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## **Global Tax Governance: Legitimacy and Inclusiveness. Why it matters**

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# Global Tax Governance: Legitimacy and Inclusiveness.

## Why it matters



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Bij ons leer je de wereld kennen

# Global Tax Governance: Legitimacy and Inclusiveness. Why it matters

Inaugural lecture given by

Prof. dr. Irma Mosquera Valderrama<sup>1</sup>

on the acceptance of her position as professor

Tax Governance

at Leiden University

on Friday June 30, 2023



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Leiden

*Caminante no hay camino, se hace camino al andar. Al andar se hace camino, y al volver la vista atrás,  
se ve la senda que nunca se ha de volver a pisar (Antonio Machado 1875-1939)*

# 1. Introduction

In 2016, Thomas Rixen and Peter Dietsch, in their book ‘Global Tax Governance: What is Wrong with It and How to Fix It’, defined global tax governance as *consisting “of the set of institutions governing issues of taxation that involve cross-border transactions or have other international implications. This definition implies that global tax governance need not, but could, involve a full or partial shift of the power to tax, that is, the right to impose taxes on citizens, to the international level”*<sup>1</sup>.

As I will further elaborate in section 1 below, since the 2008 financial crisis, the Organization for Economic Cooperation and Development (OECD) with the political mandate of the G20 have introduced standards, first the standard of exchange of information, thereafter the BEPS Project and the BEPS 4 Minimum Standards to tackle tax avoidance by multinationals, and more recently the proposals to address taxation of highly digitalized business and to introduce a global minimum tax rate to tackle tax competition. These standards are applicable to OECD, G20 and non-OECD, non-G20 countries including developing countries.

In my view, when addressing these international tax developments from the perspective of global tax governance and using the definition of Rixen and Dietsch, it means then, that there is a shift of the power to tax from countries to international organizations (the OECD) and political forum (the G20).

The main questions that I want to address in this lecture is why it matters? Why we need to discuss global tax governance, legitimacy and inclusiveness?

In order to answer this question, I will explain the political developments that influence taxation at international and European level (Section 1 and 2 respectively). Thereafter I will address in Section 3 my research: How did I get here? Section 4 will address the main topic of this lecture: Global Tax Govern-

ance: Legitimacy and Inclusiveness. In Section 5, I will address the next steps to be carried out in teaching and research in light of my Chair in Tax Governance, as well as my EU Jean Monnet Chair in EU Tax Governance. Finally, I will provide a short conclusion.

## International Political developments

Since the 2008 financial crisis, countries and international organizations have been searching for ways to collect revenue. The proposed solution at that time was to facilitate transparency and exchange of information among countries. Bank secrecy needed to be repealed, and tax havens needed to facilitate exchange of information on the assets and financial accounts owned by residents and non-residents (individuals and business).<sup>2</sup>

In response the OECD with the political mandate from G20 (a political forum with some OECD and non-OECD countries such as China, Russia, Indonesia, India) introduced international tax standards such as of the standard on exchange of information and transparency. This standard was also later implemented by other countries (non-OECD, non-G20) participating in the Global Transparency Forum (currently more than 160 tax jurisdictions<sup>3</sup>).

Since then, this standard has been amended to include automatic exchange of information mainly on financial accounting (bank) information of residents and non-residents. This new standard has been endorsed by more than 110 jurisdictions.<sup>4</sup> In order to facilitate the exchange of information, countries have signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (with more than 140 tax jurisdictions).<sup>5</sup>

The OECD claimed they did so with the political mandate of the G20 and by inviting non-OECD, non-G20 countries to participate in these initiatives, developed and developing countries will benefit since exchange of information will raise

more revenue by countries. This revenue could be used for public services (health, education, etc.) but also to contribute to fairness of taxation vis-à-vis citizens who were suffering from the consequences of the financial crisis. In short, more transparency meant more money for countries to overcome the problems created by financial crisis.

Later on, due to tax scandals by big multinationals such as Starbucks, Google, among others, the OECD (again) with the political mandate of the G20 decided to introduce the Base Erosion and Profit Shifting (BEPS) Action Plan and Project to tackle aggressive tax planning by multinationals and to ensure that multinationals pay their fair share. This Project contains 15 Actions (4 Minimum Standards, 10 Best practices, and 1 Multilateral Instrument). The BEPS Multilateral Instrument has two of the BEPS 4 Minimum Standards and some of the BEPS Best Practices.

As I have argued in the past, the decision making of the content of the BEPS Project and its Actions took place at the so-called BEPS 44 Group (the OECD, OECD Accession countries and G20 countries). Non-OECD, non-G20 countries were invited to participate as BEPS Associate in the implementation of the 4 Minimum Standards. The result was the creation of the BEPS Inclusive Framework with 143 tax jurisdictions (as of June 2023).<sup>6</sup>

Furthermore, 100 tax jurisdictions have signed the BEPS Multilateral Instrument that amends their bilateral tax treaties. Tax Treaties are agreements concluded by two countries to prevent double taxation in cross-border transactions as well as to prevent tax avoidance.<sup>7</sup> Since the BEPS Project, the aim of tax treaties is also to prevent double non-taxation where the income is taxed nowhere.

At this time, this Multilateral Instrument has been ratified by more than 70 jurisdictions.<sup>8</sup> However, even in case that the country signs and ratifies the BEPS Multilateral Instrument,

the country has to explicitly mention the tax treaties that will be covered by the Multilateral Instrument. The country has the possibility to opt-in, opt out of the provisions provided in the BEPS Multilateral Instrument.<sup>9</sup>

In both cases, the result is the OECD with the political mandate of the G20 introducing international tax standards that non-OECD, non-G20 countries are implementing throughout their membership to networks (Global Transparency Forum and BEPS Inclusive Framework) or by signing multilateral instruments (Common Reporting Standard, the Multilateral Convention on Mutual Administrative Assistance in tax Matters and the BEPS Multilateral Instrument).

Countries participating in the transparency, exchange of information and the BEPS project have also agreed to be reviewed by their peers (peer review) on their commitment to these standards. However, unlike treaties where you sign the treaty and it has an effect for both/or multiple parties, the BEPS 4 Minimum Standards are regarded as soft law since these Standards are not binding for countries. So in principle countries are not required to implement these standards, but they do so, why? (see section 4 below).

Due to the increase of digital business prior to the COVID 19 Pandemic, countries decided to address this issue. After several proposals from the OECD Secretariat, OECD countries, non-OECD countries<sup>10</sup>, in 2021, 137 of the 141 countries<sup>11</sup> belonging to the BEPS Inclusive Framework (at that time) reached a political agreement to introduce measures to tax highly digitalized business (Pillar 1) and to introduce a global minimum tax rate of 15% (GloBE Pillar 2). The number has now increased to 139, since the inclusive framework has increased to 143 countries jurisdictions (including 99 non-OECD, non-G20 countries).<sup>12</sup>

The legitimacy of all of these political developments by the OECD, G20 and the BEPS Inclusive Framework have been

questioned by scholars, civil society, countries, regional tax organizations and regional organizations (see section 4 below). **My research in the GLOBTAXGOV research project, and my Leiden Law Chair on tax governance investigate under what conditions this shift of power can be legitimate and feasible vis-à-vis non-OECD, non-G20 countries including developing countries.**

These questions are even more relevant now in the midst of the discussions taking place since November 2022 at the United Nations level. These discussions have been initiated by Nigeria with the support of some African countries. These countries submitted a proposal for a draft resolution at the UN Second Committee on the “Promotion of Inclusive and Effective International Tax Cooperation at the United Nations” by means of developing a framework or instrument. This resolution has been approved by the General Assembly in December 2022. This resolution gives the United Nations, a more important role in the setting of international tax standards.

