Tax Competition and Inequality— The Case for Global Tax Governance*

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Abstract

In this article I present the normative case for global tax governance. I argue that, contrary to an influential part of the literature, national tax policy choices cause significant externalities for other nation states. Focusing in business taxation, I show that tax competition undermines the integrity and distributive principles of domestic tax systems, and aggravates the inequality between developed and developing countries. Further, I demonstrate that the effects of international tax competition are unjust irrespective of whether a globalist or less demanding internationalist perspective on justice is adopted. The minimum requirement of justice is to devise global rules which ensure that national tax systems remain capable to implement distributive justice as they see fit. Finally, I present and discuss a concrete proposal for the global governance of business tax competition, namely, unitary taxation with formula apportionment.

One of the major insights of the literature on global governance is the idea that an ever-increasing number of issues cannot be adequately governed within the nation state. In the age of globalization, there is a need for global governance because of externalities for other states and peoples. If problems cross borders or become de-territorialized, political answers must be global.¹ This has been argued convincingly for policy areas ranging from environmental protection to maintaining a liberal world trade order and financial stability to issues of health or human rights.² But one policy area is conspicuously absent from these global governance debates: taxation. I argue that this is a serious shortcoming and make the case for the global governance of business taxation.

There are two reasons why global tax governance has hardly been considered. First, the power to tax is one of the central attributes of state sovereignty. Because of an entrenched belief that to share tax sovereignty internationally is to relinquish an essential part of 'stateness,' proposals for global tax governance have been discredited as utopian and even undesirable. Second, an influential part of the political science literature on international taxation has argued that the externalities resulting from domestic tax policy choices on other nation states are negligible. If this were correct, there would be no need for global tax governance. I show that the second view does not hold and therefore it is high time to overcome the first view.

The problem of the second view, as I show below, is that it does not use the right indicators to measure the costs of uncoordinated national tax policy choices. Much of the political science literature is preoccupied with assessing how economic globalization affects tax revenues in industrialized countries. Since that tax revenue has largely remained stable, these scholars conclude that tax competition is not a serious constraint for national

governments. But if we consider how tax competition works in the real world, it becomes apparent that national tax revenue of industrialized countries is an inadequate indicator. I show that a significant part of tax competition is not about governments trying to attract real economic activity like direct investment and jobs, but is about the assignment of paper profits irrespective of where real economic activity occurs. The effects of this kind of tax competition cannot be measured in terms of industrialized countries' tax revenues for two reasons. First, the adverse effects are strongest in developing countries. Second, in the industrialized world, the main effect is on the *structure* of tax systems. As detailed below, tax competition in its current form creates both domestic and international inequalities, and this is the reason why it should be addressed.

A workable solution necessarily requires global tax governance. I argue below that unregulated tax competition and the resultant inequalities do not meet the requirements of justice—irrespective of whether we adopt a cosmopolitan (globalist) or “only” an internationalist concept of justice. Global tax governance will indeed require governments to pool and possibly delegate some of their tax sovereignty to the international level, and to abandon the notion that taxation should be solely the prerogative of the nation state. Tax competition has in fact already undermined national governments' ability to effectively implement their tax policy goals—a key element of a democratic and socially just polity. In the future, if governments want to retain *de facto sovereignty* (attain their substantive policy goals of efficiency and equity), they will have to share some of their *de jure sovereignty* (the legal right to design their own tax systems) with other governments, in order to regulate tax competition. I also show, however, that governments can retain important taxing powers, because global tax governance is multi-level governance.

Specifically, I outline a policy proposal to address the problem of business tax competition, namely, unitary taxation with formula apportionment (UT + FA). While tax competition is multi-faceted—it concerns not only business taxation, but also international tax evasion and avoidance by individuals—measures to curb business tax competition are particularly important. As will be explained in the next section, the business tax plays such a crucial role for the integrity of tax systems that it is worthwhile to focus on this issue. This is not to neglect that ideally global tax governance should address all aspects of tax competition and strive to implement additional policy measures like effective automatic information exchange and general anti-avoidance principles. Setting these latter issues aside for now is merely a concession to spatial constraint.³

This article makes two contributions to global governance research. First, it introduces the issue of taxation to the debate. Whereas taxation—in particular, international taxation—is the turf of economists, global governance is political science territory. Political scientists need to import findings from economics so that they can begin to apply their expertise on institutional design to the area of taxation. My discussion embarks on that path by synthesizing recent results from a growing, specialized body of economics literature. Second, institutions of global governance are often accused of neoliberal bias, restricting themselves to technocratic solutions to problems of inefficiency, and failing to act on other adverse effects of the internationalization of the economy such as increasing inequalities or a loss of democratic accountability.⁴ This article concurs with these criticisms; it bases its call for global business tax governance on increasing domestic and international inequalities, and thus proposes an alternative justification for global governance.

The rest of the article is structured as follows. First, I describe the current structure of business tax competition and how it leads to domestic and international inequalities. In the second section, I develop a social contract argument why these inequalities have to be considered unjust and show that this holds irrespective of whether one adopts a “globalist” or an “internationalist” view of justice. In the third section, I propose unitary taxation with formula apportionment (UT+FA) as a workable solution. The conclusion summarizes the main arguments and briefly analyzes the political feasibility of the proposal.

Tax Competition and Inequality

The Structure of Tax Competition

Tax competition is defined as independent governments adopting their tax policies strategically. They design their tax systems to attract new investment and tax bases of other countries. Governmental tax strategies can involve every aspect of a national tax system. International tax differentials may thus be reflected in tax rates, tax bases, and the enforcement of tax laws. The expectation is that countries will attempt to undercut one another in tax burdens.

Does this actually happen? The initial empirical evidence is mixed. While nominal corporate tax rates have indeed fallen globally, from an average of around 50% in 1975 to an average below 30% in 2005, in that same period corporate tax revenue as a percentage of GDP, representing the effective tax rate, remained stable at an average of about 2.5%.⁵ By treating the effective tax rate as the relevant indicator, some political scientists have concluded that tax competition cannot have seriously constrained governments’ policy

choices; thus fears of a race to the bottom in taxation are unfounded. Given the political will to do so, governments can pursue redistributive and other social policies at the national level despite globalization.⁶

But there are good grounds for challenging this optimistic conclusion. For one, it is debatable whether corporate tax revenue has indeed remained stable, if we measure it properly. Preliminary evidence indicates that companies' profitability and the number of incorporated businesses have actually increased.⁷ Controlling for these two aspects casts serious doubt on the finding that business tax revenues have not changed significantly. Beyond this, the focus on tax revenue by itself is misleading. The argument that tax competition does not endanger national policy autonomy does not pay close enough attention to the real-world mechanisms of business tax competition. Rather than looking just at aggregate tax revenue, it is more appropriate to focus on what it is exactly that countries aim to attract when they engage in tax competition. In the following I present a stylized account of the empirical findings for the reaction of different kinds of capital to different tax policy instruments and then discuss what these findings tell us about the structure of tax competition.

