Proceedings of the 4th International Conference on Social Psychology and Humanity Studies
DOI: 10.54254/2753-7048/2026.ZJU31985

Taxation and Development: A Perspective on Development Rights in International Tax Rule-making-- Based on the Principle of "Common but Differentiated Tax Capacity"

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Abstract. The current mechanisms in the BEPS agreement regarding international tax administration and tax source allocation struggle to balance the interests of developed and developing countries, resulting in the substantial deprivation and impact on the tax development rights of some developing countries. As a fundamental right at the international law level, the right to development should be respected and upheld by the international legal order, including international tax law. Only by paying attention to and focusing on the issue of development rights, especially in developing countries, can we truly and effectively promote the realization of global governance initiatives and facilitate the construction of a community with a shared future for mankind. The current BEPS framework contains numerous institutional omissions regarding the tax sovereignty of developing countries, leading to contradictions, disputes, and conflicts between developing and developed countries over the allocation of international tax revenue. This is detrimental to enhancing the overall efficiency of international taxation and constructing international anti-tax avoidance mechanisms. Therefore, based on the "common but differentiated tax capacity principle", we should utilize various scales and standards of the proportionality principle, and from the perspective of improving and implementing the right to development in international taxation, further promote the fairness and perfection of the international tax rule of law, and further advance the construction of international rule of law and a community with a shared future for mankind.

Keywords: International Taxation, Right to Development, Fundamental Rights of Citizens, BEPS Agreement, Tax Capacity

1. Introduction

Under the international rule of law, the issue of jurisdiction over international taxation has always been an important and crucial area of contention between developed and developing countries. Focusing on international tax collection and anti-tax avoidance issues, international anti-tax avoidance agreements have been constructed to a certain extent in recent years, along with the establishment of related institutional systems. However, currently, developed and developing countries have not reached a unified and effective consensus and action viewpoint on international

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anti-tax avoidance issues, making it difficult for the international anti-tax avoidance mechanism under the BEPS agreement to address the balance of interests between developing and developed countries. The issue of international anti-tax avoidance has always been an important theoretical and practical puzzle in international economic law. How to effectively address and respond to it actually tests the practical problems and dilemmas that countries need to solve in their development processes [1]. Currently, regarding the issues in the BEPS agreement that neglect developing countries, preliminary explorations and discoveries have been made from different dimensions, and some important theoretical results have been obtained [2,3]. However, these theoretical results are difficult to address the practical interests of developing countries compared to the issues themselves, and the institutional construction of related content is also difficult to effectively resolve the controversial issues of international tax jurisdiction. Therefore, it is necessary to scientifically construct modern international tax rules based on the principle of "common but differentiated tax capacity" from the perspective and dimension of the right to development, through a theoretical approach combining legal normative analysis, empirical analysis, and comparative law analysis paradigms, so as to effectively balance the tax rights and interests of developed and developing countries and promote the realization of a community with a shared future for mankind [4-6].

2. The dilemma of development rights in international tax rule-making

The dilemma of development rights in international tax rule-making is primarily manifested in the following two aspects:

On the one hand, the construction of the connotation and denotation of "development rights" is not clear enough. According to prevailing academic theories, development rights primarily refer to the function of promoting relevant public affairs and infrastructure in developing countries within international tax rules. Its core purpose is to ensure that the relevant citizens of all countries can effectively share the development benefits brought by international taxation and reduce the impact of international tax avoidance on countries and citizens of certain specific countries and regions. In practice, development rights should be an important right that should be treated as a key aspect in balancing the interests of developed and developing countries. However, the connotation and denotation of development rights are relatively unclear at present, and there are ambiguities in related content and arrangements. In short, regarding the connotation and denotation of relevant development rights, the development rights in current international tax rules are relatively unclear. Whether development rights are a basic human right or an ordinary tax right is not clearly stated in current international law.

On the other hand, the criteria for determining the "right to development" are not sufficiently clear and prominent. Currently, there is still ambiguity regarding how to understand, study, and clarify the right to development, as well as whether it should be determined in conjunction with aspects such as "common but differentiated tax capacity". In fact, there are still unclear areas in the understanding of the "right to development" in international tax law, especially regarding how the right to development relates to the status and tax obligations of developing countries. Currently, as a basic human right, there is some controversy over the main construction and content of the right to development in terms of recognition standards between developing and developed countries. How to understand the right to development based on tax collection and management, and its core connotation and determination criteria still require further clarification and differentiation in international tax and anti-tax avoidance enforcement practices. Some scholars propose that tax obligations should be set based on the proportional principle according to the development status and stage of different countries. However, specifically, there are significant differences in how to

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define tax obligations, how to define and analyze different countries based on the proportional principle, and how to adjust or exempt tax obligations. On the other hand, there are inconsistencies in the current academic and practical circles of international law regarding the differences in tax obligations borne by developing and developed countries. These inconsistencies will lead to certain discrepancies in research on international tax content. Regarding the relationship between the right to development and international tax collection and exemption, the existing theoretical research results show a serious lack of research. How to respond to relevant content and concepts, as well as basic theories, deserves analysis and research by relevant personnel.

