

# Global Tax Governance and the OECD BEPS Project

Irma Johanna Mosquera Valderrama Associate Professor of Tax Law– Principal investigator *EU-ERC GLOBTAXGOV*

EU Tax Summer School: The EU Initiatives addressing Tax Evasion and Tax Avoidance



Universiteit  
Leiden  
The Netherlands



European  
Research  
Council

# 1. Objectives: International Taxation

- Double taxation: Before BEPS
- Double non taxation: After BEPS
- Tax evasion and Aggressive Tax Planning including treaty shopping: After BEPS

OECD

<https://www.youtube.com/watch?v=3W4orxYM18k>

Civil society/public perception

<https://www.taxjustice.net/2016/07/29/video-guide-legal-tax-evasion/>

# 1. Objectives: International taxation

- Country's fair share of revenue
- Equal tax burden on taxpayers.
- Competitiveness of the domestic economy.

## 2. Challenges to international taxation

*How to tax: If there is no link to the country or it is difficult to know what kind of activities the other person is carrying abroad.*

- a) Lack of information of assets/activities carried abroad

EOI (AEOI)

FATCA and CRS for financial accounting information

<https://www.oecd.org/tax/automatic-exchange/common-reporting-standard/>

# 2. Challenges international taxation

b) Link to the country:

- international mobility of high skilled workers

<https://www.youtube.com/watch?v=Psn4fgAWR68>

- digital economy: where are the services being performed? And taxed on users/market, digital permanent establishment (significant economic presence)? <https://www.oecd.org/going-digital/tax-and-digitalisation.pdf>

# 3. 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 later 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).

# 3. OECD/G20 Developments

- BEPS 44 Group decided the content of the BEPS Actions (OECD and G20)
- Extended to non-OECD; non-G20 Countries: BEPS Inclusive Framework for BEPS 4 Minimum Standards (Actions 5,6,13 and 14). Currently 139 tax jurisdictions.  
<https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf>

# 3. OECD/G20 development

- Multilateral instrument to modify bilateral tax treaties.  
Coexistence of bilateral and multilateral instrument.

Convention in force (July 2018), but only in force for the country after deposit instrument of ratification. Signed by more than 90 tax jurisdictions (currently ratified by more than 40)

Text MLI <https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf>



# 4. 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).*

# 4. Global Tax Governance

Tax Scholars: Fairness, neutrality, sovereignty, role of international organizations in dealing with tax cooperation and tax competition.

- 2003 Brauner “An international tax regime in crystallization”. It explores the benefits of a truly global approach to efficiently resolve the challenges in international taxation. Therefore, he proposes a full set of international tax rules in the form of a multilateral treaty.
- 2007: Christians: ‘Hard Law and Soft law in International Taxation’: To explain the degree of global adherence by countries to various tax practices
- 2009: Ring ‘Democracy, Sovereignty and Tax Competition: The Role of Tax Sovereignty in Shaping Tax Cooperation’ the question is “how sovereignty shapes arguments over the merits of tax competition and how sovereignty influences the design of responses to tax competition”
- 2013 Dourado. The validity of global standards in tax law in this case, exchange of information

# 4. Global Tax Governance

- The boundaries between international tax cooperation and global tax governance are still indistinguishable.
- Some scholars discuss international tax cooperation as part of global tax governance and that if all countries cooperate, then global tax governance will be achieved (Kingma, 2019 p.405; Ozai, 2020 p.14).
- However, other scholars may question the use of the terminology of global tax governance since the use of global governance may involve “imposing outcomes on people, to the benefit of some and at the expense of others” (Hurd, 2020, pp.1 & 20).

