

## **South Centre Contributions on ‘taxation, illicit financial flows and human rights’ to the report of the Independent Expert to the UN General Assembly, 77th session**

### **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 has [54 Member States](#) coming from the three developing country regions of Africa, Asia, and Latin America and the Caribbean. It 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.

The South Centre offers its comments [to the report of the Independent Expert](#) on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights to the General Assembly, 77th session.

### **II. Specific Comments**

- i. What specific challenges in international tax governance call for reform? Why? Are there examples or initiatives in the past that might serve to guide this process?*

The fact that there exists no single, universal, intergovernmental, international tax body remains the key problem in international tax governance. The OECD remains accountable solely to its Member States, which is governed by the richest countries in the world. The UN Tax Committee, a subsidiary body of ECOSOC, remains an independent, expert body, whose outputs are non-binding.

The OECD/G20 Inclusive Framework (IF) has no statutory basis, no rules of procedure, no transparency, limited accountability (only to the G20 and OECD countries), and arguably no democracy as it is unclear if voting ever took place in any of its bodies, such as the IF Plenary, the Steering Group or the Working Parties. No public record of its deliberations are available and there is no disclosure of how decision-making takes place. There is also a complete lack of transparency in the

selection process of the Steering Group, heads of the Working Parties, and other related bodies.

Accordingly, there is a need for an *intergovernmental tax body* under the auspices of the United Nations, on the principles of universality, democracy, transparency and accountability. The Group of 77+China (G77+China) has long called for this fundamental reform, which is fully supported by the South Centre.<sup>1</sup>

- ii. What should be the nature, scope and purpose of an international tax reform that supports human rights? Which alternatives could be considered and how do they differ from each other and from existing efforts of better collection and regulation of international taxation, for example from the OECD/G20 Agreement achieved in 2021, and its Two Pillar Solution?*

An international tax reform that supports human rights would be one that ensures ‘Maximum Available Resources’. It would mean a fairer and more equitable distribution of the billions of dollars of profits of multinational corporations to support sustainable development and human rights all over the world. Such a reform would correct the imbalance in taxing rights that has existed since the 1920s, and fundamentally reverse the principle that all taxing rights belong to the country of residence by default, and instead allocate all taxing rights to source countries by default. This becomes imperative nowadays when the digitalization of the economy is changing radically how the society and economy is functioning.

This essential principle, of the priority of source countries in taxing rights, must be reflected in all international standards, including the Two Pillar solution that is presently being negotiated. In practical terms, some of its manifestations would be as follows:

- a) The allocation of total profits to market jurisdictions under Amount A of Pillar One, instead of only a minuscule portion of residual profits.<sup>2</sup>
- b) The inclusion of a broader scope of financial services and all income from international shipping<sup>3</sup> in the scope of Pillars One and Two, respectively.
- c) The priority of the Under Taxed Payments Rule in the GloBE rules of Pillar Two.

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<sup>1</sup> Comments on the OECD Secretariat Proposal for a “Unified Approach” under Pillar One (November 2019). Available from: <https://www.southcentre.int/scti-submission-november-2019/>

<sup>2</sup> Ibid.

<sup>3</sup> Statement by the South Centre on the Two Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (13 OCTOBER 2021). Available from: <https://www.southcentre.int/wp-content/uploads/2021/10/SC-Statement-on-IF-Two-Pillar-Solution-13-Oct-2021.pdf>

- d) The default allocation of income from dividends, interest and royalties to the country of source in the UN and OECD Model Tax Conventions.
- e) The allocation of all residual rights for taxing income from capital gains to the country of source in the UN and OECD Model Tax Conventions.

Such an international tax reform would generate 'Maximum Available Resources' that would enable all countries, especially the developing countries, to fulfil their human rights obligations.

