



EU Law and the Building of Global Supranational Tax Law:

EU BEPS and State Aid

Editor: Dennis Weber

IBFD

EU Law and the Building of Global Supranational Tax Law: EU BEPS and State Aid

Why this book?

The papers in this book are the result of the 10th Annual Conference of the Group for Research on European and International Taxation (GREIT), which was held on 17 and 18 September 2015 in Amsterdam. The theme of this conference was the influence of European law on international tax law and, vice versa, the influence of international tax law on European law. European law and international tax law are increasingly offering building blocks for what can be called a “global supranational tax law”.

Subjects discussed in this book are:

- Interactive law building and EU tax law
- The formation of customary law in the field of taxation
- Tax sovereignty in an era of tax multilateralism
- Tax incentives, global tax fairness and the development of tax law in developed and developing countries
- The interaction between IP box regimes and compensatory tax measures
- Enhanced transparency and its impact on relations between tax authorities and taxpayers
- The EU Code of Conduct
- State aid recovery and investor protection for non-EU taxpayers
- APAs and State aid
- The general anti-abuse clause in the EU Parent-Subsidiary Directive
- The European Union and BEPS: conflicting concepts of tax avoidance
- The European Commission’s anti-tax avoidance package

This book is essential reading for anyone interested in learning about how EU law and international law influence each other through a two-way flow of concepts and categories.

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|------------------------------|---|
| Title: | EU Law and the Building of Global Supranational Tax Law: EU BEPS and State Aid |
| Editor: | Dennis Weber |
| Date of publication: | April/May 2017 |
| ISBN: | 978-90-8722-405-9 (print/online), 978-90-8722-406-6 (eBook) |
| Type of publication: | Book |
| Number of pages: | 324 |
| Terms: | Shipping fees apply. Shipping information is available on our website |
| Price (print/online): | EUR 105 / USD 115 (VAT excl.) |
| Price (eBook): | EUR 84 / USD 92 (VAT excl.) |

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ISBN 978-90-8722-405-9 (print)
ISBN 978-90-8722-406-6 (eBook)
NUR 826

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Preface

On 17 and 18 September 2015, the 10th Annual Conference of the Group for Research on European and International taxation (GREIT) was held in Amsterdam.

This book follows as a result. During the conference, various topical subjects were discussed and debated. The theme was the influence of European law on international tax law and, vice versa, the influence of international tax law on European law. European law and international tax law are increasingly offering building blocks for what can be called a “global supranational tax law”.

In this book, a number of interconnected chapters are incorporated in sequence.

In the first chapter, Prof. Dr Cécile Brokelind deals with the influence of foreign law on national law. She examines, amongst others, the question of whether EU tax law creates a duty on national courts to take foreign law into consideration. Prof. Guglielmo Maisto discusses the existence of customary law in the field of taxation. His general conclusion is that such customary law does exist but that the process of formation of customary international tax norms is very difficult. Prof. Tsilly Dagan subsequently deals with the fact that, as a consequence of multilateralism, states are increasingly forced to surrender their tax sovereignty.

Two other interconnected chapters are those by Prof. Dr Irene Burgers and Dr Paolo Arginelli. Prof. Dr Burgers discusses the interaction of tax incentives in developed countries and developing countries. Dr Arginelli discusses the problems related to the fact that tax benefits of IP box regimes are sometimes taxed away by other states.

Following up on this, Fred van Horzen focuses on the new tax transparency in the European Union. He asks whether the world will really change because of this. Vinod Kalloe discusses the work of the EU Code of Conduct Group, a group which is starting to gain more importance in the interpretation and development of tax law in the European Union.

Prof. Dr Raymond Luja and Dr Mario Tenore discuss the tempestuous developments in the area of EU State aid. Prof. Dr Luja deals with the influence of investor protection on the recovery of State aid. Dr Tenore deals

with APAs and State aid. Here, he gives a critical discussion of, amongst other things, the European Commission's interpretation of the arm's length principle.

In the final section of the book, Prof. Dr Otto Marres and Isabella de Groot deal with the general anti-abuse clause in the Parent-Subsidiary Directive. The contribution from Prof. Dr Frans Vanistendael ties in with this perfectly. He discusses, inter alia, the differences between tax avoidance in national tax systems, in the EU internal market and in the OECD BEPS context.

The paper from Dr Maarten de Wilde on the Anti-Tax Avoidance Directive is a fitting close: a look to the future.

I hope you enjoy reading this book.

