



**Universität  
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# **Global Justice and Distribution of Income – an Introduction to the Current Discussion in International Tax Law**

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## Content

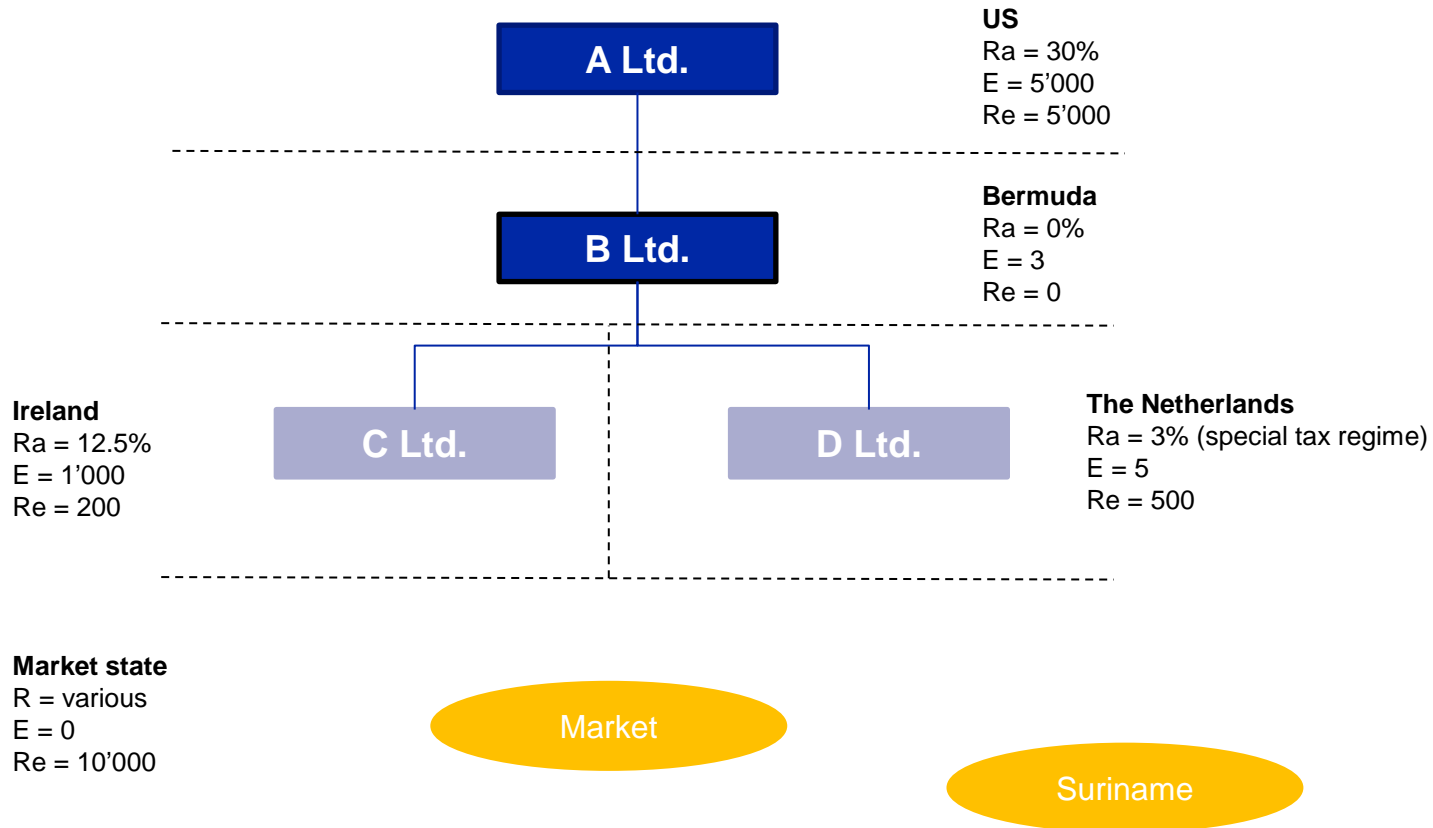
1. Why interdisciplinary research?
2. Overview on the existing references to political philosophy
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# Why interdisciplinary research?



# Our research question cannot be solved by «only» referring to one discipline



**Total profit = 1'000**

$R_a = \text{Tax Rate}$

$E = \text{Employees}$

$Re = \text{Revenue}$

## What are the research questions?

- Do states indeed need to share „the pie“, i.e. is single taxation indeed the ideal solution?
- If yes, how should we avoid double taxation?
- If yes, what does single taxation mean?
- Is there a normative claim for cross-border distributive duties?
- Is tax law an efficient instrument to achieve distributive duties? Or are other legal measure more efficient?
- Should international tax policy aim at strengthening the sovereignty of states or not?



