

Workshop 1

Normative Foundations and evolution of Global Tax Governance

In cooperation with African Tax Administration Forum ATAF

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GLOBTAXGOV

A NEW MODEL OF GLOBAL GOVERNANCE IN INTERNATIONAL TAX LAW MAKING



European Research Council
Established by the European Commission

1. Fairness

Goals International Taxation

- Getting its **fair share of revenue** from cross-border transactions: Inter-nation equity. Country to protect its domestic tax base.
- **Promoting fairness:** Equal tax burden on taxpayers with equal income and taking into account the ability to pay of taxpayers.
- Enhancing the **competitiveness** of the domestic economy: Careful approach to tax incentives and race to the bottom.

CLASS DISCUSSION

- How fairness influence the international tax law making debate?
- Why different approaches to fairness?
- Is possible to reconcile these approaches?

See also [Burgers I.J.J. & Mosquera Valderrama I.J. \(2017\), Fairness: A Dire International Tax Standard with No Meaning?, Intertax 45\(12\): 767-783.](#)

Tax Fairness: Different perceptions: MNEs, developed countries

MNEs not paying their fair share

Google/Amazon/Starbuck hearings UK Parliament

<https://youtu.be/3TeZlt3dRig>

<https://youtu.be/t-i5sstzeSI>

<https://youtu.be/QBwsjfWIXrA>

Therefore, measures to tackle base erosion and profit shifting and transparency needed

Tax Fairness: Different perceptions: OECD/G20, civil society, developing countries

- **OECD/G20 Global fair, sustainable and modern tax systems.**

<https://youtu.be/KEh2aYw546A?feature=shared>

- Civil society: Solidarity; Fairness: Fair share by MNEs
<https://www.taxjustice.net/2018/03/08/video-discussion-on-tax-revenue-losses-apples-tax-avoidance-and-state-aid/>

Goals International Taxation

- Double taxation: Before BEPS
- Double non taxation: After BEPS
- Tax evasion and Aggressive Tax Planning including treaty shopping: After BEPS

OECD

<https://www.youtube.com/watch?v=3W4orxYM18k>

History of the G20 & taxation in BEPS

<https://youtu.be/vyrzdg8kFB8?feature=shared>

Civil society/public perception

<https://www.taxjustice.net/2016/07/29/video-guide-legal-tax-evasion/>

Regional Organizations (e.g. ATAF)

Logan Wort: ATAF In The New Decade

https://youtu.be/r_JwFqViP38?feature=shared

#In5Minutes: Experts discuss the UN Tax Convention

<https://youtu.be/o6CVO3yCZbE?feature=shared>

African Group speech UN

Fifth Committee, 22nd meeting - General Assembly, 78th session

<https://webtv.un.org/en/asset/k14/k14xtkr36k> (19:00 min)

ATAF remains committed to Africa's growth and development through domestic resource mobilization, aligning with the ongoing process at the UN. [Link](#)

International Organizations (UN)



<https://financing.desa.un.org/what-we-do/ECOSOC/tax-committee/tax-committee-home>

Why is the UN Tax Committee Globally Recognized in International Tax? (Video)

<https://youtu.be/ptlVWTbTLRk?feature=shared>

<https://financing.desa.un.org/unfcitc>

2. SOLUTIONS

Current instruments/proposals

1. League of Nations, OECD and UN Models. Failure to have a multilateral instrument. (developed vs. developing countries). Some OECD projects e.g. Transfer Pricing Guidelines, 1998 Report on Harmful Tax Competition.
2. Financial crisis: Need for revenue, and to tackle tax evasion and bank secrecy. Exchange of Information: On request and then automatic (financial account information). Global Transparency Forum
3. BEPS tackle base erosion and profit shifting by multinationals (see next slide) – EU also following these developments.
4. BEPS Taxation of Highly digitalized business
 1. Pillar 1 –3 proposals and later proposal Unified Approach OECD Secretariat – Allocation of taxing rights: Nexus (where) and allocation (how).
 2. Pillar 2- introduction of a minimum income tax (15%)– consequences for tax incentives).