Prof. Dr Dennis Weber
Amsterdam, June 2016

Tax Sovereignty in an Era of Tax Multilateralism

Tsilly Dagan

3.1. Introduction

Tax policy is traditionally viewed as the domain of national sovereigns. Thus, from the traditional perspective, we envision a country ruled by a sovereign that is entrusted with exclusive tax legislative powers, aiming (at least ideally) to maximize welfare (efficiency) and justly (re)distribute it, while reinforcing the underlying normative values shared by its constituents. This changes significantly under globalization. Zooming out to the international level, the powerful sovereign we now envision is but one of 200 or so sovereigns that compete with one another for investments, residents, and tax revenues.

Competition has transformed the world of sovereign-controlled tax policies. Sovereigns cling to their powers and dig in their heels in order to preserve their formal capacities as rule-makers in the area of taxation. There is, of course, a lot to it, as taxation has always been a key feature of state sovereignty, an expression of the collective will of the citizenry, an indication of their support of their government and sense of belongingness to their political community, as well as a manifestation of their solidarity to their peers and mutual guarantee among them. The truth of the matter, however, is that under competition, it is too often the international market of states, rather than the individual sovereign state, that shapes tax policies. When states compete for investments, for residents and for tax revenues, they can no longer design their own policies in a vacuum. The reason is that competition provides taxpayers with an alternative – to shift either their capital or their residency, even their citizenship, to another country.

Thus, sovereign states – once defined by their coercive powers and control over their citizenry and territory – find themselves in an unfamiliar position, trying to lure residents and investments in the face of competition from other sovereigns. By providing taxpayers with a viable alternative, tax competition turns the decision-making process on its head. The state no longer makes compulsory demands on its subjects in order to promote the collective goals of a given group. Instead, the state increasingly acts as a

recruiter – in order to solicit investments as well as residents. In the extreme case, tax competition changes taxation from the mandatory regime it used to be into a regime that is basically elective, or more precisely, elective for some. Hence, under competition, tax increasingly becomes a price that people are willing to pay for belonging to a certain state rather than a civil obligation they should fulfil. As a consequence, tax rates as well as public policies are subject, to a great degree, to the rules of supply and demand of the market. The considerations that decision-makers should take into account increasingly resemble those of firms who compete on the market. And the relationship between the state and its constituents transforms: Not only does coercion dwindle, but exit prevails over voice and loyalty, equal concern and respect for citizens gives way to weighing their potential costs and benefits, and the duties of justice surrender to the powers of the market.

Moreover, competition considerably limits the ability of states to collect tax revenues. The competitive pressure of other jurisdictions (together with the mobility of resources and taxpayers) significantly limits the power of states to tax. The constant threat of exit by capital and residents, along with tax avoidance, tax arbitrage and tax evasion, all seriously threaten the abilities of states to tax.

Thus, in the current competitive international tax regime, tax sovereignty is under serious threat. The independence of states in collecting taxes and their ability to sustain the basic goals of income taxation are undermined.

Despite the persistent and undeniable support among many policymakers and scholars for the independence of (formal) sovereign authorities in designing tax rules, many have called for some sort of multilateral cooperation in an attempt to regain the state's power to tax and to redistribute income.¹ Indeed, in recent years, states have made several attempts to cooperate. Starting with the OECD's tax treaties project, the fight against harmful tax competition, the efforts to increase enforcement and prevent free-riding through increased transparency, and the latest fight against base erosion and profit shifting, countries – mostly developed ones – are making considerable efforts to curtail tax competition, tax evasion and tax planning.

1. As the recent BEPS Report indicated: "Tax policy is not only the expression of national sovereignty but it is at the core of this sovereignty, and each country is free to devise its tax system in the way it considers most appropriate". OECD (2013), *Addressing Base Erosion and Profit Shifting*, OECD Publishing, 28, available at: <http://dx.doi.org/10.1787/9789264192744-en>.

While endorsing cooperation, these initiatives make every effort to preserve state sovereignty on tax matters. Walking a very fine line, they are striving to design a binding multilateral regime where states (again, mostly developed states) will not have to give up their alleged sovereign control over tax rates, structure and level of redistribution. They try to preserve the position of states as independent agents that are simply bargaining for a deal that serves their mutual interests, rather than surrendering their independency to a multilateral power. Preserving the “free will” of the state to engage in such an accord (or not) is presumed to be inherently efficient otherwise – the argument goes– why would countries sign up for it. It is also presumed to be inherently just, as justice is considered to be completely mediated through the sovereign state.