Following this resolution, input has been sought (i) on the content of this framework or instrument and (ii) on the role of the United Nations to achieve inclusive and effective international tax cooperation.<sup>13</sup> A virtual consultation with UN countries and other stakeholders took place end May 2023. At this time, the UN is developing this framework, and further consultations will take place in July 2023.

This is not the first time; efforts have been made to give importance to the United Nations. At the 2015 Addis Tax Initiative, it was proposed to give to the UN Tax Committee the status of an intergovernmental body. The proposal was rejected (at that time) by some developed countries due to the predominant role of the OECD in tax matters.

Given the political developments and the voice raised by scholars, civil society and countries (unilaterally or in regional settings), this new development at the United Nations; could

shift the decision-making process from the OECD-G20 towards the United Nations. But of course, we will have to wait and see.

In January 2023, the Minister of Finance (at that time) of Colombia an OECD member country- and a participant in the decision-making process of the BEPS Project, also questioned Pillar 1 and Pillar 2 and the work of the OECD, G20 and the BEPS Inclusive Framework. He stated that “*the two-pillar solution delivered by the OECD/G20 Inclusive Framework is a step forward, but does not fully address the concerns developing and emerging countries have raised. Latin American and Caribbean countries face common challenges when it comes to cross-border taxation, from the role of tax havens to taxing the digitalized economy. We share the same problems, but we have not shared our views and technical strengths to come up with common solutions. Therefore, our interests have not been visible enough in the international tax policy debate so far, and this must change*”.<sup>14</sup>

However, changes have taken place in the 5 months since I started writing this inaugural lecture. Since May 2023, there is a new Minister of Finance, and the future of the initiative is not clear. At the same time, during the conference in May at Bogota, Colombia, civil society claimed that these discussions were mainly organized by business, and that the civil society was not being heard, respected in their views.<sup>15</sup> Since I was not at the conference, I cannot give an informed opinion, but these claims show that trying to find a consensus and shared views is more difficult than one can ever imagine.

In March 2023, at the Special Meeting on International Cooperation in Tax Matters, Ahmed Zainab, Minister for Finance, Budget and National Planning of Nigeria, “*expressed concern about the lack of inclusiveness and equal footing in the development of taxation frameworks, both in terms of the weight attributed to inputs from the developing countries, and their capacity to make such inputs. Tax cooperation architecture should address*

*mutual accountability measures through a fair process, she said, adding that developing countries are being punished by unilateral declarations and “blacklisting by forums and bodies in which they have no voice”.*<sup>16</sup>

More recently, at the June 2023 conference, Global Tax Governance at a Crossroads organized by the International Centre for Tax and Development (ICTD) and hosted by Kenya School of Revenue Administration, countries, regional (tax) organizations, academia, civil society, among others expressed the need to achieve inclusiveness in international tax negotiations including the sharing of taxing rights. According to Martin Hearson (ICTD), in a blog posted before the conference (ICTD) there are four conditions to be met (i) lower income countries need to become agenda setters; (ii) the ambition of deep, universal consensus must be abandoned; (iii) to review the subject matter of international cooperation analyzing its costs and benefits for countries; and (iv) the disconnect between the political and technical spheres in international tax policymaking needs to be overcome.<sup>17</sup>

In my view, we need to continue engaging all stakeholders (business, countries, civil society, international organizations, regional (tax) organizations, supranational organizations) while discussing these international political developments.

As I highlighted in 2015, non-OECD, non-G20 countries including developing countries need to participate in the agenda setting of international tax standards (input legitimacy), and to benefit from these standards (output legitimacy).<sup>18</sup> In my article, I concluded that there is a lack of input and output legitimacy. Later on, in a 2018 article, after the creation of the BEPS Inclusive Framework, I continue questioning the legitimacy of the BEPS 4 Minimum Standards. At that time, and still applicable, it is not yet clear, whether these BEPS 4 Minimum Standards are what developing countries need? How much revenue has the implementation of the BEPS 4 Minimum Standards raised for developing countries? In the

2018 article, I concluded (and still applicable) that the fast pace of the implementation of the BEPS 4 Minimum Standards has resulted in developing countries focusing on these standards, while deviating their attention from other priorities, such as taxation of informal economy, tax evasion, digitalization of tax administrations, improving taxpayer compliance among others.

The same discussions/questions in input and output legitimacy can also be raised in respect of the Pillar 1 and Pillar 2 discussions. Therefore, it is for international/regional organizations and governments to find out how countries including developing countries can benefit from these initiatives, and what needs to be done to give a voice to developing countries. All countries should have a voice, but this means that training and knowledge is needed so that all countries can exercise that voice.

In order to contribute to this dialogue, we have asked scholars/civil society among others to express their views in the GLOB-TAXGOV blog.<sup>19</sup> We have organized (online/onsite) several conferences, seminars where we provide a space for dialogue on topics of global tax governance with academia, civil society, international and regional organizations, business, policy makers from different regions in the world.<sup>20</sup> Most of these seminars have been recorded with recordings and slides made available open access.<sup>21</sup>

## **2. EU political developments and the EU Standard of Tax Good Governance**

At EU level, the EU Commission has introduced the BEPS 4 Minimum Standards and some of the BEPS best practices in the form of a directive. The Directives are applicable to EU countries (e.g. Anti-Tax Avoidance Directive 1; Directive on Administrative Cooperation 1 to 6<sup>22</sup>) and also to non-EU countries (Anti-Tax Avoidance Directive 2).



Unlike other Directives, where the focus was to prevent double taxation in EU cross-border transactions (e.g. Merger Directive, Interest and Royalties Directive, Parent and Subsidiary Directive), the new Directives aim to prevent base erosion and profit shifting and to ensure fair taxation. In addition, the EU following the international developments recently adopted an EU Directive that implements Pillar 2 (GloBE).

