Reimagining International Tax Cooperation at the U.N.: A Roadmap

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Late last year, the U.N. General Assembly adopted a resolution (A/RES/77/244) for the promotion of inclusive and effective tax cooperation at the United Nations. The resolution aims to jump-start discussion on how to strengthen international tax cooperation (presumably under the U.N.'s auspices), without identifying any particular framework or instrument as the best. The resolution expressly recognizes "the need to strengthen international cooperation on tax matters in a more inclusive intergovernmental forum" — meaning a forum more inclusive than the OECD's inclusive framework.

To fulfill the resolution's goals, the U.N. secretary-general must prepare a report that analyzes legal instruments and other recommendations addressing international tax cooperation, as well as the work of the U.N.'s tax committee and that of the OECD/G-20's inclusive framework. The report will outline potential next steps, such as the establishment of an ad hoc and open intergovernmental committee to recommend options for strengthening international tax cooperation. The report should provide the basis for further discussions during the U.N. General Assembly's session scheduled to take place later in 2023.

In preparing the report, the secretary-general is supposed to consult widely with member states and other stakeholders, including civil society, business, and academia, as well as the members of the Platform for Collaboration on Tax (which includes the U.N., the OECD, the IMF, and the World Bank). Input is requested by March 17.

The call for input starts the process of reimagining what a truly inclusive global tax organization might look like — or whether there needs to be one single body carrying that mantle. As the U.N. moves down this path, it should adopt the broadest possible outlook on how to build an inclusive intergovernmental tax organization and its ideal remit.

Background

The December resolution fits within the U.N.'s agenda for sustainable development, adopted at the 2015 Addis Ababa financing for development conference as a set of 17 sustainable development goals intended to provide a "shared blueprint for peace and prosperity for people and the planet, now and into the future." Sustainable development goals focus on ending poverty, reducing inequality, and spurring economic growth, all while tackling climate change. Included in them is a call for improving domestic resource mobilization and strengthening international tax cooperation.

The U.N. resolution (A/RES/69/313) that resulted from the Addis Ababa conference committed countries to enhancing revenue administration through modernized tax systems, improved tax policy, and more efficient tax collection. It said that countries would work to improve the fairness, transparency, efficiency, and effectiveness of their tax systems by broadening the tax base and continuing to integrate the informal sector into the formal. It acknowledged the importance of strengthening international cooperation, and it emphasized that efforts in that regard should be universal in approach and scope and should fully take into account the different needs and capacities of, in particular, least-developed countries, small island developing states, and African countries. U.N. member countries also committed to strengthen the resources of the U.N. Committee of Experts on International Cooperation in Tax Matters.

But lurking behind the commitments made in 2015 is the story of a recommendation that was rejected — namely, a proposal to upgrade the U.N. Tax Committee into a full-fledged U.N. intergovernmental committee. (Prior analysis: *Tax Notes Int'l*, May 4, 2015, p. 419.) Although a draft of the Addis Ababa statement included a pledge to that effect, it was blocked by the United States and the EU, who expressed concerns over a proliferation of international organizations and the potential for overlap with the OECD's work. But it's also likely that neither the United States nor the EU wished to relinquish control over global tax policymaking to a larger organization in which they would have less of a say.

Instead, what resulted from the failed 2015 initiative to upgrade the U.N. Tax Committee was the OECD/G-20 inclusive framework. It should come as no surprise that a framework led and controlled by OECD members is not seen by all as truly inclusive, and the recent U.N. resolution represents the latest attempt by some developing countries to shift the focus of global tax policy to the U.N. and away from the OECD. But the scope of the latest resolution is larger than simply upgrading the U.N. Tax Committee's status.

The Civil Society Financing for Development Mechanism is calling for a fourth financing for development conference in 2025. It says that a new conference should ensure democratization of global economic governance. Among the reforms that it wants is a U.N. multilateral legal framework that would establish a universal, intergovernmental U.N. tax body. One could expect a proposal to upgrade the U.N. Tax Committee's status to be part of that 2025 conference agenda.

