UNCTAD's contribution as a member of the IATF on FSD to the Report by the UN Secretary-General to the UNGA pursuant to A/RES/77/244 on the "Promotion of inclusive and effective international tax cooperation at the United Nations"

March 2023

1. Introduction: The rationale for a more inclusive and more effective approach to international tax cooperation

At the heart of the persistence and proliferation of illicit financial flows (IFFs) are underlying problems of financial secrecy that are global and systemic in nature. As the UN's High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (FACTI Panel) emphasised, systemic problems require systemic solutions (FACTI Panel Report 2021, p. 8) based on inclusive debate.

The United Nations System is a natural forum for such debate. It has already played a pivotal role in promoting inclusive debate as well as global regulatory frameworks to combat IFFs originating from grand corruption and organized crime through the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime, as well as through ongoing efforts to provide a transparent and comprehensive statistical framework to measure IFFs and considerable progress in promoting best practices on asset recovery and repatriation.

However, in the matter of international tax cooperation, and while some progress has been made, the debate has been perceived as lacking inclusiveness despite the involvement of some 140 countries, in the (so called) Inclusive Framework (see section 2). For a variety of reasons, meaningful participation by developing countries as well as other stakeholders in the work of the leading rule-maker on global tax, the OECD, has remained limited. This also applies to the OECD's Base Erosion and Profit Shifting (BEPS) Project and its Inclusive Framework.

This calls for a change, since tax-motivated IFFs, corporate arbitrage and phantom-FDI clearly have a very substantive impact on tax revenues in developing countries, with serious ramifications for domestic resource mobilisation, human and inclusive development as well as structural transformation. The wider importance of tax revenues for domestic resource mobilization lies in their greater stability and predictability compared to many other sources of long-term development finance. Tax revenues provide core funding for public services, such as health care and education. Empirical research indicates that tax revenue is a major statistical determinant of progress towards universal health coverage in lower-income countries and that this is overwhelmingly driven by direct rather than indirect taxation (e.g. Cobham and Carter (2016)). Tax revenues and policies are also an essential mechanism to mitigate income inequalities and promote inclusive development through redistributive tax design and transfer programmes to the poor, in addition to funding essential public services. Last but not least, effective tax systems are an indispensable policy tool to re-orient production and consumption flows towards sustainable sectors and productive investment, through selective subsidies and, more generally, the re-pricing of economic activities considered to be either particularly damaging or particularly desirable from the point of view of structural transformation including to build a diversified low-carbon economic system (UNCTAD TDR 2021).

The negative developmental consequences of IFFs in general and of tax motivated IFFs in particular, disproportionally affect smaller and poorer developing countries with already weak governance structures and low tax revenues. This makes it all the more important to ensure that multilateral initiatives to promote international tax cooperation, and the regulatory frameworks underpinning this, take fuller account of the concerns of developing countries than has so far been the case, including with a view to facilitate the implementation of the UN's 2030 Agenda.

UNCTAD therefore welcomes A/RES/77/244 on the "Promotion of inclusive and effective international tax cooperation at the United Nations" and supports recommendation 2 by the UN's High-Level FACTI Panel for the international community to "initiate a process for a UN Tax Convention" so as to establish international tax norms through "an open and inclusive legal instrument with universal participation" (FACTI Panel Report 2021, p. IX).

UNCTAD has long highlighted the importance of inclusive and effective international tax cooperation in the context of its wider work on combatting IFFs from a developmental perspective and on the interconnections between international corporate taxation and international investment flows. Section 2 draws on this work (e.g., UNCTAD reports to the UNGA/2nd C pursuant to UNGA resolutions on the "Promotion of international cooperation to combat illicit financial flows and strengthen good practices on assets return to foster sustainable development" since 2019, its flagships Trade and Development Reports 2021 and 2022 and World Investment Report 2015 and 2022, the work of its Intergovernmental Group of Experts on Financing for Development) to summarize core remaining challenges in international tax cooperation.

