

WU Vienna University of Economics and Business
Institute for Austrian and International Tax Law
Global Tax Policy Center

Comments on the Draft Agenda of the UN Tax Committee

We commend the composition of the new Committee which brings in a broader range of emerging and developing economies and further strives for increased gender balance. Below, we provide our input and comments to the Draft Agenda based on ongoing research and engagement with several developing and developed countries facilitated by our projects in diverse areas including transfer pricing; cooperative compliance; the interface between tax investment and trade; and the role of new technologies in supporting tax policymakers and tax administration.

As an academic institution that has continued to provide input, share our research, and consult with former members of the Committee, we hope our input will provide the Committee with insights into the emerging issues affecting countries that require more guidance and technical support. Should you require more information regarding our project work so far or our engagement with countries, please do not hesitate to contact us.

1. Prioritization criteria

The items set out for the agenda of the first meeting of the group are extensive and will require careful decision-making in terms of prioritization. Given the resource constraints of the Committee it should first discuss and clearly identify the broad criteria that should be adopted, below we provide some of the key factors or questions that could be considered:

- i. What are the most pressing issues faced by developing countries ?
- ii. Where can the Committee make the greatest contribution to the Sustainable Development Goals (SDG) agenda by supporting or promoting policies that increase domestic resource mobilization (DRM)?
- iii. What is the comparative advantage of the UN in relation to the other standard setting bodies such as the OECD?
- iv. Where and how can it most effectively contribute to the setting of new international standards both in the area of direct and indirect taxes?

In answering these questions the Committee should not only depend on the expertise of the new members but also on the expertise it can draw upon from external sources including the academics, civil society organizations and other stakeholders that frequently respond to or participate in Committee undertakings.

2. Topics already proposed under item 5 of the draft agenda

Our comments are provided in order of priority. The traditional topics of tax treaties, transfer pricing, environmental taxes and extractives must continue to take the highest priority as continuing areas of interest for all countries. In addition, capacity building must be a foundation block for the Committee since the ability of developing countries to implement the outcomes from Committee discussions depends crucially on their holding the necessary skills.

Based on our research and engagement with tax administrations across a diverse number of countries, we have had the opportunity to identify the practical challenges and opportunities and suggest that the following additional issues should be prioritized:

A. Digitization of tax administration:

New technologies offer developing countries the opportunity to overcome their capacity constraints, counter tax evasion and avoidance through more effective detection, simplify administrative procedures (particularly audit) and provide a better service to taxpayers. More generally they have the potential to increase the transparency of tax administrations and their accountability to taxpayers. Developing countries also have the advantage of not having many of the legacy issues facing more advanced countries. A dedicated group of tax administration experts should be created to deal with these issues drawing upon South-South experiences. The group should be mandated to produce a digital tax administration roadmap, guidance and metrics to assist developing countries tax administration to advance in this area.

B. Indirect taxes, particularly VAT/GST:

VAT/GST is now the largest single source of revenue for most emerging and developing economies and is expected to grow in importance. In many countries the bulk of revenues from these taxes are raised from cross border transactions and experience suggests that companies are increasingly encountering problems in these areas as can be seen from the growing number of cross border VAT disputes. The Committee May wish to create a dedicated sub group to explore how VAT can assist in achieving DRM whilst facilitating sustainable development in terms of their design and how to reduce the VAT gap which can range from 15 to 50 per cent of the potential VAT yield. The sub group could also examine the issue of cross border VAT disputes. This is a neglected area, particularly for developing countries, which surveys have shown to be increasing in importance.

C. The relationship between tax, trade, and investment agreements

The former members of the Committee held an initial discussion on the relationship between tax treaties and bilateral investment treaties (BITs) at a joint session with UNCTAD and a paper was prepared exploring some of the issues arising from the interaction between taxation, trade and investment¹. but there is now a need to extend this dialogue. Over the last year we have seen the signing of the Africa Continental Free Trade Agreement (AfCFTA) and the

¹ Secretariat Paper: *The Interaction of Tax Trade and Investment Agreements*, Committee of Experts on International Cooperation in Tax Matters, April 2019. Available online at: https://www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2020-04/18STM_CRP14-Tax-treaties-with-trade-and-investment.pdf

Regional Comprehensive Economic Partnership (RCEP) in Asia. Several developing countries are exploring trade agreements with the European Union, the BRICS and OECD countries. New model International Investment Agreements (IIA) which seek to exclude or carve-out taxation, in response to the growing number of investment arbitration cases concerning tax measures, are now being considered and UNCTAD have provided recommendations in line with these developments.² As a result of the growing number of cases concerning taxation both in the trade and investment dispute settlement spaces, all three disciplines now need to review the possible disruptions that could arise from interactions between their traditional models. It therefore seems an appropriate time for the UN Tax Committee to provide a forum where these three communities can come together to exchange experiences and discuss how taxes should be treated in non-tax agreements and what can each learn in the area of cross border dispute mechanisms. One outcome from these exchanges could be a series of guidance papers explaining how tax treaties, free trade agreements and BITs work and how to achieve a greater consistency in the treatment of taxes in non tax agreements. Such work could be done in collaboration with UNCTAD and the WTO.

