Setting the scene: tax, investment, PIL and trade

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Challenges international taxation

- Main problem: Double taxation or double non taxation (no tax at all)
- Double taxation: More than one country seek to tax without reference to the other tax levied in the other country (discourages investment- barrier to international transactions)
- Double non-taxation: No country may tax: assumption that another country is taxing or as a result of tax planning, tax evasion or tax avoidance. (revenue loss).
- How to tax? If there is no linkage to the country or it is difficult to know what kind of activities the other person is carrying abroad.

Challenges international taxation

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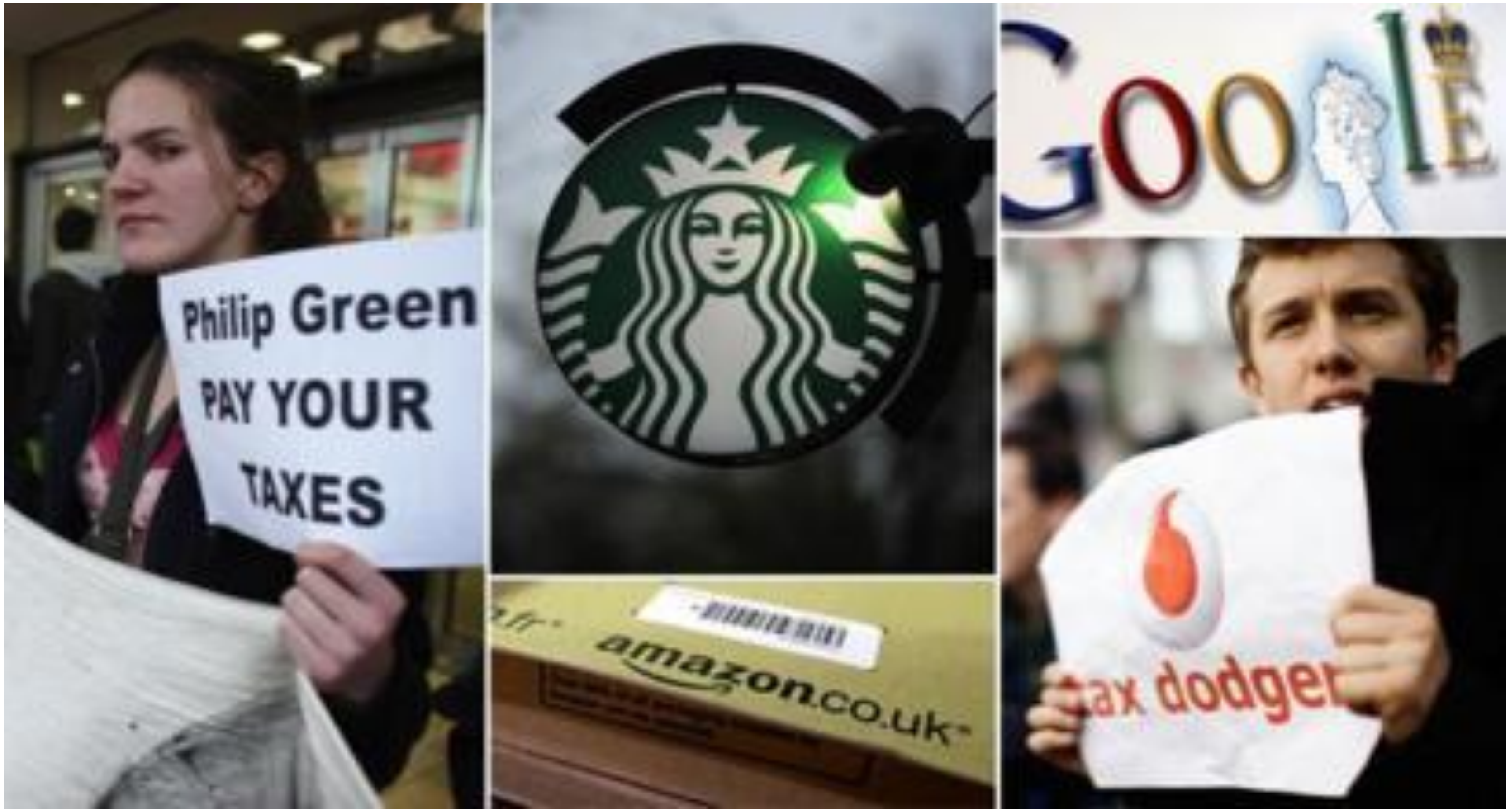


Challenges international taxation

Challenges: To find the income, to tax it, to enforce the tax and to make companies to comply with tax.

