




Submission to the Office of the High Commissioner for Human Rights



***Call for Inputs on “Best Practices in
the Contribution of Development to
the Promotion and Protection of
Human Rights in the context of
recovery from the COVID-19
pandemic”***

May 2024

Introduction

The current global financial architecture enables an annual loss of some US \$480 billion in tax revenue through cross-border tax abuse each year.¹ Such a reality is manifestly incompatible with the development of a just and inclusive international economy that serves to advance the human rights agenda.

Meanwhile, negotiations on a new framework tax convention on International Tax Cooperation (UNFCITC) are moving forward at the United Nations following the approval of a resolution brought forward by the Africa Group.² This development effectively breaks the Organisation for Economic Cooperation and Development's (OECD) 60-year dominion over standard-setting in international taxation. As explained in the sections below, the OECD's long-standing stewardship of international tax cooperation has failed to deliver any meaningful reforms. Both the negotiations and its proposed 'two-pillar solution' consistently and systematically sidelined the voices and interests of poorer countries.

Intergovernmental organisations are subject to international law and face duties to ensure both their processes and activities are in compliance with human rights norms and standards.³ The duty of international cooperation,⁴ together with the principles of non-discrimination and maximum available resources, meanwhile oblige states to ensure their participation in such fora serves to facilitate, rather than impede, the generation of resources for the progressive realisation of economic, social and cultural rights in all countries.⁵ The predictable result of the ongoing syphoning of revenue away from government coffers is chronic shortfalls in the resourcing of fundamental human rights such as health, education, water and sanitation, housing and adequate standards of living. Modelling by the Government Revenue and Development Estimations initiative at the Universities of St Andrews and Leicester demonstrates that, were it not for the revenue lost to crossborder tax abuse each year:⁶

¹ Tax Justice Network, *State of Tax Justice 2023* (2023) <<https://taxjustice.net/wp-content/uploads/2023/08/State-of-Tax-Justice-2023-Tax-Justice-Network-English.pdf>> [accessed 2 August 2023].

² UNGA Second Committee, 15 November 2023, Promotion of inclusive and effective international tax cooperation at the United Nations : revised draft resolution, <https://digitallibrary.un.org/record/4027784?ln=en>

³ Committee on Economic Social and Cultural Rights, Substantive Statement: Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights, (CESCR, 2016). See:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=E%2FC.12%2F2016%2F1&Lang=en ; See also, International Law Commission, Draft articles on the responsibility of international organizations, (ILC, 2011).

https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_11_2011.pdf

⁴ Committee on Economic, Social and Cultural Rights' General Comment No. 3: The Nature of States Parties' Obligations. UN Doc. E/1991/23 (1990), (OHCHR, 1991).

⁵ ETO Consortium, *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* (FIDH, 2013). See: fidh.org/IMG/pdf/maastricht-eto-principles-uk_web.pdf

⁶ GRADE, 2023. The impact of tax abuse on human rights on all countries. https://medicine.st-andrews.ac.uk/grade/wp-content/uploads/sites/39/2023/10/GRADE-PB_-SOTJ2023_ALL_annual.pdf

- 15 million people would have their right to basic water.
- 32 million their right to basic sanitation.
- 3.2 million additional children would attend school.
- 101 additional children would survive every day: 36,900 each year.
- Each day 11 additional mothers would not die during childbirth: 3,999 each year.

Failure of the OECD BEPS process

The OECD's Base Erosion and Profit Shifting initiative (BEPS) was initiated in 2013 with the stated aim of tackling cross-border tax abuse by multinational companies. The resulting proposal comprises two 'Pillars', with Pillar One focusing on the distribution of taxing rights between countries, while Pillar Two centres on establishing a globally-agreed minimum corporate tax rate so as to put an end to the 'race to the bottom'.⁷

In both areas, its final proposal manifestly fell short of anything that could deliver the meaningful changes needed to confront the injustices embedded in crossborder tax abuse. Under Pillar One, developed economies would receive 77 percent of additional revenue collected⁸ - with the G7 economies accounting for 71 percent – while developing countries would collect 23 percent and the benefit for least developed countries would be null.⁹ High-income countries and investment hubs would likewise be the big winners under Pillar Two, with over 80 percent of revenue gains accruing to these two groupings.¹⁰ Low-income countries, meanwhile, would receive just 0.03 percent of additional revenue, which is significantly lower than their share of corporate income tax in 2019 (0.3 percent).¹¹ Similarly, most of the revenue gained by developing countries under Pillar Two would accrue to China.¹²

Recent estimates show the overall revenue gained under Pillar One would be approximately US \$24 billion,¹³ while the gain under Pillar Two would fall in a range between \$68 and \$105 billion.¹⁴ Meanwhile, US \$311 billion is lost to abusive crossborder tax practices by multinational corporations each year.¹⁵ As such, the bulk of the revenue

⁷ The 'race to the bottom' refers to the collapse in corporate tax revenue over the past 40 years due to countries competing to outdo each other in their efforts to attract multinational investment through ever-decreasing corporate tax rates and an ever-increasing range of tax incentives. For more on this, see: <https://taxjustice.net/topics/tax-competition-and-the-race-to-the-bottom/>

⁸ Mona Barake, Elvin Le Pouhaër, Tax Revenue from Pillar One Amount A: Country-by-Country Estimates, (EUTO, 2023). https://www.taxobservatory.eu/www-site/uploads/2023/03/wp_202312_.pdf

⁹ Ibidem.

