Developing a World Tax Organization: The Way Forward, by Adrian J. Sawyer

Neil Brooks

Osgoode Hall Law School of York University, nbrooks@osgoode.yorku.ca

Follow this and additional works at: http://digitalcommons.osgoode.yorku.ca/scholarly_works

This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 License.

Recommended Citation
Book Review

Developing a world tax organization: The way forward

by Adrian J. Sawyer*

Neil Brooks**

1 The Need for International Tax Cooperation

The current financial and economic crisis has underlined the interrelatedness of the world’s economies and the importance of coordinating the use of each individual country’s governing policy instruments, including taxation.¹ The G20 London Summit in April 2009 that dealt generally with issues raised by the crisis called in particular for more concerted action in preventing international tax evasion and in assisting developing countries in securing the benefits of a more cooperative tax

** Neil Brooks teaches tax law and policy at Osgoode Hall Law School and is a Senior Fellow of the Taxation Law and Policy Institute, Monash University.

¹ The executive summary of a report recently released by the Fiscal Affairs Department of the International Monetary Fund (IMF) begins by noting, “tax distortions are likely to have encouraged excessive leverage and other financial market problems evident in the crisis.” IMF, ‘Debt Bias and Other Distortions: Crisis-Related Issues in Tax Policy’ 12 June 2009. Many of the tax policy concerns discussed in the paper that might have contributed to the seriousness of the financial crisis could only be dealt with realistically through international cooperation.

This paper was accepted for publication on 16 August 2008.
Following that communique, both the European Commission and the Organisation for Economic Co-operation and Development issued statements outlining the work they have been undertaking to counter international tax evasion and to reduce unfair tax competition. They both also suggested future directions for more international cooperation and coordination of tax policies, now generally referred to compendiously as good governance in the tax area.

The need for increased coordination and harmonization of tax policies has, of course, long been recognized by all those who appreciate the arbitrariness of national boundaries and the social construction of markets, and who care about the importance of citizens being able to take collective action through democratically elected public institutions. Initially, beginning in the 1920s, international tax coordination involved, by and large, countries entering into bilateral agreements in order to prevent the double taxation of transnational flows of income. The primary concern was the promotion of international trade and investment. However, more recently, international tax coordination of tax policies has involved efforts to mitigate the full range of ways that one country's tax system might affect or constrain public policies in other countries and, in particular, it has involved measures to reduce international tax evasion and unfair tax competition. A large number of international organizations have been involved in these efforts including the Organisation of Economic Cooperation and Development (OECD), the International Monetary Fund (IMF), the United Nations (UN), the European Union (EU), and various groupings of national tax departments.

2 G20, 'Global plan for recovery and reform: the Communiqué from the London Summit' 2 April 2009. The G20 leaders agreed "to take action against non-cooperative jurisdictions, including tax havens." They also stated that "We stand ready to deploy sanctions to protect our public finances and financial systems. The era of banking secrecy is over. We note that the OECD has today published a list of countries assessed by the Global Forum against the international standard for exchange of tax information ..."., http://www.londonsummit.gov.uk/en/summit-aims/summit-communique.

3 Commission of the European Communities, Promoting Good Governance in Tax Matters, Com (2009) 201 Final, Brussels, 28 April 2009 ("With the current financial and economic crisis, national budgets and tax systems are under increased threat and the need for international tax cooperation and common standards (i.e. 'good governance in the tax area') has become a regular feature of international discussions."). The Commission noted that good governance in the tax area included more transparency, the exchange of information, and fair tax competition.

4 OECD, Overview of the OECD's Work on Countering International Tax Evasion, A Background Information Brief, 13 July 2009 ("Since the beginning of 2009, international tax evasion and the implementation of the internationally agreed tax standard has been very high on the political agenda, reflecting recent scandals that have affected countries around the world, the spotlight that the global financial crises has put on financial centres generally, and the recent G20 London Summit.").

5 A particularly comprehensive list of all international forums that are now involved in aspects of international tax cooperation is provided in United Nations, Secretary-General, Financing for Development: A Critical Global Collaboration, Documents presented by the Secretary-General to the Preparatory Committee of the International Conference on Financing for Development Monterrey, Mexico, March 18-22, 2002, Technical Note No. 1.
2 Sawyer’s Case for a World Tax Organization

Over the past decade, a number of commentators have suggested that the problems of international tax coordination have become so urgent that some form of world tax organization should be formed in order to discharge explicitly this coordination function. Adrian Sawyer’s important new book, Developing a World Tax Organization: The Way Forward, is the first full-length book treatment of the issue. The book is exhaustively researched, logically structured, and clearly and persuasively written. It makes an important original contribution to our knowledge in this subject area and, at the same time, provides a comprehensive literature review of the issues and thus establishes a solid foundation for further research and debate.

Adrian Sawyer is a Professor of taxation in the Department of Accounting and Information Systems at the University of Canterbury, Christchurch, New Zealand. He is a prolific author. His published articles range over most aspects of tax law but in particular he has made major contributions to knowledge in the areas of tax administration and compliance, the taxation of electronic commerce, and aspects of international taxation. For the past nine years he has also been the lead editor of the highly regarded New Zealand Journal of Taxation Law & Policy. He has won several awards for his teaching and scholarship including the inaugural Cedric Sandford Medal for the best paper presented at the ATAX biennial International Tax Administration Conference in 2004 for a paper that covered some of the subject matter of this book.

