

A Legal Analysis of the Mutual Interactions between the UN Sustainable Development Goals (SDGs) & Taxation

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1. Introduction

Major international organisations, including the International Monetary Fund (IMF), together with the Organization for Economic Co-operation and Development (OECD), the United Nations (UN) and the World Bank Group (WBG) have recognized the role that taxation could play in achieving the UN 2030 Agenda, in particular in terms of domestic revenue mobilization.¹ Although it is unquestionable that the United Nations Sustainable Development Goals (SDGs) can be incorporated in all national planning processes, strategies and policy areas, including taxation², it is not yet entirely clear whether and how taxation can (or should) contribute to the achievement of the SDGs.³

In past literature, the concepts of “fiscal sustainability” and “sustainable tax systems” have been used to discuss a broad range of ideas. In public finance scholarship, “fiscal sustainability” has been used to analyse the interaction between fiscal policy and budgetary balance.⁴ In the field of business ethics, Bird and Davis-Nozemack have proposed to define tax avoidance as a “sustainability problem”, which allows to highlight the “organizational and societal consequences of tax avoidance behaviour”.⁵ The

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* The final version of this paper will be published in Alice Pirlot, "A Legal Analysis of the Mutual Interactions between the UN Sustainable Development Goals (SDGs) & Taxation", in: Cécile Brokelind & Servaas van Thiel (eds.), *Tax Sustainability in the EU and International Context*, IBFD (to be published in 2020).

¹ In February 2018, these organisations organised a conference on “Taxation and the Sustainable Development Goals” under the lead of the Platform for Collaboration on Tax (PCT), which is a joint platform that they establish in 2016 to tackle international tax issues and help member countries to mobilise tax revenues (IMF, OECD, UN, World Bank Group, “Taxation & SDGs. First Global Conference of the Platform for Collaboration on tax”, Conference Report, 14-16 February 2018). See also UN, Committee of Experts on International Cooperation in Tax Matters, “The role of taxation and domestic resource mobilization in the implementation of the Sustainable Development Goals”, 3 October 2018, E/C.18/2018/CRP.19.

² See United Nations General Assembly, Resolution adopted on 25 September 2015, 21 October 2015, A/RES/70/1, para. 55.

³ See Riina Pilke & Pekka Räsänen, “Practicing or Preaching? Linking Taxation and Sustainable Development in EU Foreign Policy” (2018) 23(2) *European Foreign Affairs Review* 203-222, at p. 205: “The SDGs are evidently not tax goals per se, but they frame a vision of the ‘world we want’, in which taxation is among the available instruments to achieve it. *While there is no unilateral agreement as to how pairing up taxation and the SDGs should be done or the success of it measured*, the importance of it is recognized, and the international community works towards blocking loopholes in taxation” (emphasis added).

⁴ On the concept of fiscal sustainability, see Nigel Chalk & Richard Hemming, “Assessing Fiscal Sustainability in Theory and Practice” (2000) IMF Working Paper. See also Craig Burnside (ed.), *Fiscal Sustainability in Theory and Practice. A Handbook* (2005) The International Bank for Reconstruction and Development/The World Bank. The issue of fiscal sustainability has also been addressed by legal scholars (see, for example, Jonathan Barry Forman & Roberta F. Mann, “Borrowing from Millennials to Pay Boomers: Can Tax Policy Create Sustainable Intergenerational Equity” (2019), to be published).

⁵ Robert Bird and Karie Davis-Nozemack, “Tax Avoidance as a Sustainability Problem” (2018) 151 *Journal of Business Ethics*, pp. 1009-1025.

approach of the legal and economic literature has been slightly different. Authors have discussed the sustainable character of tax systems by reference to the different dimensions of the concept of sustainable development as defined in the Brundtland report. For example, in her work, Schratzenstaller distinguishes between economically, environmentally and socially sustainable tax systems.⁶ Similarly, Nerudová and her co-authors propose to evaluate the sustainability of tax systems by means of a model structured around four pillars, including the three traditional pillars of the concept of sustainable development, namely the economic, social and environmental pillars, and an institutional pillar.⁷

The approach in this Chapter differs from past legal analyses in that it focuses on the UN SDGs and not on the concept of sustainable development as it has been defined in 1987 by the World Commission on Environment and Development (usually referred to as the Brundtland Commission).⁸ The UN SDGs rely on the same logic as the Brundtland report and cover the three same dimensions of sustainable development. But they also include objectives that were not explicitly mentioned in the Brundtland report, such as gender equality, which is the central focus of SDG 5. Moreover, in contrast to past analyses that contribute to the sustainability tax debate by focusing on the different dimensions of the concept of sustainable development, this chapter contributes to this debate by analysing the *mutual interactions* that arise between the SDGs and taxation. On the one hand, tax systems interact with the UN 2030 Agenda: tax measures can support and/or undermine the achievement of the SDGs (*section 1*). On the other hand, the UN 2030 Agenda interacts with tax systems: the SDGs can influence the way tax measures are adopted, implemented and interpreted. Although the UN 2030 Agenda is not binding, it informs decision-making in the field of taxation, encourages policy-makers to reform their tax system and can also have some legal effects on the judicial process (*section 2*). This Chapter does not analyse the 17 SDGs individually but rather provide a broad picture as to their impact on tax systems. Therefore, references to specific SDGs are used only for illustrative purpose.

2. Sustainable tax systems: the interactions between the SDGs and tax policies

By discussing the effects that tax measures might have on the SDGs, this section provides an analytical framework that can serve as a basis to reflect on whether existing tax measures and proposals for tax reforms support and/or undermine the achievement of the SDGs. This section distinguishes between three main forms of positive and negative interactions that can arise between taxation and the SDGs, both at the national and international levels. First, taxation can indirectly support the achievement of the SDGs by providing revenue to fund supporting activities (*2.1.*). Second, tax measures

⁶ See Margit Schratzenstaller, "Sustainable tax policy. Concepts and indicators beyond the tax ratio" (2015) 5(141) *Revue de l'OFCE*, pp. 57-77. She analyses these interactions through the concept of "sustainable tax system": "An economically sustainable tax system should generate sufficient revenues to finance government activities" (p. 9); "A tax system which aims at contributing to environmental sustainability should discourage consumption and production activities which contribute to climate change and environmental degradation" (p. 10); "A socially sustainable tax system should reduce the increasingly unequal market distribution of income and wealth, and it should aim at contributing to equal opportunity" (p. 11).

⁷ Danuše Nerudová, David Hampel, Jitka Janová, Marian Dobranschi and Petr Rozmahel, "Tax System Sustainability Evaluation: A Model for EU Countries" (2019) *Intereconomics* pp. 138-141, available at <https://www.ceps.eu/wp-content/uploads/2019/05/138-141-Forum-Hampel.pdf>. See also Jitka Janová, David Hampel, Danuše Nerudová, "Design and validation of a tax sustainability index" (2019) 278 *European Journal of Operational Research* pp. 916-926.

⁸ Report of the World Commission on Environment and Development: *Our Common Future*, 1987.

can directly and positively interact with the UN 2030 Agenda by encouraging certain behaviours that are in line with the SDGs (2.2). Third, tax measures can have a direct and negative effect on the SDGs when they incentivise behaviours that undermine the achievement of the UN Agenda (2.3). Although this section primarily relies on a legal approach, references economic and political theories are sometimes used to provide arguments in support of or against the use of regulatory tax measures.

As such, the analysis undertaken in this section is not new. Many authors have previously analysed how tax systems affect the achievement of regulatory goals (e.g. objectives related to environmental protection or human rights).⁹ However, considering that the SDGs are increasingly referred to in the tax policy discourse¹⁰, it is sensible to examine how the general tax literature on regulatory objectives applies to the SDGs. The broad scope of the UN 2030 Agenda makes it more likely for tax measures to have both positive and negative effects than when taxation is analysed in the light of a single regulatory objective (such as, for example, the protection of the environment). This section shows, by means of concrete examples, that some tax measures might have positive effects on some of the SDGs, which are counterbalanced by negative effects on other SDGs. These contradictory effects might arise for different reasons. Tax measures are sometimes designed to achieve one specific goal without due attention being paid to the other (negative) effects that they might have on other SDGs.¹¹ In other instances, conflicts between SDGs are inherent to the UN 2030 Agenda.¹² Policy-makers should be aware of these contradictory interactions if they decide to evaluate the sustainability of their tax systems.

