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Sharing beyond the State: International Tax Norm Negotiations at the OECD

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Introduction

This contribution explores two questions: what type of monetary transfer are taxes? And why and for whom does it matter that taxes are understood within an emerging anthropology of tax? My perspective is anthropological, but my concern is interdisciplinary. I aim to use the conceptual resources of anthropology to further interdisciplinary dialogue on notions of taxes.

Sociologists Issac Martin, Ajay Mehrotra, and Monica Prasad note in their groundbreaking volume on the new fiscal sociology that 'in the modern world, taxation *is* the social contract' (2009: 1). For them, taxation seems to be the most important way that citizens relate to the state (see also Campbell 1993). Similarly, fiscal economists and political scientists working on state building and development locate taxes at the core of the state–citizenship nexus. They stress that improving revenue raising in low-income countries enhances state–society accountability because these scholars treat taxation as an empowering bargaining tool for citizens with the state (Brautigam, Fjeldstad, & Moore 2008; Joshi, Prichar, & Heady 2014). In contrast, recent anthropological tax scholarship calls for a need to move research 'beyond the social contract' and to 'decenter' taxation from the state (Makovicky & Smith 2020: 1). These studies demonstrate that the public good, in many settings, is not exclusively produced by the state and through tax payments, but also through informal payments of fees, tithes, dues, communal levies, or even bribes. People make such payments to neighbourhood associations, churches, unions, or cooperatives to finance collective worlds, often in addition to paying taxes to the state (Bäumer Escobar 2020; Kauppinen 2020; Sheild Johansson 2020). This new

The chapter has greatly benefited from constructive critique from Julia Eckert, Miranda Sheild Johansson, Robin Smith, Horacio Ortiz, and Thomas Widlok. I am most thankful for the time and attention they have given to it.

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anthropological research questions the universal applicability of liberal social contract thinking and shows that, in many postcolonial and settler states, taxation has been historically associated with oppression and extortion rather than political representation, accountability, and service provision (Sheild Johansson 2020; Willmott 2021). People may commit themselves to alternative 'fiscal contributions' out of necessity in states that rarely provide the desired social goods. They may also distrust, and want to disengage from, governments with austerity policies that have taken away social welfare entitlements and increasingly threaten livelihoods (Bäumer Escobar 2020: 59). This crucial research highlights the 'fiscal essentialism' in the widespread assumption that the informal economy is untaxed or that its actors are tax evaders (Meagher 2018: 4–6). It recognises people's informal tax contribution to maintaining the collective public good, and questions the popular public policy notion of enhancing development by mobilising more domestic resources.

There is a noticeable effect from this anthropological push to create conceptual space between tax and the state. Tax is now treated as only one form of payment in 'a universe of payments' (Kauppinen 2020: 41) or as part of a 'broader repertoire of financial contributions that people draw on to actively create different fiscal commons' (Bäumer Escobar 2020: 59). Yet is a tax really the same as 'tax-like payments', as other contributions to a 'fiscal commons'? While they may be similar in terms of distribution – one might argue that a street is a street and a hospital is a hospital – they may potentially differ in terms of the social relations they involve and the kind of sociality they enable. I argue that the anthropological instinct to work with a broad definition of taxes, paying close attention to what people on the ground call a tax, makes it difficult to distinguish analytically between seemingly similar, but potentially very different forms of payments. My conceptual deliberations, grounded in my ethnographic research on the making of international tax norms, rules, and standards at the Organisation for Economic Development and Co-operation (OECD), lead me to ask: *what type of money transfer are taxes?*

Between 2015 and 2021, I followed tax experts[1] who were involved in the G20-OECD Base Erosion and Profit Shifting (BEPS) initiative. The

[1] I observed the typical processes occurring in OECD Working Party negotiations (NO. 6 'On the Taxation of Multinational Enterprises'), and also the preparatory work that goes into the design of international norms. I conducted interviews and observations at the OECD Center for Tax Policy and Administration in Paris, at finance ministries, treasuries, and tax authorities in OECD-G20 countries. I explored the wider network of international

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BEPS project was launched in 2013 after the international system for taxing multinational enterprises (MNEs) profits received unprecedented international public and political attention following the 2008 financial crisis. MNEs were accused of failing to pay their fair share of corporate income tax by taking advantage of gaps and mismatched tax rules to make profits 'disappear', or shifting profits to tax haven jurisdictions with low tax rates but where they engaged in little or no 'real' economic activity. These strategies generated little or no overall corporate tax payments. The overarching goal of the BEPS initiative was to align taxation with 'real economic activity' and 'value creation' (OECD 2013, 2015). Previously, the dominant assumption in international tax law was that a firm creates value via the *functions* it exercises with the *assets* it uses, and according to the *risks* it assumes. Contractual relationships were often used as proxies to determine the territories where these three components were located. The BEPS project aimed to move beyond arbitrary decision making and towards 'real economic activity'.

BEPS's focus on value creation, although unintended, opened up a space at the OECD to renegotiate the sharing of taxing rights. How and where value is recognised by the tax system, designed by tax experts, determines how MNEs divide their income among their worldwide affiliates. This, in turn, determines where and how much tax they pay. I argue in this chapter that more nuanced understandings and conceptualisations of taxes are needed to explore the dominant principles that structure the system determining the sharing of taxing rights and amount and jurisdiction of MNE tax payments.

This chapter is structured as follows. The first section uses official and legal tax definitions to emphasise that taxation is conceptualised here as a form of payment without direct reciprocity. In contrast, recent anthropological studies on tax often work with notions of reciprocity, exchange, and calculative returns, thereby ignoring the one-way flow of tax payments and the lack of direct return. To augment our conceptual toolkit, I suggest that anthropologists of tax draw on the anthropology of sharing. This field has argued against subsuming sharing as a form of reciprocity and exchange and conceptualised taxation as a 'mandatory form of sharing'. The second section reviews ways in which anthropologists have

tax experts, which include representatives of corporate tax offices, globally active law and advisory firms, and academics in law schools. I followed their interactions at OECD's Public Consultation meetings in Paris and in exclusive international tax seminars and conferences worldwide.