First, governments compete for *foreign direct investment (FDI)* in the form of real business activity. Business investment depends on various factors such as the level of education in a potential target country, the costs of labor, or the quality of the infrastructure. While a company does not relocate solely for reasons of taxation, the *real effective tax burden* does play a role. Empirical studies conclude that increasing taxes decreases the inflow of FDI. However, the strength of the correlation is strongly affected by the method of measurement and the kinds of tax rates considered.⁸

Second, governments compete for mobile “*paper*” profits. The current structure of international tax law allows businesses to shift profits from high tax countries to low tax countries, and losses vice versa. Consequently, companies can have the best of both worlds: they benefit from good infrastructure and other locational advantages in high tax countries and the tax advantages offered in low tax countries or tax havens. Profit shifting is aided by various techniques such as the (legal) manipulation of internal transfer prices for preliminary or intermediate products, or the skillful choice of financial structures, for instance, debt rather than equity financing.⁹ Many empirical studies have investigated whether, and how strongly, tax differences between countries influence a company’s decision to transfer paper profits. Different approaches notwithstanding, all of these studies have drawn the same conclusion: the transfer of taxable profits is highly sensitive to taxation, and companies make ample use of these possibilities.¹⁰ The decisive factor for attracting mobile paper profits is the *nominal tax rate*, because only profits which cannot be offset against depreciation through other tax benefits need to be shifted in order to gain real savings. So contrary to arguments by the optimists, the nominal tax rate is a decisive governmental instrument of tax competition. Empirical investigations into the sequence and timing of nominal tax rate reductions show that governments do indeed perceive themselves to be strategically interdependent and under competitive pressure. They react to tax reductions in other countries by reducing their own tax rates.¹¹

The fact that profit shifting plays such an important role in tax competition explains the somewhat weaker findings regarding the effects of tax differentials on FDI. As long as multinational enterprises (MNEs) can save taxes without engaging in real business relocations, the competition for FDI is dampened. This becomes clear when we see that the level

of FDI hinges on two distinct decisions an MNE has to make: where to set up new foreign establishments (discrete investment decisions) and whether to expand existing establishments (size-of-investment decisions). Empirical evidence shows that discrete investment choices are highly tax sensitive, whereas investment size decisions are less sensitive to tax differentials. Companies can establish subsidiaries in low tax countries (discrete investment), but they are not prevented from upgrading investments in high tax countries because they can transfer the profits from these investments to their subsidiaries in low tax countries.¹²

In sum, tax competition is a reality: there is limited competition for foreign direct investment and fierce competition for mobile paper profits. For reasons of parsimony, I confine the following discussion to paper profit competition and argue that this particular kind of “virtual” competition (as distinguished from “real” competition for direct investment) runs counter to basic normative principles.¹³ Nevertheless, virtual and real tax competition is related and this has implications for designing policy reform. I return to this in the subsequent discussion of my proposal for reform.

Tax Competition Causes Inequality Within and Between Countries

Does the existence of tax competition invalidate the optimists’ argument that it does not constrain national policy choices? As long as tax revenue remains more or less stable, one may think that there is no reason to do anything about tax competition. But this reasoning neglects a crucial externality that countries impose upon one another, namely, domestic and international inequality. Let us consider the consequences of tax competition for (a) developed and (b) developing countries.

(a) The governments of developed OECD countries react to international tax competition by a policy of ‘tax cut *cum* base broadening.’ This is an attempt to both defend against and compensate for the outflow of paper profits.¹⁴ By lowering nominal tax rates and simultaneously broadening the tax base governments avoid the revenue losses that would accompany the decline in rates. The tax-cut-*cum*-base-broadening policy, however, affects the distribution of the tax burden among different kinds of taxpayers within a country. In the business sector, the tax burden is shifted from highly profitable MNEs to nationally organized small- and medium-sized companies.¹⁵ But the distributive consequences do not stop here. The tax burden is also shifted from mobile to immobile economic factors: The burden on labor rises while that on capital falls, and economies rely increasingly on consumption taxes.¹⁶

Finally, there is an important indirect effect of the competitive downward pressure on corporate tax rates: it can undermine the progressiveness of personal income taxes. This is so because the corporate tax serves as a “backstop” for the personal income tax. If the nominal corporate tax rate is lower than the personal rate, then private individuals have an incentive to hide their income behind a “corporate veil”—incorporating themselves and re-categorizing their income as corporate. In order to make such tax avoidance unattractive, policymakers usually attempt to align the corporate tax rate on retained profits with the top personal income tax rate. If the corporate tax rate is lowered because of tax-competition pressure, policymakers often react by lowering the top personal rate, thus flattening the personal tax rate schedule.¹⁷ One symptom is the recent introduction of “flat taxes” in many countries, especially in Eastern Europe.

Another alternative for governments would be to allow a gap between corporate capital tax rates and top personal income tax rates (*dual income tax*). In this case tax progression for personal income tax is maintained on paper. In fact, however, the redistributive objective may be undermined: redistribution occurs only among individuals who earn their incomes on the labor market; capital owners, in contrast, are proportionally taxed at a much lower rate. High-income earners can also use the tax arbitrage opportunities of incorporation. Nevertheless, given the constraints of tax competition, redistribution under the dual income tax system may still be more effective than it would be under a flat tax system, where even earned income is not progressively taxed. Some scholars therefore consider the dual income tax to be a reasonable second best reaction to the challenge of tax competition.¹⁸ In the 1990s the Scandinavian countries, for instance, chose this route. Irrespective of whether countries opt for flat or dual tax systems, tax competition constrains their ability to engage in redistribution via the tax system.