The book is based in part on his doctoral dissertation, which was completed at the University of Virginia’s School of Law and defended in November 2006. Most of the chapters have been previously published in tax journals in some form; however, they have been substantially edited and are coherently presented to advance the central claim of the book: that a world tax organization is needed and feasible.

In addition to restating the general case for a world tax organization, and exploring the present context for it in some detail, the book’s main original contribution to the debate over a world tax organization is its suggestion that the initial jurisdiction of the organization should be to assist only in the administration of advanced rulings involving cross-border business transactions and advance pricing agreements and that, with experience, its jurisdiction should then be incrementally expanded to cover other tax areas where international coordination and cooperation is needed. The advantage, Sawyer argues, of starting relatively modestly with the coordination of the administrative practices of member nations as they relate to binding rules and advance pricing agreements is that this will allow participants to test the value of such an organization. If the organization is successful, he suggests issues such as e-commerce and environmental tax policy, the allocation of the corporate tax base, harmful tax competition, and even attempting to reach a consensus on core tax principles are obvious issues the organization might examine over time. The book also makes an important original contribution by providing considerable detail relating to the possible structure of such a world tax organization.
The book’s central claim is developed in the following manner. In chapter 2 the context for thinking about the need for coordinating national tax systems – in a word, globalization (driven not only by technological changes but also by policy liberalization) – and much of the rich literature exploring the meaning, causes and consequences of globalization, are thoroughly reviewed. Most importantly, globalization has provided more freedom for firms to decide where to locate their production facilities; more possibilities for businesses to be efficiently operated as vast networks of complex inter-related entities spread across the globe; more freedom for multinationals to shed their distinct national identities; more prospects for highly skilled individuals to deliver their services and enjoy the amenities of modern life from almost anywhere in the world; and, more opportunities for corporations and high-income individuals to hide their income from capital from the prying eyes of tax departments.

Taking advantage of these new opportunities, a number of countries have been willing to restructure their tax systems to engage in beggar-thy-neighbour policies to attract footloose resources. This has placed pressures on governments around the world to lower tax rates and to shift taxes from corporate income and the income of high-income individuals to relatively immobile tax bases such as sales and payroll taxes. There is huge debate over the extent of globalization, the effect it has had on tax systems, and whether these effects are normatively a good thing. Tax-related concepts of cooperation, coordination, harmonization and competition have been used to describe the possible reactions to these developments. In addition to reviewing the literature on all aspects of globalization, chapter 2 and the first part of chapter 3 define these concepts and explain their relevance to the debate over a world tax organization.

Suggestions for a world tax organization have been put forward by a number of tax analysts over the past decade including proposals by Vito Tanzi, Reuven Avi-Yonah, Victor Thuronyi, Dale Pinto, and Jack Mintz. This extensive literature is thoroughly reviewed in chapter 3. Others have argued that instead of a new stand-alone organization, the jurisdiction and reach of existing international forums might be expanded to embrace new areas for tax cooperation. Individual scholars writing in this area have argued that one or the other of the existing major organizations would be most suitable for assuming increased responsibilities for coordination and cooperation, most notably, either the OECD (supported by Cockfield and Brauner, for example), the World Trade Organization (WTO) (Avi-Yonah), the UN (Horner and McIntyre). Sawyer describes in considerable detail the structure, scope and work methods of each of these, and other, major organizations and reviews the case made for and against each in the literature. In particular, in support of his case for a world tax organization, he notes the shortcomings of each in assuming an expanded role.

The OECD is the most obvious candidate for assuming additional responsibilities since it has a long history of involvement in collecting tax statistics and analyzing international tax issues, has accumulated an impressive amount of expertise in international tax policy, and has experienced considerable success in coordinating international tax cooperation through its work on its model double taxation treaty and transfer pricing guidelines, the taxation of electronic commerce, and unfair tax
competition. Moreover, it is the organization that is undoubtedly responsible for
the fact that there is such wide international similarity in the outlines of the present
international tax regimes in individual countries. However, since it is comprised of
only thirty of the world’s largest economies, it is not seen as representative enough
to assume the role of a world tax organization by many commentators, including
Sawyer. It is frequently disparagingly referred to in this literature as the rich
countries club and although particularly in recent years it has undertaken several
outreach programs involving other countries and attempted to make its work more
inclusive and transparent it is widely criticized as not giving low-income countries a
meaningful enough role so that they could be regarded as legitimate partners. Other
concerns about increasing the role of the OECD include that it is too influenced by
large contributors like the United States; has proved too vulnerable to prevailing neo-
liberal political ideologies; and, is too insensitive to the development agenda. Also,
although those who support the soft law approach to international tax coordination
see this as its strength, it is primarily concerned with the diffusion of information and
the discussion of technical issues and does not have any decision-making power or
binding authority to back up its decisions. Sawyer is primarily concerned with its lack
of representation, lack of enforceable decision-making power, and lack of experience
with binding dispute resolution procedures.

The WTO is another possible international organization that could assume the
role of a world tax organization. The role of the WTO is, of course, to supervise and
liberalize international trade by providing a framework for negotiating and formalizing
trade agreements and to provide a dispute resolution forum for enforcing adherence
to WTO trade agreements. Although it focuses exclusively on trade issues, application
of the nondiscrimination and non-subsidisation of exports principles, which underlie
many trade disputes, mean that trade and international tax issues are often closely
related. Indeed, a good many of the disputes resolved by the WTO involve tax-related
issues. Moreover, the WTO is much more representative than the OECD. It has 153
members, including most low-income countries, and most of the remaining nations
in the world are seeking membership. It obviously has considerable experience with
enforcing binding dispute resolutions. Sawyer suggests that the problems with the
WTO assuming the role of a world tax organization include that it has no existing
expertise in the wide range of international tax issues; it has a tarnished history as an
acceptable international rule maker; its relatively non-transparent procedures have
frequently called into question its democratic legitimacy; there might be conflicts
between providing it with both a trade and tax jurisdiction and the pursuit of the
goals in one subject area might detract from the pursuit of the goals of the other;
and, finally, in some areas of international tax coordination what are called for is not
legalistic but soft law approaches with which the WTO has no experience.

