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ASIA VOICES: PERSPECTIVES ON TAX POLICY

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Introduction

ASIA VOICES: PERSPECTIVES ON TAX POLICY

Working Group, January 2022

Backdrop

The world is on the cusp of implementing the most significant reform to international taxation in over a century. To address the base erosion and profit shifting (BEPS) risks arising from the operations of global multinational enterprises (MNEs), the Organisation for Economic Cooperation and Development (OECD) and the G20 countries embarked on a project to reform international tax rules. This work over several years culminated in the formation of an Inclusive Framework of 141 countries[1] which arrived at a consensus on international tax reform.

Commonly referred to as BEPS 1.0 for the 2015 recommendations[2] and BEPS 2.0 for the 2021 global consensus, the BEPS projects aim to address the shortcomings of pre-existing international tax rules to address globalisation and digitalisation, ensure a fairer distribution of taxing rights is established with respect to the profits of large MNEs, and to set a global minimum tax rate.

These changes are meant to be uniformly adopted worldwide. However, tax policymakers seeking to implement BEP 2.0 and casting their eyes across Asia will see that the region is very diverse and has varied economic and fiscal policy contexts that may require more nuanced considerations.

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[1] "What is BEPS," OECD, accessed January 20, 2022, https://www.oecd.org/tax/beps/about/.

[2] "International Collaboration to End Tax Avoidance," OECD, accessed January 20, 2022, https://www.oecd.org/tax/beps/.

The Diversity that is Asia Needs a Voice

Asia has 48 countries and at least 51 tax jurisdictions if one includes Hong Kong, Macau and Taiwan.[3] Of these, four are members of the OECD[4] and six are members of the G20[5].

From an international tax perspective, an Asian regional multilateral institutional framework is lacking. There is a dearth of institutions and forums such as those in Europe for research, exchange and coordinated action on taxation, both governmental-to-government[6] and for academia and industry to provide their expertise and feedback into policy-making, such as the Joint Transfer Pricing Forum and Business at OECD which advises the EU and OECD, respectively.

Much of Asia comprises developing economies

Using the G20-OECD yardstick from the October 2021 OECD/G20 "Base Erosion and Profit Shifting Project Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy," where developing countries are defined as those with a GNI per capita of US$12,535 or less in 2019,[7] we note that of the countries in South Asia, East Asia and the Pacific defined as such by the World Bank, there are no developing Asian countries amongst OECD members.

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[3] "How Many Countries in Asia," Worldometer, accessed January 20, 2022, https://www.worldometers.info/geography/how-many-countries-in-asia/

[4] The OECD members are Australia, Japan, New Zealand, and South Korea.

[5] The G20 members are Australia, China, India, Indonesia, Japan, and South Korea.

[6] The Study Group on Asian Tax Administration and Research being a limited exception. See its website here: https://sgatar.org/.

[7] "OECD/G20 Base Erosion and Profit Shifting Project — Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy," OECD, October 8, 2021. See its footnote 3: "For this purpose, developing countries are defined as those with a GNI per capita, calculated using the World Bank Atlas method, of US$12,535 or less in 2019 to be regularly updated." We applied GNI data from "GNI Per Capita, Atlas Method (Current US$) — East Asia & Pacific," The World Bank, https://data.worldbank.org/indicator/NY.GNP.PCAP.CD?locations=Z4.

Only three are G20 members (China, India and Indonesia) and of these, only China and India are members of the 24-member Steering Group of the OECD/G20 Inclusive Framework in BEPS.[8]

In addition, the majority of the population in these developing countries[9] do not have as their *lingua franca* English or French, the two official languages for the BEPS negotiations, the official statements, model rules, and treaties. This language disadvantage will persist into the future, in terms of intellectual participation to formulate new norms, the implementation of BEPS rules, and negotiations to resolve international tax disputes.

Finally, tax capacity in developing Asia is still being built up. Taking transfer pricing profit allocation rules as a good example as it underpins Pillar One and given that Pillar Two is largely based on related party dealings, much of developing Asia has only recently started to bring their rules up to date. For instance, China adopted its comprehensive transfer pricing regulations in 2008[10] — 13 years after the publication of the 1995 OECD Transfer Pricing Guidelines. Thailand's Transfer Pricing Act only came into effect in 2019, and it has started requiring transfer pricing documentation only in 2021.[11] Similarly, other tax types are being adopted much later in Asia than in the developed world; for instance, India only introduced country-wide goods and services tax in 2017.[12] To the extent the BEPS project attempts to modify income tax rules — often as an overlay or modification to existing domestic

---

[8] "Composition of the Steering Group of the OECD/G20 Inclusive Framework on BEPS," OECD, updated January 2022, https://www.oecd.org/tax/beps/steering-group-of-the-inclusive-framework-on-beps.pdf.

[9] Asian countries ranked by population size: China, India, Indonesia, Pakistan, Bangladesh, Philippines, Vietnam, Thailand, Myanmar, Afghanistan, according to "World Bank Population 2020" available at https://databank.worldbank.org/data/download/POP.pdf)

[10] "Global Transfer Pricing Review: China", KPMG, October, 2015, https://assets.kpmg/content/dam/kpmg/pdf/2015/10/tp-review-china-v3.pdf.

[11] "Thailand Publishes Mandatory Requirements for Thai Transfer Pricing Documentation," EY Global, October 22, 2021, https://www.ey.com/en_gl/tax-alerts/thailand-publishes-mandatory-requirements-for-thai-transfer-pricing-documentation.

[12] "Evolution of GST in India," Goods and Services Tax Network, accessed January 22, 2022, https://www.gst.gov.in/about/gst/history.

rules (e.g., Model Rules for Pillar Two[13] are meant to be enacted domestically) — it means that much of developing Asia, particularly those whose official languages are not English or French, will face challenges as the system, tax administration and professionals do not have as strong a foundation or lack the capacity in applying these concepts.

Yet, there is a paucity of research on Asian perspectives on the important cross-border and regional tax issues as they relate to Asia, particularly developing Asia, notwithstanding that research on policy in individual countries such as Australia may be well developed.

The need to address this lack of considered Asian tax perspectives in international tax policy has only grown, given the twin challenges of COVID-19 and climate degradation. Tax policy plays a key role as a macro-economic fiscal tool to fund deficit spending and economic recovery from the pandemic and to drive behaviour to achieve climate goals. There is a need for more informed "voices" to contribute meaningful policy research for policymakers. This is what the working group constituted by the Institute of Policy Studies hopes to do — to contribute meaningful Asian voices to the international tax policy discourse.

For a start, we consider some of the fundamental international norms and economic principles that are relevant to tax policy-making.

Balance Between Competing Norms

There is broad consensus amongst countries and in academic literature that tax evasion by individuals and MNEs can be harmful and deprive countries of fiscal resources for government budgets. Indeed, many Asian countries have signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS[14] and most Asian countries in the 141-country BEPS Inclusive Framework have ratified the October 2021 statement, indicating common support for the need to change international tax rules to counter abusive tax evasion. Pillar Two has given countries the right to take

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[13] "OECD Releases Pillar Two Model Rules for Domestic Implementation of 15% Global Minimum Tax," OECD, December 20, 2021, https://www.oecd.org/tax/beps/oecd-releases-pillar-two-model-rules-for-domestic-implementation-of-15-percent-global-minimum-tax.htm.

[14] "Signatories and Parties to the Multilateral Convention to Implement Tax Treaty Related to Measures to Prevent Base Erosion and Profit Shifting (Status as of 14 December 2021)," OECD, accessed January 22, 2022, https://www.oecd.org/tax/treaties/beps-mli-signatories-and-parties.pdf.

countermeasures to tax payments which are taxed at below the 15 per cent global minimum rate, aimed at stopping the "race-to-the-bottom" where countries compete for foreign direct investment by lowering their rate of taxing MNEs and cross-border businesses.

On the other hand, the United Nations, with more than 190 member countries, has a universal declaration of the Right to Development,[15] which speaks to more than rights but also to duty. Duty of states, *inter alia*, to:

> "… co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States[16]
>
> "… take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development."[17]

Article 4(2) of the UN Declaration further adds:

> "Sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of developing countries, effective international co-operation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development."

The duty above would entail full use of tax policy and incentives to achieve development and growth.

Consequently, there can be competing norms such as, in this case, the universal right to development including using tax incentives and taxation as a sovereign right that may run up against jurisdictions justifiably taking steps to defend against base erosion. The policymaker needs to weigh the

---

[15] UN General Assembly*, Declaration on the Right to Development: Resolution / adopted by the General Assembly,* December 4, 1986, A/RES/41/128, accessed January 22, 2022,
https://www.un.org/en/events/righttodevelopment/declaration.shtml.

[16] From Article 3(3) of the UN *Declaration on the Right to Development*.

[17] From Article 4(1) of the UN *Declaration on the Right to Development*.

different considerations and design the tax policy to achieve a good balance across these competing norms. This task is complicated when such norms are not being applied equally across regions and countries with differing circumstances and needs.

Taxation and Economic Principles

Positive and negative externalities

From an economics point of view, the BEPS Pillar Two's global minimum tax can be seen as a Pigouvian tax that is assessed against MNEs for adverse side effects of their economic activity on society — in this case harmful tax avoidance. Adverse side effects are those costs that are not included as a part of the product's market price (also termed negative externalities). These include environmental pollution, strains on public healthcare, and any other side effects that have an external, negative impact.

In the design of tax policy, however, there are also positive externalities to consider. A positive externality is a benefit that is enjoyed by a third-party as a result of an economic transaction. For example, governments subsidise education of the individual as the skills acquired and knowledge learnt at university can benefit the wider community. Similarly, when one considers a research and development (R&D) tax incentive, for example, a government may lose tax revenue in forgoing the right to tax or providing a tax credit to that single company. However, the literature suggests that the benefits from incentivising R&D to the economy far outweighs the cost of tax revenue foregone.[18]

At a higher level, the policies of a country can produce positive and negative externalities. For example, a tax on carbon emission can benefit neighbouring countries if factories within a jurisdiction start cutting emissions that would otherwise have spilled over to other countries. Given the mobility of capital around the world, the ability of a country to attract foreign direct investment need not be a zero-sum game to its neighbours. It can lead to spill-over effects and benefit the economies of the region when capital is directed to the region to build supply chains across countries, exploiting the different comparative advantages across the region.

An example is Asia's experience of the "flying geese" model of economic development where the production of goods would continuously move from

[18] "Maximising the Benefits of R&D Tax Incentives for Innovation," OECD Directorate for Science, Technology and Industry, accessed January 22, 2022, https://www.oecd.org/sti/rd-tax-incentives-for-innovation.pdf.

more advanced to less advanced countries. The underdeveloped nations in the region could learn from and align successively behind those who developed earlier or faster, thereby growing their economies and forming a pattern that resembles geese in flight.[19] This highly successful Asian model of economic development includes the "classical preference treatment" of exception from corporate income tax.[20]

In short, there can be both positive and negative impact from tax policy across national borders. When considering international tax reform, there is a need for a more holistic consideration of these factors, rather than a narrow focus on the negatives of tax avoidance. The full spectrum of positive and negative externalities should be taken into account by the policymaker.

Horizontal and vertical equity

Since Adam Smith, economists and taxation academics have been considering the importance of equity in relation to imposing tax on members of society. Specifically, it includes ideas of horizontal and vertical equity in relation to the tax impost. In short, before imposing a tax on income, it should meet the tests of horizontal and vertical equity. The principle of horizontal equity assumes that persons in the same or similar positions (so far as tax purposes are concerned) will be subject to the same tax liability. Pivotal to the test of horizontal equity is the definition of "like circumstances".[21] Transposing these concepts onto the international scene[22] we ask if developing Asia is really in like circumstances as other jurisdictions where tax systems are more mature? Then, there is vertical equity, which posits that taxpayers who are at different levels in terms of contributive capacity must be taxed differently, because they have a differing ability to pay. If progressive taxation is important, would it be equitable for developing

[19] Kiyoshi Kojima, "The 'Flying Geese' Model of Asian Economic Development: Origin, Theoretical Extensions, and Regional Policy Implications," *Journal of Asian Economics* 11, no. 4(2000): 375–401.

[20] "The Asian Developmental State and the Flying Geese Paradigm," *United Nations Conference on Trade and Development Discussion Papers No. 213*, November 2013, https://unctad.org/system/files/official-document/osgdp20133_en.pdf.

[21] "The Meaning of Income," Britannica.com, accessed January 22, 2022, https://www.britannica.com/topic/income-tax/The-meaning-of-income#ref592184.

[22] See Adam Rosenzweig, "International Vertical Equity," *Loyola University of Chicago Law Journal* 52, no. 2(2021): 471–501, for a discussion on the ability-to-pay principle in an international context, which took into account public spending and national wealth.

countries with different economic profiles to implement the same global minimum rate of tax and to ignore relative levels of economic development and wealth?

BEPS 2.0, well-meaning as it is to end the race to the bottom, may have inadvertently given short shrift to horizontal and vertical equity. By imposing one global standard on all countries, regardless of their state and status of development (developed versus developing), it ignores vertical equity. That is, developed countries that already have functioning and efficient capital markets, infrastructure, public institutions, intellectual property or R&D and educational facilities can grow entrepreneurship and develop to create GDP wealth. Developing countries, on the other hand, do not. So, by imposing one global standard, BEPS 2.0 has not taken into account vertical equity and limits the choices of developing countries to use all their fiscal tools to attract foreign direct investment — and to develop along the same trajectory as those developed countries that had previously taken advantage of these tools.

