

Minimum Tax, Maximum Governance

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The OECD's Pillar Two project aimed to establish a global minimum tax for large multinationals, but its most enduring impact will likely be its role in ushering in an indefinite period of maximum governance with an increasingly complex and fragmented transnational tax order that is only exacerbated by the recent political shift in the United States. As non-OECD member countries seek to expand their influence on global tax relations through the UN while continuing to engage with the OECD, a proliferation of committees, meetings, negotiations, and collaboration among governmental and nongovernmental organizations will amplify the already intricate politics of global tax policymaking. The Trump administration's 'America First' trade policy and its stance on international cooperation have further complicated these dynamics, highlighting the challenges of achieving a cohesive global tax framework. Whether this next period of global tax relations will eventually result in better, more equitable policies cannot be foretold. What is clear is that, beyond any substantive policy reforms it may bring, Pillar Two is part of a cycle of institution-building arising from widespread dissatisfaction with past governance models, raising critical questions about the future of international tax relations and the value of a decentralized, if more resource-intensive, process.

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Introduction

Among a number of related anti-tax avoidance initiatives, the Organisation for Economic Cooperation and Development (OECD) Pillar Two project sought to end tax competition as we know it by in-

roducing a guaranteed tax floor for large multinationals (OECD, 2021). Instead, the most prominent change that Pillar Two has helped to produce to date is the toppling of the OECD's grip on global tax governance. The recent introduction of 'America First' trade policy by the Trump administration, which denounces cooperative multilateralism in favour of self-interested unilateralism, brings further disruption to the regulatory landscape. As the transnational tax order reorganizes itself, the legacy of Pillar Two for the foreseeable future will be maximum governance instead of minimum taxes.

I use the term *maximum governance* to refer to the rapid expansion of an already complex transnational tax order, as non-OECD countries seek to exert a greater amount of influence over the shape of future tax policy through the United Nations (UN), while continuing to work with the OECD as it implements its anti-Base Erosion and Profit Shifting (BEPS) tax policy agenda (Dourado, 2025; Peters, 2025). Separate bilateral negotiations with the United States adds a third dimension that is likely to be incompatible with both of these institutional designs. The coming expansion of governance will lead to more investment in administrative personnel hours, more committees, more meetings, and exponentially more words written about international tax than in the prior transnational order. It will likely mean more protracted discussions among blocs of countries whose policy preferences diverge, and whose ability to achieve such preferences also diverges between OECD- and UN-led negotiation processes. It will likely take longer for countries to converge on which tax policies to advance first or at all. It will mean more interaction amongst the OECD, the UN, and probably related bodies such as the International Monetary Fund (IMF) and associated nongovernmental organizations as well (Peters, 2025). The already indecipherable politics of OECD-speak (that particular way of talking as an intergovernmental organization that filters and packages its members' inconsistent views into a single voice on complex subjects) will likely become even more opaque, as will statements by the UN.

Maximum governance thus means an exponential increase in the thousands of day to day actions, interactions, and decisions that currently form the transnational tax order and propel each iterative or recursive cycle of international tax law- and policy-making. This period of maximum governance will continue until such time as a single policymaking body or process attains sufficient dominance to quash the duplication of resources. Equilibrium may emerge in the form of one or a group of the OECD member states re-asserting their leadership in a new (possibly less visible) way, or conversely in the form of a new status quo

that meaningfully distributes leadership more broadly. The US denouncement of the OECD presumably makes it harder for other OECD members to reposition the OECD going forward, but neither has the US supported any move of tax policy to the UN, even before the current administration.

It is, therefore, not obvious which kind of leadership will characterize the future transnational tax order nor how many years it will take to settle into a new equilibrium. What is clear is that the current upheaval is the culmination of years if not decades of advocacy and agitation on the part of those who viewed the OECD-led status quo as inappropriate, well before the two-pillar project (Dourado, 2025; Eurodad, 2016).