The final major international organization that might assume the role of a world tax
organization is the UN. Its membership includes almost all recognized governments
in the world; its stated purposes include cooperation in international law; and one
of its six major organs, The Economic and Social Council, is mandated to assist with
promoting international economic and social cooperation and development. Its
structure could easily accommodate an institution like a world tax organization and its various bodies at present deal with the full range of governance issues and dispute resolution. Its tax policy body, now designated as the Committee of Experts on International Cooperation in Tax Matters, has prepared a model tax treaty analogous to that of the OECD’s and its mandate from the Economic and Social Council includes the full range of issues relating to international tax cooperation. However, over the years the U.N. has devoted only a modest amount of attention and resources to international tax issues. Certainly nothing compared to that of the OECD. In spite of its obvious strengths, Sawyer is somewhat dismissive of the possibility of the U.N. assuming the role of a world tax organization: “A major shortcoming is the relatively little experience the UN and its associated organizations have with taxation policy and practice – indeed the focus of the UN’s operations is more akin to individuals’ rights, protection and security, than for facilitating international business.” (p. 78-79)

In the latter part of chapter 3 and in chapter 8, Sawyer elaborates on the possible design and structure of a stand-alone world tax organization. He reviews how it might be funded, the form of its constitutional documents, its membership, and the range of functions it might assume. He even offers a possible detailed diagrammatic organizational structure. Much of this discussion builds on suggestions offered in earlier articles by Vito Tanzi and Victor Thuronyi, for example, but Sawyer’s contribution to the possible design of a world tax organization is more comprehensive and detailed.

In support of his case that the initial jurisdiction of a world tax organization should be limited to binding rulings with cross border implications and advance pricing agreements, chapters 4, 5 and 6 provide a thorough review of the purposes, the administrative details, and a comparative analysis of these two administrative practices. Chapter 7 provides an explanation of how these two practices would benefit from enhanced international cooperation and particularized suggestions for how the administrative apparatus of an international tax organization might be structured to coordinate them and resolve disputes in relation to them.

The final chapter provides a summary of his arguments and suggestions for future research. Sawyer notes that much work remains to be done in thinking about the role of the world tax organization and hopes others will continue to advance the agenda. In that spirit, in the remaining part of this review I offer a few thoughts about the need for international tax coordination and cooperation and the most efficacious way it might be achieved. To reveal my theoretical hand, I think the tax system as a governing policy instrument is important for two reasons primarily, to raise revenue and to assist in achieving a socially acceptable distribution of income. Like Sawyer, I strongly believe that these purposes of the tax system will not be sustainable without considerable more international cooperation. However, unlike Sawyer, I do not believe that some form of world tax organization is either feasible or necessary, but that instead existing international organizations ought to be encouraged to redouble their efforts to foster international tax cooperation and in particular the UN should undertake a substantially increased role in this area.

---

A central claim in the book, repeated in numerous contexts and from different angles, is that the initial jurisdiction of a world tax organization should be modest, in part in order to assist in getting agreement on its formation, and then as the organization learns from experience and experimentation, it should proceed to expand its jurisdiction to other areas of international tax coordination and cooperation. On the broader question of how much international coordination is necessary, it is unclear how far Sawyer would go. In numerous places he states that harmonization is undesirable, but he does liken his approach to the “camel's nose under the tent approach.” (p. 207) In a subsequent article with a frequent co-author, Dale Pinto, ominously entitled “Towards Sustaining the Future of Taxation” and subtitled “Is a World Tax organization necessary and feasible in today’s globalized world?” Sawyer and Pinto argue that “the future of the administration of most ‘international’ tax systems is not sustainable in the current environment of limited cooperation.” They conclude that “for the future of ‘international’ tax systems, as we know them to be, to be sustainable in terms of producing sufficient revenue for governments’ needs and for an equitable distribution of the imposition of taxes, then a WTO [world tax organization] is a necessary requirement.”

3 Necessary Coordinating Tasks and the Allocation of Responsibilities

In thinking about how best to advance the agenda for international tax cooperation and coordination, it is helpful to review why such coordination is so important. This is familiar stuff but it puts in context what existing organizations are doing and the potential role for a world tax organization. The basic point I would make is simply to express some reservations about whether on the truly important areas where there is a need for coordination, it is worth spending much time pushing for a world tax organization. Instead, existing organizations should be encouraged to assume enlarged roles and in particular the U.N. should assume a much greater role in international tax coordination and harmonization.

The various reasons why international tax coordination and cooperation are important might be, and frequently are, classified under headings such as the following: to improve the rationality and to increase the similarities of domestic tax laws, by encouraging countries to learn from one another; to reduce the compliance costs of cross border transactions, in order to foster increased trade and investment; to reduce the double tax of cross border transactions, in order to foster increased trade and investment and in the interest of fairness; to reduce international tax avoidance, in order to ensure that all income is taxed at least once; to prevent international tax evasion, so that countries can realistically enforce their domestic tax rules; and, to

---


8 Ibid at 205.
prevent tax competition, so that all countries are able to retain some autonomy in designing their own tax systems. Each objective, and the present efforts to achieve it, will be briefly noted in turn.

