



Заседание Координационного Совета Института права БРИКС и Экспертной группы

Координация будущих исследовательских проектов, академических и практических мероприятий экспертов по праву БРИКС

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Outline

- 1. Right to protect effective sovereignty without external interferences**
- 2. Two examples of a critical area: transparency and tax incentives in special economic zones**
- 3. BRICS as bridge between OECD and developing countries: promoting global fairness in allocation of taxing powers**

1. Effective sovereignty without interferences

- ▶ *Saint-Amans*: “Chinese Presidency of the G20 has proposed linking tax policy with broader G20 objectives, namely strong, sustainable and inclusive growth. The OECD is uniquely positioned to identify tax policy reforms and opportunities, and this could become a third building block of the international tax agenda, if not its *raison d’être*”.
- ▶ Developing countries did not participate to setting of the standards (global tax transparency and BEPS), but are at equal footing as for their implementation, which is also supported by the Addis Tax Initiative (ATI) technical assistance
- ▶ ATI declaration: “mobilization and effective use of domestic resources and to improve the fairness, transparency, efficiency and effectiveness of their tax systems”.

1. Effective national sovereignty in tax matters

- ▶ Fair allocation of taxing rights
- ▶ BEPS pursues international tax justice through measures that allow a country to exercise its taxing jurisdiction on value created on its territory, counter base erosion and profit shifting
- ▶ BEPS implementation runs counter to international tax justice insofar as it allows other countries to compensate lower or zero taxation at source

Two basic questions for scientific research:

1. Are developing countries obliged to exercise their taxing jurisdiction when value is created on their territory?
2. Are developing countries entitled to remain the masters of their international tax policy decisions without external interferences?

2. A critical example on tax transparency

A developed country needs information on transfer pricing

Question:

Can developing countries really supply (either via AEOI, or upon request) what the developed country needs?

Risks:

- a. Mock compliance by developing country
- b. Devote to tax transparency large financial resources that could be otherwise used to the interest of the national community in the developing country

Exploring solutions through future research:

- ▶ Developing countries may gain by upgrading their tax system and exactly determine arm's length values in transfer pricing cases
- ▶ However, less sophisticated and less expensive mechanisms may be used (e.g. the Brazilian transfer pricing margin method, or some revised version of it - see Schoueri in BIT 2015/12)

2. A critical example on fair allocation

- ▶ A developing country gives a tax incentive for genuine activities exercised inside a special economic zone
- ▶ The developed country of residence of the investor applies CFC legislation (as suggested by the BEPS project) to income derived from entities established in the special economic zone and subject to lower taxation in connection with the grant of a tax incentive
- ▶ In addition, double taxation is relieved through credit method

Possible solutions to explore with future research:

1. Limiting the application of CFC legislation to passive income and the actual abusive practices only
2. Applying tax sparing or exemption in order to allow developing country to remain the master of its international tax policy decisions

Possible approach for future research

**Adaptation, rather than
implementation to BEPS and
transparency in developing countries**

**No compensation of tax incentives in
the absence of abusive practices**

The role of the BRICS and two milestones for future research

Building a bridge between OECD and developing countries: promoting fairness in allocation of taxing rights

Setting minimum standards and best practices for international tax justice



Thank you!

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