

Briefing on the global tax body

10 Reasons why an intergovernmental UN tax body will benefit everyone

1

A key step towards a coherent global system.

Currently, the international tax system consists of a complicated web of thousands of bilateral tax treaties and different parallel international systems to regulate, for example, information exchange and corporate reporting. Negotiation of a globally agreed system is the only way to remove the complexity, confusion, inconsistency and mismatches that exist today. A truly global tax body is a crucial first step towards this goal.

2

Stronger cooperation between tax administrations.

A coherent global system will make it easier for tax administrations to communicate and cooperate. This will further strengthen international coherence and improve working conditions for tax administrations.

3

Less unilateral action.

Blacklisting and special restrictions on transfer pricing, financial transfers, corporate reporting and documentation are only some of the measures individual governments are currently introducing to protect their tax base.

If the crisis in the global tax system continues to be unresolved, we are likely to see many more of these kinds of self-protective measures. Only truly global cooperation can ensure that all governments have a real alternative to unilateral action.

4

Ending the race to the bottom.

The fear of losing investments is currently driving governments to introduce tax incentives, loopholes and harmful tax practices in a tragic 'race to the bottom', which is costing countries billions of dollars in lost tax income. Through truly global cooperation, we can turn this sad development around.

5

Better business environment.

Clear, consistent, global and stable rules are good for business. Operating across diverse, inconsistent national tax systems creates heavy administrative burdens, legal uncertainty and high risks for international business.

6

A level playing field.

Today, governments who commit to increasing transparency and closing loopholes fear that being a 'first mover' will result in businesses and wealthy individuals registering themselves in other jurisdictions. Through truly global negotiations, governments can agree on coordinated global action and ensure a level playing field.

7

Stronger implementation.

No government will feel obliged to implement tax standards and norms adopted in closed rooms where it was not welcome. The UN is the only global institution where all governments participate as equals, and therefore the place to achieve a global commitment to action.

8

Less double taxation and double-non-taxation.

The wide variety of mismatches between national tax systems is the core reason why some get taxed twice on the same income while others don't get taxed at all. Only truly global cooperation can put an end to these problems.

9

More financing for development in the poorest countries.

Currently, the world's poorest countries are excluded from decision making on global tax standards, and international systems often don't take into account their realities and interests. This means lower tax income and thereby less available financing for development in these countries.

10

Fair and consistent global action against tax havens.

Many governments are currently trying to protect their tax base through national blacklists based on criteria that are often both unclear and inconsistently applied. While random blacklisting can be burdensome for impacted countries, it will not solve the tax haven problem.

Action against tax havens must be fair, consistent and globally coordinated in order to be effective.

Q&A on Financing for Development (FFD) and the intergovernmental Tax Body

1 What is the most important decision on tax that should come out of the FfD conference?

Governments must decide to establish an intergovernmental tax body under the auspices of the United Nations (UN).

The decision could for example be as follows: *“We decide to establish an intergovernmental body on tax matters under the auspices of the United Nations, with universal membership and adequate resources, in time for the body to convene its first meeting in 2016.”*

2 What should the intergovernmental tax body look like?

The new UN tax body should:

- Be intergovernmental: It should consist of representatives negotiating on behalf of governments.
- Have universal membership: All countries should be able to participate on an equal footing.
- Be adequately resourced: It must have the secretariat capacity and resources to operate effectively.
- It could also be supported by a subsidiary technical body: The technical work could form the basis of the political decisions, which should be taken by the intergovernmental body. This expert body could, for example, be a strengthened version of the existing UN Expert Committee.

3 Are there any similar structures in the UN?

Intergovernmental bodies with universal or near-universal membership:

- There are many examples of this: for example, the UN Climate Convention and the UN Convention on Biological Diversity (near-universal membership), or the UN’s Forum on Forests (a subsidiary body under the Economic and Social Council (ECOSOC) with universal membership).

Technical bodies supporting intergovernmental bodies:

- There are also many examples of this, for example, the subsidiary bodies on scientific and technical advice under the UN Climate Convention and the Biodiversity Convention.

