

# Global Tax Governance: Searching for consensus and legitimacy

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# 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>

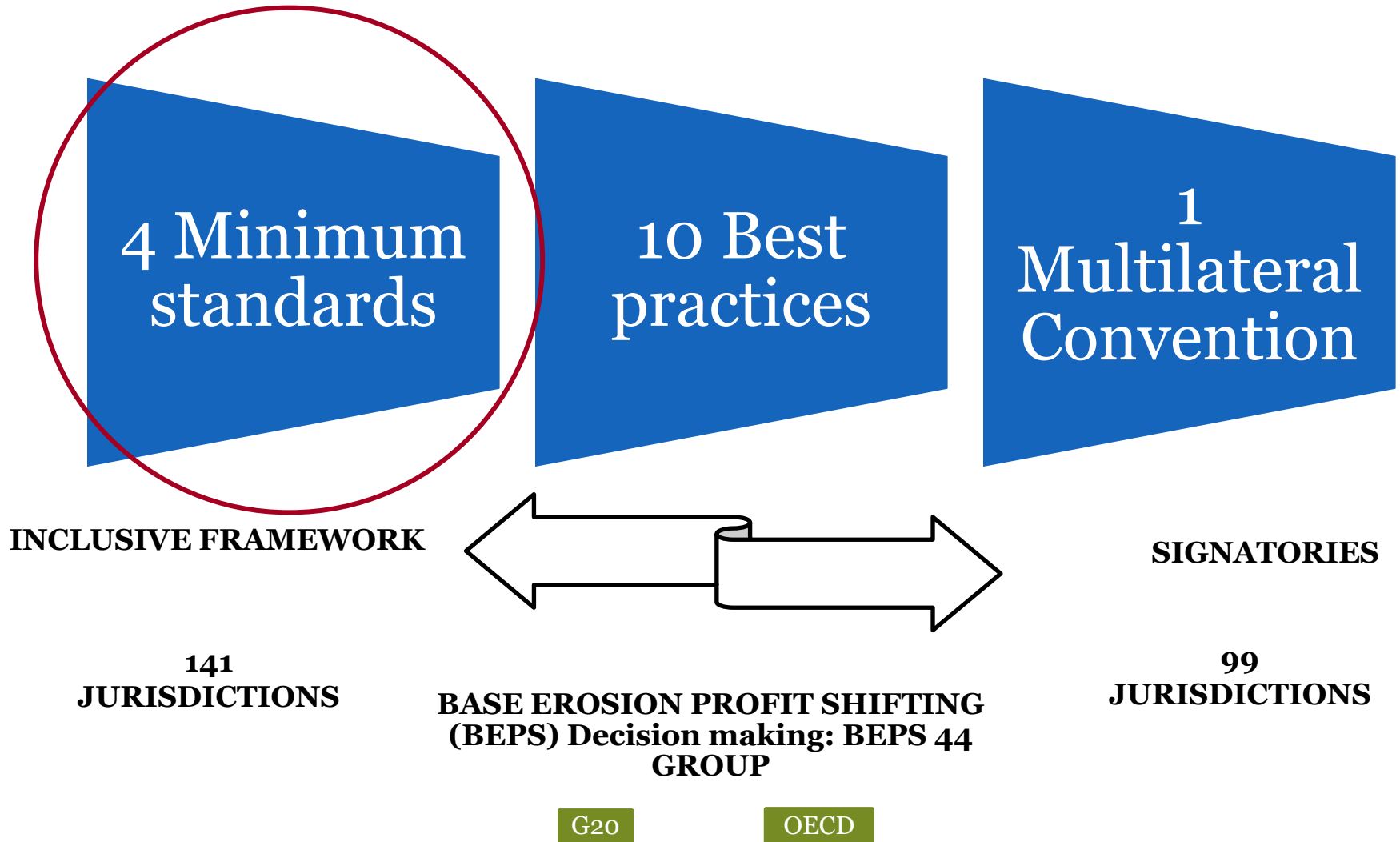
# 1. OECD/G20 development

- 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



# 2. TAX GOVERNANCE: EU AND THIRD COUNTRIES

## Anti-Tax Avoidance Directives



## State Aid Investigations



## Fair Tax Competition



# 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?*

# 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

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# 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?

