

# Global Tax Governance: Searching for consensus and legitimacy

Irma Johanna Mosquera Valderrama

5 March 2022

Professor Tax Governance Leiden Law School , EU Jean Monnet Chair Holder EU Tax Governance (EUTAXGOV) and Principal investigator *EU-ERC GLOBTAXGOV*



**Universiteit  
Leiden**  
The Netherlands

Co-funded by the  
Erasmus+ Programme  
of the European Union



European  
Research  
Council

# Topics

ERC Project  
GLOBTAXGOV

EU JEAN Monnet  
Chair EUTAXGOV

GLOBAL TAX  
GOVERNANCE



# 1. 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 141 tax jurisdictions.  
<https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf>

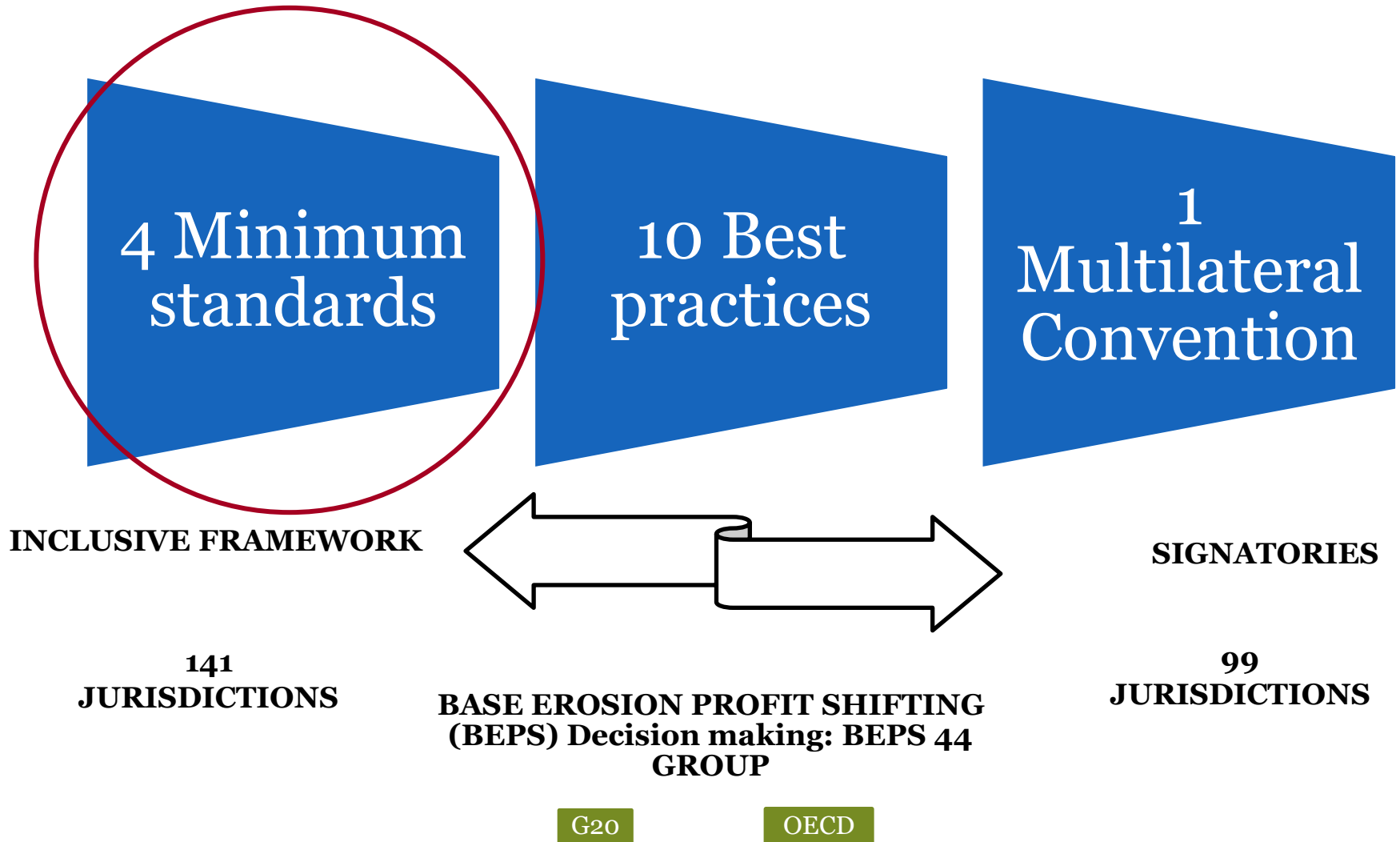
# 1. OECD/G20 development

- 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>

# 1. TAX GOVERNANCE – OECD and G20



# ERC GLOBTAXGOV

## Research question

*Under what conditions can the OECD-G20 and the EU models of global tax governance be feasible and legitimate for both developed and developing countries?*

# 2. TAX GOVERNANCE: EU AND THIRD COUNTRIES

## Anti-Tax Avoidance Directives



## State Aid Investigations



## Fair Tax Competition



# EUTAXGOV Jean Monnet Chair

*The EUTAXGOV Chair will address the EU Standard of Tax Good Governance.*

*The objectives of this Chair are (i) to enhance knowledge and understanding of the use of this Standard by students and to (ii) to raise awareness and to create a dialogue of the use of this Standard between academia, civil society, governments, and policy makers at EU level and at domestic (country) level including third (non-EU) countries.*



# 3. 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).*

# 3. 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

# 3. 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).

# 3. 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.

## 4. Legitimacy deficits

- 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.

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

### **Aims**

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

### **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



# 7. What has happened until now?

## Countries positions

- Unilateral taxes (Digital Taxes)
- Complexity of rules; fast pace (developing countries: ATAF and CIAT meetings)
- Statement OECD-BEPS Inclusive Framework 2021 (137 jurisdictions). Now drafting rules/public consultation.

## 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>

## 7. What has happened until now?

*Limited lower-capacity country representation and participation, as well as scarce opportunities for collaboration among these countries to articulate common positions, have meant that developing countries have typically had less influence on setting the Inclusive Framework agenda, establishing priorities and putting forward proposals, often limiting themselves to reacting to other countries' positions.*

<https://www.oecd.org/tax/oecd-secretary-general-tax-report-g20-finance-ministers-october-2021.pdf>

## 7. What has happened until now?

*Recognising the diverse membership of the Inclusive Framework, which includes different types of non-OECD economies, current chairing arrangements could evolve to comprise **two co-chairs, including one from a non-OECD/non-G20 economy**. Feedback from regional consultation events on practical ways to **enhance inclusivity indicated strong support for greater representation by developing countries in the leadership of the Inclusive Framework and its subsidiary bodies**.*

*Similar co-chairing arrangements could be considered for the Working Parties and other subsidiary bodies. In addition, consideration could be given to the revision of the memberships of the bureaux or steering groups of the subsidiary bodies, to ensure that they more systemically include representatives from a range of non-OECD economies, including lower-capacity countries*

## Visit us at

- **Leiden University, Institute of Tax Law and Economics**
- **EUTAXGOV Jean Monnet Chair receives funding from the Erasmus+ Programme**
- **GLOBTAXGOV project receives funding from the EU H2020 Research & Innovation Programme and European Research Council**
- **Twitter: @GLOBTAXGOV @EUTAXGOV @IrmaMosqueraV**



**Universiteit  
Leiden**  
The Netherlands

Co-funded by the  
Erasmus+ Programme  
of the European Union



European  
Research  
Council