



WORKSHOP SERIES – 3, 10, 17, 24 JUNE and 1 July 2021

GLOBALIZATION AND DIGITALIZATION: INTERCONNECTIONS BETWEEN TAXATION, TRADE, AND INVESTMENT

During the 20th century changes in the way in which the world held its commercial, financial and business activities forced taxation, trade and investment to reinvent themselves. The quest assumed by all three disciplines was posed on finding a framework for dealing with globalization. More recently, particularly since the beginning of this century, e-commerce and the digitalization of the economy have made the governance of these three fields an even more challenging area.

Globalization and digitalization have significantly increased the opportunities for cooperation among countries. At the same time, they have also exacerbated competition among nations for tax bases, trade shares and investment.

Taxation, trade, and investment have several specificities that are valuable since they could be translated from one discipline to the other, in order to fix specific incongruities or shed light onto practical circumstances that remain an open issue. At the same time, there also exist many commonalities and interconnections that are worth exploring.

Against this backdrop, this workshop series will provide four sessions in which a selected group of participants will discuss about the accepted sources of interpretation in public international law, services trade, the technical issues that concern the minds of experts on each field and the existent judicial discussions, and on the role of tax incentives for investment in the context the digitalization of the economy. The workshop series will close with a final meeting (open for the public), where a high-level panel will dig deeper into the policy implications of the topics discussed throughout the first four sessions.

Participants

This workshop series will bring together a broad range of stakeholders including academics in the tax, investment, and trade fields; regional and international organizations; government officials as well as members of the civil society to discuss challenges and potential synergies as well as explore policy priorities in these three fields.

Agenda

Session 1: Importance of domestic law for the interpretation of tax, trade and investment treaties- 3 June (14:00 to 17:00)

This section will address the impact of domestic law in international agreements and the use of tax, trade and investment domestic law provisions for the application of international agreements. Some examples are for instance the use of investment law that leads to non-application of domestic provision, the need to introduce a domestic tax provision in the framework of legality, and the introduction of a tax measure that can result in indirect expropriation under the investment agreement.

- Implications trade and investment treaties in the application of domestic tax provisions
- Navigating reform analogies: comparative insights from the tax, trade and investment regimes
- What can we import from the WTO dispute resolution system? And investment dispute resolution system?
- Interplay between investment, tax and dispute resolution mechanisms under EU law
- Calculation of damages in international investment claims: what role for domestic law?

Convener: [Irma Mosquera Valderrama](#) Associate Professor Leiden University and Lead Researcher GLOBTAXGOV ERC Funded Project

Session 2: Digital taxes and trade in services – 10 June (14:00 to 17:00)

International income tax rules rest on the principles that taxes are paid in the jurisdiction where the company has physical presence, taxes are based on profits, and there are profit allocation rules. These tax rules need to be updated as economic activities go digital – accelerated by the Covid-19 crisis. In the digital economy, assets are increasingly intangible and marginal costs may be close to zero resulting in scale without mass as well as a high degree of market concentration globally. The OECD hosts negotiations under the Inclusive Framework of Base Erosion and Profit Shifting (BEPS) to find solutions by the end of 2020. The discussions are yet to conclude and in the meantime several countries have introduced digital services taxes on their own.

- What should be the objective of a digital services tax?
- Which economic activities and what kind of firms could be subject to a digital services tax?
- What would be the benefits of a global agreement – and what would be the cost of unilateral action?

Convener: [Hildegunn Kyvik Nordås](#) is a Senior Associate with Council on Economic Policies CEP

Session 3: The Settlement of Tax and Tax Treaty Disputes by the International Courts and Tribunals – 17 June (14:00 to 17:00)

In an international context it can be said that in order for a dispute to arise, a conflict regarding the interpretation or application of a treaty needs to occur. This is most likely the

case when contracting states of a treaty use treaty provisions differing from the text of the OECD or UN Model Convention. Other reasons for conflicts to occur might be a different appraisal of the facts related to the case or treaty interpretation biased by national legislation and against the principles of good faith. When examining the nature of disputes, it has to be kept in mind that the majority of disputes arise between taxpayer and authority but only rarely a breach of a treaty obligation of one state will lead to a dispute with the other contracting state. There are various mechanisms of dispute resolution at the international level, both for tax and non-tax disputes.

Some of the most prominent measures of settling tax disputes are those found in DTCs and the EU Arbitration Convention. With most of the recent development focusing on Tax Treaty Arbitration, Mutual Agreement Procedure (MAP) remains the key tool to reduce treaty-related disputes. However, a number of other international adjudicatory bodies (namely, WTO, ISDS, Court of Justice of the European Union, and ICJ) have had to review the legality of tax measures in the light of international treaties. This trend gives rise to a number of practices such as treaty shopping but also give an opportunity to a greater dialogue between international courts and more precisely, between these courts and tax tribunals.

- How do international courts (WTO, ISDS, UN ICJ, Court of Justice of the European Union) approach tax measures?
- How frequently these adjudicatory bodies deal with tax disputes? What is the typology of tax measures reviewed by these courts?
- What are the substantive and procedural interactions between trade, investment, and tax international courts?
- How does the global push to tax the digital enterprises relate to ICJ, WTO, ISDS?
- What is the impact of these courts' decisions on tax law? How to import terminology from other disciplines within the public international law practices (trade, tax, and investment)?

Convener: [Julien Chaisse](#) Professor at the City University of Hong Kong

Session 4: Tax incentives for investment. Old and new challenges for international trade – 24 June (14:00 to 17:00)

Despite their stated goals, tax incentives are often ineffective in attracting investment or creating employment. Indeed, several provisions are redundant and hence generate costly windfall gains as well as negative spillover effects on third countries, e.g. when it comes to international trade through the impact of harmful tax practices. The digitalization of the economy has exacerbated some of the existing challenges, since certain vulnerabilities in the international tax arena (e.g. the allocation of taxing rights on the basis of physical presence) have been intensified with the disruption of digitalization.

- How to improve the design of tax incentives for investment?
- The role of tax incentives as trade barriers
- Tax incentives and digitalization

Convener: [Agustin Redonda](#): Senior Fellow with Council on Economic Policies CEP

Session 5 (All): Discussion Panel [TBA] – 1 July (14:00 to 17:00)

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