Towards legitimacy in global tax governance?

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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.

Implementation BEPS

- Why countries are adopting BEPS? Political decision?
- How the implementation of BEPS minimum standards will take place?
- How does the peer review facilitate monitoring and compliance?
- 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?

Implementation/compliance: BEPS

- Rationalist: Sanctions, cost/benefits, incentives. Internal process/country's own preferences
- Constructivist: Social pressure. External process. Civil society/Parliament discussions.
- Legitimacy and authority
- Managerial: Time and effort in negotiations.

Use of International Relations theories in taxation.

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?

Taxation and Sustainability EU

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?

What has happened until now?

Limited lower-capacity country representation and participation, as well as scarce opportunities for collaboration among these countries to articulate common positions, have meant that developing countries have typically had less influence on setting the Inclusive Framework agenda, establishing priorities and putting forward proposals, often limiting themselves to reacting to other countries' positions.

https://www.oecd.org/tax/oecd-secretary-general-tax-report-g20-finance-ministers-october-2021.pdf

What has happened until now?

Recognising the diverse membership of the Inclusive Framework, which includes different types of non-OECD economies, current chairing arrangements could evolve to comprise ***two co-chairs, including one from a non-OECD/non-G20 economy****. Feedback from regional consultation events on practical ways to* ***enhance inclusivity indicated strong support for greater representation by developing countries in the leadership of the Inclusive Framework and its subsidiary bodies****.*

Similar co-chairing arrangements could be considered for the Working Parties and other subsidiary bodies. In addition, consideration could be given to the revision of the memberships of the steering groups of the subsidiary bodies, to ensure that they more systemically include representatives from a range of non-OECD economies, including lower-capacity countries

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