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Tax and Development: The Link between International
Taxation, The Base Erosion Profit Shifting Project and
The 2030 Sustainable Development Agenda

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Abstract

The OECD-G20 project on Base Erosion and Profit Shifting (BEPS) is the largest reform of the international tax architecture in decades. The BEPS project aims to ensure that multinationals pay their taxes in the jurisdictions where they create value and where their economic activity takes place. When it is fully implemented, it will substantially alter the global governance architecture for taxation. This is a commendable goal, yet the BEPS project can be criticized for not sufficiently tailoring to the specific needs of developing countries. While it has made a laudable attempt to be more attentive towards developing countries with the creation of the BEPS inclusive framework, this concerns the implementation phase of BEPS. The agenda-setting and decision-making process only included the G20 and OECD countries. Against this background, it is unclear how and if the BEPS project considered the specific needs of developing countries, especially in light of the Sustainable Development Goals (SDGs). This paper will examine this issue by addressing the following questions: (i) Were the Sustainable Development Goals (SDGs) and the interests of developing countries to attract investment considered throughout the BEPS Process? (ii) What issues of international taxation, beyond BEPS, should be addressed to fulfill developing countries' domestic resource mobilization needs to achieve the 2030 Agenda for Sustainable Development. We conclude with a set of recommendations to the international global tax governance architecture to be more inclusive and responsive to development countries' needs.

Dissemination

The content of this working paper will be discussed in a workshop at the United Nations University Institute on Comparative Regional Integration Studies (UNU-CRIS) in Bruges (Belgium) where experts in tax, development, governance and international political economy will be invited. In addition, representatives of the European Commission (TAXUD and DEVCO including representatives of Policy Coherence for Development and Domestic Resource Mobilization), the OECD, the UN and any other international organizations (IMF and World Bank) and regional organizations (e.g. ATAF and CIAT) will be invited.

1 Introduction

In 2013, news media around the world highlighted an increasingly urgent phenomenon in many states: a steady decrease in contributions to public finances by many high profile multinational companies and high net worth individuals. Concerning multinationals, this decrease was associated with sophisticated tax planning techniques to shift otherwise taxable income and transactions to low-tax countries. The OECD framed this problem under the umbrella term: Base Erosion and Profit Shifting (BEPS).

To this end, the OECD, with a political mandate by the G20, introduced the BEPS Project in 2015.¹ This project aims to provide countries (developed and developing) with the necessary tools to tackle tax base erosion and profit shifting by introducing 15 Actions to deal with, inter alia, transfer pricing issues, harmful tax regimes and treaty abuse.

The content of the BEPS Actions were decided and approved by the BEPS 44 group. A group of countries that included OECD, OECD accession countries and G20 members on equal footing. The BEPS Project however is also applicable to developing countries and scholars have raised concerns regarding the legitimacy of the project with regards to developing countries.² The OECD addressed these concerns by introducing two initiatives.

The first initiative was the creation of the BEPS Inclusive Framework in 2016 in Kyoto, Japan. At this meeting, more than 70 countries (including the BEPS 44 group and developing countries) committed to participate as BEPS Associates in the BEPS Inclusive

¹ The BEPS and the Action Plan have been endorsed in the G20 meetings at Mexico (June 2012) and St. Petersburg (September 2013) respectively. G20 Leaders Declaration in St. Petersburg of 6 September 2013. See in particular, para. 50 of the Declaration, where it has been stated that: "In a context of severe fiscal consolidation and social hardship, in many countries ensuring that all taxpayers pay their fair share of taxes is more than ever a priority. Tax avoidance, harmful practices and aggressive tax planning have to be tackled...". See <https://www.oecd.org/g20/summits/saint-petersburg/>

² On the legitimacy and the participation of developing countries, see I.J. Mosquera Valderrama, *Legitimacy and the Making of International Tax Law: The Challenges of Multilateralism*, 7 World Tax J. 3 (2015), Journals IBFD

Framework³ and to implement the 4 BEPS Minimum Standards.⁴ The number of countries has increased since then and as of June 2018 116 countries have committed to implement these standards.⁵ In general, it can be argued that these 4 BEPS Minimum Standards are soft law that is not legally binding. However, there is a genuine expectation that they will be implemented by the BEPS inclusive framework participants.⁶ These countries have a peer review schedule for the implementation of the four minimum standards and a negative review has consequences for a country failing to implement these, mainly due to the peer pressure.⁷

The second initiative was the negotiation of a Multilateral Instrument by developed and developing countries. In June 2017; OECD, G20 and developing countries signed the “Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting” (the MLI).⁸ Like BEPS, the MLI has a global reach since (as of

³ For the OECD, “joining the Inclusive Framework offers the opportunity to interested countries and jurisdictions to participate in the BEPS related work on an equal footing with other OECD and G20 countries. Being part of the Inclusive Framework on BEPS will facilitate the implementation, as well as the peer review processes of the Members, by providing them further guidance and support, including guidance covered by the Platform for Collaboration on Tax established among the IMF, the OECD, the UN and the World Bank Group”. OECD, Background brief, Inclusive Framework on BEPS, 2017 at 8. Furthermore, as rightly argued by Christians, “becoming a BEPS Associate entails adopting the initiative’s minimum standards and joining a new coordination architecture—the “Inclusive Framework”—organized for the purpose of measuring and monitoring BEPS compliance across countries” A. Christians, BEPS and the New International Tax Order (2017)). Brigham Young University Law Review, at 1606.

⁴ Minimally, the standards that should be implemented are countering of harmful tax practices (Action 5), preventing of treaty abuse (Action 6), re-examining transfer pricing documentation including country by country reporting (Action 13), and enhancing resolution of disputes (Action 14).

⁵ <https://www.oecd.org/ctp/beps/inclusive-framework-on-beps-composition.pdf>

⁶ See Christians, A. (2007) Hard Law and Soft Law in International Taxation, *Wisconsin International Law Journal*.25 at 325.

⁷ In the past with the standard of transparency (exchange of information) countries participating in the Global Transparency Forum were required to implement measures to ensure efficient and timely exchange of information. The peer reviews of such implementation have had an impact in countries since countries were required to change their laws to ensure the timely exchange of information and even some countries such as Switzerland and Uruguay have removed their bank secrecy to ensure the efficient exchange of information.

⁸ The MLI addresses the Actions that deal with hybrid mismatches, treaty abuse, permanent establishments (PEs) and alternative dispute resolution, i.e. Actions 2, 6, 7, and 14, respectively. The purpose of the MLI is to quickly implement the measures in the OECD/G20 BEPS initiative that relate to tax treaties.

June 2018) more than 78 countries became signatories.⁹ The MLI has entered into force since June 2018, as six countries have already ratified the MLI.¹⁰ However, the different reservations made by some countries will also influence the way that the MLI will be implemented.¹¹ Some of these differences will be addressed in section 2.4. below.

Research questions

The BEPS Project aims to ensure that multinationals pay taxes in the jurisdiction where their economic activity takes place. Even though this objective is legitimate, legal research on the implementation of BEPS shows that countries are taking different approaches to the implementation of BEPS Actions. The result is undesired tax competition since the BEPS Project creates extra requirements for taxpayers who are investing in that country. Against this background, this paper will address the following questions: (i) Were the Sustainable Development Goals (SDGs) and the interests of developing countries to attract investment considered throughout the BEPS Process? (ii) What other issues of international taxation should be addressed to fulfill developing countries' domestic resource mobilization needs to achieve the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda.

2 The Base Erosion & Profit Shifting project and Sustainable Development

The BEPS Inclusive Framework is a networking body with global reach, as more than half of the 193 countries worldwide have committed themselves to implementing the standards. Despite of this, the Framework has not made changes to the agenda and content of the

Text of the MLI available at <http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf>

⁹ The United States however did not sign the MLI.

