THE POLITICAL ECONOMY OF THE POST-BEPS WORLD

TAX COOPERATION VS. TAX COMPETITION IN THE EARLY 21ST CENTURY

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1. The Secular Crisis of the Global Growth and Redistributive Model

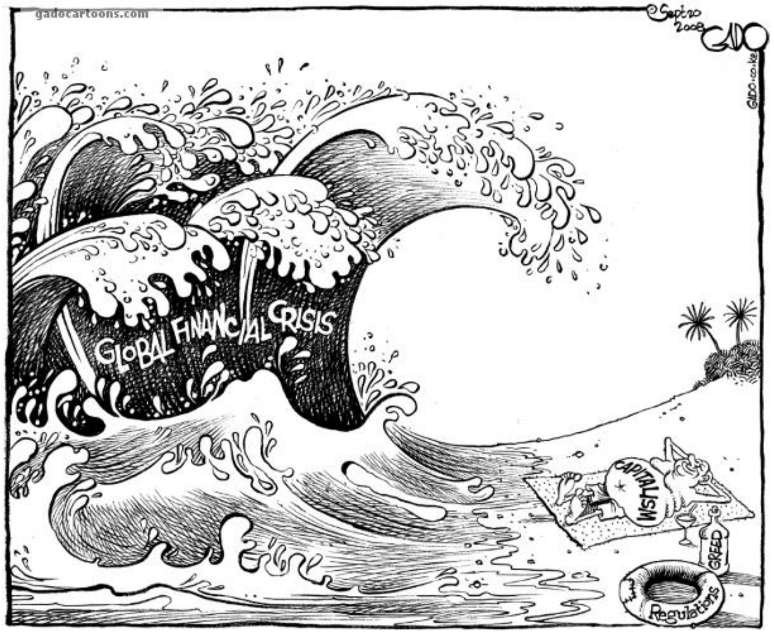
- Global capitalism is in the midst of an unprecedented crisis of legitimacy, exacerbated by a potentially lethal combination of socio-economic calamities and natural limits that are fundamentally reshaping the entire structural edifice, and with it naturally also the international tax system.

- The three most important crisis trajectories relate to and can be subsumed under what Karl Polanyi called the three “fictitious commodities”: money, labor, and land => these he defined as resources not originally produced for sale, and whose total unrestrained commodification will destroy them or make them unusable.

- Tax policies played a significant role not only in the causal chain that led to these crises, but will very likely be a crucial component of any future solutions.