¹⁰ Felix Reitz, Revenue Effects of the OECD Corporate Tax Reform - An Updated Impact Assessment of Pillar Two, (Universitat St Gallen, 2023). See: <https://ile.unisg.ch/wp-content/uploads/2023/07/17-WP-Reitz.pdf>

¹¹ Ibidem.

¹² Ibidem.

¹³ Op cit 8.

¹⁴ Gabriel Zucman, Mona Barake, Paul-Emmanuel Chouc, and Theresa Neef, Minimizing the Minimum Tax? The Critical Effect of Substance Carve-Outs, (EU Tax Observatory, 2021). <https://www.taxobservatory.eu/publication/minimizing-the-minimum-tax-the-critical-effect-of-substance-carve-outs/>.

¹⁵ Tax Justice Network. The State of Tax Justice 2023. See: <https://taxjustice.net/reports/the-state-of-tax-justice-2023/>

lost to tax abuse by MNCs would remain untouched and what benefits would arise would accrue to a handful of Global North nations and China.

It should also be noted that the original ambition of Pillar Two's minimum corporate tax rate collapsed during negotiations.¹⁶ The proposed minimum effective tax rate of 15 percent is well below the existing corporate tax rate of all but a few of the most aggressive tax havens and threatens to exacerbate the race to the bottom by serving as a 'ceiling' rather than a 'floor'. A range of carveouts insisted on by corporate tax havens in the EU now mean that effective rates even below 10 percent are likely still to be possible.¹⁴

That the OECD's stewardship of international tax negotiations failed to deliver an avenue for just or meaningful change is perhaps unsurprising, as it is mandated only to represent its member states - 38 of the world's most developed economies.¹⁷ While countries of the Global South were invited to participate in the OECD process through the 'Inclusive Framework', their voices were systematically sidelined and ignored. Indeed a proposal designed by the G24 on behalf of developing countries¹⁸ was blocked by G7 nations in favour of an alternative agreed bilaterally by the US and France.¹⁹

No less significantly, the OECD has also been beset with controversies over perceived failings of professional standards, with both its Secretary General²⁰ and current head of tax policy linked to private sector tax avoidance scandals in their previous roles.²¹

Moreover, as the Africa Group Resolution gained traction at the UN, the OECD took the unprecedented step of sending letters to ambassadors of various of its members questioning the UN's fitness to oversee tax negotiations and pressing them to block the initiative.²² More recently, it simply ignored a formal communication from a group of eight UN special procedures expressing concern that the 'two pillar solution' was incompatible with fundamental human rights principles and would reify patterns of economic inequality rooted in the historic racial injustices of slavery, colonialism and apartheid.²³

¹⁶ Tax Justice Network, OECD reform weak on corporate tax havens, harsh on poorer countries, 7 October 2019. <https://taxjustice.net/press/oecd-reform-weak-on-corporate-tax-havens-harsh-on-poorer-countries/>

¹⁷ Tax Justice Network, the State of Tax Justice, 2021. See: <https://taxjustice.net/reports/the-state-of-tax-justice-2021/>

¹⁸ At the heart of the problem of corporate tax abuse lies the practice of 'profit shifting', through which individual entities within a multinational group buy and sell to one another at distorted prices so as to pretend an inflated proportion of their profits are 'made' in tax havens. The solution to this is unitary taxation, which taxes a multinational as a single entity and apportions the tax owed to the various countries in which it operates.

¹⁹ The Financial Times, US and France agree deal on digital tax, 20 February 2022. See: <https://www.ft.com/content/76cf4008-3db1-11ea-b232-000f4477fbca>

²⁰ OECD Secretary General Mathias Cormann is alleged to have profited from dealings with former head of PWC Australia during what became known as the TaxLeaks scandal. The Klaxon, 22 January 2024, Firm secretly owned by OECD boss given taxpayer millions. <https://theklaxon.com.au/firm-secretly-owned-by-oecd-boss-given-taxpayer-millions/>

²¹ During her time with KPMG Manal Corwin co-authored a 'tax planning' proposal for Microsoft which would lead to a major scandal. See: KPMG leaked emails concerning 2004 Pitch to Microsoft. <https://www.documentcloud.org/documents/6556275-KPMG-2004-Pitch-to-Microsoft.html>

²² Tax Justice Network, UN resolution for an intergovernmental tax framework: What does it mean, and what's next?, 15 December 2022. <https://taxjustice.net/2022/12/15/un-resolution-for-an-intergovernmental-tax-framework-what-does-it-mean-and-whats-next/>

²³ The letter issued to OECD Secretary General Matthias Cormann is available here: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28676>

New hope: the UN Framework Convention on International Tax Cooperation

Negotiations now underway on a new global tax convention under the auspices of the UN represent a once-in-a-lifetime opportunity for meaningful reform of the international financial architecture. This convention, if designed with a focus on equity and human rights, has the potential to play a pivotal role in diminishing global inequalities and alleviating poverty worldwide by fostering a more democratic and inclusive environment for the creation of global tax rules.

