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FEASIBILITY OF A GLOBAL WEALTH TAX IN AN INTERNATIONAL TAX REGIME

-Chetan R¹

ABSTRACT

There has been an alarming increase in the wealth gap between the rich and the poor throughout the world. This has only been exacerbated after the pandemic due to which not only individuals but also states have been bearing the burden of wealth inequality and subsequent loss of taxes due to capital flight to tax havens. Although any such international step for regulating global wealth can be challenged, there exist considerable convincing grounds through economic, political, and social perspectives, to justify the requirement of such an international system. Further, one of the biggest objections to such a concept is the challenge it poses to the sovereignty of the States. The traditional notions of sovereignty, such as Westphalian sovereignty, maybe going against this global wealth tax system. However, with the newer understanding of sovereignty in the light of globalization and increased international cooperation, responsibility-based sovereignty would actually be promoted due to such a system. The resulting global wealth tax needs to be modeled such that it is based on the already existent Customary International Law (“CIL”) in international tax law. This model should also keep in mind the concerns and representations of third-world countries to include their perspectives on vouching for tax havens. A compromise on both sides leading to a staggered global wealth tax system, with such TWAIL countries having a lower wealth tax rate than other developed/developing countries would be the most effective system with all concerns being considered and at the same time, the present problems of wealth inequality being addressed.

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INTRODUCTION

In the aftermath of World War II, increased globalization has resulted in an exponential rise of international trade, investment, and exchange². The decrease in the cost of international business, the increase in the number of international transactions, easier trade in capital goods, and accessibility to easy credit, caused the signing of numerous agreements³, including agreements like the General Agreement on Tariffs and Trade (“GATT”), which worked to regulate international trade. These set up beneficial practices like dispute resolution mechanisms under the aegis of the World Trade Organization (“WTO”).⁴

This growth of international trade and subsequent developments in technology around the world has enabled not only states but also non-state actors, such as companies and individuals to engage in trading and business on a global scale.⁵

This led to freer movement of goods, services, labor, capital, etc., across the globe.⁶ The scope of the paper shall be confined to the regulation of the movement of capital belonging to non-state actors through the lens of an emerging international tax law.

Different countries had their own policies and laws governing the movement and subsequent taxation of capital and wealth. These include countries, such as Spain, Norway, Switzerland, etc., which taxed the wealth accumulated by their citizens⁷, while most others, such as India, France, Cana, etc., imposed no tax on wealth accumulation⁸. However, the latter still imposes a tax on income generated from the said wealth. There are also countries, such as Luxembourg, Bermuda, Netherlands, etc., which do not impose any tax on even the income generated from wealth.

²Andrew P. Morriss & Lotta Moberg, *Cartelizing Taxes: Understanding the OECD's Campaign against Harmful Tax Competition*, 4 Column. J. Tax. L. 1 (2012).

³Girjesh Shukla, *Regulating Tax Havens: An Imperative Under International Law*, 2 SML. L. Rev. 135 (2019).

⁴ Richard J. Vann, *International Aspects of Income Tax*, in VICTOR THURONYI (EDS), *TAX LAW DESIGN AND DRAFTING* (Vol 2, International Monetary Fund: 1998).

⁵ Stephen G. Brooks & William C. Wohlforth, *Power, Globalization, and the End of the Cold War: Reevaluating a Landmark Case for Ideas*, 25(3) Int'l Security 5 (2000).

⁶ Gautam Sen, *Developing States and the End of the Cold War: Liberalization, Globalization, and Their Consequences*, in LOUISE FAWCETT, & YEZID SAYIGH (EDS), *THE THIRD WORLD BEYOND THE COLD WAR: CONTINUITY AND CHANGE* (Oxford University Press, 2000).

⁷ Prabhu Balakrishnan, *List of Countries with Wealth Tax*, BEST CITIZENSHIP (Dec. 11, 2020) [HTTPS://BEST-CITIZENSHIPS.COM/2020/12/11/LIST-OF-COUNTRIES-WITH-WEALTH-TAX/](https://best-citizenships.com/2020/12/11/LIST-OF-COUNTRIES-WITH-WEALTH-TAX/).

