

# Legal transplants and international tax standards

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# Topics

**Legal transplants and legal culture**

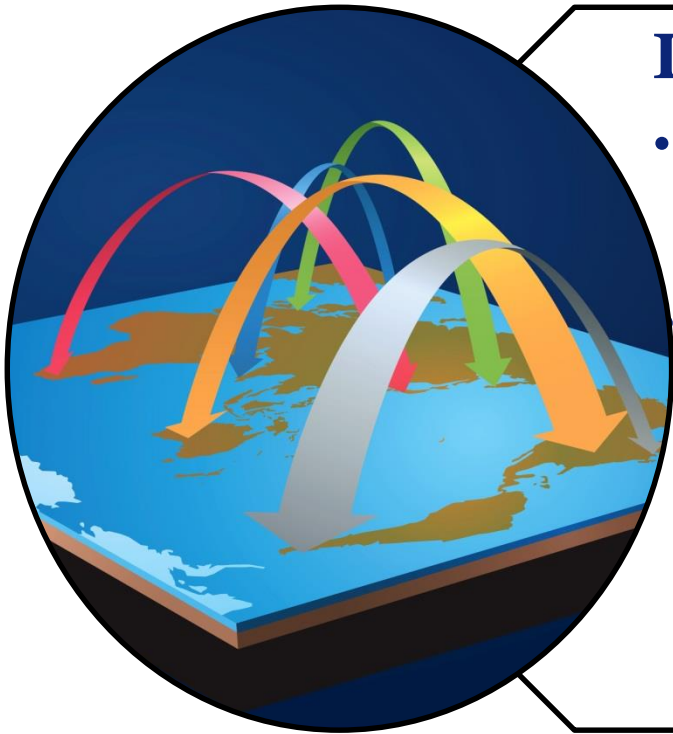
**International tax standards**

**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*).

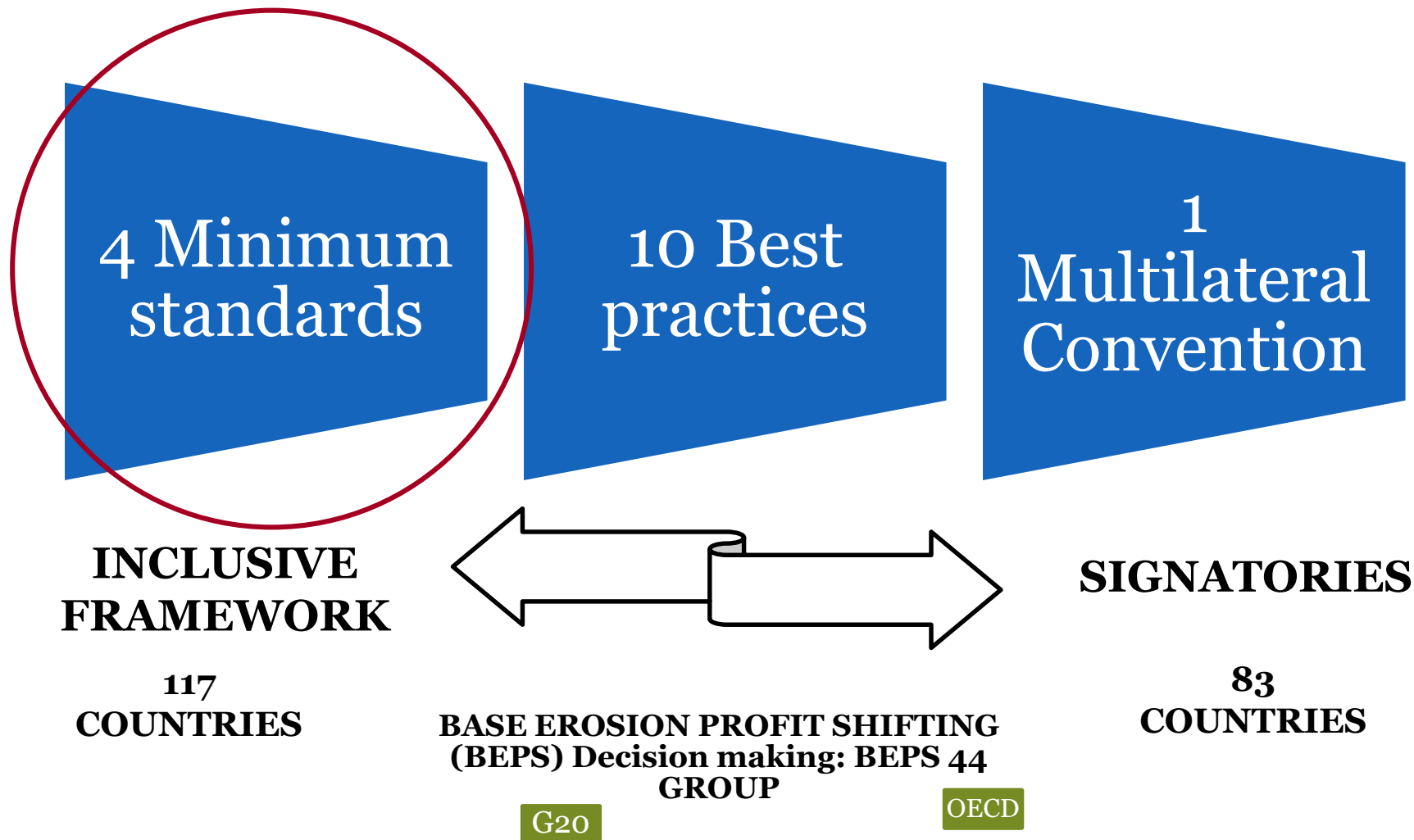
Local tuning and cross-fertilization (*Örücü, 2002*)