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considered taxation and sharing, and highlights the similarities between international taxation and sharing practices. From my ethnographic findings, I argue that the process of international tax law negotiation is constituted in modes that consider the relatedness people express, the tax conversations people have, and how presence is understood in this field. In summary, I reflect upon the broader relevance of thinking of taxation through a sharing lens. This conceptualisation foregrounds questions of the access of 'others' to the public good and the contributions of 'others' to value creation. It gives us space to think in ways distinct from dominant exchange and reciprocal logics, and outside notions that taxation cannot be separated from the nation-state.

What Is a Tax?

In its glossary, the OECD's Center of Tax Policy and Administration (CTPA) defines a tax as 'a compulsory unrequited payment to the government'. The CTPA is part of the OECD secretariat. From its Paris base, it has shaped tax policies around the world since the 1960s (Picciotto 1992: 65). The agency's definition of tax is echoed in domestic tax legislation and concurs with the notions of many revenue authorities: all emphasise that taxes are required payments.[2] Failing to declare income or pay tax is a punishable offence in most jurisdictions. At least in theory, resistance will lead to fines and/or criminal charges. The OECD definition stresses another typical point by stating that tax payments are monetary transactions for which nothing is directly received in return. Taxpayers cannot decide which specific public goods and services are funded with their payments, and there is no direct relationship between tax payments and the services and benefits a taxpayer receives. Germany's Fiscal Code specifically emphasises that:

> 'Taxes' shall mean payments of money, other than payments made in consideration of the performance of a particular activity, which are collected by a public body for the purpose of raising revenue and imposed by the body on all persons to whom the characteristics on which the law bases liability for payment apply; the raising of revenue may be a secondary objective.[3]

[2] For example, https://apps.irs.gov/app/understandingTaxes/student/glossary.jsp#T. Last accessed 18 January 2022.

[3] Fiscal Code of Germany in the version promulgated on 1 October 2002 (Federal Law Gazette [Bundesgesetzblatt] I p. 3866; 2003 I p. 61), last amended by Article 17 of the Act of 17 July 2017 (Federal Law Gazette I p. 2541).

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Yet, such legal working definitions, which cast paying taxes as obligations without guarantee of a specific return, are ignored in some anthropological theorising about the relations that taxes create and involve. The underlying conceptual focus in these deliberations tends to be reciprocity or exchange. Lotta Björklund Larsen, who has conducted research amongst Swedish taxpayers and within the Swedish tax authority, describes taxes, for instance, explicitly as 'gifts' that 'circulate in this society with the certainty that what is given to the state guarantees a reciprocal action' (2018: 69). She states that people do not always maximise their income in relation to tax payments and penalties – an assumption, she emphasises, that has been influential in tax compliance research. Rather, they evaluate what they get for taxes paid in time and space (Björklund Larsen 2018: 51), acknowledging a time gap between giving and receiving. Taxpayers in her study felt that the state owed them something: if the state did not pay them back or meet their expectations of how revenue should be spent, then they would act themselves. They could, for instance, 'balance reciprocal relations' by 'working in black' (*svart arbete*), and thereby avoid paying taxes (Björklund Larsen 2018: 69). Björklund Larsen's study demonstrates that gift exchange and reciprocity is the dominant emic model for how taxes are understood by Swedes. From an analytical perspective, however, these payments or non-payments of taxes are not necessarily reciprocal exchanges. Most tax systems produce net-providers and net-receivers. In our analysis, it might therefore be useful to distinguish representations of reciprocity from effects of reciprocity (Widlok 2017: 20).

What taxpayers expect in return for having paid tax varies in different studies. It includes tangible public goods and services such as better highways, public schooling, or public health care and decent pensions (Bäumer Escobar 2020: 68; Björklund Larsen 2018: 36). Expectations can also incorporate intangible values, including that everyone should pay their 'fair share' and should be treated equally by tax authorities and laws (Björklund Larsen 2018: 26). Lastly, specific demands can arise in certain sectors, such as the tailored business advice and networking opportunities in Kauppinen's study of a Ghanaian businesswoman becoming a taxpayer (this volume). Generally, one could say that what people expect seems to be a mix of personal calculations and reasoning about expenditure and procedure – about how tax money is collected and on what it is spent. The starting point in much anthropological tax research and theorising is that people who are forced to pay taxes or decide to become taxpayers have specific expectations that they will get something in

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return. The underlying assumption is that taxpayers must have a very good reason to pay taxes: why would they otherwise give up *their* hard-earned money? That taxation might come prior to conditions of ownership, of the ability to say 'this is mine', or that the transfer flows only in one direction, it becomes almost impossible within this line of thinking. At some point, the question of return always gains centre stage when tax payments are analysed. This is also true of studies arguing against the notion that taxes create reciprocal relations.

In her work on the perspectives of indigenous 'would-be taxpayers' in Bolivia, Miranda Sheild Johansson describes actors that 'reject a fiscal model of reciprocity, which governments and social scientists so often employ when discussing taxes' (2020: 19). Due to their historical experiences of tribute collection, endemic state corruption, and state finance via natural resource exploitation, these indigenous Bolivians were not interested in the tax culture the Bolivian government was trying to promote, where all members of society paid taxes in return for public services, infrastructure, representation, and social rights (Sheild Johansson 2020: 19).

Sheild Johansson's study illustrates well that fiscal reciprocity was the emic model of government and politicians and not of the indigenous population. Selective calculations of reciprocal and broader returns nevertheless seem to drive people's engagement with tax payments (see Sheild Johansson, this volume). This group of Bolivians paid only property and commercial licence taxes. In return, they received private property rights that enabled them to live in peace without state harassment.

My aim here is not to deny that taxes can create reciprocal relations or have reciprocal effects, or that people calculate what return they get for taxes paid. I suggest, instead, that this conceptual focus on reciprocity and calculation limits our understanding of what type of money transfer taxes in effect are. More precision than the presumption of reciprocal relations offers is needed if we want to work towards a conceptual framework that incorporates tax payments across different settings – whether Bolivia, Ghana, Sweden, or Spain – and transnational tax payments between multinational corporations and jurisdictions all over the world.

