

Goed fiscaal bestuur in de EU en daarbuiten

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22 Juli 2022

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



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Probleem

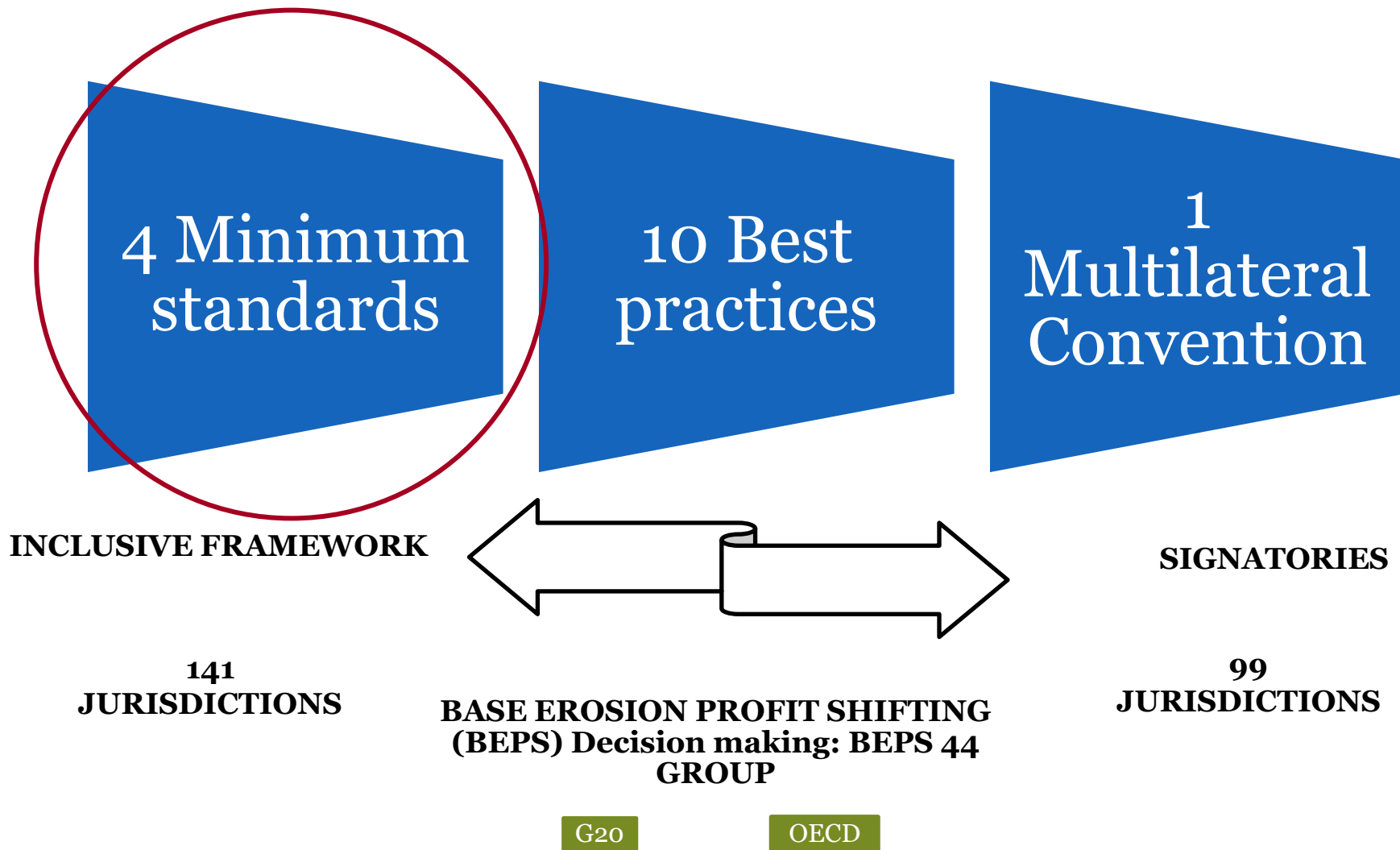
Verdeling van de heffingsrechten tussen ontwikkelde en ontwikkelingslanden-
Belastingverdragen/unilaterale regelgeving/richtlijnen (OESO Transfer Pricing).