OECD/G20 Developments

OECD with the political mandate of the G20

- ❑ 2009: Exchange of Information (thereafter AEOI- FATCA). Global Transparency Forum [172 Members](#) and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters ([151 Countries](#) including also Multilateral Competent Authority Agreements (on Automatic Exchange of Financial Account Information (the "CRS MCAA"), the Exchange of CARF Crypto-asset Transactions Information (CARF MCAA), the Exchange of CbC Reports (the "CbC MCAA"), and the exchange of information collected under the Model Reporting Rules for Digital Platforms)
- ❑ 2013: BEPS Project and BEPS 4 Minimum Standards



FATCA
CRS



BEPS



3.LEGITIMACY

***THE PROBLEMS ARE LEGITIMATE , BUT
ARE THE SOLUTIONS LEGITIMATE?***

Focus

- GLOBAL TAX GOVERNANCE
- INPUT LEGITIMACY: PARTICIPATION, REPRESENTATION IN DECISION MAKING PROCESS.
- OUTPUT LEGITIMACY: OUTCOME- SUSTAINABLE DEVELOPMENT GOALS

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).

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

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).

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 more than 140 tax jurisdictions.

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

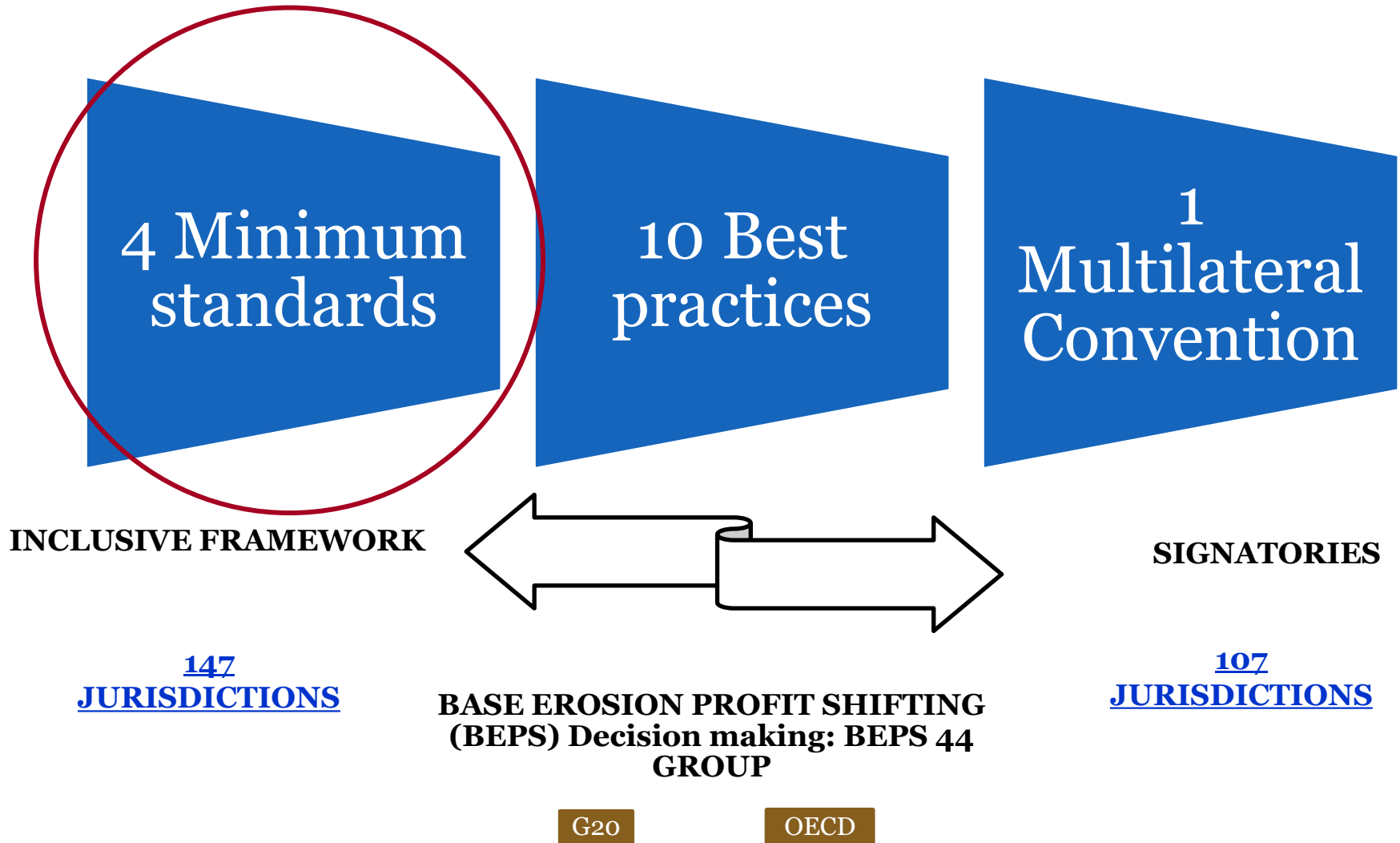
OECD/G20 development

- 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 100 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>

TAX GOVERNANCE – OECD and G20



Legitimacy deficits

- Legitimacy developed by other scholars in other areas than tax law F. Scharpf and V. Schmidt.
- Legitimacy provides for a framework to evaluate
 - the participation and representation in decision making (i.e., input legitimacy),
 - the outcome being useful for all stakeholders (output legitimacy) and
 - the process being transparent, inclusive, accountable and open (throughput legitimacy).

But also applicable to taxation: Why?

Legitimacy deficits

1. BEPS Inclusive Framework: Peer review input limited from peers due to technical capacity among others. IF only for implementation of BEPS 4 Minimum Standards. MLI different mismatches – bilateral negotiations.

2. Different needs of developing countries, speed of the reforms and the need to balance raising revenue vs attracting investment

- IMF 2019 Corporate Taxation in the Global Economy
- IMF 2019 The Rise of Phantom Investments

3. Alignment with Sustainable Development Goals and the 2030 SDG Agenda

- Ensure responsive, inclusive, participatory and representative decision making at all levels (SDG 16.7)
- Develop effective, accountable and transparent institutions at all levels (SDG 16.6)

Legitimacy deficits

