

International Tax Relations

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Spring

Semester

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Background and reasons for the course

Tax is at the core of the sovereignty of States. Tax policy is therefore primarily a domestic matter. International tax has long been limited to a few sets of legal instruments (Double Tax Conventions - DTC) designed to limit tax frictions between countries in the case of cross border income and businesses. The international tax framework, as initially designed by the League of Nations almost a century ago, has deeply evolved over the past 15 years. Following the Global Financial Crisis of 2007-2008, governments across the world have revisited their tax relations. Under the impetus of a new informal global governance (the G20), the Organisation for Economic Cooperation and Development (OECD) has been the catalyst of a new set of standards based on the principle of tax cooperation. This attempts to introduce a tax regulation of globalisation takes has taken place against the background of domestic resource mobilization (DRM) as a key UN sustainable development goal (SDG) Putting the emphasis on fighting double non taxation, governments across the world have joined new bodies to discuss international tax matters. They have also agreed new rules, which go beyond the traditional DTC and intertwine domestic tax regimes. They have finally agreed peer review mechanisms to monitor the compliance with the new rules. The end of bank secrecy, the fight against base erosion and profit shifting (BEPS), the establishment of a global minimum tax are defining features of the new international tax framework. The course aims to help students understand the making of international tax rules and get a good understanding of the new framework and the political dynamics which made it happen.

Objectives of the course

This course aims to provide a good knowledge of both the existing international tax rules and the making of them. It is an international tax policy course which bridges its **institutional, strategic, and political dimension**. The topic is approached from the perspective of all stakeholders involved and will detail the dynamics of international tax negotiations and the institutional environment in which they take place. The course will show case the fundamental change which have occurred over the past 15 years and, in particular, the end of bank and fiduciary secrecy, the BEPS rules and the establishment of a global minimum tax (Pillar 2) together with the ongoing negotiation on new rules to allocate taxing rights of the largest and most profitable multinational enterprises (Pillar 1). As part of the description of the current international tax negotiations and debates, a special focus will be brought to the issue of tax and environment and to the issue of tax and development.

Content and modalities of the course

The course will be delivered in 7 sessions of 4 hours blocks. Each block will be divided in 2 lectures of 90 minutes followed by a wrap up session of 1 hour. The course means to be interactive and connected to current international tax debate. One to two guests will be invited at each session to share their experience or knowledge. The invitees will mainly join virtually.

Block 1 (23 February) will set the scene of the course and will describe the history of international tax relations, the architecture of the international tax system and the main actors (governments, International Organizations) as well as the most recent political dynamics.

Block 2 (9 March) will be dedicated to tax cooperation and will describe the mechanisms which led to putting an end to bank secrecy (exchange of information on request and automatic exchange of information following FATCA). The course will focus on level playing field issues, peer reviews and the new institutional framework (the Global Forum) and its functioning.

Block 3 (30 March) will focus on the launch, development, and outcome of the BEPS project, including the establishment of the Inclusive Framework. It will discuss the technical/legal innovation brought by the project, in particular the new rules intertwining domestic legislations and the MLI.

Block 4 (6 April) will further elaborate on the BEPS outputs, in particular on the work on transparency (Country by Country Reporting), and the unfinished work (Transfer pricing rules and the tax challenges of the digitalization of the economy).

Block 5 (27 April) will describe the 2017 US tax reform and its impact on the design of Pillar 1 and Pillar 2. The course will describe the global minimum tax and the ongoing negotiation on Pillar 1.

Block 6 (11 May) will be dedicated to the issue of tax and development, explaining the concept of Domestic Resource Mobilization and the issue of inclusivity of the current institutions (UN, OECD, IMF, WBG...). Special focus will be made on an innovative initiative: Tax Inspectors without Borders.

Block 7 (25 May) will touch upon the issue of carbon taxation against the background of the fight against climate change. The course will discuss how carbon is currently priced, what the issues of carbon taxation are and what the current institutional framework to discuss this issue is.

References

All relevant materials relating to the course shall be available on Moodle. Reading advice per session are provided below. Students are encouraged to keep updated by following all OECD tax publications (register to the OECD tax newsletter), reading OECD Secretary General Reports to the G20 (past and future).

The list of speakers will be provided later.

Course Assistants

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Appointments only

Course Schedule

Block 1 (23 February 2023): International Tax relations: Back to Basics

Topics	<ul style="list-style-type: none"> ▶ Origin of international tax rules (tax sovereignty, consent to tax, double taxation) <ul style="list-style-type: none"> • Guiding principles shaping international tax policy (the League of Nations legacy) • Jurisdiction to tax (residence versus source taxation) • Separate entity principle • International allocation of profits and the arm's length principle (ALS) • absence of coordination of tax basis, tax rates, entity classification etc. ▶ The Players (States, Jurisdictions, International Organisations) and the negotiation dynamics (unanimity, consensus, soft law...) ▶ The new political dynamic following the 2007-2008 crisis; the role of the G20
Reading	<ul style="list-style-type: none"> ▶ OECD (2013), Addressing Base Erosion and Profit Shifting, OECD Publishing. http://dx.doi.org/10.1787/9789264192744-en, pp. 25-47.

