

# The evolution of global tax governance

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Navigating Global Tax Governance

Session 1



Universiteit  
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**GLOBTAXGOV**

A NEW MODEL OF GLOBAL GOVERNANCE IN INTERNATIONAL TAX LAW MAKING



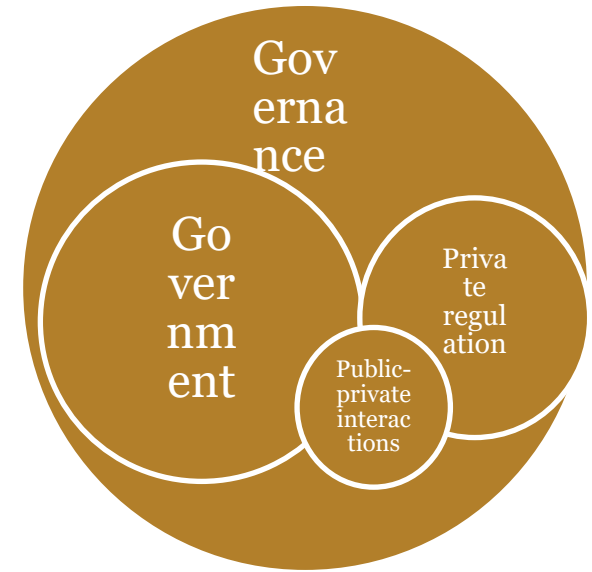
AFRICAN TAX  
ADMINISTRATION FORUM  
FORUM SUR  
L'ADMINISTRATION  
FISCALE AFRICAINE

# Content

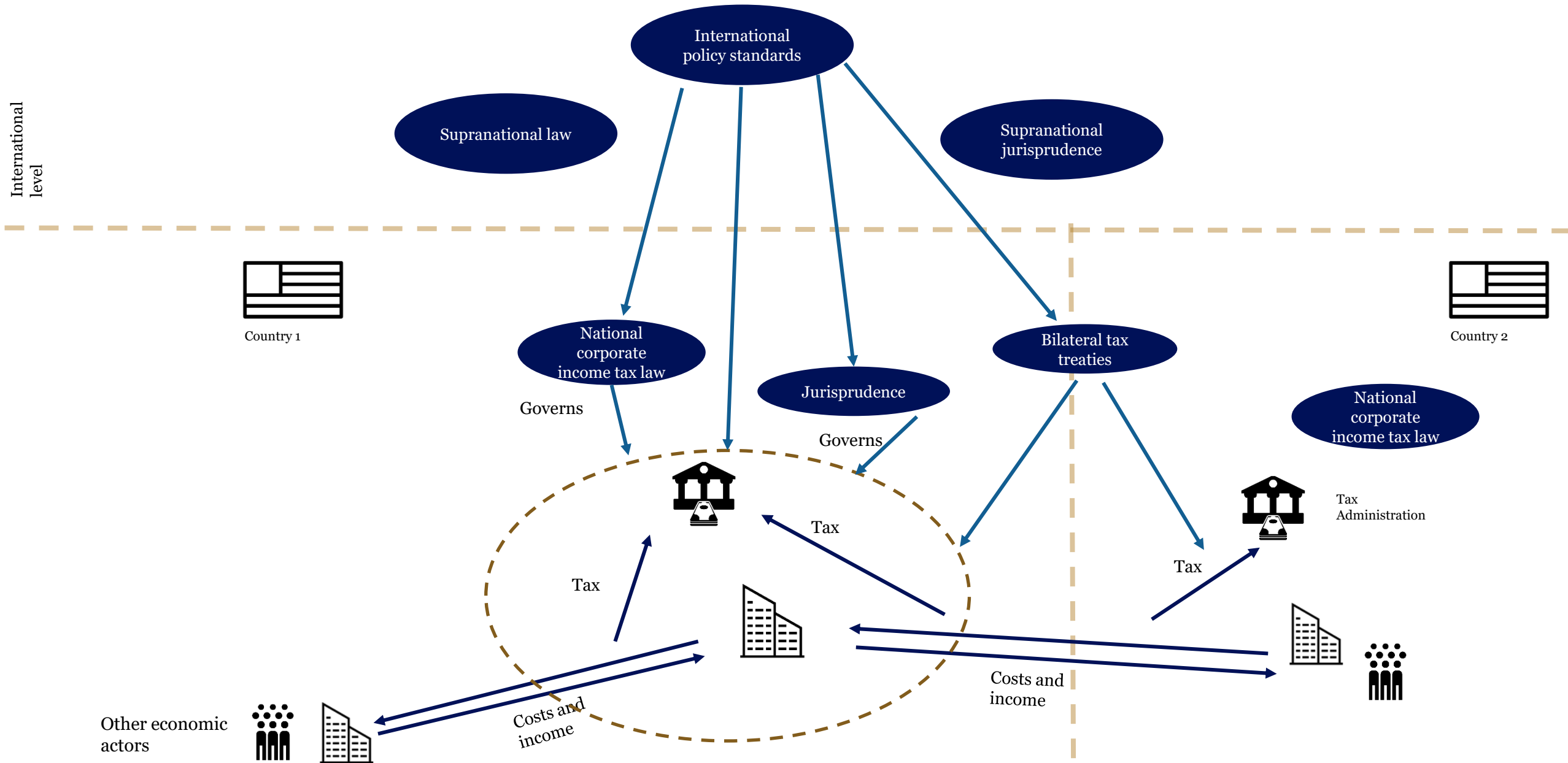
- Where does it come from? Understanding the origins of global tax governance,
- Thematical scope and evolution of global tax governance,
- How to govern? Modes of governance,
- The participants: Different actors in global tax governance,
- Justifying global tax governance: SDGs & critical perspectives

