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The evolution of global tax governance

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Navigating Global Tax Governance

Session 1



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European Research Council
Established by the European Commission



GLOBTAXGOV

A NEW MODEL OF GLOBAL GOVERNANCE IN INTERNATIONAL TAX LAW MAKING



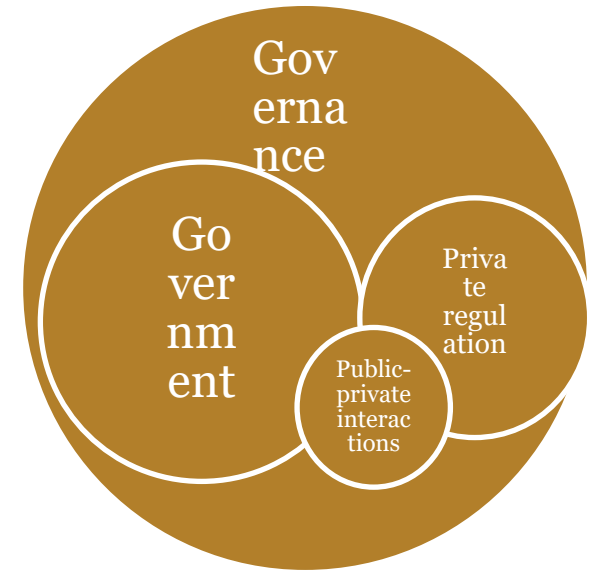
AFRICAN TAX
ADMINISTRATION FORUM
FORUM SUR
L'ADMINISTRATION
FISCALE AFRICAINE

Content

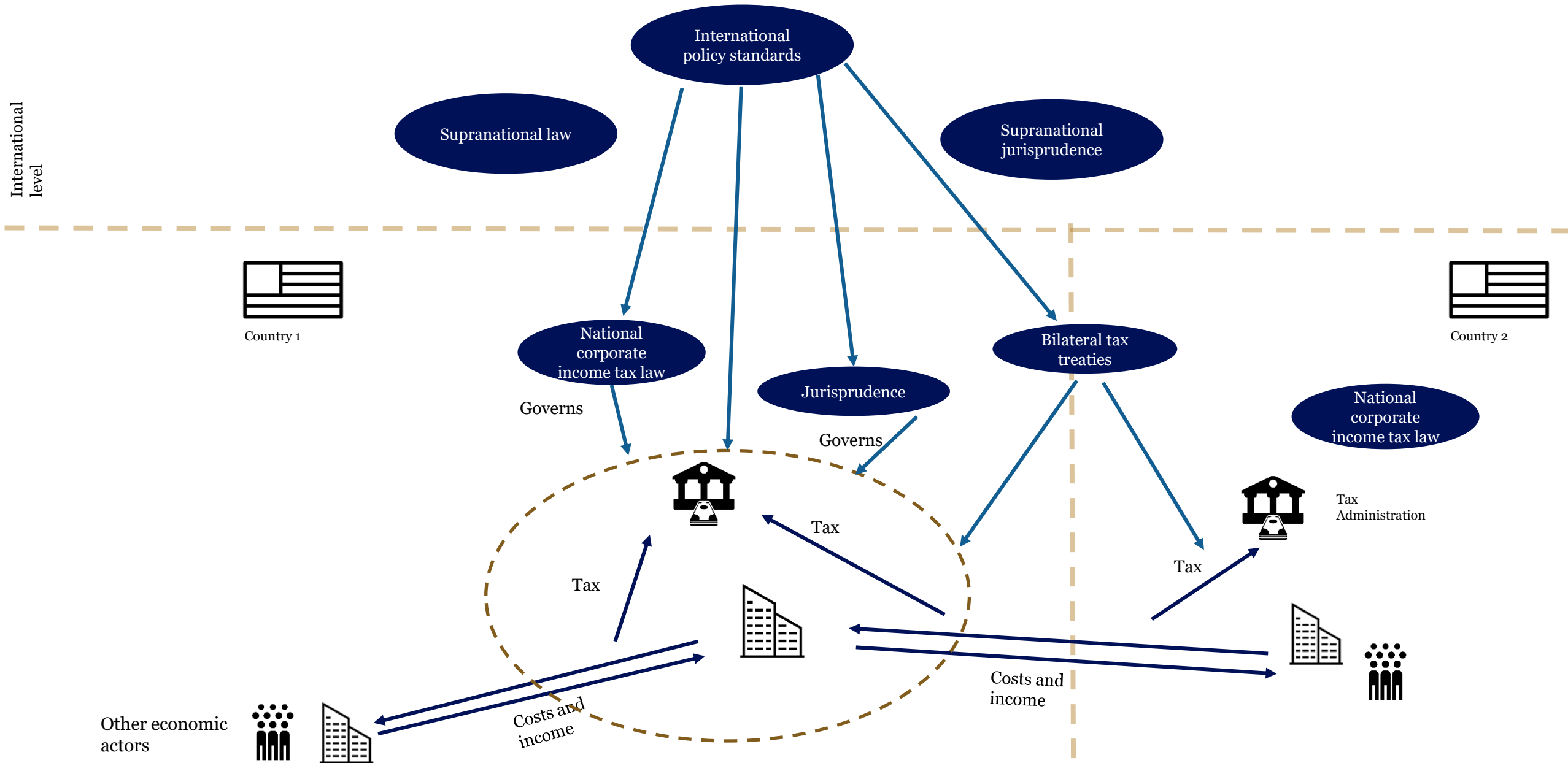
- Where does it come from? Understanding the origins of global tax governance,
- Thematical scope and evolution of global tax governance,
- How to govern? Modes of governance,
- The participants: Different actors in global tax governance,
- Justifying global tax governance: SDGs & critical perspectives