¹⁰ Art 34 Entry into force MLI and para. 320 Explanatory statement available at <http://www.oecd.org/tax/treaties/explanatory-statement-multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf>

¹¹ The MLI is outside the scope of this contribution. See for a discussion on MLI: García Antón, R. (2016) *The 21st Century Multilateralism in International Taxation: The Emperor's New Clothes?* 8 World Tax Journal, Journals IBFD; Bravo, N. (2016) *The Multilateral Tax Instrument and Its Relationship with Tax Treaties*. Vol. 8. No. 3. World Tax Journal. Journals IBFD; Grinberg, I. (2016) *The New International Tax Diplomacy*. 104 Georgetown Law Journal, pp. 1137-1196.

various actions as decided by the BEPS 44 group which consists of OECD, G20 and OECD Accession countries.¹²

Developing countries were invited to participate as BEPS Associates on equal footing, but they do not have any decision-making role, as the equal footing applies to the implementation of the BEPS four minimum standards based on the various Actions as decided by the BEPS 44 group.

During the consultations of the BEPS Inclusive Framework¹³, developing countries pointed at some of their specific tax-related issues such as allocation of taxing rights between source and residence states, taxation of informal economy and the need of countries to

¹² As stated elsewhere by one of the authors of this paper, the agenda and the content of the Actions was decided by the BEPS 44 group. Therefore, the countries participating in the BEPS Inclusive Framework do not have any decision-making in the BEPS Actions. I.J. Mosquera Valderrama, *Legitimacy and the Making of International Tax Law: The Challenges of Multilateralism*, 7 World Tax J. 3 (2015), Journals IBFD at 372-373.

¹³ The different concerns of countries during the consultations have been addressed by Mosquera in another article. During the regional consultations carried out in Africa, Central America and Latin America, and in Central and Eastern Europe by the OECD, developing countries expressed their concerns regarding the shortcomings of the BEPS four minimum standards.

For instance, in a "September 2016 meeting, countries from the Caribbean and the Latin American expressed their concerns of the consequences derived from not being able to partially or fully implement the BEPS four minimum standards, given their priorities and the features of the tax system of specific countries. These countries also expressed concerns regarding the high level of complexity and resources required to implement the measures of the OECD/G20 BEPS initiative, especially for countries with tax administrations that have a low capacity.

In November 2016, at a regional meeting regarding the BEPS Inclusive Framework with regard to African French speaking countries, the participating countries expressed the need for capacity building and training. These countries also highlighted the importance of establishing the benefits and costs that the implementation of the various Actions of the OECD/G20 BEPS initiative would have on their domestic revenue and the need for these countries to maintain some of their preferential tax regimes to attract investment. In addition, these countries asked for more flexibility in the time schedule and on the methodology to be used to implement the BEPS four minimum standards.

At a November-December 2016 meeting, some countries in Asia-Pacific noted the limited resources, for example, regarding personnel and financial support, that these countries have to implement the measures in the OECD/G20 BEPS initiative and welcomed a regional based approach to encourage further collaboration in the region. In April 2017, Central and Eastern European countries highlighted the limited resources and the need to address other non-base erosion and profit shifting issues, such as the taxation of the informal, i.e. the shadow, economy." See I.J. Mosquera Valderrama (2018), *Output Legitimacy Deficits and the Inclusive Framework of the OECD/G20 Base Erosion and Profit Shifting Initiative*, Bulletin for International Taxation 72(3).

attract investment by way of tax incentives. However, these problems have not been addressed by the BEPS Project.¹⁴ As rightly argued by the UN Chief of International Tax Cooperation, Michael Lennard, the BEPS Project was never designed to deal with the issues faced by developing countries.¹⁵ This is also true for the BEPS Inclusive Framework, which is by nature based within the BEPS Project.

The question to be addressed in this section is whether and how the Sustainable Development Goals (SDGs) and the interests of developing countries have been considered throughout the BEPS Process. In order to answer this question, the following sections will first address the technical assistance provided to developing countries and the role of the UN as representative of developing countries. Thereafter some of the problems regarding tax competition and BEPS will be addressed, and finally the relationship between taxation (BEPS) and development (SDGs) will be shortly analyzed.

2.1 Technical assistance to developing countries

To assist developing countries in the implementation of BEPS - among other objectives¹⁶ - , the IMF, WB, UNDP and the OECD launched the Platform for Collaboration on Tax in April 2016. One of the Platform's main tasks is to develop toolkits that assist developing countries to efficiently implement the BEPS Action items. These toolkits¹⁷ containing

¹⁴ See I.J. Mosquera Valderrama (2018), Output Legitimacy Deficits and the Inclusive Framework of the OECD/G20 Base Erosion and Profit Shifting Initiative, *Bulletin for International Taxation* 72(3).

¹⁵M. Lennard, *Base Erosion and Profit Shifting and Developing Country Tax Administrations*, 44 *Intertax* 10, p. 745 (2016).

¹⁶ The website of the Platform states that "The Platform for Collaboration on Tax is a joint effort launched in April 2016 by the International Monetary Fund (IMF), the Organisation for Economic Co-operation and Development (OECD), the United Nations (UN) and the World Bank Group (WBG). The Platform is designed to intensify the co-operation between these International Organisations (IOs) on tax issues. It formalises regular discussions between the four IOs on the design and implementation of standards for international tax matters, strengthens their ability to provide capacity-building support to developing countries, and helps them deliver jointly developed guidance. It also increases their ability to share information on operational and knowledge activities around the world" <http://www.oecd.org/ctp/platform-for-collaboration-on-tax.htm>

¹⁷ Up till the time of writing, three toolkits have been released being: (i) Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment; (ii) Addressing Difficulties in Accessing Comparables Data for Transfer Pricing Analyses; (iii) Taxation of Offshore Indirect Transfers. The other toolkits that will be released are (iv) Transfer Pricing Documentation

reports, guidance, model legislation, train-the-trainers materials and other tools are designed to support capacity building.

In addition, the OECD has developed technical assistance projects such as the Tax Inspector without Borders (TIWB) program in cooperation with the United Nations Development Program¹⁸ and the Twinning Projects to help new members of the BEPS inclusive framework to implement the BEPS Actions with the support of experienced tax administration officials from developed countries.¹⁹ The former project focuses on auditing and transfer pricing and the latter on the BEPS Minimum Standards. The TIWB addresses several countries in the African and Latin American region. The Twinning Project has a limited scope since only few countries participate.

Another initiative that contains a technical assistance component is the Tax Administration Diagnostic Assessment Tool (TADAT) supported by the European Commission, several developed countries (Japan, Germany, the Netherlands, Norway, the United Kingdom, Switzerland) and international organizations (i.e. the World Bank and the IMF). This tool aims to examine the tax administration function, processes and institutions.²⁰

This description shows that in order to help developing countries implement BEPS and increase domestic resource mobilization, international organizations (the OECD, IMF, WB and UN) and developed countries have developed technical assistance initiatives. However, this technical assistance has mainly focused on transfer pricing, tax treaty abuse and

requirements; (v) Tax Treaty Negotiation; (iv) Base Eroding Payments; (v) Supply Chain Restructuring; and (vi) Assessment of BEPS risks.

¹⁸ <http://www.tiwb.org/>

¹⁹ According to the OECD Through this twinning programme, “new Members of the Inclusive Framework can be supported and mentored by experienced Members of the BEPS Project”. See Background brief Inclusive Framework on BEPS January 2017. <https://www.oecd.org/ctp/background-brief-inclusive-framework-for-beps-implementation.pdf> at 15.

²⁰ According to the overview provided at the website of the TADAT, “the Tax administration Diagnostic Assessment Tool (TADAT) is designed to provide an objective assessment of the health of key components of a country’s system of tax administration. This framework is focused on the nine key performance outcome areas (POAs) that cover most tax administration functions, processes and institutions”. <http://www.tadat.org/overview/overview.html>

capacity building. Therefore, in Section 2.3 and 2.4, this paper will provide some recommendations to enhance technical assistance but also to strengthen the relationship between taxation (i.e. BEPS) and SDGs.

2.2 The diminishing role of the UN as representative of developing countries

It is important to mention the diminishing role of the UN (which is the representative of 193 countries) and the leading role of the OECD in the BEPS Project (which is the representative of 37 countries) as the principal tax organization for developing countries. Past projects initiated by the UN on profit shifting and tax avoidance have been unsuccessful. If one example may illustrate this, it is the UN questionnaire dealing with BEPS and developing countries published in October 2013. Despite several invitations to developing countries, this questionnaire was filled by only a few developing countries (Ghana, Tonga, Zambia, Thailand, Malaysia and Singapore).²¹ This indicates that developing countries themselves became skeptical about what the UN can signify on BEPS issues. On the other hand, the OECD has successfully introduced the BEPS Project, BEPS Action Plan and its Inclusive Framework with 116 countries participating in this Framework (as of June 2018).