To augment our conceptual toolkit, I suggest that we draw on the anthropology of sharing. While this body of literature focuses mostly on small-scale sharing practices, often in hunter-gatherer societies, it provides a vocabulary helpful for analysing tax payments anthropologically. Scholars in this field have famously argued that 'sharing is not a form of exchange' (Woodburn 1998: 48). Nor should it be treated as a form of

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reciprocity closely related to gift-giving (Widlok 2017: 12–16; see also Price 1975). Taxation has been conceptualised by Thomas Widlok, whose work I draw on and would like to extend, as 'large-scale sharing' or 'mandatory sharing' (Widlok 2017: 153). He defines sharing as 'enabling others to access what is valued' (Widlok 2017: 1) and argues that it is 'a versatile and widespread human practice' that should be treated as a 'fundamental and independent mode of transfer' in the repertoire humans rely on to live together (Widlok 2021). Ethnographic accounts of sharing transactions do not deny that such transfers create reciprocal exchanges, but these are 'outweighed by unilateral transactions, flows in one direction only' (Widlok 2017: 14). There are net receivers and net providers.

In contrast, the core concept of reciprocity is the notion of a 'balance of comparable mutual sacrifices' (Widlok 2017: 12). When sharing is subsumed under reciprocity, the term reciprocity becomes meaningless 'since mutuality is lost as the defining property' (Widlok 2017: 12). In the anthropological tax debates in which I participate,[4] they emphasise at this point Sahlins' model of generalised reciprocity, which pays attention to the time lapse between giving and receiving, where the return can happen at some undefined point in the future. Björklund Larsen argues, for instance, that there might be immediate returns and more intangible long-term returns for tax payments, but eventually it will even out and benefit the giver (2018: 33, 42). Thus, taxes are ultimately deemed reciprocal. Critics of this 'stretched' notion of reciprocity (Widlok 2017: 17; see also Price 1975: 5) state that with it everything, including unbalanced transfers, can be deemed reciprocal, which makes reciprocity so general that it loses its meaning. They question whether it makes analytical sense to call a transfer reciprocal when the actors cannot realistically expect the return gift or the balance. In many tax events this is, for instance, not the case.

Widlok emphasises that 'sharing' as a norm may be 'unconditional*al*' but sharing as a practice is not 'uncondition*ed*'. The important question for him is: 'what conditions sharing if it is not a simple law of reciprocity' (2017: 17)? In other words, when doubting the universality of this quasi-evolutionary 'natural' law of reciprocity that explains any kind of transfer between humans that is not an exchange, we need to search further for what makes people or whole countries share or give money in the form of tax or taxing rights. Widlok suggests that sharing is

[4] See the author's footnote in the introduction to this volume.

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constituted by a specific mode of relatedness, conversation, and presence (2017: 59–88). Before discussing the meaning of these modes and how they provide a vocabulary helpful for analysing the dominant principles that structure the system determining the amount and jurisdiction of MNE tax payments, I will give a brief overview of the ways in which anthropologists have considered sharing and taxation.

Taxation Likens Sharing

Sharing, defined as 'allowing others to access what is valued', is a complex institution, a 'cultural innovation', and an 'achievement' (Widlok 2021). How people share, with whom, what, and under what conditions they share varies in different settings, but sharing practices have been part of every observed society around the world – they are 'cultural universals' (Widlok 2017: 16).

Within the anthropology of sharing, some scholars explicitly use the term tax, speaking of hunters 'taxed by the less successful' (Clark 2007: 36), or estimating a direct tax rate based on a formal mathematical model of sharing (Chakraborty 2007: 82). John Price used the term 'pooling' for large-scale distribution practices that involve centrally organised allocation through chiefs or states (1975: 4). Although he stated that sharing also has a pooling function, he spoke of sharing as an allocation system (Price 1975: 5), defining it as an 'allocation of economic goods and services without calculating returns, within an intimate social group, and patterned by the general role structure of that group' (Price 1975: 4).

Widlok states that Price and others differentiate between taxing and sharing by arguing that sharing becomes more difficult once it moves beyond 'intimate groups' (2017: 153). In contrast, he emphasises that people have close relations in larger groups such as professional groups and nations: it is difficult 'to determine any demographic threshold which would turn the pooling of resources inevitably from sharing to obligatory taxation' (Widlok 2017: 153). Widlok suggests the term 'mandatory sharing' to distinguish the obligatory character of taxation from other forms of demand sharing (2017: 153). Most people have hardly any option to exit states' tax demands, for instance when tax authorities rely on Value Added Tax (VAT) or Pay As You Earn (PAYE) models to collect taxes.

However, the size of the group is not the reason why anthropologists of sharing do not consider taxation to be sharing (Widlok 2017: 154). Instead, it is that the state is involved as a third party to the providers and

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receivers. Moreover, the state is privileged over how money is collected, redistributed, and spent. The general issue raised in debates when there is disagreement about modalities of collection and redistribution is, according to Widlok, 'What kinds of abilities should make me a contributor and what kinds of needs would make you a recipient' (2017: 154)? For instance, when tax-financed welfare payments are presented as generosity or altruism and attached to means or work tests, eligibility criteria, and reward and sanction systems, this is not a form of sharing. Sharing is, as Widlok shows, an *unconditional* act and a *matter of entitlement* (2017: 153).

What is significant is that sharing does not create specific obligations of indebtedness in social relations that are so characteristic of commodity and gift exchange. In contrast, sharing practices create continuous opportunities: opportunities to make demands for a share, to respond to such requests and renounce them. It is a transfer that is not directed towards a derived outcome, for instance equality, symmetry, or the idea that things must even out, but it is a transfer mode that assists people to live with the constant inequalities, unevenness, and unpredictabilities that life produces and that are often beyond people's control (Widlok 2017: 26–27). There is not only no return gift in sharing practices, there is also no display of generosity and power that often accompany acts of gifting. Sharing realises intrinsic goods. It provides people, above all, with access to resources which they otherwise would not have.