However, in the reality of tax competition, tax sovereignty is in fact a myth because at least most (if not all) states are actually unable to set their tax policies independently of others.² The most that states can do in today’s international tax climate is to choose between painful alternatives. In particular, states cannot preserve their tax rates (and importantly their levels of redistribution) without sacrificing the collective welfare of their constituents.³ More like market actors than empowered sovereigns, states can make “production” and “pricing” choices, but such choices are going to be subject to the results of the supply and demand of the competitive international tax market whether they like it or not. Hence their actual choices as sovereigns are very limited. Moreover, although states may seem independent in their choices to join multilateral efforts, strategic considerations as well as network effect often dictate their choices. This explains, for example, why they may join an evolving network (e.g. the tax treaty network, or transparency arrangements) despite their reluctance to do so in isolation.⁴

This, however, does not mean that there is nothing states should (or could) do concerning the terms of the market. Indeed, the current competitive and decentralized international tax regime suffers from many ills on both the efficiency and the justice fronts. Many of these problems have occupied the public agenda in the field of international tax policy for many years. They include double taxation (the uncoordinated result of two jurisdictions

2. R.S. Avi-Yonah, *No Country is an Island: Is a Radical Rethinking of International Taxation Needed?*, U of Michigan Public Law Research Paper No. 380 (3 Feb. 2014).

3. For the complete argument, see T. Dagan, *International Tax Policy: Between Competition and Cooperation* at ch. 1 (forthcoming 2017).

4. For more on this, see *id.* at ch. 5.

imposing tax on the same economic activity),⁵ tax avoidance (as a result of taxpayers' jurisdiction shopping),⁶ tax arbitrage (the result of legislative gaps between jurisdictions)⁷ and tax evasion (the result of non-transparency of information between jurisdictions),⁸ as well as the general inability of states to collect tax revenues in order to finance their public goods in general and to pay for the welfare state in particular (usually attributed to tax competition among the various jurisdictions).⁹ There is no doubt that remedying these problems would greatly improve the international tax market. In order to deal with these ills, however, states should be ready to surrender at least part of their formal sovereign power and submit themselves to the jurisdiction of some type of multilateral accord.

As things stand now, tax sovereignty is weakening, and yet the results of the current market for tax competition are far from desirable. The international tax regime's results are neither just, nor are they efficient. The solution I support may seem counter-intuitive. Instead of attempting to secure their independent tax sovereignty, states should embrace the fact that they are market actors. Rather than preserve their formal independence, states should realize that they are linked by the competitive rules of the market for international tax and focus on viable solutions for the international tax regime that would help them regain the substantive functions of income taxation in a global competitive setting. In what follows, I explain why – perhaps counter-intuitively – more competition may be the best option.

3.2. Two approaches

There are two very different (and mutually exclusive) ways in which states could try to improve the current regime. One is a centralized approach: to have states cooperate in a multilateral regime that would curtail tax competition allowing them to collect enough taxes to sustain their welfare states.

5. See e.g. G.W.J. Bruins et al., *Report on Double Taxation: Submitted to the Financial Committee* (League of Nations, Economic and Financial Commission 1923).

6. The OECD, for example, produced two 1987 reports on the issues: OECD, *Tax Havens: Measures to Prevent Abuse by Taxpayers*, in *International Tax Avoidance and Evasion: Four Related Studies* 19 (OECD 1987); and OECD, *Taxation and the Abuse of Bank Secrecy*, in *International Tax Avoidance and Evasion: Four Related Studies* 107 (OECD 1987).

7. See e.g. D.H. Rosenbloom, *International Tax Arbitrage and the "International Tax System"*, 53 *Tax L. Rev.*, 137 (2000).

8. OECD Reports, *supra* n. 6; A. Christians, *Sovereignty, Taxation, and Social Contract*, 18 *Minn. J. Int'l L.*, 99 (2009).

9. See e.g. R.S. Avi-Yonah, *Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State*, 113 *Harv. L. Rev.*, 1575 (2000).

The other is a decentralized approach: to endorse tax competition and have the international community maximize the gains of such competition.

Both approaches, I argue, could prove superior to the current international regime in terms of efficiency as well as in terms of justice. Both require wide agreement among states which differ in their goals regarding international tax policy, and thus both necessitate real compromises on their behalf and demand that states surrender some of their tax sovereignty to a multilateral regime. Curtailing tax competition requires (for reasons of justice) that rich states compensate the poor constituents of countries that may be harmed by such a move. Perfecting competition requires states to make a multilateral effort to fight market failures.