## 2. International tax standards

### LEGAL TRANSPLANT OF BEPS

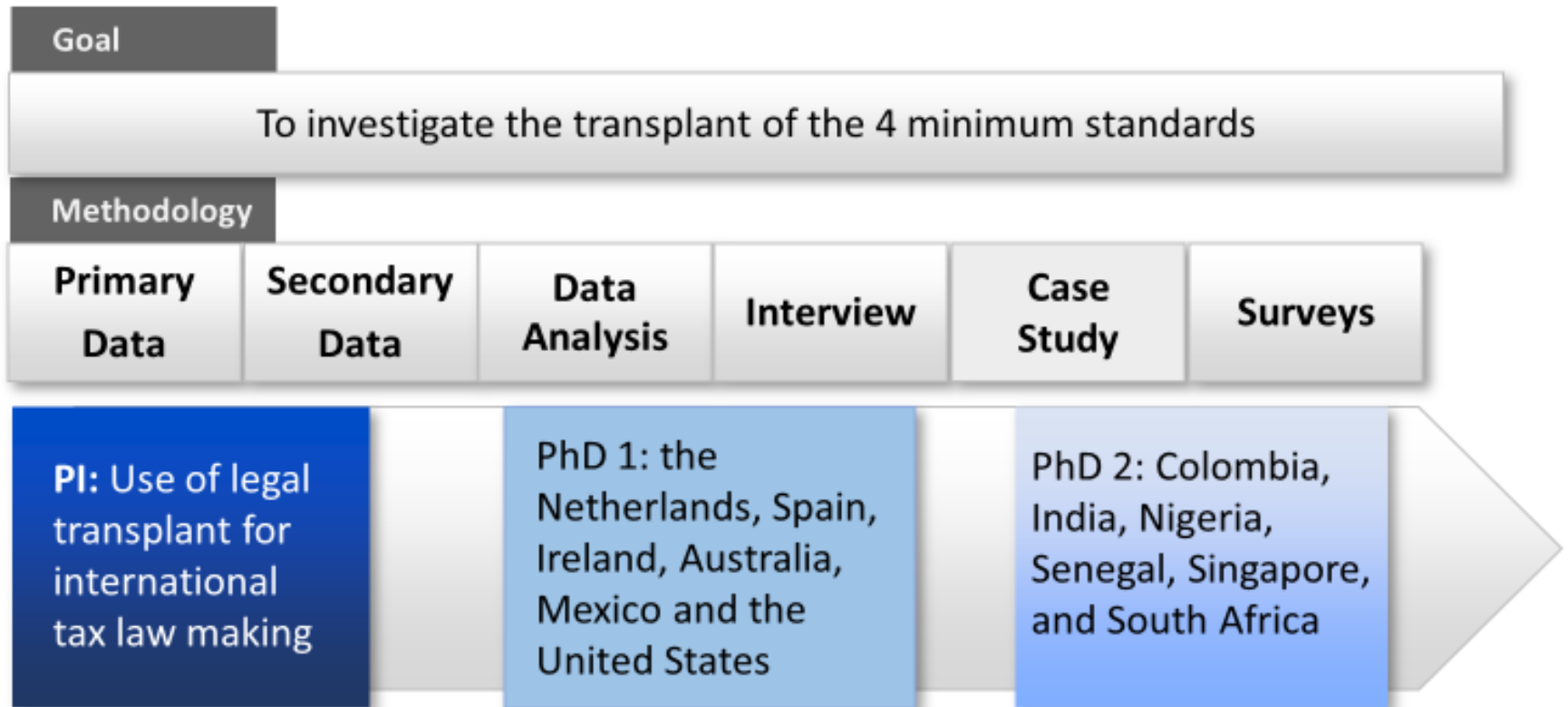
- OECD organization with a networking role for the spread of best practices (*Keohane et al, 2009*)
- Due to the G20 political mandate, the OECD introduced the project to tackle profit shifting by multinationals (BEPS)
- OECD, G20 and OECD Accession countries participated in the decision making (BEPS 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

