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THE UNRULY WORLD OF TAX: A PROPOSAL FOR AN INTERNATIONAL TAX COOPERATION FORUM

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ABSTRACT

International cooperation in tax policy is deeply fractured. Inconsistencies, loopholes and ineffective mechanisms—that could be avoided if efficient collaboration between countries existed—have created significant inefficiency losses for decades. This paper focuses on the institutional infrastructure underlying international cooperation in tax issues and argues that the current forums in which international cooperation in tax issues occurs do not provide an adequate platform in which countries with similar interests can effectively promote collaborative effort. To facilitate cooperation, this paper puts forward a proposal to create a new institution that is currently missing from the international tax policy-setting arena: an informal forum for coordination between countries that share similar interests in tax policy, inspired by the model of “Like Minded Groups” in international organizations. This forum will enable countries that share similar interests to cooperate and reach understandings about necessary policy changes. We mention two major projects that this forum could promote—efforts to curtail tax evasion and efforts to harmonize different aspects of tax policy. We argue that this model might have significant advantages in promoting cooperation, reducing the “competitiveness” threat, pushing forward policies and overcoming external and domestic pressures. Due to the current challenges in the field of tax policy, and the difficulties in forming cooperation within the current institutional framework, the proposed model is worth serious discussion and consideration.

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1. INTRODUCTION

International cooperation in tax policy is deeply fractured. Inconsistencies, loopholes and ineffective mechanisms—that could be avoided if efficient collaboration between countries existed—have created significant inefficiency losses for decades. While there are various reforms that can be suggested to the existing mechanisms of global tax governance, in this paper we focus on the institutional infrastructure underlying international cooperation in tax issues. Specifically, we argue that the current forums in which international cooperation in tax issues occurs do not provide an adequate platform in which countries with similar interests can effectively promote collaborative effort.

To facilitate cooperation, this paper puts forward a proposal to create a new institution that is currently missing from the international tax policy-setting arena: an informal forum for coordination between countries that share similar interests in tax policy. This forum will enable
countries that share similar interests to cooperate and reach understandings about necessary policy changes. The proposal is inspired by the model of “Like Minded Groups,” which is widely practiced in international organizations, where states whose interests converge establish a group to coordinate their policies and create a negotiating bloc that enables them to achieve greater gains in negotiations with other parties. This paper emphasizes the maximization of national welfare, yet it is possible that cooperation that reduces current inefficiencies would increase worldwide welfare as well.

Current international institutions and forums that specialize in the field of international taxation do not provide an effective platform for cooperation. The OECD, which is based on consensual decision-making, consists of countries with divergent and, in some cases, conflicting interests, which limit its ability to induce cooperation in contentious issues and to make significant changes to the status quo. The G20, as a forum of Heads of States with different interests and without institutional support, cannot permanently play the role of initiator and leader of international tax policy changes. Other bodies that are discussed in this paper do not effectively facilitate cooperation in tax policy matters.

We call this proposed institution the Tax Cooperation Forum (TCF). Different groups of countries can form their own TCF to promote their shared interests. One group of countries with similar tax interests that may set up such a forum is the US, UK, Germany, France, Japan, and a few other developed countries that share similar interests. The TCF would be informal and without any formal or legal authority over its members. This would allow its members to opt in or out of the discussions according to the proposed policy changes and to create ad hoc coalitions. As we explain further below, the fact that it is an informal body would lessen political pressure and sensitivities regarding inclusion or exclusion of different countries.

If the changes that were agreed upon in the TCF would require only actions by the member countries, no further international cooperation is needed, and the countries in that group would adopt the changes into their domestic laws, bilateral or multilateral agreements. If the changes would affect other parties or need the cooperation of other countries, the TCF could submit the proposed changes to the OECD (and possibly to the G-20 or the WTO in issues that affect trade), in order to allow negotiation and to form a broader consensus. The TCF may indicate what its core non-negotiable principles are and where there is room for concessions in
exchange for broader acceptance by non-TCF states. If a broad consensus is not achieved, the TCF countries would adopt the proposed changes and may set mechanisms to incentivize cooperation and to mitigate problems of lack of cooperation with other parties.

What kind of tax issues could be on the agenda of such a forum or could have resolved differently if this forum existed? At least two major projects could be promoted by this forum—efforts to curtail tax evasion and efforts to harmonize different aspects of tax policy. There may be measures that are not taken now to fight tax evasion due to lack of cooperation between countries.\(^1\) The implementation of automatic information exchange by the US (as adopted unilaterally in FATCA) while Germany and the UK are to adopt an alternative approach (by setting anonymous cross-border tax withholding in their relations with Switzerland) also makes one wonder whether a different result would have been achieved if these countries tried to collaborate on this matter.\(^2\)

The TCF could also promote multilateral harmonization efforts. Many commentators suggested ideas that would improve international tax policy, but their adoption must be multilateral: multilateral tax treaty;\(^3\) formulaic apportionment system\(^4\) and reforms in the current transfer pricing policy;\(^5\) standardization of anti-avoidance rules, such as the rules regarding CFCs;\(^6\) uniform minimal capital income tax rate;\(^7\) cooperation between countries in setting policy regarding taxation of intellectual property,\(^8\) etc. Other, more modest initiatives that would be beneficial include harmonization of reporting rules in a way that would make compliance less costly for taxpayers; standardizing source and transfer pricing rules; improving mechanisms for

\(^1\) For example that is discussed below, see footnote 27: while the G20 stated in 2010 that it is “ready to use countermeasures against tax havens,” no countermeasure was further discussed between countries that may benefit from putting pressure on tax havens.

\(^2\) For elaboration on this issue, see Itai Grinberg, Beyond FATCA: An Evolutionary Moment for the International Tax System 13 (Georgetown Law Faculty Working Papers, Paper No. 160, 2012).


\(^4\) For one proposal for a formulaic apportionment, see Reuven Avi-Yonah and Kimberly Clausing, Reforming Taxation in a Global Economy: A Proposal to Adopt Formulary Apportionment for Corporate Income Taxation (Hamilton Project, 2007).


\(^7\) For an analysis of harmonization of tax rates on capital income, see Peter Birch Sørensen, The case for international tax co-ordination reconsidered, 15:31 ECONOMIC POLICY 429 (2000).

\(^8\) For discussion of this topic and the policy alternatives see Michael J. Graetz & Rachael Doud, Technological Innovation, International Competition, and the Challenges of International Income Taxation (forthcoming in 113 COLUM. L. REV. (2013)): 
dispute resolution and administrative cooperation, and other initiatives that would improve efficiency.

What would be the advantages of this forum? First, cooperation between countries that share similar interests is beneficial for them because it reduces the “competitiveness” threat—a fear that investors will leave or that domestic companies will not be able to compete against foreign companies. Second, cooperation between influential countries may be utilized to push forward policies and achieve consensus, and if consensus is not in reach, to set a coordinated policy between them which may be better than sticking to the status quo or acting unilaterally. Third, this model would allow different groups of states that share similar interests to set their own tax policy agenda and to cooperate on issues that are not of broad interest. Fourth, cooperation between a group of countries may help to overcome domestic political pressures and lobbies against the suggested policy change. Fifth, this model is practical, feasible and would fit the current framework of international institutions.

