



UNIVERSITY OF
SURREY

FAIRNESS IN INTERNATIONAL TAXATION

WORKSHOP PROGRAMME

23-24 June 2022

OUR SPONSORS



The Surrey Centre for Law and Philosophy promotes interdisciplinary research at the University of Surrey School of Law. It is committed to the idea that the study of law is deepened when grounded in philosophical principle, and philosophy is of greater benefit to society when relevant to pressing practical and legal issues. The Centre's members consist not only of legal theorists, but also of lawyers with philosophical training and philosophers with interests in legal questions—all of whom are invested in an interdisciplinary and collaborative approach to research.

surreycentrelp.org



The Institute of Advanced Studies (IAS)
The Institute of Advanced Studies (IAS) at the University of Surrey sponsors workshops and Fellowships at the 'cutting edge' of science, engineering, social science and the humanities. Through this scheme the Institute fosters interdisciplinary collaborations and encourages a flow of international scholars to visit, enjoy their stay at Surrey and leave behind excellent ideas and innovations.

ias.surrey.ac.uk

INTRODUCTION

The nature of international tax policy has changed dramatically in recent years. Twentieth century international tax policy sought to prevent double taxation of income, to treat taxpayers doing business abroad fairly and to mitigate inefficiencies in the allocation of investment. Recently, the focus of international tax policymaking has shifted, aiming to prevent double non-taxation of corporate income and to achieve a fair division of the resulting tax revenue. This is illustrated most prominently by the recent agreement on a global minimum corporation tax rate. As international tax policy raises its ambitions, there is a need for normative theories adequate to the challenges of this new era. Fairness in International Taxation brings together legal scholars, political theorists and political philosophers to consider both high-level theories of distributive justice and the normative underpinnings and implications of leading policy proposals. The workshop will cover questions such as how to divide tax revenue from multinationals between nations, how to strike a fair balance between combating profit shifting and respecting national autonomy, and how to tax internationally mobile workers.

By combining theoretical approaches to distributive justice with analysis of the political and institutional context of policymaking we aim to develop new accounts of fairness in international taxation.

Workshop Organisers:

Dr Ira Lindsay, University of Surrey
Benita Mathew, University of Surrey

Administrative support:

Geena Brown, Vicki Blamey, University of Surrey

PROGRAMME

DAY 1 – THURSDAY 23RD JUNE

Toulson Law Library, School of Law

(BST)	
09.30 – 10.30	'Theories of Contract as a Guide to Fairness in International Taxation' - Bastiaan van Ganzen, Dirk Broekhuijsen and Henk Vording (Leiden University, Broekhuijsen also Dutch Tax Administration)
10.30 – 10.45	Break
10.45 – 11.45	'The Economic Allegiance of Capital Gains' - Amanda Parsons (University of Colorado)
11.45-12.00	Break
12.00 – 13.00	'Re-evaluating The Allocation of Tax Collection of Immigrants Between Home Country And Host Country' - Tamir Shanan (College of Management School of Law, Israel) & Doron Narotzki (University of Akron) [Online]
13.00 – 14.00	Lunch
14.00 – 15.00	'The Right and the Good: Taxing Rights, Value Creation, and the Rhetoric of International Taxation' - David Elkins (New York University) [Online]
15.00 – 15.15	Break
15.15 – 16.15	'Incentive Compatibility and Destination-Based Taxation' - Laurens van Apeldoorn (Open University, The Netherlands)
16.15-16.30	Break
16.30 – 17.30	'Jurisdiction to Tax in the Digital Economy and the Benefit Principle' - Vasiliki Koukouloti (Newcastle University)
18.30 -	Dinner, Lakeside Restaurant
SURREY.AC.UK	