The diminishing role of the UN was confirmed at the 2015 Financing for Development Conference in Addis Ababa, due to failure to upgrade the UN Tax Committee to an intergovernmental body. At said conference, developing countries called - as a precondition for more cooperation in international tax matters - for "or a precondition for more cooperation in international tax mattersor Development Conference in Addis Ababa,

²¹ In addition, the following countries members of the BEPS 44 also submitted a response: Brazil, Chile, China, India, Malaysia, Mexico and Singapore. In addition, civil society also submitted a response (i.e. Christian Aid and Action Aid; Economic Justice Network and Oxfam South Africa). <http://www.un.org/esa/ffd/tax/Beps/index.htm>

In addition, a workshop on "Tax Base Protection for Developing Countries was organized by the Financing for Development Office (FfDO) of UN-DESA organized, in cooperation with the OECD Center for Tax Policy and Administration (CTPA). Some representatives of developing countries participated in this workshop (Costa Rica, Zambia, Zimbabwe, Uruguay, Thailand, Nigeria, Morocco, Ecuador, Serbia, and Senegal). <http://www.un.org/esa/ffd/tax/2014TBP/Participants.pdf>

due to fail²² In order to achieve this, the civil society, developing countries and some developed countries (e.g. the Netherlands) proposed to upgrade the UN Committee of Experts on International Cooperation in Tax Matters to an intergovernmental body or at least to strengthen the Committee vis-à-vis the role of the OECD on tax cooperation. However, this proposal was rejected by most developed countries, who defend the leading role of the OECD in all tax issues.²³

2.3 The BEPS Inclusive Framework and tax competition

Developing countries have expressed concerns regarding differences in implementation of BEPS, which can lead to tax competition. One example is that developing countries have committed to implement BEPS Minimum Standards, but developed countries such as the United States, EU countries and Australia among others are also introducing their own measures - favorable or not - to multinationals (respectively The Tax Cuts and Jobs Act, Directives to prevent tax avoidance (ATAD 1 and 2) and diverted profit tax).

These measures may fuel tax competition where developing countries could be in a disadvantage, for instance if the multinationals decide to relocate investments to the United States in order to take advantage of the US tax reform. Another example is the implementation of the Directives to prevent tax avoidance (ATAD 1 and 2) which may also generate tax competition if an EU country decides to introduce the minimum requirements of the Directives and another EU country decides to go further than the Directives. This is the case in the Netherlands which has decided to introduce stricter rules than ATAD 1.²⁴

²² UN News Centre, 14 July 2015: UN Negotiations resume on financing framework to advance global development, available at <http://www.un.org/apps/news/story.asp?NewsID=51411#.Vgg2hfQUtFc>

²³ See paras. 28 and 29 of the Resolution 69/313 adopted by the General Assembly on 27 July 2015, available at http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/69/313

²⁴ In general, the Netherlands follows the provisions of ATAD 1, but in respect of the general interest deduction rule (Action 4)²⁴, the Dutch government has decided (i) not to include a group exemption, (ii) lower the threshold from EUR 3 million to EUR 1 million up to which net interest may always be deducted, and (iii) not to apply the grandfathering rules to existing loans. These changes will result in a stricter rule than the minimum standard of ATAD 1. See I.J. Mosquera Valderrama. The Netherlands in Tax Design and Administration in a Post - BEPS Era: A Study of Key Reform Measures in 16 Countries. Forthcoming 2018.

Despite these concerns of developing countries that investment can be reduced due to BEPS-related competition, the OECD and G20 have not provided solutions to address this problem. One example is BEPS Action 6 (minimum standard) that aims to prevent treaty abuse. This Action 6 contains a principal purpose test (PPT) to be implemented in tax treaties as a minimum standard. This test creates an extra requirement for taxpayers who are investing in that country. In a recent (May 2018) policy brief to the G20, it was argued that “discretionary application of the principal purpose test by tax administrations can introduce additional distortions in the global competition for investments. In this sense, balancing competition and BEPS implementation is needed to achieve a global model of tax governance in which developed and developing countries compete on a level playing field”.²⁵

The differences in implementation have been highlighted elsewhere in an article published by one of the authors of this paper. In said article, it was argued that analysis of the implementation of BEPS demonstrated that a one-size-fits all approach does not work. Consequently, the OECD and the BEPS Inclusive Framework should consider the differences between countries, which may result in a different implementation of the BEPS four minimum standards. This article also calls “for tailored solutions for developing countries, which should include a regional approach due to the different needs of African English-speaking countries, African French-speaking Countries, Latin American and Caribbean countries, and Central and Eastern European countries. The lack of regional tax coordination has been addressed by Asian countries, which are very concerned about the differences among the countries in the region and their needs. This also applies to countries in Africa, and in Central America and Latin America. As a result, the OECD/G20 BEPS initiative should be tailored to the needs of developing countries and more specific to the countries in these regions”.²⁶

²⁵ See G20 Policy Brief on Tax Competition prepared under the G20 Argentinian Presidency. . Task Force Trade, Investment and Tax Cooperation. May 2018. <https://t20argentina.org/publicacion/tax-competition/>

²⁶ Mosquera Valderrama, I.J. (20018) Output Legitimacy Deficits and the Inclusive Framework of the OECD/G20 Base Erosion and Profit Shifting Initiative. *IBFD Bulletin*. Issue 3, Volume 72.

In the aforementioned policy brief to the G20, the authors asked “the G20 leaders to promote regional cooperation in the implementation of international standards, including BEPS. The G20 should facilitate the creation of regional (or, for that matter, sub-regional) peer review and consultancy mechanisms that would allow countries to set and revise their own goals and targets for implementation, getting regular feedback from neighboring countries”.²⁷

Therefore, this paper recommends that a dialogue to develop a model of governance for the implementation of BEPS in developing countries in the African, Asian and Latin American Region should be encouraged by developed countries, the EU and international organizations (G20, OECD, UN, IMF and WB). This dialogue has already been initiated through the recent (May 2018) created Network of Tax Organizations (NTO).²⁸ However, there are still some outstanding questions that should be further investigated: Will this network contribute to international tax law making, and does this network help to develop new models of global tax governance for developing countries?²⁹

²⁷ See G20 Policy Brief on Tax Competition prepared under the G20 Argentinian Presidency. . Task Force Trade, Investment and Tax Cooperation. May 2018. <https://t20argentina.org/publicacion/tax-competition/>

²⁸ This network consists of African Tax Administration Forum, the Association of Tax Authorities of Islamic Countries (ATAIC), the Commonwealth Association of Tax Administrators (CATA), the Inter-American Centre of Tax Administrations (CIAT), the Centre for Exchange and Studies of Tax Administration Leaders (CREDAF), the Intra-European Organisation of Tax Administrations (IOTA) and the West African Tax Administration Forum (WATAF).

²⁹ This network is “a global network of regional and international organisations of revenue administrations which aims to provide a forum for cooperation and coordination between its members and to strengthen institutional capacities, efficiency and effectiveness in tax administrations worldwide. Through peer learning and the sharing of experiences as well as through the provision of services, products and information, the NTO ambitions to significantly enhance its members’ efficiency with their constituencies. It also aims to ensure adequate representation of members’ interests in the various international fora and discussions”. <https://medium.com/@romeosinclairnkoulouella/international-organisations-take-a-major-step-to-boost-global-cooperation-on-tax-issues-13da58610605>

2.4 The relationship between taxation (BEPS) and development (SDGs)

Due to the global reach of BEPS, it seems relevant that the BEPS also plays a part in the UN 2030 Agenda for Sustainable Development and the 17 UN SDGs. International organizations have referred primarily to domestic resource mobilization (SDG 17.1); however, some of the other SDGs to which taxation can contribute are for instance eradicate extreme poverty (1.1), promoting sustainable economic growth (8.1), reducing income inequalities (10.1), curbing illicit financial flows (16.4), and enhancing SDG capacity in developing countries (17.9).³⁰ Some of these SDGs (16.4 and 17.1) will be addressed in section 3 below.