# Global governance

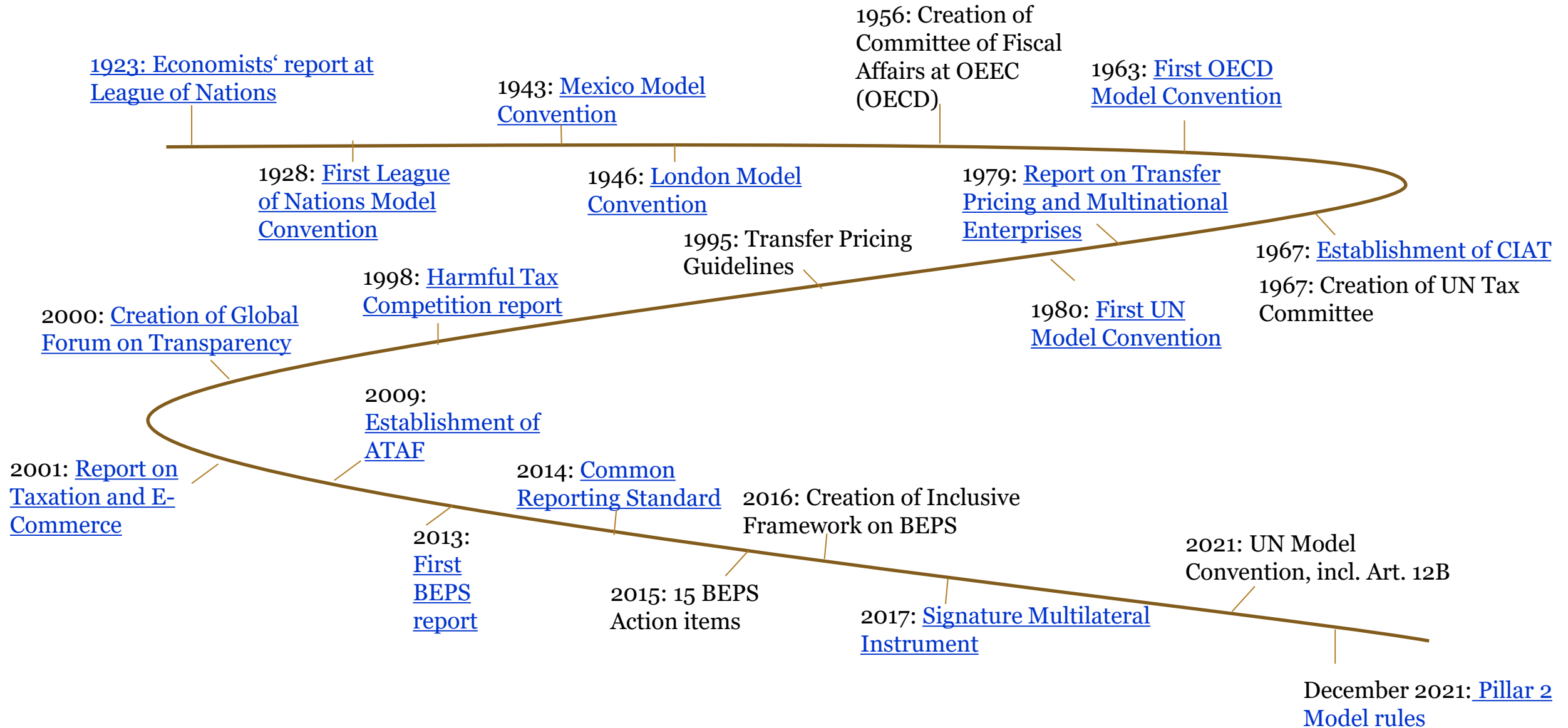
- (Self-)regulating affairs with repercussions among more than one country
- “Global governance is governing, without sovereign authority, relationships that transcend national frontiers. Global governance is doing internationally what governments do at home.” (Finkelstein, 1995)
- “Governance” > “government” (action by governments, but not only)



