

Influence of Domestic Constituencies in the Implementation of International Tax Standards and Legitimacy of Global Tax Governance*

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The intensification of global governance activities in the area of international taxation has raised the question of the democratic legitimacy of the process since decisions in multilateral institutions are typically made by members of the executive alone and predominantly those from developed countries. There are opportunities to influence discussions at the global level for non-state actors, but the capacity to do so is unequally distributed.

Yet, the results of global standard-setting processes need to be implemented domestically which affords opportunities for a wider range of constituencies to influence the outcome, among them elected parliamentarians, businesses, and local civil society. On the one hand, this two-stage process mitigates the lack of inclusiveness in global governance; on the other hand, it may jeopardize the effectiveness of global standards in achieving harmonization.

In practice, opportunities for stakeholders to influence the implementation process and the interest to actually do so vary across countries. The purpose of this article is to chart this variation and discuss what it means for the global governance process. This is sourced from interviews on the implementation of the BEPS project's standards with different tax policy stakeholders in Australia, Colombia, India, Mexico, the Netherlands, Nigeria, Senegal and Spain. With this data it is identified which non-governmental constituencies exist in each country, what are their interest vis-à-vis different elements of the BEPS Project, and what means they have at their disposal to influence the implementation process.

The findings indicate variation across countries regarding the direction in which governmental and non-governmental stakeholders try to influence the outcomes as well as regarding their opportunities to effectively influence implementation processes. This entails that the level of implication of stakeholders will be context-dependent and so will be the answer to the question on whether the participation in the implementation process can 'compensate' for a lack of participation in standard setting processes.

Keywords: Global tax governance, democratic legitimacy, international taxation, domestic implementation, stakeholder inclusiveness, expert interviews.

I INTRODUCTION

Policies exert a profound influence on individuals and communities thereby making it crucial for various stakeholders to express their perspectives in their formulation.¹ The difficulty of the debate lies in the evolving dynamics between international organizations and domestic legislative bodies in shaping tax policies. Bertil Wiman, in his 2022 Klaus Vogel lecture at WU Vienna, observed that: 'the balance between the international organizations active in the international tax field, in particular the OECD and to a lesser extent the EU

Commission, on one hand, and the national legislative bodies on the other hand, has been altered in the last ten to fifteen years in a way that may not be healthy'.² He contends that the BEPS Project was primarily steered by government and secretariat officials with national parliaments having a diminished role in shaping norms.³

Although popular as an opinion among tax lawyers, this perspective has been contrasted by tax practitioners such as Edwin Visser who argues that national parliaments retain a crucial role in ratifying international agreements.⁴ He

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¹ Robert O. Keohane, Stephen Macedo & Andrew Moravcsik, *Democracy-Enhancing Multilateralism*, 63(1) Int'l Org. 1-31 (2009), doi: 10.1017/S0020818309090018.

² Bertil Wiman, *Klaus Vogel Lecture 2022: Who Should Be in the Driver's Seat in Developing International Tax Norms – Civil Servants or National Parliaments?*, 77(4) Bull. Int'l Tax'n 158 (2023), doi: 10.59403/21q3sr.

³ *Ibid.*, at 159.

⁴ Edwin Visser, Comments on Prof. Bertil Wiman's Lecture *supra* n. 2, at 164-66.

posits that the democratic process is upheld through the requirement for domestic legal systems to implement the products of international organizations thereby allowing citizens to influence the outcome.⁵

Importantly, these international standards are qualified as soft law⁶ which means that they generally need to be transformed into hard law by national institutions before they can have a binding effect on taxpayers and tax authorities. The extent of constituency participation is thus contingent upon the domestic legal framework and the tax preferences of national stakeholders. In this context, two distinct forms of participation emerge. The first is the role of appointed officials in international forums where policies are debated, and the second is the involvement of domestic constituencies during their implementation phase.

While some critics, like Peter Hongler, argue that citizen involvement in processes such as the global minimum tax has been superficial, others caution against the undue influence of special interest groups outside of governmental structures.⁷ Furthermore, as Visser points out, the level and timing of citizen participation can differ substantially among countries.⁸ Some of them may involve their citizens early in the implementation phase while others may only do so at later stages. This diversity in approaches accentuates the complexity of stakeholder participation in the adoption of international tax standards.⁹

The objective of this contribution is to enrich the ongoing debate by examining the influence of domestic stakeholders in adopting international tax standards. Drawing upon research from the GLOBTAXGOV project at Leiden University, it is aimed to explore the implementation of the BEPS Project in eight countries: Australia, Colombia, India, Mexico, the Netherlands, Nigeria, Senegal, and Spain.

The eight countries are selected to represent different geographical areas, legal systems, stages of development, and levels of political power. The information presented is sourced from expert interviews with a diverse array of stakeholders including policymakers, tax administrators, tax advisors, businesses, and non-government organizations (NGOs). The interviews took place between 2019 and 2023, they were focused on the

respondent's expressed preferences and available avenues for participation in the BEPS Project's implementation process.

Considering that the contribution discusses democratic forms of participation, the focus is on countries that are democracies, at least from a formal perspective. The PolityIV index developed by the research centre Systemic Peace ranks Australia, the Netherlands, and Spain as consolidated democracies with the highest score of 10 while the remaining countries of the sample score between 7 and 9 (any country with a score between 6 and 10 is considered as 'democratic').¹⁰ This means that the investigation in this study does not cover autocratic countries where less involvement of different stakeholders in the implementation process can be expected from the beginning. Moreover, all of the countries are committed to implementing the BEPS Project and are peer reviewed regarding the implementation of the four minimum standards since they are members of either the OECD, G20, the Inclusive Framework, or a combination of the three.

The opening segment reviews the literature related to stakeholders' influence on the implementation of international tax standards (section 2). Subsequently, the analysis progresses to examine the opportunities of different stakeholders to influence the result drawing from evidence in the countries studied (section 3). Section 4 presents evidence on the stakeholders' preferences concerning the implementation of the BEPS Project, and section 5 discusses what the findings mean for the debate on the legitimacy of global tax governance. The article concludes with section 6.

2 LITERATURE REVIEW

There is an expanding body of research analysing the influence of specific governments and different non-state stakeholders on the formulation of standards at the international level.¹¹ Some scholars, for example, have studied submissions made in the run-up to the BEPS Project and found, among others, that the advisory profession was able to exert greater influence than businesses and NGOs due to their greater capacity to engage in technical debates.¹² However, research

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⁵ *Ibid.*, at 164.

⁶ Allison Christians, *Hard Law, Soft Law, and International Taxation*, 25 *Wis. Int'l L.J.* 325 (2007).

⁷ Peter Hongler, *The OECD Will Drive the United States into Socialism*, GLOBTAXGOV Blog (blog) (26 Jul. 2023), <https://globtaxgov.weblog.leidenuniv.nl/2023/07/26/the-oecd-will-drive-the-united-states-into-socialism/> (accessed 30 Dec. 2023).

⁸ 'So, is there nothing to worry about? No, although the basic democratic mechanisms are in place, the theory sometimes falls short in practice'. Visser, Comments on Prof. Bertil Wiman's Lecture, *supra* n. 4, at 164.

⁹ *Ibid.*, at 165.

¹⁰ Center for Systemic Peace, *The Polity Project. About Polity* (2018), <http://www.systemicpeace.org/polityproject.html>. (accessed 30 Dec. 2023).

¹¹ Martin Hearson, Rasmus Corlin Christensen & Tovony Randriamanalina, *Developing Influence: The Power of 'the Rest' in Global Tax Governance*, 30(3) *Rev. Int'l Pol. Econ.* 841–864 (2023), doi: 10.1080/09692290.2022.2039264; Christina Elschner, Inga Hardeck & Marcel Max, *Assessing the Influence of Different Interest Groups on International Tax Policy: Evidence from the BEPS Project*, 39(1) *Contemp. Acct. Res.* 304–338 (2022), doi: 10.1111/1911-3846.12722; Tim Büttner & Matthias Thiemann, *Breaking Regime Stability? The Politicization of Expertise in the OECD/G20 Process on BEPS and the Potential Transformation of International Taxation*, 7(1) *Acct. Econ. & L.: A Convivium* (2017), doi: 10.1515/acl-2016-0069; Rasmus Corlin Christensen, *Elite Professionals in Transnational Tax Governance*, *Global Networks* 2020, Vol 21 (1), doi: 10.1111/glob.12269; Fritz Brugger & Rebecca Engebretsen, *Defenders of the Status Quo: Making Sense of the International Discourse on Transfer Pricing Methodologies*, *Rev. Int'l Pol. Econ.* 1–29 (27 Aug. 2020), doi: 10.1080/09692290.2020.1807386.

¹² Elschner, Hardeck & Max, *supra* n. 11.

on different stakeholders' roles in the implementation process at the domestic level is still limited.

Cassandra Vet's article on the implementation of transfer pricing laws in East Africa highlights that tax advisors were advocating in favour of the implementation of transfer pricing laws based on the OECD guidelines despite potential increases in tax burden for their clients and could advance their claim through their close contacts with revenue officials.¹³ She also shows that, in contrast, local civil society has been less influential in the design of the rules. Martin Hearson's research on countries' tax treaty policies show that expert government officials who are part of the transnational international tax community are often able to overrule business preferences.¹⁴

Regarding the BEPS Project specifically, the 2017 IFA report 'Assessing BEPS: Origins, Standards, and Responses' surveyed the number of public consultations and the participation of non-state stakeholders both during the elaboration phase of the BEPS Project and accompanying the implementation of its result. This report found that, in a majority of the reporting countries (26 out of 48), a number of public consultations had occurred before or during the publication of the BEPS reports. Nevertheless, the reports show that the amount of discussion varied significantly across countries. For example, the German report emphasizes the substantial amount of discussion in the run-up of the BEPS Project and afterwards including business, advisory, non-governmental organizations, the media, and parliament.¹⁵ In contrast, the Indian report only mentions a few informal exchanges at academic events between the government and other stakeholders.¹⁶

Finally, some literature has investigated to what extent international standards are actually implemented in domestic legislation. The most comprehensive study was undertaken in a recent paper by the IBFD prepared for the UN Secretary General's Report on 'Promoting Inclusive and Effective International Tax Cooperation at the United Nations' that surveyed the global uptake of standards and recommendations from the BEPS Project. Analysing data from the IBFD's BEPS Country Monitors, the authors found that, eight years after their publication, implementation of the BEPS Project's recommendations is piecemeal on the global scale.¹⁷ This is exacerbated when international standards peremptorily request for a greater number of significant changes to domestic law but is also true for the minimum standards to which countries are explicitly committed.