⁸ Sarah Perret, *Why were most wealth taxes abandoned and is this time different?*, 42(3) Fiscal Studies 539 (2021).

⁹ *The most popular tax havens worldwide*, WORLD DATA, <https://www.worlddata.info/tax-havens.php>.

Thus, this combination of open international trade and different tax policy options being available across the world promotes non-state actors to evade their respective state's rules and laws. In this way, they can act in furtherance of their private interests while disregarding the state.¹⁰ This paper seeks to answer this undesirable situation by building on Thomas Piketty's suggestion of a global wealth tax, through the perspective of international tax law. Hence, this paper will not be entirely venturing into arguments or discussions concerning income tax.

To that effect, this paper is divided into three sections. *Firstly*, this paper will highlight the need for a global wealth tax from economic, political, and social perspectives. *Secondly*, this paper will address the main theoretical concern opposing such a global tax regime, which is the question of the sovereignty of the state. *Thirdly*, this paper proposes the formulation of a global wealth tax by positing the same in customary international tax law and considering the Third World Approaches to International Law ("TWAIL") perspective.

NEED FOR A GLOBAL TAX

Wealth taxes have been among one of the oldest fiscal instruments ~~to exist~~ in the world. Yet, this instrument has been neglected and discarded in many states around the world.¹¹ This section seeks to argue in Favor of wealth tax, by justifying the same through economics, political and social perspectives.

Economic Justification

The economic justification for wealth tax can be found in the works of John Maynard Keynes and Thomas Piketty.

¹⁰ Mirosław Przygoda, *Tax Havens as an Inseparable Element of Regional and Global*, 2(2) International Journal of Operations Management 34 (2022).

¹¹ RICHARD M. BIRD, *TAX POLICY AND ECONOMIC DEVELOPMENT* (The Johns Hopkins University Press, 1992) 130.

When people save and invest in wealth (like real estate, gold, paintings, etc.), there will be less money for them to consume, leading to a lack of demand.¹²

If there is no demand in the market, then the supply will also tank because demand stimulates supply. As a result of this, there will be lesser investment into production, a reduction in employment, lesser income is generated, and society (consisting mainly of the working class) will become poorer.¹³ The rich will still have this money (which they would have otherwise invested into production) and will use it to buy more wealth, but this will not set up industries and create employment.

This creates a negative feedback loop whereby due to this investment into wealth, there will again be lesser demand and then lesser supply, and so on. When this is seen in the backdrop of Piketty's work, the rate of return on the wealth/capital will be higher than the rate of economic growth ($r > g$), which just makes the rich grow even richer and their wealth grow manifold while depriving the remaining majority of the society of economic growth, thus, in stabilizing the economy.¹⁴

This shows how the hoarding of capital causes a vicious cycle that goes on to destroy the economic growth of a country. One effective way of countering this phenomenon would be through imposing a wealth tax on all forms of wealth and capital with no exceptions. This tax should have high thresholds to target those living in the top 1% or even the top 0.1%, giving only incentives to investment in those capitals which lead to more production and employment than a prescribed limit.

¹² James Ahiakpor, *A Paradox of Thrift or Keynes's Misrepresentation of Saving in the Classical Theory of Growth?*, 62 Southern Econ. J. 16 (1995).

¹³ James Ahiakpor, *Why Economists Need to Speak the Language of the Marketplace*, FEE (Dec. 01, 1995), [HTTPS://FEE.ORG/ARTICLES/WHY-ECONOMISTS-NEED-TO-SPEAK-THE-LANGUAGE-OF-THE-MARKETPLACE/#:~:TEXT=THROUGH%20THIS%20REASONING%2C%20KEYNES%20BELIEVES,AS%20IF%20IT%20WERE%20VALID](https://fee.org/articles/why-economists-need-to-speak-the-language-of-the-marketplace/#:~:text=through%20this%20reasoning%2C%20Keynes%20believes,as%20if%20it%20were%20valid).