As such, Pillar Two (and the BEPS project more broadly) is part of an iterative cycle of substantive tax law- and policy-making, but it is also part of a distinct iterative cycle of institution-building that responds to the dissatisfaction of lawmakers to a past institutional status quo. This distinct process illuminates points of contention that might otherwise have been obscured by focused attention on substantive technical rules. The emergence of a new cycle of institution building suggests there is a possible future for international tax relations that is in important respects 'better' than the past. The question is how one defines 'better' in this context.

In terms of time and money used to produce tax policy, maximum governance might feel like a burden, and some will no doubt consider it a wasteful duplication of resources. Possibly, more committees and more meetings and more words will lead to better policy in the long run, if including more perspectives in agenda-setting and decision-making leads to more creative or more efficient or fairer agendas and decisions. But it is also possible that more committees and more meetings and more words will lead to none of those things; that the United States and other key OECD members, who are determined not to transfer tax policy-making to the UN, will prevent any meaningful change in leadership. This risk makes it worthwhile to consider whether today's investment in expanding the transnational tax order will be worth it, even

if there can be no dislodging of global power relations.

The argument of this article is that the investment in maximum governance is most likely worth it, even if the status quo distribution of economic and geo-political power proves to be intractable. In particular, the investment will be worthwhile if it means that policymakers who have largely monopolized policymaking through the OECD are forced to apply resources to difficult governance questions that they have long sought to sideline. These governance questions, at essence asking who should decide what global tax policies to work on, and who should decide who decides, are institutional choice questions (Komesar, 1994). The answers that policymakers give to these questions ultimately impact the distribution of power and economic resources among countries. If nothing more, the OECD's continued work on implementing its anti-BEPS agenda demonstrates that marginalizing institutional questions is not a sustainable way to govern. Institutions and processes are key to governance and their design ought to be a major priority for policymakers across both the OECD and the UN.

The article proceeds in Part I with a brief reminder of the complex institutional aspects of the pluralistic, networked, transnational legal order that makes up what scholars are generally describing when they refer to *international tax law*. Part II then explains how and why Pillar Two helped to bring about a recursive cycle of institutional governance reform. Part III examines the emerging UN Framework Convention's sole acknowledgement of the vital importance of governance, namely in the form of a miscellaneous collection of institutional needs buried in a single paragraph of 'other' items. The article concludes that sidelining these important governance questions is a sure way to allow past OECD-led governance choices to creep into the present, while on the contrary centering governance has a better chance of potentially forcing OECD member countries – even including the United States – to accept a more inclusive and responsive governance model going forward.

1. Our pluralistic, networked, transnational tax law order

International tax has a history of inexplicable governance. There is no comprehensive multilateral tax agreement (although there are various multilateral agreements about international tax). There is no world tax body to govern the development of multilateral terms or to oversee disputes as they arise. Instead there is a sprawling, multifaceted, network-based, pluralistic transnational tax law order (Christians, 2010, Christians, 2017). There is formal law in this order: countries have a collection of mostly bilateral treaties in place to govern many of their coordination issues. There is also a layer of common practices or norms—sometimes referred to as soft law—embedded in model treaties and commentaries. Yet concluded treaties contain inconsistent terms and are often inconsistently applied by courts and administrators in different countries (Brauner, 2025). Further, the most influential models and guidance are mainly produced by the OECD, which excludes most of the world's population from its membership and features an opaque and inaccessible institutional governance model.

The OECD has dominated global tax policy for the past six decades with virtually no competition (Christians, 2010; Cockfield, 2006). The OECD gained this dominance because the first national lawmakers to face complex tax coordination challenges arising from economic globalization could not agree on a single set of rules for a multilateral agreement. They instead opted to build consensus incrementally through model treaties (Jogarajan, 2018). These leading thinkers of their day spoke of their hope for eventual convergence on a multilateral solution, but instead they set international tax on a century-long path of governance that has always been notoriously difficult to observe and understand for those from the outside looking in (Christians, 2010).