2.1. *Indirect positive or negative interaction: tax revenue as a source of funding the SDGs*

The most obvious interaction between taxation and the UN 2030 Agenda arises when tax revenue is used to fund the implementation of the SDGs. This interaction is usually indirect rather than direct: the tax measure is not designed to directly achieve a regulatory objective, its primary objective is to raise revenue, which can be used in a second stage to support the achievement of the SDGs. However, governments could also choose to earmark part of the tax revenue so as to guarantee that the proceeds of certain taxes are allocated to specific policy objectives. In this case, the interaction between the tax measure and its regulatory objective is more visible and direct.¹³ The tax system will support the UN SDGs if countries allocate tax revenue to pursue policy objectives that

⁹ On the effects of taxation on human rights, see Philip G. Alston & Nikki R. Reisch (eds.), *Tax, Inequality, and Human Rights* (OUP 2019).

¹⁰ See the references above (*supra* n. 1). At the EU level, see, for example, the President-elect of the European Commission's mission letter to the Commissioner-designate for Economy, 10 September 2019, available at https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-paolo-gentiloni_en.pdf. See also the conference organised in June 2019 by the International Tax Compact (ITC) and the Addis tax Initiative (ATI) on "Tax and Development with a focus on "how effective taxation systems can help achieve the Sustainable Development Goals (SDGs)" (the programme is available at https://www.taxcompact.net/sites/default/files/2019-04/Programme%20%28EN%29_0.pdf).

¹¹ On the reasons why tax systems are often inconsistent, see Leo P. Martinez, Structural Impediments to Tax Reform: The Environment as Case Study (2013) 14 Florida Tax Review 45; UC Hastings Research Paper No. 34. Available at SSRN: <https://ssrn.com/abstract=2251487>.

¹² See Åsa Persson, Nina Weitz & MÅns Nilsson, "Follow-up and Review of the Sustainable Development Goals: Alignment vs. Internalization" (2016) 25(1) RECIEL 59-68, at p. 63.

¹³ On earmarking, see James M. Buchanan, "The Economics of Earmarked Taxes" (1963) 71(5) Journal of Political Economy pp. 457-469.

are in line with the SDGs. In contrast, if states pursue other objectives or if they raise insufficient revenue, taxation could undermine the achievement of the SDGs and, consequently, affect the needs of future generation.

The UN and other international organisations have explicitly recognised this form of interaction between taxation and the achievement of the SDGs, underlining the role of taxes as an important source of domestic revenue mobilisation.¹⁴ For example, the UN Addis Ababa Action Agenda, which was adopted in 2015 to support the funding and implementation of the SDGs, includes several recommendations specifically targeted at least developed and developing countries aimed at fighting corruption, tax evasion and avoidance.¹⁵ Moreover, the UN Task Force on Financing for Development, which has as its main role to review progress made on the Addis Ababa Action Agenda, recommends that international cooperation be used for fiscal capacity-building and exchange of expertise between developed and developing countries so as to support the latter in strengthening their tax systems.¹⁶

2.2. *Direct and allegedly positive interaction*

In addition to their indirect interaction, the SDGs and tax systems can interact in a direct and allegedly positive way when policy-makers chose to use tax measures to foster the achievement of the SDGs. Indeed, tax laws can be designed in such a way that their primary goal is not to generate revenue but to achieve regulatory objectives, including objectives that relate to the SDGs as defined by the UN. As explained by Avi-Yonah, tax systems can have both redistributive and regulatory functions in addition to their revenue-raising objective.¹⁷

The redistributive function of taxation means that taxes can be “aimed at reducing the unequal distribution of income and wealth that results from the normal operation of a market-based economy”.¹⁸ This function of taxation can be linked to SDG 1 aimed at

¹⁴ United Nations General Assembly, Resolution adopted on 25 September 2015, 21 October 2015, A/RES/70/1, para. 17.1. p. 26. The SDGs build upon the Millennium Development Goals that were adopted earlier at the UN level (United Nations General Assembly, Resolution 55/2. United Nations Millennium Declaration, 18 September 2000, A/RES/55/2). The interaction between the MDGs and taxation was also recognised at the time: *see* United Nations General Assembly, Resolution 65/1. Keeping the promise: united to achieve the Millennium Development Goals, 19 October 2010, A/RES/65/1, para. 78.(e), p. 26. *See* also OECD, The OECD and the Millennium Development Goals, available at <https://www.oecd.org/dac/mdg.htm>; (“taxation plays a key role in mobilising resources for tackling the MDGs and in promoting responsive, accountable governments”); UNDP, “What will it take to achieve the Millennium Development Goals? An International Assessment (2010), available at https://www.unisdr.org/files/14365_UNDPmdgs.pdf, at p. 5. *See* also IMF, OECD, UN, World Bank Group, *supra* n. 3, p. 9: “taxes generate the funds that finance government activities in support of the SDGs”.

¹⁵ UN, General Assembly, Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda), A/RES/ 69/313, adopted on 27 July 2015 (*see*, among others, paras. 22, 28, 58). *See* also Olivier De Schutter, Special report, The international dimensions of the right to development: a fresh start towards improving accountability, Human Rights Council, Working Group on the Right to Development, Nineteenth session, 23 – 27 April 2018, A/HRC/WG.2/19/CRP.1, paras. 74-78. *See* also UN, Committee of Experts on International Cooperation in Tax Matters, *supra* n. 3, p. 4. On the role of taxation in achieving the SDGs in developing countries, *see* Cathal Long, & Mark Miller, “Taxation and the Sustainable Development Goals. Do good things come to those who tax more?”, 2017 Overseas Development Institute.org, available at <https://www.odi.org/sites/odi.org.uk/files/resource-documents/11695.pdf>.

¹⁶ UN, Report of the Inter-agency Task Force on Financing for Development, Financing for Development: Progress and Prospects 2018, available at https://developmentfinance.un.org/sites/developmentfinance.un.org/files/Report_IATF_2018.pdf, at p. 2 and 39.

¹⁷ Reuven S. Avi-Yonah, “The Three Goals of Taxation” (2006) 60(1) Tax Law Review, at pp. 1-28. *See* also Louis Kaplow, “Taxation” (2006) Discussion Paper No. 542, available at http://www.law.harvard.edu/programs/olin_center/papers/pdf/Kaplow_542.pdf.

¹⁸ Avi-Yonah, *supra* n. 17, p. 3.

ending “poverty in all its forms everywhere”.¹⁹ This goal, which countries have largely failed to meet so far, can be achieved indirectly through transfers after tax (by allocating a substantial amount of the tax revenue to the poorest). This corresponds to the indirect interaction that has been described above (*I.I.*). But taxation can also contribute directly to the reduction of poverty, both at the domestic and international levels. At the domestic level, tax measures can be made progressive so as to adapt the tax burden to the ability-to-pay of taxpayers.²⁰ When taxes are progressive, individuals with lower income will, proportionally, pay less taxes than those who benefit from higher income levels.²¹ Although progressive income taxes are unable, as such, to eradicate poverty, they can help achieve this goal by reducing the gap between rich and poor.²² Similarly, certain types of tax measures, such as wealth taxes, are directly aimed at reducing inequality and achieving a more equal society.²³ At the international level, tax treaties can influence the allocation of taxing rights between (richer) and (poorer) countries and support (or undermine) the ability of developing countries to raise revenue, which can then potentially serve to achieve the SDGs within their territory.²⁴

In addition to their direct redistributive functions, tax policies can be used to pursue other regulatory objectives, either by discouraging allegedly harmful behaviours and activities or by encouraging allegedly beneficial behaviours and activities. Environmental tax measures are a traditional example of the use of tax policies to achieve regulatory goals. First, environmental taxes might be aimed at internalising the environmental costs generated by polluting activities in a way which is more cost-efficient than what might be achieved by means of non-market-based instruments.²⁵ Second, environmental tax measures can be aimed at incentivizing allegedly environmentally friendly behaviours. In the context of the SDGs, carbon taxes could be used to achieve SDG 13, which aims at “taking urgent action to combat climate change and its impact”. At the same time, tax incentives could be granted to those who install solar panels, which would also supposedly help achieve SDG 13.

¹⁹ See Thomas Blanchet, Lucas Chancel, Amory Gethin, “Evidence from Distributional National Accounts, 1980-2017”, WID.world Working Paper 2019-6. They observe that inequality is reduced by 40% in the United States after taxes and transfers whereas “in Europe, taxes and transfers reduce inequality by 20%” (at p. 59). Despite this difference, they note that “Europe is significantly more equal after taxes and transfers than the US given the extreme level of pre-tax inequality in the US”.

