Article

# World Tax Policy in the World Tax Polity? An Event History Analysis of OECD/G20 BEPS Inclusive Framework Membership

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## INTRODUCTION

Tax scholars generally agree that the years since the 2008 financial crisis have seen the emergence of a new international tax order, characterized by an increase in transparency, cooperation, and coordination among countries in matters of international tax policy.[1] Such increased cooperation and coordination can be seen, for example, in recent global talks and moves towards agreement on a global minimum tax.[2] A central—if not *the* central—component of this new order is the Organisation for Economic Cooperation and Development (OECD) and G20 Base Erosion and Profits Shifting (BEPS) Project, which was developed starting in 2013, and the BEPS Inclusive Framework, which was established in 2016.[3] The BEPS Inclusive Framework is a multilateral agreement through which member countries commit to reforming their domestic tax laws and treaties to reflect the standards and policies articulated by the Framework. Its goal is to curtail tax avoidance, profit shifting, and other harmful behaviors by multinational enterprises (MNEs) that erode domestic tax bases and drain tax revenues. Spearheaded by the OECD at the request of the G20, the BEPS Inclusive Framework is undoubtedly one of the most important recent developments in international taxation.[4] It is having clear impacts on domestic and cross-border tax law regimes. The effectiveness and reach of the BEPS Project and Inclusive Framework will impact how much revenue nation states can raise, the global distribution of tax revenues, and the capacity of welfare states around the world.

While the BEPS Project and Inclusive Framework are widely regarded as an important step in preventing harmful tax base erosion and non-taxation of MNE profits, they have also been criticized as failing to prioritize developing-country interests and creating undue costs and burdens for lower-income and developing countries. Yet a large number of such countries have signed on to the BEPS Project by joining the Inclusive Framework. This Article investigates how

1. Allison Christians, *BEPS and the New International Tax Order*, 2016 BYU L. REV. 1603 (2016); Ruth Mason, *The Transformation of International Tax*, 114 AM. J. INTL L. 353 (2020); *cf.* Yariv Brauner, *Treaties in the Aftermath of BEPS*, 41 BROOK. J. INT'L L. 973 (2016).

2. *International Community Strikes a Ground-Breaking Tax Deal for the Digital Age*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (October 8, 2021), https://www.oecd.org/tax/international-community-strikes-a-ground-breaking-tax-deal-for-the-digital-age.htm.

3. *BEPS: Inclusive Framework on Base Erosion and Profit Shifting*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (last visited Nov. 24, 2021), https://www.oecd.org/tax/beps/.

4. *See* Nana Ama Sarfo & Stephanie Soong Johnston, *A New World Tax Order: The Inclusive Framework and Its Future*, 104 TAX NOTES INT'L 975 (2021) (discussing history and establishment of the Inclusive Framework and noting OECD countries' key role in setting BEPS standards).

these countries came to join the Inclusive Framework, despite the clear burdens, acknowledged limitations, and questionable benefits that it presents to some countries. It uses event history regression methods to investigate the decisions of these countries to join the Inclusive Framework in order to better understand the mechanisms underlying the proliferation of the new global tax consensus.[5]

The proliferation of BEPS Inclusive Framework membership through the work of the OECD and G20 might appear to reflect the emergence of a shared "world polity" in global tax matters.[6] The world polity theoretical perspective—which derives from neo-institutionalist theory in sociology and organizational studies[7]—emphasizes how international organizations and non-governmental organizations have come to play an important role in generating blueprints, norms, scripts, and shared global cognitive models that result in the emergence of a shared world culture, despite differences among countries.[8] World polity theory interprets global relations and structures as reflective of distinctive world-cultural norms and models that are constituted and shaped by international organizations and nongovernmental organizations (NGOs). This shaping ultimately results in isomorphism in policy adoption even across differently situated countries as they seek legitimacy and credibility.[9] The world-polity perspective has been applied to analyze various global phenomena, including the adoption of environmental policies and the proliferation of human rights treaties.[10]

The world polity analytical perspective should clearly be taken seriously in the international tax case: the OECD has long acted as a de facto "world tax organization,"[11] creating policy, providing model treaties, and setting the ground rules for international tax negotiations and policymaking.[12] The large number of

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5. Specifically, this Article uses Kaplan-Meier estimation and Cox proportional hazards regression methods. *See* Edward L. Kaplan & Paul Meier, *Nonparametric Estimation from Incomplete Observations*, 53 J. AM. STAT. ASSOC. 457 (1958); David R. Cox, *Regression Models and Life-Tables*, 34 J. ROYAL STAT. SOC'Y: SERIES B (METHODOLOGICAL) 187 (1972).

6. John W. Meyer, John Boli, George M. Thomas & Francisco O. Ramirez, *World Society and the Nation-State*, 103 AM. J. SOC.144 (1997) (analyzing nation states through a world polity lens).

7. *See, e.g.*, John W. Meyer & Brian Rowan, *Institutionalized Organizations: Formal Structure as Myth and Ceremony*, 83 AM. J. SOC. 340 (1977).

8. Jason Beckfield, *The Social Structure of the World Polity*, 115 AM. J. SOC. 1018 (2010); John Boli & George M. Thomas, *World Culture in the World Polity: A Century of International Non-governmental Organization*, 1997 AM. SOC. REV. 171 (1997); Meyer, Boli, Thomas & Ramirez, *supra* note 6; David Strang & John W. Meyer, *Institutional Conditions for Diffusion*, 22 THEORY AND SOC'Y 487 (1993).

9. Meyer, Boli, Thomas & Ramirez, *supra* note 6, at 151-52.

10. Wade M. Cole, *Sovereignty Relinquished? Explaining Commitment to the International Human Rights Covenants, 1966-1999*, 70 AM. SOC. REV. 472 (2005); ANN HIRONAKA, GREENING THE GLOBE (2014); Evan Schofer & Ann Hironaka, *The Effects of World Society on Environmental Protection Outcomes*, 84 SOCIAL FORCES 25 (2005); Christine Min Wotipka and Kiyoteru Tsutsui, *Global Human Rights and State Sovereignty: State Ratification of International Human Rights Treaties, 1965–2001*, 23 SOC. FORUM 724 (2008).

11. Arthur J. Cockfield, *The Rise of the OECD as Informal World Tax Organization through National Responses to E-commerce Tax Challenges*, 8 YALE J. L. & TECH. 136 (2005).

12. *Id.*; *see also* Diane M. Ring, *Who is Making International Tax Policy: International Organizations as Power Players in a High Stakes World*, 33 FORDHAM INT'L L.J. 649 (2009) (providing a case study of the OECD's role in acceptance and proliferation of mandatory arbitration provisions in tax treaties and discussing implications for the role of international organizations in tax policymaking).

countries joining the BEPS Framework reflects a clear case of growing policy convergence and isomorphism facilitated and encouraged by the OECD with the backing of the G20. Moreover, tax scholars have frequently described the OECD's influence in international taxation in terms of norms, which are important in world polity theory.[13] If the world polity analytical framework does hold power in describing the recent global tax changes, this could have important implications. For example, if countries are agreeing to global tax norms and blueprints primarily to gain legitimacy on the world stage, one might ask whether the new Framework is really in countries' best interests. It is also possible that a "loose coupling" between the decision to join and subsequent compliance may appear, particularly where the technical implementation of institutionalized rules conflicts with a country's other goals.[14]

In order to better evaluate the application of world polity theory to global taxation, it is essential to uncover the underlying mechanisms and processes by which global tax norms and blueprints have become institutionalized and adopted. Recent work has taken seriously the task of uncovering such underlying mechanisms in transnational processes.[15] For example, following the delineation of pathways set forth by DiMaggio and Powell, Wotipka and Tsutsui identify and attempt to tease out the specific effects of three distinct pathways—normative, mimetic, and coercive—in nation states' ratification of human rights treaties.[16] This Article follows this approach to investigating the pathways leading to countries' decisions to join the BEPS Inclusive Framework, specifically probing whether normative, mimetic, or coercive pathways have driven the unfolding of this world tax polity.

I ultimately find support for the notion that participation in the new tax world polity has occurred through both normative and coercion-based pathways. With respect to normative pathways, I find that participation in prior OECD tax initiatives—in particular, the OECD Global Forum on Transparency and Information Exchange (the OECD Global Forum), a longstanding multilateral OECD initiative to increase tax transparency—was correlated with an increased hazard of subsequently joining the BEPS Inclusive Framework.[17] (Following the nomenclature for event history and survival analysis methods, "hazard" refers to

13. Mason, *supra* note 1, at 354, 370 (characterizing the OECD BEPS Project as having "reflected and effectuated" a new "full taxation" norm); Hugh J. Ault, *Reflections on the Role of the OECD in Developing International Tax Norms*, 34 BROOK. J. INT'L L. 757 (2009) (discussing OECD's work process "as reflected in . . . projects in which the OECD could be said to be developing international tax norms").

14. Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 1983 AM. SOC. REV. 147, 155 (1983); Meyer & Rowan, *supra* note 7, at 341 (noting how formal organizational structures and actual practices of organizations may be "loosely coupled" from one another in order to maintain "ceremonial conformity").

15. *See generally* MARTHA FINNEMORE, NATIONAL INTERESTS IN INTERNATIONAL SOCIETY (1996); THE CULTURE OF NATIONAL SECURITY: NORMS AND IDENTITY IN WORLD POLITICS (Peter J. Katzenstein ed., 1996); Wotipka & Tsutsui, *supra* note 10.

16. DiMaggio & Powell, *supra* note 14 (identifying coercive, mimetic, and normative processes leading to institutional isomorphism among organizations); Wotipka & Tsutsui, *supra* note 10, at 733-38.

17. *Global Forum on Transparency and Exchange of Information for Tax Purposes*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (last visited Nov. 24, 2021), https://www.oecd.org/tax/transparency/.

the risk of joining the BEPS Inclusive Framework, given that the country has survived up until a specific time point; a country "survives" by not joining the Framework.) To a lesser extent, early adoption of the OECD's Multilateral Competent Authority Agreement regarding the Common Reporting Standard (CRS MCAA) as of 2014 was also correlated with an increased hazard of joining the Framework.[18] By contrast, in most models, joining the longstanding OECD Convention on Mutual Administrative Assistance in Tax Matters (MAATM) prior to 2013 did not appear to be correlated with the hazard of Framework membership after controlling for other variables.[19] Nor was there a significant relationship between the number of bilateral tax treaties that a country had in force (which arguably reflects integration into the world tax treaty network and exposure to existing OECD and other model treaties)[20] and the hazard of joining the Inclusive Framework in most models. While further investigation is required, these findings point to the relatively recent vintage of the new global tax order and suggest the importance of distinguishing the ways in which various prior OECD initiatives relate differently to the BEPS Project. The Article's findings also suggest that the adoption of older bilateral forms and models (such as tax treaties) does not necessarily correlate with participation in the new multilateral order. This arguably supports scholars' observations that that the new international tax order involves a "transformational" move away from bilateralism and towards increased multilateral coordination in tax policy.[21]

I also find evidence suggesting that coercion-based pathways were important in the proliferation of BEPS Inclusive Framework membership. Inclusion in the contemporaneous European Union tax haven listing process (referred to in further mentions as the scoreboard) and on a related watch list (commonly referred to as the EU greylist)—which were designed to shame countries with harmful tax regimes into correcting problematic features, under threat of sanctions—was significantly correlated with an increased hazard of joining the Inclusive Framework.[22] This highlights the role played by parallel

18. The CRS MCAA is an instrument through which countries commit to exchanging information with each other under the OECD Common Reporting Standard, or CRS. *See Signatories of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and Intended First Information Exchange Date*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (status as of Aug. 12, 2021), https://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/crs-mcaa-signatories.pdf. The CRS was approved by the OECD Council on July 15, 2014. *See Text of the CRS Multilateral Competent Authority Agreement*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (last visited Nov. 24, 2021), https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/multilateral-competent-authority-agreement.pdf.

19. *Convention on Mutual Administrative Assistance in Tax Matters*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (June 1, 2011), *available at* https://www.oecd.org/tax/the-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters-9789264115606-en.htm.

20. My thanks to Yariv Brauner and other attendees of the 2021 Law and Society Association international tax panels for this insight.

21. HUGH J. AULT, TAX COMPETITION AND TAX COOPERATION: A SURVEY AND REASSESSMENT. INTERNATIONAL TAXATION IN A CHANGING LANDSCAPE., § 1.03 (2019) (discussing new institutional mechanisms that facilitate international tax cooperation, including the BEPS Inclusive Framework); Mason, *supra* note 1.

22. *First Step Towards a New EU List of Third Country Jurisdictions: Scoreboard*, EUROPEAN COMM'N (Sept. 13, 2016) (on file with author); *see also Fair Taxation: Commission Launches Work to Create First Common EU List of Non-Cooperative Tax Jurisdictions*, EUROPEAN COMM'N (Sept. 15, 2016), https://ec.europa.eu/commission/presscorner/detail/en/ip_16_2996; *Evolution of the EU List of*

EU naming and shaming processes in amplifying the proliferation of the OECD/G20 BEPS Project, painting a picture of the emerging world tax polity as reflecting not just normative isomorphism, but also countries' concerns about the economic and political consequences of EU listing. By contrast, I found no evidence that the receipt of foreign aid significantly affected a country's hazard of joining the Inclusive Framework, suggesting that the receipt of such aid was not conditioned on BEPS membership. I also found no evidence of imitative processes driving BEPS membership; that is, an increase in the number of countries in the neighboring region or in the world joining the Inclusive Framework did not correlate with an increase a country's membership hazard.

In short, this Article reveals how international organizations like the OECD can work in tandem with powerful actors like the EU to generate far-reaching scripts, norms, and models that shape global tax institutions and ultimately affect domestic tax regimes around the world. Its findings show how these actors may exert pressure on developing countries to adopt these scripts through a combination of normative and coercion-based processes.[23] These findings also have implications for high-stakes claims frequently made by international tax commentators and policymakers. In particular, the findings about the interplay between EU tax haven listing processes and Inclusive Framework membership provide an important counter-narrative to accounts that have emphasized the increased voice and representation enjoyed by developing countries in the emerging global tax order.[24] While a common and arguably dominant narrative surrounding the BEPS Project is that developing countries are well-represented and willing participants in the project by virtue of the endorsement and presence of the G20 in spearheading it,[25] the apparent role of EU listing processes in

*Tax Havens* (as of Oct. 5, 2021), EUROPEAN UNION (retrieved Nov. 24, 2021 from https://ec.europa.eu/taxation_customs/document/download/f48f6e6e-3ad0-4c6b-8d84-173ab47890ae_en) (on file with author); *Evolution of the EU List of Tax Havens*, European Union (as of October 6, 2020), EUROPEAN UNION (retrieved March 7, 2021 from https://ec.europa.eu/taxation_customs/sites/taxation/files/eu_list_update_06_10_2020_en.pdf) (on file with author); *Evolution of the EU List of Tax Havens* (as of Feb. 18, 2020), EUROPEAN UNION (retrieved March 7, 2021 from https://ec.europa.eu/taxation_customs/sites/taxation/files/eu_list_update_18_02_2020_en.pdf) (on file with author).

23. Beckfield, *supra* note 8 (examining the implications of our increasingly fragmented world polity social structure for isomorphism, script adoption, and other international phenomena); Terence C. Halliday, Susan Block-Lieb & Bruce G. Carruthers, *Rhetorical Legitimation: Global Scripts as Strategic Devices of International Organizations*, 8 SOCIO-ECON. REV. 77 (2010); Alexander E. Kentikelenis & Leonard Seabrooke, *The Politics of World Polity: Script-Writing in International Organizations*, 82 AM. SOC. REV. 1065 (2017).

24. *See, e.g.*, ORGANISATION FOR ECON. CO-OPERATION & DEV., BEPS FINAL REPORTS: EXPLANATORY STATEMENT 2015 at 4 (2015), https://www.oecd.org/ctp/beps-2015-final-reports.htm [hereinafter OECD BEPS 2015 FINAL REPORTS] (describing the 2015 BEPS reports as "the results of a major and unparalleled effort by OECD and G20 countries working together on an equal footing with the participation of an increasing number of developing countries"); ORGANISATION FOR ECON. CO-OPERATION & DEV., INCLUSIVE FRAMEWORK ON BEPS PROGRESS REPORT JULY 2016-JUNE 2017 at 4 (2017), https://www.oecd.org/tax/beps/inclusive-framework-on-BEPS-progress-report-july-2016-june-2017.pdf [hereinafter BEPS PROGRESS REPORT 2016-17] (describing the involvement of "interested non-G20 countries and jurisdictions, particularly developing economies, on an equal footing"); ORGANISATION FOR ECON. CO-OPERATION & DEV., OECD/G20 INCLUSIVE FRAMEWORK ON BEPS: PROGRESS REPORT JULY 2018-MAY 2019 at 2, *available at* https://www.oecd.org/tax/beps/inclusive-framework-on-beps-progress-report-july-2018-may-2019.pdf (describing the BEPS Project as "a case study in how multilateralism can be effective in the face of today's global challenges").

