

Making the UN Tax Committee's Subcommittees More Effective for Developing Countries

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International tax standards and the role of the UN Tax Committee's Subcommittees

The importance of Domestic Revenue Mobilization (DRM) in developing countries, including collecting taxes from large Multinational Enterprises (MNEs) through international tax, has been long recognized, including through the Addis Ababa Action Agenda¹ which highlights the need for enhanced international tax cooperation to address challenges faced by developing countries. Despite the many MNEs operating in these countries, tax resources derived from them are limited due to large scale tax evasion and tax avoidance. The United Nations High Level Panel on International Financial Accountability, Transparency and Integrity (UN FACTI) Panel has estimated that the world loses between \$500-600 billion in corporate tax revenue each year due to corporate profit shifting.²

To help developing countries better mobilize tax resources from MNEs' activities, the United Nations sets international tax standards through a 25 Member expert committee called the Committee of Experts on International Cooperation in Tax Matters, in short, the UN Tax Committee (UNTC).³ Over the years, these standards have taken various forms, such as the UN Model Tax Convention, the Practical Manual on Transfer Pricing for Developing Countries,⁴ the Handbook on Avoidance and Resolution of Tax Disputes,⁵ the Manual for the Negotiation of Bilateral Tax Treaties⁶ and the UN Guidelines on the Tax Treatment of Government-to-Government Aid Projects.⁷ These standards have been of tremendous value to developing countries and have provided them with an alternative to the Organisation for Economic Cooperation and Development's (OECD) standards, which reflect the interests of developed countries.

Abstract

New United Nations (UN) Tax Committee Members have been appointed by the UN Secretary-General and among them 13 out of 25 are from developing countries. The Committee sets international tax standards, vital for financing for development, and works mainly through its Subcommittees. However, an unhealthy trend over time has been the disproportionate involvement of business representatives in the Subcommittees, which can be harmful for promoting the interests of developing countries. This policy brief examines this trend and outlines some of the tools available to developing countries to promote their interests in the Subcommittees.

Les nouveaux membres du comité fiscal des Nations Unies ont été nommés par le Secrétaire Général des Nations Unies. 13 des 25 membres nommés sont issus de pays en développement. Le comité produit des standards internationaux en matière fiscale, indispensable pour le financement du développement, et son travail est essentiellement produits à travers des sous-comités. Cependant, la tendance inadéquate depuis des années a été l'implication disproportionnée des représentants des entreprises multinationales dans les sous-comités, ce qui est préjudiciable à la promotion des intérêts des pays en développement. Cette note analyse cette tendance et offre quelques outils disponibles que les pays en développement peuvent utiliser pour promouvoir leurs intérêts au sein des sous-comités.

El Secretario General de las Naciones Unidas (ONU) ha nombrado nuevos miembros del Comité de Expertos en Cooperación Internacional en Cuestiones de Tributación y, entre ellos, 13 de los 25 expertos son de países en desarrollo. El Comité establece normas fiscales internacionales, vitales para la financiación del desarrollo, y trabaja principalmente a través de sus Subcomités. Sin embargo, una tendencia poco saludable a lo largo del tiempo ha sido la participación desproporcionada de los representantes empresariales en los Subcomités, lo que puede ser perjudicial para la promoción de los intereses de los países en desarrollo. Este informe sobre políticas examina esta tendencia y describe algunas de las herramientas de que disponen los países en desarrollo para promover sus intereses en los Subcomités.

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The UNTC can create Subcommittees on issues of relevance. In practice, the bulk of its work takes place through these Subcommittees. These work throughout the year and make recommendations to the Committee which then takes decisions during its two annual sessions. Thus, the functioning of the Subcommittees is vital to the overall performance of the UNTC. The resulting standards directly affect the ability of developing countries to raise revenue. This policy brief therefore examines certain issues in the functioning of the UNTC’s Subcommittees, with some recommendations on how they can be improved.

