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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5 The domestic political economy of tackling international tax avoidance

5.1 Introduction

Having charted the different possible approaches that countries can take with respect to the issue of international tax avoidance, as well as the preferred approach embedded in the outcomes of the BEPS Project, the purpose of this chapter is now to analyse under what conditions countries are likely to adopt one approach or the other, which can subsequently help understanding the impact of the BEPS Project in a given context. What are obstacles and what are facilitating factors?

I will first discuss the importance of the status-quo ante: A country's response is likely to be influenced by the way the issue has been addressed in the past and by the extent and nature of the issue, which is a function of taxpayers' behaviour and the legal framework. Then, I discuss a number of structural variables and institutional variables that I consider influential or that have been mentioned in related literature. By structural variables, I refer to variables that only change over the long term, such as the position in the market for international investment and administrative capacity. Institutional variables refer to the constellation of different stakeholders that weigh on the policy, and their interests and power with respect to the issue. None of the factors discussed should be understood as deterministic. In addition, due to the breadth and multidimensionality of the phenomena under discussion, it is hard to derive concrete predictions about whether and when a given policy will be adopted by a country. However, they should be able to shed light on the general policy directions taken.

5.2 Status-quo ante

Accounts of international policy convergence and institutional change often start by emphasizing the concept of "path dependency" which states that the best predictor of how an institution looks like at a given point in time is how it used to look like in the past. Such theories do not deny that institutions can change but change should be thought of as more of an exception than a rule, since sunk costs into development of the existing policy, the power of actors that became vested in the policy, and specific designs of past policies that make changes difficult create a preference by policymakers for the status quo.[1]

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1 Cerna, "The Nature of Policy Change and Implementation: A Review of Different Theoretical Approaches."

5.2.1 Pre-existing regulation

The status-quo ante of a country's tax policies should be relevant for the impact of the BEPS Project in a specific country for the following reasons: First, as explained in chapter 4, the BEPS Project is not a radical departure from previous standards. The degree to which a country had already incorporated standards into their legislation and practice should matter for the degree of uptake. Convergence with the BEPS Project's approach should probably be highest where alignment with OECD recommendations was already high before. The impact of the BEPS Project could be important where the specific issue has not yet been regulated in the past, i.e., where the BEPS Project can "write on a blank page". The impact should be lowest where a country has previously regulated the issue but in a way that diverges from OECD practice, since specific actions need to be taken to adjust previous regulation.

For some elements of the BEPS Project to have an impact, some degree of previous alignment is a prerequisite. As shown in chapter 66, BEPS Actions 8-10 only modify the OECD Transfer Pricing Guidelines. However, it does not require a country to implement transfer pricing legislation or to incorporate the practice of using the transfer pricing guidelines in the first place. Therefore, BEPS Action 8-10 can only have a direct impact where transfer pricing legislation (or a referral to the guidelines) is already in place. Similarly, for the BEPS Project's standard on treaty shopping to have a direct impact, a country needs to have signed tax treaties or be in the process of negotiating tax treaties.

Second, the status-quo ante is likely to influence the attitude that different actors will take towards the response suggested in the BEPS Project. For example, with regards to the general anti-avoidance rule introduced in Colombia (which is not a direct outcome of the BEPS Project but follows a similar approach), a tax advisor said that: "For me, the anti-abuse clause is a muzzle. […] Because what I am going to do to you is that the power that you have to interpret and classify abusive behaviour, I give you a way and an order. You cannot do, when you want and how you want, but you have to follow this procedure."[2] In the view of this advisor, the status-quo ante was such that practice was "blunter", as the tax administration was free to argue that a situation constituted abuse, which is why was favourable to the introduction of an anti-abuse clause, which would make the approach more "finely delineating". Hence, depending on whether the status-quo ante was a blunter or a more tolerant approach, stakeholders are likely to take opposite views on the introduction of a finely delineating approach to inter-

2 CO15. Translated by the author. Original quote: "Para mi la clausula antiabuso, es un bozal. […] Porque lo que yo le voy a hacer es que la potestad que usted tiene de interpretación y de clasificación de conductas abusivas, le doy un camino y un orden. Usted no puede hacer, cuando lo quiere y como quiere sino que tiene que seguir este procedimiento."

national tax avoidance. Whether they are likely to consider the outcomes of the BEPS Project as an improvement of their situation or not therefore depends then on their evaluation of the "bluntness" of past rules.

5.2.2 Salience of the policy issue

A second aspect of the status-quo is whether a country has been affected by the specific tax avoidance issue. This can vary significantly across countries. For example, as further detailed in section 7, in the case of treaty shopping it depends on whether a country has signed double tax treaties with countries that have a regime that is amenable to the establishment of conduit companies and on the difference in treatment that these treaties offer with respect to domestic law and other treaties. For transfer pricing, it depends on whether other aspects of the tax and customs system cancel out tax savings that an MNE would obtain through overpricing imports. As already mentioned in section 3.4.2, withholding taxes on interest, royalty, and service payments may disincentivize transfer mispricing, since lower corporate tax payments by the resident taxpayer would result in more taxes withheld from transactions that erode the tax base.

In this respect, both policy issues are likely to interact: More tax treaties mean probably less problems of treaty shopping (because the treatment for investors from different jurisdictions is likely to be more similar), but possibly more problems of transfer pricing due to lower withholding rates for outward payments. It also means that more taxpayers will be granted access to the MAP procedure, which is likely to result in more pressure on the tax administration to not deviate from international standards when auditing transfer prices.

More generally, the salience of international tax avoidance depends on whether there is a lot of cross-border activity in the first place (which in turn depends on economic and regulatory characteristics of the country). As shown in section 6.4.4, many countries in the Global South only recently (and often only partially) abolished regulations that restricted cross-border investment and other types of cross-border transaction.

Finally, whether a country is affected by the tax avoidance issue depends on whether taxpayers have decided to effectively make use of the opportunities for avoiding tax through the respective strategy. Empirical research has observed important differences in "tax aggressiveness" of MNEs based on different characteristics, such as sector, home country, management factors, etc.[3] Hence, to explain the approach taken by a country it is

3 Gaertner, "CEO After-tax Compensation Incentives and Corporate Tax Avoidance"; Huang and Zhang, "Financial Expertise and Corporate Tax Avoidance"; Dyreng, Hanlon, and Maydew, "The Effects of Executives on Corporate Tax Avoidance"; Kanagaretnam et al., "Societal Trust and Corporate Tax Avoidance."

necessary to analyse taxpayers' behaviour, in addition to the opportunities granted by the pre-existing legal and policy framework.

Nevertheless, for two reasons the salience of an issue may not perfectly determine the response: First, it may not be easy for a government to know the extent of international tax avoidance, as such activity is not easy to observe. Available economic indicators are usually imperfect, as further discussed in the respective chapters, and a government may only start collecting relevant information (such as for example on transfer prices practices by companies or on the use of specific tax treaties) after it decided to regulate the issue. Hence, a mere perception that the issue exists (including based on discussions at the international level, without particular reference to the country in question) may be sufficient to trigger a response. Second, even though a specific issue does not exist – for example, there are no instances of treaty shopping because no treaty with a conduit jurisdiction is signed – a government may decide to introduce an anti-avoidance rule since it may not create any disadvantage either. In such situations it is likely that the rule will be closely modelled on the international standard, since there is no urgency to create a rule that better fits the local context.

5.3 The position in the market for MNE investment

5.3.1 Attracting and raising revenue: A question of balance

On a more abstract level, the main characteristic that should influence international tax policies is the position of a country in global foreign direct investment flows. In contrast to industrialized countries, developing countries can generally be qualified as "capital importing" countries: They receive important amounts investment from foreign MNEs, but their own residents invest relatively little abroad. This means that developing countries will host a low number of MNE headquarters, but potentially a large number of subsidiaries of foreign MNEs. This is relevant because, as already alluded to in section 3.3, international tax policies are usually designed along the axis of residence/source allocating greater taxing rights to one or the other, and anti-avoidance rules can be designed to protect taxation at residence or taxation at source.

However, what international tax policy a capital importing country (a source country) will likely adopt is not obvious. In fact, two opposing ideas can be distinguished: One the one hand, there is the tax competition discourse and on the other hand, there is a discourse that emphasizes that capital importing countries should make sure that foreign investors pay sufficient taxes on their income derived from the country.[4]

4 Hearson, *Imposing Standards*, 53–61.

The concept of tax competition can be traced back to an article by economist Charles Tiebout.[5] It refers to a strategy adopted by a state or another territorial entity with the power to autonomously enact tax rules to attract or retain economic activity within its territory through offering a relatively more favourable tax treatment than elsewhere. The literature often suggests that developing countries should engage in tax competition. Margalioth, for example, writes that developing countries should minimize taxes on foreign direct investment, as the gains for the country from additional investment that could be attracted by low taxes would be higher than the tax revenues that could be generated.[6] As discussed in section 3.3, how a country chooses to address tax avoidance can affect the tax burden for foreign investors in different ways. If the approach is of the blunter type, the burden may increase even for non-avoidant taxpayers. Finely delineating or "giving-up" approaches are more competitive. And if the government decides to tolerate avoidance, the burden may be lower than even foreseen by the laws. Previous literature has often found competition for investment to be relevant in explaining different tax policy outcomes.[7]

Addressing competition for real investment was carved out from the 2015 BEPS Action plan (as opposed to harmful tax competition under action 5, which addressed competition to attract companies without substance that only serve the purpose of facilitating tax avoidance). Hence, scholars hypothesized that tax competition may shape the way countries are responding to the BEPS Project.[8]

The opinion that policymakers should be mindful of the effect on competitiveness of policies chosen was uttered by interviewees from all countries studied. An Indian advisor said that: "I have seen in prime of my career and in lifetime what the country was in 1990 and what the country is today […]. And that has happened because businesses have grown, economy has grown, foreign direct investment is up."[9] A Colombian tax advisor said that: "I have always said that we have to be competitive. And the only way to be competitive to attract investment is by lowering taxes."[10] There is also some evidence that competitiveness arguments have played a role in debates about the approach to avoidance: A tax director of the Colombian branch of an MNE reported that the business association to which his MNE

5 Tiebout, "A Pure Theory of Local Expenditures."

6 Margalioth, "Tax Competition, Foreign Direct Investments and Growth: Using the Tax System to Promote Developing Countries."