# The governance complex:



# Milestones of global tax governance



# Modes of governance

- Soft law
  - Model Conventions (OECD, UN, ATAF)
  - Technical standards (e.g., Common Reporting Standard, Country-by-Country Report XML scheme)
  - Guidelines on application of law (e.g. Commentaries to Model Convention, Transfer Pricing Guidelines)
- Peer review
  - BEPS Inclusive Framework, Forum on Harmful Tax Practices, Global Transparency Forum
- Multilateral conventions:
  - Comprehensive tax conventions: Nordic, West African Economic and Monetary Union, OCAM, Andean Community, various EU Directives
  - Convention on Mutual Administrative Assistance in Tax Matters
  - Pillars 1 & 2?
- Guidance for domestic legislation
  - CIAT Model Tax Code
  - OECD Global Forum on VAT: International VAT/GST Guidelines

# Advantages and disadvantages of soft law

- Broad agreement possible
  - Compare: deadlock in the World Trade Organization
  - BEPS Project attracted many members
  - But overruled in case of political disagreement
- Quick reactions to new developments
  - E.g. BEPS Project was set-up in two years (although not entirely new)
- Effective in practice
  - Most bilateral tax treaties follow UN and OECD model
  - Transfer pricing rules widely adopted
  - But: Differences in methods

# Main topics

## Encouraging relief of double taxation

- Model Convention
- Transfer Pricing Guidelines
- Best practices for dispute resolution

