

Globalisation and tax administration – a New Zealand perspective

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Abstract

The work of the G20 and OECD in relation to Base Erosion and Profit Shifting (BEPS) 1.0, and more recently with BEPS 2.0, has shown unprecedented levels of cooperation between revenue authorities globally. While the work to date has increased the sharing of information and improved cooperation on cross-border investigations, it has also led to enhancements (some currently at the policy refinement stage) that expand the tax base (such as new taxing rights for jurisdictions where value has been added), and buttress existing core tax concepts (such as residence and source). This article, taking the form of a case study, examines and reflects upon how these policy developments are impacting revenue authorities, with a focus on New Zealand. It traverses the administrative direction and political influences over the last six to eight years, within the wider context of Inland Revenue's Business Transformation project (BT) that was completed in 2022. Digitalisation has been critical to the way Inland Revenue has navigated the challenges it faces, many of which are common to tax administrations globally. In general terms, New Zealand is a 'strong supporter' of the work of the G20/OECD with respect to BEPS but would not be considered to be a leader. Being a small jurisdiction, New Zealand is less impacted by BEPS issues, but nevertheless it faces its fair share of administrative challenges, including the ongoing impact of COVID fiscal reforms on tax administrations.

Keywords: BEPS, digitalisation, globalisation, New Zealand, OECD, tax administration

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1. INTRODUCTION

Much has been made concerning the unprecedented levels of cooperation between jurisdictions and their revenue administrations in responding to the challenges of base erosion and profit shifting (BEPS). While the early lead was taken by the G20 nations, finding ways to respond to the challenges was assigned to the Organisation for Economic Co-operation and Development (OECD). Over the last decade or so the world has seen an extensive array of policy proposals, reports, public debates and announcements, as reflected in BEPS 1.0 and BEPS 2.0 (the latter ongoing as at the time of writing). A key player in the process has been the tax administrations of the OECD member countries along with those that form the wider 140-plus member OECD/G20 Inclusive Framework on BEPS.¹ Representatives have been involved in discussions (in person and virtually) that have led to proposals requiring debate and decisions concerning future ratification by Inclusive Framework members.

Running alongside these developments is the impact of globalisation. From a New Zealand perspective, former New Zealand Minister of Revenue Peter Dunne described globalisation as follows:²

I see globalisation as meaning an increase in international trade, the flow of goods and services between countries; international capital flows; and the movement of people (especially those with skills) across national borders.

Thus, while globalisation extends beyond economic issues to include societal and other (non-financial) impacts, this article will principally limit its focus to the economic impacts of globalisation as it impacts tax administrations, with particular consideration on the impact of digitalisation. In a tax context, digitalisation includes the following:³

Tax digitalisation then, as we define it, is not just converting paper forms into PDFs to upload on a government website. True digitalisation has to be revolutionary, considering not only how taxpayers complete their filings, but what is taxed, and how the authority can leverage powerful data pipelines to complete and audit taxes without a filing being made.

Globalisation is a major issue in that it signifies a far-reaching intensification of relations between countries and between the individuals that inhabit them. Avi-Yonah⁴ reflects on the advent of globalisation as it emerged in the 1980s and then digitalisation from the 1990s, and how these have impacted upon the international tax regime. What has emerged is a new economic digital divide with a varied impact on nations and tax administrations. To be clear, digitalisation and globalisation work closely together, and while it is possible that an economy may be highly digitalised but not globalised, this is unlikely today. The opposite, however, is possible, as there may be globalised economies that are not highly digitalised due possibly to internal resource constraints. Furthermore, it is the author's view that while digitalisation is a process that facilitates

¹ See further OECD, 'Members of the OECD/G20 Inclusive Framework on BEPS' (updated 15 November 2023), <https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf>.

² Hon Peter Dunne, 'Globalisation and Its Impact on National Revenue' (Speech to the Globalisation and Public Policy Conference, 11 August 2010).

³ Institute of Chartered Accountants in England and Wales (ICAEW), *Digitalisation of Tax: International Perspectives* (ICAEW, 2019) 2.

⁴ Reuven Avi-Yonah, 'International Taxation, Globalization, and the Economic Digital Divide' (2023) 26(1) *Journal of International Economic Law* 101.

greater globalisation, it is not a necessary condition given that globalisation existed before digitalisation was prevalent across the world.

At this point, in order to provide a greater focus on the direction of this article, it is useful to set out the research question to be addressed, namely: *How have globalisation and digitalisation impacted tax administration in New Zealand?*

It is acknowledged that the article provides a largely descriptive synopsis of research in the field of globalisation and digitalisation with a focus on New Zealand. Its principal contribution is to contextualise what has been occurring in New Zealand, an under-researched jurisdiction, within global developments. Exploratory case study research not only provides insights that emerge within the case at hand, but offers perspectives that may be relevant to other jurisdictions and to the global literatures on globalisation and digitalisation within a tax administration context.

As will be discussed further in section 2 of the article, this article, after first exploring globalisation and digitalisation from a global perspective, utilises an exploratory single country case study to evaluate how New Zealand's tax administration has responded to the impact of globalisation and digitalisation, taking a tax policy lens. The remainder of this article is organised as follows. Section 2 provides the rationale for taking an exploratory case study approach, and outlines the application of a policy lens. It also sets out the research question for this study. Section 3 contains the discussion and analysis of globalisation with a focus on the impact of BEPS generally, and then more specifically the New Zealand tax administration's response, and then the impact arising from globalisation and digitalisation. This is followed by further discussion incorporating the author's reflections on the preceding analysis, including a tentative assessment of what the future may hold for New Zealand in section 4. Section 5 concludes the article, and sets out its limitations and suggestions for future research.

2. LITERATURE AND METHODOLOGY

In providing some meaningful analysis of the impact of globalisation on tax administration, one needs to adopt an approach that balances the demands of taking a high-level assessment with sufficient detail to ascertain the impact within one or more jurisdictions. This article takes an exploratory case study approach focusing on one jurisdiction, New Zealand, for which the author is familiar. In adopting a sole case study approach, the design and analysis considerations are of significant importance, along with the description of events or the scenario(s) under review.⁵ The need for a case study frequently arises out of the desire to understand complex social phenomena. It enables the researcher to investigate and review in a holistic and meaningful way the various characteristics of real-life events. However, while the article contains a single country case study, it has wider ramifications for other jurisdictions, such as Australia, where other researchers may compare experiences and lessons between the two jurisdictions concerning how their respective tax administrations have responded to globalisation and digitalisation.

In terms of other potential research methods, apart from undertaking a comparative case study (as opposed to sole case study) approach, interviews or focus groups could be

⁵ Robert K Yin, *Case Study Research and Applications: Design and Methods* (Sage Publications, 6th ed, 2017).

conducted to explore the perspectives and views of influential individuals and/or representatives of directly affected groups. As such this article undertakes comprehensive document analysis using a policy lens. This involves working through policy material, legislation, guidance material, academic and other commentaries, which relate to globalisation and digitalisation globally and within a single jurisdiction (New Zealand). Instead of focusing on the impact of globalisation on tax administration through a policy lens, an empirical analytical approach could also be employed, such as by analysing tax revenue information and projections, to explore financial data and other relevant statistics. The major issue here is gaining access to this (limited) data.

From a theoretical perspective, a standard approach to understanding the role of major actors in tax policy is that of institutionalism or more specifically Institutional Theory. Institutional Theory considers the processes by which structures, including schemes, rules, norms and routines, become established as authoritative guidelines for social and economic behaviour. For example, prior research has used Institutional Theory as the theoretical framework to explain the development and application of various major disciplines or activities, such as accounting, and of particular relevance to this article, taxation. Scott states that institutions ‘comprise regulative, normative, and cultural-cognitive elements that, together with associated activities and resources, provide stability and meaning to social life’.⁶ The three elements coexist within institutional settings with varying degrees of influence. The regulative structures control and constrain behaviour by providing a written (or in some instances unwritten) framework for what must be done, which is typically in the form of laws, rules and structures, along with monitoring to ensure adherence to the rules. The normative aspects of institutions represent obligations and binding expectations based on norms, values and roles that influence the behaviour. It also involves goals and objectives, and how to achieve them. The cultural-cognitive elements involve social contexts, traditions, cultures, and also individual and subjective interpretations and assumptions.

In the context of this research, taxation is viewed as a social and political activity within itself (in addition to the economic impact), with the intention being to understand the economic, institutional, political and social environment of taxation policy and administration.⁷ How has this been utilised in a taxation context in the literature? McKerchar,⁸ writing with an accounting, law and taxation audience in mind, describes Institutional Theory as a variant of Critical Theory. This article does not seek to debate this point but notes that the analysis within the article takes a critical focus within the context of Institutional Theory.