7 Genschel and Schwarz, "Tax Competition: A Literature Review"; Swank, "Tax Policy in an Era of Internationalization: Explaining the Spread of Neoliberalism"; Shin, "Why Do Countries Change the Taxation of Foreign-Source Income of Multinational Firms?"

8 Durst, *Taxing Multinational Business in Lower-Income Countries: Economics, Politics and Social Responsibility*, 94.

9 IN18

10 CO25. "Siempre he dicho que tenemos que ser competitivos. Y la única forma de ser competitivos para atraer inversión es bajando impuestos."

belonged had lobbied the tax authority directly to make the application of the Colombian thin capitalization rule more business friendly, mobilizing tax competition arguments.[11]

On the other hand, a former Indian tax policy official said that "You are very well aware that India is a big country and there are a lot of problems and it needs resources, constant resources. When people found that there were certain loopholes which were creating problems, then they started taking cognizance of it."[12] In Nigeria, judicial doctrine even instructs an interpretation of tax laws that favours raising revenues. In the *Saipem vs. FIRS* case, the tax administration stated that "A revenue-based statute must be construed liberally in favour of revenue or in favour of deriving revenue by government unless there a clear provision to the contrary."[13] The Court sided with the tax administration in that case citing an earlier judgment in which the doctrine was established.[14] Indeed, short-term revenue needs can be less easily fulfilled in developing countries by incurring additional debt due to higher interests rates, which is why raising revenues from MNEs could be more important.

In addition, interviewees often express dissatisfaction with the deal that is struck with foreign investors. A Senegalese tax advisor commented: "I agree that we should be open to investments, but only if they are profitable for our country. [...] First, we must create jobs, we must create infrastructures and then we must pay taxes. What is often done in our countries, foreign investors, they come, they set up their company and all positions of responsibility, we do not take Senegalese or few Senegalese. What makes, it is that they bring back ex-pats. These expats often do not pay taxes in Senegal because there is either a convention which means that they are not domiciled in that country."[15] Sometimes, the scepticism towards the contribution of MNEs towards the country's development seems to be reinforced by ideas about the country's colonial history. In various occasions in India for example, interviewees used the injustices that India incurred in the past to explain their motivation to work on tax policy in India. One tax academic explained that her motivation to work on the taxation of

11 CO31

12 IN03

13 Ogakwu, Saipem Contracting Nigeria Limited & Others v. Federal Inland Revenue Service & Others (2018).

14 Ogakwu.

15 SN02. Translated by the author. Original quote: « Moi, je suis d'accord à ce qu'on soit ouvert aux investissements, mais à la condition que ces investissements soient rentable pour notre pays. […] Premièrement, il faut créer des emplois, il faut créer des infrastructures et ensuite il faut payer les impôts. Ce qui se fait souvent dans nos pays, les investisseurs étrangers, ils viennent, ils montent leur boite et tous les postes de responsabilité, on ne prend pas de sénégalais ou bien peu de sénégalais. Ce qui font, c'est qu'ils ramènent des expats. Ces expats, souvent ils ne payent pas d'impôts au Sénégal parce que soit il y a une convention qui fait que bon, voilà, on s'organise à ce qu'on ne soit pas domicilié dans ce pays-là. »

the digital economy comes from the injustice in the distribution of taxing rights that she also considered as a colonial legacy.[16] One tax advisor said that "The ghost of the East India Company is still there" to explain India's resistance towards arbitration in tax matters.[17] Nevertheless, these sentiments generally seem to play a role mainly among intellectuals and some tax advisors but are not generalized across the Indian tax profession or the wider population. Asked on the general reputation of foreign companies, one participant confirmed that it was generally very good and better than the reputation of Indian companies.[18] According to a tax lawyer, "A political mandate that politicians successively in the last 20, 25 years felt [is that] by and large […] India is a liberal country and we should liberalize, we should encourage more business, we should encourage more FDI. That message has not changed in the last 25 years."[19]

To sum up, there is no consensus on whether a capital importing country should strive to enforce taxation on foreign investors or not. Rather, one could say that capital importing countries face a balancing act: On the one hand, increased FDI could be beneficial for the economy, on the other hand countries want to reap sufficient benefits from FDI.[20] What factors could further influence where the balance tilts?

5.3.2 Market power

One could argue that the pressure of tax competition may be felt more strongly in countries with less market power and that therefore only larger countries can impose blunter anti-avoidance measures with ease. This would resonate with Drezner's model of international standards' propagation, which states that whether a country can resist the imposition of standards depends on the country's market power.[21]

Power in the market for foreign investment could be translated to the availability of non-tax factors that are attractive for foreign investors such as natural resources, large consumer markets or fast-growing economies (a sign of large and growing markets in general, whether to final consumers or local businesses). These factors could affect to what extent a government feels the pressures of tax competition. If MNEs can earn economic rents in a country, which is the case if natural resources or large markets are present, a country is usually considered to be able to impose high taxes without having to fear of driving investors away.

16 IN14
17 IN13
18 IN08
19 IN18
20 Sumner, "Is Foreign Direct Investment Good for the Poor? A Review and Stocktake," 281.
21 Drezner, *All Politics Is Global*.

In the case studies, there is evidence that this indeed plays a role for international tax policy. First, interviewees perceive market power to be relevant: "So for a Nigerian, politician, they will say that the population enough is enough to attract investment. If you have consumer goods, you have to be in Nigeria."[22] Second some pieces of evidence from the case studies speak in favour of such a hypothesis. For example, while the Senegalese tax administration respects double tax conventions which do not allow the source country to tax the total income of such contracts when a part of the activities is carried out abroad,[23] this seems to be the less the case in Nigeria, as illustrated by the *Saipem* case mentioned in section 0. In the case of transfer pricing rules, Nigeria and India more often resorted to "blunter" regulations than Senegal and Colombia.

But the case studies also highlighted mechanisms that seem to contradict the effect of market power on a country's approach to international tax avoidance. The case of Nigeria is illustrative in that regard. One aspect of Nigeria's attractiveness for foreign investors are the country's large petroleum reserves. Like many oil exporting countries, Nigeria's tax rate on profits from the sale of Nigerian crude oil is high (up to 85%). But at the same time, if the revenues from these sales are so high or increasing at such a fast pace as it has been the case historically, issues related to the details of the enforcement of the corporate tax might be neglected all together. Interviewees from Nigeria noted that tax policy in general received little attention during the era of high oil prices and explained an uptake in enforcement activities by the tax administration with a decline in revenues from petroleum extraction activities: "Generally when it comes to tax, I do not think that [politics] in any way affects tax legislation because of the resource curse, when you have a lot of oil, free money. But with the dwindling of prices of crude oil globally, the government has started taxing. There's an aggressive tax regime, to enforce the tax right now in Nigeria, unlike before. We've never experienced."[24] In contrast, in India where oil royalties or non-tax revenues are less important, the tax system has been a more important policy variable for a longer time.[25]

The second contradicting factor is that from the perspective of the MNE, bigger countries are likely to be more important for the MNE's overall tax payment. In contrast, if higher taxes are imposed in smaller countries, this does not necessarily result in a large increase in the tax costs of the MNE as a whole because the amount may not be high compared to the overall profits and costs of the MNE across all countries. Hence, the pressures to conform with global tax standards may be stronger on countries with bigger markets than those with smaller markets, all else equal. A tax director

22 NG03
23 Niang, "Sénégal : Nouveautés Fiscales et Juridiques de l'année 2022."
24 NG11, also NG14
25 IN18

from Senegal reported about a case where an independent company based in the US was selling services remotely to Senegal, and it was uncertain whether the recipients had to withhold tax on the payments. According to the interviewee, the independent supplier refused to deal with the question and simply negotiated contracts in which the recipient of the service had to assume all withholding taxes.[26] According to a blogpost written by another tax advisor, this seems to be common practice in Senegal.[27] The consequence is that the MNE would likely never engage in international dispute resolution mechanisms to relieve double taxation, since obtaining relief was never attempted in the first place. If, however, these costs are high compared to the total global tax costs, the picture is likely to look different. Thus, the pressures may be higher on countries that represent relatively large shares of MNE's transactions, such as those that have large markets. This could explain why India received many MAP demands and much interest by peer countries to comment on India's MAP practices in the Action 14 peer review process (see section 6.3.1).

In sum, the position of a country in the market for foreign investment only unsatisfactorily explains policies adopted by countries. Beliefs that tax policy should be competitive are present but not absolute and pressures to raise revenue often have a greater force. Differences in market power can partly explain differences in the approach, but it may not be necessary for a country to resist tax competition when it comes to enforcing tax avoidance. Paradoxically, where market power results in such an important inflow of investment, the focus on avoidance could actually be smaller since tax revenues are organically increasing (even though perhaps to an extent that is less than appropriate).

5.4 Capacity

Another structural factor is capacity. Since one can assume that the budget of a tax administration is likely to be a function of the country's level of development and size, developing countries can be said to have a lower level of capacity than industrialized countries.[28] One can distinguish between administrative capacity, which in the context of tax could be defined as the capacity to apply tax rules to taxpayers, and policymaking capacity, which could be defined as the capacity to analyse policy options and write consistent laws and regulations.

