Combatting tax avoidance, the OECD way? The impact of the BEPS Project on developing and emerging countries' approach to international tax avoidance
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2 | Methodology

Chronologically, my study can be divided into three steps that build on each other: I started by studying legal documents as well as literature on the BEPS Project in the Global South, and particularly on Colombia, India, Nigeria and Senegal. The second part was in-depth fieldwork in Colombia, India, Nigeria, and Senegal involving semi-structured interviews. A third part involved studying some of the hypotheses that I formed during this process in larger samples of countries to produce some more general statements. In this section I provide a description of the methods employed.

2.1 Cases studied

The case studies were conducted in four emerging and developing countries: Colombia, India, Nigeria, and Senegal. These countries were selected because one could suppose that, among the wider subset of developing and emerging economies, they offer a wide range of potentially relevant features due to their differences in legal and political systems, size, level of development and structure of the economy. In particular, they represent different combinations of key variables that are a priori important for the degree of uptake of international standards: market power, exposure to the OECD processes, and capacity.

However, the selection was not made with the purpose of testing specific hypotheses formed prior to the research project. Therefore, the general approach adopted in this study could be described as inductive, since at the start of the research not much knowledge was readily available that would have allowed to form hypotheses and purposefully select cases to test the hypotheses. For instance, given the complexity of the BEPS Project and the lack of a full analysis of its goals (see Chapter 4) it was hard to predict what country characteristics would be relevant for its impact on domestic policies. The hope was rather that the cases would display a good level of divergence to gain more insights in the breadth of possible phenomena.

They should not be seen as strictly representative of the whole universe of developing countries, either. For example, the sample neither includes small island jurisdictions, nor low income countries (according to the World Bank classification), nor countries that are not members of the inclusive framework. Moreover, no developing country that has attempted to establish itself as international financial centre has been included. Hence, the study of the "defensive dimension" of international tax policies is given more weight than the "facilitating dimension" of international tax policies (see section 3.3).

On the other hand, one of the main distinctions in international tax literature is between "residence countries" or "capital exporting countries", which are those that host many headquarters of MNEs, and "source countries" or "capital importing countries", which are those that mainly receive investment for purposes of production and/or sales in the domestic market. Almost all countries on the world import foreign direct investment, but only a few countries export FDI to a significant degree. Both lower income and emerging countries (with the exception of China) are primarily capital importing countries. The same is true for Colombia, India, Senegal, and Nigeria, therefore they are somewhat representative of non-financial centre developing countries.

Throughout the remaining text (like to some extent already in the preceding paragraphs), the country case studies are used essentially for three purposes:

1) Country practices are referred to as examples in the conceptual framework (section 3)
2) Comparisons of approaches to deal with the problems of transfer pricing and treaty shopping
3) Informing the analysis of the political economy of combatting tax avoidance

Information was gathered mainly through document analysis and semi-structured interviews conducted with relevant tax policy stakeholders. "Semi-structured" means that the topics that interviews addressed as well as the selection of interview participants was informed by the existing literature, but that at the same time sufficient space was provided for interview participants to raise own topics so that new variables can be identified, and new theories can be generated.

2.2   FIELDWORK IN COUNTRIES

2.2.1   Documentary analysis

The desk studies aimed at understanding three fundamental issues: What interpretations of the BEPS minimum standards are made by legal scholars? How did the four countries selected as case studies enact the BEPS minimum standards in their national laws and regulations? What kind of deviations can be identified from the standard as formulated in the OECD documents? What was the status-quo ante in terms of international tax policy in these countries? What are the relevant stakeholders that need to be included in the in-depth case studies and what are their policy preferences?

The main documentary sources used were original texts of domestic laws, regulations, and double tax treaties, as well as peer-review reports published by the OECD, choices made by countries in the Multilateral Instrument, databases on BEPS implementation, maintained by OECD,

IBFD or accounting firms, as well as literature written by authors from these countries. The process was carried out in an iterative manner: Documents were consulted to prepare before country visits and afterwards to confirm and expand on findings from interviews.