In a tax or fiscal context, Marriott and Holmes provide an excellent analysis of Institutional Theory and how it can be applied to understanding tax policy for retirement savings.⁹ In particular they comment on two variants of the theory, namely Old

⁶ See W Richard Scott, *Institutions and Organizations: Ideas, Interests, and Identities* (Sage Publications, 4th ed, 2014) 56.

⁷ Aspects of the discussion in this section of the article draw upon themes present in the work of Ceray Aldemir and Tuğba Uçma Uysal, ‘Public Accounting Reform from Institutional Theory Perspectives: Case of Turkey’ in Soner Gokten (ed), *Accounting and Corporate Reporting – Today and Tomorrow* (IntechOpen, 2017) 277.

⁸ Margaret McKerchar, *Design and Conduct of Research in Tax, Law and Accounting* (Thomson Reuters/Lawbook Company, 2010).

⁹ Lisa Marriott, and Kevin Holmes, ‘Exploring the Application of Institutional Theory to Tax Policy for Retirement Savings in New Zealand and Australia’ (2006) 24(2) *Law in Context* 78.

Institutionalism and New Institutionalism (and their subcategories). This theoretical approach is separate to the particular choice of theoretical analyses or principles that may be employed to analyse tax policy choices. An evaluation, when based on analysis of documents and actions taken, is necessarily limited compared to utilising more extensive in-depth methodological analysis, such as interviews and behavioural analysis.

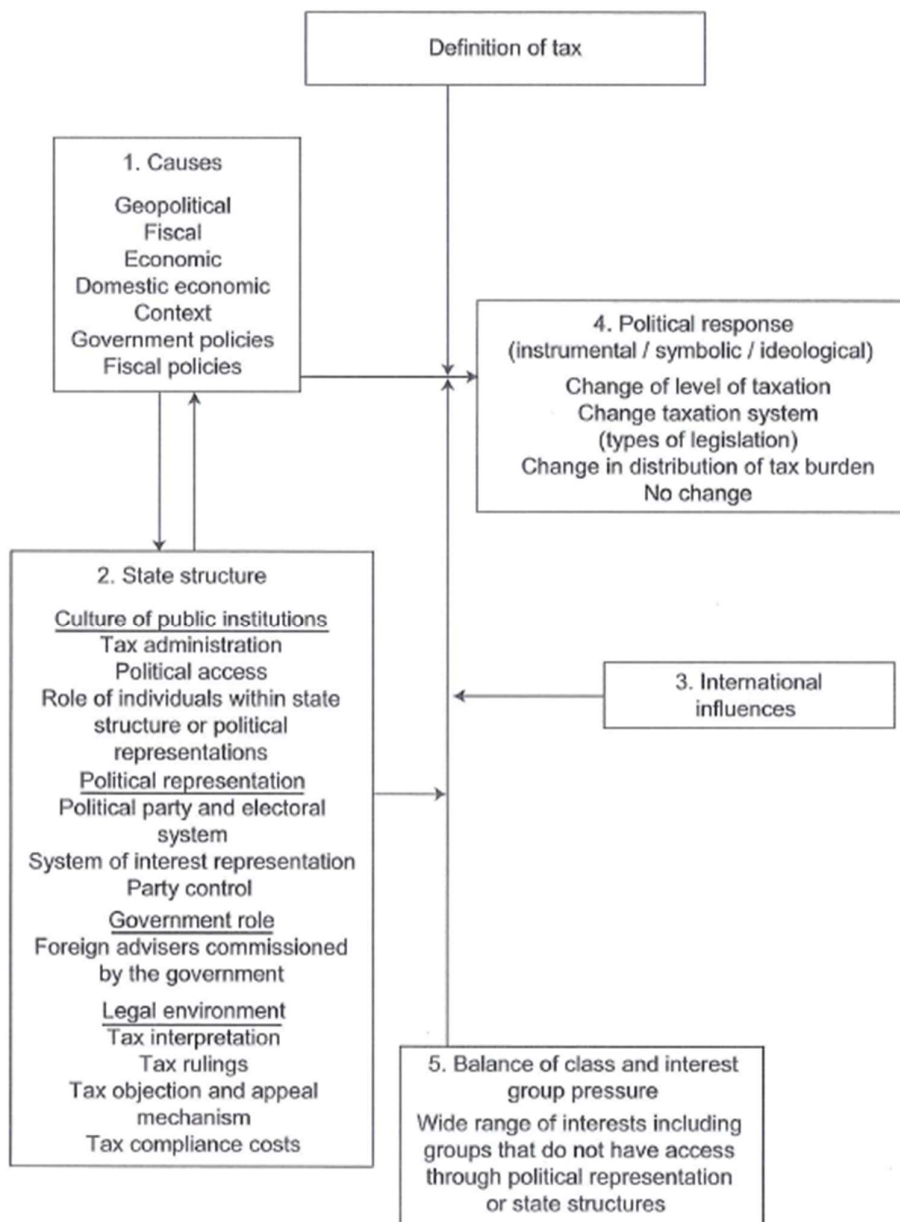
Marriott, in her published dissertation, demonstrates how a comprehensive application of Institutional Theory can be used to explain the politics behind retirement savings through a comparative case study of Australia and New Zealand.¹⁰ Marriott's work is historically focused, whereas this study seeks to take a more contemporary and potentially forward focused approach, and as such it aligns more closely with New Institutionalism. This 'split' in Institutional Theory recognises the evolution of thought as more researchers apply and test the original theory and seek to refine it to be more relevant to their analysis. For example, this may depend upon whether the focus is on historical developments (Old Institutionalism usually being more relevant) or on more contemporary events (where New Institutionalism is better suited).

In the context of this article, the major institutions involved are the G20/OECD, and more generally, the Inclusive Framework (along with its constituent members, represented in most instances by revenue authority personnel). In this regard, while no single country or jurisdiction has the 'authority' of an institution, the United States is the most significant jurisdiction in terms of its influence on global tax policy development.

Focusing more specifically on tax policy and administration, the contribution of Heij¹¹ is particularly useful in that this includes the roles and linkages of the major actors, such as the states, globalisation, political responses and other influences. This model is set out in Figure 1.

¹⁰ Lisa Marriott, *The Politics of Retirement Savings Taxation: A Trans-Tasman Comparison* (CCH Australia and Australasian Tax Teachers Association, 2010).

¹¹ Gitte Heij, 'Theoretical Framework for Applied Research on Tax Policies' in Lynne Oats (ed), *Taxation: A Fieldwork Research Handbook*, (Routledge, 2012) ch 23.

Fig. 1: Revised Model for Research

Source: Gitte Heij, 'Theoretical Framework for Applied Research on Tax Policies' in Lynne Oats (ed), *Taxation: A Fieldwork Research Handbook* (Routledge, 2012) 202.

In the context of this article, rather than focusing on the definition of tax, the focus is on BEPS issues. For box 1, all of the content is relevant to the analysis in this article, with box 2 drawing attention to the situation in New Zealand as the case study jurisdiction of interest. The international influences for box 3 here are predominantly globalisation and digitalisation (couched principally within the context of BEPS), with the content of box 4, using a tax policy lens, focusing on the impact on tax administration. Box 5 will have a minor role for the purposes of this article other than acknowledge that there are New Zealand domestic groups that will seek to exert pressure on the changes in tax administration.

Before undertaking the ‘impact’ analysis, it remains important to set out once again the research question that this study seeks to answer. Specifically, the research question to be answered is:

RQ: *How have globalisation and digitalisation impacted tax administration in New Zealand?*

3. THE IMPACT OF BEPS 1.0 AND 2.0 – GLOBAL AND NEW ZEALAND PERSPECTIVES

3.1 A global overview

It is useful to briefly review what is meant by BEPS in the context of this article, taking a global perspective, before focusing on New Zealand as the jurisdiction of interest. Following this discussion, the article will look at the issues facing tax administrations, especially as a result of increased digitalisation, from a general perspective and then move the focus to how this has influenced and impacted upon New Zealand. Much has been written about BEPS elsewhere and it is not the intention of this article to go into any detail in this regard.¹² However, some background context is necessary.