One obstacle to these initiatives at EU level, is that since tax is based on the concept of sovereignty, countries may be reluctant to give up their sovereignty in tax issues. At EU level, this concept of sovereignty is also reflected in the decision-making process to harmonize direct taxation (i.e. taxation on individuals and companies) since all of the above-mentioned Directives require unanimity by all EU Member States.<sup>23</sup> One of the drawbacks of this unanimity is that political agreements/concessions by the EU Commission and/or Member States have been made to achieve tax objectives.<sup>24</sup> In addition, the EU Commission has revisited/relaunched EU tax initiatives in order to achieve consensus by member states.<sup>25</sup>

With the aim to play a more important role in the international tax developments vis-à-vis non-EU countries, the EU Commission has also introduced in 2008 the EU Standard of Tax Good Governance that provided for transparency, exchange of information and fair tax competition. Since 2018, this Standard also includes countries commitment to the BEPS 4 Minimum Standards. This Standard of Tax Good Governance is introduced in economic/trade/partnership agreements with third (non-EU) countries, as well as one pre-condition to receive EU aid and to be excluded from the blacklist of non-co-operative jurisdictions.<sup>26</sup>

In light of the above, my research in the GLOBTAXGOV research project and my chair on tax governance also investigates (in addition to the role of the OECD and the G20 mentioned above) **under what conditions the role of the**

### **EU in international tax law making can be legitimate and feasible vis-à-vis non-OECD, non G20 countries?**

In 2021, I was awarded an EU Jean Monnet Chair (EUTAXGOV) to raise awareness of the use of the Standard of EU Tax Good Governance and the consequences for non-EU countries including developing countries. Receiving this Jean Monnet Chair shows that research can be translated into teaching. The courses that I teach at Leiden Law School also contribute to raise the awareness of the use of this Standard.<sup>27</sup>

In addition, I will be starting in October 2023, a post-graduate training on “The EU’s Global Regulatory Power and the EU Standard of Tax Good Governance”. This training is partially funded by the EU Jean Monnet EUTAXGOV Chair. The aim of this training is to contribute to the international tax debate by analyzing the international tax policies and the extent to which these policies are adopted by the European Commission in their external relations with third (non-EU) countries.<sup>28</sup> This course will be open to tax administrations, scholars, civil society, etc, from EU and non-EU countries.

In my view, more research and teaching is needed on how these international and EU tax developments have been influenced by political developments, but also on how these developments can be legitimate and feasible vis-à-vis non-OECD, non-G20, non- EU countries.

I have started to address these questions with my ERC GLOB-TAXGOV (Global Tax Governance) Research project and my Jean Monnet Chair EUTAXGOV (EU Tax Governance). I will continue addressing these questions with my Chair on Tax Governance at Leiden Law School.

### **3. The research: How did I get here?**

In short, my current research and teaching addresses Global Tax Governance, and EU Tax Governance using theories of

comparative legal theory, political science and taxation. In the following paragraphs I will address how these theories can be useful to study tax governance.

My interest in legal transplants and comparative law theory started while carrying out my PhD. My PhD Supervisor Prof. Burgers at the University of Groningen introduced me to the use of legal transplants in taxation. I relied mainly on Watson of legal transplants -“As the moving of a rule or a system of law from one country to another, of from one people to another”<sup>29</sup>.

In my PhD I investigated how the concept of leasing was transplanted from the United States to France, the Netherlands and Colombia, and whether there were differences in the rules upon transplantation. For this purpose, I used comparative legal theories such as Watson, Sacco, Nelken, among others to understand why countries use legal transplants in taxation. Furthermore, I used legal culture theories to explain the reasons for the differences in the rules. I did this in 4 different branches of law, tax law, private law, accounting law and banking law.<sup>30</sup>

In my view, legal rules can be borrowed by countries either from an international organization, or from one country to another, but the legal system and the legal culture may have an influence on the way that these rules change upon transplantation. Using the words of a comparative legal scholar Örüçü, legal culture provides the local fine tuning to explain why rules change upon transplantation.<sup>31</sup> This PhD raised my interest to use legal transplants and legal culture in taxation.<sup>32</sup>

Following the financial crisis, I decided to study the introduction of the new (at that time) standard of transparency and exchange of information<sup>33</sup>, as well as the content of the BEPS Project and the feasibility of this project to tackle aggressive tax planning in developing countries. I have argued in my articles that one size does not fit all, and that the standards of transparency, exchange of information and the BEPS Project, should

take into account the differences among countries (developed vs. developing countries), among regions (Africa with also sub-regions, Latin America, Central America, and Asian), as well as the differences among legal systems and legal cultures.

In my view, more research is needed on how these standards operate within the countries' legal systems, legal cultures and geographical (regions and sub-regions) context. I did some of this research in cooperation with other colleagues within the framework of the Project Sustainable Tax Governance in Developing Countries Through Global Tax Transparency (DeSTaT) funded by the government of Norway.<sup>34</sup>

Following these articles and the DeSTaT project, one question that I keep asking myself, is what is the validity of the standards of transparency, exchange of information, and the BEPS Action Plan and Project vis-à-vis developing countries? and, validity in terms of what?

In order to answer this question, and in the midst of the discussions of the content of the BEPS Project, I started with an article where I analyzed the validity and feasibility of the BEPS Project vis-a-vis developing countries. However, the validity was still a vague concept, so I researched theories in political science to define legitimacy. I used Scharpf and Schmidt<sup>35</sup> concepts of Input/Output (Scharpf) and Throughput (Schmidt) legitimacy which have been used in other areas than tax law. In short 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).

I have used these concepts when explaining the conditions for international tax law making from the OECD, G20 and the EU to be legitimate (i.e. validity) vis-à-vis non-OECD, non-G20/non-EU countries. By using the concept of legitimacy, I have been able to address some of the questions that I have asked at

the beginning and which I will answer later on in this lecture. I have been also able to question the role of the OECD, G20 and the EU in international tax law making in conferences/seminars with different audiences such as academia, civil society, EU Institutions, OECD, World Trade Organization, World Economic Forum, the United Nations, among others.<sup>36</sup>

This brings me to the title of this lecture and the questions addressed at the beginning of this lecture. I will address these questions in the following paragraphs.

#### **4. Global Tax Governance: Legitimacy and Inclusiveness: Why it matters**

Taxation is linked to sovereignty, where countries can decide what rules are needed, and how these rules are implemented. These rules are subject to *the trias politica* (checks and balances) between the different branches (executive, legislative and judiciary). These rules can be domestic (national/regional/local) rules.

In addition, there are rules applicable to cross-border transactions/activities by non-residents (either individuals or businesses). In order to provide relief of double taxation regarding these cross-border activities/transactions, countries have concluded double tax treaties. For this lecture, we focus on direct taxation rules applicable to individuals and businesses. Examples are for instance business income, employment income, capital gains income, among others.<sup>37</sup>

In general, tax treaties are applicable to taxation of income and capital and are in general based on the OECD or the UN Model. Some countries have also their own tax treaty models. In some cases, there will be national rules to prevent double taxation in the absence of the tax treaty or for topics not covered under the tax treaty.

However, the introduction of the standard of transparency and exchange of information as well as the BEPS Project changed this approach. By means of the former, countries were required to exchange information and to repeal their bank secrecy rules, for instance countries such as Switzerland, the Netherlands, and Uruguay changed their rules to make exchange of information more effective and efficient (swift exchange of information among tax authorities).

With the BEPS Project, countries were required to introduce rules to tackle aggressive tax planning including treaty shopping (Action 6) as well as to facilitate exchange of information of rulings (Action 5), transfer pricing documentation (Action 13), and to repeal harmful tax regimes (Action 5). In addition, countries were required to introduce rules to facilitate the resolution of tax disputes (Action 14).

#### **From legitimacy...**

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. Scholars and countries in regional consultations have also addressed issues outside the BEPS Project that are relevant for developing countries such as taxation of informal economy, taxation of capital gains from indirect transfers, among others. Some of these topics are being addressed by international organizations such as the International Monetary Fund, World Bank, and the United Nations either directly or in the framework of cooperation under the Platform for Collaboration on Tax.