2.2.2   Selection of interviewees and interview procedure

The selection of the interviewees was informed by the review of literature on the tax policy in each country as well as government and press documents. Data sources include responses to public consultations that were held by the OECD in the process of drafting the BEPS Action plans, press reports in the countries of research as well as internet research. Additionally, informants in the four countries of research with whom contact had already been established at international conferences or through the project team's professional network were consulted. Finally, I relied mainly on the "snowball" method, which means that already existing contacts, reached through my own and my supervisor's professional network, were asked to help identify additional respondents. Sometimes, these people simply recommended names, in other cases they directly established the contact through an introductory email. In a few instances, respondents brought colleagues to the scheduled interview. The "snowball" method is frequently used in research involving "hard-to-access populations",[1] which professionals in taxation and government officials belong to. Nevertheless, I took care to use more than one "entry point" into a country's tax policy sphere to not depend on one person's network only and to reduce the risk of only speaking to people with similar opinions, which may happen when using the snowball method.[2]

In most cases, people were contacted via email or the social network LinkedIn. Since this proved to be the more common way of communication in Senegal, I also used WhatsApp to contact potential interviewees there. In case of non-response, I usually sent one reminder.

However, based on my perception of the relevance of the person's knowledge and experience for the overall research project, I varied the efforts to make an interview happen. To reach some people, for example, other people were asked for an introduction. In some cases, short phone calls were done in advance of the interview upon request of the participant, where I explained the research project and the modalities of the interview with more detail. In one of the countries studied – India – conferences on international taxation took place during my stay, namely the Foundation for International Taxation Conference in Mumbai (December 5 to December 7, 2019), which is the biggest annual tax conference in India reuniting

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1   Atkinson and Flint, "Accessing Hidden and Hard-to-Reach Populations: Snowball Research Strategies."
2   Atkinson and Flint, 4.

professionals from the private and the public sector, and a conference on international tax cooperation organized by the South Centre in Delhi which was attended by many officials of the Indian government as well as by government representatives from African, Asian and Latin American countries (December 9 to December 10, 2019). These events were used to contact further interview participants and gather information through the presentations given and informal interaction with participants.

Table 1: Number of interviewees per country and category

Category	Colombia	India	Nigeria	Senegal
1 – Public Sector	5	3	5	6
2 – Business	6	3	2	4
3 – Advisory	17	13	7	6
4 – Interest groups	4	2	-	2
5 – Academic	7	5	3	-
7 – Other	-	1	-	-

Source: the author

Almost all interviews in Colombia, India, and Senegal were conducted during face-to-face meetings in the country itself at places determined by the interview participants. Most of the interviews took place in the participants' workplaces and in some cases in public places such as cafés or restaurants. In a few cases, follow-up meetings took place, when all relevant topics could not be covered during the time available for the first interview. In two cases, where the interviewee was not available during the period I stayed in the country, the interview was conducted via Skype/Microsoft Teams. Due to the COVID19 pandemic, all interviews with participants from Nigeria were conducted remotely via Microsoft Teams.

As far as permitted by the participants, the interviews were tape recorded, to provide for a more accurate transcription in the aftermath. In all cases, I took handwritten notes during the interview. Where the interviewee did not agree to a recording, I extended the notes taken during the meeting as quickly as possible after the interview with the memory of the conversation still fresh.

To ensure that participants were aware of the implications of their participation in the study, they were sent an information sheet in advance, and at the meeting they were asked to sign an informed consent where they could indicate, among others, whether they would agree with the recording of the interview.[3] For the online interviews in Nigeria, an online version of this form was used.[4]

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3   The information sheet and consent form in different languages are available here: https://globtaxgov.weblog.leidenuniv.nl/participate/

4   https://web.archive.org/web/20230222104613/https://fd24.formdesk.com/universiteitleiden/consent_form_Nigeria

Some interviewees did not agree to sign a consent form. This happened during this research with government officials from India and with a few participants from Senegal. These officials explained that in their function, it is not allowed to them to sign consent forms. They nevertheless agreed to have a conversation. In writing up my results, I used the information obtained from these interviews but where possible tried to quote as much as possible from other sources to provide as little cues as possible about their identity.