4 If all countries are members, won’t the body be unable to make decisions?

There are several examples of UN bodies with universal or near-universal membership that have been able to negotiate and adopt legally binding agreements, including the UN Framework Convention on Climate Change and the Convention on Biological Diversity. In fact, a body with universal membership can be more efficient than a body with limited membership. This is because decisions taken by an exclusive group of governments can easily be challenged by all the countries that weren’t at the table when it was negotiated, and thus there is a high risk that the decisions will have to be renegotiated. In a body with universal membership, no government can claim to have been excluded from the process.

5 We already have the OECD – why do we need another intergovernmental tax body?

The first problem with the current system is that it is highly undemocratic. At the Organisation for Economic Co-operation and Development (OECD) in Paris, decision-making on ‘global’ tax and transparency standards happens behind closed doors. While the G20 and a few other selected developing countries have been invited to join some of the meetings, more than 100 countries – which means over half of the world’s countries – remain excluded from the process. Although these countries are excluded, they are still expected to follow the decisions.

Secondly, the OECD’s track record shows that the interests of developing countries will not be taken into account. Consider, for example, the case of the arm’s length approach and the OECD’s Transfer Pricing manual, which require data and capacity that poorer developing countries don’t have (and even developed countries have great difficulties preventing multinational corporations (MNCs) from avoiding taxes when using this model).

This is also the case with the standard for automatic information exchange, which says that even the poorest countries can only receive information if they have the capacity to send the same type of information back (reciprocity). During the negotiation of this standard, the OECD and G20 considered the option of allowing countries with low capacity to receive information before they have the capacity to send the same type of information back. This option was rejected.

Also in the case of country by country reporting, the OECD and G20 considered the option of making the information from the reporting public, and thereby easily accessible to poorer developing countries. In the end, however, they decided that corporations should only report to countries where they have their headquarters (mainly OECD countries), and that this information should thereafter primarily be shared with other governments through automatic information exchange (which doesn’t work for the poorer developing countries – see above).

In other cases, OECD decisions have direct negative financial impacts on developing countries. This is the case, for example, for the OECD’s model tax treaty, which argues in favour of allocating taxing rights to the countries where MNCs have their headquarters – mainly OECD countries – at the expense of countries where these companies have their economic activity. In reality, this means that taxing rights, and thereby income, is transferred from developing countries to developed countries.

This is why some people have started using the following expression to describe the global tax negotiations:

“If you’re not at the table, you’re on the menu”.

6 Would you say that the G20/OECD processes on BEPS and AIE have failed?

The G20/OECD processes on Base Erosion and Profit Shifting (BEPS) and Automatic Information Exchange (AIE) are still ongoing and will most likely lead to improvements from the perspective of tax administrations in OECD and G20 countries. However, since the AIE standard will not include the option of non-reciprocity for developing countries with low capacity; the information generated from country by country reporting will most likely not be available to the vast majority of the developing countries; and since fundamental issues such as the allocation of taxing rights between governments and the arm’s length principle were never up for discussion, the G20/OECD BEPS and AIE processes have failed to address the problems developing countries are facing. (See more detail in the answer to the previous question).

7 Why do we need an intergovernmental UN body when we already have an expert body under the UN?

An intergovernmental body and an expert body are two very different things. The current UN expert body consists of 25 members speaking in their personal capacity. Therefore, the body is not suited to making political decisions on behalf of governments, and especially not on an issue as sensitive as tax. Furthermore, the outcomes of the work are not intergovernmental decisions – they are expert decisions.

8 Isn't the existing expert body working well?

Given the circumstances, it is working surprisingly well and has, for example, managed to develop the UN Model Double Taxation Convention and the UN's transfer pricing manual. However, the expert body has an extremely small secretariat and strict restrictions on available resources and meeting time. As mentioned above, an expert body also cannot replace an intergovernmental body.