Even though there are several articles and studies regarding the implementation of BEPS in developing countries³¹ and some economic reports in the spillover effects of international corporate taxation and tax avoidance in developing countries³², literature is scarce on the relationship between taxation and development following the implementation of BEPS. The only report that addressed BEPS and the relationship between tax and development is

³⁰ <https://sustainabledevelopment.un.org/>

³¹ For instance, IBFD: BEPS in Latin America (Part I): A review of the implementation of minimum standards and the peer review process; Asian Voices: BEPS and Beyond (S. Sim & M-J. Soo eds., IBFD 2017), Online Books IBFD. In addition, several conferences have been organized addressing the implementation of BEPS, for instance the High-level Conference Implementing Key BEPS Actions: Where do we stand?, 29 June to 1 July 2017, Rust, Vienna, Scientific Conference organized by the Institute for Austrian and International Tax Law, Vienna, Austria. The conference discussed reports of several EU Member States, Australia, Canada, China, Indonesia, Japan, Pakistan, Singapore, Turkey and the United States, some Latin American countries, i.e. Argentina, Brazil, Costa Rica, Colombia and Mexico, and some African countries, i.e. Kenya and South Africa. A book of this topic is forthcoming in 2018. See for a conference report . N. Bravo et al. Intertax, Vol. 45, Issue 2, pp. 852-863.

³² See IMF Policy Paper Spillovers in International Corporate Taxation May 9, 2014. This study “explores the nature and policy implications of cross-border effects from national corporate tax policies, highlighting how these effects can be significant for developing countries, with resulting tax revenue losses sometimes quite large relative to total government revenues”. This study was followed by an IMF Working Paper . Crivelli E. et al. Base Erosion, Profit Shifting and Developing countries. IMF Working Paper WP/15/118 <http://www.imf.org/external/pubs/ft/wp/2015/wp15118.pdf> and the counter-analysis made by A. Cobham and P. Janský. Global Distribution of Revenue loss from tax avoidance. WIDER Working Paper 2017/55. <https://www.wider.unu.edu/sites/default/files/wp2017-55.pdf>

dated 2015 at the time that the BEPS Project was just being introduced.³³ Since then, two important developments have taken place, the introduction of the BEPS Inclusive Framework in 2016 and the BEPS Multilateral Instrument in 2017.

Regarding the SDGs, some reports and short notes have been drafted on the topic of taxation and SDGs³⁴. However, to the authors' knowledge few reports have addressed the issue of BEPS and the UN 2030 Agenda for Sustainable Development and the 17 UN SDGs.³⁵ Therefore, there is a challenge for international organizations, regional organizations and countries to draw more attention to the way that the implementation of BEPS can be useful to achieve the SDGs.

Further research should be carried out (i) on how the implementation of BEPS would contribute to achieve the SDGs and (ii) on if the administrative costs countries incur while implementing BEPS (more personnel and more budget) are efficient in helping developing countries achieving the SDGs. The literature is scarce in this topic and therefore strategies should be drafted by the EU, international organizations, by developing countries themselves -with help of regional organizations (ATAF, CIAT)- to find out how the BEPS contributes to SDGs and what needs to be done by countries and organizations to ensure that there is a dialogue between tax (i.e. BEPS) and development beyond domestic resource mobilization.

³³ United Nations Conference on Trade and Development (UNCTAD) (2015): World Investment Report, Chapter 5: International Tax and Investment Policy Coherence. Geneva: UNCTAD http://unctad.org/en/PublicationsLibrary/wir2015_en.pdf

³⁴ For instance, the briefing note (May 2017) from the think tank Overseas Development Institute on Taxation and the Sustainable Development Goals Do good things come to those who tax more? <https://www.odi.org/publications/10813-taxation-and-sustainable-development-goals-do-good-things-come-those-who-tax-more> See also two recent papers/discussions (May 2018) O. Lundstøl Tax and Development: Towards a Strategic Aid Approach International Centre for Tax and Development (May 2018). <http://www.ictd.ac/publication/tax-in-development-towards-a-strategic-aid-approach/>

and A Hilling and Daniel T. Ostas, 'Corporate Income Taxation, CSR and the UN's 2030 Agenda for Sustainable Development', Kluwer International Tax Blog, May 14 2018, <http://kluwertaxblog.com/2018/05/14/corporate-income-taxation-csr-uns-2030-agenda-sustainable-development/>

³⁵ See the International Chamber of Commerce Position Paper Tax and the United Nations Sustainable Development Goals <https://iccwbo.org/publication/tax-united-nations-sustainable-development-goals/>

In light of the above, this section concludes that the BEPS Project does not consider the interest of developing countries including the problems arising with tax competition and the achievement of SDGs (except domestic resource mobilization). Several shortcomings in the implementation of BEPS and in the relationship between BEPS and SDGS have been highlighted. Therefore, more attention should be given to the concerns of developing countries and the design of tailored partnerships to cooperate in the implementation of BEPS and the achievement of the SDGs. These questions should not only be addressed by countries and regional and international organizations, but also in further research by scholars with tax, development, governance and international political economy expertise.

3 International taxation & Sustainable Development Goals beyond BEPS

Curbing tax avoidance, reducing profit shifting and building tax administration capacity to harness international taxation in developing countries are important objectives for reaching the SDGs, in particular targets 17.1: strengthen domestic resource mobilization and 16.4: curbing illicit financial flows. It is not clear however whether implementing the BEPS package is the right recipe for all developing countries. Some challenges can be noted.

Developing countries face an economic dilemma when it comes to corporate taxation.³⁶ On one hand, lower-income countries have a need for increased public revenues, for which the corporate income tax is one of the easier to admit taxes. On the other hand, there is a tangible pressure to limit corporate taxes - both through rate reduction and tax incentives - in order to attract foreign investments.

Especially in lower-income countries, this dilemma is aggravated by a tax structure that relies heavily on corporate income taxes as opposed to high income countries where the

³⁶ Durst, M. (2018, March 19). Poverty, Tax Competition, and Base Erosion. *Tax Notes International*, 89 (12). 1189-1201.

personal income tax is a more important source of revenue.³⁷ Overt reliance on big multinational companies for corporate tax revenue is another important issue. Forstater³⁸ gives the example of Rwanda where “micro, small and medium-sized enterprises make up 98 percent of taxpayers but only provide 3 percent of the revenue. 70 percent of taxation comes from multinational enterprises and 0.3 percent of taxpayers pay 48 percent of the tax authority’s revenue”. This mixture makes developing countries vulnerable to tax avoidance and profit shifting, but also to demands of multinational companies for favorable tax arrangements. The narrow tax bases means small changes in investment can have significant effects on country tax revenues.

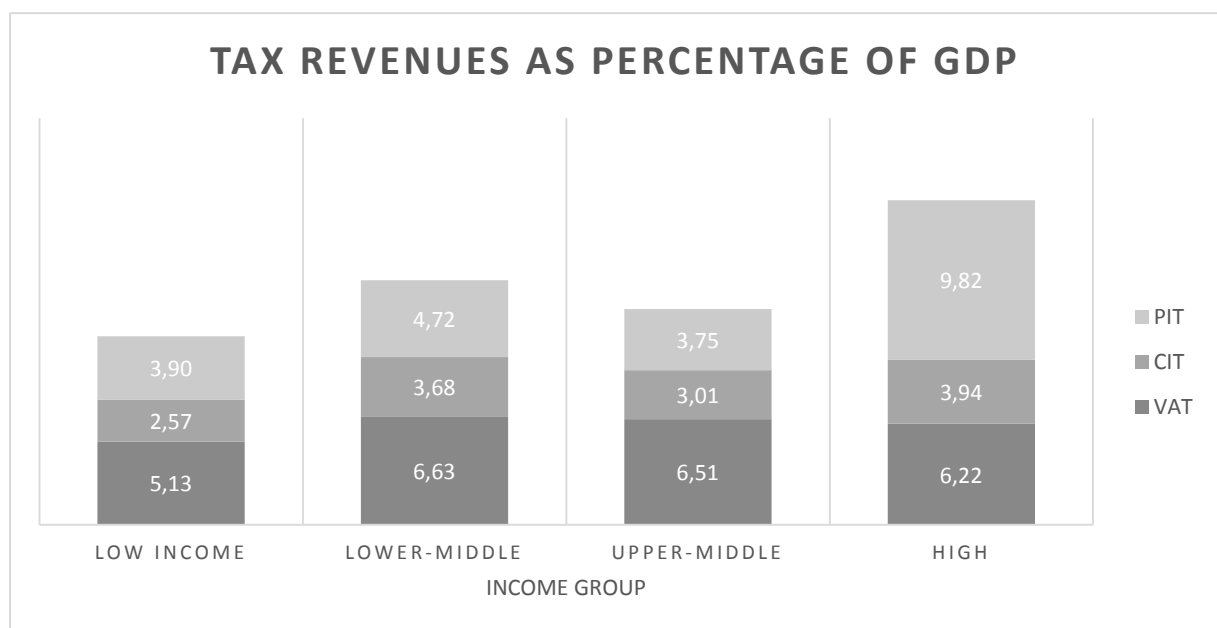


Figure 1 - USAID-Collecting taxes database 2012-2013

Reducing corporate profit shifting, through implementing BEPS provisions, should thus help close the public investment gap in developing countries³⁹ that is needed to achieve