¹⁴ THOMAS PIKETTY, *CAPITAL IN THE 21ST CENTURY* (Harvard University Press, 2017).

This form of incentive would also address the concerns that critiques of wealth tax have with respect to underinvestment and capital formation.¹⁵ Thus, capital investment and wealth growth in all forms are not being targeted in such a regime. It will only be those forms of wealth that do not generate the required limit of production and employment that will be taxed. In this way, a portion of the capital that the rich are hoarding in non-productive wealth would have to be paid off as taxes to the state in a non-compromising way.

This achieves two goals. First, the wealth inequality between the top 1% or 0.1% and the remaining will reduce counteracting Keynes' paradox of poverty in the midst of plenty principle because people will be less incentivized to save, out of the fear of paying more wealth taxes, and would instead spend their money or invest it in employment and production generating capital. Second, the state also receives a substantial sum of money (depending on the tax rates, which should tend to be on the higher side). It can then use this money to finance public spending to increase employment, production, and economic growth.

Political Justification

The political justification for wealth tax can be found in the works of Katherina Pistor and the concept of legal coding¹⁶. Wealth generation and storage have always been legal constructs. For any corporate/individual to generate wealth, have a right over it, and store it in any form, they require legal institutions and frameworks to have enabled them in this process right from the beginning¹⁷.

¹⁵ Kristoffer Berg & Shafik Hebous, *Does a Wealth Tax Improve Equality of Opportunity? Evidence from Norway*, (IMF Working Paper) WP/21/85.

¹⁶ KATHERINA PISTOR, *THE CODE OF CAPITAL: HOW THE LAW CREATES WEALTH AND INEQUALITY* (Princeton University Press, 2019).

¹⁷ Katharina Pistor *Cracks the Legal Code of Wealth and Inequality*, COLUMBIA LAW (June. 10, 2019) <https://www.law.columbia.edu/news/archive/katharina-pistor-cracks-legal-code-wealth-and-inequality>.

This particularly becomes important in the current day and age where wealth is not just limited to land and gold but extends to financial instruments, intellectual property rights, cryptocurrency, etc.

Such legal institutions and various other public goods and services are provided by the state, which is what enables corporates/individuals to amass their wealth. Paying for this bundle of non-excludable and non-rivalrous goods and services provided by the state forms a key justification for such a wealth tax¹⁸. However, with globalization and free movement of capital/wealth around the world, states themselves have become players in the market of taxation and compete with each other on the kinds and amount of public goods and services being offered, with tax becoming the currency for this competition¹⁹. This creates a prisoner's dilemma situation in the international forum where individual states make decisions that result in a less-than-optimal outcome for all the states²⁰.

This, coupled with regimes in certain countries, enables corporates/individuals to unbundle the public goods and services, which means, they could selectively consume and selectively pay for them through taxation²¹. Due to the lack of any form of a global wealth tax, corporates/individuals are able to store their wealth in countries where there is little to no wealth tax (popularly known as “tax havens”), while still continuing to enjoy the public goods of countries where they have their business activity, citizenship, education, etc. This process is termed “capital flight”²².

This fragmentation enables such corporates/individuals to tailor the basket of public goods in any way they want from different jurisdictions, as per their preferences²³. Through this, they aim for

¹⁸ Tsilly Dagan, *Klaus Vogel Lecture 2021: Unbundled Tax Sovereignty – Refining the Challenges*, 76(7) Bulletin for Int'l Taxation 318 (2022).

¹⁹ *Id.*

²⁰ R. O. KEOHANE, *AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY* (1984) pp. 85–110

²¹ Dmytro Sokolovskyi, *Is Race to the bottom modelled as Prisoner's dilemma?* (MPRA Paper No. 99404, April 07, 2020).

²² Léonce Ndikumana, *Capital Flight and Tax Havens: Impact on Investment and Growth in Africa*, 22 *Revue d'économie du développement* 99 (2014).