In order to address these concerns, the OECD created the BEPS Inclusive Framework where countries were invited to participate as BEPS Associate and to commit to the implementation of the BEPS 4 Minimum Standards. This implementation is on equal footing and subject to the consensus minus one rule. This rule means that upon review of the implementation, the peer review of the country can be adopted even if one

country does not agree with it (minus one rule). This country can be most likely the country which is being peer reviewed. The system of peer review and consensus minus one rule was adopted based on the experience of peer review of the standard of transparency and exchange of information. At that time, Uruguay a country with bank secrecy opposed to the peer review report, but the report was adopted based on this rule.

### **To Inclusiveness**

In addition to legitimacy, there were other concerns from developing countries including the fast pace of the BEPS Project and the lack of resources (personnel/financial) to participate effectively at the discussions by the BEPS Inclusive Framework (either in Paris or online). Furthermore, some scholars, civil society, and think tanks have highlighted that the main role in international tax policy making should be given to the United Nations.

These concerns have not been addressed with the creation of the BEPS Inclusive Framework, since for the BEPS Project the participation on equal footing was only for the implementation of the BEPS 4 Minimum Standards. Furthermore, it is not clear if all countries can become a member of the BEPS Inclusive Framework, since it needs approval of all of the other countries participating in this Framework. This is the case of Cyprus that has not been able to join the BEPS Inclusive Framework. To still show their commitment to the BEPS Project, Cyprus has decided to sign the BEPS Multilateral Instrument.

Furthermore, at the start of the discussions between 2018-2019 of Pillar 1 (taxation of highly digitalized business), it was clear that there were three positions (i) from OECD countries, (ii) from the United States and (iii) from G24 countries which are developing countries).<sup>38</sup> Because no consensus was reached, the OECD Secretariat submitted a proposal (end of 2019<sup>39</sup>), which was a combination of the OECD and the United States proposal leaving behind the G24 (developing) countries proposal.<sup>40</sup>

In the midst of these discussions, the United States asked countries to refrain from introducing unilateral measures such as digital service tax, and if not, the US will start section 301 US trade investigations which will result in trade retaliation measures.

In 2020, consultations and discussions took place, but without any progress on the adoption of the OECD Secretariat proposal. However, the situation changed in 2021 with the United States Biden's presidency. The United States decided to go forward with the implementation of the GLoBE (Pillar 2) proposal and to endorse the Pillar 1 OECD Secretariat proposal. This proposal was discussed at the G7, G20 and thereafter in the BEPS Inclusive Framework.

The result is the political statement agreed in 2021 endorsed by 137 of the 141 jurisdictions participating at the BEPS Inclusive Framework. Since then, the number has raised to 139 with the increase to 143 of the number of countries participating in the BEPS Inclusive Framework.

4 countries did not endorse this political statement i.e. Nigeria, Kenya, Sri Lanka and Pakistan. Nigeria has expressed that the political outcome is not fair, and therefore, they continue with their own rules (e.g. significant economic presence to tax digital business). Kenya has a digital service tax, so at that moment, it was not considered by policy makers in Kenya that the country should commit to this political statement. However, in the framework of the negotiations of a trade agreement the US has asked Kenya to repeal the digital service tax, and to commit to the political outcome for Pillar 1 and Pillar 2. Kenya's government has recently expressed that they will follow that path.<sup>41</sup>

### **Why it matters**

Even if at the time that the BEPS Project started in 2013, the OECD developed the BEPS Inclusive Framework to allow participation on equal footing, this participation is only for

purposes of the implementation, so I argued back in 2015<sup>42</sup> that there was no participation on the decision-making process. Since then, so many actors have come into place, including also new standards Pillar 1 and Pillar 2, but the question remain the same. These questions are the following:

- a. If the decision making of the content of the standard of exchange of information and of the BEPS Project took place at the OECD level with the political mandate of the G20, have non-OECD, non G20 countries truly participated in the decision-making process?
- b. If not, is the creation of networks such as the Global Transparency Forum and BEPS Inclusive Framework enough to justify the legitimacy of the decision-making process?
- c. If the BEPS 4 Minimum Standards are regarded as soft law, thus non-binding, why are countries complying with these standards?
- d. Despite the work done by the OECD and the G20 in exchange of information, the BEPS Project and Pillar 1 and Pillar 2, should the decision-making continue taking place at the OECD level, or rather at the United Nations level, and if so, how?

***If the decision making took place at the OECD level with the political mandate of the G20, have non-OECD, non G20 countries truly participated in the decision-making process?***

As I have addressed in this lecture, the decision making of the content of the BEPS Project and its 15 Actions was made by the OECD and G20 countries. In my research, I have addressed that for OECD countries, the BEPS Project was an opportunity to advance in projects that were not broadly implemented e.g., harmful tax competition, and to take the leading role in international tax matters with the OECD Secretariat, and the Committee of Fiscal Affairs deciding on the agenda/topics to be addressed in the BEPS Project.<sup>43</sup>

Even if countries wanted to participate in this decision-making process, it was not possible. As I argued in 2015, membership of the OECD is on invitation only, and it requires an accession process. Even more difficult is to become member of the G20 which is a political forum, where very few emerging economies participate (e.g., Indonesia, India, China, Brazil, Argentina, etc.). Despite the existence of other political forums with developing countries e.g., G24 and G77, these forums were not invited to take part in the decision-making process of the BEPS Project.

Furthermore, as it has been mentioned above, even in case of a proposal submitted by developing countries e.g., G24 countries in Pillar 1 choosing for significant economic presence; this proposal was left behind in the OECD Secretariat proposal which combined the OECD and the United States approach.

Nevertheless, the significant economic presence has been adopted unilaterally by countries such as Nigeria, Israel, and also Indonesia (G20 country) and in 2022 Colombia (OECD country).<sup>44</sup> This shows that countries have decided to follow unilaterally the rules that they consider are more convenient for their own economy. This is the case of the significant economic presence and the digital service tax (e.g. Kenya) for taxation of highly digitalized business.

***If not, is the creation of networks such as the Global Transparency Forum and BEPS Inclusive Framework enough to justify the legitimacy of the decision-making process?***

Regional Tax organizations i.e. the African Tax Administration Forum (ATAF) and countries in the African, Caribbean, Latin America and Central American region have stated the fast pace of the implementation of the BEPS Project, and the need to provide effective and equitable Pillar 1 and Pillar 2 rules.

Regarding the BEPS Project, some countries have chosen in addition to the BEPS Minimum Standards to implement some

of the BEPS Best Practices (Actions 3, 4, 12<sup>45</sup>), but this decision has been a unilateral decision made by each country. However, even if the countries have chosen to implement the BEPS Minimum Standards and some of the BEPS Best Practices, analysis of the peer review reports shows that some countries may choose to do that on paper but not in practice.

Regarding the decision making process, the discussions of Pillar 1 and Pillar 2 within the BEPS Inclusive Framework have also shown that there is a limited participation of non-OECD, non-G20 countries in decision making. This limited participation was addressed by the OECD in the report to the G20 under the 2021 Italian Presidency.<sup>46</sup> In the report, the OECD recognized.