The countries supporting this path consistently and intentionally channeled tax policy initiatives through the OECD instead of more inclusive policymaking bodies, especially the UN (Teo, 2023).

The UN, as well as the World Bank and the IMF, made important tax policy contributions over the years, often with a special focus on policies affecting less wealthy nations. An effort to coordinate policies across the institutions in 2016, called the Platform for Collaboration on Tax, demonstrates some acceptance of the idea of shared policymaking on tax and may serve as a base for greater cooperation going forward (IMF et al., 2016). But the OECD still forms the core of international tax law, mainly owing to its role in developing the model treaties and associated guidance, expertly facilitated by a sophisticated Secretariat with the consistent support of its member states.

The OECD's primary justification for taking leadership in global tax relations, despite its limited membership, has been its relative efficiency in producing transnational norms. It has done so by facilitating collaborative consensus-building in internal committees with administrative bodies staffed by civil servants from member countries, extending to non-members through formal and informal channels, and mobilizing externally by working cooperatively to produce policy content distributed through governmental organizations such as the G-20 as well as nongovernmental networks such as Chambers of Commerce, the International Fiscal Association (IFA) and other professional organizations. Together, these networked collaborations shape global tax standards by leveraging the expertise and influence of diplomats, technical experts, and other stakeholders. As the main site for such transnational collaboration, the OECD is generally a standard-setter rather than a rule-maker. Rather than forging a multilateral agreement akin to those seen in international trade and investment, it iteratively constructs norms – which some would describe as soft law – meant for widespread adoption (Christians, 2010).

But the line between soft law and hard law is inevitably difficult to identify. In international tax, that line eroded when the OECD began creating informal bodies and associated groups of countries to 'participate' in various tax initiatives, sometimes under threat of sanction (Christians, van Apeldoorn, 2018). Starting in 2000 with the Forum

on Harmful Tax Practices (together with associated working groups to review such harmful practices), the OECD sought to work with non-OECD members in carrying out purportedly shared policy objectives (Weiner, Ault, 1998). This Forum, and other forums and groups to follow, up to and including the BEPS Inclusive Framework, featured peer review and monitoring on issues of key importance to OECD member countries. These institutional choices moved the OECD norm-creating processes ever closer to rule-creating ones, while also drawing non-member countries into its byzantine institutional structure, simultaneously including and excluding them from tax policy-making in hard-to-explain ways.

This increasingly complex institutional architecture obscures who initiates ideas and who ensures which issues evolve into shared policy initiatives. In inviting nonmember countries to join forums and similar groupings, the OECD presumably determined for itself the technical minutiae regarding how countries would participate in deciding who ought to choose leaders, develop agendas, choose among problems to be solved, and similar institutional architecture questions. But none of these internal determinations are part of a public record that is readily accessible to outside observers. Instead, the OECD's consistent message to the public has long been in the form of a metaphor: non-member countries signing on to OECD-led initiatives are on an 'equal footing.' The meaning of the metaphor has never been clear in practical terms, namely, in terms of the institutional relationships among the OECD membership and its various bodies and informal associations. It seems that even participating personnel did not always have full awareness of how institutional choices had been made or whether such choices were open to discussion (Hearson et al., 2023). This kind of obscurity is characteristic of network-based governance (Susan, Halliday, 2017).

Accordingly, throughout the lifetime of its initiatives, up to and including the BEPS project, the OECD effectively dictated norms that primarily served the interests of its member states and created opaque institutions and processes to carry

out its member states' preferences. It should have come as no surprise when one of these initiatives finally catalyzed the institutional upheaval we see today.

2. Pillar Two as a catalyst for institutional change

With continuous OECD control over tax policy for decades despite growing external uneasiness with its legitimacy and appropriateness as a governing body, it should perhaps have come as no surprise when in late 2023 a bloc of non-OECD countries sought to upend its leadership through formal action at the UN. The group took the first step in dismantling the power structure when it led the UN to establish a committee to draft the terms of a new framework convention on international tax cooperation. But the path to this 2023 resolution began for all purposes in 2015 in the context of the OECD's work on BEPS, and gained its momentum just as it was becoming clear that BEPS, and later the two pillars (often referred to as BEPS 2.0) would overwhelmingly favour wealthy countries over less wealthy ones.