It should also be noted that UNCTAD has a pivotal role in providing a statistical definition of IFFs that has been endorsed by the UN Statistical Commission as follows: "Financial flows that are illicit in origin, transfer or use, that reflect an exchange of value and that cross country borders." According to the definition for SDG indicator 16.4.1, illicit financial flows can be generated by four main types of activities, including (1) tax and commercial activities, illegal tax and commercial activities or aggressive tax avoidance, (2) illegal markets, (3) corruption and (4) exploitation-type activities and financing of crime and terrorism. The most recent UNGA resolution on the "Promotion of international cooperation to combat illicit financial flows and strengthen good practices on assets return to foster sustainable development" (A/RES/77/159) recognizes and references this work (§§ 32-35).

Since the *World Investment Report 2015 (UNCTAD WIR 2015)* revealing and quantifying the impact of tax optimization strategies of multinationals enterprises on foreign direct investment, UNCTAD has produced a consistent and rich stream of analytical and policy work at the intersection between international taxation and investment. As countries and regions around the world are now moving towards the implementation of an historical reform setting a minimum taxation on foreign income of multinational enterprises, the analysis on "The effects of a global minimum tax on FDI" (see section 2.2) is more timely and topical than ever.

UNCTAD, as a leading UN institution to advise investment policymakers, especially from developing countries, on the most effective strategies to optimize the investment response to the ongoing tax reforms fulfils its role on issues related to investment and fully responds to the Bridgetown Covenant mandate for UNCTAD “to continue its work on taxation as it relates to investment policy” (§127, c).

Section 3 responds to §3 of A/RES/77/244 regarding the request to outline “potential next steps […] for strengthening the inclusiveness and effectiveness of international tax cooperation”.

BOX 1: Strengthening Domestic Resource Mobilization: A focus on IFFs for African countries

More than ever, the recent global events have placed emphasis on the need for a global focus on Illicit Financial Flows (IFFs). For instance, the COVID-19 pandemic required countries to implement discretionary fiscal policy in order to contain the spread of the virus. The result was an increase in debt to GDP ratios from 61.3 percent of GDP in 2019 to a high of 71.6 percent in 2020 for the Africa average, with Africa average revenue collection moderating from 21.4 percent of GDP in 2019 to 20.4 percent of GDP in 2020. The average masks the differences, since commodity exporters such as Nigeria, one of Africa’s largest economies, saw a decline in revenue from 7.8 percent of GDP in 2019 to 6.5 percent of GDP in 2020.

Consequently, most governments, including developed countries, saw their fiscal space[1] decline through the pandemic period, and are currently working toward widening fiscal space. IFFs have the effect of reducing revenues that could be used as a buffer during times of crisis.

On the African continental level, stemming the outflows of IFFs could provide benefits through: i) strengthening fiscal sustainability, by minimizing revenue losses (UNCTAD 2020); and ii) Mitigating the impact of imported inflation through a decline in outward flows.

IFFs as an obstacle to meeting the SDGs

Although reducing IFFs is a specific target under goal 16.4[2], the interconnection and interlinkage of the SDGs means that the adverse effects of IFFs spill over to other goals and targets either directly or indirectly.

Loss of government revenue through IFFs often means that governments have reduced revenue to finance spending on social protection systems (SDG target 1.3). The Economic Commission for Africa (2021) found that 58 million people in Africa were extremely vulnerable to fall back into poverty from the COVID-19 pandemic. According to the report, women were particularly at risk directly impacting SDG 5 (gender Equality) and SDG 10 (Reducing Inequalities):

> ‘In South Africa, 47 per cent of employed women in the poorest tercile reported losing their jobs compared with 36 per cent of employed men in the same tercile.’

[1] Room in a government’s budget that ensures the possibility to utilize resources, without jeopardizing fiscal sustainability.

[2] SDG 16, target 4 – Combat organized crime and illicit financial and arms flow.