DAY 2 – FRIDAY 24TH JUNE

Toulson Law Library, School of Law

(BST)	
09.00 – 10.00	'The Ethics, Economics, and Politics of Taxing (Digital) Multinationals' - Peter Dietsch (University of Victoria) & Thomas Rixen (Freie Universität Berlin) [Online]
10.00-10.15	Break
10.15 – 11.15	'Optimal Taxation for the World' - Adam Kern (United States District Court for the Southern District of New York)
11.15-11.30	Break
11.30 – 12.30	'Caught Between Two Sovereigns: The International Taxation of Cross-Border Individuals', Bernard Schneider (Queen Mary University of London)
12.30 – 13.30	Lunch
13.30 – 14.30	'Why "Global" Fails: Inclusive Institutions & International Tax Policy Making'- Natalia Pushkareva (University of Urbino / United Nations Development Programme)
14.30 – 14.45	Break
14.45 – 15.45	'Uniform International Tax Collection and Distribution for Global Development, a Utopian BEPS Alternative Abstract' - Henry Ordower (Saint Louis University School of Law)
14.45 – 15.45	Close

ABSTRACTS AND PARTICIPANTS

THURSDAY 23RD JUNE

Theories of Contract as a Guide to Fairness in International Taxation

Bastiaan van Ganzen, Dirk Broekhuijsen and Henk Vording (Leiden University, Broekhuijsen also Dutch Tax Administration)

Our aim is to explore whether the theory of contracts is helpful in getting to grips with the fairness of international tax agreements (both bilateral and multilateral) in the unequal relations between developed and developing countries. This aim fits in with other attempts to overcome the limitations of pure Rawlsian statism while avoiding the pitfalls of full cosmopolitanism.

First, we discuss debates on fairness of both bilateral and multilateral tax agreements. We will argue that a bilateral tax agreement often has important external (third-party) effects which may be internalized in a multilateral agreement. We then consider theories of contract in both the common and civil law traditions, to see how these theories deal with the allocation of the benefits of cooperation over the parties to the contract. We will extrapolate the findings to both bilateral and multilateral tax agreements. Finally, we discuss whether and how a formal social contract setting may support stronger conclusions.

The Economic Allegiance of Capital Gains

Amanda Parsons (University of Colorado)

How to ensure that multinational companies are paying their “fair share” of taxes in the countries in which they create value has been the subject of lively debate within the international tax community in recent years. These debates have led to significant and exciting reforms, namely the OECD/G20 Inclusive Framework. While these reforms represent an important step towards creating a more coherent and equitable international tax system, the current conversations have overlooked an essential fact. Value created by a company’s business activities manifests itself in two ways—as business income and as an increase in the overall market value of the company, which then translates into capital gains income when investors sell their shares. Thus far, the conversation has focused exclusively on how to divide taxing authority over company income, missing half the story. A truly comprehensive reform that ensures fairness and equity in international taxation must address the question of how taxing authority over income stemming from the growth in company value should be allocated amongst countries.

This paper fills this gap and assesses how taxing authority over this capital gains income should be divided amongst

countries under the normative principles that have guided international tax law for the past 100 years. It concludes that the current international sourcing rules, which allocated taxing authority over capital gains income from the sale of company shares to the investor’s residence country, are at odds with the benefits principle and the related concept of economic allegiance. Not allowing the countries in which companies conduct business (the “source countries”) to tax capital gains income produces an inequitable result whereby a country and its citizens provide benefits and resources that facilitate a company’s business activities without being able to tax income derived from the value created by those business activities. Digitalization and informational capitalism have revolutionized the global economy in ways that the original designers of the international tax system could never have foreseen when they established international sourcing rules in the 1920s compromise. While granting taxing authority over capital gains income exclusively to the residence country has always been inappropriate and inequitable, this paper argues that certain features of the digital economy have magnified the incoherence and inequities that the current international sourcing rules cause. The first feature is the phenomenon of company growth without income.

The drafters of the 1920s compromise worked under the assumption that growth in the value of a company would be accompanied by business income. As a result, even though the source country could not tax capital gains income, it would receive some tax revenue by taxing the company’s business income, thereby providing compensation for the benefits provided. In the digital economy, this is not always the case. Because establishing a robust network of users and customers is essential for many digital business models, particularly platform businesses, digital companies often achieve enormous market capitalizations before ever turning a profit. Digital companies are, therefore, able to create large amounts of value through business activities in a country without ever being taxed there. This broad phenomenon was inconceivable to economists and policymakers in the 1920s. Additionally, the paper argues that several of the essential drivers of company value in the digital economy have a particularly close economic allegiance to the source country, furthering the unfairness of the source country being unable to tax capital gains income stemming from that growth in company value. These drivers of company value are network effects, data collection, and the free labor of users and customers who create content and data for these companies.