The structure of this paper is as follows: part 2 discusses the current international tax forums and shows that they do not foster cooperation efficiently; part 3 discusses the proposed model for international tax policy leadership; and part 4 offers concluding remarks.

2. CURRENT INTERNATIONAL TAX POLICY FORUMS

Assume that a group of countries that share similar interests would like to collaborate on tax policy matters. What current international forum could facilitate this cooperation?

2.1. OECD

The OECD claims to have performed a central role in developing and promoting tax policies that are implemented globally, a contention that is accepted by several commentators. The most successful OECD standard-setting instrument in the field of tax policy is the OECD

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Model Treaty, on which virtually all of the more than 1,500 bilateral tax treaties are based.\textsuperscript{11} Another similarly successful example of OECD standard-setting is the 1995 Transfer Pricing Guidelines that are used as the basis for legislation in OECD countries and an increasing number of non-OECD countries. The OECD also took the leading role in developing the widely adopted standards regarding e-commerce.\textsuperscript{12} The OECD Guidelines for Multinational Enterprises (2008, updated 2011) include a chapter on taxation, in which the OECD lays the proper standard of multinationals’ behavior in the field of tax.\textsuperscript{13}

The OECD has faced setbacks in its efforts to achieve greater coordination between its members in tax policy. For example, some observers have noted that by 2006 the OECD’s Harmful Tax Competition agenda, originated in the 1998 OECD report, had largely failed to achieve its objective of combating the role of offshore countries in international tax avoidance and evasion.\textsuperscript{14} Other commentators, such as Avi-Yonah, contend it has had a limited success.\textsuperscript{15} Overall, OECD activities in the field of tax policy are predicated on the principle of fiscal sovereignty, which favors enhancing cooperation rather than tax harmonization between member states.\textsuperscript{16}

The financial crisis increased international interest, particularly among G20 member states, to augment government revenues by effectively combating tax havens. Implementing G20 decisions in this regard is largely dependent, however, on the OECD.\textsuperscript{17} Indeed, the relationship between these two bodies is symbiotic: the G20 elevates some of the OECD’s tax policies to the top of the international policy-making agenda, while the OECD provides

\textsuperscript{11} See Thuronyi, supra note 3.
\textsuperscript{13} Available at http://www.oecd.org/daf/internationalinvestment/investmentfordevelopment/oecdguidelinesformultinationalenterprises.htm (last visited: March 6, 2013).
\textsuperscript{14} Richard Eccleston, Peter Carroll & Aynsley Kellow, Handmaiden to the G20? The OECD’s evolving role in global economic governance (working paper, 2010); Wouters and Meuwissen, supra note 10, at 12.
\textsuperscript{17} See Wouters and Meuwissen, supra note 10, at 10; Christians, supra note 20, at 29.
supportive functions for the G20, since the latter lacks the capacity to develop standards, implement and monitor the implementation of its decisions.18

The Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter: Global Forum) sets an interesting example for the abovementioned relationship between the OECD and the G20. The Global Forum was established in 2001 under the auspices of the OECD to set a multilateral framework within which work in the areas of transparency and exchange of information can be carried out by both OECD and non-OECD economies. The Global Forum’s main achievements from its early years were the development of the standards of transparency and exchange of information through the publication of the Model Agreement on Exchange of Information for Tax Purposes in 2002 and the issuance of a paper setting out the standards for the maintenance of accounting records. In addition, the Global Forum has, since 2006, produced an annual assessment of the legal and administrative framework for transparency and exchange of information in over 80 jurisdictions.19

The Global Forum was restructured and strengthened in 2009 as a result of the G20’s pressure to implement standards of transparency and exchange of information.20 The OECD’s tax transparency agenda, implemented through the Global Forum, had little effect before G20 involvement: as of 2006 only 11 Tax Information Exchange Agreements (hereinafter: TIE agreements) were signed, whereas by December 2011, more than 700 agreements were signed.21

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18 Id. and Eccleston et al., supra note 14, at 4. Eccleston et al contend that there are potential benefits to closer coordination between the OECD and the G20 on international tax issues: first, the latter’s high profile support of the OECD’s agenda represents a stronger political commitment, and thus it may be less likely that OECD member states will veto the agenda in face of domestic political pressures; second, the strong commitment would probably result in specific funding to the OECD to support the agenda and fund its implementation and enforcement. Id., at 10.

19 See the Global Forum website, at http://www.oecd.org/document/33/0,3746,en_21571361_43854757_44200609_1_1_1_1,00.html (last visited: March 6, 2013).

20 See supra note 16, at 102-4: “[a]t its Mexico meeting on 1-2 September 2009, 178 delegates from over 70 jurisdictions and international organisations met to discuss progress made in implementing the international standards of transparency and exchange of information for tax purposes, and how to respond to the G20 call to strengthen the work of the Global Forum. The membership of the Global Forum was expanded to include more than 95 jurisdictions, including all OECD and G20 countries. Its governance and financing were restructured to ensure that all members participate on an equal footing. They agreed to a three-year mandate, which includes: carrying out an in-depth monitoring and peer review of the implementation of the standards of transparency and exchange of information for tax purposes; developing multilateral instruments to speed up negotiations; and ensuring that developing countries benefit from the new environment of transparency.”

To further strengthen the implementation of the standards, in 2010 the Global Forum launched a peer review process that includes a review of each jurisdiction’s legal and regulatory framework for transparency and the exchange of information for tax purposes and a survey of the practical implementation of the standards.\textsuperscript{22} This shows that while the OECD could set the agenda on issues that are not too contentious, it lacked the ability to effectively promote its policy proposals, while the G20 was much more effective in promoting the OECD’s agenda. The G20 depended on the OECD, however, to ensure implementation and monitor compliance.\textsuperscript{23}

Although it remains the most significant international forum in the field of tax policy coordination, the capacity of the OECD to lead international efforts in this field suffers from substantial limitations. \textit{First}, its decision-making is based on \textit{consensus} among 34 member states. Naturally, these countries have different interests, economic characteristics and tax systems. As in many other multilateral forums, this means that OECD decisions and policies will reflect the lowest common denominator that its members could agree upon. While it is desirable to achieve policy goals by broad acceptance, when this is not possible, partial cooperation between some members may be better than reaching a stalemate. OECD rules of procedure do not, however, provide for cooperation between some of its members that share similar interests.

\textit{Second}, the OECD might lack the political and diplomatic influence to push forward the policy it endorses, as exemplified in the OECD’s agendas on tax transparency and harmful tax competition. Therefore, although the OECD remains the forum that is best suited for forging a broad consensus over proposed international tax policies, there may be a need for additional forums for coordination between countries that share similar interests and that can influence the OECD agenda.