3.1 Fostering Mutual Learning

If countries are to learn from one another, and improve their own tax systems, there are a range of tasks that must be undertaken. Fiscal policies around the world must be monitored, statistics collected, and trends and relationships analyzed; country experiences with particular tax developments must be compared and evaluated and best practices identified; and, a forum must be provided for the exchange of information and ideas to promote learning.

All of the major organizations involved in tax cooperation are doing this type of work. Most notably, the OECD Committee on Fiscal Affairs now does this in a big way: it collects statistics, it does comparative studies, and it evaluates the tax systems in individual countries of the OECD and provides advice in annual country reports. Since these aspects of its work are such an integral part of its larger economic objectives, it is hard to imagine it would give up this work to a world tax organization. Also, to be frank, the OECD has developed such expertise and experience in this area (at least as applied to its members) that is also hard to imagine this work could be any better done. The IMF also has a relatively large staff of tax experts, including economists and lawyers, who produce general country reports, publish a large number of working papers relating to tax, and provide specific technical tax advice including drafting tax statutes for individual countries and advising on the design and operation of tax administrations. The World Bank has similarly developed considerable expertise in tax matters, in particular in tax administration, and assists low-income countries around the world with problems of tax administration. Again, in part because this tax work relates relatively directly to their wider monitoring of world economic and social trends, and the other economic and social assistance they provide countries, it is unlikely these organizations would willingly relinquish these important roles in comparative tax law and administration. Also, their expertise is unquestionable. The OECD's comparative tax work is relied upon by tax administrations around the world, the IMF's tax analysts have made major contributions to tax and public finance scholarship, and the World Bank's work on tax administration is unrivalled in its sophistication.

In part as a follow-up to the recommendations made at the First International Conference on Financing for Development (organized by the UN and held in Monterrey, Mexico, in March 2002), which pushed for improvements in international tax cooperation, the OECD, IMF, World Bank, along with the UN, joined together in the International Tax Dialogue (ITD). The primary purpose of the ITD is to facilitate the discussion of tax matters, the sharing of experiences, and the identification of best practices. It maintains a widely accessible, and increasingly complete, database of official and other documents relating to tax policy and administration, has held numerous conferences, and generally has brought together international organizations,
ministries of finance, and tax administrators, in ways that have contributed both to the dissemination of knowledge on best practices and to greater public transparency to international tax issues. With all of these international organizations contributing to the study of individual tax systems and the dissemination of tax knowledge a new organization is not needed to serve these purposes. Moreover, there is some value in having more than one organization collecting data and approaching the comparative study of tax law from different perspectives.

3.2 Reducing Cross-Border Transaction Costs

A second reason for coordinating international tax law is to facilitate globalization by reducing the transaction costs of cross-border transactions by increasing their simplicity and certainty. This is the objective Sawyer urges a world tax organization to concern itself with, initially. He argues that the negotiation, imposition, and enforcement of cross-border binding rules and advance pricing agreements, and the resolution of disputes arising out of them, would be greatly facilitated if there were a world tax organization. I am skeptical of the need for a world tax organization for this purpose. Despite gaining considerable scholarly attention, advance pricing agreements are not utilized nearly as often as anticipated. Moreover, when they are used, gaining cooperation between the various revenue agencies involved in the administration of particular agreements would appear to be a relatively straightforward exercise and not one that these individual agencies would be willing to delegate to a world tax organization. Although Sawyer’s basic point is that dealing with this issue should only be the relatively noncontroversial initial jurisdiction for a world tax organization, making a strong case for a world tax organization expressly for this purpose is one of the underdeveloped parts of his book. In any event, it does seem to be the least important reason for increased international cooperation and if countries were to truly increase their cooperation in taxing multinationals and adopt some form of combined reporting with formulary apportionment (see below) it would be unnecessary.

3.3 Preventing Double Taxation

Initially, as international trade and investment increased, and beginning in the 1920s under the leadership of the League of Nations, the primary goal of international tax policy coordination was to prevent the double taxation of cross-border transactions and in particular to resolve the overlapping jurisdiction to tax of resident and source countries. Eventually, the task of providing guidance on this issue was taken up by the OECD and the UN in the preparation of their respective model bilateral income tax treaties. Bilateral treaties based on these models now cover the globe and as a macro issue the potential for double taxation would no longer appear to be a major matter of concern. Some commentators have suggested that substantial gains could be made by moving from bilateral to multilateral treaties including the greater ease of extending the coverage of treaties, of keeping them under continuous review, and of updating them as new problems arise and policies change. Multilateral treaties would also
provide more consistent interpretation and application of the key concepts underlying international tax and a more accessible conflict resolution system. Finally, they can deal more efficiently with issues involving more than two countries and the problem of treaty shopping. One of the most consistent champions of multilateral treaties, Victor Thuronyi, has argued that a world tax organization should be established to draft, interpret and resolve dispute relating to a world-wide multilateral treaty and Sawyer reviews and draws considerably on his work. But multilateral treaties have been and are likely to continue to be most successful when done on a regional basis and in any event the drafting and coordination of a multilateral treaty could be easily accommodated within the framework of the OECD or the UN.