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26 SN04

27 Niang, "Tax Us, Do Not Kill Us!"

28 A bigger country can compensate for level of development, because critical thresholds can be reached more easily, but a big and less developed country is likely to have less administrative capacity than a smaller but economically more developed country. Nevertheless, across similar levels of development if measured by GDP per capita, one can observe divergent levels of administrative capacity.

5.4.1 Administrative capacity

The administrative capacity is likely to influence a country's choice with regard to international tax policy. As further discussed in sections 6 and 7, the lack of enforcement of international tax avoidance issues can usually (apart from exceptions such as treaty shopping in India in the 2000s or possibly transfer pricing in Nigeria before 2012), be attributed to the scarcity of administrative resources.

Countries with higher capacity can operate rules that require more finely delineating analysis. Since OECD standards are generally of this kind, a country with lower administrative capacity may opt for rules of the blunter type or rules that give up on maximizing revenue in exchange for simplicity. Interviewees often explained policy preferences with reference to their perception about the level of administrative capacity that specific approaches require compared. A former Colombian government official, for example, mentioned that Colombia wanted to introduce the LOB rule in its tax treaties since it would be easier to apply than the PPT in a context of low tax administration capacity.[29] In Nigeria, an official of the tax administration explained that the decision to introduce a cap on deductions for royalties in the transfer pricing regulation (deviating from the OECD Transfer Pricing Guidelines) resulted from the fact that intangibles were considered a more complex area of transfer pricing and given a lack of administrative capacity, the erosion of the tax base could more easily be prevented through a deduction limitation.[30]

However, as shown in the case studies, there is no uniform preference for simpler rules among policymakers, since they may consider them as technically inferior and rather try to invest in building up more capacity. The reluctance of Senegalese policymakers to introduce the "Sixth Method" in its transfer pricing rules is telling in that regard (see section 6.3.3).

A country might also adopt more complex rules even though the lack of administrative capacity may simply mean that the policy will not be enforced, hoping for voluntary compliance by taxpayers. There is some evidence that this might work when conforming with international standards. In Colombia, tax directors of various multinational companies reported that their parent companies (located in the USA and Spain) had produced guidelines based on the implementation of BEPS rules in their home country that would also apply for foreign subsidiaries.[31] However, many interviews disagreed that such a mechanism could work more generally. One Colombian interviewee explained that: "I remember that, for example, in the past the financial services companies [...] that trade in derivatives. [...] They had their global transfer pricing agreements with everybody except with Colombia, because in Colombia you could do a lot of things that you

29 CO07
30 NG17
31 interviews with three tax directors of foreign-based multinationals, CO36, CO31, CO32

couldn't do elsewhere."[32] A Nigerian advisor said that: "So most of [the multinational companies investing in Nigeria] would get their tax advice from the Big Four and they would advise them, of course, based on the principle that exists within the group. But the only thing is that […] for certain avoidance schemes, where perhaps the law has caught up with that scheme in the UK […] but not in Nigeria. Of course, the multinational is still going to continue to implement that avoidance scheme in Nigeria because there's nothing in Nigerian law to say it's not allowed."[33]

In sum, it is likely that countries with lower administrative capacity will adopt rules that are simpler (blunter or giving up on enforcing tax avoidance), but there are reasons why policymakers may prefer more complex rules.

5.4.2 Policy-making capacity

While most developing countries' ministries of finance and/or tax administrations have at least a few individuals with high expertise in international tax matters, capacity to draft and introduce legislation may be constrained.

When the BEPS reports were published, the countries researched tasked committees with evaluating what parts of the reports should be implemented. These Committees recognized that introducing all reforms at once might be to challenging time wise. A Nigerian policymaker explained: "What Nigeria did was to set up a BEPS implementation committee […which] looked at all the reports and of course most of them are good to implement. However, we can't implement all at once. So what the committee did was to prioritize implementation and to also look at the one that is fit for purpose because it's not all the reports that has much impact for Nigeria, so to look at those that have impacts for us in Nigeria and to prioritize how to implement."[34] In Colombia, as well, there was a tax reform commission that recommended implementation of the BEPS Project, but at Colombia's own pace and according to their own priorities.[35]

The prioritization undertaken by these committees reflects the country's overall position in the world market for MNE investment. A Nigerian policymaker, for example, explained that when the BEPS reports were published, a BEPS Implementing Committee established a hierarchy of the different action points' relevance for Nigeria, which was mainly based on their relevance for inward investment, as opposed to outward investment.[36] Hence, whether a country primarily imports or exports capital affects whether the focus of policymakers is on avoidance by foreign owned or

32 CO24
33 NG02
34 NG13
35 CO18
36 NG13

by domestic MNEs and hence on norms that relate more to the one or the other. However, as pointed out earlier, the position in capital market cannot sufficiently explain which direction policy would take.

In sum, a lower policymaking capacity means that in developing countries, not all issues are addressed at the same time and that international standards setting projects that require a lot of legislative and regulatory changes, such as the BEPS Project does, are implemented over a longer period of time than in countries with a high policymaking capacity.

5.5 Influence and interests of different stakeholders

5.5.1 Introduction to the international tax policy making process

While path dependencies and structural factors impose constraints on the different policy options that may be considered as viable and as priorities for a country, it is reasonable to assume that within these constraints there will be disagreement between different stakeholders as to what policy should be taken. Therefore, it makes sense to take a closer look at what the interests of different stakeholders within a country are and how they compete for influencing the policy direction. Hence, in this subsection, I discuss based on literature and interviews carried out in Senegal, Nigeria, India, and Colombia which groups of actors have an interest in international tax policy making, what kind of policy preferences they express, the factors that can affect their preferences, and their influence.

In democracies, actor-centric policy analyses often distinguish the following groups and analyze their respective preferences and avenues of influence: bureaucrats, political parties, voters, special interest groups, and experts. These groups can have a moderating effect on the impact of international norms by preventing or modifying their implementation. However, international norms can also impact the constitution of these groups themselves, for example by strengthening the agenda of interest groups that want to change the status quo.[37]

Depending on the regime type, the concrete composition of the policy arena may vary. For example, one can suppose that in autocracies, political parties (and by extension voters) may play a less important role. However, even in democracies the degree of involvement of parties and voters depends on the degree of politicization of the issue at hand. International tax avoidance has gained public attention in most Western countries over the last decades, but that is not generally true anywhere. International tax law is a policy area characterized by a high degree of technical language and is fragmented into many sub-issues, the significance of which and interactions among each other are not easy to grasp for non-specialists.

37 Knill and Lehmkuhl, "The National Impact of European Union Regulatory Policy: Three Europeanization Mechanisms."

Therefore, previous analyses often emphasize the degree of executive discretion in international tax policy making, in particular in developing countries. In 1996, Gordon and Thuronyi (who has been involved in many tax reform processes on behalf of the IMF) wrote that "[In contrast to industrialized countries], the tax legislative process is much simpler in most developing and transition countries, and has not had the opportunity to become established in many of these countries. Far fewer people are involved."[38] In his analysis on the determinants of tax treaty policy in developing countries, Hearson argued that commonly only few individuals are involved in the process of treaty policy, meaning that the beliefs of bureaucrats and high-level politicians play an important role in the determination of tax treaty policy.[39] But how does it look like in the case of international tax policy making more generally?

5.5.2 Primacy of the bureaucrats and a limited role for parliaments and political parties

In most countries, the international tax law-making process is not different from any other law-making processes, with parliaments discussing and approving laws proposed by the executive, although there can be some variation as to what type of rules require approval from parliament. For example, in most countries many parts of BEPS Action 14 are at the discretion of the executive and can be passed by regulations. Some issues are even at the discretion of the tax administration, for example making use of OECD guidelines in the application of policies or not.

Nevertheless, even where parliamentary approval is required, the influence of parliaments and the political sphere more generally is likely to be limited when it comes to the precise direction of policy. Compared to statutory tax rates, where the influence of voters has been documented in empirical studies,[40] anti-tax avoidance regulation is significantly more complex. Hence, while the wider universe of citizens may exercise more influence on the former topic through elections,[41] this is less likely for the latter.

Although I was not able to directly interview parliamentarians, interviewees from all countries pointed out that substantive discussions on international tax issues were very limited in the parliaments of their

38 Gordon and Thuronyi, "Tax Legislative Process," 1.

39 Hearson, *Imposing Standards*.

40 Plümper, Troeger, and Winner, "Why Is There No Race to the Bottom in Capital Taxation?"; Basinger and Hallerberg, "Remodeling the Competition for Capital: How Domestic Politics Erases the Race to the Bottom."

