisdom of signing one[71]. Next it released two highly critical papers on the arm's length standard. One paper discussed the merits of a Destination-Based Cash Flow Tax and concluded developing countries would be better off under

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[66] Hearson, *supra* n. 62.

[67] T. Büttner & M. Thiemann, *Breaking Regime Stability? The Politicization of Expertise in the OECD/G20 Process on BEPS and the Potential Transformation of International Taxation*. 7 Accounting, Economics, and Law: A Convivium 1. (2017); Hearson, *supra* n. 62; M. Ylönen & T. Teivainen, Politics of Intra-firm Trade : Corporate Price Planning and the Double Role of the Arm's Length Principle. 23 New Political Economy 4, pp. 441–457(2018).

[68] See W. Lips., *Power and Interests in International Tax Governance. Explaining the CRS and BEPS regimes,* (Ugent, 2019). Doctoral Dissertation.

[69] Platform for Collaboration on Tax *A Toolkit for Addressing Difficulties in Accessing Comparables Data for Transfer Pricing Analyses* (PTC 2017), available at https://www.oecd.org/tax/toolkit-on-comparability-and-mineral-pricing.pdf (Accessed 1 September 2019).

[70] The IMF has had a fiscal affairs department for a long time, and has advised LDC's on tax policy, but its criticism of the international tax framework is a more recent development.

[71] IMF, *Spillovers in international corporate taxation,* Policy Paper (IMF 2014), available at https://www.imf.org/external/np/pp/eng/2014/050914.pdf (Accessed 1 September 2019).

this system[72]. The second reviewed current corporate tax rules against options such as a destination-based cash flow tax and unitary taxation with formulary apportionment, and concluded the current rules are in need of fundamental reform[73]. The generation of more heterogenous expertise on tax through this kind of forum rivalry, might lead to improved forms of tax cooperation more suited for developing countries.

Especially double tax treaties are an area of tax governance where the diverging interests of the OECD countries and developing countries become visible. Developing countries enact double tax treaties with high-income Countries because they believe eradicating double tax and providing investor certainty will lead to more investment and higher revenues. That this should in turn help mobilize domestic resources, however, can be questioned. Research by Hearson shows that power asymmetries can lead to more unequal distributions of taxing rights for developing countries, draining revenue as some developing countries *'negotiate away their corporate tax base'*. The widely used model treaty by the OECD is a compromise that reflects the bargaining power of states that decide on it[74]. It has a legacy that can be traced back to the genesis of the international tax regime in the 1930s in the confines of the League of Nations.[75] This regime was designed in a time of colonialism and did not have developing countries' interests in mind. The main intent of the League of Nations model was to restrict source countries' taxation prerogatives to provide taxpayer certainty.[76] The OECD model tax treaty is a revision of this earlier consensus and as such holds a succinct bias that allocates taxation rights to the residence country.[77]

A few examples of restrictive source taxation articles in tax treaties can be a high permanent establishment threshold or, a low maximum or absent withholding tax rate.[78] The restrictive use of the profit-split method of transfer pricing in the OECD guidelines can also be seen as a restriction on source jurisdictions' taxation rights.[79]

This residence bias has been criticized and addressed by other international organizations. The Latin-American Free Trade Organization in the 1970s, followed by the United Nations in the 1980s have published alternative tax treaty models that allow for greater source taxation[80], yet these have failed to replace the dominance of the OECD model in developed/developing country tax relationships.

This residence bias has not been addressed during the OECD BEPS process, but remains a pertinent issue for many developing countries. However, there are signs that the inclusion of large

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[72] S. Hebous, A. Klemm & S. Stausholm, *Revenue Implications of Destination-Based Cash Flow Tax,* Working Paper (IMF 2019), available at https://www.imf.org/en/Publications/WP/Issues/2019/01/15/Revenue-Implications-of-Destination-Based-Cash-Flow-Taxation-46506 (Accessed 1 September 2019)

[73] IMF *Corporate taxation in the Global Economy* (IMF 2019), available at https://www.imf.org/en/Publications/Policy-Papers/Issues/2019/03/08/Corporate-Taxation-in-the-Global-Economy-46650 (Accessed 1 September 2019).

[74] A. Christians, *Taxing according to value creation* (Tax Notes 2018).