25. *See* sources cited *supra* note 24.

motivating BEPS membership suggests that fears of the economic and political consequences of being listed might to some extent be driving developing country participation, and that this pathway might merit closer scrutiny.[26] If coercion-based pathways are indeed playing a role in motivating Inclusive Framework membership and participation in follow-on initiatives, this implicates the legitimacy and inclusiveness of the BEPS Project and raises questions about its likelihood of success and substantive outcomes (including distribution among countries).

This Article is organized as follows. Part I provides background on the OECD/G20 BEPS Project and the BEPS Inclusive Framework, outlining its core features, the role of the OECD in its establishment, and its application to developing countries. Part II discusses the world polity theoretical framework and its relevance to the BEPS case, using theory, prior research, and factual observation to generate research hypotheses. Part III describes the data analyzed and methods used in this Article. Part IV summarizes the Article's key findings. Part V discusses the implications of these findings, both with respect to sociological theory and for the future of global tax policymaking.

## I. BACKGROUND

### *A. The New International Tax Order and the BEPS Project*

It is widely acknowledged that there has been a fundamental shift in the international tax order over roughly the last decade.[27] Some even characterize this shift as nothing short of a transformation.[28] The shift has occurred both at the nation-state level and at the global and regional levels through the activities of international organizations and blocs such as the G20, OECD, and EU. A number of factors have contributed to these developments, including the insufficiency of public revenues triggered by the 2008 financial downturn; data hacks and leaks of offshore bank account and tax haven corporate registry information, which revealed cross-border tax avoidance and evasion; leaked document troves exposing the potentially problematic tax ruling practices of jurisdictions such as Luxembourg; and increasing press coverage of how MNEs minimize taxes using favorable offshore tax regimes and tax treaties with other countries.[29]

Scholars have identified several key substantive characteristics of this international tax shift. These include moves towards greater cross-border

26. *See* Matthew Collin, *Does the Threat of Being Blacklisted Change Behavior?*, BROOKINGS GLOBAL ECONOMY & DEVELOPMENT WORKING PAPER 139 (2020), https://www.brookings.edu/wp-content/uploads/2020/06/EU_working_paper_139_mcollin.pdf.

27. *See, e.g.*, Yariv Brauner, *What the BEPS*, 16 FLA. TAX REV. 55 (2014).

28. *See* Mason, *supra* note 1.

29. *See* Omri Marian, *The State Administration of International Tax Avoidance*. 7 HARV. BUS. L. REV. 1 (2017) (analyzing Luxembourg administrative practices with respect to tax rulings based on leaked documents); Shu-Yi Oei, *The Offshore Tax Enforcement Dragnet*, 67 EMORY L.J. 655 (2017) (analyzing U.S. legislation enacted to address offshore tax evasion); Shu-Yi Oei & Diane Ring, *Leak-Driven Law* 65 UCLA L. REV. 532 (2018) (discussing the impacts of leaked data regarding tax avoidance and evasion on tax law).

information sharing and transparency and the dismantling of tax havens and bank secrecy; more attention to elimination of MNE base erosion and profits shifting behaviors; and a move beyond unilateral and bilateral country action (for example, through bilateral tax treaties) and toward multilateral tax coordination among countries, including through the OECD/G20 BEPS Project.[30] More recently, the world has also seen emerging fights over how to raise more revenues or generate a fairer allocation of worldwide tax revenues through, for example, digital taxes and initiatives to tax income on the basis of where value is created rather than based on traditional source or residence concepts.[31]

Of these elements, the move towards multilateralism and the role played by the BEPS Project in facilitating it are widely regarded as being of central importance. It is certainly the case that the new international tax order has unfolded through other initiatives, including the OECD Common Reporting Standard (CRS), which has been adopted by a number of countries; the Global Forum on Transparency and Exchange of Information for Tax Purposes; and the further adoption of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the Multilateral Instrument) by a number of countries.[32] However, the BEPS Inclusive Framework is widely acknowledged to be the key vehicle through which increased multilateral coordination and cooperation have come into existence.

The basic story of the BEPS Inclusive Framework's origins and evolution is well known to tax law experts and policymakers.[33] In 2012, in response to revelations about cross-border tax avoidance by MNEs, and recognizing the need for coordinated action among nation states, G20 leaders charged the OECD—an international organization that has played a key role in international tax

30. Ault, *supra* note 21, § 1.03 (discussing new emerging mechanisms that facilitate international tax cooperation among countries); Arthur J. Cockfield, *Protecting Taxpayer Privacy Rights under Enhanced Cross-Border Tax Information Exchange: Toward a Multilateral Taxpayer Bill of Rights*, 42 UBC L. REV. 419 (2010) (discussing need to protect taxpayer privacy in light of increased tax information exchange); Marian, *supra* note 29 (discussing harmful impacts of Luxembourg tax rulings practices); Oei, *supra* note 29 (discussing U.S. tax law reforms to address offshore tax evasion); Oei & Ring, *supra* note 29 (discussed greater attention to offshore tax avoidance and evasion in aftermath of tax leaks); Pasquale Pistone, *Coordinating the Action of Regional and Global Players During the Shift from Bilateralism to Multilateralism in International Tax Law*, 6 WORLD TAX J. 3 (2014).

31. *See, e.g.*, TAXATION AND VALUE CREATION (Werner Haslehner & Marie Lamensch, eds., 2021); Allison Christians & Tarcisio Diniz Magalhaes, *A New Global Tax Deal for the Digital Age*, 67 CANADIAN TAX J. 1153 (2019) (noting shift from bilateralism to multilateralism in international tax policymaking).

32. Alongside this new multilateralism, we have also seen diffusion of bilateral agreements concerning transparency, exchange of information, and substantive tax policy matters (for example, FATCA and its network of IGAs in the United States), as well as unilateral initiatives entered into by various nation states (including digital tax legislation and proposals). *See* Susan C. Morse, *Ask for Help, Uncle Sam: The Future of Global Tax Reporting*, 57 VILL. L. REV. 529 (2012); Susan C. Morse, *Why FATCA Intergovernmental Agreements Bind the U.S. Government*, 70 TAX NOTES INT'L 245 (2013).

33. *See* Sarfo & Soong Johnston, *supra* note 4, at 976-77 (discussing the history and origins of the BEPS Inclusive Framework).

policy[34]—with ensuring that MNEs pay their fair share of taxes.[35] The OECD accordingly created a BEPS Action Plan in 2013, delivering final action recommendations in October 2015.[36] These recommendations consisted of fifteen Action Items that countries should undertake in confronting MNE base erosion and profit-shifting behaviors.[37] In 2016, recognizing the need to involve developing countries, the OECD established the BEPS Inclusive Framework, the goal of which was to allow developing countries to participate on an equal footing in the development of standards to combat BEPS behaviors and in the review and monitoring of OECD BEPS implementation.[38] As of October 2020, a total of 137 countries had joined the BEPS Inclusive Framework. Of these, ninety-four are non-OECD and non-G20 countries that joined the project beginning in 2016, representing roughly fifty-four percent of non-OECD and non-G20 countries and territories eligible to join, and including many developing countries.[39] In joining the Inclusive Framework, countries must commit to working together to tackle base erosion and profit shifting and to working on implementing fifteen Action Items laid out by the OECD to combat BEPS, among which are four "minimum standards."[40] These minimum standards are (1) the assessment of harmful tax practices and engagement in mandatory exchange of tax rulings and practices; (2) the adoption of minimum standards to combat treaty shopping; (3) the adoption of transfer pricing documentation, including a country-by-country (CbC) reporting package to facilitate information reporting by MNEs headquartered in that country; and (4) the adoption of minimum standards for treaty disputes and arbitration.[41] Thus, joining the

34. *See* Ault, *supra* note 13; Hugh J. Ault, *Some Reflections on the OECD and the Sources of International Tax Principles*, 70 TAX NOTES INT'L 1195 (2013); Richard Eccleston & Richard Woodward, *Pathologies in International Policy Transfer: The Case of the OECD Tax Transparency Initiative*, 16 J. COMP. POL'Y ANALYSIS: RSRCH. & PRAC. 216 (2014). For more background on the OECD, see the discussion in Part I.B.

35. G20, G20 LEADERS DECLARATION, ¶ 48 (June 2012); G20, FINAL COMMUNIQUÉ, MEETING OF FINANCE MINISTERS AND CENTRAL BANK GOVERNORS, ¶ 21 (Nov. 2012); ORGANISATION FOR ECON. CO-OPERATION & DEV., ACTION PLAN ON BASE EROSION AND PROFIT SHIFTING (2013), 11, https://www.oecd.org/ctp/BEPSActionPlan.pdf [hereinafter OECD BEPS ACTION PLAN] ("The G20 finance ministers called on the OECD to develop an action plan to address BEPS issues in a co-ordinated and comprehensive manner").

36. OECD BEPS ACTION PLAN, *supra* note 35; OECD BEPS 2015 FINAL REPORTS, *supra* note 24.

37. OECD BEPS 2015 FINAL REPORTS, *supra* note 24.

38. ORGANISATION FOR ECON. CO-OPERATION & DEV., *Member Countries of the OECD/G20 Inclusive Framework on BEPS*, https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf; ORGANISATION FOR ECON. CO-OPERATION & DEV., *OECD/G20 Inclusive Framework on BEPS* (retrieved November 24, 2021), https://www.oecd.org/tax/flyer-inclusive-framework-on-beps.pdf. *See also* Sarfo & Soong Johnston, *supra* note 4, at 977-78 (discussing creation of the Inclusive Framework).

39. *OECD Hosts First BEPS Inclusive Framework Meeting*, TAX ANALYSTS DOC. SERV., Doc. 2016-13481, 2016 WTD 127-022 (June 30, 2016). The other forty-three were OECD and G20 countries that spearheaded the BEPS Project from its inception. *List of OECD Member Countries - Ratification of the Convention on the OECD*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (last visited Nov. 24, 2021), https://www.oecd.org/about/document/ratification-oecd-convention.htm; *About the G20*, G20 (last visited Nov. 24, 2021), https://g20.org/about-the-g20/.**Error! Hyperlink reference not valid.**

40. BEPS PROGRESS REPORT 2016-17, *supra* note 24, at 7-12 (outlining minimum standards).

41. These minimum standards refer to actions five, six, thirteen, and fourteen, respectively. OECD BEPS 2015 FINAL REPORTS, *supra* note 24, at 6, ¶ 11 (discussing minimum standards); *see also* BEPS PROGRESS REPORT 2016-17, *supra* note 24, at 7-12 (outlining minimum standards).

Inclusive Framework requires conformity with certain standards and ideals. Joining the Framework is not costless, and it necessitates a degree of convergence and isomorphism across country-level tax policies, with compliance monitored through a system of country "peer reviews."[42] These required commitments raise a number of issues and concerns, both substantive and procedural, with respect to developing countries.

### B. *The OECD's Role in Global Tax Policy*

A notable feature of the international tax order described above is the role that the OECD has played in formulating international tax policy and in global tax governance, both before and after the 2008 financial crisis. The OECD is an intergovernmental organization comprising thirty-eight member countries, most of which are higher income developed countries.[43] Formed in 1961, and superseding the 1948 Organisation for European Economic Co-operation,[44] the OECD's focus is on the development of economic and social policies, with a self-declared goal of "shap[ing] policies that foster prosperity, equality, opportunity and well-being for all."[45] More concretely, the OECD is involved in gathering statistical data, setting international standards, publishing economic analyses and reports, and making policy recommendations.[46] The organization has performed work on a variety of topics, including corporate governance, gender equality, affordable housing, education policy, and environmental policy.[47]

Among the most important issues with which the OECD has been concerned is tax policy. The OECD has long been the leading international organization involved in making international tax policy.[48] It has played a key role in articulating international tax standards, goals, and policies, and in coordinating bilateral and multilateral initiatives in international tax policy and enforcement.[49] Over the past few decades, the OECD has been at the forefront of articulating normative positions regarding what counts as harmful tax competition, what constitutes a tax haven, which countries should be flagged as "uncooperative" in matters of international tax policy, and what degree of tax transparency and information exchange should exist.[50] The OECD is also

42. OECD BEPS 2015 FINAL REPORTS, *supra* note 24, at 10-11, ¶¶ 28-29 (discussing monitoring and peer review).

43. *See Who We Are*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (last visited Nov. 24, 2021) https://www.oecd.org/about/.

44. *See Organisation for European Economic Co-Operation*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (last visited March 6, 2022), https://www.oecd.org/general/organisationforeuropeaneconomicco-operation.htm.

45. *Id.*

46. *How We Work*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (last visited Nov. 24, 2021) https://www.oecd.org/about/how-we-work/.

47. *Our Impact*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (last visited Nov. 24, 2021) https://www.oecd.org/about/impact/.

48. *See* Ault, *supra* note 13; Cockfield, *supra* note 11.

49. *See* Ault, *supra* note 13; Cockfield, *supra* note 11; Ring, *supra* note 12.

50. ORGANISATION FOR ECON. CO-OPERATION & DEV., HARMFUL TAX COMPETITION: AN EMERGING GLOBAL ISSUE (1998), https://www.oecd-ilibrary.org/taxation/harmful-tax-competition_

responsible for creating the influential OECD Model Income Tax Convention, which dates to 1963 and has been revised repeatedly over the years.[51] The OECD model has been a widely adopted starting point in bilateral tax treaty negotiations between countries, despite the fact that it is known to favor capital-exporting (i.e., developed) countries.

In short, it is impossible to understand the evolution and transformation of global tax norms, policies, institutions without understanding the key role that the OECD has played in constituting such norms, policies, and institutions. But OECD membership mostly consists of developed, wealthier countries, and it has been disparagingly described as "a club of mostly rich countries" that is focused on the concerns of European countries and the developed world.[52] Such criticism calls the OECD's legitimacy in global policymaking into question. The OECD has responded by forming partnerships with emerging economies and by increasing engagement with the G20 (a group comprising the world's major economies, including non-OECD economies) and other forums, programs, and regions.[53]

With respect to the new global tax order, in particular, the participation of the G20 in the BEPS Project and the establishment of the Inclusive Framework are sometimes pointed to as evidence of the increasing inclusiveness of the OECD tax agenda, in the sense that the viewpoints of emerging economies and developing countries are being represented in an unprecedented way.[54] Yet as Part I.C describes, concerns remain regarding the application of the BEPS agenda to developing countries and emerging economies.

### C. *The BEPS Project and Developing Countries*

Despite the role of the G20 in the OECD/G20 BEPS Project, there remains criticism that the BEPS Project was primarily motivated by developed-country concerns about MNE tax avoidance and the erosion of developed countries' domestic tax bases. These concerns—at the heart of which lie worries regarding

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9789264162945-en; ORGANISATION FOR ECON. CO-OPERATION & DEV., COUNTERING OFFSHORE TAX EVASION: SOME QUESTIONS AND ANSWERS ON THE PROJECT (2009), https://www.oecd.org/ctp/exchange-of-tax-information/42469606.pdf; ORGANISATION FOR ECON. CO-OPERATION & DEV., TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES: MULTILATERAL CO-OPERATION CHANGING THE WORLD, 10TH ANNIVERSARY REPORT (2019), https://www.oecd.org/tax/transparency/global-forum-10-years-report.pdf [hereinafter GLOBAL FORUM REPORT 2019]; Ault, *supra* note 13.

51. Brian J. Arnold, *An Introduction to Tax Treaties* (2013), https://www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2020-06/TT_Introduction_Eng.pdf; ORGANISATION FOR ECON. CO-OPERATION & DEV., MODEL TAX CONVENTION ON INCOME AND ON CAPITAL (2017), https://www.oecd.org/ctp/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.htm/ [hereinafter OECD MODEL TAX CONVENTION 2017].

52. Buttonwood, *What is the OECD?*, THE ECONOMIST, https://www.economist.com/the-economist-explains/2017/07/05/what-is-the-oecd; Philip Pierros, *The OECD: New Wings or Still the Same Old Club? OECD Observer* (April 7, 2017), https://www.oecd-ilibrary.org/sites/4f89f03f-en/index.html?itemId=/content/paper/4f89f03f-en.

53. *See* Pierros, *supra* note 52 (discussing OECD partnerships with Brazil, China, India, Indonesia, and South Africa and its engagement with the G20); *The OECD and the G20—An Evolving Relationship*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (Nov. 4, 2009), https://www.oecd.org/corporate/theoecdandtheg20anevolvingrelationship.htm (remarks by OECD Secretary General on the OECD and G20 relationship).

54. *See* sources cited *supra* note 24.

developed countries' ongoing capacities to fund welfare states and social safety nets—have resulted in a focus on monitoring and eliminating harmful tax practices, eliminating treaty shopping clauses, and gaining more information about and insights into the transfer pricing practices and other characteristics of MNEs (including activities across jurisdictions).[55] These concerns are reflected in several BEPS Action Items, including, notably, the minimum standards whose adoption is required of all Inclusive Framework members.[56]

Yet it is by no means clear that these priorities will benefit all countries or benefit them all equally. Commentators have recognized that the costs and benefits of joining the Inclusive Framework for developing countries may not be the same as those for developed countries and that the interests of developing and developed countries are not necessarily completely aligned.[57] Some have argued that resource-constrained countries are less likely to be able to benefit from the transparency gains associated with BEPS Project initiatives (such as the ability to access and use the information that has been reported under BEPS country-by-country reporting for tax compliance purposes).[58] Others have voiced substantive objections, arguing that developing-country tax bases benefit less from the BEPS substantive reforms than those of developed countries.[59] For example, Hearson outlines issues raised by developing countries that were not prioritized or considered as part of the BEPS Project, including distributional issues, developing-country tax incentives, lack of transfer pricing comparability

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55. *See* sources cited *supra* note 41.

56. *See* sources cited *supra* note 41.

57. Ault, *supra* note 21, § 1.06; Christians, *supra* note 1, at 1603 (noting agenda initiation and control by OECD member countries); Arthur J. Cockfield, *Shaping International Tax Law and Policy in Challenging Times*, 54 STAN. J. INT'L L. 223 (2018) (noting potential political limitations on global tax cooperation); TSILLY DAGAN, INTERNATIONAL TAX POLICY: BETWEEN COMPETITION AND COOPERATION 166 (2018) (discussing why developing countries might cooperate against their interests); Sergio André Rocha, *The Other Side of BEPS: 'Imperial Taxation' and 'International Tax Imperialism'*, IN TAX SOVEREIGNTY IN THE BEPS ERA 179-200 (Sergio André Rocha and Allison Christians, eds., 2017) (discussing tax imperialism concerns and proposing a "developing countries' international tax regime"); Annet Wanyana Oguttu, Tax Base Erosion and Profit Shifting in Africa Part I: Africa's Response to the OECD BEPS Action Plan (June 2016), Int'l Centre for Tax & Dev., Working Paper 54, at 19-20 (June 2016), https://core.ac.uk/download/pdf/286047832.pdf (discussing criticisms of OECD's BEPS Action plan by developing countries); Natalia Quiñones, *The Birth of a New International Tax Framework and the Role of Developing Countries*, in TAX SOVEREIGNTY IN THE BEPS ERA 165-77 (Sergio André Rocha and Allison Christians, eds., 2017) (noting lack of developing countries' power to influence BEPS policy outcomes); *see also* Steven Dean, *FATCA, the U.S. Congressional Black Caucus, and the OECD Blacklist*, 168 TAX NOTES 95 (2020) (describing effects of diverse decision makers on international tax policymaking).

58. Kiarra Strocko, *BEPS 5 Years Later: Tax Transparency as the Global Norm*, 2020 TAX NOTES INT'L 192-6 (2020) (discussing lack of developing country access to BEPS Action 13 reporting data); Ryan Finley, *Critics Claim CbC Reporting Regime Excludes Developing Countries*, 98 TAX NOTES INT'L 839 (2020) (same); *see also generally* Allison Christians, *Global Trends and Constraints on Tax Policy in the Least Developed Countries*, 42 UBC L. REV. 239 (2009) (discussing how benchmarks and policy structures imposed by developed countries affect developing countries).

59. Martin Hearson, *Developing Countries' Role in International Tax Cooperation*, G-24 COMMISSIONED WORKING PAPER (2017), available at https://martinhearson.files.wordpress.com/2017/08/developing-countries-role-in-international-tax-cooperation.pdf; Mindy Herzfeld, *The Case against BEPS: Lessons for Tax Coordination*, 21 FLA. TAX REV. 1, 29-36 (2017); Carmel Peters, *Developing Countries' Reactions to the G20/OECD Action Plan on Base Erosion and Profit Shifting*, BULL. INT'L TAX'N (June/July 2015) (describing developing countries' priorities based on U.N. Tax Committee Questionnaire).

data, capital gains tax avoidance in developing countries, withholding taxes, and the impacts of developed-country tax systems and tax reform on developing countries.[60] Rocha specifically identifies arbitration procedures, transfer pricing reforms, hybrid mismatches, the digital economy, and the improper uses of tax treaties as "areas where developing countries should be particularly careful with the obvious solutions presented by the OECD in its BEPS reports," because these reforms may not be to developing countries' benefit.[61] Some of these areas—specifically, prevention of tax treaty abuse, country-by-country reporting for transfer pricing documentation, and dispute-resolution mechanisms—are part of the four BEPS minimum standards, which Inclusive Framework members must agree to implement.[62] Still others have noted that poorer countries may lack the administrative capacity to undertake the BEPS reforms, and that the efforts needed to comply with the BEPS minimum standards may strain developing countries' resources.[63] Such resources might be better spent on other priorities.[64]

Another line of criticisms speaks to institutional design, questioning the location of the BEPS Project under the auspices of the OECD and its Committee on Fiscal Affairs.[65] For example, some scholars, as well as organizations such as Oxfam and the Tax Justice Network, have argued that the OECD, which tends to focus on developed country concerns, is not as well suited as, say, the United Nations Tax Committee to act as a de facto world tax organization.[66] Other

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60. Hearson, *supra* note 59, at 6.

61. Rocha, *supra* note 57, § 9.04.

62. OECD BEPS 2015 FINAL REPORTS, *supra* note 24, at 6, ¶ 11 (discussing minimum standards); *see also* BEPS PROGRESS REPORT 2016-17, *supra* note 24, at 7-12 (outlining minimum standards).

63. Ault, *supra* note 21, § 1.06 (noting that "developing countries wishing to have a famous 'seat at the table' in the Inclusive Framework and an 'equal voice' in the deliberations have had to agree to minimum standards which will be very difficult if not impossible for many of them to meet"); Reuven Avi-Yonah & Haiyan Xu, *Evaluating BEPS*, 10 ERASMUS L. REV. 3, 9 (2017); Irene Burgers & Irma Mosquera, *Corporate Taxation and BEPS: A Fair Slice for Developing Countries*, 10 ERASMUS L. REV. 29, 35-38 (2017); *see also* Peters, *supra* note 59, at 377 (noting capacity constraints).

64. Ault, *supra* note 21, § 1.06 ("[t]he administrative and personnel resources needed to even begin complying with the minimum standards could arguably be better spent on domestic revenue mobilisation").

65. Stephanie Soong Johnston, *OECD Inclusive Framework Moving on BEPS Implementation*, 83 TAX NOTES INT'L 32, 33 (2016) (noting location of BEPS decision making in OECD's CFA; discussing viewpoint of BEPS Monitoring Group on developing country interests); Allison Christians & Laurens Van Apeldoorn, *The OECD Inclusive Framework*, BULLETIN FOR INT'L TAX'N (April/May 2018) (critiquing the Inclusive Framework as "continu[ing] an OECD tradition of institutional and procedural opacity"); *see generally* Tim Büttner & Matthias Thiemann, *Breaking Regime Stability? The Politicization of Expertise in the OECD/G20 Process on BEPS and the Potential Transformation of International Taxation*, 7 ACCT. ECON. & L.: A CONVIVIUM 20160069 (2017) (critiquing OECD's approach to transfer pricing reform).

66. Hamrawit Abebe, Ryan Dugan, Michael McShane, Julie Mellin, Tara Patel & Linda Patentas, *The United Nations' Role in International Tax Policy A Research and Policy Brief for the Use of the NGO Committee on Financing for Development*, MILANO SCHOOL OF INTERNATIONAL AFFAIRS (2012) (noting global power implications of strengthening the role of the U.N. Tax Committee in international tax cooperation, and recommending such a strengthened role); Avi-Yonah & Xu, *Evaluating BEPS*, *supra* note 63, at 9 (proposing location of the BEPS Project in the U.N.); Eva Andrés Aucejo, *The Primary Legal Role of the United Nations on International Tax Cooperation and Global Tax Governance: Going on a New International Organization on Global Tax Cooperation and Governance under the UN 'Family'*, 21 REVISTA DE EDUCACIÓN Y DERECHO (2020), https://revistes.ub.edu/index.php/RED/article/view/31297 (recommending stronger role for U.N.); Soong Johnston, *supra* note 65; *see also* Cockfield, *supra* note 11, at 180-86 (discussing OECD's suitability to act as a world tax organization).

commentators have raised procedural objections, arguing that because developing countries were not "at the table" at the outset but were only included in 2016 (once the Inclusive Framework had already been established), OECD countries continue to control the agenda, and BEPS's claimed inclusiveness is more formal than substantive.[67] For some, the increased role of the G20 and the after-the-fact establishment of the Inclusive Framework are not sufficient to safeguard the interests of developing countries, or to shift the locus of tax policymaking power away from the developed world.[68] Despite these concerns, however, a large number of developing countries have joined the BEPS Inclusive Framework.

## II. THEORY AND HYPOTHESES

### A. *The World Polity Theoretical Framework*

World polity theory emphasizes how blueprints, norms, scripts, and shared cognitive models proliferate across the globe, such that we see convergence and isomorphism in policies, institutions, and behaviors across differently situated nation states and governments—evidence of a shared world polity.[69] World polity theorists view international organizations and civil society actors as central figures in the promulgation of such blueprints, norms, scripts, and models and regard them as instrumental in institutionalizing and constructing a shared world culture, which becomes widely adopted by legitimacy-seeking countries.[70] World polity theory draws from neo-institutionalist thought in organizational sociology, and may therefore be characterized as a constructivist or neo-institutional sociological theory of globalization.[71]

The world polity analytical perspective should be taken seriously in the international tax case in light of the emergence and proliferation of commonly accepted global tax norms and standards and the important role played by the OECD in such global tax standard setting and policymaking. As described in Part I.B, even prior to the BEPS Project, the role that the OECD has played in

67. Yariv Brauner, *Serenity Now: The (Not So) Inclusive Framework and the Multilateral Instrument*, 26 FLA. TAX REV. (forthcoming 2022), at pt. III.B, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3885602 (discussing how OECD countries had set the agenda); Avi-Yonah & Xu, *supra* note 63; Rasmus Corlin Christensen, Martin Hearson & Tovony Randriamanalina, At the Table, Off the Menu? Assessing the Participation of Lower-Income Countries in Global Tax Negotiations, Int'l Centre for Tax & Dev., Working Paper 115 (Dec. 2020), https://www.ictd.ac/publication/at-table-off-menu-assessing-participation-lower-income-countries-global-tax-negotiations/ (noting structural obstacles to developing country influence); Sissie Fung, *The Questionable Legitimacy of the OECD/G20 BEPS Project*, 10 ERASMUS L. REV. 76, 77-78 (2017) (critiquing BEPS Project as controlled by OECD countries); Quiñones, *supra* note 57; Rocha, *supra* note 57.

68. Allison Christians, *Taxation in a Time of Crisis: Policy Leadership from the OECD to the G20*, 5 NW. J.L. & SOC. POL'Y 19 (2010) (noting limitations of G20 influence in light of OECD dominance); *see also* sources cited *supra* note 67.

69. Boli & Thomas, *supra* note 8; Meyer, Boli, Thomas & Ramirez, *supra* note 6.

70. John W. Meyer, *Globalization: Sources and Effects on National States and Societies*, 15 INT'L SOC'Y 233 (2000); Strang & Meyer, *supra* note 8; David J. Frank, Ann Hironaka & Evan Schofer, *The Nation-State and the Natural Environment over the Twentieth Century*, 2000 AM SOC. REV. 96 (2000).

71. DiMaggio & Powell, *supra* note 14; Meyer & Rowan, *supra* note 7.

constructing international tax standards, norms, and blueprints that then spread and become influential across countries has been widely recognized.[72] Yet this involvement has scarcely been empirically documented in the tax literature, and little is understood about the underlying mechanisms and pathways through which the OECD exerts its influence on global tax norms and policies.

The existing literature suggests three pathways through which isomorphism and policy convergence across organizations or nation states may occur: normative pathways, mimetic pathways, and coercive pathways.[73]

*i. Normative Pathways*

An emergent world polity may proliferate through global normative pressures and standards, which are institutionalized through the work of international organizations like the OECD.[74] The idea is that through the institutionalization of such norms, countries may become "socialized" into accepting certain rules, standards, and policies. Norms may become further strengthened through a process of ongoing involvement and engagement, and the pressure to conform may thus persist or increase.[75]

Scholars working in the world polity tradition have studied the degree of countries' integration into the norms of the global world polity, using factors such as membership in domestic and international NGOs to operationalize and measure integration and influence. For example, in the context of human rights treaties, it has been shown that membership in international organizations (which reflects exposure to global institutional pressures exerted by those international organizations) may be important in shaping countries' decisions to ratify human rights treaties.[76] Environmental policy scholars have shown that the number of international NGO chapters in a country—reflecting a country's integration into global environmental world society—predicts environmental policy adoption rates and pro-environmental reforms.[77] In particular, these types of global

72. Ault, *supra* note 13; Cockfield, *supra* note 11; Robert T. Kudrle, *The OECD and the International Tax Regime: Persistence Pays Off*, 16 J. COMP. POL'Y ANALYSIS: RSRCH AND PRAC. 201 (2014); Diane M. Ring, *The Promise of International Tax Scholarship and Its Implications for Research Design, Theory, and Methodology*, 55 ST. LOUIS U. L.J. 307, 321-24 (2010) (noting "soft law" role of OECD; discussing norm formation processes); Mason, *supra* note 1, at 354, 370 (discussing the emergence of a "full taxation" norm after the OECD BEPS Project).

73. DiMaggio & Powell, *supra* note 14; Rachel S. Robinson, *Population Policy in Sub-Saharan Africa: A Case of Both Normative and Coercive Ties to the World Polity*, 34 POPULATION & POL'Y REV. 201 (2015); Wotipka & Tsutsui, *supra* note 10; Witold J. Henisz, Bennet A. Zelner & Mauro F. Guillén, *The Worldwide Diffusion of Market-Oriented Infrastructure Reform, 1977–1999*, 70 AM. SOC. REV. 871 (2005).

74. *See, e.g.*, Kentikelenis & Seabrooke, *supra* note 23; André Broome, A., Alexandra Homolar, A. & Matthias Kranke, *Bad Science: International Organizations and the Indirect Power of Global Benchmarking*, 24 EUROPEAN J. INT'L RELATIONS 514 (2018).

75. *See* sources cited *supra* note 74.

76. Wotipka & Tsutsui, *supra* note 10.

77. David J. Frank, Wesley Longhofer, & Evan Schofer, *World Society, NGOs and Environmental Policy Reform in Asia*, 48 INT'L J. COMP. SOC. 275 (2007); Wesley Longhofer & Andrew Jorgenson, *Decoupling Reconsidered: Does World Society Integration Influence the Relationship between the Environment and Economic Development?*, 65 SOC. SCI. RSRCH. 17 (2017); Wesley Longhofer, Evan Schofer, Natasha Miric & David John Frank, *NGOs, INGOs, and Environmental Policy Reform, 1970–2010*, 94 SOC. FORCES 1743 (2016).

influences have been shown to be important in motivating domestic environmental organizing in developing countries, supporting the world polity hypothesis.[78]

Similar types of normative forces could explain the proliferation of BEPS Inclusive Framework membership. In contrast to the environmental context, international NGOs are not numerous in international tax (in the sense that there are not multiple civil society tax NGOs in various countries that can be counted and measured to reflect world polity integration).[79] However, integration into the tax world polity may be indicated by other measures. For example, the number of tax treaties a country has in force may indicate a country's world polity integration. Countries have traditionally entered into bilateral tax treaties (also known as tax conventions) to mitigate the effects of double taxation, and these treaties are often negotiated based on widely adopted models, perhaps the most prominent and influential of which is the OECD model treaty.[80] Even though the OECD model has been argued to favor developed countries, this has not prevented its widespread adoption as a negotiation baseline by less developed countries (not to mention by developed countries in their tax treaty negotiations with less-developed countries).[81] Another commonly recognized model income tax convention is the model promulgated by the United Nations;[82] however, the OECD model is widely regarded as the leading model.[83]

In short, embeddedness in a robust network of bilateral tax treaties arguably indicates exposure to global models, norms, and blueprints advanced by key international organizations, most notably the OECD. Therefore, it is plausible that a country's existing bilateral tax treaty network signals a degree of integration into tax world polity norms and increases the hazard of a country joining the OECD/G20 BEPS Framework.[84]

*Hypothesis 1: Countries with a greater number of bilateral tax treaties in force (both in general and with OECD and G20 countries) have a higher hazard of joining the BEPS Inclusive Framework than countries with fewer such treaties.*

Integration into the tax world polity may also be measured by a country's involvement with OECD processes and initiatives prior to the BEPS Project. In particular, three earlier OECD processes are widely regarded as important with

78. Wesley Longhofer & Evan Schofer, *National and Global Origins of Environmental Association*, 75 AM. SOC. REV. 505 (2010).

79. To be sure, NGOs such as Oxfam and Tax Justice Network are active in the international tax space. However, these types of tax NGOs are not so numerous that operationalizing world polity integration using a count variable of such NGOs would make sense.

80. OECD MODEL TAX CONVENTION 2017, *supra* note 51.

81. Ault, *supra* note 34; Peter D. Byrne, *Developing Countries, Tax Treaties and the United Nations Model Tax Convention*, 2 ILSA J. INT'L & COMP. L. 695 (1995); Alice Jones, *UN Tax Convention Could Overcome EU and OECD Blind Spots*, INT'L TAX REV. (2020).

82. UNITED NATIONS, MODEL DOUBLE TAX CONVENTION BETWEEN DEVELOPED AND DEVELOPING COUNTRIES (updated 2017), https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf.

83. *See* Mason, *supra* note 1, at 354 (noting that "[f]or a hundred years, international tax has consisted of a collection of isolated national tax regimes, connected on a piecemeal basis by bilateral tax treaties that follow a model drafted by a small set of OECD member countries").

84. *See generally* Brauner, *supra* note 1.

respect to global taxation. The OECD Global Forum on Transparency and Exchange of Information is a longstanding OECD tax initiative, which dates back to 2000 but was significantly restructured in September 2009.[85] The OECD Global Forum opened membership to all interested jurisdictions, including developing countries, to participate on equal footing in the wake of the financial crisis, and it called on countries to actualize and implement its vision of tax-related transparency and information exchange among governments.[86] Like the BEPS Project, it does this through peer review, monitoring, and rating of jurisdictions to ensure compliance with standards that call for the exchange of information automatically and on request.[87] As listed in its 2013 progress report, the OECD Global Forum had 121 members.[88] As of November 2021, it had 163 members, consisting of OECD countries and other jurisdictions, as well as twenty-one observers.[89]

The Convention on Mutual Administrative Assistance in Tax Matters (MAATM) is a multilateral instrument developed jointly by the OECD and the Council of Europe in 1988 and amended by protocol in 2010.[90] The MAATM convention is an agreement among countries to cooperate to tackle tax avoidance and evasion. The convention facilitates administrative cooperation between countries in matters of tax assessment and collection, including through the exchange of information.[91] The number of signatories of the MAATM convention has grown over the years: as of the end of 2013, forty-four countries had ratified either the original 1998 convention or the amended protocol; as of December 2021, there were 144 participating jurisdictions.[92]

A third important initiative is the OECD's work in the automatic exchange of tax information between countries (as opposed to information exchange on

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85. GLOBAL FORUM REPORT 2019, *supra* note 50.

86. *Id.*

87. *Global Forum on Transparency and Exchange of Information for Tax Purposes: Compliance Ratings Following Peer Reviews against the Standard of EOR*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (last visited Nov. 24, 2021), https://www.oecd.org/tax/transparency/documents/exchange-of-information-on-request-ratings.htm.

88. ORGANISATION FOR ECON. CO-OPERATION & DEV., GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES: TAX TRANSPARENCY 2013 REPORT ON PROGRESS (2013), https://www.oecd.org/tax/transparency/documents/global-forum-annual-report-2013.pdf; *see also* ORGANISATION FOR ECON. CO-OPERATION & DEV., THE GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES: INFORMATION BRIEF (2013), https://www.oecd.org/tax/transparency/global_forum_background%20brief.pdf ("As of November 2013, there are 121 members.... As agreed in 2009, the initial potential members are: all the financial centres which participated in the previous Global Forum; all OECD countries and all G20 economies. After the initial 91 potential members confirmed their membership, in order to maintain a level playing field, the Global Forum invited countries of relevance to its work to join.").

89. *Global Forum Members*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (last visited Nov. 29, 2021), https://www.oecd.org/tax/transparency/who-we-are/members/.

90. ORGANISATION FOR ECON. CO-OPERATION & DEV. & COUNCIL OF EUROPE, THE MULTILATERAL CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS (2011), https://read.oecd-ilibrary.org/taxation/the-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters_9789264115606-en#page1 [hereinafter OECD MAATM].

91. *Id.*

92. *Jurisdictions Participating in the Convention on Mutual Administrative Assistance in Tax Matters*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (Dec. 20, 2021), https://www.oecd.org/ctp/exchange-of-tax-information/Status_of_convention.pdf.

request). As part of this work, the OECD has developed a Common Reporting Standard (CRS), as well as a CRS Multilateral Competent Authority Agreement, which details what information will be exchanged between countries and under what conditions.[93] The CRS MCAA is based on Article 6 of the aforementioned MAATM convention, which provides for automatic exchange of information based on agreed upon parameters and procedures.[94] As of October 2014, fifty-one jurisdictions had signed the CRS MCAA; as of December 2020, there were 110 signatories.[95]

Countries that have been involved with these important prior OECD tax initiatives—which are generally aimed at increasing tax cooperation and transparency and thus at minimizing the harmful effects of tax avoidance and evasion through base-erosion and other strategies—arguably become integrated into the world of tax cooperation, coordination, and information exchange spearheaded by the OECD. In particular, these countries engage with peer review, compliance, and tax reform processes, thus becoming exposed to the norms, scripts, and blueprints underlying the international tax order, which are similar to those in play in the BEPS Project. World polity theory suggests that this familiarity and acculturation make countries more likely to participate in these types of processes in the future.[96]

*Hypothesis 2: Countries that have greater involvement in prior OECD tax initiatives—specifically, the OECD Global Forum, the MAATM convention, and the CRS MCAA—will have a higher hazard of joining the BEPS Inclusive Framework than countries with less prior involvement.*

*ii. Coercion-Based Pathways*

The potential role of threats of sanctions or penalties in policy diffusion and convergence is well recognized by scholars operating in the realist tradition in international relations.[97] These types of explanations—which DiMaggio and Powell refer to as "coercive" pathways—highlight how powerful countries and

93. ORGANISATION FOR ECON. CO-OPERATION & DEV., DECLARATION, https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/multilateral-competent-authority-agreement.pdf [hereinafter DECLARATION] (Text of the CRS Multilateral Competent Authority Agreement).

94. OECD MAATM, *supra* note 90 (Article 6); DECLARATION, *supra* note 93.

95. *Signatories of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and Intended First Information Exchange Date as of 29 October 2014*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (2014) (on file with author); *Signatories of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and Intended First Information Exchange Date as of 10 December 2020*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (2020) (on file with author). *See also* Stephanie Soong Johnston, *Countries Sign Agreement on OECD Information Exchange Standard*, 145 TAX NOTES 497 (2014) (noting fifty-one "early adopter" jurisdictions and the subsequent commitment by ninety Global Forum members to implement the CRS).

96. *See, e.g.*, Kentikelenis & Seabrooke, *supra* note 23.

97. JACK DONNELLY, REALISM AND INTERNATIONAL RELATIONS (2000); DANIEL W. DREZNER, THE SANCTIONS PARADOX: ECONOMIC STATECRAFT AND INTERNATIONAL RELATIONS (1999); *see also* Immanuel Wallerstein, *The Modern World-System, in* SOCIAL THEORY: THE MULTICULTURAL, GLOBAL, AND CLASSIC READINGS 308-13 (Charles Lemert, ed., 1974); Immanuel Wallerstein, *The Modern World-System in Crisis*, in SOCIAL THEORY: THE MULTICULTURAL, GLOBAL, AND CLASSIC READINGS 460-62 (Charles Lemert, ed., 2004) (discussing core-periphery dynamics through the lens of world-systems theory).

blocs may push policies and ideologies favorable to their interests and may exert pressure on other countries to adopt these policies, potentially using carrots or sticks (incentives or sanctions) to do so.[98] Coercive pathways may also harness "softer" norm-generating processes to achieve their ends, including by institutionalizing preferred policies and ideologies in the work of international organizations. Accordingly, it has been recognized that these types of pathways may be in play in the construction of a shared world culture and polity.[99]

Scholars have studied these types of coercion-based pathways by examining "issue linkages"—that is, the linking or packaging of one issue to another so as to affect the likelihood of success or adoption of a desired policy.[100] For example, environmental policy scholars have shown how environmental provisions and clauses in preferential trade agreements have allowed trade agreements to serve as vehicles through which environmental norms diffuse.[101] In the context of military alliance negotiations, it has been found that trade cooperation offers can boost the credibility of negotiated military alliance agreements.[102] Davis has shown that, in negotiations between the United States, Japan, and the EU, issue linkages between agricultural and industrial issues promoted agricultural liberalization in both Japan and Europe.[103]

Of particular relevance to the international tax case, scholars have investigated whether grants of foreign aid can be linked to other issues. For example, it has been shown that the United States has been effective in using foreign aid programs to exert pressure and induce foreign policy compliance on important issues, including on voting in the U.N. General Assembly.[104] Researchers have also found evidence that International Monetary Fund and World Bank loan programs have a significant impact on some U.N. General Assembly voting patterns.[105]

With respect to international tax and the BEPS Project, it is plausible that the receipt of economic aid by developing countries is linked to and motivates BEPS Inclusive Framework membership. The OECD itself provides official development assistance to developing countries, defined as "government aid that promotes and specifically targets the economic development and welfare of

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98. DiMaggio & Powell, *supra* note 14.

99. Robinson, *supra* note 73; Wotipka & Tsutsui, *supra* note 10.

100. Ernst B. Haas, *Why Collaborate?: Issue-Linkage and International Regimes*, 32 WORLD POLITICS 357 (1980); David W. Leebron, *Linkages*, 96 AM. J. INT'L L. 5 (2002).

101. Sikina Jinnah, *Strategic Linkages: The Evolving Role of Trade Agreements in Global Environmental Governance*, 20 J. ENV. & DEV. 191 (2011); Sikina Jinnah & Abby Lindsay, *Diffusion Through Issue Linkage: Environmental Norms in US Trade Agreements*, 16 GLOBAL ENV. POL. 41 (2016).

102. Paul Poast, *Issue Linkage and International Cooperation: An Empirical Investigation*, 30 CONFLICT MGMT. AND PEACE SCI. 286 (2013).

103. Christina L. Davis, *International Institutions and Issue Linkage: Building Support for Agricultural Trade Liberalization*, 98 AM. POL. SCI. REV. 153 (2004).

104. Axel Dreher, Peter Nunnenkamp & Rainer Thiele, *Does US Aid Buy UN General Assembly Votes? A Disaggregated Analysis*, 136 PUB. CHOICE. 139 (2008); Te-Yu Wang, *US Foreign Aid and UN Voting: An Analysis of Important Issues*, 43 INT'L STUD. Q. 199 (1999).

105. Axel Dreher & Jan-Egbert Sturm, *Do the IMF and the World Bank Influence Voting in the UN General Assembly?*, 151 PUB. CHOICE 363 (2012).

developing countries."[106] Official development assistance has been regarded by the OECD Development Assistance Committee as the "gold standard" of foreign aid since 1969.[107]

*Hypothesis 3: Countries that receive OECD Official Development Assistance are at greater hazard of joining the OECD/G20 BEPS Inclusive Framework than non-recipients.*

In addition to issue linkages, the use of threats and shaming to change behaviors is well known in both the tax and non-tax literatures. In particular, the effects of being included on a public list of non-compliant actors has been investigated in various settings. In the environmental context, Cisneros, Zhou, and Börner find evidence that publicly listing districts with high annual forest losses reduces deforestation in Brazil, after controlling for other factors.[108] With respect to tax havens, Kudrle found no consistent evidence that tax haven listing by the OECD impacted banking investment in and out of tax havens.[109] More recently, however, Rusina has shown that inclusion of a jurisdiction on the EU list of non-cooperative tax havens is associated with negative reactions in the stock prices of firms with tax haven subsidiaries, with more tax-aggressive firms facing more negative returns (suggesting that investors expect penalties for past tax avoidance).[110]

This literature on the effects of public shaming and listing on actor behavior may be relevant to the BEPS case. Widely publicized parallel EU processes took place at the same time that the BEPS Project unfolded. Beginning in late 2016, the EU began the process of creating a list of non-cooperative tax jurisdictions (referred to in further mentions as the tax haven list), along with a process for inclusion or removal from that list based on compliance behaviors.[111] In September 2016, the EU released a scoreboard that evaluated 160 "third-country jurisdictions" based on indicators of economic relevance, namely, the strength of their economic ties with the EU, level of financial services activities, and stability.[112] The EU classified eighty-three countries as "economically relevant" and then performed an assessment of the risk indicators for facilitating tax avoidance exhibited by these countries.[113] Based on the scoreboard's "economic relevance" metric, the EU then screened selected countries to identify whether

106. *Official Development Assistance (ODA)*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (last visited Nov. 24, 2021), https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/official-development-assistance.htm.

107. *Id.*

108. Elías Cisneros, Sophie Lian Zhou & Jan Börner, *Naming and Shaming for Conservation: Evidence from the Brazilian Amazon*, 10:9 PLOS ONE e0136402 (2015).

109. *See generally* Robert T. Kudrle, *Did Blacklisting Hurt the Tax Havens?*, 12 J. MONEY LAUNDERING CONTROL 33 (2009).

110. *See* Aija Rusina, *Name and Shame? Evidence from the European Union Tax Haven Blacklist*, 27 INT'L TAX & PUB. FIN. 1364 (2020).

111. Collin, *supra* note 26; EUROPEAN UNION, FIRST STEPS TOWARDS A NEW EU LIST OF THIRD COUNTRY JURISDICTIONS: SCOREBOARD (September 15, 2016), retrieved on March 7, 2021 from https://ec.europa.eu/taxation_customs/sites/taxation/files/2016-09-15_scoreboard-indicators.pdf [hereinafter EU SCOREBOARD] (on file with author).

112. EU SCOREBOARD, *supra* note 111.

113. EU SCOREBOARD, *supra* note 111 (Table I).

they should be listed as non-cooperative jurisdictions.[114] On December 5, 2017, the EU released its tax haven list, which identified seventeen non-EU countries and territories that had made insufficient commitments to improving their transparency and tax standards.[115] In its initial December 5, 2017 tax haven list, the EU specifically called out Bahrain, the Marshall Islands, Namibia, Saint Lucia, and Samoa for not applying the BEPS minimum standards and for not committing to doing so by December 2018, and Mongolia for not committing to doing so by December 2019.[116] Importantly, the EU simultaneously placed forty-seven jurisdictions on a probationary watch list (the so-called EU greylist).[117] Countries on the EU greylist are those flagged as having some harmful tax regime characteristics, and are therefore at risk of being placed on the actual EU tax haven list. Over time, countries have been placed on and removed from the EU greylist and the EU tax haven list based on their tax reform and compliance behaviors and decisions.[118]

Inclusion on the EU tax haven list is not simply an empty threat; it carries the possibility of real economic consequences, such as EU "countermeasures" (including the denial of funding), the reporting of schemes to tax authorities, and potential sanctions by member states.[119] Fear of being greylisted or actually included on the tax haven list may therefore lead countries to join the BEPS Framework if doing so would help them avoid being listed or would lead to their removal from the list. As noted, the impact of such listing processes on country behavior is well recognized in the literature.[120]

In a broader study of the impact of listing on country behavior and tax governance, Collin has shown, using regression discontinuity analysis, that countries included on the EU scoreboard (the screening process for inclusion on the EU tax haven list) were significantly more likely to join the BEPS Inclusive Framework than countries not included on the scoreboard.[121] Though not tested by Collin, it is also possible that, in addition to being included on the scoreboard, being listed on the probationary EU greylist or on the actual EU tax haven list

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114. COUNCIL OF THE EUROPEAN UNION, OUTCOME OF PROCEEDINGS: THE EU LIST OF NON-COOPERATIVE JURISDICTIONS FOR TAX PURPOSES (Dec. 5, 2017), https://www.consilium.europa.eu/media/31945/st15429en17.pdf.

115. *Id.* (Annex I).

116. *Id.*

117. *Evolution of the EU List of Tax Havens* (updated October 5, 2021), EUROPEAN UNION, retrieved Nov. 24, 2021, *available at* https://ec.europa.eu/taxation_customs/common-eu-list-third-country-jurisdictions-tax-purposes_en. Prior versions of this document are on file with the author.

118. *Id.*

119. *Fair Taxation: Commission Puts in Place First EU Counter-Measures on Listed Non-Cooperative Tax Jurisdictions*, EUROPEAN COMMISSION (2018), retrieved March 8, 2021 from https://ec.europa.eu/commission/presscorner/detail/en/IP_18_2245; *Questions and Answers on the EU List of Noncooperative Tax Jurisdictions*, EUROPEAN COMMISSION (2019), https://ec.europa.eu/commission/presscorner/detail/en/MEMO_19_1629; *see also generally* Steven Dean, *Ten Truths About Tax Havens: Inclusion and the "Liberia" Problem*, 70 EMORY L.J. 1659 (2021) (discussing listing and sanctioning of tax havens).

120. *See supra* notes 108-110; *see also* Katrin Eggenberger, *When is Blacklisting Effective? Stigma, Sanctions and Legitimacy: The Reputational and Financial Costs of Being Blacklisted*, 25 REV. INT'L POL. ECON. 483 (2018); Jason C. Sharman, *The Bark is the Bite: International Organizations and Blacklisting*, 16 REV. INT'L POL. ECON. 573 (2009).