3. Construction of the principle of common but differentiated tax capacity

The "common but differentiated tax capacity principle" emphasizes that the tax capacity of different countries and regions should be scientifically defined based on the development status and stage of each country. It can be referred to as the proportional principle of tax collection and supervision in international tax law. Its main theoretical components should be elaborated from the following three aspects:

First, commonality. Commonality refers to situations where certain international tax collection activities span different countries and regions. Commonality often emphasizes that for the same taxation activity, it should be divided among different countries and regions. Different countries and regions should divide and differentiate taxation capabilities and tax obligations based on the degree of developed and developing countries. Therefore, the content of commonality emphasizes that international tax collection activities should be carried out through collaborative governance among various countries. Countries and regions should form a joint force for tax collection supervision, management, and jurisdiction, thereby establishing a cooperative institutional mechanism for cross-border anti-tax avoidance on a global scale. The collaborative governance institutional mechanism emphasizes that international tax supervision and jurisdiction should be governed collaboratively, minimizing supervision and regulatory loopholes that arise during the process of connection and coordination between countries [7]. This will resolutely implement the relevant content of the BEPS Agreement and ultimately achieve effective tax collection supervision and jurisdiction.

Secondly, differentiated approach. Different countries and regions should differentiate their taxation capabilities based on factors such as their national development status, economic level, and contribution to tax collection, so as to divide tax collection and management obligations as equally, scientifically, and reasonably as possible. The tax collection and management obligations should be proportional to the country's situation and development level, which should be the core essence of substantive justice and substantive fairness in the allocation of collection and management obligations. The tax collection and management obligations should be proportional to the level of national and social development, which is an important principle in the field of public international law, including the basic principles of proportionality in a narrow sense, balance, and proportionality between means and ends. These basic principles will provide relatively clear, accurate, and specific definitions for different countries when exercising their tax collection and management powers and obligations [8]. Specifically, when a country's development level is higher and its contribution to tax appreciation is greater, it should, in principle, enjoy a higher proportion and amount of tax collection and management powers; however, the aforementioned proportional distribution should also take into account the interests of developing countries, minimizing the situation where some developed countries excessively enjoy relevant taxes, resulting in a situation where the relevant tax distribution mechanism appears fair but is actually unfair in essence [9].

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Thirdly, tax capacity. Tax capacity serves as a crucial criterion for gauging and delineating a country's tax regulatory authority and scope. In principle, the tax collection and administration powers of different countries and regions should be scientifically, fairly, and impartially delineated based on their varying tax capacities.

4. Scientific plan and path planning for tax development rights

From the perspective of the right to development in international tax rule-making, namely the principle of "common but differentiated tax capacity", the author believes that a scientific approach to reconstructing and improving the scientific plan for tax development rights should be pursued from the following three dimensions:

Firstly, based on the fundamental principle of common tax capacity, a collaborative governance mechanism against tax avoidance should be established among various countries and regions. The construction of collaborative governance against tax avoidance is a core aspect that embodies common tax capacity. Countries and regions should uphold the basic attitude and concept of win-win cooperation, and strive to promote the construction of a collaborative governance system and mechanism for anti-tax evasion, anti-tax avoidance, and double international non-taxation from the perspective of international tax development rights. This will minimize the adverse impact of cross-border tax evasion on countries and regions, and resolve disputes and conflicts in the field of tax collection and administration among countries as much as possible through collaborative governance systems and mechanisms. Relevant mechanisms for consultation and dialogue should be employed to properly resolve contradictions, disputes, and conflicts arising from tax development rights among different countries and regions, ultimately achieving the effective construction of a community with a shared future for mankind.