Global governance

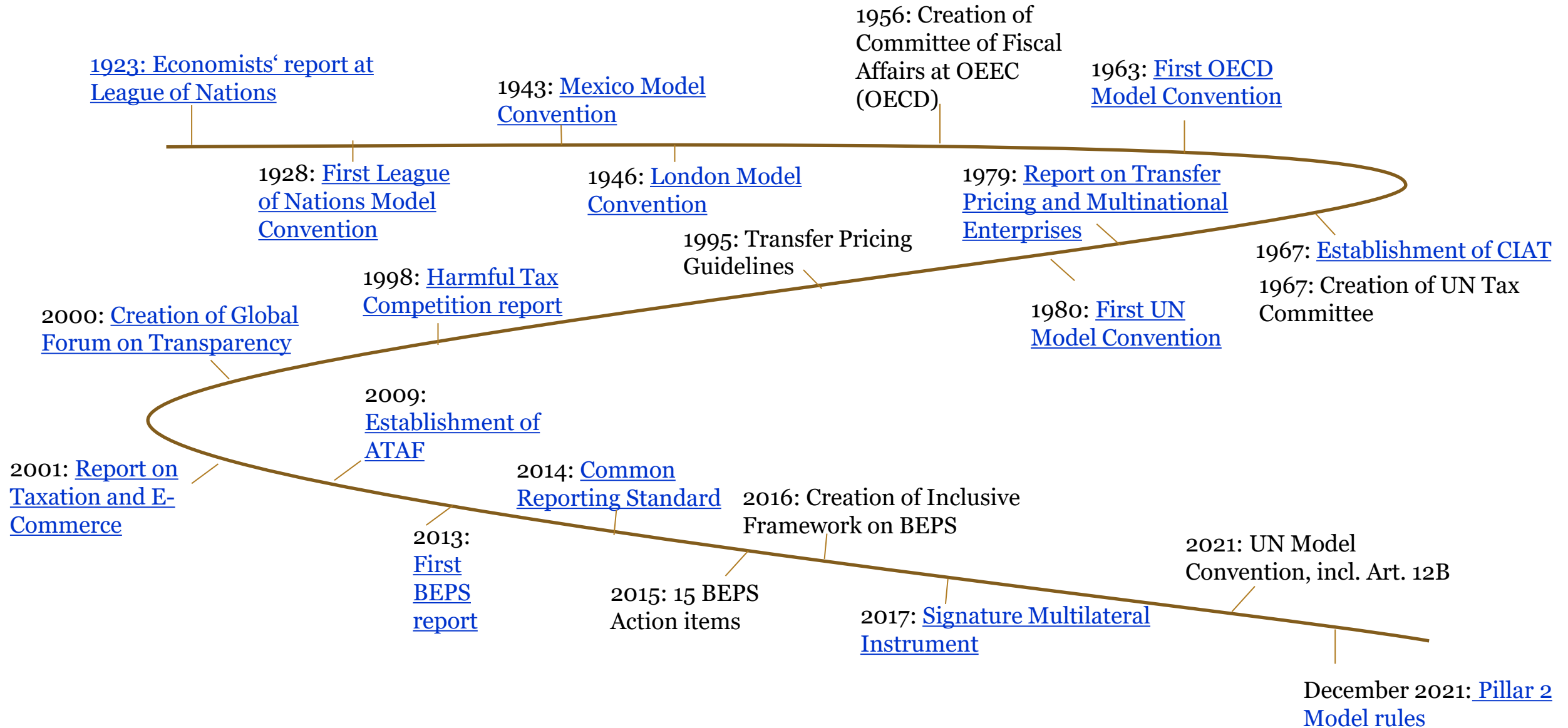
- (Self-)regulating affairs with repercussions among more than one country
- “Global governance is governing, without sovereign authority, relationships that transcend national frontiers. Global governance is doing internationally what governments do at home.” (Finkelstein, 1995)
- “Governance” > “government” (action by governments, but not only)