The limited instance where there is a differentiation between developed and developing countries is where developing countries are permitted to elect into, rather than be subject to the BEPS Pillar One mandatory dispute resolution mechanism. But this limited instance appears to be borne out of a need to reach political compromise for countries, such as India, which have been unequivocal in their insistence that mandatory arbitration is a violation of sovereignty over taxation.[23]

Tax as a part of broader fiscal and economic policy

As the IMF puts it:

> "Fiscal policy is the use of government spending and taxation to influence the economy. Governments typically use fiscal policy to promote strong and sustainable growth and reduce poverty. The role and objectives of fiscal policy gained prominence during the recent global economic crisis, when governments stepped in to support

[23] Suranjali Tandon, "For Cairns Dispute, International Arbitration is Not the Way Forward," *Indian Express*, July 21, 2021, https://indianexpress.com/article/opinion/columns/for-cairns-dispute-international-arbitration-is-not-the-way-forward-7414260/.

> financial systems, jump-start growth, and mitigate the impact of the crisis on vulnerable groups."[24]

At present, fiscal policy plays a central role in the twin crises of pandemic and climate degradation. The COVID-19 pandemic has caused a significant deterioration in public finances, adding to pre-existing strains from long-term structural challenges including population ageing, climate change, rising inequality, digitalisation, and automation. Taxation policy is a core part of addressing these challenges and opportunities for developing public fiscal policy strategies as countries seek to "build back better".[25] The recent OECD report to the G20 finance ministers, for instance, focuses on "how tax policy can be designed comprehensively so that fiscal systems can deliver a balance of equity, growth and sustainability, highlighting some of the key considerations that policymakers should take into account to ensure optimal tax policy design and the successful implementation of tax reform."[26]

Tax policy is an integral tool of broader fiscal policy in dealing with the challenges of the modern economy. Hence, countering tax avoidance is but one dimension to consider in the design of tax policy. There has to be a balanced consideration of factors and objectives. In this regard, a one-size-fits-all criterion in judging the merits of a tax regime or tax measure often fails to take into account the broader economic policy objectives and externalities that the measure or regime may bring.

Explorations

The Institute of Policy Studies (IPS) has formed a multi-disciplinary team of experts with background in public policy, law, economics, accounting, and taxation to explore the above themes and concepts outlined above. The four

[24] Mark Horton and Asmaa El-Ganainy, "Fiscal Policy: Taking and Giving Away," IMF Publications, updated February 24, 2020, https://www.imf.org/external/pubs/ft/fandd/basics/fiscpol.htm.

[25] "President Biden and G7 Leaders Launch Build Back Better World (B3W) Partnership," The White House Fact Sheet, June 12, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/12/fact-sheet-president-biden-and-g7-leaders-launch-build-back-better-world-b3w-partnership/

[26] "Tax and Fiscal Policies After the COVID-19 Crisis," OECD Policy Responses to Coronavirus (COVID-19), October 14, 2021, https://www.oecd.org/coronavirus/policy-responses/tax-and-fiscal-policies-after-the-covid-19-crisis-5a8f24c3/.

briefing notes presented in this report are vignettes of the rich vein of research that can be tapped in this exploration:

a. *Briefing Note One: Revisiting harmful preferential tax regimes*

Note One traces the evolution of the characterisation of harmful tax regimes and tax measures. It finds that notions of tax havens and harmful tax practices are at best, nuanced, having evolved over time. The criteria for judging the merits of such tax policies need to be adjusted for Asian circumstances. Instead of focusing only on avoidance and the negative list of what constitutes harmful tax measures or regimes, one could take a positive list approach to judge a regime or measure in its impact, considering the norms above. An example of such an approach is to consider whether the measure or regime promotes the right to development and vertical equity by enabling developing countries to attract capital and grow economy.

These points are not meant to be definitive but are intended to seed the idea that conventional international tax or BEPS wisdom or norms need to be critically examined when it comes to Asia.

b. *Briefing Note Two: Assessing the positive externalities of global investment hubs like Singapore*

This note sets out various aspects of Singapore's role as a global investment hub, providing important agglomeration and positive externalities for the region and the rest of the world. These positive externalities contribute to facilitate investment flows into the region that boost economic development. A failure to fully reflect the substance of these non-tangible factors and qualities in the implementation of the Pillar Two rules could yield unintended consequences that are detrimental to the economic growth and development of the region as well as lower the overall corporate income tax receipts of the jurisdictions in the region.

c. Briefing Note Three: Taxation and development: How tax policy measures have contributed to economic transformation

The Asian economic growth has followed the flying geese formation since the 1960s till today. A significant part of this successful economic model of development is the positive use of tax measures to spur economic growth. The paper examines the experience of two developing economies (the Philippines and Thailand) and two developed economies (Singapore and South Korea), per the US$12,535 GNI per capita threshold. The Asian experience challenges conventional wisdom that tax incentives are inherently poor policy choices, either forgoing tax revenue without having attracted foreign direct investment or spurred economic development, or eroding thy neighbours' tax base and spurring retaliatory actions. Instead of "race to the bottom", the Asian experience has many successful examples of intelligent use of tax policy for growth. In this regard, horizontal equity suggests that countries that are fiscally prudent and responsible should be permitted to compete for foreign direct investment by using the fiscal space that their prudence brings rather than be subject to a blunt universal global minimum tax.

Similarly, Asian policymakers should be cognizant of the limitations of the substance-based carve-out in serving as normative judgment that two factors (payroll and tangible assets) in a fixed formula can be a sound basis for judging which tax incentives are acceptable and which are not. Looking solely at payroll and tangible assets fail to consider fully:

1. the positive externalities that sound tax policies and institutional and infrastructural support (rule of law, intellectual property protection, financial/professional expertise, etc.) can bring to development across a region like ASEAN; and
2. the evolving needs of economies as they move up the value chain.

Whilst the two factors may be appropriate for Thailand and the Philippines at their stage of development, leaving out capital and intangibles like intellectual property clearly would not fit the needs of Singapore and South Korea at their stage of development.

d. Briefing Note Four: Aligning Tax with ESG factors

The largest developing populations — India, China, Indonesia — are located alongside natural wonders, from the rainforests of Indonesia to the majestic peaks of the Himalayas. At the same time, they are pressed by the relentless need for development. It is crucial to closely align tax policy with

environmental, social and governance criteria (ESG) and especially climate goals, in order to have any hope of progressing the COP26 environmental agenda in Asia.

Existing measures to promote ESG such as disclosure regimes, reports and ratings have been ineffective. Corporate law has also not caught up; for example, directors are not obligated to promote ESG. Therefore, there is a need for tax policy and incentives to supplement present measures by providing quantifiable obligations, or "carrots and sticks", to promote ESG. Drawing on the success of R&D tax incentives, it is likely that properly designed and monitored ESG tax incentives will significantly incentivise the largest MNEs to operate their businesses according to ESG factors. Consideration should therefore be given to include ESG tax incentives to Pillar Two's substance-based carve-outs.

Conclusion

Mainstream academic literature does not dispute that tax evasion by multinationals can be harmful; neither does it argue against the updating of international taxation norms to handle the challenges of a globally digitalised economy. Indeed, the broad consensus by the 141 jurisdictions of the Inclusive Framework is a laudable milestone achievement by the OECD, and it indicates the political will for collective action to counter abusive tax evasion.

Nevertheless, there are many competing norms and broader economic concepts that should, in a healthy policy design, be taken into account. This is more so when implementing international tax changes in Asia due to Asia's diversity, unique circumstances and needs. This area represents a rich vein of unexplored research and where thoughtful policy analysis from an Asian perspective could contribute significantly and positively to policy formulation.

The propositions that the policy briefs have explored preliminarily are illustrations of the insights that careful analyses can yield, taking into account Asian circumstances. These and other issues will be further explored by the IPS Working Group in future research.

Briefing Note 1

Revisiting harmful preferential tax regimes

REVISITING HARMFUL PREFERENTIAL TAX REGIMES

Darren Koh

Genesis of the Term "Harmful Tax Competition"

The term "harmful tax competition" as we know it under the Base Erosion and Profit Shifting (BEPS) Action Plans (in particular Action Plan 5)[1] had its genesis in the May 1996 request by Ministers of the member countries of the OECD for the organisation to "develop measures to counter the distorting effects of harmful tax competition on investment and financing decisions and the consequences for national tax bases, and report back in 1998."[2]

The first report of 1998[3] acknowledged the existence of two cases where harmful tax competition may arise: one in the case of tax havens, and the other in the case of harmful preferential tax regimes.

Defining a Tax Haven

While it acknowledged that the concept of "tax haven" did not have a precise technical definition, the report pointed to "countries that are able to finance their public services with no or nominal income taxes and that offer themselves as places to be used by non-residents to escape tax in their country of residence…."[4] These "havens" were in effect, money boxes — a location to for holding passive investments, or where paper profits could be booked while effectively shielding all such investments or profits from tax authorities. The OECD identified four key factors that could be used to identify such tax havens:

1. no or only nominal taxes;

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[1] OECD, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance Action 5: 2015 Final Report* (OECD: Paris, 2015).

[2] OECD, *Harmful Tax Competition: An Emerging Global Issue* (OECD: Paris, 1998), Foreword.

[3] The 1998 OECD report was adopted by the OECD with abstentions from Luxembourg and Switzerland.

[4] OECD, *Harmful Tax Competition,* paragraph 42.

2. lack of transparency, e.g., lack of effective exchange of information with other tax authorities;
3. lack of transparency; and
4. no requirement that activities in jurisdiction were substantial.

The last point of lack of substance describes a jurisdiction that attracts investments or transactions that are purely tax-driven and indicates the lack of a legal or commercial environment to support any further activity.

This was primarily used against classical "sun, sea and sand" tax havens.

Too many definitions

By 2000, the OECD began developing a list of tax havens using its own definition.[5] In its 2001 progress report, the OECD accepted that the determination of whether local activities are sufficiently substantial is difficult and concluded that this would no longer be used to determine whether or not a tax haven was cooperative.[6] By 2009, no country remained on the list after all countries made commitments to implement the OECD standards of transparency and exchange of information. In 2017 however, the European Union (EU) set out its own list of non-cooperative tax jurisdictions primarily as a tool to tackle tax avoidance, tax evasion and money laundering.[7]

The three criteria used for its list were tax transparency, fair taxation and the implementation of anti-BEPS measures. As of January 11, 2022, the latest revised list sets out nine uncooperative jurisdictions and 16 jurisdictions that are on a grey list, having given commitments to reform their adjudged shortcomings. It should be noted that the EU list conspicuously does not take into account countries of the EU. From Asia, Australia and Thailand had been grey-listed[8] whilst Hong Kong and Malaysia were added to the grey list

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[5] "Towards Global Tax Co-Operation: Report to the 2000 Ministerial Council Meeting and Recommendations by the Committee on Fiscal Affairs — Progress in Identifying and Eliminating Harmful Tax Practices", OECD, 2000, https://www.oecd.org/ctp/harmful/2090192.pdf.

[6] OECD, *The OECD's Project on Harmful Tax Practices: The 2001 Progress Report* (Paris: OECD, 2001), paragraph 27.

[7] "Taxation: Eu List of Non-Cooperative Jurisdictions," Council of the EU and the European Council, October 7, 2021, https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/.

[8] "Updates to the EU List of Non-Cooperative Jurisdictions and Possible Re-Launch of EU FTT and Public CbC Reporting Proposals," KPMG, February 22, 2021, https://home.kpmg/xx/en/home/insights/2021/02/etf-442-updates-to-the-eu-

recently[9]. In the meantime, US President Joe Biden has upset Switzerland by referring to the country as a "tax haven"[10]. Switzerland is not on the EU list of tax havens.

What is an appropriate criteria for a tax haven in Asia?

Australia, Thailand, Hong Kong and Malaysia represent quite a diverse set of jurisdictions. The fact that Asia lacks its own standards with which to judge what is harmful is a shortcoming that is waiting to be addressed. Singapore is not grey-listed with good reason. It is certainly not a country with no substantial economic activity beyond investments or paper transactions. It therefore does not appear either on the OECD's or the EU's list of uncooperative tax jurisdictions. Singapore has been and still is a global trading centre for many years now, and its success as a global hub has led to many positive externalities as set out in Briefing Note 2.

Harmful Preferential Tax Regimes

The OECD identified harmful preferential tax regimes as those having four key factors similar to those in the case of tax havens, and eight other factors. The key factors are:

1. no or low effective tax rates for beneficiaries of the particular tax regime;
2. ring-fencing of the regime away from the domestic economy;
3. lack of transparency; and
4. lack of effective exchange of information

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list-of-non-cooperative-jurisdictions.html.

[9] General Secretariat of the Council of the European Union, "The Council Conclusions on the Revised EU list of Non-Cooperative Jurisdictions for Tax Purposes — Annex," October 5, 2021, https://www.consilium.europa.eu/media/52208/st12519-en21.pdf; John Timpany and Lewis Lu, "The EU Adds Hong Kong SAR on its 'Grey List' for Tax Purposes," ITR, October 19, 2021, https://www.internationaltaxreview.com/article/b1v25q11xrxbpl/the-eu-adds-hong-kong-sar-on-its-grey-list-for-tax-purposes.

[10] "President Joe Biden called Switzerland a Tax Haven — and the Swiss Government is Not Happy About it," Euronews, April 30, 2021, https://www.euronews.com/2021/04/30/president-joe-biden-called-switzerland-a-tax-haven-and-the-swiss-government-is-not-happy-a.