Indeed the UN process was prompted by frustration over the limitations of the OECD, which led the Africa Group to propose a draft resolution in 2022 calling for the commencement of negotiations. This resolution was approved by consensus, and called for the Secretary-General to draft a report assessing the inclusivity and efficacy of current international institutions. The report, released in July 2023,²⁴ recognised progress made over the past decade but underscored the absence of a genuinely inclusive and effective platform for addressing international tax issues. In response, the Africa Group, through Nigeria, introduced another resolution advocating the commencement of negotiations for a UN Framework Convention on International Tax Cooperation (UNFCITC). This resolution received approval by a majority of 125 countries, leading to the establishment of an Ad Hoc Committee tasked with drafting the convention's terms of reference. These terms are expected to be finalised by August 2024.


In order for the new convention to effectively serve the progressive realisation of human rights, it will need to deliver in terms of process, substantive content and institutional structures. At the highest level, the negotiations must be conducted in a way that is fully transparent and which ensures the effective and meaningful participation of all countries, particularly those of the Global South, along with civil society. In its scope and ambition, the final content of the convention will need to offer nothing less than a paradigm shift in global economic governance, reflecting the fact that just tax policies are a critical lever in redirecting economies toward greater equity and social justice. It should establish a transparent and inclusive global governance structure, including a **Conference of the Parties (COP)** and a **Secretariat**.

The UNFCITC must also be designed to mobilise financial resources towards the fulfilment of other international goals and obligations, including the UN Framework Convention on Climate Change, the Convention on Biological Diversity, the Sustainable Development Goals and the UN human rights framework.

The Tax Justice Network's ABCs of tax justice, expanded to ABC (DEFG3), provide a comprehensive set of measures delineating what this must include in thematic terms.

A: Automatic exchange of information. Automatic exchange of information is a data sharing practice that prevents corporations and individuals from abusing bank accounts they hold abroad to hide the true value of their wealth and pay less tax than they should.

²⁴ UN Secretary General, 2023, 'Promotion of Inclusive and Effective International Tax Cooperation at the United Nations



Under automatic exchange of information, a country takes the information it has on the financial activity of individuals and businesses who are operating within its borders but are resident in another country and shares that information with that country.

B: Beneficial ownership transparency. A beneficial owner is the real person, made of flesh and blood, who ultimately owns, controls or receives profits from a company or legal vehicle, even when the company legally belongs, on paper, to another person or entity, like an accountant or a shell company. Because multinational corporations often build complex ownership chains across multiple tax havens and secrecy jurisdictions, without transparency of beneficial ownership it can become impossible to track and fairly tax profits.

C: Public country by country reporting is an accounting practice that requires multinationals to disclose their actual economic presence, sales, profits, and taxes paid in each jurisdiction in which they operate.

D: Linked to the above, **disclosure** of sufficient public data is fundamental to ensure tax transparency and accountability for both taxpayers (most saliently, multinational companies and wealthy individuals) and also for tax authorities and policymakers.

E: **Enforcement** by well-resourced and operationally independent tax authorities is necessary to guarantee crucial tax measures are implemented effectively.


F: **Formulary apportionment with unitary taxation. Unitary taxation** is an approach that treats a multinational group as a single taxable unit, rather than treating individual subsidiaries in different countries that make up the group as separate. The current system allows huge volumes of profits to be shifted from where they arise, into low- or no-tax jurisdictions. Unitary tax recognises that in reality, profits are maximised at the unit of the group as a whole. **Formulary apportionment**, meanwhile, is the name for the process that allocates those global profits as tax base between the different countries where the multinational has real economic activity.

G1: **Governance reform** centred on the establishment of a genuinely, globally inclusive process for the setting of tax rules and standards, under UN auspices.

G2: A **Global asset register (GAR)**, linking together beneficial ownership registers across the world, and covering all legal vehicles and high-value assets, across jurisdictions, would provide a critical tool against abuse of tax, regulations and sanctions. Importantly, it would also deliver transparency on the true level and nature of economic inequality at the global level.

G3: **Good taxes:** a catch-all covering a **progressive** and effective overall tax system, and significant individual components of the tax justice agenda including **wealth taxes, climate-related tax measures, excess profits taxes** and **minimum effective tax rates**.

Of particular importance in the context of a globalised and digitalised economy is the question of **taxing ecommerce and digital services**. Similarly, in an era of soaring inequality, both within and between countries, cooperation in the design and implementation of **wealth taxes** must likewise be directly addressed in the UNFCITC. The **extractives sector**, which was excluded from the OECD process despite its particular significance for many developing countries, must likewise be comprehensively dealt with.



A related issue is the necessity to ensure coherence between the UNFCITC and the **environmental and sustainable development agendas**. This issue, which was likewise highlighted in the Africa Group Resolution, necessitates the **cessation of harmful tax subsidies and exemptions** and their replacement with progressive green taxes.