Whether the goal is a more centralized or more decentralized tax regime, in order to achieve an international tax regime that is both efficient and just, there is a need for substantial multilateralism. The evolving multilateral regime can neither hide behind claims of state-mediated conceptions of justice nor can it assume that the current competitive market for states requires no regulation. Instead, it should face the questions of global justice and welfare enhancing head-on and make a choice regarding the required multilateral interventions.

As things stand now, the centralized path – which not only requires states to agree on a harmonized level of redistribution but also to settle on inter-country redistribution of tax revenues – seems too ambitious. I suspect that the self-interests of rich countries along with inadequate decision-making mechanisms globally render the solution unfeasible. Given that, I believe that the joint efforts of countries today should be targeted towards the second, hopefully more realistic, solution of perfecting tax competition.

Section 3.3. explains why states should substantially surrender some of their tax sovereignty to a multilateral mechanism in order to sustain justice as well as their legitimacy to tax. To be legitimate, such a multilateral mechanism itself should adhere to the principles of justice that require rich countries to compensate the poor in poor countries that are harmed by the multilateral accord. Section 3.4. will discuss the alternative of a decentralized and (more) competitive international tax regime and the ways to improve the efficiency of such a market. Beyond the obvious measures of increasing transparency and reducing externalities and artificial barriers, the section will highlight the importance of limiting cooperation to the elimination of market failures in order to avoid the risk of cartelistic behaviour on the part of cooperating states.

3.3. Tax sovereignty and justice

In this section, I argue that multilateral cooperation is required in order to sustain the ability of states to provide justice and thus their legitimacy. Moreover, such cooperation imposes independent duties of justice to which the multilateral accord (and individual countries) should adhere. A multilateral approach could regain states' legitimacy and promote justice, by taking away their exclusive power to tax and their sole obligation to the welfare of their own constituents.

In the international market, where states compete for residents, investments, and tax revenues, their sovereignty becomes fragmented. Many residents can now unbundle a state's tax sovereignty and pick and choose from among the public goods other states offer. Under this unbundled sovereignty, states can no longer unilaterally ensure the cooperation of their citizens without either imposing illiberal restrictions on those citizens or else cooperate with other countries. Thus, as far as redistribution is concerned, under globalization, the state can no longer be considered a sovereign endowed with monopolistic coercive power.¹⁰ It thus cannot provide justice unilaterally.

Moreover, because states are becoming market actors, redistribution is to a large extent becoming a price that is subject to the supply and demand forces of the global market for sovereign goods. As a result, market rules are increasingly replacing citizens' co-authorship in determining the redistributive capabilities of states and, consequently, their tax policies. Instead of equally engaging in a deliberative process with their fellow citizens, taxpayers can simply exercise their power to leave (or the threat thereof) when (redistributive) prices become too high. Thus, the level of redistribution that states can afford under global tax competition – and not what is reached through the collective co-authorship of their citizenry – is what determines their redistribution policies.

The bottom line is that the monopoly that states have over coercive powers as well as their ability to express the collective will of their constituents is undermined. The more fragmented sovereignty is, the less it is able to enforce its policies. The more marketized sovereignty becomes, the less able it is to treat its citizens with equal concern. Thus, under the conditions of state competition, justice is under constant threat. In the absence of justice, state legitimacy is undermined, as it cannot be considered legitimate to claim to coercively enforce the collective will of the people where the

10. For a more elaborate discussion of this, see Dagan, *supra* n. 3 at ch. 6.

state is unable to provide its constituents with (distributive) justice. Since legitimacy requires justice and justice requires cooperation, it follows that the state requires not only cooperation in its capacity to enforce its coercive taxing powers but also in its legitimacy when doing so.

Tax sovereignty, in other words, cannot be achieved without surrendering to a multilateral regime that would coordinate a tax level higher than the competitive “price” to allow states to finance domestic redistribution. In order to re-establish their legitimacy in using coercive power and speaking for their constituents, states need the cooperation of other states. In other words, under the current state of tax competition, only a multilateral effort could reinstate the power of states to enforce their taxes as well as to provide all of their constituents (not just the ones with enough alternatives elsewhere) with an adequate voice in the process of co-authoring their collective will.

