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Is Tax Neutrality a Weak International Tax Policy Principle?

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Why does it matter?

- Efficiency and neutrality are used to steer international tax policy – even as axiomatic claims
- Example:
- **We should not implement specific rules to tax the digital economy as it leads to distortions (e.g. withholding taxes on digital services or a digital PE).**



Who is competent to suggest tax policy developments?

- Political scientists?
- Lawyers?
- Economists?
- Philosophers?
- Other academics and non-academics?



Who is competent to suggest tax policy developments?

- *“The vague and unpromising results which are brought forward by the application of the ability-to-pay principle and the benefit principle to international tax allocation **seem to give rise to a pure efficiency analysis**, which tries to allocate taxation rights in a way that promotes either overall efficiency or at least national efficiency from a strictly economic point of view.” (Schön 2009)*
- *“Since the legal literature does not offer a definitive solution, economic literature **should also be considered** while looking at allocation rules. The discussion of international tax policy in economics has centered around achieving ‘efficiency’ or the pareto optimum productivity out of the global economy.” [...] “At this juncture, it is important to discuss possible solutions on how allocation rules in tax treaties may be structured, keeping in mind efficiency and equity and resolving the practical issues discussed above.” (Govind 2018)*



What are the justifications?

- **Worldwide welfare/worldwide prosperity?**
- Equality? (see for further details conference paper)
- **Main line of reasoning:**
- An efficient (nondistorted) allocation of production factors leads to worldwide welfare



Worldwide welfare as the justification

Justification?

- *“The efficiency of the world economy should be maximized by allocating the production factors to the location where “they” earn the highest return.[footnote omitted] **This will enhance worldwide prosperity,[footnote omitted] although it depends, of course, on more than the efficient creation of income, e.g., on the distribution of the income earned.**” (Kemmeren 2006)*
- The first part of the statement is weak unless worldwide prosperity or worldwide welfare is defined (considering inequalities, environmental protection, humanitarian duties, gender equality, life expectancy)
- Implicit utilitarian bias! But: utilitarianism does not find a lot support in global justice theory (see e.g. John Rawls [and many more])
- The reason seems obvious – there is no distribution mechanism at an international level or: **Why growing the pie if we cannot share it?**



Worldwide welfare as the justification

Intermediate conclusions:

- Welfare does not justify neutrality as a normative goal unless welfare is understood in a utilitarian manner
- International tax law plays a particular role in welfare economics
- International tax policy is still focused on efficiency considerations (CIN, CEN and CON) and not considering a broader welfare discussion
- If rule A is more efficient than rule B it does not mean that tax policy should suggest rule A as rule A does not necessarily increase welfare.



The future of tax treaty policy?

- The goals of tax treaties must be refined. Examples:
 - Should tax treaties lead to a distributive effect?
 - If yes, what does “distributive effect” mean? Humanitarian duty or general distribution from the rich to the poor?
 - How is “rich” and “poor” to be defined? (capabilities approach or GDP)
 - Other goals: environmental protection, protection of fiscal self-determination, gender equality
 - Before we have not taken a position on these questions it is dangerous to suggest new rules