(b) Tax competition contributes to increasing international inequality. While the industrialized countries experience hardly any adverse effects in terms of government revenue, the record is different for developing countries. Studies on the impacts of tax competition for developing countries show that, as in developed economies, nominal corporate tax rates have decreased. But, in contrast to developed countries, developing countries have not been able to stabilize their corporate tax revenues. African countries have experienced a 20 percent decline in corporate tax revenues since the early 1990s up to 2001.¹⁹ A significant part of this revenue loss is due directly to enterprise profit shifting. Christian Aid estimates the annual revenue loss of developing countries to be 160 billion US dollars.²⁰

In contrast to developed countries, the rate cuts in the developing economies could not be refinanced by broadening the tax base. Instead, the tax base has actually shrunk in many developing countries. In particular, the poorest countries (especially those in Sub-Saharan Africa) have watched their tax bases erode as the number of tax incentives targeted at foreign direct investment (e.g., tax holidays and allowances) have markedly increased.²¹ Examples include Ghana, where foreign companies do not have to pay any tax for the first ten years and only 8 percent on profits thereafter. Kenya also grants ten-year tax holidays, after which a flat tax of 25 percent is due.²² One reason why tax competition is more severe in developing countries is that their less developed political and administrative structures are more susceptible to the demands of particular interests, e.g. those of foreign multinationals.²³ In Zambia and Tanzania, for instance, multinationals in the copper and gold mining industries have secured favorable contracts including attractive tax deals. These arrangements, as in many other cases, have not been made public; often corruption is involved.²⁴

The loss of tax revenue and the erosion of the business tax base are troubling. Absent tax competition, we would expect corporate taxation to be an important tax instrument in developing countries. For one, the administration and enforceability of corporate taxes are less costly than they are for personal income taxes. Since developing countries do not devote as many resources to tax administration, they should rely on corporation tax more, and not less, than developed countries. Second, for countries rich in natural resources, corporate tax, at least in the extractive industry sector, should not be harmful from an efficiency perspective. Since enterprise earnings in these sectors are location-specific, the corporate tax cannot be shifted onto other factors and it cannot drive investment away.²⁵ And indeed,

before the present era of tax competition, developing countries did rely on business taxes to a higher degree than developed countries did.²⁶

To compensate direct tax revenue losses, developing countries have increasingly relied on indirect taxes. This is in line with IMF and World Bank recommendations, which see indirect taxes as a useful tax handle for developing countries because they are more easily administrable. The shift from direct to indirect taxes and from capital to labor is even more pronounced in developing countries than it is in developed countries.²⁷

A third group of countries, viz., tax havens (some of which are developed, some developing), profit from tax competition. While there is little real economic activity taking place in these countries, their economies prosper because they operate as tax shelters, commercializing their tax sovereignty.²⁸ The world's tax havens are mostly small countries or dependent territories. They offer low or zero tax rates, bank secrecy, or statutes of incorporation that enable foreign taxpayers to set up shell companies. Tax havens poach the tax base of other countries by providing an important part of the infrastructure for "paper profit" shifting.²⁹ Even though they do not receive real investment and jobs, vying for paper profit is attractive for tax havens, because they can develop a financial services sector with well paid jobs and will often receive small service fees as revenue. Since tax havens are mostly small (in terms of population) these are worthwhile benefits. Available evidence suggests that the offshore sector is a significant factor in the world economy. For example, India reports that 90 percent of its inward investment flows into the country via the tax haven Mauritius.³⁰ It is estimated that five to 11.5 trillion US dollars are cached in tax havens.³¹

In summary, tax competition causes inequality. The changes in the structure of national tax systems favor transnational businesses over small and medium sized national companies and capital owners over labor. These changes also tend to undermine the progressiveness and thus the potential for redistribution of personal income tax. However, while developed countries have generally been able to prevent negative revenue effects by broadening their tax bases, developing countries have not been able to do so. Thus the negative consequences of tax competition are worse for developing countries, and resulting in increased inequality between countries of the global North and South.

Tax Competition and Justice

In what sense can the inequalities caused by tax competition be considered unjust? Building on a relational conception of justice that derives egalitarian rights and duties from the fact that individuals are engaged in a common cooperative venture, I submit that unregulated tax competition does not meet the requirements of justice. I first develop the role of taxation in domestic justice on the basis of social contract theory.³² Then I go on to argue that international tax competition undermines domestic social contracts. This is unjust irrespective of whether we adopt a cosmopolitan or merely an internationalist concept of global justice.

Taxation, Justice, and the Domestic Social Contract

Taxation is needed in order to finance public goods. The most important public good financed via taxes is the institutional infrastructure of the state, which is laid down in constitutional rules. The constitution can be viewed as a “complex exchange” among indi-

viduals to enable themselves to supply the public goods necessary to pursue their life plans.³³ In order to derive just constitutional rules one may engage in the contractarian thought experiment of a constitutional assembly behind a “veil of ignorance,”³⁴ i.e. individuals do not know what abilities they will have and what social class they will belong to in the post-constitutional setting. In this hypothetical situation, citizens negotiate about and define their rights, entitlements, and duties. They determine the different contributions each must make to maintain the common institutional order. The institutional infrastructure also entails the definition of a structure of property rights and a market order, both financed by the taxes that citizens pay. By so doing, individuals determine the distributive principles for their societies. Distributive justice is achieved if all individuals agree consensually on a social contract.

Overall, the social contract defines the normative terms (i.e., the moral obligations individuals have toward one another) of the common cooperative venture that is the nation state. The idea of social choice under a veil of ignorance conveys the notion that the state is an instrument to achieve mutually beneficial cooperation among its citizens on the basis of equal rights. This is a relational conception of justice, because individual rights and duties are derived from the fact that there is a reciprocal (*quid pro quo*) exchange relationship among individuals. In the post-constitutional situation, i.e., once the contract is closed, individuals can be forced by the state to obey the rules of the game. While this may at first appear to contradict the notion of mutually advantageous cooperation, it can be shown that, indeed, this capability of the state is necessary to facilitate a productive, common cooperative venture, because otherwise individuals would attempt to free-ride on the public goods provided by the state. Thus, at the constitutional stage, individuals would voluntarily agree

to provide the state with coercive power. This can be understood as the political community's binding itself to common rules.³⁵

The fact that the social contract is mutually beneficial for all individuals involved also holds for redistributive policies which are often portrayed as taking money away from someone that would rightfully belong to him or her, and giving it to someone else who has no legitimate claim to it.³⁶ If we acknowledge that the definition of private property rights and their enforcement is contingent on the existence of the state, then we must accept that progressive taxation, redistribution, and other state welfare policies can be the outcome of reciprocal constitutional exchanges. Given that some individuals will profit more from the maintenance of a system of private property and market exchange, and taking into consideration the stochastic nature of market outcomes, all individuals behind a veil of ignorance may require higher financial contributions from those (as yet unknown) who turn out to be more successful, in order to obtain a social contract that guarantees private property rights.³⁷

For the argument developed here, we do not need to know what the exact outcome of social contract bargaining will be or how redistributive tax structures will be. This depends crucially on how risk-averse individuals are and how big they estimate the advantages of a market-based economy to be.³⁸ And indeed, in the real world, the respective social contracts vary; different political communities have made different choices. The size of the public budget and the level of redistribution on the revenue side (e.g., whether countries rely on a progressive tax rate schedule or a proportional one), or the expenditure side (e.g., whether public money goes into social services or into opera houses) varies from country to country.³⁹ Irrespective of the tax structure or the implied distribution of benefits

and costs that a particular political community aims for, the crucial points are that, first, it is the prerogative of the political community to make these choices, and, second, every individual profits from participating in the common cooperative venture.