Such multilateralism cannot be merely formal. Because multilateral accord is what grants the states their authority, a multilateral regime is constitutive of states’ coercive power. Moreover, to be legitimate, a multilateral regime should comply with independent duties of justice, which transcend national boundaries. Such multilateralism cannot – in the name of justice – be based on illegitimate (read: unjust) moves by other cooperating states. Thus, contrary to the common position according to which bargaining between states must conform only with duties of humanitarianism (since the requirements of justice are, and should be, mediated through the states), I argue that justice requires that a multilateral regime established through cooperation must improve (or at least not worsen) the welfare of the least well-off citizens in all cooperating states.¹¹ The duty of justice cannot be assumed to be entirely mediated through the sovereignty of individual cooperating states. Rather, the body of cooperating states has a duty to ensure that the constituents of all cooperating states are not treated unjustly as a result of the agreement.¹² As I explain in the following sections, this duty entails certain transfer payments between rich and poor countries.

A multilateral regime that sustains domestic justice may sound like an indisputable good as it allows governments to tax mobile capital and redistribute income to other less mobile stakeholders. However, a cooperative

11. See Dagan, *supra* n. 3 at ch. 6. While some countries will happily comply with this requirement, others may not wish (or simply would not be able) to afford to collect enough taxes so as to provide redistribution to their own poor. It is, however, the duty of such a multilateral regime to ensure such treatment.

12. For a detailed explanation of this argument, see T. Dagan, *International Tax and Justice, Theoretical Inquiries in Law* (forthcoming 2016).

international tax regime could affect different countries differently. In some countries (i.e. “rich countries”), which are mainly capital-exporting countries, governments will be, due to the universal regime, better able to collect taxes from capital owners (thus able to redistribute wealth). The case in poor countries, which are by and large capital-importing countries, is quite different. In capital-importing countries (i.e. “poor countries”, which I suspect are more typically developing countries), local factors of production (most importantly labour) are the ones that benefit most from foreign investments. The increased tax imposed by a multilateral regime on cross-border investments (and the tax wedge it creates) reduces the level of foreign investment in such capital-importing countries and with it the demand for local labour. By doing so, it inflicts costs on local labour.

It is true that such tax allows capital-importing countries to collect some tax revenues from the incoming investment and to collect taxes from their own capital owners investing overseas. However, such taxes are likely to be lower than the gains that labour could have collected from more foreign investments (at least this is the case if residence and host countries split the tax revenues and avoid techniques such as tax sparing). If this is correct, the ability of rich countries to provide justice to their own poor comes at the price of labour in poor countries.

In other words, such a multilateral accord may sustain the legitimacy of rich countries (i.e. their ability to treat their constituents justly) by imposing injustices on poor countries. If the domestic justices of poor countries are impaired, they cannot legitimately endorse the multilateral arrangement. To make the international agreement legitimate, it is not enough for poor governments to accept such a regime. Rather, payments from rich countries to poor ones would be necessary to ensure that labour in poor countries would not be harmed by the agreement. In other words, for a multilateral regime to be legitimate, the regime must transcend national sovereignty and ensure the fair treatment of the constituents of all cooperating partners.

3.4. The case for tax competition

The alternative to a (just) centralized multilateral regime is a decentralized competitive regime. Although cooperation would certainly provide *some* states with the ability to justly treat their constituents and thus regain legitimacy, this is not necessarily a normatively desirable outcome. If payments between rich and poor countries are unrealistic, as I suspect they are,

competition could be superior to a central regime, provided that measures are taken to curtail market failures.

Tax competition promotes some important efficiency goals such as: matching public goods with individual preferences, reducing “governmental waste” and overcoming political constraints that push governments to provide benefits to certain groups in society and not to others. Moreover, competition may allow poor countries to attract more capital by reducing their tax rates and hence may provide benefits to labour in poor countries. This may be better than compelling developing states to impose taxes, if the tax revenues allocated to the poor are lower than the harm they suffer due to the lower foreign investments.

For this to be the case, countries should indeed engage in effective competition. The current competitive regime hardly complies with this description. As mentioned above, the current regime suffers from many gaps and frictions that cause market failures. Double taxation, tax avoidance, tax arbitrage and tax evasion all undermine the efficiency of the global tax market by creating barriers to free trade, generating opportunities for free-riding and for the imposition of negative externalities by both taxpayers and states on other states and their residents. Even cooperative measures taken by developed countries – traditionally described as benefiting all states – often create counter-competitive barriers when they end up serving the interests of one group of countries.