41 Basinger and Hallerberg, "Remodeling the Competition for Capital: How Domestic Politics Erases the Race to the Bottom"; Plümper, Troeger, and Winner, "Why Is There No Race to the Bottom in Capital Taxation?"

respective countries. A Colombian tax lawyer commented on the dynamics of international tax policymaking in his country: "The young people who work at DIAN are a generation of well-prepared young people who have been elsewhere, they understand this. [...] They push, push, push and influence and as the Congress does not understand anything, they put it in the norms. And the Congress asks questions but does not expect any answers. […] One day in the Congress of the Republic I was asked to speak for five minutes on that subject. I did it very superficially because I considered that if I did it judiciously it would be more demanding for me but the others would not understand anything at all. So I spoke in generalities."[42] The only instance where an international tax proposal was stopped in the Colombian parliament was the government's attempt to introduce mandatory disclosure rules in the 2016/2017 tax reform. The rules were included in the bill that was sent to the Congress for approval, but were absent of the final text of the law that was approved.[43] An academic attributed this to lobbying activities of Colombian tax lawyers,[44] while a tax lawyer claimed these rules would have been unconstitutional due to a violation of the attorney-client privilege prevailing in Colombia.[45]

Despite the general lack of active parliamentary involvement, parliaments can cause important delays in the process of adoption of international tax policies, since the topics are not accorded a high priority. One example is the delay in ratifying international treaties such as the Multilateral Instrument in Nigeria (see also section 0). In India the MLI took only about 2 years to be ratified, precisely because treaties are ratified by the cabinet of ministers without parliamentary approval.[46]

However, even parliaments' ability to cause delays should not be understood as veto power. Rather it requires governments to use strategies to creatively circumvent parliaments. In Nigeria, amendments to the transfer pricing regulations and the adoption of country by country reporting were

42 CO18, translated by the author. Original quote: ""Los jóvenes que trabajan en la DIAN, ya una generación de jóvenes bien preparados que fueron a otras partes, lo entiende. […] Un grupo de muchachos jóvenes competentes que empujan, empujan, empujan y influyen y como el Congreso no entiende nada, lo meten en las normas y el Congreso de golpe pregunta pero no espera que le respondan nada. […] A mí un día en el Congreso de la República sí me pidieron hablar cinco minutos sobre ese tema. Yo lo hice muy superficial porque yo consideraba que si lo hacía juiciosamente era más exigente para mí pero los otros no iban a entender absolutamente nada. Entonces yo hablaba generalidades."

43 Gaceta del Congreso, Proyecto de Ley Numéro 178 de 2016 Cámara por medio de la cual se adopta una Reforma Tributaria Estructural, se fortalecen los mecanismos para la lucha contra la evasión y la elusión fiscal, y se dictan otras disposiciones., arts. 882–890; Diario Oficial, Ley 1819 de 2016 por medio de la cual se adopta una reforma tributaria estructural, se fortalecen los mecanismos para la lucha contra la evasión y la elusión fiscal, y se dictan otras disposiciones.

44 CO05

45 CO20, see also Rodelo Arnedo, "La Obligación de Revelar Esquemas de Planeación Fiscal Agresiva o Abusiva En El Ordenamiento Colombiano"; Quiñones, "Colombia."

46 Ranjan, "India Needs Parliamentary Supervision of Trade Pacts."

directly implemented as executive regulation rather than as law,[47] and a tax treaty signed with Singapore was notified as being in force without ratification by the parliament.[48] According to a tax advisor: "Anything that's not political or budgeting takes forever to go through the parliament and so it it's in the interest of efficient tax administration in Nigeria for the authorities to be able to pass swift legislation to move alongside the OECD."[49]

These examples illustrate that governmental actors can find ways to overcome institutional inertia. It should be noted that the phenomenon of "workarounds" is not new and not limited to the Global South or to the area of tax policies.[50] In the United States, for example, international instruments are frequently ratified by executive order rather than parliamentary approval due to the frequent occurrence of "divided governments".[51] The FATCA Intergovernmental Agreements are a case in point.[52]

For the executive that means making effective policy, however, at the risk of lawsuits by dissatisfied parties. In the case of a tax treaty, it is unlikely that the private sector will complain since a tax treaty usually brings a favourable tax treatment. However, public interest groups might complain such as happened in a similar scenario in Kenya. In Kenya, the Supreme Court sided with a public interest group which demanded the invalidation of the ratification of a tax treaty with Mauritius which had not properly been discussed in parliament.[53] In Nigeria, a tax lawyer raised the prospect of litigating against the Nigerian transfer pricing rules based on the lack of parliamentary approval, since they contain certain provisions that are stricter than provisions of the OECD transfer pricing guidelines, such as a deduction limitation for royalty payments, and since they impose relatively high penalties.[54] One advisor said, "Strictly speaking, I think if a taxpayer really, really wanted to take them up on the legitimacy of the legislation, they probably would win."[55] So far, however, nothing has been done in that regard. In sum, while parliaments (and by extension political parties) are unlikely to have an influence on the concrete policies adopted, they may impact the modalities through which government actors can enact policies and can impose constraints in terms of timing.

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47 NG06
48 NG10
49 NG08
50 Verdier and Versteeg, "Separation of Powers, Treaty-Making, and Treaty Withdrawal: A Global Survey."
51 Situations in which the current executive does not have a majority in one or both chambers of parliament.
52 Rather than signing tax information exchange treaties that would have required approval by the Senate difficult to obtain, the US government chose the tool of the intergovernmental agreement. Christians, "Interpretation or Override? Introducing the Hybrid Tax Agreement"; Ring, "When International Tax Agreements Fail at Home: A US Example."
53 Tax Justice Network Africa, "Court Declares the Kenya-Mauritius DTA Unconstitutional."
54 NG06
55 NG08

Of course, the influence of politics on international tax policy making need not only manifest itself through debates and negotiations in the parliament but could be visible through policy changes that correspond to changes in the political majority in power. To systematically investigate this channel, larger samples of countries and larger time spans would need to be looked at to investigate correlations between policies adopted and political parties in power. However, in the countries investigated the evidence that party politics play a large role in the approach to international tax avoidance is scarce and is mainly limited to very general aspects of international tax policy such as the overall strategy with respect to tax treaties. For example, a Senegalese interviewee attributed the fact that the lead in the negotiation of the treaty with Mauritius was confined to the investment promotion agency to a recently elected president's desire to shift power away from the finance ministry in which he still feared loyalty to his predecessor.[56] In Colombia, interviewees reported political pressure to conclude many tax treaties when Alvaro Uribe was president, who followed an ideology of quickly liberalizing the economy. Several interviewees attributed the fact that a treaty was negotiated with Spain without much preparation from the Colombia side to this generalized pressure to negotiate quickly.[57]

Nonetheless, one can suppose that apart from a few instances, bureaucrats can implement their preferred policy relatively unencumbered by the wider political environment.

It should be noted that these general remarks about the politicization of international tax proposals seem already less applicable to the case of the proposed Pillar 1 reform of the taxation of the digital economy. While beyond the scope of this study, a few observations can be made. Pillar 1 is arguably more restrictive on countries' tax policy choices, since it restricts the use of digital services taxes, even in situations where there is no tax treaty between countries. As a reaction, the political fronts have become clearer. In Colombia, for example, the newly elected left-wing government had included a digital services tax in their campaign program and introduced in the 2022/2023 shortly after coming into power, potentially to set a counterpoint to the pillar 1 proposal.[58]

5.5.3 Intra-executive politics

While the executive can thus generally implement international tax policies without having to preoccupy itself a lot about challenges by political parties, the preferences *within* the executive are not necessarily aligned. Among the different governmental branches of different countries, one can usually find

56 SN01. Abdoulaye Wade succeeded Abdou Diouf in 2000 as President of Senegal, the treaty with Mauritius was signed in 2002

57 CO01, CO15, CO07

58 Portafolio, "Entérese Cuáles Son Los Servicios Digitales Que Pagarán Impuestos."

some that pursue more the objective of raising tax revenue whereas others care more about other policy objectives such as providing a more favourable investment climate for (domestic or foreign) businesses or improving diplomatic relations with other countries. These frictions and disagreements can also occur between a ministry of finance and a tax administration, in particular where there is a higher degree of independence of the tax administration from the ministry of finance, or within the tax administration itself.

First, there are instances of conflicts between the tax administration and ministries of finance, where the former prefers solutions that can raise revenue without too much effort and the latter may worry about a detrimental impact on investment attraction. A Nigerian tax administration official explained that: "From [the] tax administration we look at collection of revenue from taxes, but the policymakers look beyond [that]. […] They want to balance collecting taxes with being able to provide a good comfort for investors so that they bring their investment, they also need to look at ease of doing business, what will be the effect of the proposal we are bringing to ease of doing business and so many things they look at. So […] we've had some instances where we are able to push through some policy perspective, […] however there are instances where the policymakers believe that then the proposal will hinder the flow of foreign direct investment."[59] While the authority to sign decrees or propose bills to the parliament rests with the ministries of finance in the countries researched, expertise is generally more concentrated within the tax authorities (except for India, where there is no real separation of tax authority and ministry), which give the latter a potentially more influential position. While in Colombia, the tax policy making function is officially exercised jointly by the ministry of finance and the tax administration, the tax administration is most of the time mentioned as initiator of policies.[60]

In tax treaty policy, government bodies, such as foreign ministries, presidential offices, or investment promotion agencies, can play a role as well. Generally, these other agencies prefer signing more treaties in a shorter time, in the hope of attracting investment or improving diplomatic relations with other countries. For example, one former treaty negotiator of the Colombian tax administration highlighted the necessity to educate these other agencies about the potential negative effects on tax revenue of tax treaties.[61] Due to the greater involvement of these agencies with different agendas, it may be more difficult for a tax administration to adopt blunt approaches with respect to treaty shopping (concretely terminating a treaty) than for instance with respect to transfer pricing.

Nevertheless, even within the tax administration interests and positions are not necessarily aligned. When experienced outsiders are interviewed about their relationship with the tax administration, they often differentiate

59 NG13
60 See for example Velasco Kerguelen, "Colombia," 241.
61 CO01

between those branches that are dealing more with legal and policy issues and those that are tasked with auditing.[62] While the latter are often labelled as having a "fiscalist" approach, companies and business associations across all countries researched generally consider the former as good interlocutors and display respect for the individuals that occupy these positions.[63] The individuals occupying these higher level positions are sometimes recruited from with the private sector (in Colombia, the director of the tax administration from 2018-2021 was recruited from an advisory firm) and they have generally more interactions both with the private sector (for example through conferences) and with other governments at international meetings.