By definition, each individual's contribution in the form of taxes must be equivalent to the ex ante benefits (i.e., those benefits that the constitutional assembly behind a veil of ignorance anticipates for the respective, still anonymous, taxpayers) he or she receives from being part of the common cooperative venture. Otherwise, they would not agree to the terms of the contract. The equivalence of benefits and costs need not hold at the post-constitutional (ex post) level. Therefore individuals may legitimately be forced to keep their commitments. In public finance, the idea that citizens or corporations pay taxes in exchange for receiving public goods and services is known as the benefit principle.⁴⁰ Accordingly, and keeping in mind the distinction between the constitutional and post-constitutional level, the normative criterion for just taxation can be labeled constitutional benefit taxation.

Tax Competition is Unjust—Globalist and Internationalist Perspectives

On the basis of the social-contract-justification for taxation, we are now in a position to see why unregulated tax competition in the form of profit shifting is unjust: namely, it undermines the distribution of benefits and costs as laid down in the social contract by allowing taxpayers to free-ride. Citizens (individual and corporate) continue to live or produce in one country and thus benefit from its public goods, but they do so without paying the agreed price (taxes). Profit shifting thus violates constitutional, and in fact even post-constitutional benefit taxation.⁴¹

But why should domestic social contracts be so sacrosanct? Could it not be argued that, in the age of globalization, to focus solely on domestic tax systems is ill-advised? Should we not be concerned primarily with global justice rather than confining ourselves to matters of domestic justice? Accordingly, should we not seek international solutions to the problem of harmful tax competition? The answer to the last three questions is yes; we should be doing all of these things. Nevertheless, nation states do carry normative weight under a relational conception of justice, but this does not militate against an internationalization of tax policy. In fact, strengthening global governance capacities in order to preserve the integrity of domestic social contracts can be shown to be required even by a thin theory of global justice. In order to show this, let us briefly consider the three main positions on global justice, which differ from one another in the extent to which they ascribe normative weight to particular nation states and derive minimum requirements for the global governance of business taxation. I consider both a continuous and a discontinuous version of globalism and then turn to the more modest internationalist conception of justice.⁴²

From a globalist perspective, equality as a demand for justice has global scope. It applies to all individuals worldwide. One can envision all individuals in the world bargaining about a worldwide social contract. In the *continuous version of globalism* this would result in a system of rights and duties that may involve direct redistribution among individuals. On this view, while nation states may continue to exist for administrative reasons, the distributive outcomes of the institutional arrangement should be the same as they would if a world state taxed all individuals directly.⁴³

A continuous version of globalism is, however, unlikely to be in line with a relational concept of justice. Under a theory which derives moral obligation towards others

from the fact that all are engaged in a common cooperative venture, there are varying degrees of moral responsibility depending on the intensity of reciprocal cooperation among individuals. Thus, in the *discontinuous version of globalism*, different requirements for distributive justice may apply to different subsets of the group of individuals worldwide.

Pogge and Sen rightly observe that these subsets need not be nation states, but can also be defined in terms of commonly shared features other than citizenship.⁴⁴ But since we want to relate to the real world, we may as well assume that individuals would accept nation states as such relevant subsets, provided that they were constituted in line with ethical prerequisites rather than historical arbitrariness. On this view, the institutional order foreseen by a worldwide social contract based on discontinuous globalism would resemble that of a federal system with a vertical dispersion of powers over different levels.⁴⁵

Concerning taxation, we would expect that certain taxing rights would be on the central (global) level and others on decentralized (regional, nation state and sub-state) levels. The design of such a system could, for instance, follow the recommendations of fiscal federalism.⁴⁶ Such a taxation regime could even tolerate tax competition in certain situations. For instance, the rules could allow for competition in line with benefit taxation in the case of local goods without external effects; but they could also support more centralized provision, or provide fiscal grants between jurisdictions for those goods whose benefit reach is not locally restricted. The decisive difference to the status quo is that this would be *regulated* tax competition, the rules of which are (hypothetically) consented by all participants, to be enforced by a global-level institution. The criterion of constitutional fiscal equivalence would be fulfilled.

The notion of a global constitutional assembly of individuals is perhaps too idealistic and impracticable. According to *internationalist* theory, equality among individuals as a requirement for justice applies only within a state. Internationalists argue that reciprocal cooperation is more intense among individuals within a nation state. For example, they routinely engage in trade with one another and they rely heavily on a functional distribution of labor. This intense reciprocal cooperation is made visible through the fact that the monopoly on the use of force and the institutional framework are defined at national level. Thus national rights and obligations should be stronger than global ones. To the extent that reciprocal cooperation extends beyond the nation state (e.g., trade and the division of labor are internationalized), moral obligations may arise globally or regionally, but these will only be indirect obligations. Internationalism rests on a two-level concept of justice: while rights and responsibilities among individuals are confined to the domestic level, there are nonetheless obligations among nations on the international level.⁴⁷

The question to be answered is this: What are the principles of just conduct among states? We can apply the contractual thought experiment to derive these principles. In this case, the constitutional assembly is made up of national representatives from different states. For the international situation, the veil of ignorance embodies the intuition that delegates are aware that institutional orders will differ, but they cannot know which state they represent. Under these conditions, delegates would agree on legal equality among nation states, and freedom from adverse external interference in order to be able to pursue their domestic conceptions of justice. Further, they would establish a moral obligation to assist those countries whose domestic orders are unjust.⁴⁸

So, regarding tax competition, we can conclude that, at minimum, we can require international law to safeguard the viability of national tax systems—the main instruments for applying the principles of justice laid down in domestic social contracts—so that they cannot be undermined by the tax policy choices of other countries. Under conditions of globalized markets, the very least that is required are rules regulating tax competition between nation states to prevent them from interfering in one another's tax systems, or to compensate them, should interference occur. And, countries should be required to assist others who have not been able to develop a well-functioning tax system.

How Unitary Taxation with Formula Apportionment Can Address the Inequalities

In order to meet the minimum requirements of justice, it is necessary to regulate tax competition. This involves sharing competences and duties between the global and national levels. To fully elaborate a set of such rules would involve more than business taxation and is clearly beyond the scope of this paper. But given its crucial role for the integrity of national tax systems, the focus on business taxes is warranted. There is one fully developed scheme for taxing multinational enterprises, which is multi-level in character and which would address many of the inequalities associated with tax competition, namely, *unitary taxation with formula apportionment* (UT+FA).