The governance complex:



Milestones of global tax governance



Modes of governance

- Soft law
 - Model Conventions (OECD, UN, ATAF)
 - Technical standards (e.g., Common Reporting Standard, Country-by-Country Report XML scheme)
 - Guidelines on application of law (e.g. Commentaries to Model Convention, Transfer Pricing Guidelines)
- Peer review
 - BEPS Inclusive Framework, Forum on Harmful Tax Practices, Global Transparency Forum
- Multilateral conventions:
 - Comprehensive tax conventions: Nordic, West African Economic and Monetary Union, OCAM, Andean Community, various EU Directives
 - Convention on Mutual Administrative Assistance in Tax Matters
 - Pillars 1 & 2?
- Guidance for domestic legislation
 - CIAT Model Tax Code
 - OECD Global Forum on VAT: International VAT/GST Guidelines

Advantages and disadvantages of soft law

- Broad agreement possible
 - Compare: deadlock in the World Trade Organization
 - BEPS Project attracted many members
 - But overruled in case of political disagreement
- Quick reactions to new developments
 - E.g. BEPS Project was set-up in two years (although not entirely new)
- Effective in practice
 - Most bilateral tax treaties follow UN and OECD model
 - Transfer pricing rules widely adopted
 - But: Differences in methods

Main topics

Encouraging relief of double taxation

- Model Convention
- Transfer Pricing Guidelines
- Best practices for dispute resolution

