

South Centre Inputs to UN Secretary-General for “Promotion of inclusive and effective tax cooperation at the United Nations”

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 [55 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 organization’s flagship program for promoting South-South cooperation among developing countries in international tax matters.

The South Centre submits the following comments and recommendations to the UN Secretary-General for the report being prepared in response to [UN General Assembly resolution 77/244](#) on “Promotion of inclusive and effective tax cooperation at the United Nations.”

II. Introduction

The South Centre welcomes UN General Assembly resolution 77/244, led by the African Group and supported by many other countries. It marks a historic step forward towards strengthening international tax cooperation at the United Nations, and towards a UN Tax Body. Both of these are long-standing demands of many countries, and particularly, the developing world articulated through the Group of 77+China.

The resolution decides to begin “intergovernmental discussions in New York at United Nations Headquarters on ways to strengthen the inclusiveness and effectiveness of international tax cooperation through the evaluation of additional options, including the possibility of developing an international tax cooperation framework or instrument that is developed and agreed upon through a United Nations intergovernmental process, taking into full consideration existing international and multilateral arrangements.”

These comments outline the deficiencies in the governance of the present international tax system, highlight the gaps and specific problems faced and, finally, explore what solutions can be implemented to solve them.

III. Limitations of Existing International Tax Governance

i. Duplication of Efforts

At present, there is a plethora of international tax fora and other bodies which have overlapping mandates and memberships, leading to duplication of efforts and competing standards. For example, the OECD Inclusive Framework, Global Forum on Exchange of Information and the UN Tax Committee all work on the same issues such as taxation of the digital economy and exchange of information, to name a few.

ii. Lack of a genuinely universal and intergovernmental tax forum

There exists at present no single forum where international tax standards are negotiated which is genuinely universal *and* intergovernmental. The OECD Inclusive Framework (IF) and Global Forum (GF) both lack a statutory basis. There is no underlying treaty, convention or international agreement between sovereign States which has set up these fora and other bodies. Accordingly, their functioning remains haphazard and arbitrary as it is not rules-based.

Thus, contrary to popular perception, the OECD IF and the Global Forum are not *de jure* (by law) but only *de facto* (in fact) intergovernmental forums. Further, they are not universal. However, it is acknowledged that while not universal, both of them enjoy wide participation including from many developing countries.

The UN Tax Committee by contrast has a statutory basis (ECOSOC resolution [2004/69](#)), universal membership (as every UN Member State is qualified to participate). However, it is not intergovernmental; it is only an expert body.

iii. Agenda setting not inclusive

The IF and GF dominate international tax rule making. Their influence continues to grow as more countries, especially developing countries, in the absence of a universal forum or body, join them. However, their agenda and workplan are largely dominated by the interests of OECD and G7 countries. This can be seen across a range of issues such as banking secrecy, Base Erosion and Profit Shifting (BEPS), taxation of the digital economy and carbon taxation. Banking secrecy was only taken up as a priority after it began to harm the developed countries themselves, work on taxation of the digital economy was speeded up after unilateral measures began to affect MNEs

headquartered in the Global North, and carbon taxation is now being promoted to justify the European Union's Carbon Border Adjustment Mechanism (CBAM) which has been characterized as a new manifestation of 'trade protectionism'.¹

Thus, in the trending influential forums, in practice, the agenda setting process is not inclusive and prioritises the interests of developed countries.

The UN Tax Committee, by contrast, is more inclusive and is able to take up issues affecting all interest groups – developing or developed countries. However, its relatively weaker status as an expert body with limited resources means its outputs lack the heft of the IF and GF.

iv. Limited accountability

The IF only reports to the OECD and G20 and not to all countries. However, given that the IF is not a rules-based, statutory forum or body, there is a lack of clarity on how even the OECD and G20 can hold it accountable.

v. Un-democratic nature of Inclusive Framework

The IF decision-making claims to make decisions by “consensus”, meaning without voting, but this method leaves little room for developing countries to effectively influence the IF outcomes. Instead, voting is core to the UN's decision-making process, with the exception of the veto in the Security Council. The use of the voting system has been key to the UN Tax Committee being able to produce progressive international tax standards such as Articles 12A (Fees for Technical Services) and 12B (income from Automated Digital Services).

vi. Opaque Functioning of Inclusive Framework

As noted, the IF has no statutory basis. It has no formal rules of procedure. Accordingly, there is no clarity as to how it or its so called “subsidiary” bodies like the Task Force of the Digital Economy are created and how they should function.

IV. Way Forward: Need, Structure and Function of a UN Tax Cooperation Instrument

Going forward, reforms are needed to the governance of the international tax system such that it addresses the limitations mentioned above. The reforms must therefore ensure the following objectives:

1. Create a genuinely universal, intergovernmental tax body

¹ <https://www.ft.com/content/67c1ea12-7495-43ff-9718-7189cef48fd6>

2. Agenda setting that is genuinely inclusive and takes into account the concerns of all countries – developed or developing.
3. De-duplication of efforts, or maximize synergies
4. Accountability to all countries through clear mechanisms
5. Democratic decision-making
6. Transparent functioning through clear rules
7. Capacity building for developing countries
8. A legal or statutory basis to all of the above

The last point is very important: all the rules necessary to achieve the objectives noted in the list above should have a clear statutory basis. This will strengthen the existing international tax system and make it genuinely rules-based. This necessitates the creation of a new international tax cooperation *instrument or framework* developed and agreed through a UN intergovernmental process. For the rest of this submission, for the sake of simplicity, the instrument will be referred to as ‘the UN Tax Cooperation Instrument (UNTCI)’.

