



## **South Centre Submission Comments on Draft Agenda of the UN Tax Committee**

### **I. Background**

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 are in Geneva, Switzerland.

The South Centre in 2016 launched the [South Centre Tax Initiative](#) (SCTI). This is the organisation's flagship program for promoting South-South cooperation among developing countries in international tax matters.

### **II. Overview**

The South Centre welcomes the UN Tax Committee's invitation of public comments into its draft agenda and four-year work plan. This was also one of the recommendations of the South Centre in its [Policy Brief 13, "Making the UN Tax Committee more effective for developing countries"](#). By engaging the public in preparing the work plan, the UN Tax Committee's work can be more responsive to the needs of developing countries, and of UN Member States as a whole.

By stating that "the goal to ensure that the Committee's agenda is practical and relevant to developing countries and includes the most pressing challenges they face in tax policy and administration"<sup>1</sup> the Committee has shown a laudable intent which is also in line with its mandate, which is to give special attention to developing countries.

The South Centre offers its written comments on the three topics on which inputs have been requested. These have been prepared based on consultation with the South Centre's [Member States](#), which are exclusively developing countries.

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<sup>1</sup> <https://www.un.org/development/desa/financing/post-news/comments-draft-agenda-un-tax-committee>

### **III. Areas that should be given priority from the identified issues in the draft agenda**

As a matter of principle, it is recommended that the number of Subcommittees that are created to examine issues are kept to a minimum. Each Subcommittee requires resources and significant commitment from Members and participants. Thus, only those issues which are of high importance and relevance to developing countries should be created so the limited resources of the UN Tax Committee can be used more efficiently.

The priority areas are:

- (c) Issues related to the United Nations Model Double Taxation Convention between Developed and Developing Countries;
- (e) Transfer pricing;
- (i) Taxation issues related to the digitalized and globalized economy;
- (h) Dispute avoidance and resolution;
- (k) Increasing tax transparency;
- (f) Taxation of the extractive industries;

#### **Issues related to the United Nations Model Double Taxation Convention between Developed and Developing Countries**

##### Rationale

The single most important product of the UN Tax Committee is the UN Model Tax Convention. Thus, its updation must be the top priority of the Committee.

##### Expected Outcomes

The next update of the UN MTC can address the following issues:

##### *Permanent Establishment: DAPE Concerns*

Some countries have been using an expanded definition of a Permanent Establishment (PE) in their tax treaties. Under Article 5(4) which deals with Dependent Agent Permanent Establishment (DAPE), an additional definition is used, "habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise."

For example, this phrase is contained in Article 5(4)(c) of the [India-US DTAA](#).

The protocol explains the meaning of the phrase as follows:

“Both sides also agree that, for purposes of paragraph 4(c) of Article 5 (Permanent Establishment) of the Convention, a person shall be considered to habitually secure orders in a Contracting State, wholly or almost for an enterprise, only if:

1. such person frequently accepts orders for goods or merchandise on behalf of the enterprise;
2. substantially all of such person's sales related activities in the Contracting State consist of activities for the enterprise;
3. such person habitually represents to persons offering to buy goods or merchandise that acceptance of an order by such person constitutes the agreement of the enterprise to supply goods or merchandise under the terms and conditions specified in the order; and
4. The enterprise takes actions that give purchasers the basis for a reasonable belief that such person has authority to bind the enterprise.”

This phrase is also present in several other treaties, including Article 5(c) of the Bangladesh-Nepal 2019 Income Tax Agreement and Article 6(c) of the Egypt-Mauritius 2012 treaty and the UAE-Zimbabwe 2012 Income Tax Agreement.

This can be included into the UN MTC as Article 5(4)(c). It would build on existing State practice. Its inclusion would be similar to the incorporation of Article 12A on Fees for Technical Services.

This will expand the definition of a PE and allow developing countries to broaden the tax base and collect more revenue.

#### *Permanent Establishment: Platforms*

Another issue which needs to be addressed is the PEs of platforms. These employ workers in source countries but tax administrations face challenges both in identifying and auditing them.