There is thus plenty of room for action that would reduce such inefficiencies. Specifically, the international tax regime could benefit from more standardization that streamlines the international tax system by regulating the basic “building blocks” of international taxation and facilitating enforcement. Such a standard would limit the opportunities for arbitrage by closing the gaps between the rules of various countries, thus reducing the incentive for taxpayers to invest in tax planning their businesses and preventing them from free-riding the public services of certain jurisdictions while evading their taxes. Standardization will also discourage the imposition of externalities by preventing countries from using creative definitions to help foreign investors to free-ride their home jurisdictions. And finally, by not only sharing information but also standardizing the modes of its collection worldwide, states will be able to streamline their collection of taxes. All in all, a standardized regime will provide for greater efficiency in the market of international taxation, reduce transaction costs for taxpayers as well as enforcement agencies and thwart market failures such as lack of transparency and externalities.

A standardized international tax regime could allow states to more effectively impose and collect their taxes. States will thus be able to compete for residents and investors based on the prices that better correlate with the level and quality of their public goods. Justice will be served as well by a standardized regime, because the taxpayers that benefit most from the current – decentralized – regime and the ample planning opportunities it has to offer are capital owners, who can most easily plan their businesses so as to minimize their combined taxes worldwide. Other taxpayers (e.g. workers) cannot make use of the available arbitrage opportunities as their sources of income are usually more strictly connected to a certain location and their tax liability is easily enforced.¹³

Standardization may sound as if it takes sides with the supporters of harmonization in the controversy regarding harmonization versus tax competition. In fact, however, this is not the case. Harmonization aspires to curtail tax competition so as to allow states to collect enough taxes for them to be able to pay for their welfare states. The standard I envision, however, is meant to streamline the regime and allow each country to freely (and efficiently) determine its actual tax rates and packages of public services, thus facilitating fiscal competition while minimizing the costs of such competition. A standardized international tax regime is not a barrier to tax competition. On the contrary. A standard could (indeed, I believe, should) streamline the rules of the competing jurisdictions and allow for a more efficient competition between countries, one that would focus on the quality of public services provided and on the “price” (i.e. the level of taxes) that is paid for them. Standardization would allow states to focus their competitive efforts on offering the best variety of packages of public services for the best prices. Hence, a standardized international tax market could offer plenty of room for heterogeneity.

Some of these issues (particularly tax evasion) are currently being discussed in international tax policy circles (notably the BEPS reports), and the jury is still out on how successful these efforts may be. However, there is another potential inhibitor of competition that requires multilateral attention: cooperation between states that may lead to cartelistic behaviour. As the history of international taxation has taught us, when states cooperate, cooperation

13. See e.g. A.H. Rosenzweig, *Harnessing the Costs of International Tax Arbitrage*, 26 Va. Tax Rev., 555, 564 (2007); D.M. Ring, *One Nation among Many: Policy Implications of Cross-Border Arbitrage*, 44 B.C. L. Rev, 79, 120-121 (2002); M. Kane, *Strategy and Cooperation in National Responses to International Tax Arbitrage*, 53 Emory L. J., 89, 109-110 (2004); T. Edgar, *Corporate Income Tax Coordination as a Response to International Tax Competition and International Tax Arbitrage*, 51 Can. Tax J., 1079, 1082 (2003).

may result in cartelistic behaviour. Prior cooperative measures (in particular, in the context of tax treaties), led to cartelistic results. In such a cartel, countries that cooperate in order to create or improve standards for international taxation have the ability and the opportunity to tilt the playing field to benefit themselves. Hence, cooperation among states, even cooperation that is designed to increase and perfect competition, may induce the evolution of cartels. To avoid this imminent hazard of cartelistic behaviour, a multilateral accord must create a mechanism that will prevent anti-competitive measures.¹⁴ To avoid cartelistic behaviour among countries, a bolder move seems necessary – creating a multilateral anti-trust agency for states that would oversee state competition. Ideally, such an agency would work to disband cartels of states that are crowding out competitors, to prevent them from increasing “cartelistic” profits at the expense of less powerful actors, and to reduce “governmental waste.”¹⁵

Whether a multilateral regime could be established and whether we are destined to engage in an endlessly unstable and chaotic international tax regime is not at all clear. As optimistic as we may be, the level of conflicting interests within as well as among states could be such that no single solution would emerge that is better than the fragile, chaotic and unsatisfactory regime we currently have. Even if such a solution emerges (e.g. along the lines of the BEPS project initiative), there is danger that it would once again cause a distorted distribution of the gains between countries, among citizens within countries, and between constituents and their governments. The competitive regime I endorse is not free of these problems. I believe, however, that it could work better than the alternatives.

14. See Dadan, *supra* n. 3 at ch. 3.

15. For more on this point, *see id.* at chs. 4 and 7.

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Notes

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