²⁰ See OECD, Economic Policy Reforms. Going for Growth, “Chapter 5: Reducing income inequality while boosting economic growth: Can it be done?” (2012 OECD publishing), available at <https://dx.doi.org/10.1787/growth-2012-en>, p. 183; UN, World Economic and Social Survey 2018, Frontier technologies for sustainable development, E/2018/50/Rev.1, ST/ESA/370, available at https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/WESS2018_full_web.pdf, p. 55.

²¹ On the definition of progressive tax systems, see James Mirrlees, et al., *Tax by design*, Chapter 2. The Economic Approach to Tax Design, section 2.1.1. The Impact of the Tax and Benefit System on the Distribution of Income”, available at <https://www.ifs.org.uk/publications/5353>, pp. 23-24.

²² See Leo P. Martinez, “A Critique of Critical Tax Policy Critiques (or, you’ve got to speak out against the madness)” (2018) 28 Berkeley La Raza L.J. 49, at p. 65: “While many members of the tax community would disagree with me, progressive taxation has its limitations in achieving fundamental tax fairness”. According to Martinez, “progressive tax system does not address the circumstances of the very poor”

²³ See David Klenert & Linus Mattauch, “Reducing wealth inequality through wealth taxes without compromising economic growth”, 31 January 2019, available at <https://www.oxfordmartin.ox.ac.uk/opinion/view/433>

²⁴ See Allison Christians, “Aligning Tax Rules with Sustainable Development: Why and How” (2019), to be published. Note, however, that some authors consider that tax treaties should rather be viewed as “instruments of pursuing economic objectives and less as negotiations between countries over splitting tax revenue from cross-border activity” (Eric M. Zolt, “Tax treaties and developing countries”, University of Oxford centre for Business Taxation Working paper series WP18/05, p. 43). On the role of international tax law and the myths surrounding tax treaties, see also Tsilly Dagan, *International Tax Policy: Between Competition and Cooperation* (CUP 2017).

²⁵ Don Fullerton, Andrew Leicester, and Stephen Smith, “Chapter 5: Environmental Taxes”, in S. Adam et al. (eds.), *Dimensions of Tax Design* (2010 Mirrlees Report, Institute for Fiscal Studies), available at <https://www.ifs.org.uk/publications/7184>, at p. 429 and following. See also Committee of Experts on International Cooperation in Tax Matters, Environmental tax issues, Note by the Secretariat, 2 October 2018, E/C.18/2018/CRP.14, p. 2

This second type of interaction between the SDGs and taxation needs to be assessed carefully. Although regulatory tax measures may sound attractive from a political viewpoint, their effects on the SDGs might not always be as positive as they appeared to be at first sight.²⁶ The example of environmental taxes and environmental tax incentives help to illustrate this point.²⁷

As mentioned above, environmental taxes are an instrument to internalise pollution, requiring “polluters to pay”. At the same time, these taxes create a “right to pollute” for those able and willing to pay by allowing taxpayers to weigh-up the fiscal costs against the perceived costs of behaviour change.²⁸ It is hard to anticipate whether an environmental tax will effectively encourage polluters to change their behaviour.²⁹ Therefore, when the polluting behaviour can be replaced by a non-polluting behaviour, a ban might be a more reliable instrument to reduce pollution. Moreover, since environmental taxes are traditionally imposed with no consideration for taxpayers’ ability-to-pay, they could lead to discriminatory effects. Those with no or low ability-to-pay will be obliged to modify their behaviour whereas those able to cover the costs of the tax will not. Where the polluting behaviour cannot be avoided, all taxpayers will be required to pay, regardless of their ability-to-pay, which means that the environmental tax will have negative distributional effects.³⁰ Finally, from an international perspective, environmental taxes can lead to pollution leakage if they encourage taxpayers to relocate to jurisdictions with lower environmental standards. Ultimately, the overall level of pollution could even become higher than before the adoption of the tax. All these contradictory effects should be considered carefully before introducing environmental tax measures to support the SDGs aimed at fostering environmental protection.

Environmental tax incentives, which are typically used to encourage environmentally friendly behaviours, may also lead to undesirable outcomes.³¹ In some instances, they can significantly reduce the tax revenue that a government is able to collect without even modifying taxpayers’ behaviour. If taxpayers would have adopted the environmentally friendly behaviour anyway, tax incentives will lead to rent-seeking or, potentially, regressive effects if they mostly benefit taxpayers with a high ability-to-pay.³² In the context of the UN 2030 Agenda, where it has been recognised that domestic revenue mobilisation is a key component to achieve the SDGs, policy-makers should be mindful of the potential negative effects of tax incentives. They might come at the costs of the objective of generating tax revenue and negatively affect the achievement of SDG1.

²⁶ Hence the need for evidence-based law making. On the possibility for Courts to control the quality of evidence-based law making, see Rob van Gestel & Jurgen de Poorter, “Putting evidence-based law making to the test: judicial review of legislative rationality” (2016) (4)2 *The Theory and Practice of Legislation* pp. 155-185.

²⁷ For a broad overview of the disadvantages of environmental taxes, see Fullerton, Leicester and Smith, *supra* n. 25, sections 5.2.2. to 5.2.5., pp. 432 to 439. See also OECD, *Environmental Fiscal Reform, Progress, Prospects and Pitfalls*, OECD Report for the G7 Environment Ministers, June 2017.

²⁸ Fullerton, Leicester and Smith, *supra* n. 25, pp. 435-436 (“effect on attitudes and perceptions”). See, also, Commentary by Agnar Sandmo, in S. Adam et al. (eds.), *Dimensions of Tax Design* (2010 Mirrlees Report, Institute for Fiscal Studies), available at <https://www.ifs.org.uk/publications/7184>, at pp. 543-544.

²⁹ Fullerton, Leicester and Smith, *supra* n. 25, p. 437.

³⁰ *Ibid.*, p. 434.

³¹ See Hans Gribnau & Ave-Geidi Jallai, “Sustainable Tax Governance and Transparency”, Tilburg Law School Research Paper, October 2018, available at SSRN: <https://ssrn.com/abstract=3273553> or <http://dx.doi.org/10.2139/ssrn.3273553>.

³² See, for example, Severin Borenstein & Lucas W. Davis, “The Distributional Effects of U.S. Clean Energy Tax Credits”, in: Jeffrey R. Brown (ed.), *Tax Policy and the Economy* (2016 University of Chicago Press, Vol. 30), pp. 191-234, available at <https://www.nber.org/chapters/c13692.pdf>

2.3. *Direct and allegedly negative interaction*

When tax measures encourage behaviours that are arguably contrary to the objectives that have been set in the UN 2030 Agenda, their interaction with the SDGs will be direct and allegedly negative.

Tax measures can be regressive, which could negatively affect the achievement of SDG1. Moreover, tax measures can lead to effects that are clearly contrary to the other SDGs. For example, tax incentives in favour of company cars lead to negative environmental effects, which run counter to several SDGs, in particular SDG 11 concerning the development of sustainable cities and communities and SDG 13 concerning the fight against climate change.³³ Another concrete example that needs to be further analysed according to the UN Inter-Agency Task Force on Financing for Development is the case of “joint taxation of adult couple” and how it amounts to implicit gender bias and possibly discriminates against female taxpayers (*see also Hemels’ Chapter in this book*).³⁴ Tax systems affect many aspects of women’s life, such as their ability to seek employment or their family role.³⁵ When they include provisions that reflect implicit or explicit gender biases, they negatively affect the achievement of SDG 5 that focuses on gender equality.³⁶

Like allegedly positive interactions between tax policies and the SDGs, allegedly negative interactions between tax systems and the UN 2030 Agenda need to be assessed carefully. Some tax measures may seem to lead to negative effects although, in practice, they do not negatively affect the SDGs. Moreover, solutions to remove allegedly negative interactions should be based on careful analysis in order not to add up to the negative impact that the tax system might have on the SDGs. The tampon tax debate, which has been largely mediatised over the past years, offers a good example of the diversity of parameters to take into consideration when assessing allegedly negative interactions.

The tampon tax debate refers to the discussions that took place in many jurisdictions in relation to the imposition of VAT on menstrual products. The key reason for this debate was the discriminatory treatment of female sanitary products, such as tampons, which were subject to the normal VAT rate whereas so-called male sanitary products (e.g.