Secondly, based on the principles of proportionality and substantive fairness, scientifically delineate the scope of authority for tax collection and management among various countries. Currently, due to certain disputes between developing and developed countries over the scope of tax collection jurisdiction, especially in the case where the interests of tax collection and management in the global South are difficult to effectively safeguard under the BEPS agreement, it is in principle necessary to incorporate a mechanism for interest coordination, coordination, and dialogue between the South and the North within the aforementioned collaborative governance system and governance structure, thereby promoting substantive fairness and justice in international tax law, reducing the threats and hidden dangers posed by international tax imbalances to developing countries, and avoiding imbalances, inconsistencies, and mismatches in the right to development caused by imbalances in tax payment behavior. It should be noted that the criterion for judging the principle of substantive fairness in tax distribution among countries is the actual development situation and stage of each country. For relatively less developed and weaker developing countries, protection and distribution should be tilted from a humanitarian perspective as much as possible.

Thirdly, according to the principle of sovereign equality in international law, countries should, from the perspective of the right to development, respect each other's tax sovereignty issues as much as possible [10]. Tax sovereignty is an embodiment and an important component of the sovereignty of a sovereign state government. Whether a country is poor and backward or relatively developed, it has natural tax sovereignty. Therefore, from this perspective, countries should strive to achieve international comity in the field of tax collection and administration, reducing challenges to the principle of sovereign equality in international law caused by disputes over tax collection jurisdiction [11]. In addition, mutual respect for tax sovereignty also emphasizes respect for the

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international order led by the United Nations, as well as respect and recognition of the United Nations' rulings and opinions on international tax collection issues [12].

All in all, to build an international anti-tax avoidance collaborative governance system and mechanism, it is necessary to coordinate the multilateral cooperation framework from a global perspective, strengthen information sharing and rule coordination, and break through the limitations of unilateral governance to address the complexity of cross-border tax avoidance behaviors. Currently, the development of the digital economy has accelerated the cross-border flow of capital, technology, and talent. Enterprises evade tax liability through means such as transfer pricing, tax haven layout, and digital currency transactions. Traditional bilateral tax treaties have become difficult to cope with. It is necessary to build a multilateral coordination platform centered around the OECD and G20, promote the implementation of rules such as the "global minimum corporate tax," improve transfer pricing documentation standards and controlled foreign company rules through the BEPS action plan, and establish a fair mechanism for the global profit distribution of multinational enterprises. Information transparency is the foundation of collaborative governance. It is necessary to promote the automatic exchange of information mechanism, use blockchain technology to build a cross-border tax data chain, achieve real-time interconnection of multi-source data from banks, customs, enterprises, and other sources, and break the dilemma of "information islands." Law enforcement cooperation needs to break through sovereign barriers, establish joint tax audits and cross-border tax investigation mechanisms, implement dynamic monitoring of the "two-pillar" approach, and conduct joint risk assessments and law enforcement actions against high-risk enterprises. The legal framework needs to be compatible with different jurisdictions, clarify the division of tax jurisdiction through bilateral or multilateral treaties, avoid conflicts between "resident tax jurisdiction" and "source tax jurisdiction," and provide capacity-building support for developing countries. Through technology transfer and talent training, their anti-tax avoidance law enforcement capabilities can be enhanced to avoid "governance deficits." In terms of technology empowerment, it is necessary to develop an AI-driven tax risk early warning system, identify abnormal transaction patterns through big data analysis, and implement dynamic supervision of new taxes such as digital service tax and carbon tax. Ultimately, collaborative governance needs to form a full-chain mechanism of "rule formulation - information sharing - law enforcement linkage - capacity building," balance the protection of tax bases and investment attraction needs of various countries through multilateral consensus, promote global trade and investment liberalization and facilitation while maintaining tax fairness, and build a fair, transparent, and sustainable new international tax order, injecting certainty into global economic governance.

5. Conclusion

The current mechanisms in the BEPS agreement regarding international tax administration and tax source allocation struggle to balance the interests of developed and developing countries, resulting in the substantial deprivation and impact on the tax development rights of some developing countries. As a fundamental right at the international law level, the right to development should be respected and upheld by the international legal order, including international tax law. Only by paying attention to and addressing the issue of development rights, especially in developing countries, can we truly and effectively promote the realization of global governance initiatives and facilitate the construction of a community with a shared future for mankind. In the current BEPS framework, there are numerous institutional oversights regarding the tax sovereignty of developing countries, leading to contradictions, disputes, and conflicts between developing and developed countries over the distribution of international tax revenue. This is not conducive to enhancing the

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overall efficiency of international taxation and constructing international anti-tax avoidance mechanisms. Therefore, based on the "common but differentiated tax capacity principle," we should utilize various scales and standards of the proportionality principle, and from the perspective of improving and implementing the right to development in international taxation, further promote the fairness and perfection of the international tax rule of law, and further advance the construction of international rule of law and a community with a shared future for mankind.

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