Taxpaying can facilitate and enable sharing, Widlok states, when money is handed out unconditionally, as with Basic Income grants and where the personal autonomy and freedom of recipients is respected so they can use their income as they wish (Widlok 2017: 154). The point that taxation can enable sharing, but does not automatically do so, is a helpful differentiation that highlights the temporality and conditionality of the transaction. For instance, one can easily imagine basic income schemes that do not enable sharing, namely when they form part of so-called neoliberal empowerment policies that link a reduction in welfare state services and security systems to the increasing call for 'personal responsibility' and 'self care'. Such lump-sum schemes are incompatible with the logic of sharing when they delegitimise and limit people's opportunities to make demands for an additional share when in need and special circumstances.

The important insights I take from anthropological scholarship on sharing are that it is, firstly, difficult to define demographic thresholds beyond which the pooling of resources or taxing becomes sharing, or

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ceases to be sharing. There is no 'natural' political unit in which people do or do not share. Secondly, taxation and sharing practices have many things in common and maybe share at times more commonalities than taxation and reciprocal gift exchanges. Lastly, this scholarship shows that people engage in transfers that are unidirectional and that they do not only do things for one another when they can expect reciprocation (Widlok 2017: 13).

Widlok's Basic Income grant example focuses on the modalities that govern when and how tax revenue is spent. He marks in these transfer processes moments when taxation enables sharing. I will discuss now how taxation likens sharing further upstream in the taxation process, namely during international tax norm negotiations. I argue that specific modes of relatedness, conversation, and presence constitute how countries share the right to tax multinationals, and collect revenue from them in the first place. Reciprocity and exchange are not the dominant principles that structure the system determining the amount and jurisdiction of MNE tax payments.

I look at international tax law negotiations and payments through a sharing lens, even though some of my interlocutors do not think about it in that way. This may be because, in everyday language in many Western countries, sharing is usually associated with altruism, care, and generosity, but rarely with interest, antagonism, and a competitive market economy. Additionally, there are strategic reasons why some interlocutors use or reject specific terms. Official BEPS documents clearly state that the project does not aim to change existing international standards on the allocation of taxing rights to cross-border income, although some countries – particularly, those with emerging economies – demand such a debate (OECD 2013: 11).

On Modes of Relatedness in International Corporate Tax Debates

According to Widlok, relatedness is a central condition that facilitates sharing (2013: 19). In hunter-gatherer societies, referring to each other in terms of kin makes demands for sharing more successful – it is easier to hear them. The process is mutually reinforcing. Prior sharing practices shape how people call to each other. Yet, Widlok emphasises, romantic assumptions that sharing only takes place within intimate, close knit communities are false (2013: 20). Nations or professions are examples of very large groups in which people have developed ways of having 'intimate relation[s]' (Widlok 2017: 153, 163). In other words, how

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relatedness is conceptualised in specific settings, and what socially accepted practices to share emerge, is not self-evident. These relationships are socially negotiated and contingent on the political system through which people order their relations to specific resources and objects of value (Eckert & Mugler n.d.; Eckert 2021).

Delegates who negotiate international tax norms, rules, and standards at the OECD express their relatedness in national terms and in terms of the office they represent and its mandate. When commenting on ongoing negotiations, they frequently made statements such as: 'my job is to defend the interests of [country K]' or 'you have to engage carefully in the OECD negotiations and very aggressively defend your principles and defend the [country X] tax base . . . [as] other countries are trying to take money that belongs to us'. During sessions, delegates call each other, not by name, but by the name of the country they represent. Even during breaks, a delegate would tell another delegate, 'Good work [country A],' after intense back and forth discussions about the specific wording of a document the working party was drafting, to which both delegates had contributed. One delegate mentioned to me, 'as chair of Working Party X I cannot ignore country M' and complained 'country P always gets more speaking time'.

This national orientation is unsurprising. The nation-state is the basic organisational unit of the OECD, and intergovernmental organisations have contributed to stabilising nation-states as a historical entity (Speich 2011; Steinmetz 2021). Member countries are considered equals, acting as sovereign agents irrespective of size and power (each member state finances the OECD based upon its GDP) and of the limitations of national sovereignty in the global capitalist world order.

Many delegates also expressed a relatedness that went beyond national orientation. Elsewhere, I showed that international tax norms are created in the OECD and its secretariat by a close network of tax professionals, a cluster of expertise from a selected number of economically advanced countries, and large corporate and private taxpayer groups (Mugler 2019). These countries and taxpayer groups comprise the majority of staff members of the OECD secretariat. Current international tax law provides them with a shared epistemic language. Some delegates emphasised that the OECD's Working Party and Committee of Fiscal Affairs (CFA) meetings are spaces where countries come to establish relations across borders and beyond nationalism. Yet sometimes this accord breaks down. The top negotiator of country N was irritated when another delegate threw his nationality back at him, and asked: 'J, why did you

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suggest this change to hybrids now, this would be bad for your country?' J understood OECD meetings as a setting where, he said, they 'think of the system that would help MNEs and help countries get the revenue that they need' where they work on something 'larger than their own national interests'. For various tax negotiators, thinking of this system was a proxy for hope, for a commitment to predictable principles, norms, and rules that treat all MNEs equally, independent of their sector and origin, and that solve tax disputes between MNEs and tax authorities, and between different tax jurisdictions to prevent 'tax chaos' and 'tax wars'. The US–China trade war was at its height during my fieldwork and its tangible effects on jobs, prices, and the wider economy concerned various experts who mentioned that their work should contribute to ameliorating such conflicts, besides facilitating trade and economic globalisation.

