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Are states allowed to harm other states through tax policy measures?

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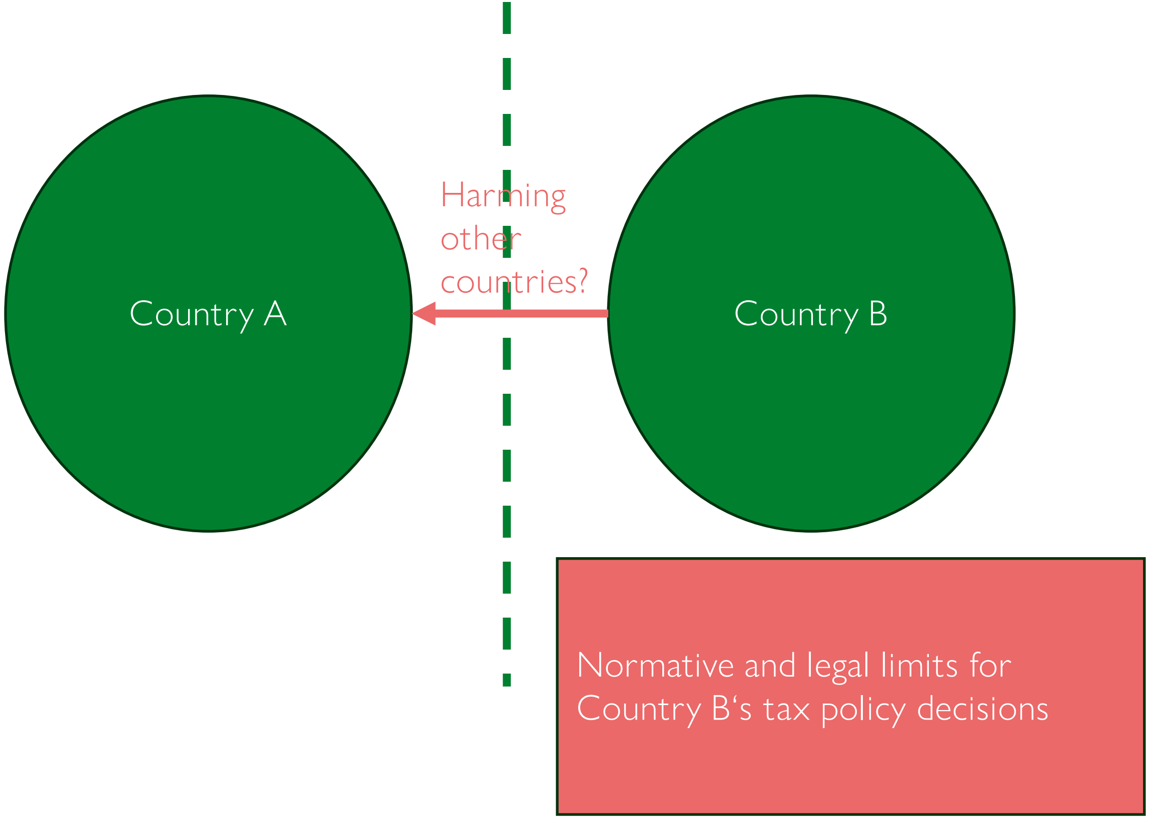
From insight to impact.

Introduction – are there any legal and normative limits?



The normative limits

The normative limits

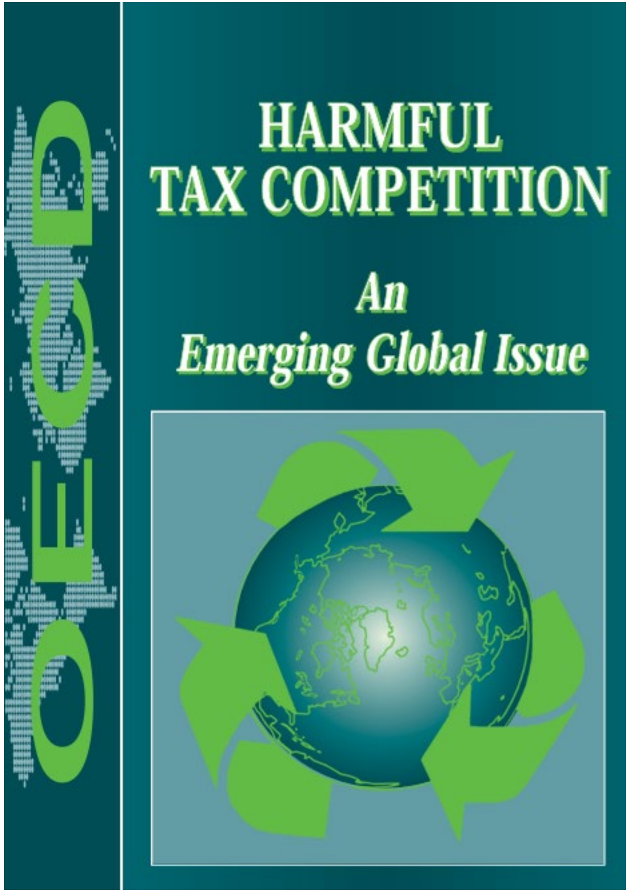
When do competitive measures harm other countries?

We should avoid beggar-thy-neighbour policies →

Many definitions: **A beggar-thy-neighbour policy is an economic strategy in which a country tries to improve its own economic situation using methods that typically make other countries' economic conditions worse.**

Probably the most recent legislative history in the US as an example:

- FDDEI
- De facto prohibition of DSTs through trade agreements/deals
- PE definition will not be amended



The normative limits

When is the sovereignty of a country „harmed“?