3.4 Ensuring Single Taxation

When tax systems differ, and in particular when they give inconsistent treatment to the same legal arrangement, it is easy for taxpayers to engage in international tax avoidance. To take the most straightforward examples, if a payment made between countries pursuant to a financial instrument is treated as deductible interest in the payer's country but as an exempt dividend in the payee's country the payment will not be taxed even though if it were made solely between taxpayers within either country it would have been. Similarly, if a transfer of an income generating asset between persons in different countries is treated as a lease in the transferor's country and a sale in the transferee's country both taxpayers might be able to claim a depreciation allowance for the same asset in their respective countries. These types of cross-border arbitrage opportunities are the stuff of a good deal of international tax planning. Individual countries can try to stop these arbitrage opportunities, but more equitable and neutral solutions usually involve international cooperation.

At present, in addition to the major international organizations mentioned above, a large number of groupings of tax administrators from different countries exchange information and attempt to deal with issues of international tax avoidance: the Seven Country Working Group, the Joint International Tax Shelter Information Center, the Pacific Association of Tax Administrators, which evolved into the Leeds Castle Group, are only a few. Since international tax avoidance schemes are likely to be detected in the first instance by tax administrators working in individual countries, and there is likely some value in the informal pursuit of these schemes with other similarly affected tax administrations, it is not clear that a world tax organization would add much value to the project of preventing this type of tax avoidance.

Other strategies for reducing the opportunities for international tax avoidance have been taken up by a number of organizations. For example, the Tax Justice Network and other NGOs are pressuring the International Accounting Standard Board to require multinationals to adopt an international accounting standard for country-by-country reporting. Multinationals release their financial statements on a consolidated basis. This allows them to obscure where their profits are reported for tax purposes and

---

the amount of taxes they pay in individual countries. Country-by-country reporting would require multinationals to report how much of their gross income was earned in each individual country, the particular expenses, including finances expenses that they claimed against that income, profits before taxes, deferred taxes payable, and taxes paid in each country. Thus, at the very least, it would make their tax avoidance activities (and corrupt practices) much more transparent. Following the revelations that many multinational oil and banking corporations had been complicit in the plundering of state assets in some low-income but natural resource-rich, countries, a coalition of NGOs embarked on a campaign called “Publish What you Pay.” The campaign aims to require natural resource companies to disclose all of their payments to government in every country in which they operate. Finally, the OECD and the UN have both been working on codes of corporate conduct that would make taxpaying, and avoiding aggressive tax avoidance schemes, an important part of corporate social responsibility. This work would presumably continue to take place outside a world tax organization and there is some danger it would be co-opted and less effectively dealt with by one organization.

3.5 Minimizing Opportunities for Tax Evasion

One of the most urgent reasons for international tax cooperation is to reduce tax evasion. The most effective, indeed indispensable, method for increasing tax compliance domestically is a comprehensive information reporting system. In every country with an income tax, third-party payers, such as employers, banks, and dividend-paying corporations, are required to furnish the tax department with returns that contain information about income payments they have made to resident taxpayers. In this way tax departments can match information about the financial transactions taxpayers have engaged in with the information they report on their tax returns. It would seem obvious that if this system of information reporting is essential for ensuring the reporting of income received from domestic payers it would be even more important that it applies to international payers. But, requiring a bank, for example, in a foreign country to provide information about any payments made to a domestic taxpayer requires international cooperation. Countries in which a taxpayer is resident do not have jurisdiction to require payers in foreign countries to file information returns.

There have been many attempts to increase information sharing about income payments across borders. All tax treaties contain an article dealing with information exchanges between the signatory countries and even jurisdictions that are not parties to a double taxation agreement sometimes enter into a stand-alone Tax Information Exchange Agreement. But these agreements have been spectacularly ineffective in preventing international tax evasion. Often, they apply only to interest earned by individuals and in order to obtain information from another country pursuant to these agreements the requesting tax administration has to have reasonable grounds

---

for suspecting that a specified person has evaded taxes, has to identify the person under examination or investigation, the information sought, the tax purpose for which it is sought, and the grounds for believing that the information requested is held within the jurisdiction of which the request is made. Given the ineffectiveness of these agreements, it is not surprising that offshore banking that caters to tax evaders has ballooned. This system of offshore financial sector secrecy has contributed to the recent financial crisis by increasing the volume of funds available for financial speculation and by reducing the confidence in the stability of the financial sector, in part, because of the complexity and opacity of these financial arrangements.

What is required, if international tax evasion is to be stemmed, is a requirement that most payers, including most importantly financial institutions, who have to file information returns with their domestic tax departments when they make a payment to a resident taxpayers also have to file information returns with the relevant foreign tax departments when they make payments to nonresidents.11 This requirement should apply to every financial institution or business entity making any payment, whether income from capital of any form or income for services, to any nonresident person, whether an individual or a legal entity or a trust. It should include an obligation to determine the true beneficial owner of the payment. It should be automatic, in electronic form, and in an agreed-upon language. Secrecy laws, including bank secrecy laws, should be prohibited from applying to these information returns. Most importantly, in order to be effective, it must include a unique identification number for the recipient. Presumably, this would include a code identifying the country in which the payees were resident taxpayers and their domestic tax number. In a world in which everyone who travels internationally must carry a passport, which provides their country of citizenship and a unique identification number, that is routinely swiped into a computer at every border crossing and can instantly disclose relevant information relating to that person, this would be easy to accomplish technically.

Would a world tax organization facilitate international agreement on these types of information exchanges? It is hard to imagine. The sticking point on these agreements is not the lack of a forum for reaching agreement but instead the political will. The EU12 and the OECD13 have done considerable work and produced directives and working papers on multilateral, automatic information exchanges but have not yet recommended the implementation of the kind of comprehensive agreement that is needed.

