

The UN Tax Convention and Why It Matters For Reforming Global Tax Governance

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Abstract

This Working paper seeks to provide a brief background of the current state of international tax cooperation, offer detailed insights into the United Nations (UN) Framework Convention on international tax cooperation, and outline perspectives on policy positions on critical matters around the reforms of global tax governance.

This policy brief aims to provide a comprehensive overview of the current landscape of international tax cooperation, with a particular focus on the UN Framework Convention on International Tax Cooperation. It delves into the historical and contextual background of recent reforms in international tax governance, highlighting the push behind these changes and their global implications. This brief also critically examines the UN tax convention process, addressing various criticisms that stakeholders have raised. Furthermore, it outlines the guiding principles that should steer the UN Tax Convention process to ensure fairness, transparency, and inclusivity. Finally, the brief discusses potential protocols and agreements that could be negotiated under the UN Tax Convention, proposing actionable recommendations to enhance global tax cooperation. Through this comprehensive analysis, the policy brief seeks to inform and influence policy positions on critical issues surrounding the ongoing reforms in global tax governance, reflecting TJNA's perspectives and advocating for a more just and effective international tax system.





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Glossary

ATAF	African Tax Administration Forum
AU	African Union
BEPS	Base Erosion and Profit Shifting
BITs	Bilateral Investment Treaties
CbCR	Country-by-country reporting
COP	Convention of Parties
CSOs	Civil Society Organisation
DRM	Domestic Resource Mobilization
DST	Digital Services Tax
DTA	Double Taxation Agreement
ECOSOC	Economic and Social Council
FATF	Financial Action Task Force
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
GloBE	Global Anti-Base Erosion
IF	Inclusive Framework on Base Erosion and Profit Shifting
IFFs	Illicit Financial Flows
ITO	International Tax Organization
MNC	Multinational Corporation
MNE	Multinational Enterprises
OECD	Organization for Economic Co-operation and Development
SDG	Sustainable Development Goals
TJNA	Tax Justice Network Africa
TOR	Terms of Reference
UN	United Nations
UN Tax Convention	United Nations Framework Convention on International Tax Cooperation
UNGA	United Nations General Assembly
UNSG	United Nations Secretary-General
UNTC	United Nations Tax Committee



1

Introduction

01

The primary focus of this working paper is to provide a historical and political context to the process of reforming the international tax architecture, focusing on the process of establishing the UN Framework Convention on International Tax Cooperation. With this background provided primarily from an African perspective, this paper then suggests what design of the UN Framework Convention would be most beneficial to African countries.

The paper shall begin by providing a brief background on the increasing importance of international tax cooperation and the underlying reasons for the clamour for international tax reforms that led to the UN Framework Convention. Against this backdrop, the paper proceeds to analyse the weaknesses of the UN as a forum for international tax cooperation. It then further suggests the scope of the UN Framework Convention, institutions that would operate under it and the scope of subsequent Protocols.



2

Background

02

Why International Tax Cooperation Matters

International tax cooperation involves the coordination of tax rules amongst different jurisdictions, the exchange of information, the provision of technical assistance, and the creation of procedures for resolving tax disputes to balance the interests of both developed and developing countries. Overall, this cooperation could lead to an increase in revenue for individual states, thereby making it vital as a source of domestic resource mobilisation (DRM).

Taxation is a political exercise

Taxation is an exercise of sovereignty and, therefore, jurisdictional. It requires states to enact laws that give them the legal right to levy and collect different forms of tax. It also represents the social contract between citizens and their government. According to this social contract, citizens give up individual rights on the basis that the government will protect them and provide public goods in return. As such, taxation, through its ability to allow governments to redistribute wealth and represent its citizens, makes it a quintessential sovereign issue.

As a matter of sovereignty, the power to impose taxes is deeply intertwined with political considerations at the national level. The considerations include political ideologies, economic objectives, regional priorities and dynamics. Governments must balance the need to generate revenue for public services and investments with the potential impact on their countries, citizens, and businesses within their regions or countries. Political parties and members of legislative bodies at a country level engage in debates and negotiations to determine tax policies that align with their agendas and the interests of their constituents.

Fiscal policies at a national, regional, or international level are not determined solely by economic considerations. Political power dynamics are often reflected in the decision-making process. These considerations are not a single-country issue; they transcend borders to regional groupings and to the international fora that countries belong to and use to advance their interests. Ultimately, country representatives at the regional or international fora also engage in tax discussions with a political lens framing. For these reasons, countries must cooperate in international tax matters in order to balance various political interests.

The increasing presence of Multinational Enterprises (MNEs) and cross-border trade and investment

Additionally, the importance of international tax cooperation has grown due to the increasing presence of multinational companies who engage in aggressive tax planning by misusing the differences in tax rules between jurisdictions, the presence of tax havens, the increased sophistication of the financial system as well as the evolution of how business is conducted due to the digitalization of the economy. Due to the increasing cross-border movement of goods and services, tax has become not only a domestic matter but also an international matter. This is because, with increased globalisation, multiple countries claim the right to tax the same income or entity from the cross-border movement of goods and services.

In order to tax MNEs effectively, countries need to cooperate at the international level to streamline the exchange of taxpayer information. Countries often agree on



procedures to share information about taxpayers, including information about taxpayers' income, assets, and tax payments. This helps to ensure that taxpayers, particularly corporate taxpayers, pay the right amount of tax in each country.

In addition, more effective global tax governance would see an increase in technical assistance among countries with the aim of improving their tax systems. This assistance, for instance, helps with drafting tax laws, training tax officials, and developing tax software. Countries have different growth trajectories and will often have different economic models. International tax cooperation allows countries to share technical knowledge.

International tax cooperation and global tax governance

Global tax governance is essential for effective international tax cooperation. Global tax governance has been defined as the “set of institutions governing issues of taxation that involve cross-border transactions or have other international implications.”¹ According to this definition, global tax governance involves transferring some or all taxing authority from the national to the international level when transactions impact multiple jurisdictions.

Global tax governance only works when it is truly representative in the formulation and administration of global tax standards.² Global tax governance remains the principal way through which nations globally can address issues such as tax avoidance, double taxation, tax evasion, and illicit financial flows (IFFs) and establish mutual agreement procedures to resolve disputes between taxpayers and tax authorities and between tax authorities.

The following section will provide insights into why there is a need for reform in global tax governance.

1 Rixen, T. and Dietsch, P., 2015. Global Tax Governance. What's Wrong with it and How to Fix it.

2 Picciotto, S. (2015). International tax regime and the BRICS: Is there room for disagreement? ICTD Working Paper 25. International Centre for Tax and Development.



Brief on The Path to a UN Tax Convention

History of the OECD in international tax policymaking

Since its inception in 1961, the OECD has dominated global tax governance. The OECD is a grouping of 38 developed countries, primarily from the global North.³ The OECD replaced both the League of Nations and the UN as the primary multilateral forum for discussions on international tax. The work of the OECD on tax matters has, however, had a chequered history.⁴ The OECD Committee of Fiscal Affairs developed and has continued to review the OECD Model Convention on Income and Capital (OECD Tax Treaty Model).⁵ The OECD Tax Treaty Model, building on the work done by the League of Nations, adopted an approach whereby taxing rights are more favourable to capital-exporting countries than capital-importing countries.⁶ At the time, many developing countries were still colonies and had no say in forming international tax rules. Despite this, the OECD Model Tax Treaty has formed the basis of negotiations between many countries, including developed and developing countries. Attempts to develop a model tax treaty favourable to developing countries were thwarted before the development of the UN Model Double Taxation Convention between Developed and Developing Countries.⁷

Other than the OECD Model Tax Treaty, one of the most recognisable products of the OECD is the Base Erosion and Profit Shifting (BEPS) project, which inadvertently led to the pursuit of the UN Framework Convention on International Tax Cooperation. The BEPS package is a series of 15 Actions aimed at tackling base erosion and profit shifting with a specific focus on addressing harmful tax practices by MNEs.⁸ The BEPS project comprised of 15 Actions to combat tax avoidance practices by MNEs. The BEPS project was heralded by the 2008 Financial Crisis in which offshore tax evasion and aggressive tax avoidance practices perpetrated by MNEs were met with public condemnation and renewed impetus for action.⁹

The conceptualisation and agenda setting within this project was carried out by the OECD and approved by the G20.¹⁰ The OECD would report its progress to the G20 in developing the 15 Actions of the BEPS package until it delivered its final package in