#### *Shipping*

Article 8 at present gives the exclusive taxing right for income from international shipping and air transport to the country of residence. However, [many of such companies are registered in tax havens](#). Thus, this becomes “untaxed and stateless income” that is taxed nowhere. Article 8 requires a fundamental revision such that shipping profits are taxable in the country of source.

#### *Sovereign Wealth Funds*

Sovereign Wealth Funds (SWFs) are used for sovereign investments which lead to Government Income. However there are no provisions in the UN Model (or the OECD

Model) for taxing such income. There are some tax treaties that do include such an article. The inclusion of such an Article in the UN Model could be considered. The draft text of such an article could balance the revenue interests of developing countries against the need for attracting foreign investments.

## **Transfer Pricing**

### Rationale

The UN Practical Manual for Transfer Pricing is a valuable tool for developing countries. The next update of the Manual can include the following changes.

### Expected Outcomes

#### *Examples*

More examples are needed for how to carry out transfer pricing of commodities, intangibles and services. Services in general need a lot more attention as the current versions do not give adequate examples.

#### *Jurisprudence*

There continue to be court judgements and rulings on transfer pricing cases around the world. Some of the significant ones can be referenced in the Manual.

#### *Transfer Pricing Issues Related to Two Pillar Solution*

Both Amount A and Amount B in the Two Pillar Solution envisage modifications to existing transfer pricing rules; Amount A for determining routine and residual profit and Amount B for providing a fixed return for routine functions. The UN Tax Committee can take into account these changes as appropriate for developing countries.

## **Taxation issues related to the digitalized and globalized economy**

### Rationale

The taxation of the digitalized economy is arguably the single most important issue in international taxation today.

### Expected Outcomes

The UN Tax Committee has produced a valuable option for taxing the digitalized economy via Article 12B of the UN MTC. Further guidance can be provided on how a jurisdiction which has agreed to the Two Pillar Solution can implement Article 12B and how the two will co-exist.

Continued work by the UN Tax Committee on alternative options for taxing the digitalized economy will be most helpful for developing countries.

## **Dispute avoidance and resolution**

### Rationale

Developing countries remain concerned about the imposition of mandatory and binding dispute resolution systems. Alternatives need to be found which can guarantee tax certainty but also respect national sovereignty and developing country concerns.

### Expected Outcomes

The Dispute Avoidance and Resolution Handbook can provide a compendium of best practices from the world, such as the short process ruling system followed in New Zealand).

The Mutual Agreement Procedure (MAP) can continue to be improved, while strongly rejecting all directions towards arbitration.

## **Increasing tax transparency**

### Rationale

This is a key tool in the fight against tax avoidance, but also tax evasion and illicit financial flows.

### Expected Outcomes

#### *Model TIEA*

Many countries around the world negotiate Tax Information Exchange Agreements (TIEAs) for obtaining tax-related information. A UN Model TIEA can give helpful guidance to developing countries in such treaty negotiations.

#### *Open-Source Software for EOI*

At present, the technology architecture for exchanging tax information is expensive and burdensome for developing countries. Developed countries demand safety and confidentiality standards in place which are not always practical for developing countries. There has been progress towards using open-source software for this by the Inter-American Center of Tax Administrations (CIAT). More work in this regard will allow developing countries to fully benefit from the international legal instruments available.

### *Risk Based Auditing*

Capacity building on risk-based tax auditing is needed for developing country tax officials. This will enable them to make more effective use of the information obtained through EOI agreements.

## **Taxation of the Extractive Industries**

### Rationale

Extractive industries form an important source of tax revenue for many developing countries, especially those dependent on commodity exports.

### Expected Outcomes

As requested by the African Tax Administration (ATAF), a Subcommittee on Extractives may consider the drafting of special treaty provisions dealing with the exploration and extraction of natural resources.

## **IV. Any other issue(s) that should be included in the Committee's work plan**

### *UN Multilateral Instrument*

The UN Tax Committee can consider developing a UN version of the BEPS Multilateral Instrument. This tool can focus exclusively on implanting provisions from the UN Model Tax Convention into existing tax treaties. The South Centre has published a [Policy Brief](#) outlining the possible structure of such an instrument.

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