[75] I. Grinberg , *The New International Tax Diplomacy,* 104 Geo. L.J. 1137-1196 (2016).

[76] Graetz & O'Hear, *supra* n. 63.

[77] M. Hearson, *When do Developing Countries Negotiate Away Their Corporate Tax Base?*, 30 Journal of international development 2, pp. 232-255 (2018); T. Dagan, *The Tax Treaties Myth*, 32 Journal of International Law and Politics, pp. 939–2000 (2000).

[78] Hearson, *supra* n. 76 and Dagan, *supra* n. 76.

[79] K. Mehta & E. Dayle Siu, *Ten Ways Developing Countries can Take Control of their Own Tax Destinies,* In *Global Tax Fairness*, (T. Pogge & K. Mehta, Oxford University Press 2016).

[80] Genschel & Rixex, *supra* n. 64.

developing countries such as Brazil or India in the G20 is opening up this discussion. OECD tax director Pascal Saint-Amans has openly acknowledged: "We've moved from a G8 dominated environment to a G20 dominated environment, and clearly, source taxation is more on the table than it used to be in the past."[81] The BEPS follow-up discussion on digital economy, for example, is one where the OECD has an explicit mandate to rebalance source and residence taxation in a new part of the economy.

## 3.2. Ensure responsive, inclusive, participatory and representative decision-making at all levels

The agenda, but also the decision-making process on the content of the Global Standard on Exchange of Information including Automatic Exchange of Financial Accounting Information and the BEPS Project have been decided by the OECD with the political backing of the G20. To illustrate, the BEPS Project was decided only by the BEPS 44 Countries (including the 2013 OECD Accession countries and the G20).

In this process, the participation of the United Nations representative of most of the developing countries has been limited mainly due to the refusal of developed countries to give to the UN Committee of Experts on International Cooperation in Tax Matters, the role of an intergovernmental body.[82] The UN continues addressing issues such as taxation of extractive industry and taxation of technical services which are outside the BEPS.

More recently, the UN Fiscal Committee has created a Task Force on the Digital Economy which published a report in April 2019.[83] However, taking into account the predominant role of the OECD and G20 in international taxation, we can safely argue that the solutions that will be adopted by developing countries will be those emerging from the OECD, the G20 and the BEPS Inclusive Framework.

The European Union, through the ECOFIN Council, has also committed to these standards by introducing in 2008 the EU Standard of Good Tax Governance that includes transparency, exchange of information, fair tax competition and since April 2018 the implementation of BEPS 4 Minimum Standards.[84] The compliance with the EU standard of good tax governance is required for countries applying for EU development funds, and it has been introduced in some trade or strategic partnership agreements with non- EU countries. In addition, it has been used in the assessment of countries tax policies for evaluating their inclusion in the EU (black or gray) list of non-cooperative jurisdictions.[85]

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[81] PWC *An Interview with Pascal Saint-Amans,* (PWC 2014), available at https://www.pwc.com/gx/en/tax/tax-policy-administration/beps/assets/pwc-tax-interview-transcript.pdf, (Accessed 1 September 2019).

[82] See UN News Centre website: https://news.un.org/en/story/2015/07/504222-addis-un-negotiations-resume-financing-framework-advance-global-development#.Vgg2hfQUtFc (Accessed 1 September 2019).

[83] UN Committee of Experts on International Cooperation on Tax Matters, Eighteenth Session: *Tax Issues Related to the Digitalization of the Economy,* (UN, 5 April 2019), available at https://www.un.org/esa/ffd/wp-content/uploads/2019/04/18STM_CRP12-Work-on-taxation-issues-digitalization.pdf (Accessed 1 September 2019).

[84] I. Mosquera Valderrama*, The EU Standard of Good Governance in Tax Matters for Third (non-EU) Countries*, in 47 Intertax 5 (2019), at pp. 454-467.

[85] This EU Standard has been also discussed in the 12TH GREIT Annual Conference 14-15 September 2017, Jerez de la Frontera, Spain. See the External Tax Strategy of the EU in a Post-BEPS Environment Jimenez, A. M. (ed.). (IBFD 2019), Online Books IBFD.