3 OECD. (n.d.). About OECD: Members and partners. Retrieved from <https://www.oecd.org/about/members-and-partners/#:~:text=Today%2C%20our%2038%20Member%20countries,out%20in%20the%20OECD%20Convention.>

4 Rixen *ibid*

5 Kysar, Rebecca M., The Global Tax Deal and the New International Economic Governance (May 16, 2024). Tax Law Review, Forthcoming, Fordham Law Legal Studies Research Paper No. 4831166, Available at SSRN: <https://ssrn.com/abstract=4831166>

6 *Ibid*

7 Diniz Magalhães, Tarcísio, What Is Really Wrong with Global Tax Governance and How to Properly Fix It (September 7, 2018). World Tax Journal, Vol. 10, Issue 4, November 2018, Available at SSRN: <https://ssrn.com/abstract=3303213>

8 Organization for Economic Cooperation and Development (OECD). (2015). Retrieved from <https://www.oecd.org/tax/beps/beps-actions/>

9 Sol Picciotto, The G20 and the “Base Erosion and Profit Shifting (BEPS) Project” (2017) https://www.idos-research.de/uploads/media/DP_18.2017.pdf

10 Woodward, R. (2009). The OECD: A study of organizational adaptation. Edward Elgar Publishing.

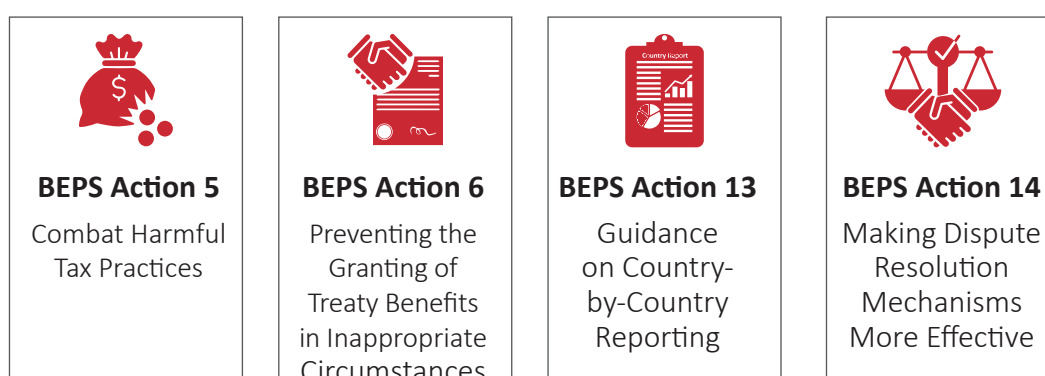


2015.¹¹ The negotiations for the BEPS Actions were done without the involvement of countries that are not members of the OECD or the G20.¹² This led to a situation where the OECD prioritizes issues of concern for its member countries and member countries of the G20.

Following years of criticism, the OECD decided to form the BEPS Inclusive Framework in 2016, which is a platform through which non-OECD countries could participate in implementing the BEPS project. Membership to the inclusive framework is not automatic, and countries have to make an application, which is then approved by the existing members. An annual membership fee is also payable. Currently, only 27 African countries are members of the BEPS inclusive framework.

There has been limited implementation of the BEPS package, and its effectiveness not clearly seen. Existing statistics on the effectiveness of the BEPS rules have come mainly from the OECD itself, with very few states analyzing the effectiveness of these rules.

Upon joining the OECD Inclusive Framework, countries are expected to implement a set of four minimum standards, which include:



Even with these requirements, there has not been a proper peer review and follow-up mechanism to assess how countries are implementing the BEPS Actions or the four minimum standards. The OECD Inclusive Framework has had little success with enforcement to ensure that states are implementing the set of rules agreed upon. Implementation of internationally agreed rules requires a follow-up and review mechanism for them to succeed. Reviews also help to identify the issues that states face in the implementation and make recommendations for course correction. This governance feature has been a missing part of the OECD history in negotiating global tax rules.

Additionally, the OECD BEPS rules have been criticized for being too technical, complicated, and complex to implement.¹³ The technical nature of the rules has meant that states often must go through a lengthy process of building technical capacity on the rules even before they can start including them in local tax legislation.

¹¹ Sol Picciotto, The G20 and the “Base Erosion and Profit Shifting (BEPS) Project” (2017) https://www.idos-research.de/uploads/media/DP_18.2017.pdf

¹² Fung, Sissie, The Questionable Legitimacy of the OECD/G20 BEPS Project (December 11, 2017). *Erasmus Law Review*, Vol. 10, No. 2, 2017, Available at SSRN: <https://ssrn.com/abstract=3087256>

¹³ African Tax Administration Forum (2019), “The Impact of BEPS on Developing Countries: Challenges and Opportunities.”



Developing countries discomfort with the OECD

Over the years, developing countries and tax justice institutions, such as TJNA, have criticized the legitimacy of the OECD as the primary body that leads in the negotiation and governance of international tax rules.¹⁴ This has been due to several reasons.

4.1.1 Inadequate Consideration of Tax Justice Issues.

The OECD's tax rule-making process has often emphasized technical aspects of taxation rather than addressing tax justice and equity issues. The unfair allocation of tax rules as per the OECD Model Tax Treaty demonstrates how the principle of inter-nation equity is not being adhered to. Although necessary, the overemphasis on technical rules over tax justice issues has led to a situation where tax justice issues are not considered in the development of tax rules.

4.1.2 Lack of Representation for Developing Countries.

The OECD has a membership of 38 countries comprised of mainly developed countries.¹⁵ Some key economic players, such as China and India, are not members of the organization. The OECD began working closely with the G20 post the 2008 global financial crisis, particularly on the BEPS project.¹⁶ As described in the preceding paragraphs the G20 is a grouping of rich and emerging economies who are said to make up 75% of the total global GDP.¹⁷ South Africa is the only African member of the G20. The African Union (AU) received membership only recently in 2023¹⁸. As a result, there has been a long-standing criticism of the OECD's legitimacy as the body leading global tax rule-making processes. To overcome this handicap, it spearheaded the formation of the Inclusive Framework to include non-OECD countries in global tax rule-making processes.¹⁹ However, the inclusive framework is not as inclusive. Currently, only 27 African countries are members of the inclusive framework, leaving out half of all African countries. Membership to the inclusive framework also comes with costs as members are expected to contribute 20,800 Euros annually, subject to an inflation adjustment.²⁰

4.1.3 Developing countries often lack a voice in the decision-making process.

Developing countries, especially those that are smaller and less-resourced, are not involved in the agenda-setting process of the OECD. This has led to the drawing up of tax rules that do not consider their specific needs and challenges. Limited

¹⁴ *ibid*

¹⁵ OECD. (n.d.). List of OECD Member Countries -Ratification of the Convention on the OECD. Retrieved February 18, 2024, from <https://www.oecd.org/about/document/ratification-oecd-convention.htm>.

¹⁶ https://www.idos-research.de/uploads/media/DP_18.2017.pdf

¹⁷ <https://www.oecd.org/en/about/oecd-and-g20.html>

¹⁸ <https://www.weforum.org/agenda/2023/09/african-union-g20-world-leaders/>

¹⁹ Organisation for Economic Cooperation and Development. (n.d.). Inclusive framework on BEPS. <https://www.oecd.org/tax/beps/flyer-inclusive-framework-on-beps.pdf>

²⁰ *ibid*



consultation with developing countries is also a mainstay of the negotiations at the OECD. The G20 often sets the agenda for the tax rules to be discussed and are often adopted with little or no meaningful participation, consultation, or engagement by least developed countries. Feedback and perspectives by developing countries may not be adequately considered, leading to rules that do not reflect their priorities and challenges. For example, developing countries have been concerned about the taxation of the extractives sector for many years. However, there are currently no rules negotiated or agreed upon at the OECD level that help developing countries net the gains from the extractives sector.

4.1.4 Balancing Interests

The OECD's Inclusive Framework membership includes countries with diverse economic interests. Reaching a consensus on tax rules that are fair and equitable to all has, therefore, been very challenging, mainly because OECD negotiations are held in secret. In these secretive negotiations, governments can introduce more loopholes and watered-down, compromise solutions in the negotiation texts without expecting to be held to account by the general public. However, the rules are often watered down to benefit developed countries and never for the benefit of developing countries. For example, during the negotiations for the two-pillar proposal, some developed countries were able to negotiate carve-outs, thereby vitiating the global binding power of the rules.²¹

4.1.5 The OECD rules have prioritized the tax interests of multinational corporations.

There has been a focus on addressing the tax interests of Multinational Corporations (MNCs) based in the OECD countries rather than addressing the broader tax needs of developing countries. Some critics have argued that the OECD's tax rule-making processes are influenced by powerful MNCs, who may have a vested interest in shaping the rules in their favour.²² This is significantly exacerbated by the fact that most MNCs are domiciled in OECD countries, especially those with preferential tax regimes. This can lead to outcomes that benefit large companies at the expense of smaller businesses and developing countries.

4.1.6 Failure to adequately address Illicit Financial Flows (IFFs).

Developing countries have often found that the OECD's rules fail to adequately address IFFs, tax avoidance, and tax evasion by MNCs, which, as a result, disproportionately affects developing countries.

4.1.7 Lack of Transparency and Accountability.

The OECD's tax rule-making processes are often negotiated and developed behind closed doors, with limited opportunities for participation by non-IF countries or other stakeholders such as civil society organizations (CSOs).

4.1.8 Power Imbalance

The dominance of the OECD in global tax rule-making reinforces the power imbalance between developed and developing countries. The rules created by the

²¹ Tax Observatory. (2023). Global tax evasion report. Retrieved from https://www.taxobservatory.eu/www-site/uploads/2023/10/global_tax_evasion_report_24.pdf.

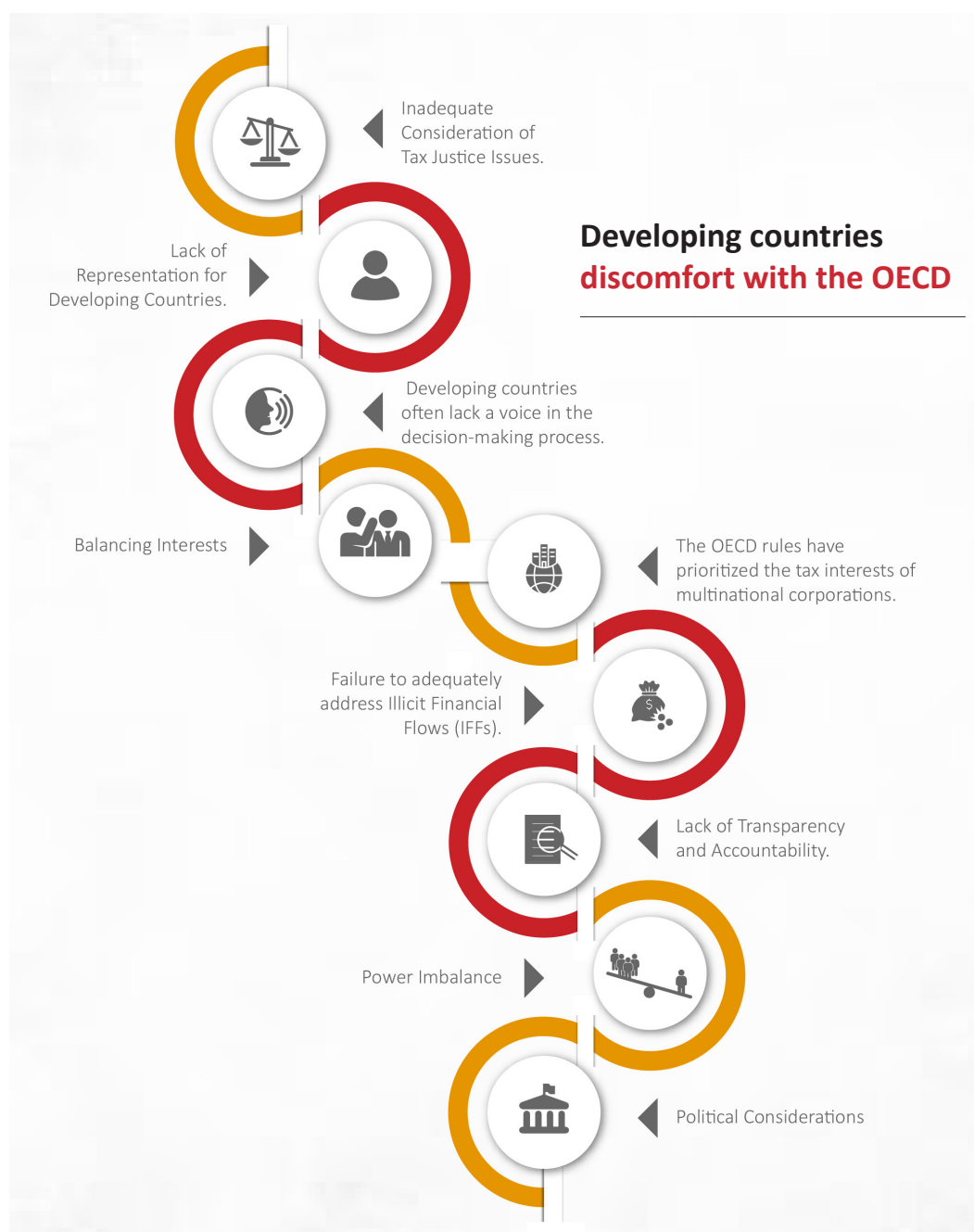
²² Zucman, G. (2019). The Hidden Wealth of Nations: The Scourge of Tax Havens. University of Chicago Press.



OECD often reflect the interests of wealthy countries while overlooking the needs and concerns of developing countries.

4.1.9 Political Considerations

The OECD's tax rule-making processes can be influenced by political considerations, including the desire to maintain good relationships with member countries. This can lead to decisions that are more politically expedient than economically sound.²³



²³ OECD. (2023). Pioneering Global Progress in Tax Transparency: A Journey of Transformation and Development – 2023 Global Forum Annual Report. Global Forum on Transparency and Exchange of Information for Tax Purposes. <https://www.oecd.org/tax/transparency/documents/global-forum-annual-report-2023.pdf>>.

5

Background to Reforms of the International Tax Governance

05

Current Problems of the International Tax Governance

The international tax governance currently faces various problems. These include those mentioned under the section above that looks at the discomfort that developing countries have with the OECD. Additionally, other broader issues currently inhibit the effectiveness of global tax governance.

5.1.1 Legitimacy

One of the significant issues is the legitimacy of the existing global tax rule-making processes such as the OECD. The G7 and the G20, which are political entities, guide the work of the OECD on several matters, including tax governance. This was very apparent in the negotiation of the two-pillar solution. It was first deliberated at the G7, then at the G20, before being discussed at the Inclusive Framework.²⁴

Another issue of the legitimacy of the existing tax rule-making processes relate to the procedure of becoming a member of the OECD. To join the OECD, Inclusive Framework, the existing members have to approve the membership request. This has led to several complications, such as geopolitical disagreements, that have led to situations such as when Turkey blocked Cyprus from joining the Inclusive Framework.²⁵ While this may look like an isolated case, it reveals how disagreements not related to tax rule-making processes can be brought into the Inclusive Framework and lead to absurd outcomes like countries being blocked or dropped from tax rule-making processes.

5.1.2 Misuse of Economic Power

The current global tax rule-making processes have also shown that developed countries can misuse their economic power to force developing countries to agree to tax rules that may not benefit them. The two-pillar proposal was adopted as a political statement in 2021 by members of the OECD Inclusive Framework. Four (4) countries that are not members of the OECD but are members of the Inclusive Framework did not support the statement. These included Sri Lanka, Pakistan, Kenya, and Nigeria. Kenya argued that it had already enacted a Digital Services Tax (DST), as signing onto the statement required countries to scrap any unilateral digital taxation measures such as DSTs.²⁶ However, in the process of Kenya negotiating a trade and investment agreement with the US, the US has made it clear that Kenya needs to scrap the DST and support the statement on the two-pillar proposal.²⁷ While the first decision not to support the two-pillar proposal was based on solid technical considerations, the decision to scrap the DST and support the statement would now be based on the US's arm-twisting and misuse of economic power.

5.1.3 Non-Binding Rules

Another challenge to current global tax rule-making processes is the negotiation of rules that are not binding and that have limited or ineffective peer review mechanisms in their implementation. Countries subscribing to existing rules, such

²⁴ Eurodad. (2022). Who is really at the table? Global tax. Retrieved from https://www.eurodad.org/who_is_really_at_the_table_global_tax

²⁵ OECD. (2020). OECD Secretary-General Tax Report to G20 Finance Ministers, July 2020. Retrieved from <https://www.oecd.org/tax/oecd-secretary-general-tax-report-g20-finance-ministers-july-2020.pdf>.

²⁶

²⁷ Business Daily Africa. Brian Ngugi (2022, June 14). US resetting trade ties with Kenya to reflect Biden priorities. Business Daily Africa. https://www.businessdailyafrica.com/bd/economy/us-resetting-trade-ties-with-kenya-to-reflect-biden-priorities-3848618#google_vignette



as the BEPS 4 minimum standards, often do so out of necessity and because it is a crucial requirement for those joining the Inclusive Framework . In implementing global tax rules, necessity is not enough as a consideration. Currently, mechanisms to promote implementation, such as peer reviews, have had limited effectiveness. They are often limited by the lack of consequences as the name and shame process undertaken through reports has had little deterrent effect.

5.1.4 Developed Vs Developing Countries.

International tax governance has also suffered the excesses of developed countries only implementing what favours them while blocking any initiatives favouring developing countries. Developed countries have consistently frustrated efforts to move global tax rule-making processes from the OECD to the UN . In 2015, at the 3rd UN Summit on Financing for Development, there was a proposal to upgrade the UN tax committee into an intergovernmental body. Developed countries blocked this proposal.²⁸ In 2023, when the Africa group filed a revised resolution to start the process towards the UN framework convention, nearly all the OECD countries, except Chile and Colombia, either voted against or abstained from the vote. It was clear that as the rest of the world seeks to find ways of enhancing international tax cooperation, most OECD countries are committed to preserving the status quo.

International tax governance has also been greatly affected by an unhealthy emphasis on the interests of developed and OECD countries. The OECD-led reforms of global tax processes have seen more focus shifted towards the interests of developed (OECD member) countries at the expense of developing countries. The implementation of these OECD-leaning rules, such as the BEPS four minimum standards, has constrained the little resources of developing countries and taken them away from key reforms that are more urgent and important. Developing countries, such as those in Africa, would reap more benefits by undertaking reforms such as digitalization of tax administrations, finding solutions to taxation of the informal sector, tackling tax evasion, and promoting tax compliance.

5.1.5 Limited Involvement of the UN

The limited involvement of the UN in global tax rule-making processes has also been a significant pullback. Currently, the UN is involved in international tax governance through the Economic and Social Council (ECOSOC), the General Assembly, and the UN Tax Committee. One of the key products of the United Nations Tax Convention (UNTC) was the United Nations Model Double Taxation Convention between Developed and Developing Countries.²⁹ The model convention sought to clarify taxing rights for developed countries, especially with the challenges of new business models. This emphasis on rules that offer greater assistance to developing country tax administrations has been the hallmark of the work of the UN Tax Committee in global tax rule-making processes.

However, the UNTC operates under limited capacity as the experts who serve on the Committee and are nominated by their countries only serve in their individual capacities. The UNTC has also provided recommendations and guidance on international tax issues; however, the guidance is neither binding nor mandatory for states to implement.

28 Global Policy Forum. (2015). FFD 3 outcome: Fishing for crumbs in a sea of lost ambition. Retrieved from <https://www.globalpolicy.org/en/article/ffd-3-outcome-fishing-crumbs-hope-sea-lost-ambition>.

29 United Nations. (2017). United Nations Model Double Taxation Convention between Developed and Developing Countries 2021 Update. Accessed on February 18, 2024. <https://desapublications.un.org/file/914/download>



The Leading Role of the Africa Group in Reforming International Cooperation on Tax Matters

There have been several efforts to reform global tax governance since the time of the League of Nations that preceded the UN.

The recent discussion on international tax governance reforms first came to the fore in 2001, when the report of the UN High-level Panel on Financing for Development (the Zedillo report) made recommendations on setting up an international tax organization (ITO).³⁰ This ITO would aim to maintain the surveillance of tax developments, sponsor a mechanism for multilateral sharing of information and take a lead in restraining tax competition, among other functions. The need for this body was based on the basis that the global tax governance system that was developed in the 50s was no longer fit for purpose and could not keep up-to-date with the challenges of globalisation.³¹ For instance, the rules were developed at a time when trade and capital movements were highly restricted and did not reflect the increase in economic interdependence and market integration. The report also cited the restrictive membership of forums addressing global economic issues, such as the G20, among others.

This proposal was opposed and only resulted in an upgrade of the Ad Hoc Group of Experts into a Committee of Experts in International Cooperation in Tax Matters, also known as the UNTC, as a subsidiary body of the UN Economic and Social Council (ECOSOC) in 2004.

In 2010, the G77 tabled a resolution to upgrade the UNTC to an intergovernmental tax body at ECOSOC.³² It suggested a much broader representation with a mandate to make recommendations on issues relating to tax matters and to review UN manuals and model conventions. While the resolution did not go through, it was agreed that the UN Secretary-General would conduct further research and analysis on the same. This resulted in a report being published in 2011 that gave three options for improving international tax governance, which included either strengthening the UNTC, upgrading the UNTC to an intergovernmental commission serving as a subsidiary body of ECOSOC and creating an intergovernmental commission with the UNTC as a subsidiary body of that commission.³³

30 United Nations. (2001). Report of the High-Level Panel on Financing for Development. Yale Center for the Study of Globalization. <https://ycsg.yale.edu/sites/default/files/files/2001%20Report%20of%20the%20High%20Level%20Panel%20on%20Financing%20for%20Development.pdf>

31 Ibid

32 Chowdhary, A. M., & Picciotto, S. (2021). Streamlining the Architecture of International Tax through a UN Framework Convention on Tax Cooperation. South Centre. https://www.southcentre.int/wp-content/uploads/2021/11/TCPB21_Streamlining-the-Architecture-of-International-Tax-through-a-UN-Framework-Convention-on-Tax-Cooperation_EN.pdf

33 UN ECOSOC, document E/2011/76. Available from <https://undocs.org/E/2011/76>.



Following the report, the ECOSOC resolution 2011/23 eventually called on the UN Secretary-General to conduct an assessment on how to strengthen the existing UNTC structure.³⁴ This effectively saw the other two proposals being discarded. Two other UN Secretary-General reports on the same issue followed.

In 2015, at the Third International Conference on Financing for Development in Addis, a proposal was made to upgrade the UN Tax Committee to an intergovernmental body.³⁵ This proposal was also killed with the compromise being made of giving the UNTC one extra session per year.

This issue was raised again by the UN FACTI Panel in its final report in 2021, reiterating the importance of having an intergovernmental body on tax matters under the auspices of the United Nations.³⁶

However, recently, we have seen significant traction in the last two years on reforms of global tax governance. In the push for reform, Africa has shown remarkable leadership and has blazed the trail in pushing for reforms. In May 2022, the African Ministers of Finance, Planning, and Economic Development adopted a resolution calling on the UN to start negotiations towards an international convention on tax matters under the auspices of the UN with the participation of all member states. This initiative gained momentum in November 2022, when the African Group, led by Nigeria, proffered a revised resolution at the United Nations focusing on the “Promotion of inclusive and effective international tax cooperation at the United Nations.” On 30 December 2022, the United Nations General Assembly adopted Resolution 77/244, emphatically advocating the advancement of inclusive and effective cooperation on tax matters. Member States of the UN-mandated the UN Secretary-General to compile an exhaustive report through stakeholder consultations.

Following this directive, the UN Secretary-General engaged in consultations and released a preliminary draft of the report in August 2023, followed by the definitive version of the Tax Report in September 2023.³⁷ This report reiterates the imperative for the international tax system to embody universally applicable principles, asserting that collaborative endeavours in tax cooperation should exhibit a comprehensive approach.

The UN Secretary General’s Report (UNSG) delineates three prospective pathways for the reconfiguration of Global tax governance:

1. a multilateral convention on tax,
2. a framework convention on international tax cooperation,
3. a UN framework for international tax cooperation.

TJNA, alongside other like-minded partners, has called on the adoption of option two (2) of the UNSGs report, which is a UN framework convention.

34 United Nations. (2011). Economic and Social Council resolution 2011/23: International cooperation in tax matters. United Nations. <https://www.un.org/en/ecosoc/docs/2011/res%202011.23.pdf>

35 United Nations. (2015, December 7). UN launches new framework to strengthen international tax cooperation. United Nations. <https://press.un.org/en/2015/dev3191.doc.htm>

36 High-Level Panel on International Financial Accountability, Transparency, and Integrity for Achieving the 2030 Agenda. (2021). FACTI Panel. https://factipanel.org/docpdfs/FACTI_Panel_Report.pdf

37 United Nations General Assembly. (2023). Promotion of inclusive and effective tax cooperation at the United Nations. < <https://financing.desa.un.org/sites/default/files/2023-08/2314628E.pdf>>-



In October 2023, the African group at the UN published a draft resolution on the 'Promotion of inclusive and effective international tax cooperation' at the Second Committee of the United Nations General Assembly. The draft resolution recommends the need to pursue a comprehensive UN Convention on Tax.

In November 2023, a revised resolution, as tabled by Nigeria on behalf of the Africa Group, was put to a vote, where 125 countries endorsed the resolution, 48 countries voted against it, and nine (9) countries abstained. Notably, all African countries, supported by members of the G77, plus China, voted in favour, showcasing strong regional cooperation and unity of purpose. However, the majority of OECD countries either voted against or abstained from the vote.

In December 2023, the United Nations General Assembly adopted Resolution 78/230³⁸, which, among other things, outlined the subsequent procedural steps as follows:

- 1** **The establishment of an ad-hoc intergovernmental committee** to negotiate terms of reference for a UN framework convention on international tax cooperation.
- 2** **Proposed timelines for the meetings of the ad-hoc intergovernmental Committee** to convene in New York and finalize its work by August 2024.
- 3** **The inclusion of the participation** of international organizations and civil society in the negotiation process.
- 4** **The submission of the ad-hoc intergovernmental Committee's report** to the United Nations General Assembly at the 79th Session.

The resolution requires the five UN regional groups to submit up to four nominations for countries that will become part of the bureau of the ad-hoc intergovernmental Committee. Africa has nominated Egypt, Kenya, Morocco, and Ghana. Subsequently, there was an organizational session for member states in February 2024, and the First Substantive Sessions to negotiate the TORs scheduled for April/May 2024. The Second and final Substantive Session is scheduled for July/August 2024. The Ad Hoc committee's work is expected to be completed in time for the UN General Assembly in September 2024.

There is a clear momentum in Africa pushing for reforms but much more needs to be done at the national, regional, and international levels in mobilizing African countries to advance common reform positions that will protect Africa's tax bases and contribute to curbing IFFs.

³⁸ United Nations General Assembly. (2023). Promotion of inclusive and effective international tax cooperation at the United Nations.-< https://financing.desa.un.org/sites/default/files/2024-01/A.RES_.78.230_English.pdf>- .



7

Why Move International Cooperation on Tax Matters to the UN?

07

In the ever-evolving global landscape of taxation, the significance of the proposed United Nations (UN) Framework Convention for cooperation on international tax matters cannot be overstated. The clarion call in the reforms has been to strengthen the inclusiveness and effectiveness of international tax cooperation. The adoption will have a significant impact on developing nations, offering them a platform to address their specific tax challenges and needs, reducing overreliance on the OECD for global tax rule-making processes, promoting democratic participation of all nations, enhancing legitimacy, facilitating enforcement of internationally agreed tax rules, gain wide acceptability, and foster transparency in decision-making. By embracing this opportunity, African countries can contribute to shaping a fairer and more equitable international tax system that supports their development aspirations and promotes inclusive economic growth.

There are several reasons why moving global tax rule-making processes to the UN remains a key priority for Africa in the reforms of global tax governance.

7.1.1 Support in Addressing Specific Needs for Countries

Like in every continent, African countries are different and have differing economic realities. A one-size-fits-all approach has delivered solutions that are hard to implement, or that bear little fruit. African countries face distinct economic and developmental challenges that require tailored tax policies. Negotiations for the UN Tax Convention would provide a platform for these countries to articulate and pursue their specific needs and concerns, ensuring that the global tax framework is inclusive and responsive to their unique circumstances. This would help promote sustainable economic growth, poverty reduction, and social development in the region.

7.1.2 Reducing Overreliance on the OECD for Global Tax Rule-making

The OECD has traditionally played a dominant role in shaping global tax rules, often without adequate representation from African countries. This dominance was not achieved through legitimate state engagements but rather through the OECD shutting down tax negotiations at the UN, which created a gap that the OECD then filled. Processes that look representative, such as the Inclusive Framework have only 50% representation of African countries. This has resulted in tax policies that have not fully considered the needs and interests of African countries. A UN Tax Convention would provide a more balanced and inclusive forum for tax rule-making processes, allowing African countries to contribute equally to the development of international tax standards.

7.1.3 Democratic Voting at the UN

Unlike the OECD, where voting power is cryptic, the UN operates on the transparent principle of one country, one vote. This ensures that all member states, including African countries, have an equal say in the decision-making process. This democratic approach to tax rule-making would foster a sense of ownership and legitimacy among African countries, encouraging their active participation in international tax cooperation. An example is during the voting processes for the adoption of the resolution towards the UN Tax Convention in November 2023, where members of the Africa group, joined by most members of the G77 and China, voted for the adoption of the resolution despite most of the OECD members voting against it.



7.1.4 Legitimacy

The UN is a body that enjoys global legitimacy from different states. It enjoys widespread recognition and legitimacy as a global body representing the interests of all nations. Despite their economic realities, all nations recognize the UN as an important norm-setting body. A UN Tax Convention would carry the weight of this legitimacy, making it more likely to be accepted and implemented globally. This would enhance the effectiveness of international cooperation on tax matters and promote greater compliance with tax rules.³⁹

7.1.5 Equal Participation

The UN allows for equal participation of all its member states: All states have a voice and agency at the UN regardless of their different economic realities. The UN provides a platform for all member states to participate equally in agenda-setting, discussions, and negotiations. This is particularly important for African countries, which may not have the same resources and expertise as developed countries. The UN's commitment to equal participation ensures that all voices are heard and that the perspectives of African countries are fully considered in the discussion, negotiation, and development of international tax rules.

7.1.6 Ability to Enforce

The UN enjoys the ability to enforce internationally agreed rules. It has mechanisms in place to enforce internationally agreed rules and conventions. This enforcement also includes the power and ability to review compliance with internationally agreed rules. The UN can use peer review mechanisms, and in extreme cases, UN conventions can include mechanisms to allow member states to take action against each other to ensure compliance. This enforcement capability provides an added incentive for African countries to participate in the discussions for international tax rules and to implement the agreed-upon rules.

7.1.7 Wide Acceptability

The UN enjoys wide acceptability as a norm-setting body: The UN is widely recognized as a legitimate body for setting international norms and standards. Its resolutions and conventions are generally accepted and implemented by member states. To overcome implementation challenges, the UN can adopt binding decisions and ensure that there are robust enforcement mechanisms for its decisions. This wide acceptability would facilitate the adoption and implementation of a UN Tax Convention, ensuring its effectiveness in promoting international tax cooperation.

7.1.8 Transparency in Decision Making

Discussions at the UN are conducted transparently: The UN's commitment to transparency ensures that discussions and negotiations are conducted openly and transparently. The agenda for any resolution is usually set out well in advance, and some sessions are open to input from other stakeholders. This transparency would allow African countries to fully consult and analyse the implications of any proposed rules and to provide informed input. Transparency would also help build trust and confidence among participating countries. This confidence in the rules adopted at

³⁹ Mosquera, I, (2023). Global Tax Governance: Legitimacy and Inclusiveness. Why it matters. GLOBTAXGOV.- <https://globtaxgov weblog.leidenuniv.nl/2023/06/30/global-tax-governance-legitimacy-and-inclusiveness-why-it-matters/>



the UN level is crucial in supporting their implementation at the state level.

7.1.9 Participation of CSOs and other stakeholders

Moving the global tax rule-making process to the UN would represent a significant shift towards inclusivity and accountability in shaping tax policies. This is something that those within the tax justice movements have been advocating for many years. This paradigm shift allows for the direct participation of CSOs, labour unions, non-governmental organizations (NGOs), advocacy groups, researchers, and individual citizens in the negotiation and adoption of tax rules. The participation of CSOs is enshrined in Article 71 of the UN Charter and ECOSOC Resolution 1996/31. This broader stakeholder engagement ensures that international tax rules are developed with a comprehensive understanding of their social, environmental, and economic implications. The involvement of diverse perspectives leads to more equitable outcomes, improved transparency, and enhanced accountability in global tax rule-making processes.



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Why a UN Framework Convention?

Having considered the challenges of global tax governance, as outlined above, TJNA considers a UN Framework Convention as the best option. The complexities of administering taxes on a global scale necessitate a comprehensive approach. Among the available options, the UN framework convention stands out as the most effective solution. This framework would establish a legally binding agreement among participating countries, ensuring a coordinated and standardized approach to tax policies. It would promote transparency, prevent tax evasion and avoidance, and foster cooperation among nations. By adopting common rules and principles, this Convention would level the playing field for businesses, encourage responsible tax practices, and contribute to sustainable economic development.

There are several reasons why a framework convention offers the best approach to global tax governance.



A framework convention would facilitate universal participation. Framework conventions enable a comprehensive approach to issues by allowing all countries to participate voluntarily in deliberations and agreements. By fostering dialogue and cooperation, the framework convention would create a global consensus on the most pressing needs and issues of global tax governance.



A framework convention would establish broad commitments. A Framework convention would lay out general principles, goals, and commitments for addressing global tax governance concerns. This broad approach provides a flexible framework that would accommodate the diverse national circumstances, economic realities, and priorities.



A framework convention would also encourage long-term cooperation between all states. A UN framework convention would establish a durable framework for ongoing international cooperation on tax matters. The Convention would include provisions for regular meetings, reviews, and updates. It would help promote continuity and consistency in addressing global tax issues.



A framework approach will also promote coherence and coordination. The UN framework convention will provide a platform for coordinating efforts among various stakeholders, including governments, international organizations, research institutions, CSOs, and other actors. This coordination will help to avoid duplication of efforts and ensure a more efficient and effective response to global tax governance challenges.





Existing platforms have suffered a legitimacy deficit. The framework convention will provide much-needed legitimacy to international efforts to improve tax matters. An agreement on the UN framework convention on tax will carry the weight of international consensus and political will, lending legitimacy to actions taken under it. This legitimacy will enhance the authority, weight and impact of the Convention's provisions and facilitate the mobilization of resources and support for implementation.



Another important feature of the framework convention is that it will provide a basis for further action. The framework convention is expected to include provisions for developing protocols or annexes that provide more specific and detailed guidance on implementation. This flexibility allows the Convention to evolve over time and adapt to changing circumstances, ensuring its continued relevance and effectiveness.

“The UN Framework Convention would establish a legally binding agreement among participating countries, ensuring a coordinated and standardized approach to tax policies.”



What are the Criticisms of the UN Tax Convention Process?

OECD countries have consistently argued that the UN's work on tax will likely lead to the duplicity of roles.⁴⁰ This is a clear defence to moving tax rule-making processes away from the OECD. The issue of duplicity in global tax rule processes is not new. The OECD itself has often duplicated its efforts in particular areas of tax work while neglecting other areas. For example, on the exchange of information for tax purposes, the OECD has issued a confidentiality and information management toolkit, a manual for the control of international tax planning, and a model manual on the exchange of information for tax purposes.

The challenge of duplicity can be overcome by ensuring that the UN and other stakeholders undertake a comprehensive analysis of existing tax rules and agreements to map out the existing areas, identify neglected thematic areas, and provide a roadmap for the consolidation of efforts. Not all countries have been involved in global tax rule-making processes. The review process would allow countries to evaluate whether existing agreements can form the basis for a UN-level agreement. This process at the UN would be the first time that all countries discuss and negotiate international tax rules in a truly inclusive forum, with countries participating on an equal footing.

The UN has also been accused of lacking sufficient experience, staffing, and resources to support the work on the UN tax convention. However, recent history has shown that the UN can dedicate resources to support the reform process. After the adoption of Resolution 78/230, the 5th Committee, in December 2023, set aside the resources required to support the work of the Ad Hoc intergovernmental committee in the drafting and negotiations of the TORs for the UN framework convention.

Additionally, existing international bodies such as the Inclusive Framework are supported by resources from the OECD and the contributions of member states. The UN process itself also draws resources from member states. Additionally, with the framework convention, members can agree on a process to avail and share the resources required to support international cooperation on tax matters.

40 Delegation of the European Union to the United Nations. (2023). UN Resolution on promoting inclusive and effective international tax cooperation at the United Nations.-< https://financing.desa.un.org/sites/default/files/2023-03/European%20Union_Input%20Tax%20Report%20Combined.pdf>- .



10

Recommendations on the Scope of The UN Framework Convention on International Cooperation on Tax Matters

10

The process of negotiating the TORs for the framework convention on international cooperation on tax matters kicked off with the nomination of members of the Bureau of the ad-hoc Intergovernmental Committee. The Adhoc committee is expected to outline the TORs that will cover the substantive parts of the Convention, including core tenets of future international tax cooperation, the objectives, the fundamental principles governing the cooperation and the governance structure of the cooperation framework.

We recommend that in formulating the key tenets, the objectives, and the fundamental principles, the Committee should consider the inclusion of these critical issues in shaping the next phase of global tax governance. In shaping the commitments of UN member states, these issues remain critical and a significant priority for both developed and developing countries. In its work plan, we also recommend that the Committee include provisions to develop protocols that would provide specific details and additional technical aspects to address these issues from the onset. These protocols can also outline new commitments between member states and additional legally binding agreements. The negotiation of these protocols can assist member states in negotiating complex tax issues and outlining specific targets and enforcement mechanisms for crucial tax issues.

10.1 International tax issues and links to DRM

The UN Tax Convention should address existing issues with international taxation. It should address itself to expanding the coordination of international tax rules and the role that this coordination can play in preventing tax avoidance and evasion and promoting domestic resource mobilization (DRM).

The UN Tax Convention should also ensure that effective implementation is included as an essential feature of international tax agreements and provide for a better mechanism to addressing international tax disputes. It should strive to clarify the international rules governing cross-border transactions and the activities of non-residents.

The UN Tax Convention should be built on analysing the relationship between international tax cooperation and DRM efforts, highlighting how effective international tax systems can contribute to sustainable development and reduce IFFs.

10.2 Address Issues with Different Types of Taxes

The proposed UN Tax Convention should also address the challenges associated with taxing different types of income, capital gains, and profits. This comprehensive approach will help to secure the commitment of UN member states to deal with broader tax issues, such as the complexities of taxing cross-border transactions, the allocation of profits between different jurisdictions, and the prevention of double taxation.

10.3 Provide a framework for addressing IFFs.

The UN Tax Convention should explore innovative approaches to addressing IFFs, tax avoidance and evasion schemes. It should be comprehensive enough to address tax evasion committed through digital platforms, intellectual property, and

MNCs⁴¹ It should also secure commitment to addressing aggressive tax planning and related harmful tax practices. The role of tax incentives and exemptions in promoting investment and economic growth while ensuring that these incentives do not undermine the overall tax base is also an important priority that should be included. The governance of tax incentives remains a crucial priority for developing countries.

10.4 Future of Taxation.

In shaping the broad tenets that member states will agree to, the framework convention should examine emerging trends and developments in international taxation, including the impact of digitalization, the rise of e-commerce, and the increasing interconnectedness of the global economy. The Convention should support the exploration of potential reforms and innovations in tax systems to adapt to changing economic realities and ensure that taxation remains effective and equitable in the future. The framework convention should also secure the commitment of member states to continually evaluate the role of technology in improving tax administration and compliance, reducing tax evasion, and enhancing the efficiency of tax collection.

10.5 Intersectionality of international Tax cooperation and other issues.

One of the key tenets of the Convention should include an acknowledgement and a commitment to continually analyse and include other global issues interconnected with tax issues, such as tax justice, climate change, sustainable development, and inequality, even as states work on addressing the challenges of international tax cooperation. Global tax governance should be seen from the lens of intersectionality with other pressing global needs.

10.6 Taxation of Mineral Resources.

The Convention should include a commitment to continually investigate the unique challenges and considerations associated with taxing mineral resources, including the volatility of commodity prices, the environmental impact of mining activities and the need for sustainable resource management. It should include requirements to analyse the different approaches to taxing mineral resources, such as royalties, profit-sharing agreements, and resource rent taxes. Member states should also commit to exploring best practices and ideal international cooperation mechanisms for ensuring that mineral resources are taxed fairly and transparently and that the benefits of resource extraction are shared equitably with local communities and governments. The differentiated impacts of mining on developing countries should be an essential part of the considerations for key tenets under the thematic area of taxing mineral resources. In solidifying the commitments, member states should acknowledge the role of taxation in promoting responsible mining practices and reducing the negative environmental and social impacts of mineral extraction with an emphasis on developing countries.

