

# Nexus and developing countries : the impact of OECD Pillar 1 and Pillar 2

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A NEW MODEL OF GLOBAL GOVERNANCE IN INTERNATIONAL TAX LAW MAKING



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# 1. What is the real problem?

## Principles

- OECD: Global fair, sustainable and modern tax systems.
- Civil society: Fairness: Fair share by MNEs

## Aims

- Pillar 1: Value creation? Nexus: market/ intangibles/data?
- Pillar 2: (Co-ordinated) Tax competition? Also value creation? see EU

## But what is the real problem?

- Allocation of taxing rights? More taxing rights to source (mainly developing) countries?
- Taxing MNEs: Develop multilateral norms to deal with prisoner dilemma-type of situations (e.g. aggressive tax planning, tax competition) (Broekhuijsen 2018) – US; OECD/G20; Developing countries
- How the discussion of nexus can help this prisoner's dilemma?

# 1. EU -GLOBE

## Resolution Parliament December 2019:

- *Welcomes the GloBE proposal, which aims at ensuring that a minimum level of tax is paid where value is being created and where economic activity is taking place; considers that the ultimate aim of the Pillar Two measures should be to address remaining BEPS issues while preventing damaging tax competition, notably by reducing pressures to grant unjustified tax incentives without any positive economic impact, on top of existing measures aimed at tackling tax evasion, aggressive tax planning and tax avoidance;*
- *Recommends that all of the harmful tax practices contained in BEPS Action 5 are covered by the GloBE proposal*

Fair taxation in a digitalised and globalised economy - BEPS 2.0. P9\_TA(2019)0102

## 2. What has happened until now?

### International organizations

- **OECD**

- Pillar1: BEPS Action1, Interim Report, Report, OECD Unified approach, Blueprint
- Pillar 2: Consultation, Blueprint

- **UN**

- Pillar 1: UN Subcommittee, No consensus (Oct. 2019), UN Proposal Art. 12B (Aug. 2020)

### Countries positions

- Unilateral taxes (Digital Taxes)
- Complexity of rules; fast pace (developing countries: ATAF and CIAT meetings)

### Scholars contributions (e.g.)

- Different perspectives between developed and developing countries (Riccardi 2020)
- A new taxing right for market jurisdiction (Buriak 2020)
- GLoBE – Precedence of measures Pillar 2 and BEPS Actions (Dourado editorial 2020)
- Articles on digital economy and proposals Pillar 1 (Intertax, TNI, etc.);
- Meaning value creation (Becker & English 2018; Christians 2018, Deveraux & Vella 2018).

### 3. Where is the nexus?

- Nexus: Qualifying connection
- The nexus as principle of customary tax law aims to ascertain tax jurisdiction by finding a qualifying connection between the taxpayer/tax activity and the taxing State. (Gadzo 2018)
- The consequence of the nexus principle, being regarded as a rule of international customary tax law, is the prohibition of income taxation in the absence of any personal or territorial nexus (Kokott 2019)
- If Pillar 1 and Pillar 2 to solve prisoner's dilemma situations, how the nexus can help?
- Nexus: market (user/consumer); intangibles; significant economic presence. In GLoBE what is the nexus?
- How nexus will help developing countries achieving economic development and 2030 SDGs?

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