Other factors include:

1. an artificial definition of the tax base;
2. failure to adhere to international transfer pricing principles;
3. foreign-sourced income exemption from residence country taxation;
4. negotiable tax rate or base;
5. existence of secrecy provisions;
6. access to a wide network of tax treaties;
7. regime promoted as a tax minimisation vehicle;
8. regime encourages operations or arrangements that are purely tax-driven and involve no substantial activities.[11]

The OECD recognised that even if the factors above identified a preferential tax regime as being potentially harmful, it would not be actually harmful if it did not create "harmful economic effects." The following three questions were thought helpful in determining if such effects were present:

- Does the tax regime shift activity from one country to the country providing the preferential tax regime, rather than generate significant new activity?
- Is the presence and level of activities in the host country commensurate with the amount of investment or income?
- Is the preferential regime the primary motivation for the location of an activity?[12]

The OECD used the criteria as developed above to review and identify harmful preferential tax regimes. The report also recommended tools countries may use to counter such harmful preferential regimes. Initially the OECD identified 47 potentially harmful regimes within the OECD in 2000.

By 2006, all 46 were abolished, amended or found to not be harmful — with only one OECD regime actually identified as harmful, and subsequently abolished. The review programme has since been enlarged to include countries outside the OECD, and the work continues under the aegis of the forum now known as the OECD Forum on Harmful Tax Practices.

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[11] OECD Publications Centre (1998), paragraphs 60–79

[12] OECD Publications Centre (1998), paragraphs 80–84

BEPS

By the time of the release of the 2015 Final Report[13], the work had begun to focus on improving transparency in relation to rulings and refining the substantial activity requirement. The latter marked a refinement of thought towards the need to establish a link between the income qualifying for benefits and the core activities necessary to earn the income. The link for intellectual property (IP)-based regimes could be the expenditure incurred to perform R&D within a country in developing the IP versus the income earned from the IP, while a headquarters company regime would need to link the headquarter services provided to the service income received by the company.[14] This requirement of "substance" was not new but had not been fleshed out in the 1998 report. However, Action 5 elevates the substantial activities requirement to the status of a "key factor", to be considered alongside the earlier four factors in determining if a regime was harmful.[15]

A pause….

The OECD began their projects by stressing that countries are free to design their own tax systems "as long as they abide by internationally accepted standards in so doing"[16]. In fact, as recently as 2015, the OECD said that "[t]he work on harmful tax practices is not intended to promote the harmonisation of income taxes or tax structures generally within or outside the OECD, nor is it about dictating to any country what should be the appropriate level of tax rates."[17] However we have now BEPS Pillar Two which does precisely that.

There is an English proverb that goes, "Give a dog a bad name and hang him." While its origins are obscure, it points to the fact that reputation once besmirched is very difficult to recover.

In their work on harmful tax practices, the OECD did acknowledge that:

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[13] OECD, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance Action 5: 2015 Final Report* (Paris: OECD, 2015).

[14] Ibid., paragraphs 70–88.

[15] Ibid., paragraph 25.

[16] OECD, *Harmful Tax Competition,* paragraph 26.

[17] OECD, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance Action 5: 2015 Final Report* (Paris: OECD, 2015), paragraph 3.

> "Tax competition and the interaction of tax systems can have effects that some countries may view as negative or harmful but others may not. For example, one country may view investment incentives as a policy instrument to stimulate new investment, while another may view investment incentives as diverting real investment from one country to another. In the context of this last effect, countries with specific structural disadvantages, such as poor geographical location, lack of natural resources, etc., frequently consider that special tax incentives or tax regimes are necessary to offset non-tax disadvantages, including any additional cost from locating in such areas. Similarly, within countries, peripheral regions often experience difficulties in promoting their development and may, at certain stages in this development, benefit from more attractive tax regimes or tax incentives for certain activities. This outcome, in itself, recognises that many factors affect the overall competitive position of a country. Although the international community may have concerns about potential spill-over effects, these decisions may be justifiable from the point of view of the country in question."[18]

Having acknowledged that there is room for a different view, the report blithely ignores this view, and moves on with a focus on harmful tax preferences without any further concession to this point. Subsequent reports issued and even BEPS Action 5 trumpets the battle against harmful tax practices to the point where this became the dominant message, whether or not it was intended to be so — that is, tax incentives are *per se* harmful preferential tax regimes. Even though by BEPS Action 5 we have reached the point that "substantive activities" may well point to an incentive regime being "not harmful", the unfortunate loud messaging against tax incentive regimes have in essence, given the dog a bad name, and hanged it.

The work that was done against tax havens and harmful tax practices is to be applauded. But we also do need to recognise that — despite the attempts to broaden its legitimacy by handing the continuing work the forum now referred to as the OECD Forum on Harmful Tax Practices — there is still a lingering sense that this was served onto the developing world as a *fait accompli* in 1998. To this end, a little late it may be, it is important to stress that we do need to hear different voices too.

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[18] *Harmful Tax Competition,* paragraph 27.

A Reconsideration from the Asian or ASEAN Context?

Perhaps it is time to reconsider the idea that an incentive that diverts investment that might have gone to country A to country B means the measure is harmful *per se*. In assessing whether or not investment should be made in country A or country B, multinational enterprises (MNEs) are not driven solely by tax. Offering zero per cent tax does not guarantee diversion of investment to that jurisdiction. Conversely, having a high tax does not mean investors will leave; if that were the case, few MNEs would set up in Japan where the corporate tax rate has averaged 40.83 percent from 1993 to 2021.[19] But they do. This is not to say that the tax rate is not important: it is. But it is one of few important things taken into account when MNEs make their investment decisions. In short, as the OECD policy brief on "Tax Effects on Foreign Direct Investment" found that:

> "while tax is recognized as being an important factor in decisions on where to invest, it is not the main determinant. Foreign direct investment is attracted to countries offering: access to markets and profit opportunities; a predictable and non-discriminatory legal and regulatory framework; macroeconomic stability; skilled and responsive labour markets; and well-developed infrastructure." [20]

If we truly are embracing the idea that sovereign nations are free to design their own tax systems, and if we truly believe in free market competition, we should be highlighting how preferential tax regimes can and do assist in the development of an economy. Some of the countries in Southeast Asia (e.g., Thailand and the Philippines) would probably not have achieved the level of development they have without the assistance of preferential tax regimes. The development of Silicon Island in Malaysia's Penang island, which had Intel, HP, Hitachi, Robert Bosch and other tech companies invested long-term[21] as well as the development of back-office services in the Philippines are clear examples. To continually sound the horn of harmful tax practices without the balancing out with success stories brought on through incentives will continue to perpetuate the notion that all tax incentives are harmful preferential tax regimes.

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[19] "Japan Corporate Tax Rate", Trading Economics, https://tradingeconomics.com/japan/corporate-tax-rate

[20] "Tax Effects on Foreign Direct Investment," *OECD Policy Brief*, February 2008, https://www.oecd.org/investment/investment-policy/40152903.pdf.

[21] "Creating the Silicon Valley of the East 2.0 on Penang's Mainland," *The Edge*, November 6, 2021, https://www.theedgemarkets.com/article/creating-silicon-valley-east-20-penangs-mainland.

Somewhere in the near future

More work should be done on documenting and publicising the positive effects of properly run preferential tax regimes. If all incentives are viewed as bad, and governments feel that they do not have this lever to use, then a very important carrot and stick would be removed from the economic toolkit that could be used to mould behaviour. Looking to the near horizon, the environmental, social and governance (ESG) movement looms large —but for countries with small economies, making the necessary changes to meet the new aspirations will not be easy. What would be a small cost in a large, developed economy might require large investments to bring in more green technology, but would someone do so for a small market? Once again, preferential tax regimes may help, and again, when properly implemented, should not be deemed "harmful".

Briefing Note 2

Assessing the positive externalities of global investment hubs like Singapore

ASSESSING THE POSITIVE EXTERNALITIES OF GLOBAL INVESTMENT HUBS LIKE SINGAPORE

Woo Jun Jie
Christopher Gee

This briefing note focuses on how the specific nature of global investment hubs like Singapore in generating positive externalities are largely ignored in the OECD/G20 Global Anti-Base Erosion Model Rules (Pillar Two). It forms part of an initial investigation into the broader implications of the Pillar Two rules on the Asian region and sets the stage for follow-up research to be undertaken.

Carve-outs to accommodate tax incentives for substantial business activities under Pillar Two are based on just two factors: employee compensation and tangible assets[1], and do not consider the non-tangible quantities and qualities of the investment hub and the MNEs located there.

This narrow definition under-represents the full substance of a MNE's commercial basis for locating in an investment hub like Singapore that provides legal, regulatory and governance infrastructure and institutions as well as offering a comprehensive eco-system of supporting industries and services that catalyse investment flows that ultimately benefit developing countries. A failure to accommodate these non-tangible factors raises the risk of diminishing economic growth and development of not just the investment hub but also the region the hub serves, and reducing rather than raising overall corporate income tax receipts.

Global Investment Hub Singapore

Given its strategic location at the intersection of global trade as well as its historical role as a British colonial entrepôt, Singapore has over its history developed itself into a global hub for business, finance, technology and culture. Aside from geographical location and historical contingencies, Singapore also possesses several key attributes that have made it a highly attractive business hub. These include its excellent urban and technological

[1] OECD, *Tax Challenges Arising from Digitalisation — Report on Pillar Two Blueprint: Inclusive Framework on BEPS* (Paris: OECD, 2020).

infrastructure, skilled workforce, political stability, and robust regulatory infrastructure.[2]

Singapore's current success as a major economic hub derives directly from its ability to leverage on the dislocation of global production of goods and services by hosting important components of global supply chains and producing exportable services such as finance. This was largely achieved through deliberate efforts to support and even champion institutions that serve to liberalise global trade and foster closer regional ties. Known as its "regionalisation drive", such efforts have effectively situated Singapore at a "global-local nexus" of international flows of goods, capital, finance, people and knowledge.[3]

Due to its advanced levels of economic and technological development, Singapore has often been seen as the "financial, commercial and diplomatic centre of the region"[4], establishing itself as a major trading node and leading financial centre for the region. Perhaps most importantly, Singapore's attractiveness to MNEs has resulted in the situation of 'command and coordination functions' in the city-state, with regional headquarters of these MNEs serving as command centres for their operations in the region, which in turn contribute to economic growth and development in other Southeast Asian economies.[5]

MNEs have therefore over the years played a key role in both Singapore's economy as well as those of the region. By positioning itself as an attractive hub for MNEs to situate their global and regional headquarters and thereafter expand into other Southeast Asian economies, Singapore plays a key role in driving regional economic development. It is however also important to note these MNEs' extensive business, financial and logistical operations — all of which require the aforementioned skilled workforce, infrastructure, regulatory framework and political stability that Singapore provides.

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[2] Tai-Chee Wong, "The Transformation of Singapore's Central Area: From Slums to a Global Business Hub?", *Planning Practice & Research* 16, no. 2(2001): 155–170.

[3] Brenda Yeoh and Katie Willis, "The Global-Local Nexus: Singapore's Regionalisation Drive", *Geography* 82, no. 2(1997): 183–186.

[4] Simon Shen, "Why Singapore plays a pivotal role in ASEAN," Ejinsight, April 20, 2015, http://www.ejinsight.com/20150420-singapore-pivotal-role-asean/.

[5] Henry Yeung, Jessie Poon and Martin Perry, "Towards a Regional Strategy: The Role of Regional Headquarters of Foreign Firms in Singapore", *Urban Studies* 38, no. 1(2001): 157–183.

In short, Singapore's position as a leading business hub provides important economic benefits for the region. Furthermore, Singapore's position as an economic hub has served to further strengthen and diversify its domestic economy. In the next few sections of the paper, we will provide an overview of Singapore's economy, focusing in particular on the three key sectors of manufacturing, financial services and technology and how it forms the basis of positive externalities that benefit other jurisdictions beyond Singapore. As our discussions will show, Singapore's economy is driven by a strong manufacturing base, deep capital markets and a well-regulated banking sector, as well as a burgeoning technology sector, serving global and regional markets.

Aside from MNEs and major corporations, Singapore's economic landscape also includes a wide array of supporting industries that help foster an attractive business environment. Often described as "advanced producer services" these include legal services, information communication technology support, business consultancy and accountancy.[6]

This concentration of talent, capital and supporting industries has allowed Singapore to achieve what is known as "agglomeration" — a process whereby businesses and industry players converge on a specific location due to the strong presence of potential business partners, clients, business services, and even competitors, in the process facilitating the development of industry and innovation "clusters".[7]

Manufacturing

At the heart of the Singaporean economy is a strong manufacturing base, which has been established upon its independence. Figure 1 provides a broad overview of Singapore's manufacturing industry by listing the total number of manufacturing establishments by industry, as of 2019. As the figure shows, there are more than 9,000 major manufacturing establishments, spread across a wide range of sectors and producing a large array of products.

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[6] Saskia Sassen, "Cities in a World Economy," Fourth Edition (California: Sage Publications, 2011), 212-213.

[7] Poh-Kam Wong, Yuen-Ping Ho and Annette Singh, "Industrial Cluster Development and Innovation in Singapore," in *Agglomeration to Innovation*, eds. Masatsugu Tsuji and Akifumi Kuchiki (London: Palgrave Macmillan, 2010), 50–116.