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*“the diverse membership of the Inclusive Framework, which includes different types of non-OECD economies, current chairing arrangements could evolve to comprise two co-chairs, including one from a non-OECD/non-G20 economy. Feedback from regional consultation events on practical ways to enhance inclusivity indicated **strong support for greater representation by developing countries in the leadership of the Inclusive Framework and its subsidiary bodies.** Similar co-chairing arrangements could be considered for the Working Parties and other subsidiary bodies. In addition, consideration could be given to the **revision of the memberships of the bureau or steering groups of the subsidiary bodies,** to ensure that they more systemically include representatives from a range of non-OECD economies, including lower-capacity countries”.*<sup>47</sup>

In light of the above, one of the recommendations of this report addressed the governance of the inclusive framework stating “*The Inclusive Framework stakeholders should, as a priority, reflect on governance arrangements to ensure a broad and systematic inclusion of developing countries. This could include consideration of representation in the leadership of the Inclusive Framework and its subsidiary bodies, and updating the mandate of the Advisory Group for Co-opera-*

*tion with Partner Economies”*.<sup>48</sup> The result was then, next to the chair from an OECD, country, to introduce a co-chair of the BEPS Inclusive Framework which should be from a non-OECD, non G20 country.

The question is whether the proposed co-chair would be enough to ensure inclusive participation of developing countries in the decision-making process.

For illustration purposes, I am dealing with these questions in a forthcoming article where I analyze the peer review and legitimacy of the BEPS 4 Minimum Standards in a case study of 7 countries which are members of the BEPS Inclusive Framework. The countries are Congo, Cameroon, Costa Rica, Jamaica, Peru, Sri Lanka and Viet Nam. Four of these countries (Sri-Lanka, Congo, Cameroon, Costa Rica) are members of the BEPS Inclusive Framework since the creation of this Framework (30 June 2016)<sup>49</sup> and the other three countries have joined shortly afterwards (Jamaica July 2016, Peru December 2016, Viet Nam June 2017).

In this forthcoming article, I have concluded the lack of (throughput) legitimacy (see section 3 above<sup>50</sup>) of the peer review process (i.e., accountability, transparency, inclusiveness and openness) of the OECD Secretariat, the BEPS Steering Group and the BEPS Inclusive Framework. I have also provided recommendations to improve the governance of the peer review process as one way for the OECD Secretariat and OECD countries to address the lack of throughput legitimacy.

***If the BEPS 4 Minimum Standards are regarded as soft law, thus non-binding, why are countries complying with these standards?***

As I have explained in section 3 above, by using the theories of legal transplants, I can explain why countries may decide to comply with the BEPS 4 Minimum Standards even if soft law.

For instance, there are 3 reasons that I would like to highlight here

1. chance and necessity (technical assistance by developed countries and/or OECD, and twinning projects between developed and developing countries);
2. expected efficacy of the law (access to information by tax administrations on multinationals);
3. political, economical and reputational incentives (commitment to the EU Standard of Tax Good Governance in trade, partnership agreements to receive EU funding and to be excluded of the list of non-cooperative jurisdictions).

The reason for countries to comply with the standards is being dealt in a forthcoming article where I have analyzed the peer review and legitimacy of the BEPS 4 Minimum Standards in a case study of 7 countries (Congo, Cameroon, Costa Rica, Jamaica, Peru, Sri Lanka and Viet Nam).

Since these 7 countries were non-members of the BEPS 44 group (OECD, OECD Accession, and G20 countries), these countries did not participate in the agenda setting and decision-making process of the content of the BEPS Project and its 15 Actions including the BEPS 4 Minimum Standards. Since then, one country Costa Rica has become an OECD Member and another country Peru is in the Accession Process to become member of the OECD.

2 of the 7 countries are involved in closed cooperation with the OECD regarding the implementation of international tax standards. For instance, Viet Nam has signed a memorandum of understanding to enhance cooperation (competition, investment and tax) with the OECD.<sup>51</sup> Cameroon participates in an OECD induction Programme to implement international tax standards.<sup>52</sup> Such Induction Programme or Memorandum of Understanding have not been found in the OECD website for Sri Lanka, Jamaica or Congo. However, Jamaica's tax administration representative has now been appointed co-chair of the BEPS Inclusive Framework.<sup>53</sup>

***Despite the work done by the OECD and the G20 in the BEPS Project and Pillar 1 and Pillar 2, should the decision-making take place at the OECD level, or rather at the United Nations level, and if so how?***

In my view this is the most difficult question to answer at this stage, since the United Nations development is recent (since November 2022). It is also difficult to answer taking into account the changes at OECD Secretariat mainly the Director of the OECD's Centre for Tax Policy and Administration. When the BEPS Project started Pascal Saint-Amans was the director, thereafter in 2022, Grace Perez Navarro had this role (temporary) and was recently replaced by Manal Corwin (former US Tax Advisor and US Tax administration representative).

At the time that Pascal Saint-Amans was the Director (2012-October 2022), the BEPS Project, BEPS Actions and the proposals for Pillar 1 and Pillar 2 were developed and discussed, including also the Pillar 1 and Pillar 2 Political Outcome. There was a clear movement of the OECD towards inviting countries to participate as BEPS Associate in the BEPS Inclusive Framework as well as to commit to the Pillar 1 and Pillar 2 OECD Secretariat Proposal.

Since then, the OECD has focused on the design of Pillar 2 rules (model rules<sup>54</sup>, safe harbour<sup>55</sup>, technical administrative guidance<sup>56</sup>) as well as to address issues such as compliance and tax certainty.<sup>57</sup> In respect of Pillar 1, the OECD is still in the process of having public consultations on the design of Amount A<sup>58</sup> and B.<sup>59</sup>

During that time, as we have addressed in section 1 above, countries, civil society and some regional tax organizations (ATAF) called for a more decisive role of the United Nations. One of the main reasons, is the broader representation of countries in the United Nations vis-à-vis the limited membership of OECD countries where countries are invited to become

members following a accession procedure. Furthermore, as I have argued in section 4 above, the participation at the G20 is even more difficult, since it is a political agreement where only few countries are able to participate.

While the OECD, OECD Accession countries and G20 countries (i.e. BEPS 44 group) have been discussing the content of BEPS Project, BEPS Actions, and Pillar 1 and Pillar 2; the United Nations has presented proposals for some non-BEPS issues (e.g. in the taxation of indirect transfers) and its own alternative proposal to address Pillar 1 i.e. the introduction of Art. 12B 2021 UN Tax Treaty Model. This article 12B provides for withholding tax on automated digital services<sup>60</sup> which is different from the unilateral proposals i.e. the digital service tax and significant economic presence that are currently being introduced by countries.<sup>61</sup>

14 However, times have changed, as Nigeria with the support of some African countries, and Colombia (currently an OECD member country that took part in the BEPS decision making process as OECD Accession country (at that time)) have also questioned whether there is a global fair tax deal that benefits not only developed but developing countries.

Nevertheless, I am still skeptical about the role of the UN. In my view, for the UN to have a leading role, there should be a coordination between all units (i.e. UNDESA, UNDP, UN Tax Committee). This requires also political will of countries, and of the UN Institutions.