The G20 nations engaged the OECD in the early 2010s to make recommendations for combating international tax base erosion and profit shifting (BEPS) activities from a global perspective. This reflected a growing view that multinational enterprises’ (MNEs’) behaviour was focused on locating profits in low-tax jurisdictions and contributing little by way of tax in proportion to their global pre-tax profits. Most jurisdictions concluded that this type of tax behaviour by MNEs was endemic. Furthermore, this behaviour (often labelled as ‘tax avoidance’) was not viewed as relating to selected sectors of the global economy or to individual enterprises. By definition it is not constrained by jurisdictional boundaries. The OECD, with the establishment of the Inclusive Framework (along with its members), released draft reports in September 2013 with 15 action plans to address BEPS. By October 2015, 15 Actions in 13 final reports were released. This has become known as BEPS 1.0. Overall,

¹² See for example, Sergio André Rocha and Allison Christians (eds), *Tax Sovereignty in the BEPS Era* (Kluwer Law International, 2017); Sam Sim and Mei-June Soo (eds), *Asian Voices: BEPS and Beyond* (IBFD Publications, 2017); Michael Lang, Pasquale Pistone, Alexander Rust, Josef Schuch and Claus Staringer (eds), *The OECD Multilateral Instrument for Tax Treaties: Analysis and Effects* (Kluwer Law International, 2018); Werner Haslehner, Georg Kofler, Katerina Pantazatou and Alexander Rust (eds), *Tax and the Digital Economy: Challenges and Proposals for Reform* (Kluwer Law International, 2019); Allison Christians and Laurens van Apeldoorn, *Tax Cooperation in an Unjust World* (Oxford University Press 2021); Craig Elliffe, *Taxing the Digital Economy: Theory, Policy and Practice* (Cambridge University Press, 2021); Andreas Perdelwitz and Alessandro Turina (eds), *Global Minimum Taxation? An Analysis of the Global Anti-Base Erosion Initiative* (IBFD Publications, 2021).

the intention was to prevent double taxation; prevent no or low taxation by shifting of profits, and to ensure fair share of tax revenues.

A notable absence in BEPS 1.0 was any detailed proposals to deal with Action 1 – the digital economy. Addressing the tax challenges arising from digitalisation is a key policy issue today and is likely to be one for some years to come. BEPS 2.0 (focusing on addressing the issues of the digital economy), is arguably the greatest single phenomenon to shape tax activities/behaviours and the responses of tax administrations to all of the BEPS actions. The work remains ongoing but potentially it is close to finalisation. Several other actions have had a major influence, including the four minimum standards (Actions 5, 6, 13 and 14), along with Actions 8-10 focusing on transfer pricing issues, Action 11 (the data gathering processes) and Action 15 with the development of the multilateral instrument (MLI).¹³

Overall, the espoused intention behind the OECD's approach is to equip governments (that choose to take up the tools) with the domestic and international instruments needed to tackle cross-border tax avoidance. This is designed to 'ensure' that profits are taxed where economic activities generating the profits are performed and where value is created. Concurrently, it is intended that the tools will give businesses greater certainty by reducing disputes over the application of international tax rules and standardising compliance requirements. The OECD is also taking a role in monitoring of jurisdictions' implementation as Inclusive Framework members, including the use of peer reviews.

However, the process is only as effective as the level of agreement between nations, along with domestic uptake through ratification and amendments to domestic legislation by member jurisdictions, and commitments that lead to action to give effect to the tools. Throughout the process each jurisdiction needs to ascertain the degree to which it is willing to adjust its level of sovereignty over taxation policy, in order to not only improve its own interests, but the wider collective interests of other Inclusive Framework members.

3.2 The OECD as the key institutional player

With the underlying theoretical framework for this article adopting Institutional Theory, it is important to consider how the OECD has such a major influencing role and what might be its future – might it be the future international tax organisation? In considering this question, Tychmańska¹⁴ provides a comprehensive overview of the history and major developments in the life of the OECD. She observes that the OECD's approach regarding dealing with international tax issues has evolved from a preference to implement defensive measures on behalf of its members towards the non-OECD Member States that contributed to the tax base erosion. Over time it realised that this approach is not the most appropriate for addressing the problems faced by international taxation, and that developing countries' voices need to be heard, and so it began to engage in dialogue with developing non-OECD Member States. This has led to many initiatives to cooperate with the non-OECD Member States and provide assistance to some developing countries that lack technical capacity. The Inclusive Framework is an example of this change in approach.

¹³ For further details on the OECD's actions, see generally <https://www.oecd.org/tax/beps/about/>.

¹⁴ Aleksandra Tychmańska, 'The OECD as the Future International Tax Organization: An Inevitable Course of Events?' (2021) 49(8-9) *Intertax* 614.

Furthermore, Tychmańska observes, the OECD continues to rely on soft power consensus mechanisms, although with BEPS 1.0, approaches such as the MLI show that agreements of binding character may be established. This is reflective of the OECD launching a number of multilateral projects creating the platforms for cooperation with non-OECD Member States. However, the OECD is still adapting its approach to international tax policy. Going forward, the current author expects to see the OECD become an informal global/international tax organisation using soft power mechanisms (especially in the absence of any specifically created world tax organisation¹⁵). In this sense, the OECD is a major institutional actor in the framework as set out in Figure 1.

More on point with respect to BEPS 2.0, Plekanova¹⁶ argues, using a case study approach (using the social dimension of fairness as a focus), in the context of the OECD's BEPS Action 1 narrative (as seen through the Inclusive Framework), that the OECD's narrative is inconsistent with the various states' narratives and as such is unjustified. In particular, she argues that it lacks fidelity (story integrity) and is only weakly persuasive, at least where the fairness argument is concerned. However, of particular relevance to this article is her conclusion that these flaws may not affect the OECD's legitimacy as a standard-setter and consensus facilitator. However, they may undermine the legitimacy of the OECD standards that are founded on fairness arguments, especially if those standards affect the distribution of the benefits and costs of tax cooperation.

Plekhanova supports this by asserting that the normative legitimacy of the OECD (its claim to a right to rule, or legally sanctioned legitimacy) is weak because, like most intergovernmental organisations, the OECD lacks coercive power (it can be persuasive at most). Furthermore, in the case of the non-OECD members of the Inclusive Framework, there is nothing akin to normative legitimacy since the Inclusive Framework is not premised on any binding agreement (notwithstanding that the OECD is a formally established body). She further applies a framework that:¹⁷

... recognizes the distinction between normative and sociological legitimacy, and views the legitimacy of institutions as a complex phenomenon that can be legally sanctioned (a regulative pillar), morally governed (a normative pillar), and/or comprehensible, recognizable, and culturally supported (a cultural-cognitive pillar). In other words, *the legitimacy of institutions can rest on the rule of law, a shared moral or social norm, and a shared belief, if the rule of law is grounded in both shared norms and beliefs that underlie those norms.*

Thus, in order to legitimise its governance in the eyes of all Inclusive Framework members (or at a minimum to secure their agreement to adopt the standards developed during the BEPS project), the OECD needs 'its strategic narratives to resonate with the values of a more diverse audience than the OECD group membership'.¹⁸ This is essential for the OECD to have a realistic chance to secure widespread cooperation. A

¹⁵ See for example, Adrian Sawyer, *Developing a World Tax Organisation: The Way Forward* (Fiscal Publications, 2009).

¹⁶ Victoria Plekhanova, 'The Legitimizing Effects of the OECD's Fairness-Based Narratives' (2022) 70(4) *Canadian Tax Journal* 785.

¹⁷ Ibid 789 (footnote references removed, emphasis added).

¹⁸ Ibid 809.

question to ponder is if the OECD had not assumed the role that it has, what organisation might have filled the void (for example, the United Nations)?

BEPS 2.0 is a pivotal phase in the OECD's evolution and ongoing impact on international taxation. It creates 'winners' and 'losers' amongst jurisdictions, which may not facilitate widespread cooperation by those that believe they are worse off. It has a significant impact on tax sovereignty and tax competition. As Harpaz concludes:¹⁹

This Article examined the OECD's proposed rules to address the tax challenges of digitalization and profit-shifting. It argued that the *two-pillar solution resulted from a political compromise that undermines tax sovereignty and overlooks the role of developing countries*. Reducing profit-shifting is an important duty. MNEs should be required to pay their fair share of taxes and report profits where they are earned. However, the OECD BEPS Project largely ignored broader institutional issues in the international tax framework. Taxes on MNEs will increase – mostly under Pillar Two – yet traditional tax norms, including profit allocation principles, have not been meaningfully reconsidered.

The OECD inherently represents the interests of the world's developed economies and has historically disregarded the interests of developing ones. While the OECD dominates global tax policy, it continuously neglects the effects of its agenda on non-members who are excluded from the essential stages of policy design and diplomatic negotiation. Thus, this Article proposed ways to *promote inclusivity in international tax policymaking. It recommended expanding voting rights for non-members within the OECD. Furthermore, it supported a newly created intergovernmental process within the United Nations that should focus on revisiting the traditional norms and promoting the distinct interests of developing countries*.