9 Why the UN? Why not establish a new World Tax Organisation?

The UN is the only place where all governments – including the poorest – are able to participate and negotiate on an equal footing. The group of 'Least Developed Countries' (LDCs) all have permanent missions established to represent them at the UN and have formed their own UN negotiating group (the LDC Group). If a tax body was established as a new body outside the UN system, it would be very difficult to ensure that the poorest countries would be able to participate as effectively as they can in the UN, where all their basic structures are now in place.

Furthermore, establishing a new organisation would be a very time and energy-consuming process.

Before the organisation could start working it would have to develop its organisational setup, adopt procedures, mobilise funding, get members, etc. This would take many years. At the UN, on the other hand, these structures are already in place.

When it comes to the discussion about whether the UN is 'dysfunctional', it is worth noting that some developed countries, and in particular the EU, are on the one hand arguing against the UN as a forum to discuss tax, but on the other hand arguing strongly for using the UN to negotiate agreements on, for example, sustainable development goals

and climate change. The US is a different story – see question 22.

10 Isn't the OECD much more efficient than the UN?

It is true that including developing countries at the table, and including their concerns and interests in the development of global tax standards, will make decision making more complex than if a small closed group of countries get together and make all the decisions.

But it's important to remember that the aim should not just be to get some sort of decision made about global tax standards. The objective should be to make balanced and sustainable decisions that will actually be implemented.

Countries can and should not be expected to implement tax related decisions taken in meetings where they were not welcome. It is therefore unlikely that OECD decisions on 'global' tax standards will be implemented globally. Instead, we will see more countries taking unilateral action and thus a proliferation of different national tax laws and an incoherent and fragmented global tax system. This will both lead to more double-taxation and double-non-taxation and the complexity will increase the administrative burden and undermine the legal certainties for business. This is anything but 'efficient' and it will not lead to sustainable solutions to the problems we see in the global tax systems.

The OECD BEPS action plan was set to be finished in just two years (2013-2015), which is very fast. But first of all, the action plan excluded the more fundamental problems of the global tax system, such as the arm's length principle and the allocation of taxing rights between countries.

Second, more than 100 developing countries were excluded from the decision making process.

While the process has been fast, it will not be able to provide an efficient solution to the problems of base erosion and profit shifting, in particular not for the countries who were not at the table when the decisions were made, and thus were not able to ensure an outcome that supports their interests and is implementable in their national context – see also question 5.

11 Exactly what should the intergovernmental UN tax body work on?

The overall purpose of the intergovernmental UN tax body should be to ensure that countries do not erode each other's tax

bases, and that the international tax system is transparent, coherent and supports equality and development.

In order to do this, the body would have to address a number of different issues, including base erosion and profit shifting, tax and investment treaties, tax incentives, progressive taxation, taxation of extractive industries, harmful tax practices, beneficial ownership transparency, public country by country reporting, automatic exchange of information for tax purposes and alternatives to the arm's length principle. In order to ensure that the mandate of the tax body is broad enough to tackle all these issues – as well as new issues that might emerge – it's important that the mandate is not too narrow and specific.

In the longer run, and with a view to ensuring implementation of the decisions of the tax body, we should have a legally binding UN Tax Convention. Developing such an agreement should therefore be one of the key tasks of the intergovernmental body.

To fulfil its mandate, the body would likely need to meet two weeks per year and furthermore be able to establish subcommittees. Unless the body has a technical expert subcommittee, the secretariat should also have the resources and the option to consult and engage national legal experts and tax administrations as needed.

12 Isn't 'global tax standards' a controversial idea? What about national sovereignty?

We already have a body adopting tax standards that all countries are expected to follow: the OECD (sometimes together with G20). The OECD has even developed international legally binding agreements – 'multilateral conventions' – on tax matters. Therefore, we are not suggesting something new. We are simply suggesting that these decisions on global tax standards should happen in a process where all governments are allowed to be in the room and negotiate as equals.

13 Do MNCs have any interest in an intergovernmental UN body on tax?

MNCs have an interest in avoiding a situation in which individual countries start creating their own unique rules to combat tax avoidance and evasion. The lack of a fair and inclusive global decision making body will increase the likelihood of more radical and unilateral action from developing countries, and thereby a proliferation of different national tax laws and an incoherent and fragmented global tax system. This will both

lead to more double-taxation and double-non-taxation and the complexity will increase the administrative burden and undermine the legal certainties for business.