- Complexity of the transactions resulting in double non-taxation, or low taxation.
- Lack of information exchange between tax administrations
- Use of tax havens

Challenges different for developing and developed countries. Developing countries lack of resources, and advance knowledge of international taxation to tackle complex transactions.

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 Taxation of Highly digitalized business
    1. Pillar 1 –3 proposals and 9th October proposal Unified Approach OECD Secretariat – Allocation of taxing rights: Nexus (where) and allocation (how)
    2. Pillar 2- introduction of a minimum income tax – consequences for tax incentives).

TAX GOVERNANCE – OECD and G20: BEPS

4 Minimum standards

10 Best practices

1 Multilateral Convention

INCLUSIVE FRAMEWORK

134 JURISDICTIONS

BASE EROSION PROFIT SHIFTING (BEPS) Decision making: BEPS 44 GROUP

G20

OECD

SIGNATORIES

89 JURISDICTIONS

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

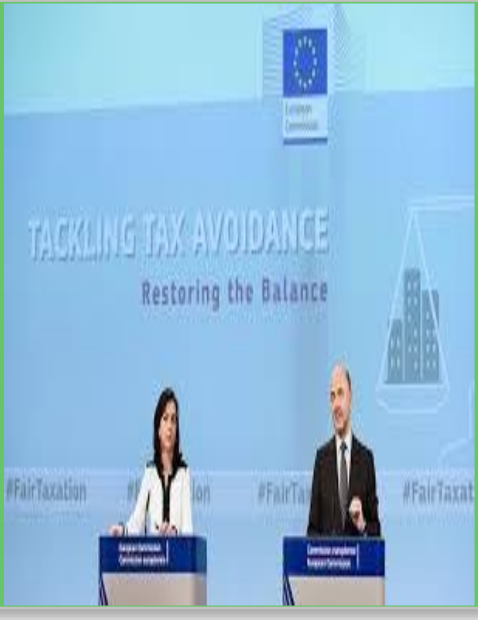
- IMF 2019 Corporate Taxation in the Global Economy
- IMF 2019 The Rise of Phantom Investments

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

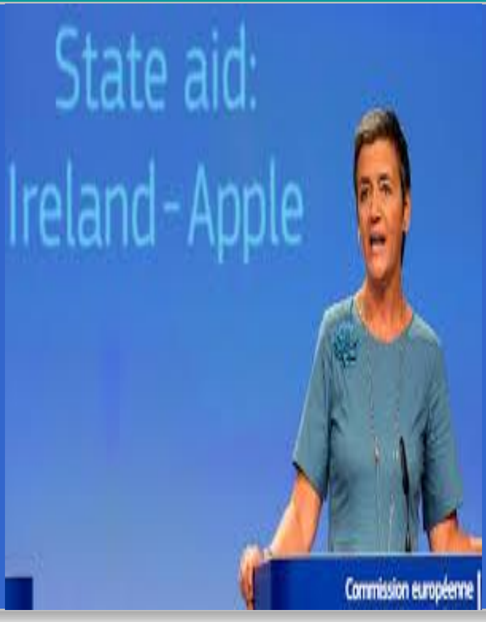
- Ensure responsive, inclusive, participatory and representative decision making at all levels (SDG 16.7)
- Develop effective, accountable and transparent institutions at all levels (SDG 16.6)

TAX GOVERNANCE: EU AND THIRD COUNTRIES

Anti-Tax Avoidance Directive



State Aid Investigations



Standard of Good Tax Governance

Intertwined relationships

Public International Law:

- Use of public international law for the multilateral instrument: Mechanics and design (coexistence, opt-in, opt-out, MLI provisions to replace DTT language (art 7), modify parallel clauses (art. 5), complement them (-in the absence of art. 16(4)(b)(i)).
- Discussion of taxpayer as non-state actors. Setting up of standards that can emerge as customary international law
- Investment Law
- Use of the MLI as a model for the amendments to bilateral investment treaties (IIAs). Submission Colombia to current UNCITRAL negotiations.

Trade Law

- Discussion consequences of digitalization proposals on trade, and work done by WTO in e-commerce (moratorium on customs duties on electronic transmissions).

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