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Macroeconomic policy questions: promotion of inclusive and effective international cooperation on tax matters at the United Nations

Promotion of inclusive and effective international tax cooperation at the United Nations

Report of the Secretary-General

Summary

The present report is submitted in response to General Assembly resolution [77/244](#) on the promotion of inclusive and effective international tax cooperation at the United Nations and is based on written submissions and consultations with Member States and other stakeholders. The report provides an analysis of the existing arrangements in international tax cooperation, identifies additional options to make such cooperation fully inclusive and more effective and outlines potential next steps. The analytical approach used in the report is based on a definition, derived from the input and analysis, of the inclusiveness and effectiveness of international tax cooperation in substantive and procedural terms. The findings of the report show that enhancing the role of the United Nations in tax-norm shaping and rule-setting, with full consideration of existing multilateral and international arrangements, appears the most viable path for making international tax cooperation fully inclusive and more effective. In this regard, the report identifies three options for consideration, each of which needs to be developed and agreed upon through a United Nations, Member States-led process. The options include (a) a multilateral convention on tax; (b) a framework convention on international tax cooperation; and (c) a framework for international tax cooperation. The report then provides an outline of the next steps associated with each option.

* [A/78/150](#).



I. Introduction

1. A country's domestic tax system reflects its values and national priorities and is a fundamental aspect of its exercise of national sovereignty. This includes: substantive and procedural choices regarding the scope of taxation; identification of taxpayers; determination of tax bases and rates; ways of levying taxes; setting incentives for social, environmental and economic behaviours; and spurring trade and investment.

2. Similarly, the international tax system should reflect universal values, including the principle of sovereign equality of all Member States, enshrined in Article 2 (1) of the Charter of the United Nations. In its resolution 69/313, the General Assembly accordingly stressed that efforts in international tax cooperation should be universal in approach and scope and should fully take into account the different needs and capacities of all countries, in particular countries in special situations.

3. Over the past century, international tax cooperation has principally focused on mitigating the possible negative effects that countries' individual tax policy choices might otherwise have on productive cross-border trade and investment. The main approach has been to modify the operation of domestic tax rules otherwise applicable to cross-border income flows through bilateral tax treaties (for the purposes of that treaty relationship). These treaties seek to mesh the tax systems of the contracting States to prevent the double taxation of income and capital, without inadvertently leaving income and capital untaxed.

4. Bilateral tax treaties are widely used globally. Many countries, however, have not concluded such treaties or have done so only with their most important trade and investment partners. Where there is no treaty in place, countries retain unconstrained taxing rights over most of the income earned in their jurisdictions and the full exercise of such rights may have effects, such as double taxation, that should be considered. A country's decision whether to restrict its taxing rights by concluding a tax treaty is an exercise of tax sovereignty.

5. In recent years, there has been increasing recognition that existing treaty-based rules for allocating rights to tax income and capital among jurisdictions allow for base erosion and profit shifting and need to be updated to reflect new ways that business may be conducted in an increasingly digitalized and globalized economy. A key forum for discussing responses to those concerns has been the Organisation for Economic Co-operation and Development (OECD), with the support of the Group of 20. The OECD/Group of 20 Inclusive Framework on Base Erosion and Profit Shifting has developed a "two-pillar solution" which is intended primarily to change the applicable rules for large multinational enterprises.¹ However, the changes being developed through that process would not fully address a broader discontent rooted in the long-standing conviction, held by many countries and stakeholders, that existing tax treaty rules do not reserve sufficient taxing rights for countries hosting multinational enterprises and constituting markets for their products. The current call for fully inclusive and more effective international tax cooperation shows agreement on the need to address tax evasion, aggressive tax avoidance, money laundering and illicit financial flows and to improve and build confidence in tax systems.² The call also shows recognition of the need to frame international tax cooperation in a more holistic, sustainable development context, including in relation not only to trade and

¹ See www.oecd.org/tax/beps/outcome-statement-on-the-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2023.pdf.

² See General Assembly resolution 77/154.

investment but also to inequality, the environment, health, gender and intergenerational aspects.³

6. Against this multilayered backdrop, the General Assembly, in its resolution [77/244](#), has taken, by consensus, a potentially path-breaking decision: to begin intergovernmental discussions at the United Nations on ways to strengthen the inclusiveness and effectiveness of international tax cooperation, through the evaluation of additional options, including the possibility of a framework or instrument developed and agreed upon through a United Nations intergovernmental process, taking into full consideration existing international and multilateral arrangements. To that end, the Assembly requested the Secretary-General to prepare a report, in consultation with Member States and others, analysing the existing arrangements, identifying additional options and outlining potential next steps.

7. Accordingly, the Secretariat invited Member States and other stakeholders to provide written inputs. Over 80 diverse and thoughtful written submissions were received. All submissions were made publicly available before the meetings of the Economic and Social Council forum on financing for development follow-up held in 2023, in order to facilitate multi-stakeholder discussions on the weaknesses and gaps in existing arrangements for international tax cooperation, as well as additional options for making such cooperation fully inclusive and more effective.⁴

8. As requested by the General Assembly in resolution [77/244](#), the Secretariat then analysed relevant international legal instruments, other documents and recommendations that address international tax cooperation. The work benefited from extensive data collection and analysis by in-house experts and well-qualified research institutions. Informal exchanges were organized to share updates on the report preparations and obtain feedback and further input from Member States and other stakeholders on the analytical approach, initial findings and emerging options.⁵ These inputs are a valuable resource for international tax cooperation efforts moving forward.

9. The analytical approach used for the present report is based on a working definition of inclusiveness and effectiveness in international tax cooperation, derived from the resolution, written submissions and discussions. The report provides this definition in section II and it is then applied in section III to analyse the existing arrangements. Based on that analysis, the report then serves to identify additional options in section IV and provides an outline of potential next steps in sections V and VI.

