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

Dr. Peter Hongler

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Content

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Why interdisciplinary research?
Our research question cannot be solved by «only» referring to one discipline.

- **US**: Ra = 30%
  - E = 5'000
  - Re = 5'000

- **Bermuda**: Ra = 0%
  - E = 3
  - Re = 0

- **Ireland**: Ra = 12.5%
  - E = 1'000
  - Re = 200

- **The Netherlands**: Ra = 3% (special tax regime)
  - E = 5
  - Re = 500

- **Market state**: R = various
  - E = 0
  - Re = 10'000

- **Suriname**: Total profit = 1'000
  - Ra = Tax Rate
  - E = Employees
  - Re = Revenue

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Tax Justice in a Global World
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

<table>
<thead>
<tr>
<th>Country</th>
<th>Tax Rate (Ra)</th>
<th>Employees (E)</th>
<th>Revenue (Re)</th>
</tr>
</thead>
<tbody>
<tr>
<td>US</td>
<td>30%</td>
<td>5'000</td>
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</tr>
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<tr>
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Total profit = 1'000
Ra = Tax Rate
E = Employees
Re = Revenue

Musgrave & Musgrave
Relational duty according to Benshalom

Suriname
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 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

<table>
<thead>
<tr>
<th>Location</th>
<th>Ra</th>
<th>E</th>
<th>Re</th>
</tr>
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<tbody>
<tr>
<td>A Ltd.</td>
<td></td>
<td></td>
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<tr>
<td>B Ltd.</td>
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<td>C Ltd.</td>
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<tr>
<td>D Ltd.</td>
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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?