## Fighting tax evasion

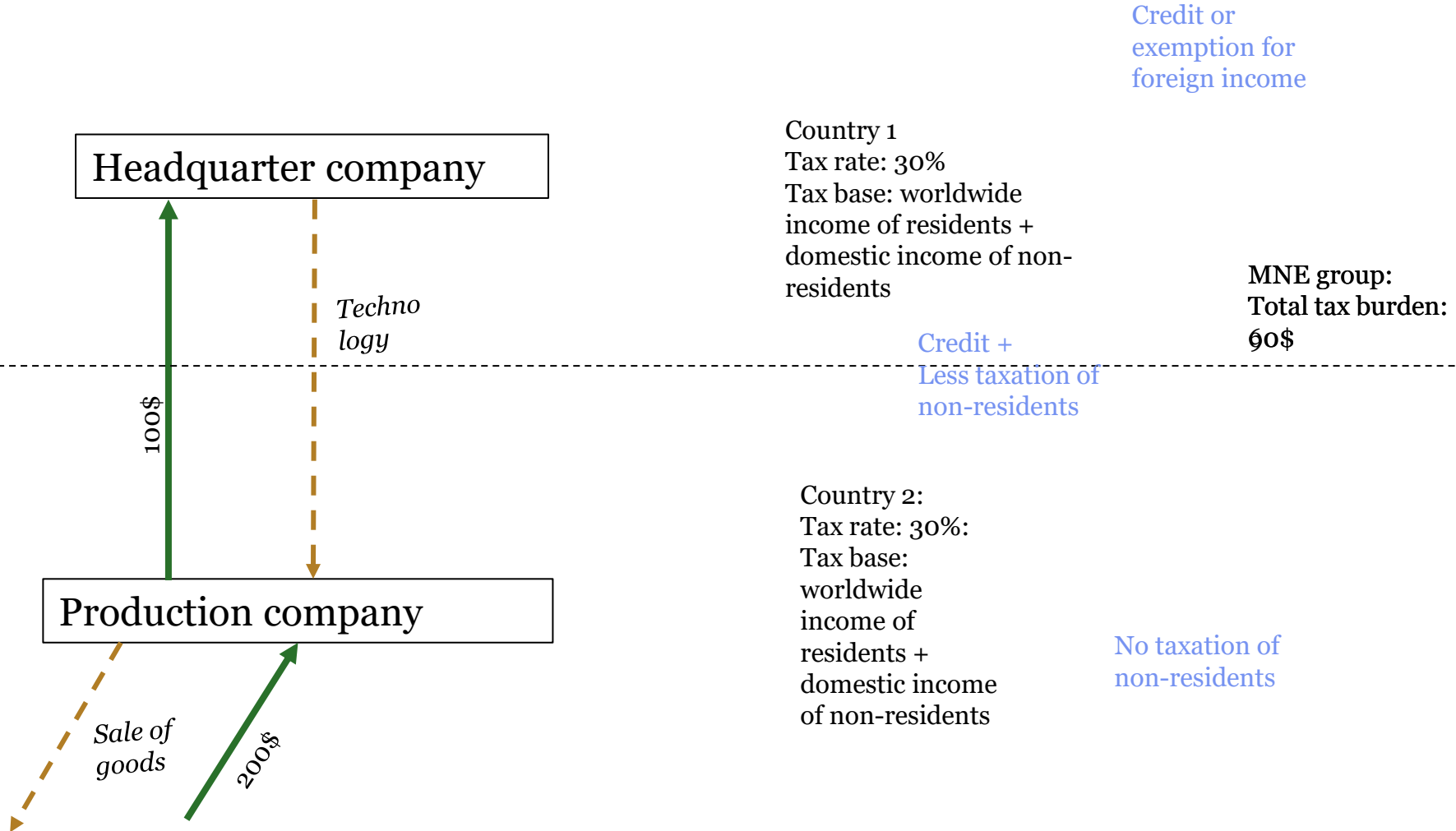
- Harmful Tax Practices Project
- Exchange of Information

## Fighting international tax avoidance

- Reports on treaty shopping, thin capitalization, hybrid mismatches, transfer pricing guidelines
- Harmful Tax Practices Project
- BEPS Project
- Exchange of country by country reports
- Pillar Two