Under UT+FA, governments would be required to pool a part of their tax sovereignty and to agree upon a common and consolidated business tax base. Multinational enterprises would have to determine their worldwide profit in a combined report, and they would be allowed to consolidate profits and losses of entities in different countries. The worldwide profit would then be apportioned to the respective countries in which the MNE operates, on

the basis of a predetermined formula. The formula should reflect the economic contributions of each part of the MNE to the production of the profits by referring to factors such as property, sales, and payroll in the respective country.⁴⁹ Thus, the definition of the corporate tax base would no longer be the sole responsibility of the national government, but would be undertaken at the international level. National governments would nevertheless retain tax sovereignty vis-à-vis the tax rate; they would be able to apply their own preferred rate to their share of the overall profit. To administer such a system requires an international organization with enforcement powers. It must have the authority to sanction governments which do not take the measures agreed upon. An international tax organization (ITO) could also serve as the bargaining forum wherein governments develop the common tax base and the allocation formula. In order to guarantee fair and equal inclusion of all governments, the ITO should ideally be under the auspices of the United Nations.⁵⁰ Importantly, the proposal is not as utopian as it may sound at first. UT+FA, which is used in federal states such as Canada and the US, is seriously considered in the European Union.

In order to see why UT+FA can be a workable solution to the problems of corporate tax competition, let us consider the current state of affairs. At present, the branches or subsidiaries of an MNE in different countries are to be taxed as if they were separate entities. Each part of the company must, for the calculation of its taxable profits, set prices for transactions of goods and services which are internal to the enterprise as a whole but which cross national borders. These so-called transfer prices should be the same as they would be if different parts of the company were independently operating market participants (*arm's length standard*). Under this system, governments are completely free to define both the tax base and the tax rate.

This system of separate entity accounting is at the heart of the problem of tax competition over paper profits. For example, thin capitalization and transfer mispricing are possible only because of separate accounts.⁵¹ If, in contrast, there were a common and consolidated tax base, transfer prices would not be needed and, ergo, could not be manipulated. Likewise, if accounts were consolidated across borders, a subsidiary could not be stripped of profits through the mother company's accumulation of excessive debt. Further, if a formula can be found for profit apportionment, which reflects the true economic contributions of each part of an enterprise, then the typical letterbox company in a tax haven would only be assigned a negligible part of the enterprise's profit, because virtually no real economic activity occurs there. Rather than relying on the legal form of a subsidiary, which can be awarded by every country as it wishes, the allocation of profits would be based on economic substance.⁵²

UT+FA curbs paper profit shifting and, in so doing, could redress many of the inequalities described above. First, the tax base drawn away to tax havens, where it went essentially untaxed, would return to those countries where economic activity actually occurs, and where it can be taxed at regular rates. This would first and foremost rectify the inequality between tax havens and developed and developing countries. To the extent that countries have become tax havens because they saw no other possibility to initiate economic development and have thus come into a situation of "provocative dependence"⁵³ on the offshore industry they should be adequately compensated by 'high-tax' countries. Exceptions to this form of compensation are warranted in cases of rich, longstanding tax havens like Switzerland or Liechtenstein. Second, UT+FA can also balance out the inequalities between different taxpayers within one country. If large and profitable companies are taxed

where real economic activity takes place, they will no longer be favored over smaller, nationally organized companies for whom the same applies by default. Thus governments would be less inclined to shift the tax burden from direct business taxes to indirect taxes and labor.

The extent to which UT+FA can restore the backstop function of corporate tax and progressive personal income taxation, depends on the extent to which competition on nominal tax rates is driven by companies' abilities to shift profits. It is conceivable that, if they can no longer shift profits easily, companies would begin to relocate real production facilities. "Virtual" tax competition would thus turn into "real" tax competition.⁵⁴ Although it is reasonable to assume that the empirical tax sensitivity of real location decisions would increase, after the possibility to optimize tax payments by mere profit shifting has been removed, the magnitude of this effect is nevertheless difficult to assess. Considering that taxation is only one of various factors influencing location decisions, it is quite likely that competitive pressure, though doubtlessly extant, would be lower than it is at present.

However, if this turns out to be wrong, as some experts suggest,⁵⁵ there should be the possibility to also coordinate the tax rate. This means agreeing on (a) certain corridors within which tax rates are set, (b) a common minimum tax rate, or (c) different levels of minimum tax rates for different groups of countries.⁵⁶ Governments would not only have to pool their sovereignty vis-à-vis defining the tax base, but also with respect to the corporate tax rate. Under the relational concept of tax justice I propose, this is justifiable. If it turns out that nation-state interdependence is so strong that taxpayers would be willing to relocate for reasons of taxation, then it would also be warranted to coordinate tax rates on the international level.

Finally, UT+FA can help to rectify the inequality between developed and developing countries. Unlike developed countries, many developing countries have not been able to resist pressures to narrow their tax bases. But, if the tax base were determined at global level by all governments in concert, this would give many developing countries a broader tax base than they have now. So, in addition to preventing profit shifting away from developing countries, the determination of a unitary tax base would be a way to help them broaden their tax bases. Likewise, it could help developing countries to improve the operability of their tax administrations. In the process of defining a common tax base there will be intensified contact and exchange among tax administrators from developed and developing countries, with a consequent transfer of knowledge and expertise.

Summary and Conclusion

In this paper I have made the normative case for global tax governance and presented a proposal to regulate global business tax competition. First, I have argued that, contrary to claims of an influential part of the literature, national tax policy choices do cause significant externalities on other nation states. Tax competition undermines the integrity and distributive principles of domestic tax structures and aggravates the inequality between developed and developing countries. Second, I have shown that under a globalist or a less demanding internationalist concept of justice, the effects of international tax competition can be deemed unjust and thus ought to be addressed. The minimum requirement to achieve justice is a set of international rules ensuring that national tax regimes can implement distributive justice as they see fit. Third, I have made a concrete proposal for the global governance of business tax competition. I have argued that the successful implementation of

UT+FA should be undertaken by an international tax organization that would ideally operate under the auspices of the United Nations.