## Why should we refer to political philosophy

- Neither the discipline of law nor public finance / economics contain a theory of (global) justice
- How should we decide whether the international tax regime is just?
- Empirical evidence, i.e. perception of justice?
- Procedural justice – see sessions 4 and 5
- However, if we need an analytical tool to decide whether the international tax regime is just, reference to political philosophy is essential



# **Overview on the existing references to political philosophy**

## Tax law as means to achieve distributive justice

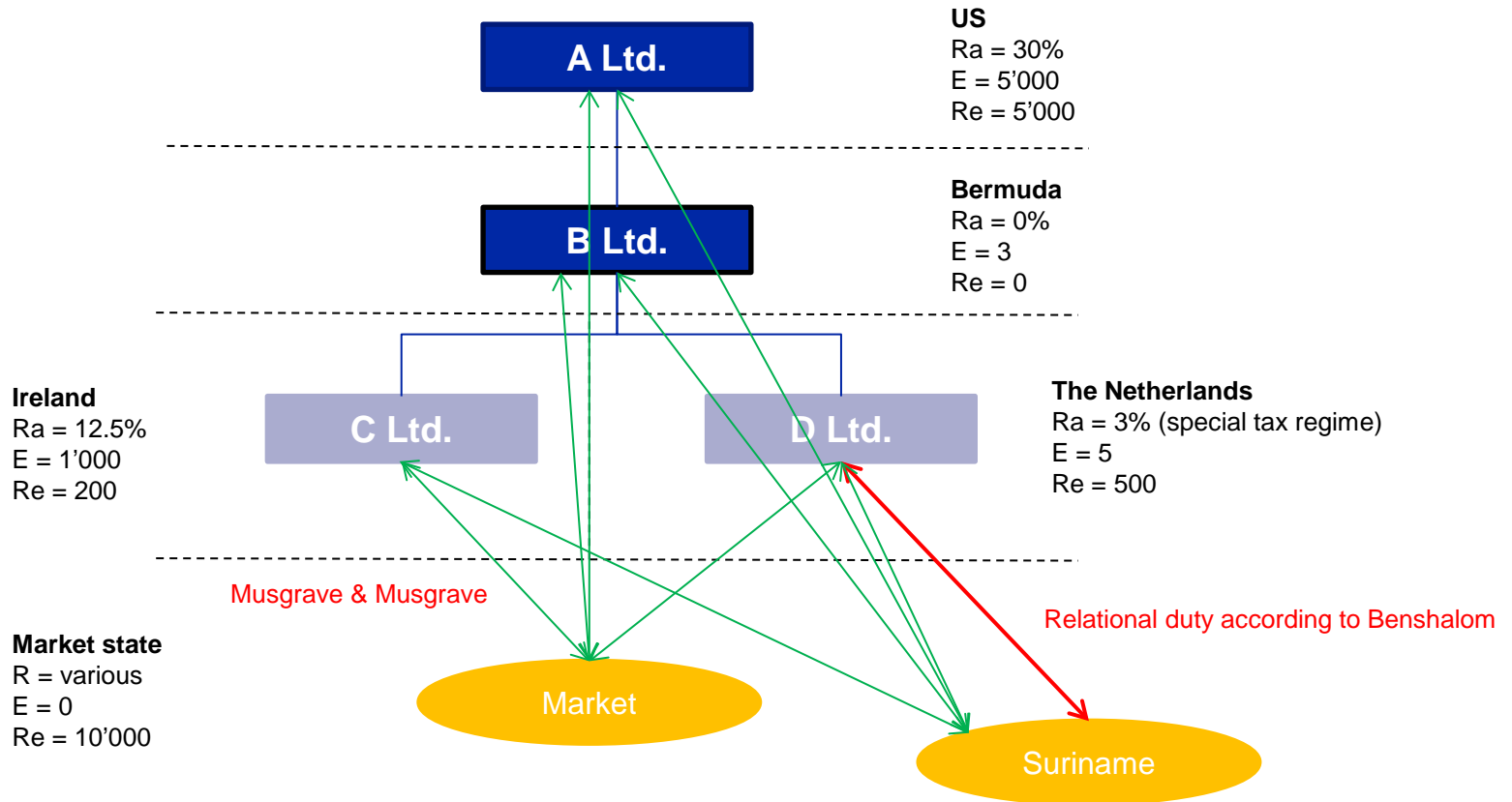
- Musgrave & Musgrave (1972):
  - *„Finally, it might be argued that the taxation of income from foreign-owned capital should be used as an instrument of international redistribution. With a highly unequal distribution of resource endowments and per capita income among countries and in the absence of an adequate method for dealing with the problem, an appropriate pattern of tax-imposed national gains and losses might be used to secure some degree of adjustment.“*
  - *„it might be desirable to apply a uniform rate schedule“*
  - **Different withholding tax rates depending per capita income**



## Tax law as means to achieve distributive justice

- Benshalom (2010):
  - Global trade could potentially lead to relational-distributive duties between states.
  - Source taxation should be increased in the relation between developing and developed states, i.e. higher taxing right of the developing country should be implemented.
  - Applicable withholding tax rates depends, *inter alia*, on the trade relation between two countries.