Hearson and co-authors²⁰ provide an insightful analysis of how the Inclusive Framework operates. The authors set out to reconceptualise what is meant by 'regulatory capacity', arguing that nation states can overcome limited market power or influence through using socio-technical resources, namely expertise and professional networks. In studying the Inclusive Framework, they focus on how the 140-plus members participated in negotiations through analysing attendance data and interviews with dozens of participants. A key emphasis was the extent and sources of developing countries' influence. They conclude that socio-technical resources allow individuals from lower income (developing) countries to achieve limited yet significant successes, thereby to use the parlance 'punching above their weight in global governance'.

Elliffe asserts in his 2022 article that the proposed changes to the international tax regime (through BEPS and the 2020s compromise) are fundamental and brave in the

¹⁹ Assaf Harpaz, 'International Tax Reform: Who Gets a Seat at the Table?' (2023) 44(4) *University of Pennsylvania Journal of International Law* 1007, 1063 (emphasis added).

²⁰ Martin Hearson, Rasmus Corlin Christensen and Tovony Randriamanalina, 'Developing Influence: The Power of "the Rest" in Global Tax Governance' (2023) 30(3) *Review of International Political Economy* 841.

sense that, on balance, they represent positive changes to the international tax regime.²¹ Elliffe also observes that:²²

It is vital to continue to examine whether the Inclusive Framework is genuinely ‘inclusive’. If it is, then all of the 2020s Compromise is being facilitated by the increasingly multilateral processes of the institutions, instruments, and interpretation of tax law (soft and hard), that is, consensus international tax law. *The future of international tax will have increasing focus on the three elements discussed, more effective source taxation, multilateralism and cooperation. If it is not inclusive, then we can expect that the future of international tax will be very uncertain.*

Noonan and Plekhanova conclude their analysis of the compliance challenges that BEPS 2.0 faces for successful implementation as follows:²³

The likely impact of the [Two Pillar Solution] on state (and taxpayer) behaviour cannot be determined from within the four walls of the BEPS documentation. *State interests, institutions, legitimacy and capacity are likely to impact the implementation of the TPS.* The decisions of states will affect and be affected by those of others. The international law and international relations literatures have explored the circumstances in which international rules have more or less compliance pull.

If fully implemented, the TPS would represent a new and potentially significant enhancement of the OECD’s public authority in the area of international tax and would increase the influence of major jurisdictions over domestic tax systems simultaneously throughout the world. Putting aside the substantive merits of the TPS, *the increased influence of the developed countries over the tax policy of the world raises legitimacy concerns.* These concerns are attenuated by the challenges inherent in the global implementation of the TPS. Agreed international dispute settlement seems likely to have limited impact outside of the Amount A rules, where the proposed dispute settlement mechanism may be seen as undermining tax sovereignty too much. Despite its presentation as a package, the TPS appears to be held together loosely. The obstacles to full implementation of the TPS in major countries, in particular the US, may mean the TPS will lead an uncertain life.

Building upon the earlier discussion in this article, Li introduces her paper in a provocative manner stating:²⁴

With much pomp and ceremony, it was announced that member jurisdictions of the G20/OECD BEPS Inclusive Framework ‘agreed to a two-pillar solution to address the tax challenges from the digitalization of the economy’ (the ‘Two-Pillar Agreement’). *This agreement has been hailed by some as ‘historic’,*

²¹ Craig Elliffe, ‘The Brave (and Uncertain) New World of International Taxation under the 2020s Compromise’ (2022) 14(2) *World Tax Journal* 237.

²² Ibid 260 (emphasis added).

²³ Chris Noonan and Victoria Plekhanova, ‘Compliance Challenges of the BEPS Two-Pillar Solution’ [2022] (5) *British Tax Review* 512, 548-549 (emphasis added).

²⁴ Jinyan Li, ‘The Global Tax Agreement: Some Truths and Legal Realities’ (Osgoode Hall Law School of York University Working Paper, 2022) 1 (emphasis added; footnotes omitted).

‘momentous’, ‘revolutionary’, but criticized by others as ‘harmful to developing countries’, cartelistic power grabbing by a few powerful countries, or neocolonialism. So, is the agreement a cause for celebration or the opposite? What is the chance of the Agreement become real law?

Through Li’s exposition of a number of ‘truths’ and ‘legal realities’ about the two-pillar solution, the challenges and ‘hype’ surrounding BEPS 2.0 are laid bare. Li’s conclusion brings the challenges into stark reality:²⁵

For anyone interested in international taxation, the current moment is really exciting because we are witnessing a multilateral, open process attempted to transform a century-old regime. *The outcomes of this process are not yet clear or certain because the fundamentals that shaped the existing system remain more or less unchanged in the past 100 years: each state is fiscally responsible and accountable to its citizens in its own ways and there is no international government that has the power to impose taxes.* Taxing rights are directly translated into revenues to pay for public spending on hospitals, social welfare and national defence, among others. Because Pillar One and Pillar Two distribute taxing rights among jurisdictions and such distribution is, by definition, a zero-sum game, they produce winners and losers among states. *Reaching a genuine and legally enforceable global agreement requires participating states to feel that they all win something. Finding a way for each of the 140 jurisdictions to feel that they are a ‘winner’ may be akin to chasing a rainbow.*

With these challenges it is important to explore and discuss the impact of globalisation more closely in the context of how it has shaped digitalisation.

3.3 The impact of digitalisation

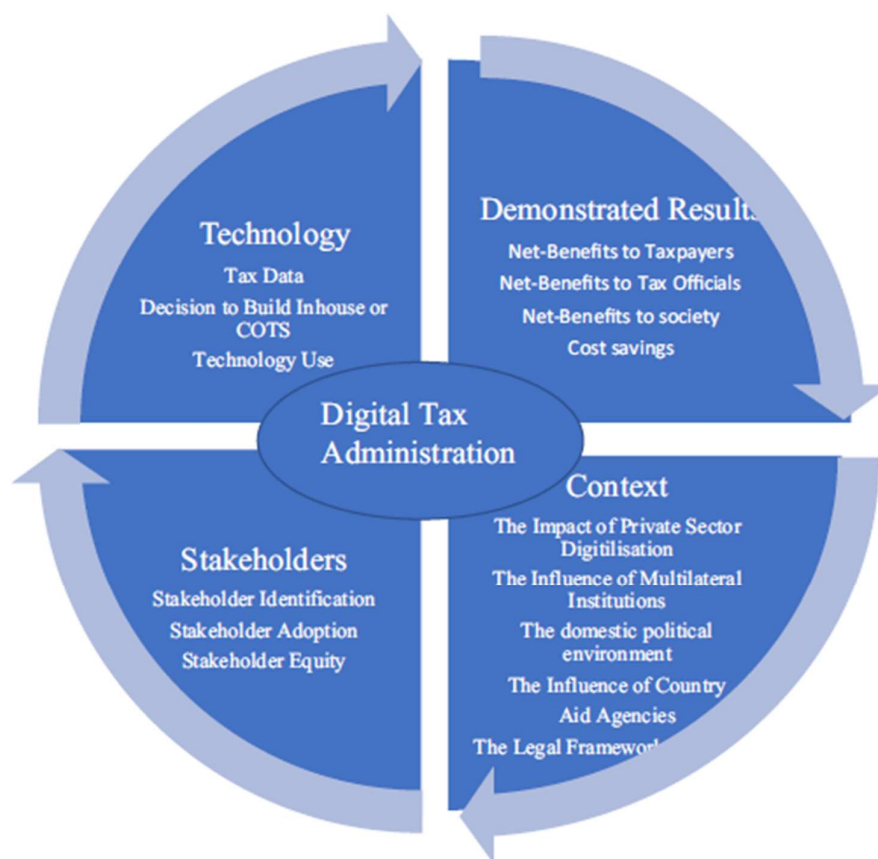
Digitalisation has become in many respects an enabler for tax administrations in terms of their interactions with taxpayers and tax practitioners, while also facilitating many of the challenges that are the focus of BEPS 2.0. Strauss and co-authors²⁶ evaluate the digital response of tax authorities in a number of jurisdictions, including New Zealand, to optimise tax administration within the wider digitalised economy. They observe that the legislative and policy responses to the digitalisation of the economy establish a legal right for governments via their tax authorities to collect taxes; what is of utmost importance is an optimised tax administration system to administer this legal right. The authors find discrepancies in the level of response and the level of sophistication of tax administration systems implemented among tax authorities globally to address this new digital world. None of the participating tax authorities’ tax administration systems reflect an optimised tax administration system, as defined, within the digitalised economy. In order to move forward a standard set of elements to undertake a global assessment, a set of minimum digital maturity standards and an international consensus on what is an ‘optimised’ tax administration system are needed.

²⁵ Ibid 14-15 (emphasis added).

²⁶ Helena Strauss, Tyson Fawcett and Danie Schutte, ‘An Evaluation of the Digital Response of Tax Authorities to Optimise Tax Administration within the Digitalised Economy’ (2020) 18(2) *eJournal of Tax Research* 382.