II. Defining inclusive and effective international tax cooperation

10. During the assessment of the written submissions and input from Member States and other stakeholders and the analysis of international tax cooperation in accordance with General Assembly resolution [77/244](#), some common themes emerged. The input and analysis showed that it is necessary to consider both the substantive and procedural criteria for fully inclusive and more effective international tax cooperation.

³ See, for example, recent outcomes of the Economic and Social Council forum on financing for development follow-up, available at <https://financing.desa.un.org/what-we-do/ECOSOC/financing-development-forum/outcomes>; information on the special meeting of the Council on international cooperation in tax matters, available at <https://financing.desa.un.org/ecosoc-special-meetings>; and information on the Group of 20 High-level Tax Symposium, available at www.g20.org/en/about-g20/#previous-summits.

⁴ See <https://financing.desa.un.org/inputs>.

⁵ See <https://financing.desa.un.org/taxreport2023/events>.

11. Substantively, the resolution and subsequent input are focused on a pressing, practical problem that has to be addressed in seeking to strengthen international tax cooperation: how to support countries in exercising their taxing rights, mobilizing resources to invest in the Sustainable Development Goals and climate action and promoting fiscal policies that are aligned with the Sustainable Development Goals. As set out in the Addis Ababa Action Agenda, the mobilization and effective use of domestic resources by a country is central to financing sustainable development. In order to achieve these goals, it is also necessary to recognize the many stakeholders in tax systems and the importance of perceptions of legitimacy, as well as the likely responses of other Governments and stakeholders to country policy choices. However, those perceptions or likely responses should not necessarily drive policy decisions.

12. The international tax system must therefore include policy options and arrangement that can be effectively implemented by all jurisdictions, while taking into account their different needs and capacities, in order to help to ensure that taxes are paid where economic activity occurs, including through relevant market participation. International tax rules need to be as simple and easy to administer as the subject allows. Sufficient stability is required, such that businesses can reasonably plan for the long term. At the same time, the system needs to be sufficiently flexible and resilient to continuously ensure equitable results as technology and business models and the international tax cooperation landscape evolve.

13. It was emphasized in many inputs and the consultations that inclusiveness and effectiveness in international tax cooperation must also be evaluated in terms of the processes by which international tax norms are developed and followed through. The key aspects that emerged were participation, agenda-setting, decision-making and implementation, including the monitoring, avoidance and resolution of tax disputes.

14. In the spirit of the Addis Ababa Action Agenda, inclusive and effective international tax cooperation will allow all countries to effectively participate in developing the rules that affect them, by right and without preconditions. Effective participation implies that procedures must take into account the different needs and capacities of all countries to meaningfully contribute to the norm-setting processes, without undue restrictions, and support them in doing so. They should all have an opportunity to participate in agenda-setting, debates and decision-making, either directly or through country groupings, according to their preference. Tax sovereignty also implies that countries have the right not to participate in a given process and to choose not to be bound by the outcome thereof. Only such participation in international tax cooperation efforts, which is freely chosen, ensures that countries can provide an input to and take ownership of the substantive outcomes, thereby confirming their legitimacy and enabling a fully inclusive and more effective system for all stakeholders.

15. Agenda-setting is a crucially important procedural aspect because the way in which tax challenges requiring collective action are identified and framed often predetermines the scope and nature of the responses to these challenges, as well as the order of priority for dealing with them. Different countries are in very different economic circumstances, have very different tax systems and may face very different tax-related challenges. Thus, in setting the agenda for international tax cooperation, all countries must have real opportunities, supported by the process and institutions, to be involved so that their different needs and capacities are considered in deciding which topics will be discussed, which options will be considered and the course of action that will be chosen.

16. Inclusive and effective international tax cooperation requires legally established and transparent decision-making structures, such that the rules are clear and not adapted to suit the interests of those on one side of the debate or another. Having

transparent rules helps to ensure that all participants are on an equal footing procedurally and have the same ability to engage meaningfully in decision-making, whether through consensus-based or voting-based processes, or a combination of the two. For instance, even a consensus-based process should require affirmative action by a country before it is bound by a decision. The relevant governance structure, including such formal aspects as the composition of any bureau or steering group, would have to be carefully negotiated and agreed to ensure that it fully represents all those participating in the discussions. In addition, procedures must provide sufficient time for all countries to consider their positions, including consultations within Governments and other stakeholders, before being pressed to make decisions.

17. Even if decisions are reached through a fully inclusive process, international tax cooperation will not be more effective unless those decisions are actually implemented by countries that have agreed to be bound by them, for example, by ratifying a treaty. Monitoring, including through peer-to-peer review, may be appropriate, in cases where the actions of one or more jurisdictions could undermine the overall framework. Any such monitoring should be conducted pursuant to clear standards against which a country's performance will be measured and applied equally to all, bearing in mind that such equality must take into account the differing capacities of countries, in particular those that are the weakest in that respect. All countries should have input into the development of those standards and be satisfied with the appropriateness of the standards before being subject to them.

18. Inevitably, disputes will arise, between Governments and/or between taxpayers and Governments, regarding the ways in which countries implement and interpret international tax rules resulting from any intergovernmental process. Although some countries' domestic legal systems may provide the objective forum necessary for resolving disputes, not all will do so. Therefore, procedurally, a fully inclusive and more effective tax cooperation system requires robust processes for avoiding and resolving tax disputes in a principled and effective manner, in accordance with domestic law and the international commitments of the relevant jurisdiction when domestic processes are not sufficient. Such dispute resolution procedures should be agreed through an inclusive process to help to ensure that they enjoy the confidence of all participating jurisdictions and retain that confidence by outcomes that reflect the agreement reached in accordance with well-accepted canons of treaty interpretation. To this end, special consideration for developing countries, in particular least developed countries, and support in cases where they have an interest, would need to be integrated into the system.