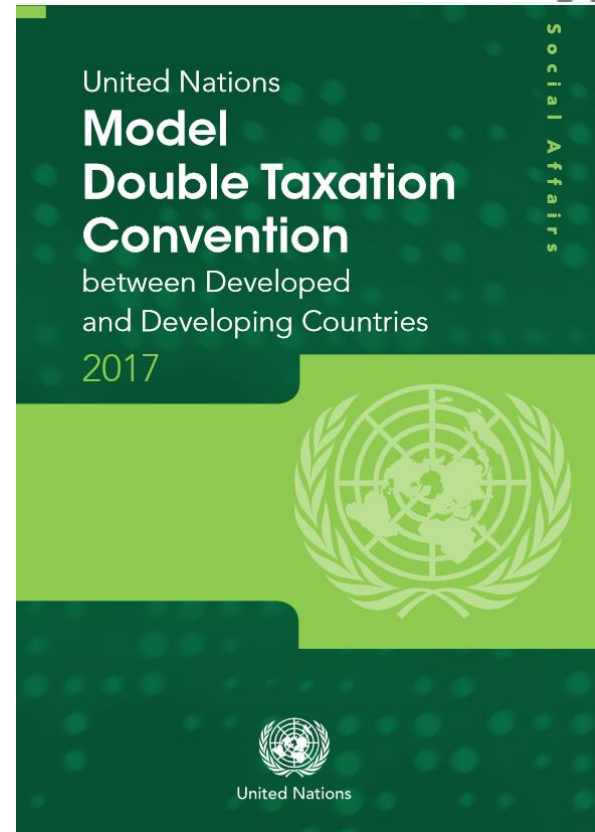


# Double taxation



# Tax treaties: in general

- Regulate taxation of transactions with foreigners
- Main goal: Alleviation of double taxation
- Definitions
- Allocation of taxing rights:
  - Limitations to tax foreign residents: business income, dividend, interest, royalty, service, capital gains, pensions, etc.
  - Relief for foreign taxes
- Procedures: Exchange of information and mutual agreement
- Bilateral, sometimes multilateral
- Model Conventions