However, it should also be kept in mind that many MNCs are very well connected to the OECD and its Member States, and for that reason they might be very reluctant to start supporting the idea of moving decision making power to the UN.

14 Do OECD Member States have any interest in an intergovernmental UN body on tax?

The OECD Member States have an interest in coherence and consistency between the national tax legislation of different countries because it will strengthen the ability of tax administrations to work together, reduce the occurrence of tax avoidance and evasion, and create a more enabling environment for business. Furthermore, they have a strong interest in avoiding that more developing countries decide to stop cooperating and instead become tax havens, or take unilateral action and create their own national tax laws and solutions.

The OECD itself will of course never have an interest in losing power and positions to another organisation.

15 Tax issues are very technical – isn't this too complicated for UN negotiators?

The international tax negotiations are not simply technical issues. The decisions on global tax standards are extremely political and have very direct implications for all countries and their citizens.

Therefore, the technical issues should not be held up as an argument for excluding countries from the negotiations.

In the current setup, the negotiations take place at the OECD, which is also an intergovernmental body, but currently excludes more than 100 countries from the negotiations.

Although a technical expert body can never replace the intergovernmental negotiations, the best setup would be for the UN to have both a technical expert body and a political intergovernmental body.

Many technical details should also not be decided at the global level, but rather by tax administrations at the national level. What the global community needs to agree on is an international framework, including principles, norms, and issues concerning cross-boundary matters.

There would still be technical issues included in the tax negotiations, but this is the case for many international political issues, including climate change, for example.

16 Why abolish the OECD now that they have built up such great capacity and expertise?

The OECD will still exist and can still provide technical reports and advice to governments. What we are challenging is their right to make global decisions when they exclude more than half the world's countries from their decision-making processes.

17 The existing UN expert committee on tax is very useful. Isn't it a shame to change it?

Yes, that would be a shame, and we think it should not only be maintained but also significantly strengthened. However, the expert committee cannot replace an intergovernmental body, which is something quite different. Therefore, we are suggesting having both.

18 The OECD already has a 'Global Forum' with more than 120 members. Why can't that solve the tasks you envision for the UN tax body?

The OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes is not the same as a global negotiating forum on tax matters. It focuses on the implementation of specific initiatives, including the 'upon request system' for exchange of information between governments and on increasing the number of bilateral tax treaties between governments. The fact that the Forum is hosted by the OECD also creates a number of concerns about whether the body is really politically independent from the OECD.

19 Shouldn't we just focus on capacity building of developing countries?

Capacity building is no alternative to a seat at the table when global tax standards are being negotiated. That said, capacity building of developing countries can be positive, but it should be driven by demand from the receiver countries. It should not be linked to any political agenda or economic interests of the donor country (or the MNCs based in this country).

20 Many of the countries in the UN are tax havens. Won't that be a problem?

It is a problem that some countries benefit financially from harmful tax practices and profit shifting, but leaving decision-making to the OECD rather than the UN is not the solution. First of all, because countries such as Switzerland and Luxembourg, who are a key part of the global problem, are members of the OECD and therefore already have a seat at the table.

Second, excluding countries from global agreements on tax might only make them even less likely to cooperate, and even more inclined to focus on their own short-term interests rather than on ensuring a functional global tax system. In fact, the current exclusive decision-making system might act as an incentive for some of the countries that are excluded from the process to consider becoming tax havens.

21 If so many countries reject the idea of an intergovernmental UN tax body, isn't it an impossible dream?

The developing countries insist on having an intergovernmental UN body and the developed countries insist on not having it. Unless the negotiations collapse, some governments will have to change their position. However, UN negotiations are not as simple as price haggling – the outcome is rarely just the mid-point between the two positions. Instead, governments engage in trade-offs.