Continued ►

The paper analyzes these drivers of value under the same criteria that the 1923 Four Economists' report used to assess the economic allegiance of agricultural, mining, and industrial activities and finds a strong economic allegiance to the source country. Furthermore, when digital companies are building networks, collecting data, and taking advantage of the free labor of users and customers, they are not only relying on benefits and resources provided by governments to facilitate their business activities and grow their market value. They are also relying on benefits and resources provided by the citizens of the country themselves, in a dynamic that many scholars have highlighted as exploitative and harmful. This reliance makes the violation of the benefits principle caused by not allowing source countries to tax capital gains more acute. Granting taxing authority to the source country is not only needed to directly compensate the government for benefits provided but is also needed to indirectly compensate citizens for the benefits and resources they provide. Allowing the source country to tax capital gains income both realigns taxation of capital gains with the normative goals of the benefits principle and economic allegiance and alleviates some of the exploitative and inequalitarian outcomes we see in the digital economy.

This paper is primarily a proof of concept. But it also presents a policy suggestion to implement this reallocation of taxing authority to source countries—an annual mark-to-market tax at the company level on increases in market value, apportioned amongst source countries based on a set formula. The goal of this policy discussion is to begin a broader conversation about possible global reforms to create an international tax system that is more in line with its underlying normative goals.

Re-evaluating the Allocation of Tax Collection of Immigrants Between Home Country and Host Country

Tamir Shanan (College of Management School of Law, Israel) & Doron Narotzki (University of Akron) [Online]

In 1972, when Professor Jagdish Bhagwati published his seminal proposal “The Brain Drain and Income Taxation, a Proposal,” his fundamental idea was to tax skilled workers who had emigrated from developing countries to developed countries and return at least some of the income to developed countries for their economic loss. Professor Bhagwati underlying rationale for this tax was the need to compensate developing countries for the losses those countries experienced by individuals who were born, raised, and often times professionally trained there but eventually left to developed countries in order to find a more lucrative employment opportunities (higher salaries, better working conditions, etc.) and improve their standard of living (more stable lives in the developed countries and better educational opportunities for the migrant's children). This basic idea of the so-called “brain drain tax” is that skilled migrants typically earn economic rents, that rely on skills and know-how which they received in their home-country (especially when the training and education relies on state funding) and that due to their relocation

benefit the host-country which did not invest any of its own resources in order to receive skilled professionals. Furthermore, such relocation of skilled professional from developing countries to developed countries also results in shortages of skilled professional in the developing countries and as a result put those in another disadvantage. Professor Bhagwati proposal was aimed mainly at promoting global fairness between developing countries and developed countries and focused on the phenomena of skilled migrants leaving developing countries and moving to developed countries. However, our research wishes to further develop this idea, and explore the jurisdiction to tax individuals and more specifically the fundamental principle of “residency” under the existing international norms. Accordingly, our research would explore migration economic and tax implications in general, regarding skilled and unskilled migrants and regarding migration from one country to another (not necessarily from developing countries to developed countries), and eventually suggest a model that will assist countries with ways to tax those individuals in a more fair manner that will lean on social justice and social contracts and ties between the individual and her domiciliary community, and not solely between countries or on technical standards as it is currently.

Continued ►

One of the challenges in implementing such a tax is the fact that under the current international tax regime the taxing jurisdiction follows residence and that many countries define residency for tax purposes based on one version or another of a physical presence test (presence of more than 183 days in one country during the calendar year), or based on the place where the migrant's habitual abode was in the relevant calendar year. As such, under existing rules, and more often than not, immigrants are considered residents of the host-country rather than of their home-country. One possible solution to this challenge is in strengthening the domiciliary concept which interprets the notion of "home" in the country where the individual resides permanently without any intention of moving. For instance, under this concept, an immigrant who studied a graduate degree in a host-country who decides to work for several years after graduating, does not cease to have his permanent home in his home-country merely because he is temporarily residing elsewhere. Another possible solution to this challenge can be achieved in an alternative personal jurisdiction regime - adoption of a citizenship-based taxation.