- Scholars, civil society and countries have expressed in articles and meetings at international and regional level their concerns regarding the legitimacy of the BEPS Project vis-à-vis non-OECD, non-G20 countries.
- 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.

What has happened until now?

OECD –G20 Report

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>

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

What has happened until now?

Regional organizations have created new committees to address taxation and to enhance legitimacy in international tax law making

The African Union created in 2020, an Extraordinary Specialized Technical Committee (STC) on Finance, Monetary Affairs, Economic Planning and Integration This Committee has been convened under the theme, Securing Africa's Taxing Rights, Stemming Illicit Financial Flows and developing payment system for AfCFTA.

A Regional Tax Cooperation Platform for Latin American and the Caribbean created in July 2023.

What has happened until now?

At international level, the African Group at the United Nations has led the adoption in November 2022 of a UN Resolution to develop a globally inclusive new tax framework and in November 2023 of an UN Resolution to develop an international tax framework Convention under the auspices of the UN.

As a result, an ad hoc intergovernmental committee has been mandated to develop the terms of reference for the development of such convention. These terms of reference have been approved in Aug 2024, and the drafting of the convention will start next year.

See also Roundtables:

UN vs. OECD – Quo Vadis International Tax Governance? 23 November
[[Recording](#)]

Roundtable: The UN Framework Tax Convention. 12 July. [[Recording](#)]

See Inaugural Lecture at Leiden University: Global Tax Governance: Legitimacy and Inclusiveness. Why it matters

The book version can be downloaded [here](#). Recording inaugural lecture available [here](#)

UN challenges

Stakeholders/countries (participation/representation decision making process)

- Role of developing countries vs. developed countries? Rotation/representative/same interests? E.g. Africa, Caribbean, Latin America.
- Decision making by Consensus vs. qualified majority?
- Technical assistance and limited resources to participate still a problem. How to solve that?

Rules (outcome)

Framework Convention- terms of reference? Multilateral instruments? Achievement of the SDGs?

Process

Transparent, inclusive, accountable and open

Challenges

In BEPS, Pillar One and Pillar Two and further development of international rules at OECD or UN level , important to find out

- How countries including developing countries can benefit from these initiatives?
- What needs to be done to also give a voice to developing countries?