Figure 1. Manufacturing Establishments by Industry

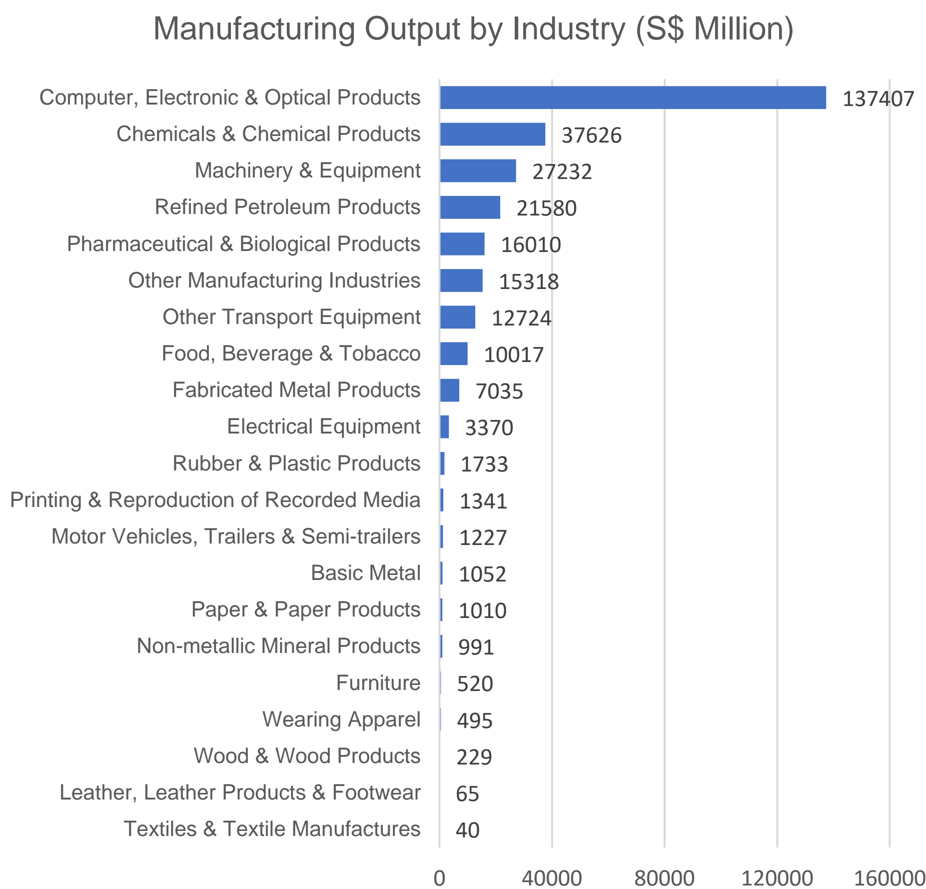
Manufacturing Establishments by Industry
(Total Establishments 9,017)

Industry	Establishments
Machinery & Equipment	1,706
Fabricated Metal Products	1,170
Food, Beverage & Tobacco	1,046
Other Transport Equipment	896
Printing & Reproduction of Media	798
Furniture	608
Other Manufacturing Industries	501
Wearing Apparel	372
Computer, Electronic & Optical	368
Chemicals & Chemical Products	300
Rubber & Plastic Products	283
Electrical Equipment	239
Wood & Wood Products	166
Non-metallic Mineral Products	136
Textiles & Textile Manufactures	117
Motor Vehicles & Trailers	92
Paper & Paper Products	83
Pharma & Biological Products	56
Basic Metal	38
Leather Products & Footwear	24
Refined Petroleum Products	18

0 500 1000 1500 2000

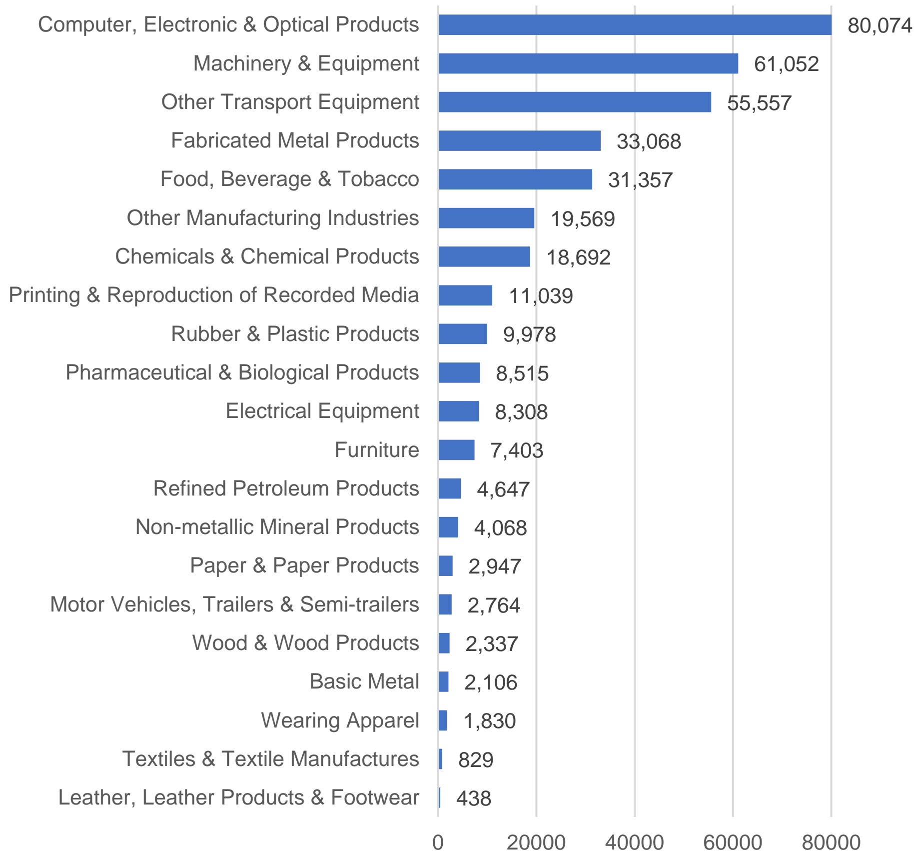
These manufacturing establishments produce a substantial amount of output. As Figure 2 shows, Singapore's total manufacturing output in 2020 was S$297 billion, with significant proportions of this total manufacturing output coming from computer, electronic & optical products, machinery & equipment, chemicals & chemical products, and refined petroleum products. Given Singapore's position as a major port city, much of this manufacturing output is ultimately exported to the region and beyond.

Figure 2. Manufacturing Output by Industry (S$ Million)



With this substantial manufacturing output, it is not surprising that Singapore's manufacturing industry employs a meaningful proportion of the Singaporean workforce. As Figure 3 shows, manufacturing accounted for more than 366,000 of Singapore's workforce (10% of the total).

Figure 3. Workers in Manufacturing by Industry



In short, Singapore possesses a sizeable manufacturing base that produces a substantial number of products for export and domestic consumption and employs many workers. Whilst all but a very small proportion of the enterprises indicated in Figure 1 above would not fall within the ambit of the Pillar Two rules, they form an integral part of the industrial eco-system that forms the environment in which MNEs that are covered by the BEPS rules to base themselves in Singapore.

Furthermore, this large manufacturing base is also supported by Singapore's financial services sector, which provides capital and financing for the manufacturers, shippers and logistic companies that are involved in producing and exporting manufactured goods.

Finance

According to Global Financial Centres Index, Singapore is ranked the fourth most competitive financial centre in the world[8], trailing New York, London and Hong Kong. Other cities that are ranked within the topflight of global financial centres in the world include San Francisco, Shanghai, Los Angeles, Beijing and Tokyo. In all instances, global financial centres that are ranked highly on the indices tend to be characterised by their diverse and well-developed financial services sector, robust regulatory infrastructure as well as the presence of a skilled workforce.

Singapore's positions as a leading global financial centre have important implications for the region as well for those financial and non-financial MNEs operating in the jurisdiction. For instance, Singapore is commonly used by global banks as an Asian base for project finance lending and advisory in the region, with about 60 per cent of project finance transactions in Southeast Asia led or managed by Singapore-based banks.[9] Singapore's role as a regional hub for infrastructural finance has therefore contributed significantly to infrastructural development in the region, providing other Southeast Asian countries with the financial capital, professional services and expertise necessary for the building and development of large-scale infrastructural projects.

[8] Z/Yen Group, Michael Mainelli and Mike Wardle, "The Global Financial Centres Index 30," *Long Finance And Financial Centre Futures (September 2021)* 4, https://ssrn.com/abstract=3943178.

[9] Enterprise Singapore, "50 Years of Growth as Asia's Infrastructure Hub," Reuters Brand Features, accessed January 5, 2022, https://www.reuters.com/brandfeatures/infrastructure2030/singapore-hub.

Table 1. Global Financial Centres Index 30 Industry Subsector Indices

Rank	Banking	Investment Management	Insurance	Professional Services
1	New York	New York	**Singapore**	New York
2	Hong Kong	London	Hong Kong	London
3	**Singapore**	**Singapore**	Shanghai	**Singapore**
4	Shanghai	Beijing	New York	Hong Kong
5	London	Shanghai	Beijing	Shanghai

Rank	Government & Regulatory	Finance	FinTech	Trading
1	New York	New York	New York	New York
2	London	Shanghai	**Singapore**	London
3	**Singapore**	Beijing	London	Hong Kong
4	Zurich	Tokyo	Shanghai	Shanghai
5	Hong Kong	Hong Kong	Wellington	**Singapore**

As Table 1 above shows, Singapore exhibits strengths in the subsectors of banking, investment management, insurance, professional services, government & regulatory, fintech and trading. Most notable for Singapore's position as a trustworthy and reputable financial centre are its strengths in insurance, fintech, banking, and government and regulatory services.

Table 2 below provides a broad overview of the different types of financial institutions that operate in Singapore. As the table shows, Singapore's financial institutions are largely comprised of banks, insurers, fund management firms, payments service providers, and capital market service providers.

Table 2. Number of Financial Institutions

Data Series	2021
Banks	131
Local	4
Full Banks	4
Foreign	127
Full Banks	30
Wholesale Banks	97
Asian Currency Units	150
Banks	130
Merchant Banks	20
Merchant Banks	21
Insurance Companies	207
Direct Insurers	79
Professional Reinsurers	42
Captive Insurers	81
Authorised Reinsurers	5
Insurance Brokers	92
Capital Markets Services Licensees	937
Fund Management	599
Product Financing	19
Providing Custodial Services	55
Real Estate Investment Trust Management	39
Venture Capital Fund Management	119
Licensed Trust Companies	60
Registered Fund Management Companies	290
Payments Services Providers	414
Money-Changing Licensees	262
Standard Payment Institutions	3
Major Payment Institutions	149
Payment Systems	12
Designated Payment System Operators	6
Designated Payment System Settlement Institutions	6
Credit And Charge Card Licensees	4

It is important to note that foreign banks are largely comprised of full banks and wholesale banks, with 10 of the foreign full banks granted Qualifying Full Bank (QFB) status. QFBs are allowed to provide a wider range of services to local retail customers.

In 2020, the Monetary Authority of Singapore (MAS) awarded the Significantly Rooted Foreign Bank (SRFB) privileges to Standard Chartered Bank (Singapore) Limited, allowing it to operate additional places of business. QFBs and SRFBs are required to fully subsidiarise their banking business operations in Singapore, ensure that major business lines and key decision-makers are based in Singapore, and serve a comprehensive spectrum of the local community in Singapore[10, 11].

As such, major foreign banks that operate in Singapore are required to subsidiarise their operations, maintain substantial headcounts and business interests in Singapore, as well as base their key decision-makers and business lines within Singapore. By tying foreign banks' scope of operations with their level of commitment to Singapore's financial services sector and its local employment, the QFB and SRFB schemes help ensure that foreign banks in Singapore are engaged in the provision of banking services to local and regional customers.

Finally, Table 3 below provides a snapshot of the assets and liabilities of finance companies in Singapore, as of October 2021. As Table 3 shows, a large proportion of assets held by finance companies take the form of loans and advances, while fixed deposits account for most of finance companies' liabilities.

[10] "MAS Announces Changes to the Qualifying Full Bank Programme," Monetary Authority of Singapore, June 28, 2012, https://www.mas.gov.sg/news/media-releases/2012/mas-announces-changes-to-the-qualifying-full-bank-programme.

[11] "MAS Enhances its Significantly Rooted Foreign Bank Framework," Monetary Authority of Singapore, August 3, 2020, https://www.mas.gov.sg/news/media-releases/2020/mas-enhances-its-significantly-rooted-foreign-bank-framework.

Table 3. Assets and Liabilities of Financial Institutions (S$ Million)

Data Series	October 2021
Assets Of Finance Companies	$17,099.2
Cash & Balances with Monetary Authority Of Singapore	$413.3
Total Deposits with Banks & Other Institutions	$775.0
Securities & Equities	$2,023.7
Loans & Advances	$13,754.9
Other Loans & Advances	$10,844.5
Other Assets	$132.3
Liabilities Of Finance Companies	$17,099.2
Capital & Reserves	$2,597.2
Total Deposits	$13,858.1
Savings Deposits	$318.4
Fixed Deposits	$13,301.8
Other Deposits	$237.9
Other Creditors	$256.2
Other Liabilities	$387.7

Aside from banking and finance, Singapore has also taken steps to establish itself as a fintech hub. To ensure a more competitive and vibrant fintech sector, the government has provided a range of support for smaller financial institutions, many of which will face difficulties competing directly with larger financial institutions. These include grants for digitalisation, expansion and innovation, as well as tax concessions and rebates that help lower tax payables for smaller financial institutions and start-ups.