III. Assessing the inclusiveness and effectiveness of current international tax cooperation

19. The present section provides an analysis of the extent to which relevant international legal instruments, and other documents and recommendations that address international tax cooperation, are inclusive and effective. To this end, the section serves to assess the extent to which international tax cooperation instruments and arrangements developed by the United Nations and OECD, two international organizations that have played important roles in multilateral norm-shaping in international tax cooperation, are consistent with the substantive and procedural criteria set out in section II. Consistent with the present report as a whole, the analysis draws on the written submissions received, independent evidence-based academic research and the extensive analysis by in-house experts of the issues addressed in General Assembly resolution [77/244](#).

A. United Nations

20. The United Nations is an international organization that is based on the principle of the sovereign equality of all its 193 Member States. The role of the United Nations in relation to international tax cooperation is primarily performed by the General Assembly and Economic and Social Council, with the support of the Committee of Experts on International Cooperation in Tax Matters.⁶

21. The Addis Ababa Action Agenda, within its seven areas of action, includes the commitment to reduce harmful tax practices, strengthen the role of tax in financing development and increase development aid to support fair and effective tax systems. As referenced above, the Addis Ababa Action Agenda called for international tax cooperation that is universal in approach and scope and that fully takes into account the different needs and capacities of all countries, in particular countries in special situations.

22. The forum on financing for development follow-up allows all Member States and other stakeholders to freely participate in reviewing progress and making recommendations to support the ongoing implementation of these commitments. Tax issues are routinely included on the agenda of the forum. However, the role of the forum does not include detailed norm-shaping with respect to international tax cooperation issues.

23. The role of the United Nations in norm-shaping in international tax cooperation is fulfilled by the Committee of Experts on International Cooperation in Tax Matters, which grew out of long-standing concerns that existing paradigms for international tax cooperation were not serving the needs of all countries. In 1967, the Economic and Social Council recognized the need to provide an alternative, for those developing countries wishing to enter into tax treaties, to the primarily residence-country taxation rules found in the 1963 draft double taxation convention produced by OECD. Those rules, while providing roughly equivalent benefits in the case of treaties between countries with balanced capital flows, would tend to allocate taxing rights primarily to the developed country in treaties between developed and developing countries. As a result, the Ad Hoc Group of Experts on International Cooperation in Tax Matters, which was succeeded by the Committee of Experts on International Cooperation in Tax Matters, was charged with developing and subsequently keeping up-to-date a model tax convention that balances the objective of better preserving the taxing rights of developing countries with creating an attractive investment environment.

24. In accordance with its mandate,⁷ the Committee of Experts shapes international tax norms and produces guidance and recommendations on tax policy and administration, with particular attention to the needs of developing countries. In the context of the *United Nations Model Double Taxation Convention between Developed and Developing Countries*, this has resulted in the steady expansion of source-country taxing rights over what would be provided for under bilateral treaties following the provisions of the OECD Model Tax Convention on Income and Capital. This expansion includes, in particular, provisions allowing taxes to be imposed on providers of certain remote services that do not meet traditional “physical presence” tests, which is an issue of great importance to developing countries. These rules help to protect source countries’ tax bases and are a first step towards addressing inequities that arise when local brick-and-mortar companies are required to pay tax on their profits, because they meet physical presence tests, while the providers of remote services are not. Expanded rules regarding the taxation of gains, including with

⁶ For information on the role of other United Nations bodies and the Bretton Woods institutions in tax matters, see [E/2011/76](#).

⁷ Economic and Social Council resolution 2004/69.

respect to “offshore indirect transfers,” help to ensure that developing countries will be able to tax the gains derived by non-residents but which are inextricably linked to their territories.

25. The adoption of the provisions of the United Nations Model Convention in bilateral tax treaties is supported by the regular updating of the *United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries*, which is a practical guide covering all aspects of tax treaty negotiations, including the purpose and operation of rules of the United Nations Model Convention rules. By describing a wide range of viewpoints and providing a variety of options from which countries can choose, according to their realities and priorities, both the United Nations Model Convention and the *United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries*, supported by capacity-building, can assist countries in developing and articulating their own treaty policies in negotiations.

26. Substantively, the work of the United Nations on international tax cooperation has been found to be inclusive and effective. The International Centre for Tax and Development, which tracks the incidence in bilateral tax treaties of provisions that appear in the United Nations Model Convention, but not in the OECD Model Tax Convention, found that they are becoming more common.⁸ The achievement of this level of influence can be attributed to the way in which the guidance addresses the needs, and takes into account the capacities, of developing countries (e.g. by emphasizing administrable solutions), which is intrinsically connected to the way in which this guidance is produced.⁹ The work of the United Nations on international tax cooperation is expanding into new subject areas from a tax and sustainable development perspective, such as environmental, health and wealth taxes.¹⁰

27. Procedurally, the Committee of Experts does not meet the criterion of universal participation by right and without preconditions. The Committee of Experts is an expert group in which the members serve in their personal capacities. The 25 members are selected to reflect an equitable geographical distribution, with the composition changing each four years, and to represent different tax systems. This, combined with its way of working and multi-stakeholder engagement, ensures that a wide range of views is reflected in the United Nations guidance products. Nevertheless, while the nomination process is open to all countries, countries do not have the right to participate directly in the norm-shaping process of the Committee of Experts.

28. Other procedural criteria are not met solely because of this lack of universal participation in the Committee of Experts. Within these confines, the Committee’s agenda-setting process is open. Each new member decides, within its broad mandate, on the programme of work and an appropriate structure of subcommittees at its first meeting. Furthermore, Member States and other observers are free to make suggestions regarding the work programme of the Committee.