For any international tax global body to function either at the UN or as separate international tax body or any international or regional tax organization, it is important to keep in mind that it is not only about the input and output legitimacy, but also about throughput legitimacy (i.e. Accountability, transparency, inclusiveness and openness).<sup>62</sup>

In my view, the OECD, but also any organization/body such as the UN or an independent global tax body, will require these four conditions: transparency, accountability, responsiveness and openness. Agenda setting and decision-making should be transparent. Furthermore, this body should be held accountable for the decisions taken. The process should be open to all stakeholders, and responsive to the needs of all countries.

From observing the process that it has been carried out since November 2022, in my view, the UN and its Institutions mainly UNDESA could be more open and responsive since at this moment, despite the public consultations: One (closed) for countries, and another one (open) for other stakeholders, and the publication of documents in the UN website, there is not clarity who is hiring the experts to present/work in the text of this instrument (either a multilateral convention or a multilateral instrument such as the BEPS MLI) or framework, are all developing countries truly participating, and why we are now discussing a convention?, if the resolution mentioned an instrument or framework?.

By using the word Convention, and not instrument nor framework, we may assume that all countries will be invited to sign this Convention followed by ratifications including constitutional/legislative review at country level which may take a long time. As we know from ratification of tax treaties, as well as from the lengthy process of ratification of the BEPS Multilateral Instrument, the ratification and enter into force process will take time. What would countries do in the meantime? Introduce unilateral measures, re-negotiate tax treaties, conclude tax treaties, or introduce regional tax treaties.

## 5. What is next?

In 2017, I received the Starting Grant to carry out the Global Tax Governance (GLOBTAXGOV) Research project. While receiving, Frans Vanistendael, tax scholar who recently passed away, told me that the problem of global tax governance was so



complex that if I manage to find a solution, I will not only get the Nobel prize of Economy, but also the Nobel prize of Peace. I took the challenge, and since 2018, I am searching for the conditions under which a model of global tax governance can be feasible and legitimate for both developed and developing countries.

When I started to discuss global tax governance, the BEPS Project just started. 5 years later, we also have Pillar 1 and Pillar 2 proposals, as well as the recent developments that have taken place at the UN level.

Moreover, on 15 of June, the EU Parliament in a resolution on lessons learnt from the Pandora papers and other revelations called for “the EU to support the setting up of a UN framework convention on tax, with the aim of strengthening international cooperation and governance on tax and trade-related illicit financial flows; highlights the need to introduce transparent and inclusive decision-making where all countries can negotiate as equals” (para. 17). But in light of the EU Standard of Tax Governance that I have mentioned above, my question is, is this true?, can developing countries negotiate as equals since non-EU countries including developing countries are required to implement BEPS and receive positive review? I have already addressed my concerns regarding the EU Standard of Tax Governance in my statement at EU Parliament public hearing on 1 December 2020.<sup>63</sup>

Following up the questions addressed in the GLOBTAXGOV Research Project, I will continue addressing these questions (despite the funding ending on July 2023), in my Chair on Tax Governance at Leiden University, and in my EU Jean Monnet Chair on EU Tax Governance. In my work, I aim to expand my research agenda to inquire under what conditions can the role of the United Nations in international tax law making be legitimate and feasible for developed and developing countries?

This shows that still there is work to be done, and that even though we started with global tax governance addressing issues of legitimacy and feasibility, after 5 years, we have more actors (OECD, EU, UN, regional (tax) organizations, countries, civil society, business, think tanks, etc.) and that reconciling these goals so that all countries (developed and developing countries) benefit from these changes is still a difficult task. Therefore, I will continue with this research by using my network of the GLOBTAXGOV and EUTAXGOV and Leiden University to reach out to developing countries, civil society, regional tax organizations, and scholars in developed and developing countries.

This task is not one person-task, but a multiple stakeholder task. Therefore cooperation, exchange of knowledge/experiences, sharing publications/presentations via open access, is relevant. Coming from Colombia (an emerging country that only recently joined the OECD) in my Chair, I also want to focus on what these changes on international tax law making could mean for developing countries, and for scholars in the global South.

## Conclusion

To conclude, international taxation nowadays is not only about the technical rules. The political developments need to be taken into account. In addition, to participate in international tax law making process and to introduce tax rules, countries should not only have technical knowledge, but also resources, and political will to change the rules.

What I have learned since 2018 when I started with my GLOBTAXGOV Project is that the questions of legitimacy, inclusiveness continue being relevant for all stakeholders, and that any process of international tax law making will need to analyze the conditions under which this process can be legitimate and feasible for developed and developing countries. This is true, in the BEPS Project, but also in the current developments of

Pillar 1, Pillar 2 and the UN Tax Resolution. We cannot forget the process, so therefore, more attention should be given to transparency, accountability, responsiveness and openness.

### **Who am I?**

When I began studying law in Colombia, I was interested in topics of equality and fairness among all stakeholders. These topics are still relevant to me after more than 20 years of being employed as tax advisor, lecturer, postdoctoral researcher and, since November 2021 as a Full Professor at Leiden Law School, Leiden University. I have received acknowledgment of my research with, first, a Fulbright scholarship (2005) to conduct PhD research in the United States. Thereafter, I earned cum laude for my PhD (2007) primarily due to the comparative approach for which I studied the transplant of a concept leasing in four countries: The United States, France, the Netherlands, and Colombia. These experiences allowed me to understand the role of the stakeholders (governments, companies, advisors, judges, scholars) in law making.

### **Research**

In 2017, I was awarded a European Research Council (ERC) Starting Grant to assess the feasibility and legitimacy of the current model of global tax governance and the role of the OECD and the EU in international tax law making (GLOBTAXGOV). In the ERC Project, I employed different disciplines (law, international relations, political science, and international political economy) in order to understand the setting of international tax standards by the G20, the OECD, and the EU. This project also utilizes empirical research compiled through interviews with all of the stakeholders to understand the differences in implementation of different rules between countries.

One of my goals as a researcher is to facilitate exchange of ideas and also to connect people working on the same topic from a different perspective. Therefore, in the ERC Project, I have organized several conferences and workshops. We have

addressed common problems (sustainable development, digital economy, tax competition, new models of governance) with (young and experienced) scholars from different disciplines and backgrounds: business, governments, and representatives of the European Commission, the United Nations, and Regional Tax Organizations, among others.

Another goal as a researcher is to reach different audiences, listen their experiences, and raise awareness of the differences between developed and developing countries when dealing with international standards. In order to achieve this goal, I have given lectures and training in several countries within and outside Europe to different audiences, i.e. business, government representatives, non-governmental organizations (NGOs), and representatives of several international and regional organizations, and also participated in the EU Platform for Tax Good Governance, the WTO Forum, and the Think Tank T20 meetings for the G20.

In order to ensure that information is being shared under the FAIR practices and open access policy, I have published my power point presentations in the GLOBTAXGOV blog and ensured that most of my publications are openly available. In addition, my research team and I have published (when possible) slides and summary reports of the workshops/conferences that we have organized. I have also invited stakeholders with different backgrounds to write in the blog on issues of global tax governance (with more than 40 contributions since 2018).

To facilitate public engagement, we have utilized social media such as LinkedIn, Twitter, and Facebook to share our activities and create discussion for hot topics regarding governance in general. These efforts have made it possible for me, as a researcher and leader of the ERC project, to be asked to participate in international and national discussions. This position allows me to address issues of fairness, taxation, and inequality

and also draw the attention of stakeholders to the need to address the 2030 Sustainable Development Agenda in taxation.

