

Tax Havens' Regulation: Policy Paradox on the International Level?

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Abstract

The thesis explores three political initiatives of global leverage that aimed to regulate tax avoidance and tax evasion facilitated through tax havens. By using Policy Paradox concept of Deborah Stone, I analyzed the political discourse of Harmful Tax Competition initiative that began in 1998, Tax Information Exchange that originated in 2009 and Base Erosion and Profit Shifting initiative that started in February 2013. By examining the key actors, their goals, rhetorical strategies and arguments that were publicly available, the thesis offers a unique insights in the international decision-making process of these initiatives. The thesis discovered that the actors, the goals of the initiatives, and arguments that were used are very similar in all three analyzed initiatives. Therefore, the author suggests that they should be perceived as a single ongoing initiative that gradually aims to achieve the stated goals. The thesis also shows that in accordance with expectations, Policy Paradox concept that was originally intended for national decision making analysis is suitable for application on the analysis of international policy making processes.

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1. Introduction

During the present economic crisis, when countries are struggling with increasing debts, legal tax avoidance¹ and illegal tax evasion² have come under the spotlight again. The recent case of Cyprus bailout has also increased the interest in tax havens. Tax havens³ (50 – 60 in the world) are blamed for creating an environment where tax evasion and avoidance can be done easily. It is impossible to give an accurate estimation of the amount of losses in tax-revenues due to the banking secrecy that is an inherent feature of tax havens' regimes, however, it is claimed that the "tax gap" is enormous. For the same reason, it is unknowable how much untaxed money resides in tax havens due to the secrecy laws of these jurisdictions⁴. Estimations of scholars and other professionals vary significantly⁵ (Valencia, 2013). However, they agree on the fact that the amount of foreign direct investment and the amount of money in tax havens is constantly rising, despite various regulatory attempts (Palan, Murphy & Chavagneux, 2010, p. 52). On the basis of these estimations, taxing the money residing in tax havens to alleviate fiscal problems became a frequently discussed political topic.

The attempts to regulate tax havens are not a new phenomenon. The tax havens and Offshore Centers (OFCs) started to be politically defined as a problem at the end of 1990s when the Organization for Economic Co-operation and Development (OECD) declared its "Harmful Tax Competition" – a set of actions and declarations that aimed to fight tax havens. Since then, the perceived urgency of the problem has varied. This initiative was followed by

various regional and global initiatives that more or less continued to pursue similar goals after the previous initiatives ended. In 2009, the G20 threatened tax havens with the slogan that “the era of bank secrecy is over” (Johannesen & Zucman, 2012, p. 2). At the beginning of 2013, Britain declared the fight against tax avoidance of companies as its top priority as Britain’s presidency of the G8 approaches (Valencia, 2013, p. 3).

Currently, the measures against tax havens are widely discussed by NGOs and in the media such as the Economist, the Financial Times and the Guardian that continuously report on this topic. In these austerity times, but also before the crisis, several intergovernmental actors (e.g. European Union, G20, OECD), nongovernmental actors (e.g., Tax Justice Network), individual national states and scholars have been involved in the discussions on tax haven and OFC regulation.

Johannesen and Zucman (2012) claim that the foreign-owned deposits in tax havens had grown in spite of the clampdowns. It can be said that well-established tax havens survived every regulatory attempt until now and have shown unexpected resilience (Johannesen & Zucman, 2012, p. 22). Most scholars claim that public debate has been a decisive factor in the regulatory attempts against tax havens (see Sharman, 2006; Van Fossen, 2003; Palan, Murphy & Chavagneux, 2010; Kudrle, 2008). The most extensive work on this topic was a book of Jason Sharman devoted to the analysis of “recursive links between rhetoric and reputation and the struggle for global tax regulation” (Sharman, 2006, p. 6). For instance, he claims that OECD campaign called “Harmful Tax Competition” in 1998-2002 has been defeated by the tax havens because the regulators have lost the “rhetorical contest” and were unable to persuade the public and governments (Sharman, 2006, p. 1).

2. Research Goals

The thesis has three intertwined goals. First, by using a concept of discursive policy analysis by Deborah Stone called Policy Paradox, I want to explain and describe the complex development of tax havens' regulation attempts from 1998 until nowadays. I will analyze the regulation initiatives that aimed to have global leverage and that were focused on combating tax evasion and tax avoidance. By examining the main actors, their public arguments and rhetoric that is reflected in actors' public materials, such as agreements, declarations, analysis, speeches, media outlets, etc., I will analyze how the actors interpret the problems on tax haven regulation, what values they wish to achieve by their actions and what type of solutions they propose. Subsequently, these arguments will be categorized and compared according to the theoretical background of Policy Paradox. This thesis will offer a unique, concise and up-to-date outlook on the arguments and rhetoric of the global initiatives that aimed to regulate tax evasion and tax avoidance.

Second and more importantly, Stone's concept will allow me to identify what rhetorical strategies of persuasion the actors used and analyze it systematically. Although Jason Sharman (2006) analyzed the discourse on tax havens' regulations and he came up with important thoughts and results, his research was not backed by a theoretical framework in this topic. He used a historicist method – he collected significant amount of materials for three global regulatory attempts until 2006 and analyzed the discourse by using deductive logic and chronological description. As a result of his analysis of the rhetoric and events, he claims that tax havens were able to defeat the regulatory initiatives and continue in their financial activities because they won the rhetorical contest. By using the Policy Paradox analytical concept, I will be able to analyze the debate between the actors more thoroughly and bring new insights of the process of public discussion. Moreover, I will analyze OECD Harmful Tax Competition initiative that Sharman covered and extend the analysis also on the

developments after 2006. Therefore, I will also analyze G20 initiative on tax information exchange and OECD's Base Erosion and Profit Shifting initiative.

The Policy Paradox concept that I will use for analysis was implicitly developed to analyze national decision-making. Deborah Stone claims: "Public policy has been a prisoner of the word state (Stone, 2008, p. 1)." Because of globalization, some of the decisions cannot be solved on the level of nation state. The state is re-configured through global-public partnerships. New forms of authorities emerge through global and regional policy processes that co-exist alongside state policy-making. On the global level, authority is more diffuse, decision making more dispersed and sovereignty opaque (Stone, 2008, p. 1). According to this, the environment for analysis is expected to be larger and the roles of the actors can be more complex or even mixed. However, the Policy Paradox is not dependent on national or environmental peculiarities. Policy Paradox is a framework for an analysis of arguments. Therefore, I do not expect any constraints to prevent it from being applied on the international level. There is no reason to think that international actors should pursue different goals, use different rhetorical tools and strategies for pursuing their policies or propose distinctive solutions in the international environment. Similarly, actors on the international level must try to win the hearts and minds of various groups to push through their proposals.

Therefore, the international application of Policy Paradox will be the third contribution of this thesis. I will evaluate whether Policy Paradox can be a suitable method for analysis of policy making on the international level.

3. Data

To reconstruct the discourse, various sources of information must be collected and analyzed to gain an accurate picture of the arguments used. The condition for conducting such an analysis is a public character of the materials. Sharman (2006, p. 7) claims that the materials on struggle over global tax regulation have been (at least were until 2006) overwhelmingly publicly available. In the case of this thesis, I will use data of the actors that they used to persuade citizens and governments about their proposals. For each regulatory attempt, I expect to find plausible materials from various resources. First and foremost, the data will be searched in official documents issued by the actors. This can encompass proposals, agreements, comments, statements, declarations, minutes, speeches, etc. I will gather these official documents from the archives (OECD Libraries and Archives), public libraries, and actors' websites. Further, I expect to identify the reasoning of the actors in their media statements, more specifically, in the press releases, videos from press conferences, or quotations in the important media. It is important that the data gained from media sources were quotations because there is a danger that paraphrasing would change the original meaning of the arguments. To obtain these data, I will search articles using the Pressdisplay database, LexisNexis Academic Database, Westland, and publicly available database of the media.

4. Structure

The structure of the thesis will be as follows: First, I will outline the three regulatory initiatives that will be in the focus of my thesis. To introduce this field to the reader, I will characterize the regulatory initiatives, describe their contents and summarize the historical background. Second, I will focus on the theoretical part where I will introduce the Policy Paradox framework. I will also set the Policy Paradox into a broader public policy analysis literature and compare it to other political decision making analytical approaches. After the outline of the theory, I will also present the critique of Policy Paradox approach. Third, I will analyze the discourse using the media releases and public sources. I will identify the main actors that were involved in the debates. In the main analysis, I will follow the framework provided by Stone and identify the phenomena she talks about in the discussions the actors have led.

5. Sovereignty, Globalization and the Global Scope of the Analysis

The discussion about tax havens is embedded in the broader issue of globalization. Sharman (2006, p. 3) writes: “International tax competition includes all the main elements of conventional globalization story. A credible exit option for capital at the domestic level and severe collective action problem among states at the international level leads to ascendance of global markets over national policies.” The basic rules for international taxation were set in 1920s, reflecting the conditions of trade in those times. The advance of communication technologies, travelling and growing amount of international trade in combination with liberalization and deregulation enabled the capital owners to gain immense mobility. Capital can be transferred “at the click of a mouse”. As a result of these possibilities, governments are pressured to lower their taxes in order to compete for capital and provide the best conditions for investors. Taxation is regarded to be a crucial element of country’s sovereignty. Therefore, some jurisdictions can build their economies on the basis of low or zero taxes, attracting foreign capital and live largely from financial services (Sharman, 2006, p. 3). This is advantageous especially for the small and the least populated jurisdictions since they do not need to pay for expensive welfare state and the control over the territory and politics is much easier (Hampton & Christensen, 2002).

International policy making is constructed differently than the national one – in international theory, the anarchic character is regarded to be one of the most important characteristic of international relations (Milner, 1991). Unilateral or regional means will fail if some reliable tax havens exist because the capital will simply flee to another jurisdiction. It is clear that there is no international government that can solve this collective action problem and unilateral or regional means can have only a limited effect. Because of the high mobility of capital I regard the global as the most important.

I have chosen to analyze global initiatives only, although several important regional attempts against tax havens have taken place⁶. As I have mentioned in the introduction, I want to focus on the initiatives that have aimed to curb tax evasion and avoidance. Therefore, I will not include the initiative of Financial Stability Forum (later Financial Stability Board), since their aim is global financial stability and their work have not addressed evasion and avoidance directly, even though they support other initiatives in this matter. For the same reason, I will not include the initiative of Financial Action Task Force initiative.

The global leverage will have an effect on the data I need, too. As I have mentioned above, I will also analyze the statements of the actors involved in the three initiatives that occurred in the media. I will search for such media quotes that are written in English. I decided for the English language because it is the main language in which all the proposals and treaties are written. Moreover, given the high international importance of the talks and the impact on the financial business world-wide, English is used by actors universally.

6. Regulatory Initiatives: a Historical Background and Achievements

As I have mentioned in the introduction, the first goal of this thesis is to investigate who the regulators were, what means they proposed, and what they achieved. I will summarize the knowledge about the tax haven's world-wide regulation attempts that aimed to curb tax avoidance and evasion from 1998 to 2013, beginning with OECD Harmful Tax Competition that was the first and largest campaign announced. This historical perspective will be also useful for the analytical chapter – it will create grounds for identifying important actors in these policy processes and will serve as a factual framework for the analysis of discourse. First, I will present the regulation attempts, their initiators, the years in which they were actual, and their methods and incentives proposed in the Table 1. Second, the historical overview will be outlined for each initiative.