Concerning the BEPS Minimum Standards, the general pattern reveals either acceptance or delay in implementation.

Instances of outright rejection or non-compliant modifications are uncommon. For international tax standards of a less binding character, such as other outcomes of the BEPS Project that are labelled as recommendations or best practices or the OECD Transfer Pricing Guidelines, the implementation of a modified version may be more common. The OECD's Corporate Tax Database that compiles information on interest deduction and controlled foreign company rules, for example, shows that countries have implemented an array of different versions of them.¹⁸

3 COMPARING INSTITUTIONAL CONFIGURATIONS AND OPPORTUNITIES TO INFLUENCE OUTCOMES AT THE DOMESTIC LEVEL

In this section, the opportunities available to stakeholders for influencing the results of the implementation process are surveyed, along with a comparison of how these vary across countries. Section 4 identifies how the stakeholders convey their interests in those circumstances.

The following stylized description can be made of the implementation process of most international standards. Following a political decision to commit to implementing a policy standard, typically made by the minister of finance, the implementing bill is prepared by government officials at a technical level. This can take place either within the ministry of finance or the tax administration or with the involvement of both. These officials are often the same as those who are also delegated to international fora.

When preparing the law, consultations are potentially held with other governmental actors, for example, the tax administration if it is not directly responsible for the implementation or other ministries and with non-governmental stakeholders. The bill is subsequently discussed by parliament and ratified with or without modifications.

However, this process varies across countries and depends on the nature of the international standard (e.g., whether it is more of a substantive or procedural nature and whether it is embedded in an international convention).

Additionally, the process is likely to develop further than the implementation phase. In this case, the context of supplementary or alternative changes will depend on how the standard is addressed by the government and if it elicits changes that expand on the scope of the change originally

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¹³ Cassandra Vet, *Diffusion of OECD Transfer Pricing Regulations in Eastern Africa: Agency and Compliance in Governing Profit-Shifting Behaviour*, ICTD Working Paper (Institute of Development Studies 21 Apr. 2023), doi: 10.19088/ICTD.2023.022.

¹⁴ Martin Hearson, *Transnational Expertise and the Expansion of the International Tax Regime: Imposing 'Acceptable' Standards*, *Rev. Int'l Pol. Econ.* 1–25 (2018).

¹⁵ Daniel Fehling & Karoline Kampermann, 'Germany', *IFA Cabiers 2017 – Volume 102A: Assessing BEPS: Origins, Standards, and Responses* (IFA 2017).

¹⁶ H. Padamchand Khincha & Ameya Kunte, 'India', *IFA Cabiers 2017 – Volume 102A: Assessing BEPS: Origins, Standards, and Responses* (IFA 2017).

¹⁷ IBFD, *Promotion of Inclusive and Effective Tax Cooperation at the United Nations*, Input Paper to the United Nation Secretary General's report (2023), <https://financing.desa.un.org/input-paper-international-bureau-fiscal-documentation-ibfd> (accessed 30 Dec. 2023).

¹⁸ See OECD, *Corporate Tax Statistics*, 4th edition, <https://www.oecd.org/tax/tax-policy/corporate-tax-statistics-fourth-edition.pdf> (accessed 30 Dec. 2023).

envisioned by the standard itself. An example is when domestic rules are adopted to align the legislation with the commitment made at the international level, but these changes were not part of the international commitment. This is common in tax law that affects international agreements which is usually incentivizing changes in domestic legislation that facilitate the future application of the rules included in the tax agreement. This can be the case with anti-avoidance measures¹⁹ or with provisions that enable the country to tax activities that were not included in domestic rules.²⁰ Some of the comments made by respondents also referred to this type of effect as being connected with the international tax standards implementation process, therefore, they are considered within the scope of the analysis.

3.1 Consultations

Three types of consultations can be distinguished. The first can be referred to as an official public consultation in which the government requests the general public to take part in the discussions, e.g., calls for input published on a Ministry's website or official hearings that are held. A second alternative is an informal consultation when government officials informally meet with other stakeholders or participate in conferences and workshops organized by stakeholders outside the government. Finally, there are formal private consultations where a defined set of stakeholders is directly invited to share their opinion. An example of this last category is a commission established by law in Colombia to enable discussions on matters of customs duties, taxation, and foreign exchange between representatives of the ministry of finance, the tax administration, and representatives of business associations.²¹

During the interviews, it was also observed that consultations can occur at various moments in the process and can be initiated by different types of actors. For example, the institution initiating this interaction can be the ministry during the drafting phase of the bill, and it can also be the parliament or even the courts when they are engaged in ratifying or reviewing legislation (*See* section 3.4).

In all of the countries that were researched, public or private consultations are regularly organized, although not always for every type of policy. For example, an Indian tax advisor noted in an interview that the Indian Government had invited public comments for introducing legislation on country by country reporting (CbCR) and rules on the attribution of profits to permanent establishments. However, the same was not true for India's position on the Multilateral Instrument.²² Similarly, in Mexico, an official public consultation was organized by the taxpayers' ombudsman (Procuraduría de la Defensa del Contribuyente – PRODECON) before implementing BEPS Action 13 CbCR. However, this was not the case for other standards such as BEPS Action 6 and its correlated domestic general anti-avoidance rule²³ or changes from thin capitalization to earnings before interests, taxes, depreciation and amortization (EBITDA). This is because, according to an interviewee working for the Mexican tax administration, other parts of the BEPS Project concerned taxpayers that were thwarting the correct application of the tax provisions and therefore consulting with them were not deemed appropriate.²⁴

There are also variations regarding the moment when a consultation is organized, e.g., at the beginning of the legislative drafting process or only once a proposal has already been made. In the case of Senegal, for example, there is evidence that the government organized events with businesses and advisors prior to introducing country-by-country reporting and transfer pricing regulations. However, these appear more to have had the purpose of informing stakeholders rather than receiving input on the draft.²⁵ In Mexico, one respondent noted that the practice of consulting informally varied between governments. In the past, tax reform bills had previously been discussed with the most affected taxpayers by either the tax administration or the ministry of finance before submitting it to parliament.²⁶ Yet, in this person's opinion, the current administration²⁷ has a different approach to the matter whereby the only moment to deal with the changes was at

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¹⁹ For the BEPS minimum standards, it was observed that there were countries that adopted a domestic general anti-avoidance rule or amended their existing one in order to align the provision with the wording and logic of the general anti-avoidance rule introduced with the project, specifically the PPT.

²⁰ In his analysis, Brian Arnold clearly explains the divergent approaches to the application of double taxation treaties, particularly focusing on certain African countries and France. Arnold elucidates that these jurisdictions tend to interpret double tax treaties in a manner that empowers them to impose taxes beyond the scope traditionally allowed by their domestic regulations. Such an approach contrasts starkly with other interpretative traditions for which double tax agreements are viewed primarily as facilitators that merely serve to enable applying domestic tax rules. Brian J. Arnold & Michael J. McIntyre, *International Tax Primer* (2d ed., Kluwer Law International 2002).

²¹ The Comisión Nacional Mixta de Gestión Tributaria y Aduanera in Colombia serves as a national advisory body on tax compliance, customs, and foreign exchange operations as well as preventing and penalizing infringements of these regulations. Colombia: Ley 1607 de 2012 'Por la cual se Expiden Normas en Materia Tributaria y se Dictan Otras Disposiciones', Art. 146.

²² Interview with Indian tax advisor, 27 Nov. 2019, on file with the authors.

²³ BEPS did not require having a domestic general anti-avoidance rule, however, Mexico decided to use the BEPS input to have the PPT at double tax treaty level to steer the approval of a domestic general anti-tax avoidance rule that was being proposed without success by the government since 2005. This example will be discussed in full in s. 3.4.

²⁴ Interview with Mexican tax administration's official, 29 Apr. 2021, on file with the authors.

²⁵ Interviews with Senegalese business association and Senegalese tax authority, 7 and 10 Jun. 2022, respectively, on file with the authors.

²⁶ Interview with Mexican tax advisor, 1 Jun. 2022, on file with the authors.

²⁷ The respondent referred to the government in power for the term 2018–2024.

the same time in which the reform was shared with the legislative power for their approval. The tax bills that were affected by this change in practice concerned those that included the four BEPS minimum standards.

As anticipated, stakeholders can also have consultations once the norm has already been enacted to resolve doubts or integrate the new content with preceding norms. This behaviour is a constant for Spanish stakeholders as legislative changes are analysed in private forums organized by law firms to discuss topics whose application is not yet settled with the tax administration. The conclusions achieved in these forums might not result in settling the positions of the institutions, but they serve to clarify doubts and share them with other constituencies.²⁸ This course of action is complementary to consultations that can take place in earlier stages of the implementation process.

In the case of Australia and the Netherlands, consultations are constantly organized on all types of legislative proposals by either the ministry of finance in their own headquarters or by tax consultant organizations such as the Nederlandse Orde van Belastingadviseurs (NOB). The interviews conducted in both countries reveal a consensus among respondents regarding the close interaction between tax authorities, the ministry of finance, and taxpayers.²⁹ This consistent view suggests a notable affinity between taxpayers and public administrations.

