

Ekaterina Tibilova

*Comments On Promotion Of Inclusive And Effective Tax Cooperation At The United Nations*

From Ekaterina Tibilova

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**RE: PROMOTION OF INCLUSIVE AND EFFECTIVE TAX COOPERATION AT THE  
UNITED NATIONS**

In boxing, the aim is to knock the opponent out. This is no place for cooperation, but unilateral action aiming at taking down the opponent. This, however, should not happen in the international tax realm. It should not be doubted that better results can be achieved if the international tax system is based on collaboration, rather than rivalry and unilateralism. For example, taxpayers should not seek for loopholes but clarify them with tax administrations, whilst tax administrations should not use the complexity and uncertainty of legislation to impose additional tax but make its application straightforward. Politicians should not blame tax professionals for tax avoidance (evasion) but employ their expertise to tackle it, whilst tax professionals should not choose sides but act with integrity. Governments should not compete for taxpayers but find areas for a fruitful cooperation, and supranational organisations should not compete for their influence but work together to navigate and help governments to build a sustainable and prosperous future for the people. The United Nations' initiative on the promotion of inclusive and effective tax cooperation is welcomed,

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precisely because it sets the missing negotiation ground, necessary for a collaborative tax world.

Hence, this document aims to provide comments on how the United Nations can promote the inclusive and effective tax cooperation, and what issues should be considered to secure positive results. It starts with the explanation of the possible role of the United Nations, which is seen in representing countries in front of the OECD/G20 Inclusive Framework on BEPS<sup>1</sup> (IF). It further highlights the areas where the United Nations' role can be essential to safeguard the interests of the represented countries – simplification and digitalisation.

### **“A Centre For Harmonizing The Actions Of Nations”<sup>2</sup>**

There is always a chance that even a world boxing champion can lose the fight to a less titled one.<sup>3</sup> Yet, this may be quite uncommon, because such world championships are gained by qualities and skills of a specific boxer, such a speed, fighting IQ, strength, and stamina. Such traits ‘position’ boxers in competitions. Similarly, knowledge and expertise predetermine the position of actors in international taxation. It is, therefore, not surprising that the OECD, along with the IF, has become a leader in developing international tax policies – the

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<sup>1</sup> OECD, *International collaboration to end tax avoidance*, accessed 16.03.2023, <https://www.oecd.org/tax/beps/>.

<sup>2</sup> United Nations, Charter of the United Nations, 1945, 1 UNTS XVI, art 1(4): “[The Purposes of the United Nations are: ... 4.] To be a centre for harmonizing the actions of nations in the attainment of these common ends.”

<sup>3</sup> For example, Buster Douglas vs Mike Tyson

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progress and value of their efforts are undeniable. Does this imply that the United Nations is not fit for the position? It depends on the role, which can be defined according to its mission.

The United Nations was established, inter alia, to “reaffirm faith [...] in the equal rights [...] of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.”<sup>4</sup> One of the purposes of the United Nations is to “achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character.”<sup>5</sup> In order to achieve its purposes, the United Nations committed to become “a centre for harmonizing the actions of nations.”<sup>6</sup> Thus, in international taxation, the United Nations can be expected to be a guarantor of equal rights of all nations in cooperative efforts to build a harmonised international tax system, and to set fair and effective rules respected by the nations. Understanding that the international tax system consists of tax systems of sovereign nations and the interactions between them, its harmonisation should cover the tax systems of all countries (or at least the ones interested in participating in this harmonisation). Apparently, this cannot be accomplished if the tax world is divided into two or more groups following different directions.

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<sup>4</sup> Charter of the United Nations, Preamble.

<sup>5</sup> Charter of the United Nations, art 1(3).

<sup>6</sup> Charter of the United Nations, art 1(4).

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Finding consensus amongst all nations is a noble but hardly a realistic aim. As in professional boxing, stakes are high on the international tax arena. It is not enough to be a member of the IF. A country should be well-equipped to protect its interests, which, as has been observed, incurs significant costs.<sup>7</sup> It is thus critical that the voices of countries that cannot afford to actively participate in the IF's discussions are heard, and this is where the United Nations' role is vital. The United Nations can literally become a "centre for harmonizing the actions of nations" if it joins the IF as a representative of those countries to actively promote their interests on a permanent basis.

The success of the United Nations' representative role in the IF is contingent on many factors, which should be comprehensively assessed, negotiated, and approved. For example, the following agreement can be considered. The United Nations joins the IF. The status and capacity of the United Nations' participation can be similar to the ordinary membership with the possibility of joining the Steering Group and working parties and groups. Any country, including non-members and members of the IF, with no capacity to actively take part in and affect the IF's work is entitled to apply for the representation by the United Nations. The agenda to be promoted by the United Nations to the IF comprises of various issues raised by these countries, academics, professionals and non-profit organisations, and businesses. The diversity of opinions on each identified issue can be coordinated in working groups. Hence, if the United Nations joins

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<sup>7</sup> For example, see Herzfeld, M. (2023), *Developing Countries: Victims or Victors? Tax Notes International*, 109, 1085-1089.

the IF, instead of creating a competing body, the countries are expected to benefit from the timely access to academic knowledge and professional expertise, shared experience, and continuous advancement of their interests.