All countries should have a voice, but this also means that training and knowledge is needed so that all countries can exercise that voice.

4. Pillar One and Pillar Two

CLASS DISCUSSION

- Globalization and Digitalization: Interconnections between Taxation, Trade and Investment: Section 2: What would be the benefits of a global agreement – and what would be the cost of unilateral action
[Recording](#) min. 8.50 OECD presentation

Pillar One and Pillar Two

- Pillar 1 –Taxation of Highly digitalized business: 3 proposals and later proposal Unified Approach OECD Secretariat – Allocation of taxing rights: Nexus (where) and allocation (how)

- Pillar 2- introduction of a minimum income tax – (15%).

October 2021 [Political Statement on a Two-Pillar Solution](#)
approved by 137 jurisdictions (139 jurisdictions as of June 2023)

November 2023 [Political Statement on a Two-Pillar Solution](#)
Another political statement approved by 142 jurisdictions (as of May 2024) .

Rules being implemented by countries into domestic legislation.
Also Pillar Two Directive.

Pillar One and Pillar Two

- **UN**
 - UN approval Art. 12B (April 2021).
 - August 2024 ToR for the Convention and for the development of Protocols 2 early protocols to be developed simultaneously with the Framework Convention:
 - (1) a protocol to address "taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy"; and
 - (2) a protocol focusing on a subject that will be chosen later from four priority areas, identified as (a) the taxation of the digitalized economy; (b) measures against tax-related illicit financial flows; (c) prevention and resolution of tax disputes; and (d) addressing tax evasion and avoidance by high-net worth individuals and ensuring their effective taxation in relevant UN member jurisdictions.
 - The ToR further indicate that consideration could be given to protocols addressing other topics, including tax cooperation on environmental challenges, exchange of information for tax purposes, mutual administrative assistance on tax matters, and harmful tax practices.
- **EU**
 - Digital Service Tax (countries).
 - Proposal DAC 7: automatic exchange of information with respect to the information reported by digital platform operators.

BEPS Pillar 1 and 2: What is the problem?

Aims

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

But what is the real problem?

- Taxing MNEs: Develop multilateral norms to deal with race to the bottom
- Role of countries – US; OECD/G20 vs. Developing countries.
- Allocation of taxing rights developed vs. developing countries
- Complexity of the rules/limited administrative capacity of developing countries to address Pillar Two rules. More taxing rights to source (mainly developing) countries?

What has happened until now?

International organizations

- **OECD**

- Pillar1: BEPS Action1, Interim Report, Report, OECD Unified approach, Blueprint
- Pillar 2: Consultation, Blueprint. Agreement most of the BEPS Inclusive framework jurisdictions.

Countries positions

- Complexity of rules; fast pace (developing countries: ATAF and CIAT meetings)
- Countries such as China, India and the United States will need to commit for successful implementation of the OECD-Pillar One and Pillar two rules.

In the meantime, countries that have introduced some rules to tax digital economy (e.g. digital service tax) have been subject to US Trade Investigations. However, the US is awaiting for the taxation of highly digitalized business rules (Pillar One) which includes the negotiation of a Multilateral Convention (still pending).