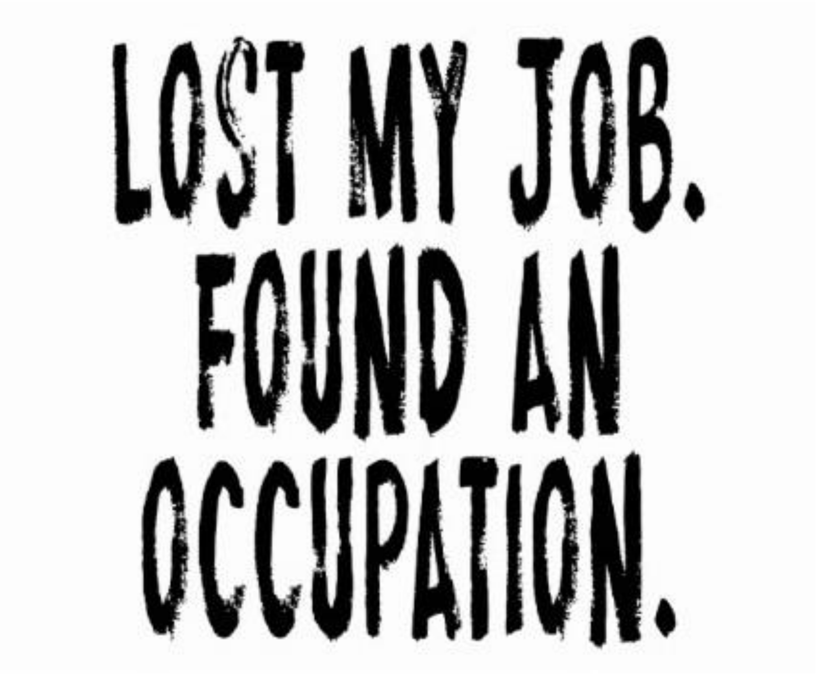
1.1 Excessive Commodification of Money

- Began shortly after the fall of the Bretton Woods system of capital controls.
- Restoration of growth and profitability via a limitless supply of cheap credit turned into sophisticated financial “products” and a subsequent explosion of public and private debt.
- Led to successive rounds of competitive deregulation, lobbying for more deregulation, and ultimately to the global financial crisis.
- Slowest recovery in history => secular stagnation in the productive economy.



1.2 Excessive Commodification of Labor

- Jobless “recovery”, characterized by higher levels of unemployment and precarious employment (part-time contracts, zero hour contracts, forced self-employment, task economy).
- Middle and working class wages continue to lag behind inflation and have not kept up with productivity increases, while executive pay has seen unprecedented increases.
- Technological progress eliminates jobs faster than it can replace them.



1.3 Excessive Commodification of Land (Nature)

- Mismatch between the logic of infinite expansion and the finite amount of natural resources.
- Climate change already costing an estimated 1.6% of global GDP annually, expected to double by 2030.
- Need to transition to an environmentally sustainable economic model thwarted by a lack of resources (public debt), and immense lobbying power of status quo forces.

"Yes, the planet got destroyed. But for a beautiful moment in time we created a lot of value for shareholders."

1.4 The Broken Social Contract

- According to NGO estimates, anywhere between USD$21 to USD$32 trillion in financial assets was parked offshore, representing 8-13% of the total global wealth of USD$250 trillion in 2015.

- According to the US Congressional Research Service, USA loses about USD$100 billion a year through tax avoidance and evasion, while NGOs put the sum at around USD$186 billion.

- According to the European Commission, annual EU losses to tax avoidance and evasion are estimated at EUR€1 trillion.

- According to the OECD, revenue losses from aggressive tax planning are estimated to be in the range of USD$100-240 billion annually, or 4-10% of the global corporate income tax base, with the effects much higher in developing countries due to their greater reliance on corporate income tax revenues.

- According to Oxfam's calculations, the 62 wealthiest individuals now own as much wealth as the bottom half of the planet.

2. The “Democratization” of Taxation

- Historically, international taxation almost exclusively a domain of technocrats, practitioners, and experts, mostly from the global “core”.

- The basic architecture of the international tax system itself laid down by the “core” in the1920s and “exported” to the rest of the world => source - residence conflict.

- This historical asymmetry now faces increasing pressure, with new players entering the arena and rapid changes under way.

2.1 New State Level Players

- Unprecedented growth in the economic size and political influence of the BRICS and other emerging markets.
    - G7 becomes G20 (new agenda setting and decision making powers, including at the OECD).
- Increased emancipation of the developing world.
    - Continuing demands for a “UN intergovernmental tax body” to replace the still mostly “core” dominated OECD.
    - Late invitation to the G20/OECD BEPS process.
    - Importance of taxation for development recognized in the UN Sustainable Development Goals.