121. Collin, *supra* note 26.

also affects whether countries join the Inclusive Framework. Therefore:

*Hypothesis 4: Countries screened on the EU scoreboard, placed on the greylist, or placed on the EU tax haven list are at greater hazard of joining the BEPS Inclusive Framework than countries not screened on the scoreboard (and therefore not included on the EU greylist or tax haven list).*

*iii. Mimetic Pathways*

A third potential pathway via which a shared world polity may proliferate is through imitation of one's peers.[122] That is, countries may copy or imitate the policies adopted by other countries or by economic competitors. If imitative pathways are important, we would expect to see that a country will be more likely to join the BEPS Inclusive Framework if neighboring countries have joined, or if more countries in the world have joined. Therefore:

*Hypothesis 5: Countries are at greater hazard of joining the BEPS Inclusive Framework if more countries in the country's region, or more countries in the world, have joined the Inclusive Framework.*

*B. Other Explanations*

The identification of the pathways through which a shared world tax polity might be proliferating holds important implications. For example, if countries are publicly agreeing to institutionalized global tax norms and blueprints primarily to gain legitimacy on the world stage or due to fear of shaming or sanctions, one might wonder whether countries are actually invested in complying with the Inclusive Framework requirements. The world polity perspective predicts that we may see "loose coupling" between the decision to join the Framework and the implementation of its requirements (because the technical implementation of institutionalized rules that were agreed to in the interests of seeking legitimacy may conflict with a country's welfare-maximizing goals).[123] This dynamic has been observed in other contexts, as in the case of human rights treaties.[124]

There are, of course, other potential theoretical frameworks through which the emergence of the new world tax order may be analyzed. This Article's focus on world polity theory does not preclude the application of other theories, which might also hold power in describing the new global tax order. For example, neorealist theories in international relations may point to explanations based on national security, state survival, or competition among states.[125] International

122. DiMaggio & Powell, *supra* note 14; Wotipka & Tsutsui, *supra* note 10.

123. DiMaggio & Powell, *supra* note 14, at 155; Meyer & Rowan, *supra* note 7, at 341.

124. Rob Clark, *Technical and Institutional States: Loose Coupling in the Human Rights Sector of the World Polity*, 51 SOC. Q. 65 (2010); *see also* discussion *infra* accompanying notes 183 and 198; *see also* Kathleen M. Fallon, Anna-Liisa Aunio & Jessica Kim, *Decoupling International Agreements from Domestic Policy: The State and Soft Repression*, 40 HUM. RTS. Q. 932 (2018) (discussing how some states use "soft repression" to avoid compliance with human rights treaties that they have signed while also avoiding international condemnation).

125. *See, e.g.*, KENNETH WALTZ, THEORY OF INTERNATIONAL POLITICS (1979); *see also* Donnelly, *supra* note 97.

relations theories grounded in neoliberalism might emphasize the functional role institutionalized regimes (such as a global tax order) play in facilitating agreement and cooperation among nation states and in reducing transaction costs.[126] Materialist-structuralist theories such as world-systems theory might emphasize how the new global tax order reflects core-periphery power relationships inherent in the structure of the broader world-system at the current historical moment.[127] This Article does not aim to test the fit of these other theoretical frameworks, but it also does not preclude them. It is of course possible that theories other than world polity theory might have relevance. As described in the data and methods section (Part III), this Article includes a number of control variables that may account for possible alternative explanations.

## III. DATA AND METHODS

### *A. Data*

#### *i. Dependent Variable*

The dependent variable is whether or not a country joins the BEPS Inclusive Framework by October 2020, and in what period and order. Although the OECD publishes an up-to-date list of Inclusive Framework members, joining dates are not listed in a centralized location.[128] I therefore tracked down the dates on which each country joined the Inclusive Framework based on OECD press releases, accounting firm announcements, country press releases, and other tax news publications (such as *Tax Analysts* articles).[129] I divided the period between October 2015 (when the BEPS Final Reports were issued) and October 2020 into sixty-one months. I coded October 2015 as period one and ended my study in October 2020 (period sixty-one). For purposes of the Cox regression, all countries were considered singly right-censored as of October 2020 (period sixty-one, the end of the study). In other words, for countries that had not joined BEPS by time period sixty-one, we only know that their survival time exceeds sixty-one months.[130] Because my focus is on the decisions of non-OECD and non-G20 countries, I excluded from my analysis countries that were members of the OECD and G20 as of 2016. My final sample consisted of 6854 observations over sixty-one months across 174 non-OECD, non-G20 countries, of which there were ninety-four "failures" (i.e., instances of countries becoming members of the BEPS Inclusive Framework). The number of observations, countries, and failures differed slightly across estimated models due to missing data in some of the independent variables.

126. *See, e.g.*, ROBERT O. KEOHANE, AFTER HEGEMONY (2005).

127. *See, e.g.*, IMMANUEL WALLERSTEIN, WORLD-SYSTEMS ANALYSIS (2004).

128. See *Members of the OECD/G20 Inclusive Framework on BEPS*, https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf.

129. *See generally Tax Notes*, TAX ANALYSTS, https://www.taxnotes.com/.

130. Note that the membership decisions of four countries (Belarus, Samoa, Togo, and Mauritania) that joined the Framework in 2021 were not included in the study. The decision to terminate the study in October 2020 is in part due to the fact that 2021 data for some independent variables and controls is not yet available.

*ii. Independent Variables*

Independent variables, controls, and other information are summarized in Table 1. To test normative processes, I included a count variable for the number of treaties a country had in force as of October 2015. I obtained this information based on treaties listed in the International Bureau of Fiscal Documentation (IBFD) tax database.[131] Here again, the information was not publicly gathered in one place, so I hand-counted the number of treaties in force.[132]

I created three separate dummy variables indicating a country's involvement in three OECD tax forums and initiatives prior to the BEPS Project: (1) membership in the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (the OECD Global Forum) as of 2013; (2) ratification of the OECD Convention on Mutual Administrative Assistance in Tax Matters by the end of 2013; and (3) signature of the Multilateral Competent Authority Agreement for the Common Reporting Standard as of 2014.[133] I also created a three-level count variable indicating how many of these initiatives a country had joined. I estimated separate models using the three-level count variable as well as the separate indicator dummies.

To test coercion-based pathways, I included a time-varying three-level categorical variable (sixty-one periods each) indicating periods for which a country was not on, was placed on, or was taken off the EU scoreboard (=1), the EU greylist (=2), and the EU list of non-cooperative jurisdictions or tax haven list (=3).[134] Using a three-level categorical variable was more appropriate than using separate and time-varying dummy variables, because inclusion on the greylist and ultimate EU tax haven list is predicated on prior inclusion on the EU scoreboard and connotes increasing magnitudes of noncompliance with EU-envisioned standards, a fact that would not be captured by separate dummies. However, models using separate dummies yielded substantively similar results. I also included a time-varying variable indicating the amount of OECD net official development aid a country received, obtained from the World Bank. In addition, I created a dummy variable indicating whether a country was or was not a recipient of net official development assistance for use in generating Kaplan-Meier curves.

Finally, to test mimetic processes, I included variables reflecting the proportion of countries in the same region as the country in question, and in the world, that had previously joined the BEPS Framework, lagged by four months. Regions are classified in accordance with the World Bank methodology.[135]

Where appropriate, variables were transformed to address skewness, and data was lagged to minimize the risk of reverse causation.

131. *IBFD - Tax Research Platform*, INT'L BUREAU OF FISCAL DOCUMENTATION, https://research.ibfd.org/#/.

132. I also created variables for the total number of treaties entered into by each country with OECD countries, OECD and G20 countries, and OECD, G20, and EU countries as cross checks.

133. *See* discussion *supra* Part II.A.

134. *Id.*

135. WORLD BANK COUNTRY AND LENDING GROUPS, https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups.

*iii. Controls*

I controlled for countries' GDPs per capita, populations, trade-to-GDP ratios, and stocks of inbound foreign direct investment (FDI) as a percentage of GDP.[136] In some models, I also controlled for taxes as a percentage of the country's GDP. Substantively, these controls account for countries' size, wealth, openness to trade, exposure to or reliance on FDI, and for the extent of tax revenue mobilization in each country.

GDP per capita, country population, trade-to-GDP ratio, and a country's receipt of net official development assistance (as defined by the OECD Development Assistance Committee) were obtained from the World Bank World Development Indicators database and supplemented with data from other sources.[137] Inbound FDI stocks as a percentage of GDP was obtained from the U.N.[138] Taxes-as-a-percentage-of-GDP data—which I use to measure tax mobilization as of 2015—was obtained from the IMF World Revenue Longitudinal Data (WoRLD) database.[139] Where possible, missing values were retrieved from the International Center for Tax and Development (ICTD) government revenue dataset and the OECD Global Revenue Statistics database.[140]

In models not presented here, I also attempted to control for revenue losses from profit shifting using country-level revenue loss estimates by Cobham and Janský.[141] Controlling for revenue losses from profit shifting accounts for different levels of exposure to the harms of tax base erosion due to MNE profit shifting. However, due to missing data, the number of subjects and failures dropped dramatically in all such models I estimated. I do not present these models because revenue losses from profits shifting were not a significant predictor of BEPS membership and did not change my research findings.

*iv. Missing Data and Censoring*

I used various methods to deal with missing data.[142] These methods, though

136. I also ran models controlling for inbound FDI flows (as a percentage of GDP). This yielded results consistent with those models controlling for inbound FDI stocks (as a percentage of GDP).

137. WORLD BANK, DATABANK - WORLD DEVELOPMENT INDICATORS, https://databank.worldbank.org/source/world-development-indicators; OUR WORLD IN DATA, https://ourworldindata.org/; WORLD POPULATION REVIEW, https://worldpopulationreview.com/.

138. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT FDI DATABASE, https://unctadstat.unctad.org/wds/TableViewer/tableView.aspx?ReportId=96740.

139. INTERNATIONAL MONETARY FUND, WORLD REVENUE LONGITUDINAL DATA (WORLD), https://data.world/imf/world-revenue-longitudinal-dat. This taxes-as-a-percentage-of-GDP data does not include social security taxes.

140. INTERNATIONAL CENTRE FOR TAX & DEV., THE GOVERNMENT REVENUE DATASET, https://www.ictd.ac/dataset/grd/; ORGANISATION FOR ECON. CO-OPERATION & DEV., GLOBAL REVENUE STATISTICS DATABASE, https://stats.oecd.org/Index.aspx?DataSetCode=RS_GBL.

141. Alex Cobham & Petr Janský, *Global Distribution of Revenue Loss from Corporate Tax Avoidance: Re-estimation and Country Results*, 30 J. INT'L DEV. 206 (2018). Cobham & Janský offer estimates for 145 countries, using both an IMF model and a model using higher quality data from the ICTD Government Revenue database. I take the average of these numbers.

142. Specifically, data was interpolated, extrapolated, or addressed through listwise deletion. For example, interpolation was performed for GDP per capita figures by examining the U.N. Country GDP

defensible, are imperfect, and the underlying data is likewise imperfect. In particular, variables such as FDI stock and trade-to-GDP ratio may reflect country features (such as tax haven status) other than the extent of foreign investment or trade openness.[143] Moreover, as noted, this study does not take into account countries that joined after October 2020.[144]

rankings and CIA World Factbook Rankings and either using those numbers where systematic error was minimal, or taking the average of the closest competitors (to minimize systematic error).

143. *See generally* Daniel Haberly & Dariusz Wójcik, *Tax Havens and the Production of Offshore FDI: An Empirical Analysis*, 15 J. ECON. GEOG. 75 (2015), Dylan Sutherland & John Anderson. *The Pitfalls of Using Foreign Direct Investment Data to Measure Chinese Multinational Enterprise Activity*, 221 THE CHINA QUARTERLY 21 (2015).

144. In other words, the data is right censored as of October 2020.

***Table 1: Independent variables and control variables***

| ***Independent Variables*** | ***Type*** | ***Source*** |
|---|---|---|
| Joining dates (time) | Sixty-one months; October 2015 to October 2020 | Various sources |
| EU listing process | Three-level ordinal variable (included on scoreboard=1; included in greylist=2; included on tax haven list=3) (61 months) | Timeline of EU List evolution from Council of European Union website, *supra* note 117. |
| Bilateral tax treaties in force (as of Oct. 2015) | Time-invariant count variable | IBFD tax treaties database, *supra* note 131. |
| OECD Global Forum on Tax Transparency member (as of December 2013) | Dummy variable (1=member) | OECD Global Forum 2013 Report on Progress, *supra* note 88. |
| Signed MAATM convention (as of December 2013) | Dummy variable (1=signed) | OECD list of participating jurisdictions, *supra* note 92. |
| Adopted CRS MCAA (as of October 2014) | Dummy variable (1=signed) | OECD list of signatories as of October 29, 2014, *supra* note 95. |
| Involvement in prior OECD tax initiatives | Three-level count variable | OECD |
| Net official development assistance | Time-varying continuous variable; lagged 1 year | World Bank World Development Indicators database, *supra* note 137. |
| Official development assistance recipient | Dummy variable | World Bank World Development Indicators database, *supra* note 137. |
| Number of countries in region and world previously joining BEPS | Time-varying proportion; lagged 4 months | World Bank regional classifications, *supra* note 135. |
| ***Control Variables*** | ***Type*** | ***Source*** |
| Total population | Time-varying continuous variable; lagged 1 year (logged) | World Bank World Development Indicators database, *supra* note 137; World Population Review, https://worldpopulationreview.com/. |
| GDP per capita (2015 USD) | Time-varying continuous variable; lagged 1 year (logged) | World Bank World Development Indicators database, *supra* note 137; U.N. country GDP rankings, U.N. Statistics Division, https://unstats.un.org/unsd/snaama/Downloads; CIA World Factbook, https://www.cia.gov/the-world-factbook/. |
| Trade-to-GDP ratio | Time-varying continuous variable; lagged 1 year (logged) | World Bank World Development Indicators database, *supra* note 137; Our World In Data, https://ourworldindata.org/. |
| Inbound FDI stocks as percentage of GDP | Time-varying continuous variable; lagged 1 year (61 months; logged) | United Nations Conference on Trade and Development FDI Stocks and Flows Database, *supra* note 138. |
| Tax mobilization as of 2015 | Time-invariant continuous variable (percentage) | IMF World Revenue Longitudinal Data (WoRLD) database, *supra* note 139; International Center for Tax and Development Government Revenue Dataset, https://www.ictd.ac/dataset/grd/; OECD Global Revenue Statistics Database, https://www.oecd.org/tax/tax-policy/global-revenue-statistics-database.htm. |

### B. *Event History Methodology*

Event history models are suitable for studying relatively sharp changes occurring at specific time points.[145] These models can account for explanatory variables that change over time, overcoming a limitation of standard linear regression models.[146] In the study of international treaties and accords, event history models allow for the estimation of the hazard of a country joining the treaty or accord in light of which countries have already joined the treaty, thus taking into account the effects of time.[147]

I first estimated the survival and hazard functions of countries in my sample non-parametrically and generated Kaplan-Meier curves for the dummy categorical independent variables.[148] Such estimation does not control for other variables. Nonetheless, graphing the survival and hazard functions provides a useful descriptive sense of how countries' Inclusive Framework membership decisions correspond with certain variables and country characteristics.

I then used Cox proportional hazards regression to estimate models describing event occurrence.[149] The model permits examination of the effects of several variables on the time it takes for an event to occur. The Cox regression model does not require specification of a particular hazard function and looks at only order of occurrences rather than the exact time each event occurs.[150] I checked for multicollinearity, violations of the proportional hazards assumption, robustness, and model fit in the Cox regression models using the appropriate methods.[151]

## IV. FINDINGS

### A. *Non-Parametric Survival Analysis*

Figure 1a shows the estimated survival function for the countries in my

145. Paul D. Allison, *Event History and Survival Analysis*, 46 SAGE PUBS. (2014).

146. These models can also account for censored data.

147. David Strang, *From Dependency to Sovereignty: An Event History Analysis of Decolonization 1870-1987*, 1990 AM. SOC. REV. 846 (1990); Jay Ulfelder, *International Integration and Democratization: An Event History Analysis*, 15 DEMOCRATISATION 272 (2008).

148. Kaplan & Meier, *supra* note 5.

149. Cox, *supra* note 5. Cox regression is a semiparametric regression method that uses partial-likelihood estimation to analyze survival data.

150. After the OECD and G20 countries finalized and adopted the final BEPS reform package in October/November 2015, thirty-three additional countries joined the Framework at an inaugural summit in Kyoto, Japan, on June 30, 2016. *First Meeting of the New Inclusive Framework to Tackle Base Erosion and Profit Shifting Marks a New Era in International Tax Co-operation*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (June 30, 2016), https://www.oecd.org/tax/beps/first-meeting-of-the-new-inclusive-framework-to-tackle-base-erosion-and-profit-shifting-marks-a-new-era-in-international-tax-co-operation.htm. Thus, my data reflects a significant number of time period ties in June 2016 (month 9). In order to accommodate these ties, I estimated my models using the exact partial likelihood approximation method.

151. Namely, I used link test, Schoenfeld residuals, and examined VIF scores. Some of these checks were only available using the Efron approximation. Models estimated using the Efron approximation showed hazard ratios, directions, and significance levels consistent with those estimated using the exact partial likelihood method in terms of significance and direction of the hazard. I also checked model fit by generating Cox-Snell residuals, which are included in the Appendix. I checked for significance of the Kaplan-Meier estimations using log-rank testing, which confirmed robustness.

sample, with ninety-five percent confidence intervals. This visually represents the estimated probability that a country "survives" past specified time points by not joining the BEPS Inclusive Framework.[152] Figure 1b shows the estimated hazard function. This hazard function visually represents the estimated risk of a country in the sample joining the BEPS Framework, given that the country has not already joined.[153]

***Figure 1a. Kaplan-Meier survival function with 95% confidence intervals***

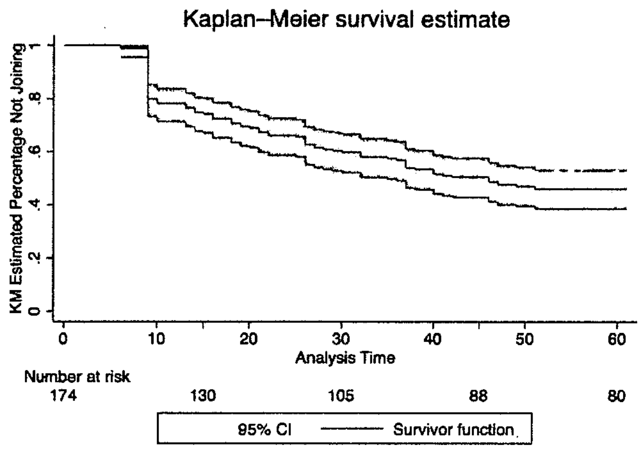



***Figure 1b. Hazard function***

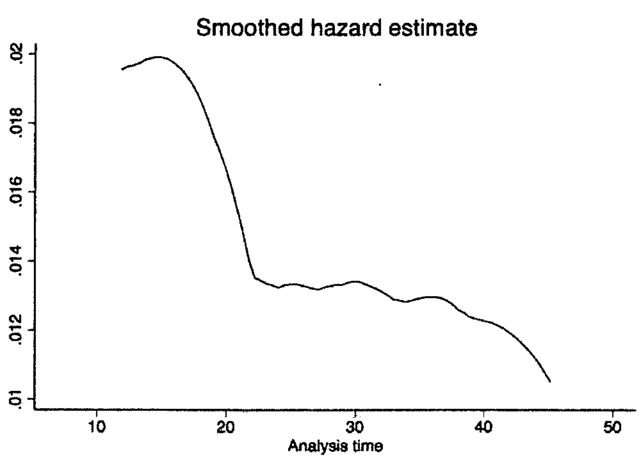



Figure 1a shows a sharp step down in the estimated survival function in

152. So $S(t) = P(T > t)$, where S is the survivor function, and T is the time of joining BEPS.

153. So $P(t, s) = P(t < T < s \mid T \geq t)$, where T is the time of joining BEPS and s is the end of the study period.

month nine (June 2016), the date on which thirty-three additional countries joined the BEPS Framework at the Kyoto summit (on June 30, 2016). After Kyoto, the survival function declines more gradually. Out of 174 countries, ninety-four joined the Inclusive Framework by October 2020.[154] So, 45.98 percent "survived" past October 2020 and did not join the Framework. The estimated hazard function in Figure 1b shows an initial increase, then a steep decline, and then a more gradual decline (in which the function flattens out) before declining more steeply again. This means that if a country has survived past around March 2017, its conditional failure rate (or rate of joining the BEPS Framework, given that it has not already joined) becomes lower. The estimate hazard and survival functions suggest that the Inclusive Framework joining process was front-loaded in terms of hazard of joining, with the hazard declining as time went on. Thus, this does not look like an international process in which membership risk of non-OECD, non-G20 countries accelerated over time as more countries joined.

*i. Prior OECD Processes*

Non-parametric estimation also shows significant relationships between some prior OECD processes and BEPS Inclusive Framework joining decisions. Figure 2 compares estimated survival functions for countries that were and were not members of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes as of the end of 2013. Visually, it is clear that OECD Global Forum members were more likely than non-members to join the BEPS Inclusive Framework. Figure 3 shows the estimated survival functions for countries that were and were not signatories of the Common Reporting Standard MCAA as of October 2014. Again, it is clear that signatories of the CRS MCAA are more likely to join the Inclusive Framework than non-signatories. Log-rank testing shows that these differences are statistically significant.

154. As noted, Samoa and Belarus joined in February 2021, Togo joined in August 2021, and Mauritania joined in November 2021.

***Figure 2. Kaplan-Meier survival functions of OECD Global Forum members (as of December 2013) and non-members***

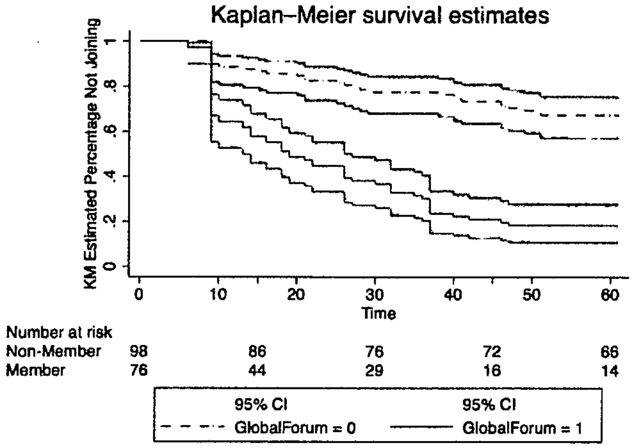
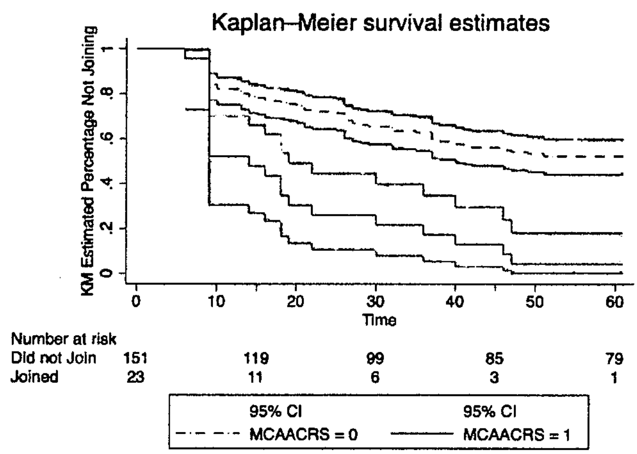



***Figure 3. Kaplan-Meier survival functions of Common Reporting Standard MCAA signatories (as of 2014) and non-signatories***




Non-parametric estimation and log-rank tests for equality of survival functions also suggest a statistically significant difference in estimated survival functions between countries signing the MAATM convention as of December 2013 and those that did not, though at a lower confidence level. Countries that signed the MAATM convention were more likely to join the BEPS Inclusive Framework as of some time points. As noted, however, this significant relationship is not reflected in most of the estimated Cox models discussed below.

*ii. EU Processes*

Non-parametric estimation and accompanying log-rank tests for equality of survival functions also show a statistically significant difference in estimated survival functions of countries that were included on the EU scoreboard in September 2016 (period twelve), denoting economic relevance, and those that were not, and between those placed on the EU greylist at any point during the study period and those that were not. Figure 4 visually depicts how countries placed on the EU scoreboard have a lower probability of survival (i.e., of not joining the Framework) past the specified time points than non-scoreboard countries.[155]

***Figure 4. Kaplan-Meier survival functions of countries included on the EU scoreboard***

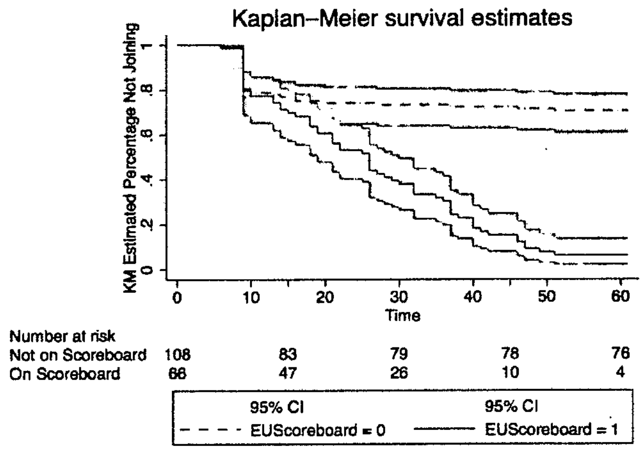


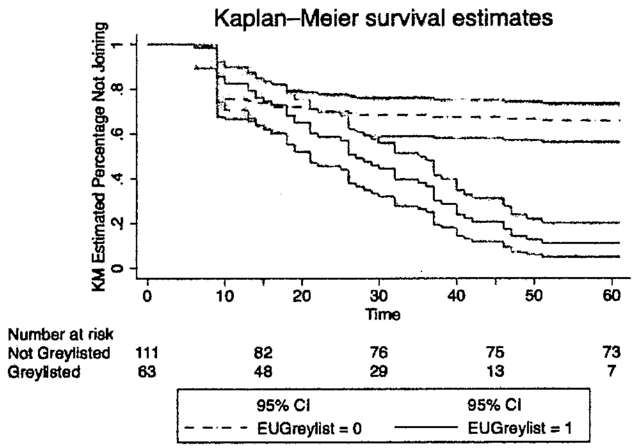

Figure 5 shows the estimated survival functions for countries placed on the EU greylist at any point during the study period.[156] Here again, we see how

155. For Kaplan-Meier purposes, I coded EU scoreboard inclusion as a time-invariant dummy variable. This reflects the intuition that regardless of subsequent EU greylisting and Tax Haven Listing developments, a country flagged on the scoreboard as economically relevant for EU purposes remains so in the future. Note that Figure 4 represents all countries placed on the EU scoreboard, whether or not subsequently greylisted.

156. For Kaplan-Meier purposes, I coded EU greylist inclusion as a time-invariant dummy variable denoting whether a country had been included on the EU greylist at any point during the study period (1=included). There is some loss of information with this approach. Alternatively, it would have been possible to code EU greylist as a time-varying variable, which essentially allows the risk set to change at each time period based on which countries are on the EU greylist in that period. This would be similar to the approach of Simon and Makuch (1984). *See* Richard Simon and Robert W. Makuch, *A Non-Parametric Graphical Representation of the Relationship between Survival and the Occurrence of an Event: Application to Responder versus Non-Responder Bias*, 3.1 STATS. IN MED. 35 (1984). However, the interpretation of Figure 5 would be more complicated with a time-varying EU greylist variable, so I chose the former approach. For further discussion, *see* Steven M. Snappin, Qi Jiang, & Boris Iglewicz, *Illustrating the Impact of a Time-Varying Covariate with an Extended Kaplan-Meier Estimator*, 59 AM. STAT. 301 (2005); Lonni R. Schultz, Edward L. Peterson, & Naomi Breslau, *Graphing Survival Curve Estimates for Time-Dependent Covariates*, 11 INT'L J. METHODS IN PSYCH. RSRCH. 68 (2002). Note that dummy value 0 in Figure 5 includes countries that may have been placed on the scoreboard but that were

countries placed on the EU greylist have a lower probability of survival past the specified time points than non-greylisted countries.

***Figure 5. Kaplan-Meier survival functions of countries included on the EU tax haven greylist***



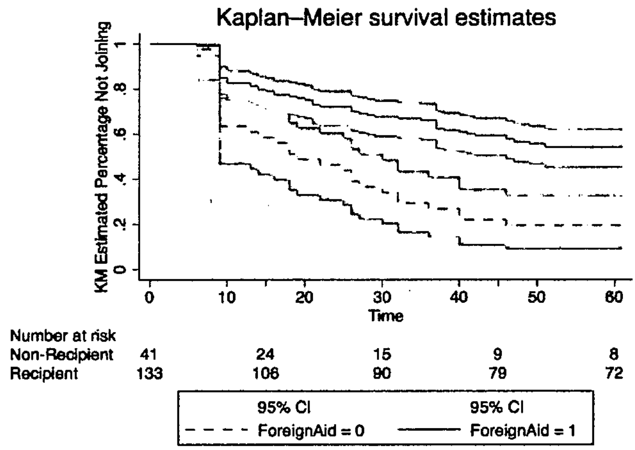

Together, Figures 4 and 5 show how the EU listing process occurred in parallel with BEPS Inclusive Framework membership and seemed to correlate with differences in BEPS participation outcomes, with countries placed on the scoreboard and greylist having a higher probability of joining the Framework as of the specified time points. This observation will be further tested in the Cox regression analysis below, which controls for other variables.

*iii. Foreign Aid and Development*

Figure 6 illustrates the estimated survival functions for countries that are and are not net official development assistance recipients. Visually, we see that net official development assistance recipients have a greater probability of not joining the Framework. Log-rank statistical tests support the observation that there are statistically significant differences between the estimated survival functions of countries that receive net official development assistance and those that do not. These findings suggest that receipt of OECD aid does not appear to increase the likelihood of joining the Inclusive Framework. On the contrary, foreign aid recipients are *less* likely to join the Inclusive Framework than non-recipients. As further discussed below, Cox regression using continuous net official development aid values shows no significant relationship between receipt of such foreign aid and Inclusive Framework membership.

not subsequently greylisted.

***Figure 6. Kaplan-Meier survival functions of recipients and non-recipients of official development assistance***




## B. *Cox Regression Models*

Results of the Cox regressions are shown in Table 2, below. Models 1, 2, and 3 are estimated using a three-level count variable reflecting involvement in the three prior OECD tax processes discussed above (OECD Global Forum membership, MAATM convention signing, and CRS MCAA adoption). Models 4, 5, and 6 are estimated using the separate dummy variables for each of these OECD processes. Models 1, 2, and 3 are useful for reflecting whether participation in a greater number of prior OECD tax initiatives affects the hazard of joining the Inclusive Framework. The separate dummies in Models 4 through 6 provide more information about the relationship between specific OECD processes and Inclusive Framework membership. I present these models, which employ differing numbers of variables and controls, to show robustness of the results across model specifications.[157]

The confidence intervals provide the range of plausible values for the true hazard ratio in the population, in light of sample variability. The asterisks show whether findings are significant at the ninety-five percent, ninety-nine percent, or 99.9 percent confidence levels. Hazard ratios generally refer to the estimated ratio of the hazard rate between two groups.

Overall, the results show support for the hypothesis that, after controlling for GDP per capita, population size, and other variables in the model, inclusion in EU listing processes (both being screened on the EU scoreboard and being included on the EU greylist) is associated with a higher hazard of joining the Inclusive Framework.[158] This highlights the potential importance of EU-initiated

157. Note that as more controls are introduced, the number of observations decreases due to missing data.

158. Inclusion on the actual EU Tax Haven List was not a significant predictor of BEPS membership. Most estimations yielded infinitesimally small hazard ratios and confidence intervals with infinite upper bounds. This is likely due to the fact that the number of observations (countries in the sample

shaming and listing processes in shaping the OECD and G20-led international tax accord. For example, in Model 1, after adjusting for the other variables in the model, countries that were included on the EU scoreboard were at a 543 percent greater hazard of joining the Inclusive Framework than countries that were not included in the EU screening processes (i.e., countries that were not included on the EU scoreboard and belong to reference category 0). Countries that were included on the EU greylist were at a 5383 percent greater hazard of joining the Framework than non-scoreboarded countries (again, those in reference category 0), adjusting for the other covariates.[159] Notably, in some cases, the confidence intervals are quite wide.

By contrast, receipt of foreign aid was not associated with a higher hazard of joining the Inclusive Framework. This is consistent with the non-parametric estimations discussed in Part IV.A above. It should be noted, though, that the non-significance of foreign aid may be due to the fact that many of the countries in the sample are official development assistance recipients.[160]

With respect to normative pathways, Model 1 shows that involvement in one, two, or three prior OECD initiatives was associated with a greater hazard of joining the Framework compared to not joining any prior initiatives, adjusting for other covariates. Models 2 and 3, which control for inbound FDI stocks and (in the case of Model 2) tax mobilization, show that involvement in one or two prior OECD initiatives was associated with a greater hazard of joining the Framework compared to not joining any prior initiatives, adjusting for other covariates. However, Models 2 and 3 show no significant increase in hazard associated with joining three initiatives, compared to not joining any prior initiatives. In all three models, the increase in hazard associated with joining two prior initiatives was greater than the increase in hazard for countries that were involved in only one prior initiative (again, compared to not joining any initiatives). Thus, in Model 1, prior involvement in one prior OECD tax initiative was, compared to joining zero prior initiatives, associated with a 210 percent increase in the hazard of joining the BEPS Inclusive Framework, and prior involvement in two prior OECD tax initiatives was associated with a 492 percent increase in the hazard of joining the Framework (again, compared to reference category of joining zero prior initiatives).

Models 4 through 6 provide more texture. In these models, which included the OECD tax initiatives dummy variables, membership in the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes was clearly associated with a higher hazard of joining the Framework, and the relationship was statistically significant. For example, in Model 4, countries that were members of the OECD Global Forum as of the end of 2013 were at a 210 percent greater hazard of joining the Inclusive Framework than nonmembers,

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that were actually placed on the tax haven list) is very small and no tax-haven-listed countries joined the Inclusive Framework during the time periods they were listed (though a few did join in subsequent periods).

159. Large hazard ratios are common where the covariate at issue is categorical.

160. Out of 174 countries in my sample, the majority (133, or about seventy-six percent) were Official Development Aid recipients.

adjusting for the other covariates. By contrast, joining the MAATM convention and CRS MCAA were not significantly associated with a higher hazard of membership in Models 4, 5, and 6. In some models (not shown here) that were estimated without the OECD Global Forum and MAATM dummy variables, the hazard associated with signing the CRS MCAA became significant. However, even where the OECD Global Forum and CRS MCAA dummies were dropped from the models, the hazard ratio for signing the MAATM convention still did not become significant. This suggests that adopting the CRS MCAA had a stronger correlation with membership in the BEPS Inclusive Framework than signing the MAATM convention, though in most models, the change in hazard associated with CRS MCAA adoption was not significant, either. These findings illustrate the need for more work to tease out the precise normative pathways and specific OECD projects and initiatives through which an international tax world polity has come into existence and where it is centered.

Surprisingly, the number of bilateral tax treaties entered into by a country was also not a significant predictor in most of the models I estimated. In Models 2 and 5, where treaties were found to be significant at the ninety-five percent confidence level, the change in hazard is in the opposite direction from what was hypothesized. In Model 2, for example, a one-unit increase in the number of bilateral tax treaties in force is associated with a roughly two percent *decrease* in the hazard of joining the BEPS Inclusive Framework, adjusting for the other covariates. Though not presented here, I also separately estimated models based on the number of bilateral tax treaties in force with only OECD countries; with only OECD and G20 countries; and with only OECD, G20, and EU countries. These models also showed no significant increase in the hazard of joining the Inclusive Framework as bilateral tax treaties increase. In those models where the number of treaties was found to be significant, the hazard remained in the opposite direction from what was hypothesized.

***Table 2: Cox regression models (exact partial likelihood approximation)***

| | Model 1 | Model 2 | Model 3 | Model 4 | Model 5 | Model 6 |
|---|---|---|---|---|---|---|
| GDP per capita (logged) | 1.428** | 1.652** | 1.339* | 1.292 | 1.568** | 1.297 |
| | [1.103,1.849] | [1.179,2.313] | [1.014,1.767] | [0.970,1.721] | [1.121,2.195] | [0.973,1.731] |
| Population (logged) | 1.438*** | 1.621*** | 1.460*** | 1.455*** | 1.609*** | 1.463*** |
| | [1.212,1.705] | [1.303,2.018] | [1.209,1.763] | [1.203,1.759] | [1.294,2.001] | [1.204,1.777] |
| Tax treaties in force (2015) | 0.986 | 0.981* | 0.987 | 0.989 | 0.983* | 0.988 |
| | [0.971,1.001] | [0.965,0.996] | [0.972,1.002] | [0.974,1.004] | [0.968,0.999] | [0.972,1.004] |
| EU scoreboard (=1) | 6.434*** | 6.819*** | 6.781*** | 6.267*** | 6.183** | 6.359*** |
| | [2.227,18.587] | [2.239,20.763] | [2.303,19.972] | [2.126,18.472] | [2.035,18.781] | [2.146,18.846] |
| EU greylist (=2) | 54.83*** | 82.73*** | 66.44*** | 55.65*** | 64.20*** | 56.05*** |
| | [15.661,191.973] | [22.192,308.413] | [18.370,240.309] | [15.692,197.328] | [17.815,231.350] | [15.777,199.162] |
| EU tax haven list (=3) | 6.10e-16 | 2.03e-17 | 9.15e-15 | 4.02e-16 | 1.24e-16 | 3.73e-19 |
| | [0.000,.] | [0.000,.] | [0.000,.] | [0.000,.] | [0.000,.] | [.,.] |
| Prior OECD initiatives (=1) | 3.096*** | 2.415** | 3.090*** | | | |
| | [1.765,5.431] | [1.348,4.324] | [1.760,5.426] | | | |
| Prior OECD initiatives (=2) | 5.915*** | 5.397*** | 5.630*** | | | |
| | [2.711,12.906] | [2.158,13.496] | [2.366,13.397] | | | |
| Prior OECD initiatives (=3) | 3.475* | 1.711 | 2.743 | | | |
| | [1.285,9.396] | [0.537,5.453] | [0.945,7.961] | | | |
| Net official development aid | 1.000 | 1.000 | 1.000 | 1.000 | 1.000 | 1.000 |
| | [1.000,1.000] | [1.000,1.000] | [1.000,1.000] | [1.000,1.000] | [1.000,1.000] | [1.000,1.000] |
| Trade-to-GDP ratio (logged) | 1.451 | 1.264 | 1.239 | 1.290 | 1.264 | 1.307 |
| | [0.764,2.756] | [0.626,2.552] | [0.641,2.394] | [0.662,2.511] | [0.632,2.528] | [0.663,2.579] |
| Inbound FDI stocks (% GDP; logged) | | 1.155 | 1.163 | 1.160 | 1.197 | 1.162 |
| | | [0.824,1.619] | [0.911,1.484] | [0.907,1.483] | [0.858,1.669] | [0.907,1.487] |
| Tax mobilization | | 1.006 | | | 1.010 | |
| | | [0.967,1.046] | | | [0.972,1.050] | |
| OECD Global Forum member (2013) | | | | 3.100*** | 2.493** | 3.133*** |
| | | | | [1.777,5.407] | [1.408,4.413] | [1.786,5.496] |
| MAATM signatory (2013) | | | | 0.694 | 0.746 | 0.691 |
| | | | | [0.278,1.736] | [0.275,2.021] | [0.276,1.728] |
| CRS MCAA adopter (2014) | | | | 1.909 | 1.607 | 1.855 |
| | | | | [0.767,4.749] | [0.577,4.478] | [0.725,4.743] |
| BEPS membership density (world) | | | 0.995 | | | |
| | | | [0.000,.] | | | |
| BEPS membership density (region) | | | | | | 1.002 |
| | | | | | | [0.987,1.017] |
| Akaike information criterion | 539.8 | 466.1 | 501.7 | 501.4 | 470.1 | 501.4 |
| Bayesian information criterion | 607.9 | 546.4 | 582.7 | 575.7 | 550.4 | 575.7 |
| N | 6720 | 5968 | 6335 | 6335 | 5968 | 6335 |

Exponentiated coefficients; 95% confidence intervals in brackets
$^{*}p < 0.05$, $^{**}p < 0.01$, $^{***}p < 0.001$

In sum, with respect to normative pathways, I found no evidence that having a greater number of bilateral tax treaties in force (both total treaties and treaties with OECD and G20 countries) increased the hazard of joining the BEPS Inclusive Framework. *Thus, Hypothesis 1 is not supported.* By contrast, prior involvement in the OECD Global Forum on Tax Transparency, and to some extent, the CRS MCAA, do increase the hazard of joining the BEPS Framework, so *Hypothesis 2 is supported with respect to OECD Global Forum involvement and (to some extent) CRS MCAA participation. However, Hypothesis 2 was* *generally not supported with respect to the MAATM convention.*

With respect to coercion-based pathways, being screened on the EU scoreboard and being included on the EU greylist were both correlated with an increased hazard of joining the BEPS Framework, controlling for the other variables in the models. The effect of being actually listed by the EU as a tax haven was not significant. *Thus, Hypothesis 4 was supported with respect to the EU scoreboard and EU greylist, but not with respect to the EU tax haven list.* The receipt of foreign aid did not increase the hazard of BEPS Inclusive Framework membership. *Thus, Hypothesis 3 is not supported.*

Finally, I found no evidence that mimetic pathways influenced the decision to join the Inclusive Framework. Countries' decisions to join the Framework were unrelated to the proportion of countries in the region or in the world that had previously joined. In some models, the effect of the proportion of countries in the world that had previously joined the Inclusive Framework could not be estimated without violating model assumptions. However, in models where estimation was possible, the hazard was found not to be significant. Thus, *Hypothesis 5 is not supported.*

Though not the direct focus of this Article, my findings with respect to control variables were also informative. In Models 1, 2, 3, and 5, GDP per capita (logged) was correlated with an increased hazard of joining the Inclusive Framework, but in Models 4 and 6, the correlation was not significant. Population size (logged), by contrast, was significantly and positively correlated with a higher hazard of joining BEPS in all models, which basically means that larger countries were at higher hazard of joining the Framework, controlling for the other covariates. In the models presented, there was no relationship between inbound FDI stocks (logged), trade openness (logged), or tax mobilization and the hazard of joining the Inclusive Framework. The fact that several economic variables were largely nonsignificant arguably strengthens this Article's conclusions with respect to the importance of world polity processes, by controlling for and to some extent ruling out alternative explanations based on economic factors.

## V. DISCUSSION

By focusing on the case of the BEPS Inclusive Framework, this Article has shed light on how interactions among the OECD, EU, G20, and nation states have come to shape the world tax polity that has emerged over the last decade. World polity theory aside, this Article's findings also hold implications with respect to substantive global tax policymaking and the role that international organizations play in that policymaking.

### A. *World Polity Implications*

My findings support the notion that the new world tax polity has emerged not just through normative but also through coercion-based pathways, thus reinforcing the importance of more scholarly work to tease out the precise pathways through which norms and practices proliferate in the context of international tax institutions.

With respect to normative pathways, involvement in and familiarity with the OECD Global Forum on Tax Transparency was a significant and positive predictor of Inclusive Framework Membership. By contrast, the weight of the evidence suggests that signing the MAATM convention was not significantly associated with an increased hazard of Inclusive Framework membership, once other variables are taken into account.[161] As described above, the evidence with respect to the CRS MCAA is more mixed. These findings suggest that there are potentially meaningful distinctions to be drawn between the different initiatives, programs, and pathways operating within the OECD. While some non-OECD, non-G20 countries were previously involved with the OECD's MAATM convention and CRS MCAA initiatives prior to the BEPS Project, for the most part, Inclusive Framework membership is not strongly correlated with these modes of prior involvement. This is perhaps not particularly surprising—fewer than fifty countries were involved with these two prior initiatives prior to the formation of the BEPS Inclusive Framework. Moreover, the CRS MCAA is of relatively recent vintage—the CRS was approved by the OECD Council in July 2014.[162] By contrast, the OECD Global Forum, once reorganized, set out to involve "countries of relevance" at an early stage.[163] Hence, OECD Global Forum membership is unsurprisingly more significantly correlated with BEPS membership and is a more important precursor in the process by which the new "world tax polity" among nation states has proliferated.

Likewise, and somewhat surprisingly, the extent of country embeddedness in the existing bilateral tax treaty network did not appear related to the decision to join the Inclusive Framework in the hypothesized direction, at least as measured by the number of treaties in force.[164] Like the findings regarding prior OECD initiatives and pathways, this finding shows how relationships between prior processes and networks and later-developing ones may be nuanced and unexpected.

With respect to coercion-based pathways, my findings regarding the importance of parallel European Union tax haven listing processes yield important information about the role of EU actions in shaping the trajectory of the OECD- and G20-led BEPS initiative.[165] The OECD and EU are separate organizations, and not all EU countries are OECD or G20 members. Yet the EU's decisions with respect to tax haven naming and shaming—specifically, its designations of countries as economically relevant on the EU scoreboard and its inclusion of countries on the EU greylist—were significantly correlated with an increased hazard of countries joining the BEPS Inclusive Framework, even

161. As noted, the hazard for MAATM convention was not significant even in models that did not include the OECD Global Forum and CRS MCAA dummy variables.

162. *Automatic Exchange Portal*, ORGANISATION FOR ECON. CO-OPERATIVE DEV. https://www.oecd.org/tax/automatic-exchange/common-reporting-standard/

163. *See supra* notes 87-88 and accompanying discussion.

164. It is possible, of course, that a different measure of influence (such as a network-based measure of a country's centrality in the treaty network, as opposed to a numerical count of treaties) might yield a different result.

165. *See* sources cited *supra* note 22.

controlling for economic and other variables.[166] This suggests that EU initiatives were a potentially powerful parallel force influencing the proliferation of BEPS Inclusive Framework membership. It also raises questions about the extent to which the presence of the G20 and developing countries really signals greater inclusivity, or whether accounts emphasizing the pressures placed on less-developed countries hold more weight.[167]

More pointedly, these findings suggest the possibility of a more critical analysis of the new international tax consensus than the one generally articulated by the OECD itself. While what we have seen in the case of the BEPS Inclusive Framework may look like the emergence of a new set of cooperative and consensus-based world-polity-like norms in international tax cooperation, it is likely that this new world polity has come about not just through consensus-based norm proliferation resulting from the OECD's work; it has likely also been amplified by parallel naming-and-shaming pressures applied by the powerful EU. Viewed through this lens, the G20's presence in the BEPS endeavor could potentially be viewed less as a beacon for greater developing country representation and more as a legitimizer of EU power and policy preferences—as expressed through the parallel but nominally separate EU naming-and-shaming tax haven listing process.[168] Correspondingly, our new and more inclusive-looking tax world polity and the isomorphism in tax policy that accompanies it seem less steeped in inclusivity, representation, and willing cooperation and more driven by fear of shaming and its economic and political repercussions.

Taking a step back from tax, a broader question is whether similar dynamics to those observed in the case of the BEPS Inclusive Framework might be observed in other contexts. Specifically, are there other situations in which the interplay between powerful organizations or blocs is important in amplifying transnational processes? How commonly is this dynamic observed, and what are its implications? While these questions are beyond the scope of this Article, the extent to which what we see in the BEPS case is distinctive as opposed to an instance of a broader phenomenon is an obvious avenue for future research.

### B. *Implications for Global Tax Policy*

World polity theory and processes aside, this study also holds important implications for how we characterize and evaluate the substance of international tax policy. This Article's research findings tend to support the claims of tax scholars who have criticized the BEPS Inclusive Framework as centered around

166. *Id.*

167. *See* discussion *supra* Part I.C.

168. It is worth noting that this characterization of the G20 is consistent with the view of some scholars that expanding the G7 to include the G20 is a purposeful move that has been employed by wealthy developed countries to "co-opt" other countries and form alliances with them in the light of the rise of the BRICs, the growing global middle class of countries, and the decline of US hegemony. *See, e.g.*, Ho-Fung Hung, *Recent Trends in Global Economic Inequality*, 47 ANN. REV. SOC. 349, 359 (2021) (discussing this phenomenon).

EU and other developed country interests.[169] As noted, the importance of parallel EU listing processes provide a counter story to accounts that emphasize the increased voice and representation enjoyed by developing countries by virtue of the presence of the G20's role in the project and countries' own "seat at the table" in the Inclusive Framework.[170] While this Article cannot answer the follow-up question of whether actual BEPS standards, policies, and outcomes in fact favor developed as opposed to developing countries, analysis done by others suggests that this is likely the case.[171] This suggests that more attention ought to be paid to the substantive concerns that have been raised by commentators advancing developing country perspectives regarding both the efficacy and the distributive dimensions of the BEPS Project.[172]

Looking ahead, recent developments indicate that the OECD, G20, EU, and the BEPS Inclusive Framework are once again at the forefront of international tax negotiations, including negotiations over a global minimum tax on multinationals.[173] On July 1, 2021, the OECD issued a "Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy," which essentially outlines its plans for global taxation.[174] The Statement was updated in October 2021, and as of November 4, 2021, 137 countries had agreed to it.[175] This two-pillar solution represents a historic and groundbreaking multilateral agreement with respect to the distribution and allocation of global tax revenues among countries.[176] Commonly referred to as BEPS 2.0, this new phase of the BEPS Project tackles some of the distributional issues left open by the initial OECD/G20 BEPS Inclusive Framework; as such, it is the logical next stage of the BEPS endeavor.[177] The two pillars of BEPS 2.0 address, respectively, the taxation of the digital economy through the imposition

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169. Brauner, *supra* note 67; Christensen et al., *supra* note 67; Christians, *supra* note 1; Fung, *supra* note 67; Herzfeld, *supra* note 59; Rocha, *supra* note 57.

170. *See* sources cited *supra* note 24.

171. Christensen et al., *supra* note 67.

172. *See* discussion *supra* Part I.C.

173. *See International Community Strikes a Ground-Breaking Tax Deal for the Digital* Age, ORGANISATION FOR ECON. CO-OPERATION & DEV. (Oct. 8, 2021), https://www.oecd.org/tax/international-community-strikes-a-ground-breaking-tax-deal-for-the-digital-age.htm; *Global Agreement on Corporate Taxation: Frequently Asked Questions*, EUROPEAN COMM'N (July 10, 2021), https://ec.europa.eu/commission/presscorner/detail/en/QANDA_21_3564.

174. *See Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy*, ORGANISATION FOR ECON. CO-OPERATION & DEV., (July 1, 2021), https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf; Stephanie Soong Johnston, *Countries Advance Historic Global Tax Plan with New Details*, 172 TAX NOTES 295 (2021).

175. *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy*, ORGANISATION FOR ECON. CO-OPERATION & DEV., (Oct. 8, 2021), https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf; *Members of the OECD/G20 Inclusive Framework on BEPS Joining the October 2021 Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy as of 4 Nov. 2021*, ORGANISATION FOR ECON. CO-OPERATION & DEV., https://www.oecd.org/tax/beps/oecd-g20-inclusive-framework-members-joining-statement-on-two-pillar-solution-to-address-tax-challenges-arising-from-digitalisation-october-2021.pdf.

176. Ruth Mason, *The 2021 Compromise*, 103 TAX NOTES INT'L 569 (2021).

177. *Id.* at 570.

of a tax on multinational enterprises with global turnover above a certain threshold (Pillar 1) and the institution of a global minimum corporate tax (Pillar 2).[178] BEPS 2.0 is favored by many developed countries, including, it is worth noting, by the powerful G7. By October 2021, the global minimum tax had been formally endorsed by G20 heads of state.[179]

While important issues have yet to be hammered out, and while success is not guaranteed, the BEPS 2.0 agreement is widely regarded as a major historic event.[180] The role played by the initial BEPS Inclusive Framework and project (BEPS 1.0) in setting the stage for potential multilateral agreement on distributional and substantive issues at the BEPS 2.0 stage cannot be overstated. As Ruth Mason has noted, the initial OECD/G20 BEPS Project "built robust institutions of multilateral cooperation, including the cooperation between the OECD and the G20 and the establishment of the inclusive framework," and it also "marketed to the world the technical prowess of the OECD, which had the right experts and leadership for the moment."[181] Importantly, the 137 countries that have signed off on the July 1, 2021 statement are members of the original BEPS Inclusive Framework, which this Article has studied.[182] This means that alongside the OECD and G20 countries, the other BEPS Inclusive Framework countries are continuing to be at the forefront of multilateral attempts to negotiate, articulate, and propose international tax rules and policies, an endeavor that will have important distributional outcomes.

In light of this, it is important to understand how and whether the types of forces that may initially have motivated many countries to join the Inclusive Framework in the first place may be continuing to shape their actions with respect to BEPS 2.0, including countries' decisions to support a global minimum tax and a tax on in-scope multinationals under the first Pillar of BEPS 2.0. Specifically, this Article's findings that the EU tax haven listing processes appear to have amplified and motivated the initial Inclusive Framework participation of many countries suggest the importance of investigating whether similar pressures may be driving developing countries' stated support for a global minimum tax.

The answer to this question could have important implications for the content and legitimacy of any multilateral tax accord. Even setting aside concerns about legitimacy, inclusiveness, and fairness, the answer could also have implications for the implementation and success of any negotiated global

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178. *See* sources cited *supra* notes 174 and 175.

179. G20, G20 ROME LEADERS' DECLARATION (Oct. 31, 2021), https://www.g20.org/wp-content/uploads/2021/10/G20-ROME-LEADERS-DECLARATION.pdf (endorsing global minimum tax); Jeff Stein & Seung Min Kim, *Biden, Other G-20 World Leaders Formally Endorse Groundbreaking Corporate Minimum Tax*, WASH. POST (Oct. 30, 2021), https://www.washingtonpost.com/us-policy/2021/10/30/biden-g20-global-minimum-tax/.

180. Mason, *supra* note 176, at 573 (describing Pillar 1's "new nexus" as "a significant change" and the overall project as "A Really Big Deal").

181. *Id.* at 570 (also noting that "[t]he BEPS project built transnational relationships and the infrastructure for resolving the very distributional questions that it highlighted").

182. *International Community Strikes a Ground-Breaking Tax Deal for the Digital Age*, ORGANISATION FOR ECON. CO-OPERATION & DEV. (Oct. 8, 2021), https://www.oecd.org/tax/international-community-strikes-a-ground-breaking-tax-deal-for-the-digital-age.htm.

tax deal. For example, if countries are signing on to the two pillars of the OECD plan because they feel like they have no choice (that is, they are agreeing in order to avoid shaming or sanction), then it is possible that such countries may exhibit low levels of compliance with the terms of any such deal, despite prior formal commitment to its terms, or that they may find indirect ways of resisting the implementation of a global deal. If the agreement of Inclusive Framework countries to BEPS 2.0 is found to be primarily a result of coercion or compulsion, then researchers and policymakers might want to remain especially aware of "loose coupling" or "decoupling" of compliance from commitment in the future.[183]

### *C. Implications for the Location of the BEPS Project under the OECD*

This Article's findings also hold implications for evaluating the OECD's role in making international tax policy. Here, there are two main sets of implications.

First, as discussed above, some commentators have criticized the fact that the BEPS Project is located under the OECD, rather than under the U.N. or another international organization.[184] The worry is that the OECD's leadership as a de facto world tax authority is likely to focus more on the interests of developed countries. These types of concerns have led to the formation of initiatives such as the Platform for Collaboration on Taxation, a joint initiative of the IMF, World Bank, U.N., and OECD that focuses on the development of tax capacity in developing countries.[185] This Article's findings give credence to the notion that institutional location of international tax projects may matter. They show how OECD and EU policies, procedures, and actions with respect to international tax policy have interacted to influence the path of international tax consensus over time, and how this likely affects developing countries' decisions. While it may make the most logistical sense for the OECD to continue to spearhead international tax projects, growing evidence about the nature and sources of OECD power suggest that tax policymakers should be more attuned to how power dynamics may shape outcomes and to ensuring that such outcomes are procedurally and distributively just and are regarded as legitimate.[186]

Second, this Article's findings suggest the need for a deeper understanding of how the OECD itself has functioned as a tax policymaking institution. As discussed, the OECD has long played a role as a de facto world tax organization.[187] However, it has both strengths and weaknesses in serving this

183. Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110 AM. J. SOC. 1373, 1381-83 (2005) (noting the possibility of "loose coupling" between the symbolic gesture of treaty ratification and actual compliance in practice).

184. Cockfield, *supra* note 11.

185. *Who We Are*, PLATFORM FOR COLLABORATION ON TAX, https://www.tax-platform.org/.

186. *See, e.g.*, Linda Brosens & Hasper Bossuyt, *Legitimacy in International Tax Law-Making: Can the OECD Remain the Guardian of Open Tax Norms?*, 12 WORLD TAX J. 313 (2020) (discussing the legitimacy of OECD in making international tax law and suggesting reforms in decision-making procedures).

187. Cockfield, *supra* note 11; Kudrle, *supra* note 72; Ault, *supra* note 13.

function.[188] While the OECD may be effective at coordination and compromise between member states and at establishment of international tax norms through "soft power" and setting expectations,[189] it may historically have been less effective at enforcing compliance.[190] Moreover, within the tax space, the OECD has engaged in various initiatives and projects through its Committee on Fiscal Affairs.[191] Distinct OECD documents and directives may also carry different weights in influencing domestic tax reform.[192]

In light of these multiple initiatives, directives, and channels, this Article's finding that some prior OECD initiatives correlate more strongly with subsequent participation and involvement in the BEPS Project than others is probably not surprising.[193] While the channels investigated in this Article (namely, the OECD Global Forum, the MAATM convention, and the MCAA CRS) are not exhaustive, the Article's findings suggest that more empirical work illuminating which channels of involvement and norm formation are more influential could yield fruitful insights into the precise OECD initiatives and pathways through which global tax norms develop and proliferate. While the literature on the OECD's role as global tax policy institution has grown over the years, it remains scarce, particularly with respect to empirical documentation and analysis. In this regard, research using event history models for the study of repeated events over time or models for the study of parallel processes may help shed light on the pathways and mechanisms through which the OECD's work has taken effect, particularly when paired with qualitative research methods.[194] These types of empirical projects will be the subject of my future work.

### *D. Limitations*

Like all research, this study has limitations, and these limitations suggest important directions for future research. This study only investigates the relationship between the hazard of BEPS Inclusive Framework membership and the independent variables and control variables identified. There may be omitted variables that are not taken into account. Relatedly, the variables used to operationalize this study's hypotheses may not adequately capture the

188. *See, e.g.*, Rasmus Corlin Christensen & Martin Hearson, *The New Politics of Global Tax Governance: Taking Stock a Decade after the Financial Crisis*, 26 REV. INT'L POL. ECON. 1068, 1072-73 (2019) (noting some of the OECD's limitations in global tax governance prior to the 2008 financial crisis).

189. *See, e.g.*, Ault, *supra* note 13, at 763, 779 (discussing how the OECD facilitates compromises and establishes international tax norms); Ring *supra* note 12, at 652 (describing influence exerted by international organizations through "soft power"); Brosens & Bossuyt, *supra* note 186, at 327 (noting how OECD commentaries and guidelines may set "cognitive expectations").

190. *See, e.g.*, Christensen & Hearson, *supra* note 188, at 1073 (noting weakness at establishing enforcement with respect to tax havens).

191. *See, e.g.*, Ault, *supra* note 13, 760-779 (discussing OECD initiatives with respect to harmful tax competition, dispute resolution, and defining "permanent establishment" for services).

192. *See, e.g.*, Brosens & Bossuyt, *supra* note 186, at 318-19 (noting differing ability of different OECD documents in influencing domestic tax legislation).

193. *See, e.g.*, Kudrle, *supra* note 72 (discussing how the OECD Global Forum on Transparency and Exchange of Tax Information has roots in the OECD's 1998 Harmful Tax Practices project).

194. JANET M. BOX-STEFFENSMEIER & BRADFORD S. JONES, EVENT HISTORY MODELING: A GUIDE FOR SOCIAL SCIENTISTS 157-66 (2004) (discussing application of repeated event models in social science research); Allison, *supra* note 145, at 54-56 (discussing modeling of parallel processes).

underlying theory and hypothesized result. For example, the Article finds that covariates reflecting economic self-interest (such as trade openness, tax mobilization, inbound FDI, and revenue losses from profit shifting) are not significant predictors. But it is of course still possible that self-interest—whether driven by politics, economics, or expressive signaling—drives countries to join the Framework, and that this is reflected in indicators other than the obvious ones investigated in my study. As Dean argues, some countries may not prioritize obvious metrics like GDP.[195] Relatedly, this study is limited by data imperfections. For example, the extensive literature on FDI highlights many difficulties with accurately measuring and operationalizing FDI.[196] As noted, this study is also right censored as of October 2020, and does not take into account membership decisions occurring after that time.

This study also does not examine how the costs of joining compare to the benefits of joining (or to the costs of not joining) the BEPS Inclusive Framework. Comparison of such costs and benefits may provide an alternative theoretical explanation for membership decisions, grounded in functionalism or realism as opposed to constructivism or world polity theory.

Importantly, while I took steps to minimize the risks of reverse causation (including by introducing lags in the independent variables where appropriate), it is possible that these steps were insufficient. Moreover, correlation is obviously not the same as causation, and this study does not necessarily prove that the normative and coercion-based pathways that were investigated directly caused BEPS membership outcomes. However, the findings of this Article do show that the hazard of joining the BEPS Framework was strongly correlated with the timing of inclusion of a country on the EU scoreboard and greylist, pointing to the conclusion that these processes occurred in parallel and that the latter likely affected the former outcome.[197]

Finally, this research only studies the initial BEPS Inclusive Framework membership decision. It does not examine country compliance and adherence to the BEPS minimum standards in later time periods. It is possible that countries may act in self-interest by joining the Framework but may have no actual intentions to comply with the minimum standards, which remain soft law and may be hard to enforce. Because this study does not consider country compliance behaviors after their initial membership decisions, it cannot answer these follow-up questions, including questions of whether there will be "loose coupling" of membership from compliance in the future.[198] In follow-up research, it would also be worth investigating the extent to which and the ways in which the BEPS minimum standards are complied with and enforced.

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195. *See* Steven Dean, *Philosopher Kings and International Tax: A New Approach to Tax Havens, Tax Flight, and International Tax Cooperation*, 58 HASTINGS L.J. 911 (2006).

196. *See, e.g.*, Andrew Kerner, *What We Talk About When We Talk About Foreign Direct Investment*, 58 INT'L STUDIES Q. 804 (2014); Sutherland & Anderson, *supra* note 143.

197. And obviously, causation in the opposite direction (i.e., the idea that BEPS Inclusive Framework causes a country to be listed by the EU) makes no sense.

198. *See* Clark, *supra* note 124; Hafner-Burton & Tsutsui, *supra* note 183; Oona Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935 (2002).

## CONCLUSION

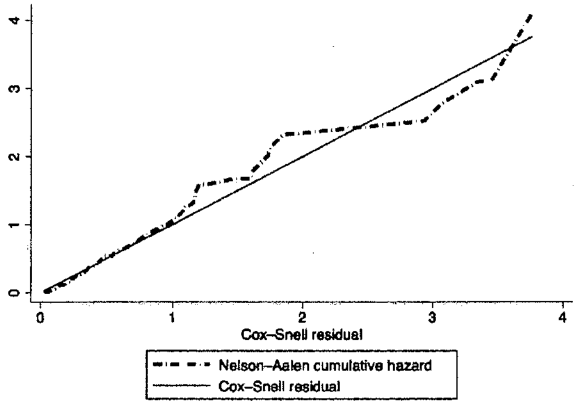
More than five years after the creation of the OECD/G20 BEPS Inclusive Framework, there remains limited empirical understanding of which non-OECD and non-G20 countries have and have not joined the BEPS Framework and why. Scholars and policymakers' understanding of how BEPS unfolded and became a new global tax phenomenon has been mainly derived from qualitative and anecdotal accounts. Moreover, with a few exceptions, the perspectives and interests of developing countries have remained largely underexplored. This Article contributes to the literature by illuminating the mechanisms underlying the emergence of the new shared world polity in tax policymaking using event history analysis. The findings presented here hold important implications for the future of multilateral global tax cooperation and policymaking.

More broadly, this Article also contributes to the literature on international agreements and treaties. Much of the existing literature deals with bilateral treaties in the human rights, environmental, and trade and investment contexts.[199] The case of BEPS—a multilateral agreement focusing on economic governance—can help highlight new dynamics in global multilateral policymaking, revealing, for example, whether countries join multilateral economic agreements for the same reasons that drive bilateral treaties and non-economic agreements.

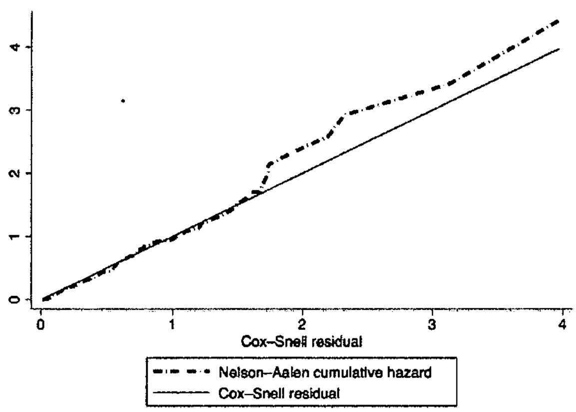
199. *See* Wade M. Cole, *Hard and Soft Commitments to Human Rights Treaties, 1966–2000*, 24 SOC. FORUM 563 (2009); Hathaway, *supra* note 198; Oona Hathaway, *Why Do Countries Commit to Human Rights Treaties?*, 51 J. CONFLICT RESOL. 588 (2007); Ulfelder, *supra* note 147; Wotipka & Tsutsui, *supra* note 10.

APPENDIX: COX-SNELL RESIDUALS

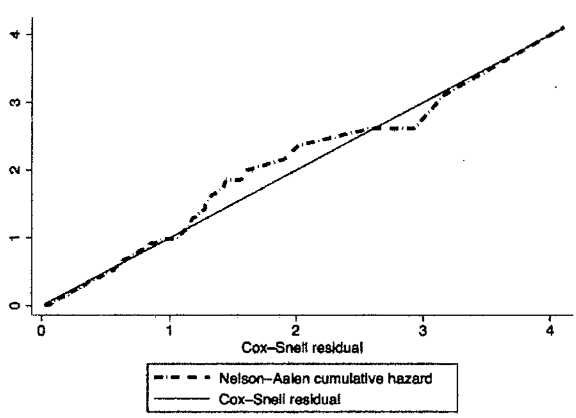
**Model 1**



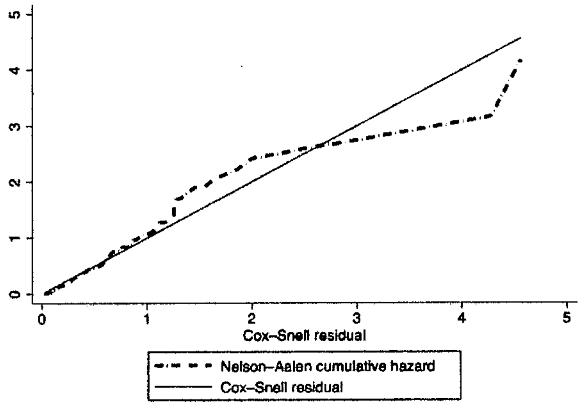

**Model 2**



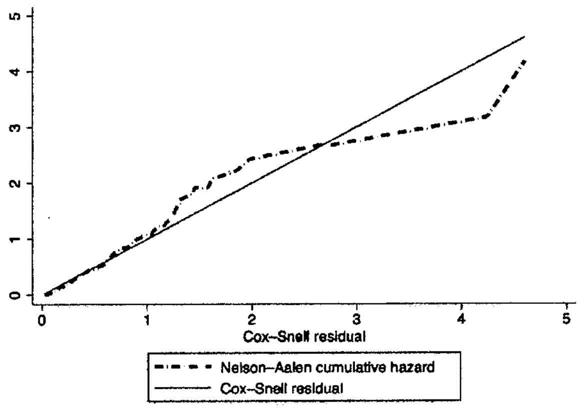

**Model 3**



**Model 4**




**Model 5**




**Model 6**