Block 2 (9 March 2023): Tax Cooperation after the Global Financial Crisis

Topics	<ul style="list-style-type: none"> ▶ Traditional rules and their limitations (former Article 26, article 27 of DTC) – role of competent authorities ▶ The new standard on information exchange on request and its endorsement in 2009 <ul style="list-style-type: none"> • The 2000 report of bank secrecy • The lists and the issue of level playing field • The new standard ▶ The Global Forum and the peer reviews of the core principles <ul style="list-style-type: none"> • The core principles • The institutional dynamics ▶ FATCA and the Common Reporting Standard – policy and politics
Readings	<ul style="list-style-type: none"> ▶ Article 26 and 27 of the MTC ▶ Global Forum Terms of Reference ▶ Global Forum Peer review of Switzerland

Block 3 (30 March 2023): Base Erosion and Profit Shifting – the G20 Response

Topics	<ul style="list-style-type: none">▶ The earlier OECD work on harmful tax practices▶ The BEPS issue and the BEPS Action Plan (2012-2013)▶ The BEPS philosophy<ul style="list-style-type: none">• Bridging the gap between sovereignties• Realigning profits and substance• Improving transparency▶ The innovative instruments<ul style="list-style-type: none">• Minimum standards and common approaches• The MLI• The Inclusive Framework▶ Focus on Hybrid mismatches▶ Transparency and public perceptions – Country by Country Reporting following in the context of leaks and “Papers”▶ Transfer Pricing: is the DEMPE dumb?
Reading	<ul style="list-style-type: none">▶ Wolfgang Schön, ‘Is there finally an International Tax System’, World Tax Journal 2021▶ OECD (2013), Addressing Base Erosion and Profit Shifting, OECD Publishing. http://dx.doi.org/10.1787/9789264192744-en, pp. 73-79▶ OECD, Action Plan on Base Erosion and Profit Shifting, 2013▶ OECD, Explanatory Statement, 2015▶ Article, Has Cross Border Arbitrage Met its Match? Prof Ruth Mason Pascal Saint-Amans https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3915033

Block 4 (6 April 2023): BEPS – Transparency and the remaining BEPS issues

Topics	<ul style="list-style-type: none">▶ The tax challenges of the digitalization of the economy<ul style="list-style-type: none">• Action 1 Report• The issue (source/residence and the concept of destination)• Digital Services Taxes▶ The US Tax reform, DBCFT, GILTI and the BEAT▶ The emergence of Pillar 1 and Pillar 2
Reading	<ul style="list-style-type: none">▶ BEPS Action 1 Report - 2015▶ Intermediary report on the Addressing the Tax Challenges of the Digitalisation of the Economy (OECD, March 2018)

Block 5 (27 April 2023): Pillar 1 and Pillar 2

Topics	<ul style="list-style-type: none">▶ The design of Pillar 1 and the state of play<ul style="list-style-type: none">• Towards unitary taxation and destination• Scope and technical design (incl elimination of double taxation, marketing and distribution safe harbour...)• Tax certainty• State of play▶ Pillar 2 and the Global minimum tax<ul style="list-style-type: none">• Overall design: a common approach, critical mass of countries and domino effect• Income Inclusion Rules/Undertaxed payment rule and top up tax (QDMTT).• State of play (EU directive)• Implementation and tax certainty issues▶ Current State of P2 implementation
Reading	<ul style="list-style-type: none">▶ P2 Model Rules

Block 6 (11 May 2023): Tax and development

Topics	<ul style="list-style-type: none">▶ The weight of direct taxation in developing countries▶ Source/Residence<ul style="list-style-type: none">• Withholding taxes• Extractive industries taxation▶ OECD/UN: which body to organize the debate and the negotiations▶ DRM: from aid to tax – Addis Conference on Financing Development▶ The current state of play: FACTI Report, Current Report by the UN SG▶ Focus on Tax inspectors Without Borders
Reading	<ul style="list-style-type: none">▶ FACTI Report▶ OECD Report to the G20 on Tax and Development (2020)

Block 7 (25 May 2023): Trade, Tax and Climate

Topics	<ul style="list-style-type: none">▶ Carbon pricing: state of play▶ The political issues of carbon pricing<ul style="list-style-type: none">• Domestic dynamics• International dynamics▶ The EU CBAM and the US Inflation reduction Act▶ The Institutional Framework
Readings	<ul style="list-style-type: none">▶ Effective Carbon rates, OECD▶ German Proposal for a Carbon Club▶ Inclusive Forum on Carbon Mitigation Approaches