²³ Dagan *supra* note 19.

achieving the best tax offer, without paying the due to the states where they have consumed such public goods for the growth of their wealth²⁴. For example, India lost nearly Rs. 75,000 crores in taxes in the past year due to corporates utilizing this fragmentation and tax havens²⁵. The effect of this fragmentation and unbundling even on the social contract is enormous as corporates/individuals will be acting as per their own preferences with no regard to the moral and political rules of the state, thereby creating a form of state of nature on the international forum²⁶.

Social Justification

Due to the reasons mentioned above, practices of fragmentations and tax havens may appear to be beneficial for business, however, they have a detrimental impact on society and people. Firstly, such practices entirely go against the principle of progressive wealth taxation. This is one of the main tools for wealth redistribution wherein the state imposes increasing levels of taxes on corporates/individuals having more wealth²⁷. This policy action ensures that inequalities in the society are minimized and human rights are promoted through increased government spending on development and reducing the wealth gap²⁸. Such policies become particularly important in the post-pandemic world where nearly 500 new billionaires came up²⁹, with the poor falling even lower in the economic scale. Poverty and hunger, which remain one of the largest human rights concerns across the world, are exacerbated by this growing inequality in wealth³⁰.

²⁴ Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64(5) J. Political Econ. 416 (1956).

²⁵ *India's losing Rs 75,000 crore in taxes every year due to tax abuse by MNCs, individual evasion*, THE ECONOMIC TIMES (Nov. 21, 2020), <https://economictimes.indiatimes.com/news/economy/finance/indias-losing-10-3-billion-in-taxes-per-year-due-to-tax-abuse-by-mnacs-individual-evasion/articleshow/79326660.cms?from=mdr>.

²⁶ Allison Christians, *Sovereignty, Taxation and Social Contract*, 18 Minn. J. Int'l L. 99 (2009).

²⁷ A. Pfingsten, *Progressive Taxation and Redistributive Taxation: Different Labels for the Same Product?*, 5(2) Social Choice and Welfare 235 (1988).

²⁸ Shukla *supra* note 3.

²⁹ Chase Peterson-Withorn, *Nearly 500 People Became Billionaires During The Pandemic Year*, FORBES (Apr. 06, 2021), [HTTPS://WWW.FORBES.COM/SITES/CHASEWITHORN/2021/04/06/NEARLY-500-PEOPLE-HAVE-BECOME-BILLIONAIRES-DURING-THE- PANDEMIC-YEAR/?SH=5E87C07B25C0](https://www.forbes.com/sites/chasewithorn/2021/04/06/nearly-500-people-have-become-billionaires-during-the-pandemic-year/?sh=5e87c07b25c0).

³⁰ *Inequality and poverty: the hidden costs of tax dodging*, OXFAM INTERNATIONAL,

[HTTPS://WWW.OXFAM.ORG/EN/INEQUALITY-AND-POVERTY-HIDDEN-COSTS-TAX-DODGING](https://www.oxfam.org/en/inequality-and-poverty-hidden-costs-tax-dodging).

Secondly, the concentration of wealth in the hands of a few members would also lead to them acquiring bargaining power and sway within the political working of the country³¹. Such power may result in policies and government actions being taken to cater to the interest of this minority thereby jeopardizing the majority, most of whom would lie on the middle or lower economic sections of the society. This would also erode the democratic nature of the majority of the states³².

Thirdly, the large amount of wealth being lost to tax havens, greatly affects low-income countries much more than high-income countries³³. And the countries operating as tax havens are not always third-world countries with no other sources of income. 78% of the world's annual tax losses can be attributed to Organization for Economic Cooperation and Development ("OECD") countries, with the UK being one of the major contributors³⁴. The absence of these funds causes states to compromise on providing essential goods and services such as water, sanitation, finance infrastructure, medical services, etc., and even fail to meet concerns about global warming and the environment³⁵. Thus, meeting human rights obligations by different states would be impaired due to the lack of sufficient funds.