Is the U.N. the Right Place?

Let's assume that the OECD's claim for legitimacy as a globally representative tax body will remain under pressure, despite the establishment of the inclusive framework. The next question is whether the U.N. is the right organization to take on that role. The U.N. suffers from its own challenges, which include layers of bureaucracy, bloated budgets, and voting systems that give priority to the smallest countries.

A World Trade Organization for Tax

As an alternative to the U.N. or the OECD, it's worth considering the creation of a new global tax body modeled on the WTO. The WTO similarly deals with a specific topic in a multilateral context, outside the purview of the U.N. or any other official organization. Its model seems a natural fit for a tax body to emulate, and indeed, the WTO has served as a model for others who have considered the need for a world tax organization. (See, e.g., Vito Tanzi, "Is There a Need for a World Tax Organization?" in *The Economics of Globalization: Policy Perspectives From Public Economics* (1999).)

But using the WTO as a model requires addressing its challenges, which include accusations of imbalanced or outcome-driven decisions, and new members (for example, China) that don't fully abide by their commitments. (See Jennifer Hillman, "China's Entry Into the WTO — A Mistake for the United States?" (2022).) Many characterize the state of dispute settlement at the WTO as a crisis, with a malfunctioning appeals mechanism. The United States has consistently blocked appointments to the appellate body, making it difficult for members to enforce WTO obligations.

The problems at the WTO are hardly new; the United States has long expressed its concerns about judicial overreach at the appellate body. If the WTO is to provide a template for a new world tax organization, those concerns must be addressed, but it's not clear how or even whether they can be resolved.

An Enhanced Platform for Collaboration

Another option is to strengthen an existing organization. The Platform for Collaboration on Tax — a loose coalition of the OECD, the U.N., the World Bank, and the IMF — is, as its name suggests, intended to enhance cooperation between these four international organizations that each work on global tax matters. But it has done little since its founding in 2016 besides publish a few toolkits, and any enhanced collaboration it may have produced isn't obvious.

Strengthening the structure and power of an existing platform that already reflects different perspectives could remove the need to try to reinvent the tax wheel or tussle over whether the U.N. or the OECD is the more appropriate global tax body. Providing the platform with greater authority could allow for more inclusivity in tax matters without returning to square one. And there's no need to limit an enhanced platform to these four organizations — it could be expanded to include, for example, the body that may emerge from the Latin American and Caribbean initiative for creating a regional tax organization, or other regional tax organizations.

Governance

Membership

What might membership in a truly inclusive global tax body look like? There are different models to choose from.

The Economic and Social Council (ECOSOC) coordinates the U.N.'s economic and social work. It focuses on international cooperation under the overall authority of the General Assembly. While the council has 54 members, elected by the General Assembly for three-year terms, it is effectively governed by a five-member bureau elected by the council. The bureau proposes the ECOSOC agenda, draws up its program of work, and organizes ECOSOC sessions with the support of the U.N. secretariat. Its current members are representatives from Bulgaria, Chile, Italy, Indonesia, and Zimbabwe.

Under ECOSOC rules, each member of the council has one vote, and decisions are made by a majority of members present and voting. Seats on the council are allotted based on geographic representation in the following proportions:

- 14 to African states;
- 11 to Asian states;
- 6 to Eastern European states;
- 10 to Latin American and Caribbean states; and
- 13 to Western European and other states.

The United States and Western Europe collectively represent a minority on the council, meaning that while its representation may be proportionate by population, it's not aligned to economic strength, output, or GDP.

