Ten Years of Attempts to Reform International Tax

- **Base Erosion & Profit Shifting (BEPS) Project**
  - OECD 2012 > G7 > G20 2013
  - First package of reports 2015:
    - patch-up of existing rules, no proposals on Action 1 Digitalisation
  - Country-by-Country Reports: to MNE Home Country, restricted access, not public
  - Inclusive Framework 2016: open to all states accepting commitments
  - Addressing Tax Challenges of Digitalisation 2018 report
  - G24 proposals December 2019

- **National Measures**
  - Digital Services Taxes: **India** (EL), **France** + others – **US** trade countermeasures
  - **US** reforms 2016: GILTI & BEAT
  - **UK**: Diverted Profits Tax, **Australia**: Combating Multinational Tax Avoidance
  - **India** & **Nigeria**: taxable nexus for Significant Economic Presence

- **UN Tax Committee**
  - Article 12A: Withholding tax on Fees for Technical Services (& option for all services) 2017
  - Article 12B: WT + net tax option on income from Automated Digital Services 2021
BEPS Phase 2

- **Pillar 1**
  - c.100 largest & most profitable MNEs (excluding finance & extractives)
    - >€20b turnover + 10% global profit rate + in-country sales €1m (€0.25m if < €40b GDP)
  - Allocates 25% of profits >10% to countries by sales revenue
  - Existing “Arm’s Length” rules continue for rest of profits & for all other MNEs
  - MNE’s self-assessment return submitted to Home country, verified by Panel (if required)
  - Mandatory binding dispute resolution for Amount A and related issues (elective for some LICs)
  - removal of DSTs & ‘other similar measures’ (online sales? mobile money?)
  - Implementation
    - Pillar 1: Multilateral Convention + model rules for domestic law
      - ratification by critical mass of countries by 2023. USA?
  - Pillar 2: GLOBE: model rules + implementation framework
    - STTR: model treaty provision + coordinated process for implementation (MLI)
      - commitment by IF members with CIT rate <9% to implement in treaties with LICs on request

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  - Package = political commitment, not a single binding international agreement
Options for African Countries

- **Participation in the Package**
  Pillar 1: cost/benefits of Amount A (including withdrawal of DSTs)
  Pillar 2: GLOBE: is UTPR improvement on alternative base protection measures? STTR: scope (seems limited) & rate (seems low)

- **Strengthen Tax on Non-Resident Companies**
  Home countries’ application of 15% ETR removes investment disincentive (in any case tax exemptions for non-residents are disincentive to local presence)
  Withholding taxes on (gross) payments
  Net Profit taxation: SEP + formulaic allocation of profits (India, Nigeria)
  Should cover all services, not only digitalised
  Alternative Minimum Tax

- **Review existing tax treaties**
  Minimum standard: power to tax all income derived from activities performed in country
  Services: single broad article (Commentary to UN model 12A), or
  UN model 12A + 12B (includes net income option)
The Institutional Architecture

- **Institutional Imbalance & Fragmentation**
  Only political accountability of Inclusive Framework is to G7/OECD/G20
  Lack of coordination between UNTC, WB, IMF & OECD/IF

- **A Framework Convention on Tax Cooperation (FCTC)**
  similar to Framework Convention on Climate Change (FCCC)
  Broad obligations on Tax Cooperation
    - mutual administrative assistance in tax assessment & collection
    - aim to tax activities where they take place
  Institutional Framework
    - COP: high political level
    - specialised technical bodies
  Umbrella for existing (& new) Conventions and Standards
    - e.g. MCMAA & MLI, now hosted by OECD
  Subsume existing global bodies
    - UN Committee of Experts
    - Global Forum on Tax Transparency & Exchange of Information
    - Inclusive Framework

- Further details: Chowdhary & Picciotto South Centre Policy Brief 21, November 2021
  [https://www.southcentre.int/tax-cooperation-policy-brief-21-november-2021/](https://www.southcentre.int/tax-cooperation-policy-brief-21-november-2021/)
Many Thanks!

https://www.bepsmonitoringgroup.org/