The consultation process in tax policy is fundamentally rooted in legal or administrative requirements. It is subject to dynamic changes influenced by the evolving relationship between tax administrations and taxpayers and factors such as shifts in government, policy direction, and administrative leadership. The analysis reveals substantial stakeholder involvement in these processes. However, their frequency and depth can vary, often reflecting the strategic interests of certain stakeholders, especially in situations where trust is lacking between taxpayers and tax authorities or finance ministries. In such scenarios, consultations might be reduced to a formality that merely satisfy legal obligations or mitigating conflicts. On the other hand, in environments where a trustful and open relationship prevails, consultations are more likely to be frequent and facilitated by administrative mechanisms encouraging transparent communication. A government's approach to these can shift from being closed and agenda-driven to more open and trust-based, and vice versa, depending on governance structures, policy direction, and leadership style.

3.2 Delegation of Competences

In some countries, institutions that are funded by the government but enjoy independence to determine strategies and activities may also have specific involvement in the policy process.

For example, an institute devoted to reviewing the tax laws and the tax system's coherence can be delegated by the ministry to promote discussions among tax experts and academics on policy proposals. Likewise, this institution might be the place to offer training on technical matters for taxpayers and advisors. In this way the participation of an important sector of the public opinion, specifically the expert community, will be assigned to a given institution. Creating of institutions that function as knowledge centres outside of the governmental system instituted by law might contribute to constituencies participating in the normative construction of the law.

An example of this type of institution is the Institute of Fiscal Studies (IEF as per its name in Spanish – Instituto de Estudios Fiscales) in Spain that operates in order to provide technical knowledge and assistance to the ministry of finance, other ministries, government agencies/institutions as well as the national and international public.³⁰ The IEF was created by legislative power (Law 8 of 2000), but it is an organism that is appointed by the ministry of finance through the secretary of state. Regardless of this, the IEF has its own statute that was approved by a royal decree.³¹

In similar terms, creating specific bodies within the government to engage with distinct topics of tax law might contribute to the technical discussions that need to occur before creating new norms but also once they are being applied. Once again, in this regard, Spain developed an office within the Department of Financial and Tax Inspection named the National Office of International Taxation *Oficina Nacional de Fiscalidad Internacional* - ONFI devoted to engage with all matters concerning transfer pricing. This office was not created due to the eminent engagement that BEPS supposed in this topic but as a need that was foreseen by the tax administration as per the increased involvement of taxpayers with opening branches outside of the country.³²

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²⁸ An example of this type of forum is the conference organized by Ernst and Young Madrid on 15 Oct. 2022 in which speakers of the tax administration (Luis Jones-ONFI) and tax advisors and CEOs of large multinational firms such as Unilever and Repsol participated.

²⁹ Interviews conducted with tax practitioners in the Netherlands between 1 Feb. to 31 Mar. 2021 and an interview with two officials of the Australian Treasury Office, 11 Jan. 2022.

³⁰ According to the mission and vision of the IEF, their work can be summarized in two main areas, i.e., knowledge and training. Additionally, it acknowledges that the main recipients of their output are: 'Sus destinatarios son el Ministerio de Hacienda, otros Ministerios, organismos públicos e instituciones, del ámbito nacional e internacional'.

³¹ Royal Decree 63 of 26 Jan. 2001. More information about the IEF can be found on their webpage, <https://www.ief.es/Instituto/presentacion.vbhtml> (accessed 30 Dec. 2023).

³² Interview with a Spanish tax authority's officer within the ONFI, 11 Oct. 2022, on file with the authors.

An additional example of institutions that are part of the government but have independence when acting is the Taxpayer's Ombudsman Office (Procuraduría de la Defensa del Contribuyente – PRODECON) that operates in Mexico as a bridge between the taxpayers and the tax authority when required.³³ In fact, PRODECON has established itself as a crucial entity in recent years, significantly contributing to both the adoption of international tax standards and the acceleration of tax collections while simultaneously reducing the need for dispute resolution processes and lawsuits.³⁴

The institution's creation was influenced by the structure of the National Taxpayer Advocate (NTA) and the Taxpayer Advocate Service (TAS) in the United States that are designed to assist taxpayers facing issues with the Internal Revenue Service (IRS) in matters of substantial and formal tax compliance³⁵ PRODECON's role in implementing the four BEPS minimum standards was focused only on Action 13 for which it promoted a joint analysis between taxpayers and the tax administration tending to agree on practical solutions to comply with the CbCR standard.

3.3 Parliamentary Approval

The role of the parliament differs according to its involvement in approving the different rules. In some countries, the constitutional mandate expressly identifies the fact that any new tax measure can only be determined by law.

3.3.1 Formal Involvement

The parliament's involvement in discussing internationally agreed standards varies depending on constitutional provisions and government choices. Table 1 shows that, for the same policy standard, parliaments may be involved in some countries but not in others. For example, while international conventions such as the MLI need to be approved by the parliament in most countries, this is not the case in India. On the contrary, changes made to the OECD transfer pricing guidelines are more often included in domestic legal orders without parliamentary approval. This is because they are either adopted by way of executive regulation or because the law provides for a direct applicability of the OECD guidelines.

Table 1 Parliamentary Involvement per BEPS Action

Item	Colombia	Senegal	India	Nigeria	Netherlands	Spain	Mexico	Australia
MLI ratification	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
CbCR domestic legislation (BEPS Action 13)	Yes ³⁶	Yes ³⁷	Yes ³⁸	No ³⁹	No ⁴⁰	No ⁴¹	Yes ⁴²	Yes ⁴³

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³³ PRODECON's role extends beyond mediation; it actively drafts legislative recommendations and organizes public events to improve citizen-government communication. This multifaceted approach underscores its vital contribution to developing a more responsive and equitable tax system in Mexico.

³⁴ PRODECON issues an annual report that explains the objectives achieved during the year. The most recent reports can be consulted here, <https://www.gob.mx/prodecon/acciones-y-programas/informe-anual-de-actividades-ejercicio-2016> (accessed 30 Dec. 2023). PRODECON includes detailed information on its functions and achievements within the Mexico's National Report on the Observatory for the protection of taxpayers' rights, In: *Observatory on the Protection of Taxpayers' Rights International Bureau of Fiscal Documentation* (Pasquale Pistone & Philip Baker eds., IBFD), 2023, National Report of Mexico - 1.

³⁵ Interview with a Mexican former PRODECON officer, 10 Mar. 2021, on file with the authors.

³⁶ Colombia: Diario Oficial, *Ley 1819 de 2016 Por Medio de La Cual Se Adopta Una Reforma Tributaria Estructural, Se Fortalecen Los Mecanismos Para La Lucha Contra La Evasión y La Elusión Fiscal, y Se Dictan Otras Disposiciones*, Pub. L. No. Año CLII No. 50.101 (2016), Art. 107.

³⁷ Senegal: Loi 2018/10 du 30 mars 2018, Art. 28.

³⁸ India: Finance Act, 2016, Art. 113.

³⁹ Passed by regulation. Nigeria: FIRS, *Income Tax (Country-by-Country Reporting) Regulations, 2018* (8 Jan. 2018), <https://www.firs.gov.ng/wp-content/uploads/2021/01/Official-Gazette-of-Income-Tax-CbC-Regulations-2018.pdf>.

⁴⁰ Regulation No. DB/2015/462M described the guidelines for the obligation to share the CbCR.

⁴¹ The CbCR was considered a formal obligation as per Arts 13 and 14 of the Income Tax Act regulatory act – Law 27 of 2014 amended.

⁴² Implemented via Art. 32-H, fractions I, II, III and IV of the Federation Fiscal Code and subparagraphs a) and b) of para. 2 of fraction III of the Income Tax Act.

⁴³ Subdivision 815-E of the Income Tax Assessment Act 1997 (modified by the Treasury Laws Amendment Act – 2020 Measures No.1). In this regard the main document to follow is the Tax Bill of 2015.

<i>Item</i>	<i>Colombia</i>	<i>Senegal</i>	<i>India</i>	<i>Nigeria</i>	<i>Netherlands</i>	<i>Spain</i>	<i>Mexico</i>	<i>Australia</i>
Modification/deletion tax incentive pursuant to Action 5	Yes	NA	NA	NA	Yes ⁴⁴	Yes ⁴⁵	NA	Yes ⁴⁶
Change in transfer pricing guidelines (Actions 8–10)	Yes ⁴⁷	No ⁴⁸	No	No ⁴⁹	No ⁵⁰	Yes ⁵¹	Yes ⁵²	Yes ⁵³

NA = The respective item is not applicable (in the case of Action 5, for example, because the country did not have any harmful tax incentives)

Usually, the degree of involvement for different types of laws is mandated by the constitution or other laws. However, governments may enjoy some discretion for the decision of submitting (or not) a text for parliamentary approval. In the Nigerian case, for example, the decision to amend the domestic transfer pricing guidelines by regulation alone was controversially discussed by stakeholders from the private sector. One interviewee debated the prospect of litigating against the validity of the guidelines.⁵⁴ However, others showed an understanding. One tax advisor stated: ‘Anything that’s not political or budgeting takes forever to go through the parliament and so it’s in the interest of efficient tax administration in Nigeria for the authorities to be able to pass swift legislation to move alongside the OECD’.⁵⁵

In sum, it can be seen that, from a formal perspective, parliaments’ involvement in the implementation process of international standards varies across countries. In a first instance, this is due to constitutional differences that may not always require the same type of parliamentary involvement for the same type of legislation. Second, there are

different methods available within a single tax system to adopt international agreements. For instance, a ministry of finance may choose to implement a general mandate through law necessitating parliamentary approval while delegating the detailed formal and operational aspects to administrative acts such as regulations or general rulings.