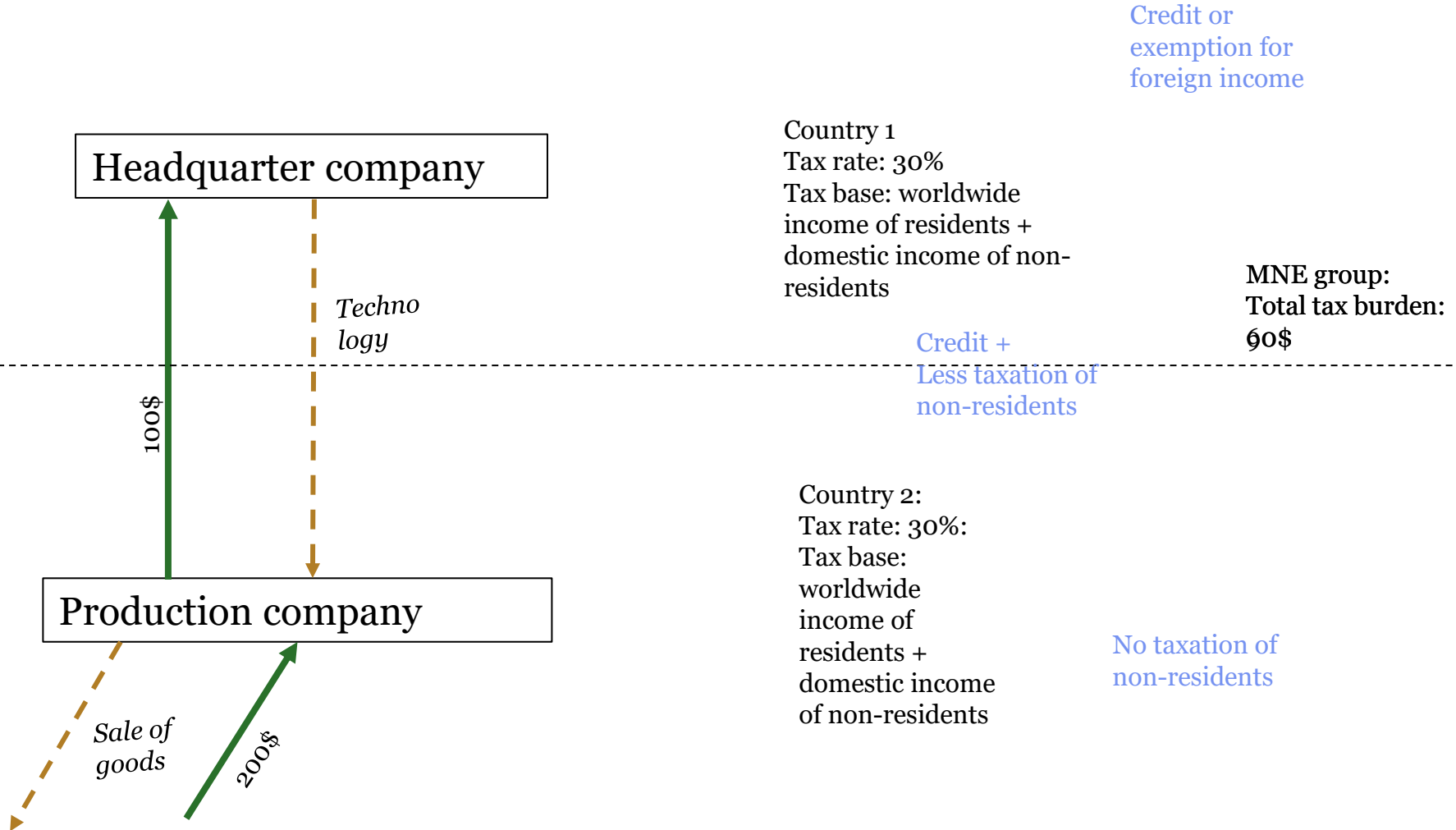
Fighting tax evasion

- Harmful Tax Practices Project
- Exchange of Information

Fighting international tax avoidance

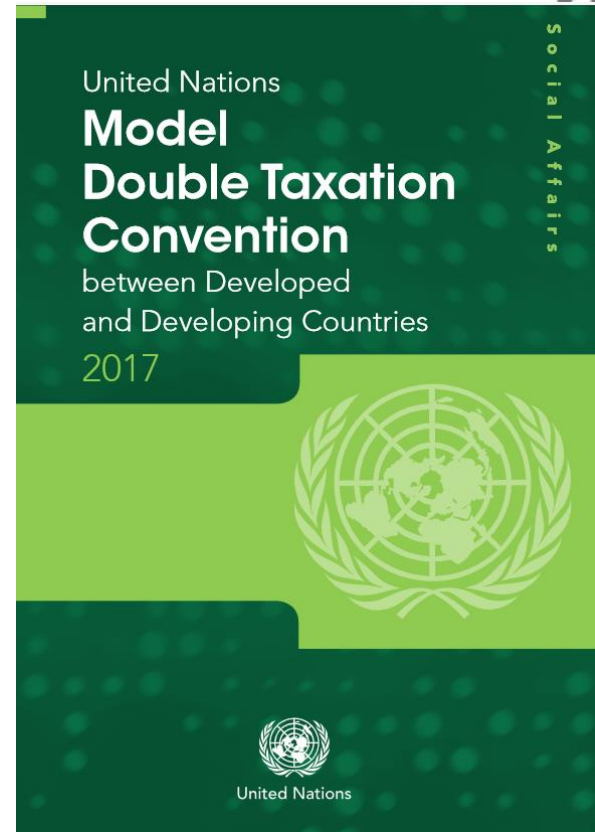
- Reports on treaty shopping, thin capitalization, hybrid mismatches, transfer pricing guidelines
- Harmful Tax Practices Project
- BEPS Project
- Exchange of country by country reports
- Pillar Two

Double taxation



Tax treaties: in general

- Regulate taxation of transactions with foreigners
- Main goal: Alleviation of double taxation
- Definitions
- Allocation of taxing rights:
 - Limitations to tax foreign residents: business income, dividend, interest, royalty, service, capital gains, pensions, etc.
 - Relief for foreign taxes
- Procedures: Exchange of information and mutual agreement
- Bilateral, sometimes multilateral
- Model Conventions