In general, I did not share topic lists with the participants beforehand, except where this was requested by the interviewee. A problem with sharing topic lists beforehand could be that the participant may prepare answers based on literature rather than speak more from personal experience.

It should be noted that interviewees in government positions usually stated that they were speaking in personal capacity. Any attributions made to them in this thesis should therefore be understood as statements in personal capacity, and not as official positions of the government of the country in question. For participants from other organizations the same applies, even though the organizations are not identified.

2.2.3   Questionnaire design

Based on the desk study on the BEPS minimum standards, a questionnaire with around 20 general topics was designed.[5] Within these topics, around 100 precise questions were formulated to ask participants for specific information that could not readily obtained via documents.

The topic lists were designed with the objective of assessing how and to what extent the BEPS project has influenced policy and practice. They included both general open-ended questions about tax practice such as "What have been the most important changes in the relationship between taxpayers and tax administrations in the last 10 years?", as well as precise questions about specific policies, such as for example "Some of Colombia's amended tax treaties contain the phrase 'Desiring further to develop economic relationships…' in the preamble (Mexico, Japan, UK), others not. In your opinion, would this have an impact on the application of the treaty?".

A few questions were common to all countries and almost all interviewees. Other questions were specific to the country, specific to the type of interviewee (e.g., tax advisors, government official, etc.) or to the individual. The precise questions asked to each person were adapted according to the person's background and new follow-up questions were asked spontaneously based on responses received. No interview participant was asked the full list of questions. I usually asked an entry question on the participant's professional experience and the topic he or she was most engaged with, and

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5   See Annex 1 for the topic list.

subsequently focussed the interview on the topics that the participant most likely had the greatest experience with. This approach was chosen since the goal of the interviews was not only to obtain opinions on specific issues but rather to learn about the issues that the interviewees would raise and their perspective on the topic.

Over time questions evolved, as insights from previous interviews were incorporated in subsequent interviews. Due to the COVID-19 pandemic interviews in Nigeria and Senegal were conducted more than two years later than most interviews in Colombia and India. Finally, during the field visit in the country, the questionnaire was modified based on responses: For example, on some topics and questions, sufficient information was already obtained after a few interviews. In turn, the responses obtained in interviews generated interesting new questions that were subsequently incorporated into the questionnaire.

Due to the highly specialized nature of the topic, most of the interviews that were conducted can be classified as so-called "expert interviews". Some of them were at the same time "elite interviews", as some interviewees occupied prestigious positions in government and law firms, which justifies the use of rather open-ended questions.[6]

Especially towards the end of a research stay, I tried to signal that I had already obtained a decent amount of knowledge, so that participants were encouraged to go more into detail and not waste time explaining fundamentals that were already understood. I did this, for example, by using some (anonymous) quotes from previous interviews and asking the participant's opinion thereon.

2.2.4   Generating data from interviews

Given the large amount of recorded interview hours (around 100 hours), I used a pragmatic strategy to generate data from the conversations. For about half of the interviews, which were considered key, I prepared a full transcript. For the other half, I listened to each interview at least once and with the help of the hand-written notes from the interview wrote a protocol of the conversation, focused on the information delivered without always retaining the original sentence structure.[7]

Afterwards, an English summary of roughly one page was written based on the protocol. This method represented a significant time gain in contrast to the preparation of a full transcript, while still capturing enough information for the subsequent analysis.