This approach has been effectively employed by Mexico and Nigeria in the context of regulating transfer pricing formal obligations in accordance with BEPS updates. The underlying rationale of this strategy is to fulfil international commitments while simultaneously reducing administrative burdens and costs associated with the implementation process. However, it is important to recognize that decisions made through administrative acts, alike to laws passed by parliamentary review, are not immune to scrutiny; they can still be subject to judicial review, as will be discussed in section 3.4.

From this vantage point, it becomes apparent that the perceived advantages in terms of cost and administrative efficiency are not entirely eliminated but rather deferred and potentially addressed later at the judicial instances.

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⁴⁴ Dutch Tax innovation Box Regime which grants an income tax rate of 9% over the regular corporate tax rate of 15%-25,8% for year 2022 for the self-developed intangible assets of a company (IP assets). This rule includes the limits addressed in Action 5 BEPS; see summary of the information prepared by the Dutch tax authority’s webpage, <https://www.belastingdienst.nl/wps/wcm/connect/blcontentnl/belastingdienst/zakelijk/winst/vennootschapsbelasting/innovatiebox/boxdrempel> The changes were applicable as of Jan. 2017.

⁴⁵ IPBox Regime – Law 27 of 2014 modified by Law 5 of 2022.

⁴⁶ Australia had a ring-fencing system to offer income tax benefits for investors located in the country. It was challenged before by the OECD and once again under BEPS Action 5.

⁴⁷ Passed by law in 2016: Diario Oficial, *supra* n. 36.

⁴⁸ Passed by regulation: Instruction sur les Prix de Transfert, 2018 (as of 2023 not yet in force).

⁴⁹ Passed by regulation: Income Tax (Transfer Pricing) Regulations (2018).

⁵⁰ Incorporated by Decree (nr. 2018–6865 dated 22 Apr. 2018) was published on 11 May 2018 and replaces the 2013 Decree (IFZ 2013/184M dated 14 Nov. 2013).

⁵¹ Changes to the legislation were minor as they were already in alignment. Institutionally, they formed a specific office to deal with TP matters as of 2013, i.e., the ONFI. Art. 18 of the Income Tax Law (Ley del impuesto sobre sociedades -LIS) – Law 27 of 2014 and further amendments inclusive of the one introduced by Law 5/2022, at 9 of Mar. 2022.

⁵² Changes to the Fiscal Code of the Federation (used as an auxiliary document to clarify the procedures related to the Income Tax Act and Indirect taxes Act – Congress defines its content in 196 transitory rules).

⁵³ The transfer pricing legislation was amended to a great extent because it was outdated in comparison with the guidelines offered by the OECD after 2010. Changes to this legislation can be found in Division 815 of the Income Tax Assessment Act 1997 and its Explanatory Memorandum.

⁵⁴ Interview with Nigerian tax advisor, 11 Mar. 2022, on file with the authors.

⁵⁵ Interview with Nigerian tax advisor, 9 Mar. 2022, on file with the authors.

This perspective is crucial for understanding the complexities and nuances involved in the integration of international tax standards within national legal frameworks.

3.3.2 Presidential vs. Parliamentary Systems

Whether parliament is likely to play an important role also depends on whether the political system allows the parliamentary majority to be different from the government. Globally speaking, in presidential systems, government and majority are not necessarily aligned which means that parliaments may more frequently be blocking proposals. In parliamentary systems, in contrast, the government is elected by the parliamentary majority. This means that it can be expected that government policies will be supported by parliament most of the time except when a supermajority (e.g., two thirds of the parliament or unanimity) is required to pass a certain law. This is inclusive of the decision taken at the international level by government representatives and subsequent decisions to implement the outcomes.

A well-known example of a presidential system is the United States where what is known as divided governments frequently occur. The World Bank's Database of Political Institutions classifies Australia, India, the Netherlands, and Spain as parliamentary systems and Colombia, Mexico, Nigeria, and Senegal as presidential systems.⁵⁶ This implies that there could be a difference between the way that the studied countries adopted the BEPS standards provided that the process in presidential systems could face a higher level of contestation.

3.3.3 Capacity of Parliaments to Influence Policy

Voters rely on the parliament to promote the interests and goals of the constituencies. This implies that the parliamentarians must not only to be able to engage in the discussions from a formal perspective (*see* section 3.3.1) but also to understand the issues at stake and be able to formulate an opinion on them. Likewise, parliamentarians must be able to identify the particularities of their country's tax system in order to comprehend the changes that the standard will cause.

Among the countries reviewed, those that show a high level of involvement of ministry officials with the parliament (e.g., disclosure or explanatory statement meetings or accountability sessions) are much more capable of transferring technical knowledge to parliamentarians. This step is

key for the parliament to be able to engage with the content of the standards and its impact upon the existing tax system.

Parliaments on their own might lack the technical capacity to substantively discuss proposals that implement international standards. Their suitability to the task depends on the infrastructure available to research topics to be discussed in the legislative agendas. The number of assistants that the parliament can have in order to engage actively with the topics involving international tax standards also matters as more resources increase the possibility for gathering information and understanding the standards' implications for the country.

On the topic of parliament's capacity, the stakeholders manifested some of their concerns regarding the resources for which their own parliament had to actively engage in the discussion of the impact of those standards vis-à-vis the existing legislation. A Colombian tax lawyer commented on the dynamics of implementing the BEPS proposals in his country that:

The young people who work at [the tax administration] are a generation of well-prepared young people who have been elsewhere, they understand this. [...] They push, push, push and influence and as the Congress does not understand anything, they put it in the norms. And the Congress asks questions but does not expect any answers. [...] One day in the Congress of the Republic I was asked to speak for five minutes on that subject. I did it very superficially because I considered that if I did it judiciously it would be more demanding for me, but the others would not understand anything at all. So I spoke in generalities.⁵⁷

In practice, therefore, parliamentarians need to often rely on expert judgment which means that they could be used as vehicles for other stakeholders to influence the debate. A Senegalese tax advisor interviewed for this project, for example, said that, while usually tax advisors were consulted by the government during the lawmaking process, that was not always the case. In this situation, he would contact parliamentarians and ask them to voice his concerns during a parliamentary debate.⁵⁸

A related issue is the amount of time that is allocated for discussing a given subject. Nigerian interviewees pointed out that proposals are often only published very shortly before they are voted on in parliament so that there is limited time for stakeholders to react to a policy proposal. An interviewee from a multinational company said that the Nigerian tax community 'had

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⁵⁶ Carlos Scartascini, Cesi Cruz & Philip Keefer, *The Database of Political Institutions 2017 (DPI2017)* (Inter-American Development Bank (16 Mar. 2018), doi: 10.18235/0001027).

⁵⁷ Interview with Colombian tax advisor, 20 Oct. 2019, on file with the authors.

⁵⁸ Interview with Senegalese tax advisor, 1 Jun. 2022, on file with the authors.

been taken by surprise' when the Nigerian Government announced the repeal of an exemption from capital gains tax for sales of shares in the 2022 Finance Act. Additionally, taking into account the number of amendments proposed in it, there was not sufficient time to react.⁵⁹

In a similar fashion, an interviewee in Mexico⁶⁰ also argued that the time window to react to legislative proposals was too short primarily because the timeframes provided for constituencies to review and respond to government proposals before their evaluation by parliament were insufficient. As was mentioned in section 3.1 the absence of an informal consultation process carried out before sharing the final proposal by the ministry of finance affected the opportunity for taxpayers and tax advisors to become aware of the diverse changes ahead. Due to the limited time available to familiarize themselves with the extensive changes proposed in the tax bill, taxpayers had to become more selective in choosing topics to lobby against.⁶¹

The three examples show that international standards are often introduced as part of a larger tax reform project that could contain dozens of amendments to provisions.⁶² This strains the capacity of the parliament to engage in substantive debates. At the same time, it makes lobbying for the private sector more difficult.

3.4 Judicial Review

Judicial review processes may afford additional opportunities for stakeholders to influence the implementation process. In systems with an ex-ante constitutional review, stakeholders can appeal to the judiciary for opinions on the constitutional validity of internationally agreed treaties before their ratification or other pieces of legislation before their enactment. In other systems, they can challenge the constitutional validity of laws once those have been implemented. Finally, ordinary judicial review processes can also affect the meaning of a legislation in practice.

3.4.1 Constitutional Review

Colombia and Mexico are examples in which constitutional review of laws can be influential. In the former, a revision of laws by the constitutional court is common practice and mandatory in the case of international treaties, such as the MLI, as foreseen by subsection 10 of section 241 of the Colombian Constitution.⁶³ For other pieces of legislation, any citizen has the right to ask the constitutional court to evaluate the constitutionality of a law.⁶⁴ For tax laws, such demands are frequently put forward by tax lawyers. During the process, the court generally requests that expert witnesses pronounce themselves on the position, mainly the Colombian Institute for Tax Law and the countries' principal universities. The constitutional control has experienced recent updates, including a significant change pertaining to double tax treaties. Now, when drafting legal approvals for such treaties, the ministry of finance is mandated to explicitly state the 'substitute source due to revenue decrease' that will offset the additional expenses incurred by these agreements.⁶⁵ This new requirement, however, is applicable only to future agreements and does not extend to those whose negotiation phases were completed by 2020. This measure aims to ensure fiscal responsibility and transparency notwithstanding potential revenue impacts from double tax treaties.⁶⁶

Similarly, in Mexico, two respondents identified that an often used mechanism to argue the unconstitutionality of the tax norms is to file an *Amparo*. It allows individuals or legal entities to appeal against laws and other regulations⁶⁷ that are considered violative of human rights established in the federal constitution and in the international treaties of which Mexico is a part. This resource is used extensively in Mexico according to one of the respondents because it is perceived as an emergency resource that requires a more comprehensive revision of tax norms that become approved under high pressure and can be hastily passed by the government.⁶⁸

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⁵⁹ Interview with Nigerian business representative, 21 Feb. 2022, on file with the authors.