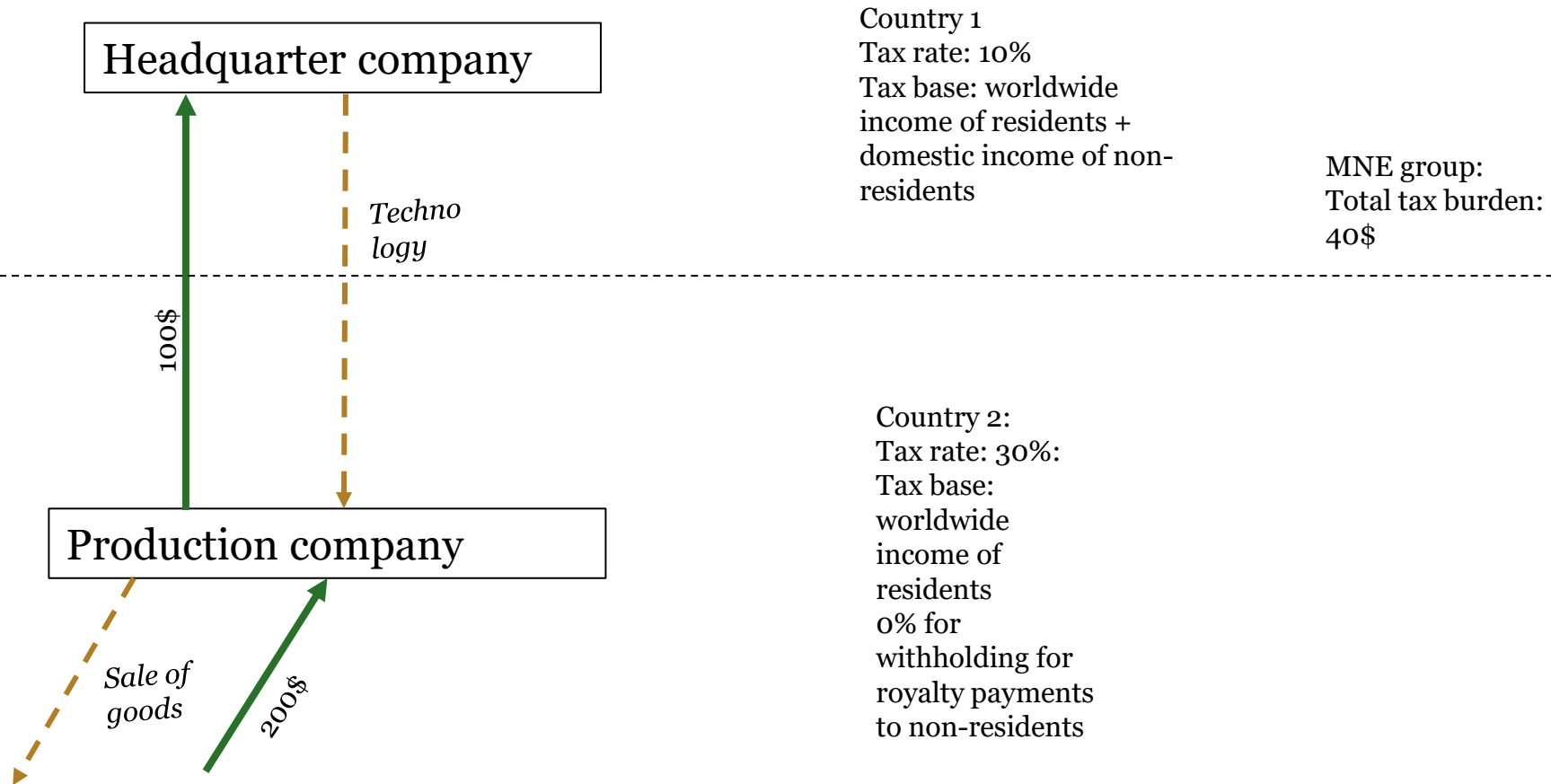


Model Tax
Convention
on Income
and on Capital