41 Ovonji-Odida, I., & AkwiOgojo, A. (2019, January). Illicit Financial Flows: Conceptual and Practical Issues (Policy Brief No. 6). South Centre.

10.7 Financing the Sustainable Development Goals (SDGs) and AU Agenda 2063.

The broader tenets of the Convention should include an agreement on the role of taxation in financing the Sustainable Development Goals (SDGs) and regional development blueprints such as the African Union Agenda 2063. It should provide a roadmap for using reforms in global tax governance to address challenges in mobilizing sufficient domestic resources to achieve these ambitious development objectives. Member states should, in shaping their commitments, analyse the potential of tax reforms and innovative financing mechanisms to generate additional revenue for development while ensuring that tax systems remain progressive and equitable.

10.8 Technical Assistance.

The guiding tenets of the framework convention should include a commitment for member states to provide technical assistance and offer capacity building to each other to help strengthen their tax systems and improve their ability to collect and manage tax revenue effectively. This technical assistance could include help with drafting tax laws, training tax officials, developing tax software, and digitalizing tax administrations. The technical assistance should be shaped in a way that avoids inappropriate interventions by developed countries in the affairs of developed countries.

Guiding Principles for the UN Framework Convention for International Tax Cooperation

Following the adoption of the UN General Assembly Resolution 78/230, the Ad Hoc intergovernmental committee will identify guiding principles that set out the Terms of Reference for the UN framework convention (ToRs). These ToRs will need to consider the needs and capacities of all countries alike. Therefore, this framework must be fully inclusive in procedural and substantive terms as it will be binding. It must also be flexible enough to keep up with the pace of technology and the rapidly evolving business landscape. It is thus imperative that the African Group continues its role as an agenda-setter during this critical time. This is because this framework will set the tone for how the international tax system will operate for a long time.

The Ad Hoc committee is due to develop ToRs by August 2024. With that in mind, the following is a wish list for what could be included in the guiding principles of the framework:

11.1 Sustainable development, including environmental protection.



Given that taxation plays a vital role in raising revenue to attain sustainable development goals, it is imperative that the guiding principles recognise that any rules adopted acknowledge the same. This will ensure that the Convention for International Tax Cooperation promotes inclusive economic growth that protects the environment and promotes social inclusion. It will also ensure that the development aspirations currently framed within the context of the SDGs and any subsequent agreed-upon development agenda are considered.

11.2 Tax and Human Rights



The guiding principles of the Convention for International Tax Cooperation should also consider the importance taxation plays in the attainment of universal human rights. Incorporating this principle will ensure that the adopted rules consider that cross-border taxation directly impacts the enjoyment of economic and social human rights. This is imperative in ensuring fair, transparent, and effective tax systems that reduce inequality between and among countries; it would also guarantee that countries work together to ensure that taxes are paid where actual economic activity occurs and that developing countries get their fair share of taxes.





11.3 Domestic Revenue Mobilisation (DRM)

The guiding principles should also acknowledge the importance of ensuring that countries are able to mobilise enough resources to meet their spending needs. This would mean that greater reliance is placed on the use of domestic resources and less on foreign aid and debt over time. This would be important for channelling resources to enhance revenue collection, particularly in the informal sector, which can result in an increased focus on modernising revenue administrations. This would require increased international cooperation to support capacity building in developing countries.



11.4 Transparency and Exchange of Information

The Convention for International Tax Cooperation should also highlight the importance of the “ABC of tax transparency.” This includes automatic information exchange, beneficial ownership transparency, and public country-by-country reporting. If adopted, the Convention would be able to build on existing initiatives and would allow for the incorporation of developing country perspectives. This would make it a truly global and representative system that addresses all member countries’ different needs and capacities.



11.5 Interaction between existing international arrangements

The Convention for International Tax Cooperation should also acknowledge that while it builds on existing global tax norms, its work does not, by any means, duplicate the efforts of existing standard-setting bodies. Rather, it would address existing gaps and weaknesses and make the rules adopted truly inclusive.



11.6 Transparency and Equal Footing in Rule-making

The Convention for International Tax Cooperation should also highlight that rule-making should be done through a universally inclusive process where governments can participate on an equal footing in a transparent rule-making process. All countries would need to be included in the norm-setting process substantively and procedurally by allowing universal participation in agenda-setting, negotiation, and peer review. It should also incorporate the views of citizens, civil society, and academia. This would ensure the legitimacy of international tax rules and that the various perspectives and needs of countries, both developed and developing, are considered.



Institutional Provisions

Following the determination of the Convention for International Tax Cooperation guiding principles, it would then be critical to determine the institutions developed to enforce it.

A Conference of Parties (COP), which would be the main decision-making body that governs the body of the Convention, should be established. It would consist of representatives of the parties to the Convention as well as accredited observers and would take necessary steps to promote its effective implementation. The presidency of the COP could then rotate among the UN regional groupings.

COP plenary sessions would be a forum for member states to express their views and negotiate and adopt resolutions. Prior to the plenaries, an agenda would be set, and preparatory sessions held. This would be followed by an opening session, debates and discussions of the agenda items, negotiations, decision-making through voting or by consensus, and finally, the adoption of the resolutions. Subsequently, member states would then implement the decisions and resolutions at the national level. In addition, subsidiary committees could focus on specific issues in greater detail, report their findings and make recommendations.

CSOs should be able to attend the COP meetings as observers of negotiations, attend side events, and participate in various other activities throughout the sessions. They could also be given the opportunity to make interventions or deliver statements and present their research and findings. Furthermore, they could collaborate with country delegations to provide expertise, share information, and advocate for specific positions. During the plenary sessions, it would be imperative to have members representation from the ministries of finance and foreign affairs.

The COP would also oversee monitoring the implementation of the Convention and its protocols through peer reviews. This approach will help member states identify their technical assistance needs and promote international cooperation. A general review can be taken in the Plenary of the COPs. These peer reviews should be periodic and allow for the facilitation of reciprocity and praise enforcers while naming and shaming non-enforcers. They would also enable citizens, CSOs and the media to hold governments accountable.



Protocols that Could be Negotiated that could be Negotiated with the Framework

Protocols will also need to be negotiated. These could include protocols that cover taxation of the digital economy, taxation of the extractive industry, environmental taxes, tax treaties, transfer pricing, dispute resolution, the return of stolen assets and IFFs, among others.

Negotiating protocols within the UN Convention on International Tax Cooperation, framework offers an opportunity to address various crucial aspects of taxation and financial governance at the international level. A breakdown of potential protocols that could be negotiated are as follows:

- a. **Protocol on Tax Treaties (DTAs).** With the UN Tax Convention, there will be an urgent need to evaluate and consider the future of bilateral tax treaties in the context of new rules under the Convention. This protocol related to tax treaties could focus on updating and standardizing the provisions of bilateral and multilateral tax agreements to prevent double taxation, promote transparency, and combat tax evasion and avoidance.
- b. **Protocol on Taxation of the Digital Economy.** With the rapid growth of digital businesses operating across borders, there is a pressing need to establish fair and effective taxation mechanisms for the digital economy. This protocol could focus on determining the appropriate tax base, allocation of taxing rights among jurisdictions, and preventing profit shifting by digital multinational corporations.
- c. **Protocol on Taxation of the Extractive Industry.** The extractive industry, including mining, oil, and gas, often involves complex cross-border transactions and has been susceptible to tax avoidance and evasion. A protocol in this area could aim to ensure that host countries receive fair revenue from the extraction of natural resources, addressing issues such as transfer pricing manipulation and tax incentives.
- d. **Protocol on Environmental Taxes.** As countries seek to address climate change and environmental degradation, this protocol could explore the implementation of international environmental taxes or levies on activities that contribute to environmental harm. This could include taxes on carbon emissions, plastic usage, or other pollutants.
- e. **Protocol on Transfer Pricing.** Transfer pricing regulations govern the pricing of transactions between related entities within MNCs. Protocols in this area could establish standard guidelines and methodologies to ensure that transfer pricing reflects arm's length transactions and prevents profit shifting.
- f. **Protocol on Dispute Resolution.** Disputes between taxpayers and tax authorities and disputes between different jurisdictions can arise in the context



of international taxation. This protocol on dispute resolution could establish mechanisms for efficient and fair dispute resolution, including arbitration or mediation procedures.