The steps that led to the 2023 resolution are thus key to understanding that it is the OECD members themselves that prompted today's recursive cycle of institutional reform, which is designed to upend their power structure. The OECD members did so when their leaders made a series of governance choices that held onto tax policy making at the OECD and rejected any reform designed to disrupt that status quo by moving to an institution with a much larger membership, and when they continuously made technical rule choices to benefit themselves even when doing so appeared to disadvantage non-OECD member states.

The first of these choices occurred at the United Nations Third Annual Conference on Financing For Development in Addis Ababa on 27 July 2015, when a group of more than 100 developing countries made a significant call for change in the venue for international tax policymaking. These countries advocated for establishing an independ-

ent world tax organization with broad membership or in the alternative, for the UN to take over international tax policymaking (Eurodad, 2016). This pushback was a critical moment, highlighting the limits of the OECD's ability to impose global standards without broader international cooperation. It demonstrated that the OECD's exclusive approach was no longer tenable, as non-member countries recognized that their interests were not being adequately represented within the existing structures. This confrontation marked a shift in global tax governance, where the OECD was forced to acknowledge the necessity of wider participation. Yet OECD members responded to the call with a blanket rejection (ATAF, 2022).

Instead, within a matter of months, the OECD created the Inclusive Framework to implement BEPS and began sprinkling the term *equal footing* across the documentation, implicitly assuring non-member countries that the OECD was the institutional framework they had asked for in Addis Ababa. The stated rationales the OECD gave for creating the Inclusive Framework were to allow all interested countries and jurisdictions to "*participate on an equal footing*" in the development of standards on BEPS related issues, to review and monitor the implementation of the BEPS minimum standards, and to provide capacity building support for the implementation process (OECD, 2016). But the timing of its increased rhetoric of inclusivity and participation in official documents suggests that the OECD also sought to address past criticisms of its exclusive and insular policymaking approach and suppress any discussion about a move to a different institution. The OECD's approach was initially successful in that the Inclusive Framework forestalled the immediate rise of the UN as a rival international tax policy-making institution—at least temporarily.

The reprieve was relatively short-lived, however. In 2022—just six years after the creation of the Inclusive Framework—the UN General Assembly adopted a resolution initiating inter-governmental discussions over the shape of future international tax relations (UN, 2022). The move was clearly driven by the view of a majority of UN

members that the OECD-led international tax governance structure continues to favour industrialized countries and neglect the needs and voices of developing countries (Parada, 2023). Although the Inclusive Framework was intended to foster inclusivity, many non-member countries viewed it as a superficial gesture that failed to deliver meaningful change (Christians, van Apeldoorn, 2018). This superficiality only entrenched opposition to the OECD further, hardening global attitudes against it as non-member countries and civil society groups continued to advocate for alternative approaches to global tax governance (ATAF, 2022). This hardened stance reflects a growing frustration with the OECD's refusal to relinquish control and make space for more equitable participation in international tax policymaking.

Countries did not necessarily voice their governance concerns in the form of an express rejection of the OECD as an institution, but focused on the substance of the OECD's complex technical rules, many of which appear to be well beyond the capacity of many non-OECD countries (ATAF, 2022). The OECD's subsequent offer of capacity building risks being viewed as an implicit part of an overall buy-in for OECD policies. Further, throughout the development of the Pillar Two Model Rules, the emerging rule set contained policies, some later reversed, which appear contrary to general principles as well as the aims and needs of lower-income states.

