

Legality; from rule of law to legitimacy in international law making

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LEGALITY

- Principle of Legality: No Taxation without representation.
- However, since the financial crisis and the discussion on fairness, changes are taking place that may raise tension on legality, rule of law and legitimacy.

Why is important to think about legality, rule of law and legitimacy in international tax law making?

INTERNATIONAL TAX LAW MAKING

- From International Tax Cooperation to International Tax Law Making
 - Exchange of Information: Administrative Assistance.

Nowadays

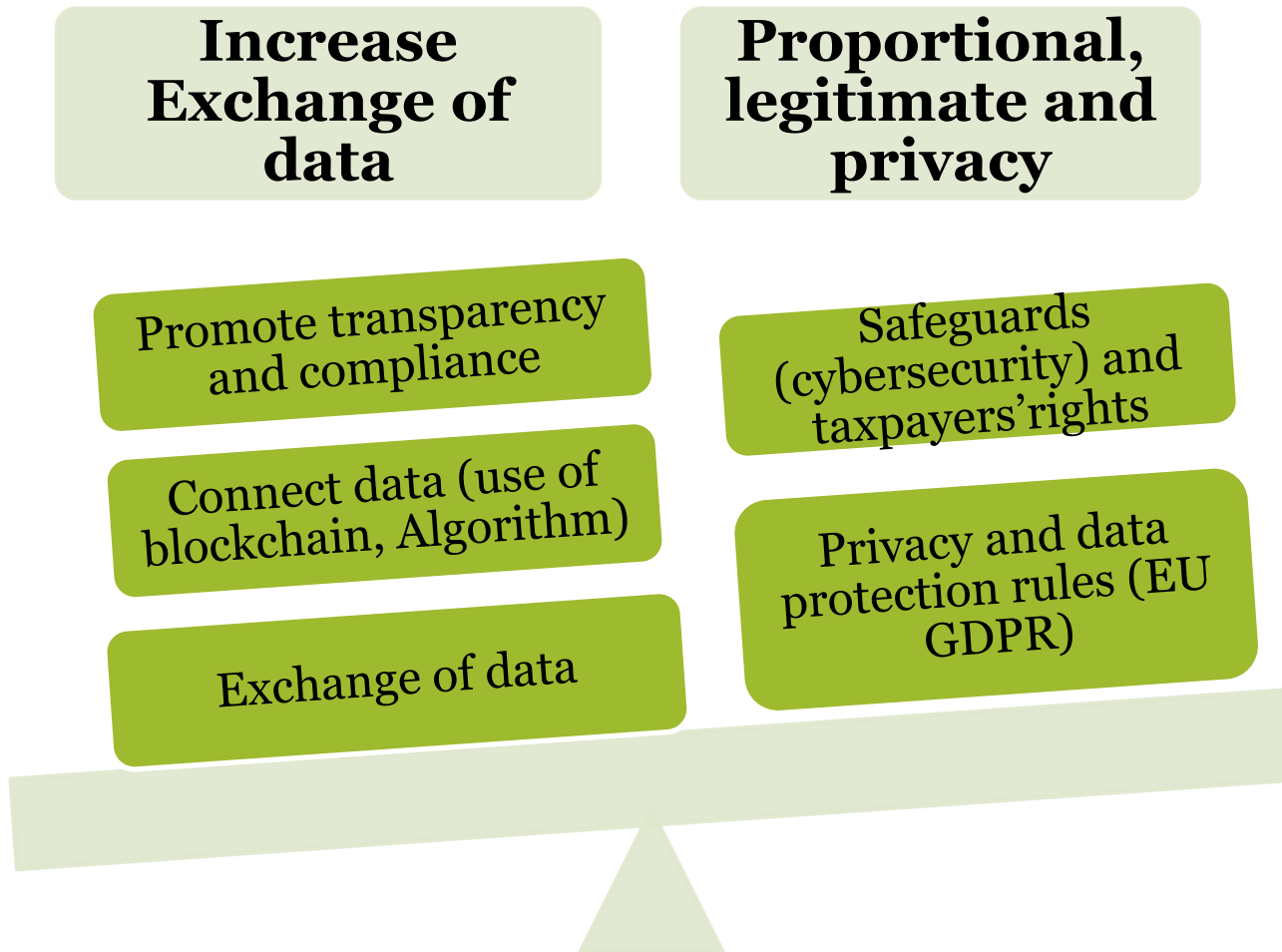
- BEPS: Substantial rules to tackle base erosion and profit shifting
- Pillar 2: Rate and rules to tackle tax competition
- Legitimate participation: Global Transparency Forum, BEPS Inclusive Framework, Political Endorsement Pillar 2.
- Discussions on what is needed? What taxes? How to implement? Are taking place at the OECD-G20, BEPS Inclusive Framework. National Parliaments are moving towards these political decisions (Ministry of Finance).
- For developing countries: Technical assistance from the OECD and Tax Inspector Without Borders to implement these standards.
- Use of peer review pressure to adopt these standards. Repeal of Bank Secrecy, Changes to rulings practice, treaty shopping rules