- g. Protocol on Curbing IFFs:** Addressing IFFs, including funds originating from money laundering and tax evasion activities, is critical for global financial integrity. This protocol could facilitate the return of stolen assets to their countries of origin and enhance international cooperation in combating illicit financial activities.
- h. Protocol on Wealth Taxation:** In recognition of the growing wealth inequality within and across countries, a protocol could be negotiated to establish guidelines for the implementation of wealth taxes at the international level. This protocol would aim to ensure that individuals with significant wealth contribute proportionately to public revenue, thereby promoting social cohesion and sustainable development.

The protocol could:

1. Outline the criteria for determining the threshold for wealth taxation, considering factors such as net worth, assets held domestically and abroad, and income derived from wealth.
2. Specify the progressive rates and brackets for wealth taxation, with higher rates applicable to individuals with substantial assets while providing exemptions or deductions for essential assets and investments in productive sectors.
3. Address challenges related to enforcement and compliance, including mechanisms for valuing assets, preventing tax evasion and avoidance, and facilitating information exchange among tax authorities.
4. Encourage the use of revenue generated from wealth taxation to fund social programs, public infrastructure and initiatives aimed at reducing poverty and promoting inclusive growth.



Progress Made in 2024 on Developing the UN Framework Convention on International Tax Cooperation.

Following the adoption of the United Nations General Assembly (UNGA) resolution 78/230, the Ad Hoc Committee was convened with the mandate of developing the TOR for the establishment of a UN Framework Convention on International Tax Cooperation. In 2024, the Ad Hoc Committee has had the following sessions:

1. Organisational Session in February 2024
2. First Substantive Session from 26th April 2024 to the 8th May 2024

14.1 Organisational Session

The organisational Session was convened at the UN Headquarters in New York from 20 to 22 February 2024. During the organisational Session, the Ad hoc committee elected its chair and 18 vice chairs drawn from UN member states to compose the Bureau for the Ad hoc committee.

The organisation session adopted the proposed outline and modalities for the work of the Ad Hoc Committee and the proposed modalities for multi-stakeholder engagement in the work of the Ad Hoc Committee.

In the adoption of the modalities for its work, the ad-hoc Committee agreed that it would:

1. Take into account the needs, priorities and capacities of all countries, in particular developing countries;
2. Take a holistic, sustainable development perspective that considers interactions with other important economic, social and environmental policy areas;
3. Consider the need for sufficient flexibility and resilience in the international tax system to ensure equitable results as technology and business models and the international tax cooperation landscape evolve;
4. Take into consideration the work of other relevant forums, potential synergies and the existing tools, strengths, expertise and complementarities available in the multiple institutions involved in tax cooperation at the international, regional and local levels;
5. Consider simultaneously developing early protocols while elaborating the framework convention on specific priority issues, such as measures against tax-related IFFs and the taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy.



6. During the organizational Session, the ad hoc committee also developed the provisional agenda for the first substantive Session of the Committee.

14.1.1 Request for Public Inputs

After the organisational Session, the Ad Hoc Committee requested for public input by posing the following key questions:

1. What are some specific problems that could be addressed by a UN framework convention on international tax?
2. The Ad Hoc Committee sought guidance on the structural elements of the Framework Convention, including substantive and procedural elements.
3. Lastly, the Ad Hoc Committee requested for proposals on what issues the early protocols should address.
4. The Ad Hoc Committee received a considerable number of inputs. An analysis of the inputs provided by African stakeholders shows that the following were the main interests of African countries:
5. Institutional arrangements – African stakeholders desire for the establishment of a Conference of Parties, with a Secretariat, that will be the key decision-making body established under the Convention. Additionally, many stakeholders have acknowledged the role of the UN Tax Committee over the years and envisioned that, under the Framework Convention, the UN Tax Committee will gain a special/ expert advisory role under the Framework Convention.
6. Commitments: African stakeholders desire that issues such as the imbalance of taxing rights, tax-related IFFs, taxation of cross-border services, promotion of tax transparency and exchange of information, amongst others, are addressed through the Framework Convention by being designed as commitments.
7. Principles/ Objectives/ - In line with the UNGA resolution 78/230, African countries hope to see objectives and principles that are grounded on the SDGs and that embody the consideration of the different capacities and needs of developing countries.
8. Procedural issues- As expected, procedural issues are a key concern for African countries; they wish to see processes such as decision-making, voting and agenda-setting under the Framework Convention take place in a democratic manner.
9. Early protocols – Lastly, African countries suggested that early protocols could address the following issues: Tax-related IFFs, tax across borders, border services in a digitalised economy, tax transparency, exchange of information for tax purposes and addressing harmful tax regimes, amongst others.

14.2 First Substantive Session

This Session was held in New York from 26 April to 8 May 2024 and was focused on the following issues:

1. Discussion on the substantive issues: This involved a question on high-level



commitments on the taxation of high net-worth individuals, DRM and capacity building, equitable taxation of MNEs, taxation of cross-border services in a digitalized economy and ensuring that tax measures contribute to addressing environmental challenges. In addition to this, there was further conversation on the preamble, objectives and principles.

2. Simultaneous development of early protocols: Discussion also focused on the timeframe and approach of the simultaneous development of early protocols and the issues that they must address.
3. Domestic Resource Mobilisation and Capacity Building: This commitment was widely discussed. Many developed countries were of the opinion that the challenges of DRM in developing countries could be addressed through capacity building and strengthening. However, developing countries preferred not to interchangeably use the commitments on DRM and capacity building. For African countries, DRM within the context of international tax cooperation should be addressed by allocating taxing rights that will allow source countries to collect more revenue. Some African countries argued that addressing taxation of high-net-worth individuals could be adequately addressed through the commitment on DRM rather than a standalone commitment.
4. Equitable Taxation of Multinational Enterprises (MNEs)/Taxation of Cross-Border Services in a Digitalised Economy: Developed countries argued that the work done under the Framework Convention should avoid duplicating efforts since considerable work has been put into addressing base erosion and profit shifting and significant progress achieved through the Inclusive Framework, Pillar 1 and 2 amongst other solutions. African countries argued that i) a considerable number of them were not involved in setting these rules and the resulting international tax rules from this process, and ii) setting new rules would lead to the fragmentation of international tax rules.

14.3 African Positions on the Discussions

African countries were in full support of these commitments. These commitments were arguably of highest importance to African countries because they would lead to addressing the imbalance of taxing rights. They did not support the position of not duplicating efforts/ initiatives. They argued that a considerable number of African countries were not present during the formation of these rules and that the resulting international tax rules were skewed against African countries. For these reasons, they believed that existing measures should not prevent the Framework Convention from addressing cross-border taxation nor equitable taxation of MNEs.

1. Environmental taxation

African countries were in support of this commitment. However, they advised that any taxation measures to address environmental challenges should take into account the level of development of developing countries and that the polluter pays principle must be reflected in these measures.



2. Simultaneous development of Framework Convention and Early Protocols

The timeframe and approach of the development of early protocols was discussed. Developed countries were of the opinion that the early protocols should be developed subsequently. This was because of the strain of both human and financial resources on negotiating the Framework Convention and early Protocols. African countries were of the contrary opinion, arguing that the simultaneous development of early Protocols was captured within the intentions of resolution 78/230. Furthermore, they argued that delaying the process of developing Protocols would delay any substantive change in taxing rights. Eventually, African countries aligned with a compromise position in which the development of the Framework Convention and the Protocols would begin simultaneously. However, the completion of the Framework Convention would precede the completion of simultaneous development of Protocols.

The First Substantive Session provided a rich forum for discussions on some of the most pertinent issues on international tax cooperation that will be addressed within the references in the TORs. Following this Session, it is expected that the written Draft TORs will be released, and Member States will deliberate and agree upon the final TORs by the end of the Second Substantive Session. The TORs, as well as the report of the Ad Hoc Committee, will then be presented at the 79th Session of the UNGA.

Conclusion

We are at a critical juncture in history as we start negotiations on the UN Tax Convention. This moment could forever transform global tax rule-making processes, but it could also be hijacked if we do not remain vigilant. It has been a long time coming and all our efforts must ensure the process delivers a robust convention and protocols. This policy brief provides information that stakeholders can use to clarify and strengthen their positions in this process.



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