Worrying trends in Subcommittee composition

The first and most important aspect of the Subcommittees is their composition. The Subcommittees are composed of not just UNTC Members but a wider set of stakeholders. These are country observers, academics, civil society organizations, business representatives and international organizations. The mix of each varies in each Subcommittee. The composition is of critical importance as these participants then carry out the work of the Subcommittee and promote their particular interests. The composition of the Subcommittees gives an indication as to the relevance of the issue for developed or developing countries, as well as which interests are being represented.

After the end of each Membership of the UNTC, all the existing Subcommittees are dissolved. Each new Membership then decides which subcommittee must be created or re-established. A pattern over time can be discerned only for those Committees that remained constant across Memberships.

Public data on Subcommittee composition is available only for two Memberships, 2013-2017 and 2017-2021. Data for 2005-2013 is not yet online.⁸ Making this

data public would be welcome and provide enhanced transparency on the Committee’s functioning.

From the period 2013-2021, the following three Subcommittees remained constant: (1) Transfer Pricing (2) Taxation of Extractive Industries (3) Dispute Resolution.⁹ Figure 1 contains composition data by groups using the UN Tax Committee’s classification system.

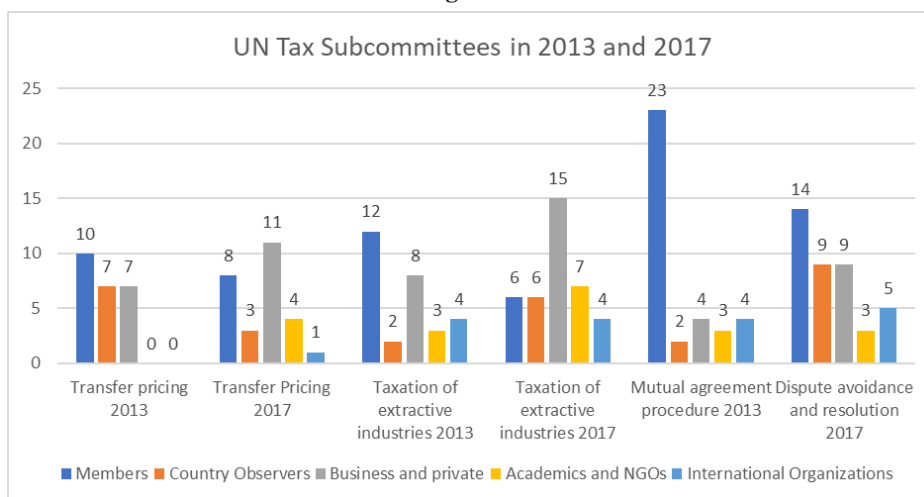
In 2013 the Subcommittee was titled “Mutual Agreement Procedure”, which is a specific type of dispute resolution, and in 2017 it was given a broader title of “Dispute Avoidance and Resolution”. Accordingly, both have been compared as they dealt with the same substantive issue.

As can be seen in Figure 1, there are two clear trends: a decrease in Members’ participation and an increase in the participation of business and private stakeholders. This can be seen especially in the Subcommittees on Extractive Industries and Dispute Resolution, where business representation increased by almost 100% year-on-year. These included major oil and gas companies like Shell and Repsol.

An examination of the Committee’s session reports reveals a disturbing trend where Subcommittees present “guidance notes” and other such documents to the Committee for approval that have been prepared by business representatives.¹⁰ These representatives are also heavily involved in the production of standards such as Handbooks and Manuals. This is a clear conflict of interest where taxpayers are setting the rules by which they pay taxes.

For example, at the twelfth session in 2016, the Subcommittee on extractives presented five notes to the Committee. The note on decommissioning was presented by a representative of British Petroleum (BP), the notes on VAT issues and government take were presented by representatives of Shell, the note on renegotiation of contracts was presented by a former Exxon Mobil tax counsel and the note on permanent establishment issues was pre-

Figure 1:



Source: Authors’ compilation based on UN Tax Subcommittees’ composition data available here:

<https://www.un.org/development/desa/financing/what-we-do/ECOSOC/tax-committee/subcommittees>

sented by a representative of Repsol.¹¹ Thus the energy industry, all based in developed countries, set the agenda and had total domination over the debate that took place.