Whether within the tax authority itself or in the ministry of finance, the officials tasked with proposing and implementing policy can be thought of as influential due to their expertise. However, the lower echelons can influence the direction taken due to the fact that they are in a more direct relation with the taxpayer and are the first level to decide which approach to take with respect to a given case. There are often clear incentives for them to prefer rules that are both easily applicable and that permit to collect more revenue. On the one hand, tax inspectors are often evaluated based on meeting certain performance targets, which are often related to revenue collection or adjustments made in audits.[64] On the other hand, for capacity reasons tax inspectors are often given a time constraint when auditing a taxpayer (in Senegal, three to four months, according to a tax official), which makes it challenging to apply complex rules.[65]

Policymakers need to take this into account or accept that there may be a disconnect between policy that is legislated and its application in practice, when they implement solutions that are more "finely delineating" like, but tax auditors apply them in a "blunt" way. Beyond their position as the first instance that applies a policy, tax auditors may also directly influence the policymaking process. In Senegal, one tax administration official highlighted that the initiative to terminate the treaty with Mauritius came originally from tax inspectors which were involved in many disputes with companies that had established intermediary companies. "So this is the effort of the control services that bring to light difficulties, that push people to legislate, to denounce. This came from below."[66] Moreover, the Syndicate

62 In India, the Central Board for Direct Taxes directly overseas the activities of the tax administration while being an integral part of the Ministry of Finance. In Colombia, the Oficina de Asuntos Internacionales of the tax administration; in Senegal, la Direction de la Législation; in Nigeria, the … of the Federal Inland Revenue Service, are those offices that are more concerned with policy issues.

63 SN11, CO10

64 IN17

65 SN09

66 SN15, translated by the author. Original quote: « Donc ça c'est l'effort des services de contrôle qui mettent en lumière en fait des difficultés, qui poussent les gens à légiférer, à dénoncer. Ça, c'est venu d'en bas. »

of Revenue Officers, a trade union representing Senegalese tax inspectors, publicly criticized tax policies that might have a revenue reducing effect, such as the ratification of a double tax treaty with Luxembourg,[67] or the granting of tax benefits or amnesties to companies by the higher levels of the tax administration.[68] In India, as well, tax inspectors were at the origin of the legal battle against the policy to tolerate treaty shopping (see section 0).[69]

The higher and more political levels of the tax administration are usually aware of these challenges but are wary of possible detrimental effects on investment, and hence may adopt a mediating role between the audit functions and other agencies (including ministries of finance).

5.5.4 The judiciary

While the judiciary does not make tax policy itself, its interpretations and its general importance in the tax system can have an important impact on a country's policy approach. In the EU, the role of the European Court of Justice in putting a brake on EU Member States' anti-avoidance legislation (basically preventing them from adopting any type of blunter measure) is well documented.[70]

In general, the development of the domestic judicial system conditions the discretion that the tax administration can apply. This, however, varies widely across countries. Where taxpayers can easily access the courts and the latter have no issue with ruling in favour of the taxpayers, there should be a greater pressure on policymakers to adapt rules more to the circumstances of the countries needs and the capacity of the tax administrators. In the absence of a reliable judiciary system, tax administrators can more easily apply rules in a "blunter" fashion, regardless of their exact formulation by policymakers.

Ease of access depends largely on the capacity of the judicial system to handle tax cases, the existence of specialized tax benches or tax judges, the (perceived) independence of the judiciary from the government, and the rules governing access. Among access rules, it is particularly relevant whether taxpayers need to deposit the sum or part of the sum under dispute before accessing the system. Specialized tax courts or tax benches are becoming more widespread. Among the countries researched, India and Nigeria have specialized lower tier tax tribunals, but Colombia and Senegal do not.

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67 Pouye, "«Relation Fiscale» Avec Le Grand-Duché de Luxembourg, Une Liaison Dangereuse !"

68 Willane, "Elimane Pouye et Cie Dénoncent Un «pillage" Des Ressources Publiques."

69 Kotha, "The Mauritius Route: The Indian Response."

70 Lenaerts, "The Concept of 'Abuse of Law'in the Case Law of the European Court of Justice on Direct Taxation."

5.5.5 Do business preferences make a difference?

To analyze the preferences of taxpayers that are directly affected by a rule change, I start from the premise that for businesses, tax is a cost.[71] Firms operate on a profit basis. Since the main components of profit are revenue and costs, firms want to minimize costs. Therefore, business should be in favour of lower taxes and against a higher administrative burden associated with complying with the tax.[72] Although Rixen and Unger argue that businesses may favour higher taxes since they expect benefits in the form of public goods paid by taxes,[73] this is less likely in the context of emerging and developing economies, where private actors often perceive corruption and consider that funds are less well spent in the hands of the government than in the hands of private actors. Therefore, businesses' preferred response to international tax avoidance should be "giving up" and removing incentives to engage in avoidance by lowering the tax burden. Indeed, interviewees from businesses have generally expressed such preferences. An interviewee working at a foreign MNE's Colombian affiliate said with regard to the Colombian tax rate: "When you compare that tax rate with Europe or other places, you know that you pay taxes, but those taxes are paid, they are invested, they are properly used. But in Colombia there has been a lot of corruption […] and many people say: why am I going to pay taxes if they are going to steal it?"[74]

Taxpayers may be supportive towards harmonization-based solutions,[75] but given the difficulty of achieving international agreement, they are unlikely to push governments to work towards harmonization. Somewhat open is whether taxpayers may prefer blunt responses over finely delineating responses, since the former may sometimes come with less administrative costs and more certainty.

Although submissions by businesses often emphasize that tax certainty is more important than the level of tax and often express dissatisfaction with the complexity introduced by anti-avoidance rules, there are indications that these remarks should be qualified. With regard to the Indian transfer pricing safe harbour provision, a tax advisor commented that "we used to have that issue in transfer pricing a few years back where they brought in […] safe harbour provision and the first reaction from everyone was that your safe harbour is so high that it's of no use."[76] This suggests that the price companies are willing to pay for certainty may be limited. Those

71 Anesa et al., "The Legitimation of Corporate Tax Minimization."
72 Elschner, Hardeck, and Max, "Lobbying on the BEPS Project? Assessing the Influence of Different Interest Groups," 2017, 13.
73 Rixen and Unger, "Taxation: A Regulatory Multilevel Governance Perspective," 11.
74 CO31
75 Weiner, "Practical Aspects of Implementing Formulary Apportionment in the European Union," 630.
76 IN17

taxpayers affected by blunter responses are likely to be in favour of a fine separation of avoidant and non-avoidant situations, both in circumstances where blunter responses are already in place or likely to be put in place in the future. Blunt responses should therefore rank lowest among the preferences of taxpayers, as they likely increase the tax burden.

Whether businesses prefer no response against tax avoidance at all or a finely delineating response is more difficult to predict. Since international tax avoidance is about cross-border investment, there is a potential for diverging interests between MNEs and local businesses, between different sectors, and between big and small business, and finally between businesses with a propensity to take tax risks and more conservative businesses. The OECD motivated the BEPS Project with reference to restoring injustices between different types of businesses, stating that MNEs "have access to sophisticated tax expertise, may profit from BEPS opportunities and therefore have unintended competitive advantages compared with enterprises that operate mostly at the domestic level".[77] One could therefore suppose that domestic businesses would favour the introduction of anti-avoidance rules and MNEs not. However, in the countries studied, bigger companies and their advisors frequently mention that those big firms that have higher compliance standards than domestic companies and are often scrutinized more intensively than those firms that do not comply.[78] Empirical studies seem to confirm that the number of avoidant companies usually represents a small percentage of the universe of companies (although the latter may have a large footprint in terms of economic activities).[79] This could explain why the introduction of country-by-country reporting was mostly welcomed by MNEs. Although one could generally expect that the introduction of CbCRs increase the compliance burden – provided the reports are used by tax auditors – this would increase the tax burden that companies may face in a country, due to reduced possibilities to manipulate transfer prices, the move to more risk-based audits that the additional information could facilitate seems to override these concerns. One tax director of an MNE operating in Nigeria said that with respect to the introduction of the three-tiered transfer pricing documentation: "So at least it provided a lot of information. And then once you have more information, then the discussion is more measured and also more informative. And yes, at times are they happy with the agreement? No, but at least it lowered down the aggression."[80]

77 OECD, *Addressing Base Erosion and Profit Shifting*, 50.
78 CO28, IN18
79 Wier, "Tax-Motivated Transfer Mispricing in South Africa: Direct Evidence Using Transaction Data."
80 NG03

Another aspect is that individuals representing firms on tax matters may sometimes not have strong interests against a higher compliance burden since the latter may grant them higher prestige within the firm.[81] One tax director of the local subsidiary of an MNE in Colombia mentioned that after BEPS issues gained more public coverage, tax issues figured more often on the agenda of the board.[82] In addition, most directors of tax departments that I spoke too had worked in the advisory sector before joining a firm, which could make their preference align more with this sector than with the firm.[83]

In sum, businesses that are out of the scope of anti-avoidance responses of the finely delineating type may even derive benefits if avoidant competitors are caught by the measures or if at least focus of audits would be redirected to other firms.

Businesses often trust that anti-avoidance rules suggested by the OECD rules are able to deliver this. For example, a representative of a Colombian business association said that: "we have always sought that tax regulations be general, be as little rare, exotic and creative as possible, [...] that they comply with OECD standards, especially since we are part of the OECD. And above all, with regulations such as the CFC, there was a big problem before the [last] tax reform. We sought this change precisely by bringing as example into the debate what was happening at the international level."[84]

A Senegalese policymaker commented with respect to the involvement of business in establishing transfer pricing regulations that "They didn't write with us, but we made them aware of it, we held meetings with them, and they understood that these were standards, so it wasn't something complicated."[85] The evidence thus suggests that for most businesses, the finely delineating type can be seen as lowest common denominator.