Table 1

Multilateral Tax Cooperation against tax avoidance and tax evasion with global leverage (January 1998-May 2013)

The name of the initiative	Proposal made by	Years of the campaign	The problem addressed	Proposed incentives and methods
Multilateral attempts of regulation at the global leverage				
Harmful Tax Competition (HTC)	Ministers of OECD member states, endorsed by G7	unofficial talks began in 1996; 1998-2002	Personal income tax evasion, corporate income tax avoidance and evasion, transparency, information sharing	First blacklisting, peer pressure, threatening with sanctions, later dialogue, persuasion
G20 Tax information exchange	G20, delivered by OECD and Global Forum on Transparency and Exchange of Information for Tax Purposes	2009 - nowadays	Tax evasion and tax avoidance, signing at least 12 bilateral treaties to challenge bank secrecy. Mutual Administrative Assistance in Tax Matters - agree to implement automatic exchange of information in cooperation with Council of Europe	Blacklisting, sanctions in case of bilateral treaties, no measures in case of automatic exchange of information
Base Erosion and Profit Shifting (BEPS)	G20, delivered by OECD	2013 - nowadays	Tax evasion, aggressive tax planning, tax avoidance done by multinational corporations, profit shifting, erosion of governments' tax base – developed and developing countries	not known yet

Note: author.

6.1. OECD Harmful Tax Competition (HTC)

In 1996, ministers of the OECD requested that the organization develops measures to counter the distorting effects of “harmful tax competition” on investment and financing decisions and the consequences for national tax bases. After consultation on the matter with the European Commission, the G7 endorsed this request for the OECD Committee on Fiscal Affairs to respond to their concerns of harmful tax competition. The OECD Fiscal Affairs Committee released its first report called Harmful Tax Competition – An Emerging Global Issue in 1998 (OECD, 1998). In it, tax havens were accused of luring foreign investment that is not based on any substantial economic activity in the territory of the jurisdiction. Tax havens were accused of invoking harmful tax competition, depriving other countries of their tax revenues. First, the HTC initiative did not receive much attention from tax havens. However, in 1999 when the OECD announced the goal of blacklisting all the jurisdictions and to name and shame them, they started to respond. The report with the blacklist in preparation proposed sanctions for those jurisdictions that will not comply to change of their laws (Sharman, 2006, p. 15).

In 2000, the committee published the report Towards Global Tax Co-operation (OECD, 2000) which listed forty-one tax havens allegedly involved in harmful tax practices. The original characteristic of attracting capital based on “no substantial economic activity” was removed from the criteria. There remained four criteria for blacklisting that were congruent with the OECD definition of tax havens: low or no tax income from financial services; lack of information sharing provisions; ring-fencing of financial services from the rest of domestic economy; a lack of transparency. Simultaneously, the OECD was careful to evaluate whether the jurisdiction had been involved in tax competition in a harmful way (OECD, 2000; Maurer, 2008, p. 164). Some OFCs successfully lobbied to be removed from the list before it was officially published in exchange for co-operation with the OECD in changing their laws. Other jurisdictions obtained a year to reform their legislations. Those

OFCs that would not comply were threatened by a withdrawal of withholding tax treaties with OECD countries and by listing them on the second list with “uncooperative tax havens” (Hampton & Christensen, 2002, p. 1660, Sharman, 2006, p. 15). Moreover, the report also developed measures against uncooperative jurisdictions; transactions were supposed to be under close scrutiny and to be reported by firms and individuals, tax treaties with these jurisdictions could have been abrogated, special fees for transactions with uncooperative tax havens were to be enacted or foreign aid for these countries was to be restricted (Sharman, 2006, p. 46-51). After the blacklisting in 2000, criticism towards the OECD increased. Tax havens complained about unequal treatment. Rawlings and Sharman (2006; see also Unger & Ferwenda, 2008, p. 10) have shown in their study that OFCs that were connected with OECD countries were usually not put on the list. The countries under which they have their jurisdictions probably helped them not to be blacklisted. Later on, I will show that this aspect of vested interests had its importance in the debate because tax havens felt that OECD treats jurisdictions unequally.

At the beginning of 2001, the Secretary General of the Commonwealth met with OECD representatives in Barbados. This meeting was crucial for the beginning of coordination of tax havens. Commonwealth ministers attacked the initiative and the Commonwealth secretariat became involved in derailing the HTC on behalf of targeted jurisdictions. OECD agreed to set up a Joint Working Committee, which became a precedent for the negotiations based on equal footing of tax havens and the OECD. After the meetings, with the help of the Commonwealth, the International Tax and Investment Organization (ITIO) was founded. It’s main aim was to coordinate the interests of tax havens and to derail OECD’s regulation efforts. For a similar purpose, the Center of Freedom and Prosperity was founded in October 2000 in Washington. These newly founded groups with other right-wing and libertarian think tanks (the Cato Institute, the Heritage Foundation, the Center for

Freedom and Prosperity) began to influence key actors in Washington by lobbying. Therefore, they tried to win OECD governments on their side, since the HTC had been gaining legitimacy from the member governments. The support eroded especially among the Commonwealth countries that are OECD members Australia, Canada, and New Zealand. The newly elected US president's administration also withdrew support for HTC as a result of efficient lobbying of the Center for Freedom and Prosperity. In contrast to a firm support from Treasury Secretary Lawrence Summers during the Clinton administration, the new Treasury Secretary Paul O'Neill publicly criticized HTC in May 2001. The sanctions that would take place in July 2001 were dropped and OECD failed to accomplish the compliance of tax havens (Sharman, 2006, p. 16 – 17, Van Fossen, 2003, p. 248).

However, due to the terrorist attacks on 9/11, the initiative did not die out, but its aims changed. OECD removed the criteria of “ring-fencing of the jurisdiction's tax laws” and “no substantial activity” clause from the definition of harmful tax competition. As a result of these concessions, and also as a consequence of the risk of being blacklisted, many jurisdictions made commitments to the OECD to reform their laws accordingly. In November 2001, OECD published a new initiative that announced new goals of HTC that were to be achieved until 2006, which was exchange of information in criminal matters, such as fraud, money laundering, drug trafficking, financing terrorist activities and on civil taxation matters. In this refocused initiative, the OECD abandoned the unilateral approach and involved ITIO, tax havens and their representatives into decision-making process (Maurer 2008, p. 167, Sharman, 2006, p. 17). In 2000, the Global Tax Forum on Taxation was founded in order to discuss the regulations. In 2002, it encompassed various actors to negotiate on an equal footing (OECD, ‘About the Global Forum’). In 2002, the Forum came out with its first point of agenda - the Model Agreement on Exchange of Information on Tax Matters. The Model

Agreement was a set of principles of information exchange that the Forum aimed to achieve and served as the basis for negotiating agreements on tax matters.

The attempts to coerce OFCs changed into a discussion about the principles of shared responsibility, transparency and effective exchange of information, tying it (at least rhetorically) more to the Financial Action Task Force initiative goals, namely money laundering, illicit financial flows and terrorist financing. The exchange of information aimed led to a disagreement with Switzerland and Luxembourg. A new deadline was set: by February 2002 with the sanctions to begin in April 2003, all the jurisdictions were expected to commit to information exchange, otherwise they would be threatened by naming and shaming. However, the Isle of Man achieved a limitation that the information exchange would be applied only if all the OECD member states and listed states complied with the requirements of OECD. In May 2002, seven jurisdictions did not comply and were listed as uncooperative. However, even this modest initiative suffered embarrassment when in 2003 Austria, Belgium and Luxembourg were excused from participation in tax information exchange until 2011. Therefore, none of the members was eventually bound by the initiative. The initiative for universal regulation of international taxation was lost in October 2003 when tax havens managed a rule to be enacted - if third party competitors, such as Singapore, would not bind themselves to the tax information exchange, they would not be expected to comply either (Sharman, 2006, p. 17 – 18; Maurer, 2008, p. 167; Kudrle, 2008, p. 8). Subsequently, Global Forum on Taxation remained functional but the modus operandi has changed – Global Forum ceased to attack tax havens and even stopped using the term “tax havens”. The Global Forum’s new strategy was based purely on persuasion to achieve transparency and exchange of information. It aimed to achieve a “level playing field” – treat all jurisdictions equally. The forum continued to review legal and administrative frameworks of jurisdictions in the areas of transparency and exchange of information and the proposed means to change the legislations

was persuasion and negotiations. Thus, after 2003, the Global Forum's and OECD's strategy have not involved a conflicting approach towards the tax haven jurisdictions anymore (OECD, 2006). Politics of conflict with tax havens returned again with the initiative of G20 in 2009.

6.2. G20 Tax Information Exchange

The G20 initiative aimed to solve the tax evasion and tax avoidance through various types of information exchange. In particular, the OECD elaborated the Model Convention where jurisdiction supposed to declare agreement with information exchange. The way how to change the information is a matter of further agreements between particular jurisdictions: it can encompass automatic tax exchange, exchange on request, spontaneous exchange and other administrative measures.

G20 chose the exchange of information upon request and encouraged states and jurisdictions to sign bilateral treaties (on the basis of previously mentioned) in order to exchange information. Tax havens were urged to sign at least 12 bilateral Model Agreement on Exchange of Information on Tax Matters (TIEAs)⁷ with other countries under the threat of economic sanctions. This measure should have led to investigations and should have deterred individuals and companies from tax avoidance and tax evasion. The other type of information exchange – automatic, was left for later.

Similarly as in 2000, the OECD used lists to put pressure on tax havens. It used a “white list” of countries that agreed upon implementing and implemented information exchange, a “gray” list of countries that have committed to such a standard and not implemented it, and a “black” list of countries that have not committed to information exchange standards. The G20 also proposed to employ sanctions against jurisdictions that will not announce to comply. In April 2009, the last four countries on the “black” list - Costa Rica, Malaysia, Philippines, and Uruguay - were moved to the “gray” list. As of May 2012, only Nauru appeared on the gray list for tax havens and Guatemala was on the gray list for financial centers (Gravelle, 2013, p. 5).

By the end of 2009, countries and jurisdictions signed more than 300 TIEAs (Johannesen & Zucman, 2012, p. 1-4). Interestingly, the TIEA agreement refers to the legacy

of HTC initiative and traces its origin to it (OECD, 2009a). Currently, there are almost 900 bilateral agreements on information exchange among jurisdictions that have joined the forum and the number is growing. All countries agreed to exchange information upon request and Global Forum works on their implementation by jurisdictions.

In September 2009, delegates from 70 jurisdictions and international organizations met to proceed with information exchange implementation. The OECD Secretary-General restructured the Global Forum upon their request so that that members could participate on equal terms. The restructured forum was supposed to speed up the peer review of jurisdictions and proceed faster with implementation of information exchange (OECD, 2009b, p. 2 - 5).

After all the jurisdictions agreed upon the exchange of information on request, OECD endorsed by UN and G20 moved from bilateral to multilateral cooperation and to automatic exchange of tax information⁸ (OECD, 2013e). The next goal is to search for a universal agreement of jurisdictions on automatic tax information exchange which “involves the systematic and periodic transmission of “bulk” taxpayer information by the source country of income to the country of residence of the taxpayer concerning various categories of income (OECD, 2013b, p. 9).” In OECD and among some other countries, the automatic exchange of information is an implemented practice. OECD members Luxembourg and Austria still apply a withholding tax instead of an automatic exchange that is in the process of implementation (OECD, 2013b, p. 11). However, at the end of May 2013, the remaining OECD members Luxembourg and Austria agreed to implement automatic exchange of tax information and signed the Convention (Malik, 2013). However, the practical means of automatic tax information exchange are still unclear.

6.3. Base Erosion and Profit Shifting (BEPS)

BEPS initiative originated only very recently and the contours of the discussion have not fully developed yet. However, it deserves attention since it addresses corporate tax avoidance and aggressive tax planning and their impact on the budget of governments. During a G20 leaders' meeting in June 2012, G20 finance ministers expressed the need to prevent base erosion and profit shifting. More specifically, they demanded the elimination of "double non taxation", which basically means that due to a loophole, corporations with business activities in two or more countries can avoid paying taxes totally. They also expressed an intention to prevent profit shifting to tax-free jurisdictions where no substantial economic activity of the corporation takes place. They have asked the OECD to report on this issue by their meeting in February 2013. In February, the OECD published the report Addressing Base Erosion and Profit Shifting (OECD, 2013d) that analyses the root causes of BEPS. The report was supported by G20 finance ministers at a Moscow meeting and they urged the development of a comprehensive action plan to be presented in July 2013 (OECD, 2013a).