As a fintech hub, Singapore plays an important role for the region by acting as a springboard for start-ups and financial institutions seeking to enter other ASEAN markets as well as the broader Asian region.[12] By developing a large fintech ecosystem and a deep pool of venture capital, Singapore's status as a fintech hub will also benefit the region, with its fintech companies and other

[12] Markus Gnirck and Gerben Visser, "Singapore, the Fintech Hub for Southeast Asia," in *The Fintech Book: The Financial Technology Handbook for Investors, Entrepreneurs and Visionaries*, eds. Susanne Chishti and Janos Barberis (John Wiley & Sons, 2016), 58–60.

financial institutions providing capital for the development of fintech in the region.[12]

Singapore's role in fostering the development of fintech in the region will also contribute to greater financial inclusion across ASEAN.[13] More recently, Singapore is aiming to develop itself into a hub for Green Finance and Green fintech, with these growing sectors potentially contributing to the development of sustainable solutions and green energy across the region.

Technology

Singapore has more recently put in place plans to transform itself into a smart city by developing its burgeoning technology sector and encouraging greater technological innovation. Hence, aside from its manufacturing sector and financial services industry, Singapore has developed a strong technology and innovation ecosystem that contributes to both domestic and regional economic activities by providing a pipeline of technological innovations and solutions.

Tables 4, 5 and 6 below provide a broad overview of Singapore's technology and innovation landscape. Table 7 shows that as of 2019, 9,865 patents are owned in Singapore, with the majority of these by the private sector. Of the 2,592 patents that were applied for in 2019, 1,476 were awarded. Table 8 provides a list of the total number of organisations that are involved in R&D activities, while Table 9 shows the total number of employees who are employed by this R&D sector. Taken together, the tables paint a picture that reflects a well-developed innovation and design ecosystem that is buttressed by a growing number of organisations and workers involved in R&D.

[13] Douglas Arner, Ross Buckley and Dirk Zetzsche, "FinTech for Financial Inclusion," in *Sustainable Development Goals*: *Harnessing Business to Achieve the SDGs Through Finance, Technology, and Law Reform*, eds. Julia Walker, Alma Pekmezovic and Gordon Walke (John Wiley & Sons, 2019), 177–203.

Table 4. Patents Owned

Data Series	2019
Patents Owned, as at End of Period	9,865
Public Sector	1,558
Private Sector	8,307
Patents Applied	2,592
Public Sector	669
Private Sector	1,923
Patents Awarded	1,476
Public Sector	221
Private Sector	1,255

Table 5. Organisations Performing R&D

Data Series	2019
Total	1,134
Private	1,052
Institutes of Higher Learning	15
Government	40
Public Research Institutes	27

Table 6. R&D Manpower

Data Series	2019
Total	52,989
Research Scientists & Engineers (RSE)	38,887
Full-Time Postgraduate Research Students (FPGRS)	4,931
Non-Degree Researchers	2,307
Technicians	2,400
Supporting Staff	4,464

Further work

This paper sets out the various aspects of Singapore's role as a global investment hub, providing important agglomeration and positive externalities for the region and the rest of the world. A failure to fully reflect the substance of these non-tangible factors and qualities in the implementation of the Pillar Two rules could yield unintended consequences that are detrimental to the economic growth and development of the region as well as lowering the overall corporate income tax receipts of the jurisdictions in the region.

Further work in this area will explore the tangible and more importantly intangible benefits that the developing Asian region secures from global investment hubs like Singapore, and to examine the role of tax incentives provided in the investment hub in generating economic gains for the region.

Briefing Note 3

Taxation and development: How tax policy measures have contributed to economic transformation

Taxation and Development: How Tax Policy Measures Have Contributed to Economic Transformation

Paul Lau
Chris Woo

Introduction

Tax is primarily a fiscal tool — it is used to raise revenues to fund public expenditure.[1] That said, it is also used to promote desired undertakings or discourage certain behaviours.[2] It could be for social causes, for example, permitting deductions for donations to encourage philanthropy. It could also be used to correct for externalities, such as a carbon tax to internalise pollution cost (at least in part). Tax policy is capable of influencing a particular course of action, and as such, is an integral part of the economic and social toolkit with which a government deploys in running a country. Inasmuch as tax is an impost that can serve to deter certain conduct or activities, the reduction of a tax charge through incentives can help encourage others. Tax incentives have had a long history. Among other things, they have been employed to channel investments with the view to promoting certain activities or industry sectors to achieve specific policy goals.[3]

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[1] Taxation has been around for several millennia and is a common thread that ran through many significant historical events, from wars to revolutions; for an introduction on role of taxation in public finance over the course of history, see Michael Keen and Joel Slemrod, *Rebellion, Rascal and Revenue* (Princeton and Oxford: Princeton University Press, 2021).

[2] A recent example would be that of Quebec in Canada, which has announced a "health tax" on residents who are eligible but have chosen not to be vaccinated against COVID-19 during the ongoing global pandemic: "Covid: Quebec to Impose Health Tax on Unvaccinated Canadians," January 11, 2022, BBC, https://www.bbc.com/news/world-us-canada-59960689.

[3] For a general discussion, see David Holland and Richard Vann, "Income Tax Incentives for Investments," in *Tax Law Design and Drafting Volume 2,* ed. Victor Thuronyi, (Washington: IMF, 1998), 986–1019; as well as Victor Thuronyi, "Tax Expenditure: A Reassessment," *Duke Law Journal* (1988): 1155–1206. Because of the equivalence of tax incentives to direct expenditure programmes, they have also been referred as "tax expenditures".

In this paper, the term "tax incentives" refers to measures that provide a more favourable tax treatment of certain activities in any specific region or industry compared to what is granted to the economy in general.[4] Very broadly, tax incentives could be profit-based, by offering a concessionary tax rate or tax holiday; or they could be expenditure-based, where additional tax deductions (or credits) are available for every dollar spent on specific activities or equipment. The incentives are usually given for a fixed duration, and the benefits may or may not be capped. In either case, they are usually subject to economic conditions imposed. These may range from business to headcount requirements, as well as the need to undertake specific activities or to operate in certain regions. Invariably, the incentives are intended to address certain inherent disadvantages that deter investments, for example, the lack of infrastructure.

It is not the purpose of this paper to canvass the merits or otherwise of tax incentives; much has already been said in this regard.[5] Rather, it is meant to draw attention, via case studies of the Philippines, Thailand, Singapore, and South Korea, to how certain tax incentives employed by these countries have successfully uplifted their economies, such that they have become an integral part of global value chains in modern commerce. It is acknowledged that tax incentives alone did not lead to these outcomes and that tax alone cannot explain the successful transformation of an economy, because there are many other factors — particularly around governance and institutional framework, labour and skills, infrastructure and technology — that are all essential ingredients. However, there are ample examples of tax incentives acting as catalysts for economic development and bringing about positive outcomes.

[4] This definition is adapted from that in Alexander Klemm, "Causes, Benefits, and Risks of Business Tax Incentives," *IMF Working Paper WP/09/21*, January 2009, https://www.imf.org/external/pubs/ft/wp/2009/wp0921.pdf, and generally refers to income (i.e., direct) tax incentives, although concessions can be given for indirect taxes too, such as reliefs or reduction of import duties.

[5] See for example, "Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investments," a 2015 report to the G20 Development Working Group by IMF, OECD, UN and World Bank, https://www.oecd.org/tax/tax-global/options-for-low-income-countries-effective-and-efficient-use-of-tax-incentives-for-investment.pdf; as well as the references in Alexander Klemm's "Causes, Benefits, and Risks of Business Tax Incentives".

International Scene

Before considering the countries' examples, it would be apposite to review how the international taxation landscape has evolved, to better appreciate the role of tax incentives.

Taxation is a sovereign right — every state is entitled to implement a tax system that suits its economic and social needs. This is reflected in the common law principle of the Revenue Rule[6] whereby one state will not enforce directly or indirectly the taxes of another, which stems from the premise that taxing rights are an act of sovereignty for a state to assert within its territory and cannot be asserted within the territory of another.

Having said that, countries trade with one another and thus one country's tax system will interface with another's. Whether a tax system is considered harmful, in the sense that it erodes the tax base of another country, has evolved over time, along with the proposed measures to address any harmful practice.

The OECD in its 1988 report identified four key factors of a tax haven, being: no or only nominal taxes; lack of effective exchange of information; lack of transparency; and no substantial activities.[7] Further, a country that is not a tax haven may nonetheless have regimes that are regarded as "harmful preferential tax regimes". This entails first assessing a regime against a set of primary factors, including no or low effective tax rates, ring-fencing of regimes. This is followed by a set of secondary factors, including whether there is an artificial definition of the tax base; adherence to international transfer pricing principles; exemption of foreign source income in resident state; negotiable tax rate or tax base; secrecy provision; access to a wide network of tax treaties; or a regime which is promoted as tax minimisation vehicles.

The emphasis on addressing harmful practices shifted by the early 2010s, where attention was turned to achieving transparency through more effective

[6] *Government of India v. Taylor* [1955] AC 491, and applied in Singapore in *Relfo Ltd (In Liquidation) v. Bhimji Velji Jadva Varsani* [2008] 4 SLR(R) 657.

[7] OECD, *Harmful Tax Competition: An Emerging Global Issue* (OECD: Paris, 1998).

and extensive exchange of information.[8] Following the publication of the Action 5 report by the OECD in 2015 in connection with its project to counter base erosion and profit shifting (BEPS),[9] the focus has moved onto addressing the lack of substantial activities, improving transparency through enhanced information exchange on tax rulings and conducting peer review of preferential regimes.[10]

Despite having reviewed a number of preferential regimes (including Singapore's) and concluded that they are not harmful,[11] the OECD along with the Inclusive Framework[12] proposed a global minimum tax mechanism to address tax competition, with the stated policy objective of providing jurisdictions with a right to "tax back" profits where other jurisdictions have not exercised their primary taxing rights, or the payment is otherwise subject to low levels of effective taxation.[13] The question is therefore no longer about whether a regime is harmful based on its design attributes or whether it entails substantial activities, but on the level of the effective tax rate.

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[8] Enhanced exchange of information through the adoption of the revised Article 26 of the OECD Model Tax Convention on Income and on Capital 2005, which incorporated the "reasonably foreseeable" standard and the lifting of domestic interest requirement for information exchange.

[9] Based on the OECD, BEPS refers to tax planning strategies used by multinational enterprises that exploit gaps and mismatches in tax rules to avoid paying tax. Following the release of the report *Addressing Base Erosion and Profit Shifting* in February 2013, the OECD and G20 adopted a 15-point Action Plan to address BEPS in September 2013. The Action Plan identified 15 actions along three pillars: introducing coherence in the domestic rules on cross border activities, reinforcing substance requirements in the existing international standards, and improving transparency and certainty.

[10] OECD, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance Action 5: 2015 Final Report* (Paris: OECD, 2015).

[11] OECD, "Annex I Inclusive Framework on BEPS Progress Report: July 2016 to June 2017," in *OECD Secretary General Report to G20 Leaders* (Hamburg: OECD, 2017), 24, https://www.oecd.org/tax/beps/inclusive-framework-on-BEPS-progress-report-july-2016-june-2017.pdf.

[12] The Inclusive Framework on BEPS allows interested countries and jurisdictions to work with OECD and G20 members on developing standards on BEPS related issues and review and monitor the implementation of the BEPS Package. At its inaugural meeting in Kyoto, Japan in June 2016 there were 82 members of the OECD/G20 Inclusive Framework on BEPS. Since then, the membership of the Inclusive Framework has grown to 141 countries and jurisdictions, including 14 observer organisations. See details here: https://www.oecd.org/tax/beps/about/.

[13] OECD, *Tax Challenges Arising from Digitalisation — Report on Pillar Two Blueprint* (Paris: OECD, 2020), paragraph 566.

Use of Tax Incentives

Against this changing landscape, many countries have enacted tax concessions over time to promote the development of certain regions or sectors based on their domestic priorities. This paper sets out the experience of two developing nations (the Philippines and Thailand) and two developed ones (Singapore and South Korea)[14] on how tax incentives have been a key plank of their transformation journey.

The Philippines[15]

An example of how a developing country has successfully applied tax incentives is the Philippines, which has established the Philippine Economic Zone Authority (PEZA), an investment promotion and incentive granting agency whose objective is to support the government's efforts to promote investments and create employment, amongst others. The tax concessions offered include tax holidays, reduced corporate income tax of 5 per cent on income less allowable deductions, tax- and duty-free import of capital equipment and supplies, as well as VAT concessions to companies that operate in various economic zones across the country. There are also non-tax incentives offered, such as work permits for foreign nationals and long-term leases, as well as administrative ease with PEZA acting as a one-stop shop to serve foreign investors, again demonstrating that tax considerations alone are not determinative in investment decisions.

There are more than 400 such economic zones nationwide, with the vast majority focusing on industrial and export processing, and information technology (IT) parks and centres. As of 2018, call centres and business process outsourcing (BPO) made up 79 per cent of total IT investments, with

[14] Developing countries are defined as those with a GNI per capita, calculated using the World Bank Atlas method, of US$12,535 or less in 2019, available at 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. This applies the World Bank GNI data from https://data.worldbank.org/indicator/NY.GNP.PCAP.CD?locations=Z4.