In contrast, the U.N. Tax Committee — which is a subsidiary body under the ECOSOC — comprises 25 members, nominated by governments and acting in their expert capacity. Each member is appointed by the secretary-general for a four-year term after notification is given to ECOSOC. Members are selected to reflect an adequate equitable geographic distribution representing different tax systems. There is currently no U.S. representative on the U.N. Tax Committee (Treasury apparently declined to name anyone for consideration for the role). As with the ECOSOC, representation on the U.N. Tax Committee is weighted in favor of smaller and developing countries, rather than spread proportionately across countries' contributions to the global economy or domestic tax bases.

The OECD/G-20 inclusive framework on base erosion and profit shifting is open to any jurisdiction that wants to join, provided they meet the minimum standards. It's led by a steering committee of 24 members, the makeup of which is very different from that of the U.N. Tax Committee. More than half of the steering committee are in the OECD — mostly large Western countries. The members of the steering committee that represent what the OECD calls "BEPS Associates" are — even if not OECD members — also larger, emerging market countries (such as South Africa and Singapore) rather than low-income countries.

The WTO provides a different model: It's run by its member governments. All major decisions are undertaken by consensus and made by the membership as a whole (constituting 164 countries), either by ministers (who meet at least once every two years) or by their ambassadors or delegates (who meet regularly in Geneva). The WTO is different from some other international organizations, such as the World Bank and the IMF, in that its power is not delegated to a board of directors or the organization's head.

A conversation about what a more inclusive global tax body would look like must start with the question of how many members it should have and how decisions about membership would be made.

Governing Committee

Different models of governance could apply, ranging from one in which the full membership body must agree on any decisions (like the WTO) to one in which the decisions and daily work are managed by a smaller steering committee. If the decision-making body comprises less than the full membership, choices must be made on how many countries that would include, what regions and what size economies those countries would represent, and how that smaller body would be selected.

It wouldn't necessarily have to be individual countries represented on a steering committee. An alternative could be a steering committee composed of representatives from other international organizations — similar to the Platform for Collaboration on Tax, but perhaps with added representation. That could include the G-7, the G-20, the Group of 77 and China, the African Tax Administration Forum, the Inter-American Center of Tax Administrations, the Commonwealth Association of Tax Administrators, the Study Group on Asia-Pacific Tax Administration and Research, and regional trading blocs such as the EU and the parties to the United States-Mexico-Canada Agreement.

Vote

Although membership in the global tax body is important, what really matters is who can vote, how much voting power each country or member carries, and how agreement is reached. Different international organizations apply different paradigms. The U.N. generally has a one-vote-per-country model (although that can be weighted depending on the composition of various committees or councils). The IMF and the World Bank have deliberately skewed voting power toward the larger and richer countries that have contributed the most and made the largest commitments to the organizations. At the IMF, the United States has 16.5 percent of the vote, compared with 0.06 percent for Malawi. The numbers are similar at the World Bank. In contrast, at the U.N. Tax Committee, Malawi has one vote (out of 25 total votes), while the United States is not even represented.

It should be no surprise that the United States would block an expansion of the U.N. Tax Committee that would give it and Malawi equal input on how the world's most profitable companies (many of which are U.S. ones) are taxed.

How would decisions be made and how binding would they be? The U.N. Tax Committee now operates by majority vote, while the OECD reaches decisions based on consensus. At the WTO, some decisions are binding on members, but others are not. The OECD rules generally have only the status of soft law, but the OECD has been trying to strengthen its rulemaking authority through multilateral conventions.

Enforcement Powers

Another crucial governance question concerns enforcement powers. The inability of the WTO to enforce its policies regarding China is a large part of what has caused many to question its effectiveness. The perception of bias in the rulings of the WTO's appellate body also has led the United States to block appointments to the WTO appellate board. With too little enforcement power, the organization may be ineffective. But with too much, countries with their own power — economic or otherwise — might withdraw.

The OECD has attempted to circumvent those concerns through its public peer review process. It says this process — which calls out noncompliance but has essentially no penalties — has been effective in pushing countries into conformity with a range of improved tax procedures, such as preventing harmful tax practices and cross-border tax evasion.