# 4. Global Tax Governance

- Brauner, Yariv. (2002). An international tax regime in crystallization. *Tax L. Rev.*, 56, 259
- Christians, A. (2007a). Hard Law, Soft Law, and International Taxation. *Wis. Int'l LJ*, 25, 325.
- Dietsch, P., & Rixen, T. (2016). Global tax governance: What it is and why it matters. *Global Tax Governance: What Is Wrong with It and How to Fix It*, 1–23.
- Dourado, A. P. (2013). Exchange of information and validity of global standards in tax law: Abstractionism and expressionism or where the truth lies.
- Hurd, I. (2020). The case against international cooperation. *International Theory*, 1–22.
- Kingma, S. (2019). Inclusive global tax governance in the post-BEPS era. IBFD Publications
- Ring, D. (2009). Who is Making International Tax Policy: International Organizations as Power Players in a High Stakes World. *Fordham Int'l LJ*, 33, 649.
- Ozai, I. (2019). Institutional and Structural Legitimacy Deficits in the International Tax Regime, *World Tax Journal* 12(1), 53-78
- Mosquera Valderrama, I. J. (2015). Legitimacy and the making of international tax law: The challenges of multilateralism. 7:3 *World Tax J.* IBFD Publications.
- Mosquera I.J. Global Tax Governance in Oxford Handbook on International Tax. Eds. F. Haase and G. Kofler. Oxford University Press. Forthcoming 2022.

# 5. Implementation BEPS

- ❑ Why countries are adopting BEPS? Political decision?
- ❑ How the implementation of BEPS minimum standards will take place?
- ❑ How does the peer review facilitate monitoring and compliance?
- ❑ How the implementation of BEPS will contribute to achieve the SDGs?
- ❑ What issues of international taxation, beyond BEPS, should be addressed to fulfill developing countries' need to achieve the 2030 Agenda for Sustainable Development?

# 5. Implementation/compliance: BEPS

- ❑ Rationalist: Sanctions, cost/benefits, incentives.  
Internal process/country's own preferences
- ❑ Constructivist: Social pressure. External process. Civil society/Parliament discussions.
- ❑ Legitimacy and authority
- ❑ Managerial: Time and effort in negotiations.

Use of International Relations theories in taxation.

# 6. Developed countries: The Netherlands

## CIVIL SOCIETY

SOMO (Centre for Research on Multinational Corporations).: Capital flight

<https://www.somo.nl/tax-avoidance-everything-you-need-to-know/>

- Video

<https://www.youtube.com/watch?v=8ocm42ytXto&feature=youtu.be>

The Netherlands as tax haven <https://www.somo.nl/nl/the-netherlands-a-tax-haven/>

- The 2013 Report analyze the question: Should the Netherlands sign tax treaties with developing countries? <https://www.somo.nl/wp-content/uploads/2013/06/Should-the-Netherlands-sign-tax-treaties-with-developing-countries.pdf>
- The 2020 Report analyzes the differences between the Dutch tax treaty policy and the treaty policy of developing countries <https://www.somo.nl/dutch-tax-treaty-policy-very-different-from-practice-when-it-comes-to-developing-countries/>

## NEWS

- <https://www.theguardian.com/world/2017/jul/25/netherlands-and-uk-are-biggest-channels-for-corporate-tax-avoidance>

# 6. Developed countries: The Netherlands

Government (Letter State Secretary of Finance to Dutch Parliament)

- 2013 decision to introduce treaty abuse provisions in tax treaties with at least 23 developing countries. Letter of 30 August 2013.
- 2017 Application of the MLI to these countries even if negotiation of tax treaty is pending or has not been finalized. The main reason is that in case that the re-negotiations to introduce a treaty anti-abuse rule (main purpose test) are not successful, then, the MLI can be an alternative way to include the treaty anti-abuse rule (principal purpose test). Letter of 21 March 2017 to the Dutch Parliament
- 2020 with 14 of the 23 countries there is already an agreement to introduce a treaty abuse provision (either bilaterally or through the MLI). Ethiopia, Egypt, Georgia, Ghana, India, Indonesia, Kenya, Malawi, Morocco, Nigeria, Ukraine, Uzbekistan, Pakistan and Zambia. Some of the remaining countries which are still in the re-negotiation process are: Bangladesh, Kirgizia, Moldavia, Uganda, Sri-Lanka, and Vietnam. Letter of 21 September 2020.