Bassey and co-authors²⁷ undertake a systematic review of around 100 publications across several literatures, including digital taxation, taxation, and information systems (IS), from which they develop a comprehensive conceptual framework to improve the success of digital services in tax administration. The authors identify 15 themes around four categories; see Figure 2.²⁸

Fig. 2: Digital Tax Administration Conceptual Framework



Source: Edidiong Bassey, Emer Mulligan and Adegboyega Ojo, 'A Conceptual Framework for Digital Tax Administration – A Systematic Review' (2022) 39(4) *Government Information Quarterly* 101754, Fig. 10.

²⁷ Edidiong Bassey, Emer Mulligan and Adegboyega Ojo, 'A Conceptual Framework for Digital Tax Administration – A Systematic Review' (2022) 39(4) *Government Information Quarterly* 101754.

²⁸ Ibid 10-11.

The linkages to the framework for this research are captured within Figure 2, especially with respect to the stakeholders and overall context. The authors conclude:²⁹

Overall, the conceptual framework is described as an ecosystem, which intends to suggest *thinking of each theme and category as part of a wider whole, in which each theme is interdependent*. Furthermore, the arrows in the conceptual framework reflect that *digital services in tax administration is constantly changing and that changes in one part of the framework due to new laws or technological development in a particular country context will have spillover effects on other parts of the framework*. The study is one of the first to develop a conceptual framework to integrate themes in designing effective digital services in tax administrations. ...

Various proposals for addressing the concerns of digital tax administrations and the impact of digitalisation have been suggested beyond those of the G20/OECD, such as a digital data tax (DDT) to create a significant source of tax revenues for market jurisdictions (utilising existing tax theory and principles), that is overseen by a new global internet tax agency.³⁰ Proposals beyond those being put forward by the G20/OECD are beyond the scope of this article.

The preceding analysis sets the scene for exploring the impact of globalisation (including digitalisation) on tax administration in a New Zealand context.

3.4 A New Zealand perspective

New Zealand, as a long-term member of the OECD from the early 1970s, has been a dedicated supporter of the OECD's work, and sought to work for the greater good where it may not stand to gain significantly as a nation. New Zealand is well known for having an efficient and robust tax system. In some respects, it is a world leader in tax policy and reform (such as with its generic tax policy process – GTPP).³¹ However, in other areas, including when it comes to international tax, New Zealand usually prefers to be a follower rather than a leader or early adopter. Under successive governments during the last 20 to 25 years, New Zealand has supported the work of the OECD, ensuring that it is – in all material respects – compliant with OECD recommendations and guidance. New Zealand has also succumbed to the pressure of much larger nations, such as the

²⁹ Ibid 13 (emphasis added).

³⁰ See for example, Cristian Óliver Lucas-Mas and Raúl Félix Junquera-Varela, *Tax Theory Applied to the Digital Economy: A Proposal for a Digital Data Tax and a Global Internet Tax Agency* (World Bank Group, 2021).

³¹ See for example, Adrian Sawyer, 'Broadening the Scope of Consultation and Strategic Focus in Tax Policy Formulation – Some Recent Developments' (1996) 2(1) *New Zealand Journal of Taxation Law and Policy* 17; Michael Dirkis and Brett Bondfield, 'At the Extremes of a "Good Tax Policy Process": A Case Study Contrasting the Role Accorded to Consultation in Tax Policy Development in Australia and New Zealand' (2005) 11(2) *New Zealand Journal of Taxation Law and Policy* 250; Peter Vial, 'The Generic Tax Policy Process: A "Jewel in Our Policy Formation Crown"?' (2012) 25(2) *New Zealand Universities Law Review* 318; Adrian Sawyer, 'Reviewing Tax Policy Development in New Zealand: Lessons from a Delicate Balancing of "Law and Politics"' (2013) 28(2) *Australian Tax Forum* 401; Adrian Sawyer, 'Tax Policy Without Consultation: Is New Zealand on a "Slippery Slope"?' (2022) 37(4) *Australian Tax Forum* 481 ('Tax Policy Without Consultation'); Adrian Sawyer, 'Navigating Challenging Times: A New Zealand Perspective' (2023) 29(4) *New Zealand Journal of Taxation Law and Policy* 341. See also Inland Revenue, 'Tax and Social Policy Engagement Framework' (August 2019).

United States, through enacting legislation to give effect to the Foreign Account Tax Compliance Act (FATCA).³²

As this author and McGill observe:³³

New Zealand has actively engaged with the G20/OECD BEPS program. *New Zealand's approach to BEPS generally is to work with the OECD (unsurprising given it is a member) to ensure that its international tax rules provide a robust way of taxing MNEs.* This needs to be balanced against ensuring that NZ remains a good place to base an exporting business, as well as to encourage inward investment given that NZ is a net capital importer.

Overall, New Zealand has also worked to ensure that the reforms needed to the domestic tax system to incorporate the BEPS 1.0 program were progressed through the domestic ratification process. BEPS 2.0 remains a 'work in progress'. That said, New Zealand was not initially overly concerned about the BEPS initiatives proposed by the G20/OECD as officials took the view New Zealand's international tax regime was robust and the jurisdiction would not be one targeted by MNEs for abusive tax practices.

A major component to New Zealand's domestic response to BEPS 1.0 was to enact the *Taxation (Neutralising Base Erosion and Profit Shifting) Act 2018* to prevent MNEs from using:

- artificially high interest rates on loans from related parties to shift profits out of New Zealand (new interest limitation rules);
- artificial arrangements to avoid having a taxable presence (a permanent establishment – PE) in New Zealand (proposals go beyond BEPS requirements);
- related party transactions (transfer pricing payments) to shift profits into their offshore group members in a manner that does not reflect the actual economic activities undertaken in New Zealand and offshore (New Zealand adopted the OECD's Transfer Pricing Guidelines);³⁴
- hybrid and branch mismatches that exploit differences between countries' tax rules to achieve an advantageous tax position (correcting current deficiencies); and

³² New Zealand signalled it would enter into an agreement in October 2012 with an agreement signed in June 2014 and in force in July 2014; see <https://www.taxpolicy.ird.govt.nz/tax-treaties/united-states-america>.

³³ Adrian Sawyer and Richard McGill, 'The Adoption of BEPS in New Zealand' in Kerrie Sadiq, Adrian Sawyer and Bronwyn McCredie (eds), *Tax Design and Administration in a Post-BEPS Era: A Study of Key Reform Measures in 18 Jurisdictions* (Fiscal Publications, 2019) 211, 212 (emphasis added).

³⁴ Note that Michael Kobetsky argues that in this new post-BEPS 2.0 environment, the OECD needs to illuminate the status of the OECD's *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* by including a clear statement in the associated Commentary on the intrinsic character of the OECD Guidelines and expressly identifying which parts of the OECD Guidelines form part of the Commentary; see Michael Kobetsky, 'The Status of the OECD Transfer Pricing Guidelines in the Post-BEPS Dynamic' (2020) 3(2) *International Tax Studies*.

- certain tactics to hinder an Inland Revenue investigation, such as withholding relevant information that is held by an offshore group member, which would be penalised.

Under BEPS Action 5 New Zealand agreed to disclose a wide variety of binding rulings, and it is also committed to binding arbitration. New Zealand ratified the MLI (Action 15) on 14 May 2018. New Zealand remains open to taking unilateral action through a digital services tax (DST)³⁵ should it not be satisfied with the OECD's progress or the final BEPS 2.0 outcome. Walker³⁶ reviews the DST proposal, setting out his concerns over its intended scope and lack of supporting evidence for the need for a DST. Importantly, he emphasises the risks that such unilateral action will reduce overall levels of cooperation. As time passes, it seems more likely that the DST proposal will progress further, although this ultimately depends significantly on the effectiveness of BEPS 2.0.³⁷

In terms of an early assessment of a core aspect of BEPS 1.0, namely the country-by-country reporting (CbCR) under Action 13, this author and Sadiq³⁸ adopted a cross-country comparative case study analysis involving Australia and New Zealand that have implemented CbCR. Utilising a series of semi-structured interviews with key tax professionals, along with revenue officials, they are able to ascertain the views of the profession and their MNE clients on the new CbCR requirements. Specifically, the tax practitioner interviewees were candid in their responses, and provided insights that could not be ascertained from reviewing documentation. What is particularly evident in their comments are significant challenges in implementing CbCR for their clients, along with their role in supporting their clients. They saw minimal benefits to them and their clients, although the revenue officials unsurprisingly had a different view!