³⁷ The corporate tax in African countries for example counts for 13 to 18% of the total tax revenue as opposed to the OECD average of 8%. <http://www.oecd.org/tax/rising-tax-revenues-are-key-to-economic-development-in-african-countries.htm>

³⁸ Forstater, M. (2015) Can Stopping ‘Tax Dodging’ by Multinational Enterprises Close the Gap in Development Finance? *CGD Policy Paper 069*.

³⁹ The investment gap is the difference between current investment and the level of investment needed to achieve the SDG’s. Believed by UNCTAD to be \$2.5 Trillion. The share of domestic government resources in this gap is believed to be between 50 and 80 percent by the World Bank. See also: <http://www.undp.org/content/undp/en/home/blog/2017/7/13/What-kind-of-blender-do-we-need-to-finance-the-SDGs-.html>.

the SDGs. Precise estimates of revenue losses in developing countries through tax avoidance are unfortunately hard to come by. Cobham and Jansky⁴⁰ show that low and lower-middle income countries suffer much more revenue losses in relation to their GDP than OECD and high-income countries. Schimanski⁴¹ on the other hand finds no evidence that profit shifting is more intense in developing countries, although the author herself points out that this is more probably caused by the complexity of profit-shifting schemes and a lack of data availability than the non-existence of profit shifting.

The BEPS outcomes, however, are etched on the OECD's international model tax treaties, and as such reflect developed countries' preferred international tax norms. Implementing BEPS, even with outside assistance for capacity building, places a lot of the burden of responsibility on the tax administrations of the south. The agenda is largely on helping developing countries achieve the standards set by OECD countries. This dissolves developed countries of the impact their preferred international norms may have on developing countries and makes their only responsibility to assist developing countries in building tax administration capacity to better implement those rules.

While the issue of tax avoidance is as pertinent for developing as for OECD countries, the solutions might not be the same, and a common-but-differentiated approach where developed countries acknowledge the damaging role of their preferred tax norms might be appropriate. A few challenges can be discussed in depth here to highlight where the link between the SDGs and international taxation cannot be solved through implementing BEPS alone.

3.1 Double Tax Treaties

Participating in BEPS goes hand in hand with stepping in to the network of bilateral tax treaties. These treaties regulate the division of tax base between source and resident

⁴⁰ Cobham, A. & Jansky, P. (2017). *Global distribution of revenue loss from tax avoidance*. UNU-WIDER working paper 2017/55.

⁴¹ Shimanski, C. (2018). *Do multinational companies shift profits out of developing countries? How data availability may hide the evidence*. UNU-WIDER working paper 2018/52.

countries⁴² to avoid double taxation and provide long-term legal certainty to cross-border investments. Developing countries often sign such treaties with developed countries hoping to attract investments. Figure 2⁴³ shows that developing countries a) often have fewer tax treaties and b) sign more treaties with developed countries than with each other.

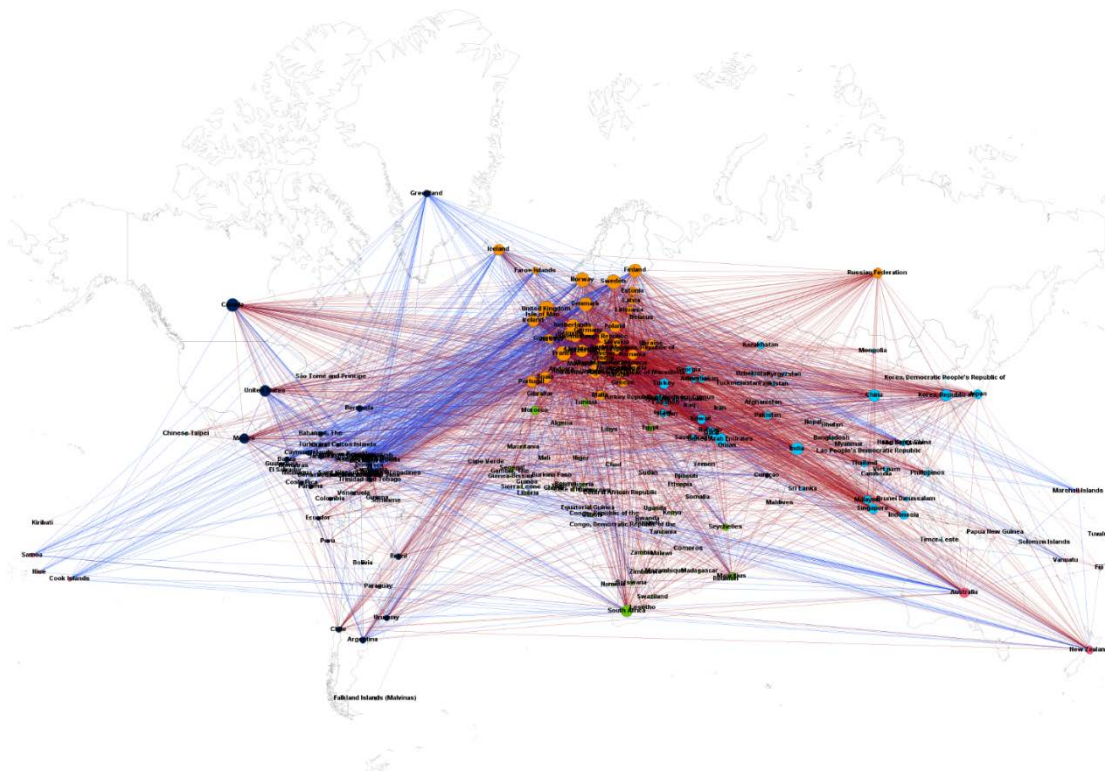


Figure 2 - Network of Tax Treaties (Red lines represent bilateral double tax treaties, blue lines represent tax information exchange agreements. Node size by number of tax treaties).

The perceived wisdom is that eradicating double tax and providing investor certainty will lead to more investment and higher revenues. This is being questioned however. The IMF is openly recommending considerable caution for developing countries when entering tax

⁴² A resident country refers to the jurisdiction where a taxpayer has his/her/its residence. A such there is a personal bond that gives the country the authority to tax. Source country refers to the place where the taxpayer earns money through investment, sales or labor. Taxation rights occur from an economic bond.

⁴³ Data collected by the author from <http://www.eoi-tax.org/>

treaties.⁴⁴ Research by Hearson⁴⁵ shows that power asymmetries can lead to more unequal distributions of taxing rights for developing countries, draining revenue as some developing countries 'negotiate away their corporate tax base'. It's not certain that a developing country can immediately benefit from stepping into the bilateral treaty network. One study⁴⁶ for example found that only in middle income countries an increase in FDI could be observed from signing bilateral tax treaties with the US and not in low-income countries.

International organizations have developed resources to help developing countries design a non-damaging tax treaty policy. Key among those is the United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries. It is important that high-income countries are also aware of the impact of their treaties.⁴⁷ A recent positive development in the UK was the mediatized parliamentary debate on a new tax treaty with Lesotho⁴⁸, showing that political salience is growing on an issue that until recently would have passed quietly.

3.2 Source/residence bias in the OECD model rules

The BEPS project is about reducing double non-taxation, but another issue is the inherent bias towards residence taxation, usually high-income countries, in the model tax treaties that the OECD provide. This model treaty has a legacy that can be traced back to the genesis of the international tax regime in the 1930s in the confines of the League of Nations.⁴⁹ This regime was designed in a time of colonialism and did not have developing

⁴⁴ IMF (2014) Spillovers in International Taxation. *IMF Policy Papers*.