In addition to social protection programs, increased revenue from stemming IFFs could provide African governments with additional resources for expenditure on quality education (SDG 4), spending on clean water and sanitation (SDG 6), spending on development of affordable energy (SDG 7) and spending on green infrastructure aimed at strengthening industry (SDG 9).

Measuring IFFs: A Partnership to measure trade mis invoicing in Africa

It is imperative to note that there are varying definitions of IFFs, depending on the types of flows being measured. In addition, since IFFs are deliberately hidden, measurement is considerably challenging. In this note, we focus on trade related IFFs, or what is defined by the International Classification of Crime for Statistical Purposes (See UNCTAD and UNODC, 2020) as activities that may generate IFFs, that is, illicit tax and commercial practices.

As custodians of the SDG 16.4.1, UNCTAD and UNODC have developed a conceptual framework for the statistical measurement of IFF.[3] In particular, UNCTAD statistical guidelines provide six methods to measure three types of tax and commercial IFFs. These are:

- Trade mis invoicing.
- Aggressive tax avoidance or profit shifting by MNEs.
- Transfer of wealth to evade taxes by individuals.

Under trade mis invoicing, the following two methods are utilized to measure discrepancies in trade statistics:

<u>Method 1: Partner Country Method.</u>

This method utilizes reported trade flows to review discrepancies between two countries, that is, the differences between reported imports into country 1 by country 1, compared to reported exports by country 2 to country 1. However, it is important to note that differences must be analyzed to eliminate non IFF components such as for instance, the use of different criteria in the attribution of import and export statistics (UNCTAD, UNODC – 2020).

In UNCTAD (2020)[4] an analysis of the Partner Country method is carried out for African country commodity exports between 2000 and 2018. A key finding is that broadly, all high value trade commodities tend to have a positive trade gap, whereas petroleum tends to have a negative trade gap (Note: the analysis is carried out as the difference between imports reported by Partner countries and exports reported by African countries). Gold, platinum and diamonds had the biggest discrepancies in statistical reporting between partner countries. An additional finding of interest was that the extra continental trade gap is much wider than the intra continental trade gap, an indication that stemming IFFs must be a joint effort with all countries involved.

<u>Method 2: Price Filter Method.</u>

This method estimates a price filter for each commodity, using it as a proxy for arm's length pricing (see UNCTAD, 2020). As with method one, the difference in reported price and the arm's length prices must be analyzed to take into account the different circumstances surrounding the given transaction.

---

[3] UNCTAD, UNODC (2020). Conceptual Framework for the Statistical Measurement of Illicit Financial Flows. U.N., Vienna.

[4] See Schuster and Davis (2020). The Value of mirror trade data analysis for the detection of commodity-specific illicit outflows from Africa. Background document for the Economic Development in Africa Report 2020. UNCTAD.

UNCTAD in partnership with regional commissions and other UN organizations, are working together with a group of pilot countries to test the price filter method. The two methods are not mutually exclusive and are most effective when used in combination.

Conclusion

IFFs have adverse effects for the economy indirectly impacting development goals through multiple faucets including poverty, inequality, gender equality, infrastructure, and water and sanitation.

Because of their nature, that is, deliberately hidden, IFFs are difficult to measure. Nonetheless, as custodians of SDG 16.4.1., UNCTAD and UNODC have come up with conceptual statistical frameworks to measure IFFs.

UNCTAD, in Partnership with other UN organizations and Regional Commissions such as the Economic Commission for Africa, are working with member States in Africa to not only apply the statistical frameworks, but also to analyze the data for appropriate policies that will curb the flow of IFFs.

2. Inclusive and effective international tax cooperation: Remaining Challenges

2.1 The OECD BEPS process

Since Baker's (2005) pioneering work on the assessment of the magnitude of tax-motivated IFFs, several recent studies have found that public revenue losses due to cross-border corporate tax abuse by multinational enterprises (MNEs) are likely to fall within a range of \$53 to \$312 billion per year globally. This variability arises because of differences in methodology, data sources and assumptions (Garcia-Bernardo and Janský, 2022: table A11 provides an excellent recent survey of the literature)[5].