7. The Argumentative Turn in Policy Analysis

In this chapter I will succinctly review the theoretical framework I intend to use. I will describe all the basic categories that can be used in the policy discourse according to Stone. By using these categories, Stone intends to deconstruct the policy debate in order to show “how the actors think, what they believe, and what their best strategies are (2002, p. 385).” Before the introduction to theory I intend to use and before the analysis is conducted, I will set Stone’s theoretical concept into broader public policy literature.

7.1 Rationalist Approach to Policy Analysis and the Argumentative Turn

Stone emphasizes that one of the reasons for writing *Policy Paradox* was her critique of rational approach in political analysis. She claims to “bring politics back (2002, p. 8)” and incorporates it into her *Policy Paradox* concept. The traditional approach to political analysis is characterized by following steps that parallel the requirements of scientific research. This approach excluded politics as something unnecessary and replaced it with rationality – the policy analysis resembled a “process of fixing a broken bicycle”. Put differently, an objective problem is to be empirically identified, then a goal is chosen, a number of possible actions are considered, the consequences for each alternative are predicted and evaluated by using a cost - benefit analysis, and finally the solution that maximizes the effective attainment of objectives is selected. The problem is resolved for at least some time⁹ (Stone, 2002, p. 8; Fischer, 2007, p. 223).

Stone builds her theory in contrast to “rational“, “economic” or “sequential” models¹⁰. Indeed, policy analysis was largely technocratic in the 1960s and 1970s when it emerged. The neopositivist and empiricist methods were prevalent and policy analysts conducted the

quantitative analyses. The scholars that used the rationalist approach tried to separate facts from values and they searched for objective value-free solutions. The role of values, politics and rhetorics was not taken into account (Fischer, 2007, p. 223-225).

Stone`s work is of different character – it emerged as a response to the epistemological limitations of empiricist decision-making practices and presents an alternative to the formal logic of neopositivism. Thus, her work belongs to a new methodological approach in policy analysis that combines the analysis of empirical data with arumentation, narratives and rhetoric. A growing number of scholars have focused on this approach giving rise to what was named by Fischer et al. (1993) as the “argumentative turn” or the practice of “deliberative policy analysis” by Hajer (2003). In general, this approach starts from a recognition that social and political reality can be interpreted in many ways. These interpretations give rise to competitng definitions of policy problems. This approach brings together normative and empirical inquiry together in a deliberative framework. Simultaneously, this approach is regarded to provide a better description of real-world policy-making (Fischer, 2007, p. 224). Stone writes: “Reasoned analysis is necessarily political. It always involves choices to include some things and exclude others and to view the world in a particular way when other visions are possible. Policy analysis is political argument, and *vice versa* (Stone, 2002, p. 378).” Scholars from this approach, such as Majone (1989, p. 7) claim that most of the work of policy analysts is to produce evidence and arguments that can be used in the debate. Policy can be best understood as a crafted argument. Persuasion and interpretation is important during all stages of policy process. Arguments are essential to construction and reconstruction of policy problems (Fischer, 2007, p. 225 - 226)

Stone has shown a different pattern of analysis in her framework - she divided her concept into 3 elements – goals, problems and solutions according to which she also organized her book. I will explain the meaning of these categories later in this chapter.

Compared to the traditional sequential notion of policy-making (a problem emerges, various solutions are considered and the problem is resolved), the parts of the policy formulation in argumentative approach do not follow each other in a given order and can enter the game in a different order. They also tend to interlock in paradoxes. Policy Paradox, according to Stone, refers to an interlock of values that is created in narratives of the actors involved in the policy process. “This is the knowledge that policies may hold two or more realities at the same time and that these interpretations may be seen as contradictory, yet both can be defended as truth (Stone, 2002, p. 1; Thomas, 1989, p. 567).” What policymaking is not is a clear-headed, rational analysis and fixing the problems that emerged in the polis. Objective rationality as such does not occur in policy making (Stone, 2002, p. xi). Political thinking is characterized by using metaphors and analogies. The reason for this is to persuade others, to make them understand the discussion in a desired way. Similarly, policy making is not rational problem-solving conducted by rational government that achieves objective public good. Politics is a battle of ideas (Stone, 2002, p. 9-11).

Majone’s (1989) work also belongs to the “argumentative turn” in policy analysis. He emphasizes the importance of argumentation in policy-making in his book and creates a similar conceptualization for analyzing debates among actors advocating policies. He puts the main ideas of this approach even more explicitly:

As politicians know only too well but social scientists too often forget, argument is central in all stages of the policy process. (...) Public policy decisions are underpinned by societal values and moral judgments determined through a wider process of argumentation and reciprocal persuasion within society rather than merely the exercise of interests. (...) Policy-making is a constant discursive struggle over the criteria of social classification, the boundaries of problem categories, the intersubjective interpretation of common experiences, the conceptual framing of problems, and the definitions of ideas that guide the ways people create the shared meanings which motivate them to act (Majone, 1989, p. 1-4).

As can be shown on several examples where Policy Paradox was previously applied for the analysis of decision-making¹¹ (e.g., Chytilek & Spac, 2012), many paradoxes and strategies that will be characterized below can occur in one policy situation. Without knowing what tools and strategies the actors in the discourse on tax havens could use, I need to succinctly outline the whole framework that Stone described in her book on over 400 pages.

8. The Concept of Policy Paradox

The Policy Paradox is a set of tools for analysis of actors' rhetoric and arguments. These categories of goals, problems and solutions outlined below should be all-encompassing. For instance, in the case of goals, the four categories - equity, liberty, effectivity and security should be sufficient to categorize all the goals that actors can pursue in policy making debates. These categories should bring order to the debates, simplify them and show the rhetoric strategies of the actors. I will describe all the categories of Policy Paradox, since it is impossible to know beforehand what goals, arguments and rhetoric strategies will the actors eventually pursue. I will apply them on the cases I intend to analyze.

8.1. Goals

Stone identifies four crucial goals which are equity, liberty, effectivity and security. In this subchapter, I will describe three the functions they can represent in the policy making debate. First, these goals represent normative ideals that societies want to achieve. Second, they also provide justification for pursuing (or not pursuing) certain policies. Third, they can be used for the evaluation of adopted policy (2002, p. 37-38). As Chytilek and Spac write in their analysis, in practice, these four goals are primarily not normative ideals that are being considered by political parties when selecting a policy. They are rather a "munition" or justification for parties for convincing the public about the correctness of a selected policy. When Stone characterizes goals, she ascribes them a great potential to be used in a particular way (Chytilek & Spac, 2012, p. 18).

8.1.1. Equity

"Equality may in fact mean inequality; equal treatment may require unequal treatment; and the same distribution may be seen as equal or unequal, depending on one's point of view (Stone, 2002, p. 42)." The ambivalence of equity is one of the biggest debates in political philosophy. The famous debate on justifiable distribution has a special name: Equality of

What? and renowned scholars such as Ronald Dworkin, Jerry Cohen or Amartya Sen were involved in this debate for years. They ask: How should we redistribute wealth? Should there be equality of resources, capabilities, welfare, merit? This ongoing and unresolved debate shows that there is no definite justice when we distribute goods. In political process, various actors take various criteria and try to persuade the public that their vision of equality is the correct one. Thus, different visions of equity can meet in political arena and create a paradox of values. They could both rightfully argue that their measurement of equality is the correct one, just as in the debate “Equality of What?”.

8.1.2. Efficiency

Efficiency is a goal that can be defined as “getting the most out of a given input” (Stone 2002, p. 60). Stone shows that it is not so simple because technical efficiency does not say how exactly to achieve efficiency. She uses an example of managing a public library when explaining the ambivalence of efficiency. How would we evaluate the efficiency of a library when our resources are limited? On the basis of what criteria would we measure it? Is it the number of borrowed books? Or should it be a number of minutes that a person must wait to borrow a book? Is it rather the variety of various activities that the library offers? Should multimedia and magazine offers be encompassed into evaluation, too? Is the quality of the collection that the library offers important? These competing criteria are at least as legitimate as the number of borrowed books criterion. If a politician decides what should be measured, he is able to determine the outcome of an efficiency evaluation. The ambivalence of effectiveness, therefore, resides in how we define the criteria of what should be measured. Subsequently, we can determine how efficient a library is (Stone, 2002, p. 60-68).

8.1.3. Security

Besides physical security, economic, psychological and other types of security are also included in this category. It is closely linked with the concept of basic human needs. It expresses that somebody desperately needs something. There is often a political debate at

what is still a need and what is an unnecessary desire. Similarly to the case of equality, there is a big philosophical debate about what are basic human needs. Philosophers such as Martha Nussbaum, Amartya Sen and many others created lists of basic human needs. Are the basic human needs only attributes needed for immediate survival, or are love, solidarity, relaxation and contact with other humans basic needs as well? Should we provide only basic security to those who need it the most (e.g., food and shelter), or should we rather try to achieve life with dignity for everyone? What is dignity then (Stone, 2002, p. 86-106)? It is clear that in the political arena, actors can define security and use it as an argument, even in conflicting ways that may create a paradox – for instance, a decision-maker can argue that building a new power plant will endanger the health of the people living around it. A second politician can also use the same security value for his argument that contradicts the argument of the first politician. He could say: Security of people living around the plant will be greatly enhanced since they could be employed there and earn good wages. They will not be threatened by poverty.

8.1.4. Liberty

As it is well known, there are two competing types of liberty as Isaiah Berlin defined them - positive and negative (Berlin, 1958). If a person wants to gain more freedom, someone else's freedom is usually reduced. Two different concepts of liberty are one of the basic issues of political competition. Which policy enhances liberty – freedom of not being taxed or the development of freedom of the disadvantaged by using taxes of the most advantaged ones? Stone writes: “Sometimes curtailing individual liberty may be necessary to preserve a community in which individuals can thrive and exercise free choice. But under what circumstances should public policy ever limit individual privacy and autonomy (Stone, 2002, p. 108 - 109)?”

8.2. Problems (Ways of Problem Presentation)

This chapter will briefly describe how problems in polis are defined and demonstrated politically. Similarly to the case of goals, Stone emphasizes that status quo is unstable and vague depending on which standards are used to interpret it. In the rationalist tradition of policy analysis that Stone criticizes, the evaluation of status quo is perceived as objective and therefore objectively measurable. Contrary to this, Stone claims that usually there are several competing interpretations of the policy problem that is strategically defined and supported by language or biased evidence. Political actors use various tools to support the goals they pursue. Stone identifies following six ways of problem presentations that are used frequently. Each of them presents a type of language for defining and portraying problems. Stone also claims that there is no universal or scientifically correct way of problem definition. Each of the outlined methods of presentation offers is a “vehicle for expressing moral values” (Stone, 2002, p. 133-135).

8.2.1. Symbols

The function of symbols is to represent a given political situation to the public in a concise manner. It also means that a symbol should have some established interpretation in a society. Symbols that are well chosen help an interest group to communicate given problems and make them more pressing. There are four tools that Stone defines – stories, metaphors, synecdoche and ambiguity (Stone, 2002, p. 137-138).

8.2.2. Stories

Politicians often use stories to deliver a problem or a solution to the public. One of the most well-known stories is the so called “story of decline”. Originally, the situation was satisfactory but then it deteriorated and it is currently unbearable. Something has to be done, otherwise the situation is going to be critical. The second frequent story is the “story of helplessness and control”. It expresses that a bad situation was regarded to be without a

feasible solution. However, the actors in charge of a policy eventually found a way how to solve it (Stone, 2002, p. 138 - 145).

8.2.3. Metaphors, Synecdoche and Ambiguity

There is probably no need to define such a term as metaphor. It can be a very powerful tool – using a fitting meaphor can compare two situations in a way that favors the author's aims and disqualifies competing measures. Synecdoche is used as a strong persuasive tool, too – it takes a particular thing or event and applies it globally, or vice versa. For instance, when there is a problem with car crashes on one particular road caused by high-speed driving, the ministry argues to limit the speed for everyone in the whole country, using this particular road as an argument for speed limit. Ambiguity is a symbol that helps to label political decisions but leaves space for further interpretation and specification. Therefore, ambiguity makes political bargaining faster and supports compromise. It is used for aggregation of different or competing interests (Stone, 2002, p. 145-162; Chytilek & Spac, 2012, p. 30-31).