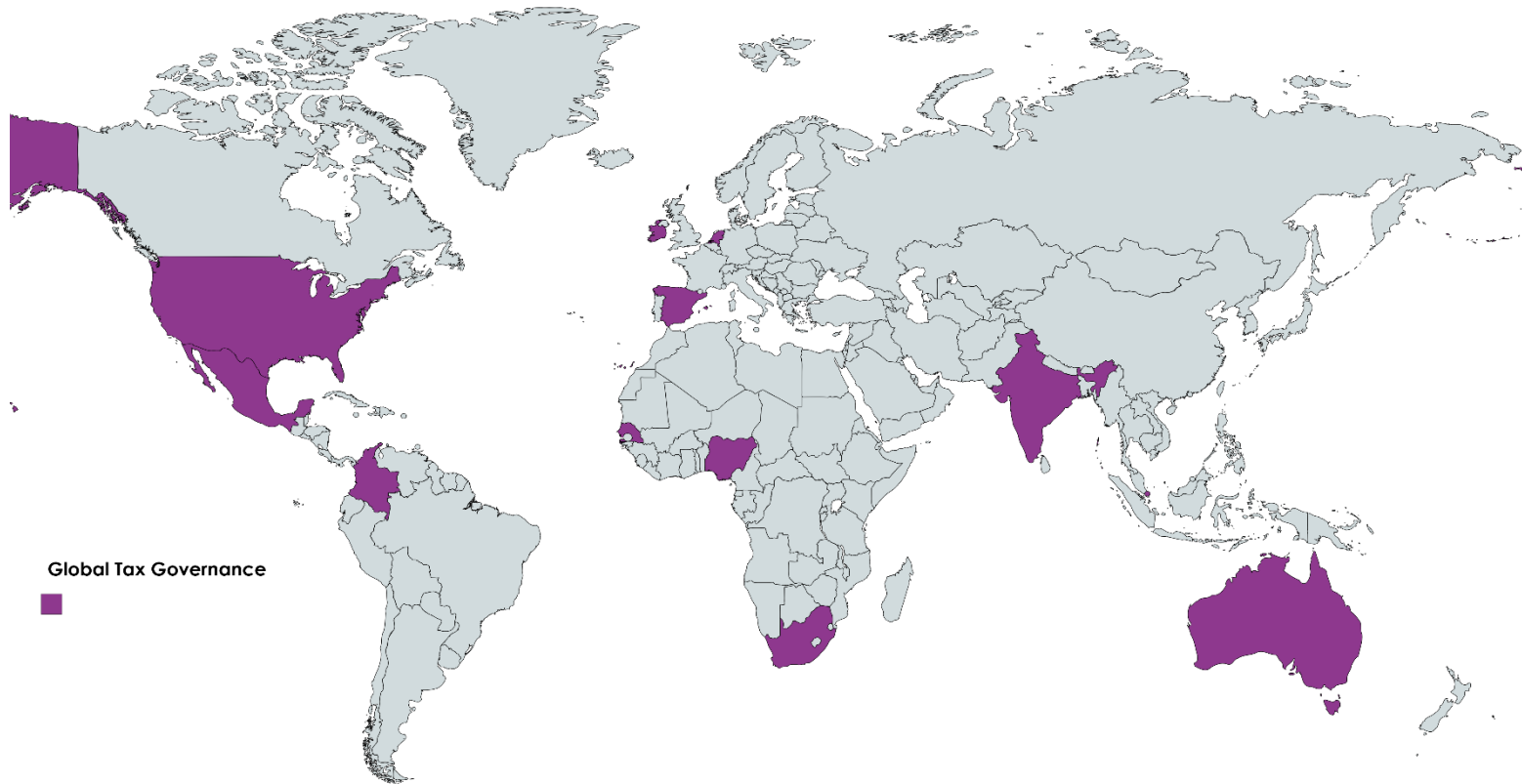


# 3. Socio-legal methodological approach

## 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 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 easy for multinationals to avoid taxation
  - The Dutch government wants to overturn the image

*Implement 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

1. Why is the Netherlands adopting BEPS? Focus Minimum Standards and some reference to best practices
2. 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?
3. 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)
4. Problems that these countries have in implementing BEPS and the solutions: Share experiences and best practices

# 4. Case study: The Netherlands

## Tax culture

### 1. Preliminary Analysis 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?

### 2. 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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- **GLOBTAXGOV project receives funding from the EU H2020 Research & Innovation Programme and European Research Council**  
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