⁶⁰ Interview with Mexican tax advisor, 1 Jun. 2022, on file with the authors.

⁶¹ *Ibid.*; Mexican tax advisor, 1 Jun. 2022.

⁶² Such as, e.g., the Colombian tax reforms of 2016 (Diario Oficial, 'supra n. 36) and 2018 (Diario Oficial, *Ley 1943 de 2018 Por La Cual Se Expiden Normas de Financiamiento Para El Restablecimiento Del Equilibrio Del Presupuesto General y Se Dictan Otras Disposiciones*, Pub. L. No. Año CLIV No. 50.820 (2018), <http://www.suin-juriscol.gov.co/viewDocument.asp?id=30036049>.)

⁶³ The constitutional court's roles include determining the validity of international treaties and related laws, reviewing government submissions within six days of law enactment, allowing citizen participation in constitutional debates, and facilitating or denying treaty ratification based on constitutional adherence. If a multilateral treaty's provisions are non-enforceable, the president can only agree by making specific reservations.

⁶⁴ Irma Johanna Mosquera Valderrama, *The International Tax Treaty Policy of Colombia*, 67 (4/5) Bull. Int'l Tax'n 238–247 (2013), doi: 10.59403/f7615.

⁶⁵ In compliance with Art. 7 of Law 819 of 2003.

⁶⁶ Sentences C-443 of 2021 that approved the introduction of the double tax treaty between Colombia and Italy and C-091 of 2021 that approved the introduction of the double tax treaty between Colombia and France.

⁶⁷ An Amparo can be filed against laws, acts, or omissions of the authority or a private party performing acts equivalent to those of an authority.

⁶⁸ Interview with a former SAT official current tax advisor, 13 Jun. 2022, on file with the authors.

3.4.2 Ordinary Judicial Review

Judicial review can significantly impact legislation as evidenced in discussions regarding the adoption of the principal purpose test (PPT) rule at the tax treaty level. Respondents in Mexico noted that the major domestic change stemming from the PPT's adoption was not the rule itself but the potential to incorporate a similar rule into domestic legislation.⁶⁹ This scenario presents two distinct pathways. In the first, a country without a general anti-avoidance rule in its legislation might consider adopting one in line with the PPT. The second scenario involves countries where a general anti-avoidance rule already exists and is deemed effective in practice often due to substantial case law thus not necessitating any amendment. This analysis highlights the dynamic interaction between international tax standards, like the PPT, and domestic legal frameworks revealing how judicial review can catalyse legislative adaptations or affirm the adequacy of existing rules within a country's tax system.

In the case of Australia, this was observed regarding steering the government to amend the outcome of the existing general anti-avoidance rule due to the recurrent case law that dismissed its application.⁷⁰ In an indirect manner, taxpayers began bringing cases before the court where the general anti-avoidance rule was applied by the tax authority implying that the norm was not allowing the tax administration to recharacterize the presumed avoidant operations. In fact, the wording of the norm was not referring to the recharacterization process and, therefore, the outcome could only be the declaration of avoidant behaviour. The government realized that a change in the legislation was required and enacted a new provision in 1981 explicitly addressing the possibility of the tax administration to recharacterize the avoidant operation.⁷¹

Similarly, two respondents in Spain identified that courts⁷² in the country were rejecting the claims made by the tax authorities of using provisions countering evasion and avoidance interchangeably to deny interest

deductions and other tax benefits to taxpayers. The two main articles involved in these disputes were Articles 15 and 16⁷³ of the General Tax Act⁷⁴ which corresponded to the general anti-avoidance rule⁷⁵ and a rule to combat sham strategies. According to the respondents, the tax administration preferred to claim the application of Article 16 instead of Article 15 for considering that the procedure for proving the existence of tax avoidance was more complex than the procedure to invoke a sham situation.⁷⁶ The corrective action taken by the highest court in the country⁷⁷ was to deny the claim as the argumentation that was presented was not aligned with the object and purpose of the norm invoked. The Supreme Court of Spain makes a crucial distinction between simulation and conflict in the application of the law. In the latter case, unlike simulation, a non-existent contract is not concealed under the appearance of another. Instead, refuge is sought in a different contract in order to avoid the realization of a specific taxable event. This manoeuvre, despite being oriented towards tax savings, does not entail significant differences in terms of its legal or economic effects. That is, beyond the intention to reduce the tax burden, it does not alter the legal or financial consequences inherent to the operation that is performed.

Contrasting these realities, Mexico did not have a general anti-avoidance rule in place at the time when the PPT was being adopted at the treaty level by signing the MLI. A respondent recognized that this rule has been suggested and heavily debated since 2005,⁷⁸ but stakeholders belonging to tax consultancy practice along with taxpayers were mostly against this adoption. The matter remained under consideration for years without managing to introduce the rule in the tax system. Yet, once the PPT was approved, the perspective of the legislative power regarding the introduction of a domestic general anti-avoidance rule changed. The discussion that was held then was not about the introduction or not of the rule, but moreover regarding the procedure that the rule would have to be applied. In this regard, the respondent noted that the lobbying efforts from taxpayers and tax advisors ultimately shifted from outright rejection to advocating

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⁶⁹ Interview with a Mexican tax advisor, 27 Jan. 2021, on file with the authors; interview with a Mexican tax advisor, 1 Jun. 2022, on file with the authors; interview with a Mexican tax advisor, 9 Feb. 2021, on file with the authors; and interview with tax law prof., 11 Feb. 2021, on file with the authors.

⁷⁰ The rule was created in 1936 and the series of cases dismissing its use took place in the 1970s.

⁷¹ Lidia Xynas, *Tax Planning, Avoidance and Evasion in Australia 1970-2010: The Regulatory Responses and Taxpayer Compliance*, 20(1) Rev. L. J. 6714 (2011), doi: 10.53300/001c.6714.

⁷² Especially the supreme tribunal (Tribunal Supremo en Español).

⁷³ Article 13 of the General Tax Law is also mentioned; however, this article simply reminds the taxpayers that tax obligations will be required in consideration to the nature of the fact, act, or business that is conducted regardless of the form or denomination given to it and disregarding the defects that might hinder its validity. It works as a reminder of the way in which the authority is performing the analysis when assessing a tax scheme rather than creating a new provision on its own.

⁷⁴ Law 58 of 2003 with its further modifications in Law 34 of 2015.

⁷⁵ Known as a conflict in the application of the tax rule as per a literal translation from Spanish.

⁷⁶ Interview with Spanish tax law prof., 21 Oct. 2022; and interview with Spanish tax advisor and litigator, 26 Oct. 2022, on file with the authors.

⁷⁷ Tribunal Supremo based in Madrid with jurisdiction over the entire country.

⁷⁸ Interview with Mexican tax advisor, 1 Jun. 2022, on file with the authors.

for the rule's implementation by a committee comprising officials from both the tax administration service (Servicio de Administración Tributaria – SAT) and the ministry of finance rather than having it solely enforced by the SAT as suggested in the government's proposal.⁷⁹

Conclusions of this Section

In summarizing the dual role of judicial review within the context of domestic tax systems, it is evident that this mechanism operates in two distinct yet interconnected phases. Initially, judicial review serves as a constitutional safeguard by scrutinizing new tax regulations for their compatibility with the constitutional mandate before they become part of the domestic tax framework. It subsequently provides a platform for taxpayers to challenge these rules by either advocating for a more constrained interpretation or seeking their outright invalidation on constitutional grounds. This process not only allows for pre-emptive influence over the content of tax rules, considering factors like budgetary implications and constitutional suitability, but also offers avenues for reevaluating their application by tax authorities post-implementation. The impact of judicial review is further nuanced by elements such as the composition of the judiciary and the specific stances of judges as applicable in the cases of Australia and Spain. These factors emphasize the dynamic nature of judicial review in shaping and contesting tax legislation and providing a forum for taxpayers to strive for the alignment of the tax laws with constitutional principles.

3.5 Elections

Another point of consideration regarding the influence of parliament is the time that is required for the implementation of international standards. As was pointed out in the introduction, democratic systems constrain the policymakers in time and authority as current majorities can be subverted depending on the results of a new election. The term that is granted to elected representatives, and therefore the time period that government officials and ministers are in office, is restricted to short periods of time without the possibility for securing that the new legislature will continue with the policies initiated in the previous one.

An Australian expert interviewed for this project stated that policy choices taken by the Australian Government on the standards to be implemented varied throughout the years according to its political vision. Hence, the change in government from a centre-right to centre-left majority in 2022 affected policy on the BEPS Project. This respondent opines:

I guess if you say BEPS 1.0 actions 1 to 15 or maybe 2 to 15, I mean quite a lot of those have been very important in Australia, and we had a law reform for example on action 2 hybrids, we legislated and implemented the recommendations ... The new government that was just elected last year is a different government, right? A labor government and they have changed our policy on thin capitalization interest deductibility, so Australia is now going to adopt, you know, mainly adopt the action 4 recommendation under BEPS, so that is EBITDA or 30% of the EBITDA as a threshold. So that is interesting, because it is a change in policy. And I think what that shows is that even though there are BEPS issues from 2015, the action reports are still relevant, right? we are still changing bits of the law to align with these as policy changes.⁸⁰

The quote underscores a pivotal aspect of tax policy dynamics particularly in the context of Australia's response to the BEPS actions. It highlights how the change in government can critically influence policy shifts. The transition from one government to a labour government brought about significant changes, notably in the approach to thin capitalization interest deductibility. By adopting the Action 4 recommendation under BEPS that involves the EBITDA or 30% of the EBITDA as a threshold, Australia demonstrates a clear policy shift that is not merely procedural but reflects a deeper alignment with international tax standards as stipulated in the BEPS action reports.