\textit{Third}, as a forum that aims to address global tax issues, the OECD is probably not the most suitable body to discuss issues that are of interest to only a portion of its membership. For example, if some countries offer substitutive investment opportunities, they can collaborate to

\textsuperscript{22} See http://www.oecd.org/dataoecd/35/16/46615395.pdf (last visited: March 6, 2013).
\textsuperscript{23} It is argued that the current efforts of the G20 and the OECD are not tough enough, as they do not require imposing automatic information exchange or closing tax havens down, but only demand “information exchange upon request,” allowing tax havens to be taken from the OECD’s black list by limited compliance with information exchange requirements.
suppress tax competition that is harmful to them. This form of coordination is not implementable through the OECD, which is not a forum that allows for cooperation between some of its members.

2.2 G20

From its inception in 1999 until the financial crisis that broke out in late 2008, the role of the G20 in setting tax policy was rather limited.\textsuperscript{24} The G20 is an informal forum, it does not have a founding legal instrument or voting mechanisms, its decisions are reached by a consensus, and are they not legally binding. Moreover, it does not have a permanent secretariat to assist it. Rather, the member state holding the rotating Presidency of the G20 hosts the annual meeting of the group and provides secretarial and logistical support to the meeting.\textsuperscript{25} In 2004, the G20 released a “Statement on Transparency and Exchange of Information for Tax Purposes,” in which it made a commitment “to the high standards of transparency and exchange of information for tax purposes that have been reflected in the Model Agreement on Exchange of Information on Tax Matters as released by the OECD in April 2002” and a call to “all countries to adopt these standards.”\textsuperscript{26} However, as noted above, the 2004 statement had little effect on the signing of TIE agreements.

\textsuperscript{24} The Group of Twenty Finance Ministers and Central Bank Governors (G20) was established in 1999 as a forum for both industrialized and developing economies to discuss key issues relating to the global economy, growth and economic stability (The G20 was created by the G7 as a response both to the financial crises of the late 1990s and to a growing recognition that key emerging economies were not adequately integrated in debates on global economic governance. See the G-20 website, at: http://www.g20.org/docs/about/about_G20.html, last visited: March 6, 2013). It is composed of the finance ministers and central bank governors of 19 countries and the European Union. There are no formal criteria for G20 membership and the composition of the group has remained unchanged since it was established (These are the original members of the G7: Canada, France, Germany, Italy, Japan, the United Kingdom and the United States, in addition to Argentina, Australia, Brazil, China, India, Indonesia, Mexico, Russia, Saudi Arabia, South Africa, Republic of Korea and Turkey). In view of the objectives of the G20, it was deemed important that it include countries that wield considerable influence within the international financial system. Aspects such as geographical balance and population representation also played a major part. The G20 usually meets once annually at the level of the G-20 finance ministers and central bank governors. The ministers’ and governors’ meeting is usually preceded by two deputies’ meetings and technical work to provide ministers and governors with analysis to better inform their consideration of policy options. See supra note 31.

\textsuperscript{25} See Wouters and Meuwissen, supra note 10, at 5.

\textsuperscript{26} It was stated that “[t]he G20 therefore strongly support the efforts of the OECD Global Forum on Taxation to promote high standards of transparency and exchange of information for tax purposes and to provide a cooperative forum in which all countries can work towards the establishment of a level playing field based on these standards.” See G-20, STATEMENT ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES (November 21, 2004).
In the aftermath of the financial crisis, the G20 role in the field of international tax policy became more significant. The primary manifestation of G20 interest in this field appeared in the fight against tax havens through the improvement of transparency and exchange of information. These statements were backed with political and diplomatic commitments. Thereafter, a striking increase in the signatories of TIE agreements by key countries occurred, as well as the granting of larger funding for the Global Forum, as mentioned above.

Nonetheless, the G20 remains unable to perform a leading role in international tax policy by reason of a number of impediments. First, the G20 depends on the OECD in a way that limits its ability to originate tax policy. As described above, the relationship between the G20 and the OECD is symbiotic: the G20 provides high-level political commitment, while the OECD develops the technical standards, and monitors implementation. Therefore, as one commentator has noted, the primary role of the G20 is to syndicate, rather than originate, tax policy. Moreover, since the G20 depends on the OECD for implementation, if tax policies adopted by the G20 are not in line with OECD standards, then the latter is not likely to implement it.

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27 In a statement issued after the 2009 London summit, the G20 expressed the need to “take action against non-cooperative jurisdictions, including tax havens. We stand ready to deploy sanctions to protect our public finances and financial systems. The era of banking secrecy is over. We note that the OECD has today published a list of countries assessed by the Global Forum against the international standard for exchange of tax information.” See London Summit – Leaders’ Statement (2 April 2009). Later, in the Pittsburgh Summit, a statement issued by the G20 was noted that: “[w]e welcome the expansion of the Global Forum on Transparency and Exchange of Information, including the participation of developing countries, and welcome the agreement to deliver an effective program of peer review. The main focus of the Forum’s work will be to improve tax transparency and exchange of information so that countries can fully enforce their tax laws to protect their tax base. We stand ready to use countermeasures against tax havens from March 2010.” See Leaders’ Statement, The Pittsburgh Summit (Sep. 24–25, 2009). The G-20 has not yet stated what countermeasures are being considered against tax havens. See Wouters and Meuwissen, supra note 10, at 5.

28 See supra notes 17 and 18.

29 See Christians, supra note 10, at 29. For example, see the recent statement issues in February 2013, the G20 noted that: “we welcome the OECD report on addressing base erosion and profit shifting and acknowledge that an important part of fiscal sustainability is securing our revenue bases. We are determined to develop measures to address base erosion and profit shifting, take necessary collective actions and look forward to the comprehensive action plan the OECD will present to us in July. We strongly encourage all jurisdictions to sign the Multilateral Convention on Mutual Administrative Assistance. We encourage the Global Forum on Transparency and Exchange of Information to continue to make rapid progress in assessing and monitoring on a continuous basis the implementation of the international standard on information exchange and look forward to the progress report by April 2013. We reiterate our commitment to extending the practice of automatic exchange of information, as appropriate, and commend the progress made recently in this area. We support the OECD analysis for multilateral implementation in that domain.” This statement shows that the OECD originates the action plans and the norms while the G20 provides high-level political support.
Second, since the G20 is an executive-level forum that is based on consensual decision-making, it tends to avoid taking stances on issues that are too politically sensitive. This may explain why the G20 refrained from adopting a tougher stance on the fight against tax havens. Conflicting interests among G20 members that have jurisdictions that offer tax havens, such as Hong Kong and Macau in China, and the Isle of Man, Guernsey, and Jersey in the case of the United Kingdom, may also explain the choice taken by the G20 not to endorse harsher measures to combat tax havens. The G8, which is less active in tax policy issues in the last few years, suffers from similar problems.

Nevertheless, the advantage of the G20 is that it enables cooperation in regard to fiscal issues within a relatively small group of influential countries. This cooperation may lead to significant advances on proposed tax standards, which could not be achieved by the OECD alone, as shown in the transparency and exchange of information example.

