

The New World of International Tax

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Mason, Ruth, *The Transformation of International Tax*, 114 *Am. J. Int'l L.* __ (forthcoming, 2020), available at [SSRN](#).

International tax law has been in the news a good deal lately, and one of the key developments widely discussed among international tax experts is the “[OECD/G20 Inclusive Framework on BEPS](#),” which aims to take on base erosion and profit shifting (*i.e.*, “[BEPS](#)”) behaviors of multinational enterprises (“[MNEs](#)”). [Ruth Mason](#) offers a broad new view of these developments in her article, *The Transformation of International Tax*.

Here’s the backstory: Before the 2008 financial crisis, world leaders largely tolerated cross-border corporate tax avoidance and minimization by MNEs. The 2008 crisis, together with data leaks, hacks, and resulting parliamentary and congressional hearings, brought heightened public attention to these tax avoidance strategies. This jolted world leaders out of their longstanding inaction. In 2013, leaders of the G20 countries tasked the OECD—an international organization that in recent years has played a key role in international tax policy—with coordinating multilateral efforts to ensure that MNEs paid their fair share of taxes. The OECD accordingly created its now-famous “BEPS Action Plan” in 2013 and delivered final action recommendations in October 2015. These recommendations consisted of 15 action items that countries should undertake to confront MNE base erosion and profit shifting behaviors. In 2016, recognizing that the success of the BEPS project required the engagement of developing countries, the OECD established the OECD/G20 Inclusive Framework. Through this new structure, the OECD and G20 invited developing countries to participate on an equal footing in the creation of standards to combat base erosion and profit-shifting behaviors and in the review and monitoring of OECD BEPS implementation.

The OECD/BEPS project is often discussed in highly technical terms, with tax experts focusing on the specific doctrinal and policy mechanisms by which it intends to close tax loopholes. In her new paper, Ruth Mason argues, by contrast, that these changes aren’t merely technical. Instead, she writes that the international tax regime has undergone nothing short of a transformation since 2008.

Specifically, according to Mason, the BEPS project effectuated transformation along five dimensions: (1) by increasing the number of participants in international tax policymaking to include G20 and developing countries, (2) by expanding the agenda of international tax policymaking to include more multilateralism, thereby contributing to the growing importance of the OECD in international tax policymaking, (3) by moving towards a new “full taxation” norm (as opposed to merely focusing on avoidance of double taxation and the elimination of harmful tax competition), (4) by advancing novel forms of multilateral law (such as the new “[Multilateral Instrument](#)” and fiscal fail-safes); and (5) by bringing distributional issues to the forefront of the international tax agenda. Any one of these developments would be a major shift on its own, but Mason uses her masterful expertise in international tax—both from a U.S. and EU perspective—to tie all the threads together and explain how, in combination, they represent a fundamental transformation.

Mason then pushes the analysis further. She undertakes a normative evaluation of the new transformed international tax order, noting the uncertain effects for revenue and inclusivity, possible accountability problems, and potential difficulties with the new “full taxation” norm. Most notably, Mason is concerned about potentially controversial distributive issues that may arise among nations in deciding how to allocate worldwide tax revenues. She notes the conflicting and changing interests of the U.S. and EU, the emerging role of the BRICS, and the roles being played by the OECD and EU in the diffusion of norms and outcomes as important factors that will affect the ultimate worldwide allocation of tax revenues. Ultimately, she warns that distributive considerations cannot be indefinitely postponed or

swept under the rug without risking chaos, failure of the new “full taxation” norm, or derailment of the entire BEPS project.

Mason’s paper gives the tax field its most recent “big picture” work, a wide-ranging conceptualization of the state of the international tax field. Her paper should spark reams of subsequent research in light of the numerous important questions it raises. For example, obvious follow-up lines of inquiry include investigation into the role and participation of developing countries in the new international tax order, further examination of the role played by the OECD, the EU, and the G20 in the diffusion of tax norms and standards and the impacts of this on policy outcomes, and, of course, empirical research about the success or failure of the BEPS project and the ultimate distribution of worldwide tax revenues that will result. The answers to these questions are important. They not only affect the ability of revenue-strapped nations to fund welfare states and social safety nets but also carry fundamental implications for the future positions and roles of nation states in our world order.

Shu-Yi Oei, *The New World of International Tax*, JOTWELL (May 22, 2020) (reviewing Ruth Mason, *The Transformation of International Tax*, **American Journal of International Law** (forthcoming, 2020), <https://tax.jotwell.com/the-new-world-of-international-tax/>).