The next question is how the UNTCI could achieve the objectives contained in the aforementioned list. The proposed organization and functions of the UNTCI are as follows:

i. Creation of a Conference of Parties

The Conference of Parties (COP) to the UNTCI will be open to all UN Member States. This will be the ‘intergovernmental tax body’ long demanded by many countries, particularly the developing world. All parties to the UNTCI would be represented at the COP which would monitor the implementation of the Convention and any other legal instruments that the COP adopts, and take the decisions necessary to promote its effective implementation through institutional and administrative arrangements.

In a way, the UNCTI would be analogous to the present system where G20 and OECD countries mandate the OECD Secretariat to find solutions to the tax problems they face, with the crucial difference that instead of the mandate coming from a select few countries, it would come from a COP with universal participation. Thus, the COP to the UNTCI could provide the forum through which all countries can work on international tax norm setting on an equal footing.

ii. Ensuring accountability of all existing international tax institutions to one universal body

The UNTCI will ensure that all the existing international institutions such as the IF, the GF, the Inclusive Forum on Carbon Mitigation and the UN Tax Committee all

report to through clear mechanisms and are accountable to the COP to the UNCTCI. This builds on the FACTI Panel Report which recommended that the GF becomes a “related organization” to the UN system, as was done with the International Organization for Migration (IOM). This approach can be extended to the other bodies mentioned above. Placing them under the umbrella of a new UN-sponsored UNCTCI would enable them to receive overall guidance and political oversight from the COP instead of only G20 and OECD countries.

iii. Inclusive Agenda Setting

The COP to the UNCTCI which, as noted, will have universal membership, will decide the international tax agenda and workplan through a rules-based, democratic, transparent and inclusive decision-making process.

iv. De-duplication of efforts

The agenda decided by the COP to the UNCTCI will then be carefully allocated to the existing bodies/ fora to minimize duplication of efforts and maximise synergies. New institutions, if necessary, will be created through clear processes and democratically agreed upon mandates.

v. Creation of a Secretariat

There will be a Secretariat to service the UNCTCI.

vi. Association of existing international tax rules

All existing international tax agreements, such as the BEPS MLI and MAAC, can be associated with the UNCTCI such that their implementation is coordinated by a single Secretariat for all related agreements on international tax cooperation which are open to all states. This has occurred, for example, with the UN Office on Drugs and Crime, which acts as the secretariat to several existing UN conventions, such as those on narcotic drugs, and the UN Convention Against Corruption.² Another example is the WIPO Secretariat, which administers a large number of IP conventions.

vii. Creation of new rules

The COP to the UNCTCI could also create new international tax rules through a variety of international law instruments, ranging from protocols and agreements on specific issues, to codes of conduct which can establish standards directly for legal persons. For example, the Kyoto Protocol and the Paris Agreement were created through the

² https://www.unodc.org/images/about-unodc/activity-areas_1100x1251px.jpg

UN FCCC, and the Protocol to Eliminate Illicit Trade in Tobacco Products was created through the WHO FCTC. Regarding codes of conduct, one example is the Code of Conduct for Responsible Fisheries adopted by the Food and Agriculture Organization (FAO) Conference in 1995. The COP to the UNTCI could similarly decide to adopt new protocols or codes of conduct as necessary.

viii. Deciding whether rules are binding or voluntary

Tax sovereignty lies at the core of the international tax system, and for many countries it is of critical importance that they have the ability to pick and choose international tax rules in their national interest. Thus, the COP to the UNTCI will also be able to decide whether the rules it produces are binding or voluntary. Codes of conduct, for example, tend to have a voluntary nature while provisions in protocols and agreements have a binding nature. The COP to the UNTCI can choose the appropriate instrument for each issue, depending on the interests of countries.

ix. Accountability to all Countries

The COP to the UNTCI will be the ultimate body to which the existing fora report to.

x. Democratic Decision-making and Transparent Functioning

The UNTCI will ensure that all the existing fora function on the basis of rules of procedure which include democratic decision-making through voting as an essential component. Further, the rules of procedure can bring maximum transparency and accountability in the functioning of all the existing fora, especially the IF and the GF.

xi. Capacity building for developing countries

Finally, to ensure that developing countries can take maximum advantage of the UNTCI, part of its mandate must include capacity building of developing country representatives, so they are well informed of issues and are able to articulate their interests. This is in line with the principles of fairness and affirmative action, and can serve to level the playing field between developed and developing countries.

V. Conclusion

The UN Tax Cooperation Instrument, as outlined above, can promote inclusive and effective tax cooperation at the United Nations. The South Centre stands ready to provide further analysis and support in this regard.