Sinds 2008, regels voor de fiscale informatie-uitwisseling te faciliteren en om het internationale belastingsysteem te herzien in de strijd tegen belastingontwijking door multinationals

-BEPS Project heeft 15 actiepunten (4 minimumstandaarden, 10 zogenoemde guidance based on best practices en 1 multilaterale instrument voor het wijzigen van belastingverdragen). Doel: Belastinggrondslaguitholling en winstverschuiving tegen te gaan. BEPS Inclusive Framework: Landen participeren op gelijk voet(equal footing) op de implementatie van de 4 minimumstandaarden.

- BEPS 2.0-project (Pijlers 1 en 2) hebben als doel het invoeren van een nieuwe wereldwijde oplossing voor de uitdagingen die de digitaliserende economie stelt aan de internationale verdeling van de bevoegdheid om belasting te heffen (Pijler 1). en het invoeren van een minimumbelasting van multinationals (Pijler 2).

1. FISCAAL BESTUUR– OESO/G20



2. GOED FISCAAL BESTUUR EU

Directives ATAD/DAC/Unshell proposal



State Aid Investigations

State aid:
Ireland - Apple



Fair Taxation



2. GOED BESTUUR IN BELASTINGZAKEN 2008

Billijke en efficiënte belastingstelsels

Op 14 maart 2009 hebben de EU-ministers van Financiën benadrukt dat het financiële systeem beschermd moest worden tegen niet-transparante, niet-coöperatieve en minder strikt gereguleerde jurisdicties, waaronder offshorecentra; zij hebben ook opgeroepen tot het opstellen van sanctie-instrumenten en de behoefte onderstreept aan meer daadkracht om op internationaal niveau goed bestuur in belastingzaken (***transparantie, inlichtingenuitwisseling en eerlijke belastingconcurrentie***) te bewerkstelligen

[Mededeling van de Commissie COM/2009/0201 def](#)

2. Goed Fiscaal Bestuur: Raad van de Europese Unie 2018

*“The Parties recognise and commit themselves to implement the principles of good governance in the tax area, including the global standards on transparency and exchange of information, fair taxation, and the minimum standards against **Base Erosion and Profit Shifting (BEPS)**. The Parties will promote good governance in tax matters, improve international cooperation in the tax area and facilitate the collection of legitimate tax revenues”.*

Council of the European Union, Council Conclusions on the ‘EU Standard Provision on Good Governance in Tax Matters for Agreements with Third Countries, FISC 180, ECOFIN 364 (26 Apr. 2018), <http://data.consilium.europa.eu/doc/document/ST-8344-2018-INIT/en/pdf>

2. GOED FISCAAL BESTUUR EU

Commissie 2020

Maatregelen om schadelijke belastingconcurrentie en agressieve fiscale planning aan te pakken en belastingparadijzen te bestrijden, om te komen tot een eerlijkere en effectievere belastingheffing en het witwasrisico te beperken

Goed fiscaal bestuur vormt de grondslag voor de uitbouw van een eerlijke belastingheffing.

- Fiscale transparantie,
- Eerlijke belastingconcurrentie,
- ***de afwezigheid van schadelijke belastingmaatregelen*** en
- **de toepassing van internationaal overeengekomen normen (BEPS en ??? Pijler 2???)**

[Mededeling van de Commissie COM \(2020\) 313 final](#)

2. GOED FISCAAL BESTUUR EU

Commissie 2020

Hoewel er de afgelopen tijd al veel heeft plaatsgevonden op het gebied van de aanpak van belastingontwijking en -ontduiking, blijven er nieuwe fiscale uitdagingen ontstaan. ***Mondialisering, digitalisering en moderne bedrijfsmodellen verleggen de grenzen voor belastingconcurrentie en leveren nieuwe mogelijkheden op voor agressieve fiscale planning.*** De Commissie is daarom van mening dat het van belang is om de EU-agenda voor goed fiscaal bestuur daarop aan te blijven passen.