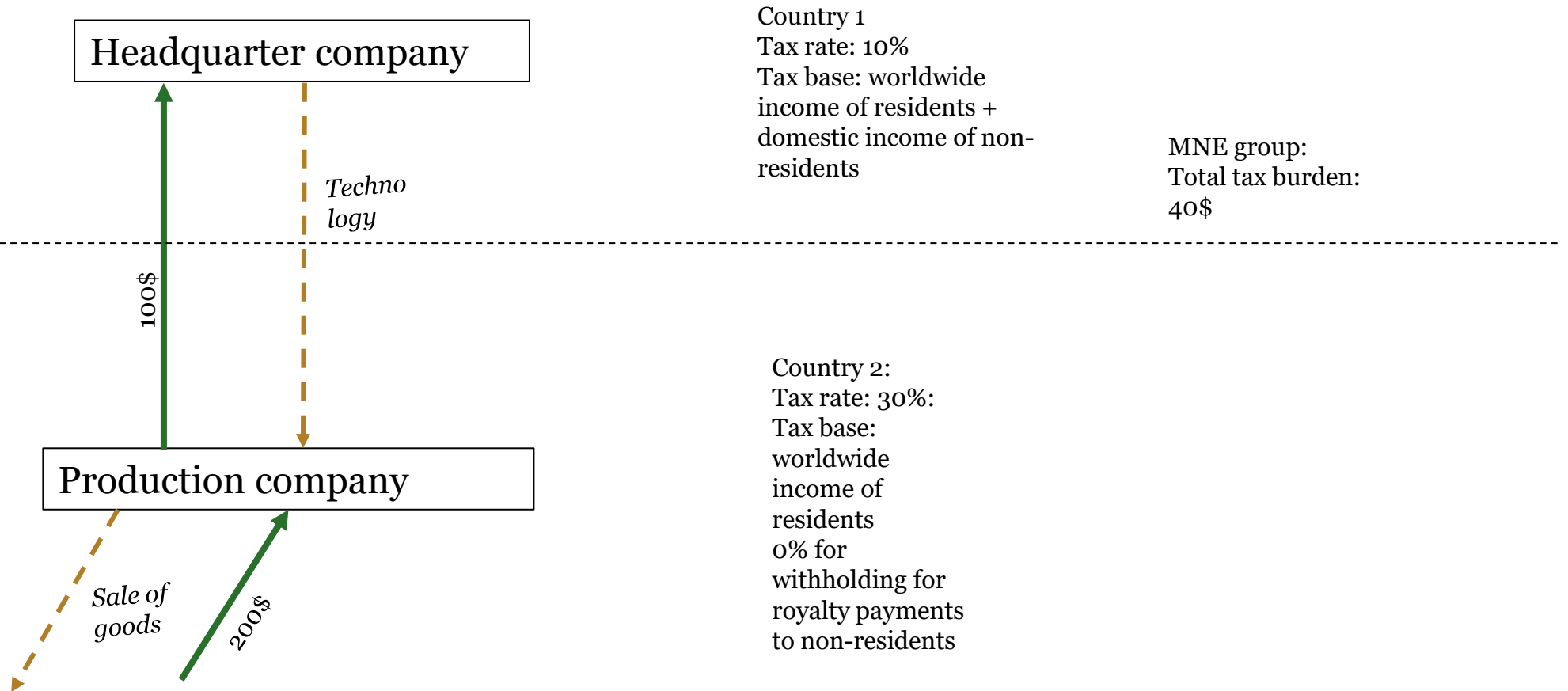


Model Tax  
Convention  
on Income  
and on Capital

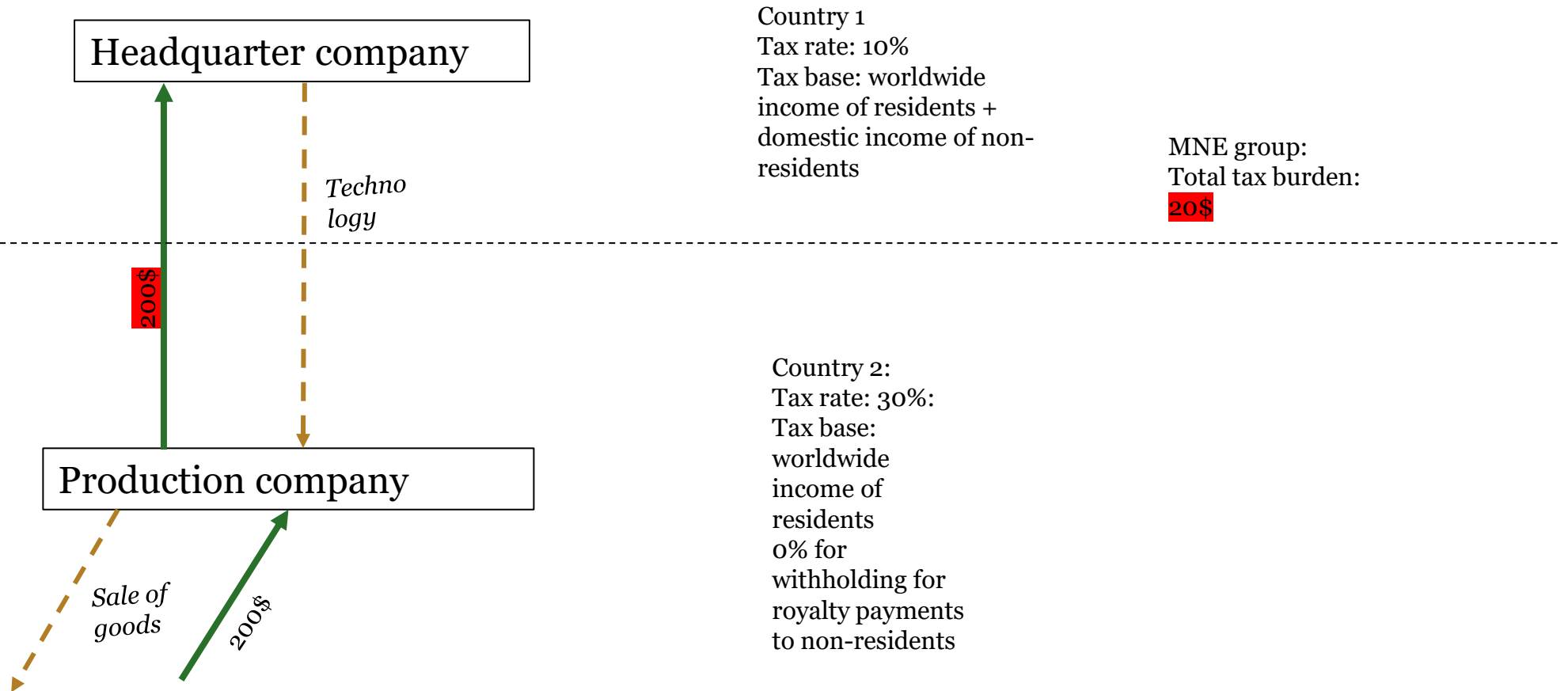
CONDENSED VERSION  
(as it read on 21 November 2017)