[15] The information in this section is largely drawn from the Philippine Economic Zone Authority and ADB's "Knowledge Sharing Session for Mongolia: Developing the Economic Cooperation Zone Project — A Case Study on the Philippines: The PEZA Experience," presented on March 31, 2021, https://events.development.asia/system/files/materials/2021/03/202103-case-study-philippines-one-stop-shop-sezs-and-role-global-value-chain-english-translation_0.pdf.

investors from the US and the Netherlands accounting for 59 per cent of these investments.

Since its introduction in 1995, PEZA exports have expanded from 5 per cent of the country's GDP to 17 per cent, and direct employment from about 122,000 to 1.6 million. Based on the total direct and indirect employment figures (a total of 7.8 million) and the social profile of the Philippines, PEZA has estimated that one in five Filipinos or a total of 23 million individuals have been positively affected by the PEZA economic zone programmes.[16]

More specifically, the programme, along with wide usage of English among the local population, has also helped position the Philippines as a significant part of the global IT outsourcing industry. A key pillar of the economy, the BPO in the Philippines now accounts for about 12 per cent of the global outsourcing market by revenues and has benefited adjacent sectors such as real estate and retail.[17]

Thailand

As with the Philippines, tax incentives have been used in Thailand to foster economic development. The agency responsible for prescribing investment policies in Thailand is the Board of Investment (BOI), whose vision is to encourage valuable investments, both in Thailand and overseas to enhance Thailand's competitiveness, to overcome the "middle income trap" and to achieve sustainable growth in accordance with the sufficiency economy philosophy.[18] Very broadly, the policy direction includes promoting:

- investment that enhances national competitiveness by encouraging R&D, innovation, value creation in the agricultural, industrial and services sectors;
- activities that are environment-friendly, optimise energy consumption or use alternative energy to drive sustainable growth; and
- clusters to create investment concentration in accordance with regional potential and to strengthen value chains.

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[16] Assuming that a breadwinner supports an average of five family members, and that half of the 7.8 million are breadwinners.

[17] Cliff Venzon, "How Philippine Call Centers Are Capitalizing on COVID Crisis," Nikkei, September 17, 2021, https://asia.nikkei.com/Business/Business-Spotlight/How-Philippine-call-centers-are-capitalizing-on-COVID-crisis.

[18] Thailand Board of Investment, *A Guide to the Board of Investment 2021* (Bangkok: The Office of the Board of Investment, 2021), https://www.boi.go.th/upload/content/BOI_A_Guide_EN.pdf.

Tax concessions offered include exemption of corporate income tax on the net profits and dividends derived from the approved activity, reduction of corporate income tax, enhanced deductions for certain expenses such as cost of transport, electricity, water supply as well as cost of installation or construction of facilities. The extent of tax incentives available would depend on the type of business activity undertaken, with a maximum of 13 years of corporate income tax exemption.[19]

Consistent with the vision to drive valuable investments to enhance Thailand's competitiveness, the proposed activity for any incentive award must be one of the eligible ones promoted by the BOI and the project must be a new investment. The incentives are broadly categorised into activity-based incentives (such as agriculture, bio and medical industries, advanced manufacturing, digital and high value services); technology-based incentives (such as biotechnology, nanotechnology, and advanced materials); merit-based incentives for enhanced competitiveness (such as R&D, development of human resources or technology); and area-based incentives (which pertain to development of specific regions or sub-regions).

It is clear from these focus areas that the BOI is seeking to transform the country's economic profile and to embark on a high-value creation strategy. With its recently introduced Thailand 4.0 vision and the Bio-Circular-Green (BCG) economy model, Thailand is aiming to become a high-income country by 2037, along with sustainable and inclusive development through economic upgrading towards a value-based and green economy.[20]

Besides capital expenditure requirements, the incentives operate to create jobs and upskilling opportunities in various ways, including:

- Generally, the BOI will not allow the projects seeking incentive approval to hire foreign semi-skilled and unskilled workers. Instead, these projects will need to hire Thai workers for these positions, thus creating employment for the local workforce.
- Practically, there is also the foreign-to-local staff ratio to be maintained, again facilitating the creation of positions for locals.
- For some of the promoted activities, the extent of tax incentives granted is based on the actual investment on the personnel. For

[19] These are in turn supplemented by various non-tax measures such as labour policies and land ownership, as is common with schemes to attract foreign direct investments, further demonstrating that tax incentives alone cannot drive investment decisions.

[20] OECD, *OECD Investment Policy Review of Thailand* (Paris: OECD, 2021), 4.

example, to be eligible for investment promotion under the category "Development of Software, Digital Platform, or Digital Content", one of the conditions is that the applicant must incur minimum salary expenses for Thai IT personnel of not less than US$45,167 (1,500,000 baht) a year. The corporate income tax exemption cap is worked out based on a number of factors including the salaries of the incremental Thai IT personnel over those employed in the year prior to the commencement of the tax incentive, as well as qualifying training expenses.[21] These measures are meant to encourage growth of skilled labour.

Based on the 2020 summary BOI investments, a total of 1,717 projects applied for investment promotion, representing new investment value of US$16 billion (481.1 billion baht),[22] of which 44 per cent represented foreign direct investments (FDI). In addition, a total of 94,153 jobs were created for Thais through the BOI promoted projects in 2020.[23]

Thailand has had tax incentives since 1977 with the enactment of the Investment Promotion Act. Over time, these incentives would have helped to advance economic development, as evidenced by the increase in its GDP from US$19.8 billion in 1977 to US$502 billion in 2020.[24] Under the direction of the BOI, Thailand has attracted a steady flow of FDI, which have been pivotal in its remarkable economic journey. With a successful development strategy built around foreign direct investment, particularly the early liberalisation of inward foreign direct investment for the manufacturing sector, and integration in global value chains, Thailand is now a net outward investor, with rapidly growing presence in neighbouring countries.[25]

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[21] Thailand Board of Investment, "Explanatory Note of the Office of the Board of Investment On The Application for Investment Promotion in Development of Software, Digital Platform, or Digital Content According to the Announcement of the Board of Investment No. Sor. 4/2564," September 16, 2021, https://www.boi.go.th/upload/content/CSor4_2564EN_619b07cc859f0.pdf.

[22] Thailand Board of Investment, "Thailand 2020 Investment Applications at Over 480 Billion Baht, Led by E&E and Food, BOI Says," No.11/ 2564 (O.3), February 10, 2021, https://www.boi.go.th/upload/content/No.11_2021EN_602383703d432.pdf.

[23] Thailand Board of Investment, *New Challenges, New Opportunities: Annual Report 2020* (Bangkok: BOI, 2021), 102, https://www.boi.go.th/upload/report/2563/index.html#p=102

[24] "GDP (Constant 2015 US$) — Thailand," The World Bank, accessed January 22, 2022, https://data.worldbank.org/indicator/NY.GDP.MKTP.KD?locations=TH

[25] OECD, *OECD Investment Policy Review of Thailand*, Preface.

Singapore

An example of how a country has transformed its economy over five decades to that of a developed nation is Singapore.

Since gaining independence, Singapore's GDP has increased from US$977 million in 1965 to US$340 billion in 2020.[26] This phenomenal growth is the result of a combination of measures undertaken, including building a strong governance and institutional framework that is conducive for business and investments, investing in infrastructure and people, and establishing broad trade ties with the region and beyond. Against the backdrop of globalisation, Singapore has employed tax incentives successfully to complement, as well as to catalyse its industrialisation policy in the initial years, and for economic transformation to focus on high value-adding activities and R&D in more recent times.[27]

With a diversified economic structure[28] and its strategic location, Singapore runs an open economy with trade flows in goods and services that are 3.2

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[26] "GDP (Constant US$) — Singapore," The World Bank, accessed January 22, 2022, https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=SG.

[27] To maintain its competitive edge and in recognition of the contribution of intangible assets in value creation, Singapore has, among other things, committed to invest 1 per cent of its GDP in research and development annually between 2021 and 2025 and to establish a vibrant ecosystem to support innovation and enterprise. This R&D spending rate is consistent with the recent past, and in line with that of the four largest economies in Europe. Based of 2019 data, Singapore's gross domestic spending on R&D as a percentage of GDP is 1.891 per cent, which is lower than that of Germany (3.19 per cent) and France (2.196 per cent) but higher than that of the UK (1.756 per cent) and Italy (1.466 per cent). Data from Department of Statistics Singapore's *Singapore in Figures: Economy*, *https://www.singstat.gov.sg/publications/reference/singapore-in-figures/economy,* and OECD's "Gross Domestic Spending on R&D," https://data.oecd.org/rd/gross-domestic-spending-on-r-d.htm, both accessed January 22, 2022.

[28] The three largest sectors by their percentages of contribution to GDP for the 2020 fiscal year are manufacturing (21.5 per cent), wholesale and retail trade (18.2 per cent) and financial services (15.7 per cent). Together, they account for 34 per cent of resident employment in 2020. Data from Department of Statistics Singapore's *Singapore in Figures: Economy*. This reflects the heritage of Singapore as a trading port as well as the government's deliberate policy choice to embark on industrialisation and to develop a financial sector to tap and to support the growth of the region.

times of its GDP in the year ended 2020.[29] It maintains a prudent fiscal stance, where its Constitution requires each term of government to return a balanced budget.[30] In line with the governing principles of creating equal opportunities and not necessarily equal outcomes, Singapore eschews welfarism and has kept public spending low. These principles in turn inform the design of Singapore's tax policies in a manner that caters for its unique economic circumstances.

As an open economy, Singapore strives on a level playing field. In turn, it has observed global norms in the design of its international tax rules (including incentive schemes), in line with the principle of international comity.[31] It offers various tax incentives available to taxpayers involved in specified activities or industries identified as being beneficial to the economy. Tax incentive applications are typically subject to an approval process during which the administering agency evaluates applicants' business plans in detail. Successful applicants are to satisfy rigorous requirements and expected to make significant economic commitments in Singapore. Generally, applicants are expected to carry out substantive, high-value activities in Singapore, and will be required to commit to certain levels of local business spending and skilled employment. Some factors that will be considered include the use of Singapore as a base from which to implement regional expansion strategies; introduction and anchoring of leading-edge skills, technology and activities in Singapore; contributions to

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[29] "Trade (% of GDP) — Singapore," The World Bank, accessed December 18, 2021, https://data.worldbank.org/indicator/NE.TRD.GNFS.ZS?locations=SG.

[30] Jón R. Blöndal, "Budgeting in Singapore," *OECD Journal on Budgeting* 6, no. 1(2006): 52, https://www.oecd.org/gov/budgeting/40140241.pdf

[31] Some recent examples include adopting the revised Article 26 of the *OECD Model Tax Convention on Income and on Capital*, lifting the domestic interest requirement (section 105D[4] of the Income Tax Act 1947); banking secrecy provisions (section 105E of the Income Tax Act 1947) to facilitate information exchange, entering into international agreements to improve tax compliance (Part 20B of the Income Tax Act 1947); ratifying the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the MLI); and last but not least, agreeing to the Two Pillar Solution promulgated by the OECD/ G20 to address the tax challenges arising from digitalisation of the economy. Singapore's commitment to observe international norms is a matter of public record. See "Parliamentary Replies," Ministry of Finance, July 15, 2021, https://www.mof.gov.sg/news-publications/parliamentary-replies/implications-on-singapore-from-g7-agreement-on-global-minimum-corporate-tax-rate

the growth of R&D and innovation capabilities; and potential spin-off to the rest of the economy.[32]

These concessions[33] include:

- A 5 per cent rate under the Development and Expansion Incentive for companies engaging in new high-value-added projects or expanding or upgrading their operations.
- Either 5 per cent or 10 per cent (that will be increased at regular intervals) on a percentage of qualifying income derived from the commercialisation of certain IP, consistent with the modified nexus approach set out in the Action 5 Report of the OECD BEPS project.
- 5 per cent, 10 per cent or 13.5 per cent under the financial sector incentive (FSI) scheme that covers a broad range of financial institutions, including bond intermediaries, derivative traders, fund managers, equity capital market intermediaries and operational headquarters.[34] Under the FSI scheme, income from certain high growth, high value-added activities, such as services and transactions relating to the bond market, derivatives market, equity market, and credit facilities syndication may be taxed at 5 per cent, fund management income at 10 per cent, whereas a broader range of financial activities will qualify for a 13.5 per cent tax rate.

In the design of these schemes, Singapore has observed the substance requirements promulgated by international bodies in requiring applicants to make substantial investments (in terms of spending and employment) and are directed at achieving specific policy goals. Therefore, a number of Singapore's incentives are not considered harmful in a peer review conducted in 2017.[35] It should also be recognised that tax incentives by

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[32] "Corporate — Tax Credits and Incentives," PwC Worldwide, updated September 10, 2021, https://taxsummaries.pwc.com/singapore/corporate/tax-credits-and-incentives.

[33] The current corporate income tax rate in Singapore is 17 per cent.

[34] A typical FSI holder which is a bank incurs an average annual total business spending of S$250m and employs 100 staff, of whom 70 per cent are professionals engaged in front and middle office functions. See details from Monetary Authority of Singapore here: https://www.mas.gov.sg/schemes-and-initiatives/financial-sector-tax-incentive-schemes/financial-sector-incentive-scheme.

