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FINANCIAL TRANSPARENCY COALITION

BRIEFING PAPER • DECEMBER 2019

An intergovernmental UN tax commission – why we need it and how we can get it

The Group of 77 (G77) – representing more than 130 developing countries – has repeatedly proposed the establishment of an intergovernmental tax body under the United Nations (UN) to fix the broken global tax system. Here's why this proposal would benefit everyone – and how it can be done.

Why we need it

1) A coherent global system. Despite the fact that tax dodging by multinational corporations and wealthy individuals is a global problem, we do not yet have a coherent global solution. The international tax system consists of a diverse set of approaches, guidelines and standards, which have resulted in a complicated web of thousands of bilateral tax treaties and different national and regional regulations. Negotiation of a globally agreed system is the only way to remove the complexity, confusion, inconsistency and mismatches that exist today. An intergovernmental UN tax commission is a crucial first step towards this goal.

2) Stronger cooperation between tax administrations. In order to stop trans-boundary tax dodging, tax administrations need access to information about shell companies, hidden bank accounts and economic activities of their citizens and the multinational corporations operating in their country. A coherent global system will make it easier for tax administrations to communicate and cooperate.

3) Less unilateral action. Blacklisting, special taxes and restrictions on financial transfers, corporate reporting and documentation are only some of the measures individual governments are currently introducing to protect their tax base. If the crisis in the global tax system continues to be unresolved, we are likely to see many more of these kinds of self-protective measures. Only truly global cooperation can ensure that all governments have a real alternative to unilateral action.

4) Ending the race to the bottom. The fear of losing investments is currently driving governments to introduce tax incentives, loopholes and other harmful tax practices in a tragic 'race to the bottom', which is costing countries billions of dollars in lost tax income. Through truly global cooperation, we can turn this troubling trend around.

5) Better business environment. Clear, consistent, global and stable rules are good for business. Operating across diverse, inconsistent national tax systems creates heavy administrative burdens, legal uncertainty and high risks for international business.

6) A level playing field. Today, governments who commit to increasing transparency and closing loopholes fear that being a 'first mover' will result in businesses and wealthy individuals registering themselves in other jurisdictions. This has resulted in special rules and loopholes that allow the richest and most powerful multinational corporations and individuals to dodge taxes, while national companies, small- and medium-sized enterprises and ordinary citizens are left to pay their taxes. Through truly global negotiations, governments can agree on coordinated global action and ensure a level playing field.

7) Stronger implementation. No government will feel obliged to implement tax standards and norms that were adopted in closed rooms where it was not welcome. The UN is the only global institution where all governments participate as equals, and therefore the only place to achieve a global commitment to action.

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8) Less double taxation and double non-taxation. The wide variety of mismatches between national tax systems is the core reason why some get taxed twice on the same income while others don't get taxed at all. Only truly global cooperation can put an end to these problems. A global approach can also ensure that those governments that refuse to cooperate and, for example, insist on being tax havens, are faced with global pressure to comply.

9) More financing for development. Currently, the international tax rules often don't take into account the realities and interests of the least developed countries. This means lower tax income and less available financing for development in these countries. If the world's poorest countries were able to participate effectively in the development of global tax rules and standards, they would be able to ensure that the global system also works for their countries. However, while the impacts of tax dodging are felt most keenly in the world's poorest countries, rich nations are losing billions of dollars too.[1] A global solution to the problem could generate large amounts of new financial resources in both developed and developing countries, and help to achieve global development and environmental protection.

10) Fair and consistent global action against tax havens. Many governments are currently trying to protect their tax base through national or regional 'blacklists' based on criteria that are often both unclear and inconsistently applied. For example, the European Union Member States are exempted[2] from the EU blacklist, despite the fact that several Member States have a multitude of harmful tax practices[3] and others have very high levels of financial secrecy[4] that can be abused to conceal transboundary tax dodging by corporations and wealthy individuals.

However, in today's globalised economy, financial assets can quickly be moved from one tax haven to another. Therefore, while random blacklisting can be burdensome for impacted countries, it will not solve the tax haven problem. Action against tax havens must be fair, consistent and globally coordinated in order to be effective.

What's wrong with the current system?

Negotiations dominated by rich countries' interests

The negotiation of the new global tax rules currently takes place within a body known as the Inclusive Framework, hosted by the Organisation for Economic Co-operation and Development (OECD), which also acts as the secretariat for the negotiations.

Despite the name, the Inclusive Framework does not include all countries. One key reason for this is that membership of the framework comes with certain very specific conditions.[5] First and foremost, countries must commit to following the outcome of the 2015 negotiations on base erosion and profit shifting (BEPS).[6] This is controversial, not least because of the fact that over 100 developing countries were excluded when the package was negotiated,[7] and the fact that the negotiations followed an agenda set by the OECD and G20 countries – meaning that richer country interests dominated the negotiations.[8] The growing concerns about BEPS having failed to solve international corporate tax avoidance,[9] as well as the high administrative requirements associated with implementing the BEPS rules, are not making it any easier to get countries to commit to BEPS.

Each country that wishes to join the Inclusive Framework must also commit to paying an annual membership fee of around €20,000 to the OECD.[10] This has raised concerns because the lack of available funding was a key argument raised by OECD countries against conducting a tax negotiation at the UN.[11] With this in mind, there are concerns about developing countries now being asked to pay fees to an organisation that they are not members of, instead of using those funds to finance a UN-led process.

The fact that the OECD is the host and secretariat is also controversial. The body, which has 36 member countries and is commonly referred to as a 'rich countries' club', has been leading the development of the global tax rules for over half a century.[12] However, as the Indian government highlighted in a recent public consultation paper,[13] the OECD is – according to its founding convention – focused on ensuring "*the highest sustainable economic growth and employment and a rising standard of living in Member countries*".[14] The bias towards the interests of its members makes it an unconventional lead on international negotiations. It is particularly controversial in an international negotiation about something as sensitive as global tax rules, including splitting taxing rights, and thus income, between countries.

Currently, out of the world's 195 countries, over one third have decided not to join the Inclusive Framework. For the world's least developed countries, the share of countries not taking part in the Inclusive Framework is over two thirds.[15] The number of countries that are part of the Inclusive Framework (117 as of August 2019) is significantly lower than the official number of members (134).[16] This is due to the fact that a number of jurisdictions have joined as individual members. For example, no less than ten UK territories and crown dependencies are currently members, including Bermuda, the British Virgin Islands, Cayman Islands, Guernsey and Jersey.

The alternative – a truly global negotiation

Developing countries have not accepted the current system of international decision-making on tax without objections. For years, the G77 has been calling for the establishment of an intergovernmental tax body under the UN to lead the setting of global tax standards. In April 2019, the group released a statement saying:

> "*We recognize with concern that there is still no single globally inclusive intergovernmental forum for international tax cooperation*," and called for an intergovernmental UN tax body.[17]

The group reiterated its call during a UN high-level meeting on combating illicit financial flows in May 2019.[18] At the high-level meeting, Senegal – speaking on behalf of the African Group – also called for "*the upgrading of the existing committee of experts in tax matters to a universal intergovernmental body under the auspices of the UN with a mandate to deal with all aspects of [illicit financial flows]*". In the statement, Senegal also highlighted that the African Group believes existing UN tools do "*not sufficiently cover illicit flows emanating from tax avoidance, trade misinvoicing, profit shifting and other illegal commercial activities, especially those by multinational enterprises,*" and added, "*We therefore call for a separate international convention on tax. We believe that such a convention will serve as the backbone for our envisioned upgraded international tax committee, and will assist in tackling all aspects of [illicit financial flows].*"[19]

Unfortunately, the calls from developing countries for an intergovernmental UN process on tax have so far been rejected by a number of OECD Member States.[20] However, in July 2019, the government of Norway entered into a new partnership with the UN, and contributed 35 million Norwegian Kroner to support the UN's work on tax. In that context, the Norwegian Minister of International Development, Dag-Inge Ulstein, highlighted the UN as "*the one organisation with a universal mandate to develop international tax rules,*" and added that, "*[t]he world is on the cusp of some very substantial changes in global tax norms, and the UN must be at the centre of these discussions*".[21]

How should governments approach international decision-making on tax?

Bearing in mind that the global tax rules affect citizens all over the world, and that fair and effective rules are vital for ensuring financing for development, environmental protection and the achievement of the sustainable development goals, it is important that governments insist that negotiations about global tax rules:

- are transparent and allow participation of observers
- take place in a forum where all countries are on a truly equal footing. Among other things, this means that no developing countries should be asked to commit to following existing rule packages in order to join the negotiations; that all countries should be allowed to participate in setting the agenda; and that the secretariat leading the negotiations should be neutral
- are free of bias towards the interests of a certain group of countries, and recognise the interests of all countries, including the poorest developing countries.

In practice, the obvious forum for this would not be the OECD and its Inclusive Framework, but rather the UN. Therefore, governments should support the establishment of a well-resourced, transparent tax commission under the auspices of the UN, with a mandate to address all aspects of international tax cooperation, including international corporate tax.

The new UN tax commission should:

Be intergovernmental: It should consist of representatives negotiating on behalf of governments, as opposed to, for example, an expert body, where members speak in their personal capacity, and where the outcomes are not intergovernmental decisions.

- **Have universal membership**: All countries should be able to participate on an equal footing.
- **Be adequately resourced**: It must have the secretariat capacity and resources to operate effectively.
- **It could also be supported by a subsidiary technical body**: The technical work could form the basis of the political decisions, which should be taken by the intergovernmental body. This expert body could be a strengthened version of the existing UN Expert Committee.
- The overall purpose of the intergovernmental UN tax body should be **to stop international tax dodging and illicit financial flows** by ensuring that governments commit to not eroding each other's tax bases and create an international tax system that is transparent, coherent and supports equality and development.
- In the longer term, and with a view to ensuring implementation of the decisions of the tax body, we should have a legally binding UN Tax Convention. Developing such an agreement should therefore be one of the key tasks of the intergovernmental body.

Endnotes

1 UNCTAD has estimated that one type of corporate tax avoidance alone is costing developing countries $70 billion and $120 billion per year. UNCTAD. (2015). *World Investment Report*: http://unctad.org/en/PublicationsLibrary/wir2015_en.pdf). Meanwhile, another (conservative) estimate says that the EU is losing €50-70 billion per year due to corporate tax avoidance: Dr Robert Dover, Dr Benjamin Ferrett, Daniel Gravino, Professor Erik Jones and Silvia Merler. (2015). *Bringing transparency, coordination and convergence to corporate tax policies in the European Union.* Research paper, published by the European Parliament: http://www.europarl.europa.eu/RegData/etudes/STUD/2015/558773/EPRS_STU(2015)558773_EN.pdf).

2 The EU blacklist will only include 'third countries', i.e. not EU Member States. Furthermore, countries that are found to be cooperative with the EU will be exempted, despite the fact that these countries might still be acting as tax havens towards, for example, developing countries. Source: European Commission. (2016). *Communication from the Commission to the European Parliament and the Council on an External Strategy for Effective Taxation*: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1454056581340&uri=COM:2016:24:FIN

3 For an overview of harmful tax practices in EU Member States see Ramboll Management Consulting and Corit Advisory. (2015). *Study on Structures of Aggressive Tax Planning and Indicators.* Commissioned by the European Commission: http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_61.pdf

4 See Tax Justice Network. (2018). *Financial Secrecy Index*. Published January 30 2018: https://www.financialsecrecyindex.com/en/

5 See OECD. (2018). *OECD/G20 Inclusive Framework on BEPS*, June 2018: https://www.oecd.org/tax/flyer-inclusive-framework-on-beps.pdf

6 OECD. *BEPS Actions*: https://www.oecd.org/tax/beps/beps-actions.htm

7 OECD. (2015). *OECD Secretary-General Report to the G20 Finance Ministers and Central Bank Governors*: http://www.oecd.org/g20/topics/taxation/oecd-secretary-general-tax-report-to-g20-FMCBG-september-2015.pdf, page 11.