Deze mededeling ziet op drie onderwerpen:

1. De hervorming van de Gedragscodegroep voor bedrijfsbelastingen,
2. De herziening van de Europees fiscale Lijst van niet coöperatieve jurisdicties (geïntroduceerd in 2016), en
3. Ondersteuning van ontwikkelingslanden op het gebied van goed fiscaal bestuur (technische assistentie TIWB)

2. GOED FISCAAL BESTUUR EU

Commissie 2020

1. De hervorming van de Gedragscodegroep voor bedrijfsbelastingen

Het mandaat van deze groep is sinds 1997 in zeer beperkte mate herzien en is, gegeven hoe de wereld sindsdien is veranderd, toe aan een modernisering.

Hierbij denkt de Commissie aan een **breder reikwijdte aan fiscale onderwerpen waarnaar gekeken kan worden, zoals vrijstellingen op bepaalde buitenlandse inkomsten of woonplaatsdefinities**. Daarnaast denkt de Commissie aan het onderzoeken van bepaalde speciale fiscale regelingen aan particulieren zoals het verstrekken van zogenaamde «**gouden visa**» **aan vermogende niet EU ingezetenen**.

2. GOED FISCAAL BESTUUR EU

Commissie 2020

1. De hervorming van de Gedragscodegroep voor bedrijfsbelastingen

Een ander belangrijk thema voor de nieuwe opzet, is de lopende discussie in de OESO over de digitaliserende economie. Met name het onderdeel over een **minimum belastingniveau** ligt in het verlengde van het aanpakken van schadelijke belastingstructuren.

Het kan volgens de Commissie gezien worden als een algemene oplossing omdat er niet meer gekeken hoeft te worden naar de wijze waarop de belastingontwijking plaatsvindt. In plaats daarvan zal via een minimum belastingniveau het resultaat van de belastingontwijking zichtbaar worden en ongedaan worden gemaakt door een naheffing.

Belastingstructuren zorgen immers voor een vermindering van de afgedragen belasting, die op dit moment niet wereldwijd kan worden berekend. Het minimum belastingniveau brengt hier verandering in.

2. GOED FISCAAL BESTUUR EU

Commissie 2020

2. De herziening van de Europees fiscale Lijst van niet coöperatieve jurisdicties

Nu de lijst 4 jaar bestaat, vindt de Commissie het tijd voor een evaluatie van de gehele procedure, te beginnen met de economische relevantie toets. Zo komen de vragen op **waarom bepaalde ontwikkelingslanden zonder financieel centrum deze toets gehaald hebben, en of zij in staat moeten worden geacht om aan alle fiscale criteria te voldoen**. Het fiscale transparantie criterium bijvoorbeeld betekent dat de relevante belastingdiensten moeten voldoen aan relatief zware administratieve vereisten.

Het belangrijkste punt waar de Europese lijst zich onderscheidt van de OESO, is dat ook landen die feitelijk geen vennootschapsbelasting (VpB) heffen, getoetst worden op schadelijke belastingconcurrentie

Zie Heitmuller/Mosquera Special Economic Zones Facing the Challenges of International Taxation: BEPS Action 5, EU Code of Conduct, and the Future

2. GOED FISCAAL BESTUUR EU

Commissie 2020

2. De herziening van de Europees fiscale Lijst van niet coöperatieve jurisdicties

Aanvullend wil de Commissie een discussie organiseren over de huidige toetsingscriteria. Zo zullen de uitkomsten van de hierboven genoemde OESO-discussie over de digitaliserende economie ook doorwerken in de criteria. Hierbij zal vooral het *minimum belastingniveau* een belangrijk onderwerp worden.