QUESTIONING TAX SOVEREIGNTY OF STATES

This section aims to address the main concern for any such global tax imposition, which is its impact on the sovereignty of the states. Originally, there have been two forms of sovereignty propounded in literature.

They are the Westphalian sovereignty and Domestic sovereignty³⁶. The former has been understood, in international law and political science, to mean states have equal status on the global forum, with every state having the right to non-interference in its internal affairs.

³¹ R. Harrison Wagner, *Economic Interdependence, Bargaining Power, and Political Influence*, 42(3) Int'l Organization 461 (1988).

³² Rebecca S. Rudnick & Richard K. Gordon, *Taxation of Wealth*, in VICTOR THURONYI (EDS), *TAX LAW DESIGN AND DRAFTING* (Vol 1, International Monetary Fund: 1996).

³³ *Id.*

³⁴ Mark Bou Mansour, *Losses to OECD tax havens could vaccinate global population three times over, study reveals*, TAX JUSTICE NETWORK (Nov. 16, 2021), [HTTPS://TAXJUSTICE.NET/2021/11/16/LOSSES-TO-OECD-TAX-HAVENS-COULD-VACCINATE- GLOBAL-POPULATION-THREE-TIMES-OVER-STUDY-REVEALS/](https://taxjustice.net/2021/11/16/LOSSES-TO-OECD-TAX-HAVENS-COULD-VACCINATE-GLOBAL-POPULATION-THREE-TIMES-OVER-STUDY-REVEALS/).

³⁵ Magdalena Sepúlveda, *Tax justice—a crucial tool to advance human rights*, SOCIAL EUROPE (Dec 10, 2021) <https://socialeurope.eu/tax-justice-a-crucial-tool-to-advance-human-rights>.

³⁶ Laurens van Apeldoorn, *International Taxation and the Erosion of Sovereignty*, in THOMAS RIXEN & PETER DIETSCH, *GLOBAL TAX GOVERNANCE. WHAT'S WRONG WITH IT AND HOW TO FIX IT* (ECPR Press, 2016).

Thereby, it imposes a corresponding duty on other states for the said non-interference³⁷.

The latter has been understood to mean the state is the supreme authority within its territory, so it concerns only the internal actors³⁸. The concept of a global wealth tax, would *prima facie*, go against both these forms of sovereignty, as there would be interference in the internal affairs of the state along with internal actors also not being able to discharge their obligation to the supreme authority. However, in the current day and age, with the aforementioned globalization and its subsequent effects on trade and business across the world, these classical ideas of sovereignty no longer remain entirely true³⁹. A new form of sovereignty not limited to superiority and non-interference has been emerging throughout the world.

Not only literature, but also states themselves, have accepted this new form of sovereignty, which is not always based on the duty of non-interference, but in reality, it is actually based on responsibilities to assist other states to ensure they fulfill their duties of protection of human rights of their subjects⁴⁰. This new form of understanding sovereignty goes above and beyond the Westphalian idea of non-interference. The common goals and interests that different states have in the current globalized environment require this form of international interdependent cooperation⁴¹. Moreover, even under the Universal Declaration of Human Rights, 1948, states are envisaged to provide human rights to all their subjects without any discrimination⁴².

³⁷ *Peace of Westphalia*, BRITANNICA (Oct. 17, 2022), [HTTPS://WWW.BRITANNICA.COM/EVENT/PEACE-OF-WESTPHALIA](https://www.britannica.com/event/Peace-of-Westphalia).

³⁸ Peter Dietsch, *Tax competition and its effects on domestic and global justice*, in AYELET BANAI & MIRIAM RONZONI (EDS), *SOCIAL JUSTICE, GLOBAL DYNAMICS: THEORETICAL AND EMPIRICAL PERSPECTIVES* (Routledge, 2011).

³⁹ Peter Dietsch, *Rethinking sovereignty in international fiscal policy*, 37(5) *Rev. Int'l Studies* 2107 (2011).