### Education

In my Chair on Tax Governance at Leiden Law School and my EU Jean Monnet Chair on EU Tax Governance, I have been able to address all topics of fairness with different audiences. At Leiden University, I am currently teaching alone or with other colleagues, courses for Bachelor students, Master Students from Leiden Law, as well as other Faculties such as FGGA (Faculty of Global Governance and Global Affairs), FSW (Faculty of Social Sciences). Among the courses, I am currently teaching (some with other colleagues) are:

- General Understanding of Comparative Tax Law (Minor Tax and Society)
- Policy Coherence to achieve the Sustainable Development Goals from a tax, trade, and investment law perspective (HC Law)
- EU and Tax Sovereignty: Discussing the Role of the EU in International Tax Law Making (FGGA MsC International Relations and Diplomacy Program)
- Role of International Actors to tackle global inequality (Honours Academy)
- International Tax Law for Multinational Enterprises (Leiden Law School also open for exchange students)
- Working group *Privatissimum* (Capita Selecta of European Law): Topic The EU Global Regulatory Power and the EU Standard of Tax Good Governance (Leiden Law School)
- *Belastingverdragen* (In English Tax Treaties)
- Comparative Tax Law (Leiden Law School also open for exchange students)

In addition, I will be starting in October 2023, a post-graduate training on “The EU’s Global Regulatory Power and the EU Standard of Tax Good Governance”. This training is partially funded by the EU Jean Monnet EUTAXGOV Chair.<sup>64</sup> This course will be open to tax administrations, scholars, civil society, etc, from EU and non-EU countries.

### Management and Organization skills

My management tasks have been mostly related to the management of the ERC GLOBTAXGOV Project. Even though I had prior management experience, managing such a project has been challenging, especially since this ERC project is the first one carried out at Leiden Law School. Therefore, I managed to actively engage in my project all the key people at Leiden Law School and at Leiden University in the project including project controllers, human resources, marketing, ICT, among others.

For further improving my management skills for the ERC project, I have sought advice from other ERC grantees outside Leiden Law School, and I have set up an External Advisory Board to the project.<sup>65</sup> For the supervision of the PhDs fellows, I have also found an experienced professor (Madeleine Hosli) to be the co-supervisor.

At Leiden Law School, I was (between 2019-2020), appointed as coordinator of the research Programme “Limits of Tax Jurisdictions”. In this position, I participated in the Faculty Research Board, coordinate research output within the Research Programme, and publish the Research Programme Annual Report.<sup>66</sup>

Since January 2021, I am one of the two PhD Deans (*promovendidecaan*) at Leiden Law School. In this position, I am the contact person for the PhD researcher (external and internal PhDs, including PhD fellows). I also help with the training and supervision plan for PhD candidates and contribute to developing the policy on PhDs. Furthermore, I advise about possible extensions of contracts for PhD candidates. From my personal experience, I know what it is to be a PhD. As PhD Dean my aim has been to contribute to the academic and professional development of PhD candidates and support them in progressing with their research.

1. Special acknowledgement to Prof. Allard Lubbers, Prof. Koos Boer, and Prof. Suranjali Tandon for reading this text, and for providing comments/guidance regarding the shorten version of this text that will be presented at the inaugural lecture.
2. Dietsch, P., & Rixen, T. (2016). Global tax governance: What it is and why it matters. Global Tax Governance: What Is Wrong with It and How to Fix It, p.3.
3. Residence is a concept that has his own definition according to the country, for instance, based on citizenship, and personal/economic ties with the country among others.
4. <https://www.oecd.org/tax/transparency/who-we-are/members/> accessed 9 June 2023
5. <https://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/crs-mcaa-signatories.pdf> accessed 9 June 2023
6. [https://www.oecd.org/ctp/exchange-of-tax-information/Status\\_of\\_convention.pdf](https://www.oecd.org/ctp/exchange-of-tax-information/Status_of_convention.pdf) accessed 9 June 2023
7. <https://www.oecd.org/tax/beps/inclusive-frame-work-on-beps-composition.pdf> accessed 9 June 2023
8. There are also multilateral tax treaties concluded by more than 2 countries for instance the Andean Community Multilateral Tax Treaty. These multilateral tax treaties are outside the scope of this lecture. See Mosquera Valderrama, I.J. Taxation and Regional Integration: How to overcome obstacles to achieve regional integration in taxation? Eds. J. Chaisse and C. Herrmann. Oxford University Press (forthcoming).
9. <https://www.oecd.org/tax/treaties/beps-mli-signatories-and-parties.pdf> accessed 9 June 2023
10. This is different that tax treaties concluded by countries where parties agree bilateral (or multilaterally) to specific provisions to prevent double taxation, tax avoidance, to facilitate exchange of information, among others. In this case, there is not opt-in, opt out provisions. Countries can only provide reservations, for instance reservations to provisions of the OECD or UN Models.
11. See Mosquera Valderrama. Trade, Digitalization and Taxation. The Elgar Companion to the WTO. Eds. J. Chaisse and C. Rodriguez-Chiffelle. Forthcoming.
12. Except Nigeria, Sri Lanka, Pakistan and Kenya. <https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf> accessed 9 June 2023
13. <https://www.oecd.org/tax/beps/inclusive-frame-work-on-beps-composition.pdf> accessed 9 June 2023
14. See for instance our input with D. Broekhuijsen and E. Arik <https://globtaxgov.weblog.leidenuniv.nl/2023/03/09/input-to-the-un-public-consultation-on-promotion-of-inclusive-and-effective-tax-cooperation-at-the-united-nations/> accessed 9 June 2023
15. <https://www.ictd.ac/blog/calling-all-ministers-re-think-global-taxation/> accessed 9 June 2023
16. <https://www.latindadd.org/2023/05/12/el-debate-urgente-por-un-pacto-fiscal-en-america-latina-y-el-caribe/> accessed 9 June 2023
17. <https://press.un.org/en/2023/ecosoc7116.doc.htm> accessed 9 June 2023
18. <https://www.ictd.ac/blog/critical-juncture-global-tax-governance/> accessed 9 June 2023
19. Mosquera Valderrama I.J. Legitimacy and the Making of International Tax Law: The Challenges of Multilateralism, 7 World Tax J. 3 (2015), Journals IBFD. <https://scholarlypublications.universiteitleiden.nl/handle/1887/62377> accessed 9 June 2023
20. <https://globtaxgov.weblog.leidenuniv.nl/> accessed 9 June 2023
21. See link to events and to the YouTube Channel available <https://globtaxgov.weblog.leidenuniv.nl/outputs/past-events/> accessed 9 June 2023
22. Available at <https://globtaxgov.weblog.leidenuniv.nl/outputs/> accessed 9 June 2023
23. <https://taxation-customs.ec.europa.eu/taxation-1/tax-co-operation-and-control/general-overview/>