8.2.4. Numbers

Measuring a problem is a common strategy in political decision-making and in persuasion in general. Using numbers has a powerful impact on the public and other stakeholders supporting the politicians' cause by scientific expertise and exact ethos. Obviously, measurement can be arbitrary. It can be manipulated to the advantage of the actor's cause because he is the one who decides what to measure, how to measure and how to interpret it. Numbers can be used to define a problem or to evaluate solutions already proposed (Stone, 2002, p. 164-187).

8.2.5. Interests

Politicians offer refer to a level playing field. They clarify to the public what are the interests of the actors and who will benefit from the proposed policy. Clearly, such identification bears a lot of subjectivity. Various itnerest groups have differing resources,

gains and potential to mobilize supporters. Stone reflects this problem in a two by two table of costs and benefits.

Table 2

Categorization of interests according to concentration of costs resources and concentration of benefits

		Concentration of benefits	
Concentration of Costs		Dispersed	Concentrated
	Dispersed	Social Benefits	Benefits of forcefully deployed
	Concentrated	Environmental protection	Bargaining between company owners and unions

Note: From Policy Paradox: Political decision making in practice (p. 223), by Stone, D., 2002, New York.

The table shows that groups can be advantaged and disadvantaged. In the case when both costs and benefits are dispersed or both concentrated, the competing groups have equal opportunities. In the case of mixed costs and benefits (when costs are dispersed and benefits concentrated, a vice versa) one group has advantage over the other.

Stone also brings another table in regard of advantaged and disadvantaged groups. She arbitrarily divides the interests into two groups on the basis how citizens perceive the interests – as good weak interests and bad strong interests.

Table 3

Characteristics of good weak interests vs. strong bad interests

Good weak interests	Strong bad interests
collective	individualistic
dispersed	concentrated
wide	narrow
long-term	short-term
spiritual	material
social	economic
public	special
in connection with work	capitalist

Note. From Policy Paradox: Political decision making in practice (p. 228), by Stone, D., 2002, New York.

Good weak interests are advantageous in this case because they have higher potential to raise public support for their cause. If strong interests were more advantaged in the sphere of resources, weak interest groups can benefit from the ethos of being good (Stone, 2002, p. 223-228). However, as Chytilek points out, this categorization is arbitrary and sorting the interests into these two categories can cause problems. Usually, bad strong interests want to be seen as weak good interests. Chytilek and Spac (2012, p. 36) demonstrate this on the example of Charels Wilson's quotation (General Motors' director): "What is good for General Motors is good for America."

8.2.6. Causes

Pointing out at the cause of some phenomena or status quo can also be used as a persuasive technique. By identifying the cause of a problem, we can create a causality that implicitly states what should be done and by whom. Policy-makers can legitimize themselves for solving the problem or create alliances by defining the partners. Stone proposes a typology of actions and causes in 2 by 2 matrix according to the criteria whether they were intended or unintended. The four categories have different political strength – on one hand, if something happened without the attention of political authorities and without intention to cause harm it is much easier to justify the unpleasant results. This can be a good strategy of an actor that could be held responsible for ill outcomes of his policies. On the other hand, another political actor should try to show that a unwanted result was intentionally caused by a specific actor. The second causality has greater political power to mobilize. Moreover, this persuasion technique enables the actors to show that they are professionals who understand the issues and should be in charge of solving the policy problem (Stone, 2002, p. 188-197; Chytilek & Spac, 2012, p. 33).

Table 4

Types of causality		Causes	
Actions	Uncontrolled	Intended	Unintended
		Mechanical Causality	Random Causality
	Controlled, intended	Intended Causality	Unintended Causality

Note: From Decision Making in the Public Sphere: Model Policy Paradox in the Czech Republic (p. 33), by Chytilék & Spac, 2012, Brno.

8.2.7. Decisions

Obviously, policy makers propose possibilities of solution. Their aim is to show why one solution should be chosen over others. They compare the advantages and disadvantages of possible solutions to show that their solution is the best available. The most frequent tools for such comparison are cost-benefit analysis and risk-benefit analysis. Stone emphasizes that these tools are not value-neutral. In fact, the policy-maker can select quite arbitrarily what will be considered in the costs and benefits analysis. In other words, he can decide what will be placed on the side of costs and what on the side of benefits to influence the overall outcome. Thus, they are also strategic tools by which policy-makers try to exaggerate the advantages of their solutions or belittle the drawbacks and vice versa. This is also possible because the goals of the policies are vague and not stable in the sense that the goals can change during the policy-process. Overall, Stone regards these tools are used rather as rhetorical strategies than exact measures (Stone, 2002, p. 232-257).

8.3. Solutions

Solutions are the means how policy problems are tackled and the means how to change the status quo. They can also be called policy instruments that intend to exert power on people and make them what they otherwise would not do. The important part of Stone's theory is that enacted solutions are not stable and problems are not resolved once and for all. According to her, they are rather "ongoing strategies for structuring relationships and coordinating behavior to achieve collective purposes. Policy is more like an endless game than a bicycle repair as she puts it (Stone, 2002, p. 261)." She names five basic types of resolutions. As she claims, every solution that can be enacted in polis is covered by these categories (of course, other types of solutions can be combination of these basic types).

8.3.1. Inducements

Inducements are solutions that use the strategy of carrots and sticks. When policy-makers choose this solution they want to motivate positively, negatively or by a combination of both in order to influence people's behavior. Again, in the case of polis, stimulus has a different character than in economic models. First, the administrator of the stimulus in polis is often a collective actor and the stimulus is a matter of conflict between various actors, such as political parties in government or branches in the ministries. Contrary to this, in economic models we expect a single uniform entity that can make a rational decision on the stimulus. Second, the stimulus in economic models has a precise meaning and it is interpreted in a single intended way. In polis, much more must be account for - the stimulus can be interpreted in different ways, it can have a symbolic value, too much "sticks" can lead to protest and disobedience, thus becoming ineffective, etc. (Stone, 2002, p. 265-283; Chytilek & Spac, 2012, p. 39).

8.3.2. Rules

Rules are various types of laws. They describe actions that should be done in a different context. Rules can be official and unofficial, more or less ambiguous. Stone claims that the policy bargaining often results into ambiguous rule. If rules are precise they are rigid because in every situation there is a clear guidance how to behave. They are also more just because they treat the same cases equally. If they are not, it can lead to protests from other actors who wish that rules were exact. To enact flexible or ambiguous rules might be a strategy of policy makers because the consensus among different interests is achieved easier. Sometimes, the rules can also invoke “perverse incentives” – motivating people to abide to rules but avoid the costs at the same time. For instance, if fixed payments for a patient in the hospital are stated according to the seriousness of his illness, the hospital might diagnose the patient with different and more serious type of illness he actually has and treat him accordingly. If laws are ambiguous, actors can claim that their advantage is flexibility, sensitivity to different cases. Contrary to polis, economic models expect that there is an ideal intersecting point between ambiguity and rigor. Laws in polis are often incomplete, they are being enacted in a crisis. Traditional models of rational choice would also expect them to be neutral towards various social groups. In polis this is a fiction. Some social and interest groups are favored and some disfavored. Rules are also not perfectly enforceable in polis (Stone, 2002, p. 284 - 290).

8.3.3. Facts

Persuading with facts is one of the most ambivalent category of Stone’s theory. Formulating goals, trying to get as much information as possible and making an informed decision is a good practice we expect from decision-makers. Power and conflict are replaced by neutral facts. Decision-makers try to persuade the public using neutral or scientific facts to change their behavior. Campaigns for using helmets on the bicycle, campaigns for preventive examinations against breast cancer are a good example. However, persuading citizens can be turned to propaganda – the government can use inaccurate, incomplete or misleading facts to

persuade the public. The purpose of such a message is not to solve a policy problem. Rather, Politicians want to push the message through the media, prevent the public from critical thinking and control citizens. Stone claims that using facts in polis is somewhere in between these two extremes. She refuses the usual notion that facts are used neutrally in polis. People are influenced not by the rational facts only, but also by history, culture, simplifications, social norms, etc. Various actors can try to influence the public by using this rhetorical device. However, they can possess different means to do that (Stone, 2002, p. 305 - 323).

8.3.4. Rights

The problematic issue of rights in polis in Stone's theory reflects the American judiciary tradition, however, they can be also applied to other democracies. She observed that rights in polis are considerably ambiguous. For instance, take the well-known debate on third generation social rights. Do all people perceive them similarly? Obviously, the laws originate from various rights that are codified in constitutions, legislatures, international agreements and other sources. However, what should be a right is perceived differently by the people. There is no objective list of universal rights. Decision-makers can use the rhetoric on rights to shape the perception of public what their rights are. Stone also claims that when judges proclaim their neutrality is also delusional. They are susceptible to various external interpretations and influences (Stone, 2002, p. 324 - 346).

8.3.5. Powers

Decision-making can be influenced through the change of the decision body as well. Stone identifies three basic strategies how to influence the redistribution of powers in one's favor: changing the composition of a decision-making body, changing the size and changing the level of decision. Changing the decision body can be an effective strategy for some actors to achieve the desired outcome of the policy (Stone, 2002, p. 354-365).

9. Critique and Reflection of Policy Paradox Concept

Policy Paradox as a deviant concept that defines itself against the rational choice approach received mostly positive reviews. In 1988, when the book was first issued, this approach in studying policy was original. Given the amount of studies that were conducted using this concept (e.g., Spurr, 2007), the critical voices are almost not heard (Chytilek & Spac, 2012). Among the few, the most relevant was the one of Thomas (1989) who points out that Stone's book structure is organized in a way that she paradoxically criticizes. She claims that goals, interests and solutions do not usually follow this order but she organized her book chapters in that way. Even though Thomas (1989) thinks that Policy Paradox is not an adequate alternative and cannot fully replace the previous rational choice theories, it complements them well.

10. Analytical Part

10.1. Actors

I will divide the actors in two basic groups. First, it is a group of various actors that had been arguing for preventing citizens and companies from tax evasion and avoidance. Second, it is a group of various actors around tax havens who opposed this pressure. Actors in these groups are of different organizational types – international organizations, NGOs, think tanks and lobby groups. They got involved in the debate in different time. I have included actors that have made substantial or frequent contributions to the debates only. It must be said that this division into two groups does not mean that the actors within those two groups cooperate and support each other. For instance, the most medially exposed coalition of NGOs Tax Justice Network calls OECD to be “a club of rich countries that has delivered very little positive in practice but it has set of rules that favor rich countries and multinationals” (Tackle Tax Havens, The Lingo). The members of both groups can be found in Table 5. Short characteristic and participation in particular initiatives is included.

Table 5

Important actors involved in the analyzed initiatives

Group of Actors	Actors	Years of taking part in the public debates on the side of defined group	Have taken significant part in the debate on		
			Harmful Tax Competition	Exchange of Information	Base Erosion and Profit Shifting
Regulation of tax evasion and tax avoidance	International organizations				
	G7 (later G8)	1998 - now	x		x
	OECD	1998 - now	x	x	x
	G20	1998 - now	x	x	x
	NGOs				
	Tax Justice Network (tax havens, tax avoidance, evasion, illicit fin. flows; founded project Tackle Tax Havens)	2003 – now		x	x
	European Network on Debt and Development (Eurodad, coalition of NGOs)	2009 - now			x
	The Task on Financial Integrity and Economic Development (coalition of NGOs)	2009 - now			x
	Oxfam (development, poverty eradication)	2000 - now	x	x	x
	Christian Aid (tax justice, development, poverty eradication, member of Eurodad)	2000 - now	x	x	x
Action Aid	2009 - now		x	x	
Status quo or deregulation	International organizations				
	Commonwealth secretariat	2000 - 2001	x		
	The Pacific Islands Forum (PIF)	2000 - 2006	x		
	NGOs and others				
	Swiss Private Bankers Association	1998 - now	x	x	x
	Society of Trust and Estate Practitioners (STEP)		x	x	x
	The Center for Freedom and Prosperity (CFP; lobbies for tax havens)	2000 - now	x	x	x
	The Heritage Foundation (think tank)	2000 - now	x	x	x
	International Tax and Investment Organization (ITIO; unites tax havens and defends their interests publicly)	2001-2007	x		
	The Cato institute (think tank)	2000 - now	x	x	x
The International Financial Center Forum (IFC) (a multi-jurisdictional private sector organisation with members operating across a number of British Crown Dependencies and Overseas Territoriesv)	2009 - now		x	x	

Note: Author.