Daarnaast wil de Commissie *meer duidelijkheid verschaffen aan derde landen door één fiscale lijst toe te passen, zodat er geen verschillen meer zijn met nationale zwarte lijsten, die lidstaten zelf opstellen*. De Commissie wil graag met de lidstaten bespreken hoe deze verbeterde coördinatie zou kunnen plaatsvinden.

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. Goed Fiscaal Bestuur: Externe strategie

Met haar externe strategie voor een effectieve belastingheffing van 2016 heeft de Commissie gekozen voor een **coherente en holistische aanpak** van de EU om wereldwijd goed fiscaal bestuur te bevorderen en samen te werken met haar internationale partners op het gebied van belastingen.

Het hoofddoel van de externe strategie was sterker samen te werken met derde landen op het gebied van goed fiscaal bestuur, via ***clausules in bilaterale overeenkomsten, ondersteuning van ontwikkelingslanden op het gebied van belastingen en maatregelen om negatieve indirecte gevolgen van belastingmaatregelen in de EU te voorkomen.***

3. Goed Fiscaal Bestuur: Externe strategie

Voor de strategie is echter ook een nieuw instrument in het leven geroepen waarmee de *internationale partners van de EU ertoe worden aangezet zich te voegen naar de overeengekomen normen voor goed fiscaal bestuur, door middel van het Europese proces van lijsten opstellen.*

GOED FISCAAL BESTUUR (ELEMENTEN) IN BILATERALE/MULTILATERALE OVEREENKOMSTEN

EN

ACP (POST-COTONU) VERDRAG



4. EU and standard of good governance in tax matters

Standard can be introduced in:

- For third (non-EU countries) strategic partnership agreement: Legally binding framework for cooperation
- For third (non-EU countries) a coordinated tax clause that should be included in free trade agreements that the EU concludes with third countries
- For third (non-EU countries) relevant agreements, without prejudice to their respective competences. Thus trade and strategic partnership but also other areas (aid, cooperation)

4.1. Legal status standards

4 BEPS Minimum Standards

Non- Binding

- Participants BEPS Inclusive Framework 141 jurisdictions

Consequences

- The international standards introduced in the agreement become binding standards.
- However, mismatches between the countries adopting the standards and countries required to implement the standards (if not yet adopted)

EU Standard in Agreements 2010: South Korea

Article 12 Taxation

- With a view to strengthening and developing economic activities while taking into account the need to develop an appropriate regulatory framework, the Parties recognise and commit themselves to implement in the tax area the principles of **transparency, exchange of information and fair tax competition**. To that effect, in accordance with their respective competences, the Parties will improve international cooperation in the tax area, facilitate the collection of legitimate tax revenues, and develop measures for the effective implementation of the above mentioned principles.

EU-South Korea 2010 Framework Agreement

- Also signed trade and investment agreement and framework participation agreement

EU Standard in Agreements 2018: Japan

Article 19

Taxation

With a view to promoting good governance in tax matters, the Parties shall endeavour to enhance cooperation in line with internationally established tax standards, in particular by encouraging third countries to enhance **transparency, ensure exchange of information and eliminate harmful tax practices.**

EU- Japan April 2018 Strategic partnership agreement

- A legally binding pact covering not only political dialogue and policy cooperation, but also cooperation on regional and global challenges
- Also linked to Economic Partnership agreement (trade).

EU Standard in Agreements 2018: Philippines

Article 12

Good Governance in the Tax Area

- With a view to strengthening and developing economic activities while taking into account the need to develop an appropriate regulatory framework, the Parties recognise and will implement the principles of **good governance in the tax area**. To that effect, and in accordance with their respective competences, the Parties will improve international cooperation in the tax area, facilitate the collection of legitimate tax revenues, and develop measures for the effective implementation of the abovementioned principles.
- The Parties agree that the implementation of these principles takes place notably within the framework of existing or future bilateral tax agreements between the Philippines and Member States.