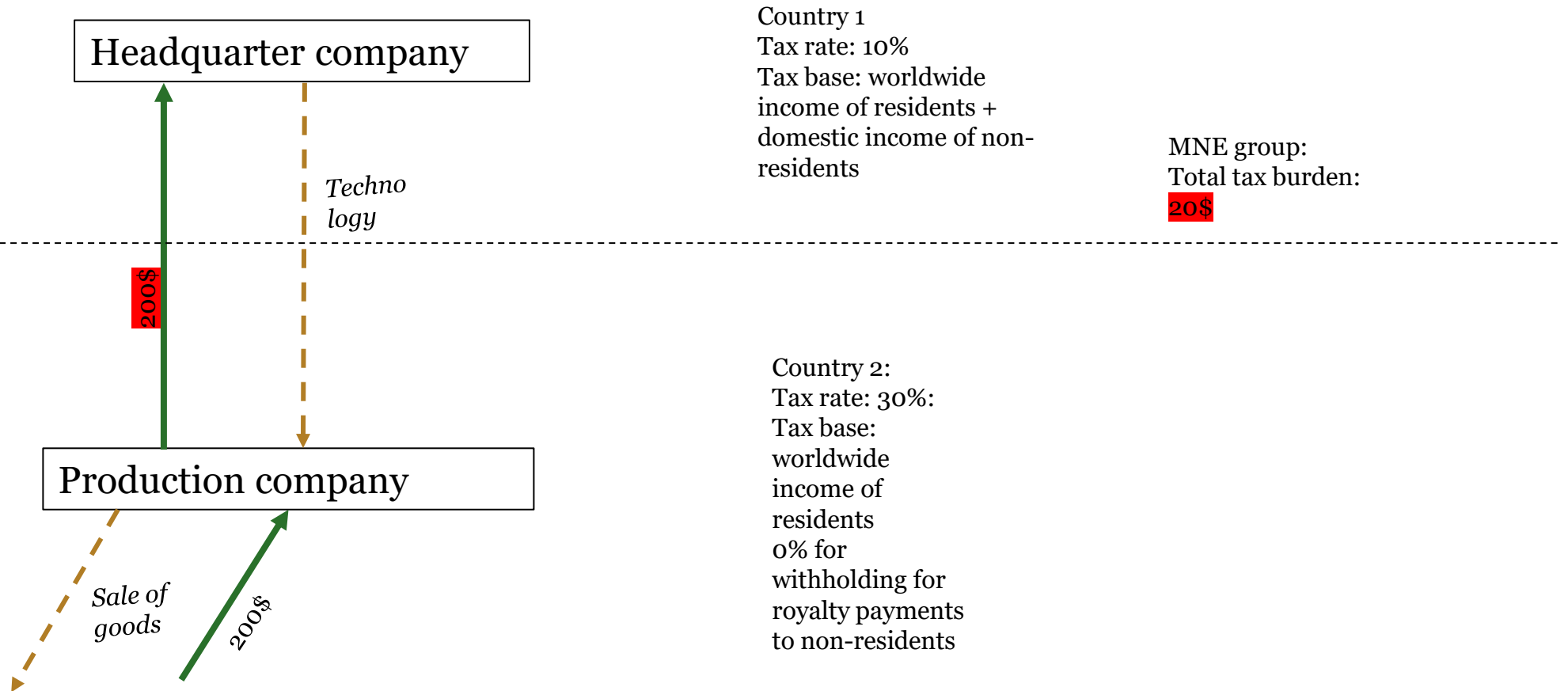
CONDENSED VERSION
(as it read on 21 November 2017)