### **A Team In The Corner**

Like taxpayers, boxers have to know the rules, which can differ significantly because there are various bodies and organisations who set them. Although boxers have teams in their corners for support and advice, they themselves choose how they follow these rules. Referees are on the boxing ring to ensure that the rules are complied with. Judges score the fight and decide the winner. Spectators are cheering their favourites. In contrast, the roles in the international tax system are blurred. On the one hand, taxpayers and tax administrations resemble boxers. In a taxpayer's 'corner' there is a team of tax professionals, whilst it is indeterminate who exactly is in the tax administration's corner. On the other hand, all actors can be seen as competing parties, not only taxpayers and tax administrations. Obviously, this is not how an inclusive and effective tax cooperation should look like.

As mentioned at the beginning, the international tax playground is not and should not be a boxing ring. Ideally, both the OECD and the United Nations should become a single supporting team in the metaphorical corner of each actor – governments, politicians, tax professionals, taxpayers, and tax administrations (with no fighting against each other). Moreover, based on the

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experience and expertise of the OECD, the United Nations can ensure that the international tax policies are feasible for the implementation by all countries it represents.

One of the main issues to address is the complexity of these tax policies. Whilst this matter is subject to comprehensive study, one of the options suggested with regard to the Amount B of Pillar One<sup>8</sup> can be applied to most international tax policies.<sup>9</sup> In broad strokes, this option offers that the tax rules clearly define their goals and intended results, whilst the following roles are assigned to the actors:

- taxpayers are given the opportunity to achieve the set goals and outcomes of the rules based on their best judgement and inside knowledge of their own business (resembles boxer's position but with no opposition);
- tax professionals audit the taxpayers' compliance with the rules and ensure that tax administrations receive clear and correct information (resembles referee's position);
- tax administrations rely on independent tax audit and focus on critical and material aspects (resembles judges' position);
- governments and supranational organisations ensure that the application of the tax rules is monitored, uncertainties are clarified in a timely

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<sup>8</sup> OECD (2022), Public Consultation Document: Pillar One – Amount B, OECD, Paris (hereinafter, the Amount B Framework).

<sup>9</sup> OECD, Tax challenges arising from digitalisation: Public comments received on the design elements of Amount B under Pillar One relating to the simplification of transfer pricing rules, File "Ekaterina Tibilova," accessed 16.03.2023, [https://www.dropbox.com/s/f4jssaabg2xwocr/public-comments-design-elements-amount-b-pillar-one-transfer-pricing.zip?dl=0&file\\_subpath=%2FPublished+30+January+2023+\(Morning\)%2FEkaterina+Tibilova.pdf](https://www.dropbox.com/s/f4jssaabg2xwocr/public-comments-design-elements-amount-b-pillar-one-transfer-pricing.zip?dl=0&file_subpath=%2FPublished+30+January+2023+(Morning)%2FEkaterina+Tibilova.pdf).

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manner, and the standards of tax audit (including auditors' responsibilities and ethical considerations) guarantee its high quality.

Implementation of the described option requires transformation of the existing tax rules from mandatory to recommended status. Practically, this can be solved by starting the relevant tax policies with a statement according to which taxpayers can deviate from the rules if and only if they can ensure that the goals and the intended results are achieved with no exceptions. The introduction of the tax auditors should allow the countries to significantly reduce their costs associated with the implementation of new tax rules and their administration. For the taxpayers, this approach can address any uncertainty issues, and simplify their tax compliance process.

Another area of focus where the United Nations' efforts can be essential for most countries (especially for the developing countries) is the technological equipment of tax administrations. Addressing the challenges of the digitalised economy without digital solution is the same as having a professional boxer to fight against a beginner. Moreover, the existing applications provide collaborative solutions along with the document management systems. In practice, this means that there can be a centralised tax platform, which can enable immediate exchange of information between the members, simplified process for requests of information, provision of comments, development of mutual tax rulings and their automatic approval, etc. The centralised technological solution can address the requirements and preclude unnecessary

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complexity of a particular international tax policy or a number of them.<sup>10</sup> Therefore, its consideration is required at the early stages of policy development, which can be coordinated by the United Nations.

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Boxers are rivals in a zero sum game: to win, the opponent has to lose. The document has highlighted that international taxation is a realm where the opposite game should be played: collaboration. It is important that this collaboration starts between the OECD and the United Nations, as only their joint efforts can ensure inclusive and effective tax cooperation amongst all actors.

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<sup>10</sup> For example, see: OECD, Tax challenges arising from digitalisation: Public comments received on the Implementation Framework of the global minimum tax, File "Ekaterina Tibilova," accessed 16.03.2023, [https://www.dropbox.com/s/py0w2hwy6jjsvvw/public-comments-implementation-framework-global-minimum-tax.zip?dl=0&file\\_subpath=%2FComments+published+13+April+2022%2FEkaterina+Tibilova.pdf](https://www.dropbox.com/s/py0w2hwy6jjsvvw/public-comments-implementation-framework-global-minimum-tax.zip?dl=0&file_subpath=%2FComments+published+13+April+2022%2FEkaterina+Tibilova.pdf); and OECD, Tax challenges arising from digitalisation: Public comments received on tax certainty aspects of Amount A under Pillar One, File "Ekaterina Tibilova," accessed 16.03.2023, [https://www.dropbox.com/s/wnuqzyp0ydfgw8m/public-comments-progress-report-administration-tax-certainty-aspects-amount-a-pillar-one.zip?dl=0&file\\_subpath=%2FEkaterina+Tibilova.pdf](https://www.dropbox.com/s/wnuqzyp0ydfgw8m/public-comments-progress-report-administration-tax-certainty-aspects-amount-a-pillar-one.zip?dl=0&file_subpath=%2FEkaterina+Tibilova.pdf).