⁸ See International Centre for Tax and Development, “Tax treaty norms among lower-income countries and the role of the United Nations model: past, present and potential” (forthcoming).

⁹ Developing countries frequently note their preference for tax rules that are simple to administer, such as withholding taxes. See International Bureau of Fiscal Documentation, *Promotion of Inclusive and Effective Tax Cooperation at the United Nations* (forthcoming).

¹⁰ The Committee of Experts produces many other guidance products relating to tax policy and administration, available at <https://financing.desa.un.org/what-we-do/ECOSOC/tax-committee/publications>. They are not discussed in the present report because it is more difficult to analyse the influence of such guidance products without the kind of evidence obtained from reviewing the results of tax treaty negotiations, for which there is a time lag between the negotiation of the treaty in question and its publication.

29. Similarly, the decision-making processes of the Committee of Experts are transparent, as they are described in the “Practices and working methods for the Committee of Experts on International Cooperation in Tax Matters”,¹¹ which are informed by and based on the rules of procedure of the Economic and Social Council. Most proposals are adopted by consensus; votes are relatively uncommon, but may occur to confirm whether the majority is in favour of a proposal, which can then lead to a consensus-based decision as to how to reflect the majority and minority views in the guidance products. Such reflection of differing perspectives means countries can adopt those policies most appropriate in the light of their particular circumstances. Many of the Committee’s subcommittees engage multi-stakeholder participants from the International Monetary Fund, OECD, the World Bank and regional organizations, as well as civil society, academia and the business sector, to help to shape the guidance products throughout the drafting process.

30. The situation with respect to dispute resolution is mixed. As noted above, the Committee-specific guidance regarding tax treaties is widely and increasingly adopted in treaties concluded by developing countries. The simplicity of many of these rules, which are often based on withholding taxes, may reduce the number of disputes in comparison with alternative rules. When disputes arise, they should be resolved through the mutual agreement procedure set out in the relevant treaty. Although the United Nations Model Convention includes the option for countries to provide for binding arbitration of disputes,¹² relatively few treaties concluded by developing countries include this option.

B. Organisation for Economic Co-operation and Development

31. Currently, 38 countries are members of OECD, each with a gross national income per capita that places them in the category of “upper-middle income economy” or “high-income economy”, as defined by the World Bank. None of them are least developed countries, landlocked developing countries or small island developing States. Becoming a member of OECD involves a rigorous review process, including technical reviews to evaluate a candidate country’s willingness and ability to implement relevant OECD legal instruments. Most States members of OECD are from Europe and the Americas, while none are from Africa.¹³ Accession road maps for Brazil, Bulgaria, Croatia, Peru and Romania were adopted by OECD in 2022.

32. With respect to international tax cooperation, the OECD Committee on Fiscal Affairs generally sets the agenda and approves the technical work products developed by its Working Parties. The work of the Committee is supported by the Centre for Tax Policy and Administration. Through the Group of 20, the Committee’s tax agenda is also influenced by large developing country economies (Argentina, Brazil, China, India, Indonesia and South Africa) that are not members of OECD. Moreover, much of the Committee’s work is carried out through the Inclusive Framework on Base Erosion and Profit Shifting.¹⁴

33. OECD produces a wide range of guidance documents on tax policy and administration that is recognized as having a high technical quality. This, for instance, is reflected in the input paper to the present report, prepared by the International

¹¹ See <https://financing.desa.un.org/what-we-do/ECOSOC/tax-committee/working-methods>.

¹² The *United Nations Handbook on the Avoidance and Resolution of Tax Disputes* was issued by the Committee of Experts on International Cooperation in Tax Matters in 2021.

¹³ South Africa is a key partner of OECD. See www.oecd.org/southafrica/south-africa-and-oecd.htm.

¹⁴ The Inclusive Framework on Base Erosion and Profit Shifting does not have a dedicated secretariat; the work is serviced by the OECD secretariat.

Bureau of Fiscal Documentation.¹⁵ The report of the International Bureau of Fiscal Documentation also demonstrates that, in general and across topic areas, the OECD guidance is adopted much more widely in the developed countries than by developing countries.¹⁶ In the report, several reasons for this are identified, including: the complexity of the provisions and administration, lack of capacity in developing countries and some missed opportunities in the context of the base erosion and profit shifting project “to address comprehensively the key issues that are regarded as most pressing for developing countries. These include wasteful tax incentives, taxation of cross-border services (especially digital or non-physical services), indirect transfer of assets, and certain transfer pricing issues, such as the lack of comparability data”.¹⁷

34. These shortcomings have contributed to the perception among developing countries that the expected benefit from the proposed reforms will be minimal, especially when compared to the cost of implementation.¹⁸ This perception, supported by extensive data, is consistent with the input received from many country groups and civil society, in written form and at the special meeting of the Economic and Social Council on international cooperation in tax matters. There was particular concern about the “two-pillar solution” being developed by the OECD/Group of 20 Inclusive Framework process, which is aimed at addressing the problems of taxing the digitalized and globalized economy and at limiting harmful tax competition. The Inclusive Framework currently has 143 member jurisdictions,¹⁹ including 126 of the 193 States Members of the United Nations.

35. Pillar One focuses on taxation in the market jurisdictions in which large multinational enterprises sell their products and services. It consists of two components: Amount A and Amount B.