But do businesses' preferences actually matter? Castañeda argued that in tax policy issues business interest groups usually lobby "reactively", while policymakers are first movers.[86] With respect to international tax

81 Radcliffe et al., "Professional Repositioning during Times of Institutional Change: The Case of Tax Practitioners and Changing Moral Boundaries."

82 CO32

83 It should be noted that I do not have evidence on how widespread this practice is among MNEs

84 CO10, translation by the author. Original quote: "Nosotros siempre hemos buscado que las normativas tributarias sean generales, sean lo menos raras, exóticas y creativas posibles [...] que [...] cumplan con los estándares OCDE, sobre todo ya que somos parte de la OCDE. Y sobre todo esas normativas como por ejemplo lo del CFC, había un gran problema antes de la ley de financiamiento. Ese cambio lo buscamos precisamente trayendo por ejemplo lo que pasaba a nivel internacional." In contrast to OECD recommendations, the Colombian rules did not contain an exemption from the rules if the controlled entity is located in a jurisdiction with a similar tax rate. CO16

85 SN16. Original quote: « Sur les prix de transfert par exemple, ils n'ont pas écrit avec nous, mais on les a sensibilisés, on a fait des réunions avec eux, ils ont compris que c'était des standards, donc ce n'était pas quelque chose de compliqué. »

86 Castañeda, "Business Interest Groups and Tax Policy," 389.

issues at the domestic stage, the evidence seems to confirm this (at the international stage, business associations such as the International Chamber of Commerce or Business At OECD have proactively lobbied the OECD and member governments to advance arbitration in tax matters).[87]

First, tax policy plans are not always openly discussed. One tax advisor for example observed that MLI choices in Colombia were "managed like a state secret".[88] Sometimes policy changes are announced only shortly before they are voted in parliament so that there is limited time for businesses to react to a policy proposal. An interviewee from a multinational company said that the Nigerian tax community "had been taken by surprise" when the Nigerian government announced the repeal of an exemption from capital gains tax for sales of shares in the 2022 Finance Act, and that taking into account the amount of amendments proposed in the same Finance Act, there was not sufficient time to react.[89] Only after the change had already taken place, critical points of view were expressed in articles written by tax advisors.[90]

Even when business is consulted, the instances where they are able to significantly influence legislation are not frequent. A tax manager of a Nigerian MNE said that: "So most times they give opportunity for industry players to make some contributions. But maybe 7 in 10 of the cases are challenged unsuccessful, and maybe three are successful. So in the international space, I am unable to remember one in which industry has been able to successfully influence government or take a stand that would be less anti-business."[91]

In Senegal, business seems to be consulted more often before laws are passed (with respect to a larger reform of the tax code in 2012, some interviewees even said that it was co-authored by the private sector)[92] and there are some examples where business could make a difference (e.g., VAT exemption instead of reimbursement for exporting companies). But with regard to international tax matters, there is no clear evidence that businesses have been able to influence any policy choices.

In India, interviewees often describe a relationship of deference. They do not take the fact that government would consult with businesses in the policymaking process for granted as, in the words of one the interviewees, policymakers could also say "I am a government, I can make law".[93] A Nigerian advisor answered the question on whether there was any resistance when the Nigerian government proposed the introduction of the

87 Hearson and Tucker, "'An Unacceptable Surrender of Fiscal Sovereignty': The Neoliberal Turn to International Tax Arbitration," 12.
88 CO30
89 NG01
90 Filani and Umoh, "Capital Gains Tax On Disposal Of Shares: Possible Consequences On Foreign Direct Investments In Nigeria."
91 NG01
92 SN16
93 IN22

Significant Economic Presence regulation that private sector representatives had opposed the proposal but that "the debate was more of an intellectual debate. Not that anybody is stopping the Nigerian government from taxing."[94]

Finally, influencing international tax policy may not always be worthwhile for businesses when they have more effective means to gain favourable economic outcomes at their disposal. Several interviewees reported that businesses concentrate lobbying more on direct tax incentives or around procedural issues that may have an important incidence on cash flows.[95] These may have more important consequences on their tax burden than international tax rules such as those included in the BEPS Project.

In addition, businesses may be able to influence their tax burden through direct political influence. One former tax inspector of the Senegalese administration spoke with respect to a transfer pricing audit in the mining sector that he was involved in, that "The file has remained all over the place, because it poses political problems as well. When a company has such a large footprint […] they are ready to fight. […] It is above all a political problem. That is to say, they are big multinationals. If the administration attacks them, they put means to curb the administration. And our rulers are not strong enough to maintain the position of the administration."[96] This issue is likely to be more urgent in smaller than in larger countries. According to the same Senegalese interviewee, large companies would often be able to speak to the President directly to ensure a favorable resolution of such disputes.[97] The issue might be smaller as well in countries where the statutes of the tax administration grant it more autonomy.[98]

In sum, businesses are likely to prefer a more laissez-faire approach to international tax avoidance, i.e., "giving up" or a finely delineating approach. However, in the context of developing economies this does not necessarily mean that they will invest a lot of effort in influencing policy in that regard.

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94 NG11

95 NG33304, CO36

96 SN07, translated by the author. Original quote : « Le dossier est resté un peu partout, parce que ca pose des problèmes politiques aussi. Quand une entreprise a un magot aussi important […] ils sont prêts à se battre. […] Je pense qu'il y a des problèmes techniques qui se posent dans nos pays, à trouver de bons comparables, à connaître les transactions de façon approfondie, […] ca c'est d'abord technique. C'est vrai, ca existe. Mais c'est surtout un problème politique. C'est-à-dire que c'est des grosses multinationales. Si l'administration les attaque, ils mettent des moyens pour freiner l'administration. Et nos gouvernants ne sont pas solides pour maintenir la position de l'administration. »

97 SN07

98 Senegal is not one of them, but several African countries have set-up "semi-autonomous" revenue agencies over the last decades. See Dom, "Semi-Autonomous Revenue Authorities in Sub-Saharan Africa: Silver Bullet or White Elephant."

5.5.6 Tax advisors: National interest vs. clients' interests?

Given the depth of technical understanding required to formulate ideas on international tax policy, previous research has emphasized the influential position of experts,[99] which in the countries studied are in a majority working as tax advisors or academics. In the countries studies, tax advisors are indeed often associated in tax reform projects, for example in the 2012 reform in Senegal,[100] in the initial drafting of the Nigerian transfer pricing regulations,[101] or in the Colombian expert committee that advised the 2016 tax reform.[102] However, stating that experts wield influence does not allow for a direct prediction of what turn policy would take.

Empirical studies, such as Anesa et al.'s on tax professionals in Australia emphasize the close ideological relationship between advisors and their clients, meaning that both groups tend to favour similar policies.[103] In contrast, not having direct financial interests in a lower tax burden for businesses, one might suppose that lawyers and advisors adopt a mediating role between interests of different sub-groups when it comes to international tax policymaking, as advanced by Elschner and colleagues.[104] An often discussed cliché is that more complexity of tax rules or simply the introduction of new types of tax rules (no matter the content) and reporting requirements (such as those of BEPS Action 13) may be good for the business of tax advisory firms, since this may lead to more business in terms of planning or litigation.[105] Indeed, several interviewees expressed this idea, usually adding, though, that they would prefer better policies rather than pieces of legislation that are difficult to comply with.[106]

Nevertheless, tax advisors often express a preference for rules that follow the finely delineating approach, either because previous practice was perceived to be more uncertain or there is an expectation that it might become less certain in the future. The introduction of the Nigerian transfer pricing regulations in 2012 seemed to be in part driven by the advisory sector's preference for more certainty and in part by comparison with peer countries. One Nigerian advisor explained that even though in his opinion,

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99 Christensen, "Elite Professionals in Transnational Tax Governance"; Picciotto, "Technocracy in the Era of Twitter: Between Intergovernmentalism and Supranational Technocratic Politics in Global Tax Governance"; Seabrooke and Wigan, "Powering Ideas through Expertise: Professionals in Global Tax Battles"; Brugger and Engebretsen, "Defenders of the Status Quo: Making Sense of the International Discourse on Transfer Pricing Methodologies."

100 SN11, SN16

101 NG03

102 CO18

103 Anesa et al., "The Legitimation of Corporate Tax Minimization."

104 Elschner, Hardeck, and Max, "Lobbying on the BEPS Project? Assessing the Influence of Different Interest Groups," 2017.

105 Christensen and Seabrooke, "The Big 4 Under Pressure: Scanning Work in Transnational Fields," 20; Ormeño-Pérez and Oats, "Implementing Problematic Tax Regulation."

106 CO27

the tax administration was gaining more tools to question tax planning through the implementation of country by country reporting and transfer pricing rules, it was "a very good thing that Nigeria is able to implement the OECD rules. I mean, if you ask me, I somewhat like it because it's a development over where we were before, because when we were using general anti avoidance rule you know that's a rule of thumb."[107]

A quote from Colombia can illustrate that, as well. With respect to the introduction of the PPT into tax treaties, a Colombian tax advisor said "I think it would be positive because [...] the rule is for everyone and surely there would be similar or similar lines of interpretation in the different jurisdictions that would mean that one would not think differently from us."[108] This means that often, advisors express views that resonate with business interests, but interpret the introduction of anti-avoidance rules modeled on the OECD approach as favorable to business.

But in practice, in all countries studied, almost the whole spectrum of tax policy ideas was put forward by different experts. I spoke with several advisors who expressed sharp criticism on tax avoidance practices by MNEs or laws and regulations that are perceived to be too lenient. For example, when I prompted one Senegalese tax advisor on whether in his opinion the tax administration would abuse clauses that granted it discretion, he answered that this happened at times but that most of all, companies were engaging in abuse. He considered this as an insult towards the advisors.[109] An Indian advisor highlighted that he considered penalties for failure to comply with the submission of a master file as too low.[110]

It is therefore important to emphasize that the group of advisors is not homogeneous in any of the countries. However, they should not be seen as a force that would hinder the implementation of anti-avoidance rules proposed by the OECD.