# 6. Developed countries: The Netherlands

Also introduced withholding tax on interest and royalties

Currently being discussed withholding tax on dividends (as of 2024)

<https://www.government.nl/latest/news/2021/03/25/dividend-withholding-tax-bill-submitted>

*The new tax will enable the Netherlands to tax dividend payments to countries that levy too little or no tax. The measure will apply to dividend flows to countries with a corporate tax rate of under 9% and to countries on the European Union's list of non-cooperative tax jurisdictions.*

See also

- IMF 2019 [Corporate Taxation in the Global Economy](#)
- IMF 2019 [The Rise of Phantom Investments](#)

# 7. Developing countries: 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
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)

# 7. Developing countries: Participation

See FACTI panel: Presentation Kim-Jacinto Henares (former representative Tax Administration Philippines at the BEPS discussion)

<https://www.factipanel.org/events/virtual-consultation-session-improving-cooperation-in-tax-matters> (min. 16.20)

# 7. Developing countries: Participation

- 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.

# 7. Developing countries: Some solutions

- Training, coordination and communication within the tax administration
- Coordination between OECD, countries with help of Regional Tax Organizations to provide input to peer review reports. Selective choice of countries for peer review.
- Voice of developing countries: Requires long-term investment
- Role of regional tax organizations and consultative academic/expert groups to deal with issues of global tax governance
- UN should lead the discussions.

# 7. Developing countries: Different needs

- BEPS 4 Minimum Standards
  - No allocation of taxing rights (source vs. Residence)
  - Other problems: Informal economy, and need for countries to attract investment
  - Nowadays COVID19 to keep economy going (different incentives) and need to raise revenue (e.g. Different taxes: wealth taxes, digital tax, etc.) See [https://www.youtube.com/watch?v=AuK\\_iBYIIOc&feature=emb\\_logo](https://www.youtube.com/watch?v=AuK_iBYIIOc&feature=emb_logo) (min. 29 and min. 1:12)

# Alignment with SDGs and 2030 SDG Agenda

- Were the Sustainable Development Goals (SDGs) and the interests of developing countries to attract investment considered throughout the BEPS Process?
- How the implementation of BEPS will contribute to achieve the SDGs?
- What issues of international taxation, beyond BEPS, should be addressed to fulfill developing countries' need to achieve the 2030 Agenda for Sustainable Development?
- Is the approach to technical assistance holistic and inclusive? How this approach relates to Medium Term Revenue Strategies. How to strengthen the cooperation between countries and donors?

# Alignment with SDGs and 2030 SDG Agenda

- Lips W. & Mosquera Valderrama, I. J., Global Sustainable Tax Governance in the OECD-G20 Transparency and BEPS Initiatives. 14th GREIT Annual Conference Tax Sustainability in an EU and International Context. IBFD Publications (book chapter)
- Mosquera Valderrama, I. J., Lesage, D., & Lips, W. (2018). Tax and development: The link between international taxation, the base erosion profit shifting project and the 2030 sustainable development agenda. UNU-CRIS Working Paper Series, 34.



# 8. BEPS Pillar 1 and 2: What is the problem?

## 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) – US; OECD/G20; Developing countries

# 8. What has happened until now?

## 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).

## See also roundtable minimum tax

<https://www.youtube.com/watch?v=qmnWzyIXSRI>

## Visit us at

- **Leiden University, Institute of Tax Law and Economics**
- **GLOBTAXGOV project receives funding from the EU H2020 Research & Innovation Programme and European Research Council**  
**Blog <https://globtaxgov.weblog.leidenuniv.nl/>**
- **Twitter: @GLOBTAXGOV @IrmaMosqueraV**



Universiteit  
Leiden  
The Netherlands



**GLOBTAXGOV**  
A NEW MODEL OF GLOBAL GOVERNANCE IN INTERNATIONAL TAX LAW MAKING



European  
Research  
Council