Because 2015 is a year of many UN decisions (on climate, sustainable development goals/post-2015 and financing for development), there are likely to be a lot of trade-offs this year. Although the intergovernmental UN tax body is on the list of things developed countries don't want to have, it's important to note that the list is very long, and that the tax body is less controversial than other issues developing countries are demanding. Furthermore, the national budget implications of a UN body are much lower than, for example, increasing ODA. Lastly, it's simply a proposal backed by many good arguments. Therefore, this is a good candidate for a trade-off.

22 But even if everyone else would agree to the proposal, won't the US kill it?

We shouldn't rule out the option that the US government might in the end acknowledge that developing countries have a democratic right to participate in the development of global tax standards.

However, in case they don't, there are several examples of how countries have responded to the US blocking international negotiations. One option is to pressure the US to change its position. One example of this is the climate negotiations in Bali in 2007, where Papua New Guinea challenged the US to "lead or get out of the way".

Another option is to move forward without the US and either count on them to catch up and adapt as the rest of the world develop joint standards, or simply acknowledge that a global system without the US is better than no global system at all. This has been the approach of the UN Convention on the Law of the Sea, the UN Convention on Biological Diversity, Kyoto Protocol, and many other international agreements. Some international agreements – such as the Nagoya Protocol – also provide developing countries the option to deny American MNCs access to their territory unless the US complies with the international agreement.

23 Won't this new UN body be very expensive?

What's expensive is to carry on without repairing the global tax system. Currently, trillions of dollars have been hidden away in tax havens and billions are lost every year due to tax avoidance and evasion.

The UN system is already established. What we are asking is for governments to use this system to solve the global tax problems. The exact costs will depend on the final setup of the intergovernmental tax body. Of course, the extra meetings and staff time will cost some more money, but those costs will first of all be shared among the UN member states. Second, they will be very small compared to the enormous sums of money

that would be saved by fixing the tax system.

A few estimates:

- Mbeki Panel's report (2015): "*IFFs from Africa range from at least \$30 billion to \$60 billion a year. These lower-end figures indicated to us that in reality Africa is a net creditor to the world rather than a net debtor, as is often assumed.*"
- UN Conference on Trade and Development (UNCTAD) (2015): "*Tax avoidance practices are responsible for a significant leakage of development financing resources. An estimated \$100 billion of annual tax revenue losses for developing countries is related to inward investment stocks directly linked to offshore hubs. On average, across developing economies, an additional 10% share of inward investment stock originating from offshore investment hubs is associated with a decrease in the reported (taxable) rate of return of more than 1 percentage point. The estimated tax losses represent around one-third of corporate income taxes that would be due in the absence of profit shifting.*"

Of course, the countries that are currently profiting from being tax havens will lose that income if the system is repaired. But the overall tax payments from MNCs and wealthy individuals will increase dramatically once they start paying their fair share of taxes rather than hiding their fortunes in secret bank accounts.

24 The OECD has expertise – the UN doesn't

The OECD expertise comes with a political bias, and therefore it is important to separate this expertise from the decision-making on

global tax standards. Under the UN system, the OECD is able to participate and make contributions as an observer, and so are other international bodies.

In terms of the UN secretariat's capacity, this will definitely need to be expanded. Furthermore, it should receive technical input from an expert body. This could be a strengthened version of the existing UN expert committee, for example.

25 Can't the UN just complement the work of the OECD?

The OECD has worked on very broad and fundamental tax issues, and in some cases made far-reaching decisions on global tax standards. For example, the OECD has already discussed the arm's length principle, automatic information exchange, base erosion and profit shifting, harmful tax practices, bilateral tax treaties, distribution of taxing rights between governments, transparency and country by country reporting.

It is important that developing countries who were excluded from the OECD processes have the chance to ask for a UN negotiation on some of these same topics, to ensure that truly global solutions, which also incorporate the interests of developing countries, can be negotiated. While these should – as far as possible – build on previous work done by OECD and others, it should not be assumed that developing countries will, in all instances, be able to fully endorse the existing OECD decisions.

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- research complex development finance policy issues
- synthesise and exchange NGO and official information and intelligence
- facilitate meetings and processes which improve concerted advocacy action by NGOs across Europe and in the South.

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