8 The background report and action plan for the BEPS negotiations were developed by the OECD, following a mandate from the G20. See G20. (2013). *Tax Annex to the St. Petersburg G20 Leaders' Declaration*, September 2013: https://www.mofa.go.jp/files/000013928.pdf.

9 See above under '4.0 Pillar two: a minimum effective corporate tax rate?'.

10 See OECD. (2018). *OECD/G20 Inclusive Framework on BEPS*, June 2018: https://www.oecd.org/tax/flyer-inclusive-framework-on-beps.pdf

11 The issue has been debated a number of times among government representatives at the UN, including during the negotiations leading up to the Third International Conference on Financing for Development in Addis Ababa in 2015.

12 See, for example, OECD. (2018). *Secretary-General's Report to Ministers 2018*, 30 May 2018: https://www.oecd-ilibrary.org/economics/secretary-general-s-report-to-ministers-2018_sg_report-2018-en;jsessionid=WpvWbmU4WQUo8bZbQTqeLeOS.ip-10-240-5-34, page 16.

13 Government of India. (2019). *Public Consultation on the proposal for amendment of Rules for Profit attribution to Permanent Establishment-reg.*, F. No. 500/33/2017-FTD.I, 18 April 2019: https://www.incometaxindia.gov.in/news/public_consultation_notice_18_4_19.pdf, paragraph 101.

14 OECD. (1960). *Convention on the Organisation for Economic Co-operation and Development*, 14 December 1960: https://www.oecd.org/general/conventionontheorganisationforeconomicco-operationanddevelopment.htm

15 As of August 2019, 195 sovereign states are recognised by the UN, of which 193 are UN Member States and two are permanent observers to the UN. Of these 195, 117 are members of the Inclusive Framework. 47 countries are recognised as least developed countries, of which 10 are members of the Inclusive Framework. See UN, *Member States*, https://www.un.org/en/member-states/; UN, *Non-member States*, https://www.un.org/en/sections/member-states/non-member-states/index.html ; OECD (2019), *Members of the Inclusive Framework on BEPS*, updated August 2019, https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf; and UN Committee for Development Policy (2018), *List of Least Developed Countries*, as of December 2018, https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/ldc_list.pdf

16 OECD. (2019). *Members of the Inclusive Framework on BEPS*, updated August 2019: https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf

17 G77. (2019). *Statement on behalf of the Group of 77 and China by H.E. Minister Dr. Riyad Mansour (State of Palestine), Chair of the Group of 77, at the 2019 ECOSOC Forum on Financing for Development Follow-up*, 15 April 2019, https://www.g77.org/statement/getstatement.php?id=190415c

18 G77. (2019). *Statement of behalf of the Group of 77 and China by H.E. Minister Dr. Riyad Mansour (State of Palestine), Chair of the Group of 77, at the High-Level Meeting of the UN General Assembly on Combating Illicit Financial Flows*, 16 May 2019: http://www.g77.org/statement/getstatement.php?id=190516b

19 Senegal, speaking on behalf of the African Group at the UN High-level meeting on International Cooperation to Combat Illicit Financial Flows and Strengthen Good Practices on Assets Return, 16 May 2019, New York. The full statement can be found here: http://webtv.un.org/watch/part-1-high-level-meeting-on-international-cooperation-to-combat-illicit-financial-flows-and-strengthen-good-practices-on-assets-return/6037733391001, (starting at 2:49:30).

20 See Eurodad et al. (2017). *Tax Games – the Race to the Bottom*: https://eurodad.org/files/pdf/1546849-tax-games-the-race-to-the-bottom.pdf, page 49.

21 Norway in the UN. (2019). *Norway enters into partnership with the UN Tax Committee*, 16 July 2019: https://www.norway.no/en/missions/UN/news/news-on-development-and-humanitarian-efforts/norway-enters-into-partnership-with-the-un-tax-committee/

This publication was produced through Eurodad's membership of the Financial Transparency Coalition, FTC, a global civil society network working to curtail illicit financial flows through the promotion of a transparent, accountable and sustainable financial system that works for everyone. This publication reflects the views of Eurodad and is not intended to represent the positions of other members of the FTC.

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