The need to compensate home countries, whose citizens relocate and move to another country, from the loss of untaxed unrealized gains was addressed by many countries that adopted exit taxes.

These exit taxes attempt to capture unrealized untaxed appreciated gains of assets based on their appreciation during the period the individuals owned the property just before she or he abandoned her or his tax residency or just before she or he renounced her or his citizenship. However, these exit taxes unfortunately do not capture the human capital appreciation since at the time of migration emigrants generally do not benefit from the increase of wages, and in any event many of the economic benefits that derive from the know-how, intellectual property they acquired/developed prior to the relocation can easily be deferred, and also because the "appreciation" period (unlike the holding period of a movable property) is less explicit and as such pose greater collection challenges for the home countries.

Our research will explore the different proposals raised by legal and tax scholars over the years regarding brain drain tax and propose a model that would try to capture unrealized and untaxed economic "rent" that derives from know-how and skills that may be attributed to their home-countries. We would also compare between the U.K. domiciliary-based regime and the U.S. citizenship-based regime and propose a model that can be relatively easily adopted, administered and monitored by the home-countries and that will enhance global fairness between countries.

The Right and the Good: Taxing Rights, Value Creation, and the Rhetoric of International Taxation

David Elkins (New York University), [Online]

A prominent theme in the discourse of international taxation is that taxing rights should follow wealth production. In considering the validity of this proposition, the paper will rely on the familiar dichotomy in moral philosophy between the right and the good. In the context of international taxation, the right involves a host country's deontological claim to receive a portion of the income produced within its borders. The good involves the claim that host countries need revenue from multinational enterprises (MNEs) to fund public goods. Although the literature often conflates these two claims, they are distinct and require separate analysis. Within the realm of the right, we must make a further distinction between two different types of right-based claims. On the one hand, a host country may assert that MNEs who choose to operate in its territory take upon themselves an implicit contractual obligation to pay tax as delineated in the host country's laws. When the host country imposes an income tax, MNEs are in effect contractually obligated to pay the host country a percentage of the income generated by their economic activity in the host country. Alternatively, the host

country may assert a neo-Lockean claim to a commensurate share of the wealth that its social capital – in the broadest possible sense of the term – helped to create.

Regarding the contractual claim, I argue that the terms of the contract are in almost all cases delineated by the host country's tax legislation. In effect the host country offers a standard-form contract to foreign entities, which then signify their assent by investing or otherwise operating in the host country's territory. Consequently, if the terms of the agreement are difficult to enforce, the most obvious response would be to adopt terms that are more easily enforceable. I posit that the reason host countries do not do so is because a stricter tax regime would make it difficult to compete for international investments against countries whose tax systems are easier to manipulate. In other words, the so-called "loopholes" are actually part and parcel of the implicit contractual arrangement between the host country and the MNE.

The neo-Lockean argument is that creation of wealth within a country's borders is effectively a joint project involving the exploitation of the MNE's resources along with the social capital – in the broadest sense of the term – of the host country. Under neo-Lockean theory, the host country is entitled to a share of the income commensurate with its contribution to the production of that

Continued ►

wealth, and income tax is the means by which it asserts that right. Profit shifting by MNEs understates the wealth actually created within the host country's territory and prevents the host country from claiming its fair share of that income. I contend that this argument too does not succeed.

First, from the mere fact that an MNE derives wealth from its operations in the territory of a certain country, it does not necessarily follow that the host country's social capital contributes in any meaningful way to the production of that wealth. Second, even when there is reliance upon the social capital of the host country, the MNE will in most cases pay for its exploitation of the host country's social capital via factor prices (particularly salaries and rent). Third, to the extent that the positive contribution of its social capital is not reflected in factor prices, the host country should be able effectively to impose tax on foreign entities. Its desire for more MNE tax revenue than it is capable of collecting in a competitive atmosphere constitutes at least *prima facie* evidence that it wants more than its actual contribution to the creation of wealth.

Moving from the right to the good, it is often asserted that budgetary exigencies of host countries require that they collect taxes from MNEs and that without such revenue their ability to supply essential public good would be seriously curtailed.