---

3.6 Controlling Tax Competition

Finally, in addition to stemming tax evasion, an equally important reason for international tax cooperation is to reign in tax competition between countries. Tax competition results when governments use their tax systems strategically to attract financial capital, enterprises, direct investment, or wealthy and highly skilled individuals. Although the competition might take place with respect to any tax base, the debilitating effect of this type of tax competition can be illustrated with respect to corporate tax. Corporate tax competition might take any one of a number of forms such as special tax holidays, tax concessions, accelerated depreciation allowances, investment tax credits or lower corporate tax rates generally.

Writing on tax competition has become a cottage industry among tax policy wonks from all disciplines and there is nothing new to be said about it. Nevertheless, since coordinating corporate tax systems will be the most challenging task for international cooperation over the next few years, and since Sawyer did not review this aspect of tax coordination, I will briefly set out here why it is so important. Corporate tax competition results in a misallocation of resources, a loss of tax revenue, a reduced ability to use the corporate tax to control corporate power, a reduction in the fairness and progressivity of tax systems, and increased distortions in labour markets.

In order to achieve the most efficient worldwide allocation of resources, corporations should invest where production can be carried out at the least cost. To the extent that corporations shift their production to countries solely in order to take advantage of reduced taxes, resources will be misallocated. Corporations might be producing in a country even though costs might be lower in another country. Worldwide prosperity will be diminished.

Corporate taxes have been important sources of revenues in many countries, particularly low-income countries. If the corporate tax has to be reduced in response to tax competition this revenue source will be reduced and, practicably and politically, it might be difficult to recover this lost revenue through other taxes. Thus, tax competition means that countries will be able to provide fewer public services than citizens might otherwise prefer.

In addition to raising revenue, the corporate tax has historically been used by governments to restrain corporate power. Tax competition reduces the effectiveness of this important policy instrument over the political power of corporations. Further,

---

14 Although the literature is so vast that any citation will appear to be randomly selected two recent reviews by political scientists have provided a somewhat new approach to the issue, see J.C. Sharman, Havens in a Storm: The Struggle for Global Tax Regulation (Ithaca: Cornell University Press, 2006) (in its harmful tax competition initiative against tax havens, the OECD was outflanked rhetorically in part because it was trying to impose standards on tax havens that it was unwilling to impose on its own members); and Thomas Rixen, The Political Economy of International Tax Governance (London: Palgrave Macmillan, 2008) (argues, from the perspectives of a political scientist, that the present international tax regime will remain inherently unstable unless fundamental reform, such as unitary taxation with formulary apportionment, is undertaken).
since it is primarily large multinational corporations that benefit from tax competition, remaining taxes on corporations are likely to be shifted to smaller less mobile national corporations.

The reduction in statutory corporate tax rates due to tax competition reduces the fairness and progressivity of the overall tax system in two ways. First, to attempt to recoup the lost revenues, governments will be forced to shift the tax base to relatively immobile bases such as consumption and payroll taxes. These taxes tend to fall primarily on labour income and hence are much more regressive than taxes on income from capital. Second, if the corporate tax rate is much lower than the top personal tax rate high-income individuals generally will be able to shelter their income from the top rate by arranging to receive it as corporate-source income. Hence, in most countries top personal rates have declined in line with the reduction in the corporate tax rate, making it more difficult for countries to use the tax system to achieve their distributional goals.

Finally, reducing taxes on income from capital and increasing it on income from labour increases the labour tax wedge and reduces the level of employment.

There is a huge debate in the tax literature about the extent to which countries engage in tax competition, whether other countries respond to tax competition, and if they do so whether such competition is harmful. In particular, skeptics point to the substantial amounts of tax revenue still collected by modern welfare states as evidence that tax competition has not had a serious effect on their ability to raise the amount of revenue desired by their citizens and have made a number of arguments that even if it has had some effect, tax competition is a good thing: it restrains the size of government; it puts pressure on governments to deliver public goods and services more efficiently; and, even if countries have different levels of taxes and public goods, for whatever reason, individuals will simply move to the jurisdiction that best reflects their preferences. None of these arguments in support of tax competition make any sense. What democracy entails, presumably, is that citizens of particular countries should be able to choose the amount of goods and services they would like delivered publicly through democratically elected institutions without being pressured by the deliberate, beggar-thy-neighbour actions of other countries. Although competition ensures that private firms deliver the goods demanded by consumers as efficiently as possible, competition between nations that brings pressure to bear on taxes might simply result in less goods and services than those preferred by the majority of citizens.