⁴⁵ Hearson, M. (2018). When do Developing Countries Negotiate Away Their Corporate Tax Base? *Journal of international development*, 30 (2). 232-255.

⁴⁶ Neumayer, E. (2007) Do double taxation treaties increase foreign direct investment to developing countries?, *The Journal of Development Studies*, 43:8, 1501-1519

⁴⁷ For examples of NGO campaigning on this particular issue: see 11.11.11 in Belgium: https://www.11.be/en/component/docman/doc_download/1800-11-dossier-tax-treaties and Action aid in the UK: https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/action_aid_160614.pdf.

⁴⁸ Date, J. (2018). Four Questions MPs Must Ask In Parliament Today About The UK-Lesotho Tax Treaty. *Huffington Post*. Extracted 25/05/2018 at https://www.huffingtonpost.co.uk/entry/uk-lesotho_uk_5a54982be4b0f9b24bf31a7d?guccounter=1.

⁴⁹ Grinberg, I. (2015). *Breaking Beps: The New International Tax Diplomacy*.

countries' interests in mind. The main intent of the League of Nations model was to restrict a source countries' taxation prerogatives to provide taxpayer certainty.⁵⁰ The OECD model tax treaty is a revision of this earlier consensus and as such holds a succinct residence taxation bias.⁵¹ This bias is present regardless of the power asymmetries mentioned above, that can distort the balance even further.

A few examples of restrictive source taxation articles in tax treaties can be a high permanent establishment threshold or, a low maximum or absent withholding tax rate.⁵² The restrictive use of the profit-split method of transfer pricing in the OECD guidelines can also be seen as a restriction on source jurisdictions' taxation rights.⁵³

This residence bias has been criticized and addressed by other international organizations. The Latin-American Free Trade Organization in the 1970s, followed by the United Nations in the 1980s have published alternative tax treaty models that allow for greater source taxation⁵⁴, yet these have failed to replace the dominance of the OECD model in developed/developing country tax relationships.

This residence bias has not been addressed in the OECD BEPS process, but remains a pertinent issue for many developing countries. However, there are signs that the inclusion of large developing countries such as Brazil or India in the G20 is opening up this discussion. OECD tax director Pascal Saint-Amans has openly acknowledged: "We've moved from a G8 dominated environment to a G20 dominated environment, and clearly,

⁵⁰ Graetz, M., and O'Hear, M. (1997). "The 'Original Intent' of US International Taxation." *Duke Law Journal* 46: 1021–1109.

⁵¹ Hearson, M. (2018). When do Developing Countries Negotiate Away Their Corporate Tax Base? *Journal of international development*, 30 (2). 232-255.

⁵² Ibid

⁵³ Mehta, K & Dayle Siu, E. (2016). Ten Ways Developing Countries can Take Control of their Own Tax Destinies. In: Pogge, T. & Mehta, K. (eds.) *Global Tax Fairness*. Oxford: University Press.

⁵⁴ Genschel, P., and Rixen, T. (2014). "Settling and Unsettling the Transnational Legal Order of International Taxation." : 1–24. <http://www.eui.eu/Documents/DepartmentsCentres/SPS/Profiles/Genschel/SPSGenschelRixen2014.pdf>.

source taxation is more on the table than it used to be in the past.”⁵⁵ The BEPS follow-up discussion on digital economy, for example, is one where the OECD has an explicit mandate to rebalance source and residence taxation in a new part of the economy.

Meanwhile, some large developing countries have developed more assertive approaches to transfer pricing to secure a more equitable part of the international tax base. China and India have introduced the concept of location-specific advantages⁵⁶ in their transfer pricing rules that multinational enterprises have to incorporate in their transfer pricing calculations. This effectively redistributes part of the tax base towards these countries. These and other specific practices are laid out in the UN manual on transfer pricing⁵⁷ and developing countries can take a cue from these while waiting for the OECD to address its residence bias.

3.3 Tax incentives

A non-BEPS related international taxation issue that nevertheless can have deteriorating effects on developing countries revenue are tax incentives for attracting FDI. These are tax arrangements for foreign companies in the form of temporary tax exemptions (tax holidays), tax-advantageous developing zones, or other tax advantages generally not available to domestic tax payers.

Such incentives in theory are trade-offs between need for foreign investment and public revenues. By enacting less taxes on foreign business, the costs of investment in a particular country is lowered. That’s why they were regularly advised by the IMF and World Bank as development tools in the 1980’s and 90’s during the period of the ‘Washington consensus’.⁵⁸

⁵⁵ PWC. (2014). “An Interview with Pascal Saint-Amans.” <https://www.pwc.com/gx/en/tax/tax-policy-administration/beps/assets/pwc-tax-interview-transcript.pdf> (June 14, 2016).

⁵⁶ These can be among others: access to growing regional markets and costumers with increased spending capacity, or highly specialized manpower and knowledge.

⁵⁷ United Nations (2017). *Practical Manual on Transfer Pricing for Developing Countries*.

⁵⁸ Stiglitz, J. (2016). *From the Washington Consensus Towards a 21st Century Consensus on Development*. Extracted 28 May 2018 at <https://www.sida.se/globalassets/sida/sve/aktuellt-press/stiglitz-stockholm-september-2016.pdf>.

Nowadays, the view on tax incentives as a means for development is generally less positive. One reason is that it can trigger a specific form of tax competition between developing countries, resulting in a race to the bottom. Powerful multinationals can exploit this dynamic and play off countries against each other in a demand for more flavorful tax conditions.⁵⁹ This is why the IMF and the OECD both recommend transparency, parliamentary control and multilateral cooperation (one suggestion is a code of conduct for tax incentives) on tax incentives to curb this race to the bottom.⁶⁰

Another fundamental issue is that their effect on development, and thus their effectiveness as a tool for reaching the SDG's, is being called into question. One study by the IMF finds a positive effect on FDI, but not on total investment or economic growth which can imply a crowding-out effect.⁶¹ Another recent study confirmed this, but also found a negative effect on public finances and development objectives such as school attendance. It concludes that research should focus on ways of phasing out tax incentives and to decrease pressure of tax competition.⁶²

In sum, a cautious approach to tax incentives – perhaps including intergovernmental discussions on a code of conduct - has to be part of the discussion on how international taxation can help reach the SDG's.

3.4 Country ownership and damaging external pressure

High-income countries should respect country ownership and be aware of the consequences of their actions on developing countries choices. When offering outside

⁵⁹ Zolt, E. (2015). Tax Incentives: Protecting the tax base. *Paper for Workshop on Tax Incentives and Base Protection New York, 23-24 April 2015*.

⁶⁰ IMF, OECD, UN, World Bank (2015). Options For Low Income Countries' Effective And Efficient Use Of Tax Incentives For Investment. *Report To The G-20 Development Working Group*; OECD (n.d.) Principles To Enhance The Transparency And Governance Of Tax Incentives For Investment In Developing Countries.

⁶¹ Klemm, A. & Van Parys, S. (2009). Empirical Evidence on the Effects of Tax Incentives. *IMF Working Paper/09/136*.

⁶² Stausholm, S. N. (2017, December 13). Rise of ineffective incentives: New empirical evidence on tax holidays in developing countries. <http://doi.org/10.17605/OSF.IO/4SN3K>

assistance, they should have their own accountability mechanisms, such as with the Addis tax initiative.⁶³

Moreover, developing countries should never be forced to sign up to international tax reforms due to outside pressure from more powerful states, unless proven to be involved in enabling harmful tax practices. Tax haven blacklists are obvious examples of well-intentioned practices that can have damaging effects. While calling out harmful tax practices is a legitimate goal, blacklists often have disproportional effects on countries that play only very a small part in facilitating global tax avoidance.

The 2017 EU blacklist of uncooperative jurisdictions, implemented by the EU council, is a good example of this. First of all, it failed to target particular EU countries which play large parts as either conduit or sink countries of offshore money⁶⁴ or the US which strictly speaking does not fit the information-exchange criterion of the list.⁶⁵ This leaving-out of powerful states is common in blacklisting practices⁶⁶, but emphasizes that these are geopolitical rather than rational listing processes.