Measured against these normative demands, the empirical record of international tax governance is poor. The main concern up to now has been to find solutions to the problem of double taxation in order to reduce obstacles to international growth. This work has been undertaken primarily by the OECD which promoted a model convention that can serve as a template for bilateral double tax agreements. Unlike the commitment with which these liberalizing measures were undertaken, efforts to re-regulate and address tax competition as a serious, unintended side effect have not received much attention. This changed only recently, with the ongoing OECD project against harmful tax practices.⁵⁷ But the OECD project has not been successful. It has only been able to incrementally improve information exchange between tax authorities, but since this exchange is only on request, its effectiveness is very limited.⁵⁸ The problem of profit shifting by businesses was effectively removed from the OECD agenda, despite its relevance.⁵⁹

One of the reasons for the significant is-ought gap in tax matters is due to the fact that tax policy is formulated within a purely national frame of reference. This makes it difficult for governments to overcome their conflicting interests in international taxation. Recently, however, some civil society groups like the Tax Justice Network have begun to pressure governments to consider the international dimension of tax policy and to address the injustices of tax competition.⁶⁰ The United Nations has also strengthened its work on the issue of international taxation, particularly in the field of development finances.⁶¹ While these activities have certainly not yet reached the critical threshold necessary to bring about the required institutional change, they do at least indicate that there are now clearly identi-

liable political forces for international tax justice. Even in the domain of taxation, which is at the core of the nation state, there has finally emerged a reframing of issues in terms of global instead of merely national justice.⁶²

Hopefully, governments will respond to these calls and begin to take their moral responsibilities seriously. Otherwise, the tax sovereignty that governments so keenly cling to will become more and more fleeting. Under conditions of globalization, it is necessary to share *de jure* tax sovereignty with others in order to regain *de facto* tax sovereignty. Only collectively can governments recapture what they have lost individually.

Notes

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¹ See for example Klaus Dingwerth and Philipp Pattberg, “Global Governance as a Perspective on World Politics,” *Global Governance: A Review of Multilateralism and International Organizations* 12, no. 2 (2006): 185-203 and Michael Zürn, “From

Interdependence to Globalization,” in Carlsnaes, Risse and Simmons, eds., *Handbook of International Relations* (London: Sage, 2002), pp. 235-254.

² See for example Daniel C. Esty, “Revitalizing Global Environmental Governance for Climate Change,” *Global Governance: A Review of Multilateralism and International Organizations* 15, no. 4 (2009): 427-434 and the contributions in Inge Kaul, Pedro Conceicao, Katell Le Goulven and Ronald U. Mendoza, eds., *Providing Global Public Goods: Managing Globalization* (Oxford: Oxford University Press, 2003).

³ For overviews on the other issues, see e.g. Reuven S. Avi-Yonah, “Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State,” *Harvard Law Review* 113, no. 7 (2000): 1573-1676 and Tax Justice Network (TJN), *Tax Us if You Can. The True Story of a Global Failure* (http://www.taxjustice.net/cms/upload/pdf/tuiyc_-_eng_-_web_file.pdf, 2005).

⁴ See e.g. David Held, “Reframing Global Governance: Apocalypse Soon or Reform!” *New Political Economy* 11, no. 2 (2006): 157-176.

⁵ See e.g. Kimberly A. Clausing, “Corporate Tax Revenues in OECD Countries,” *International Tax and Public Finance* 14, no. 2 (2007): 115-133, p. 121. It should be noted that these numbers are average numbers. There may be quite some variation in the experiences of individual countries.

⁶ See for example Geoffrey Garrett and Deborah Mitchell, “Globalization, Government Spending and Taxation in the OECD,” *European Journal of Political Research* 39 (2001): 145-177, Duane Swank, *Global Capital, Political Institutions, and*

Policy Change in Developed Welfare States (Cambridge: Cambridge University Press, 2002), Sven Steinmo, “The Evolution of Policy Ideas: Tax Policy in the 20th Century,” *British Journal of Politics and International Relations* 5, no. 2 (2003): 206-236.

⁷ Clausing, “Corporate Tax Revenues in OECD Countries,” pp. 121-123.

⁸ Ruud A. de Mooij and Sjef Ederveen, “Corporate Tax Elasticities: A Reader’s Guide to Empirical Findings,” *Oxford Review of Economic Policy* 24, no. 4 (2008): 680-697.

⁹ For a brief and accessible description of these and other techniques of shifting paper profits, see Brian J. Arnold and Michael J. McIntyre, *International Tax Primer* (Den Haag: Kluwer Law International, 1995), pp. 8-17.

¹⁰ See, e.g. Eric J. Bartelsman and Roel M.W.J. Beetsma, “Why Pay More? Corporate Tax Avoidance through Transfer Pricing in OECD Countries,” *Journal of Public Economics* 87, no. 9-10 (2003): 2225-2252, Kimberly A. Clausing, “Tax-Motivated Transfer Pricing and US Intra-Firm Trade Prices,” *Journal of Public Economics* 87, no. 9-10 (2003): 2207-2223 and the meta-study by de Mooij and Ederveen, “Corporate Tax Elasticities: A Reader’s Guide to Empirical Findings,” p. 695, who estimate the tax elasticity of FDI at -0.4 to -0.65, whereas that for paper profits is -1.2.

¹¹ Michael P. Devereux, Ben Lockwood and Michela Redoano, “Do Countries Compete over Corporate Tax Rates?” *Journal of Public Economics* 92, no. 5-6 (2008): 1210-1235.

¹² Michael P. Devereux, “The Impact of Taxation on the Location of Capital, Firms and Profit: A Survey of Empirical Evidence (with Data Appendix by Giorgia Maffini),” Working Paper, University of Warwick, April 2006, pp. 28-40. According to surveys, the influence of taxes on discrete investment positions is most pronounced for financial service centers. Ruding Report, *Report of the committee of independent experts on company taxation* (Luxemburg, 1992), p. 114. This is additional evidence for the importance of paper profit shifting, as discrete investments into financial service centers are driven by companies’ desire to avail themselves of the opportunity to shift paper profits. Sam Bucovetsky and Andreas Haufler, “Tax Competition when Firms Choose their Organizational Form: Should Tax Loopholes for Multinationals be Closed?” *Journal of International Economics* 74, no. 1 (2008): 188-201.

¹³ This is not to imply that real tax competition is unproblematic. However, making this case is less obvious and will therefore be bracketed here. Peter Dietsch and Thomas Rixen, “Two Principles of Justice for International Tax Governance,” Unpublished Manuscript, show under what conditions real tax competition is unjust. See also the brief discussion in note 41.

¹⁴ See e.g. Andreas Haufler and Guttorm Schjelderup, “Corporate Tax Systems and Cross Country Profit Shifting,” *Oxford Economic Papers* 52, no. 2 (2000): 306-325.

¹⁵ Michael P. Devereux, Rachel Griffith and Alexander Klemm, “Corporate Income Tax Reforms and International Tax Competition,” *Economic Policy* 17, no. 35 (2002): 451-495, p. 483.

¹⁶ Hannes Winner, “Has Tax Competition Emerged in OECD Countries? Evidence from Panel Data,” *International Tax and Public Finance* 12, no. 5 (2005): 667-687, Peter Schwarz, “Does Capital Mobility Reduce the Corporate-Labor Tax Ratio?” *Public Choice* 130, no. 3-4 (2007): 363-380, Simon Loretz, “Corporate taxation in the OECD in a wider context,” *Oxford Review of Economic Policy* 24, no. 4 (2008): 639-660.