Gupta³⁹ explores, in the context of a wide array of transparency obligations under BEPS 1.0, New Zealand's tax administration's response to exchange of information (EOI) requests under double tax agreements (DTAs), implementation of the BEPS program (specifically Actions 5 and 13), new standards on automatic EOI, and critically assesses the provision of beneficial ownership information to tax authorities for the global exchange to treaty partners. She also recommends, from a revenue authority perspective, adoption of enhanced technology to facilitate the gathering of such information.

³⁵ See Inland Revenue, *Options for Taxing the Digital Economy: A Government Discussion Document* (June 2019) <https://www.beehive.govt.nz/sites/default/files/2019-06/20190604-dd-digital-economy.pdf>.

³⁶ Ben Walker, 'Analysing New Zealand's Digital Services Tax Proposal' (2019) 21(2) *Journal of Australian Taxation* 86.

³⁷ The current New Zealand government introduced a Digital Services Tax Bill (based on a proposal released in 2019) on 31 August 2023, due to its frustration over the slow progress under BEPS 2.0. See further <https://www.beehive.govt.nz/release/government-enable-digital-services-tax-multinationals-2025>.

³⁸ Adrian Sawyer and Kerrie Sadiq, 'Country-by-Country Tax Reporting: A Critical Analysis of Enhanced Regulatory Requirements for Multinational Corporations' (2019) 36(7) *Company and Securities Law Journal* 570.

³⁹ Ranjana Gupta, 'Global Tax Transparency and Developments in the Exchange of Information Standards: A New Zealand Perspective' (2021) 36(1) *Australian Tax Forum* 1.

An important observation is made by KPMG concerning BEPS 2.0 with respect to New Zealand:⁴⁰

New Zealand's commitment to BEPS 2.0 is a sign that it accepts the OECD arguments around the greater global good. This means the complexity created for some businesses and the potential restrictions on our tax policy choices is considered to be worth it. Similar to New Zealand's embracing of the BEPS 1.0 measures, there is the desire to be a good global citizen and play our part in the expectation that a multilateral approach will be of greatest benefit.

In terms of BEPS 2.0, it has been determined that if a critical mass of countries adopt the BEPS 2.0 two-pillar approach, then New Zealand will also formally adopt it. This is premised on the New Zealand government continuing to support the current tax settings and that from a business perspective, ways to reduce compliance costs are accepted. The outcome of Inland Revenue's consultation on Pillar 2 was confirmed with the decision to implement Pillar 2 which is part of the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill 2023, currently with the Finance and Expenditure Committee. Assuming that the Bill is enacted largely as proposed, then the application date for the GloBE rules will be set by Order in Council once the New Zealand government determines that a critical mass of countries has adopted those rules. In terms of its approach to digitalisation, Strauss and co-authors conclude⁴¹ that strategic goals with a strong digital focus for New Zealand include 'information and intelligence gathering by ensuring that decisions and actions are intelligence-led' and '[d]igital by fully embracing their place in the digitally connected world'.

The article now moves its focus onto the area of Business Transformation (BT) in New Zealand, where the tax administration undertook a significant project to digitalise the tax administration process as well as update the IT system. While this project has been a great success in digitalising the tax administration system in New Zealand, it has created a number of significant issues.

This author in an earlier paper,⁴² taking a taxpayers' rights perspective, focuses on the impact of digital delivery on taxpayer assistance, especially those that are digitally challenged. New Zealand's BT was 'successfully' implemented in its entirety in 2022, replacing Inland Revenue's aging IT systems, and making the digital interface the principal mechanism for taxpayer interaction with Inland Revenue. BT came with huge risks, including technical complexity and 'disturbing' previous compliance activities, but also does not provide sufficient accessible service engagement mechanisms for all members of society, especially for the 'digitally challenged'.⁴³ The New Zealand government failed in its pledge to close the digital divide by 2020,⁴⁴ notwithstanding

⁴⁰ See Darshana Elwela, 'BEPS 2.0 – The Final Frontier?' *KPMG New Zealand* (2021), <https://home.kpmg/nz/en/home/insights/2021/10/beps-2-0-the-final-frontier.html> (emphasis added) (accessed 28 February 2023).

⁴¹ Strauss et al, above n 26, 387 (citing Inland Revenue, *Annual Report 2019*).

⁴² Adrian Sawyer, 'The Impact of Digital Delivery on Taxpayer Assistance – A New Zealand Perspective' (Paper presented at the Fourth International Conference on Taxpayers Rights, University of Minnesota Law School, Minneapolis, 23–24 May 2019).

⁴³ Inland Revenue has made some significant steps to assist those who are digitally challenged; see, for example, Inland Revenue, *Inland Revenue Annual Report: Te Tari Taake Pūrongo ā-Tau 2021–22* (2022) 21, 65.

⁴⁴ See Digital Economy and Digital Inclusion Ministerial Advisory Group; Hon Clare Curran (Broadcasting, Communications and Digital Media and Government Digital Services Minister), 'Digital

the boost that the Covid-19 pandemic has offered to speed up the roll out of digital platforms.

Most recently, Granger and this author⁴⁵ examine the level of preparedness of Australia and New Zealand's revenue authorities for a digital environment. Specifically, in an exploration of the two jurisdictions' 'digital journeys' with respect to how digitalisation is shaping their revenue administrations, a key feature is that each tax authority evolved in time to meet the challenges they faced. That study applies a tax policy lens and a largely positivist approach, with some normative suggestions offered. It also observes how institutional factors influence the ability of the state to create productive political relationships with key groups, such as tax practitioners. In the context of New Zealand, the digital history of Inland Revenue is analysed from the early 1990s until the full implementation of BT in 2022. This includes the regular addition of new services, such as income support and student loans to Inland Revenue's IT system. The use of big/smart data has become a feature, along with growing interconnectedness within New Zealand and with agencies in other jurisdictions (such as through data sharing and data transparency). The just in time feature was significant in enabling both jurisdictions to respond to the Covid-19 pandemic and function as the major vehicle for the delivery of governmental fiscal support.⁴⁶

That study concludes with five significant policy issues that emerge from the analysis:⁴⁷

- (1) The design of information technology infrastructure is moving away from being tax-specific to being *integrated and networked*.

It is essential to plan for contingencies and be prepared, not just for today's requirements and the envisaged future, but also for significant change (COVID-19 is a potent example) during the redevelopment of systems, while remaining nimble and adaptable.

- (2) The role of tax administrations is expanding as a *smart data hub for a whole-of-government approach*.

The data collected and tax administrations' ability to exploit this to support digital services is a valuable resource that can provide valuable insights and intelligence well beyond tax-related interactions. More regular and expanded sharing of data throughout the government (and in some cases between jurisdictions) should be expected.

Advisory Group to Be Established' (Media Release, 15 December 2017), <https://www.beehive.govt.nz/release/digital-advisory-group-be-established>. As at December 2020 the New Zealand government had set out its vision but was far from achieving it: New Zealand Government, 'Closing the Digital Divide 8/15' (6 December 2020), <https://www.beehive.govt.nz/feature/closing-digital-divide-815>.

⁴⁵ Jennie Granger and Adrian Sawyer, 'Digitally Prepared? The Journeys of the Revenue Administrations in Australia and New Zealand' in Nella Hendriyetti, Chris Evans, Chul Ju Kim and Farhad Taghizadeh-Hesary (eds), *Taxation in the Digital Economy: New Models in Asia and the Pacific* (Routledge, 2022) 166.

⁴⁶ See further, John Cuthbertson, 'Why the Taxman Is Our Unsung COVID Hero', *NZ Herald* (28 September 2020), <https://www.nzherald.co.nz/business/john-cuthbertson-why-the-tax-is-our-unsung-covid-hero/GHAH46X42AYJDPE5ISSKXUZM/>. See further: Adrian Sawyer, 'Navigating Challenging Times: A New Zealand Perspective' (Paper Presented at the ATTA Annual Conference, Brisbane, 19-20 January 2023).

⁴⁷ Granger and Sawyer, above n 45, 185-186 (emphasis added in headers).

(3) The shift from merely consulting stakeholders during the design process to collaborating with them.

Stakeholders must be actively involved in the design and implementation phases, reflecting a two-way engagement. This reflects the fact that the reach of tax administrations extends well beyond taxation, being linked to welfare and other government services – they are effectively a digital intermediary between citizens and businesses, and the government.

(4) *Support people through transition*, especially the vulnerable.

An outstanding challenge is to invent new approaches for the digitally challenged and vulnerable for whom the digital approach is unsatisfactory. Recognizing that not all businesses are highly digitalized is vital to help them transition to becoming more digitalized.

(5) Managing ecosystem risks.

High levels of system integration mean that risks, such as system outages, extend beyond the tax system.