THE PUZZLE

- Peer review BEPS 4 Minimum Standards, soft law (except MLI), but countries comply? Why?
- Countries outside the BEPS 44 group did not participate in the decision making of the content of the standards.
- The potential costs of compliance are high, and benefits are unclear (resources, other non-BEPS problems, changes to domestic law and treaty law that may take years).
- Unlike EOI, not clear that BEPS minimum standards benefit developing countries or that it addresses the problems of developing countries. Some other BEPS measures (e.g. best practices) may be more favorable.
- No (full) data regarding the benefits from BEPS in terms of revenue.
- Peer reviews in other areas but taxation. Peer review in taxation is new
- Interesting discussion: EU List of Non-cooperative Jurisdictions and the EU Standard of Tax Good Governance (Transparency, Exchange of Information, BEPS, and Fair Tax Competition)

EOI, TECHNOLOGY AND RULE OF LAW

RULE OF LAW



EOI, Technology and Rule of Law

Questions Rule of Law: EOI and also in the use of technology:

- How is the confidentiality and privacy of the taxpayer protected? What safeguards have been introduced to protect the confidentiality and privacy of the exchange of information? And what is the role of the taxpayer and their procedural rights in the exchange of information?
- MOSQUERA VALDERRAMA I.J., MAZZ A., SCHOUERI L., QUINONEZ N., ROELEVELD J. PISTONE P., AND ZIMMER F. (2017). [The Rule of Law and the Effective Protection of Taxpayers' Rights in Developing Countries.](#) WU International Taxation Research Paper Series (10)
- MOSQUERA VALDERRAMA I.J. (with F. Debelva) (2017), [Privacy and Confidentiality in Exchange of Information Procedures: Some Uncertainties, Many Issues, but Few Solutions,](#) Intertax 45(5): 362-381.
- MOSQUERA VALDERRAMA I.J. (2019) [Processing of personal and business data and the rule of law in the era of digital trade,](#) Central European Political Science Review CEPSR Journal – 76 number
- MOSQUERA VALDERRAMA I.J. with WU Vienna, Leiden University, Antwerp University and Tilburg University. (2025) [AI Governance and Taxpayers' Rights in a Digital Age.](#) Intertax.

BEPS, PILLAR 2 AND LEGITIMACY

EOI Legitimacy: MOSQUERA VALDERRAMA I.J. (2015) [Legitimacy and the Making of International Tax Law The Challenges of Multilateralism](#) World Tax Journal 7(3):344-366. Reproduced with permission from the publisher.

Legitimacy deficits

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

But also applicable to taxation: Why?

Legitimacy deficits: Where are the decisions being taken?

Plenaries evaluate progress and take final decisions, on a consensus basis, on proposals prepared by subordinate bodies. The plenary is the formal decision-making body, and the final step in a process which identifies and resolves disagreements between countries in advance. Many interviewees described its meetings as choreographed:

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

R. Christensen, M. Hearson & T. Randriamanalina, At the Table, Off the Menu? Assessing the Participation of Lower-Income Countries in Global Tax Negotiations, ICTD Working Paper 115.