¹⁷ Ganghof shows that OECD countries were successful in narrowing the gap between 1975 and 1989, but were forced to allow the gap to widen perceptibly when tax competition intensified after 1989. Steffen Ganghof, *The Politics of Income Taxation. A Comparative Analysis of Advanced Industrial Countries* (Colchester: ECPR Press, 2006a), pp. 5-8. Domestic tax arbitrage between personal income tax and corporate tax is likely to be another reason why the incorporated sector has grown relative to the rest of the economy in some countries, and may thus explain why corporate tax revenue has not fallen Clausing, “Corporate Tax Revenues in OECD Countries,” p. 123.

¹⁸ Ganghof, *The Politics of Income Taxation*, pp. 156-159.

¹⁹ Michael Keen and Alejandro Simone, “Is Tax Competition Harming Developing Countries more than Developed?” *Tax Notes International* 34, 28 June (2004): 1317-1325.

²⁰ Christian Aid, *Death and Taxes: The True Toll of Tax Dodging* (London: <http://www.christianaid.org.uk/getinvolved/christianaidweek/cawreport/index.aspx>, 2008).

²¹ See Keen and Simone, “Is Tax Competition Harming Developing Countries more than Developed?”, pp. 1318-1320. Unlike the very poorest countries, the tax base has remained relatively stable on average in the Americas, North Africa, and the Middle East.

²² Jens Martens, *The Precarious State of Public Finance. Tax Evasion, Capital Flight and the Misuse of Public Money in Developing Countries – and what can be done about it* (Global Policy Forum, 2007), p. 15.

²³ Richard M. Bird, “Tax Challenges Facing Developing Countries,” Joseph L. Rotman School of Management, Institute for International Business Working Paper No. 9, pp. 14-16.

²⁴ Christian Aid, *Death and Taxes: The True Toll of Tax Dodging*, pp. 11-18.

²⁵ Reuven S. Avi-Yonah, “Bridging the North/South Divide: International Redistribution and Tax Competition,” *Michigan Journal of International Law* 26, no. 1 (2004): 371-387, pp. 380-381. The same may not hold for so-called firm-specific earnings, which may be realized irrespective of location.

²⁶ Keen and Simone, “Is Tax Competition Harming Developing Countries more than Developed?” p. 1324.

²⁷ Martens, *The Precarious State of Public Finance*, p. 10.

²⁸ Ronen Palan, “Tax Havens and the Commercialization of State Sovereignty,” *International Organization* 56, no. 1 (2002): 151-176.

²⁹ For a brief overview of how tax havens can be used in tax avoidance and evasion and the unsuccessful attempts to curb their use, see Thomas Rixen, *The Political Economy of International Tax Governance* (Basingstoke: Palgrave/Macmillan, 2008a), pp. 118-149.

³⁰ Jeffrey Owens, “The Global Forum On Taxation's 2006 Progress Report: An Overview,” *Tax Notes International* 42, June 5 (2006): 869-878, p. 869.

³¹ Jeffrey Owens, “Written Testimony of Jeffrey Owens, Director, OECD Center for Tax Policy and Administration before Senate Finance Committee on Offshore Tax Evasion, 3 May 2007,” <http://finance.senate.gov/hearings/testimony/2007test/050307testjo.pdf>, estimates the number to be in the range of US\$ 5-7 trillion, whereas the Tax Justice Network puts the number at 11.5 trillion. TJN, *Tax Us if You Can*.

³² Social contract theory provides one convenient, but certainly not the only, way to illustrate the basic idea of collective self-determination. The essential argument I make can also be derived from other theories.

³³ James M. Buchanan, *The Limits of Liberty: Between Anarchy and Leviathan* (Chicago: University of Chicago Press, 1975). For an overview of social contract theory, see Fred d'Agostino and Gerald Gaus, *Contemporary Approaches to the Social Contract*, *The Stanford Encyclopedia of Philosophy*, edited by E. N. Zalta, <http://plato.stanford.edu/archives/win2008/entries/contractarianism-contemporary>.

³⁴ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971). In contrast to Rawls, Buchanan in “The Limits of Liberty” proposes a “veil of uncertainty.” The contract under the veil of ignorance assumption is more egalitarian. For the argument I develop here, the difference between the two is irrelevant.

³⁵ Jon Elster, *Ulysses Unbound: Studies in Rationality, Precommitment, and Constraints* (Cambridge: Cambridge University Press, 2000), part II.

³⁶ Buchanan himself, to whom I refer regarding the notion of complex exchange, did not favor redistributive taxation and the establishment of a welfare state; however, he

acknowledged that constitutional choice may legitimately lead to progressive tax structures. James M. Buchanan and Gordon Tullock, *The Calculus of Consent. Logical Foundations of Constitutional Democracy* (Ann Arbor: University of Michigan Press, 1962), pp. 189-199.

³⁷ If the existence of the state as the central institution to protect property is not simply assumed as given, but its establishment is seen as an important part of the complex exchange, the “conventional nature of property” becomes evident: there can be no legitimate claim to own pre-tax income, since taxes are needed to establish property rights in the first place. Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (Oxford: Oxford University Press, 2002). As a consequence, the notorious trade-off between equity and efficiency is—conceptually—neutralized.

³⁸ C. John Harsanyi, “Can the Maximin Principle Serve as a Basis for Morality? A Critique of John Rawls's Theory,” *American Political Science Review* 69, no. 2 (1975): 594-606.

³⁹ Peter H. Lindert, *Growing Public: Social Spending and Economic Growth Since the Eighteenth Century, Vol. 1 and 2* (Cambridge: Cambridge University Press, 2004).

⁴⁰ See e.g. Richard A. Musgrave, *The Theory of Public Finance* (New York: McGraw-Hill, 1959), chapter 4.

⁴¹ This also applies to so-called preferential tax regimes which are commonly used in international tax competition. Under such regimes foreign taxpayers are offered a better tax deal than is available to domestic taxpayers. In the extreme, very small countries do not even have to ring-fence the benefits to foreign taxpayers, but can also grant them to their

own citizens, as long as they attract enough of the foreign tax base. See e.g. OECD, *Harmful Tax Competition. An Emerging Global Issue* (Paris: <http://www.oecd.org/dataoecd/33/0/1904176.pdf>, 1998). The extent to which real tax competition violates the principle of constitutional benefit taxation is more difficult to determine. One may argue that, in this case an individual or a business enters into a new social contract and must accept the benefits and costs as they are embodied in this contract, so there appears to be no violation. On the other hand, if a government changes its policy only with a view to attracting real economic activity from other countries, and it would not have made that choice otherwise, then this policy choice cannot be seen to be in accord with the social contract among its own citizens. See Dietsch and Rixen, “Two Principles of Justice for International Tax Governance”.