EU- Philippines 2018 Partnership and Cooperation Agreement. Linked to (under negotiation Trade Agreement based on the 2007 ASEAN Negotiation Directives)

EU Standard in Agreements

EU- China 2020 Strategic Agenda for Cooperation

- Commit to reach an agreement on the adoption of the Global Standard on **Automatic Exchange of Information** being developed by the OECD together with G20 countries in the area of taxation.

EU- Colombia and Peru. 2010 Free Trade Agreement

Art. 155(5) Effective and Transparent regulation

- The Parties also take note of the "Ten Key Principles for Information Sharing" promulgated by the Finance Ministers of the G7 Nations and the Agreement **on Exchange of Information** on Tax Matters of the Organisation on Economic Cooperation and Development's (hereinafter referred to as "OECD") and the Statement on Transparency and exchange of information for tax purposes of the G20.

EU-Canada SPA

EU- Canada (signed) 2016 Strategic Partnership Agreement

➤ **Title II** The EU and **Canada** commit to upholding democratic principles and human rights, to advancing democracy, including free and fair elections, and the importance of the rule of law for effective democratic governance.

➤ **Article 11 Cooperation on Taxation**

- With a view to strengthening and developing their economic cooperation, the Parties adhere to and apply the principles of good governance in the tax area, i.e., transparency, exchange of information and avoidance of harmful tax practices in the frameworks of the OECD Forum on harmful tax practices and the Union Code of Conduct on business taxation, as applicable. The Parties shall endeavour to work together to promote and improve the implementation of these principles internationally.

See also https://www.international.gc.ca/world-monde/international_relations-relations_internationales/spa-aps.aspx?lang=eng

EU-Canada CETA

➤ Article 28.7 Taxation CETA

7.(a) Where an investor submits a request for consultations pursuant to Article 8.19 (Consultations) claiming that a taxation measure breaches an obligation under Sections C (Non-discriminatory treatment) or D (Investment protection) of Chapter Eight (Investment), ***the respondent may refer the matter for consultation and joint determination by the Parties*** as to whether:

- (i) the measure is a taxation measure; 216
- (ii) the measure, if it is found to be a taxation measure, breaches an obligation under Sections C (Non-discriminatory Treatment) or D (Investment Protection) of Chapter Eight (Investment); or
- (iii) there is an inconsistency between the obligations in this Agreement that are alleged to have been breached and those of a tax convention.

(b) A referral pursuant to subparagraph (a) cannot be made later than the date the Tribunal fixes for the respondent to submit its counter-memorial.

Where the respondent makes such a referral the time periods or proceedings specified in Section F (Resolution of investment disputes between investors and states) of Chapter Eight (Investment) shall be suspended. If within 180 days from the referral the Parties do not agree to consider the issue, or fail to make a joint determination, the suspension of the time periods or proceedings shall no longer apply and the investor may proceed with its claim.

(c) A joint determination by the Parties pursuant to subparagraph (a) shall be binding on the Tribunal.

(d) Each Party shall ensure that its delegation for the consultations to be conducted pursuant to subparagraph (a) shall include persons with relevant expertise on the issues covered by this Article, including representatives from the relevant tax authorities of each Party. For Canada, this means officials from the Department of Finance

EU-Canada CETA

➤ Joint Interpretative Instrument Investment protection

“CETA requires a real economic link with the economies of Canada or the European Union in order for a firm to benefit from the agreement and prevents “shell” or “mail box” companies established in Canada or the European Union by investors of other countries from bringing claims against Canada or the European Union and its Member States. The European Union and Canada are committed to review regularly the content of the obligation *to provide fair and equitable treatment, to ensure that it reflects their intentions (including as stated in this Declaration) and that it will not be interpreted in a broader manner than they intended*”.