2.3 Other Forums

Other bodies and international organizations do not provide an effective platform for countries to collaborate on tax policy matters. Some of these organizations—the UN, EU, WTO, IMF, World Bank, regional and administrative forums—are discussed below.

The UN has not been a leading forum for international tax policy setting, although it made some contributions in advancing some proposals that affect the tax policy of developing countries. There are a few reasons for this minor involvement of the UN in tax policy issues.

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30 See Wouters and Meuwissen, supra note 10, at 7.
31 Id.
32 The lack of UN leadership in tax issues was apparent in the international conferences on financing for development in Monterrey (2002) and Doha (2008) in which tax-related issues received limited attention.
33 Overall, UN activity in this area sought to support developing countries’ tax policy, which was due to the universal membership of the organization. See Wouters and Meuwissen, supra note 10, at 16. One major development of relevance to tax policy that took place at the UN is the adoption of the Model Double Taxation Convention between Developed and Developing Countries. Work on this instrument began in 1967 as a response by developing countries to the success of the draft of the OECD Model Treaty from 1963, and its main goal was to eliminate double taxation that impedes the flow of investments to developing countries. The UN model convention was published in 1980, and revised in 2001. See Michael J. McIntyre, Developing Countries and International Cooperation on Income Tax Matters: An Historical Review, 6-7 (working paper, 2005). While the UN model mirrored many aspects of the OECD model convention, it departed from the latter on some major issues in a manner that is favorable to developing countries. Specifically, it modified the definition of a ‘permanent establishment’ to allow additional taxation of business income by the source country, and it provided that any reduction in a country’s statutory withholding rates would be done through bilateral negotiations. Additionally, no specific target withholding rates were established in the model, and the expectation was that treaties based on the UN model would
One is that Ministries of Finance in developed countries are ambivalent towards the prospects of the UN becoming a major player in fiscal policy, whereas Ministries of Foreign Affairs, which are the most involved in UN affairs, are not the most qualified to deal with tax issues. These institutional and bureaucratic realities have contributed to preventing the UN from being at the forefront of international tax policy setting.\textsuperscript{34} Second, as an inclusive forum, the UN usually adopts the lowest common denominator acceptable to all participating states. This effectively means that no real change in the status quo is achieved. Lesage \textit{et al} argue that the negotiating blocs, such as the G77, the RIO Group, and the EU that are divided internally, come to the negotiations with their group’s lowest common denominator, which practically prejudices the discussions before a conference is convened.\textsuperscript{35} Third, it has been argued by some commentators that the UN is inferior to the OECD with regard to institutional capacity to develop and implement tax policy standards.\textsuperscript{36} Although the UN has a permanent committee on International Cooperation in Tax Matters, which consists of 25 experts, with a mandate to discuss all relevant global tax issues,\textsuperscript{37} most of its work is focused on updating the UN model.\textsuperscript{38}

While the European Union (EU) has ability to coordinate indirect tax issues between its member states, its ability to promote other kinds of cooperation is very limited. The EU has legislative authority over indirect taxes, since they affect free movement of goods and the

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\item have higher withholding tax rates on royalties, dividends and interest than the ones recommended in the OECD model. The UN model has been effective in influencing tax treaties between developed and developing countries - virtually all of which have a positive withholding rate on royalty income, and the proposed permanent establishment article was adopted widely. \textit{Id.}
\item \textit{Id.} at 163-4.
\item \textit{Id.}
\item See Wouters and Meuwissen, supra note 10, at 17; Dries Lesage, David McNair and Mattias Vermeiren, \textit{From Monterrey to Doha: Taxation and Financing for Development}, 28:2 Dev. Pol’y Rev. 155, 163.
\item The mandate of the committee is: “1. Keep under review and update as necessary the United Nations Model Double Taxation Convention between Developed and Developing Countries and the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries; 2. Provide a framework for dialogue with a view to enhancing and promoting international tax cooperation among national tax authorities; 3. Consider how new and emerging issues could affect international cooperation in tax matters and develop assessments, commentaries and appropriate recommendations; 4. Make recommendations on capacity-building and the provision of technical assistance to developing countries and countries with economies in transition; 5. Give special attention to developing countries and countries with economies in transition in dealing with all the above issues.” See ECOSOC resolution 2004/69 on “Committee of Experts on International Cooperation in Tax Matters” (E/2004/INF/2/Add.3, page 14), available at: http://www.un.org/esa/ffd/tax/overview.htm (last visited: March 6, 2013).
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freedom to provide services. The EU has therefore set common rules for the operation of value added tax (VAT), and a lower limit on VAT rates that can be charged, yet with considerable leeway for national differences in VAT rates. Excise taxes are also subject to some common rules, but they leave plenty of room for national differences.\(^\text{39}\) In the case of direct taxes, unanimous consent of the member states is needed for EU legislation.\(^\text{40}\) This policy is based on respect for the principle of fiscal sovereignty. However, the European Court of Justice (ECJ) can strike down domestic legislation dealing with direct taxation of a member state if it violates the “Community law,”\(^\text{41}\) i.e., creates an unjustified and disproportionate obstacle to the smooth movement of goods, services and capital around the EU’s single market.\(^\text{42}\) The ECJ, in a series of cases, struck down anti-avoidance legislation of different member countries since it was not consistent with the “whole artificial arrangement” doctrine endorsed by the court.\(^\text{43}\) Still, this lack of EU legislative authority and legislative vacuum induced by the ECJ, is problematic.\(^\text{44}\) Initiatives to harmonize the direct tax treatment of EU tax corporations have been unsuccessful so far, mainly because of the need for a consensus among all EU members while some of them have conflicting interests. It is debatable whether any harmonization agreement would be accepted by all of the EU members,\(^\text{45}\) since there are conflicting interests among them. It is important to note that the EU rules apply only (or at least mainly) to the relations between EU member states. Therefore, this body in its current form does not facilitate cooperation between countries sharing similar interests in tax policy issues.

The WTO has an indirect effect on its members’ tax policy, as the Agreement on Subsidies and Countervailing Measures forbids governmental distortive measures including government revenue foregone or not collected (for example, fiscal incentives such as tax


\(^{41}\) Id. at 188.

\(^{42}\) Id. at 189-192.

\(^{43}\) For a detailed description and analysis, see id. at 193-200. These judicial decisions are limited to the relations between the EU members—the legislation is valid with regard to the relation between an EU member and a non-EU member.

\(^{44}\) Id.

\(^{45}\) Id. at 226-8.
credits). Some possible tax reforms (such as implementing subtraction-method VAT with border adjustments) might contradict the WTO rules and be banned by them. Although some commentators have called for more intervention of the WTO in tax policy matters, this body currently does not foster collaboration—it only sets constraints on tax policies adopted by member states—and political conditions made it unlikely that countries would agree to the WTO assuming some of their sovereignty in tax matters.