Business representatives represent business interest and their excessive participation in the development of tax standards should be an issue of high concern for developing countries. This trend is harmful to developing countries because weak standards which excessively favor MNEs will further reduce their abilities to raise revenue.

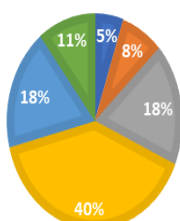
The situation is not too different when the composition of the other stakeholders is examined. Academics typically tend to come from Global North institutions which largely advocate developed country interests and positions. The international organizations that are represented are again largely influenced or dominated by developed countries, such as the International Monetary Fund (IMF), World Bank and the OECD, with the latter being present in practically every Subcommittee. On the other hand, a welcome trend is the increasing involvement of regional bodies such as the African Tax Administration Forum (ATAF) and the Inter-American Centre of Tax Administrations (CIAT).

However, taken together, developed country interests tend to be over-represented. Figure 2 provides the example of the Subcommittee on Extractives.

Here it can be seen that developing country Members - from Ghana, Viet Nam and Liberia - accounted for only 8% of the Subcommittee. Developed country interests were represented by the 5% from the Members, backed by the solid 40% of business participation. At least some of the academics and international organizations also largely represented developed country interests. These could and probably did overwhelm the minuscule and under-resourced developing country voices.

FIGURE 2: COMPOSITION OF EXTRACTIVE INDUSTRIES SUBCOMMITTEE 2017

■ Developed Country Members ■ Developing Country Members
 ■ Country Observers ■ Business and private
 ■ Academics and NGOs ■ International Organizations



Source: Authors' compilation based on UN Tax Subcommittees' composition data available here: <https://www.un.org/development/desa/financing/what-we-do/ECOSOC/tax-committee/subcommittees>

Perils of "Multistakeholderism"

This domination of the agenda by private interests - which benefit developed countries - is being justified under the new label of "multistakeholderism". This must be seen with caution because experience in other forums that set international standards on issues such as health and the Internet has raised concerns about the influence of large corporations and other actors.¹² Their inclusion in standard-setting poses challenges to poor and developing countries, who often find it difficult to match the resources of these actors. This was even raised in a 2012 report¹³ by the UN Secretary-General to the Economic and Social Council (ECOSOC) on the role of the UNCTC:

"50. Most members are of the view that the limited presence of developing countries in the work of subcommittees is due to lack of funding. In addition, a related observation has been made that, owing to the fact that members of subcommittees work pro bono and are required to fund their own travel, this work attracts people with more financial means. This not only results in a representational imbalance between developing and developed countries, but also in a disproportionate number of participants from the business sector being represented on certain subcommittees. Efforts are being made to address such imbalances, including through coordinators actively seeking balanced views, meeting whenever possible in developing countries and encouraging the participation of developing countries at expert group meetings for which some financial support for attendance may be possible. There are, nevertheless, systemic risks to the integrity of some of the work of the Committee and to achieving its objectives unless more thoroughgoing support of the subcommittee system is provided."

Tools available to promote developing country interests in the Subcommittees

Despite the grim scenario so far, there are several tools available through which developing country Members can take action to ensure that their interests are promoted in the Subcommittees.

Practices and Working Methods

The rule of law is a powerful weapon in the hands of the dispossessed for correcting wrongs.

In the case of the UN Tax Committee, these rules are developed in the document known as the "Practices and Working Methods for the Committee of Experts on International Cooperation in Tax Matters."¹⁴ These were developed late into the UNCTC's existence but nevertheless form a welcome basis to its further institutionalization and evolution.¹⁵ There are several useful provisions in the Working Methods that can be used by the Members.