³³ On the negative impact of the tax benefits in favour of company car, *see* Copenhagen Economics, “Company Car Taxation” (2010) Working Paper No. 22, available at https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_22_en.pdf. *See also* Daniel Metzler, Andreas Humpe & Stefan Gössling, “Is it time to abolish company car benefits? An analysis of transport behaviour in Germany and implications for climate change” (2019) 19(5) Climate Policy, pp. 542-555. Finally, *see* the opinion of the Belgian Council of State that refer to the potential discriminatory character of this tax advantage (Opinion 64.113/1/V and 65.114/1/V, 27 September 2019).

³⁴ UN, Report of the Inter-agency Task Force on Financing for Development, *supra* n. 16, p. 46. *See also* Sandra Fredman, “Taxation as a Human Rights Issue. Gender and Substantive Equality”, in: Philip Alston & Nikki Reisch (eds.), *Tax, Inequality, and Human Rights* (OUP 2019), at pp. 92-94.

³⁵ *Ibid.*

³⁶ The link between taxation and gender equality has been explicitly recognized by the UN. *See* UN, Committee of Experts on International Cooperation in Tax Matters, *supra* n. 3, p. 5.

Viagra³⁷ or condoms³⁸) benefitted from preferential rates or tax exemptions.³⁹ This unjustified discrimination could be removed in two different ways: either by imposing the normal VAT rate on both “male”, “gender-neutral” and “female” products or by providing “female” sanitary products with the same preferential treatment as “male” and non-gender specific basic products.

The first option – to remove reduced rates and exemptions and apply one general VAT rate to all products - was not seriously considered by tax activists, although it was the preferred option of some VAT experts.⁴⁰ The main argument to support this option is that reduced VAT rates and exemptions make VAT systems more complex and weaken their robustness to tax avoidance.⁴¹ Moreover, the main justification for reduced rates and exemptions, namely that they mitigate the regressive character of VAT, is not fully convincing. According to the Mirrlees review:

*“In assessing progressivity, we should (...) look at the impact of the system as a whole rather than at its individual components. (...) Making the system as a whole progressive does not require every individual tax to be progressive. Different taxes are designed to achieve different ends. Some current taxes are quite regressive – taxes on tobacco, for example – because they are intended to achieve a different purpose, not progressivity. (...) we (...) argue that zero-rating goods consumed disproportionately by poorer households is not a good way to achieve progressivity in the tax system as a whole”.*⁴²

Applied to the tampon tax debate, the conclusions of the Mirrlees review underline that the tampon tax debate could have been framed the other way around. The main problem might not have been the normal VAT rate imposed on female sanitary products, but the many reduced rates and exemptions granted to certain male and many other gender-neutral products. Moreover, the Mirrlees review emphasizes that the regressive effects of certain taxes should better not be analysed in a vacuum but rather in light of the overall effect of the tax system.

Yet, most of the tampon tax debate has focused on the need to grant “female” sanitary products the same preferential treatment as “male” and non-gender specific basic products.⁴³ Subsequently, tax reforms have been adopted in several jurisdiction to lower

³⁷ The example of Viagra is mentioned by Jennifer Bennett, “The Tampon Tax: Sales Tax, Menstrual Hygiene Products, and Necessity Exemptions” (2017) 1 Bus. Entrepreneurship & Tax L. Rev. 183, at p. 194.

³⁸ I struggle to understand why condoms have been described as “male” products. First, female condoms exist, although they are more expensive and not as popular as male ones. Second, male condoms, when used with female partners, are beneficial to both males and females. See Anny Peters, Willy Jansen & Francien van Driel, “The female condom: the international denial of a strong potential” (2010) 18(25) Reproductive Health Matters, pp. 119-128.

³⁹ Bennett, *supra* n. 37, p. 186; Victoria Hartman, “End the Bloody Taxation: Seeing Red on the Unconstitutional Tax on Tampons” (2017) 112 Nw. U. L. Rev. 313, at pp. 347-352; Bridget J. Crawford & Carla Spivack, “Human Rights and Taxation on Menstrual Hygiene Products in an Unequal World”, in: Philip G. Alston & Nikki Reisch (eds.), *Tax, Inequality, and Human Rights* (CUP 2019).”

⁴⁰ Rita de la Feria & Max Schofield, “Legislative Comment. Finance Act 2016 notes: section 126: VAT: women’s sanitary products” (2016) 5 British Tax Review 611-618, at p. 617: “Reducing the rate is not supported by traditional theories of consumption taxation and is unlikely to yield meaningful, if any, financial benefits for women.” See also Rita de la Feria, “Blueprint for Reform of VAT Rates in Europe” (2015) 43(2) Intertax, pp. 155-172; Rita de la Feria, Rita & Max Schofield, “Towards an [Unlawful] Modernized EU VAT Rate Policy” (2017) 2 EC Tax Review pp. 89-95.

⁴¹ *Ibid.*

⁴² Mirrlees, et al., *supra* n. 21, p. 26. See also Kaplow states as follows: “It turns out that most types of taxation are optimally utilized in specialized ways. A general income tax (or personal consumption tax) tends to be best to address redistribution, while most other forms of taxation are primarily justified because they target particular externalities or other imperfections, or because they address administrative and enforcement problems associated with other taxes”. Kaplow, *supra* n. 17, pp. 3-4.

⁴³ See Bridget J. Crawford & Carla Spivack, “Tampon Taxes, Discrimination, and Human Rights” (2017) Wis. L. Rev. 491, <http://digitalcommons.pace.edu/lawfaculty/1070/>. Crawford and Spivack also analyse the possibility to challenge

the tax burden on “female” sanitary products.⁴⁴ At first sight, these reforms are welcome and justified by the objectives of improving women’s health and reducing gender inequality. Formally speaking, the direct discrimination between female and male products has been removed, which seems to be in line with SDG 1 on the reduction of poverty and SDG 5 that focuses on gender equality and the empowerment of all women and girls.⁴⁵ However, in practice, the effects of providing preferential rates to menstrual products are not clear-cut. Reduced rates and exemptions on sanitary products will not necessarily benefit female consumers. Indeed, the incidence of the removal or reduction of the tax could benefit either the producers or the consumers.⁴⁶ If only producers (or high-income earners) get better off, the tax reform will have no positive impact on SDGs 1 & 5.⁴⁷ One could even argue that the tampon tax debate has had a counterproductive impact on SDGs 1 & 5 by drawing the attention primarily to tax and not to other significant issues related to women’s menstrual health (such as, for example, the risks associated with the use of tampons or the fact that tampons and sanitary products, which are necessary goods, may be too expensive, regardless of the tax, for low-income women). This is unfortunate as these issues need to be considered in their own right and could sometimes be more appropriately and effectively mitigated by non-fiscal policy instruments.⁴⁸

3. *The legal effects of the SDGs on tax systems*

If tax systems can positively or negatively impact on the achievement of the SDGs, the question arises as to the potential impact of the SDGs on the adoption, implementation and interpretation of tax laws. This section explores the different types of legal effects that the SDGs could have on the legislative and judicial process (3.2 and 3.3). The extent of these legal effects will largely depend on the legal nature of the SDGs. Therefore, this section begins with a short discussion of the similarities and differences between the SDGs and other regulatory objectives in terms of their legal value (3.1). This section is framed in the context of tax law, although a similar legal reasoning could be applied to assess the legal impact of the SDGs on other legal fields, including environmental law, labour law, family law, company law, etc.

3.1. *The SDGs versus other regulatory objectives*

the tampon tax in front of a Court. *See also* Viktoriya Rusanova, “The Sales Tax on Necessities: Call for a Unified Approach” (2018) 32 *Notre Dame J.L. Ethics & Pub. Poly* 433.

⁴⁴ For example, in Belgium, Canada, France. In the UK, the debate is still ongoing. *See* Antony Seely, “VAT on sanitary protection”, Briefing Paper No. 1128, House of Commons Library, 8 July 2019.

⁴⁵ *See* Hartman, *supra* n. 39, p. 352: “The argument is not that feminine hygiene products should inherently be tax-exempt. Rather, the argument is that it is discriminatory to tax a sex-based medical necessity within a tax scheme that has exemptions for medical and other necessary products.”

⁴⁶ *See* Christopher Cotropia & Kyle Rozema, “Who Benefits from Repealing Tampon Taxes? Empirical Evidence from New Jersey, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2999970. They find that the incidence of the tax break benefits low-income consumers the most. For high-income consumers, however, the benefit is shared with producers. *See also* Jorene Ooi, “Bleeding Women Dry: Tampon Taxes and Menstrual Inequity” (2018) 113(1) *Northwestern University Law Review* 109-154, at pp. 139-140.