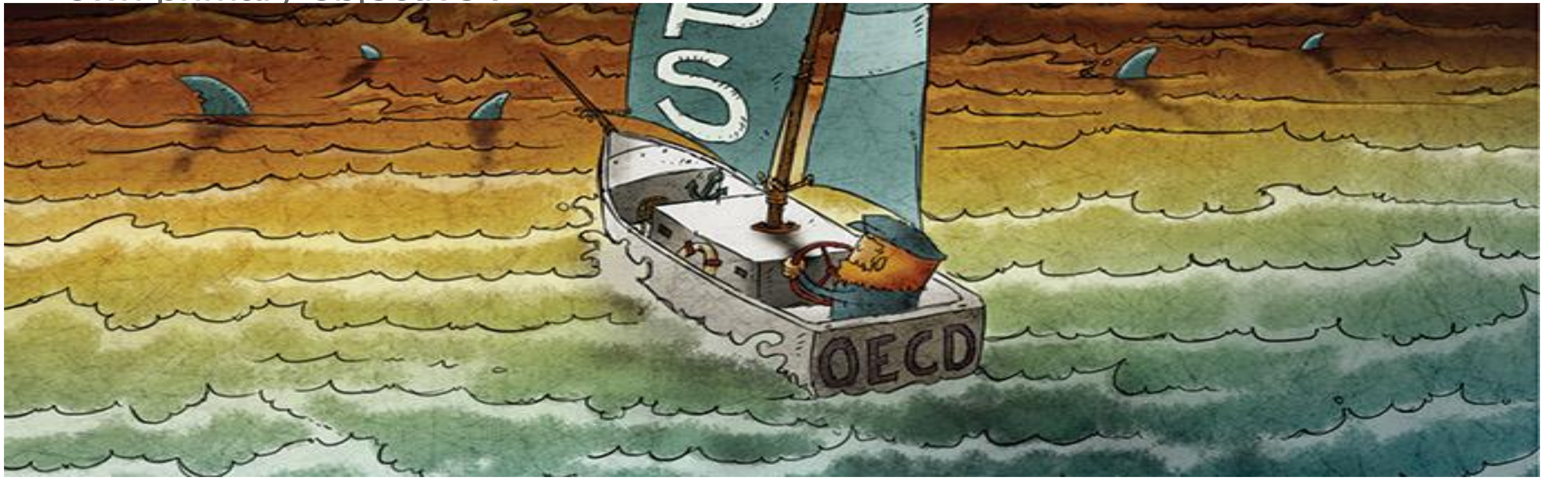
2.2 New Non-State Level Players

- In the late 1990s, development NGOs take notice of the impact of tax avoidance and evasion, and begin to campaign for an elaborate reform programme:
  - **1) Automatic exchange of tax information**
  - **2) Beneficial ownership registers**
  - **3) Country - by - country reporting**
  - **4) Unitary tax (formulary apportionment)**
  - **5) Criminal liability for "willful blindness"**
- Fed by a steady stream of leaks by whistleblowers and exposés by investigative journalists, the global tax justice community has now grown to include investors, trade unions, human rights groups, feminist groups, academics, as well as small and medium-sized enterprises.
- Struggles to enact this reform programme recently gave rise to a new demand:
  - **6) Curb tax competition and move towards greater harmonization**

3. The Failed Promise of the BEPS Project

- BEPS Project – the most far reaching attempt to reform the international tax system since the 1920s in order to ensure MNEs are taxed "*where economic activities take place and value is created*".

- Despite some welcome provisions, reception unenthusiastic across the board:
  - For businesses - more complexity, more uncertainty, higher compliance costs.
  - For tax justice campaigners - a mere patch-up exercise that fails in achieving its own primary objective .