Tax avoidance through strategic transfer pricing



Tax avoidance through strategic transfer pricing



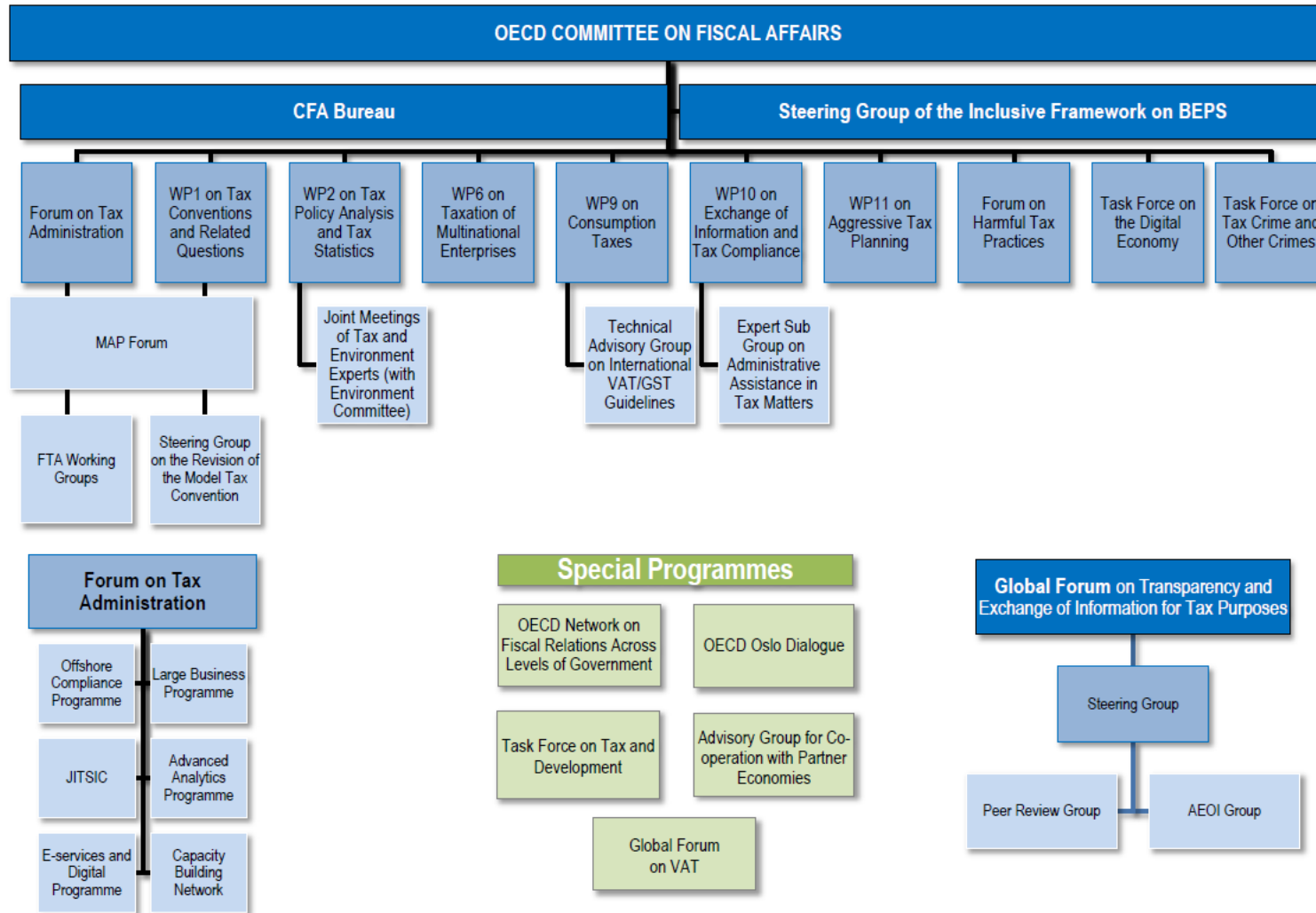
What drives the global agenda?