However, Proposal Unshell Directive if applicable to third non (EU countries) may result in a broader interpretation. See <https://globtaxgov.weblog.leidenuniv.nl/2022/05/19/is-the-unshell-directive-proposal-really-necessary/>

EU-ACP

EU-ACP

June 2018 EU Negotiating Directives

Strategic priorities

- The Agreement will include provisions to support legislation and initiatives addressing all forms of corruption, introduce more transparency and accountability over public funding and in the delivery of public services, improve revenue collection, tackle tax evasion and avoidance, money laundering and illicit financial flows and meet ***global tax governance standards***. In this regard, particular attention will be given to the proper use of financial external assistance.

April 2020, the ACP Group of States became an international organisation: the Organisation of African, Caribbean and Pacific States (OACPS).

EU Standard in Agreements

EU-ACP

The EU and OACPS chief negotiators concluded their negotiations on 15 April 2021. [Negotiated agreement](#)

Art. 12 Good Governance

*6. The Parties recognise and commit themselves to implement the principles of **good governance in the tax area**, including the global standards on transparency and exchange of information, fair taxation and the minimum standards against Base Erosion and Profit Shifting (BEPS). They shall promote good governance in tax matters, improve international cooperation in the tax area and facilitate the collection of tax revenues. They shall cooperate to enhance capacity to comply with these principles and standards and reap the benefits of a thriving rulesbased financial sector. They agree to engage in timely partnership dialogue at bilateral and international levels on tax matters.*

EU Standard in Agreements

EU-ACP

Art. 32. Public Finance and Financial Governance

3. The Parties shall take measures to combat illicit financial flows, tax fraud and tax evasion, and reduce opportunities for tax avoidance, including through bilateral and multilateral consultations. The Parties shall apply the ***principles of good governance in the tax area*** in, inter alia, enacting legislation, developing comprehensive policies, adopting concrete measures and strengthening relevant institutions and mechanisms.

EU Standard in Agreements

EU-ACP

Art. 41 Financial Governance

3. The Parties shall cooperate to combat tax evasion, tax avoidance and illicit financial flows, and ensure the efficiency, effectiveness, transparency and *fairness of tax systems*.

EU Standard in Agreements

EU-ACP

Art. 72 Financial Governance

3. The Parties shall combat tax fraud, tax evasion, tax avoidance and illicit financial flows and shall strengthen asset recovery. They shall work towards ensuring the efficiency, effectiveness, certainty, transparency and ***fairness of tax systems***.
4. The Parties shall take concrete measures, including by enacting legislation, and shall strengthen relevant institutions and mechanisms to implement the principles of ***good governance in the tax area***.

EU Standard in Agreements

EU-ACP

Art. 83 Domestic Public Resources

2. The OACPS Members that are parties to this Agreement shall endeavour to enhance revenue collection through modernised tax systems, improved tax policy, more efficient tax collection, and strengthened and reformed tax administration. They shall work towards improving the fairness, transparency, efficiency and effectiveness of their tax systems, including by broadening the tax base and continuing efforts to integrate the informal sector into the formal economy in line with country circumstances. They shall strengthen fiscal legitimacy by enhancing the efficiency and effectiveness of their public expenditure.

3. The Parties agree to increase efforts to combat illicit financial flows with a view to eradicating them, to cooperate in the recovery of lost assets and capital, and to strengthen good practices on assets return in order to foster sustainable development. They shall promote anti-corruption, anti-fraud, and anti-money laundering measures and undertake measures to tackle tax avoidance, tax evasion and other harmful tax practices, through increased international cooperation, improved domestic regulation as well as strengthened capacities and exchange of information.

4. The Parties shall enhance and cooperate to strengthen good financial and tax governance, transparency, and accountability. They commit to scaling up international tax cooperation in an inclusive, fair and transparent manner.

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