# Our research question cannot be solved by «only» referring to one discipline



**Total profit = 1'000**

Ra = Tax Rate

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## The importance of tax sovereignty

- The question of whether the principle of sovereignty should be protected relates to the debate among philosophers on global justice
- Sovereignty as a means to achieve global justice (following an institutional approach)? If yes,
  - Does harmful tax competition undermine the sovereignty of other states?
  - Does a worldwide tax system infringe the principle of sovereignty?
  - Do CFC rules infringe the principle of sovereignty?



## International tax law and political philosophy

- Further contributions:
  - Christians (2009)
  - Dagan (2015)
  - Dietsch (2015)
  - Peters (2014)
  - Ronzoni (2009)
  - Valta (2014)



# **BEPS and theories of global justice**



## BEPS – Base Erosion and Profit Shifting

- OECD/G20 project to limit aggressive tax planning
- Launched by some of the strongest economies in the world
- 15 different actions
- 13 final reports published on 5 october 2015



## Alignment of taxation and value creation

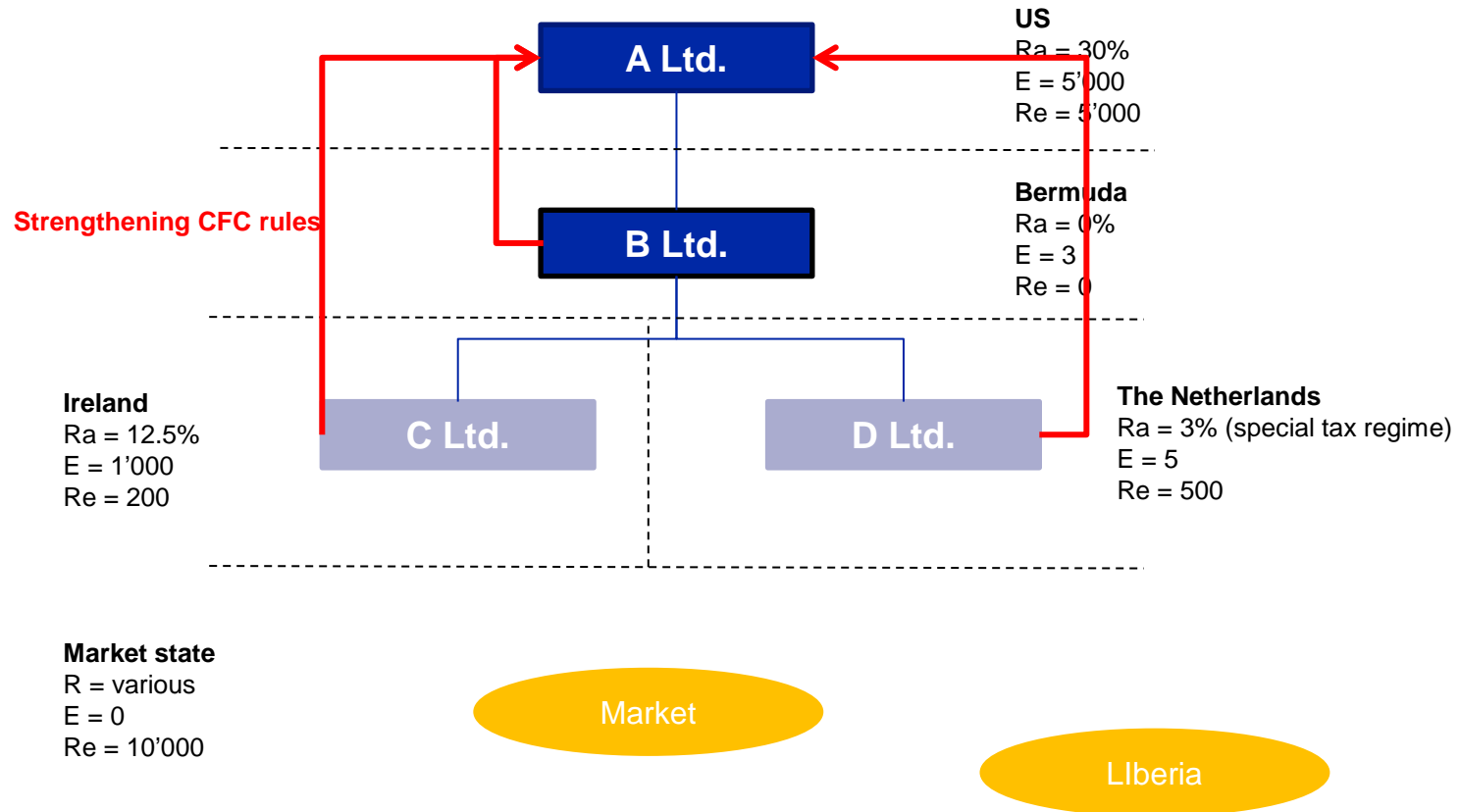
- The main goal of the BEPS project seems to be to realign taxation and value creation
- What is the underlying reason for such a claim?
- The argument seems to be that these states are „entitled“ to tax such income, i.e. protection of sovereignty
- If it is the principle of sovereignty, should it not also contain a negative component?