⁴⁰ Ezgi Arik, *Philosophical Re-Thinking of International Tax Law: An Analysis of Harmful Tax Competition*, 10(19) *Cambio. Rivista Sulle Trasformazioni Sociali* 73 (2020).

⁴¹ Koesrianti Koesrianti, *International Cooperation Among States in Globalized Era: The Decline of State Sovereignty*, 3(3) *Indonesia L. Rev.* 267 (2013).

⁴² The Universal Declaration of Human Rights, Article 2.

In this new conception, states sacrifice these classical forms of sovereignty to a certain extent to ensure all the cooperating states benefit and are successful in providing their subjects with better public goods and services and hence, safeguard their human rights⁴³. This is seen in the form of thousands of treaties being signed by states. This new form of sovereignty, as understood as responsibilities, forms the basis for imposing any such global wealth tax regime⁴³. In such a case, the constraints on the state's power for designing any form of a tax policy, would not be constraints on its sovereignty, but would be "constraints of sovereignty"⁴⁵.

Consequent to this understanding, different national tax practices can, in fact, be viewed as eroding the sovereignty of nation-states⁴⁶. These practices include tax competition (a race to the bottom in providing the least amount of domestic tax to invite foreign investment), tax havens (states not imposing taxes on certain forms of investments), etc. These state practices, coupled with non-state accumulation of wealth lead to an increasing inequality around the world, not only between people but also between states. This causes states to fail in the discharge of their obligations to their subjects as their supreme authority due to the distributive injustice prevalent within the state and around the world⁴⁷. Therefore, any form of a global wealth tax regime would be in line, and would actually promote the sovereignty of states around the world.

MODELLING A GLOBAL WEALTH TAX REGIME

This section aims to model a global wealth tax regime in the backdrop of international law, by first, posting the same in customary international law ("CIL"), and secondly, providing the regime a TWAIL perspective to ensure better inclusion and representation.

⁴³ J.H. Bello, *National Sovereignty and Transnational Problem Solving*, 18(3) Cardozo L. Rev. 1027 (1996).

⁴⁴ Dietsch *supra* note 39.

⁴⁵ Dietsch *supra* note 39.

⁴⁶ Arik *supra* note 40.

⁴⁷ Arik *supra* note 39.

Finding CIL in International Wealth Taxation

There is an extraordinary convergence in the current and previous domestic wealth tax laws and policies of numerous countries around the world⁴⁸. However, as of now, the international tax regime mainly rests on bilateral tax treaties signed between countries. Treaties of multilateral nature are exceedingly rare, with the OECD model being one of the very few, but this too doesn't squarely deal with a global wealth tax⁴⁹. Due to this, a global wealth tax regime has to be found in both bilateral tax treaties and CIL in international taxation.

CIL is the law that arises on the international forum due to a consistent and general practice followed by states as a result of their sense of legal obligation, which is widely accepted⁵⁰. So, a practice can qualify as CIL if it has two components, firstly, the objective components of the actual state practice, and secondly, the subjective element of *opinio juris*⁵¹. The first component can be seen in the 3,000+ bilateral tax treaties present in the world, among which almost 80% are nearly identical to each other, along with numerous continuing and previously failed attempts at implementing a wealth tax within their domestic tax system.

This shows a consistent state practice. The second component can be seen in the states wanting to get into these treaties to properly implement their tax system and not lose out revenue, which is a major driving factor for any state. The states have also attributed the failure of their wealth tax systems to it being too expensive and inefficient in its implementation,⁵² and have not questioned their ideals behind wealth taxation. Therefore, there are *opinio juris* on the part of the states for wanting such a system, albeit in a more feasible and efficient manner.

⁴⁸ H. David Rosenbloom, *International Tax Arbitrage and the "International Tax System"*, 53 Tax L. Rev. 137 (2000).

⁴⁹ REUVEN S. AVI-YONAH, *INTERNATIONAL TAX AS INTERNATIONAL LAW* (Cambridge University Press, 2007).