Broad understanding:

Tax sovereignty means sth. like:

- “a state [is] able to be responsive to the beliefs of its citizens about what justice requires.” (van Apeldoorn)
- a state has access to sufficient tax revenue to decide on the level of domestic redistribution

→ Statist and cosmopolitan approach mingle! → redistribution would be required between countries

Narrow understanding:

Tax sovereignty means sth. like:

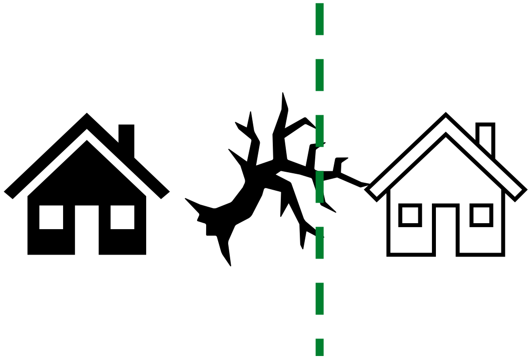
- A state has the right to levy taxes on income created within its territory by using the benefits of such a state. Not more not less.

The normative limits

Sic utere tuo ut alienum non laedas

use your own property in such a manner as not to injure that of another

Countries should not harm each other as property owners should not harm each other



The legal limits

The legal limits

Treaties

- WTO treaties
- Investment treaties

Customary international law/General principles of international law/Other sources

- Jurisdiction-to-tax
- No-harm-principle

Jurisdiction-to-tax

- **Legal source: Customary international law (prevailing opinion)**

  - State practice
  - Opinio iuris

  - Diplomatic protest as an indication of opinio iuris → section 899 as an example? Non-exchange of information for the application of the UTPR as another example?
  - Ryngaert (2024): *"Jurisdiction is closely related to the international law principle of non-intervention, and is an attribute of a State's sovereignty"*
  - **→ jurisdiction should protect countries from certain actions of other states**
  - **→ many uncertainties in the field of international tax law**

No harm principle

Legal source: disputed (ICJ → Customary international law)

- **Trail Smelter (United States of America v Canada (Award) 1941, 1965)**
- *"[U]nder the principles of international law, as well as of the law of the United States, no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence."*
- **Pulp Mills (ICJ, Argentina v Uruguay (Judgment) 2010)**
- *"A State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State"*
- **Advisory Opinion on Climate Change, ICJ, 2025**
- It contains two elements: (i) duty not to cause significant harm to the environment (climate system) and (ii) due diligence.
- *"not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction."* → this infringes the no harm principle

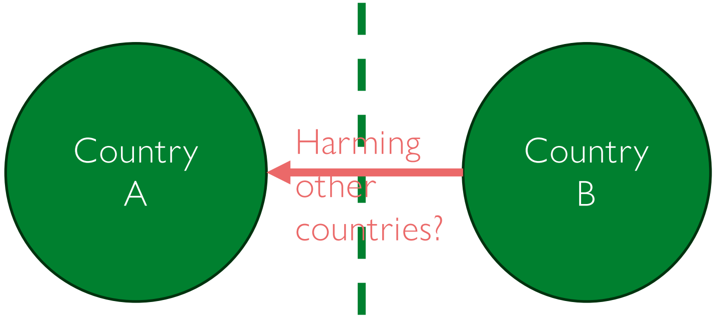
No harm principle

Very clear statement by the ICJ (para. 427)

- *"Failure of a State to take appropriate action to protect the climate system from GHG emissions — including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the* ***provision of fossil fuel subsidies*** *— may constitute an internationally wrongful act which is attributable to that State."*

Legal consequences (para. 444 et seq.)

- *i) Duty of performance*
- *ii) Duty of cessation and guarantees of non-repetition*
- *iii) Duty to make reparation*



Country B grants a fossil fuel subsidy through a tax exemption (e.g. no excise duty on kerosene, no VAT on flight services)

No harm principle

Assessment

- Fossil fuel subsidies are (that is my reading) considered to be an infringement of the no harm principle
- Depending on the domestic procedure, I might be able to litigate against tax exemptions on fossil fuel emitting activities
- Reparation payments will be difficult to enforce. However:

Ukraine plans $44 billion claim against Russia for wartime emissions

By **Simon Jessop** and **Sebastian Rocandio**

November 18, 2025 10:15 PM GMT+1 · Updated November 19, 2025

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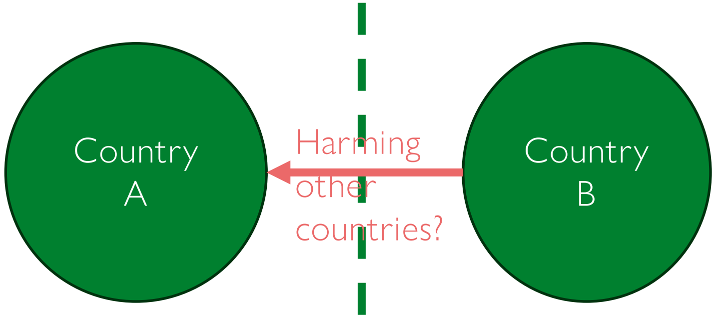

Country B grants a fossil fuel subsidy through a tax exemption (e.g. no excise duty on kerosene, no VAT on flight services)

Conclusion

Conclusions

Normative limits

- There are several normative arguments for limiting the tax policy leeway of countries (beggar-thy-neighbour policies, sic utere but also the protection of tax sovereignty)

Legal limits

- The limits of jurisdiction in tax matters still need to be defined → maybe through the ECJ?
- The ICJ Advisory Opinion on Climate Change has opened the Pandora Box for climate litigation – also regarding fossil fuel subsidies through tax exemptions.

- → very important to have clarity on the distinction between normative goals and legal limits