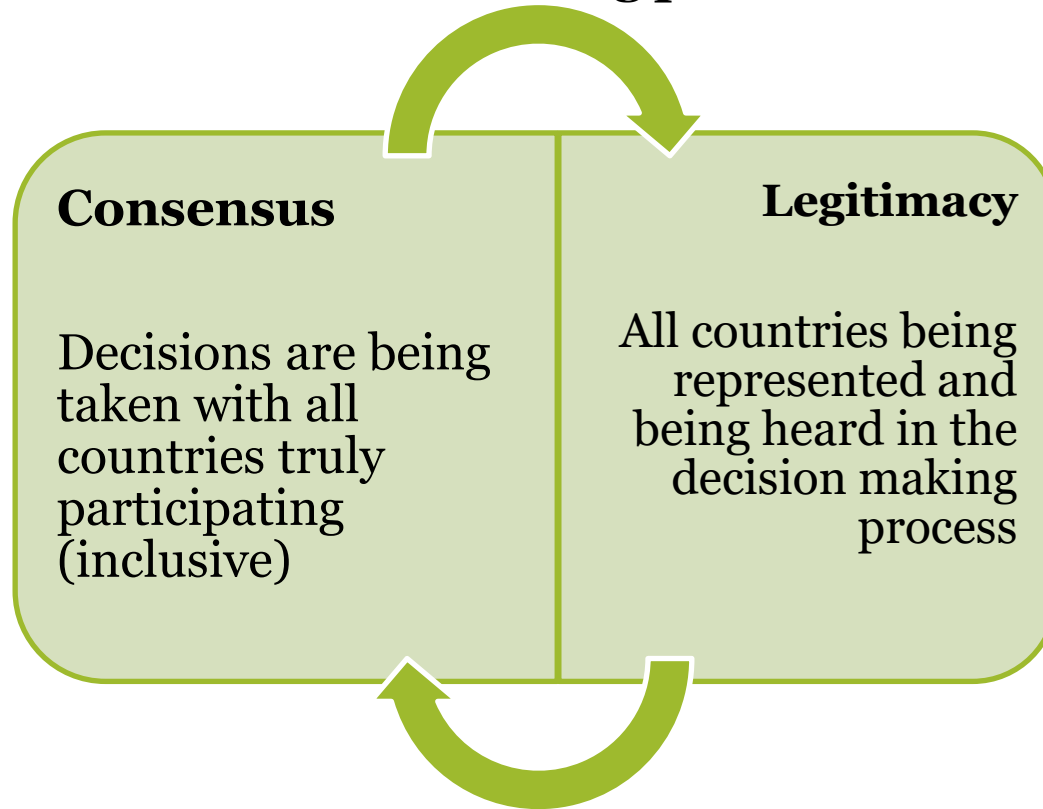
# 5. Implementation/compliance: BEPS

- ❑ 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. Consensus and Legitimacy

## Decision making process



Both concepts are intertwined.

# 7. BEPS Project

## **The different choices made by countries in implementation of BEPS Minimum Standards and the tensions between developed and developing countries**

- In practice, some countries other BEPS Actions e.g. 2 (Hybrid mismatches); 3 (CFC), 4 (interest deductions); 12 (mandatory disclosure). Examples EU ATAD and DAC Directive; Latin America Action 3 and 12. However, other voices see [OECD report Oct. 2021](#) regarding action 2, 3 and 12 (developing countries -capacity constrains) at 69.
- EU standard of good governance in tax matters
  - As of April 2018 fair tax competition includes the implementation of BEPS 4 Minimum Standards in the agreements concluded by the EU and EU Member States with third (non-EU) countries. Problems (e.g. Philippines in ASEAN agreement)

