

## Making the UN Tax Committee more effective for developing countries

By Abdul Muheet Chowdhary \*

The United Nations (UN) is the foremost international organization, setup in the aftermath of the Second World War to help build a new world. One of its six principal organs is the Economic and Social Council (ECOSOC), tasked with advancing the three dimensions of sustainable development – economic, social and environmental. In that sense it plays a major role in the achievement of the Sustainable Development Goals (SDGs), which the world has committed to.

Nestled within ECOSOC is a little-known but vitally

important subsidiary body with the somewhat archaic and lengthy title of “Committee of Experts on International Cooperation in Tax Matters”, popularly known as the UN Tax Committee (UNTC).

The UNTC is responsible for nothing less than reviewing and recommending standards on international taxation, notably the rules through which non-residents, particularly Multinational Enterprises (MNEs), may be taxed. As is well known, in today’s world there is a growing concentration of wealth and corporate consolidation, with one

### Abstract

The United Nations Committee of Experts on International Cooperation in Tax Matters (UN Tax Committee) is an important and influential subsidiary body of the Economic and Social Council (ECOSOC) that shapes standards and guidelines on international taxation. These are the rules through which Multinational Enterprises (MNEs) are taxed. Its role post-COVID-19 has become even more important as countries struggle to raise revenue. Despite being under-resourced, it has produced valuable guidance, especially on the crucial question of the digital economy. As a new Membership of the Committee is about to be selected, this Policy Brief provides practical recommendations on how the Committee can be reformed to be made more effective, especially for the interests of developing countries.

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*Le Comité d'experts des Nations unies sur la coopération internationale en matière est un organe subsidiaire important et influent du Conseil économique et social (ECOSOC), dont le rôle est d'élaborer des normes et des lignes directrices en matière de fiscalité internationale permettant l'imposition des entreprises multinationales. Ce rôle est d'autant plus essentiel dans cette période post-COVID-19, qui voit la plupart des pays lutter pour augmenter leurs recettes. Malgré des ressources insuffisantes, il a élaboré des orientations précieuses, notamment sur la question cruciale de l'économie numérique. Alors qu'il s'apprête à connaître une nouvelle composition, l'objectif de ce rapport sur les politiques est de formuler des recommandations pratiques sur les réformes qui doivent être adoptées concernant son fonctionnement afin de le rendre plus efficace, en particulier dans la prise en compte des intérêts des pays en développement.*

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*El Comité de Expertos de las Naciones Unidas sobre Cooperación Internacional en Cuestiones de Tributación (Comité Tributario de las Naciones Unidas) es un órgano subsidiario importante e influyente del Consejo Económico y Social (ECOSOC) que trabaja sobre las normas y directrices de aspectos fiscales internacionales. Estas son las reglas por las que se establecen tributos a las empresas multinacionales (EMN). Su papel después de COVID-19 se ha vuelto aún más importante a medida que los países luchan por aumentar sus ingresos. A pesar de carecer de recursos suficientes, ha producido una valiosa orientación, especialmente sobre la cuestión crucial de la economía digital. Dado que se está a punto de seleccionar nuevos miembros del Comité, este informe sobre políticas ofrece recomendaciones prácticas sobre cómo se puede reformar dicho Comité para que sea más eficaz, especialmente para los intereses de los países en desarrollo.*

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company even reaching a staggering market valuation of USD 2 trillion.<sup>1</sup> This is juxtaposed with an estimated **\$427 billion** in tax revenue lost each year to international corporate tax abuse and private tax evasion. This makes the taxation of these MNEs (and non-residents more generally) an important source of revenue for the countries where they operate.

There is also the aspect of a level playing field, because if these foreign MNEs do not pay the rightful taxes due, owing to tax evasion or avoidance, then it results in a higher burden on domestic firms, leading to competition concerns. Foreign firms end up with more funds at their disposal through which they can carry out predatory pricing or buyout rivals.

The disruption of local businesses has many negative effects, with one of them being reduced consumer demand owing to job losses. This is harmful even for the foreign MNE as it means less demand for their goods and services. Thus, non-payment of taxes leads to a vicious cycle of economic slowdown, while tax compliance means fairer competition, higher consumer demand and more capacity of governments to provide public goods, leading to a virtuous cycle of prosperity.<sup>2</sup>

Thus, international tax standards are of critical importance, as they enable countries to effectively tax MNEs and raise the revenue needed for providing public goods and financing the SDGs. Improved capacity for tax collection is in fact target 17.1 of the SDGs.

