

The Governance of Tax Incentives after Pillar 2: Some Reflections

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1. 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).

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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. Legitimacy

From BEPS to Pillar One and Pillar Two... What has changed?

Not only about the content of the rules, but the legitimacy of the decision-making process

- Input legitimacy: Participation and representation in decision-making
 - OECD/G20
 - BEPS Inclusive Framework - Co-chair
 - United Nations Resolution: Strengthening international tax cooperation to make it fully inclusive and more effective

See Roundtable: UN vs. OECD – Quo Vadis International Tax Governance? 23 November Video [link](#)

2. Legitimacy

- Output legitimacy: Is the outcome really beneficial for developing countries? The discussion in global tax governance focuses on ways to reduce harmful tax competition, profit shifting by multinationals, and nowadays to coordinate tax competition

BUT

- There is not yet proof that these initiatives will help developing countries to achieve SDGs
- DRM, regional tailored partnerships for development, reduce the inequalities between countries and tackling illicit financial flows among others

Input and output legitimacy deficits!!!

2. Legitimacy

Inaugural lecture: Global Tax Governance: Legitimacy and Inclusiveness: Why it matters? Video [Link](#)- Book [Link](#)

Importance of also addressing Throughput legitimacy

In general used in Political Science by Schmidt accountability, transparency, inclusiveness, and

responsiveness. *V. Schmidt, (2012) Democracy and Legitimacy in the European Union Revisited: Input, Output and 'Throughput', 61 Political Studies*

But also applicable to taxation: Why?

2. Legitimacy

Analysis case study of peer review process of BEPS 4 Minimum Standards in 7 BEPS IF countries: Cameroon, Congo, Costa Rica, Jamaica, Peru, Sri Lanka, and Viet Nam.

Mosquera, I. Throughput Legitimacy Of The Peer Review Process Of The Four BEPS Minimum Standards: A Case Study. Intertax. Volume 52, Issue 3. 2024. [Link](#)

Output legitimacy deficits. More work by OECD Secretariat, BEPS IF to improve the governance of the peer review process

3. Implementation Pillar Two

- ❑ Why countries are adopting Pillar Two? Political decision?
- ❑ How the implementation of Pillar Two standards will take place?
Will be the administrative guidance and other documents be enough?
- ❑ Will there be a peer review facilitate monitoring and compliance with Pillar Two? And if so? How? Throughput legitimacy deficits?
- ❑ How the implementation of Pillar Two will contribute to achieve the SDGs?
- ❑ What issues of international taxation, beyond BEPS, Pillar One and Pillar 2 should be addressed to fulfill developing countries' need to achieve the 2030 Agenda for Sustainable Development?
- ❑ Role of the UN in Pillar Two?

4. Implementation/compliance: BEPS- Also relevant for Pillar Two

- ❑ 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.

5. BEPS Pillar Two: What is the problem?

Aims

- Pillar 2: (Co-ordinated) Tax competition?

But what is the real problem?

- Taxing MNEs: Develop multilateral norms to deal with prisoner dilemma-type of situations (e.g. aggressive tax planning, tax competition) – US; OECD/G20; Business hubs; Developing countries

See also GLOBTAXGOV events/recordings/special issues

- [The Global Minimum Tax and its effects on countries' tax regimes](#)
- [Is the UTPR in Pillar 2 compatible with international law obligations?](#)
- Public international law, international taxation and tax dispute resolution with J. Chaisse Special Section Asia Pacific Law Review [Link](#)

6. What about tax incentives?

Tax incentives

Redesigned, repealed, replace (e.g. tax subsidies)

See

- **Roundtable minimum tax**

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

- Recent

- Pillar 2: QDMTT or Safe Harbour Domestic Minimum Top-Up Tax (SHDMTT)? J. Englisch

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