⁵⁰ Reuven S. Avi-Yonah, *Does customary international tax law exist?*, in YARIV BRAUNER (EDS), *RESEARCH HANDBOOK ON INTERNATIONAL TAXATION* (Edward Elgar Publishing Ltd., 2020).

⁵¹ Dirk Broekhuijsen & Irma Mosquera Valderrama, *Revisiting the Case of Customary International Tax Law*, 23 Int'l Community L. Rev. 79 (2021).

⁵² Perret *supra* note 7.

The three prominent coordinating rules of CIL in international taxation law are (1) the Permanent Establishment (“PE”) Threshold, (2) the Arm’s Length (“AL”) Standard, and (3) the Non-Discrimination Principle⁵³. The PE Threshold states that a source country would not tax a foreign business unless this foreign corporation has a permanent establishment in the source state. This has previously been understood to mean a physical presence⁵⁴, but with increasing digital financial instruments, even “substantial digital presence” is being considered to be acceptable. The AL Standard states that in allocating the tax benefits between the source country and foreign country, the proper standard would be to treat the parties as if they were dealing with one another at arm’s length.⁵⁵

Hence, in view of these substantiations, CIL existent in international taxation law and can form the basis for any global wealth tax regime which may be designed. Similar claims have already been raised by parties in cases such as the *Vodafone International Holdings BV. v. Union of India*,⁵⁶ where it was argued that CIL would govern this case involving international tax law.

TWAIL Approach to Global Tax

In designing a global wealth tax, mistakes committed by the OECD in their BEPS Action Plan needs to be avoided. There should not be an assumption that all forms of capital tax havens are harmful without understanding the reasons for opting for such a wealth tax system.⁵⁷ Moreover, there should not be an assumption that all states stand at an equal position, i.e., the position of developed Western countries.⁵⁸ The TWAIL countries, and their past experiences of colonization, exploitation, oppression, etc. have to be recognized and taken due notice in any deliberations for

⁵³ Reuven S. Avi-Yonah, *International Tax Law as International Law*, 57 Tax L. Rev. 483 (2004).

⁵⁴ *Commissioner of Internal Rev. v. Piedras Negras Broadcasting Co.*, 127 F.2d 260 (5th Cir., 1942).

⁵⁵ Yonah *supra* note 53.

⁵⁶ [2012] 341 ITR 1.

⁵⁷ Terry Dwyer, ‘Harmful’ tax competition and the future of offshore financial centres, such as Vanuatu, 15(1) Pacific Econ. Bulletin 48 (2000).

⁵⁸ Sissie Fung, *The Questionable Legitimacy of the OECD/G20 BEPS Project*, 10(2) Erasmus L. Rev. 76 (2017).

a global wealth taxes.⁵⁹ There needs to be a differentiation made while designing any such global policy without lumping all the states together. Furthermore, these TWAIL countries have to be given negotiating power without facing any coercive strategies on the part of Western states. They should not be subject to a “civilizing mission” where such unilateral taxes are imposed.⁶⁰ There should rather be a “Common but Differentiated Approach” to the designing of such a law wherein the broader aim of the global tax system should be to further the justifications, while different countries depending on their economic, political, and social needs, should adopt different approaches which cater to the said needs.

So, instead of there being just a staggering wealth tax depending on the corporate/individual’s ability to pay, or a flat wealth tax, there needs to be differentiated wealth tax at least on two levels, along with having little to no exemptions. Some TWAIL countries are only getting investment and capital because of imposing little to no wealth tax on the capital being invested in their countries.⁶¹ So, an ideal design of a global wealth tax, keeping in mind the TWAIL perspective, would be to have a staggered form of a global wealth tax, whereupon an agreement between all consenting states, super developed and developed countries along with certain developing countries could set- up a singular global wealth tax system. Countries that are under-developed and primarily rely on such investment through their status as tax havens can impose a lower percentage of wealth tax. Due to their attempts at fulfilling their obligations of development towards their citizens, concerns of TWAIL countries have to be considered,⁶² despite a large amount of Western literature calling these tax havens as being harmful to the entire world.⁶³