36. Under Amount A, Pillar One proposes a formulary approach to allocate a fraction of the residual profits of the largest and most profitable multinational enterprises to market jurisdictions, using a revenue-based allocation key. Many countries that have long argued for an allocation of profits to market jurisdictions initially welcomed this approach as a first step towards ensuring that international tax rules recognize the right of market jurisdictions to a share in the residual profits of businesses. However, many countries have come to view the quantitative scope of Amount A as too narrow and the quantum allocated to the market jurisdiction as too low.²⁰ Moreover, many consider that the rules are too complex and not well-adapted to their particular circumstances. Amount A, by design, needs to be implemented through a multilateral convention, so that it will only come into force when it has received sufficient ratifications, in accordance with the terms of the convention. Another concern is that while countries will be able to collect tax on Amount A from a small number of multinational enterprises, they are giving up the right to impose digital services taxes on all enterprises, including smaller enterprises that are not subject to Amount A, but which may, however, have a significant market presence and may be highly profitable.

¹⁵ See International Bureau of Fiscal Documentation, *Promotion of Inclusive and Effective Tax* (forthcoming).

¹⁶ *Ibid.* In one example, various “linked” rules on hybrid entities and instruments require countries to have information regarding the treatment of a transaction in other countries and have been adopted by over 30 developed countries but only one or two developing countries.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Seventeen of the jurisdictions are not sovereign States but have various relationships, such as overseas territories, with countries that are members of OECD.

²⁰ See, for example, the comments of the Intergovernmental Group of Twenty-four on International Monetary Affairs and Development. Available at <https://www.g24.org/wp-content/uploads/2022/03/Comments-of-the-G24-on-the-IF-July-Statement.pdf>.

37. Under Amount B, Pillar One proposes an internationally coordinated application of the existing arm's length standard, with a view to allocating predetermined fixed returns for certain baseline marketing and distribution functions performed by subsidiaries or branches in market countries. Amount B is aimed at enhancing tax certainty and reducing resource-intensive disputes between taxpayers and tax administrations. It is intended to benefit countries with lower capacity tax administrations. However, no agreement on the scope and mechanics of Amount B has been reached as yet, and its adoption has been made dependent upon the implementation of the multilateral convention on Amount A.

38. Pillar Two is aimed at establishing a global minimum effective tax on "excess profits" on a jurisdiction-by-jurisdiction basis to limit tax competition between countries, whether through the general structure of a country's tax system or through granting tax incentives.²¹ While such tax incentives are often used to attract investment, they can also be a source of inefficiencies and harmful tax competition between countries. Under Pillar Two, if a country imposes an effective tax rate on an enterprise's local operations that is less than the agreed minimum rate, other countries can impose top-up taxes to make up the difference. In addition, tax credits may reduce local effective tax rates significantly. The compliance burden for taxpayers and administrations will be considerable, especially since implementing legislation is likely to differ between countries.²² At present, many countries seem to be adopting a wait and see approach with respect to the implementation of Pillar Two.²³ Many are also concerned that the implementation of Pillar Two by other countries will impinge on their tax sovereignty and ability to attract and incentivize investment through tax credit.

39. The Global Forum on Transparency and Exchange of Information for Tax Purposes, which currently has 168 member jurisdictions, continues to develop guidance to expand and improve the exchange of information for tax purposes.²⁴ Exchanging information can help countries to identify tax evasion and aggressive tax planning. Developing countries that have been able to meet the requirements to participate in the Standard for Automatic Exchange of Financial Account Information in Tax Matters reported positive results in some cases involving higher-income residents. Nevertheless, it can be difficult for many developing countries to comply with the reciprocity requirements or meet the high confidentiality standards necessary for them to participate in exchanges under the Standard for Automatic Exchange of Financial Account Information in Tax Matters. The Standard for Automatic Exchange of Financial Account Information in Tax Matters was developed to allow the seamless use of exchanged information in countries' electronic matching systems. Many developing countries are still in the process of developing these matching systems and, in practice, confidentiality requirements under the Common Reporting Standard may require developing countries to keep information received completely sequestered from their domestic tax records.

40. According to the International Bureau of Fiscal Documentation report, these problems reflect the reality that "official participation and commitment does not necessarily imply effective application or implementation by all participating jurisdictions".²⁵ It notes in particular that developing countries may not consider that

²¹ Pillar Two also contains a subject-to-tax-rule with a narrow scope applicable to certain intra-group payments triggering a top-up to a 9 per cent nominal tax rate.

²² Tax Inspectors Without Borders have decided to assist countries in implementing Pillar Two, where there is clear demand.

²³ See for example, PricewaterhouseCoopers (PwC) tracker, available at www.pwc.com/gx/en/services/tax/pillar-two-readiness/country-tracker.html.

²⁴ The Global Forum has had a dedicated secretariat since 2009.

²⁵ International Bureau of Fiscal Documentation, *Promotion of Inclusive and Effective Tax* (forthcoming).

the system offers sufficient benefits to justify the resources required, which could be used for more urgent priorities relating to economic development.

41. As indicated in the above analysis, there is significant evidence showing that often the substantive guidance produced through these processes, which is generally of a high technical quality, is not implemented by developing countries. This is because they consider that the guidance does not respond to their more immediate needs and priorities, and instead draws resources away from such issues, and/or that they are not capable of implementing it as a result of their tax administration capacities. The substantive aspect of inclusive and effective international tax cooperation does not, therefore, appear to be adequately met.

42. The limited effectiveness of the substantive rules produced by the Global Forum and the Inclusive Framework in addressing the needs of developing countries can be traced to procedural issues that prevent developing countries from participating fully in the agenda-setting and decision-making processes.²⁶ In addition, countries that join the Global Forum must commit to implementing the Exchange of Information on Request standard as well as the Common Reporting Standard. Similarly, countries that wish to join the Inclusive Framework must commit to the minimum standards of the base erosion and profit shifting actions.²⁷ In each case, they must also pay an annual fee.²⁸ The requirements that jurisdictions pay to participate in discussions and accept the existing standards before being allowed to participate run counter to the principle of universal participation, by right, without preconditions.