D. Solidarity Wealth Taxes

Growing inequalities in the distribution of income and wealth; the perception that the cost of the current economic and health crisis are not being fairly shared and the pressure on health and social services are all leading to a growth of populists and a break up of social cohesion, which constrain governments actions to achieve sustainable and inclusive growth. Past experience shows that government actions on the expenditure and revenue side of budget and regulations (e.g. minimum wages) can reverse this trend. Taxation has a modest role to play here by :

- Ensuring that governments have the revenues needed to finance social and health programs.
- By ensuring better compliance with the existing tax rules particularly by High-Net Worth Individuals (HNWI).
- Reviewing the role of taxes on capital and wealth and in particular the treatment of capital gains.
- The use of Net Wealth solidarity taxes and Inheritance taxes.
- Examining how special excises can be applied to goods and service typically consumed by the rich.

The World Bank, International Monetary Fund (IMF), OECD and the EU have already undertaken extensive analytic work which could form the basis for a regular exchange of views leading to possible recommendation to these organizations on which areas of taxation they should prioritize. The Committee itself could examine how NWT and Inheritance taxes are

² UNCTAD, *International Investment Agreements and their Implications for Tax Measures: What Tax Policymakers Need to Know*, UNCTAD, 2021. Available online at: <https://unctad.org/webflyer/international-investment-agreements-and-their-implications-tax-measures-what-tax>

treated in international tax agreements which could lead to suggestions for new work on the UN model Convention.

3. New Topics

i. Countering Illicit Financial Flows

Illicit Financial Flows (IFFs), including money laundering, bribery, corruption in all its forms, tax evasion and other financial crimes, are estimated to lead to billions of dollars of outflows from developing countries: far exceeding the aid they receive. They also undermine the legitimacy of government and reduce taxpayer morale. Over the last year the UN has played a crucial role (through the FACTI Panel) in raising the political alarm on this issue. It is therefore an appropriate time for the new Committee to provide a forum where tax experts can contribute to the wider UN debate by:

- Examining the use of shell companies, trust, and other opaque entities to hide assets offshore and how to identify the ultimate physical owner of such entities – in particular the type of information collected by tax authorities and how to cooperate with other law enforcement to match and detect.
- Explore how the misuse of client /Attorney privilege can frustrate offshore investigations.
- Exchange experiences of tax authorities with other law enforcement on the use of new technologies to improve the fight against IFFs.
- Examine in more depth trade misinvoicing and transfer mispricing to shift funds offshore.

ii. Changing the nature of the dialogue between Tax Administration and Multinational Enterprises in developing countries

Today in most countries this relationship is conflictual, and lacks transparency and trust which results in a waste of scarce resources both for government and business. A number of emerging and developing countries (e.g. Malaysia, Honduras, Zambia and Nigeria) now recognize that cooperative compliance³ programs can move this relationship to one characterized by openness and trust. The Committee could provide a neutral forum for discussion between Multinational Enterprises (MNE) and tax administration on how such programs could be designed to work in the specific circumstances of developing and emerging economies which could lead to a tool kit.

iii. Assisting SME in developing countries to go global

³ WU Global Tax Policy Center, *Cooperative Compliance Handbook*, 2021. For more see online at: <https://www.wu.ac.at/en/taxlaw/institute/gtpc/current-projects/cooperative-compliance/cooperative-compliance-handbook>

Much of the Committee's work is premised on the basis that only MNEs operate globally. Yet today's technologies open up global markets to small enterprises - especially technology start ups and through remote-working - in developing economies. These activities can provide new jobs and foreign currency reserves and foster innovation. At one point in its 4 year mandate the Committee could invite a selection of the most dynamic starts up to discuss what has been their experience of using the instruments developed by the Committee and identify circumstances under which taxation acts as a barrier to these enterprises going global.

iv. Adapting the UN Transfer Pricing Guideline to the outcomes from the BEPS 2.0

When the G20 arrives at a consensus on pillar 1 on the BEPs 2.0 package and, in particular, on the proposed allocation rules, it may be useful to ask the Transfer Pricing working group to provide for the Spring 2022 meeting a short note setting out what it sees as the main implications for the UN Transfer Pricing Guidelines. This should be done as soon as possible as it is likely that the technical details of pillar 1 will be agreed upon before mid 2022 and Developing countries will need time and information to react to these rules. In addition, the Committee should seek to integrate the outcomes of the ongoing work at the Inclusive Framework in so far as they impact UN Member States (particularly LDCs) into the UNTC work program.