⁴⁷ The outcome could, however, differ if the revenue derived from the reduced tax imposed on female sanitary products is earmarked for projects aimed at fighting against period poverty. In the UK, a “Tampon Tax Fund” has been created. Its objective is to allocate the revenue generated by VAT on sanitary products to projects aimed at disadvantaged women and girls (*See* Tampon Tax Fund application form: 2019- 020 funding round, available at <https://www.gov.uk/government/publications/tampon-tax-fund-application-form-2019-2020-funding-round>

⁴⁸ Ooi, *supra* n. 46. Ooi analyses different solutions to mitigate “period poverty”, including the distribution of free tampons, the expansion of welfare programmes benefiting women, the provision of a “women’s menstrual health credit” (which she considers to be the best solution). *See also* Elizabeth Montano, “The Bring Your Own Tampon Policy: Why Menstrual Hygiene Products Should Be Provided for Free in Restrooms” (2018) 73 *U. Miami L. Rev.* 370.

The different types of interactions that arise between taxation and the SDGs are not unique. Similar interactions arise between taxation and other regulatory objectives. From this perspective, the idea to use taxation to achieve the UN 2030 Agenda is just a proposal to use taxation to foster certain goals. Scholars have made similar proposals in the past, arguing that taxation should be aligned to certain social values or religious beliefs that they consider essential, such as the protection of the environment or Christian ethics. For example, Stahel has argued that tax systems should be designed on the basis of the “principles of sustainability” in order to “accelerate the shift to a circular economy”.⁴⁹ Hamill has supported the use of Judeo-Christian ethics for guiding tax reforms.⁵⁰ Other researchers have looked into whether and how tax policies could be interpreted in the light of human rights or feminist values.⁵¹ As such, all these proposals can be compared to the one in favour of the alignment of tax policies to the SDGs in that they are aimed at guiding the design, implementation and interpretation of tax laws. Consequently, the typology developed in the previous section (*section 1*) to map the effects of taxation on the SDGs could also be used to discuss interactions between tax measures and other types of regulatory objectives.

Nevertheless, the SDGs differ from regulatory goals and values that only reflect individual preferences and lack recognition at the UN level. UN members have approved the SDGs in a UN resolution, which gives them a moral and universal character, which goes beyond mere national preferences and ambitious political slogans. The Sustainable Development Solutions Network, which gathers sustainable development experts under the auspice of the UN Secretary-General to facilitate the implementation of the SDGs and the Paris Climate Agreement, describes the SDGs as “complementary to the tools of international law (...), by providing a shared normative framework that fosters collaboration across countries, mobilizes all stakeholders, and inspires action”.⁵²

Even so, the SDGs, as such, are not legally binding, which distinguishes them for instance from human rights treaties, but they do amount to soft law provisions.⁵³

⁴⁹ Walter R. Stahel, “Policy for material efficiency – sustainable taxation as a departure from the throw away society” (2013) *Phil Trans R Soc A* 371: 20110567. <http://dx.doi.org/10.1098/rsta.2011.0567>, p. 1.

⁵⁰ See Susan Pace Hamill, “An Argument for Tax Reform Based on Judeo-Christian Ethics”, *Alabama Law Review* (2002) 54 *Ala. L. Rev.* 1.

⁵¹ Shane Darcy, “‘The Elephant in the Room’: Corporate Tax Avoidance & Business and Human Rights” (2017) 2 *Business and Human Rights Journal* 1-30, at p. 2, referring to the Lima Declaration on Tax Justice and Human Rights and to the report of the special rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona (UN, General Assembly, Human Rights Council, Report of the Special Rapporteur on Extreme poverty and human rights, 22 May 2014, A/HRC/26/28). The report written by Sepúlveda emphasizes that taxation can be a “critical tool for realizing human rights and tackling inequality”. It formulates clear recommendations. On the impact of feminist theories on the interpretation of tax law, see Bridget J. Crawford & Anthony C. Infanti, *Feminist Judgements. Rewritten Tax Opinions* (2017 CUP). See also Anthony C. Infanti, “Dismembering Families.”, in: Kim Brooks, Åsa Gunnarson, Lisa Philipps and Maria Wersig (eds.), *Challenging Gender Inequality in Tax Policy Making: Comparative Perspectives* (2011 Hart Publishing), pp. 159–176.

⁵² Sustainable Development Solutions Network (SDSN), *Principles for Framing Sustainable Development Goals, Targets, and Indicators*, Issue Brief, Prepared by the SDSN Secretariat, 14 February 2014, available at <http://unsdsn.org/wp-content/uploads/2014/02/Principles-for-Framing-SDGs-Targets-Indicators1.pdf> On the SDSN, see <http://unsdsn.org/about-us/vision-and-organization/>.

⁵³ On this question, see Marcel M.T.A. Brus, “Soft Law in Public International Law: A Pragmatic or a Principled Choice? Comparing the Sustainable Development Goals and the Paris Agreement”, in: Pauline Westerman, Jaap Hage, Stephan Kirste & Anne Ruth Mackor (eds.), *Legal Validity and Soft Law* (2018 Springer), pp. 243-266, also available at <http://dx.doi.org/10.2139/ssrn.2945942>. See also the conclusions of Voigt on the legal value of the concept of “sustainable development” in: Christina Voigt, *Resolving Conflicts between Climate Measures and WTO Law* (Martinus Nijhoff Publishers 2009), at pp. 160-177. De Schutter describes the SDGs as follows (supra n. 15, para. 74): “Though the commitments contained in the Addis Ababa Action Agenda and, especially, in the Sustainable Development Goals, remain too vague to be truly enforceable, they nevertheless send a strong political signal”. On the non-enforceability of the SDGs, see the special issue on “The Sustainable Development Goals and Human Rights: A Critical Early Review” published in 2017 in *The International Journal of Human Rights* (issue 8, volume 21). Thomas Pogge & Mitu Sengupt,

According to Persson, Weitz & Nilsson, the SDGs are to be seen “as a set of norms at the softest end of the ‘hard-to-soft’ continuum”.⁵⁴ Although the UN 2030 Agenda does not include compliance and enforcement mechanisms, the control mechanisms that exist in some international treaties, such as human rights treaties, could be relied upon to guarantee the implementation of the SDGs that overlap with the provisions of these international treaties.⁵⁵ Moreover, the SDGs could be made legally binding at the national level. The integration of international recommendations in domestic law is not uncommon. For example, recommendations on gender equality have been made into law in Belgium, requiring Belgian policy-makers to integrate a gender dimension in all policies they adopt, including the budget (‘gender budgeting’).⁵⁶

If the SDGs differ from individual regulatory preferences and amount, at least, to soft law, the question arises as to the role they could play in the legal system of UN members, including in their tax system. In the next section, the objective is to explore the legal effects that the SDGs and the UN 2030 Agenda might have both on domestic and international tax laws at different stages of the legislative and judicial process. The SDGs could have different effects on tax systems that span from soft effects on the way tax systems are being designed (3.2) to relatively harder legal effects on the way tax provisions are being interpreted (3.3).

3.2. *The influence of the SDGs on the adoption of tax laws*

The SDGs might have soft legal effects on taxation through their influence on policy-makers.⁵⁷ This phenomenon is neither new nor specific to the SDGs but generally characterizes norms of international soft law.⁵⁸

Although it is hard to come up with positive evidence on how soft law principles influence the legislative process, the growing number of references to sustainability in the tax policy discourse suggests that the SDGs are having an impact on tax systems.⁵⁹

“The sustainable development goals (SDGs) as drafted: nice idea, poor execution” (2015) 24(3) *Washington International Law Journal* 571-587. On the relationship between the SDGs and human rights, see Siobhán McInerney-Lankford, “Human Rights and the SDGs: Progress or a Missed Opportunity?”, Oxford Human Rights Hub, available at <http://ohrh.law.ox.ac.uk/human-rights-and-the-sdgs-progress-or-a-missed-opportunity/>

⁵⁴ Persson, Weitz & Nilsson, *supra* n. 12, at p. 60. In contrast, Kim and Bosselmann argue that the environmental SDGs should be given priority and that ecological integrity should become a “grundnorm of international law” with similar legal effects to human rights provisions. See Rakhyun E. Kim & Klaus Bosselmann, “Operationalizing Sustainable Development: Ecological Integrity as a *Grundnorm* of International Law” (2015) 24(2) *Review of European Community & International Environmental Law* 194-208.

⁵⁵ See De Schutter, *supra* n. 15, para. 64.