43. The obligation that countries that are not members of OECD must commit to applying rules that were developed before they became members of the norm-shaping body, namely the Exchange of Information on Request requirement, Common Reporting Standard and base erosion and profit shifting minimum standards, is inconsistent with the procedural criteria that all countries should be involved in agenda-setting.

44. In the publications produced by the Global Forum and the Inclusive Framework, it is consistently indicated that all members participate on “an equal footing” in decision-making processes “by consensus”. States that are not members of OECD are referred to as “Base Erosion and Profit Shifting Associates.” In practice, however, it may be difficult for countries with small international tax staff to influence decision-making processes in these forums. In the case of the Inclusive Framework, a country is considered to agree to a proposal unless it raises an objection. It is not required to affirmatively “opt-in” to be part of the consensus. Therefore, a country that cannot keep up with the pace of work and never expresses a view on a proposal is considered to agree to it.

45. For the minimum standards developed as part of the Base Erosion and Profit Shifting Project, a peer review mechanism was developed, based on an agreed methodology for measuring a country’s performance, and was, over time, integrated into the work of the Inclusive Framework. The Global Forum also has a peer review system for analysing the legal framework and practical implementation of the information exchange requirements. Accordingly, the procedural aspect of inclusive and effective international tax cooperation pertaining to reviewing the implementation of standards appears to be met.

²⁶ International Centre for Tax and Development, “Inclusive and effective international tax cooperation: views from the Global South” (forthcoming).

²⁷ Base Erosion and Profit Shifting Actions 5, 6, 13 and 14.

²⁸ In 2022, the annual fee to join the Inclusive Framework was €21,500 (approximately \$24,000). In 2016, the minimum annual fee for the Global Forum was €15,300 (just under \$17,000 at the time).

46. Base Erosion and Profit Shifting Action 14 is aimed at improving the resolution of tax-related disputes between jurisdictions through relevant mutual agreement procedures. Initial findings from the peer review mechanism show that countries have restructured their competent authorities to resolve mutual agreement procedure cases in a timelier manner and the number of closed cases has increased substantially. It should be noted, however, when considering these positive trends that many developing countries have deferred their peer review.²⁹ To that effect, the situation with respect to dispute resolution appears mixed.

IV. Considering options for making international tax cooperation fully inclusive and more effective

47. The foregoing analysis of existing international and multilateral arrangements indicates that they do not satisfy the main elements for fully inclusive and more effective international tax cooperation. OECD has introduced several initiatives to engage and associate countries that are not members of OECD with its work, but many of those countries find that there are significant barriers preventing their meaningful engagement in agenda-setting and decision-making. As a result, it often happens that the substantive rules developed through these OECD initiatives do not adequately address the needs and priorities of developing countries and/or are beyond their capacities to implement.

48. The United Nations is attuned to the need to provide guidance that offers different options that are appropriate for countries at varied levels of development. Such guidance is widely used by developing countries. However, it is produced by the Committee of Experts, which is a small expert group, the members of which serve in their personal capacities. Even with the broad engagement of Member States and other observers in the Committee's work, the status of its guidance is not the same as that of guidance produced and agreed through an intergovernmental process. While other intergovernmental organizations, such as the International Monetary Fund and the World Bank, advise their members on tax issues, these organizations do not undertake collective norm-shaping in the area of international taxation cooperation.

49. The analysis in sections II and III shows that enhancing the role of the United Nations in tax-norm shaping and rule-setting, with full consideration of existing multilateral and international arrangements, appears the most viable path for making international tax cooperation fully inclusive and more effective. Rather than duplicating existing processes, a United Nations intergovernmental process would leverage existing strengths and address gaps and weaknesses in current international tax cooperation efforts. It would draw and build on the long-standing and multilayered cooperation between the United Nations and OECD in the area of international tax, as in many other areas.

50. The United Nations has vast experience of reaching and implementing multilateral agreements that address the needs of all parties, on both politically sensitive and technically complex issues. Some of those multilateral agreements were initiated by other institutions but only became global standards after being reopened for negotiation through a United Nations process that led to them being concluded and agreed.³⁰

²⁹ International Bureau of Fiscal Documentation, *Promotion of Inclusive and Effective Tax* (forthcoming).

³⁰ See, for example, <https://unctad.org/topic/competition-and-consumer-protection/un-guidelines-for-consumer-protection>.

51. In its resolution [77/244](#), the General Assembly referred to the possible options of an international tax cooperation framework or instrument that is developed and agreed upon through a United Nations intergovernmental process. The options could, of course, cover a range of possible formats, which could be structured in such a way that they contain the necessary procedural elements described in section II regarding inclusive and effective international tax cooperation, resulting in substantive rules that support countries in appropriately exercising their taxing rights and mobilizing resources to invest in the Goals and climate action.

52. Since the concepts of “framework or instrument” are potentially broad the present section serves to narrow them down to three general approaches for the purposes of the next stage of intergovernmental discussions at the United Nations on this topic. Given that a high degree of certainty regarding international tax rules is necessary for tax authorities, taxpayers and other stakeholders, two of the options would provide for binding legal commitments with respect to some aspects. The main differences between those two options relate to the scope and process. However, recognizing that not all Member States may be equally supportive of an increased norm-setting role for the United Nations in tax matters, a third option has been identified, which presents a coordination function. While this option does not require a legally binding instrument, it provides less of the certainty necessary to create a sufficiently stable international tax system.