For example, the OECD initially prioritized the collection of controlled foreign corporation taxes (which go to the capital-exporting country) over qualified domestic minimum top-up taxes (which go to the capital-importing country) (OECD, 2023 at para. 118.30). This ordering rule followed the US preference, which ultimately might have been upheld by denying foreign tax credits for source-based taxes in respect of qualified domestic minimum taxes that did not exclude its controlled foreign corporation taxes. But denying a tax credit for source-based income taxes would reverse a basic assumption of cross-border coordination, namely that the country of the residence of the corporate shareholder will cede the primary right to tax

to the country of the source of the income of the corporation, and only tax on a residual basis. Ultimately, the OECD conceded the point (Englisch, 2023), but the apparent disregard of key OECD leaders for long-standing principles undermined trust in the Pillar Two project and in international tax lawmaking as a whole.

Thus, beyond the ultimate shape of any particular rule or norm to be adopted, wealthy countries' exertion of authority during the BEPS project, culminating in the technical rules of Pillar Two, was marked by an ongoing sense of indifference to sharing governance. International tax law scholarship has long featured observations about these challenges in international policy formation, and shown that national policy decisions may disproportionately prioritize immediate strategic interests over the long-term coherence and sustainable development of transnational tax law mechanisms (Graetz, 1997). The Trump administration has only crystallized these impressions in express language (The White House, 2025a, The White House, 2025b). Accordingly, while the technical rules of Pillar Two presumably continue to be fully understood by a relatively tiny number of experts around the world, there is a broad understanding that the US and other influential OECD member countries benefit themselves by controlling the ongoing development of international tax law rules.

A move to the UN (or another world tax body format) is a coherent and rational response to this status quo (Faccio, 2024). There are ultimately few alternative options for those continuously denied the right to govern when OECD countries continuously shape policy even when their choices damage the revenue-raising prospects of non-member countries.

The change in administration and the introduction of 'America First' trade policies – which extend to tax measures – will likely help shift away from the OECD. As of the time of this writing, President Trump had been in office for three weeks. In each of these three weeks, President Trump either released memos or personally made comments which signaled the demise of tax multilateralism and an increasingly imperialist economic agenda.

During his first week in office, President Trump released a series of memos to introduce major trade policy changes. Among these changes is for his cabinet to investigate *“the causes of our country’s large and persistent annual trade deficits in goods”* and *“the feasibility of establishing and recommending the best methods for designing, building, and implementing an External Revenue Service (ERS) to collect tariffs, duties, and other foreign trade-related revenues”* (The White House, 2025a).

During his second week in office, President Trump published a memo purporting to reclaim US sovereignty and economic competitiveness by denouncing the global minimum tax initiative (referred to in the memo as the *Global Tax Deal*) (The White House, 2025b). The memo describes the Global Tax Deal as a *“retaliatory international tax regime”* that applies *“if the United States does not comply with foreign tax policy objectives,”* disavows any prior US commitments, and announces an investigation into *“Discriminatory and Extraterritorial Tax Measures.”* The memo claims that the deal *“allows extraterritorial jurisdiction over American income”* and impedes the ability of the US *“to enact tax policies that serve the interests of American businesses and workers”* without defining the terms or explaining how US policymaking is hampered. The memo concludes by *“clarifying that the Global Tax Deal has no force or effect in the United States,”* even though there is no prior law that would have made the deal have such force or effect.

During his third week in office, President Trump urged foreign businesses to invest in the US, stating that *“we’re going to have the lowest – just about the lowest rate”* (The White House, 2025c). Trump also declared grievances of the United States with the EU, describing EU court cases against American companies as *“a form of taxation,”* expressed his disapproval of EU regulation, and stating more generally that *“from the standpoint of America, the EU treats us very, very unfairly, very badly”* (The White House, 2025c). In response, Trump urged businesses to *“Come make your product in America, and we will give you among the lowest taxes of any nation on Earth.”* Trump declared that the US rate would go down to as low as 15%, which cor-

responds to the amount agreed under the Global Tax Deal.