Despite various initiatives to curb tax avoidance by MNEs – notably the launch in 2013 of the Base Erosion and Profit Shifting (BEPS) project by the OECD – recent research by leading academics suggests that such attempts have so far made, at best, only a relatively small dent in these harmful practices, with the exception of the recent commitment to a coordinated minimum corporate income tax which could reduce corporate profit shifting more significantly (e.g., Zucman 2022).

The BEPS project has a number of milestone achievements: in June 2016, it established an Inclusive Framework to ensure comprehensive implementation of its recommendations. Under this Framework two main steps were taken, first, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (or the Multilateral Instrument (MLI), entered into force on 1 July 2018. The MLI allows jurisdictions to integrate results from the BEPS project into their existing networks of bilateral double tax agreements and to reduce opportunities for double non-taxation by MNEs. Second, the Common Reporting Standard (CRS) on automatic exchange of information was introduced, designed to increase cross-

[5] Tax Justice Network (2021) also reports an additional loss of \$171 billion due to offshore tax abuse by wealthy individuals, which is not tackled within the scope of the BEPS. It overall results in a combined estimate of a loss of \$483 billion a year in tax to multinational corporations and wealthy individuals using tax havens to underpay tax.

border transparency and exchange of information for tax purposes. Additional measures and BEPS Actions to increase transparency and cross-country exchange of information for tax purposes make tax inspection by national authorities easier and may eventually serve as a basis for comprehensive cross-border tax audits of MNEs.

In October 2021, 137 member jurisdictions of the Inclusive Framework agreed a two-pillar solution to address tax challenges arising from the digitalisation of the economy (OECD 2021). This included the reallocation of profits of MNES under Pillar One and an effective global minimum tax of at least 15 per cent under Pillar Two, as well as a detailed implementation plan.

Despite this agreement being widely hailed as a game-changer, UNCTAD's Trade and Development Report 2021 (UNCTAD TDR 2021, pp. 67-68) noted a number of concerns, over and above the obvious hurdle of this agreement having to be passed into legislation by Inclusive Framework members, which has not yet happened for the US for instance, one of the biggest players. Most important in the current context are two core drawbacks:

Effectiveness: According to research by Devereux and Simmler (2021), the reform might affect only 78 of the world's 500 largest MNEs, because, under Pillar One, the tax applies only to companies with revenues above $20 billion that earn a rate of return on revenue above 10 per cent. The study shows that reducing the Pillar One revenue threshold for MNEs from $20 billion to €750 million would increase the number of companies affected by a factor of 13, even though the authors acknowledge that the relative gain of reducing the threshold to a figure below $5 billion is small relative to the increase in the number of companies involved.

Inclusiveness: Apart the general risk posed by highly complex rules to continue to game the system and create loopholes (de Wilde 2021), there is a risk that developing countries will gain very little from this reform, because major grey areas and other contentious issues remain to be addressed. These include: 1) the complexity of the new rules creating a significant burden for tax administrations around the world, especially in developing countries who face a shortage of highly-trained tax experts in their public administration; 2) the low level of the tax rate; the limited reallocated tax-base under Pillar One with special carve-outs already promised for extractives and regulated financial services; 3) the timing of the implementation with legal and political haggling likely to shift the start date to well beyond 2023.

Beyond the technical specifics of this agreement, two broader points are worth noting about the OECD BEPS process.

First, the OECD, mandated in 2013 by the G20 to collect and publish country-by-country reporting data, published two sets of this data in 2020 and 2021 (referring to companies' activities in 2016 and 2017, respectively) and none in 2022. This country-by-country reporting marks a substantial improvement in data transparency and has been welcomed by all. Nevertheless, while delays in publication may have some valid reasons, the same cannot be said for the accounting standards applied to the reporting. This concerns the exclusion of key variables on the activity of MNEs to establish where they are genuinely doing business, the exclusion of intra-group activity and a lack of robust definitions of core variables, such as dividends and financing arrangements (Tax Justice Network 2022).