Option 1: multilateral convention on tax

53. The first option would be a legally binding convention, sometimes also referred to as a “standard multilateral convention”, that would potentially cover a wide range of tax issues. It would be “regulatory” in nature, as it would set out specific rules creating obligations, including rules that potentially place limits on exercising taxing rights. Many provisions of such a convention might be similar to those in bilateral tax treaties. It would include a statement of the convention’s objectives and definitions of the key terms. It would then provide mandatory, preferably enforceable, obligations that are deemed essential for appropriate domestic resource mobilization, including rules regarding the reporting and exchange of information for tax purposes, and for strengthening domestic enabling environments. The convention would also establish a monitoring mechanism to ensure adherence to the information reporting and exchange rules, as well as dispute resolution procedures to address failures by parties to adhere to their commitments, such as any rules on the allocation of income across jurisdictions.³¹

54. The viability of a potentially comprehensive multilateral convention on tax would depend on there being: (a) a political agreement on the need to address, at the global level and in a legally binding manner, the tax issues to be subject to the convention; and (b) the ability to reach a consensus on approaches. If there is a consensus on some but not all issues to be addressed, a comprehensive agreement may not be viable, but a legally binding convention could still be used to make rapid progress on the most pressing issues through more targeted agreements, for example a United Nations multilateral convention on tax-related illicit financial flows.

Option 2: framework convention on international tax cooperation

55. A second option, namely a framework convention, would also be a legally binding multilateral instrument, but one that is “constitutive” in nature, in that it

³¹ This description has been adapted to the context of tax and is based on Koen De Feyter, “Type and structure of a legally binding instrument on the right to development”, 2019.

would establish an overall system of international tax governance. A framework convention would therefore outline the core tenets of future international tax cooperation, including the objectives, key principles governing the cooperation and the governance structure of the cooperation framework. Framework conventions may also include institutional provisions for creating a plenary forum for discussion between States that is endowed with the authority to adopt further normative instruments to which States could then become a party.

56. Protocols to the framework convention could provide additional, “regulatory” aspects, with more detailed commitments on particular topics, giving countries the ability to opt-in and opt-out on the basis of their priorities and capacities. If there is sufficient agreement on certain action items, some of these protocols could be negotiated at the same time as the framework convention. This might include, for example, a protocol on measures to address the problem of illicit financial flows.

57. Framework conventions, because of their flexibility,³² have been negotiated to address several different problems, including protecting the environment,³³ improving public health³⁴ and securing human rights.³⁵ They allow parties to address a problem incrementally, by agreeing to begin discussions although there is no strong political consensus in favour of specific solutions. If the framework convention includes reporting requirements, it can help the parties to reach a common understanding of relevant facts, facilitating future agreements. There is a risk, however, that adopting a framework convention would end up deferring the detailed and practical legal and technical work necessary to implement effective change.

Option 3: framework for international tax cooperation

58. A third option would be developing a non-binding multilateral agenda for coordinated actions, at the international, national, regional and bilateral levels, on improving tax norms and capacity. Some problems, such as eliminating illicit financial flows, require global action because a handful of jurisdictions can undermine the efforts of the majority. A single approach is not necessary for some other matters, such as the appropriate withholding tax rates that should apply to cross-border payments in a bilateral situation. Improvements to tax administration naturally take place at the national level, but they can be, and frequently are, supported by multilateral and regional processes. Member States, operating through the framework, would analyse tax problems to determine the level or levels at which coordinated actions would be most effective.

59. Substantively, this framework would resemble option 2, in that it would establish the principles or modalities of international tax cooperation, but such principles or modalities would not be the subject of legal commitments. It often happens that frameworks emerge from the conclusions of subject-matter intergovernmental conferences.³⁶

60. Where the political consensus is that a particular problem requires not only coordinated actions but also binding legal commitments at the global level, the

³² Daniel Bodansky and World Health Organization Tobacco Free Initiative, “The framework convention/protocol approach”, 1999. Available at <https://apps.who.int/iris/handle/10665/65355>.

³³ For example, the United Nations Framework Convention on Climate Change.

³⁴ For example, the World Health Organization Framework Convention on Tobacco Control.

³⁵ For example, the Framework Convention for the Protection of National Minorities.

³⁶ The Sendai Framework for Disaster Risk Reduction 2015–2030, for example, was initiated through stakeholder consultations, followed by intergovernmental negotiations, approved at the Third United Nations World Conference on Disaster Risk Reduction, and adopted by the General Assembly in its resolution [69/283](#).

General Assembly could decide to approve the negotiation of an instrument that resembles option 1 or option 2. Accordingly, the three options identified are not mutually exclusive, as a framework that provides recommendations regarding domestic tax rules could coexist with a multilateral convention on tax or framework convention that is focused on international tax rules.

61. In order to assist Member States and other stakeholders in considering the options, the table below serves to highlight the salient features of each one.³⁷

Features of the three options

Features	Options		
	<i>Multilateral convention on tax</i>	<i>Framework convention on international tax cooperation</i>	<i>Framework for international tax cooperation</i>
What is it?	Binding legal agreement that establishes enforceable obligations regarding international tax cooperation, such as the exchange of information, thus potentially modifying parties' taxing rights; primarily regulatory in nature	Binding legal agreement that establishes a general system of governance in the area of international tax cooperation; primarily constitutive in nature, with regulatory aspects adopted through protocols	Non-binding agenda for coordinated actions, at the international, national, regional and bilateral levels, on improving tax norms and capacity
When is it most likely to be effective?	When there is political consensus on the need to address an issue at the global level and there is consensus on a solution. If a consensus exists with respect only to specific issues, possibility of less comprehensive agreements are an option, for example a United Nations multilateral convention on tax-related illicit financial flows	When there is no immediate political consensus on binding substantive measures and/or the problem is changing since this option allows for incremental progress	When there is no political consensus on substantive measures or some aspects of a problem require a multilevel approach or are best approached at the national, regional or bilateral level rather than at the global level, although such approaches remain guided by the framework
Participation	Universal	Universal	Universal
Agenda-setting	Universal	Universal	Universal
Decision-making	Negotiation: General Assembly rules Ongoing: in accordance with the terms of the convention and supplemented by the decisions and actions of the Conference of the Parties	Negotiation: General Assembly rules Ongoing: in accordance with the terms of the convention and supplemented by the decisions and actions of the Conference of the Parties	Negotiation: General Assembly rules

³⁷ See section II for a description of the components of inclusive and effective international tax cooperation referred to in the table.

