



Collaboration or Co-optation?

A review of the Platform for Collaboration on Tax*

By Manuel F. Montes and Pooja Rangaprasad* *

The Platform for Collaboration on Tax (PCT), launched in April 2016, is an effort to intensify cooperation on tax issues **among the staff** of the OECD, IMF, World Bank and the United Nations¹. This brief makes the following arguments about the PCT on the basis of its activities and recent outputs:

- In a context where the UN membership is currently incapacitated from hosting intergovernmental negotiations on tax matters, the work of the Platform for Collaboration on Tax – a body made up of secretariat staff from the OECD, IMF, the World Bank and United Nations – needs closer scrutiny.
- PCT statements have taken positions on issues where no UN agreement has been reached, including where a majority of the UN membership has expressed a different position.
- There is a need to clearly identify the role of the PCT, specifically the role of the UN in the platform, and ensure a proper division of tasks and decision-making between Member States and secretariat staff.
- While it is not unusual for UN agencies or secretariat staff to be involved in providing policy advice collaborating with other agencies, the advice provided is usually in service of a UN negotiation process on which governments then make decisions. In this situation, the governments are out of the room, while technocrats make decisions.

The PCT's stated objectives include the production of joint outputs, strengthening interactions between standard setting, capacity building and technical assistance and sharing information². PCT has since produced toolkits on issues such as tax incentives, transfer pricing, and taxation of offshore indirect transfers³. The PCT also held its first global conference in February 2018 at the UN where a concluding 'conference statement', negotiated among the four secretariats, was produced⁴.

In a political context where a majority of UN Member States continue to contest international tax standard set-

ting led by the OECD and call for a global negotiation process based within the UN, this collaboration between the four institutions requires a closer look. Increased technocratic cooperation when the process is challenged by a political deficit in norm setting raises critical questions for the institutions involved and the constituencies they represent. This policy brief will unpack some of these issues pertaining to the Platform for Collaboration on Tax (PCT).

Redefining tax cooperation as capacity building and learning about OECD standards

The pace of tax reform efforts has accelerated after OECD countries found themselves more urgently needing to get corporations to pay a fair share of tax in the aftermath of the North Atlantic financial and economic crisis of 2007-08. OECD norms which dominate the allocation of taxing rights among countries have made it possible for corporations to use developing countries to avoid and evade taxes. In its actions, the OECD and its Member States have signalled a strong preference to manage and control the design of and actions on the reform agenda. One argument often touted is that rich countries supposedly have greater technical expertise to fix the tax problems of developing countries. In this context, tax cooperation is about capacity building⁵ and implementation of OECD standards rather than reforming the process to restore tax performance and agency of all parties involved.

This argument has also made its way into the report of the PCT on building tax capacity in developing countries, which concluded that 'rapid progress' has been made on including developing countries in international rule setting⁶. The evidence for this progress is ostensibly the fact that developing countries are being invited to *implement* OECD standards in the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum)⁷ and Inclusive Framework on BEPS (Inclusive Framework)⁸. Developing countries in the Inclusive Framework could also be part of some remaining standard setting as long as they commit to implementing most of the standards already designed without their equal

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* * Manuel F. Montes is Permanent Observer and Senior Advisor on Finance and Development for the South Centre and Pooja Rangaprasad is an independent researcher on tax and development based in Delhi, India. All data, analyses, and opinions in this piece are solely the responsibility of the authors and are not necessarily those of their organizations.

participation. Countries pay fees to the OECD to join both the Global Forum and the Inclusive Framework which apparently can be interpreted as ‘rapid progress’ in international rule setting on ‘equal footing’.

Not surprisingly, most UN Member States disagree. The Group of 77 and China, a group of 134 developing countries, continues to highlight the lack of progress on tax cooperation, including at the recent Financing for Development (FfD) Conference in April 2018⁹. The Addis Ababa Action Agenda stresses that “efforts in international tax cooperation should be universal in approach and scope...”, though developed countries continue to block the very mechanism that would ensure implementation of this commitment – establishing a universal, intergovernmental tax commission under the auspices of the UN.

The Platform for Collaboration on Tax is a secretariat of secretariats with unclear mandates from their underlying constituencies. There is also an imbalance of representation – the interests of OECD countries are represented by all four secretariats, whereas this is not the case for developing countries. This is further exacerbated by the fundamental difference in the sizes of the secretariats, with the UN secretariat’s resources, for example, being much smaller than those of the OECD, which creates imbalances in capacities to draft joint outputs, influence the agenda and decision-making, ultimately affecting which political perspectives get represented.

Governance dominance by well-resourced organizations as “good governance”

A further example of these imbalances is seen in the PCT’s recent report on the identification of tax tools over treating the transfer of assets through third country tax jurisdictions¹⁰. These rules protect a country’s capacity to tax the capital gains from the sale of companies and mining assets; other rules close off this possibility. Despite this being a critical issue for developing countries, with OECD taking the position as gatekeeper of the agenda for international tax reform, this area was only partially addressed in the OECD BEPS process. It was decided that the issue would further be analyzed by the PCT instead.

The recent report on indirect transfers by the PCT unfortunately also took a limited view of the issue, focusing on just indirect transfers of immovable assets, excluding moveable assets such as shares. The Government of India, in their submission to this draft report, highlighted both the technical deficits as well as the need for greater involvement of governments in finalizing these positions¹¹. Several business submissions to the draft report also highlighted their concern that they do not see the PCT as having the standing to decide this issue and needs to be agreed through intergovernmental negotiations¹².

As the PCT *ex post* tries to pick up broken pieces left unresolved in the BEPS process and mop up afterward,

it is not surprising that their legitimacy to do so will be increasingly questioned by governments, business and civil society alike. In the process, the underlying governance problem surfaces as technical pitfalls and the legitimacy of intergovernmental negotiations cannot simply be replaced by technocrats enunciating their views.

UN stamp without mandate from UN Member States

The first global conference of the PCT was held at the UN in February 2018 on the theme “Taxation and the Sustainable Development Goals”. The three-day conference was packed with several panel discussions and presentations on a range of tax issues with no room for any meaningful discussion or debate between Member States¹³. At the end of the conference, a conference statement that had been negotiated behind closed doors between the four secretariats of the PCT was released. In this statement, the PCT once again declared that this was ‘an era of unprecedented international cooperation on tax’ as well as highlighted the mandate they decided on for their upcoming work¹⁴.

The conference statement also seems to misrepresent the UN agreement from Addis Ababa, by leaving out important political nuances agreed through the intergovernmental negotiations in 2015. When the Addis Ababa Action Agenda states that “*We recognize that significant additional domestic public resources, supplemented by international assistance as appropriate, will be critical to realizing sustainable development and achieving the sustainable development goals*”, the reference to “international assistance” is a reflection of the positions expressed by the Group of 77. This is, however, left out of the PCT conference statement, which claims that: “*The Addis Ababa Action Agenda recognizes that much of the increased public financing to reach these goals will have to be generated domestically.*”

While it is not unusual for UN agencies or secretariat staff to be involved in providing policy advice and collaborating with other agencies, the advice offered is usually in service of a UN negotiation process where governments then make decisions. In the PCT, the governments are out of the room, while staff experts draft the decisions. It also is not clear what mandate UN staff have to put forth opinions on politically sensitive international tax policy issues when there is no process of negotiation between all governments at the UN. As a result, the apparent UN stamp of approval in the PCT only risks legitimizing positions that do not represent most of the UN membership, since the OECD already has an intergovernmental negotiation process in place for their membership.

What Next: Reinstating good governance principles in intergovernmental cooperation

When the OECD BEPS agenda was decided, many developing countries stressed that the allocation of taxing rights was a significant issue for them¹⁵. This issue is fundamental to addressing the flaws in the international tax system that favour countries where corporations are headquartered (mostly in developed countries) as opposed to ‘source countries’ (where economic activities take place,

that is, in the developing countries hosting foreign companies). Developing countries were told by the OECD that taxing rights issues are beyond the scope of the BEPS agenda (even though the BEPS agenda has a mandate from the Group of Twenty (G20), a grouping which includes some large developing countries such as China, India and Indonesia). In the choice of agenda items, the BEPS process was shaped by developed country interests. These unresolved taxing rights questions are resurfacing through the unresolved BEPS issue around taxing the digital economy, now that many developed countries are seeking to tax e-commerce companies at 'source'.

In international tax negotiations, there is a need to hold OECD countries to the principles they loudly espouse at the global level: democracy and transparency. It is also evident from their pronouncements that OECD countries place great value in "equal footing" in decision-making. Collaboration between the four secretariats in the PCT could be productive but these activities only pay off when their technical outcomes feed into a transparent intergovernmental negotiation process where *all* governments are at the table to make decisions. There is also an urgent need to restore public trust in the wake of scandals and leaks highlighting huge losses of public revenue around the world through tax avoidance and evasion. It is in the interest of all countries, developed and developing, to work together in a UN-based negotiation process that is universal, inclusive, transparent and with a more ambitious agenda and mandate to address the fundamental issues in the international tax system.

Recommendations

- There is a clear need to insist that the UN secretariat cannot negotiate and sign off on tax policy recommendations that deviate from agreed outcomes of intergovernmental UN processes, such as through the Financing for Development process, or which concern issues on which the UN membership have not yet negotiated an agreed position. This includes taking a position on the state of international tax cooperation, and the outcomes produced by OECD and G20 processes. The PCT can provide a space for dialogue and technical coordination between the secretariats. However, as regards joint outputs from the PCT, the role of the UN secretariat must be limited to promoting adopted UN outcomes, such as intergovernmental agreements, and outputs produced by the UN's Committee of Experts on International Cooperation in Tax Matters.
- As noted by the G77 and China at the UN Economic and Social Council (ECOSOC) Special Meeting on International Cooperation in Tax Matters¹⁶, "While the establishment of the Inter-Agency Platform for Collaboration on Tax (PCT) reflects an urge to strengthen coherence, coordi-

nation and consensus building in international tax matters, we need to bear in mind that such an effort must be conducted through intergovernmental cooperation and negotiations... the establishment of a universal, intergovernmental UN tax body would be the appropriate way forward on these issues."

End notes:

¹ "OECD" stands for Organisation for Economic Co-operation and Development among 35 developed countries, "IMF" for International Monetary Fund, "WB" for World Bank, and "UN" for United Nations.

² Concept Note available here: <http://documents.worldbank.org/curated/en/801891468196141038/pdf/104902-SECOND-REVISION-concept-note-platform-for-collaboration-on-tax.pdf>.

³ For details, see: <http://www.oecd.org/ctp/platform-for-collaboration-on-tax.htm>.

⁴ <http://www.worldbank.org/en/events/2017/06/06/first-global-conference-of-the-platform-for-collaboration-on-tax>

⁵ The IMF, one of the four PCT agencies, in 2004 argued against an emphasis on capacity building, saying "Limiting adverse spillovers on developing countries requires not just capacity building, but also addressing weaknesses in domestic law and international arrangements" (see <https://www.imf.org/external/np/pp/eng/2014/050914.pdf>, p. 1).

⁶ <http://www.oecd.org/tax/enhancing-the-effectiveness-of-external-support-in-building-tax-capacity-in-developing-countries.pdf>

⁷ The Global Forum on Transparency and Exchange of Information for Tax Purposes monitors implementation of OECD standards on transparency and exchange of information: <http://www.oecd.org/tax/transparency/>.

⁸ The Inclusive Framework on BEPS brings together over 100 countries and jurisdictions to collaborate on the implementation of the OECD/G20 (Group of Twenty) Base Erosion and Profit Shifting (BEPS) Package:

<http://www.oecd.org/tax/beeps/beeps-about.htm>.

⁹ G77 and China statement at the FfD Forum, 2018:

http://www.un.org/esa/ffd/ffdforum/wp-content/uploads/sites/3/2018/04/GeneralDebate_G77andChina.pdf.

¹⁰ <http://www.oecd.org/tax/discussion-draft-toolkit-taxation-of-offshore-indirect-transfers.pdf>

¹¹ <http://www.oecd.org/tax/public-comments-draft-toolkit-taxation-of-offshore-indirect-transfers.pdf>

¹² <http://www.oecd.org/tax/public-comments-draft-toolkit-taxation-of-offshore-indirect-transfers.pdf>

¹³ Conference agenda available here:

<http://www.worldbank.org/en/events/2017/06/06/first-global-conference-of-the-platform-for-collaboration-on-tax#2>.

¹⁴ <http://www.worldbank.org/en/news/statement/2018/02/16/platform-for-collaboration-on-tax-first-global-conference-on-taxation-and-sdgs>

¹⁵ <http://www.oecd.org/tax/tax-global/report-to-g20-dwg-on-the-impact-of-beeps-in-low-income-countries.pdf>

¹⁶ <http://www.g77.org/statement/getstatement.php?id=180518b>

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The South Centre
Chemin du Champ-d'Anier 17
PO Box 228, 1211 Geneva 19
Switzerland
Telephone: (4122) 791 8050
Fax: (4122) 798 8531
E-mail: south@southcentre.int
<http://www.southcentre.int>