Its significance goes beyond the specifics of tax policy; it illustrates the fluid nature of policy-making where changes in political leadership can lead to substantial modifications in how international agreements and recommendations are implemented domestically. This observation reaffirms the continued relevance of the BEPS action reports that were first introduced in 2015 in shaping current tax laws. It also suggests that the process of aligning national tax policies with international standards is an ongoing endeavour that is influenced significantly by the prevailing political landscape. This scenario in Australia therefore exemplifies the interplay between government change and policy reform, emphasizing the importance of understanding political context in the analysis of tax law and international compliance.

Conclusions of this Section

This section shows that there are many opportunities for different stakeholders to influence the implementation process of international standards. However, it also reveals

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⁷⁹ *Ibid.*; tax advisor, 1 Jun. 2022.

⁸⁰ Interview with Australian tax law prof., 22 Feb. 2023, on file with the authors.

three other important points. First, the opportunities are not the same across different democracies and for all types of international standards. Second, it may not always be easy for stakeholders to effectively use formal opportunities to influence the process, for example, due to short timeframes in which bills can be discussed and due to the high level of expertise that is required. Third, for the same reasons, not all types of stakeholders are likely to be able to influence implementation processes in a similar way.

4 STAKEHOLDERS OF THE BEPS PROJECT IN THE DOMESTIC ARENA: WHO ARE THEY AND WHAT ARE THEIR PREFERENCES

After having analysed the variety in terms of opportunities for different stakeholders to influence implementation processes, it is asked in this section who the different stakeholders at the domestic level actually are and what preferences towards international tax standards they express.

4.1 Overview of Stakeholders

What preferences do different stakeholders have for international tax standards such as those contained in the BEPS Project? To answer this, stakeholders could be divided into two groups according to how directly they are affected by international standards: First, those stakeholders that are immediately affected and, second, those which are indirectly impacted.

The BEPS Project intended to address multinational enterprises (MNEs) that were exploiting the gaps and mismatches of tax rules around the world with the intention of avoiding taxes. Hence, it could be considered that those stakeholders that are most immediately affected by international standards are MNEs since these may face direct monetary consequences.

However, to the extent tax authorities need to apply policies and may see their workload and ease of raising revenue affected by those plans, they can also be considered as immediately affected stakeholders albeit with a special position as a government actor.

However, these stakeholders are not the only ones that are likely to take an interest in the matter. Ordinary citizens are affected by the amount of tax payments by MNEs to the government which may influence the amount of spending on government services. Likewise, the amount of MNE investment in a country may influence employment opportunities that have a direct effect upon citizens. Other businesses may be concerned about

the amount and modalities of MNE payments to the extent that these could influence their ability to compete with MNEs. This might be the case for non-MNE businesses that operate locally and require state funding at times to achieve their revenue goals. Hence, domestic businesses could also be counted among stakeholders with an indirect interest in international tax standards.

There will also be stakeholders invested in acting as auditors of the new policies adopted in a country. Among them can be think tanks and non-governmental organizations. Their work is precisely focused on testing the adequacy of laws and regulations to the conditions of the economy and the proper compliance with policy promises made by the government to their citizens. This group will be indirectly affected by the implementation of international tax standards, but they are likely to make them the core of their daily work.

Finally, the fact that taxation is a highly technical matter means that experts such as tax consultants and academics are likely to also be of great importance. Both of these groups work in close interdependence with the new legislation created in a country as a way to assist clients in complying with their tax obligations or simply to evaluate the new regulations against the context of the tax system in which they are being incorporated. However, their economic stake is less direct. At least, for consultants, a much compelled situation is created under the BEPS Project in the event of the implementation of Action 12 that seeks to impose direct obligations on tax advisors.⁸¹ Thus, they can also be considered as immediately affected stakeholders.

4.2 Preferences

According to Frieden, an 'actor's preferences are the way it orders the possible outcomes of an interaction'.⁸² Usually, the preference voiced and pursued may not necessarily be a stakeholder's absolute inclination if attaining the latter is not considered feasible. For example, while a business may prefer not paying any tax, it may not consider this a goal within reach and hence simply focuses its lobbying activities on attaining a lower tax burden or preventing policy changes that could lead to a higher burden. Likewise, when there is a new tax bill, stakeholders may focus their efforts on laws that present a major concern even if this implies accepting other measures that represent unwanted changes if the opportunities to influence are limited (*see*, for example, sections 3.1 and 3.3 on the limited time available to react to change).⁸³

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⁸¹ OECD, *Mandatory Disclosure Rules, Action 12–2015 Final Report* (Paris: OECD Publishing 2015), doi: 10.1787/9789264241442-en.

⁸² Jeffrey A. Frieden, *Actors and Preferences in International Relations*, in *Strategic Choice and International Relations* 42 (David A. Lake & Robert Powell Princeton: Princeton University Press 1999).

⁸³ Interview with Mexican tax advisor, 1 Jun. 2022, on file with the authors.

Once international standards are set and agreed at the international level, there is a limited number of theoretically possible responses that should be observable regarding the implementation of the standards within the country. With this perspective, these are the possible responses by stakeholders:

1. Accepting the international standard
2. Implementing a modified version of the policy (in a way not consistent with the standard)
 - a. with substantive impact – upon the tax obligation (e.g., which taxpayers are affected, which transactions are affected, grandfathering rules, etc.)
 - b. with impact on procedural aspects – upon the formal obligation (e.g., when to pay, when to file, etc.)
3. Rejecting implementation
4. Delaying implementation

Acceptance does not necessarily mean that the resulting policy will be exactly the same everywhere since international standards often do not regulate all aspects of the policy in detail or merely provide a range of options to choose from that are all consistent with the international standard.⁸⁴ Rejection and delay are, of course, difficult to distinguish. ‘Delay’ is used to describe the situation in which initial steps towards implementation have been taken but the process has not been concluded or has taken a long time. In the following, it is discussed which options different stakeholders prefer based on evidence collected through interviews.

4.3 Immediately Affected Stakeholders

4.3.1 Businesses

International standards can affect three important dimensions of MNEs’ tax payments:

- The amount of tax;
- the certainty of the amount of tax; and
- procedural costs related to paying tax.

It should be expected that MNEs prefer a lower amount of tax and oppose a higher administrative burden associated when complying with paying the tax. Hence, businesses could be expected to oppose standards that reinforce anti-avoidance rules and procedural obligations or to strive for modifications that reduce the scope of standards or the compliance burden.

Nevertheless, developing countries often express support towards an implementation that resembles the international standard as closely as possible. A representative of a Colombian business association, for example, stated in an interview: ‘We have always sought that tax regulations be general, be as little rare, exotic and creative as possible, [...] that they comply with OECD standards, especially since we are part of the OECD’.⁸⁵

An underlying reason may be that businesses trust the quality of legislation produced by the OECD more than that of its own government and consider the possible alternative outcome in the event that an international standard is not followed as less advantageous. For example, a tax director of an MNE operating in Colombia indicated for the Colombian thin capitalization rule: ‘I am convinced that when one decides to use an international standard it is better to use the global standard and not “colombianize” it. For example, that thin capitalization rule, if they implemented exactly the same standard as other countries, we wouldn’t have any problem, but they modified it’.⁸⁶

Similarly, a representative of the Senegalese tax authority said in a meeting where transfer pricing guidelines were presented to businesses that there was not much of an opposition by those organizations: ‘On transfer prices [...] we held meetings with them, they understood that these were standards, so it was not something complicated, [...] it wasn’t the administration that imposed it on me, it’s a standard that is known, that is shared almost everywhere’.⁸⁷

Preferences may differ between multinational enterprises that were the direct target of the BEPS Project and domestic businesses as they may be in favour of stricter tax policies on MNEs in order to gain a competitive advantage (or reduce a competitive disadvantage). A representative of another Colombian business association, for example, criticized in an interview that foreign technological companies were paying little taxes in Colombia despite a significant number of sales.⁸⁸

However, the awareness of domestic businesses is generally likely to be less pronounced.

4.3.2 Tax Authorities

Regarding the adoption of BEPS, it is noticed that some tax administrations were in agreement with the overall purpose of the project; so much so that they intended

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⁸⁴ For example, for country-by-country reporting, countries can choose whether they impose penalties on non – or late filers and how high the penalty should be. Similarly, for BEPS Action 6, countries could decide whether to implement a principal purpose test only or whether to also introduce a limitation on benefits test.

⁸⁵ Interview with representative of Colombian business association, 4 Oct. 2019, on file with the authors.

⁸⁶ Interview with MNE in Colombia, 7 Oct. 2019, on file with the authors.

⁸⁷ Interview with Senegalese tax authority, 10 Jun. 2022, on file with the authors.

⁸⁸ Interview with representative of Colombian business association, 4 Oct. 2019, on file with the authors.

to integrate the arguments used for the project in their daily work.