# Tax avoidance through strategic transfer pricing



# Tax avoidance through strategic transfer pricing



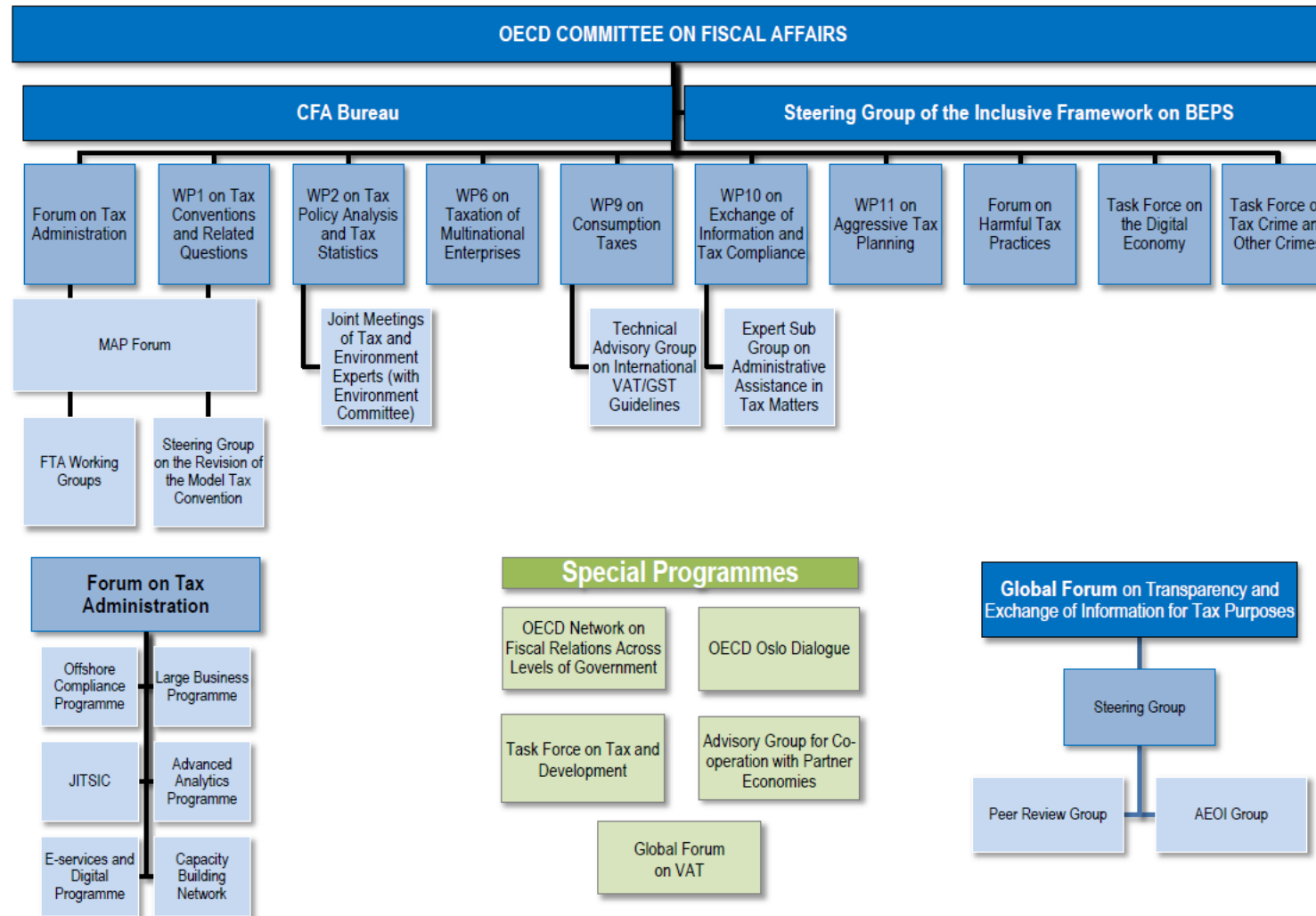
# What drives the global agenda?