- iii. What would be the advantages/disadvantages of a single global tax entity? How would a global tax body ensure equal representation of the interests, needs and concerns of different States, particularly low and middle-income countries? What would be the advantages/disadvantages of regional fiscal or tax entities?*

A single global tax entity at the United Nations would solve fundamental problems in the international tax architecture:

1. The duplication of efforts through the plethora of institutions that presently exist such as the UN Tax Committee, OECD, OECD/G20 Inclusive Framework and Global Forum on Transparency.
2. The ability of all countries to participate in international tax rule making on a 'one country one vote' principle and hence genuinely equal footing. This will also enable them to break deadlocks in negotiations in a democratic, transparent and accountable manner, namely through voting.
3. The accountability of such a body to all countries and not just a few.
4. The increased likelihood that its outputs will be adopted globally.

Regarding its composition, there are well established precedents at the UN for inclusion of different categories of States in universal bodies. A 2010 draft resolution<sup>4</sup> by the G-77+China (E/2010/L.10) for creating an intergovernmental tax body at the UN provides such a formula. The resolution states:

The Committee shall consist of representatives of forty-seven States to be elected by the Economic and Social Council from among the States Members of the United Nations for four-year terms, with due regard to equitable geographical distribution.

The regional allocation of seats shall be according to the following pattern:  
(a) thirteen members from African States; (b) thirteen members from Asian States;  
(c) eight members from Latin American and Caribbean States; (d) six members from Eastern European States; and (e) seven members from Western European and other States.

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<sup>4</sup> See: <https://digitallibrary.un.org/record/685632?ln=en#record-files-collapse-header>

Regional fiscal and tax entities, such as the African Tax Administration Forum (ATAF), West African Tax Administration Forum (WATAF), Inter American Centre for Tax Administrations (CIAT) and Study Group for Asian Tax Administration and Research (SGATAR) are important institutions that respond to the needs of regions. These can and should be further strengthened and play a more active role in standard setting. Important examples are the ATAF Model Tax Convention, the Southern African Development Community (SADC) Model Tax Agreement for the Avoidance of Double Taxation; the East African Community Double Tax Agreement; the SADC Agreement on Assistance in Tax Matters of 2012 and ATAF's African Agreement on Mutual Assistance in Tax Matters.

- iv.* What measures and mechanisms should be put in place to ensure that a global tax entity incorporates human rights principles and priorities in its processes and outcomes?

As mentioned earlier, such a global tax body must function on the principles of universality, democracy, transparency and accountability.

- v.* What would be the arguments in favor of a UN Convention on Tax? What would be the benefits of such an instrument for developing countries, including Small Island Developing States and Least Developed Countries?

A UN Convention on Tax can provide the statutory basis for the creation of a UN Tax Body. It can be structured as a UN Framework Convention on Tax Cooperation (UN FCTC), which will give it the flexibility to bring existing institutions such as the Inclusive Framework and Global Forum under its control. It can also “act as an umbrella for existing multilateral tax conventions and instruments in the field of tax cooperation. These could include, in particular, the multilateral convention on Mutual Assistance in Tax Matters (MCMAA), and the multilateral instrument to implement treaty provisions on base erosion and profit shifting (MLI). Associating these existing treaties with the UN FCTC would achieve the important aim of streamlining the existing institutional architecture of international tax.”<sup>5</sup>

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<sup>5</sup> Streamlining the Architecture of International Tax through a UN Framework Convention on Tax Cooperation (Tax Cooperation Policy Brief 21, November 2021) By Abdul Muheet Chowdhary and Sol Picciotto. Available from: [https://www.southcentre.int/wp-content/uploads/2021/11/TCPB21\\_Streamlining-the-Architecture-of-International-Tax-through-a-UN-Framework-Convention-on-Tax-Cooperation\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2021/11/TCPB21_Streamlining-the-Architecture-of-International-Tax-through-a-UN-Framework-Convention-on-Tax-Cooperation_EN.pdf)

A Policy Brief published by the South Centre has detailed the advantages, structure and function of a UN FCTC.<sup>6</sup>

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<sup>6</sup> Ibid.