

# Legal transplants and international tax standards

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# Topics

**Legal transplants and legal culture**

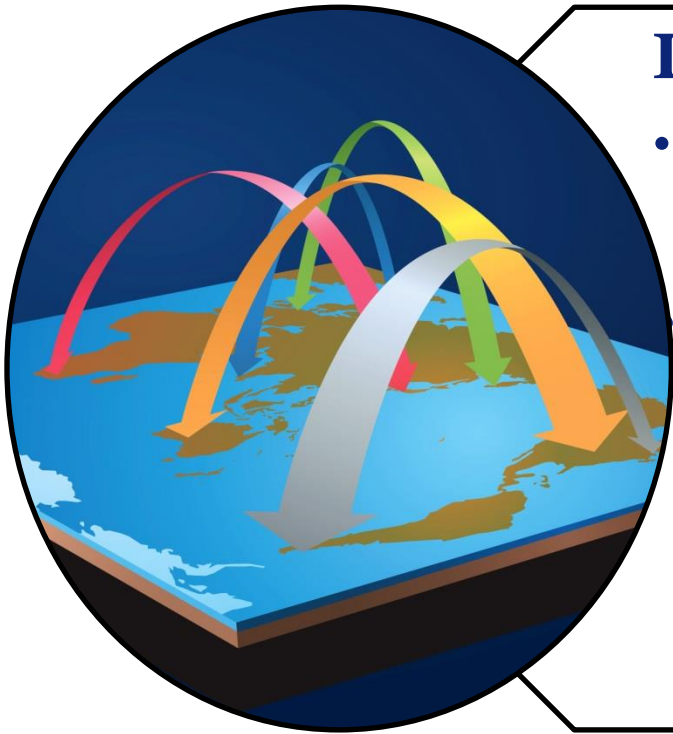
**International tax standards**

**Socio-legal methodological approach**

**Case study: The Netherlands**



# 1. Legal transplants and legal cultures



## Legal transplants

- “Moving of a rule or a system of law from one country to another” (*Watson 1974*)

## Legal cultures

- “how culture shapes the operation of formal legal institutions’ in a legal system” (*Gibson and Caldeira, 1996*)

# 1. Legal transplants and legal cultures

## Reasoning for legal transplants

- (i) authority (*Watson, 2002*)
- (ii) prestige and imposition (*Sacco, 1991*)
- (iii) chance and necessity (*Örücü, 1999*),
- (iv) expected efficacy of the law (*Berwowitz et al, 2000*),
- (v) political, economic and reputational incentives (*Schauer 2000*).

Law in the books vs. law in action  
(*Ewald 1978*)

## Relevance

Placing law in context (*Nelken 2010, Sousa de Santos 2002 and Tamanaha 2008*).