It is sometimes argued that reduced corporate taxes as a result of tax competition does not shift the tax burden to labour since the corporate tax itself does not fall on owners of capital but falls on labour and it is more efficient to simply tax labour directly. However, among other assumptions, this argument assumes that corporations have the option of avoiding the corporate tax imposed by a country by employing their capital in jurisdictions with lower corporate taxes. Thus if a country has high corporate taxes corporations will be able to demand a greater pre-tax rate of return on investment and hence there will be less capital employed in the country per worker, and hence lower productivity and lower wages. But the whole point of attempting to prevent tax competition is to reduce the opportunities for corporations to invest in low-tax countries.
One of the most frequently expressed arguments in support of tax competition is based upon a hypothesis expounded by Charles Tiebout in a 1956 article that has become a classic in local government finance. What has become known as the Tiebout hypothesis suggests that society’s overall welfare will be enhanced if local governments offer a variety of levels of public goods, and hence have a variety of tax levels, so that individuals can move to those jurisdictions that reflect their preferences for public good and taxes. Hence any effort to harmonize taxes will reduce the options available to individuals in terms of their desired level of public services and will reduce society’s overall welfare. As countless critics have noted, there are a number of obvious problems with this hypothesis particularly as it applies to countries and not small local governments. First, the rationale does not apply to legal entities, but only individuals. Yet international tax competition is often aimed at corporations and other legal entities. Second, it assumes that individuals are free to move to whatever jurisdiction might best reflect their tax-expenditure preference. Yet, for a host of reasons – legal, cost, personal relationships, language barriers – the great majority of individuals are not free to change their country of residence. Third, it assumes that the cost of public services provided in a country is reflected in its tax rates, that is to say, the hypothesis assumes that the only purpose of taxes is to finance the provision of public goods and services. Yet, taxes and transfers are also used to achieve redistributive purposes. Fourth, it assumes that all jurisdictions are completely self-contained and that the level of taxes and benefits provided in one country has no affect on citizens in other countries. Yet the public services provided in one country – the level of police and health protection, for example – clearly affect well-being in other countries.

Given the widely accepted premise that tax competition adversely affects worldwide social welfare, regional and international organizations have used a variety of policy instruments to attempt to curtail it. Nondiscrimination clauses and prohibition on state aids in tax treaties and other supernational documents have been used with some success against the most egregious types of tax competition. Over the past decade, the EU, the OECD and the UN have all taken various initiatives against harmful tax competition including suggesting codes of conduct for business taxation that define tax competition, set out criteria to determine whether it is harmful, and provide for an array of measures to try to persuade recalcitrant jurisdictions to comply with the code. These reports have generated an enormous amount of controversy, an extensive literature, and there is an ongoing debate over how successful they have been.

However, much more significant than standards of conduct for fair tax competition, a number of commentators have contended that the problem of international tax avoidance and competition will only be solved if the major countries agree to adopt some form of combined reporting and formulary apportionment for taxing multinationals. At present, the income of multinationals is allocated to the various countries in which they do business on the basis of the principle of separate entity accounting. The business conducted in each separate country by a multinational is treated as if it were a completely independent business entity and all the goods and

services that are transferred between such assumed independent business entities in the various countries in which the multinational does business are priced as if they had been transferred between unrelated corporations (the so-called arm’s-length method). On this basis, the profits of the multinational are allocated to each country. There are huge problems with this method of allocating the profits of multinationals: most notably, in the context of corporate tax competition, since it is relatively easy for multinationals to manipulate the prices charged for transfers of goods and services between particular parts of their business located in different countries they can arrange to report a disproportionate amount of their profits in low-tax jurisdictions thus providing a powerful incentive for countries to engage in tax competition.17

Under a system of combined reporting with formulary apportionment, basically all the members of a related group of corporations that engage in a common enterprise must calculate their income as if they were a single taxpayer. Then that combined income is allocated to the individual countries in which the related group carries on business based upon a formula that might take into account various factors such as the group’s percentage of sales, assets and payroll in each country. There are a number of advantages of such a system for calculating and allocating the profits of multinationals worldwide, but in particular, it greatly reduces opportunities for tax avoidance and the incentives for tax competition. Of course it would require an extraordinary degree of international cooperation.18 All participating countries would have to agree on a harmonized corporate tax base (a definition of income) and on a formula for apportioning the income among countries.

4 A World Tax Organization or a Revitalized Role for the UN

The point of this somewhat extended discussion of the need for comprehensive and automatic information reporting, and for combined reporting with formulary apportionment, is not to debate the merits of these proposals, but simply to suggest that they are the two important reasons why there needs to be international

---


18 For the past several years the EU has been studying the design and implementation of a common consolidated corporate tax base (CCCTB). There is a significant amount of support for the plan, but a number of countries have expressed reservations about it. Aside from concerns over the loss of the ability to use the corporate tax base as an instrument of national public policy, one of the major sticking points is whether to be effective it would have to be supplemented with the introduction of a minimum tax rate and how broadly it would have to apply to all forms of enterprises.
cooperation in tax matters. I am not sure that Sawyer would dispute this assessment. His book deals at length with the coordination issues involved in cross border advance rulings and advance pricing agreements only because he argues that should be the initial jurisdiction assumed by a world tax organization; however, he does express reservations about harmonization, which both of these initiatives would entail. Nevertheless, in thinking about whether there is a need for a world tax organization the question that should be asked is whether it would be helpful in achieving these ends or are they more likely to be achieved by concentrated on strengthening existing international organizations and in particular the UN?

Perhaps in the truly long-run, in a world that at this point is hard to imagine, there should be a stand-alone world tax organization where all of the issues relating to international tax could be politicized, debated, and fairly resolved, but in the meantime, energies would be better spent attempting to increase the capacity, responsiveness, and transparency of existing international organizations in solving the problems of tax evasion and international tax competition. Considerable progress has been made, and much more can be made, through a process of monitoring, negotiating, informal initiatives, recognition of mutual advantage, and a variety of soft law initiatives. There would appear to be considerable value in pursuing these objectives through forums of different size, membership, interests, methods of proceeding and perspectives. Naturally, pressure should continue to be placed on these organizations, particularly the OECD, to make them more representative and transparent.