Second, and while the 2021 Inclusive Framework Agreement ostensibly is about tax challenges arising from the digitalisation of the economy, it does little to address those challenges as these arise in particular in developing countries. Digitalisation erodes the assumptions underlying current international corporate tax norms to determine where taxable value is created and how to measure and allocate this between countries. This is because (i) digitalization reduces the necessity of physical presence in the markets where enterprises operate, while under current norms this is a requirement for taxation in foreign states; (ii) its greater reliance on intangible assets further invalidates the arm's length principle and increases the scope for profit shifting towards low-tax jurisdictions; and (iii) an important part of digitalized business models rely on user-generated value that existing tax norms cannot capture. Measuring the resulting profits is effectively impossible because data provision and user participation generally occur at zero nominal prices. Foregone fiscal revenues from digitalization are particularly high for developing countries because they are less likely to host digital businesses but tend to be net importers of digital goods and services. While the OECD BEPS project has increasingly included considerations about digitalization in recognition of this problematic, it has not succeeded in providing operational mechanisms and standards in this regard that take account of the impact of digitalisation on developing economies for taxation purposes.

As the United Nations Committee of Experts on International Cooperation in Tax Matters and its Subcommittee on Tax Challenges related to the Digitalization of the Economy that has undertaken capacity-building activities in developing countries and updated the United Nations Practical Manual on Transfer Pricing for Developing Countries, has stressed, it is important to seek simplicity and administrability, such that "corporate tax rules applicable to cross-border transactions, including digital transactions, should include considerations of revenue implications for all countries and their impact on broader sustainable development objectives". [6]

2.2 The potential impact of a global minimum tax on FDI[7]

The introduction of a minimum tax of 15 per cent on the foreign profits of the largest multinational entreprises (MNEs) proposed in the context BEPS project has important implications for international investment and investment policies. BEPS Pillar II is expected to discourage MNEs from shifting profits to low-tax countries and to reduce tax competition between countries. Further objectives are to stabilize international tax rules and reduce tax uncertainty, to create a more level playing field for companies and to prevent the proliferation of unilateral measures that would lead to a deterioration of the investment climate. In addition, increased tax revenues will support domestic resource mobilization for the SDGs.

[6] Committee of Experts on International Cooperation in Tax Matters (2020): Report on its nineteenth session (15–18 October 2019). Document E/2020/45-E/C.18/2019/12, p. 12.
[7] Extracts from key messages of the World Investment Report 2022, UNCTAD, https://unctad.org/system/files/official-document/wir2022_key-messages_en.pdf

It is expected that both developed economies and developing economies are expected to benefit substantially from increased revenue collection in applying the minimum tax. Offshore financial centres stand to lose a substantial part of corporate income tax (CIT) revenues collected from MNEs' foreign affiliates. For smaller developing countries – which generally have lower effective tax rates (ETRs)[8] – the application of the top-up tax[9] could make a major difference in revenue collection. The flipside of increased tax revenues is the potential downward pressure on the volume of investment that the increase in CIT on FDI activities will exert. UNCTAD's simulation on this downward effect on global FDI is estimated between -2 to -3 per cent.

At the same time, the reduction in tax rate differentials (between high- and low- tax rates) will result in the diversion of investment from low- to higher-tax jurisdictions, with developing countries benefiting relatively more because of their generally higher corporate tax rates. The diversion effect could counterbalance investment losses caused by the volume effect[10]. However, this will not occur automatically. In a world of smaller tax rate differentials, countries stand to gain more from improvements in other investment determinants – including those related to infrastructure and the regulatory and institutional environment.

No country can afford to ignore Pillar II. The mechanism that has been devised for implementation is such that it is sufficient for a relatively limited number of investor home countries (e.g. G20 and OECD members) to apply the top-up tax for the effects to become almost universal. Host countries, including many developing economies, then have the option to apply the top-up tax first – before home countries can do so –to protect tax revenues. But the effectiveness of competitive tax rates or traditional tax incentives to attract FDI will be diminished.