See , [Output Legitimacy Deficits and the Inclusive Framework of the OECD/G20 Base Erosion and Profit Shifting Initiative](#) Bulletin for International Taxation 72(3) [IBFD Publications](#)

# 7. BEPS Project

In addition to the need for technical assistance and limited resources (personnel and financial support) also other concerns:

- **Caribbean and Latin America:** Expressed their concerns of the consequences derived from not being able to partially or fully implement the BEPS four minimum standards, given their priorities and the features of the tax system of specific countries.
- **Africa:** Highlighted the importance of establishing the benefits and costs that the implementation of the various Actions of the OECD/G20 BEPS initiative would have on their domestic revenue and the need for these countries to maintain some of their preferential tax regimes to attract investment
- **Asia-Pacific region** welcomed a regional approach to encourage further collaboration in the region.
- **Central and Eastern Europe** highlighted the need to address other non-base erosion and profit shifting issues, such as the taxation of the informal (shadow) economy.



# 7. 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. BEPS Pillar 1 and Pillar 2: Some solutions

## 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>

## 8. What has happened until now?

### Scholarship (Dec. 2020). Decision-making -BEPS IF

*A three-tiered structure of decision making: plenary, Steering Group and working parties.*

*At the top political level, plenaries convene senior tax officials from almost every IF member, alongside observers from regional and international organisations. Plenaries evaluate progress and take final decisions, on a consensus basis, on proposals prepared by subordinate bodies. The plenary is the formal decision-making body, and the final step in a process which identifies and resolves disagreements between countries in advance.*

Christensen et al 'At the Table, Off the Menu? Assessing the Participation of Lower-Income Countries in Global Tax Negotiations'. ICTD Working Paper 115 December 2020

[https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15853/ICTD\\_WP115.pdf?sequence=9](https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15853/ICTD_WP115.pdf?sequence=9)

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Scholarship (Dec. 2020). Decision-making -BEPS IF

*Many interviewees described its meetings as choreographed: **It is a room of approval where everything has been well prepared and orchestrated (...) the sauce has been made, the dish is served. If you say that the salt is missing, you want to add something (...) they will tell you that the dish is done.** It is at the Steering Group level that the dish is prepared. (Lower-income country)*

Christensen et al at. 10-11

## 8. What has happened until now?

### OECD Report to the G20 (October 2021)

*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>

## 8. What has happened until now?

### OECD Report to the G20 (October 2021)

*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*

## 8. What has happened until now?

Ministerial Dialogue on Tax and Developing countries (November 2021). Hosted by the Minister of Finance of Jamaica.

Countries stated their concerns regarding *“the governance of the Inclusive Framework, including **the representation of developing countries in leadership positions, and ways to maximise our voice and influence over international tax rule making.** We noted the diversity of the membership of the Inclusive Framework and that the practicalities of **participating effectively** in international taxation discussions are often significant constrains, particularly for small lower capacity countries”*.

[Chair’s Statement of Outcomes](#) at 1.

Countries participating Barbados, Côte d’Ivoire, Egypt, Georgia, Honduras, Jamaica, Jordan, Senegal,, Thailand, and Vietnam and the three countries hosting the G20 Presidency between 2020-2022 i.e. the United Kingdom, Italy and Indonesia

## 8. What has happened until now?

Ministerial Dialogue on Tax and Developing countries (November 2021).

*To further realise **equal footing and to strengthen the voices of developing countries**, the governance structure of the Inclusive Framework could evolve to be more representative of developing countries and ensure their views are heard and understood (including a developing country representative co-hosting the Inclusive Framework and an updated mandate and role for the Advisory Group for Co-operation with Partner Economies). Practical measures to support the effective participation by developing countries during meetings are also important.*

*Different regions can reflect further about **how regional bodies can gear up and prepare effectively for international taxation discussions***

[Chair's Statement of Outcomes](#) at 2



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