The list of important actors seems quite surprising for several reasons. First, the stability of the list is stunning – many actors had been expressing their views for the whole history of these global initiatives to curb tax avoidance and evasion. According to Stone's theory, this could be explained as follows: the resolutions brought by the initiatives are unstable, their achievements dubious since tax avoidance and evasion seem to be actual and growing. Thus, there is no reason for the actors to cease their activities. Second, the list is surprisingly short. The initiators of the regulatory attempts were powerful countries that give mandate to OECD to represent them. Similarly, the most influential NGOs, such as Tax Justice Network and Eurodad, are large coalitions. Tax havens are also usually represented by collective bodies that specialize itself on this particular matter.

11. Harmful Tax Competition

11.1. Goals of Actors

The goals of the first group can be defined in terms of Stone's categories of security, equity and efficiency. OECD saw erosion of countries' tax bases as a security threat that can affect the wellbeing of citizens. In the first document Harmful Tax competition: An Emerging Global Issue (1998, p. 3-4), OECD explains that the "erosion of tax bases of other countries diminishes global welfare." Simultaneously, tax evasion and avoidance increases the administrative costs and compliance burdens on tax authorities and subsequently on taxpayers. Harmful tax competition can erode national tax bases of other countries. It may alter the structure of taxation by shifting part of the tax burden from mobile to relatively immobile factors and from income to consumption and thereby may have a negative impact on employment. This can hamper the application of progressive tax rates and the achievement of redistributive goals (OECD, 1998, p. 14).

The Heritage Foundation have not agreed with OECD that security would be enhanced when tax havens was regulated. David Mitchell has argued that welfare of the poor is enhanced by status quo because "low-tax nations are magnets for jobs, capital, and entrepreneurial talent is a development that should be celebrated. High-tax OECD nations appear so desperate to hold tax revenues hostage that they ignore the interests of less-developed countries (Mitchell, 2000, p. 3)." He also added that security of all the nations will be more assured because "tax competition promotes fiscal responsibility of governments. Lower tax rates caused by competition encourage savings and investment to move more easily around the globe. Thus, world resources are better allocated and standards of living rise" (Ibid., 2000, p. 7-8). ITIO (2001) brought another view of tax havens on security into the discussion: "small economies fear that if they are forced to close down their offshore centres, they will suffer significant economic damage (ITIO, 2001)." John Cashen, chief finance officer of the Isle of Man expressed the concern about tax havens' own economies (Hampton

& Christensen, 2002): “The OECD threat is potent. (...) What would we do instead? If the OECD closed us down, we would become depopulated and derelict.”

STEP, the organization that represents employees connected with OFCs, claimed that status quo means security for vulnerable groups: “The offshore jurisdictions serve to protect the funds of families and businesses operating in the more turbulent parts of the world (Bennett, 1999, p. 20).” Libertarian Center for Freedom and Prosperity (Quinlan & Jansen, 2001) and the Heritage Foundation (Mitchell, 2000, p. 9) declared to defend liberties in a negative way - fiscal freedom and nonintervention. They have used argument that if the OECD initiative was successful, minorities, individuals, and entrepreneurs that are discriminated or persecuted could be subjected to kidnapping and other physical threats by their oppressive governments.

OECD also pursued greater equality and perceives that harmful tax competition “undermines taxpayers’ confidence in the integrity of tax systems” (OECD, 1998, p. 4) because corporations and wealthy individuals that are able to avoid or evade taxes are free riders who exploit the welfare services. Thus, the amount of tax revenues that is needed by state is collected among those who cannot use tax havens’ services given their way of paying taxes (VAT, income tax).

The Heritage Foundation (Mitchell, 2000) and STEP (Bennett, 1999, p. 20) think that equity would be violated by HTC if it was implemented: “The low-tax nations are discriminated by financial protectionism imposed upon them by OECD high-tax nations.”

The Heritage Foundation (Mitchell, 2000) asserted a negative liberty goal: by eliminating financial privacy – governments will gain unlimited access to personal information in order to spy on bank’s customers. Likewise, he claims that attacking sovereignty to establish low-tax regime leads to bullying of citizens by high-tax nations and citizens can enjoy less for the money they have earned - tax competition frees people to pursue

better lives. Taxpayers should have opportunity to “vote with their feet” (Mitchell, 2000, p. 9).

In 2002, OECD (2002) has also introduced efficiency argument. HTC supposed to be beneficial for every actor: “the ultimate success of this project will benefit all countries, OECD members and non-OECD economies. The implementation of the commitments to transparency and effective exchange of information will help to protect tax bases and as a result help developing countries to meet the call made in Monterrey for them to mobilize their own domestic resources for development (OECD, 2002).”

Opponents of HTC also claimed that tax havens create efficient environment that supports the economic growth. Among others, Switzerland considers that competition in tax matters has positive effects. In particular, it “discourages governments from adopting confiscatory regimes, which hamper entrepreneurial spirit and hurt the economy” (Statement of Switzerland, 1998, p. 76). The Heritage Foundation (Mitchell, 2000) added to the debate that tax competition leads to efficiency from which everybody will benefit from because it brings more investment and better standard of living, innovation, lower prices, and good service.

The opponents of HTC initiative defended the status quo by using all four possible goals that should have been achieved if status quo remained in place. The proponents of the initiative used all the goals except of liberty. The goals are summarized in the following Table 6.

Table 6

Summary of paradoxes of goals

Proponents of HTC initiative	Oponents of HTC initiative
Security	
<ul style="list-style-type: none"> - HTC diminishes welfare of developed and developing countries - compliance costs are transferred to taxpayers 	<ul style="list-style-type: none"> - welfare of developed and developing countries is enhanced by tax competition; more jobs, trade - tax havens would fall into insecurity - banking secrecy protects vulnerable citizens from unstable regimes
Equity	
<ul style="list-style-type: none"> - fairness of tax system – employees pay higher share; burden transmitted on them 	<ul style="list-style-type: none"> - low-tax jurisdictions being discriminated by high-tax that have chosen their level of taxation
Efficiency	
<ul style="list-style-type: none"> - help the developing and developed economies to mobilize their own financial resources - protect tax bases of countries 	<ul style="list-style-type: none"> - higher standards of living thanks to competition in tax matters
Liberty	
	<ul style="list-style-type: none"> - negative liberty - governments should not bespying on clients - attack on sovereignty of jurisdictions; liberty to set own tax laws - taxpayers should enjoy money they have earned - taxpayers should have a chance to express freedom of choice by moving to low or high-tax jurisdiction

Note: Author.

11.2. Problems – Persuasion in the Debate on HTC

11.2.1 Causes

According to OECD, the harmful effects of tax competition were partially invoked by environment. The first condition for harmful tax competition was globalization of trade and investment that has fundamentally changed the relationship among domestic tax systems.

The removal of non-tax barriers to international commerce and investment and the resulting integration of national economies have greatly increased the potential impact that domestic tax policies can have on other economies. Globalization has also encouraged countries to assess continually their tax systems and public expenditures with a view to making adjustments where appropriate to improve the “fiscal climate” for investment. Globalization and the increased mobility of capital have also promoted the development of capital and financial markets and have encouraged countries to reduce tax barriers to capital flows and to modernize their tax systems to reflect these developments (OECD, 1998, p. 13).

However, OECD also claims tax havens were aware of what they were causing: “The Committee notes that many tax havens have chosen to be heavily dependent on their tax

industries (OECD, 1998, p. 10).” After these environmental conditions, OECD blames some countries for using these conditions for intentional luring of other countries’ tax revenues:

The spillover effects on other countries are not a mere side effect, incidental to the implementation of a domestic tax policy. Here the effect is for one country to redirect capital and financial flows and the corresponding revenue from the other jurisdictions by bidding aggressively for the tax base of other countries (OECD, 1998, p. 22).

By using this powerful accusation, OECD justifies its own regulatory action against tax havens and taxpayers: “Governments cannot stand back while their tax bases are eroded through the actions of countries which offer taxpayers ways to exploit tax havens to reduce the tax that would otherwise be payable to them (OECD, 1998, p. 37).”

11.2.2. Symbols

One of the powerful symbols that are used by actors that propose HTC is the very term “tax haven” and “offshore”. Representatives of tax havens claim that this expression is pejorative and instead of it, all of them use a term that is neutral according to them - “international financial center” (Valencia, 2013, p. 6). Clearly, they see the symbolic meaning of the word that helps people to connect the symbol in mind with something they already know and identify who is hero and who is villain.

11.2.3. Metaphors

Metaphors were mostly used by opponents of HTC only. The only metaphor I have found in OECD’s statement was that “taxpayers who use the services of tax havens are in effect “free riders” who benefit from public spending in their home country and yet avoid contributing to its financing (OECD, 1998, 14).”

One of opponents’ metaphor that justifies tax competition goes like this: “Government officials are like owners of a town’s only gas station, who suddenly has to deal with a bunch of competitors after years of being able to charge high prices while offering poor service. The residents of the town are taxpayers. Competition between governments makes their life better (Mitchell, 2000).” Center for Freedom and Prosperity (Quinlan & Jansen, 2001) used this

metaphor in order to warn before OECD's intentions: "This type of controversial government-mandated spying is an Echelon-type system for financial transactions and is open to the same types of abuse." To defend the belief in beneficial character of tax competition, The IFC Forum and The Heritage Foundation used several metaphors that pointed out at the way how OECD wanted to enforce tax havens to behave as OECD wished. The Commonwealth secretariat (2001) wrote that "OECD not only writes the rules, but wishes to be the prosecutor, judge, jury and jailor. They are setting themselves up as the world's financial policeman".

11.2.4. Numbers

The strategy of measuring was used by both groups of in the discussion on HTC. OECD wanted to show by estimations of foreign direct investments and money "parked" in tax havens that harmful tax competition is a real problem. Opponent actors tried to provide the measured evidence that tax competition is not harmful but beneficial. Simultaneously, it helped position the actors into the role of experts. Even though the actors have not provided exact numbers, they have at least mentioned that they tried to measure it and provided estimation. This quote represents the use of numbers in OECD argumentation:

The available data do not permit a detailed comparative analysis of the economic and revenue effects involving low-tax jurisdictions. It has also proven difficult to obtain data on activities involving preferential tax regimes because they are often nontransparent. However, the available data do suggest that the current use of tax havens is large, and that participation in such schemes is expanding at an exponential rate. For example, foreign direct investment by G7 countries in a number of jurisdictions in the Caribbean and in the South Pacific island states, which are generally considered to be low-tax jurisdictions, increased more than five-fold over the period 1985-1994, to more than \$200 billion, a rate of increase well in excess of the growth of total outbound Foreign Direct Investment. A regime can be harmful even where it is difficult to quantify the adverse economic impact it imposes (OECD, 1998, p. 17).

Opponents have argued that tax competition is beneficial because growth is higher in countries where lower taxes are implemented. This argument can be represented by an example by IFC Forum (2009) that used a table with selected countries that shows this pattern. "A review conducted by one of the leading American economists studying the effect

of tax competition, Professor James Hines, confirms the association between low tax and growth across a broad group of OECD countries. Professor Hines found that from 1982 to 1999 countries with low tax rates grew 2.5 times faster than high tax countries.”

11.2.5. Interests

Both groups have tried to position themselves as the defenders of good wide public interests and portray the opponent as the defender of bad strong interests. In the OECD Harmful Tax Competition report (1998), tax havens help powerful individuals and corporations to evade and avoid taxes which causes harm to public welfare. The group against HTC cunningly spun this notion. As I have mentioned in the review of initiatives, this was especially supported by the fact that some OECD member states deferred to comply with the HTC initiative. Moreover, HTC opponents have shown that powerful tax havens are also among US federal states (Delaware) and Great Britain uses the services of its` dependent territories - tax havens, widely. Thus, HTC opponents labeled small jurisdictions that cannot defend themselves against villains from among big powerful countries represented by OECD. They have accused regulators from market competition and an attempt to overtake the tax havens` business, labeling them as technocrats.

The response of the president Mr. Arthur from Caribbean community presented in OECD at the meeting after HTC was published (Atkinson, 2001) can serve as a good example of this type of argument. He accused the OECD of “technocratic tyranny”, labeled them to be “nameless, faceless” people with “no common sense”, and asked: “Is it because they are more powerful, or richer?” The Commonwealth Secretariat agrees: “OECD is known as the rich nations’ club (...), the OECD’s HTC initiative was widely seen as an attempt to kill the offshore financial services sector of the economies of developing states (Frempong, 2008).”

The Heritage Foundation also positioned tax haven interests as wide and public (Mitchell, 2000, p. 5): “Tax competition is not about governments. It is about people and whether they enjoy more freedom and have more opportunity.”

11.2.6. Decisions

The Heritage Foundation disagreed with the solution that HTC proposed.

Removing the bank secrecy is wrong way how to address money laundering – OECD’s proposal will undermine tax havens` incentives to cooperate because they will become poorer due to the outflow of clients. Therefore, they will welcome money launderers as a new source of funds. To suspend civil liberties and destroy financial privacy is a wrong way how to force greater compliance. The right approach is to cut tax rates and reform the tax system. The lower the incentive to use either legal or illegal means to avoid taxes or even hide money (Mitchell, 2000).

Switzerland also protested against the means of HTC and rather preferred withholding tax: “The Report ignores the reality of the structural diversity of existing tax regimes. For instance, the only solution adopted is administrative assistance by means of exchange of information, even though this presents certain limits, and the existence of withholding systems is not taken into account, even though such systems are viable alternatives which entail lower administrative costs (Statement of Switzerland, 1998, p. 77).”

11.3. Solutions

11.3.2. Inducements

The OECD (1998) enacted 19 detailed Recommendations of action at the level of national legislation and in tax treaties that are a complex set of sticks and carrots. Threatening with sanctions and blacklisting can be definitely regarded as a “stick” that was actually used and evoked very negative responses. OECD also provided “carrots” and offered co-operating tax havens financial help since they were dependent on the business (OECD, 1998, p. 57). In 1999, OECD added another set of negative incentives. Although abrogation of tax treaties, special fees imposed on the transactions with uncooperative jurisdictions, cutting of foreign

aid (OECD, 2000) have never been truly employed, they have raised very negative reactions of tax havens.

11.3.3. Powers

It was an especially powerful argument of tax havens that they have not been consulted on the matter of HTC. ITIO complained about the fact that tax havens are not present in the talks on HTC. According to them, level playing field did not exist in OECD: “Our position stresses the importance of all countries in the process, whether members of the OECD or not, receiving equal participation and treatment. For example, regarding compliance monitoring we suggest that a form of peer review was put in place which applies to non-OECD and OECD countries alike. This would build general confidence in the fairness of the process. Without a level playing field, the OECD’s project could end up enriching OECD members at the expense of small and developing economies (ITIO, 2001).”

In 2000, OECD and tax havens have changed the way of consultation and they have institutionalized it as Global Forum on Taxation that encompassed also tax havens.

11.3.4. Ambiguity

A very interesting phrase often use in the HTC report (1998) was the goal to establish “level playing field”. By that OECD probably meant equal taxation, however, the other group used this phrase to justify its demand for negotiations on equal footing. When Global Forum was reformed, both groups agreed that it should help to establish “level playing field”, even though they probably meant different things. This ambiguity could have helped the groups to achieve some consensus to start the talks.

11.4. Evaluation of the Debate

As can be found in the Table 2, the goals of two groups of actors were paradoxical. Both groups claimed that if their goals were achieved, the financial security of people in developing and developed countries would increase. Both groups also aimed to achieve

equity. The group supporting HTC focused on the current inequity of taxpayers that should be fixed because some taxpayers pay less and some pay more in taxes. The group that opposed HTC focused on different level where inequality would be present if HTC was enacted – on the level of jurisdictions, the HTC would prevent some states to have full control over their laws. The two groups were also conflicting on the value of efficiency – both claimed that their desired achievement would bring more money to economies everywhere, diverging in the notion what effects the tax competition has. In case of liberty, only the group that stood for status quo declared a goal to achieve negative liberty in various forms. It is quite surprising that OECD have not used the notion of positive liberty that could be achieved for citizens through welfare programs if lost tax revenues were raised and it was present in the debate only implicitly.

By using numbers as a strategy to show how much untaxed money resides in tax havens, the OECD powerfully mobilized for its cause and justified itself as the main organization capable of fixing the problem. Both groups also tried to show that the solutions of the other group will not work as they intended to. OECD positioned itself as a moral defender of welfare services for honest taxpayers; it declared to protect broad public interest. However, the second group portrayed OECD differently – as a club of powerful countries with technocratic governments that want to remove the only possibility of development from the small jurisdictions, without applying the same standards on themselves. Moreover, tax havens vowed that OECD did not negotiate with them. This powerful argument based on Stone's category of powers resulted into the resolution of establishing the Global Forum. Inducements have shown to be an important tool in the international environment. On the other hand, some jurisdictions were appalled by the blacklisting without previous negotiations so that they started the campaign against OECD in the name of ITIO.

12. G20 Tax Information Exchange

12.1. Goals

The main goals of the group for exchange of information became security, equity and efficiency. Regarding security, the initiative should ensure that development countries will benefit from new transparent environment. In this regard, NGOs that support development were involved the most. For instance, Christian Aid recognizes the crucial importance of tax revenues for developing countries and call for signing OECD treaties that assure tax information exchange. “If the world’s least-developed countries raised at least 20 per cent of their GDP from taxes – still a long way from the rate in the developed world – they could achieve all the Millennium Development Goals – including halving the number of people living in hunger (Prats, 2013).” OECD, G20 and NGOs consent on the point that the information exchange in tax matters should be efficient; it should maximize compliance benefits for residence countries, reduce costs for financial institutions and contain all necessary safeguards through one standard. Automatic information exchange should also increase tax revenues and thus lead to fairness – ensuring that all taxpayers pay their fair share (OECD, 2013f, p. 35-37). Fair distribution of the global tax base should be the main goal, says Tax Justice Network (2013, p. 3).

Even though the group that opposes the initiative agreed upon TIEAs, they disagreed to implement automatic tax information exchange. They replied with the goals to ensure status quo and defend negative liberty that would be jeopardized by automatic exchange of information. Current president of Switzerland Ueli Maurer said: “The state should completely respect the privacy of individuals (...) there is absolutely no reason that this should be a theme for us (Allen, 2013).” Similarly, Thomas Matter, politician from the Swiss People’s Party told to Reuters: “Swiss people love freedom (...) the state was always for the citizen and not the other way round (Thomasson, 2013).” In the same article, Patrick Odier, president of the

Swiss Bankers Association (SBA) also defends the code of secrecy: “Automatic exchange of information goes against the core values of not only the Swiss banking service but against the core values of the Swiss people in general. (...) We pursue the objective of a financial center that does not allow the misuse of privacy laws.” Konrad Hummler, president of the Swiss Private Bankers’ Association also emphasized the importance of negative freedom: “The large majority of foreign investors with money placed in Switzerland evade taxes. (...) I admit it is undemocratic, but I have a feeling that the democratic system went way beyond their legitimate role against the taxpayer. What these states (regulators) do may be legal, but it is not legitimate (Brooks et al., 2009).” Last but not least, Austria Finance Minister Maria Fekter said: “I am a hunter of tax cheats but also the protector of honest savers. It is unjustified to open all the savings accounts of those who have done nothing wrong. That is why I am fighting like a lion for banking secrecy (Reuters, 2013).”

12.2. Problems

12.2.1. Symbols

Tax Justice Network opposes in its article the notion of competitiveness that is supposed to be beneficial for economic growth. Shaxson and O’Hagan (2013) aim to debunk the metaphorical argument by using synecdoche. They doubt the claim that competition is beneficial for companies and therefore is beneficial for states in tax matters. In the US, federal states compete on the height of tax which causes extremely low tax for companies. They claim that because of tax competition US states have regressive taxation. Because of lowering taxes for the wealthiest ones, the tax burden is on the shoulders of middle and low-income citizens. They also buttress their argument by providing a graph with numbers that shows how the employment taxes have been raising in years and the corporate taxes quite the opposite. Therefore, competition in taxes is to be regarded as unfair.

Tax Justice Network (2013) has chosen stories as a persuasion strategy. TJN has collected outrageous stories from the media that refer to tax evasion and avoidance. In the end of every story, TJN puts the possible international measures (automatic exchange of tax information) that can be done and tries to mobilize public for their support.

12.2.2. Numbers

NGOs that want to raise awareness about the problem of tax havens often use estimations of revenue losses. For instance, by using numbers Task Force on Financial Integrity and Economic Development estimates that the amount of money draining illicitly out of developing countries into western economies is approximately \$850 billion to \$1 trillion a year. “This massive transfer of wealth out of poorer nations is the most damaging economic condition undermining poverty alleviation and sustainable growth efforts (Task Force on Financial Integrity and Economic Development).” By using numbers, Tax Justice Network encourages governments to tax the corporations and wealthy individuals. According to a plot of 17 developed democracies, they show that there is no relationship between average government revenue and growth (Shaxson and O’Hagan, 2013). TJN also emphasizes the extent of the problem by estimation of revenue lost by using estimations (Tax Justice Network, 2008, Country-by-Country Reporting).

12.2.3. Decisions

It is interesting that the argumentation about the suitable means of information exchange was mostly led within the group that promotes exchange of information. The group that represents tax havens’ interests supported TIEAs as an efficient tool to curb tax evasion. STEP wrote that TIEAs are “a powerful disincentive to anyone trying to evade taxes by hiding their money in another country (STEP, 2012).”

Jeffrey Owens, director of the OECD’s Centre for Tax Policy and Administration, told that automatic information exchange would not work, because, “For developing countries, it would be very hard for them to manage an enormous flow of information.” To support this

claim he used synecdoche: “I visited the office of an unnamed tax commissioner and noticed boxes marked “IRS” stacked against the wall. The commissioner said he had all this information and didn’t know what to do with it.” Because of this, Owens promoted TIEAs because “targeted information is the key thing. (...) Don’t underestimate deterrent effect (Komisar, 2009).”

Tax Justice Network disagreed with OECD’s Global Forum initiative that it (among other measures) implements one of the types of exchange - exchange of information upon request (TIEA). They used this synecdoche: If developing countries do not at present have the technical capacity, the UN Tax Committee should focus on helping developing countries acquire that capacity and automatic exchange should be introduced gradually. The tax administrations of developing countries have various levels of technical expertise. Some developing countries clearly have at present the technical capacity to implement automatic exchange of information. Mexico receives automatically some tax information from the United States. Also, Chile has a highly developed electronic tax compliance system (Christensen, Spencer & Gurtner, 2009).

The NGOs claim that the initiative is inefficient because when requiring the information on particular clients’ taxes, the country must have almost all the information on tax evasion or avoidance already. Therefore, there is very few information that had being exchanged in this way. However, the Tax Justice Network and Financial Integrity and Economic Development Task fully endorsed automatic information exchange and believe that automatic exchange of information only would deter tax evasion (Meinzer, 2012).

However, OECD later changed opinion and started to promote automatic tax information exchange and currently it admits that automatic exchange has better results in countering offshore non-compliance. OECD expects higher voluntary compliance, increased tax revenues and higher fairness (OECD, 2013f, p. 35). To support this new means, OECD

used synecdoche to show that automatic exchange will work: “Denmark used information received automatically to conduct 1 000 audits, resulting in additional tax revenue. In addition 1 100 letters were sent out to other taxpayers with the information that the Danish Tax Administration received on foreign income. This resulted in 440 persons reporting foreign income in their tax return which they had not reported in previous years (OECD, 2012, p. 20).”

12.2.4. Interests

The strategy of NGOs is to point out at powerful economic interests behind tax havens. For example, Tax Justice Network (2013, p. 3) writes: “Multinational corporations (MNCs) exploit the existing loopholes to their own advantage, often advised by lawyers and consultants who earn significant profits from the tax avoidance industry they have helped to develop.” And Claire Melamed, head of policy at the charity ActionAid accused tax havens of hurting people worldwide: “It is imperative that (finance ministers) put people, not special interest groups, first. The starting point for any change must be the understanding that an unfairly regulated economy has wrecked many people’s lives at home and across the developing world (Stewart & Leigh, 2009, The Guardian).”

Edouard Cuendet, secretary general of the Geneva Private Bankers’ Association pointed out at powerful interests and made a victim out of Switzerland. “The U.S. has become very attractive for nondeclared clients, and New York has been developing as an offshore center, as has London. Some of the countries that have been targeting our system have offshore centers that are far less transparent than Switzerland. Just look at a place like Delaware (Minder, 2013).” In addition, as I mentioned above in the chapter on goals of Switzerland’s representatives that aim to protect negative liberty, they use an argument base on broad public will – the Swiss representatives claim that it is the will of Swiss people to keep the banking secrecy intact.

12.3. Solutions

Although the Model Convention that encompasses the promise of automatic exchange of information was signed by all OECD members very recently, it was not implemented in the global scale yet. Therefore, no exact actions and definite solutions were taken and cannot be analyzed. The Model Agreement on Exchange of Information on Tax Matters (TIEA) was implemented fully and its low efficiency in preventing tax evasion and avoidance is admitted even by the OECD.

12.3.1. Inducements

The strategy of making jurisdictions to sign 12 TIEAs (OECD, 2013e, p. 35) was a set of sticks and carrots provided by OECD bodies. Blacklisting, greylisting and threatening by sanctions are clearly negative inducements. These sticks should have tarnished the reputation of tax havens as stable financial centers and deter its clients. However, as NGOs such as Action Aid UK noted, the sticks were not too serious: “A number of major tax havens managed to jump through the hoops in time to escape even the grey list.” Oxfam agreed: “Tax havens like Jersey and the Isle of Man appear on the white list, rather than the grey list of jurisdictions that have committed to the internationally agreed tax standard but have not yet substantially implemented it. These lists reflect promises rather than actions from uncooperative jurisdictions to sign up to OECD standards (Komisar, 2009).” The Global forum provided also positive inducements - technical assistance to developing countries in implementing the standards (see OECD, 2013g, Exchange of Tax Information Portal).

12.3.2. Rules

Stone writes that flexibility of rules is often needed to make it possible for some rules to be enacted. This is a case of making jurisdictions to sign TIEAs. “It is not a multilateral agreement in the traditional sense. Instead, it provides the basis for an integrated bundle of bilateral treaties. A party to the multilateral agreement would only be bound by the agreement *vis-à-vis* the specific parties with which it agrees to be bound. The purpose of the agreement

is not to prescribe a specific format for how this standard should be achieved. Thus, the agreement in either of its forms is only one of several ways in which the standard can be implemented (OECD, Agreement on Exchange of Information on Tax Matters).”

There is a consensus among NGOs (Christian Aid, Action Aid, Tax Justice Network) and even OECD itself that exchange of information upon request that is provided through TIEAs does not work. Murphy said: “TIEAs don’t work. Everyone knows it. As things stand, client funds can be moved out of a jurisdiction before an enquiry can develop, thwarting it before it really gets underway. In order to make a successful TIEA request you need to correctly identify the individual, which is made virtually impossible by a combination of legal entities and professional services designed to ensure he or she remains anonymous. There is, for example, no public documentation relating to trusts (O’Hare, 2011).” He also supported this argument with some numbers (Murphy, 2009b): “As a result Jersey has – under the terms of its agreement with the US, which has been in place since 2001 – delivered just five pieces of data in that time. There is a deterrent effect in knowing this is possible, but automatic information exchange would be vastly better.” Pascal Saint-Amans, head of the Global Forum Secretariat at the OECD admits: “We needed to start with something objective, if you have no agreement you have not started the process. (...) We agree that automatic exchange is more efficient. But it now allows tax administrations to make these requests where before they were deprived of any means (Stoddard, 2010).”

Second, Tax Justice Network (Tax Justice Network, On Exchange of Information for Tax Purposes) emphasized that TIEAs support “perverse incentives” in Stone’s terminology. First, tax havens could sign up mutual agreements to lower the chance of sending information and most of the remaining treaties in 2009 were with Nordic countries such as Greenland, Island and Faroe Islands (Tax Justice Network, 2009; see also OECD, 2013g).

The STEP added different criticizing point. They agree with the necessity to tackle tax evasion and avoidance, however, they are concerned about the security of clients' data. "OECD extended TIEAs to many developing countries. Without safeguards, the result could be detailed data on individuals being provided to countries with poor records in areas such as respect for human rights or protecting personal data from abuse. This reflects a major flaw in the current OECD peer review process for TIEAs – the review process only examines a country's ability to deliver tax information (STEP, 2010)."

12.4. Evaluation of the Debate

Just as in the case of HTC, the actors that aimed for higher transparency used the same values as goals to be achieved. The representatives of tax havens publicly used the goal of negative liberty that should be preserved. Both groups used the same strategy and arguments of delegitimizing the opponents by claiming that they represent "bad interests". The same is valid for using numbers for persuasion – both groups used numbers in the same way as during HTC initiative.

It is interesting that the conflict between two groups on information exchange finally focused on automatic exchange of information and there were no critical voices towards TIEAs from the group of tax havens that implemented TIEAs abruptly. Therefore, I have mostly analyzed the debate on automatic exchange of information. However, regarding the solutions, I analyzed bilateral agreements TIEAs only, because no practical rules were enacted in automatic exchange of information so far. It is interesting that TIEAs have not raised critique. The reason for this can be seen in the procedure of enactment – it came from the Global Forum where the tax havens are represented already. Therefore, it seems that the resolution in the category of powers from HTC initiative had an effect on further negotiations and the inefficiency of TIEAs was a result of compromise. However, this notion would need further confirmation.

13. Base Erosion and Profit Shifting (BEPS)

The BEPS initiative originated only very recently, in February 2013 when OECD issued BEPS report. Therefore, OECD has not published how they want to achieve the goals stated in the report yet and the actors of Global Forum have not enacted any solutions, too. Thus, in analyzing this debate, I will analyze stated goals and problems presentation. The analysis of solutions will be omitted.

13.1. Goals

The aim of OECD's initiative is to support countries' efforts to shape fair and efficient tax systems. The first declared goal is equity for taxpayers and also companies, to prevent double taxation, double non-taxation, and create a level playing field for all taxpayers (OECDd, 2013). OECD set the goal of equality that all taxpayers must pay their fair share. If other taxpayers (including ordinary individuals) think that multinational corporations can legally avoid paying income tax, it undermines voluntary compliance by all taxpayers upon which modern tax administration depends and the tax system becomes inefficient. Likewise, conditions for businesses should be equalized. Profit shifting distorts fair competition because "businesses that operate cross-border can benefit from profit shifting opportunities. This gives them a competitive advantage compared with enterprises that operate mostly at the domestic level share (OECD, 2013b)." Although, the reform of taxation would potentially harm multinational corporation interests, OECD claims that the initiative is not targeted against them.

The goals of NGO actors and also OECD is the security of people in the developing nations. They want developing countries to benefit from the new transparent environment (OECD, 2013f, p. 37) Fifty six NGOs that signed up under the No More Shifty Business declaration that reflects BEPS (Tax Justice Network, 2013, No More Shifty Business) called for security of undernourished population exploited by mulitnational corporations that evade and avoid taxes.

At this early stage, the actors opposing the initiative are the Center of Freedom and Prosperity and ideologues from the Cato Institute. However, no declarations nor co-ordinated relevant public statements from business were published yet. The only media statement of a few companies came on May 20, 2013. Their representative, president of corporation CBI Roger Carr, asked David Cameron before the G8 summit starts to stop moralizing about taxes and tarnishing the reputation of companies. Instead, he called to change the international rules and claimed that companies just abide the rules that are in place (Aldrick, 2013). This stance does not seem to invoke conflict.

13.2. Problems

13.2.1. Causes

Contrary to David Cameron, OECD does not blame multinational corporations directly. BEPS initiative does “not blame business that had been using aggressive tax planning and avoided taxes for using the rules that governments themselves have put in place (OECD, 2013d, p. 47).” OECD claims that the base erosion was not intended by any actor.

Many domestic and international rules to address double taxation of individuals and companies originated from principles developed by the League of Nations in the 1920s. Domestic rules for international taxation are still grounded in an economic environment characterised by a lower degree of economic integration across borders, rather than today’s global taxpayers, which is characterized by the increasing importance of intellectual property and by constant developments of information and communication technologies (OECD, 2013d, p. 47).

On the basis of this argument, OECD explains that it is the best institution to address this problem because it represents governments. However, in other place of the analysis, OECD hints that the cause for BEPS is also in aggressive tax strategies of corporations. “A

number of indicators show that the tax practices of some multinational companies have become more aggressive over time, raising serious compliance and fairness issues (OECD, 2013d, p. 49).”

TJN also sees the cause of the problem in the international rules – in the fact that multinational corporation public accounts represent the transactions of all the companies within the MNCs group. The intra-group transactions, which are the basis for much tax avoidance, are not reported in the published accounts and taxed accordingly. Paradoxically, companies are not taxed as a unit but they break the taxes for trade down into several suppliers that have residences in different jurisdictions. TJN also ascribes the vile intention to harm the economies to tax havens and also accuses bankers, lawyers and tax havens that they have knowledge of the consequences (Tax Justice Network, 2008, p. 1-2).

13.2.2. Numbers

Supporting the claims of BEPS and the necessity to change the status quo, OECD officials argue that the real corporate tax of big firms is 5 % and 30 % of small businesses (Love, 2013). Clearly, these numbers that should show the problem as pressing are somehow arbitrary because it is not obvious how is the scope of business measured and what was the mechanism to estimate the level of taxation. In addition to this case of number usage, OECD provides estimations from various statistical sources on the amount of foreign direct investment that goes through tax havens and other countries to show how widespread the problem of BEPS is. Even though OECD does not claim the data are accurate, they want to show that the problem is serious: “According to the IMF Co-ordinated Direct Investment Survey, in 2010 Barbados, Bermuda and the British Virgin Islands received more FDIs (5.11% of global FDIs) than Germany (4.77%) or Japan (3.76%)” (OECD, 2013d, p. 17). Similarly, OECD justifies the existence of BEPS by using numbers from J.P. Morgan study. The report compares the effective average tax rate of multinational corporations and domestic

firms, clearly showing that domestic companies pay much higher taxes (OECD, 2013d, p. 61). Pascal Saint Amans, the head of OECD Centre for Tax Policy and Administration argued by using numbers that workers face increase in taxes. “VAT has increased in 25 out of 33 OECD member countries during the crisis. On one hand you have people, men on the streets, on the other hand you have multinationals looking like they pay little taxes if any (CNN, 2012).”

James Henry from Tax Justice Network said: “the elites of 139 low-middle-income countries have parked up to 9.3 trillion of unrecorded wealth offshore. Developing countries as a whole do not face a debt problem, but a huge offshore tax-evasion and money laundering problem (Valencia 2013, p. 7).”