- enhanced-administrative-cooperation-field-direct-taxation\_en accessed 9 June 2023
24. This is different than indirect taxation (value added tax, excise tax) where decision making takes place at a faster and more consensual way. Indirect taxation refers to value added tax and excise duties among others. The initiatives in indirect taxation are not subject to unanimity but to qualified majority. <https://www.europarl.europa.eu/factsheets/en/sheet/81/indirect-taxation> accessed 9 June 2023
  25. This is the case of the Pillar 2 Directive to achieve a Minimum Tax Rate where Hungary and Poland made the approval of the Directive conditional to approval of COVID Aid funding by the EU which has not yet been release due to the problems in the rule of law in these two countries.
  26. One example is the discussion of the Common Consolidated Corporate Tax Base Directive proposal that despite having different forms since their introduction in 2001, it has not been possible to achieve a political agreement for this Directive. See for an overview from 2011 [https://taxation-customs.ec.europa.eu/common-consolidated-corporate-tax-base-ccctb\\_en](https://taxation-customs.ec.europa.eu/common-consolidated-corporate-tax-base-ccctb_en) accessed 9 June 2023  
Before 2011 Mosquera Valderrama, I.J., 'The CCCTB Compatible with National GAAP? What's Next?', (2008), 36, *Intertax*, Issue 8, pp. 359-370, <https://kluwerlawonline.com/journalarticle/Intertax/36.8/TAXI2008051> accessed 9 June 2023.
  27. See Mosquera Valderrama I.J. 'The EU Standard of Good Governance in Tax Matters for Third (Non-EU) Countries', (2019), 47, *Intertax*, Issue 5, pp. 454-467 <https://scholarlypublications.universiteitleiden.nl/handle/1887/73433> accessed 9 June 2023
  28. For an overview of the courses given in the framework of the EU Jean Monnet Chair see <https://www.universiteit-leiden.nl/en/law/institute-for-tax-law-and-economics/tax-law/eu-tax-governance> accessed 9 June 2023
  29. Watson, A. *Legal transplants*, 1974, Edinburgh. Scottish Academic Press Ltd. p. 21
  30. See Mosquera Valderrama, I.J. *Leasing and Legal Culture - Towards consistent behaviour in tax treatment in civil law and common law jurisdictions*, dissertation, 2007, at 301. [https://www.researchgate.net/publication/41937226\\_Leasing\\_and\\_legal\\_culture\\_towards\\_consistent\\_behaviour\\_in\\_tax\\_treatment\\_in\\_civil\\_law\\_and\\_common\\_law\\_jurisdictions](https://www.researchgate.net/publication/41937226_Leasing_and_legal_culture_towards_consistent_behaviour_in_tax_treatment_in_civil_law_and_common_law_jurisdictions) accessed 9 June 2023.
  31. This concept is borrowed from comparative law and it is described by Örüçü as follows: "If the old models are abandoned with 'optimistic normativism' while new legal models are looked for, a transplanted legal system not compatible with the culture in the receiving country, without the appropriate transposition and tuning, will create only a virtual reality. In answer to the question, how do legal ideas, institutions and structures find their way from one location to another, it has been aptly put that 'laws do not have wings'. This alone highlights the importance of those who move the law and help in its internalisation, and hence, what I call 'tuning'". E.Örüçü, "Law as a transposition" in *International and Comparative Law Quarterly*, Number 51, 2002, at 208.
  32. Mosquera Valderrama, I.J. *Interaction of Tax Systems and Tax Cultures in an International Legal Order for Taxation Diritto e Pratica Tributaria Internazionale*, CEDAM, Vol. 5, No. 2, pp. 841-867, 2008
  33. Mosquera Valderrama I.J. (2010), *EU and OECD Proposals for International Tax Cooperation: A New Road?*, *Tax Notes International* 59(8): 609-622. Available at <https://scholarlypublications.universiteitleiden.nl/handle/1887/62381> accessed 9 June 2023
  34. Some articles Mosquera Valderrama I.J., et al. *The Rule of Law and the Effective Protection of Taxpayers' Rights in Developing Countries*, WU International Taxation Research Paper Series 2017(10) <https://scholarlypublications.universiteitleiden.nl/handle/1887/62320>  
Mosquera Valderrama I.J., Mazz A., Schoueri L.E., Quiñones N., West C., Pistone P. & Zimmer F. (2018), *Tools Used by Countries to Counteract Aggressive*

Tax Planning in Light of Transparency, *Intertax* 46(2): 140-155 <https://scholarlypublications.universiteitleidennl/handle/1887/62317> See link to the project <https://www.jus.uio.no/ior/english/research/projects/global-tax-transparency/> accessed 9 June 2023

35. V. Schmidt, (2012) Democracy and Legitimacy in the European Union Revisited: Input, Output and 'Throughput', 61 *Political Studies*, at 17.
36. Other topics such as value added tax and customs duties are outside the scope of this lecture.
37. OECD (2019), Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy, OECD/G20 Inclusive Framework on BEPS, OECD, Paris, <https://www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.htm> accessed 9 June 2023
38. Public Consultation Document: Secretariat Proposal for a "Unified Approach" under Pillar One (9 October - 12 November 2019). <https://www.oecd.org/tax/beps/public-consultation-document-secretariat-proposal-unified-approach-pillar-one.pdf> accessed 9 June 2023
39. Comments of the G-24 on the OECD Secretariat Proposal for a Unified Approach to the Nexus and Profit Allocation Challenges Arising from the Digitalisation (Pillar 1)' (2019) [https://www.g24.org/wp-content/uploads/2019/12/G-24\\_Comments-on-OECD-Secretariat-Proposal-for-a-Unified-Approach.pdf](https://www.g24.org/wp-content/uploads/2019/12/G-24_Comments-on-OECD-Secretariat-Proposal-for-a-Unified-Approach.pdf) accessed 9 June 2023
40. <https://www.businessdailyafrica.com.cdn.ampproject.org/c/s/www.businessdailyafrica.com/bd/economy/ruto-drops-digital-service-tax-against-multinationals-4179322?view=htmlamp> accessed 9 June 2023
41. Supra n. 19.
42. Mosquera Valderrama I.J. Output Legitimacy Deficits and the Inclusive Framework of the OECD/G20 Base Erosion and Profit Shifting Initiative, *Bulletin for International*

*Taxation* 72(3) 2018 <https://scholarlypublications.universiteitleidennl/handle/1887/59348> accessed 9 June 2023

43. Supra n.11.
44. These Actions dealt with Controlled Foreign Company (Action 3), Limitation on Interest Deductions (Action 4), Mandatory Disclosure Rules (Action 12).
45. See OECD (2021), Developing Countries and the OECD/G20 Inclusive Framework on BEPS: OECD Report for the G20 Finance Ministers and Central Bank Governors, October 2021, Italy, OECD, Paris, <https://www.oecd.org/tax/beps/developing-countries-and-the-oecd-g20-inclusive-framework-on-beps.pdf> at 45. accessed 9 June 2023
46. Ibid.
47. Ibid.
48. <https://www.oecd.org/tax/beps/first-meeting-of-the-new-inclusive-framework-to-tackle-base-erosion-and-profit-shifting-marks-a-new-era-in-international-tax-co-operation.htm> accessed 9 June 2023
49. Supra n. 35
50. <https://www.oecd.org/countries/vietnam/oecd-and-vietnam-sign-mou-to-deepen-co-operation-and-support-reforms.htm> accessed 9 June 2023
51. <https://www.oecd.org/countries/cameroon/oecd-launches-programme-to-assist-cameroon-to-implement-new-international-tax-standards.htm> accessed 9 June 2023
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