The UN Tax Committee, housed within ECOSOC, hence has a crucial role to play for the world at large. It is also the only standard shaping body on tax that is within a genuinely universal organization, the UN. The other major body, the Organisation for Economic Co-operation and Development (OECD), remains to this day an organization ultimately controlled by 37 of the world's richest countries. Hence the UNTC is the only body where developing countries have something close to a level playing field and the Committee's Membership is almost evenly divided between developed and developing countries.

Though far less resourced than the OECD, the UNTC has performed admirably, producing standards such as the UN Model Double Taxation Convention between Developed and Developing Countries, Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries, Practical Manual on Transfer Pricing and Handbook on Selected Issues for Taxation of the Extractive Industries by Developing Countries. These documents provide much-needed guidance to countries, particularly developing countries, in strengthening their international tax policy frameworks.

The recent sessions of the Committee have seen a spurt of activity as some of the more active Members, all from developing countries, have taken the lead in finding solutions to some of the burning issues of the day. Nowhere has this been more apparent than in the

taxation of the digitalized economy, arguably the single most important issue in international tax today.

The digitalized economy can no longer be hived off into a sector; it is increasingly a part of the 'real' economy and as such calls for major changes to international tax rules. The OECD has been trying for years to find a solution through its "Inclusive" Framework on Base Erosion and Profit Shifting (BEPS), but there is no end in sight as discussions continue endlessly. Meanwhile developing countries are ever more stressed for funds, particularly in these times of recession and COVID-19.

While the OECD, with its enormous resources and Secretariat, continues to struggle to find a practical and acceptable solution, the more modest UNTC, in its 20<sup>th</sup> and 21<sup>st</sup> Sessions has come out with a simple and realistic proposal for taxing income from Automated Digital Services,<sup>3</sup> one that has been prepared entirely by developing country Members. That the Committee could provide such a solution in a relatively short period of time with all its constraints is a testament to its relevance, but more importantly unfulfilled potential.

These outcomes have happened not because of the UNTC's structure but rather despite it and can be attributed to the individual drive and initiative of some Members. However it is unwise to rely on such individuals and what is needed is a system that facilitates and encourages such outcomes as a matter of course. Hence, this article seeks to examine how the structure of the UNTC can be improved so it does precisely this and is better able to fulfil its mandate.

### Issues Relating to Committee Members

#### Appointment

The first and most important aspect of the UNTC's functioning is the selection of Members, especially those from developing countries. Having passive Members who do not or cannot perform their duties effectively means that their engagement is reduced to simply approving Secretariat documents. This is an unfortunate outcome because even though the Members are individuals serving in their expert capacity, they are nevertheless nominated by countries and the reality is that they to an extent reflect national experiences. Further, the UNTC is meant to be a Committee-driven body and the Members must have as much control as possible and should be able to drive the Committee's work. For this, Members who are *capable, committed* and *supported* must be selected.

#### Capability

The Members must have the capacity to perform their duties. For this domain knowledge is essential; candidates must have expertise in international tax matters such as exchange of information or transfer pricing. Practical experience in tax treaties should also be a necessary qualification. This will ensure that at minimum they have the capacity to substantively contribute to the Committee's work.

### *Commitment*

The Members must also have a track record which proves their commitment to the issue. This is especially important in the case of Members hailing from developing countries.

### *Support*

Members of the UNTC are tax officials working with their governments but are nominated in their expert and individual capacity, hence their work is not counted as “official” in the eyes of their governments. Working for the UNTC is seen as a personal responsibility and something that eats into their official duties. Several times this trade-off means that they are unable to devote adequate time to their obligations as UNTC Members.

The way out of this is to ensure that the Committee Members have support from their governments in their work as UNTC Members and the time spent in this important work is given due recognition and support by their governments.

It would be good if the domestic tax administrations can provide additional resources and staff to their Members. This will enable them to provide better inputs and manage their Committee work along with their official responsibilities.

Thus, it is recommended that Member States, especially those from developing countries, take these criteria into account when making nominations, so that they are putting forth the best candidates possible. They must also assess whether their respective tax administrations will be able to provide them with the requisite support so that they are able to do their best. The UN can issue guidelines encouraging countries to follow this approach.