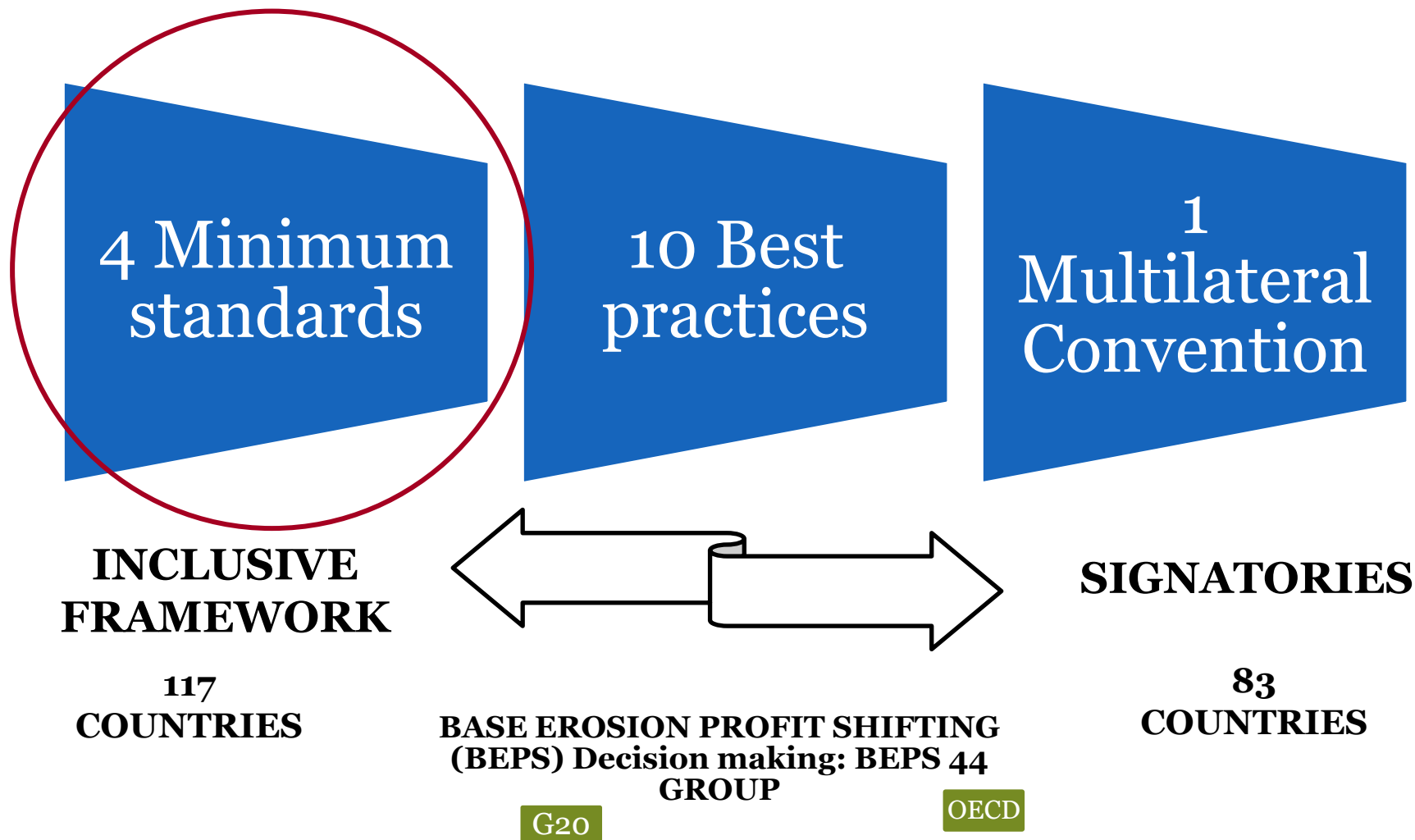
Local tuning and cross-fertilization (*Örücü, 2002*)