## The limited influence of political philosophy

- BEPS does not consider potential distributive duties
- Has an international basic structure been created which would create distributive duties?
- BEPS does only partly consider the (potential) need to protect sovereignty as a normative goal
- BEPS speaks of „equal footing“ but are the participating states are indeed on an equal footing (session 4)?
- The increase of tax revenue seems to justify many measures
- BEPS limits the sovereignty of states to decide upon their tax policies



# Strengthening CFC rules



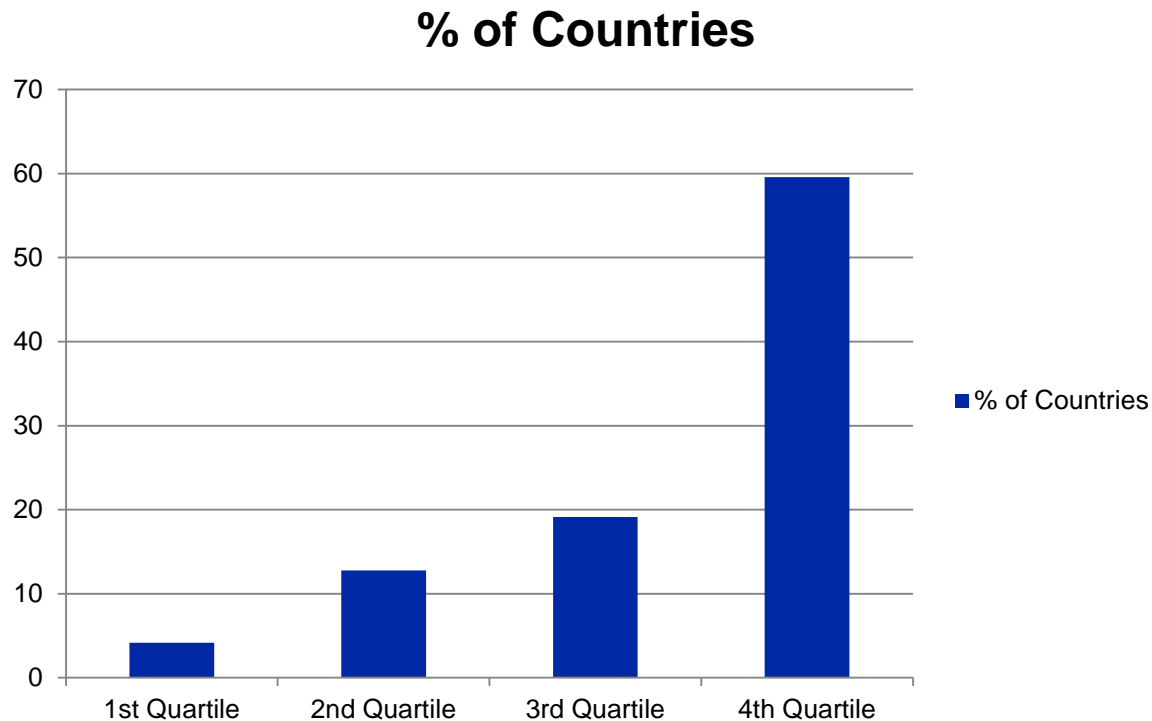
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## Percentage of countries with CFC rules



## Conclusions

- The most crucial questions of international tax law cannot be solved by only referring to existing legal principles
- We should more focus on question such as:
  - Should the international tax law lead to distributive payments following cosmopolitan approach?
  - Should we protect the sovereignty of states and if yes, what does it mean?