Secondly, The EU blacklist compelled listed countries to participate in international tax fora on BEPS and information-exchange in order to be unlisted. Mongolia, for example, was listed in that process⁶⁷.

The country has since succumbed to the pressure⁶⁸ and signed up to the BEPS inclusive framework⁶⁹, but it is more probable that this was due the external pressure from the EU

⁶³ Platform for collatoration on Tax (2016) Enhancing the Effectiveness of External Support in Building Tax Capacity in Developing Countries;

⁶⁴ Garcia-Bernardo, J., Fichtner, J., Takes, F. W., & Heemskerk, E. M. (2017). Uncovering Offshore Financial Centers: Conduits and Sinks in the Global Corporate Ownership Network. *Scientific Reports*, (June), 1–10.

⁶⁵ Lips, W. & Cobham, A. (2017), Paradise Lost: Who will feature on the common EU blacklist of non-cooperative tax jurisdictions? <https://datafortaxjustice.net/paradiselost/>

⁶⁶ Sharman, J.C. 2006. *Havens in a Storm. The Struggle for Global Tax Regulation*. Ithaca: Cornell University Press.

⁶⁷ European Council (2017). The EU list of non-cooperative jurisdictions for tax purposes. Council conclusions (adopted on 5/12/2017).

rather than an internal decision that the BEPS project was the right fit for the countries' revenue needs. This puts significant adjustment costs on Mongolia that might take away, rather than contribute to public revenue needed for reaching the SDGs. High-income countries should be cautious about forcing developing countries to commit to these processes, and evaluate the proportionality of their actions.

3.5 A wider and diversified approach beyond BEPS

There is a clear link between problems on international corporate taxation and the revenue challenges of development countries to reach the sustainable development goals. These problems run deeper than the narrow scope of the BEPS project, that attempts to constrain profit shifting within the confines of the established international tax rules.

Developing countries face wider challenges than BEPS alone: source-residence bias, negotiation of appropriate double tax treaties, a policy on tax incentives, and general challenges of tax administration performance and capacity. Whether a developing country should prioritize signing up for the inclusive framework on BEPS depends its level of income and place in multinationals' global value chains, but should always be a countries own decision and not the result of external pressure.

High income countries have the right to address profit-shifting issues among themselves, and a responsibility to help developing countries who wish to implement the minimum standards. They have made important steps forward with the development of the BEPS toolkits. The Addis Tax Initiative, the Platform for collaboration on tax and several capacity-building initiatives are legitimate progress in this regard.

Yet, the responsibility of high income countries does not stop there, and a wider debate about how the international tax rules are essentially stacked against developing countries is

⁶⁸ European Council (2018). The EU list of non-cooperative jurisdictions for tax purposes. Compilation of letters seeking commitment. 6/03/2018.

⁶⁹ OECD (2018). Members of the Inclusive Framework on BEPS. Extracted 27/5/2018 at <http://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf>.

in order.⁷⁰ We have to be careful with comparing estimates of profit shifting with aid streams, and statements like “Africa is losing x times the amount of aid it receives through tax dodging”.⁷¹ These statements are sometimes inflated or attributed wrongly, but developing countries’ revenues, budgetary autonomy and public investment capacity are being damaged by tax avoidance, the inadequacies of the international tax rules and dynamics of tax competition. High income countries need to consider their part in maintaining this tax system as part of their development policies.

⁷⁰ De La Feria, R. (2017). “There’s a Simple Way to Stop Big Corporations Avoiding Tax. Here’s How.” the guardian. https://www.theguardian.com/commentisfree/2017/dec/13/stop-big-corporations-dodging-tax-avoidance-paradise-paper?CMP=share_btn_tw (January 17, 2018).

⁷¹ Forstater, M. (2015) Can Stopping ‘Tax Dodging’ by Multinational Enterprises Close the Gap in Development Finance? *CGD Policy Paper 069*.

4 Governance models for developing countries and taxation

4.1 Medium Term revenue strategies

While a lot of helpful external assistance programs exist around developing countries and international taxation - including the BEPS toolkits and TIWB - each country ultimately has different needs and priorities. These can range from basic IT-investments, to shadowing and training of tax officials, assistance with transfer pricing inquiries or improving taxpayer registries. If and how a country can benefit from implementing (part of) BEPS will depend partly on the capacity of its tax administration.⁷² Signing up for country-by-country reporting without the necessary infrastructure or staff capacity in place is more burden than beneficial. Without adequate coordination, a country risks to receive ill-fitted forms of assistance or contradictory advice from multiple development partners.

To this end, the Platform for Collaboration on tax partners developed the concept of medium-term revenue strategies (MTRS).⁷³ These were introduced in 2016 and rely heavily on recipient country input to determine which revenue needs should be tackled in a 4-6 year period. PTC and other capacity delivering partners can then organize their work around these strategies.

These country and partner commitment notes can forward the ownership of countries in the coordination of the support they receive from the international community. The revenue strategies go beyond international taxation and also comprise domestic taxes. It looks both at tax policy, the revenue agencies and the legal framework of a countries tax system, in an explicit effort to link tax revenue to the SDG's.⁷⁴ While the concept is still being developed and it still is too early for an evaluation, MTRS hold promises.

⁷² IBFD (2018). *Implementing OECD/G20 BEPS Package in Developing Countries. An assessment of priorities, experiences, challenges and needs of developing countries*. Bonn: GIZ. https://www.ibfd.org/sites/ibfd.org/files/content/pdf/wp_implementing_beps_package_developing_countries.pdf

⁷³ Platform for Collaboration on Tax (2017). *Concept Note on the Medium-Term Revenue Strategy (MTRS)*.

⁷⁴ Ibid.

Because MTRS are country-specific, their added value to BEPS is to differentiate the capacity needs of low, and middle-income developing countries with regard to the implementation of BEPS measures.

4.2 The Addis Ababa Action Agenda and Addis Tax Initiative

One of the main fora where the relationship between taxation and development has been addressed was the UN 2015 Financing for Development Conference in Addis Ababa. The outcome of the conference (so-called Addis Ababa Action Agenda⁷⁵) recognized the urgency of improving domestic resource mobilization (DRM) and modernizing tax systems in developing countries.⁷⁶ Furthermore, the countries stressed that efforts in international cooperation should consider the needs of developing countries and should ensure that these efforts are inclusive and benefit all countries.⁷⁷ The countries also stressed the need for an enhanced and revitalized global partnership for sustainable development that includes multi-stakeholder partnerships to support the achievement of the sustainable development goals, in particular in developing countries.⁷⁸ All these developments led to a pledge of donor (developed) countries to double technical cooperation resources for DRM and subsequent creation of the Addis Tax initiative as a monitoring body.⁷⁹ Following this conference, the UN Summit on Sustainable Development adopted the 2030 Agenda for Sustainable Development and the 17 SDGs (post-2015 development agenda) in a 2015 Resolution “Transforming our world: The 2030 Agenda for Sustainable Development”.⁸⁰

⁷⁵ Final text of the outcome document adopted at the Third International Conference on Financing for Development (Addis Ababa, Ethiopia, 13–16 July 2015) and endorsed by the General Assembly in its resolution 69/313 of 27 July 2015. http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf

⁷⁶ Ibid

⁷⁷ Ibid. (para. 28)

⁷⁸ Ibid. (para. 10)

⁷⁹ https://www.addistaxinitiative.net/documents/Addis-Tax-Initiative_Monitoring-Report_2015_EN.pdf

⁸⁰ Resolution adopted by the General Assembly on 25 September 2015. http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

The Addis Ababa Action Agenda stated that the achievement of these goals should also consider the “different national realities, capacities, needs and levels of development and respecting national policies and priorities”.⁸¹ Furthermore, the 2015 Resolution stated the commitment of countries sustainable Development of development and respecting national policies and priorities and the 17 SDGs (post-2015 developed developed countries, landlocked developing countries, small island developing States and middle-income countries – in international economic decision-making, norm-setting and global economic governance”.⁸² However, it is not clear how the current international tax architecture will enhance the participation of developing countries in the BEPS Project. The agenda setting, and decision-making on BEPS has been done by G20 and OECD countries.⁸³ Therefore, new models of governance should be envisaged to encourage the participation of developing countries.