Legitimacy deficits

- Scholars, civil society and countries have expressed in articles and meetings at international and regional level their concerns regarding the legitimacy of the BEPS Project vis-à-vis non-OECD, non-G20 countries.
- Participation BEPS Inclusive Framework – Content and coordination with tax administrations of countries regarding decisions/discussions at the BEPS Inclusive Framework. More time to be given to staff preparation for meetings.
- Participation Peer Review Minimum Standards – How to make it effective, and also to contribute to exchange of best practices.

Implementation/compliance: BEPS

- ❑ Rationalist: Sanctions, cost/benefits, incentives. Internal process/country's own preferences: Believe BEPS will raise more revenue, technical assistance, side payments by trade cooperation (EU Standard)
- ❑ Constructivist: Social pressure. External process. Civil society. Naming and shaming.
- ❑ Legitimacy and authority: OECD membership, EU membership.
- ❑ Managerial: Time and effort in negotiations.

Use of International Relations theories in taxation.

Peer Review BEPS

Peer review process of the four BEPS minimum standards in Cameroon, Congo, Costa Rica, Jamaica, Peru, Sri Lanka, and VietNam).

Analysis of the process in light of throughput legitimacy
throughput: accountability, transparency, inclusiveness, and
openness.

MOSQUERA VALDERRAMA I.J. [Throughput Legitimacy of the peer review process of the BEPS 4 Minimum Standards: A case study](#). Intertax. Vol 52. Issue 3.

What has happened until now?

Limited lower-capacity country representation and participation, as well as scarce opportunities for collaboration among these countries to articulate common positions, have meant that developing countries have typically had less influence on setting the Inclusive Framework agenda, establishing priorities and putting forward proposals, often limiting themselves to reacting to other countries' positions.

<https://www.oecd.org/tax/oecd-secretary-general-tax-report-g20-finance-ministers-october-2021.pdf>

UN challenges

Stakeholders/countries (participation/representation decision making process)

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

Rules (outcome)

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

Process

Transparent, inclusive, accountable and open

MOSQUERA VALDERRAMA I.J. Global Tax Governance: Legitimacy and Inclusiveness: Why it matters? Video [Link](#)- Book [Link](#)

MOSQUERA VALDERRAMA I.J. [How Can Regional Cooperation Help the Enhancement of Regional Economic Development and Strengthen the Voices of Developing Countries in Global Tax Negotiations?](#) Journal of World Investment and Trade 25 (2024) 201-236

SOME SOLUTIONS: UN

2023

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

2024

- Blogpost UN Framework Convention – The Role of (Early) Protocols by Peter Hongler and Simon Habich Link [here](#)
- Roundtable: The UN Framework Tax Convention. 12 July. [[Recording](#)] [[Programme with slides](#)]

2025

- Blogpost The legitimacy of the UN Negotiations and the Path Towards Inclusive and Effective International Tax Cooperation. Are we getting it right? Link [here](#)
- Blogpost Getting the Priorities Right: The Central Role of Workstream I in the UN Framework Convention on International Tax Cooperation Link [here](#)

SOME SOLUTIONS: UN

2025

- Blogpost The overarching goal of a new UN Framework Convention: Workstream I Link [here](#)
- Draft UN Framework Tax Convention Link [here](#)
- Blogpost A New Era for Global Tax Cooperation? Reflections on the UN Negotiations in New York Link [here](#)
- Blogpost Towards a UN Framework Convention on Tax Cooperation: Conceptual and Institutional Challenges in the Co-Lead's Draft Link [here](#)
- Blogpost Commitments Workstream I: A matter of a Preamble? Link [here](#)
- Comments on the “Co-Lead's Draft Framework Convention Template” on Workstream I as of 24 October 2025. Input available [here](#)

2026

- The UNFCITC and the Future of Mutual Administrative Assistance Link [here](#)
- Assessing the State of Play in the UN Framework Convention on International Tax Cooperation Link [here](#)