But most importantly, to ensure a more balanced international dialogue about the need for tax cooperation, the role of the UN should be considerably strengthened. It should strive to become an equal partner with the OECD in this area. Greater involvement by the UN would be more likely to result in the questioning of existing fundamental principles of international tax, like transfer pricing and separate entity accounting. In order to increase its role the UN's tax policy body should change its orientation, increase its status (perhaps from an expert committee to an intergovernmental commission), substantially strengthen its expertise, and greatly increase the funding and resources it devotes to this issue. The UN should turn its attention from the details of its model double taxation agreement and focus more directly on the issues of tax evasion (problems of capital flight) and tax competition and push for truly global solutions such as automatic information exchanges and the unitary approach for the taxation of transnational corporations.

19 In this respect I agree with Arthur Cockfield in his article, ‘The Rise of the OECD as Informal ‘World Tax Organization’ Through National Responses to E-Commerce Tax Challenges’ (2006) Yale Journal of Law & Technology Vol 8, in which he documents the success of the OECD in using these strategies when dealing with the challenges to the international tax regime posed by the emergence of e-commerce. He concludes that the informal approach used by the OECD is more likely to be successful with these kinds of issues than a more formal approach that might be used by a world tax organization. On the two issues I have identified, however, it is the UN not the OECD that should take the lead.

The major advantage of strengthening the UN's role is that it would ensure that the interests and unique problems of low-income countries are given consideration in the international tax debate and that development issues become more central in that discussion. The lack of international cooperation has been particularly devastating to low-income countries. An important debate that really started in March 2002 at the United Nation's International Conference on Financing for Development in Monterrey Mexico, calls upon low-income countries to mobilize domestic resources for development and become less dependent on foreign aid. This necessity has been reaffirmed many times since in different international settings.

Although low-income countries confront a daunting array of obstacles to raising revenue sufficient to fund desperately needed public goods and services, international tax avoidance and evasion has recently been singled out by a number of international organizations as being one of the most significant. Much of this revenue loss to developing countries is due to tax evasion by resident wealthy individuals and to multinationals shifting profits earned in low-income countries to other countries with lower taxes. By one estimate, wealthy individuals in low-income countries have deposited over US$6.2 trillion of income producing assets in jurisdictions where it is not taxed and where its existence is protected by bank secrecy laws; the resulting revenue loss to developing countries is estimated to be as high as US$124 billion a year. The annual revenue loss to developing countries that arises from the manipulation of transfer pricing by multinationals has been estimated to be about $160 billion a year. Furthermore, tax holidays and other forms of tax incentives for active investment are widespread among low-income countries as multinationals

---

21 A number of articles and studies have been written recently on the damaging effects of tax havens and capital flight on developing countries and development policy. See, for example, Norway, Government Commission on Capital Flight Poor Countries, Tax Havens and Development: Status, Analyses and Measures (Minister of Environment and International Development, 18 June 2009).

22 The so-called Monterrey Consensus embraces a number of areas and has become the major reference point for international development cooperation. See United Nations, Monterrey Consensus for Financing For Development (New York, 2003). A follow-up conference, to review the implementation of the Monterrey Consensus, was held in Doha, Qatar in late November, early December, 2008. The conference website is at http://www.un.org/esa/ffd/doha/


24 Christian Aid, Death and Taxes: The True Toll of Tax Dodging (May, 2008); see also False Profits: Robbing the Poor to Keep the Rich Tax-Free (March, 2009). Naturally, these and other figures of this magnitude have been disputed, see Clemens Fuest and Nadine Riedel, 'Tax evasion, tax avoidance and tax expenditures in developing countries: A review of the literature', Report prepared for the UK Department of International Development (DFID), 19 June 2009 ("Overall, it is fair to concluded that most existing estimates of tax revenue losses in developing countries due to evasion and avoidance are not based o reliable methods and data" (p. 56)). The authors
play one low-income country off against others in pushing for lower taxes. Most low-income countries feel that they have little choice but to offer ever more generous investment incentives in response to those offered by neighbouring countries.

5 Read This Book

The last part of this review might appear to have wandered away from Sawyer's book. However, in numerous places in his book and writings Sawyer expresses grave concern about the ability of nation states to retain their sovereignty unless there is more international tax cooperation. In chapter 2, he concludes his survey of articles on the challenges posed by globalization to taxation with this strong statement: “The discussion makes it clear that the impact of globalization on tax policy and practices represents the greatest threat to existing tax principles and the tax base since the end of the second world war, and requires collective action by revenue authorities to secure the tax bases and prevent a ‘race to the bottom’ for the lowest tax rates, thereby severely threatening existing world welfare” (p. 27) Although his book deals primarily with the need to engage in international tax cooperation in order to reduce the transaction costs of cross-border business transactions, this brief review of the other, arguably much more important reasons for international cooperation, is meant to underline the importance of the general subject with which his book deals.

*Developing a World Tax Organization: The Way Forward* is a tour de force. It makes an important contribution to one of the most significant on-going debates in international tax, although I remain unconvinced about Sawyer's case for the need for a world tax organization as a way of furthering international cooperation. Over the past year or so there does appear to be a sea change in the political will to finally tackle international tax evasion and tax competition. Governments of even the richest countries appear to have recognized that they must gain some control over the unrestrained forces of globalization if they are to retain their sovereignty to pursue the collective aspirations of their citizens, that in an inter-related world harmonizing certain aspects of tax policy is a necessary precondition to national tax sovereignty, and that beggar-thy-neighbour tax policies are immoral and ultimately self-destructive. Adrian Saywer's book is essential reading in furthering this debate and hopefully in his scholarship he will continue to build upon it.

---