4.3 The EU Collect More -Spend Better approach

From an EU perspective, the European Consensus on Development has addressed the need to pursue coherence between the EU tax policies and their effects on developing countries and the need to have tailored development partnerships to reflect capacities and needs. The Consensus states the need to promote effective and efficient resource mobilization through the “Collect More, Spend Better approach”.⁸⁴ The Consensus states support to the Addis Ababa Action Agenda and to the BEPS initiatives.⁸⁵

⁸¹ Final text of the outcome document adopted at the Third International Conference on Financing for Development (Addis Ababa, Ethiopia, 13–16 July 2015, para. 10) and endorsed by the General Assembly in its resolution 69/313 of 27 July 2015. http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf

⁸² UN Resolution 70/1 adopted by the General Assembly on 25 September 2015 Transforming our world: the 2030 Agenda for Sustainable Development http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E at 11.

⁸³ See Mosquera Valderrama, I.J., *Legitimacy and the Making of International Tax Law: The Challenges of Multilateralism*, 7 World Tax J. 3 (2015), Journals IBFD.

⁸⁴ See EU Commission Staff Working Document : Collect More -Spend Better: Achieving Development in a Sustainable Way October 2015 <https://ec.europa.eu/europeaid/sites/devco/files/swd-collect-more-spend-better.pdf> According to the website of the EU Commission, this Working document “analyses ways to support developing countries in providing the resources required to ensure the right mix of public goods and services for implementing the 2030 Agenda for Sustainable Development”.

In addition, the Consensus states that “development cooperation will continue to be country- or region-specific, based on partners’ own needs, strategies, priorities and resources. The EU and its Member States will cooperate with developing countries in an increasingly diversified and tailored manner. Partnerships should encompass development cooperation and financial assistance, but also include a range of strategies, policies and instruments, in order to reflect the growing variety of developing country circumstances”.⁸⁶ However, the link between how these tailored partnerships will be used in taxation to achieve the SDGs has not been made in this Consensus and as far as the authors are aware there is no specific policy approach from the EU or EU Commission to establish this link.

5 Conclusions and recommendations

In the paper we demonstrated how the architecture for international taxation governance is not sufficiently inclusive, which to an important degree explains why the current OECD/G20-led BEPS initiative hardly responds to the specific needs of development countries. Therefore, reform is needed to render the BEPS project SDG-relevant.

The BEPS Actions were designed by 44 OECD, OECD accession and G20 countries, excluding the overwhelming majority of developing countries. The current BEPS regime does not address important tax problems of developing countries, such as power asymmetries in double tax treaties, the source/residence bias in the dominant OECD models, the informal economy, development-unfriendly blacklisting exercises by powerful players such as the EU, and tax capacity building. In general, developing countries struggle with the general dilemma between the need to attract economic activity and investments on the one hand, and the need to preserve their public revenues. The BEPS Inclusive

https://ec.europa.eu/europeaid/staff-working-document-collect-more-spend-better_en See also Discussion Paper A Contribution to Contribution to the Third Financing for Development Conference in Addis Ababa

https://ec.europa.eu/europeaid/sites/devco/files/com_collectmore-spendbetter_20150713_en.pdf

⁸⁵ https://ec.europa.eu/europeaid/sites/devco/files/european-consensus-on-development-final-20170626_en.pdf at 49.

⁸⁶ https://ec.europa.eu/europeaid/sites/devco/files/european-consensus-on-development-final-20170626_en.pdf para 91 at 44

Framework is much more inclusive than the group of 44 in terms of composition. Yet, this is largely a mechanism for evaluation and peer review of implementation of the minimum standards. It is definitely not a forum for (preparation of) decision-making to improve the BEPS initiative based on a feedback-loop.

These important issues point at fundamental deficiencies in the architecture of international taxation governance. The solution lays in the strengthening of inclusiveness in global decision-making. Over the past decades, the OECD has acquired a lead position in multilateral policy formulation and implementation on tax, and continues to benefit from that position in a path-dependent way. Still, it remains a club of advanced industrialized countries, which is reflected in the policy output. Therefore, we make a case for strengthening the role of the UN on SDG-relevant tax issues.

An upgraded UN tax committee should become the site for policy formulation on developing countries' taxation needs. The extant Committee of Experts on International Cooperation in Tax Matters as a subsidiary body of the Economic and Social Council (ECOSOC) should be elevated to a genuinely intergovernmental body for meaningful and authoritative political discussion. Thus far, proposals in this sense have never been approved by a sufficient majority of UN member states. It is the responsibility of both developed and developing countries to endorse the necessary upgrade of the UN in this field, so that development-policy debates on tax can migrate from the OECD to our most universal multilateral organization. This political upgrade will require a concomitant strengthening of the Financing for Development Office of the UN Department for Social and Economic Affairs (UNDESA), so that it can serve as a vital and dynamic secretariat for the new UN Tax Committee.⁸⁷

Having said this, SDG-relevant tax cooperation should occur in a pragmatic fashion within the already crowded international governance architecture. For reasons of efficiency and effectiveness, the appreciation of networked governance based on existing capacity and

⁸⁷ Lesage, D (2008) Taxation and the 2008 UN follow-up conference on financing for development: policy recommendations. *Studia Diplomatica*, 61:2: 133-149.

expertise is key. The Platform for Collaboration on Tax (PCT), created in 2016 and comprising the OECD, IMF, World Bank and UN, is a promising governance innovation in this regard. The PCT has already been active in the implementation of BEPS and is set to streamline tax capacity building and strengthen country-ownership through its medium-term revenue strategies (MTRS). Even though the secretariats of PCT member organizations, notably the OECD and IMF, are actually quite influential in policy formulation, the PCT is not a political body. Political decision-making guiding the work of PCT is supposed to occur elsewhere. There is even a clear risk that the technocratic secretariats that constitute the PCT embark on actual policies that are not in line with the existing agreements and goals of the United Nations.⁸⁸ In this regard, we call for the recognition of the renewed UN Tax Committee as the principal decision-making body for the PCT. Note that the IMF, World Bank and UNDESA are already parts of the UN system and responsive to the UN. Among the member organizations, a memorandum of understanding can be concluded that confirms the prevalence of UN decision-making.

At this point, the regional dimension should be brought in as well. Above, we already pointed out that issues of corporate taxation and tax competition in the Global South reflect regional realities. The regional tax organizations are best placed to understand regional trends, organize regional tax cooperation and to transmit knowledge and demands to the global multilateral level. In a show of this regional emancipation, in May 2018 the Network of Tax Organizations (NTO) was launched.⁸⁹ The network is facilitated by the Bonn-based International Tax Compact (ITC) and funded by Germany and the European Union. As soon as it is up and running, the NTO should become structurally integrated in the work of PCT, maybe as the fifth member organization.

⁸⁸ Montes, M. & Rangaprasad, P. (2017). Collaboration or Co-optation? A review of the Platform for Collaboration on Tax. *South Centre Policy Brief (48)*. At https://www.southcentre.int/wp-content/uploads/2018/06/PB48_Collaboration-or-Co-optation-A-review-of-the-Platform-for-Collaboration-on-Tax_EN.pdf.

⁸⁹ <http://www.nto.tax/>

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The United Nations University Institute on Comparative Regional Integration Studies (UNU-CRIS) is a research and training institute of the United Nations University, a global network engaged in research and capacity development to support the universal goals of the United Nations and generate new knowledge and ideas. Based in Bruges, UNU-CRIS focuses on the provision of global and regional public goods, and on processes and consequences of intra- and inter-regional integration. The Institute aims to generate policy-relevant knowledge about new patterns of governance and cooperation, and build capacity on a global and regional level. UNU-CRIS acts as a resource for the United Nations system, with strong links to other United Nations bodies dealing with the provision and management of international and regional public goods.

The mission of UNU-CRIS is to contribute to generate policy-relevant knowledge about new forms of governance and cooperation on the regional and global level, about patterns of collective action and decision-making, benefitting from the experience of European integration and the role of the EU as a regional actor in the global community.

UNU-CRIS focuses on issues of imminent concern to the United Nations, such as the 2030 Development Agenda and the challenges arising from new and evolving peace, security, economic and environmental developments regionally and globally. On these issues, the Institute will develop solutions based on research on new patterns of collective action and regional and global governance. The Institute endeavors to pair academic excellence with policy-relevant research in these domains.

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