The unilateral approach by the Trump administration – and the accompanying loss of cohesion within the OECD – makes the choice of allowing the OECD to design international tax policy even more questionable for most states. Previously, one of the strongest arguments for setting international tax policy through an institution like the OECD was that the process would lead to some form of agreement, even if this agreement would be biased towards the world’s most powerful states. The wisdom of this argument is dubious when the US refuses to recognize the interests of other wealthy states and states explicitly that it intends to act only in its perceived self-interest.

Even without the Trump’s administration’s shift away from the OECD, it is perhaps surprising that the world accepted the OECD-led governance model for so long. Each of the OECD member states feature domestic politics that are shaped by hard-fought experience with good and bad governance decisions. OECD member state leaders are aware that those who feel continuously disenfranchised from governance will tend to work to undermine and destroy such structures. Yet generations of policy leaders from OECD member countries failed to even try to produce inclusive governance institutions and processes and instead exerted their power to advance themselves economically. It seems likely that blatantly opposing any change in institutional governance in the context of the Addis Ababa movement only served to foment resentment and stoke additional opposition, eventually culminating in formal procedures to unseat the OECD and move international tax relations to the UN.

Accordingly, the 2023 resolution directed the UN secretary general to write a report explaining the existing arrangements, identifying additional options, and outlining potential next steps. The UN Secretary General published this report in August 2023 and by November 2023, the UN Economic and Financial Committee adopted a resolution for the *“promotion of inclusive and effective international tax cooperation at the United Nations,”* with 125

countries voting in support, 48 (including most OECD member states) voting against, and nine (Armenia, Costa Rica, El Salvador, Iceland, Mexico, Norway, Peru, Türkiye, and the United Arab Emirates) abstaining (UN, 2023a). In December 2023, the UN General Assembly then adopted resolution 78/230, establishing an *ad hoc* committee to draft the general terms of a UN framework convention on international tax cooperation. This resolution received 111 votes in favour, 46 against, and 10 abstentions, largely following the prior resolution (UN, 2023b). The *ad hoc* committee met and negotiated from July to August 2024, leading to the approval of the final draft of the Terms of Reference for the framework convention on August 16, 2024.

3. Terms for inclusive and responsive governance

It is striking that the quest for a new UN Framework Convention arises from the strong expressed preference of a large number of UN members for a ‘fully inclusive’ system for international tax cooperation, yet the design elements to achieve such inclusivity are only nominally sketched out in the draft Terms of Reference. In particular, the draft Terms of Reference expressly acknowledge the vital importance of governance in the form of a miscellaneous collection of institutional needs buried in a single paragraph. That paragraph is preceded by the title *Other Elements* and reads as follows:

“13. *The framework convention should also include, inter alia, the following additional substantive and procedural elements: definitions; relationship with other agreements, instruments and domestic law; review and verification; exchange of information (for implementation of the framework convention); data collection and analysis; financial resources; Conference of the Parties; Secretariat; subsidiary bodies; dispute settlement mechanisms; and procedures for amendments to the framework convention and adoption of protocols; and final provisions.*”

This is a significant set of mandates, but its placement under the category of miscellany risks

minimizing its importance. Each of the listed attributes represents enormous undertakings of time and resources, with significant impacts on the shape of substantive policy- and rule-making to come. The categories of *instruments and domestic law, financial resources, Secretariat, subsidiary bodies, and procedures for amendments to the framework convention and adoption of protocols and final provisions* involve multiple decisions and commitments that will require a serious investment of time and resources by the UN membership. Further, the list is incomplete. For example, the Terms of Reference omit key decision-making components concerning the high-level choice between majority rule and consensus (Parada, 2024). This omission will undoubtedly produce conflict going forward.