Inclusion of Developing Country Tax Officials

Under rule 59 of the Working Methods, if a Member is already part of a Subcommittee or is interested in joining it, they can recommend participants. This can be used to bring in more developing country voices. It is especially recommended that tax officials from developing countries be included in this manner. Given the nature of cross-

country alliances, Members can also nominate tax officials from other countries. It is vital that the officials who are recommended are either actively involved in or have experience with international taxation, such as treaty negotiation, transfer pricing or exchange of information. This will maximize their effectiveness as they will be direct stakeholders.

Involving more tax officials will also boost the efficacy of developing country Members as they will have additional support in their work. As the UNTC is an expert body, the Members act in their individual capacity. This often means they are not aided in their duties by their domestic authorities as it is seen as "personal". Hence, having more tax officials will augment their efforts.

Prevention of Excessive Business Involvement

The same rule also allows Members to reject Subcommittee participants both at the time of its creation and subsequently. This can be used to limit excessive business involvement. Rule 59 states,

"The Coordinator is responsible for determining the Observers who are participants in the Subcommittee in consultation with the Chairperson, Members who are, or have expressed interest in, participating in the Subcommittee and the Secretariat. The initial list of participants in a Subcommittee must be presented to the Committee for approval. Subsequent changes to the list of participants do not have to be approved by the Committee unless the proposed addition or removal of an Observer is opposed by a Member who is participating in the Subcommittee."

However, here there are two ambiguities in the rules. It is not clear how exactly the Committee will approve the list of participants. It can be specified whether this will be through majority voting and if so what kind. Secondly, it is not clear if a Member who is part of the Subcommittee exercises veto power over appointments, and if not how such disagreements can be resolved.

Another rule that can be used is rule 55 which states that the "composition of Subcommittees should include a majority of Members and State Observers unless, on a recommendation from the Coordinator of a particular Subcommittee, the Committee agrees to a different composition of the particular Subcommittee." Again, the word "agrees" needs more clarity, as to what kind of voting procedure will be used. Furthermore, as stated, the Coordinator can single-handedly change the composition of the Subcommittee. This will significantly impact its working and poses a danger especially if the Coordinator is from a developed country or is acting in their interests. It is preferable that the support of a majority of the Committee's Members is needed to enact this change.

Limiting involvement to Members and Country Observers

Another rule available to Members is rule 50 where the "Committee may decide to limit participation in a Subcommittee to only Members or to Members and

Observer States." This will keep out the business lobbies and can and should be used to the fullest, especially for the important Subcommittees such as on the Model Convention or Transfer Pricing. This will give the Subcommittees more of a *de facto* intergovernmental character and allow tax officials to thrash out hard national interests.

Way forward to enhance the work of Subcommittees

Mandatory Member consultation in preparing the agenda

Rule 62 states that "the agenda for a Subcommittee meeting will be prepared by the Coordinator of the Subcommittee, after consultation with the Secretariat, and the participants of the Subcommittee, **as necessary**" (emphasis added). Accordingly, the Coordinator may find that it is not necessary to consult participants in the Subcommittee in preparing the meeting agenda, which is of vital importance, and thereby ignoring relevant issues developing countries have raised. The phrase "as necessary" can be removed and Subcommittee Members' consultation can be made mandatory in preparing the Subcommittee's meeting agenda.

Limited number of Subcommittees

Each Subcommittee takes up time and resources of the Committee Members. Accordingly, only a small number should be created which correspond to the interests of Members. The mandate of these should also be carefully decided and kept as precise as possible.

Developing Country leadership

Given the key role of the Subcommittee Coordinator, developing countries should aim to lead the important Subcommittees, such as on the UN Model Convention, Transfer Pricing, Dispute Resolution and Practices and Procedures. The latter is of particular significance as this Subcommittee updates the Working Methods.

Conclusion

The Subcommittees are the key sub-units of the UN Tax Committee and they must function in a manner which will enable the Committee to deliver its mandate, which is to give special emphasis to the interests of developing countries. It is imperative to ensure a composition of Subcommittees which promotes the interests of developing countries rather than those of businesses largely hosted in developed countries. The present trend of disproportionate participation of business in the Subcommittees may be harmful for developing countries. There are several rules available in the UN Tax Committee's Practices and Working Methods which can be used by Committee Members from developing countries to counter this.

