

# Global Tax Governance: OECD, UN, developed and developing countries

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# 1. Current instruments/proposals

1. League of Nations, OECD and UN (bilateral) 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– EU also following these developments. Also Multilateral Instrument
4. BEPS Taxation of Highly digitalized business
  - Pillar 1 –3 proposals and later proposal Unified Approach OECD Secretariat – Allocation of taxing rights: Nexus (where) and allocation (how).
  - Pillar 2- introduction of a minimum income tax (15%)– consequences for tax incentives).
5. United Nations Framework Convention (under discussion)

## 2. 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).*

# 3. Legitimacy deficits

- Legitimacy developed by other scholars in other areas than tax law F. Scharpf and V. Schmidt.
- Legitimacy provides for a framework to evaluate
  - the participation and representation in decision making (i.e., input legitimacy),
  - the outcome being useful for all stakeholders (output legitimacy) and
  - the process being transparent, inclusive, accountable and open (throughput legitimacy).

# 3. Legitimacy deficits

- Scholars, civil society and countries have expressed in articles and meetings at international and regional level their concerns regarding the legitimacy of the BEPS Project vis-à-vis non-OECD, non-G20 countries.
- 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.

- MOSQUERA VALDERRAMA I.J. (2015) Legitimacy and the Making of International Tax Law The Challenges of Multilateralism World Tax Journal 7(3):344-366.
- MOSQUERA VALDERRAMA I.J. Global Tax Governance in The Oxford Handbook of International Tax Law. Eds. F. Haase and G. Kofler. Oxford University Press. 1007-1024.
- MOSQUERA VALDERRAMA I.J. Throughput Legitimacy of the peer review process of the BEPS 4 Minimum Standards: A case study. Intertax. Vol 52. Issue 3.

## 4. 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>

## 4. 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 bureaux or 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*



## 4. What has happened until now?

Regional organizations have created new committees to address taxation and to enhance legitimacy in international tax law making

The African Union created in 2020, an Extraordinary Specialized Technical Committee (STC) on Finance, Monetary Affairs, Economic Planning and Integration This Committee has been convened under the theme, Securing Africa's Taxing Rights, Stemming Illicit Financial Flows and developing payment system for AfCFTA.

A Regional Tax Cooperation Platform for Latin American and the Caribbean created in July 2023.

## 4. What has happened until now?

Furthermore at international level, the African Group at the United Nations has led the adoption in November 2022 of a UN Resolution to develop a globally inclusive new tax framework and in November 2023 of an UN Resolution to develop an international tax framework Convention under the auspices of the UN.

As a result, an ad hoc intergovernmental committee has been mandated to develop the terms of reference for the development of such convention. It is expected to finalize the Committee's work by August 2024.

See also Roundtable: UN vs. OECD – Quo Vadis International Tax Governance? 23 November [[Recording](#)]

# 5. Legitimacy to inclusiveness

- *If the decision making took place at the OECD level with the political mandate of the G20, have non-OECD, non G20 countries truly participated in the decision-making process?*
- *If not, is the creation of networks such as the Global Transparency Forum and BEPS Inclusive Framework enough to justify the legitimacy of the decision-making process?*
- *Despite the work done by the OECD and the G20 in the BEPS Project and Pillar 1 and Pillar 2, should decision-making take place at the OECD level, or rather at the United Nations level, and if so, how?*

See Inaugural Lecture at Leiden University: Global Tax Governance: Legitimacy and Inclusiveness. Why it matters

*The book version can be downloaded [here](#). Recording inaugural lecture available [here](#)*

# 6. UN challenges

## **Stakeholders/countries (participation/representation decision making process)**

- Role of developing countries vs. developed countries? Rotation/representative/same interests? E.g. Africa, Caribbean, Latin America.
- Decision making by Consensus vs. qualified majority?
- Technical assistance and limited resources to participate still a problem. How to solve that?

## **Rules (outcome)**

Framework Convention- terms of reference? Multilateral instruments? Achievement of the SDGs?

## **Process**

Transparent, inclusive, accountable and open

# Challenges

In BEPS, Pillar One and Pillar Two and further development of international rules at OECD or UN level , important to find out

- How countries including developing countries can benefit from these initiatives?
- What needs to be done to also give a voice to developing countries?

All countries should have a voice, but this also means that training and knowledge is needed so that all countries can exercise that voice.

# **III. How Can Regional Cooperation Help the Enhancement of Regional Economic**

## **Development and Strengthen the Voices of Developing Countries in Global Tax Negotiations?**

**Mosquera I.J. Forthcoming 2024 The Journal of World  
Investment & Trade.**

- Despite the importance of regional integration to achieve development, attention should be given to the proliferation of regional initiatives that may result in a lack of take up by countries of these initiatives.
- The mapping of the initiatives shows that countries are members of several different initiatives /agreements/organizations.
- E.g. Rwanda: East African Community (EAC), the Southern Africa Development Community (SADC), the Common Market for Eastern and Southern Africa (COMESA), the Economic and Monetary Community of Central Africa (CEEAC), the African Union, and the Organization for African, Caribbean and Pacific States (OACPS).



Countries may want to participate in several agreements which may have the same or similar objectives, and in some cases, to withdraw from one or another, in order to focus on another agreement.

This is the case of South Africa that has decided to withdraw from the OACPS which has been negotiating the EU-ACP (Post-Cotonu Agreement).

The mapping of regional initiatives ***shows that more coordination is needed in order to strengthen the role of the regions in global tax negotiations not only at the BEPS Inclusive Framework but also at the United Nations level.***

The UN Resolution has stressed the need to take into account the work of other relevant forums, potential synergies and complementarities available in multiple institutions involved in international tax cooperation at international, local and regional level, BUT

How this Framework can operate in a regional context?  
Are regional organizations necessary for strengthen the voice of developing countries in UN discussions? Role of Africa as continent, or focus on geographical areas within Africa?

***Still not clear, what would be the role of regional tax organizations and regional tax cooperation frameworks in facilitating the work of this ad hoc intergovernmental committee.***

In addition, countries such as Colombia and Chile (member of the OECD) have decided to initiate regional discussions to address the problems of Pillar 1 and Pillar 2 in a regional setting mainly throughout the creation of the Regional Tax Cooperation Platform for Latin American and the Caribbean

This shows that ***multilateral initiatives are still far from being the only solution for all problems of international tax cooperation***, and that international organizations such as the OECD, and the UN as well as political forums ***will need to take consensus and legitimacy, and regional organizations perspectives*** into account when designing multilateral tax initiatives.

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