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6   Harvey defined elites as people who "occupy senior management and Board level posi-
     tions within organizations" Harvey, "Strategies for Conducting Elite Interviews," 433.
7   In some cases, particularly illustrative quotes were fully transcribed, and interviews

When preparing full transcripts – where permitted by the interviewee and where the sound quality was sufficient – the automatic online transcription service "AmberScript" or the offline transcription library "Vosk" were used to generate automatic transcripts that were manually corrected subsequently.[8] This allowed to save some time compared to the procedure where a full transcript was generated from scratch. For some interviews, research assistants helped with the transcription (subject to a confidentiality agreement).[9] Anonymized summaries and/or protocols can be consulted upon request.[10]

2.3   QUALITATIVE ANALYSIS AND INFORMATION REDUCTION

Within the overall research project, I used the interviews in several ways: First, to inform the theoretical framework laid out in section 3. Second, to collect information on the evolution of international taxation in the four countries studied. And third, to understand the political context, the preferences of different types of stakeholders and the ways in which they may influence the evolution of international taxation or not. Which of the goals I was focussing on in the respective interview depended on the individual and the moment within the research project that the interview took place at. For example, policymakers closely involved with drafting of legislation were better positioned to talk about the political contexts, whereas tax advisors were able to provide a better account of how the system actually "works" in practice. Moreover, during my first field work stay in Colombia, informing the general theoretical framework was still more important than in the last field work stay in Senegal, where much of the general knowledge I had acquired was simply confirmed.

To analyse the information from the interview, I collected quotes from the interviews on the same topic in one document and synthesized the different opinions. Where possible, I triangulated factual information either through quantitative data analysis or consultation of laws, regulations, and academic articles. Spanish and French quotes were translated by me. After the fieldwork, one report was written for each country, combining analysis from the desk study with analysis from the interviews and follow-up research done after the conduct of the interviews.

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8   https://www.amberscript.com/; https://alphacephei.com/vosk/
9   I am grateful to Marius von Frankenhorst, Philippe Gaulard, and Céleste Ricci
10   The data is deposited at *DANS Data Station Social Sciences and Humanities* under the following DOI: https://doi.org/10.17026/SS/5U8XDM. Under the link, options and conditions to request access are specified.

2.4   SMALL CAPS QUANTITATIVE DATA ON LEGAL REGIMES

2.4.1   Data sources

To analyze aspects on the evolution of countries' tax systems and the impact of the BEPS Project thereon beyond the four countries studied (mainly in chapters 6, and 7), I assembled specific datasets relying on three main public data sources:

1)   BEPS peer review reports and other documents published by the OECD;
2)   Ernst & Young's (EY) Global Corporate Tax Guides;[11]
3)   The ICTD Tax Treaty Dataset assembled by Hearson and colleagues.[12]

In the context of the BEPS Project, the OECD has started collecting and disseminating information about certain international features of countries tax systems, such as CFC rules, interest deduction rules, and countries' domestic laws relating to country-by-country reporting. These datasets are usually machine-readable and can be directly analysed. In addition, the OECD publishes country-level information that is collected through longer country questionnaires, among them the Transfer Pricing Country Profiles and Dispute Resolution Profiles. Finally, peer review reports contain detailed information about countries' compliance with all aspects of the four BEPS minimum standards.

     Therefore, the EY Corporate Tax Guides are used as additional data source for longitudinal information on withholding taxes. The Corporate Tax Guides are available as pdfs for the period 2004-2022 in a relatively consistent format, which facilitates the construction of dataset. Moreover, the coverage is relatively large. However, since the 2022 report appeared after the main data collection phase, it has not been considered anymore.

