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Allocation of Taxing Powers – Some Conceptuel Remarks

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"From insight to impact"

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Allocation rules

- Double tax treaties as the main source of law
- Double tax treaties contain in general 16 different allocation rules (e.g. one for employment income, one for interests)
- Allocations rules aim at allocating taxing powers but they mainly limit the taxing right of the source state
- Bilateral treaties but based on «fuzzy multilateralism»
- What is the difference between allocating taxing powers and allocating jurisdiction in other areas:
    - Not just a field of coordination (e.g. compared to international private law)
    - States are not impartial concerning taxing powers – losing jurisdiction means losing revenue (e.g. compared to antitrust law)
    - Overlapping jurisdiction is not necessarily unjust but a necessary consequence of globalization (i.e. a person operating in different states may legitimately face a different tax burden compared to a person operating in one state only)

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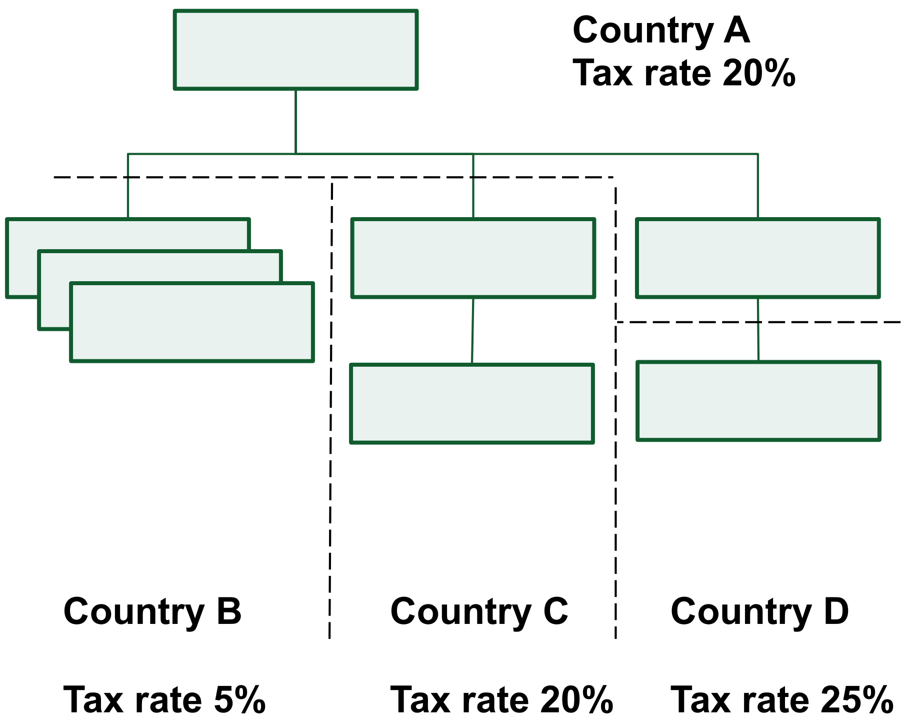
Justice concerns in the current environment

- Benefit principle and source principle have a normative value
- Justification- but also limitation-to-tax principles
- Protection of source taxing rights is key (Pillar 1 – new source taxing rights)
- Unconditional protection of worldwide tax systems seems not persuasive (Pillar 2 – global minimum tax)
- No global ability-to-pay/equality principle
- Distributive concerns apply only in a domestic basic structure (opposing cosmopolitanism; the development of basic structures is dynamic [e.g. EU example - Schumacker])

Global minimum tax (Pillar 2 – to be introduced as of 1 Jan 2024)



- Operations in country B are taxed below 5%
- Pillar 2 aims at a global minimum rate of 15% - how it works:
    - Country A has priority to tax the income in country B up to 15% (Why priority?)
    - If Country A does not exercise such right, Country C and D have the right to tax the income in country B up to 15%
    - Arbitrary result! Presence in D might very limited - why should D have jurisdiction over activities in B?
    - Is this not even infringing the genuine link doctrine?
    - Where is the limit of the genuine link doctrine? Does it have any legal value?
    - Allegedly a global solution for a global problem
    - But: is it (i) a global problem to be solved and is it (ii) a global solution (systemic bias in favor of capital exporting countries)?