- External shocks, such as financial crisis
- Evolution of business practices
- Technology
- Path dependency
- Increasing level of complexity and specialization

Tax institutions at OECD

Secretariat	Intergovernmental branch	
	Executive	Plenary
<ul style="list-style-type: none">• Centre for Tax Policy and Administration• Head: Pascal Saint-Amans	<ul style="list-style-type: none">• Committee of Fiscal Affairs (Chair: Fabrizia Lapecorella, Italy; previously Martin Kreienbaum, Germany)• Steering Groups• Working Parties	<ul style="list-style-type: none">• BEPS Inclusive Framework• Global Forum on Transparency and Exchange of Information for Tax Purposes• Forum on Harmful Tax Practices

Institutions at OECD (2)



- <https://www.oecd.org/tax/beps/committee-on-fiscal-affairs-and-subsidiary-bodies-organigramme.pdf>

The OECD alone?

- United Nations Tax Committee
- International Monetary Fund
- Platform for Collaboration on Tax
- Inter-Governmental Forum on Mining
- European Commission and European Council
- ATAF
- CIAT
- CREDAF
- Other regional organizations

Non-state actors in global tax governance

- Multinational Enterprises
- International Chamber of Commerce
- Business At OECD (formerly Business and Industry Advisory Committee – BIAC)
- International Fiscal Association
- Tax Justice Network
- Oxfam
- International Consortium of Investigative Journalists
- ... and many others
- Look at submissions to public consultation processes!

Positions and interests by non-state actors

- Business:
 - tax as cost,
 - reducing compliance burden → harmonization among countries
- Tax Justice Movement:
 - High tax-to-GDP ratio good for development
 - More progressive than regressive taxes (corporate tax assumed to be progressive)

Global tax governance: critical perspectives

- Division of taxing rights in models in favour of capital exporting countries
- Administrative complexity
- Lack of „true“ influence in decision-making
 - Costs of participating in meetings
 - Language barriers
 - Technical knowledge barrier
 - Lack of human resources

Relationship with global normative projects – tax and the Sustainable Development Agenda



- Sustainable Development Agenda:

- 17 Goals with ~10 targets each
- 17.1: “Strengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection”
- 16.4: “By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime”
- Debate around the definition of “illicit financial flows”
- Tensions: Resource mobilization vs. incentivizing economic behaviour (e.g., increasing industry’s share in GDP, clean energy production, supporting technology development)

Thank you!

Questions? Comments?

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