The problem for those seeking governance change is that “*there are no shortcuts around the issues of institutional choice*” (Komesar, 1994). Just as every institutional choice the OECD made over six decades—including its decision to form the Inclusive Framework when and in the manner it did so—directly impacted its ability to deliver tax policy, every institutional choice the UN will make will influence its ability to do the same. Making institutional choices is unavoidable. The only question is “*whether these institutional choices are made implicitly or explicitly; whether they are made thoughtfully or haphazardly*” (Komesar, 1994). There is no easy way for outside observers to know whether the OECD generally made its institutional choices thoughtfully or haphazardly; that is the price of obscurity in governance. Those finalizing the terms of reference for the UN are in a different position, holding socio-political power that is distinct from that of the members of the OECD (Hearson et al., 2024). Leveraging this position, these countries have not only opened up the possibility of making different substantive tax policy choices in the future, but they have also opened up the possibility of being more overtly deliberate in their institutional design choices.

Relegating such choices to a list of miscellany does not adequately reflect the political and ultimately economic consequences of each of these vi-

tal institutional components. To configure broadly inclusive institutional settings, the UN may need to depart from the OECD's historical structure and practices in several critical ways.

In particular, the UN will need to determine how to balance decision-making processes with broad representation. Achieving this balance may require structuring leadership and agenda-setting to prevent the concentration of power, such as by rotating leadership roles among regional blocs or establishing co-chairing arrangements (Christians, 2023). Extending these decisions to cooperation with other bodies, perhaps by revising the terms for the Platform for Collaboration on Tax, may further enhance the legitimacy and responsiveness of the governance model while addressing the shortcomings of existing frameworks.

Achieving this balance also requires contending with how substantive policy decisions develop through consensus. For example, opting for unanimity in creating policy norms might ensure that all voices are heard and have equal weight, but risks paralysis in achieving full consensus and allows for minoritarian control of policy (What Komesar, 1994, refers to as minoritarian bias). Presumably, those who seek a move to the UN do not seek to replicate the OECD's minoritarian bias or exchange it with the minoritarian bias of another group of countries. On the other hand, majority rule (or other consensus-based decision-making process), potentially with weighted voting or regional representation to account for disparities in resources and influence among member states, offers a practical alternative. To the extent majority rule (whether or not weighted) ensures that decisions reflect the collective will while mitigating the risk of dominance by wealthier or more powerful nations, embedding majority rule may be preferable to continuing minoritarian bias in international tax relations.

Even so, majority rule has its own governance weaknesses, including majoritarian bias which may lead to results that allow the majority to make decisions that impair the minority (Komesar, 1994). Further, finding the right balance of agen-

da setting and decision-making is made more difficult by the mixed hard- and soft-law nature of the international tax regime. It is not clear what kinds of institutions and processes are ideal for our current partially norm-based and partially rule based system. Nor is it clear whether the international tax system should actively seek to move away from soft-law norms in favour of more hard-law instruments, or the reverse. Building acceptable governance systems within and across each institution that carries out tax policymaking is a first step to answering these kinds of questions.

Accordingly, the complexity involved in making governance decisions demonstrates that a first move of any institution that seeks to carry out tax policy should be striking a committee or working group that is solely focused on international tax governance. The task of such a committee or working group would be to study the institutional alternatives and make defensible institutional choices about how the chosen institutions and processes will advance collaborative policy development in order to make defensible policy choices. It is clear that governance is a substantive area that deserves study and collaborative problem-solving with the same intensity as any other area of tax norm formulation. Decisions about governance influence the acceptability of rules, norms, and standards both within and beyond those directly involved in the decision-making. It is for these reasons that I have previously advocated for international leaders to strike such a committee or working group (Christians, 2023).

Relatedly, the institutional structure should prioritize transparency and accessibility. Unlike the OECD's model, which long exhibited opaque governance and limited public accountability, the UN should consider how to create mechanisms for open agenda-setting and clear procedural rules for participation. This could include public reporting requirements for decision-making bodies and formal avenues for non-state actors, such as civil society organizations, to contribute to discussions. That said, accountability creates administrative costs, so these kinds of decisions should also be subject to review and discussion among

the members, furthering the need for a committee on governance.