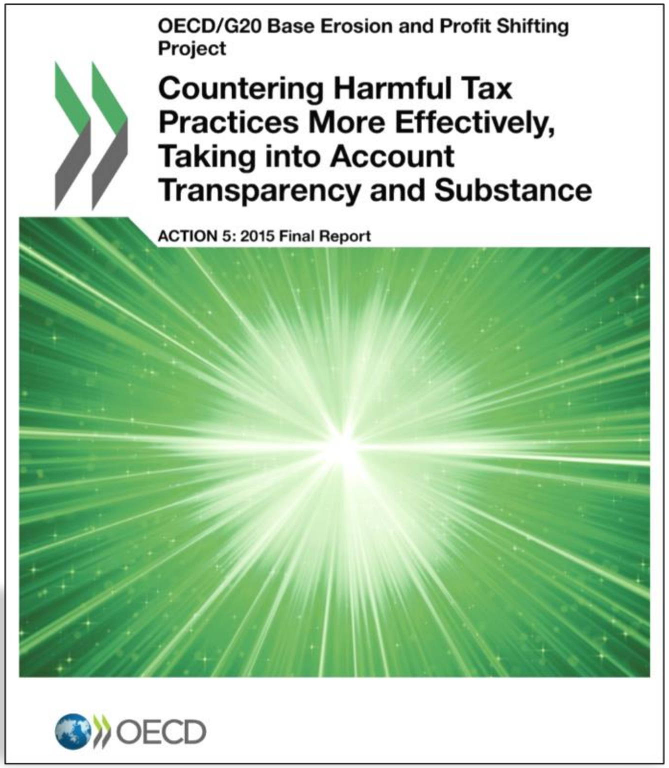
3.1 The BEPS 15's Uneasy Compromise

Action 1 – Digital Economy	Non-binding	-	Report + Recommendations
Action 2 – Hybrid Mismatches	Non-binding	-	Common approach / best practice
Action 3 – CFC Rules	Non-binding	-	Common approach / best practice
Action 4 – Interest Deductibility	Non-binding	-	Common approach / best practice
Action 5 – Harmful Tax Practices	Binding	-	Minimum standard
Action 6 – Treaty Abuse	Binding	-	Minimum standard
Action 7 – Permanent Establishment	Binding	-	Revision of the model tax convention
Actions 8 -10 – Transfer Pricing	Binding	-	Revision of the TP guidelines
Action 11 – Measuring & Monitoring	N/A	-	Report
Action 12 – Mandatory Disclosure Rules	Non-binding	-	Common approach / best practice
Action 13 – Country-by-Country Reporting	Binding	-	Minimum standard
Action 14 – Dispute Resolution	Binding	-	Minimum standard
Action 15 – Multilateral Instrument	Binding	-	To be finalized by 2016

3.2 Harmful Tax ~~Competition~~ Practices

"I think tax competition is a matter of fact. It's around, and it will not go away. (…) Tax competition is something that the OECD has nothing against. We are in favor of lower tax rates on corporate income tax, as long as you have broad bases, and the fact that countries want to compete on this is not a problem, as long as they don't do it in a harmful manner, meaning ring-fenced or too aggressive on some sectors where it's highly mobile, otherwise it's a race to the bottom, which is hard to accept for a large number of countries."

Pascal Saint-Amans



- Action 5 mandates exchanges of information on tax rulings, but otherwise only manages to place certain restrictions on patent boxes, rather than doing away with the practice altogether.
- The message: If not outright encouraged, tax competition is at least acceptable to the OECD.

4. Tax Cooperation Vs. Tax Competition in the Early 21st Century

Tax Cooperation

- The impacts of the numerous crises facing the system today (financial instability, sluggish growth, joblessness, inequality, environment), as well as the solutions to them, will mount significant pressures for progressive redistribution.

- In the face of growing instability, the institutions of global governance (G20, OECD, IMF, WB, etc.) will increase the call for greater cooperation.

- The international tax system is unsustainable in the 21st century both politically (source - residence conflict) and practically (new business models).

- The growth of the tax justice community through both membership and alliances with market actors will be pushing towards greater cooperation and increasingly against tax competition (number of whistleblowers likely to increase further).

Tax Competition

- Defending an established status quo, no matter how inefficient or harmful, is easier than effecting fundamental change.

- Tax competition is an indispensable component of tax avoidance, which is part of a multi-billion dollar industry that serves some of the wealthiest and most powerful individuals and corporations on the planet.

- In a future mired by systemic crises, there will be no shortage of decision makers amenable to competitive defection in a bid to attract FDI, or to political pressures leading to unilateral outcomes and conflicts (EU's State Aid investigations, UK's Diverted Profits Tax, India's Equalization Levy).

- Limited impact of tax justice name and shame campaigns - only around 1/5 of MNEs are customer facing (mostly retail and some services).

THANK YOU FOR YOUR ATTENTION !

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