However, this utilitarian claim does nothing to support the proposition that taxing rights should follow the production of wealth. In allocating taxing rights under the umbrella of the good, it is needs and the capacity to meet those needs that should dictate taxing power. To which of any number countries the international tax regime should grant the power to tax a particular MNE's income in the name of the good would be a function of the extent to which granting the taxing power to any particular country would promote total human happiness. The location of wealth production is irrelevant from this perspective.

The paper concludes by considering why the principle that taxing rights should follow value creation has gained such prominence in the discourse on international taxation. I speculate that what actually motivates countries is a parochial concept of the good in which the welfare of their constituents takes precedence over the welfare of others. However, as it is difficult to seek international cooperation to implement such a principle, they instead attempt to justify their position in terms of an objective principle, even if that principle ultimately lacks a normative justification.

Incentive Compatibility and Destination-Based Taxation

Laurens van Apeldoorn (Open University, The Netherlands)

Incentive compatibility concerns the extent to which each individual economic agent can achieve her best possible outcome while following the norms established by a group of agents. In *Taxing Profit in a Global Economy* (Oxford: Oxford University Press, 2021), Devereux et al. identify it as an important desideratum in international tax cooperation. Only if it is in the interest of countries to follow established norms can the international tax system remain stable over time and fulfil its functions. They suggest, however, that this is not currently the case. Today companies are taxed predominantly in 'origin' countries (where mobile economic factors such as management and production are located) rather than 'destination' countries (where generally immobile consumers are located). Taxing in origin countries leads to tax competition and a gradual reduction of tax revenue which destabilises the system and threatens its long-term viability. Devereux et al. therefore argue that we should move to destination-based taxation. The purpose of this paper is to investigate the criterion of incentive compatibility as utilised to defend destination-based taxation. It is partly clarificatory and partly critical. First,

I outline the idea of incentive compatibility and ask how we can best apply it to international tax cooperation, especially in light of the demands of fairness.

Second, I ask whether it supports the conclusion that we should move to a system of destination-based taxation. I conclude that, depending on how one interprets the principle, requiring it as a feature of the international tax system may lead to the undue exclusion of potentially more equitable alternative arrangements.

Jurisdiction to Tax in the Digital Economy and the Benefit Principle

Vasiliki Koukouloti (Newcastle University)

The benefit principle, despite its replacement by the ability-to-pay in domestic taxation, constitutes one of the main justifications for states to exercise their tax jurisdiction at the international level. Nevertheless, despite it being a robust part of both residence and source jurisdictional entitlements, as well as of the recently introduced value creation concept, the benefit principle is a construct that presents conceptual and normative deficiencies. Benefits are difficult to measure and locate in a specific jurisdiction, especially in the digitalized economy. More importantly, the benefit principle perpetuates existing inequalities in the allocation of resources among countries (vicious cycle). The same conceptual deficiencies and distribution inequalities are also produced by the value creation concept. These problems are compounded by tax competition practices, facilitated by the benefit principle, which is either applied selectively to attract investments or mandatorily to render other countries' tax regimes less attractive. Less developed economies are more severely impacted, while multinational corporations reap benefits from the host countries at the expense of both less mobile domestic

taxpayers and other less powerful investors. In this context, I argue that taxation has a role to play to correct inequalities between and within countries and contribute to sustainable development.

I therefore introduce the reverse benefit principle, founded on inter-nation equity, which allocates taxing rights according to the needs a country has in resources for public spending. For its implementation, corporations should go beyond mere compliance towards devising business models that contribute to the sustainability of the host countries. This would signal the shift to a self-regulation model which would intervene as a standard and norm setter in the international tax landscape.

FRIDAY 24TH JUNE

The Ethics, Economics and Politics of Taxing (Digital) Multinationals

Peter Dietsch (University of Victoria) & Thomas Rixen (Freie Universität Berlin) [Online]

Fuelled by a combination of public outrage over free riders and cash-strapped governments needing additional revenue, tax justice has been moving up the political agenda in recent years. Presenting its reform of international corporate taxation in the fall of 2021, the OECD announced on its website that "137 countries and jurisdictions [had] joined a new two-pillar plan to reform international taxation rules and ensure that multinational enterprises pay a fair share of tax wherever they operate."

The rhetoric surrounding the reform and its build-up suggests that the old system suffered from two fundamental drawbacks and that the principal challenge for reform consists in making the taxation of multinationals (MNEs) more efficient. More specifically, the status quo ante was unsatisfactory because its antiquated definition of economic activity did not adequately tax digital corporations on the one hand, and because it allowed profit-shifting to low-tax jurisdictions on a massive scale on the other hand. Pillar One, by provided a new definition of economic nexus, targets the former concern, while Pillar Two, by introducing a 15% minimum tax on MNEs globally is meant to reduce the incentive for profit-shifting.

This paper argues that using the efficiency of taxing MNEs as the only criterion to evaluate the success of the reform is myopic. Any system of international corporate taxation faces two challenges. First, it indeed needs to be structured in a way that minimises the capacity of MNEs to game the system and avoid paying taxes. Second, however, once the international tax base has been defined and secured, states have an incentive to maximise their share of the tax base. A set of principles to govern the allocation of taxing rights is necessary. While the first challenge is one of efficiency, the second is one of distributive justice between states. Which states should have the right to tax which part of the tax base and why? How should we evaluate the OECD reform package from this angle?

Against this background, the paper aims to make three contributions corresponding to its three sections. First, using the taxation of digital MNEs as a point of departure, we present a menu of principles borrowed from global justice theory that could be used as a normative benchmark for international taxation. Second, we reflect on the policy tools available to implement the normative principles discussed in the previous section. Third and finally, we use these considerations on the desirability and feasibility of certain taxing arrangements to evaluate the OECD reform. Is it compatible with principles of global justice and does it represent a step towards them or not?

Optimal Taxation for the World

Adam Kern (United States District Court for the Southern District of New York)

One of the central questions in international tax law is how to allocate taxing rights across countries. Allocations of taxing rights have significant distributive consequences, making some people richer and others poorer. But scholars rarely evaluate international tax regimes by looking to their effects on individual people.

Scholars have neglected individualist approaches to the international allocation of taxing rights because of a perceived philosophical problem. Many tax scholars believe that only two kinds of individualism are coherent. The first urges us to treat the world as though it were one society; the second urges us to ignore the interests of foreigners entirely. Since each of these positions is implausibly extreme, individualism has not caught on.

In this article, I develop a moderate individualist approach to the international allocation of taxing rights. This approach is individualist because it evaluates allocations of taxing rights by referring to their effects on individual people. It is moderate because it affirms both that national borders matter and that foreigners matter in the specification of distributive principles. I develop this approach by making three contributions. First, I show that moderate individualism is coherent. Drawing on the philosophical literature, I show that there are, in fact,

many possible moderate positions about how goods should be distributed across international borders. Some of these positions ascribe extra, but not infinite, weight to the interests of compatriots; some assert that different sets of distributive principles hold within societies and across them; some do both. These moderate positions about global distributive justice, in turn, imply moderate positions about the international allocation of taxing rights. Second, I show that many varieties of moderate individualism converge on a common implication. While they disagree about the overall value of the rights that one nation should concede for the sake of another, they agree on the direction that any such concessions should go: Concessions should go to countries that are worse-off. I show that conclusion does not presuppose many of the controversial claims that it often is associated with. Instead, it follows from relatively uncontroversial normative premises and realistic assumptions about how many taxing rights are available for allocation, the global distribution of economic resources, and the relative quality of particular governments' choices about how to use their fiscal capacity. Finally, I illustrate the concrete implications of moderate individualism through a discussion of two tax instruments. The first provides relief from "double taxation"; the second is Pillar One of the 2021 global tax deal brokered by the OECD's Inclusive Framework.

Caught Between Two Sovereigns: The International Taxation of Cross-Border Individuals

Bernard Schneider (Queen Mary University of London)

The last two decades have been a period of great ferment in international taxation. Economic globalisation and the digitalisation of the economy have resulted in substantial changes in business models and structures. These have in turn led to concerns about whether the existing international tax system, designed for a world of physical, largely bilateral trade and investment, is fit for purpose in a world of global supply chains and virtual goods and services. These concerns started to come to a head with the financial crisis of 2008. At the same time, the rise of emerging and developing countries in the tax arena has called into question the consensus that developed in the early to mid-20th century.

This has led to two major developments in the international tax system. The first was the implementation of the Foreign Account Tax Compliance regime (FATCA) and the Common Reporting Standard (CRS). The second is the Base Erosion and Profit Shifting (BEPS) project initiated by the G20 in 2012 and led by the OECD. The BEPS project has suffered from two major failings. The proposed solutions are innovative procedurally and have increased tax multilateralism via the Inclusive Framework and the Multilateral Instrument.

Substantively and conceptually, however, they largely revisit proposals and discussions that have been around for decades. The G20 and the OECD were largely driven by revenue concerns and the need to be seen to be doing something, and quickly. Both are uncondusive to fundamental review and reform. Furthermore, the OECD countries were not and are not interested in challenging an international tax regime that largely benefits them, to the detriment of many developing countries. This concentration on revenue and performative politics and the unwillingness to address fundamental questions have meant that the policy and academic discourse has been almost exclusively on corporate taxation. With the important exception of account information reporting (FATCA and CRS), the treatment of individuals has been left out of the discussion. This is unfortunate, because the international tax system is as out of date for individuals, in particular for expatriate and migrant individuals, as it is for corporations. The existing system was designed for a world of physical provision of services, limited cross-border investment by individuals and limited voluntary migration. All of this has changed with advances in communications and transportation. Estimates by the World Bank, the United Nations and others vary, but currently there are about 275 million expatriates and migrants. Although not more than 3.5% of the world's population, this

Continued ►

number has risen sharply in the last few decades. In addition, this 'new mobility' is often marked by multiple or serial migrations. Expatriates and migrants can be caught by overlapping jurisdiction, multiple reporting requirements and dual tax residency.

At the same time, FATCA and CRS raise issues of data privacy and security, while proposals for net wealth taxes, if implemented in any serious way, will need to deal with the same issues of double taxation and privacy that arise in the income taxation of individuals. These regimes for the taxation of individuals need to be considered in terms of both fairness to individuals and fairness as between states, particularly where the competition is between developed and developing ones. The literature on fairness in taxation at the domestic level is inappropriate for evaluating international tax policy, and the developing literature on the appropriate the cross-border taxation of entities does not sufficiently address the rights of states or of natural persons in the taxation of individuals, which raises fundamental issues of human rights, justice and privacy that do not apply to entities. The paper will examine the normative basis of the existing regimes for taxing individuals in the cross-border context and consider the implications of notions of fairness for our understanding of the international taxation of individuals.

Why "Global" Fails: Inclusive Institutions & International Tax Policy Making

Natalia Pushkareva (University of Urbino / United Nations Development Programme)

In recent years we got to witness an increasing "globalisation" of tax policy, with leading policy institutions arguing that intensified internationalisation of tax policy issues is key to prosperity and stability of the global community. At the same time, we see more and more lower-income jurisdictions refusing to cooperate or adapt "global" tax policies, and implementing unilateral solutions instead. Many of them have claimed that international tax policy fora fail to properly include them in decision-making processes and represent their financial interests.

Globalization and digitalization of the past decades led to increased interconnectedness of sovereign nations, however, jurisdictions are still very different in terms of size and structure of their economies among other factors. Therefore, their tax policy choices also differ significantly. Recent research showed that the existing global tax policy institutions are systematically biased towards protecting financial interests of large, industrialized, capital-exporting countries, while they fail to properly represent "developing" countries interests. However, the demand for fair international tax policies, as well as for recognition of historical injustices related

to international taxation, is clearly present, and truly inclusive institutions are key to achieving these goals. The institutional architecture of global tax policy making has become very complex, with many national, regional and international actors pursuing various goals. While several platforms have an ambition to lead the international tax debate, the leading position of the OECD remains strong, and a shift of tax policy making to another platform in the nearest future seems unlikely from political perspective. Recently, the OECD experienced an important – yet very rapid – organizational change when the Inclusive Framework was created. The organisational structure, processes and practices will need time to adjust and to deliver desirable outcomes, while at the moment lower-income jurisdictions are still experiencing multiple issues when voicing their opinions and trying to affect content of tax policies drafted by the OECD.

The paper explores the influence that limited access of "developing" states and territories to international tax policy making had on the system of international taxation and inequalities between the Global North and the Global South. In addition, it discusses how institutional architecture of tax policy making can be altered to address the issue and distribute taxing rights in accordance with value creation rather than economic power. Argumentation is based on analysis of relevant OECD organisational documentation, publicly

available macroeconomic data, in-depth interviews with tax policy professionals and experience of other institutions. However, the OECD is not the first international forum experiencing inclusivity issues but aiming at representing its participants on an equal footing. Many international organizations faced similar challenges, and while it is difficult to judge how "perfect" their models of inclusion are, their experience is not to be wasted. I also explore experience of other international organizations by investigating what did they do to improve representation and inclusion of lower-income jurisdictions, and what lessons can be learnt from their experience. In particular, I attempt answering the following three research questions:

Q 1: What did other international organizations do to improve their inclusivity / representation of "developing" countries?

Q 2: Are there some parts of their experience that can be borrowed by the OECD to better represent interests of lower-income jurisdictions and produce more balanced policies?

Q 3: What amendments / additions to these practices might be needed given the international tax context?

This part of analysis examines experience of international institutions such as the World Bank, the International Monetary Fund, the Basel Committee on Banking Supervision as well as the Financial Action Task Force.

Uniform International Tax Collection and Distribution for Global Development, a Utopian BEPS Alternative Abstract

Henry Ordower (Saint Louis University School of Law) '

Under the guise of compelling multinational enterprises (MNEs) to pay their fair share of income taxes, the OECD and other multinational agencies introduced proposals to prevent MNEs from eroding the income tax base of developed economies by continuing to shift income artificially to low or zero tax jurisdictions. Some of the proposals garnered substantial multinational support, most recently adopted by 136 (7) OECD countries, including recent support from the U.S. presidential administration for a global minimum tax. This Article reviews many of those international proposals.

The proposals tend to concentrate the incremental tax revenue from the prevention of base erosion into the treasuries of the developed economies although the minimum tax proposal known as GloBE encourages low tax countries to adopt the minimum rate. The likelihood that zero tax countries will transition successfully to imposing the minimum tax seems uncertain.

Developed economies lack a compelling moral claim to incremental revenue so this Article argues that collecting a fair tax from MNEs and other taxpayers should be a goal that is independent of claims on that revenue.

This Article maintains that to prevent tax base erosion, the income tax base and administration must be uniform across national borders and the Article recommends applying uniform rules administered by an international taxing agency. The Article explores the convergence of tax rules under such an international taxing agency.

The Article illustrates the problem of uniform tax collection and distribution with a regional example of school funding in St. Louis County, Missouri, USA. Through that mechanism, the Article presents the unnecessary and unfair manner in which some districts capture a disproportional share of revenue and deploy it to provide higher quality education in their communities, leaving other communities far behind. Distribution of tax revenue by the international agency should follow contextualized need. In addressing the conundrum of absolute poverty in the undeveloped and developing world vis á vis relative poverty in the developed world, the Article proposes that the taxing agency should distribute all incremental revenue from the uniform tax where the need is greatest to ameliorate absolute poverty and improve living standards without regard to income source.

The location of income production, destination of the produced goods and services generating the income, and residence of the income producers should not determine the tax revenue

distribution. Rather, the use of contextualized need for distribution determination will enable developed economies to receive sufficient revenue to maintain their existing infrastructures and governmental services. Developed economies should forego new revenue, for which they have not budgeted, in favor of improving worldwide living conditions for all. The proposals for uniform, worldwide taxation and revenue sharing based on contextualized need are admittedly aspirational and utopian but designed to encourage debate on sharing of resources in our increasingly globalized world.

Continued ►



FACULTY OF ARTS AND SOCIAL SCIENCE

University of Surrey
Guildford, GU2 7XH, UK

surrey.ac.uk