The Pillar II reforms will thus have major implications for national investment policymakers and investment promotion institutions, and for their standard toolkits. Fiscal incentives are widely used for investment promotion, including as part of the value proposition of most special economic zones. Looking specifically at the incentives most used to attract FDI:
- Accelerated depreciation and loss carry-forward provisions will remain effective.
- Tax holidays and exemptions will lose all or most of their attraction for investors.
- A range of other incentives will be affected to various degrees depending on their design.

Investment policymakers urgently need to review their incentives packages, for both existing and new investors. Some fiscal policy options to promote investment remain, including

[8] Statutory rates of corporate income tax hover at about 25 per cent in both developed and developing countries. Effective tax rates (ETRs) on the reported profits of foreign affiliates tend to be lower, less than 20 per cent on average, mainly because of fiscal incentives offered by host countries. MNEs often pay significantly less tax on their foreign income because they can shift part of their profits to low-tax jurisdictions.

[9] Pillar II will increase the corporate income tax faced by MNEs on their foreign profits. In addition, foreign affiliates that pay an ETR on profits reported in host countries below the minimum, will be subject to a top-up tax, to reach the global minimum tax.

[10] It is expected that with a reduced tax-rate differential between low- and high- tax rates, incentives for investments to flow to lower-rate jurisdictions will be reduced and more investments will flow to higher-tax jurisdictions: a diversion effect. The reduction of high corporate tax rates to the minimum tax-rate will reduce the tax revenues of Government: a volume effect.

amplifying the benefit to investors of the so-called substance-based carve-out; shifting to incentives that are less affected by Pillar II; or reducing taxes that are not covered by Pillar II, to the extent that they have a bearing on investment decisions.

International investment policymakers and negotiators of IIAs need to consider the potential constraints that IIA commitments may place on the implementation of key provisions of Pillar II. If host countries are prevented by IIAs and their investor-State dispute settlement (ISDS) provisions from applying top-up taxes or removing incentives, the tax increase to the global minimum will accrue to home countries. Host countries would lose out on tax revenues without the compensating investment-attraction benefit. Existing old-generation IIAs, of the type predominantly in force in many developing countries, are likely to be particularly problematic.

The strategic implications of the reforms for investment policy are also important. Reduced competition from low-tax locations could benefit developing economies. As investment promotion shifts from fiscal incentives to financial incentives and infrastructure provisions, many developing countries could find themselves at a disadvantage because they are unable to afford the upfront financial commitments associated with infrastructure provision and subsidies.

Looking ahead, many important details of Pillar II still need to be defined. Therefore, it will be key for developing countries to strengthen cooperation and technical capabilities to ensure effective participation in the process of negotiating the final shape of the reforms.

The implementation of BEPS Pillar II by tax authorities will be highly complex, and so will the translation of the reforms into investment policies, incentives regimes, and the value propositions of investment promotion agencies and special economic zones. Moreover, the tax revenue implications for developing countries of constraints posed by IIAs are a major cause for concern.

While the establishment of a global minimum tax is a welcome step in increasing the tax revenues from MNEs, its implementation would need to be carefully crafted to limit its negative impact on FDI. In particular, the international community, in parallel with or as part of the Inclusive Framework discussions, should alleviate the constraints that are placing developing countries, and especially LDCs, at a disadvantage:

- Vastly scale up technical assistance for developing countries to support BEPS implementation and investment policy adjustment.
- Adopt a multilateral solution to remove implementation constraints posed by IIAs and mitigate ISDS risks.
- As a stopgap measure, establish a mechanism to return any top-up revenues raised by developed home countries that should have accrued to developing host countries, but that they were unable to raise because of capacity or treaty constraints.

2.3 Corporate Tax Arbitrage and phantom FDI structures

UNCTAD (UNCTAD TDR 2022, chapter VII) provides a detailed analysis of the problems posed by so-called phantom FDI by MNEs, going beyond illicit finance and relating to problems of tax evasion and avoidance, corporate rent-seeking, and accountability. The analysis highlights the need to address the pervasive use of complex technical, regulatory, financial, and legal tools that facilitate corporate arbitrage between jurisdictions by MNEs. The techniques of regulatory arbitrage, including tax arbitrage, can substantially reduce fiscal space for national governments, in particular in developing countries that are currently also subject to multiple exogenous macroeconomic shocks and associated financial crises.

The Report examines the problem of phantom FDI by analyzing the equity chains of the top 100 non-financial MNEs, combining the spatial mapping technique of corporate equity chains with the analysis of subsidiary accounting data, to assess the extent to which investment in developing countries follows the phantom FDI pattern. This makes it possible to gauge the proportion of those subsidiaries in the corporate group structure that are engaged in genuine economic activity. The method used in the study furthermore allows to discriminate between operational and asset-based subsidiaries of MNEs, where both forms of financial reporting are available.

The study shows that when investing in weak jurisdictions, top MNEs tend to structure their FDI flows indirectly, taking ownership and control over the nature of investment (i.e., the type of economic activity, if any, associated with the investment) away from the host country and the purview of its fiscal authorities and regulatory institutions. As the Report also establishes, this concerns around a quarter of subsidiaries of the top MNEs in the Global South that present only balance sheets as evidence of their presence in a country, with no (or few) income statements that would reflect real economic engagement with it. This has multiple implications for policymakers at national and regional levels and more crucially, at the multilateral level, including in the area of taxation and fiscal policy, as well as multilateral measures such as windfall tax or the OECD BEPS initiatives.

In light of these observations, based on recent analyses of pertinent issues by UNCTAD, we reiterate our support for a more inclusive and effective approach to international tax cooperation based in the United Nations System.

3. Potential next steps

As mentioned in A/RES/77/244 (§ 3), the establishment of a Member State-led, open-ended ad hoc intergovernmental committee to recommend actions on the options for strengthening the inclusiveness and effectiveness of international tax cooperation will be an obvious way forward to ensure inclusive, organised and coordinated debate on international tax cooperation. This ad hoc intergovernmental committee, while open-ended, should nevertheless start its activities at the earliest possible to get a possibility to inform the 2023 SDG Summit and the 2024 Summit of the Future.

The establishment of a global minimum tax is a welcome step in increasing the tax revenues from MNEs, but its implementation would need to be carefully crafted to limit its possible negative impact on FDI, which could be counterproductive, especially for LDCs. The international community, in parallel with or as part of the Inclusive Framework discussions, should alleviate the constraints that are placing developing countries at a disadvantage and provides support through technical assistance and internationally agreed ad-hoc measures on IIAs, ISDS and return of top-up revenues.

As an additional as well as complementary steps, the following proposals should be set in motion to initiate some recommendations by the FACTI panel:

1. The establishment of a UN Commission of Experts to address pending challenges in the area of international tax cooperation and rationales, which could initiate a process for a UN Tax Convention.
2. The United Nations Chief Executive Board (UN CEB) should support these initiatives to facilitate a coordinated response of the United Nations development system and its specialised agencies.
3. Relevant UN bodies may consider organizing a UN event on Inclusive and Effective International Tax Cooperation as part of the wider planning for the SDG summit in September 2023 and/or follow-up events.

Efforts at the UN level, necessary to foster inclusiveness, should complement and support ongoing reforms that are helpful for sustainable development.

References

Baker, RW (2005). Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System. Hoboken, NJ, John Wiley & Sons.

Bolwijn, R., B. Casella and D. Rigo (2018). "An FDI-driven approach to measuring the scale and economic impact of BEPS". Transnational Corporations, 25 (2): 107–143. U.N., Geneva and New York.