In Mexico, a few experts replied that the tax authority was adopting positions in the investigations that reflected the BEPS standards as a whole while connecting the new standard's logic with concepts such as materiality or substance of the operations that were already used in court cases. In one of the expert's opinion:

BEPS revolutionized the tax system, because even before the OECD final reports, the Mexican authorities suggested reforms to be passed at the Congress. All of them based on the same assumptions used in BEPS. (...) Before the Congress approval of these laws, the tax authorities were using arguments proper to BEPS in their audits, to defend the importance of acquiring information from taxpayers (transparency standards) and the salience of the economic purpose of the operations over their structural character. (...) Thus the tax authorities started to implement the principle of materiality and substance, when the law was not prescribing it. The tax authority was focusing their concept in formalities when it was not serving their interest and on substance when it contributed to their interests.⁸⁹

However, this is not the only response seen from governmental actors. Within a same government, interests of different agencies are not necessarily aligned. While tax policymakers working in ministries of finance often need to balance revenue collection objectives with others of economic policy, tax administrations primarily need to be concerned about ease of revenue collection. This is particularly relevant in developing countries where those targets are often the primary performance indicators. A Nigerian tax administration official, for example, explained that:

From [the] tax administration we look at collection of revenue from taxes, but the policymakers look beyond [that]. [...] They want to balance collecting taxes with being able to provide a good comfort for investors so that they bring their investment, [...] So we've had some instances where we are able to push through some policy perspective, [...] however there are instances

where the policymakers believe that, then, the proposal will hinder the flow of foreign direct investment.⁹⁰

This can mean that tax administration officials become an interest group for tax policymaking on its own. For instance, in Senegal, the Syndicate of Revenue Officers is a trade union representing Senegalese tax inspectors. It publicly criticized tax policies that might have a revenue reducing effect, such as the ratification of a double tax treaty with Luxembourg,⁹¹ or the higher levels of the tax administration granting tax benefits or amnesties to companies.⁹²

4.4 Indirectly Affected Stakeholders

4.4.1 The General Public and NGOs

International tax standards are likely to affect the general public via standards' impact on tax revenue and on international investment which can subsequently affect public spending or employment and business opportunities. Both policy objectives do not need to be incompatible with each other. However, citizens may have different priorities regarding strategies that lead to their attainment, e.g., favouring higher or lower tax burdens for foreign investors.

In the debate around BEPS, NGOs working on taxation have become a relevant actor at the international stage of tax policy making over the last two decades. They define their purpose as defending the general public's interest in higher tax revenues resulting from stronger actions against base erosion and profit shifting. Some of them are organizations with an extensive history in advocacy (such as Oxfam or ActionAid) that have included international taxation in their range of topics. In addition, a number of groups such as the Tax Justice Network formed specifically to deal with issues of tax evasion and international tax avoidance.⁹³

In the BEPS implementation process, there is some evidence of local NGOs advocating for broadening the scope of international standards and increasing powers of tax authorities. In India, for example, the Centre for Budget and Government Accountability (CBGA) asked the Indian government to reduce the revenue threshold of the CbCR requirement.⁹⁴

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⁸⁹ Interviews with two Mexican tax advisors, 31 Mar. 2021, on file with the authors.

⁹⁰ Interview with Nigerian tax authority official, 9 May 2022, on file with the authors.

⁹¹ Elimane Pouye, *Relation Fiscale Avec Le Grand-Duché de Luxembourg, Une Liaison Dangereuse !*, *Le Quotidien* (4 Feb. 2018), <https://lequotidien.sn/relation-fiscale-avec-le-grand-duche-de-luxembourg-une-liaison-dangereuse/>.

⁹² Babacar Willane, *Elimane Pouye et Cie Dénoncent Un 'pillage' Des Ressources Publiques, Enquête +* (15 Jan. 2016), <https://www.enquetepius.com/content/politique-fiscale-elimane-pouye-et-cie-d%C3%A9noncent-un-%E2%80%98pillage%E2%80%99%E2%80%99%E2%80%99-des-ressources-publiques>.

⁹³ Allison Christians, *Tax Activists and the Global Movement for Development through Transparency*, in *Tax, Law and Development* (Yariv Brauner & Miranda Stewart 288–315 (Cheltenham: Edward Elgar Publishing 2013), doi: 10.4337/9780857930026.00024; Sam Dallyn, *An Examination of the Political Salience of Corporate Tax Avoidance: A Case Study of the Tax Justice Network*, 41(4) *Acct. Forum* 336–352 (2017), doi: 10.1016/j.acfor.2016.12.002.

⁹⁴ Interview with Indian NGO, 16 Dec. 2019, on file with the authors.

However, in other developing countries, local NGOs have a too limited capacity to develop positions on specific items. As they are only sometimes able to employ a few people working on tax issues, they need to make choices in terms of topics. In Colombia, there is a very active coalition of academics and civil society organizations working on these. However, these groups identified the issue of tax incentives and the tax administration's transparency as more important topics and focused their engagement on these.⁹⁵

When asked about the impact of civil society organizations, a Senegalese tax administration official stated, 'They don't really influence the debate in terms of the evolution of the legislation, because we are in advance. They follow these questions in an episodic way. So it is not very structured'.⁹⁶

In sum, while NGOs may prefer implementing modified versions of international standards that strengthen tax authorities in the fight against base erosion and profit shifting, it is not certain they will expend much energy on engaging with the implementation process due to other priorities.

4.4.2 Experts

Given the depth of the technical understanding that is required to formulate ideas on international tax policy, previous research has emphasized the influential position of experts that are in a majority working as tax advisors or academics in the countries studied.⁹⁷

Empirical studies, such as Anesa's et al. on tax professionals in Australia, accentuate the close ideological relationship between advisors and their clients that would lead to both groups favouring similar policies.⁹⁸ However, not having direct financial interests in a lower tax burden for businesses, it could also be supposed that lawyers and advisors adopt a mediating role between interests of business vs. the government for international tax policymaking as advanced by Elschner and colleagues.⁹⁹ An often discussed cliché is that more complexity of tax rules or simply the introduction of new types of tax rules (no matter the content) and reporting

requirements (such as those of BEPS Action 13) may be good for the business of tax advisory firms since this may lead to more business in terms of planning or litigation.¹⁰⁰ Indeed, several interviewees expressed this idea, usually adding, though, that they would prefer better policies rather than pieces of legislation for which compliance is difficult.¹⁰¹

In practice, in the countries studied, almost the entire spectrum of tax policy ideas was put forward by different experts. Some pronounce similar ideas as businesses, for example, emphasizing that the implementation of international standards would lead to more certainty. Regarding the introduction of the PPT into tax treaties, a Colombian tax advisor stated, 'I think it would be positive because [...] the rule is for everyone and surely there would be similar or similar lines of interpretation in the different jurisdictions that would mean that one would not think differently from us'.¹⁰² Others, however, would rather highlight perceived inadequacies of standards in attempting to effectively address base erosion. An Indian advisor mentioned that he considered the penalties for failure to comply with the submission of a master file as ineffective.¹⁰³ It is therefore unlikely that tax experts will have common preferences. Rather, individual experts may defend specific positions.

Conclusions of this Section

Broadly, it can be seen that not all stakeholders at the domestic level are likely to have the same preferences regarding the implementation of international standards even though preferences do not seem to fundamentally differ for the BEPS Project.

5 DISCUSSION

In the discussion about the participation of domestic constituencies in creating international standards, it is essential to differentiate between two stages that could be termed as 'upstream' and 'downstream' processes.

During the former stage, international standards are formulated and negotiated within international

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⁹⁵ Interviews with Colombian NGO representatives, 18 Oct. 2019, on file with the authors.

⁹⁶ Interview with Senegalese tax administration official, 10 Jun. 2022, on file with the authors.

⁹⁷ Christensen, *supra* n. 11; Leonard Seabrooke & Duncan Wigan, *Powering Ideas through Expertise: Professionals in Global Tax Battles*, 23(3) J. Eur. Pub.c Policy 357–374 (2016), doi: 10.1080/13501763.2015.1115536.

⁹⁸ Mattia Anesa et al., *The Legitimation of Corporate Tax Minimization*, Acct., Org. & Soc'y (2018).

⁹⁹ Elschner, Hardeck & Max, *supra* n. 11.

¹⁰⁰ Rasmus Corlin Christensen & Leonard Seabrooke, *The Big 4 Under Pressure: Scanning Work in Transnational Fields*, Contemporary Accounting Research, 39(4), 2941–2969, 5 Aug. 2022, doi: 10.1111/1911-3846.12815; Rodrigo Ormeño-Pérez & Lynne Oats, *Implementing Problematic Tax Regulation: Hysteresis and Bureaucratic Revolutionaries Within Tax Administrations*, The Brit. Acct. Rev. 101147 (Nov. 2022), doi: 10.1016/j.bar.2022.101147.

¹⁰¹ Interviews with tax advisors in Colombia, 1 Oct. 2019 and 2 Oct. 2019, on file with the authors.

¹⁰² Interview with tax advisor, Colombia, 7 Oct. 2019, on file with the authors.

¹⁰³ Interview with tax advisor, India, 29 Nov. 2019, on file with the authors.

organizations. The domestic dimension of this part of the process includes selecting representatives of the country to be sent to the international forum and defining the country's preferences to be defended in the international meeting. The downstream process refers to the phase when globally agreed standards are introduced in a country's legal system and put into practice by domestic stakeholders.

The theory of democratic representation argues for an equitable influence of all citizens in shaping global policy standards. However, the absence of a centralized global governance structure, often described as the lack of a 'world state', constrains the direct participation of citizens in international policymaking. As a consequence, the preferences of domestic constituencies are mediated through the institutions of nation-states that participate in international forums to negotiate global standards. Within this context, legitimacy in international tax standards can be considered robust if it satisfies two criteria:

- Adequate influence from all participating countries on the final policy outcome¹⁰⁴; and
- the positions represented by countries accurately mirror the preferences of their domestic constituencies.

A considerable body of tax scholarship has been devoted to scrutinizing the first criterion, and the consensus appears to be that influence is not fairly distributed among countries. Recent research also examined the second criterion and revealed deficits in the alignment between governmental positions and citizens' preferences.¹⁰⁵ This issue likely varies from country to country with some maintaining a more consistent input from their domestic constituencies than others.

However, counter-arguments must be considered that challenge the concept that domestic constituencies are marginalized in formulating international tax standards. Edwin Visser, among other tax practitioners, opines that the role of national parliaments remains pivotal through their power to ratify international agreements. He asserts that the democratic process is not entirely bypassed but is upheld when domestic legal systems are mandated to implement internationally agreed-upon standards. This act of implementation ensures that a degree of domestic constituency input is factored into the equation, albeit indirectly.