## 2. International tax standards

### LEGAL TRANSPLANT OF BEPS

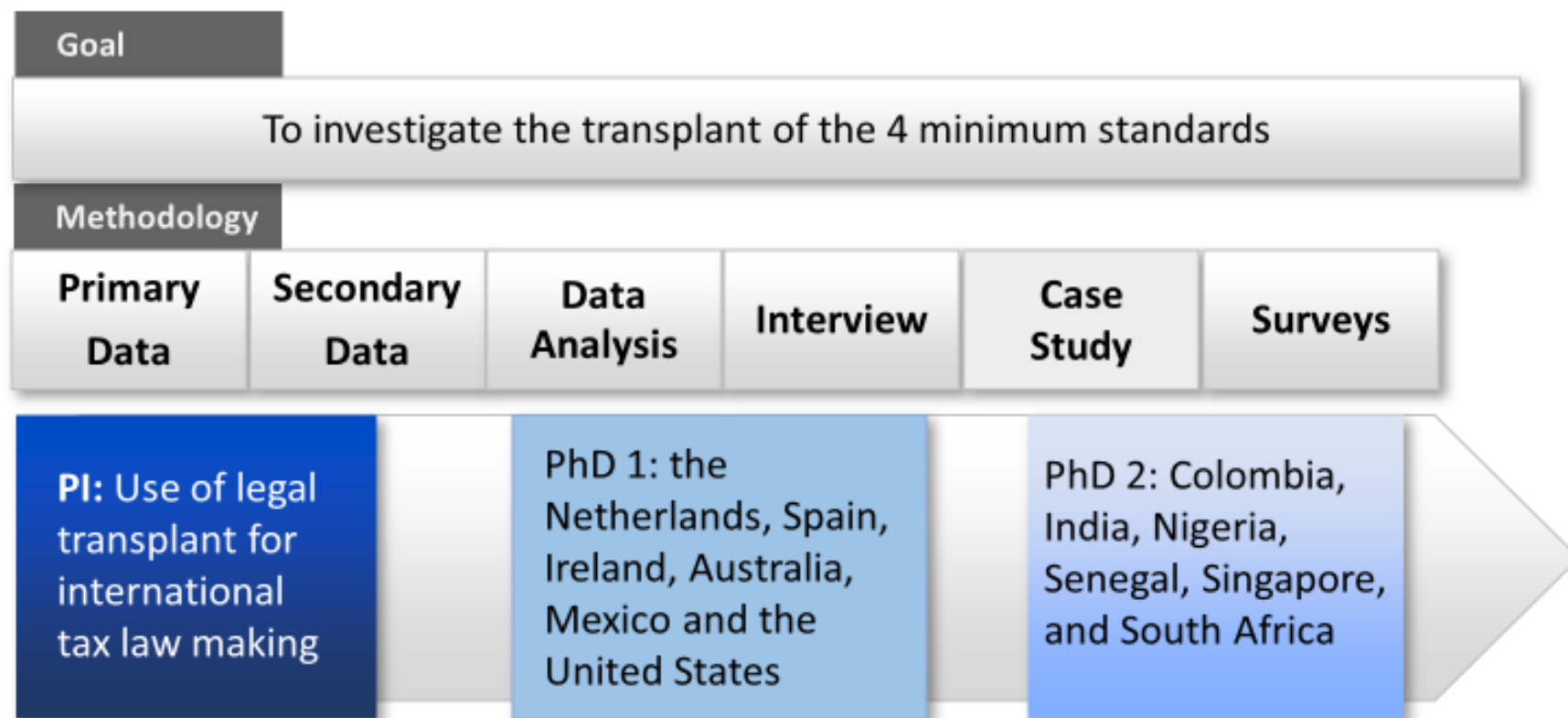
- OECD organization with a networking role for the spread of best practices (*Keohane et al, 2009*)
- Due to the G20 political mandate, the OECD introduced the project to tackle profit shifting by multinationals (BEPS)
- OECD, G20 and OECD Accession countries participated in the decision making (BEPS 44 group)
- In the BEPS Inclusive Framework, 117 countries participate on the implementation of BEPS 4 Minimum Standards (Actions 5, 6,13 and 14)
- 73 countries did not participate in BEPS decision making process

