Global Tax Governance

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IOs/G20/EU and civil society: International Taxation

Aims

- OECD/G20/EU: Global fair, sustainable and modern tax systems. https://youtu.be/KEh2aYw546A

- Civil society: Solidarity; Fairness: Fair share by MNEshttps://www.taxjustice.net/2016/07/29/video-guide-legal-tax-evasion/

Current instruments/proposals

1. League of Nations, OECD and UN Models. Failure to have a multilateral instrument. (developed vs. developing countries). Some OECD projects e.g. Transfer Pricing Guidelines, 1998 Report on Harmful Tax Competition.

2. Financial crisis: Need for revenue, and to tackle tax evasion and bank secrecy. Exchange of Information: On request and then automatic (financial account information). Global Transparency Forum

3. BEPS tackle base erosion and profit shifting by multinationals (see next slide) – EU also following these developments.

4. BEPS 2.0
   1. Pillar 1 –Taxation of Highly digitalized business. Allocation of taxing rights: Nexus (where) and allocation (how)
   2. Pillar 2- Introduction of a minimum income

OECD/G20 Developments

- BEPS 44 Group decided the content of the BEPS Actions (OECD and G20)

- Extended to non-OECD; non-G20 Countries: BEPS Inclusive Framework for BEPS 4 Minimum Standards (Actions 5,6,13 and 14). Currently 141 tax jurisdictions. https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf

EU: BEPS: Standard of Good Tax Governance

- ECOFIN Council: Since 2018: Transparency, exchange of information, fair tax competition and BEPS 4 Minimum Standards
- **EU**
- Transparency, exchange of information, BEPS 4 Actions: OECD-G20
- Fair Tax Competition: Developed by the EU
- **THIRD (NON-EU) COUNTRIES**
- Standard pre-condition: EU development aid' strategic and economic partnership and free trade agreements. Also used for list of non-cooperative jurisdictions.
- Flexibility to the EU Commission to negotiate the content of the standard that can result in competition among countries.

Goals of international tax rules

- Getting its fair share of revenue from cross-border transactions: Inter-nation equity. Country to protect its domestic tax base.

- Promoting fairness: Equal tax burden on taxpayers with equal income and taking into account the ability to pay of taxpayers.

- Enhancing the competitiveness of the domestic economy: Careful approach to tax incentives and race to the bottom.

Focus

- GLOBAL TAX GOVERNANCE
- INPUT LEGITIMACY: PARTICIPATION, REPRESENTATION IN DECISION MAKING PROCESS.
- OUTPUT LEGITIMACY: OUTCOME- SUSTAINABLE DEVELOPMENT GOALS

Global Tax Governance

Definition:

it "consists of the set of institutions governing issues of taxation that involve cross-border transactions or have other international implications. This definition implies that global tax governance need not, but could, involve a full or partial shift of the power to tax, that is, the right to impose taxes on citizens, to the international level. Currently, the right to tax is firmly tied to the nation-state. While global tax governance circumscribes and shapes a nation's power to tax in various ways, it exclusively consists of institutions governing the interaction among national tax systems"

Thomas Rixen, Peter Dietsch 'Global Tax Governance: What is Wrong with It and How to Fix It' (2011).

Global Tax Governance

Tax Scholars: Fairness, neutrality, sovereignty, role of international organizations in dealing with tax cooperation and tax competition.

- 2003 Brauner "An international tax regime in crystallization". It explores the benefits of a truly global approach to efficiently resolve the challenges in international taxation. Therefore, he proposes a full set of international tax rules in the form of a multilateral treaty.
- 2007: Christians: 'Hard Law and Soft law in International Taxation': To explain the degree of global adherence by countries to various tax practices
- 2009: Ring 'Democracy, Sovereignty and Tax Competition: The Role of Tax Sovereignty in Shaping Tax Cooperation' the question is "how sovereignty shapes arguments over the merits of tax competition and how sovereignty influences the design of responses to tax competition"
- 2013 Dourado. The validity of global standards in tax law in this case, exchange of information

Global Tax Governance

- The boundaries between international tax cooperation and global tax governance are still indistinguishable.

- Some scholars discuss international tax cooperation as part of global tax governance and that if all countries cooperate, then global tax governance will be achieved (Ozai, 2020, Kingma, 2019; Diniz Magalhaes 2018).

- However, other scholars may question the use of the terminology of global tax governance since the use of global governance may involve “imposing outcomes on people, to the benefit of some and at the expense of others” (Hurd, 2020, pp.1 & 20).

Global Tax Governance

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Legitimacy deficits

1. BEPS Inclusive Framework: Peer review input limited from peers due to technical capacity among others. IF only for implementation of BEPS 4 Minimum Standards. MLI different mismatches – bilateral negotiations.

2. Different needs of developing countries, speed of the reforms and the need to balance raising revenue vs attracting investment

- IMF 2019 Corporate Taxation in the Global Economy
- IMF 2019 The Rise of Phantom Investments

3. Alignment with Sustainable Development Goals and the 2030 SDG Agenda

- Ensure responsive, inclusive, participatory and representative decision making at all levels (SDG 16.7)
- Develop effective, accountable and transparent institutions at all levels (SDG 16.6)

Participation

- Participation BEPS Inclusive Framework – Content and coordination with tax administrations of countries regarding decisions/discussions at the BEPS Inclusive Framework. More time to be given to staff preparation for meetings.
- Participation Peer Review Minimum Standards – How to make it effective, and also to contribute to exchange of best practices.

Participation

See FACTI panel:Presentation Kim-Jacinto Henares (former representative Tax Administration Philippines at the BEPS discussion)

https://www.factipanel.org/events/virtual-consultation-session-improving-cooperation-in-tax-matters (min. 16.20)

Taxation and Sustainability

Taxation linked to good governance?

EU as a major political and economic player internationally: To support implementation of international standards (exchange of information and BEPS) smooth and timely in the single market and internationally

Taxation linked to development?

To facilitate the collection of tax revenues (DRM)

Communication from the Commission to the European Parliament and the Council on an External Strategy for Effective Taxation COM/2016/024 final at 5

To assess how BEPS contributes to achieve the 2030 Sustainable Development Agenda?

Taxation and Sustainability

- Were the Sustainable Development Goals (SDGs) and the interests of developing countries to attract investment considered throughout the BEPS Process?
- How the implementation of BEPS will contribute to achieve the SDGs?
- What issues of international taxation, beyond BEPS, should be addressed to fulfill developing countries' need to achieve the 2030 Agenda for Sustainable Development?
- Is the approach to technical assistance holistic and inclusive? How this approach relates to Medium Term Revenue Strategies. How to strengthen the cooperation between countries and donors?

Developing countries: Some solutions

- Training, coordination and communication within the tax administration
- Coordination between OECD, countries with help of Regional Tax Organizations to provide input to peer review reports. Selective choice of countries for peer review.
- Voice of developing countries: Requires long-term investment
- Role of regional tax organizations and consultative academic/expert groups to deal with issues of global tax governance?
- UN should lead the discussions?

Developing countries: Different needs

- BEPS 4 Minimum Standards
  - No allocation of taxing rights (source vs. Residence)
  - Other problems: Informal economy, and need for countries to attract investment
  - Nowadays COVID19 to keep economy going (different incentives) and need to raise revenue (e.g. Different taxes: wealth taxes, digital tax, etc.) See https://www.youtube.com/watch?v=AuK_iBYIIOc&feature=emb_logo (min. 29 and min. 1:12)