⁵⁶ Law of 12 January 2007 aimed at controlling the implementation of the resolutions of the World Conference on Women that took place in Beijing in 1995 (Loi du 12 janvier 2007 visant au contrôle de l’application des résolutions de la conférence mondiale sur les femmes réunie à Pékin en septembre 1995 et intégrant la dimension du genre dans l’ensemble des politiques fédérales). See also Circulaire relative à la mise en œuvre du *gender budgeting* conformément à la loi du 12 janvier 2007 visant au contrôle de l’application des résolutions de la conférence mondiale sur les femmes réunies à Pékin en septembre 1995 et intégrant la dimension de genre dans l’ensemble des politiques fédérales, 29 avril 2010. A similar idea has been proposed in France in order to foster environmental protection (“Green Budgeting”; “budget vert”).

⁵⁷ De Schutter, *supra* n. 15, para. 74.

⁵⁸ See Dinah Shelton, “The Environment and Natural Resources”, in Dinah Shelton (ed.), *Commitment and Compliance: The Role of Non-binding Norms in the International Legal System* (OUP 2003), pp. 231-235.

⁵⁹ *Ibid.*, at p. 231: “Within states, compliance means performing the measures flowing from non-binding norms. In principle, the transcription of soft law rules into national law constitutes their implementation, and does not necessarily ensure compliance with their prescriptions. It is tempting to conclude that real compliance is effectuated through administrative or judicial decisions, unless it can be shown that the behavior of actors is influenced by internationally agreed soft laws, rules, and norms without such enforcement. Such hypothesis supposes far-reaching investigation into the everyday life of societies and has not thus far been conducted on a systematic basis”. Recently, at the EU level, the president-elect of the European Commission, Ms. Ursula von der Leyen, has requested each Commissioner, including the

For example, parties to the Addis Agenda initiative have been encouraged to adopt tax reforms at different levels, including regarding their practice of exempting official development assistance (ODA) from taxation.⁶⁰ Although these exemptions were justified as a way to encourage ODA, the report of the Inter-agency task force on financing for Development underlined that they add up to the complexity of tax systems and undermine domestic revenue mobilisation, which is key to finance the SDGs.⁶¹ As mentioned above (2.1), the need to guarantee domestic revenue mobilisation in the context of the SDGs has also led to recommendations to “combat tax evasion”, “reduce opportunities for tax avoidance and consider inserting anti-abuse clauses in all tax treaties”.⁶² Moreover, a group of developed countries have voluntarily decided to launch a tax initiative (the “Addis Tax Initiative”) in order to support fiscal capacity building and domestic revenue mobilisation.⁶³

Beyond voluntary initiatives, UN members are not required to adopt and reinforce the positive interactions that arise between their tax system and the SDGs (2.2). As mentioned in the previous section (3.1.), SDGs are primarily the expression of broad objectives, which UN members are free to achieve as they see fit.⁶⁴ They can do so by using tax measures or any other non-fiscal regulatory instruments. For this reason, caution should be exercised when the sustainability of tax systems is assessed by reference to whether or not they include allegedly positive regulatory tax measures that are aimed at achieving the SDGs. Such an assessment does not say much about how well or badly a UN member is achieving the goals set by the UN 2030 Agenda. In theory, a country characterized by a tax system that does not include any regulatory tax measures linked to the SDGs could still score high in how well it pursues the targets defined by the UN 2030 Agenda. Indeed, such a country could contribute to the SDGs by means of non-fiscal tax measures.⁶⁵ The tax system does not operate in a vacuum and the existence or absence of allegedly positive tax measures should preferably not be assessed on its own.

Although the UN 2030 Agenda does not formulate positive legal obligations, it might be argued that negative obligations can be derived from the SDGs.⁶⁶ UN members should minimize and eliminate all potential direct and negative effects that their tax system might have on the achievement of the SDGs (2.3). This soft legal effect of the SDGs on tax systems is likely to be reinforced through the voluntary and country-led follow-up

future Commissioner in charge of the EU’s tax policies, to deliver the SDGs within their policy area (see Ursula von der Leyen, Mission letter to Paolo Gentiloni, Commissioner-designate for Economy, 10 September 2019).

⁶⁰ UN, Report of the Inter-agency Task Force on Financing for Development, *supra* n. 16, p. 106, referring to the UN, General Assembly, Addis Ababa Action Agenda, *supra* n. 15, at para. 58 (“(...) We will also consider not requesting tax exemptions on goods and services delivered as government-to-government aid, beginning with renouncing repayments of value-added taxes and import levies”).

⁶¹ *Ibid.*

⁶² UN, General Assembly, Addis Ababa Action Agenda, *supra* n. 15, in particular at paras. 22 and 23.

⁶³ See the following website <https://www.addistaxinitiative.net>

⁶⁴ Spangenberg, Mumford & Daly argue that “the SDGs do not define or prescribe a certain conduct, but, rather, specify outcomes and targets, that are not always precise, but, in some cases, could be described as rather vague and aspirational” (Ulrike Spangenberg, Ann Mumford & Stephen Daly, “Navigating taxation towards sustainability. Contradictions between Social, Gender, Environmental, and Economic ambitions, obligations and governance capacities in European tax law”, H2020-EURO-SOCIETY-2014 project, p. 43).

⁶⁵ A similar reasoning applies to environmental taxation. The fact that a country has not adopted any environmental tax measures does not mean that this country has low environmental standards. Conversely, the fact that a country has adopted a large number of environmental taxes does not necessarily imply that it has high environmental standards.

⁶⁶ Whether or not this obligation could be subject to judicial review is analysed in section 2.3.

and review process, which is part of the 2030 Agenda.⁶⁷ Although this review process is much weaker than the control mechanisms included in human rights treaties, its impact should not be underestimated. Indeed, reporting can be an indirect supervisory tool if it is used to pressure non-compliant states into action.⁶⁸

To support this supervisory role of the review process, NGOs active in the field of taxation should encourage states to integrate an analysis of the sustainability of their tax system in voluntary national reviews.⁶⁹ Further research is required on how such integration could take place. So far, taxation has been largely left out of most indicators on the SDGs. The global indicator framework for the SDGs, developed by the Inter-Agency and Expert Group on SDG Indicators, includes only a few references to tax measures.⁷⁰ One indicator concerns the negative impact of fossil fuel tax subsidies (indicator 12.c.1) and another one refers to the use of tax revenue to strengthen the means of implementation of the Global Partnership for Sustainable Development (indicator 17.1.2.).⁷¹ There will be an opportunity to better integrate taxation in the UN SDGs indicators in 2020 during the 6th session of the Statistical Commission.⁷² The work by Nerudová and her co-authors could be a very useful basis to do so (*see also Nerudova's Chapter in this book*).⁷³ As mentioned in the introduction (I), they have established a model that allow to test tax systems against the four dimensions of the concept of sustainable development. This model could be extended to include all the SDGs and serve as a useful tool to align tax systems with the UN 2030 Agenda.

3.3. *The influence of the SDGs on the interpretation of tax laws*

Assuming that the SDGs are recognised a legal status similar to norms of international soft law, they could also have relatively stronger legal effects on the way domestic and international tax provisions are interpreted.⁷⁴

Domestic tax law

At the national level, judges could give interpretative value to the UN 2030 Agenda. For example, they could interpret some general tax provisions in a way that fosters gender

⁶⁷ United Nations General Assembly, Resolution adopted on 25 September 2015, 21 October 2015, A/RES/70/1, para. 74, a) and para. 79: "(...) We also encourage Member States to conduct regular and inclusive reviews of progress at the national and subnational levels which are country-led and country-driven." *See also* Sylvia Karlsson-Vinkhuyzen, Arthur L. Dahl & Asa Persson, "The emerging accountability regimes for the Sustainable Development Goals and policy integration: Friend or foe?" (2018) 36(8) *Environment and Planning C: Politics and Space*, pp. 1371-139.

⁶⁸ Brown Edith Weiss, "Conclusions: Understanding Compliance with Soft Law", in Dinah Shelton (ed.), *Commitment and Compliance: The Role of Non-binding Norms in the International Legal System* (OUP 2003), at pp. 538-539.

⁶⁹ "The 2018 Voluntary National Review Synthesis Report coordinated by the Division for Sustainable Development Goals (available at https://sustainabledevelopment.un.org/content/documents/210732018_VNRs_Synthesis_compilation_11118_FS_BB_Format_FINAL_cover.pdf) include some references to tax measures. However, the report does not provide any systematic analysis as to how domestic tax systems support or undermine the achievement of the SDGs.