Funding a secretariat to facilitate networked bargaining is complex and expensive. It involves countless personnel and management decisions. It involves thinking about hundreds of details that will impact the content and quality of future policy decisions. The same goes for building an institutional structure of bodies and sub-bodies that will inter-relate, collaborate, and be hierarchical in agenda-setting and decision-making. Making these institutional choices involves hundreds of political and diplomatic decisions that will impact the substance of future policy negotiations going forward.

The history of international tax coordination is replete with institutional lessons that demonstrate the kind of mistake policymakers make when they view institutional and procedural designs as organic factors that do not require policy attention. The very first drafters of the international tax system, working under the auspices of the League of Nations, imagined themselves to be building “*authoritative channels for the use of scientific and expert knowledge in the interest not of any one Power, but of the solution of the problems themselves*” (Shotwell, 1920). One of its organizers described the League as a solution to a world in which diplomacy and bureaucracy frustrated rather than advanced international cooperation. The network approach was viewed as a viable means of meeting worldwide public welfare goals by “*arriving at policies in the technical or limited fields in which they operate*” without “*infringing upon the principle of national sovereignty.*”

In retrospect, those policymakers underestimated the importance of process in relation to substance. International tax relations are governed by institutional choices, whether policy leaders are willing to acknowledge it or not. It was institutional choices that led the world outside the OECD to upend the structure the OECD had built and maintained for decades. And it will be institutional choices that determine whether the future of international tax relations looks different than in the past.

Conclusion

The global minimum tax project, while aimed at curbing tax competition, has instead prompted a recalibration of international tax relations. For decades, the OECD’s dominance in international tax policy-making entrenched the interests of economically powerful countries while marginalizing others, particularly developing nations. A push to shift tax policy-making to the United Nations reflects growing frustration with this imbalance and a broad demand for a more inclusive, equitable governance framework. However, the institutional challenges involved in making such a transition are immense, and many critical questions about design, decision-making, and authority are yet to be resolved.

Focusing on governance in its own right is key to achieving these goals. The OECD’s historic approach to global tax policy often prioritized technical rule-making over addressing underlying governance issues. Efforts such as the Inclusive Framework signaled the OECD’s awareness of the need for broader participation but sharing power in governance requires much more than the rhetoric of equal footing. There is a risk that the current momentum for reform will repeat past mistakes by sidelining institutional questions in favour of expediency. Without a clear and deliberate focus on governance, the shift to the UN risks reinstating or replicating the very power imbalances it seeks to dismantle.

The current institutional upheaval thus offers a unique opportunity to reshape global tax governance by bringing a broader and more diverse membership to the table. The UN has an established framework for international cooperation and a track record of developing global standards in other areas. Its inclusive processes have the potential to better reflect the interests of developing nations, which have historically been excluded from meaningful participation in global tax discussions. By leveraging the UN’s strengths, there is a chance to create principles and norms that are not only technically sound but also socially and economically just. Potentially, this also means

working to ensure that the principles and norms of global tax governance do not actively counter global progress toward achieving the Sustainable Development Goals.

Prioritizing governance is the key to realizing this potential. This requires questions about institutional design, decision-making processes, and mechanisms for ensuring accountability. The focus should be on building systems that encourage cooperation across nations with vastly different resources and capacities. A well-constructed governance framework could provide the legitimacy and stability needed to support effective international tax policies over the long term.

The legacy of Pillar Two and the OECD anti-BEPS initiative more broadly will depend on whether the international community seizes the opportu-

nity to redefine the foundations of tax governance. In prioritizing equity, legitimacy, and inclusivity in the governance model, policymakers might create a system that not only addresses current challenges but also lays the groundwork for sustainable cooperation in the future. But the task has almost certainly become much more challenging in the context of ‘America First,’ which emphasizes unilateral decision-making and benefits to the United States, presumably without concern for what an equitable allocation of transnational profits would require. This policy has underscored the need for a governance framework that can accommodate diverse national interests while striving for global cooperation. This moment represents more than a technical reform, it is a chance to reshape international tax relations as a whole.

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