### **Re-appointment**

Sometimes Committee Members are re-appointed for the next term. All the aforementioned points are equally applicable when it comes to such reappointments. At present however the process is not transparent. Given the importance of being on the Committee, some criteria and procedures should be developed in this regard. Only those Members who have demonstrated their contributions to the Committee’s functioning should be reappointed. A feedback mechanism can be devised which also takes into account the opinion of Observers, civil society and the UNTC Secretariat itself. The UN can share this assessment with countries when requesting them to nominate or re-nominate candidates.

### **Induction**

New Members should be given an introduction to the Committee and how it works. They have no time to learn the ‘rules of the game’ and as a result cannot function with full efficiency. Often times they join to find that many things have been already pre-decided, such as the agenda and composition of sub-committees. To

prevent this and to ensure that they are informed of how things work, it is recommended that outgoing Members do some handholding for them and share their experiences. This is especially important for Members from developing countries.

## **Issues Relating to Committee Functioning**

### **Agenda**

The agenda should be decided by the Members. It is recommended that the inputs of UN Member States should be solicited in preparing the UNTC agenda.

### **Number of Meetings**

One of the compromise outcomes of the 2015 Addis Ababa conference on Financing for Development<sup>4</sup> was to increase the number of Committee meetings from two per year instead of just one. However this is not at all enough for the work to get done. As a result decisions on many pending issues tend to get delayed and their resolution is dragged out. Hence, the number of Committee meetings needs to be increased, with the flexibility to have additional Sessions if the work so requires.

### **Staffing of the Secretariat**

The composition of the Secretariat is very important as it works full-time and continuously on the Committee’s work, unlike the Members who also have official responsibilities. So far, the Secretariat staff, especially for the core work of the Committee such as updating the UN Model Convention and the Transfer Pricing Manual, comprises largely former OECD officials or officials from developed countries. The reality of this means that OECD standards – which are predominantly in the interests of developed countries – keep finding their way into the UN Committee. To balance this, the Secretariat staff should have much larger representation from developing countries. There is no dearth of talent.

Another measure in this regard is to lower the emphasis given to knowledge of multiple UN languages when hiring candidates. It should be enough for eligible candidates to know only one language. Many nationals of the developing world do not have the luxury of learning multiple UN languages, which those in the developed world do. The hiring policy should be therefore rational and flexible in this regard with a focus on subject knowledge to prevent over-representation of nationals of former colonial powers.

### **Conclusion**

These are some concrete recommendations for improving the structure of the UNTC so it is better able to discharge its responsibilities. The reforms required are not major but nevertheless have the potential to greatly improve the Committee’s functioning, which in turn means more balanced and efficient international tax standards for a world in dire need of funds to combat COVID-19 and finance the recovery.

**Endnotes:**

<sup>1</sup> See <https://www.financialexpress.com/industry/apples-3t-m-cap-veteran-analyst-who-predicted-its-run-to-2t-reveals-path-to-big-milestone-in-sight/2168152/>.

<sup>2</sup> See <https://www.southcentre.int/tax-cooperation-policy-brief-3-august-2018/>.

<sup>3</sup> See <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=f330625ffc>.

<sup>4</sup> See [https://sustainabledevelopment.un.org/content/documents/2051AAAA\\_Outcome.pdf](https://sustainabledevelopment.un.org/content/documents/2051AAAA_Outcome.pdf).

**This brief is part of the South Centre’s policy brief series focusing on tax policies and the experiences in international tax cooperation of developing countries.**

**Efforts to reform international cooperation in tax matters are exhibiting a distinct acceleration. The direction of change must recognize and incorporate innovations in developing country policies and approaches, otherwise the outcomes will obstruct practical paths to development.**

**The policy brief series is intended as a tool to assist in further dialogue on needed reforms.**

**\*\*\* The views contained in the policy briefs are personal to the authors and do not represent the institutional views of the South Centre or its Member States.**



*The South Centre is the intergovernmental organization of developing countries that helps developing countries to combine their efforts and expertise to promote their common interests in the international arena. The South Centre was established by an Intergovernmental Agreement which came into force on 31 July 1995. Its headquarters is in Geneva, Switzerland.*

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