Clausing, K.A. (2016). The effect of profit shifting on the corporate tax base in the United States and beyond. SSRN Scholarly Paper No. ID 2685442. Rochester, NY: Social Science Research Network.

Cobham, A. and P. Carter (2016). Are taxes good for your health? *UNU-WIDER Working Paper* 2016/171. December.

Cobham, A., and P. Janský (2018). Global distribution of revenue loss from corporate tax avoidance: re-estimation and country results. Journal of International Development, vol. 30, 206–232. Available at https://doi.org/10.1002/jid.3348 (accessed 8 September 2022).

Cobham, A., and P. Janský (2019). Measuring misalignment: the location of US multinationals' economic activity versus the location of their profits. Development Policy Review, vol. 37, pp. 91–110. Available at https://doi.org/10.1111/dpr.12315 (accessed 8 September 2022).

de Wilde M (2021). Is there a leak in the OECD's Global Minimum Tax Proposals (GLOBE, Pillar Two)? Kluwer International Tax Blog. 1 March. Available at http://kluwertaxblog.com/2021/03/01/is-there-a-leak-in-the-oecds-global-minimum-tax-proposals-globe-pillar-two/

Devereux M and Simmler M (2021). Who will pay Amount A? EconPol Policy Brief No. 36. Available at https://www.econpol.eu/publications/policy_brief_36

FACTI (2021) Financial integrity for sustainable development. Report of the High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda, 21 February. Available at: https://factipanel.org/docpdfs/FACTI_Panel_Report.pdf

Fuest C, Greil S, Hugger F and Neumeier F (2022). Global profit shifting of multinational companies: Evidence from CbCR micro data. CESifo Working Paper No 9757. CESifo GmbH, Munich.

Garcia-Bernardo J and Janský P (2022). Profit shifting of multinational corporations worldwide. Mimeo. Available at: https://arxiv.org/pdf/2201.08444.pdf

Hines, J.R. (1988). Taxation and US multinational investment. Tax Policy and the Economy, vol. 2, pp. 33–61.

OECD (2021). Statement Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. OECD, Paris. Available at: https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf

Schuster and Davis (2020). The Value of mirror trade data analysis for the detection of commodity-specific illicit outflows from Africa. Background paper for the Economic Development in Africa Report 2020. UNCTAD, Geneva.

Tax Justice Network (2021). State of Tax Justice 2021. London. Available at: https://taxjustice.net/wp-content/uploads/2021/11/State_of_Tax_Justice_Report_2021_ENGLISH.pdf

Tax Justice Network (2022). State of Tax Justice 2022. London. Available at: https://taxjustice.net/wp-content/uploads/2022/11/State-of-Tax-Justice-2022-Tax-Justice-Network.pdf

UNCTAD, UNODC (2020). Conceptual Framework for the Statistical Measurement of Illicit Financial Flows. U.N., Vienna.

UNCTAD (EDA 2020). Economic Development Report in Africa: Tackling Illicit Financial Flows for Sustainable Development in Africa. U.N., Geneva

UNCTAD (TDR 2021). Trade and Development Report, 2021. From Recovery to Resilience: The Development Dimension. United Nations publication, New York and Geneva.

UNCTAD (TDR 2022) Trade and Development Report, Chapter 7. U.N., New York and Geneva.

UNCTAD (WIR 2015) Reforming International Investment Governance. U.N., New York and Geneva

UNCTAD (WIR 2022) Key messages from the World Investment Report 2022. U.N., New York and Geneva.

UNECA (2021). Economic Report on Africa: Addressing Poverty and Vulnerability in Africa during the COVID-19 pandemic. U.N., Addis Ababa.

UNECA, UNCTAD (2023). Counting the cost. Defining, estimating and disseminating statistics on Illicit financial flows in Africa. U.N., Addis Ababa and Geneva.

Zucman G (2022). International Tax Avoidance by Multinational Firms. NBER The Reporter, issue No 3, October. Available at: https://www.nber.org/reporter/2022number3/international-tax-avoidance-multinational-firms