When tax negotiators reflected on their relatedness in conversations with me, a national orientation seemed natural. For instance, a delegate from a wealthy country, whose domestic tax system facilitates shifting MNE profits away from poorer countries, indicated that she did not feel obliged to give more taxing rights to these states: 'Why should we give more to African countries? I do not see the sense. If the money does not even reach the wider population . . . They must first get organised.' While acknowledging that more money could benefit people in these countries, she delegitimised their demands for more revenue from the global profits of MNEs by pointing to domestic wealth inequalities in various postcolonial states, and also by drawing racialised assumptions about the inefficiency and corruption of 'native' states. In her understanding, each nation-state is solely accountable for economic and social justice within its borders. Extraterritorial obligations to share are tied to specific conditions of good economic governance, which have to be met before different monetary allocations can take place.

Other negotiators were less state centred. To some degree, they had disentangled nationalism from their image of the world. Ralph's reflections illustrate how these delegates switched between a universal and national understanding of relatedness. A tax professional who had already worked as a delegate in private practice and in academia, Ralph said that as a lawyer, the most important clientele he wanted to speak for were 'the absolutely poor in the world, the people who live on two dollars per day or less'. He was embarrassed by how far he had moved away from this important moral reference. The other constituency he preferred speaking for was his own country: 'you know, I am an X, I care about the national interests of [country X], I care about the welfare of its

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citizens, I try to do what is good for the country in some general sense.' He struggled to reconcile his two constituencies in practice. As he said, 'as soon as I work for the government, I understand I have a client, I represent the interests of [his country]. I understand that I have a client, and the client is not a Kenyan.' He indicated, however, that caring for national constituencies is less straightforward since the benefits of facilitating trade and economic growth are not equally spread within a society. Ralph stated that, although he believed in a global economic order 'economic globalisation has not been good for the working class or lower middle classes of [his country], but it has helped to move x amount of people in the world out of poverty'. He quoted the latest World Bank figures, saying, 'in a way I am happy to throw the X people [from his own country] under the bus, because while people might be less well off in [country X], they still are in the x percentile in the world'.

While tax negotiators' personal understanding of their relatedness is secondary in official negotiations, their positions are necessarily formed by conversations with other people over extended periods of time back home in their finance ministries, tax authorities and in other parts of the government, such as departments of trade and industry. Although unofficial, these understandings give insights into how conceptualisations of relatedness differ amongst negotiators. They are shaped by their official mandate, but also by cultural assumptions about efficiency, accountability, and deservingness, or their knowledge of international justice debates. Hence, negotiators disentangle the relations produced by global value chains differently, based on how much attention they pay to macroeconomic realities and to globally circulating figures concerning global economic inequality. Their reflections show how the institutionally determined mode of relatedness at the OECD affects whether a demand is socially acceptable, where demands can be made, and how providers feel they should react. In the next two sections, I show how a different form of relatedness is currently being pushed by various actors who are changing the mode of conversation, and how presence is understood in international tax law. These actors push to acknowledge in international tax norms the factual relation MNEs have to jurisdictions where they conduct business.

On Modes of Conversation in International Tax Debates

The mode of conversation 'sets the scene for sharing to take place' (Widlok 2013: 20). A mode is more than a 'single utterance that guarantees sharing', it involves various 'conversational strategies' that 'provide

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the background against which providers and takers find sharing to be an acceptable strategy or even a mode of transfer that they cannot avoid without risking confrontation or open conflict' (Widlok 2013: 20). In other words, conversational strategies determine, as Widlok states, what a socially acceptable demand is, and what language can be used to make it. They also determine socially accepted ways to dodge and ignore demands (Widlok 2017: 68). I suggest that the mode of conversation is as relevant to international tax law negotiations and the payments that derive from these norms, as to other sharing practices. It affects how demands are heard and how their legitimacy is judged and therefore how countries share taxing rights and MNEs give money, as in tax to some jurisdictions and not others. In this section, I show that the vocabulary and conversational strategies used by key actors in international tax negotiations to demand payments and ignore payment demands changed with the launch of the BEPS project.

Tax authorities make tax payment demands on MNEs using a multi-layered language based on written documents, but also involving verbal conversational strategies. A combination of tax norms, rules and standards, and accounting protocols set out in domestic tax laws, double taxation treaties, and OECD guidelines determines (1) the jurisdiction which has the right to tax MNEs, (2) the specific share of global profits which can be taxed in that jurisdiction, and (3) the methodology the MNEs and/or tax authorities can employ to calculate that share (Picciotto 1992; 2011: 216–223; OECD 2017). Most taxing events do not lead to confrontation or open conflict. They are resolved between the MNEs and tax authorities without involving the courts or national tax authorities.

Over the last decade, however, increasing discrepancies have occurred between what tax authorities, treasuries and finance ministries, politicians and other taxpayers, including other businesses, demanded in tax payments from MNEs and what the MNEs were legally obliged to pay (Grinberg 2018). This rise in confrontation and conflict involved disagreements over whether MNEs pay enough tax in jurisdictions where they are headquartered (e.g. 'Does Microsoft or Facebook pay enough taxes in the United States?') and disagreements between countries over whether foreign-controlled MNEs pay enough tax in jurisdictions where they conduct business (e.g. 'Does Google pay enough taxes in the UK? Does H&M pay enough in Bangladesh?'). Such questions were debated in televised public events, finance committees, and social media, but also in less visible places, such as the offices of tax authorities, tax courts, and at the OECD.

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In debates about their tax structures, MNEs defended their legality. Their tax lawyers and advisers described their own work as legitimate tax planning or tax optimisation that creates value for the company and the wider economy. Other actors, including politicians, NGOs, investigative journalists, and tax justice activists characterised MNE tax practices as immoral and unfair, and referred to the work of their tax professionals as 'dodgy', 'aggressive', and 'artificial'. Such contrasting conceptualisations of the same tax payments and practices are not uncommon in international tax debates (Avi-Yonah 2008; Maurer 2008; Rawlings 2007). They are also common in sharing practices (Widlok 2017: 70).

The issues of Base Erosion and Profit Shifting were, for instance, discussed for some time at the CTPA and in the OECD Committee of Fiscal Affairs, as well as its various tax-related working parties. Yet, terminologies were different and there was no political mandate to reform the key international tax principles that determine how MNEs divide their worldwide income among their affiliates for tax purposes. After the 2008 financial crisis, public outcry over MNE tax payments emerged in various countries, fuelled by the spotlight shown on international tax issues by tax justice activists. This attention created a novel political space that allowed the G20 to give such a mandate to the OECD and its working parties. Now the delegates and the OECD secretariat could work on redefining permanent establishment and determining the scope of economic activity and value creation. The mandate changed conversational strategies in this setting and had an effect on how demands could be made or (de-)legitimised.