Inland Revenue itself is reflecting upon what tax administration should be like in a digital world now that the BT is complete.⁴⁸ With a shift to operating in an even more digitalised environment, three key areas are seen as being impacted:⁴⁹

- **External parties:** Their potential to meet the needs of taxpayers and recipients of payments and what changes are necessary to facilitate this.
- **Data:** Rationalising data collection and unlocking value through taxpayers authorising Inland Revenue to share their data.
- **Tax rule changes:** Adapting the tax system to more digital processes and making changes that facilitate a more automated approach to determining tax obligations.

In moving towards a fully digitalised system, Inland Revenue observes:⁵⁰

A fully digital system

1.9 Businesses are moving online and this shapes our thinking about the future world in which the tax system will operate. Key features of this world are likely to be:

- Businesses operating in a digital ecosystem – that is, they're connected digitally to their suppliers and customers.

⁴⁸ Inland Revenue, *Tax Administration in a Digital World: An Officials' Issues Paper to Support Future Tax Administration* (Policy and Regulatory Stewardship, February 2022). This document and the submissions received have informed the 2021-22 Tax Policy Work Program (TPWP), available at: <https://www.taxpolicy.ird.govt.nz/work-programme>.

⁴⁹ Ibid 15 (emphasis in original).

⁵⁰ Ibid 5-6 (emphasis in original).

- Administration of tax and social policy payments integrated into broader economic systems, for instance individuals or businesses can use a common digital identity across a range of services.
- Tax administration processes embedded in the natural systems businesses are using, that is, the systems that businesses use to suit their business rather than to suit tax obligations.
- Digital processes enabling data to flow in real time.

1.10 Further features of this future tax administration could include:

- Taxpayers granting and managing consents to the party or parties they want to represent them or manage their tax affairs and with whom they are comfortable having their data shared.
- Processes being streamlined through there being one source of truth for data and information. Rather than there being separate data repositories that need to be reconciled, participants would access this data when needed.
- Increased partnering between Inland Revenue and the external parties who provide the apps and services that taxpayers will use.

Inland Revenue sees that the process of moving towards this ideal will take at least a decade, recognising that the needs of taxpayers, social policy customers, and businesses vary. In particular, it has identified that in moving forward in this direction it will require evolution in all aspects of its strategy. Thus, the coming years should provide interesting material for further reflection and analysis.

Having outlined the prior literature and debate over the impact of globalisation and digitalisation, both globally and with a particular focus on New Zealand, what are the takeaways that can be learnt from the last decade or so, and the observations moving forward? The current author expects that New Zealand will support and implement the BEPS 2.0 two-pillar approach, at least with respect to Pillar 2 through adopting the GloBE rules (assuming a critical mass of other countries do the same), but may implement a DST if it believes progress remains slow on BEPS 2.0.

4. DISCUSSION

A good point to start is to reflect upon the discussion in the prior section and focus on the research question:

RQ: *How have globalisation and digitalisation impacted tax administration in New Zealand?*

It is important to note that in referring to tax administration this article focuses on tax authorities but also recognises that globalisation and digitalisation impact other significant stakeholders in the tax administration process, such as tax practitioners and taxpayers, and less directly, the law-makers. In one respect a major driver has been the G20/OECD response via BEPS 2.0, measured principally through the overarching leadership of the Inclusive Framework. It should be recognised that there are numerous other digitally-based initiatives affecting the administration of tax in New Zealand, such as new goods and services tax (GST) rules for digital platforms (which will be discussed

shortly), as well as relatively recent rules for GST to be applied on offshore services. Another example is Inland Revenue's recent responsiveness to the Covid-19 pandemic, which was highly successful and to a very large extent driven by its investment through the BT program in digital platforms and revised methods of working. This was also discussed in the previous section of the article.

While the G20/OECD are desirous of a multilateral and cooperative approach, a number of jurisdictions have responded with a range of unilateral measures, such as diverted profits taxes (DPTs), DSTs, expanded definitions of a permanent establishment (PE), new levies and additions to turnover-type taxes and the like. Potentially a consensus-based solution with the active and meaningful engagement of all governments (via the Inclusive Framework) and stakeholders may contribute significantly to the long-term stability of the international tax system. Since one of the major aims is that the 'solutions' are global and inclusive in nature, then these solutions must be practicable for all tax administrations, including those with few resources (such as in many developing countries).

In this regard New Zealand has enacted a more expansive definition of a PE and has a policy proposal for a DST (but no clear indication of whether it will be advanced any further), and no proposal for a DPT. Otherwise, New Zealand has adopted the OECD's recommendations and is an active member within the Inclusive Framework. Thus, from a high-level perspective, New Zealand's tax administration (especially Inland Revenue as the tax authority) is adapting to the challenges of globalisation and digitalisation in the spirit of the OECD's recommendations, with legislative amendments made to reflect domestic ratification (at least with respect to BEPS 1.0). The New Zealand government has clearly indicated that it will implement the GloBE rules as part of the two-pillar approach of BEPS 2.0 (with application depending upon a sufficiently large degree of global adoption).

What all of this shows with respect to globalisation and BEPS is that the OECD is the leading 'player' and influential institution that is shaping international taxation. The OECD has evolved over the last 10 to 15 years to be the 'global tax authority' in the absence of any effective alternative body. While working on the basis of consensus, few 'small nations' have stood up to the OECD's recommendations. Indeed, being a small nation and one that sees itself as good global citizen (and a 'responsible' OECD member), New Zealand has felt constrained to adopt OECD guidance and recommendations. As such this reflects this author's expectations when applying a New Institutionalism lens.

Digitalisation is impacting many parts of the tax system (especially administration), not just the international rules. This includes the gig and sharing economies,⁵¹ where online multi-sided platforms are operating with potential significant impact on tax status of individuals and revenues. This raises issues over educating taxpayers of their obligations and looking to have a level playing field with existing players providing similar services. Tax administrations need to use digital tools to deliver improved

⁵¹ For New Zealand's response on this issue, see Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2) 2022 (enacted into law on 31 March 2023). For discussion on the earlier discussion paper and the Bill, respectively, see Vivian Cheng and Cameron Jacob-Sauer, 'Tax Update' [2022] (3, April) *New Zealand Law Journal* 76; Chris Harker and Matt Handford, 'Tax Update' [2022] (9, October) *New Zealand Law Journal* 296.

taxpayer service (eg, more precise pre-filing, or more personalised assistance). Concurrently tax administrations need to harness big data to enhance tax compliance (eg, identifying trends and using ‘nudges’).⁵² These approaches need to be taken with caution to protect against risks (eg, blockchain (in the form of crypto currencies) are impacting tax transparency and adding to risk).

New Zealand’s Inland Revenue has embraced these changes, with its online platform (myIR) the principal way in which it engages with taxpayers and tax practitioners (but not without a number of hiccups and challenges).⁵³ It is making extensive use of big data in all aspects of its operations, and in many respects is taking a less technical and complex approach⁵⁴ in dealing with taxpayers concerning their international tax obligations compared to other jurisdictions such as Australia. The role of institutionalism takes more of a national focus when it comes to digitalisation and Institutional Theory, with Inland Revenue as the tax authority filling the role of the powerful institution that requires all that need to engage with it to adapt to the environment created by BT. That said, Inland Revenue’s leading and influential role was vital in New Zealand’s fiscal response to Covid-19.

The response needs to be ongoing and adaptive as new developments emerge. While taking action that supports New Zealand as a whole, such as through tax base protection is important, this must be evaluated against its international obligations as an OECD member, and the ‘global good’. New Zealand has the advantage of being a small nation, and as such, is able to be reasonably nimble in its actions. That said, New Zealand does not tend to be a leader in new initiatives, but seeks to come ‘mid-pack’ to evaluate the implications for early adopters. It also has a tradition, until recent years,⁵⁵ of being very transparent and consultative in developing tax policy responses through use of the GTPP.

Going forward there are some New Zealand unique features that will need to be embraced, regardless of the developments in globalisation and digitalisation. These include the impact of the growing indigenous Māori economy,⁵⁶ assessing whether the current tax system is fit for purpose (including the proposed new tax principles reporting framework⁵⁷), and the final outcome of BEPS 2.0.

⁵² In addition to big data, other relevant technology trends include analytics, artificial intelligence (AI), machine learning, the Internet of Things (IoT), mobility and cloud computing. For a discussion on how AI may affect the operations of the Australian Taxation Office by 2030, see Duncan Bentley, ‘Tax Officer 2030: the Exercise of Discretion and Artificial Intelligence’ (2022) 20(1) *eJournal of Tax Research* 72.

⁵³ For a useful overview of how a revenue authority may successfully embark on a digital transformation journey, see Microsoft and PwC, *Digital Transformation of Tax Administration* (2018), available at: <http://info.microsoft.com/rs/157-GQE-382/images/Digital%20Transformation%20of%20Tax%20Administration%20White%20Paper.pdf>.