Andrew Quinlan from Center for Freedom and Prosperity counterargues these numbers showing that the situation is not serious but evolving in the opposite direction. “The (BEPS) report itself acknowledges that revenues from corporate taxes have increased as a share of GDP over the last half-century, from 2.2% in 1965 to 3.8% in 2007. While revenues subsequently and understandably decreased during the recent recession, they are again trending up (Quinlan, 2013).”

13.2.3. Interests

The Tax Justice Network named problems that enable strong business interests of multinational corporations (MNCs) to avoid paying taxes and undermine efforts to tackle poverty and inequality, which are obviously good public interests. “For decades, developing countries have been the main victims of an unfair and ineffective tax system, as the signatories of this document have long maintained. Only when the damaging consequences have been felt in the richest economies have G20 and OECD leaders called for solutions (Tax Justice Network, 2013, p. 2).” ActionAid goes further and argues that G20 countries control tax havens and therefore are not truly interested in solving the problem (ActionAid, 2013).

Center for Freedom and Prosperity implies that governments are “villains” who just want to raise more taxes from taxpayers and the BEPS campaign is just another trick against tax competition. “Premised on the idea that governments are no longer seizing from multinational corporation enough money in taxes, the costs of which are inevitably passed on to workers, shareholders and consumers. (...) Tax competition is the only force working on the side of taxpayers, which explains the organized campaign by global elite to defeat it (Quinlan, 2013).”

13.2.4. Story

NGOs Tax Justice Network and Action Aid use stories as a strategy of public mobilization and publish stories in their public materials. These specific stories on fraudulent behavior of MNCs that involved tax havens are based on synecdoche. For instance, a “leaked audit report on the Mopani copper mine in Zambia, owned by Swiss metals dealer Glencore, was alleged that the mine had sold copper to a Swiss subsidiary of Glencore at below-market prices, while exponentially increasing the operational costs of the Zambian mine from 2005-07. Inflated costs, combined with undervalued copper exports, enabled the company to report overall losses, and pay little or no corporation taxes in Zambia, with an estimated Zambian tax loss of some £76m in one year alone (Tackle Tax Havens).”

13.2.5. Decisions

NGOs (Tax Justice Network, 2008, p. 5; see also Christian Aid, 2010) and OECD jointly support country-by-country profit reporting and unitary taxation¹². For instance, Richard Murphy in the report for The Task Force on Financial Integrity and Economic Development argues for this solution in this way:

Tax evasion by multinational corporations is one of the greatest drivers of illicit capital flight out of the developing world. County-by-country reporting is a low-cost, readily implementable way to ensure better business compliance with tax policy and fair business practices. Allow appraisal of the vulnerability inherent in a corporations internal supply chains since these will be reported for the first time under

country-by-country reporting. For example, if a supply chain was critically dependent upon a politically unstable state it would be very important that the shareholders are aware of this fact, and that they are able to quantify it (Murphy, 2009a).

Libertarian think tank Cato Institute and Center for Freedom and Prosperity declared that unitary taxation will not work and challenged the claim of NGOs that it would be easy for companies to carry out. They have also challenged the intention to raise taxes in this way for corporations. “Formula apportionment would be worse than a zero-sum game because it would create a web of regulations that would undermine tax competition and become increasingly onerous over time. Consider that tax competition has spurred OECD governments to cut their corporate tax rates from an average of 48 percent in the early 1980s to 24 percent today. If a formula apportionment system had been in place, the world would have been left with much higher tax rates, and thus less investment and economic growth (Mitchell, 2013).”

13.3. Evaluation of the debate

The initiative bears a strong legacy of previous initiatives. The goals are based on the same categories as previous two initiatives: BEPS is supposed to achieve equality of taxpayers, security for people in developing countries and workers and efficient tax system and state budgets. Regarding persuasion strategies, the groups use Numbers and Interests just as before. This time, the G20 and OECD focused on rules for MNCs that should make usage of some tax havens' services useless. The first opposing voices came from ideologues from libertarian institutes and from tax havens. The business representatives are not involved in the debate yet. Some companies expressed that they want to stay away from political talks and that they will abide to the rules if they were enacted.

14. Concluding Remarks

The goals asserted by OECD initiatives and the actors that supported them were in all three cases based on the goals of security, efficiency and equity. Tax havens and other actors that supported the deregulation always based their arguments on negative liberty and also on efficiency, equity and security. Thus, the goals often led to paradoxes.

The main dispute that was permanent in the debates was the conflict on the effect of tax competition. On the one hand, OECD, Tax Justice Network and others from the group argued that tax competition can be harmful. On the other hand, the actors around tax havens tried to persuade the governments and public that tax competition is profitable.

For NGOs that argued in favor of the initiatives a part of broader fight against tax havens and business for global justice and better conditions for developing countries. For libertarian think tanks and tax havens, non-regulation or deregulation, maintaining of negative liberty and market competition was the underlying ideology behind their arguments, regardless of the initiative.

Regarding the problem of presentation, the proponents of regulation used numbers as a strategy to show how much untaxed money resides in tax havens and to show the urgency of the problem in order to powerfully mobilize for their cause. The opponents tried to show exactly the opposite. Both groups also tried to demonstrate that the proposed solutions of the other group will not work as they are intended to, except for the case of TIEAs where tax havens quickly enacted the agreements without protest.

The strategy of accusing the opponent from defending narrow particular business interests had been present throughout all three initiatives. Jason Sharman (2006) wrote that tax havens have lost the public debate – first, not all OECD members complied with HTC and the US president Bush withdrew the support of HTC because of lobbying of libertarian NGOs that represented tax havens. I add something to the first possible explanation – when Switzerland and Luxembourg refused to comply with HTC, the tax havens claimed in the

media that OECD countries (City of London, Delaware) are in fact those “strong interests” and small islands cannot defend themselves against their pressure and even the members of OECD are not forced to comply. HTC initiative was depicted as a campaign of powerful countries who want to remove small islands that cannot defend themselves from the lucrative business. The turn of the roles of “good weak interests” and “bad strong interests” explain better what rhetoric strategy can be found behind Sharman’s explanation.

In case of HTC initiative, tax havens argued that they were not consulted on the matter and demanded to be involved in the further talks. This powerful argument based on Stone’s category of powers resulted in the resolution of establishing the Global Forum. This solution had further consequences for the decision-making in the case of next OECD initiative, particularly TIEAs. Inducements, such as blacklisting, peer-review, and threatening with sanctions were also used in the first two initiatives and the action plan of the BEPS has not been published yet.

I expected the international debate to be extremely complicated due to changing actors, varying goals and argumentation strategies. None of this appeared to be the case. During the fifteen years, the number of actors in the decision making stayed low and they were also presented solidly. Therefore, I can conclude that the analysis by using Stone’s Policy Paradox was in this case suitable and it can be applied on the analysis of international decision making.

Stone’s approach emphasizes that in policy making, solutions are not permanent but rather temporal resolutions in changing the status quo. This analysis supports this idea. The initiatives proposed different means to target different aspects of tax avoidance and tax evasion. In the case of HTC, OECD attempted to regulate tax havens directly. The information exchange initiative targeted the secrecy that is conditional for tax havens’ services. BEPS targets the business customers of tax havens and aims to fight the problem by

making tax havens unusable for profit shifting. However, given the great stability of actors in the policy making, the similarity of their goals, references to previous initiatives in documents, persistent use of the same rhetorical strategies and the same type of arguments, it is possible to conclude that the three analyzed initiatives can be perceived and analyzed as one broad ongoing initiative that aims to reduce tax evasion and tax avoidance facilitated through tax havens.

15. List of References

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16. Footnotes

¹ Sharman (2006, p. 10) and also Palan, Murphy and Chavagneux (2010, p. 10) define it as follows: A tax avoiding individual or a company seeks to ensure that one of three things happens. First, they might seek to pay less tax than might be required by a reasonable interpretation of a country's law. Second, they might hope that tax is paid on profits declared in a country other than where they were really earned. Third, they might arrange to pay tax somewhat later than the profits were earned. Tax avoidance is supposed to be legal. However, sometimes the courts may decide otherwise. Similar term to this is "aggressive tax planning" used by companies which refers to the strategy of finding ways how to avoid taxation legally.

² Sharman (2006, p. 9) and Palan, Murphy and Chavagneux (2010, p. 9) define it as illegal activity undertaken to reduce an individual or company's tax bill. It occurs when a taxpayer does not declare all or part of his or her income or makes a claim to offset an expense against taxable income that he or she did not incur or was not allowed to claim for tax purposes.

³ Probably the most perpetuated definition of tax haven is the one proposed by OECD (1998, p. 22-23). Tax havens should have these characteristics: Have zero or low effective tax rate; "ring fencing" of regimes - preferential tax regimes are partly or fully insulated from the domestic markets to protect own economy; the lack of transparency and lack of effective exchange of information. The term offshore finance center or international financial center is used as a synonym. However, some authors such as Zoromé (2007) see some difference between these two terms. In some cases, a jurisdiction can be a tax haven and not an OFC, and vice versa. According to Zoromé (2007, p. 7), an OFC is a jurisdiction that provides financial services to nonresidents on a scale that is incommensurate with the size and the financing of its domestic economy.

⁴ Tax haven or OFC is not necessarily a country. It is unimportant whether it is a sovereign state or a dependent territory - it can be every territory that has its own legal system and issues its own laws. Thus, nongovernmental organization Tax Justice Network and also scholars rather use term "jurisdiction" that encompasses various forms of territories (Tax Justice Network, 2007, Palan, Murphy and Chavagneux 2010: 8-9, 17).

⁵ The estimates of money placed offshore vary. In the beginning of 2013, Boston Consulting Group estimated it for 8 trillions, which is around 6.5 % of overall global wealth. This number excludes fixed assets, such as property and yachts. James Henry, a former chief economist of McKinsey estimates that the amount is 21 trillions. However, he similarly as other actors emphasizes that his results are despite complicated methodology a „an exercise in night vision. Maria Milesi-Ferretti of IMF said that "the data gaps are daunting" (Valencia, 2013, p. 4). Similarly, Hampton and Christensen (2002) wrote: "Data on offshore finance are sparse and collating statistics on offshore financial flows presents methodological problems arising from the secrecy that surrounds the offshore finance world and the potential for double-counting. Currently, OECD tries to develop a set of indicators that would more accurately estimate the erosion of tax base of individual countries (OECD, 2013d)."

⁶ Such case is, for instance, The European Savings Taxation Directive that started from the initiative of European Union in 2003 or The European Code of Conduct that was implemented in 2005. Current initiative that is limited to US citizen but very effective is FATCA that demands tax havens to report every US citizen who wants to invest on their territory.

⁷ It was finally enacted by the OECD Global Forum Working Group on Effective Exchange of Information that consisted of representatives from OECD Member countries as well as delegates from Aruba, Bermuda, Bahrain, Cayman Islands, Cyprus, Isle of Man, Malta, Mauritius, the Netherlands Antilles, the Seychelles and San Marino.

⁸ In 2011, the Convention on Mutual Administrative Assistance in Tax Matters was revised and opened for countries outside the EU and OECD members, with the cooperation of Council of Europe. The convention facilitates international co-operation among tax authorities to improve their ability to tackle tax evasion and avoidance. It encompasses various tools; among others, it can serve as a basis for agreement between two countries on automatic tax information exchange (OECD, 2009).

¹⁹ The sequential models that Stone refers to are deducted from the sequential model defined by David Easton (1979). His model that he named "cyclical" was composed out of four stages: input, concersion, output and feedback. On the basis of feedback, new impulses for policy making are getting to the system, creating a cycle. Other models usually build on this model. For instance, popular Eugene Bardach's framework (2000) begins

with definition of the problem and continues with assembling some evidence, constructing the alternatives, selecting the criteria, projecting the outcomes, confronting the trade-offs, making a decision and telling the story.

12 The parent and all of its subsidiaries are viewed as they were a single entity (unitary combination), and the method is then also known as unitary taxation.