It became, for instance, less socially acceptable for MNEs to ignore demands for higher tax payments by referring to the legality of the tax structure. Suddenly, doing so risked confrontation. In conversation with me and during public presentations at the OECD and other professional meetings, tax lawyers and advisers clearly emphasised when scrutinising MNE tax structures, 'that what is legally and technically possible is not good enough anymore'. Tax experts discussed regulatory measures that would tie economic substance to the number of highly skilled MNE employees located in specific low-tax jurisdictions, which were likely to come out of BEPS negotiations that increasingly focused on people's functions. Jokingly, they wondered how many MNE employees would have to move to Switzerland or the Cayman Islands. Yet when a tax adviser from a global advisory firm insisted that 'half a woman' might be enough staff on a small island with favourable tax jurisdiction to justify booking millions in profits there, state representatives rolled their eyes at

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this crude and sexist take on what counts as economic substance. Private and corporate tax professionals also felt embarrassed that their colleague had not realised that the conversation had moved on.

As I already mentioned, the language of international tax events was also changed by the BEPS initiative to align taxation with value creation. Negotiating taxing rights was not on the original agenda of the BEPS action plan. In fact, a common conversational strategy in international tax debates keeps specific talking points off the official agenda. Negotiations occur in a highly controlled environment where strict speaking and time protocols are set in advance. This makes it extremely difficult for negotiators to suddenly add an issue to discuss during a session. Thus, when representatives of emerging economies wanted time to reconsider the allocation of taxing rights, they were initially stymied. Value creation was on the agenda, however, and it brought taxing rights to the table through the back door, since everyone agreed to it in principle, but no one agreed on exactly what it meant.

The initial idea behind the BEPS mantra was that tax havens booking billions of MNE profits at low or zero tax rates produce little value and should be eliminated. Contractual or legal ownership of an intellectual property right should not justify excessive returns from the intangibles located in these places. Countries where investment in intangibles – such as software or database development, research and development, design, branding, and business process re-engineering – outweighs tangible investment emphasise 'people functions' for the purposes of allocating intangible income. They want income from intangibles to be allocated to locations where highly skilled people develop, enhance, maintain, protect, and exploit these properties, including people who control the financial risks associated with them.

Yet, the focus on value creation and people functions also resonated with officials from emerging economies, where tax officials had long complained that MNEs and foreign tax authorities undervalued the economic activities located in their countries. Activities characterised as 'routine labour', 'simple distributor', 'simple or routine' service provider, or 'contract researcher and developer' merited only a 'routine' return. Hence, little profit was booked in these jurisdictions. Officials from emerging economies also demanded that value created by multinationals in cross-border transactions should also be attributed to markets, user participation, and even government support, not predominately to entities that funded the transactions.

In conversations I had after these negotiations and in consultations with tax officials and corporate tax experts from advanced economies, it

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was clear that many perceived demands for alternative value conceptualisations to be outrageous. Most drew clear lines between entrepreneurial value creators that innovate, take risks, and build global brands, and other workers who 'simply' produce, manufacture, copy, and imitate. Some indicated that these others were incapable of 'innovating and global scale'. One tax director used an illustrative analogy to express how many tax experts from advanced economies think about value creation: she compared her company to human anatomy, stating that 'the heart and brain are here in x (a city in an advanced economy), it would not be fair if the value of the company's hands and legs, (in South East Asian countries), is overestimated'. Yet, some corporate tax experts call the notion that all research and development occurs in advanced economies a myth, emphasising that innovation also takes place during production.

The general devaluation of manual and routine labour that came with the outsourcing and offshoring of production from advanced economies to 'low(er)'-cost jurisdictions and the expansion of intellectual property rights from the 1970s onwards was occasionally thematised. Some stressed the effects on revenue flows in the event that alternative value and labour conceptualisations become more accepted. An executive member of various international business associations representing MNEs in policy-making processes said such value and labour conceptualisations 'would be the end of wealth in the West, in particular, for export nations'.

While it is too early to comment on the effects of altered conversational strategies on tax norms and tax payments, a few important changes can be mentioned in what is socially and legally acceptable to ask for, and from whom. Because emerging economies had the unexpected opportunity to present alternative value demands during official OECD negotiations, it became increasingly difficult to draw an authoritative line between clearly identifiable value creators and others more broadly conceived. Demands to re-characterise so-called low-value activities circulated amongst negotiators from lower income countries. They were repeated in other fora, like the UN Tax Committee, and influenced what tax authorities advised their staff members to look for and demand when scrutinising MNE tax declarations. The idea that consumers and users contribute to value creation gained traction, and was discussed at the OECD in the aftermath of the BEPS initiative. I suggest that the new taxing rights gained by market jurisdictions in which MNE users and customers are located, starting in 2023, are due to the changed conversational strategies that emerged during the BEPS project. In the next

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section, I show that this alteration in how taxing rights are shared was constituted through the emergence of a different mode of presence.

On Modes of Presence in International Tax Debates

The mode of presence is an important factor, both 'a prompt and a trump' in sharing as a social practice (Widlok 2017: 72). In hunter-gatherer societies, presence means that people 'stay close to those from whom they expect a share' (Widlok 2017: 72). When people sit around a fireplace with cooking and tea pots, others situate themselves in a good position to get a plate of food or a cup of tea. Handing a cup of tea to someone who is present looks like a simple act. Yet, Widlok shows that certain practices of establishing and recognising presence form the necessary condition for sharing food or other items of value. Physical and temporal co-presence are not enough; a practical presence needs to be established (Widlok 2017: 72), that is, a presence that both parties in the encounter recognise. Thus, practical presence can be denied even when physical presence exists, and vice versa. At the same time, practical presence can exist across great physical distance – although this may be more difficult to achieve (Widlok 2017: 73–75). For instance, talking and thinking of others in terms of relatedness or kin is one way of realising presence when these others are not physically present. The main point is that there are different ways of constructing practical presence. Once such presence is acknowledged, it becomes difficult for providers to evade demands.