<i>Features</i>	<i>Options</i>		
	<i>Multilateral convention on tax</i>	<i>Framework convention on international tax cooperation</i>	<i>Framework for international tax cooperation</i>
Implementation	Set out in the convention	Set out in the framework convention	Voluntary participation by States in international, national, regional or bilateral actions, as established in the framework
Dispute resolution	Set out in the convention	Set out in the framework convention	Not applicable because no binding obligations

V. Next steps

62. The present section provides an outline of the next steps that each option would entail.

63. If option 1, namely the development of a multilateral convention on tax, is chosen, the next step would be, for example, to establish a Member State-led, intergovernmental ad hoc advisory expert group to prepare the draft terms of reference for the negotiation of such an instrument. The expert group would examine the issues that might be covered and why they need to be addressed by such a convention in order to make a recommendation regarding the scope of such an agreement – either a comprehensive multilateral convention on tax or a convention focused on specific international tax cooperation issues. The expert group would normally be asked to present the terms of reference at the next session of the General Assembly. Subsequently, if the General Assembly agrees with the recommendations, a Member State-led, intergovernmental ad hoc negotiating group could be established to negotiate the convention.

64. If option 2, that is, a framework convention, were chosen, the next steps would be similar. Given that a framework convention is drafted in more general terms, it may be possible to start with a Member State-led, intergovernmental ad hoc negotiating group charged with drafting the terms of reference. However, a Member State-led, intergovernmental ad hoc advisory expert group might be in a better position to determine whether it would be possible to negotiate any substantive protocols at the same time as the framework convention, such that following the same two-step procedure as in option 1 for the multilateral convention on tax might be advisable.

65. As noted above, frameworks for coordinated action frequently emerge from subject-matter conferences. If option 3 is chosen, a Member-State led, intergovernmental ad hoc expert group could be established and charged to serve as the preparatory committee to undertake the substantive and organizational preparation of the conference, including negotiating input papers and a draft outcome document on the most pressing international tax cooperation issues.

66. The next steps may appear more time-consuming for options 1 and 2 than for option 3, but a deliberate approach is appropriate when the goal is to create binding legal commitments. Inclusive and effective preparatory processes for high-level conferences, however, take time, so the speed at which the next steps can be taken may not differ significantly between the three options.

67. Finally, General Assembly resolution [77/244](#) outlines, as a possible next step, 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. This step would be appropriate if the General Assembly is not able, at its seventy-eighth session, to reach an agreement on a way forward.

VI. Supporting an enhanced role of the United Nations in making international tax cooperation fully inclusive and more effective

68. Exercising any of the options for making international tax cooperation fully inclusive and more effective will require greater engagement of all Member States in the United Nations intergovernmental discussions on tax matters. This will depend on the Governments of each country deciding to make international tax negotiations at the United Nations a priority and devoting sufficient resources to those negotiations to ensure that the needs and capacities of their country are voiced and taken fully into account. It is also likely to require increased support, in the form of financial and human resources, for capacity-building by international organizations, civil society and other stakeholders, as well as continued coordination and collaboration between the secretariats of these organizations, including through the Platform for Collaboration on Tax, and with interregional, regional and subregional organizations.

69. Current capacity-building activities by international organizations, regional tax organizations, government development agencies, civil society organizations and academia³⁸ are often focused on assisting developing countries in implementing existing tax rules and improving tax administration related to those tax rules. However, as indicated by developing countries during the special meeting of the Economic and Social Council on international cooperation in tax matters in 2023, if those rules do not respond adequately to their circumstances, technical assistance to implement those rules would not address their most immediate concerns and needs for capacity-building in tax policy and administration.³⁹

70. Moreover, it was requested in many inputs to the present report that international organizations, civil society organizations and, perhaps most importantly, regional tax organizations provide capacity-building to assist developing countries in participating more effectively in multilateral discussions. These organizations are crucial to assisting in this process. Further coordination of their activities will help to ensure the optimal use of resources to meet the high demand for support for capacity-building in tax policy and administration that is aligned with countries' different needs and priorities, including in terms of their effective participation in multilateral processes.

VII. Summary and conclusion

71. The present report comes amid increasingly urgent concerns that the international financial architecture, and with it the international tax system, have not sufficiently supported the post-pandemic economic recovery, financing of the Sustainable Development Goals and climate action. Global discussions are under way on the possibilities of a major overhaul of the international financial architecture. Meanwhile, as reflected in the decision of the General Assembly to begin intergovernmental discussions on tax matters at the United Nations, there is already consensus on the need to strengthen international tax cooperation to combat tax

³⁸ For an indicative list, see <https://financing.desa.un.org/inputs>.

³⁹ See United Nations, Economic and Social Council, official summary of the Special Meeting on International Cooperation in Tax Matters, New York, 31 March 2023, para. 14.

avoidance and evasion and illicit financial flows, which drain much needed resources from developing countries in particular, and to build fairer, more inclusive and effective tax systems, which are essential to building trust and spurring the transformation envisaged in the global sustainable development agenda.

72. The international community must not miss this opportunity to advance meaningful progress on this front. As requested in the resolution, the present report has served to analyse existing arrangements, identify additional options and outline potential next steps. Member States must weigh the options and take a timely decision during this session on the most suitable option and next step towards fully inclusive and more effective international tax cooperation for sustainable development. This decision should take into account the opportunities provided by a potential Fourth International Conference on Financing for Development in 2025. The Secretary-General wishes to express his deep appreciation to all stakeholders for their valuable input and counts on their engagement in the months ahead.