⁵⁴ See, for example, Inland Revenue, *Offshore Tax Transparency* (IR 1246, 2022).

⁵⁵ See Sawyer, ‘Tax Policy Without Consultation’, above n 31.

⁵⁶ The ‘Māori economy’, all business assets of people and entities who identify as Māori, in 2018 was estimated to be worth approximately NZD 69 billion.

⁵⁷ The Tax Principles Reporting Bill 2023 was tabled as part of Budget 2023 on 18 May 2023. The proposed tax principles are horizontal equity, vertical equity, efficiency, revenue integrity, compliance and administrative costs, certainty and predictability, and flexibility and adaptability. The Bill focuses on reporting by the Commissioner each year but is silent about how the information may be used. There is no reference to the current Broad Base Low Rate (BBLR) framework. The Bill received Royal Assent on 29 August 2023 and became effective the next day.

Alongside the forces of globalisation and digitalisation, there are uniquely New Zealand issues impacting upon tax administration. In terms of supporting the Māori economy, Inland Revenue's Policy and Regulatory Stewardship group is at the start of its Māori perspectives journey.⁵⁸ This panel was established to help guide the development of Inland Revenue's internal practices to embed Māori perspectives and effective Māori engagement to inform the formulation of its tax and social policy advice. It comprises a Chair and six advisors from across the Māori sector, meeting at least three times a year. The panel is now into its second year of operation and has considered the following policy items:

- Officials' framework for environmental and resource pricing;
- Tax Administration in a Digital World;
- New Zealand Income Insurance; and
- Tax[ation] Principles [Reporting] Act.

The panel has considered how it might use *He Ara Waiora* (to assist the New Zealand Treasury through applying a Māori approach to lifting living standards by understanding *waiora* or wellbeing⁵⁹) to frame its own advice. In particular, it has requested all policy items/officials work through *He Ara Waiora* before coming to the panel to encourage thought as to how policy might impact on Māori.

While it may not be readily apparent that such 'domestic' issues are of direct relevance to globalisation and digitalisation, the New Zealand government has made it clear that the Māori economy is critical to New Zealand's approach to globalisation and digitalisation, and that the Treasury's Wellbeing measures (via the Living Standards Framework),⁶⁰ are to be applied to all aspects of government action, including how government departments and ministries operate, as well as tax policy development.

New Zealand's future tax administration system will be driven by a mix of globalisation and digitalisation, and domestic features. Major forces will include:⁶¹

- enhanced use of automation;
- greater use of business systems to capture required tax information;
- resolving data ownership, control and access issues;
- clarifying the rights and obligations of tax intermediaries;

⁵⁸ This is drawn from a presentation by Selwyn Hayes and Heta Hudson to the 2022 Chartered Accountants Australia New Zealand Tax Conference in 2022.

⁵⁹ See further Matthew Scobie (Kāi Tahu) and Tyron Rakeiora Love (Te Ātiawa), 'The Treaty and the Tax Working Group: *Tikanga* or Tokenistic Gestures?' (2019) 21(2) *Journal of Australian Taxation* 1.

⁶⁰ See NZ Treasury, *The Living Standards Framework 2021* (28 October 2021), available at: <https://www.treasury.govt.nz/information-and-services/nz-economy/higher-living-standards/our-living-standards-framework>.

⁶¹ This draws upon a presentation made by Scott Mason and John Cuthbertson to the 2022 Chartered Accountants Australia New Zealand Tax Conference in 2022.

- balancing the level of information required as between the utility to Inland Revenue and the time/cost of taxpayer compliance;
- revisiting of self-assessment options;
- revising the penalties regime;
- improving the resolution of tax disputes, and
- a revision of the privacy rules.

Vigilance is therefore needed to monitor developments globally and New Zealand's response to these developments as they emerge.

5. CONCLUSIONS, LIMITATIONS AND FUTURE RESEARCH

This exploratory single country case study has sought to answer the question: *How have globalisation and digitalisation impacted tax administration in New Zealand?* The prior discussion commenced broadly with developments globally before moving to focus on New Zealand. It has focused on the impact of major institutions such as the G20/OECD globally, and Inland Revenue and the New Zealand government domestically. Collectively these organisations form a sizeable number of the major stakeholders, along with taxpayers and tax practitioners, and to a lesser degree other organisations.

Applying Heij's research model, the major causes identified in box 1 of Figure 1 in section 2 are all present in shaping tax administration (with a particular focus on BEPS). The state structure was simplified in focusing on a single jurisdiction (New Zealand), although an in-depth analysis of the political institutions and government role (box 2) was not undertaken. Indications of the culture of public institutions is one of being upfront and reasonably transparent, but with some major limitations in recent years. The international influences of relevance here (box 3) come from the organisations discussed in relation to box 1, especially the OECD for matters regarding globalisation and international tax policy, and Inland Revenue within New Zealand for digitalisation via BT. The political response (box 4), using a tax policy lens to focus on the impact on tax administration, has been driven by Inland Revenue (often at the request of the government) in New Zealand, being largely informed by the work of the OECD and to a lesser extent, what is in New Zealand's self-interest. There have been significant changes in legislation to address issues from BEPS 1.0, with the response to BEPS 2.0 still a work in progress but with a clear direction with respect to the GloBE rules being adopted as part of Pillar 2.⁶² Other significant changes have come from the impact of digitalisation through the development of a new information system and enhanced inter-relationships between tax policy and social policy. As indicated earlier, the content of box 5 has had a minor role for the purposes of this article other than acknowledging that there are New Zealand domestic groups that have exerted pressure on the changes in tax administration, such as the professional accounting bodies (eg, Chartered Accountants

⁶² See Inland Revenue, *OECD Pillar Two: GloBE Rules for New Zealand, An Officials' Issues Paper* (May 2022) for the recommendations concerning the approach New Zealand should take and the New Zealand government's response in the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill 2023. This Bill remains at the select committee stage with expectations that after the October 2023 General Election it will be revived by whatever parties form the new government. There is no evidence of any political opposition to Pillar 2 being implemented in New Zealand.

Australia and New Zealand (CA-ANZ)) and the New Zealand Law Society (NZLS). Thus, there is emerging evidence through an Institutional Theory lens to conclude that the OECD is shaping global tax policy by seeking to set new normative approaches, while domestically this is more focused on the actions of a particular revenue authority (Inland Revenue in the case of New Zealand). This conclusion becomes more nuanced when BEPS 2.0 is the focus since this brings into close proximity the BEPS initiatives (from globalisation) with digitalisation (BT in New Zealand case).

Bassey and co-authors⁶³ conceptual model fits well although the cycle remains incomplete. At this point, while it is circular in nature, the context aspect and the role of stakeholders is clear as digitalisation has been embraced. The technology is in place but the challenge that remains is to provide demonstrated results that justify the investment and new approach. This should become clearer in the coming months.

While New Zealand has largely embraced the implications that globalisation and digitalisation have presented through adopting the G20/OECD's recommendations on BEPS 1.0 (with the 'jury being out' on BEPS 2.0 Pillar 1 but clarity is needed with respect to adopting the GloBE rules under Pillar 2), it must also make adaptations that fit the uniquely New Zealand features, such as the need to recognise the partnership with Māori and the work that the New Zealand Treasury is undertaking on measuring wellbeing.

However, one needs to be cautious in drawing conclusions, particularly given the incomplete nature of the responses to BEPS 2.0 initiatives in New Zealand (as well as globally, especially concerning Pillar 1). While it is likely that the modernisation of New Zealand's tax system, which has been progressing steadily, makes it more likely that it can comfortably address globalising initiatives, it is not clear that the converse is necessarily true. While the digital initiatives under BT having been completed in roughly the same period as BEPS 1.0 and the concepts behind BEPS 2.0, finalisation of BEPS 2.0 has not been achieved. That said, New Zealand is in a good position to respond to BEPS 2.0 through its digitalisation initiatives.

In terms of limitations, this article is a single case study, the findings of which are unlikely to be fully transferable to other jurisdictions. Unsurprisingly, the analysis is based upon publicly available information and the author's own interpretation of that information. Furthermore, the full impact of globalisation and digitalisation is yet to be felt, with the response through BEPS 2.0 far from certain in terms of the extent of adoption by Inclusive Framework members.

In some respects, these limitations provide opportunities for future research, such as undertaking a similar analysis for other jurisdictions, such as Australia, and to undertake follow up research when the full impact of globalisation and digitalisation (especially as seen through BEPS 2.0) can be assessed. Once BEPS 2.0 is finalised, future research should assess its impact on addressing issues arising from globalisation and digitalisation.

⁶³ Bassey et al, above n 27.