Widlok's differentiation between practical presence and physical presence is helpful for analysing what constitutes the sharing of international taxing rights. Firstly, an MNE's physical presence in a country is, according to international tax norms, not enough justification for a tax authority to make a demand on its profits. A taxable presence, also referred to as permanent establishment (PE), is required. Similar to Widlok's practical presence, a taxable presence is not something which is simply there, or inherent in business transactions, but is socially negotiated. It depends on what international tax norms define as a PE.

Under pre-BEPS regulation, a PE did not exist when a place of business engages solely in certain activities classified as 'preparatory and auxiliary' (e.g. stocking goods for storage, display, delivery, or processing; purchasing goods or merchandise; collection of information). Amazon, which operates huge warehouses in the United Kingdom from where goods are stored and dispatched to UK customers, was, for

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instance, heavily criticised for evading PE status in the United Kingdom by relying on this specific exception in the definition of PE in Article 5 of the OECD Model Tax Convention, even though these preparatory and auxiliary activities are key to its business model. The MNE generates a couple of billion pounds of sales yearly in the United Kingdom via its website www.amazon.co.uk. During recent BEPS negotiations, a consensus was reached that these exceptions will only apply when the activities are preparatory or auxiliary in relation to the business as a whole (OECD 2017).

Despite the new PE definition and Amazon's digital presence, in the form of its website, and physical presence, in the form of fulfilment centres in the United Kingdom, the firm's corporate tax in the United Kingdom remains low. Warehousing and delivery are considered low-value, low-margin businesses so that the profits declared to that part of Amazon are low. And traditionally, corporate taxes are paid on profits, not sales. All purchases made by UK customers are invoiced from Amazon's European headquarters in Luxembourg (Amazon EU Sarl); both Amazon and His Majesty's Revenue & Customs (HMRC) consider this trade to be distinct from the activities of Amazon UK's resident company.

Some countries were dissatisfied with the BEPS outcome and introduced unilateral digital service taxes to make tax demands on companies with business models that rely heavily on intellectual property and have no need for physical proximity to targeted markets. Discrepancies between the digital and economic presence of MNEs and their taxable presence were further discussed during the 'Tax Challenges Arising from the Digitalisation of the Economy' initiative within the OECD/G20 Inclusive Framework on BEPS. Negotiations continued until 2021, when an agreement was reached reallocating some taxing rights over MNEs with global sales above €20 billion to markets where they have business activities and earn profits, regardless of the firms' physical presence there. Many countries signed the updated multilateral convention during 2022, with effective implementation in 2023 (OECD 2021). Some, however, are resisting the paradigm shift to taxation without the physical presence of assets or employees. They demand a narrow application of the new rules to a small number of specific foreign MNEs to limit future demands on their own multinationals and protect their own revenue flows.

Widlok's distinction between practical and physical presence is also helpful when zooming into the places and epistemic communities where such norms are negotiated and designed. He states that the social permeability of a space is an important prerequisite for sharing events to

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take place (Widlok 2017: 77). For instance, the layout of a building can undermine or facilitate people's physical presence. It affects their opportunities to hang around and demand or wait for a share, and their knowledge about where and how to ask about it. The social permeability of the OECD as an institution hinders taxing events in various respects since it makes it difficult for newcomers to establish a practical presence in international tax debates.

The OECD has been the key intergovernmental organisation in the area of international tax law policy for the last sixty years (Picciotto 1992). The common practice in the past was that these policy products, negotiated within the OECD, were accepted by governments of other non-OECD countries (Webb 2004: 794). This was the case despite its exclusionary membership. The composition of the OECD's tax-making arm has changed considerably with the launch of the OECD/G20 BEPS Project, launched in 2013, which led to the OECD/G20 Inclusive Framework on BEPS in 2016. From thirty-eight countries initially, over 135 countries today work together 'on an equal footing', to further develop tax norms and standards and ensure implementation of BEPS measures in a peer review process (OECD 2021: 9). Still, access to the negotiation table or physical presence at the OECD does not equal practical presence in the negotiations. Consultations and negotiations take place in Paris and are conducted in a mannered and technical mode of speech. Continuous participation is costly and time intensive – only a handful of countries have specialised units of skilled negotiators and strategists to send to the negotiations. Thus, experience and expertise in making demands heard by establishing a practical presence, for instance through sophisticated tax law interventions in negotiations, is unevenly distributed amongst these countries.

This lack of experience and capacity is a limiting factor for delegates to have their presence recognised and is shaped by educational and legal histories. Only a few universities worldwide offer international tax law programmes. Only a few countries have an elaborate body of domestic tax law upon which experts can draw to offer solutions for international tax problems. Negotiators from these countries are privileged since the domestic tax norms they are familiar with are closer to international norms than those of younger countries with more recently established tax infrastructure, featuring, for example, transfer pricing legislation or specialised tax courts. Moreover, tax negotiators whose predecessors were involved for decades in designing international tax rules – 'internationalising' their domestic tax systems – have enormous advantages, not the least of which is they already speak the language of international tax employed at the OECD.

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I showed in the previous section how modes of conversation affect how tax demands are heard and how their legitimacy is judged. The presence of people on the streets demanding more tax justice in various OECD countries after the 2007 financial crisis was an important game-changer, according to many tax experts, for the OECD to receive a mandate to work on the 'conversational strategies' dominant in international tax policies, including definitions of PE. While the BEPS Action Plan did not include the item 'reallocation of taxing rights', this issue came on the negotiation agenda due to the project's focus on aligning taxation with value creation. My point in this section is, besides showing the social negotiation of MNEs PE status, that tax delegates practical presence at the OECD is dependent on these actors' funds to make it to Paris and on their ability to make others recognise them as tax experts. This was crucial, since a common strategy of established tax experts was to delegitimise other delegates' ideas about where MNEs create value in their global value chains by asserting these suggestions were not in line with existing international tax norms, not technically sound, or outrageous, aggressive, or unheard of.