Furthermore, Wiman's observation of the extended influence of international organizations such as the OECD and the EU Commission suggests a shift in power dynamics but does not necessarily negate the influence of national parliaments or constituencies. The interaction between international organizations and domestic

legislative bodies has always been dynamic and continuously adjusting to social, economic, and political shifts. The challenge is therefore ensuring that these shifts do not compromise the essential principles of democratic governance.

While asymmetries in power distribution between countries and the deficit in mirroring citizens' preferences are critical concerns, they do not present an exhaustive situation. The view that international tax governance is moving toward a less democratic structure needs to be weighed against counterpoints that underscore the continuing role of domestic constituencies through indirect mechanisms such as ratification and legislative oversight. Thus, while gaps in democratic representation in international tax standard-setting exist, they may not be as expansive or unequivocal as initially posited.

This counterview has been presented in this contribution. Section 3 provides the evidence that was collected on the involvement of different stakeholders in the implementation process of the BEPS Project. Theoretically, different degrees of involvement by domestic constituencies were distinguished:

- Direct applicability of international standards (no involvement);
- implementation by government alone;
- implementation by government with involvement of other stakeholders through consultations;
- implementation by government with ratification by parliament; and
- implementation by government with ratification by parliament + other instances (e.g., court).

Across the different countries investigated for this study, it was found that the degree of stakeholder involvement differs for various policies. In some countries (and for some policies), there are ample opportunities for stakeholders to participate in the implementation process and influence government decisions. This ranges from public consultations over parliamentary debates and, in the case of Colombia, even a procedure at the constitutional court. In other situations, governments move forward alone, sometimes making use of flexibility in deciding whether to submit a certain change for parliamentary approval. Yet, in other situations, formal avenues to influence exist, but they do not factually guarantee participation, for example, when changes get passed through parliament as part of large legislative projects with little time for discussion.

Overall, the evidence collected can neither fully confirm or refute claims such as those raised above. Rather, it

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¹⁰⁴ It can be debated what 'adequate' means. Some may advocate for 'one country one vote' while others may argue in favour of weighted voting systems based on population size or other criteria.

¹⁰⁵ Visser, Comments on Prof. Bertil Wiman's Lecture 'Who Should Be in the Driver's Seat in Developing International Tax Norms – Civil Servants or National Parliaments?'

is determined that the general claim that the implementation phase offers participation opportunities for parliamentarians and other stakeholders is context dependent.

5.1 *Would more Stakeholder Participation in the Implementation Process be Desirable?*

Some authors, such as Keohane and colleagues, contend that the level of popular participation in policymaking is not the only decisive feature of democracy.¹⁰⁶ Other criteria that are of relevance are whether policies are taken in favour of diffuse (as opposed to narrow) interests, that there are deliberative processes that can lead to the emergence of the best policy options, and that minority rights are protected. Keohane and colleagues argue that, if countries engage in multilateral policy-making processes, these can enhance democracy at the domestic level even though they may not have the same affect for citizens.¹⁰⁷ Using the example of trade policy, they argue that multilateral institutions may reduce the influence of narrow interests on domestic politics. They also advance that constitutions sometimes take certain policy areas specifically out of the hands of popular influence with the purpose of protecting the common good (e.g., independent central banks).

As a consequence, if it was the case that processes that enhance participation of stakeholders at the implementation stage only allowed narrow interests to veto or modify the introduction of international standards that advance diffuse interests, then more opportunities for participation could be considered as contrary to democratic principles as conceptualized by Keohane and others.

Prima facie, international tax standards seem indeed to advance interests of a more diffuse constituency. Indeed, the BEPS Project's purposes of combatting international tax avoidance, 'levelling the playing field', and generating revenue while safeguarding tax certainty suggest that it may indeed favour diffuse over narrow interests. Arguably, only a narrow constituency benefits from opportunities to avoid tax through international transactions.

Moreover, implementation processes that offer many opportunities for stakeholders to influence the process may be more beneficial in practice for narrowing interests since these may have greater access to expertise which can subsequently procure greater influence.

From that perspective, having technocrats in the government implement outcomes from multilateral processes

directly may be 'democracy enhancing' according to the democracy concept of Keohane and colleagues.

However, there is no guarantee that technocrats will necessarily advance diffuse over 'narrow' to the extent that, regarding tax policy (in contrast to other areas of public policy), parts of the government itself can be considered as an immediately affected stakeholder that may have 'narrow' interests. Section 4 discussed some evidence that suggests that tax authorities sometimes defend their own interests to raise tax revenues in simpler (but possibly more arbitrary) ways than suggested by international standards. Indeed, this appears to be a reason why particularly in developing countries' MNEs may be in favour of the implementation of international standards against tax avoidance.

Of course, it can be questioned in this case whether international standards genuinely work towards favouring the general interest. This may not be the case if they stifle tax authorities' ability to raise revenue effectively. For example, an often raised critique against international tax standards is that their application requires more resources than may be available to all tax authorities, in particular those of smaller developing countries.¹⁰⁸

In sum, as long as 'upstream' processes of global tax governance exhibit legitimacy deficits, enabling the participation of as wide a constituency as possible in the implementation (or 'downstream') process is recommended to increase the legitimacy of global tax governance as a whole.

6 CONCLUSION

This article discussed the relevance of implementation processes for the debate on the legitimacy of global tax governance. It could be concisely argued that, if implementation processes significantly influenced a range of different stakeholders to modify or veto the adoption of international standards, some of the concerns regarding the critique that international tax standards are mainly decided by unelected technocrats could be considered as less serious.

However, as international tax standards become more far-reaching and attempt to regulate more aspects of countries' corporate tax policies, questions of participation by different stakeholders are increasingly becoming subject to debate.

It is observed that implementation processes differ across countries, meaning that different stakeholders can have more or less influence depending on the context. For

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¹⁰⁶ Keohane, Macedo & Moravcsik, *supra* n. 1.

¹⁰⁷ *Ibid.*

¹⁰⁸ Michael Lennard, *Base Erosion and Profit Shifting and Developing Country Tax Administrations*, 44(10) *Intertax* (2016), doi: 10.54648/TAXI2016063; Irma Johanna Mosquera Valderrama, *Output Legitimacy Deficits and the Inclusive Framework of the OECD/G20 Base Erosion and Profit Shifting Initiative*, 72(3) *Bull. Int'l Tax'n* 160–170 (2018), doi: 10.59403/se9pt3; Hearson, Christensen & Randriamanalina, *supra* n. 11.

example, parliament involvement is not the same between countries as the same international standard must be implemented by law in one country while it can be passed via executive regulation in another. In addition, formal opportunities to influence the process may sometimes be difficult to use in practice due to lack of capacity or time. It was also discussed to what extent various stakeholders at the domestic level actually have different preferences for international standards and are hence likely to use their influence to modify or veto implementation processes. It was also examined to what extent various stakeholder at the domestic level actually have different preferences for international standards and are hence likely to use their influence to modify or veto implementation processes. Some degree of difference in preferences was indeed observed, although these may not always correspond to what was expected. For example, private sector stakeholders whose practices could be targeted by international standards do not necessarily express themselves against their implementation and neither do non-governmental organizations that represent the general public. Therefore, it could be argued that it is of little significance whether they can meaningfully influence the implementation process since the result may not be fundamentally different. However, the expressed preferences may also be a function of the opportunities to influence legislation in the first place. If there were lesser constraints in terms of formal involvement and capacity to analyse and react to proposals, preferences that are more diverging might be observed. In sum, it is possible to conclude that there is scope even in democracies to increase the participation of a wider range of constituencies in implementation processes of international standards.

7 ANNEX: LIST OF INTERVIEWS

<i>Number</i>	<i>Country</i>	<i>Type</i>	<i>Date</i>
1	Colombia	Tax advisor	1 October 2019
2	Colombia	Tax advisor	2 October 2019
3	Colombia	Business association representative	4 October 2019
4	Colombia	Tax advisor	7 October 2019
5	Colombia	Business representative	7 October 2019
6	Colombia	NGO representatives	18 October 2019
7	Colombia	Tax advisor	20 October 2019

<i>Number</i>	<i>Country</i>	<i>Type</i>	<i>Date</i>
8	India	Tax advisor	27 November 2019
9	India	Tax Advisor	29 November 2019
10	India	NGO representative	16 December 2019
11	Nigeria	Business representative	21 February 2022
12	Nigeria	Tax advisor	9 March 2022
13	Nigeria	Tax advisor	11 March 2022
14	Nigeria	Tax Administration's Official	9 May 2022
15	Mexico	Mexican Tax Advisor	27 January 2021
16	Mexico	Tax Advisor	9 February 2021
17	Mexico	Tax Law Professor	11 February 2021
18	Mexico	PRODECON officer	10 March 2021
19	Mexico	Tax Advisors	31 March 2021
20	Mexico	Tax Administration's Official	29 April 2021
21	Mexico	Tax Advisor	1 June 2022
22	Mexico	Former SAT official current Tax Advisor	13 June 2022
23	Senegal	Tax advisor	1 June 2022
24	Senegal	Business association representative	7 June 2022
25	Senegal	Tax Administration's Official	10 June 2022
26	Netherlands	Tax Advisors	1 of February to 31 March of 2021
27	Australia	Treasury Officers	11 January 2022
28	Australia	Tax Law Professor	22 February 2023

Influence of Domestic Constituencies in the Implementation

<i>Number</i>	<i>Country</i>	<i>Type</i>	<i>Date</i>
29	Spain	Tax Authority's Officer within ONFI	11 October 2022

<i>Number</i>	<i>Country</i>	<i>Type</i>	<i>Date</i>
30	Spain	Tax Law Professor	21 of October 2022
31	Spain	Tax advisor and litigator	26 of October 2022