Both the World Bank and the International Monetary Fund (IMF) operate as economic advisors, presenting policy options and recommendations, and not as forums for negotiation and cooperation. The IMF provides technical advice as well as more substantial policy advice to member states. The G20 sometimes also assigns tasks to the IMF, as it is one of the “organizational instruments” of the G-7/8 and the G-20. Similarly, the World Bank occasionally makes specific recommendations for particular developing countries, and it can

46 See Wouters and Meuwissen, supra note 10, at 25-6; WTO, Subsidies and Countervailing Measures: Overview, available at: http://www.wto.org/english/tratop_e/scm_e/subs_e.htm (last visited: March 6, 2013). The case law of the WTO on this issue, banning the use of some fiscal policies, has an influence on current and potential domestic tax law of the member countries. Some exemptions were banned as “subsidies” by the WTO’s adjudicating bodies. See Wouters and Meuwissen, supra note 10, at 25-9.
47 See Itai Grinberg, Where Credit is Due: Advantages of the Credit-Invoice Method for a Partial Replacement VAT, 63 TAX L. REV. 309 (2009-2010).
48 Reuven Avi-Yonah and Joel Slemrod, (How) Should Trade Agreements Deal with Income Tax Issues? 55:4 Tax L. Rev. 533-54 (2002). Avi-Yonah and Slemrod argue that trade agreements should cover more income tax issues that are relevant to enabling free trade with no “predatory tax protectionism.” They also note that the multilateral nature of the trade agreement is more effective than the bilateral nature the tax treaties in addressing some problems, such as trade- and investment-distorting competition.
51 See Wouters and Meuwissen, supra note 10, at 20. For example, the statement issued by the Pittsburgh Summit called on the IMF to prepare a report regarding the “options countries have adopted or are considering as to how the financial sector could make a fair and substantial contribution toward paying for any burdens as associated with government interventions to repair the banking system.” See supra note 38, at §16. The IMF report presented and discussed several tax options. IMF, A Fair and Substantial Contribution by the Financial Sector (June 2010), available at:www.imf.org/external/np/pp/eng/2008/022208.pdf
condition loans or grants on the adoption of its recommendations. Additionally, the World Bank publishes tax policy recommendations in different fields, such as carbon taxes, improving tax compliance and administration in developing countries, and other global or developing-countries-related issues. Neither body is a forum dedicated to achieving cooperation among different countries. The International Tax Dialogue (ITD), which was initiated in 2002 by the IMF, the OECD and World Bank, serves as a platform for comparative data and analysis of tax issues, but it does not serve as a forum for negotiation and cooperation.

Regional tax organizations—such as CIAT, CATA, PATA, IOTA, CREDAF and ATAF—also have limited capacity to promote collaboration among countries that share similar tax challenges. The Inter-American Center of Tax Administrations (CIAT) was founded in 1967, is based in Panama City, and has 40 member and associate countries: 31 countries of the Americas, 6 European countries, 2 African countries and 1 Asian country. The organization supports the efforts of national governments by promoting the evolution, social acceptance and institutional strengthening of tax administrations, encouraging international cooperation and the exchange of experiences and best practices.

The Commonwealth Association of Tax Administrators (CATA) was founded in 1977-8 and has 48 member countries, most of which are developing countries. CATA’s mission is to promote the improvement of tax administration of its members in all its aspects. To this end, its activities include: “holding meetings of technical and administrative personnel in tax administration for the exchange of ideas and experiences; organising seminars, workshops and training courses on aspects of tax administration; collecting, analysing and disseminating information on tax administration; providing directly or, collaborating with, and generally facilitating, the work of bilateral and multilateral agencies providing technical assistance and research facilities in the field of tax administration; generally carrying out functions related to the overall improvement of the capabilities of tax administrations through functional co-operation between and among Commonwealth countries.” See CATA’s Constitution, Article 2 (1978, updated 2004) see http://www.catatax.org/resources/our-mission (last visited: March 6, 2013).

The Pacific Association of Tax Administrators (PATA) was established in 1980. The countries comprising this intergovernmental tax group are Australia, Canada, Japan and the United States, and are represented by tax officials from their tax authorities. PATA was formed in response to the increased use of certain strategies and techniques by transnational corporations to evade taxes, including transfer pricing and tax havens. It members meet at least annually to exchange information and identify specific deterrents to tax evasion activities. The main products of
interests. The major focus of these organizations is on tax administration and not a broader tax policy issues. Moreover, the membership of most of these organizations is based on being part of a certain geographic region and not on shared interests in tax policy.

One current forum that can serve as an example for cooperation in tax matters of a small number of countries that share similar interests is the Joint International Tax Shelter Information Centre (JITSIC). JITSIC was established in 2004 by the tax administrations of the United States, the United Kingdom, Australia, Canada, and later on Japan, South Korea and China, to supplement the ongoing work of these tax authorities in identifying and curbing tax avoidance and tax shelters and those who promote them and invest in them.62 According to the JITSIC Memorandum of Understanding, the parties will each appoint tax experts as officials to JITSIC. The parties will create an Executive Steering Group to coordinate, oversee, and evaluate the work of the JITSIC, and the meetings will be held periodically in different locations of the parties.63 Although JITSIC is an interesting example for cooperation among a small number of

PATA were exchange of information mechanisms, transfer pricing policies, and mutual agreement procedures between PATA members. See Susan C. Borkowski, The history of PATA and its effect on advance pricing arrangements and mutual agreement procedures, 17 J. INT’L ACC., AUDITING & TAX’N 31-60 (2008). For example, PATA provides principles under which taxpayers can create uniform transfer pricing documentation (“PATA Documentation Package”) so that one set of documentation can meet PATA members’ transfer pricing documentation provisions. Use of this PATA Documentation Package by taxpayers is voluntary and does not impose any legal requirements greater than those imposed under the local laws of a PATA member. This way a taxpayer can reduce compliance costs of duplicative administrative requirements in order to meet the transfer pricing documentation standards of the different jurisdictions.

59 The Intra-European Organisation of Tax Administrations (IOTA) is a non-profit organization, founded in 1996-7, which provides a forum to assist member European countries to improve their tax administration. See the IOTA website, http://www.iota-tax.org/about-iota/what-is-iota.html (last visited March 6, 2013). IOTA’s mission is “to provide a forum for discussion of practical tax administration issues, to promote cooperation between tax administrations in the European region and to support their development according to their individual needs.”

60 The General Assembly of the Meeting and Studies Center of Tax Administration Directors (CREDAF) first met in 1972 and today includes 30 French speaking countries, with a secretariat located in Paris. See CREDAF website: http://www.credaf.org/ (last visited: March 6, 2013).

61 The African Tax Administration Forum (ATAF) was founded in 2009 and has 39 member countries. It is a platform to promote and facilitate mutual cooperation among African Tax Administrations (and other relevant and interested stakeholders) with the aim of improving the efficacy of their tax legislation and administrations. See ATAF website: http://www.atafx.net/ (last visited: March 6, 2013). Its goals are similar to the abovementioned organizations.

62 See the IRS website: www.irs.gov/pub/irs-utl/jitsic-finalmou.pdf (last visited: March 6, 2013). JIPSIC’s purposes include are to: “Provide support to the parties through the identification and understanding of abusive tax schemes and those who promote them; Share expertise, best practices and experience in tax administration to combat abusive tax schemes; Exchange information on abusive tax schemes, in general, and on specific schemes, their promoters, and investors consistent with the provisions of bilateral tax conventions; Enable the parties to better address abusive tax schemes promoted by firms and individuals who operate without regard to national borders.

countries, it is a narrow-scope forum that is focused on cooperation between tax administrators in combating tax avoidance, and less on policy issues.

3. **PROPOSAL: TAX COOPERATION FORUM**

3.1 **APPLYING THE ‘LIKE-MINDED GROUP’ MODEL TO TAX POLICY SETTING**

The most salient feature of international affairs is the absence of a global government capable of regulating activity on the international plane. This is why international relations scholars describe the world order as anarchic. This does not, however, mean that the world is chaotic – far from it. As the world became increasingly globalized, it became necessary to regulate the multitude of activities of every type and form that occur globally in the absence of a centralized authority. This led various actors, including states, businesses, international organizations, and civil society institutions to engage in a dynamic process that has involved many of the functions of governance that are traditionally practiced by governments. This process, which includes norm creation, standard-setting, and even enforcement of laws and regulations, is called global governance. It is by nature a decentralized, and at times fragmented, process that takes different forms in the various fields of international affairs.

The lack of international cooperation and coordination in the field of tax policy is, in many respects, a global governance problem. A large group of actors, primarily states, have a stake in harmonizing, or at least coordinating, tax policies. This is because the actions and decisions taken by any particular state might affect the interests of other states. This means that ensuring the full effectiveness of national tax policies requires a degree of international cooperation to ensure that measures taken externally do not undermine national policy. Moreover, tax policy affects many other areas of public policy, such as monetary and general economic policy. Tax policies adopted in foreign countries impact the flow of international

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64 For an authoritative statement of this claim, see: Kenneth Waltz, Theory of International Politics (1979).
investments and affect the business decisions of transnational cooperation. The existence of a multiplicity of actors of varying types and disparate interests and the absence of a central body, such as a global government, which authoritatively determines and enforces policy, are what necessitates the creation of global governance forums that bring various stakeholders together to coordinate their policies.\(^{67}\)

This is the essence of the proposal advanced by this paper. The creation of the TCF would fill a gap in the scheme of international tax policy by providing a setting in which the relevant stakeholders could coordinate their policies. This proposed TCF would be modeled around, but not identical to, what is known as a ‘Like-Minded Group’ (LMG) of states, which is a common practice in many international organizations, especially the United Nations. An LMG is an uninstitutionalized and informal gathering of states sharing similar interests regarding a specific matter.\(^{68}\) The practice in many international organizations is that delegations of these countries will meet to agree on common positions that satisfy their interests and create a negotiating bloc in international meetings or conferences. These LMG’s have been established in numerous settings, such as the main six committees of the UN General Assembly in New York,\(^{69}\) the UN Human Rights Council in Geneva,\(^{70}\) UN specialized agencies, the WTO,\(^{71}\) international environmental law and policy forums,\(^{72}\) and even within the OSCE.\(^{73}\)


\(^{69}\) These six main committees are: First Committee: Disarmament and International Security Committee; Second Committee: Economic and Financial Committee; Third Committee: Social, Humanitarian and Cultural Committee; Fourth Committee: Special Political and Decolonization Committee; Fifth Committee: Administrative and Budgetary Committee; Sixth Committee: Legal Committee. See generally: M.J. Peterson, *The UN General Assembly* 80 (2006).


\(^{71}\) See for example: John S. Odell Ed., Negotiating trade: developing countries in the WTO and NAFTA 17 (2005).


As mentioned above, an LMG is a non-institutionalized forum. In other words, it has no permanent premises, no secretariat or staff, and is not established pursuant to a treaty or a legally binding instrument. In most cases, the presidency of an LMG rotates among its member states. In cases where the LMG is not within the framework of an international organization, such as the UN, the presiding state would provide secretarial services for the group’s meetings and would lead discussions, facilitate debates, prepare background papers for the meetings, and speak and negotiate on behalf of the group in other forums.

The principal advantage of an LMG as a coordinating forum lies in its flexibility. First, it allows states with different foreign policies generally to cooperate on specific matters on which their interests converge. This means that an LMG offers countries the opportunity to achieve policy objectives without having to overcome the hurdles created by differences in views in other policy areas. For example, India and Pakistan, hardly political allies, were members of an influential LMG during the Uruguay Round of negotiations that led to the establishment of the WTO. Second, the LMG model does not necessarily require permanent membership. Whenever a state concludes that its interests are no longer served by its membership in the LMG it may opt to terminate its participation. This poses a much lesser political cost than withdrawing from a formal international organization. Furthermore, membership in LMG’s is usually open to states that believe their interests are identical to those of other participating countries. The latter usually agree to invite a new member to attend their meetings. Third, LMG’s do not have formal procedures and protocols similar to those in institutionalized forums, which means that meetings may be more efficient and able to focus on the matters that are of interest to the participants.

Fourth, meetings of the LMG can be periodic, or can be convened whenever the need arises, or can be held on the margins of other events. The fact that these are informal forums means there is no obligation to meet. This is unlike institutions that require members to meet regularly, even if there is no urgent need. Fifth, LMG’s are essentially a negotiating bloc. Members of these groups will agree on a joint position that reflects their interests and will present a common policy

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75 For example, during the 2001 Doha Round of WTO negotiations a like-minded group of countries was created that included 12 countries and 2 observers. The members included India and Cuba. The fact that the former is the world’s largest democracy, while the latter is a communist state demonstrates the flexibility that a like-minded group offers to States. See: Amrita Narlikar, Bargaining over the Doha Development Agenda: Coalitions in the World Trade Organization, Series Latin American Trade Network Papers No. 34.
in the meetings of international organizations. Naturally, with numbers comes influence. Therefore, an LMG provides a useful mechanism to increase the bargaining power of all of its members.

Meetings of LMG’s are usually preceded by informal consultations about the agenda and the desired outcomes. In many global governance settings, these preparatory consultations are usually undertaken by technical experts and government functionaries. Once these meetings are concluded and agreement is reached on the agenda items that will be discussed and the proposed outcome, the LMG will meet at the level of the policy executives who review the matters discussed by their representatives and make the necessary decisions.

Most examples of LMG’s have been established within the framework of a broader international organization, such as the UN or the WTO. The members of these LMG’s coordinate positions and participate in the meetings of international organizations as a joint negotiating bloc. This is why it has been noted earlier that the proposal advanced in this paper is to create a body that is similar but not identical to an LMG. As shown from the survey of global tax policy forums, there is no central or leading international organization that oversees matters of taxation. Therefore, the proposed TCF would not be established as a negotiating bloc within any particular forum. Rather, it would act as a coordinating forum for states whose interests in the field of tax are similar. Those countries would meet as an LMG, agree on common positions and policies, and then jointly promote and lobby for those common positions in the various organizations that are active in the field of international taxation such as the OECD. In other words, the TCF could become a vehicle through which these governments could cooperate and agree on positions regarding global tax policy.

A model that could serve as a guide to the establishment of the proposed TCF is the Basel Committee on Banking Supervision (BCBS), which deals with a global governance problem similar to regulating international taxation.\(^76\) This is a committee established in 1974 to provide

\(^{76}\) Like tax policies, fiscal and monetary policies are decided by national agencies. In an increasingly interconnected world, however, it is not longer tenable for states to set fiscal and monetary policies without considering the international ramifications of their national decisions. This means that forums and mechanisms designed for the global governance of fiscal and monetary affairs was necessary. This was the purpose for which the BCBS was established. Indeed, as one scholar notes, “... questions concerning the interface between the international nature of banking and the domestic character of financial regulation/supervision otherwise faces a political/economic/legal
a forum for cooperation and coordination between the central bank governors of the main world economies. Like the TCF that we propose, the presidency of BCBS rotates among the central bank governors of the participating states. In addition, the committee does not “possess any formal supranational supervisory authority, and its conclusions do not, and were never intended to, have legal force.” Rather, the BCBS has been described as “one of the central organs of global economic governance, being both a locus of financial decision-making, and a facilitator of coordinating the actions of other international financial institutions.” This is similar to the functions that the proposed TCF could perform, namely, to act as a coordinating mechanism between players in the field of international taxation who have similar interests, and to enable them to reach common understandings and agree on joint positions that could be advanced through other institutional mechanisms.

One group of like minded countries that could establish the proposed TCF includes major developed economies having comparable tax systems and interests, such as the United States, the United Kingdom, Germany, France and Japan. Other groups of countries that share similar interests could form their TCF as well. Like other LMG’s the TCF would be informal and would not exercise legal authority over its members. Its decisions and recommendations would not be binding, and it would not require an international legal instrument for its establishment. Rather, a joint statement or communiqué by the representatives of the participating states would suffice to announce that they would hold regular meetings to coordinate their tax policies.

One design question would be whether the TCF should have a permanent staff. As noted, LMGs do not have a permanent secretariat or staff. If the TCF follows that model, it would not be costly to create. In addition, the agenda of its meetings would not be predetermined, but would be agreed upon by the members depending on international developments requiring the attention and consideration of the member states. However, having a lean staff to facilitate

vacuum ... it was this vacuum that the BCBS filled.” See: Charles Goodhart, The Basel Committee on Banking Supervision 6 (2011).
77 The membership of the BCBS currently includes the following states: Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States.
regular communication, to prepare the meetings and to shape the agenda, might be beneficial, while keeping costs low. One model for that would be JITSIC. As noted, the JITSIC members each appoint tax experts as officials to JITSIC; there is an Executive Steering Group to coordinate, oversee, and evaluate the work of the JITSIC, and the meetings are held periodically in different locations of the parties. The proposed TCF can follow this model.

The implementation of decisions taken by the TCF would depend on the nature of the understandings among members. For example, if participating states decided to adopt certain measures that affect their interests alone, then they would oversee their implementation nationally. If, however, the TFC reached agreements that require further consultations with other states, the matter could be brought before the pertinent international forum, such as the OECD. The members of the TCF would submit their proposals to these forums. Like any negotiating party, the members of the TCF could agree on what they will consider to be their non-negotiable bottom lines and the positions they would be willing compromise on to garner greater international agreement.

In addition, the TCF could invite leading tax scholars and experts to attend meetings and express views on the matters being discussed by the TCF. Representatives from participating governments would benefit from the knowledge and expertise of tax scholars who could give their opinions either as written submissions or even during informal meetings such as roundtable discussions or interactive dialogues. Invitations to attend meetings of the TCF could also be extended to representatives of international organizations that are relevant to the matter being considered by the TCF.

3.2. WHERE CAN THE TCF MAKE A DIFFERENCE?

The TCF could deal with a wide range of topics of interest. For example, it could undertake to promote measures to curtail tax evasion and avoidance. As mentioned above, the OECD’s efforts to fight tax evasion have had a limited success. Despite the G20’s decisive statements from 2010 that it is “ready to use countermeasures against tax havens,” no countermeasure was further discussed between countries that may benefit from putting pressure on tax havens. The Joint International Tax Shelter Information Centre (JITSIC) is a forum that is

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80 See supra note 63.
focused on cooperation between tax administrators from the United States, the United Kingdom, Australia, Canada and Japan in combating tax avoidance and shelters, and less on policy issues. The TCF can deal with broader policy issues that JITSIC does not address, and can also set goals for the tax administrations, instruct them on priorities and push forward other collaborative efforts to reduce tax evasion.

A current example of lack of cooperation in combating tax evasion concerns the choice between implementation of automatic information exchange (as adopted unilaterally by the United States in FATCA) or anonymous cross-border tax withholding (as adopted by Germany and the United Kingdom in treaties signed with Switzerland in 2011). It is not clear that adoption of different policies is beneficial to these countries, and one may wonder whether a different result would have been achieved if they tried to collaborate on this matter.

The TCF could also promote multilateral harmonization efforts. Many commentators have suggested ideas that would improve international tax policy, but their adoption must be multilateral: a multilateral tax treaty to address inconsistencies between treaties and multilateral issues that cannot be addressed in a bilateral treaty system; implementing formulaic apportionment of multinationals’ income in a manner that would reduce incentives for income shifting by using transfer pricing and other planning tools or other alternatives to the current transfer pricing system; standardizing anti-avoidance rules, such as the rules regarding CFCs; addressing situations in which an entity is not taxed in any jurisdiction because of differences in tax laws; adopting a minimal corporate and capital income tax rate to reduce tax competition between countries that have similar economies and tax structure; changing taxation of intellectual property to limit companies’ ability to lower tax liability by planning tools involving intellectual property, and reducing incentives to change location of research and development because of differences in the tax systems. Other initiatives that would be beneficial include harmonization of reporting rules in a way that would make compliance less costly for taxpayers;

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81 For elaboration, see Grinberg, supra note 2.
82 See Thuronyi, supra note 3.
83 For a proposal for a formulaic apportionment, see Avi-Yonah and Clausing, supra note 4.
84 For a discussion on the flaws of the current transfer pricing system, see Spencer, supra note 5.
85 See Chloe Burnett, supra note 6.
86 For an analysis of harmonization of tax rates on capital income, see Peter Birch Sørensen, supra note 7.
87 For discussion of this topic and the policy alternatives see Graetz & Doud, supra note 8.
standardizing source and transfer pricing rules; improving mechanisms for dispute resolution and administrative cooperation, and other initiatives that would make cooperation more efficient.

It is likely that the lack of cooperation today can be explained by several reasons. Powerful lobbies, influential multinationals, as well as other countries, can put significant pressure on countries that share similar interests to prevent them from cooperating to improve these countries’ ability to tax income that is evaded or avoided today. These forces might limit the ability to reach effective cooperation even if the proposed TCF existed. However, this paper argues that while there may be other reasons why countries do not cooperate, not having a forum to facilitate effective collaboration definitely does not help. As noted above, lack of coordination in the international setting is not unique to tax policy—other international institutions face similar difficulties and pressures. Learning from other institutional frameworks that are used for cooperation-building can be useful for tax policy setting as well. To the extent the institutional factors have influence on policy decisions—and we believe they do—establishing a forum or a process in which countries with similar interest will better cooperate can make an actual difference in regard to tax policy issues.

3.3 RATIONALE AND ADVANTAGES

The rationale for this proposal is clear: to enhance cooperation among countries that have similar interests in matters of taxation, which would maximize national welfare of these countries. As discussed above, current forums and institutions do not serve this function today. Although this paper emphasizes the maximization of national welfare, greater cooperation in tax issues may reduce current inefficiencies that result from lack of cooperation in a way that would possibly increase worldwide welfare as well. For example, reducing sheltering opportunities would hurt countries that benefit from providing tax shelters, but it may increase worldwide welfare due to the inducement of efficiency gains.

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88 For other implementations of the National Welfare approach, see, for example, Michael J. Graetz and Itai Grinberg, *Taxing International Portfolio Income*, 56 Tax L. Rev. 537; Mihir A. Desai and Dhammika Dharmapala, *Investor Taxation in open Economics* (working paper, August 2009).

89 In terms of distribution, very rich countries such as Switzerland and Luxemburg are some of the states that will suffer the most from reduction of sheltering opportunities. While some poor tax shelters will suffer as well, it is not clear if the amount of inefficiency they cause justify the distributive gain and whether there are other ways to improve distributive goals and economic growth in these countries.
This informal forum may induce significant cooperation gains. First, countries today face a “competitiveness” threat that if they adopt a stricter tax policy that is not adopted by their competitors, investors might shift their capital or local corporations might be in an inferior competitive position. Thus, even if the current tax policy is inefficient and causes social waste, lack of coordination leads countries to continue to apply it. Cooperation among countries that have similar tax policy interests may enable them to suppress undesired tax competition amongst themselves in an effective way and to adopt more efficient tax policies.

Second, cooperation may help overcome domestic political pressures and lobbies against the suggested policy change. Assume, for example, that representatives in the TCF reach a draft on a particular anti-tax-abuse policy. Such a policy could be undermined by significant domestic lobbies that could influence the domestic legislative process. However, the dynamics may change when it is proposed as a collaborative policy between several comparable countries—any particular country may not want to stand out as one that rejects the anti-abuse measures adopted by other countries, and local political pressure to adopt the proposal may increase.

Third, cooperation between countries with similar interests increases their power to push forward their agenda and to reach a broader consensus (such as in the G20 example of pushing forward the anti-tax-haven policy). Even if broad consensus is not in reach, cooperation in adopting a policy change may effectively mitigate the problems of lack of full cooperation, may incentivize other countries to comply with the policy change, and may induce other efficiency gains.\textsuperscript{90} Thus, countries with similar interests may be better off by cooperating even if there is no worldwide or OECD consensus in regard to their policy. Since the forum is informal, flexible and does not infringe on members’ sovereignty, potential members may achieve possible cooperation benefits with no significant downside (unless the cooperation turns against their policies, but assuming that the member countries have similar tax interests, this scenario is not likely).

Fourth, as chronicled in the survey of international organizations active in the field of tax policy, negotiations in these bodies are burdened with the need to achieve consensus among their

\textsuperscript{90} One example for efficiency gains from a collaboration between several states is the Streamlined Sales and Use Tax Agreement, which is a multilateral agreement between several states in the US to harmonize their sales tax systems (after attempts by states to prevent buyers from avoiding sales tax were struck down by the US Supreme Court as a violation of the Commerce Clause). See supra note 40, at 228-9.
members. This inevitably leads to the adoption of the lowest common denominator, which in many cases is not the most efficient and effective policy choice. The ability to form a cooperation between smaller number of countries would provide an alternative (which is a cooperation of the TCF participants only) to the lowest-common-denominator result. The existence of this alternative may increase the leverage of the TCF members while trying to form a broader consensus.

*Fifth,* when tax issues are discussed within a broader international organization, such as the OECD or G20, it naturally must compete with other matters and issues for the attention of policy makers. For example, Ministers of Finance meeting within the G20 have a long list of matters that need to be discussed and agreed upon, which means that international tax policy may not receive the requisite attention and consideration. Having a forum that is focused on tax policy would mitigate this concern. Moreover, setting up the forum would be practical, inexpensive and politically feasible. More importantly, the forum complements the current international institutions and is not expected to create strong opposition. The proposed model reserves the OECD role in negotiating to get a broad consensus, focusing on developing standards regarding worldwide issues, and providing data and analysis for policy-making. The proposed model may even increase the importance of the OECD as a negotiator and consensus achiever. In addition, since this forum is informal, flexible and resembles other forums in the international sphere, it would probably be accepted with no significant international opposition. Being an informal body would lessen political pressure and sensitivities regarding inclusion or exclusion of different countries.

4. **CONCLUSION**

This paper proposes to set up an informal forum or forums for coordination between countries that share similar interests in tax policy, a function that is currently missing in international tax policy-setting. The current institutions and forums that affect tax policy today are thoroughly discussed, and it is shown that their ability to form cooperation is limited and problematic. This cooperation benefits from this model, which would maximize national welfare for the cooperating countries, and also possibly global welfare by reducing the current inefficiencies. Any group of countries that share similar interests in tax policy can establish such a forum. The uninstitutionalized forum could be established simply by a joint statement or
communiqué by the Ministers of Finance of the participating states that announces that they would hold regular meetings to coordinate their tax policies.

We mention two major projects this forum could be promote—efforts to curtail tax evasion and efforts to harmonize different aspects of tax policy. The advantages of this model are significant. First, cooperation between countries that share similar interests is beneficial for them because it reduces the “competitiveness” threat—a fear that investors will leave or that domestic companies will not be able to compete against companies of other similarly situated countries. Second, cooperation between influential countries may be utilized to push forward policies and achieve consensus, and if consensus is not in reach, to set a coordinated policy between them (which may be better than sticking to the status quo or acting unilaterally). Third, this model would allow different groups of states that share similar interests to set their own tax policy agenda and to cooperate on issues that are not of broad interest. Fourth, cooperation between a group of countries may help to overcome domestic political pressures and lobbies against the suggested policy change. Fifth, this model is practical and feasible; it would have a lean staff or no staff at all; it would fit the current framework of international institutions; and it reserves the role of the OECD as the forum for consensus-forming, addressing global issues, and providing data and analysis.

Due to the current challenges in the field of tax policy, and the difficulties in forming cooperation within the current institutional framework, the proposed model is worth serious discussion and consideration.