## 2. International tax standards

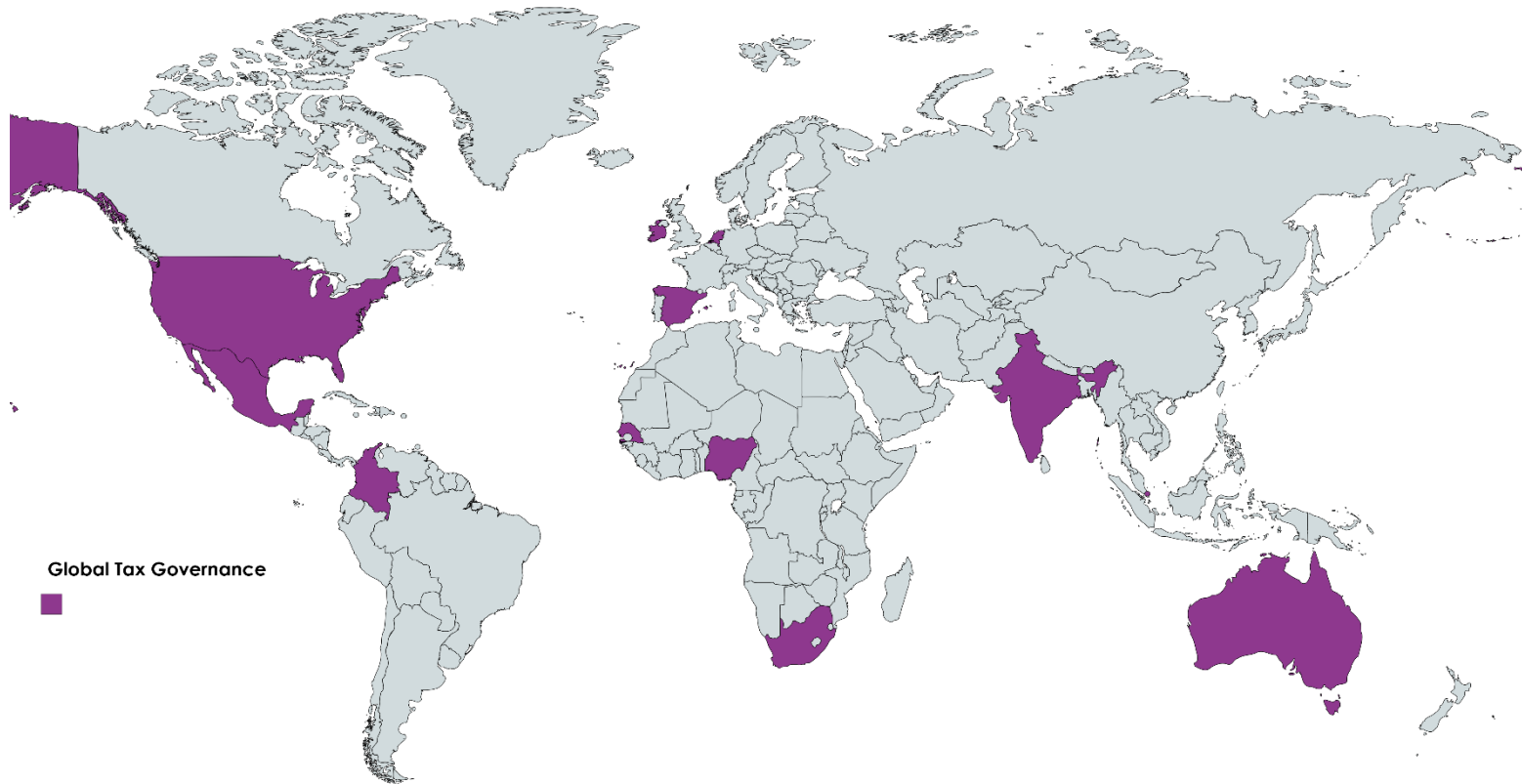


# 3. Socio-legal methodological approach

## FIRST RESEARCH OBJECTIVE: FEASIBILITY



# Global Tax Governance: GLOBTAXGOV





## 4. Case study: The Netherlands

- Open economy, 9<sup>th</sup> largest export economy in the world
- Legal system: Mixed approach — civil law in private law and common law in case law and trade law (*Smits 1998*) —
- Tax system: Northern European tax system influenced by civil law, common law and German tradition (*Thuronyi 2003*)

### STARTING POINT FOR ANALYSIS

- Tax law: Local context: Political, legal and cultural context (*Mosquera 2007; Omri 2010*)
- Tax culture: To identify the role of the different parties in the transplantation and in the development of tax rules to implement BEPS

# 4. Case study: The Netherlands

- Developed country: member of the OECD; BEPS 44 group and BEPS Inclusive Framework
- Member of the EU: Required to implement:
  - Some of the BEPS best practices: EU Anti-tax Avoidance Directives ATAD 1 and 2; Administrative cooperation Directive (mandatory disclosure)
  - Some EU initiatives go further than BEPS: Exit taxation and general anti-avoidance rule in ATAD 1
- Political context
  - Leaks: Panama papers and Paradise papers and civil society
  - The Netherlands makes it easy for multinationals to avoid taxation
  - The Dutch government wants to overturn this image

*Implements BEPS 4 Minimum Standards, implements EU rules and changes two main features of the tax system (ruling practices, and the treatment of interest and royalty payments)*

# 4. Case study: The Netherlands

## Legal transplant and context

- Why is the Netherlands adopting BEPS? Focus on Minimum Standards and some reference to best practices
- How is the Netherlands adopting BEPS?
- Historical development of the BEPS rules in the Netherlands
- Are the rules going further than BEPS? Due to EU? Political change of image?
- Are BEPS rules the same? Or have they changed upon transplantation?
- The mismatch between the BEPS and the current tax rules of the selected countries (e.g. arbitration, defensible position of the taxpayer)
- Problems that these countries have in implementing BEPS and the solutions: Share experiences and best practices

# 4. Case study: The Netherlands

## Tax culture

- Preliminary Analysis of primary data:
  - Political changes influence the implementation of BEPS in the Netherlands
  - Parliament and Government documents: Principles play a role in BEPS: Equality, certainty, transparency, and in some cases proportionality (rulings)
  - Are these principles the same for business? Tax advisors? Business associations? What principles are important for them?
- Tax culture
- Role of the different parties in the transplant of BEPS and in the development of tax rules to implement BEPS
- Tax culture: tax law makers, taxpayers, tax administration, courts with tax competence, business associations and tax advisors (Role of the courts and tax administration in BEPS Action 6 ).

## Visit us at

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