[35] OECD, "Annex I Inclusive Framework on BEPS Progress Report: July 2016 to June 2017," in *OECD Secretary General Report to G20 Leaders* (Hamburg: OECD, 2017), 24, https://www.oecd.org/tax/beps/inclusive-framework-on-BEPS-progress-report-july-2016-june-2017.pdf.

themselves do not guarantee a successful outcome.[36] Investments are driven by a confluence of factors, from a stable political environment, access to markets, availability of skilled workforce, infrastructure and the rule of law, among other things. It would be overly simplistic to suggest that a low tax environment alone could distort capital flows that result in the erosion of tax base of another jurisdiction.

South Korea

The evolution of tax incentives in South Korea's development is similarly instructive. An *Asian Development Journal*[37] study of the experience with tax reform in South Korea noted that a tax system should not only be designed to "optimally" raise revenue to finance necessary government expenditures, but in developing economies must also include the function of promoting rapid economic growth.

The 1960s saw South Korea implement general tax reform, with the aim of providing strong support for the First Five-Year Economic Development Plan. That was the first time taxation took on the role of promotion of rapid economic growth, which would continue into the 1980s.[38] This reform saw the number of taxes reduced from 38 to 28. In the 1960s, the main development policy was export promotion. Hence, emphasis was placed on those tax incentives designed to promote foreign exchange earning activities (including tax holidays and investment tax credits).[39]

In the 1980s, after the second oil crisis of 1979, the government switched its economic policy directions fundamentally: from protection to competition and openness, and from regulation to liberalisation and privatisation. This era saw major changes made in two areas: tax incentives and the curbing of land price hikes. Strategic industries were provided with a variety of tax

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[36] See for example, Kerrie Sadiq and Richard Krever, "The Rise and Fall of Australia's Offshore Banking Concessions," *Tax Notes International* (December 2021), https://www.taxnotes.com/tax-notes-today-international/financial-institutions/rise-and-fall-australias-offshore-banking-concessions/2021/12/10/7clrd, which noted that Australia's efforts to develop a regional financial centre through tax concessions has had limited success.

[37] Ilho Yoo, "Experience with Tax Reform in the Republic of Korea," *Asian Development Journal* 7, no. 2 (2000): 75–104, https://www.unescap.org/sites/default/files/apdj-7-2-4-yoo.pdf

[38] Ibid., 76, 77

[39] Ibid., 86

incentives under many different schemes, adding to the stock of incentive schemes.[40]

The Asian financial crisis that started in late 1997 led the government to initiate comprehensive reform measures to overhaul the economy, including changes to the tax laws by exempting or reducing taxes on asset transactions that were needed for corporate and financial restructuring.

To attract foreign direct investment, the Foreign Investment Promotion Act (FIPA) was enacted in 1998,[41] providing foreign businesses and investors that made investment in advanced technology with tax exemptions for a defined period, followed by 50 per cent reduction (also for a defined period). In addition, foreign businesses and investors were granted exemptions from various local transaction taxes.[42]

Although the study acknowledged the difficulty in isolating and measuring the precise effect of tax incentives due to other factors spurring Korean economic growth — such as credit support and policy loans,[43] it is nevertheless evident that tax incentives, whilst having introduced some complexity to the tax system, had facilitated the country's economic expansion over time.

As the Korean economy matured, the incentives were adjusted accordingly. This trend continues to the present day where contemporary incentives are offered in line with the changing comparative advantages of the country, for example, to attract foreign capital and financial services firms to move to the Busan International Financial Centre,[44] as well as measures relating to investment in technology.

The recent 2021 tax law changes focus on overhauling the existing investment tax incentive schemes to encourage corporate investment and reinvigorating consumer spending to help prepare for economic recovery

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[40] Ibid., 79

[41] The provisions dealing with tax incentives for foreign direct investment were subsumed into the Special Tax Treatment Control Law in 1999.

[42] Ilho Yoo, "Experience with Tax Reform in the Republic of Korea," 81–82.

[43] Ibid., 86.

[44] "Korean Opportunities for Global Financial Occupiers" Colliers, updated September 18, 2020, https://www.colliers.com/en-kr/research/2020-sep-korea-radar-korean-opportunities-for-global-financial-occupiers-english-ver

after COVID-19. These include an overhaul of investment tax credit scheme such that investment tax credits should be generally available for all types of business-purpose tangible assets unless excepted (i.e., a negative list approach). Other significant changes include extension of the carry forward period of unused tax credits from five to 10 years, and measures that facilitate innovative growth and develop new growth engines. For example, for R&D expenditures in qualified new growth engine and core technology areas designated in the Presidential Decree — for instance, future automobile technology, artificial intelligence including block-chain technology and quantum computing, next-generation software and information security, robotics including wearable robots, air and aerospace technology, etc. — the preferred credit rates ranging from 20 per cent to 40 per cent will apply, depending on the type of company.[45]

Conclusion

Taxation is a sovereign right. Each state will have to implement a system that suits its needs of the day. It is beyond the scope of this paper to discuss the factors that influence the design of a tax system. Suffice it to say that each country will have different requirements, be it economic or social, each will have different considerations, for example whether it is a capital exporter or importer, and invariably each (and sub-regions therein) will be at different stages of development. There cannot be a one-size-fits-all solution. The notion of fairness in taxation, i.e. horizontal and vertical equity, when transposed onto the international scene, would also question an outcome where developing countries with different economic profiles are effectively subjecting their constituents (coming within the Pillar Two rules) to the same global minimum rate of tax regardless of the level of wealth in each country.[46]

[45] "Republic of Korea: Corporate — Tax Credits and Incentives," PwC Worldwide, updated June 24, 2021, https://taxsummaries.pwc.com/republic-of-korea/corporate/tax-credits-and-incentives.

[46] See Adam Rosenzweig, "International Vertical Equity," *Loyola University of Chicago Law Journal* 52, no. 2(2021): 471–501 for a discussion on the ability-to-pay principle in an international context, which takes into account public spending and national wealth. Please also refer to the introduction of this publication for more details of this notion of fairness in setting international tax policies.

There are thus limits on the merits of introducing a global set of uniform rules.[47]

The experiences from the Philippines, Thailand, Singapore and South Korea illustrate that with proper design, tax incentives can be useful in fostering development of specific regions or zones and sectors that can in turn create jobs and raise standard of living for the community.

The experiences of these Asian economies also illustrate that as one moves up the value chain, the kind of incentives will evolve from those that focus on low-cost manufacturing and labour intensive or physical activities to those that exploit the comparative advantages of developed countries in capital intermediation and intangible assets. This means that a one-size-fits-all approach such as using payroll and tangible assets as proxies for substance does not fully reflect value creation nor address the evolving needs of nations as they develop.

It could also be gleaned from these case studies that tax is not the sole factor in attracting foreign direct investment, and tax incentives alone do not guarantee success. Sound institutional framework that embraces principled governance and accountability, availability of infrastructure and skilled workforce are some of the other necessary ingredients.[48] Tax policy is, however, an integral part of a country's economic toolkit and when applied judiciously and in manner consistent with a country's specific needs and development goals, can help (and has helped) to catalyse economic transformation.

[47] See also Andrew Morriss, "Forward Down the Road to Serfdom; International Tax Law as a Means of Central Planning," Texas A&M University School of Law Legal Studies Research Paper No. 21–58 (2001), for a critical commentary on the imposition of rules developed by international bodies that constrains jurisdictions' ability to shape their own tax policies and economic actors' ability to structure their operations and transactions across multiple jurisdictions.

[48] See Sebastian James's "*Tax and Non-tax Incentives and Investments: Evidence and Policy Implications*," published by the Investment Climate Advisory Services of the World Bank (updated 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2401905, which observed that although lowering effective tax rates helps boost foreign direct investment, the effect is eight times stronger for countries with good investment climates.

Briefing Note 4

Aligning Tax with ESG Factors

ALIGNING TAX WITH ESG FACTORS

Samantha Tang
Justin Tan[1]

Background

Companies have been involved in a variety of crises, scandals, and controversial business practices, including the international slave trade,[2] environmental pollution,[3] and (allegedly) excessive greenhouse gas emissions.[4] It is beyond doubt that corporate decisions can and do impact society as a whole. Against this backdrop, companies have come under greater pressure from investors to operate their businesses pursuant to environmental, social, and governance (ESG) factors.[5] Notwithstanding renewed interest in ESG factors from business leaders and institutional investors, ESG is nothing new: in fact, it draws inspiration from corporate social responsibility[6] and socially responsible investing.[7] Broadly speaking, ESG factors "typically include a wide range of issues that are not part of

[1] The author thanks Abraham Chan for research assistance.

[2] See, for example, J. Nolan and N. Frishling, "Australia's Modern Slavery Act: Towards Meaningful Compliance," *Company & Securities Law Journal* 37, no. 104(2019): 104–126.

[3] See, for example, Itzhak Ben-David, Stefanie Kleimier and Michael Viehs, "Research: When Environmental Regulations Are Tighter at Home, Companies Emit More Abroad," *Harvard Business Review,* February 4, 2019, https://hbr.org/2019/02/research-when-environmental-regulations-are-tighter-at-home-companies-emit-more-abroad.

[4] See, for example, "Activist Investors Tighten Screws on Rio Tinto's Emissions Plan," Reuters, March 5, 2020, https://www.reuters.com/article/us-rio-tinto-climatechange-idUSKBN20S0BJ.

[5] See, for example, Max M. Schanzenbach & Robert H. Sitkoff, "Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee," *Stanford Law Review* 72 (2020): 381–454.

[6] See, for example, Virginia H. Ho, "Beyond Regulation: A Comparative Look at State-Centric Corporate Social Responsibility and the Law in China," Vanderbilt Law Review 46 (2013): 375, 382–396.

[7] See, for example, Max M. Schanzenbach & Robert H. Sitkoff, "Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee," *Stanford Law Review* 72 (2020): 381, 392–395.

traditional financial analysis, but may still have investment relevance or materiality",[8] and go beyond corporate governance (representing the "G" in "ESG") to environmental concerns such as climate change, as well as diverse social issues including international human rights, labour rights, and modern slavery.[9] Implementing ESG on a global scale has emerged as a priority for investors, businesses and governments alike in light of escalating climate change, and the critical role that companies may play in arresting climate change.[10]

Present Incentives for Companies to Operate Their Businesses According to ESG Factors Are Inadequate

The extent to which companies operate their businesses according to ESG factors may be measured in two ways:

1. ESG disclosures and reports issued by the company; and
2. ESG ratings issued by proxy advisors and ratings agencies.

Both measures are inadequate in promoting companies' commitment to operate the businesses according to ESG factors. Further, corporate law offers few disincentives for non-compliance with ESG factors, because directors are unlikely to be sued for breaches of their duties where companies choose not to operate according to ESG factors.

ESG Disclosures and Reports

ESG disclosures and reports may be issued by public listed companies pursuant to mandatory, or "comply or explain", disclosure requirements in listing rules. Many leading stock exchanges, including the Stock Exchange

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[8] Javier El-Hage, "Fixing ESG: Are Mandatory ESG Disclosures the Solution to Misleading Ratings?" *Journal of Corporate & Financial Law* 26, no. 2 (2021): 359, 363.

[9] Ibid.

[10] Francis Kan, "The Urgent Business of Going Green," *The Business Times,* September 29, 2021, https://www.businesstimes.com.sg/hub/strategy-spotlight/the-urgent-business-of-going-green.

of Hong Kong,[11] and the Singapore Stock Exchange,[12] have introduced rules requiring listed companies to make annual ESG disclosures. Companies may also be required to issue annual sustainability reports setting out corporate compliance with ESG factors, as is the case for the UK.[13] Listed companies not subject to such legal requirements may voluntarily disclose information on their ESG performance to ratings agencies;[14] non-listed companies may do so as well.[15]

Mandatory ESG disclosure regimes have been criticised for the quality of corporate disclosures, and the absence of effective oversight mechanisms. First, ESG disclosure requirements need to cater to diverse companies, and it is difficult to determine *ex ante* which ESG factors are relevant to specific companies. For example, different ESG issues may arise in a logging company versus a restaurant chain. ESG disclosure requirements may therefore only require companies to disclose "material" ESG factors: substantial discretion over what is "material" is left to the company. As a result, corporate disclosures may be cursory and uninformative.[16] Second, ESG disclosure regimes may lack effective oversight mechanisms. Without a regulatory body to review ESG disclosures and hold underperforming companies to account, such regimes are effectively toothless.[17]

ESG Ratings

Proxy advisors and ratings agencies may rate companies according to publicly accessible data, and data obtained directly from companies

[11] "Rules and Guidance: Appendix 27, Environmental, Social and Governance Reporting Guide," HKEX, paragraphs 4–13, https://en-rules.hkex.com.hk/rulebook/environmental-social-and-governance-reporting-guide-0.

[12] "SGX Rulebook", SGX, rules 711A & 711B, http://rulebook.sgx.com/rulebook/.

[13] Companies Act 2006 (UK), section 414(7)(b) (only for quoted companies).

[14] Timothy M. Doyle, "Ratings That Don't Rate: The Subjective World of ESG Ratings Agencies," American Council for Capital Formation, July 2018, 13, https://accfcorpgov.org/wp-content/uploads/2018/07/ACCF_RatingsESGReport.pdf.

[15] See, for example, "Investor: Investment Update," Temasek Review 2021, accessed December 30, 2021, https://www.temasekreview.com.sg/investor/investment-update.html.

[16] Ernest Lim, *Sustainability and Corporate Mechanisms in Asia* (Cambridge: Cambridge University Press, 2020), 70–71.