     The pdf data has been transformed into analysable datasets using automatic pdf extraction libraries in the R programming language, extended by further "manual" transformations and corrections. The scripts are reproducible, and all transformations are documented in the technical annex (raw data files from other sources are not included though for copyright reasons).[13]

     The EY Corporate Tax Guides do not always present information in a way that allows for directly comparing tax regimes across countries. For example, countries often apply different withholding rates depending on the circumstances of the transaction (e.g., whether payment is made to a related party, made to a tax haven country, made to residents or non-residents, etc.). In general, I have assumed based on reading of a sub-sample of

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11   https://www.ey.com/en_gl/tax-guides/worldwide-corporate-tax-guide, https://www.ey.com/en_gl/tax-guides/tax-guide-library-archive
12   https://www.treaties.tax/
13   https://doi.org/10.5281/zenodo.10253245

the data points, whether the highest or lowest rate is the adequate one for the purposes of the analysis. Except for dividends, where the lowest rate displayed was assumed to be the correct one, for all other types of payments, the highest rate was retained.[14] For cross-checking the information in case of doubts, I either directly searched the national law, consulted IBFD's Tax Research Platform or PwC's Worldwide Tax Summaries.[15] Additional data sources used for individual parts of the analysis are presented in these specific parts. All the figures and tables that are based on quantitative data can be reproduced with the R code in the technical annex, where links to original datasets are provided as well.[16]

2.4.2   Countries included in the analysis

The number of jurisdictions analyzed varies across the different parts of the analysis for data availability reasons. As explained above, much of the analysis is based on only four countries. However, where available with a reasonable effort, I also analyzed data on larger samples. The analysis in section 6.4, for example, includes all members of the Inclusive Framework. As can be seen in Table 2, this however excludes most low income countries, as well as half of all lower middle income countries. Note that the baseline for this table is not the 193 UN Member States, but 230 independent tax jurisdictions, including for example British Overseas Territories such as Cayman Islands, Bermuda, and the British Virgin Islands, etc., which are not members of the UN, but have large discretion to determine their tax system, can sign tax treaties and become members of the BEPS Inclusive Framework in their own right.[17]

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14   For dividends paid to related entities abroad, I have done a more extensive manual analysis, and attempted to code the correct rate applicable to such payments for all countries/years.

15   https://taxsummaries.pwc.com/, https://research.ibfd.org

16   https://surfdrive.surf.nl/files/index.php/s/Qw4PRiBn0ksI7ar (not yet public, permanent version will be stored at zenodo once completed)

17   For some cases it is difficult to decide whether they should be considered as independent jurisdictions. For example, the island Labuan can be considered as an Offshore Financial Center with its own tax regime. There are indications, however, that it is under relatively close control of the Malaysian government and that it should therefore rather be considered as a free trade zone with preferential tax regime of Malaysia rather than a jurisdiction/country with independent tax system in its own right. See https://www.pl.gov.my/home, where the local authority presents itself as "Agency under Ministry of Federal Territory" and https://www.labuanibfc.com/about-labuan-ibfc/the-midshore-jurisdiction, where it is explained that the tax treaties of Malaysia apply to Labuan.

Table 2: Jurisdictions in the Inclusive Framework and BEPS Process

Group	Inclusive Frame-work member (as of 2023)	Part of BEPS development process	Total
High income	59	35	77
Upper middle income	37	7	57
Lower middle income	27	2	54
Low income	5	0	26
Low tax	13	0	16

Source: the author, based on OECD.[18]

In sections 6 and 7, when I analyse the evolution of tax regimes on a global basis, regimes are usually compared across categories of countries. The main classification I use is the four-tier World Bank classification into "Low income", "Lower middle income", "Upper middle income" and "High income" in 2020.[19] However, I merge the "Low income" and "Lower middle income" country categories together in one "Lower income" group, since in most datasets I use, there are only very few "Low income" countries. In contrast, I add the category of "Low tax jurisdictions", which I define as jurisdictions with a statutory corporate tax rate equal to or under 5% in any year since 2012. Most low tax jurisdictions qualify as "High income" countries based on their Gross National Income (GNI) with a few being in the "Upper middle income" category. However, since their tax policy choices are a priori very different from those of other countries, it makes sense to present them separately. For a few jurisdictions, the World Bank has not provided a classification. In these cases, I classified them manually, using information about GNI and GDP from other sources.

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18   https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf
19   https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups