



OECD's growing role in the harmonization of taxation regimes

**(and how it changes our understanding of the international tax
law system)**

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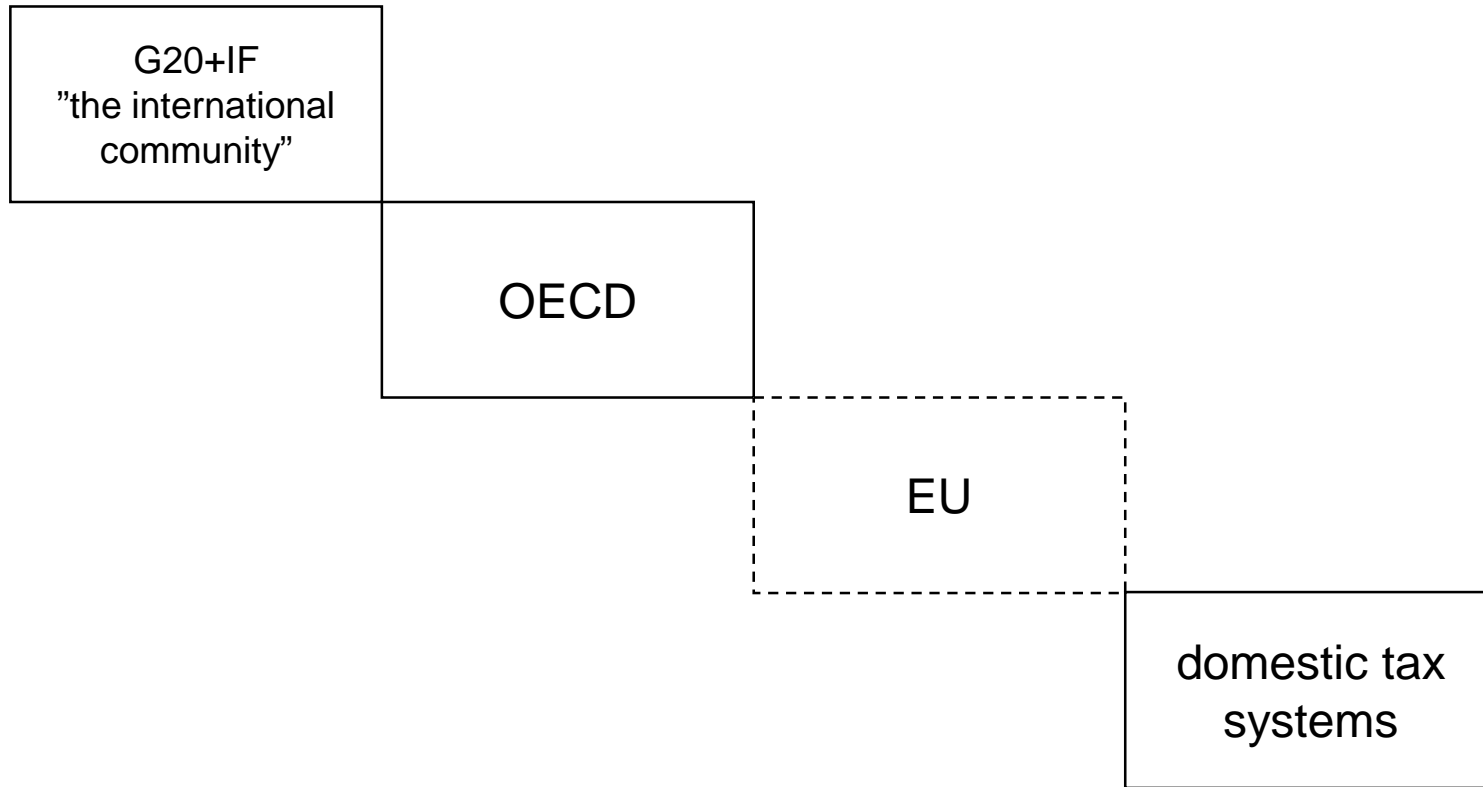
Now: implementation of Pillar 2 – global minimum tax

- Objectives
- Fairness narrative, delegitimization of the previous system
 - (See e.g. Plekhanova, Canadian Tax Journal 70:4, 2022)
- Common approach
- Participating countries
- EU endorsement
- Model rules & commentary
 - phase 1: how to implement
 - phase 2: how to interpret

⇒ *Pillar 2 demonstrates the current role of OECD – what it has become*

- How did we get here
 - (See e.g. Mason, American Journal of International Law 114:3, 2020)
- Which countries and interest groups had influence, who were excluded
 - (See e.g. Elschner & Hardeck, Contemporary Accounting Research 39:1, 2022)
- Potential and actual winners and losers
- What are the consequences for business
 - (See e.g. ETLA 2023: Finnish Companies in the Vortex of International Tax Reforms)
- Are the compliance costs reasonable
- Is the system "fair" as endorsed by the OECD
- What are the next steps (Pillar 1 and beyond)
- What are the consequences for future developments in EU tax policy
- What are the consequences for domestic tax legislation and policy

- Would all this have been possible even without the OECD?



tax technical, fiscal, legal, economic and political aspects & explanations

OECD before and after BEPS?

- Vienna Convention
- tax sovereignty
- bilateralism
- elimination of double taxation
- potential conflicts between tax treaties and EU law
- *expert organization*
- internationally agreed reform agenda
- international tax standards
- multilateralism
- improving "fairness" of the system
- keen endorsement by EU
- *inclusive platform for building consensus at global level*

Theories of "new intergovernmentalism" as explanation?

- traditional expectations
 - moving forward in international tax coordination may require a creation of "World Tax Organization" etc., with defined tasks and competences
 - changes may be effective only if based on sufficiently binding norms (tax treaties)
 - one-off transformation
 - *"rule of law -model"*
- expectations under "new intergovernmentalism" (e.g. *Bickerton et. al 2015, JCMS*)
 - countries are in favor of enhanced international coordination of the economy, but are not willing to transfer new legal competences to supranational institutions
 - proposed policy coordination measures have better prospects of success if based on soft law
 - gradual acceptance
 - *"consensus -model"*

OECD materials as "soft law"

- Rule of law -principle is a (theoretical) cornerstone of tax law – pros & cons
- How to define "soft law", generally and for the purpose of international tax law
 - (See e.g. Navarro, Intertax 48:10, 2020)
- Is there (still) anything between hard law and soft law
- OECD Commentary
- OECD Transfer Pricing Guidelines
- OECD materials endorsed in the recitals of EU directives
- challenges (or futility) of clear-cut classifications

Implications and research gaps (tax law)

- future role of OECD
 - (See e.g. Tychmanska, Intertax 49:8-9, 2021)
- key elements of tax sovereignty
- EU – OECD relationship in tax policy and legal interpretation
- sources of international tax law
- purpose and objectives of the international tax law system
- prerequisites and obstacles of international tax coordination