Annex

Comparison of the Composition of Subcommittees 2013 and 2017

	Transfer pricing 2013	Transfer Pricing 2017	Taxation of extractive industries 2013	Taxation of extractive industries 2017	Mutual agreement procedure 2013	Dispute avoidance and resolution 2017
Members	10	8	12	6	23	14
Country Observers	7	3	2	6	2	9
Business and private	7	11	8	15	4	9
Academics and NGOs	0	4	3	7	3	3
International Organizations	0	1	4	4	4	5
TOTAL	14	19	17	38	13	26

Endnotes:

¹ Addis Ababa Action Agenda of the Third International Conference on Financing for Development. Available from https://sustainabledevelopment.un.org/content/documents/2051AAAA_Outcome.pdf.

² *Financial Integrity for Sustainable Development, Report of the High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda* (February 2021). Available from https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/602e91032a209d0601ed4a2c_FACTI_Panel_Report.pdf.

³ See <https://www.un.org/development/desa/financing/what-we-do/ECOSOC/tax-committee/about>.

⁴ United Nations Department of Economic and Social Affairs, *Practical Manual on Transfer Pricing for Developing Countries 2021*, Document ST/ESA/377. Available from <https://www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2021-10/Transfer%20Pricing%20with%20new%20cover.pdf>.

⁵ United Nations, *Handbook on the Avoidance and Resolution of Tax Disputes* (New York, 2021). Available from <https://www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2021-10/Dispute%20Avoidance%20and%20Resolution%20English.pdf>.

⁶ United Nations Department of Economic and Social Affairs, *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries 2019*. Available from <https://www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2020-03/manual-bilateral-tax-treaties-update-2019.pdf>.

⁷ United Nations, *Guidelines on the Tax Treatment of Government-to-Government Aid Projects* (New York, 2021). Available from <https://www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2021-09/G-to-G%20PDF.pdf>.

⁸ United Nations Department of Economic and Social Affairs, *Financing, Recent Subcommittees*. Available from <https://www.un.org/development/desa/financing/what-we-do/ECOSOC/tax-committee/subcommittees>.

⁹ In 2013, the Subcommittee was titled “Mutual Agreement Procedure”, which is a specific type of dispute resolution, and in 2017 it was given a broader title of “Dispute Avoidance and Resolution”. Accordingly, both have been compared as they dealt with the same substantive issue.

¹⁰ United Nations Economic and Social Council, *Official Records 2016, Supplement No. 5, Committee of Experts on International Cooperation in Tax Matters, Report on the twelfth and thirteenth sessions* (11-14 October 2016 and 5-8 December 2016), document E/2016/45-E/C.18/2016/7. Available from https://www.un.org/ga/search/view_doc.asp?symbol=E/2016/45.

¹¹ Profile of Alvaro De Juan Ledesma. Available from https://www.xing.com/profile/Alvaro_DeJuanLedesma (accessed 15 October 2021).

¹² Transnational Institute, *Multistakeholderism: A Critical Look, Workshop Report* (Amsterdam, March 2019). Available from <https://www.tni.org/files/publication-downloads/multistakeholderism-workshop-report-tni.pdf>.

¹³ United Nations Economic and Social Council, *Role and work of the Committee of Experts on International Cooperation in Tax Matters*. Available from <https://www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2020-03/N1224793.pdf>.

¹⁴ See *Practices and Working Methods for the Committee of Experts on International Cooperation in Tax Matters*. Available from <https://www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2021-08/Practices%20and%20Working%20Methods%20cover%20and%20color.pdf>.

¹⁵ Abdul Muheet Chowdary, “UN tax committee gets a boost through new working methods”, *SouthViews* No. 181 (Geneva, South Centre, 25 June 2019). Available from <https://mailchi.mp/southcentre/southviews-un-tax-committee-gets-a-boost-through-new-working-methods?e=0fb8a9986b>.

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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.

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