What this all means is that the global tax initiatives developed by the OECD with the political mandate of the G20 are being followed by developed and developing countries. In addition, international organizations (e.g. IMF and WB) and supranational organizations (i.e. EU) have decided to follow and to contribute to the implementation of these initiatives (e.g. Platform for Collaboration on Tax PCT and Addis Tax Initiative) and in some cases to make these initiatives a requirement for cooperation, which is the case of the EU with the Standard of Good Tax Governance.

For non-OECD, non-G20 countries, there is not much choice but to adopt these global tax initiatives. Even though it is not clear how much of the revenue (reported by the June 2019 OECD report to the G20 Finance Ministers and Central Bank Governors) is for developing countries, these countries continue adopting these standards mainly due to the peer pressure exercised either by the Global Transparency Forum or the BEPS Inclusive Framework. And in some cases, also to avoid the inclusion in the EU list of non-cooperative jurisdictions.

Other obstacles for non-OECD, non G-20 countries are the political (or not) commitment to implementing global tax initiatives, and the level of participation of developing countries in decision making. In order to address the concerns of legitimacy, the G20 and the OECD created the BEPS Inclusive Framework to implement BEPS on an equal footing. However, the speed of the BEPS Project makes it difficult for countries to contribute actively in the meetings of the BEPS Inclusive Framework which is also difficult since the discussions take place in English (with some limited translation) and in some cases require extensive technical knowledge of the content (e.g. the principal purpose test of Action 6). The extensive travel commitments are also an obstacle. Therefore, in our view developing countries are losing the opportunity to have a voice in this process mainly due to their limited resources (personnel and financial) but also due to the lack of confidence in expressing themselves in English and in providing feedback on technical aspects of the BEPS discussion.[86]

More recently in June 2019, the OECD addressed the difficulties to reach a consensus in all proposals (Pillars 1 and 2) among all countries belonging to the BEPS Inclusive Framework. Therefore, Pascal Saint- Amans from the OECD explained that consensus will be needed among “significant” countries and that other countries will need to be on board even if dissenting on the main proposal.[87] In our view, this undermines the system of consensus of the BEPS Inclusive Framework and at the same time questions the equal footing which has been argued by the OECD as one of the main features of the BEPS Inclusive Framework.

[86] This was observed by one of the authors of this Chapter (Mosquera) in one of the BEPS Inclusive Framework meetings that took place in Paris. Most of the developing countries did not participate with questions or input in the meeting because of the pressure to speak English, but also because the need to discuss technical issues in such a big forum makes difficult for these countries to participate. Therefore, participants in these meetings should receive training and coaching to participate in these meetings. This also applies to English speaking developing countries which if there is a lack of technical knowledge.

[87] See Bloomberg Tax website: https://news.bloombergtax.com/daily-tax-report/insight-subtle-shifts-seen-in-the-oecd-inclusive-frameworks-program-of-work-on-digitalization (Accessed 1 September 2019).

### 3.3. Developing effective, accountable and transparent institutions at all levels

The technical elements of the EOI and BEPS Initiatives requires knowledge of tax administration and/or Ministry of Finance at all levels (drafting law and regulations, auditing, managing IT, tax collection, tax treaty negotiation). This knowledge should make it possible for the tax administration of the recipient country to process the tax information received from other countries on individuals and companies (mainly multinationals). This complexity will be increased with the automatic exchange of tax rulings (Action 5) and Country by Country Reporting of multinationals (Action13). The question is then, are all countries capable of analyzing the amount of data received? and if not, is the technical project/ assistance sufficient? Can tax institutions in developing countries be effective to achieve the Sustainable Development Goals?

In our view, the effectiveness of the global tax initiatives requires the development of long-term educational programs that are specifically directed to the country, developed in consultation with and carried out in the country, but also that motivates the tax official to continue working for the tax administration so that the investment is not being lost. In short, a Human Resources Program to educate, to motivate and to keep the staff. The aforementioned MTRS might be amended to link with such a program.

This Program should be free from any political bias and available to everyone working on the tax administration so that employees are motivated to learn and to grow within the organization acquiring technical knowledge (tax treaties, transfer pricing, tax auditing) but also specific skills/competence in their area of work (e.g. project management, production process, confidentiality training, effective communication). In addition to a lack of resources (which can be addressed in coordination with donors), another problem is the high number of staff working for the tax administration. Therefore, this Program requires careful planning, long-term investment and it should be specifically tailored to each country's needs/ and specific cultural, economic and political environment.