An instance of resistance happened only with respect to tax rules that directly affect advisors: In Colombia, the project to introduce mandatory disclosure rules was halted presumably because of pressure from tax advisors: The Colombian tax law institute (ICDT) argued in a letter submitted to Congress that the norms, even though in principle compatible with the BEPS Action 12 report would be too broad since even tax benefits that are potentially and not necessarily realized would give rise to a reporting obligation.[111]

In sum, experts are influential stakeholders when it comes to international tax policy but are unlikely to have a uniform opinion which means that their involvement is unlikely to be decisive for the path taken.

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107 NG14

108 CO14, translated by the author. Original: "Yo creo que sería positivo porque […] la regla es para todos y seguramente habría unas líneas de interpretación parecidas o similares en las diferentes jurisdicciones que harían que uno no pensara diferente a nosotros."

109 SN12

110 IN14

111 Ruiz, "Carta de Comentarios Del Instituto Colombiano de Derecho Tributario (ICDT) al Proyecto de Ley Número 178 de 2016 Cámara."

5.5.7 Civil society organizations

Civil society groups have become a relevant actor at the international stage of tax policy making over the last two decades. Some of them are organizations with a long history in advocacy (such as Oxfam or ActionAid) that have included international taxation in their range of topics.[112] In addition, a number of groups such as the Tax Justice Network formed specifically to deal with issues of tax evasion and international tax avoidance.[113]

Most groups advocate for more progressive tax systems, and relate international tax issues to issues of progressivity, inequality, and unfairness to weaker societal groups in general.[114] The influence of civil society groups in the creation phase of the BEPS project has been widely acknowledged.[115] On the one hand, they worked together with journalists to create political salience and propel responses by policymakers.[116] On the other hand, they championed specific policy proposals such as public country-by-country reporting or replacing the arm's-length-principle with a formulary apportionment system at the global level. However, while they have participated in the technical work at the international level through participating in the OECD's public consultations, a study attributes them less influence than other interest groups on how legislative solutions are formulated precisely.[117] Moreover, while the influence of civil society groups in domestic policy processes concerning international tax is well documented in some Western countries,[118] this cannot be taken for granted in other countries. As illustrated well by Cascant-Sempere's case study on ActionAid's tax work in Nigeria, civil society activism on taxation is no new phenomenon in developing countries, but it has usually focused on issues with a direct impact on individuals or small businesses, such as consumption taxes or administrative issues around the taxation of small businesses (see for example the widespread protests in Colombia in 2021 against a proposed increase of VAT on basic products).[119]

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112 The 2000 Oxfam report on tax havens was one of the first important interventions. Oxfam, *Tax Havens: Releasing the Hidden Billions for Poverty Eradication*.

113 Dallyn, "An Examination of the Political Salience of Corporate Tax Avoidance: A Case Study of the Tax Justice Network," 2017; Christians, "Tax Activists and the Global Movement for Development through Transparency," 2013.

114 Christians, "Tax Activists and the Global Movement for Development through Transparency," 2013, 293.

115 Christians, "Tax Activists and the Global Movement for Development through Transparency," 2013.

116 Dallyn, "An Examination of the Political Salience of Corporate Tax Avoidance: A Case Study of the Tax Justice Network," 2017.

117 Elschner, Hardeck, and Max, "Lobbying on the BEPS Project? Assessing the Influence of Different Interest Groups," 2017.

118 Anesa et al., "The Legitimation of Corporate Tax Minimization"; Dallyn, "An Examination of the Political Salience of Corporate Tax Avoidance: A Case Study of the Tax Justice Network," 2017; Vaughan, "Talking about Tax: The Discursive Distance between 38 Degrees and GetUp."

119 Cascant-Sempere, "Grounding ActionAid's Tax Justice Campaigns in Nigeria."

However, many international NGOs such as Oxfam, ActionAid or Transparency International have been present in developing countries for a long time. Therefore, when these started to work on international tax at the international level, they developed strategies to integrate tax advocacy in developing countries as well.

To what degree and in which way they have engaged with the international tax agenda in developing countries or with the implementation of the BEPS Project in particular varies.[120] In India, one organization works on tax and international tax topics, the Center for Budget and Government Accountability (CBGA). CBGA has put forward concrete policy demands concerning the BEPS implementation process, asking the government to reduce the threshold under CbCR reporting.[121] CBGA also wrote a research paper quantifying revenue lost through tax treaties with Mauritius, which however was published after the treaty was amended.[122]

Another way of intervening in international taxation is by making publicity around cases of alleged tax avoidance by MNEs, asking the tax administration to be intransigent, such as in the Barrick Gold case in Senegal. In this case, a the Senegalese tax authority's had claimed capital gains taxes for the sale of a gold mine, whereupon the company challenged the decision under an investment treaty.[123] A representative of Forum Civil, the Senegalese branch of Transparency International, support for the tax administration's action, arguing that "It would be one too many betrayals, […] if the Government ventured to accept crumbs by sacrificing the interests of the people, owners of natural resources".[124] However, when asked about the impact of civil society organizations, a Senegalese government official said that "They don't really influence the debate in terms of the evolution of the legislation, because we are in advance. They follow these questions in an episodic way. So it is not very structured".[125] Also, there is no evidence that civil society organizations are able to mobilize the broader population on the subject of international tax avoidance. A reason could be that since due to the large informal sectors, a significant part of the population does not pay income taxes, making it more difficult to argue that MNEs avoid taxes while the normal citizen pays.

120 In addition, the (international) Tax Justice Network's Corporate Tax Haven Index could be considered as attempt to influence international tax policies at the domestic level through benchmarking. However, most developing countries are not part of the exercise (none of the countries researched). See https://cthi.taxjustice.net/en/

121 IN08

122 Jaiswal, "Foreign Direct Investment in India and Role of Tax Havens."

123 Financial Post, "Barrick Refers Senegalese Tax Dispute to Arbitration."

124 Faye, "408,6 Milliards FCFA Gagnés Par Barrick Gold: Birahime Seck Exige Du Gouvernement Que La Société Paie Les 120 Milliards Taxes Dus à La DGID."

125 SN16, translated by the author. Original quote: « Mais je pense que fondamentalement, s'ils en parlent, c'est plus pour des tribunes quoi, mais pas plus. Ils n'influent pas sur le débat réellement en termes d'évolution de la législation, parce qu'on est même en avance, ils suivent des questions-là de manière épisodique. Donc ce n'est pas très structuré.»

In Nigeria, ActionAid engaged in more technical work by commissioning a paper from a tax expert. In 2012, Nigeria signed a treaty with Mauritius, which as of 2022 awaits ratification. After the signature ActionAid commissioned a research paper from a prominent Nigerian tax lawyer (Taiwo Oyedele), which recommended the government not to ratify the treaty out of concerns for treaty shopping.[126]

In Colombia, there is a very active coalition of academics and civil society organizations that engages on tax topics. However, these groups have rather identified the issue of tax incentives as well as the transparency of the tax administration as main topics of engagement.[127]

There is more evidence of collaboration between government and local civil society groups for influencing international debates. An Indian civil society group's representative mentioned that the group's strategy was to meet with officials of the Indian government before international meetings, and ask the official to bring these policy ideas forward at the international level.[128] Vice versa, the Senegalese government has worked together with Oxfam Senegal so that, through its international network, the NGO could amplify the voice of Senegal and other developing countries at the international level. [129]

In sum, while local civil society organizations may contribute in raising the salience of international tax avoidance at the national level, their influence on concrete policy outcomes is likely to be low, a finding which echoes Cassandra Vet's assessment with respect to civil society's contribution in the adoption of transfer pricing rules in East Africa.[130]

5.5.8 The OECD

International organizations can exercise power through socialization, authority or through more direct incentives such as membership conditionality.[131] The OECD being the place where standards are set, it should have an interest in that these are implemented in practice. Of course, the OECD is both a forum where national representatives of the organization's member countries meet and an organization on its own (the Secretariat). National representatives of the member countries mainly exercise influence by

126 Oyedele, "Review of Mauritius-Nigeria Double Taxation Treaty"; ION News, "ActionAid Warns Nigeria That Mauritius Tax Treaty Could 'Hurt' Economy."
127 CO04, CO13
128 IN08
129 SN16
130 Vet, "Diffusion of OECD Transfer Pricing Regulations in Eastern Africa."
131 Goodman and Jinks, *Socializing States: Promoting Human Rights through International Law*; Davis, "More than Just a Rich Country Club: Membership Conditionality and Institutional Reform in the OECD"; Kelley, "International Actors on the Domestic Scene: Membership Conditionality and Socialization by International Institutions."

endorsing policies as international standards and by participating in peer review processes. The Secretariat however may undertake separate actions to enhance the uptake of the standard it endorses.

For example, the "multidimensional examination" on Senegal published by the OECD in 2017 criticizes the restrictions on interest in place in Senegal as stricter than "usually in place" and recommended the adoption of the approach set out in BEPS Action 4,[132] and recommended that Senegal adopts OECD transfer pricing principles for better protection of the tax base but also for more certainty and attractiveness for investors.[133] As explained in section 6.3.4, Senegal seems to have followed the recommendation.