⁷⁰ United Nations General Assembly, Resolution adopted by the General Assembly on 6 July 2017, 71/313. Work of the Statistical Commission pertaining to the 2030 Agenda for Sustainable Development, A/RES/71/313.

⁷¹ *Ibid.*, Annex. The same holds true for other indicators, including the ones developed by the Sustainable Development Solutions Network (SDSN), in collaboration with the Bertelsmann Stiftung, could also better integrate tax policies. So far, the SDSN only targets tax policies as part of SDG 17. *See* <http://sdgindex.org/assets/files/2018/01%20SDGS%20GLOBAL%20EDITION%20WEB%20V9%20180718.pdf>

⁷² *Ibid.*, para. 1.

⁷³ Janová, Hampel, Nerudová, *supra* n. 7.

⁷⁴ On the legal effects and the interpretative function of "sustainable development" in international law, *see* Virginie Barral, *Le développement durable en droit international: essai sur les incidences juridiques d'une norme évolutive* (Laciar 2016).

equality. As critical legal scholars have shown, some tax provisions can be subject to different interpretations, some of which are more favourable to gender equality than others.⁷⁵ The interpretation of tax provisions in a way that best aligns with the UN SDGs would either lead to the emergence of a positive, direct interaction between tax laws and the SDGs and/or to the prevention of the emergence of negative, direct interaction between tax laws and the SDGs. For example, the concept of “deductible business expenses” can be interpreted in a restrictive way, excluding the deduction of certain expenses such as childcare expenses or any other expenses that facilitate the employment of women or in a more flexible way, allowing women to deduct these expenses from their taxable professional income. The restrictive interpretation could be considered to have negative effects on SDG 5 where the broader, more inclusive, interpretation could have a positive impact on the achievement of SDG 5.⁷⁶

Moreover, in so far as some of the SDGs overlap with more precise legal principles or other international legal norms, the UN 2030 Agenda could influence the way these principles and international provisions are used to annul tax provisions and/or lay down positive obligations on tax policy-makers.⁷⁷ For example, courts could use SDG 13, in the same way as they have used the UN Framework Convention on Climate Change, to determine whether a government has a duty to take action to fight against climate change.⁷⁸

The *Urgenda* case offers a good illustration of how the SDGs could possibly be relied upon by civil society organisations to hold UN members accountable.⁷⁹ In 2013, the Dutch Urgenda Foundation filed a complaint to require the Dutch State to propose adequate measures, including corresponding budgets, within six months of the Court’s decision, in order to reduce its greenhouse gas emissions to 40%, or at least 25%, below the level of 1990 by 2020.⁸⁰ To support its claim, the Urgenda Foundation referred to general principles of international law (in particular the ‘no harm’ principle), the UN Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, other UN Agreements such as the Copenhagen agreement and the Cancun Agreement, some provisions of the European Convention on Human Rights (articles 2 and 8) and provisions of domestic Dutch law related to the duty of care. In 2015, the District Court of The Hague required the Dutch State to reduce the volume of its emissions to at least

⁷⁵ Crawford & Infanti, *supra* n. 51.

⁷⁶ A feminist view on the question of which expenses should qualify as business expenses can be found in the comment made by Nicole Appleberry on the case *Welch v. Helvering*, 290 U.S. 111 (1933) of the US Supreme Court). See N. Appleberry, “Comment on Welch v. Helvering”, in: Crawford & Infanti, *supra* n. 51, pp. 95-120. See also Kathleen A. Lahey, “Chapter 2: Feminist Judging for Substantive Gender Equality in Tax Law”, in: Crawford & Infanti, *supra* n. 51, at pp. 22-52, in particular the section on the crucial role of childcare services to women’s economic equality. In order to shed lights on implicit bias, the UN Inter-Agency Task Force on Financing for Development calls for more sex-disaggregated data on tax systems (UN, Report of the Inter-agency Task Force on Financing for Development, *supra* n. 16, pp. 46-47).

⁷⁷ Brus, *supra* n. 53, at p. 15: “Although it seems unlikely that the provisions of these instruments will be directly invoked before courts and tribunals, they may be given legal effect by being used to clarify obligations of states in other international instruments, e.g. in environmental or human rights conventions”.

⁷⁸ A detailed overview of climate cases brought in front of domestic courts can be found on the following database, developed by the Sabin Center for Climate Change Law at Columbia Law School and Arnold & Porter: <http://climatecasechart.com/about/>

⁷⁹ Karlsson-Vinkhuyzen, Dahl & Persson, *supra* n. 67, p. 1383: “(...) people, mostly in the form of national or transnational civil society organizations are the major principals in the accountability regime for the SDGs as States point out in the Agenda 2030”. See also Fredman, *supra* n. 34, pp. 87-88. The SDGs could have a similar role to play as human rights for NGOs and human rights advocates.

⁸⁰ The translation of the summons in the *Urgenda* case can be found on the following webpage: <https://www.urgenda.nl/wp-content/uploads/Translation-Summons-in-case-Urgenda-v-Dutch-State-v.25.06.10.pdf>

25%.⁸¹ The District Court based its decision on the duty of care of the Dutch government, which finds its legal basis in the Dutch civil code, and not on UN treaties or human rights provisions. However, the Court made clear that it could refer to UN treaties and human rights provisions in order to assess the duty of the Dutch State in the field of climate change.⁸² The Dutch government appealed the decision but the Hague Court of Appeal confirmed the judgement of the Hague District Court.⁸³ On 8 January 2019, the Dutch State filed an appeal before the Dutch Supreme Court (*Hoge Raad*). According to the Netherlands, the Court's decision is based on UN recommendations (namely the decisions of the Conference of the Parties to the UNFCCC) that are political and not legally binding.⁸⁴ The Dutch State also considers that the Court did not respect the wide margin of appreciation of the Dutch State and its ability to independently define its political action in the field of climate change.⁸⁵ In contrast, the Foundation Urgenda argues that "a Court decision can have significant political implications but this does not imply that the question answered by the Court is a political question, which cannot be dealt with by the judiciary".⁸⁶ The Court is expected to issue its decision in 2020. Regardless of its future outcome, the Urgenda case shows that civil society organisations are willing to hold States accountable for their international commitments before domestic courts. The Urgenda Foundation took action to fight against climate change. Other civil society organisations might decide to take action to support other causes where States fall short of their international commitments, including in the field of taxation and in the context of the SDGs.

Aside from this interpretative effect, the legal impact of the SDGs on domestic tax law is expected to be limited as they are formulated in very general terms. Indeed, it is unlikely that domestic courts rely on the SDGs to annul tax provisions that undermine the achievement of the SDGs. It is also rather unlikely that a domestic court would derive positive obligations from the SDGs so as to condemn the government for not having taken sufficient steps to align the tax systems to the UN 2030 Agenda (3.1).⁸⁷

⁸¹Rechtbank Den Haag, *Stichting Urgenda tegen de Staat der Nederlanden (Ministerie van Infrastructuur en Milieu)*, 24 June 2015, C/09/456689/ HA ZA 13-1396, para. 5.1, available at <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2015:7145> Translation of this case are available on the website of the Urgenda Foundation: <https://www.urgenda.nl/en/themas/climate-case/climate-case-explained/>

⁸² *Ibid.*, para. 4.52. The fact that the decision requires the Dutch State to reduce its emissions to 25% is clearly related to the decisions that have been adopted at the UN level.

⁸³ Gerechtshof Den Haag, *De Staat der Nederlanden tegen Stichting Urgenda*, 9 Oktober 2018, C/09/456689/HA ZA 13-1396, available at <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHDHA:2018:2591>.

⁸⁴ Procsinleiding vorderingsprocedure Hoge Raad, Middel van Cassatie van de Staat der Nederlanden (Ministerie van Economische Zaken en Kimaat), introduced on 8 January 2019, para. 5.4, p. 27, available at <https://www.urgenda.nl/wp-content/uploads/20190108-procsinleiding-Staat-Urgenda-PRDF-2436693.pdf>. To counter this argument, the Foundation Urgenda referred to legal scholars who have described COP decisions as "treaty-based standards" (See Verweerschrift inzake Stichting Urgenda tegen De Staat der Nederlanden (Ministerie van Economische Zaken en Klimaat, 12 April 2019, para. 204, available at https://www.urgenda.nl/wp-content/uploads/PROC-2019_04_12-Verweerschrift-zijdens-Urgenda.pdf).

⁸⁵ Procsinleiding vorderingsprocedure Hoge Raad, *supra* n. 84, para. 6.3., p. 35. See also the 9th section of the argument of the Dutch State (pp. 53-56), concerning the fact that the decision of the Court obliges the Dutch State to legislate, which it considers to be unacceptable.