⁴² For a distinction between globalism and internationalism, see, e.g. Thomas Nagel, “The Problem of Global Justice,” *Philosophy & Public Affairs* 33, no. 2 (2005): 113-147 and Andrea Sangiovanni, “Global Justice, Reciprocity, and the State,” *Philosophy & Public Affairs* 35, no. 1 (2007): 1-39. For an overview of competing theories of global justice, see Charles Beitz, “International Liberalism and Distributive Justice. A Survey of Recent Thought,” *World Politics* 51, no. 2 (1999): 269-96.

⁴³ Again, how progressive the tax system would be and how much redistribution would be agreed upon is not of interest for the argument.

⁴⁴ Thomas Pogge, “An Egalitarian Law of Peoples,” *Philosophy and Public Affairs* 23, no. 3 (1994): 195-224, pp. 197-199. Amartya Sen, “Global Justice: Beyond International Equity,” in Kaul, Grunberg and Stern, eds., *Global Public Goods*:

International Cooperation in the 21st Century (Oxford: Oxford University Press, 1999), pp. 116-125. Beitz, "International Liberalism and Distributive Justice," pp. 287-288 introduces the distinction between continuous and discontinuous globalism.

⁴⁵ Thomas Pogge, "Cosmopolitanism and Sovereignty," *Ethics* 103, no. 1 (1992): 48-75, pp. 60-68.

⁴⁶ For one classic formulation, see Wallace E. Oates, *Fiscal Federalism* (New York: Harcourt Brace Jovanovich, 1972).

⁴⁷ Sangiovanni argues that obligations among states do not arise unless the relationship is based on an institutionalized order like the European Union. Sangiovanni, "Global Justice, Reciprocity, and the State," pp. 34-35. The problem with this view is that normative prescriptions are premised on the real-world existence of political structures. Pogge, "An Egalitarian Law of Peoples," p. 224.

⁴⁸ John Rawls, "The Law of Peoples," in Shute and Hurley, eds., *On Human Rights* (New York: Basic Books, 1993), pp. 41-82 and 220-230, Pogge, "An Egalitarian Law of Peoples". In Rawls' account the duty to assist countries to become well-ordered nation states does not apply. Pogge shows this to be inconsistent. See also Beitz, "International Liberalism and Distributive Justice. A Survey of Recent Thought," pp. 276-280.

⁴⁹ See e.g. Jinyan Li, *International Taxation in the Age of Electronic Commerce: A Comparative Study* (Toronto: Canadian Tax Foundation, 2003), Michael J. McIntyre, "The Use of Combined Reporting by Nation States," *Tax Notes International* 35, September 6 (2004): 917-948.

⁵⁰ See Frances M. Horner, “Do We Need an International Tax Organization,” *Tax Notes International* 24, October 8 (2001): 179-187 and Tax Justice Network (TJN), *Tax Us if You Can. The True Story of a Global Failure*, pp. 52-54 for proposals to establish an international tax organization. This would, however, require the OECD to give up its leadership in this policy area. The OECD has traditionally opposed UT+FA. See Rixen, *The Political Economy of International Tax Governance*, pp. 126-131.

⁵¹ See endnote 9 and the accompanying text for more on these techniques of tax avoidance.

⁵² See e.g. Michael J. McIntyre, “Guidelines for Taxing International Capital Flows: The Legal Perspective,” *National Tax Journal* 46, no. 3 (1993): 315-321. Even under a system of unitary taxation some possibilities for manipulation would remain. For example, it is undesirable if tax competition turns into competition for low labor costs. This could happen, if payroll plays prominently in the formula. Clausing and Avi-Yonah argue for a formula that uses only sales on a destination basis in order to dampen such unwanted competition. Kimberly A. Clausing and Reuven Avi-Yonah, “Reforming Corporate Taxation in a Global Economy: A Proposal to adopt Formulary Apportionment,” The Hamilton Project, Brookings Institution. http://www.brookings.edu/papers/2007/06corporatetaxes_clausing.aspx. This would, however, also be a lopsided conception of economic substance. In any case, the choice of a reasonable formula is essential to limit these possibilities. Ana Agúndez-García, “The Delineation and Apportionment of an EU Consolidated Tax Base for Multi-jurisdictional

Corporate Income Taxation: a Review of Issues and Options,” European Commission Taxation Papers No. 9.

⁵³ Mark P. Hampton and John Christensen, “A Provocative Dependence? The Global Financial System and Small Island Tax Havens,” in Cochrane, Duffy and Selby, eds., *Global Governance, Conflict and Resistance* (Basingstoke: Palgrave Macmillan, 2003), pp. 194-215.

⁵⁴ Michael Keen, “Preferential Regimes can make Tax Competition Less Harmful,” *National Tax Journal* 54, no. 4 (2001): 757-762. See also Thomas Rixen, “From Double Tax Avoidance to Tax Competition: Explaining the Institutional Trajectory of International Tax Governance.” *Review of International Political Economy*, forthcoming.

⁵⁵ See the discussion in Clemens Fuest, “The European Commission's proposal for a common consolidated corporate tax base,” *Oxford Review of Economic Policy* 24, no. 4 (2008): 720-739, pp. 725-733

⁵⁶ See e.g. Thomas Rixen and Susanne Uhl, “Europeanizing Corporate Taxation. Regaining National Tax Policy Autonomy,” Expertise for the Friedrich-Ebert-Stiftung

⁵⁷ OECD, *Harmful Tax Competition. An Emerging Global Issue*.

⁵⁸ For an account of the history and politics of international tax governance from the 1920s to our days, see Rixen, *The Political Economy of International Tax Governance*.

⁵⁹ Michael C. Webb, “Defining the Boundaries of Legitimate State Practice. Norms, Transnational Actors and the OECD's Project on Harmful Tax Competition,” *Review of International Political Economy* 11, no. 4 (2004): 787-827.

⁶⁰ For a detailed description, see Thomas Rixen, “Politicization and Institutional (Non-)Change in International Taxation,” WZB Discussion Paper, SP IV 2008-306.

⁶¹ For an overview of recent UN work, see Dries Lesage, David McNair and Mattias Vermeiren, “From Monterrey to Doha: Taxation and Financing for Development,” *Development Policy Review* 28, no. 2 (2010): 155-172.

⁶² On the normative case for reframing the political struggles for justice, see Nancy Fraser, “Reframing Justice in a Globalizing World,” *New Left Review* 36 (2005): 69-88. On the empirical observation that international relations are politicized by civil society pressure on intergovernmental organizations, see Michael Zürn, Martin Binder, Matthias Ecker-Erhardt and Katrin Radtke, “Politische Ordnungsbildung wider Willen,” *Zeitschrift für Internationale Beziehungen* 14, no. 1 (2007): 129-164.