



**Universiteit  
Leiden**  
The Netherlands

## **Taxation of the digital economy and forum shopping**

Heitmüller, F.

### **Citation**

Heitmüller, F. (2022). Taxation of the digital economy and forum shopping. In . “Navigating Global Tax Governance”, online workshop in cooperation with ATAF, Session 3. Retrieved from <https://hdl.handle.net/1887/3513535>

Version: Not Applicable (or Unknown)

License: [Creative Commons CC BY 4.0 license](https://creativecommons.org/licenses/by/4.0/)

Downloaded from: <https://hdl.handle.net/1887/3513535>

**Note:** To cite this publication please use the final published version (if applicable).

# Taxation of the Digital Economy: Discussion of Assignments

Frederik Heitmüller

PhD Candidate, Leiden University

Navigating Global Tax Governance

Session 3



Universiteit  
Leiden  
The Netherlands



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

# Questions

- Are unilaterally adopted digital services taxes at odds with the idea of multilateral cooperation? Why (not)?
- Can the proposition of an article 12B by the UN Tax Committee be interpreted as attempt to engage in “forum shopping” by countries? Was it successful?

# Unilaterally adopted DSTs and multilateralism

At odds, because:

- Not covered by tax treaties in place
- Potentially not compatible with international trade law (Threat of tariffs by US)
- Multilateral negotiations already under way
- Potentially lead to double taxation of income

But:

- Unilateral moves can hinder or *advance* negotiations
- No formal WTO case was launched, only unilateral trade sanctions (US)
- But can be imposed as levy not having character of an income tax, e.g. India; no problem if no tax treaty in place
- Beyond treaties, no “customary” obligation to relieve double taxation

# Unilaterally adopted DSTs and multilateralism

- Common approaches have been negotiated and inspired unilaterally imposed taxes
  - ATAF Suggested Approach to Drafting Digital Services Tax Legislation
  - UN Model Convention, Article 12B
  - OECD Action 1 report (although less concrete)
- “Multilateralism is not absolute”

# Questions

- Are unilaterally adopted digital services taxes at odds with the idea of multilateral cooperation? Why (not)?
- Can the proposition of an article 12B by the UN Tax Committee be interpreted as attempt to engage in “forum shopping” by countries? Was it successful?

# What is forum shopping?

- “strategic selection and use of policy venues by any political actor—a nation-state or non-state actor—in order to advance an agenda” (Murphy-Gregory and Kellow)
- Term originated from practice in US to choose favorable courts for being tried
- Reasons for choosing alternative venues in global governance
  - Membership
  - Decision-making rules
  - Legitimacy in the eyes of relevant actors
- There can be trade-offs!
- In the history of global tax governance:
  - Period after second world war, stalemate in UN, OECD takes over

# Forum shopping for a solution to tax the digital economy

- More countries adopting DSTs, US Trade investigations, long negotiations at OECD
- UN Tax Committee: 25 members,
- OECD Inclusive Framework: 141 members, consensus, OECD country leadership
- → attempt to gain greater legitimacy to withholding taxes for digital services



# Limits of forum shopping

- Path dependency: partner countries need to agree to change in bilateral tax treaty
- Economic power: Targeted enterprises resident in few jurisdictions (mainly US, China, EU)
- Legitimacy: UN Tax Committee still lacking status of inter-governmental body

# Thank you!

## Questions? Comments?

[f.heimuller@law.leidenuniv.nl](mailto:f.heimuller@law.leidenuniv.nl)

Twitter: @heimuellerf  
<https://globtaxgov.weblog.leidenuniv.nl/>



Universiteit  
Leiden  
The Netherlands



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