Another avenue of influence could be through technical assistance. Funds and trainers come mainly from OECD countries, either directly through the programs of OECD or other international institutions or bilaterally from OECD countries' technical assistance agencies.[134] Hearson describes that in the past participation at capacity building meetings at the OECD has driven interest in signing tax treaties in Zambia.[135] However, the amount of direct contacts between government officials and the OECD secretariate does not appear to be decisive. In her study on the introduction of transfer pricing laws in East African countries, Vet finds that networks effects (the fact that many countries have previously introduced OECD-based transfer pricing rules) are a better explanation for their adoption than direct intervention by the OECD.[136]

In addition, the OECD as institution does not have a monopoly in technical assistance. Much assistance is done by the IMF or the TIWB program which is run by the OECD in association with UNDP, and these programs do not necessarily endorse the approaches suggested by the OECD. In Senegal, for example, interviewees from the tax administration had participated in a technical assistance workshop by the IMF that focussed on the "Sixth Method" in transfer pricing, which could be seen as a blunter approach than the CUP method (see section 6.2.1).[137]

As already mentioned in the preceding sections, many stakeholders express trust in the expertise of the OECD. But the perception that not all of its outcomes may be suited for the countries is widespread. A Colombian tax professional who was part of the expert committee which made recommendations for Colombia's 2016 tax reform said with respect to the question whether the outcome of the BEPS Project should be implemented that "the truth is that there was no debate here, but if there had been any debate, the three or four people there would have said that this is the right thing

132 OECD, *Examen Multidimensionnel Du Sénégal*, 105.
133 OECD, 106.
134 For an overview of technical assistance projects, see the International Tax Compact's database: https://www.taxcompact.net/projects
135 Hearson, *Imposing Standards*, 126–27.
136 Vet, "Diffusion of OECD Transfer Pricing Regulations in Eastern Africa."
137 SN15

to do. That is what is necessary in today's world. This is a commitment that already exists in the international community. Of course, it has to be done carefully. I myself remember that I said something along these lines, because I myself did not know and I still do not know where we are going. Because I'm not sure that everything has to be done. And I'm not sure at what speed."[138]

A Senegalese tax expert said that "Now, it's true that on a technical level, it's good to know what the OECD thinks. All these theories. It's good, but it's not for us. And so we are not going to close our eyes to apply. […] I know that the tax administration participates in the OECD, but doesn't believe in it too much. We as advisors can be inspired to tell them on the international level this is what they are doing, but they will tell you that we are not on the international level."[139]

The Colombian case is special since Colombia officially became an OECD accession candidate in 2013 and officially joined the organisation in 2020. Its status as accession candidate permitted Colombia to actively participate in the Working Group of the Committee on Fiscal Affairs that elaborated the BEPS reports. However, when a country intends to join the OECD, a roadmap with conditions for accessions is determined, in which various thematic bodies of the OECD make demands with regards to policies.[140] With regards to international taxation, the Committee on Fiscal Affairs demanded from Colombia that it complies with the key substantive conditions underlying the OECD Model Tax Convention; that it adheres to the OECD's Transfer Pricing Guidelines and that it commits "to address base erosion and profit shifting in accordance with the OECD's work in this area."[141] While these demands are relatively unspecific, in the perception of many interviewees, this played a role in the speed and extent in which Colombia tried to comply with the BEPS standards.[142] One interviewee for example attributed the fact that Colombia chose to be peer reviewed

138 CO18, translated by the author. Original quote: "La verdad es que acá no hubo un debate acá, pero, si hubiera habido algo de debate, las tres personas o cuatro acá hubiéramos dicho eso es lo que hay que hacer. Eso es lo que se impone en el mundo de hoy. Ese es un compromiso que existe ya en la comunidad internacional. Claro, hay que hacerlo con cuidado. Yo mismo recuerdo que yo dije algo en estas líneas, porque yo mismo no sabía y todavía no sé en qué vamos. Porque no estoy seguro de que haya que hacer todo. Y no estoy seguro de a qué velocidad."

139 SN07, translated by the author. Original quote: "Maintenant, c'est vrai que sur le plan technique, c'est bien de savoir ce que pense l'OCDE. Toutes ces théories-là. C'est bien, mais ce n'est pas fait pour nous. Et donc on ne va pas fermer les yeux pour appliquer. […] Je sais que l'administration fiscale participe à l'OCDE, mais n'y crois pas trop. Nous, en tant qu'expert, on peut s'inspirer pour leur dire sur le plan international voilà ce qu'ils font et ils vont te dire qu'on n'est pas sur le plan international. »

140 Davis, "More than Just a Rich Country Club: Membership Conditionality and Institutional Reform in the OECD."

141 OECD, "Roadmap for the Accession of Colombia to the OECD Convention (Adopted by Council at Its 1285th Session on 19 September 2013)," 12.

142 CO05

not only with respect to the Action 14 minimum standards, but also the Action 14 best practices, to a desire to show a high commitment to the BEPS Project.[143]

In sum, it is likely that more interactions with the OECD (both current and historical) may lead to closer alignment with the standards promulgated by the organization.

5.6 Preliminary conclusions

At this point of the discussion, it is pertinent to summarize what has been advanced so far and how it relates to the overall research question, namely how the BEPS Project impacts policy "on the ground" and how we can explain different levels of impact. In order to elucidate these questions, I took several steps back in the last chapters. I first discussed what approaches countries can generally take towards the issue of international tax avoidance from the defensive perspective, i.e., when they potentially are in the position of losing revenue. I distinguished several dimensions on which these policies can vary and identified five main types of approaches. Then I analysed what approach the norms embedded in the BEPS Project and the Project's general ideas represent among these ideal-typical approaches.

In this chapter I focussed on the different factors that are likely to condition the approach that a country takes with respect to the issue. In the latter part, I discussed what the preferences of different stakeholders are, and to what extent they are likely to actually exercise influence on policy. At the centre is the struggle between different sectors of the government as to whether easy revenue collection or attractiveness for investors should be privileged. Whereas tax administrators, and in particular those that are involved in auditing, prefer blunter approach to tax avoidance that allow them to levy revenues without fact intensive analyses, those tasked with economic policymaking in a broader sense prefer to give up on taxing corporations or at least limit the impact of anti-avoidance rules through requirements for finely delineating analyses. Diplomats, ministries of foreign affairs, or presidential offices may affect the policy choice, as well, as they may want to acquiesce to the preferences of an international organization (such as the OECD) or a partner country to establish closer relations with the organization or the country.

Among extra-governmental actors, civil society organizations are likely to support the former, while businesses and advisory are more likely to support the latter. Whether these organizations are influential in actual policy decisions is however questionable: Civil society organizations may lack technical capacity to effectively engage with concrete proposals and

143 CO39

may more play a role of diffusely raising the salience of doing "something" about the issue. For businesses, the stakes may be lower than with respect to other aspects of tax policy. For advisory, there is likely to be a great deal of heterogeneity with respect to the preferred policy direction, and there are no direct stakes in most policies either (with the exception of rules that directly target advisors). Therefore, it is hard to predict a common stance of the tax advisory sector on the BEPS Project.

Higher level tax administrators or officials at ministries of finance, who are tasked with proposing and implementing policies, have to navigate these conflicting interests, within the boundaries imposed by more structural factors: Capacity, short-term revenue needs, as well as market power constrain the number of available policy choices, albeit not in a deterministic way.

How can knowledge on general preferences for policy directions be translated into predictions about the way the BEPS Project may be taken up? Here interactions of preferences with the other variables discussed becomes important. First among them, the status-quo ante: it is likely that the position that stakeholders of the same group will take on the BEPS Project will not to be uniform across countries (or even within one country) but depend on whether previous rules are perceived to be weaker or stronger (blunter). As I will further lay out in the following chapters, one should not lightly assume that countries have always been less well protected from international tax avoidance in the past. On the contrary, rules of a "blunter" character could have been in place, which means that directly affected actors such as MNEs may prefer the BEPS Project's approach over the past approach.

In addition, the extent of a particular international tax avoidance issue will affect the pressures to adopt a deviating solution. Where the phenomenon is not important, it is likely that the country does not adopt any change or adopts the international standard per default. However, where it is important, stakeholders interested in raising more revenue may push for "blunter" solutions or those in favour of attracting investment may try to oppose the implementation of a particular item from the BEPS project. As laid out in chapter 4, among the different elements of the BEPS project, some reinforce the finely delineating logic of addressing tax avoidance whereas others are "blunter" than previous standards endorsed by the OECD. Preferences with respect to the BEPS Project may therefore vary from item to item. However, it is important to recall that next to its concrete technical content, the BEPS Project could be understood as carrying the general message that some action against international tax avoidance should be taken. In the absence of an extensive technical discussion, policymakers interested in applying blunter solutions can attempt to build upon this diffuse message to advance their preferences.

Other aspects that are likely to influence the response are market power, as well as administrative capacity. Market power will likely facilitate deviating from an international standard because policymakers have to worry less

about attractiveness for investors, even though a bigger size of a country (which generally goes with market power) also means that MNEs may apply more pressure not to deviate because of the higher importance of the country for the MNE's overall tax burden. Lower administrative capacity generally means that a country will be more likely to adopt blunter solutions, even though policymakers may also opt for policies that, theoretically, require more capacity than currently available, with the perspective of increasing it in the future.

In the next chapter, I will investigate how the policy approaches in two policy areas have been transformed by the BEPS Project, using India, Colombia, Nigeria, and Senegal as case studies. Studying four countries is not sufficient to ascertain the relevance of all the variables discussed in the preceding chapter, as there is likely not be sufficient variation on all of them in the sample, even if one takes into account the evolution over time. Nevertheless, the four countries are a diverse sample among those developing countries that are members of the Inclusive Framework: India and Nigeria are among the countries in the Global South with the highest market power due to the size of their economies. Colombia is a medium sized and Senegal a relatively small country. Politically, the countries have different profiles, as well: Colombia was in the OECD accession process and is now a member of the OECD. India is a member of the G20, and was influential in the development of the BEPS Project, often being the most vocal dissenter. Nigeria and Senegal have only started participating later, whereby Nigeria has gradually taken up a dissenting role as well. Senegal has kept a lower profile despite continuous participation in meetings.