5. Legitimacy deficits: Pillar One and Pillar Two

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

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

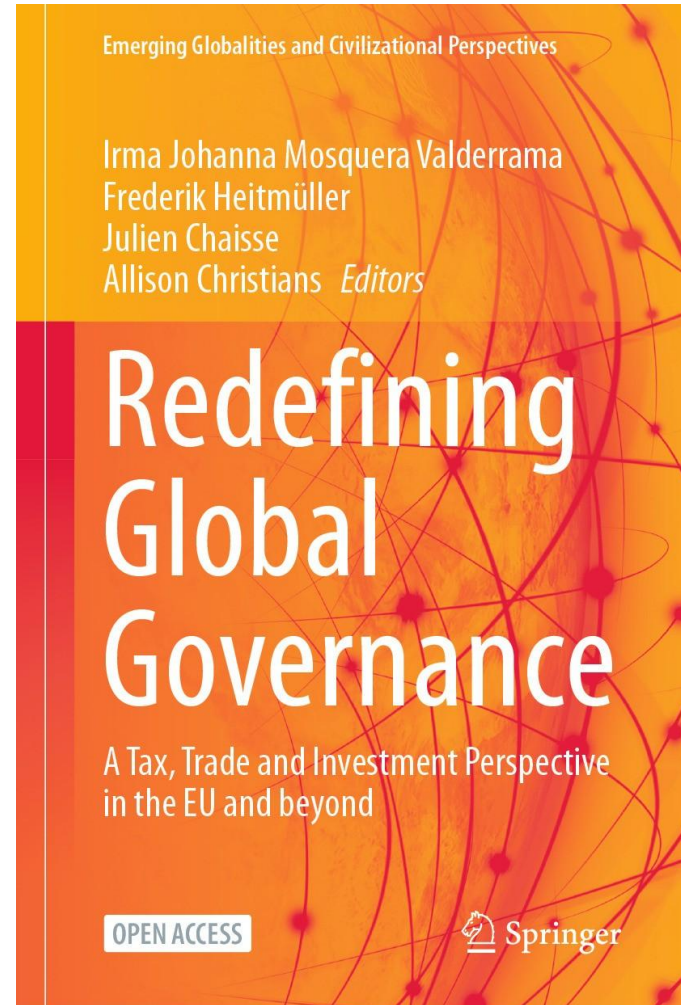
Input and output legitimacy deficits!!!

Background to the book for assignment one

- This open access volume offers a unique interdisciplinary analysis of the current structure of global governance on tax, trade, and investment. It explores the interplay between actors, critiques current norm-making procedures, and proposes concrete solutions for improvement. It considers the impact of global governance in local contexts in Asia, Europe, and Africa, and includes perspectives from scholars based in these continents. It takes a comparative approach that goes beyond a siloed perspective to undertaking comparisons between the ways in which similar problems have been addressed in different areas---making the contributions highly relevant to scholars and policymakers worldwide.

Editors:

- Irma Johanna Mosquera Valderrama, Frederik Heitmüller, Julien Chaisse, Allison Christians



Redefining Global Governance

A Tax, Trade and Investment Perspective in the EU and beyond [Link here](#)

- **The Tax, Trade and Investment Governance Landscape**
- A survey and critique of International Tax Governance Reform
- International Tax and Investment Policy: Navigating Competing Demands
- The Tax Carve-Out Clause in International Investment Law
- Tax and Trade and Investment Instruments in SDG's Achievement
- **Global Tax Governance: Transparency, Fairness and Regulation**
- Competition and Complementarity of EU and FATF Beneficial Ownership Transparency Orders
- Dealing with Treaty Shopping Across the Tax, Trade and Investment Regimes
- Hidden Dynamics and Hierarchies in Tax Policy: A Critical Assessment of Fairness in OECD, EU and UN
- Transparency and Transformation: Rethinking Tax Governance in the Mining Sectors of Tanzania and Kenya

Redefining Global Governance

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- **Interactions and Overlaps Between Tax, Trade and Investment Policies**
- The Interaction Between IIAs and DTCS: Potential for Overlap and Reform Proposals.
- The Intersection of Treaties on Tax and Trade: A Case Study of Australia and India
- The Legal Transplant of EU Standards in Taxation: A Case Study of the ACP Post-Cotonu Agreement
- **Reforming Global Governance**
- Optimising Policy Synergies: The Role of Tax Incentives in International Trade and Investment
- Tax, Trade and Investment for Green Transition
- Breaking the Cycle of Domination in Global Tax Governance: Africans Defying Asymmetries and Seizing Opportunities
- Decision-Making in a Proposed African Union Tax Governance Structure

Taxation, International Cooperation and the 2030 Sustainable Development Agenda [Link here](#)

Global Tax Governance and Developing Countries

- Transfer Pricing
- Arm's length, destination based and unitary taxation
- BEPS in Latin America and the Caribbean

External Assistance for Tax Capacity Building

- Policy coherence for SDGs
- MTRS

Tax Incentives and Attracting Sustainable Investment

- Tax Incentives
- International Investment Agreements

Harmful and Helpful Tax Practices for Sustainable Development

- Tax Expenditure
- Negative Spillovers in International Corporate Taxation