- External shocks, such as financial crisis
- Evolution of business practices
- Technology
- Path dependency
- Increasing level of complexity and specialization

# Tax institutions at OECD

Secretariat	Intergovernmental branch	
	Executive	Plenary
<ul style="list-style-type: none"><li>• Centre for Tax Policy and Administration</li><li>• Head: Pascal Saint-Amans</li></ul>	<ul style="list-style-type: none"><li>• Committee of Fiscal Affairs (Chair: Fabrizia Lapecorella, Italy; previously Martin Kreienbaum, Germany)</li><li>• Steering Groups</li><li>• Working Parties</li></ul>	<ul style="list-style-type: none"><li>• BEPS Inclusive Framework</li><li>• Global Forum on Transparency and Exchange of Information for Tax Purposes</li><li>• Forum on Harmful Tax Practices</li></ul>

# Institutions at OECD (2)



- <https://www.oecd.org/tax/beps/committee-on-fiscal-affairs-and-subsidiary-bodies-organigramme.pdf>

# The OECD alone?

- United Nations Tax Committee
- International Monetary Fund
- Platform for Collaboration on Tax
- Inter-Governmental Forum on Mining
- European Commission and European Council
- ATAF
- CIAT
- CREDAF
- Other regional organizations



# Non-state actors in global tax governance

- Multinational Enterprises
- International Chamber of Commerce
- Business At OECD (formerly Business and Industry Advisory Committee – BIAC)
- International Fiscal Association
- Tax Justice Network
- Oxfam
- International Consortium of Investigative Journalists
- ... and many others
- Look at submissions to public consultation processes!

# Positions and interests by non-state actors

- Business:
  - tax as cost,
  - reducing compliance burden → harmonization among countries
- Tax Justice Movement:
  - High tax-to-GDP ratio good for development
  - More progressive than regressive taxes (corporate tax assumed to be progressive)

# Global tax governance: critical perspectives

- Division of taxing rights in models in favour of capital exporting countries
- Administrative complexity
- Lack of „true“ influence in decision-making
  - Costs of participating in meetings
  - Language barriers
  - Technical knowledge barrier
  - Lack of human resources

# Relationship with global normative projects – tax and the Sustainable Development Agenda



- Sustainable Development Agenda:

- 17 Goals with ~10 targets each
- 17.1: “Strengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection”
- 16.4: “By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime”
- Debate around the definition of “illicit financial flows”
- Tensions: Resource mobilization vs. incentivizing economic behaviour (e.g., increasing industry’s share in GDP, clean energy production, supporting technology development)

# Thank you!

## Questions? Comments?

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