This reduction in wealth tax should be such that it doesn’t greatly affect the corporates/individuals who are looking to shift their capital, but at the same time, it brings some transparent regulation, less loss of revenue and a uniformity in at least the imposition of wealth

⁵⁹ Jalia Kangave, ‘Taxing’ TWAIL: A Preliminary Inquiry into TWAIL’s Application to the Taxation of Foreign Direct Investment, 10 Int’l Comm L Rev 389 (2008).

⁶⁰ Makau Mutua & Antony Anghie, *What Is TWAIL?*, 94 Proceedings of the Annual Meeting (American Society of International Law) 31 (2000).

⁶¹ Kangave *supra* note 59.

⁶² Abosede Abidemi Oladiji, *Global Tax Regulation and Developing Countries*, (Faculty of Law, University of Manitoba), [HTTPS://MSPACE.LIB.UMANITOBA.CA/XMLUI/BITSTREAM/HANDLE/1993/33592/OLADIJI%20ABOSEDE.PDF?SEQUENCE=1&ISALLO WED=Y](https://mpace.lib.umanitoba.ca/xmlui/bitstream/handle/1993/33592/OLADIJI%20ABOSEDE.PDF?SEQUENCE=1&ISALLO WED=Y).

⁶³ Álvaro De la Vía, *A Critical Third World Approach (TWAIL) To CFC Rules*, LINKEDIN (Aug. 27, 2020), <https://www.linkedin.com/pulse/critical-third-world-approach-twail-cfc-rules-%C3%A1lvaro-de-la-v%C3%ADa/>.

tax throughout all these countries. Sharing of information to remove information asymmetry would be of prime importance in such a scenario, as even though corporates/individuals may look to shift their capital to countries offering low wealth tax rates, there will be no great loss of revenue and complete opacity for the involved states, as it is right now.

This approach, instead of the altogether abolishing of tax havens would be a much more plausible and agreeable solution. Any such treaty formed for imposing a global wealth tax will have to be enforced in good faith as per the VCLT.⁶⁴ Thus, such a model would incorporate not only the aims of developed/developing states to reduce capital flight, and wealth inequality, prevent the loss of wealth tax revenue and ensure better protection of the human rights of its subjects but also the aims of under-developed states which look for foreign investments through such offerings of slightly low wealth taxes as compared to the rest. This would greatly address the current prisoner's dilemma situation which is existing in the international wealth tax scenario.

CONCLUSION

There has been an alarming increase in the wealth gap between the rich and the poor throughout the world. This has only been exacerbated after the pandemic due to which not only individuals but also states have been bearing the burden of wealth inequality and subsequent loss of taxes due to capital flight to tax havens.

⁶⁴ Brian J. Arnold, *An Introduction to Tax Treaties*, UNITED NATIONS, [HTTPS://WWW.UN.ORG/DEVELOPMENT/DESA/FINANCING/DOCUMENT/INTRODUCTION-TAX-TREATIES-BRIAN-ARNOLD](https://www.un.org/development/desa/financing/document/introduction-tax-treaties-brian-arnold).

Further, one of the biggest objections to such a concept is the challenge it poses to the sovereignty of the states. While the traditional notions of sovereignty may be going against this global wealth tax system, the newer understanding of sovereignty in the light of globalization and increased international cooperation, the responsibility-based sovereignty would actually be promoted due to such a system. And the resulting global wealth tax needs to be modeled such that it is based on the already existent CIL in international tax law.

It should also keep in mind the concerns and representations of the TWAIL countries to include their perspectives on vouching for tax havens. A compromise on both sides leading to a staggered global wealth tax system, with such TWAIL countries having a lower wealth tax rate than other developed/developing countries would be the most effective system with all concerns being considered and at the same time, the present problems of wealth inequality being addressed.