

International organizations and their impact (28th November 2023)

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Abstract

After tracing the evolution of international taxation – from its early 20th-century developments to the current balance of power between the OECD, G20, UN, and EU – key tensions emerge between source-based and residence-based taxation, alongside the growing political relevance of global crises. The G20 acts as a catalyst for reform, while the UN moves to redefine the rules of the international tax system.

Keywords: International taxation, OECD, G20, United Nations (UN), BEPS, European Union (EU).

[Prof. Marino]

Hi Raffaele, good to see you. Good morning, everybody. Yesterday was very interesting.

What emerged from Raffaele's lecture is that beyond the classic organizations – those we'll focus on today – many other institutions, like think tanks and development banks, also influence international tax policy. These actors are less visible in the media, but they are equally important. Today's session will focus on formal international organizations, and we're fortunate to have Raffaele with us, who knows the OECD inside and out. So, thank you very much for being with us. The floor is yours.

[Prof. Russo]

Thank you very much Giuseppe, and good morning, everyone.

Yesterday we looked in general at the main actors in defining international tax policy. Thanks to the comment of Giuseppe, I think for the next presentation I will add also journalists as a category because thinking about that I don't think it's only the International Consortium of Investigative Journalists that

basically did a lot of the analysis of the documents that were leaked in the past, you know, from the Panama Papers to the recent Cyprus files. But also, I think there are a number of journalists, like individual journalists, some of them are still around that have actually influenced the debate. If you google it and you google Jesse Drucker, Double Irish Dutch Sandwich. Jesse was the first one that actually, you know, put in the public domain the details of the structure that is used by most US tech companies, or was used, at least in the past, and that was the Double Irish Dutch sandwich. And that Article on Bloomberg attracted a lot of attention. Another one is Tom Bergin from Reuters, who did something extremely interesting in my view, and which at that time we were talking about, it was probably 12 years ago. So basically, the representation of what was happening at the level of the UK subsidiary of a big technology company that used to have the most used search engine, just not to make names, Google. Basically, the way Google UK represented its way of working was to provide support to Google Ireland, and that they were not entitled to enter into any contract that was binding on Google Ireland, which would have created the tax liability in the UK in the form of a permanent establishment. Now what this journalist did was actually go to the LinkedIn page of the employees of the UK company of this tech group. And basically, on LinkedIn, a number of these employees were posting news saying today I concluded the biggest contract of my entire professional career, or I'm so happy because today we closed a very important contract. So, he published that on Reuters and these two elements together with the Article of another journalist called the Kaczynski who, by the way, won the Pulitzer Prize on the way general electric managing its tax affairs. It actually had an impact in putting the issue front and center into the debate. So, thank you Giuseppe for the suggestion. And as I see that also some of my colleagues are connected, I'm sure they've taken notes, and so we can update the presentation. Now, today, we will focus on certain international organizations. So yesterday, we looked at the entire landscape from national authorities, including parliaments, tax administrations, ministries of finance, stakeholders at large, business, NGOs, academia, regional tax organizations, multilateral development banks, the Bretton Woods institutions, IMF, and World Bank. And now today to complete the picture of the landscape, we will look at the international organizations that are most active in tax matters. And we will also discuss a little bit the impact they've had. While tomorrow we will go more into constant issues in terms of comparing the work that they have done and that they're doing. Now, before looking at these four organizations, the OECD, the G20, United Nations and the EU, I would like to talk for a few minutes about the role of international organizations in the genesis of international tax rules. As I said, I am a person that tends to not take things for granted. So, I think, you know, we should always be able to question the status quo, but at the same time, I think it's always helpful to understand where we're coming from when looking at what we have

in front of us today. And that often helps in the analysis and when decisions have to be taken, in taking decisions. So, if we go back to the very beginning of the 20th century. In 1919, the International Chamber of Commerce was formed, and it was formed to represent international business interests. Obviously, the world was very different from the world we have today. So, there was less focus on cross-border issues, and most of the focus was on domestic issues. But in a way, there were already exchanges across borders, and double taxation that would result from the lack of coordination of different countries' laws, was obviously an impediment to reconstruction after the First World War. The ICC, the International Chamber of Commerce, provided inputs, push the League of Nations to do work in this space. And remember what we discussed yesterday, like, don't look at this as, or if you want to do it, but at least my perspective is not, you know, the institutions are captured by business, and when business tells them to do something, they do things so that they can create loopholes and not pay taxes. This is one way of looking at things, as I told you, it's not my way. I think cooperation with stakeholders is extremely important from the perspective of policymakers and policymakers should have the brain in order to take informed decisions. So here, what you see is a sort of interconnection between the public interest and the private sector interests that says look, if we need to send our enterprises abroad to build a bridge or to build what has been destroyed during the war, and these enterprises will be taxed in that country and then will be taxed again in our country, they will not go because obviously they prefer to stay here and be taxed only once. This was the underlying economic crash and therefore, the League of Nations set up a committee of experts that would develop principles that would allow for the avoidance, or at least, the reduction of double taxation that would otherwise arise. And as it was common, and I have to say, it is happening also today, in certain instances, the decision was, okay, let's appoint a group of academics, a group of economists that are appointed by the national government, and that can effectively encapsulate these principles into a report. And this is the famous 1923 report of the four economists, which by the way, is the one we are celebrating this year with the anniversary of the first century, thanks to the idea of Prof. Marino Giuseppe. Who were the four economists? Seligman from the US, Einaudi from Italy, Bruins from the Netherlands, and Stamp from Great Britain. Now all these documents are actually available. And you know, if you're passionate about this topic, I suggest that you have a look at what was written there. Because sometimes, it's actually striking how current the statements that are included in the report are still today. And that's something that I think tells us some, gives us certain indications of where we are today and what will be the sense of direction that will be the last part of the presentation that we will do online on Thursday. But the report is based on the concept of, basically, identifying criteria that would economically justify the allocation of the right to tax a

certain item of income to one jurisdiction or to another. And in that analysis, and in that exercise, the elements that were considered were the production of wealth, the possession or the disposition of wealth, and the concepts of residence or domicile. Remember, we are at the beginning of the 20th century, like even income tax legislations in a number of countries were not as developed as we have today. Taxation systems were also very different one from another. So, it was a sort of exercise to pull together people from different legal and economic backgrounds and try to get to the identification of one or more principles. And this principle is the principle of economic allegiance, which, if you go forward 100 years, and you look at, you know, the statements that are made, for example, in the context of the BEPS project, or in the context of the two pillars solution, or even if you look at what's written in the resolution that has been approved by the General Assembly of the UN on the 22nd of November, which we will discuss on Thursday, you have reference to concepts like value creation, when value is created, where activities take place, so we have always been struggling to identify concepts that would provide the economic justification for the allocation of the right to tax to one country or another. And what this report tried to do was basically to try to do that. And the way they did that, now, if you have seen the countries where they were coming from, you see that they were effectively, like, I will say countries that were exporting capital more than they were importing capital. And therefore, what you see is a preference in the report for residence-based taxation over source-based taxation, and what was the reasoning there? Well, the reasoning was, well, you know, if you do your production activities, your manufacturing activities in this country and then you take the goods and sell them in another country, effectively, what you're doing is using the resources of the first country, that has, you know, put at your disposal as an entrepreneur, its territory, its workforce. So like, you are benefiting from being in that country, and therefore, you have to contribute to public expenses. This was the underlying reasoning which still, if you think about it in a creative manner, it's what we have today. Because then, once in the source state, you, let's say, pass this threshold according to which you can be considered to be part of the economic life of that jurisdiction, and therefore using the resources of that jurisdiction etc., then you should pay taxes in the source country, which is, in other words, the concept of permanent establishment, which is conceived as a threshold. So up to that threshold, you pay only in the resident state because that's where you should contribute to public expenses. But once your involvement in the economic life of another country reaches a certain level, and the level is the definition of permanent establishment, then you pay taxes in that country, on what? Well, on the profits that are attributable to that permanent establishment. And the resident state may still tax the income, but it has to provide the relief in order to avoid the double taxation. In a nutshell, this is what they agreed upon, and this is what we still have today in our

international taxes. The work continued because obviously, this was a report. So, there were no rules, there was no actual text of law that will be used in order to apply the principles contained in the report. And these four people that drafted the report being economists were probably not the right people to write rules. And this is also an important lesson for all of us, and therefore a technical committee was set up to actually draft a model treaty, a model convention that countries could then use when bilateral negotiating the introduction of these rules into their system via an international treaty.

This, once you look at things in this way, you know, you understand also provisions like the definition of permanent establishment where it is stated that the fact that there is a subsidiary in the country doesn't mean that that subsidiary is a permanent establishment because at that time, things were unclear, you know, it was like, okay, I have a US company that is doing things or selling things in France, or in Italy, how do they do that? Well, they set up a company, but then, so like, don't think that all the elements that are firm in our system today were firm at that time. And that's also one of the reasons why it was immediately clear that once you had defined the criteria according to which the right to taxes should be located, you also have to determine the amount on which these rights to tax had to be allocated. Because when different parts of the same enterprise were dealing with each other, obviously they would have had an incentive to ensure that the most taxable base will be allocated to the country that had the law with tax applicable. And at that point, it wasn't clear how to do that, and the League of Nations entrusted an expert, Mitchell Carroll, who is now a famous name, we also have scholarships at the level of the International Fiscal Association entitled to him, but basically he wrote a report on the methods to allocate taxable income, the taxable income of a multinational group, so a group that will be economically the same entity, but that would operate in a number of different countries via a number of different legal forms. And the 1933 Mitchell Carroll's report is often considered to be the start, to be the beginning of what today the arm's length principle, and the transparent pricing principle. Even though I think, again, you know, if you have no more interesting things to do, but it's an interesting read because I think already in that report, there are a number of indications that, let's say, try to square the circle between what is today's debate, arm's length versus formulary apportionment. But the decision that was then taken at international level was to include in model convention a provision which encapsulates the arm's length principle. And the arm's length principle fundamentally tells you that, you know, when you are dealing with someone to which you are related, you cannot play games with the price that you determine, but that you should basically price the transaction as an independent party will have done at market rates. But here I see on the camera top experts on transport pricing, so I'm trying to also reach to the undergraduate students. So, maybe it is boring for some of you. The activities regarding the drafting of the model

convention didn't start effectively. And what's funny is that the last component of the first phase of international tax policymaking, and in particular tax treaty making, was the issuance of two different models, the Mexico model in 1943, and the London model in 1946. Now, what is striking about these two dates in your view?

[Student]

A war in between.

[Prof. Russo]

Yes, in 1943, there was the World War Two. So, that also tells you something on how the world goes. Now, if you look at the 1943 Mexico model and you look at the 1946 London model, you will say, well, you know, they didn't change much in three years. But then if you look at the comparison, the main provisions, that's what you get. If you look at the Mexico model, there is much more, there are many more instances of source taxation. In particular, as regards royalties, dividends, business profits. And why is it so? Well, because when there was the meeting in Mexico in 1943, most capital exporting countries were busy with the war. So, the Mexico model was effectively agreed mostly among the Latin American jurisdictions. And again, you know, this comes back today with the recent creation of the platform for tax cooperation in Latin America, which has been pushed forward by former minister Ocampo and just a few months ago, they decided to get together and sort of present new approaches to international taxation. So, at least what I find fascinating about history is that it tends to come back. And that's probably where we are at the moment.

[Prof. Marino]

Raffaele, I have a question about the Mexico model and the London model, do we know who is behind? Which countries are behind the approval of the two models in order to understand also the application of the models themselves?

[Prof. Russo]

Yeah, in fact, the Mexico model was mostly Latin American jurisdictions, while the London model then everyone was back, the US, the UK, the Netherlands.

[Prof. Marino]

We could also say that there was a sort of gain between the two models, because I believe that in the table of negotiations between a European country and a South American country, both countries were bringing their respective models, is that correct?

[Prof. Russo]

Yeah, absolutely, these are models. So effectively, these rules do not create legal rights or legal obligations until they are inserted into an actual double tax treaty, which is negotiated by two sovereign countries. And as Prof. Marino was saying, when you start the negotiation, you start with your own model, or with what you have in mind in relation to your double tax treaties, and the other country does the same. If you are a good student, you have also studied the legislation of the other countries so that you are prepared, you have possibly confronted with your stakeholders to see, you know, what are the relevant items for purposes of your enterprises investing there or doing business there. And then you go into the negotiation and the negotiation then, you know, may end with the treaty that is then signed and ratified then becomes law, or it may end with no agreement, because the positions are very different. And that's, for example, the reason why several Latin American jurisdictions, if you take Brazil, the treaty network of Brazil is not that large. As of 2023, we still don't have a treaty between Brazil and the United States, for example. So, you know, obviously you are sovereign, and we are all living in an era where many people, well, I don't want to say things that are the object of tomorrow, but let's say, when Max and myself studied in the Leiden 20 years ago, there was no discussion that treaties were a good thing. And, you know, they were important to provide certainty, to provide predictability, to attract investment, to avoid double taxation, *etc.* Today, there is an increasing number of people that is questioning the usefulness of double tax treaty from an individual country perspective. Because in many cases, treaties limit the taxing rights of the source jurisdiction and source jurisdictions may not be very happy about that. And that may also relate to what we were discussing yesterday, the way national power is allocated among different entities. Because maybe, you know, the people that work in the ministry of taxation or in the tax administration are not very happy. But people that work in economic development or international commerce are very happy, and that's what they want to achieve. And that's where it's done at the domestic level that you need to find a common position on the economic policy that the country wants to carry out. But something that I will say no one 20 years ago would have said treaties are not good. Today, you have an increasing number of people saying, well, you know what? And what we have seen, also recently, is that double tax treaties have a very strong political component. When did we see this extreme political component in the recent past in your opinion?

[Student]

The Russia and Ukraine conflict.

[Prof. Russo]

Very good. We terminated the treaties with Russia. Most countries that are supporting Ukraine, the first thing they did was, we terminate the treaties, the double tax treaty with Russia. Why? Because effectively, it's part of the economic strategy, in this case against Russia. Which is to say, we don't want our people to invest there, we don't want our people to create prosperity there, and therefore we cut the bridges so that they cannot go there. In addition to imposing specific sanctions in the case they do. So, this is not only like a very fascinating tax technical topic to write a PhD about, but it's also very much entrenched with politics.

Now, going back to where we were, the differences between the Mexico and the London model, as you can see, are clear, but then what happens afterwards? And this is, I think, something that is also, to be honest, I wasn't able to find out properly what happened. I think I have a gap of about 10 years. Because remember where we started, the League of Nations, then the League of Nations issued the four economists report, then the Mitchell Carroll's report, then the League of Nations model conventions, then the Mexican, the London models. But then the League of Nations basically disappeared. It disappeared and there is a new international organization called the United Nations. But if you look at the tax work, the tax work was actually carried forward by an organization which at that time was called the OEEC, the Organization for European Economic Cooperation, which is basically the current OECD. But what was the OEEC doing? The OEEC was effectively the organization that was set up in the Château de la Muette in Paris in order to administer the Marshall plan, which was the plan of funding substantially from the US and Canada to reconstruct Europe after the World War Two, and also geopolitically to counterweight the influence of the of the Soviet Union at that time. You remember that phase where the wall in Berlin that divided the two parts of the world. Now, from a tax, international tax policymaking perspective, funny enough, it was the OEEC that took over the work and set up a fiscal committee with the objective to promote and support stronger economic ties between different sovereign countries. In 1960, it was then decided to basically transform the OEEC into the OECD, which took care not only of the remaining parts of the Marshall Plan that by then had already been deployed. Again, think in, particularly for those of you that come from Europe, think in today's terms into the recovery and resilience plan at the level of the EU, and like what we are trying to reconstruct, even though there has not been a war, but there has been a pandemic, which also tells us something now that sometimes in order to make progress in certain areas, you need the big crisis. But what matters for our purposes here is that the OECD immediately took an important role in international tax policymaking. And in 1963, it issued its first draft model convention. And if you want, that is probably the time when a new era starts in international tax policy. Now, if you

look at the updates that were made to this model, look at the dates, first model in 1963, the first update in 1977, 14 years, then in 1992, 15 years. So, in a way the model was pretty stable. And it is only from 1991 that it was clear that the pace of economic, technological, political development was going much faster than in the past. It's the beginning of globalization of hybrid connectivity, but like, there was an immediate realization that things had to speed up in order to match the speed of the developments that the rules were trying to regulate. And therefore, since 1992, effectively, the OECD model is updated every two or three years. It was updated in 1994, in 1995, in 1997, in 2000, in 2002, in 2005, in 2008, in 2010, in 2014, and the last update called BEPS project was in 2017. Now, what is the relevance of the model of the OECD? As we said, it's not a binding document because what's binding is the treaty, like if you're advising a client that, I don't know, he is deriving royalties from the Netherlands where he or she has published a book and gets paid royalties for the use of the copyright, you don't look at the model, you look at the actual treaty in this case. But the influence of the model has always been on two things. First, in actually providing the template of the rules that then are included in the actual treaty. And second, because the model also contains a very long commentary that basically provides explanations of what the rules mean with examples, with guidance. So effectively, what was being updated, in many instances, was not the model itself, but was the commentary to the model. And if you look at the updates to the commentary, to the model, you realize that what we saw before with the League of Nations, the prevalence of the resident principle as a sort of like cognitive prejudice, was the residence-based taxation rules. And in many instances, what you see in the commentary is clarifications that very often respond in an almost direct manner to the positions taken by certain source jurisdictions, whether at the level of the tax administration, or at the level of the judiciary. Anything that comes to your mind when I'm making these examples? What is a famous court decision that got the honor of being officially criticized in the commentary to the model tax convention?

[Student]
Philip Morris.

[Prof. Russo]
Thank you very much. Prof., you wanted to comment?

[Prof. Marino]
I was just thinking that I experienced that moment together with Guglielmo Maisto. By the way, Guglielmo Maisto last week was talking about the case law that he tried to defend before the Supreme Court with no success. But nevertheless, to be honest, I see behind the reaction of the OECD, certainly a way

for the US government to show its power by reacting, what could have been a wave spread all over many other countries other than the Italian jurisdiction. And it comes to my mind that a similar approach is not arriving with reference to the digital PE because we indeed are experimenting a lot of other, you know, solutions circling around the same concept, while much simpler it would be to intervene within the PE definition, within a concept of digital PE, which would certainly be easier for comprehension about practitioners, scholars and so on. So, for analogy, I think that it is a similar experience we are facing with today, with reactions from the United States mainly, in order not to go into that direction. That is what I wanted to share with you.

[Prof. Russo]

Thank you very much. I fully agree, and I also think that in a way, and to be honest, I wrote this 15 years ago, so it's not now, but the Philip Morris decision was actually, clearly going beyond the rules that were applicable, but was also sending a signal that something had to be done. Otherwise, the system would just not continue to be as strong as it was. And this is where I think there was a missing recognition from the site of many, like if we will not be in a university, but we will be in a bar drinking spritz, I will tell you, frankly, Italy was criticized because of the Supreme Court decision in Philip Morris. Brazil was bashed for the fixed margins in its transparent pricing legislation for 20 years. Now we end up with pillar one and pillar two where we have focus on transparent pricing and we have consideration of tax rules at group level. So, you know, if instead of frontally confronting those state Supreme Court judges, you know, presenting certain view and just thinking more in strategic terms, probably we wouldn't have ended up in the mess in which we are today. The influence of the US, for sure, it's what we're seeing today, and those that know, if I am a digital service tax guy, I am very much in favor of, you know, thought about it when we were doing BEPS, work on it when I was in Italy, it's bringing in money, it's not creating any particular issue for taxpayers, it works. It has maybe, you know, some improvements that could be made also based on experience in terms of territoriality and now we apply the rules. It's not an income tax, it's closer to an excise tax on the value of data whose approximate determination is considered to be revenue. But if in three years, we have a better way to value our data, and frankly, business is already helping us because those of you that are in Italy. So not to talk about tech companies, just go on the website of any Italian newspaper, what do you get? Either you give us your data and you can read the Articles for free, or you pay five euros per month, or whatever that is. Well, we are starting to get to the point where we can price it. And at that point, we may have to consider what tax implications this triggers. So now, everyone is also thinking, again, the crazy Italians because as you know, there is an audit undergoing on a big tech company actually saying what I was just saying. This

is a barter transaction. The idea that you get because it is in our mind, like if I tell Sara, Sara are you there? Yes, you're Sara. If I tell you, you have to pay for your email account, what will be your reaction? You will say, wow, it's strange, like, why do I have to pay for my email account? If I tell Prof. Andrea Ballancin, I give you a cell phone for free, and you can use and call everyone, no worries, you don't pay. That will seem strange to me because it's in our mind, it's entrenched in our mind, but the two things are exactly the same. And in both cases, like you are paying, but you are paying with your data, and you're not paying with your money. This is the point. Now if someone comes in and says, well, this is a barter transaction, and therefore barter transactions should be subject to tax, direct and indirect. Personally, I don't think that's such a crazy position, particularly now, when people themselves are telling us either you pay me or you give me your data. But again, maybe 10 years ago, when digital service taxes were conceived in this way, because that's how they were conceived. It was too early and maybe you know, we were not there. I think now slowly we are getting there. Comments, views, criticism? Well, I have done a bit offline, but you know, this is a topic.

[Prof. Marino]

No, this is an interesting issue. But before arriving to, because I think that the most delicate issue within your reasoning is the exchange value, because you are not receiving money, but you are receiving data. So, this is certainly creating also an issue of transfer pricing, what is the value of data rather than the value for money? What is the value for money? But if we just stick on the money, for example, the case of Spotify. I think it's one of the easiest examples, or the case of Netflix, for example. Everybody now uses Spotify and probably uses Netflix, so I pay for something like Spotify, I have a registration, and I swipe my credit card, I don't even swipe the credit card, it is automatic, the billing on my credit card. So certainly, there is an Italian resident consumer that is billed through a credit card for the registration for the use of Spotify. And this is going somewhere, certainly, either in Ireland or straight to the United States. And it is part of the revenue of Spotify. Those revenues are certainly transparent. Everybody knows within the balance sheet of Spotify that those revenues are coming from market jurisdictions, because those, we are talking of corporations that are listed on the stock exchange, the values, so they maybe don't pay taxes, but certainly the shares value are going up because of the money that is entering into their bank account. So what I don't catch is, why would it not be possible to isolate the revenue, at least the revenue, then certainly we have the problem of the costs, because if I get the revenue from Giuseppe Marino for registration for Spotify, that is not the income, it is just the revenue, because then I certainly have to attribute also some costs in order to get proportion of the income that I have produced into the market jurisdiction. But certainly, that

is the starting point, the revenue is clear, the cost is less clear. But certainly, it is to say that this world is going into another direction because I can say, listen, I assume that the income is equal to the revenue and for me that it is clear the revenue that you have taken into my jurisdiction, if I look at my consumers, if I look at your accounts, it is not clear the costs that we should attribute to those revenues in order to get the income. But that is up to you, not up to the local tax administration. So, I frankly don't understand why there's no solution into this dynamic, at least this is the simplest example. Then of course, the data is introducing certain complications, but at least for these assumptions, I frankly have difficulties in getting into other ways, I see other ways not to solve this very easy approach. At least, that's what I want to share with you.

[Prof. Russo]

That's what we are here for, and others please come in because I give you my point of view. I think while in the first case, what we are discussing is the fact that there is value extracted from the country in the form of data or user contribution and therefore from an economic point of view, I think it is justified and justifiable to levy a tax on it. In your second example, so you know, I log in and I benefit from the service, you have taken Netflix, but these days, you know it can be the Indian math teacher that teaches to highest school students math, it can be the doctor that looks at the X ray online and gives you a diagnosis. It can be the lawyer that works in Milan to provide an opinion to someone somewhere else.

[Prof. Marino]

Raffaele, I give you, give all of you another easier example, banks. If we keep bank accounts out of our country, for example, in Luxembourg, or in Switzerland, as individuals, the banks are obliged to exchange automatically information to the Italian tax administration on the bank accounts. I do have, together with other Italian resident taxpayers, into the Swiss bank. The Italian tax administration at today is just considering the positions of Giuseppe Marino, Giuseppe Rossi, and so on *vis-à-vis* the information they receive from the Swiss bank through the automatic exchange of information. If they just switch, and through a sort of algorithms, they take all the information coming from a single Swiss bank saying I don't want to know about Giuseppe Marino, I want to know, I want to add all the information arriving to me from UBS. They have automatically the idea of what is the Italian market of UBS in Italy because they can see all the bank accounts that are managed in Switzerland belonging to Italian resident taxpayers. Certainly, that is a measure, then the commissions will be taken in Switzerland, the bankers are in Switzerland, nothing is within the Italian territory. But nevertheless, they have the information of the magnitude of what are the portfolios managed abroad. So, it's then the easiest way to

understand the commissions and to get a revenue, it is indeed a digital, a sort of digital PE because I do not have any material presence, but there is indeed an economic presence. And to give you a detail on that, the banks, the Swiss banks, generally were providing their balance sheet book where they were dividing the fund raising countries, they are no longer publishing it anymore, they are no longer publishing it with the locations of their clients, because that is a clear indication. Certainly, I manage the money in Switzerland, but if the client is resident in Italy, the commission is generated basically in Italy, then of course, the bank, the banker has a cost, the salary, whatever, but the money comes is linked to the Italian territory because of that. That is a very easy example because through the automatic exchange of information, you can immediately know everything.

[Prof. Russo]

I see the one but what I am trying to say is that while in the first case, I see a clear economic rationale for levying the digital service tax. In these cases, I'm not sure I see the rationale because what seems to be the rationale that you're putting forward is the fact that the customer is in Italy, and probably I read into your mind, but you will say once you reach a certain level of revenue, and therefore of customers, I am deeming you to have a significant presence in the country, and therefore you have to pay taxes. What I am saying is that I'm not sure I share that point of view. And I'm not sure that in the world in which we are today, income taxation would be the best way to capture it. Because there is a tax on consumption, it's called VAT, and it is actually levied in these instances that you are describing. And to me, this is one of the things that I would say 80% of the people I spoke to didn't recognize and not because it was the people's fault, it was the report's fault. But this is the biggest achievement of the Action one report of the first BEPS project. Before, when you are ordering on Amazon, you will pay Luxembourg VAT, today you pay Italian VAT. And that's, too. Now, you know, we are really talking about relevant and complex issues, but in my view, if I had, you know, the possibility of designing the system, I would say the best way to capture that manifestation of economic capacity is through VAT, it's not through income taxation, because otherwise, like, I would had to have a system where effectively I have to set the threshold which is going to be a monetary threshold that will assume and say, you know, once you derive, which is exactly what we do in the VAT space. And also the information you were referring to, because of these VAT rules, in the case of digital services, now you get this information. So, to me, the point I'm trying to make is that we should not look at these things in isolation, but from a wider tax system perspective, but fascinating discussion. And effectively what Prof. Marino is saying is already being done by a number of countries, particularly in Latin America, and you know, who is bearing the administrative costs? It is the banks. In many

Latin American jurisdictions, once the bank knows that the bank account of the recipient is the bank account of Netflix, to make the example of before, they have to levy tax. And so, what I'm trying to say that it is something that is very central in today's debate. If you don't mind, I will say let's have a five-minute break, and then we resume, let's say at 10:20.

[Prof. Russo]

First of all, thank you Prof. Marino, it was a very interesting discussion. And I think, effectively, it's the elephant in the room, and it's the elephant in the room even more so today because as we may have all seen, let's say, the chair of the presidency, what should be done in international tax matters has been exercised in the last few years by someone else, and effectively, the G20. Now, the G20 is interesting because it's not an international organization. It doesn't have a legal form or legal personality, but it's a gathering of heads of state of the 20 biggest economies in the world. And as you will see from the membership, many of them are not members of the OECD, which as we have seen since the end of World War Two until today, is the depository of the model tax convention and also as we will see tomorrow, the transfer pricing guidelines, the work on tax transparency *etc.*, but a sort of new player is in town now. And what we have seen with the financial crisis of 2008, the G20 in reality exists since 1999, but it was, I would say, an almost unknown gathering. And then this is a funny story. So, this is one of the behind-the-scenes things that I can say. But when there was the financial crisis in 2008, you remember this moment, this was when the people from Lehman Brothers were going out of the office with boxes, and we thought that the entire financial system would collapse, and that a couple of bigger insurance, conglomerates and banks would collapse too. So, this was a moment where it's like it's the end of the world in financial terms. And the first proposal was to gather a G8+. So, the first proposal was, let's gather the G8, which had already been existing and visible, but let's also invite what is now widely known as the BRICS, Brazil, Russia, India, Indonesia, Saudi Arabia, South Africa, and China. And that's also another funny story not because the BRICS like now, they are also a bloc now, they have created their own bank. But the BRICS didn't exist, it's an invention of a trader from Goldman Sachs that put them together, you know, in a bucket because they had similar growth perspectives, but then if you look at the economy, natural resources, population. But anyway, the BRICS said forget about it, we're not coming to your place as invited as plus. Let's do it with the G20, which already exists, but let's upgrade it to the level of heads of state rather than keeping it as a meeting of ministers of finance and central bank governors. And that's how the G20 comes about, and it comes about with a very strong mandate, which is to save the financial and economic system as we have known. And what is the result of this is the G20 mandates, in this case, the OECD to do work in the tax field.

Because if you remember, you know, in a way the link is not evident, but if you remember the causes of the financial crisis, it was fundamentally the subprime and what characterizes this instrument, in addition to the fact you know, that they were pulling together risk and therefore, get something, was the use of secrecy jurisdiction, use of jurisdictions that would not provide the information on tax matters when asked because of domestic law limitations. And that's why the G20 decided to attack tax transparency. This is the G20 in London, Gordon Brown comes out of the meeting, he was then Prime Minister in the UK and says the era of bank secrecy is over. And that's the work on exchange of information on request. At that time, it was only on request, you know, before this development if, say, the Italian Revenue Agency suspected that Raffaele Russo had an account in Switzerland where he was bringing money to Switzerland, they will ask the Swiss: can you tell me if Raffaele has a bank account, and the Swiss would say no, we can't because it's against our Constitution, because it's thanks to us that a lot of Jews were able to save their wealth when the Germans went after them and we're not going to compromise that just for a stupid tax assessor. This was the situation. Then G20, financial crisis, G20 had views of the bank secrecy, well, if I ask, I can get the information. But then countries realize that you know, there was a space and so the question became, can I ask for information not about Raffaele but maybe about a group of taxpayers? Can you tell me the people whose family name is Russo and we have two here, Raffaele and Max, that have a bank account in Switzerland. And then, I'm taking Switzerland as an example, but you know, only in the OECD, it was Switzerland, it was Luxembourg, it was Ireland, Austria, that had bank secrecy, in addition to all the more traditional so-called tax havens, you know, Cayman, BVI, Jersey *etc.* So, we moved from bank secrecy, from I cannot tell you anything, to I will give you something if you ask, to well, actually, it can also be a big ask, and you can ask also about group of taxpayers. And then boom, Obama comes in in the United States, and the United States passes FATCA, Foreign Account Tax Compliance Act. So basically, all of a sudden, either Swiss banks, or Lux banks or Austrian banks provide information to the United States about United States account holders, or they will be subject to a 30% withholding tax on any payment that goes through them. And that's when the era of automatic exchange of information starts. And that's where the G20 mandates the OECD to develop the Common Reporting Standard, which is the mechanism through which today, every financial institution has to provide information to its local tax administration about non-resident account holders, and the local tax administration automatically shares it based on the template with the tax administration of the country of residence of the account holder. So, if you have a bank account in Switzerland, you better declare it now because your tax administration is going to know it anyway. Frankly, all these will have not been possible without the G20. The second piece that the G20 decided to attack after, you

know, this concept of tax transparency and global individual wealth was the taxation of multinationals. And again, it was always in this environment where you know, people were upset, there was the crisis. And then you had these headlines about large multinational groups paying very low effective tax rates or not paying taxes at all. And that's the BEPS project, and then the two pillars that are under discussion these days. But if you look at post-G20, look at some of the numbers of the OECD. Here on the left, you have the member countries. But here you have the number of countries that are involved in the OECD work, whether it's the inclusive framework on BEPS, whether it's the Global Forum on transparency and exchange of information, whether it's the coordinating body of the Multilateral Convention on Mutual Assistance in Tax Matters, whether it's the multilateral instrument to implement the treaty measures that were developed in the work of BEPS. So, what I'm trying to say here is that if we look at where we started from, it was League of Nations, First World War, League of Nations, Second World War, the two models Mexico, London, then it's taken over by the OECD, which was the OEEC. And then the G20 comes in, and also the nature of the OECD work changes, the governance of the OECD work changes. So now, it's not only open to member countries, but it's open also to non-member countries. To be fair, it was already the case before, but they were invitees, you know, come and listen. Now it's come and you know, you have the same rights and the same obligation that I have as a member of the organization. If, conceptually, if you think about the inclusive framework on BEPS, the Global Forum, the coordinating body of the multilateral on the MAAC, on the Mutual Administrative Assistance Convention, the link with the OECD is the fact that they are served by the OECD Secretariat, which is people like I was that, like, we don't represent, they don't represent any country. They do the technical work, and then at the political level, countries agree or not. But this is the OECD tax work today. And why I'm saying it? I'm saying it because it's closely related to what's happening. And there too, I find myself in the same position where I found myself 20 years ago with the Philip Morris decision, thinking like why people can't just look beyond. And what's beyond? On one side, you have the UN, and we haven't talked about the UN so far. Now, the UN was officially established in 1945. It has now roughly 200 members. It's well known because it does many things. It's supposed to promote peace, security and cooperation. We know the function, we know the General Assembly, we know the Security Council, we know that there are certain permanent members and other rotating members. But from our perspective, what did the UN do in tax matters, because you would have expected that, you know, the UN is the legitimate successor of the League of Nations. So, you will have expected them to take over the work of the League of Nations, they didn't. Look, set up in 45, it's only 1967 that they do what? They established a committee of experts on international cooperation in tax matters. Now, mind you, this is very

different from the committees of the OECD, the Committee on Fiscal Affairs. Why? Because the people that are in this committee of experts are there in their personal capacity. They are appointed, they are nominated by governments, but they are there in their personal capacity, which means they can say whatever they want, they can do whatever they want, it doesn't bind the government that has appointed them. Historically what they have been doing at the UN? Well, another model convention, the UN Model Convention, which was for the first time published in 1980, and was in a way, taking the OECD model and on the margins, amending it in order to ensure increase source taxation which was perceived as to be in the interest of developing countries. And then, for 20 years, the model was not updated. Then there was an update in 2001, one in 2011, and then 2017, and 2021, which have become more substantial updates. As I mentioned in the previous slide, when I started at the OECD in 2007, one of my main tasks was to visit non-member countries, and to explain to them the model tax convention and the transfer pricing guidance. It's not an easy task, if you can imagine that, like you go to India with the 40 Indian tax officials telling them that the OECD model is the best thing in the world and they should follow it. Well, I never did that because I didn't think that was the case. What I did when I went to India, when I went to China, when I went to Indonesia, when I went to Brazil, was to tell them, this is what the model says, if you adopt a provision, which is the one of the model, the expectation is that to interpret it as the commentary says. I'm not telling you this provision is good or bad, I'm telling you this is what this provision says, then it's your policy decision to decide to negotiate treaties with this provision or with another one. And you know, the usual thing was, oh, no, we follow the UN model, we follow the UN model, we follow the UN model, and what I usually told them, and I think it's still right today, if I was a developing country with no treaty network, and I had to develop my treaty network, the best thing I will do is instead of looking at the OECD, or at the UN model, to look at the treaty network of New Zealand. To me, it's the country that has secured in the most balanced and effective way source taxation. And if you look at the observations and the reservations of New Zealand, you recognize that, and this is to say that the idea that the OECD is made only of resident countries, it's just stupid. Turkey, Mexico, New Zealand, Australia, Czech Republic, Poland, Slovak Republic, all these countries see themselves as recipient of investment. Then you have another group of countries that, depending on the situation, may be resident or source country. Italy is a very good example, France. You can be both on the inbound or on the outbound side. So, this idea that, you know, the model is entirely made to secure residence taxation, to me, it's only a way to frame the debate in a controversial and conflictual way, as we said yesterday, which has been the frame that has been put forward also thanks to civil society and NGOs. The model favors resident taxation because it considers that to be more aligned with the

underlying economic principles that should govern the allocation of taxing rights. Or because in some cases, it is considered to be a simplification. The question is, is this model a good model for the relation between the developed and the developing countries? Remember the example we were discussing before with Prof. Marino, if I am Italy, and you are India and let's say you have 100 billion coming into India because Indian math professors are teaching online to Italian students. I'm making this example because I saw that yesterday, I saw a number of friends of mine and I found it fascinating. On the other hand, Italy gets 100 billion from, I don't know, selling brakes for Tata Motors. And then you say, you know what, instead of me taxing yours and you taxing mine, we just say that everyone taxes his own, and that's it, and we simplify the life of everyone. This was the basis of the OECD model. So, I am all in regarding the idea of having different models depending on what are the economic objectives that one wants to achieve. And to me, that is not the UN model, and particularly in the recent past, the UN model has been stuffed with provisions that, to me, don't make much sense. I'm talking about 12A and 12B. But what we will do is that tomorrow, tomorrow is the one where we will focus more on content. So now we're still on the strategy, geopolitics, what's happening. Tomorrow, I want to go deep into the OECD versus UN content wise. First of attraction, what does it mean? What does it not mean? Definition of royalties, 12A, 12B, taxation of services. I want to discuss with you these differences and provide you with the tools to make up your mind on the current debate, which is the topic of the last presentation on Thursday, which is who should draft the rules? Should it be the UN or should it be the OECD?

Now, pausing for a moment, the EU, because, in a way, they do play a role in international taxation, a very important role for EU countries in indirect taxation, but a relatively irrelevant role also in relation to direct taxation. In the field of indirect taxation, obviously we have harmonization and that makes sense because at the moment we are a single market. So, in a single market you cannot have excise or VAT creating obstacles to the free movement of goods or services. In the area of direct taxation, basically, it is left to Member States, but the Commission can make proposals, but they have to be approved with unanimity, which is the reason why not much has been done in the area of direct taxation, with the exception of two directives, the Parent-Subsidiary and the Merger directives that were issued in 1990. Then Interest and Royalties Directive that was a bit later, was in 2003, and then ATAD I and ATAD II in 2014 and 2015, and then the minimum tax of last year. But basically, if you discount the last two, the ATAD and the minimum tax which effectively were the tool through which the results of the BEPS project as regards ATAD, and the results of pillar two as regards the minimum tax directive, were implemented into EU legislation, which then itself is transposed into national legislation as we are seeing these days. You must have seen it, Luxembourg put out to the minimum tax yesterday,

and the number of countries are including it in their budget law for this year so that it starts from next year. Then there was Parent-Subsidiary Directive and Interest and Royalties Directive that basically eliminated any withholding tax on certain payments. And according to some, in particular, the Interest and Royalties Directive, but also the Parent-Subsidiary Directive were sort of the legal tools through which income was shifted out of Europe into low tax jurisdictions. Because effectively what happened was that all countries that had the withholding tax on outbound payments were not in the position to apply this withholding tax when the recipient was another EU company belonging to the same group. And usually, this EU company belonging to the same group was itself established in a country which did not have an outbound withholding tax, so that they would, what they would get, they would be able to pay out, to someone in a zero or no tax jurisdiction, and therefore what you had was a deduction at the level of the first payer without taxation anywhere, and the income shifted in a low or nominal tax jurisdiction. When they were proposed, they were considered to be, you know, the tool through which to ensure additional integration within the single market. I'm saying this because sometimes decisions that seem like a good idea at the time can later appear questionable. It's like the story of the guy in the desert who sits on a cactus. When asked why he did it, he replies that It seemed like a good idea at the time.

This illustrates how perceptions – especially in tax policy – can change significantly over time. So, the Interest and Royalties Directive from being, you know, a tool for integration, supporting investment, cross-border activity, has then become a tool for tax avoidance, bad tax planners and shifting income into no-tax jurisdictions. And in general, my approach is, in these cases, I tend not to trust extremists, on one side or on the other, and we have a lot of extremists in tax policy and in the position that they present. So, probably both of them are true and as always, we need to find the right balance between conflicting interests.

Other work that the EU has done is in the area of eliminating economic double taxation, particularly in the case of transfer pricing adjustments and we have a convention, so which is a separate legal instrument that provides for procedures to eliminate double taxation, plus all the work that has been done at the level of the EU to implement the same standards that we discussed before in relation to tax transparent, which now will be updated with the new Common Reporting Standard and eventually within the EU, also with the automatic exchange of information on crypto assets, which at the moment are not covered but considering their relevance, again, at the request of the G20, the OECD did the work and published the Crypto Asset Reporting Framework for comments. People sending comments, the OECD analyzed comments and arrived at the final version of the CARF. The CARF was approved by the Inclusive Framework and it was welcomed by the G20. Now it is not an international standard yet because in many countries crypto assets are banned, so these countries don't

want to implement regulations that appear to allow the circulation of crypto assets. And therefore, at the moment it's not an international standard but there are already 50 countries that have signed up to it and will implement it. But this is just to tell you that one of these blocs is the EU, which has already approved a new directive for the implementation of the CARE, of the reporting framework on crypto assets. So, what you see is G20, OECD, EU, and on the side of this, we see the UN. The UN has been carrying out a different type of game and also different type of work from a content perspective. And my idea, if you agree, is that tomorrow we go into the details of what the UN does and what the OCD does and what are the differences there and what countries will do in relation to one or another, and then on Thursday we go back to, sort of, the overall government. But I can already tell you and I'm writing an Article on this which I hope will be published soon that on the 22nd of November, the General Assembly of the UN, the Second Committee of the General Assembly approved a resolution according to which the tax work has to be done at the UN via a group of representatives of government. So, stepping up the group of experts and calling for a framework convention that would allow the UN to officially and formally compete with the OECD. Personally, I think this is going to be a disaster and I have an alternative proposal which I will discuss with you on Thursday. So, for today, I think we are done. I thank you again for your attention and I pause to see if there are comments, questions, remarks.

[Prof. Marino]

Actually, thank you again Raffaele, I do have a question for you, it has to do with the EU. I would like to have your impression on what is the relationship between the OECD and the EU as far as the taxation policy is concerned. I mean what is your impression on the powers into the field?

[Prof. Russo]

Well, certainly the EU has been implementing all of the minimum standards and common standards developed by the OECD. This is the fact. So, certainly I think it's good. I think it is not good when, first, there is agreement at the level of the OECD of the inclusive framework, and then the EU, via implementation, changes that agreement. This is something that we have seen, for example, with the so-called tax haven, on which Prof. Marino is an expert, because the OECD model rules for the exchange of information by platform operators that had been agreed by consensus by all countries, including all the EU countries, and the Commission, which is a member of the OECD, participates in the OECD's work as a member. It didn't include the sale of goods, and then the EU directive that implemented it included the sale of goods. So, this is something that I don't think it's useful because if there is agreement, there is agreement. But if, like when I have to act as a father with my kids, I say let's

agree that we watch one cartoon, okay fine, one cartoon, then the cartoon is over, well, let's do another one. But no, we agreed one. And if you start getting into that loop, then you never stop, and that means you don't have agreement anymore. Second, as a truly convinced European integration supporter, I wish the EU could do more. And to be honest, the proposals that I see, I don't see them as having success. We have been discussing, Alberto knows that very well, you know, a common consolidated corporate tax base which will be, you know, formal apportionment in the EU for 20 years, 25 years, no success. We have, the things that were approved are the ones on the slide. So, all the rest hasn't been approved and also, if you look at the resources that are there, I think much more could be done. But as the history of the EU tells us, it's always a step-by-step process, and also in that space with much wider implications and because of what we were discussing before of the recovery and resilience plan, and because, you know, what's happening with the stability mechanism, and you know the mandate that has been given to Mr. Mario Draghi to come up with the proposal for a new governance, makes me hopeful that you know, we could be closer to an additional step *vis-à-vis* European integration, and this will certainly have an impact also on tax matters.

[Prof. Marino]

That's true, let's hope for that, for sure.

Well, thank you very much for your speech, Raffaele, and thanks everybody for having the patience to stay with us, and tomorrow the lecture is going to be on presence at the university. Nevertheless, there's going to be also the zoom link, so be there.

Thank you very much again and enjoy the rest of the day.