Substance

After governance, the next set of considerations relevant in structuring a more inclusive tax body is what matters it should take on. A new era may call for a new agenda.

Treaties: Validity

The historical remit of international tax organizations — the U.N. and the OECD, and before that, the League of Nations — has been tax treaties. In the past, these organizations mostly confined themselves to developing and disseminating model treaties.

There's room now for a more concerted effort to reconsider the value and merit of tax treaties. Organizations such as the IMF have raised serious questions about the value of treaties to developing countries. (See IMF policy paper, "Spillovers in International Corporate Taxation" (2014).) Meanwhile, the OECD — the supposed champion of international law and treaties — has undermined their validity by proposing new rules that conflict with several treaty provisions. At the same time, the OECD is pushing for a multilateral tax treaty to implement the pillar 1 and pillar 2 agreements.

A reorganized international tax body could take a fresh look at the purpose of model and bilateral tax treaties from the perspective of recent economic theory and provide updated thinking on the role of treaties to coordinate among various tax regimes, rather than requiring countries to conform or reduce their own tax collections on domestically generated profits.

Dispute Resolution

Despite the lip service paid to dispute resolution throughout the BEPS process, the topic remains one of the thorniest in cross-border tax. Countries' incentives to come to the table and compromise is limited when doing so could mean giving up some of their tax base. And that isn't restricted to countries with limited capacity in their tax administrations or with highly publicized controversial court decisions. Some of the worst violators include OECD members and countries with well-established legal systems, such as Italy, Australia, Canada, and Germany. Some of these countries have been known to withhold access to a treaty's mutual agreement procedure as a negotiating tactic. Others, such as the United Kingdom, have touted their ability to collect large revenues from nonresident taxpayers under laws that likely violate existing treaties (for example, the diverted profits tax).

An honest appraisal of cross-border dispute resolution that would account for the realities of both developing and developed countries, and both low-capacity tax administrations and overaggressive ones, would benefit enhanced cross-border trade and the rule of law for all.

Tax Policy Goals

Revenue collection is but one goal of tax policy. As the sustainable development goals make clear, the ultimate objective of collecting tax revenue is to establish healthy, wealthy, and peaceful societies. It was this focus on the role that economic and tax rules and incentives play in expanding economies and protecting democracies that led to the creation of the OECD's precursor in postwar Europe. A reimagined global tax body would be well served to undertake a renewed focus on the role of tax policy in helping — rather than hindering — economic growth, shifting away from an agenda that has become progressively more narrowly focused on tax cheats or extracting more revenue from already compliant taxpayers.

A broader conversation about the goals of tax policy also could redirect the OECD's preoccupation with ending tax competition and lead to a larger debate about the merits of tax competition and the benefits of tax incentives in generating growth. (See, e.g., Rita de la Feria, "The Perceived (Un)Fairness of the Global Minimum Corporate Tax Rate," in *The Pillar 2 Global Minimum Tax* (forthcoming 2023).)

It's a Journey

There's much opportunity for thoughtful and rigorous work to be done by an ad hoc committee tasked with considering options for strengthening the inclusiveness and effectiveness of international tax cooperation. Whether this committee could be formed in a way that reflects not just the interests of civil society and developing countries — often focused on an agenda of maximizing revenue allocations from rich countries and profitable companies — and whether it could be done in a way that produces an output amenable to the richer countries that mostly produce the products and profits that others seek to tax, remains to be seen. Getting there will require thoughtful initiative from many varied stakeholders.

Ideally, the United States and EU member states, as well as the business community, will take an active role in that initiative. As we move to the next phase of international tax governance and coordination, powerful players should stop treating the interests of developing countries as little more than a nuisance to be pandered to, and recognize that the U.N. plays an important role in expressing those interests, one that can't be superseded by the OECD.

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DOCUMENT ATTRIBUTES

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