## 4. Conclusions

This chapter investigated whether the OECD transparency and BEPS initiatives are the right framework for global and sustainable tax governance that benefits not only OECD and G20 countries but also non-OECD, non-G20 countries including developing countries? We offered a two-step analysis that examined how those initiatives considered the SDG's on domestic resource mobilization (17.1) and were building the global partnership for sustainable development (17.16).

Regarding domestic resource mobilization and international taxation, we recognize on the basis of the discussion in section 2, that the OECD initiatives should on paper help developing countries realize their DRM goals. However, numbers on the actual benefits derived from signing up to AEoI and BEPS are scarce, and the costs of compliance is significant for developing countries. If it is the case that mainly high-income countries are deriving increased tax revenues from the global rules, while developing countries are also complying but derive less benefits, then this could be counter-productive for sustainable DRM. We propose that the OECD investigates mechanisms for revenue sharing, so as to incentivize and reward developing countries for their participation in global tax frameworks. Another caveat in the BEPS Inclusive Framework that is especially

relevant for developing countries, is the lack of discussion on tax incentives. A useful addition, to link BEPS and SDG 17.1, would be a code of conduct on tax incentives that stops a competitiveness race to the bottom between developing countries and also prevents high-income countries from canceling out the incentives provided by developing countries, for example by systematically including tax sparing clauses in their tax treaties.

Most importantly, international organizations should recognize that there is no one-size-fits-all approach to tax and DRM, and that for some but certainly not for all developing countries BEPS and Automatic Exchange of Information are priorities. Tailored partnerships are a necessity here, taking into account institutional capacity. There is reason to be slightly optimistic about the new PCT-driven MTRS concept in this regard, although it is too early for evaluation and there are certain pitfalls regarding its ambitions and development partners.

Section 3 questioned whether the OECD institutions and especially the BEPS Inclusive Framework can be seen as global partnerships for sustainable development (SDG 17.16) in relationship to tax. There is a real concern that the participation of developing countries in the OECD-led tax initiatives might lead them to adopt measures that could be good for global tax governance but not entirely in their own interests or in their list of priorities. We pointed at several factors that hindered the functioning of the OECD frameworks as true global sustainable partnerships. There are structural factors such as the inherent residence bias in the OECD tax treaties on which OECD tax policy and BEPS built, and the refusal of high-income countries to elevate the UN tax committee to a true intergovernmental institution which could advocate developing countries' interests. On the other hand, we also observed practical obstacles such as the high number of meetings and required travel with limited personnel, linguistic barriers and the high speed at which technical expertise is developed.

In sum, we do believe that the G20/OECD initiatives have a potential to help achieve sustainable taxation in developing countries, which we defined as contributing to the SDG's; in particular SDG 17.1 (domestic resource mobilization) and 17.16 (effective global partnerships), along a wider institutional context including the PCT. However, in this chapter we pointed at several shortcomings in the framework that should be resolved in order to protect developing countries' interests when they participate in these initiatives. These involve tailored partnerships for DRM and ensuring effective, accountable and inclusive decision-making at all levels.

Key to achieving true global sustainable tax governance would be the institutional elevation of the UN tax committee to an intergovernmental body with a well-resourced secretariat[88]. This body could then be an equal partner to the other PCT institutions, be more involved in the MTRS, which could alleviate some of the concerns we noted with the concept as a tailored partnership. It could also help formulate alternative global tax proposals that better protect developing countries' interests and better advocate them in the OECD frameworks. Such an institutional counter-weight to the OECD, even if it would not be the center of global tax decision-making, would contribute to making the OECD more responsive and inclusive towards developing countries' needs, beyond just an invitation to participate, and would ultimately lead to a more sustainable global tax governance for developing countries.

[88] The authors do realize there are several institutional difficulties with a UN intergovernmental body, including the problem of achieving consensus among 193 countries. Discussing the merits and obstacles of a UN intergovernmental body warrants a chapter on its own. We do however believe that there is a need for more inclusive policy-making in international tax governance and an institutional spokesperson for developing countries. In the current landscape, only an elevated UN could take this role in our view.