It will be interesting to observe what effects the physical presence of non-OECD countries will have at the OECD as they come together for future rounds of negotiations. While they have already changed the tone and language of international tax debates much more than various international tax experts had anticipated, their demands can still be easily ignored due to a lack of practical presence. Although seasoned representatives of OECD countries and the CTPA were generous and welcoming to negotiation table newcomers, economically disadvantaged countries and their delegates found it, in important matters, difficult to make their position recognised by others. At tax conferences I attended, tax experts from Southern African countries frequently complained that the turnover threshold used to decide whether MNEs have to allocate 25 per cent of their residual profit to market jurisdictions is too high. Many MNEs do not have a global turnover above €20 billion and profitability above 10 per cent, that is, profit before tax/revenue, yet, these are corporations Southern African countries, for instance, want to tax.

Conclusion

Anthropologists have discovered taxation as an important analytical lens for many areas of research, such as the public good, the state, colonialism, money, property, inequality, and also, as we show in this volume, as an

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object of study in its own right. Understanding what taxes are and what social relations they create, enable, or hinder is crucial for further anthropological tax inquiries. Scholars in this field work with a broad definition of tax to capture the emic views and many kinds of payments people make to fund collective worlds. Taxes tend to be all forms of payments where people pool resources, even though access to the goods and services produced via these payments is often highly restricted. This broad-brush framework is problematic. The move to create a conceptual space between taxation and the state was borne of a desire to go beyond social contract thinking and tax theories that emphasise tax system benefits without acknowledging their roots in painful histories of class, racism, and colonialism. While this is a crucial contribution of anthropological tax scholarship, I recommend bringing the state back in when analysing taxation, and more importantly, foregrounding questions of scalability and access of others to collective worlds in future fiscal anthropological studies.

My second point concerns the conceptual toolkit we draw on to analyse taxes. Many phenomena are explored in anthropology against a gift-exchange logic and this mode of transfer dominates our understanding of other transfers, which has the effect that researchers find reciprocal exchanges on the ground even when there were none (Pickles 2022). It is therefore not surprising that the explicit or underlying notion of reciprocity and exchange dominate current anthropological (and other) tax debates. Yet, this conceptual focus affects what kind of questions and concerns are prioritised in anthropological research on tax relations and what kinds of future fiscal worlds we can imagine. Obsession with mutual interests, returns, and benefits obscures the fact that taxes are often unilateral monetary transactions. More generally, it overlooks the human capacity to give and provide, under specific conditions, without calculating or receiving something in return. The logic of sharing is, as we learn from the scholarship in this field, directed towards a specific process (continuous opportunities to formulate demands and to evaluate them) and not towards specific outcomes (such as obligations to give, receive, and return). My case study demonstrates that what makes MNEs give money, as in tax to specific jurisdictions and not to others, is not necessarily this 'natural' law of reciprocity, but changes to the dominant modes of relatedness, conversation, and presence in international tax norms. While taxation is not a form of sharing, I argue that it is productive to pay attention to the many similarities between these two types of transfers. They share, at times, more commonalities than

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taxation and reciprocal gift exchanges; and there are moments when taxation facilitates and enables sharing.

Engaging with taxes, ubiquitous required payments, can provide a thinking space outside of dominant exchange and reciprocal logics. I suggest that such a space is helpful and probably needed, because many issues – from humanitarian and ecological crises, including climate shocks, pandemics, and wars – produce inequalities, unevenness, and unpredictabilities that are beyond peoples' control. The need to act collectively and demands for state intervention will increase and become more acute when scarcity of resources, ecological catastrophes, and therefore distributional conflicts accelerate. Taxes are a space with the power to radically transform socio-economic relations, as we argue in the introduction to this volume (see also Piketty 2020); simultaneously, they are structures that perpetuate harm and exploitation. Whether they are transformative or exploitative, we can analyse with more nuanced understandings and conceptualisations of taxes.

My third and last point concerns scale and the need to study taxes transnationally. While sharing is often associated with intimate close-knit groups, people also develop intimate relations and share within very large groups, such as nations via their tax payments. What constitutes sharing and taxation beyond the state is not well explored. Anthropological tax studies that call for decentring tax from the state explore the creation of communal worlds beyond the state. However, this tends to happen within a specific territory, or to people who demand their own territory (Willmott 2022). My case study of the situative causes, conditions, and actions that constitute the sharing of taxing rights to MNEs' global profits counters the idea that taxation operates within a spatiality inseparable from that of a nation-state, that is that fiscal boundaries are coeval with the legal boundaries of nations. The nation-state is the basic organisational unit of the OECD and shapes how relatedness is expressed in that setting and how negotiators conceptualise the circle who they have to care for. Yet, I show how some tax experts switch between a universal and national understanding of their relatedness. They also understand the OECD as a space to establish relations beyond nationalism and emphasise the ambiguities of caring for national constituencies, since the benefits of trade and economic growth are not equally spread within a society. When income and money, goods, and services cross borders, it becomes less clear who creates value and who is entitled to tax.

Lastly, my case study illustrates that modes of relatedness on this transnational scale are socially negotiated. A different form of relatedness

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is currently being pushed by various actors who demand to acknowledge in international tax norms the factual relation MNEs have to jurisdictions where they conduct business. This push to establish practices for the recognition of presence and identify value and real economic activity for tax purposes, which is not simply a technocratic exercise defined by the pursuit of neutral determinants that can be easily assessed, opened up an unexpected political space to negotiate value conceptualisations in international tax norms. It changed the mode of tax conversations at the OECD. Demands to share corporate taxing rights more with countries where manual, routinised, or contract labour takes place were mostly ignored. The physical presence of new tax experts at the OECD did not equal their practical presence in the negotiation. It remains a question for further research whether future rounds of tax negotiations provide them with new opportunities to make their demands heard and thereby transform international processes of valuation and sharing.

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