⁸⁶ Free translation on the basis of Verweerschrift inzake Stichting Urgenda tegen De Staat der Nederlanden, *supra* n. 84, para. 124. See also UNEP, The status of climate change litigation. A global review, May 2017, p. 30, available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/20767/climate-change-litigation.pdf?sequence=1&isAllowed=y>

⁸⁷ For example, it is hard to imagine that a domestic court would require the legislator to adopt new taxes or increase tax rates in case it considers that insufficient taxes are being raised to fund the SDGs.

International tax law

Some authors have argued that the SDGs could also have some effects on international tax law. For example, Christians suggests that the SDGs could serve as an interpretation method to “adjust” current international tax standards to the UN 2030 agenda.⁸⁸ She does not go as far as to argue that the SDGs require that tax treaties be interpreted in accordance with the UN 2030 Agenda but she considers that “it is within the bounds of conventional legal interpretive approaches” to “align tax rules more closely within instead of working against development goals”.⁸⁹ In other words, Christians’ argument is that countries that are willing to reform international taxation do not need to fundamentally change the existing tax system; they could simply adapt the interpretation of transfer pricing rules by reference to the sustainable development agenda.⁹⁰ Although recent developments at the OECD level to redefine income allocation rules (“pillar one”) suggest that proposals in favour of a reinterpretation of transfer pricing rules are perfectly reasonable, the SDGs might not serve as a useful guidance for the interpretation of international tax principles due to their vague character. Moreover, there are good reasons to share Kane’s pessimism on a future revision of the allocation rules between developed and developing countries to the advantage of the latter.⁹¹ Kane’s analysis focuses on the connection between taxation and human rights, but his conclusions could be extended to the SDGs. He states:

*“To date I have seen very little to convince me that international tax reform efforts currently underway will connect to the concerns of human rights in any meaningful way. That pessimism flows from an observation and assessment of the current state of affairs in both the real world of tax policymaking and in the academic world”.*⁹²

In other words, it seems unlikely that international tax law will align to human rights concerns (even less so to the SDGs) in the near future. Although it is more and more common to find references to tax in comments and observations of UN committees on human rights⁹³, the impact of human rights provisions on international tax practices remains minimal, if at all existent.⁹⁴ Whereas some human rights experts argue that

⁸⁸ Christians’ paper proposes “a method for an immediate interpretive shift—referred to as a sustainability adjustment—that could align tax rules more closely with instead of working against development goals” (Christians, *supra* n. 24). See also Allison Christians, “The Search for Human Rights in Tax”, in: Philip Alston & Nikki Reisch (eds.), *Tax, Inequality, and Human Rights* (OUP 2019), at pp. 115-134. Christians explains how the OECD’s Guidelines for Multinational Enterprises (2000) have been used by NGOs to challenge certain tax structures used by multinational corporations in Zambia and in the Democratic Republic of the Congo.

⁸⁹ Christians, *supra* n. 24, p. 3 & p. 45.

⁹⁰ *Ibid.*, at pp. 43-46. In a similar way, one could argue that the SDGs offer policy-makers the opportunity to adopt cross-border taxes that would otherwise violate superior legal norms, such as international trade law. For example, Moon refers to recent WTO law case law to highlight that taxes that would not be “unnecessarily discriminatory” in their design could easily be found justified under the social exception provision under the general agreement on tariffs and trade (article XX(a) GATT). See Gillian Moon, “A ‘Fundamental Moral Imperative’: Social Inclusion, the Sustainable Development Goals and International Trade Law After Brazil-Taxation” (2018) 52(6) *Journal of World Trade*, pp. 995 – 1018.

⁹¹ Mitchell A. Kane, “Tax and Human Rights. The Moral Valence of Entitlements to Tax, Sovereignty, and Collectives”, in: Philip Alston & Nikki Reisch (eds.), *Tax, Inequality, and Human Rights* (OUP 2019), at pp. 99-114, at p. 100.

⁹² *Ibid.*

⁹³ See United Nations, Committee on Economic, Social and Cultural Rights, General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, E/C.12/GC/24, para. 37; United Nations, Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, 14 July 2016, E/C.12/GBR/CO/6, paras. 16-17; United Nations, Committee on the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of Switzerland, 25 November 2016, CEDAW/C/CHE/CO/4-5, para. 40.

⁹⁴ See Alston & Reisch (eds.), *supra* n. 9, in particular the article by Olivier de Schutter (*chapter 2*), Allison Christians (*chapter 3*) and Mitchell A. Kane (*chapter 4*).

certain human rights treaties create extraterritorial fiscal obligations upon states⁹⁵, most tax lawyers would probably consider that the impact of human rights on international tax practice is inexistent. Tax experts are likely to be even more sceptical about the effects of the SDGs on international tax practice because the UN 2030 Agenda is not “truly enforceable”, unless it overlaps with human rights treaties or other binding provisions.⁹⁶ The SDGs are usually more imprecise than human rights provisions and their implementation is not guaranteed by *ad hoc* compliance mechanisms as it is the case under human rights treaties.⁹⁷

In addition to their (potential but unlikely) impact on the interpretation of tax treaties, the SDGs could (more likely) have an influence on the interpretation of WTO law agreements in tax disputes. Sustainable development is mentioned as one of the objectives of the WTO and the recognition of the SDGs at the UN level could affect the interpretation of this objective in future tax and trade disputes by the dispute settlement body.⁹⁸

4. Conclusion

This paper provides a two-fold analysis of the mutual interactions that can arise between tax systems and the UN 2030 Agenda and explores whether policy-makers could be required to integrate the SDGs in their tax system, keeping the negative effects of taxation on the SDGs to a minimum and maximizing the positive impact of tax measures on the UN 2030 Agenda.

The first section describes the types of effects that tax systems can have on the SDGs, distinguishing between the indirect and direct effects that can support and/or undermine the achievement of the SDGs. This descriptive analysis provides a framework that can be useful to assess the “sustainability” of tax systems. Taxation can bring substantial support to the achievement of the SDGs if tax revenues are used to foster the 17 goals that have been defined at the UN level in 2015. Taxation can also be a direct policy tool to meet the SDGs when tax measures are used as regulatory instruments. Conversely, tax law can encourage behaviours that are contrary to the SDGs. Policy-makers should ensure that their tax system does not lead to effects that are irreconcilable with the objectives that they committed to pursue in the context of the UN 2030 Agenda. Finally, a precautionary approach is key to avoid that taxation is used as a smokescreen so as to divert the attention of the general public from other non-fiscal regulatory instruments that could be used to achieve the SDGs.

The second section looks into the legal interactions that might arise between the SDGs and tax systems. This part provides an overview of the potential legal effects that the

⁹⁵ See UN, General Assembly, Human Rights Council, Report of the Special Rapporteur on extreme poverty (*supra* n. 51, para. 62); De Schutter, *supra* n. 15, p. 42.

⁹⁶ See De Schutter, *supra* n. 15, para. 74. The potential overlap between the SDGs, human rights and the obligation to mobilize the maximum available resources for the fulfilment of human rights is made explicitly in the following document: International Bar Association’s Human Rights Institute, “The Obligation to Mobilise Resources: Bridging Human Rights, Sustainable Development Goals, and Economic and Fiscal Policies, December 2017, pp. 20-21. This document includes many references to reports of independent experts on human rights treaties, which touch upon tax policy.

⁹⁷ See De Schutter, *supra* n. 15, para. 74.

⁹⁸ See the preamble of the Agreement establishing the World Trade Organization (1995): “(...) in accordance with the objective of sustainable development (...)”.

SDGs might have on the design, implementation and interpretation of tax measures, distinguishing between the effects that the SDGs might have on domestic and international tax law. Although it is unlikely that the SDGs, on their own, will amount to positive obligations, requiring UN members to adopt tax policies that directly contribute to the achievement of the SDGs, it could be argued that UN members are subject to the negative obligation of not interfering negatively, through their tax system, with the SDGs. As the UN 2030 Agenda does not include supervisory mechanisms similar to the ones that characterise some international treaties, such as human rights treaties, the role of non-state actors is key in ensuring compliance with the SDGs. Academics, NGOs and citizens have an important role to play in reminding governments of their commitments under the UN 2030 Agenda and their implications on tax systems. Ultimately, they could also pressure UN members into removing tax measures that have a clear negative impact on the achievement of the SDGs from their tax system while preventing them from adopting new harmful tax measures. As this chapter has shown, this would be a right step towards more sustainable tax systems.