[17] Ibid., 97–98.

themselves. While such ratings are issued by the largest and most influential proxy advisory firms in the US, and used by leading institutional investors such as Blackrock,[18] they have been criticised for being biased and lacking uniformity. ESG ratings may be subject to multiple sources of bias, including geographical bias arising from the lack of uniform ESG reporting requirements across jurisdictions. The lack of a unified, global standard to assess and verify reported ESG data means that ESG ratings may be unreliable. The same company may obtain very different ESG ratings from different rating agencies.[19] Worse, probably the global world standard for ESG ratings, MSCI, "does not actually measure a company's impact on the Earth and the society"; in fact, it measures the opposite: "whether environmental issues have the potential to harm the company"![20]

Director Liability Under Corporate Law

Directors generally owe legal duties to their company in respect of the management of the company's affairs.[21] However, there are few, if any, jurisdictions that impose a positive duty on directors to comply with ESG factors in the discharge of their duties.[22] Further, it is rare for directors to be found personally liable for breaching their duties.[23] Taken together, directors who choose to manage their companies without complying with ESG factors are unlikely to be penalised for doing so as a matter of corporate law.

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[18] MSCI ESG, Sustainalytics, RepRisk, and ISS all issue ESG ratings: Javier El-Hage, "Fixing ESG," 359, 363–364; Timothy Doyle, "Ratings That Don't Rate," 7–8.

[19] Timothy Doyle, "Ratings That Don't Rate," 5.

[20] Cam Simpson, Akshat Rathi and Saijel Kishan, "The ESG Mirage," Bloomberg Businessweek, December 10, 2021, https://www.bloomberg.com/graphics/2021-what-is-esg-investing-msci-ratings-focus-on-corporate-bottom-line.

[21] Reinier Kraakman, John Armour, Paul Davies, Luca Enriques, Henry Hansmann, Gerard Hertig, Klaus Hopt, Hideki Kanda, Mariana Pargendler, Wolf-Georg Ringe, and Edward Rock, *The Anatomy of Corporate Law*, third edition (Oxford University Press, 2017), 68–71.

[22] See, for example, Lorraine Emma Talbot, "Trying to Save the World with Company Law? Some Problems," *Legal Studies* 36, no. 3(. 2016); 513, 529, which discusses a directors' duty to act in the best interests of the company under section 172 of the UK Companies Act.

[23] A. K. Koh, "Direct Suits and Derivative Actions: Rethinking Shareholder Protection in Comparative Corporate Law," *Washington University Global Studies Law Review* (forthcoming).

Enter Tax Incentives

Given (1) the urgency of having companies operate their businesses according to ESG factors; and (2) the inadequacy of present measures (disclosures/reports, ESG ratings and director liability under corporate law) in incentivising the same, governments should consider using tax incentives to supplement the present measures. With respect to the "E" factor, the IMF and OECD already recognise that "current emissions commitments and policies fall short of the ambitious policy action that is needed."[24]

It is likely that properly designed and monitored cost-based tax incentives will incentivise the largest MNEs (targeted by Pillar One and Pillar Two) to operate their businesses according to ESG factors. Such incentives (ESG tax incentives) are sound in principle and practice. In terms of principle, we could draw an analogy to R&D tax incentives, which have been justified in principle because "[t]he social return on R&D investment is often higher than the private return to the investing firm. Thus, one can justify policy interventions if a well-designed intervention scheme can be implemented."[25] Similarly, given the urgency of having companies operate their businesses according to ESG factors, and the inadequacy of present measures to promote the same, ESG tax incentives are a justified policy intervention.

In terms of practice, we could again draw an analogy to R&D tax incentives. Although the effectiveness of tax incentives in attracting foreign direct investment is inconclusive (especially with respect to developing countries),[26] R&D tax incentives work. An OECD study concludes that "the

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[24] IMF/OECD, *Tax Policy and Climate Change: IMF/OECD Report for the G20 Finance Ministers and Central Bank Governors*, September 2021, 4, www.oecd.org/tax/tax-policy/imf-oecd-g20-report-tax-policy-and-climate-change.htm.They also recommend explicit pricing of carbon, via instruments like carbon taxes, emissions trading systems and fuel excise taxes, as "particularly conducive to cost-effective climate change mitigation" (ibid., 4–14).

[25] Ådne Cappelen, Arvid Raknerud and Marina Rybalka, "The Effects of R&D Tax Credits on Patenting and Innovations," Research Policy 41, no. 2(2012): 334; Bodo Knoll, Nadine Riedel, Thomas Schwab, Maximilian Todtenhaupt, Johannes Voget, "Cross-Border Effects of R&D Tax Incentives," *Research Policy 50* no. 9 (2021): 104326.

[26] Andriansyah, Seung Hyun Luke Hong and Byunghoon Nam, "Policy Considerations in Using Tax Incentives for Foreign Investment," ASEAN +3 Macroeconomic Research Office (AMRO) *Policy Perspectives Paper* (PP/21-01) (October 2021): 4–6 https://www.amro-asia.org/wp-content/uploads/2021/10/Policy-Considerations-in-Using-Tax-Incentives-for-Foreign-Investment-1.pdf.

available evidence predominantly suggests a positive effect of R&D tax incentives on innovative sales or the number of new products".[27] Canadian,[28] US,[29] Japanese,[30] and Taiwanese studies confirm the same.[31] Cost-based ESG tax incentives share two key similarities with R&D tax incentives: both are cost-based instead of profit-based;[32] and both are meant to stimulate R&D (because technology will be the prime driver of success in meeting ESG goals).

Therefore, drawing from the success of R&D tax incentives, it is likely that properly designed and monitored ESG Tax Incentives will significantly incentivise the largest MNEs to operate their businesses according to ESG factors. Indeed, a 2010 to 2020 study of 58 green-bond issuing economies, including 11 economies in Asia, found that "green bonds and tax incentives, have a positive and significant effect on green bond issuance in the private sector", because this helps "reduce the costs and risks of green bond issuance".[33] This is just one example of the effectiveness of using tax policy to tackle the climate challenge facing our world. It would be a waste if countries were denied this proven tool of incentivising green R&D (and other well-designed ESG Tax Incentives) to facilitate their green transition.

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[27] Silvia Appelti, Matej Bajgari, Chiara Criscuoloi and Fernando Galindo-Ruedai, "R&D Tax Incentives: Evidence on Design, Incidence and Impacts," *OECD Science, Technology and Industry Policy Papers* 18, http://dx.doi.org/10.1787/5jlr8fldqk7j-en.

[28] D. Czarnitzki, P. Hanel and J. M. Rosa, "Evaluating the Impact of R&D Tax Credits on Innovation: A Microeconometric Study on Canadian Firms," *Research Policy* 40, no. 2(2011): 217, 227.

[29] Bronwyn Hall and John Van Reenen, "How Effective are Fiscal Incentives for R&D? A Review of the Evidence," *Research Policy* 29 (2000): 462.

[30] Kasahara Hiroyuki, Shimotsu Katsumi and Suzuki Michio, "How Much Do R&D Tax Credits Affect R&D Expenditures? Japanese Tax Credit Reform in 2003," *RIETI Discussion Paper Series*, 11-E-072 (November 2011), https://www.rieti.go.jp/jp/publications/dp/11e072.pdf.

[31] Huang Chia-Hui and Yang Chih-Hai Huang, "Tax Incentives and R&D Activity: Firm-Level Evidence from Taiwan," *Global COE Hi-Stat Discussion Paper Series* (December 2009), 102, https://gcoe.ier.hit-u.ac.jp/research/discussion/2008/pdf/gd09-102.pdf.

[32] Andriansyah, Seung Hyun Luke Hong and Byunghoon Nam, "Policy Considerations in Using Tax Incentives for Foreign Investment," 6–7.

[33] Dina Azhgaliyeva and Zhanna Kapsalyamova, "Policy Support in Promoting Green Bonds in Asia," *ADBI Working Paper* 1275 (2021), https://www.adb.org/sites/default/files/publication/726166/adbi-wp1275.pdf.

Conclusion – In the Spirit of Contributing to the International Tax Reform Discourse and Policy Making

It is not the intention here, nor is mainstream academic literature disputing, that pervasive tax evasion by multinationals can be harmful. There is also broad agreement that international taxation norms need to be updated to handle the challenges of a globally digitalised economy. Indeed, the broad consensus by 141 jurisdictions of the Inclusive Framework is a laudable milestone achievement by the OECD and indicates the political will for collective action to counter abusive tax evasion.

In view of the above, it is submitted that the BEPS project could factor in the beneficial effects of well-designed ESG Tax Incentives and include them in its substance-based carve out. As the world moves into crafting the detailed rules of BEPS 2.0, there is precious little time, but still the possibility to align the BEPS 2.0 goals with climate goals. This would connect the BEP 2.0 project nicely with the OECD's proposal to the G20 finance ministers and central bank governors to use tax policy to drive climate objectives.[34] And it would be timely, with BEPS 2.0 going into the implementation phase. Once implemented into domestic law, it would be fiendishly difficult to rewind the clock in each country to provide for a substance-based carve out that takes into account ESG Tax Incentives. Let us therefore act now, to avoid the situation where countries, particularly developing Asian countries, are denied the proven tool of incentivising green R&D (and other well-designed ESG Tax Incentives) to facilitate their green transition.

[34] IMF/OECD, *Tax Policy and Climate Change: IMF/OECD Report for the G20 Finance Ministers and Central Bank Governors*, September 2021, 4, www.oecd.org/tax/tax-policy/imf-oecd-g20-report-tax-policy-and-climate-change.htm.

Appendix

Asia Voices: Perspectives on Tax Policy Working Group

ASIA VOICES: PERSPECTIVES ON TAX POLICY WORKING GROUP

The Asia Voices: Perspectives on Tax Policy working group has been formed by the Institute of Policy Studies to contribute meaningful, policy-relevant research on important cross-border and regional tax issues as they relate to Asia and especially the developing countries in the region.

The Institute welcomes comments from tax practitioners, academics, and policymakers with an interest in corporate tax policies in Asia. Those interested to collaborate with or join this working group may apply by contacting Christopher Gee at christopher.gee@nus.edu.sg.

The biographies of the working group members responsible for the publication of this report are set out here (by alphabetical order of their surnames).

Matt ANDREW is currently Ernst & Young's (EY) Asia Pacific Head of Tax Policy. Prior to this role, Matt was the head of the OECD's Tax Treaty, Transfer Pricing and Financial Transactions Division. There, Matt was responsible for overseeing the OECD tax policy developments in relation to tax treaty and transfer pricing matters.

Christopher GEE is Senior Research Fellow at the Institute of Policy Studies, National University of Singapore (NUS) where he leads the Governance and Economy Department. Christopher has published several papers on retirement financing, strengthening old-age income support and aspects of fiscal policy. Christopher previously worked in investment banking, leading equity research teams covering Singapore and Malaysia, and the Asian real estate sector. He has a BA (Law) from the University of Nottingham and holds the CFA charter. Christopher holds a joint appointment with the NUS Department of Real Estate, and is a non-executive director of CapitaLand China Trust, a Singapore-listed real estate investment trust with a portfolio of shopping malls in China.

Darren KOH is one of the editors of The Law and Practice of Singapore Income Tax (LexisNexis, 2020, third edition). He is both a Barrister and a Chartered Accountant of England and Wales. His career has taken him around the world from London to Hong Kong, Kobe, Geneva, Singapore, and Cincinnati, and back again to Singapore. His career stretches from tax advisory roles to in-house, client-side regional and global tax roles as well as handling war reparation claims filed against Iraq after the first Gulf War. He obtained his Master of Laws and joined the School of Business of SIM University (now the Singapore University of Social Sciences) as Head of Area — Taxation and Business Law. He is now the Vice-Dean of the School of Law as well as the Head of Programme — Master of Taxation.

Paul LAU is a partner at PwC Singapore. With over 25 years of experience in practising tax, Paul has advised financial institutions, investment funds and multinationals in a broad range of transactions, including corporate restructuring, mergers and acquisitions, transfer pricing, treasury operations and capital markets instruments. Paul has written widely on taxation matters. Among others, he co-authored the capital market transactions chapter in The Law and Practice of Singapore Income Taxation (LexisNexis, 2013) and authored the capital allowances chapter for the 3rd edition of the said publication, as well as the taxation chapter in Theory and Practice of Islamic Finance (Saw Centre for Financial Studies, 2008). Paul chairs the Tax and Levies Committee at Singapore Chartered Tax Professionals. He holds a bachelor's degree in accountancy from Nanyang Technological University and a master's degree in international taxation from University of Sydney Law School.

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Samantha TANG is a Sheridan Fellow at the Faculty of Law, NUS. She received a LLB from NUS, and is a PhD candidate at Melbourne Law School. Samantha's research interests are the corporate law of Commonwealth jurisdictions, with a special focus on shareholder stewardship, and environmental, social and governance (ESG) investing.

Chris WOO is the Tax Leader for PwC Singapore and Myanmar, and a member of the firm's leadership team and the Asia Pacific tax leadership team. He is a board member of the Singapore Chartered Tax Professionals

and an Accredited Tax Advisor in Income Tax. Chris has over 30 years of experience particularly in deals tax and corporate restructuring to meet the tax needs of strategic, financial and private equity clients from Asia, the United States and Europe. He has led many regional and global projects in various industries to maximise long-term value and tax efficiency for multinationals engaged in realigning their global business structures, supply chains, assets and key personnel. He has been active in moderating and speaking in various discussions regarding recent international tax developments. Chris brings practical industry experience as he was the international tax director for a large US MNC based in the US and Singapore.

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