



Q&A ON THE INTERGOVERNMENTAL TAX BODY

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1. What do we want governments to do on this issue?

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 2017.”*

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.

The UN negotiations themselves are also an important mechanism to expose the governments that don’t want to take action to stop tax dodging and put pressure on them to move forward.

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. But the OECD has established both an 'Inclusive Framework' and a 'Global Forum' where all countries can participate. Is that not enough?

The OECD's 'Inclusive Framework' and 'Global Forum' are not the same as a global negotiating forums on tax matters. Rather, they are 'implementation forums', established to ensure that all countries commit to follow and implement the decisions that the OECD has already taken.

The Inclusive Framework was established in early 2016, less than six months after the OECD and G20 had adopted almost 2000 pages of decisions on BEPS in a negotiation where more than 100 countries were excluded from participating.

Since the Framework will also be asked with addressing gaps in the BEPS framework, the OECD claimed that the Framework would give developing countries a chance to participate on an equal footing in decision making. However, fact is that:

- Developing countries will not be allowed to participate unless they commit to complying with the nearly 2000 pages of decisions on BEPS, which have already been taken.
- The agenda, as well as the terms and conditions for participation, have already been determined by the OECD. So while developing countries can participate in the meetings of the framework on an "equal footing", they do not have equal powers when it comes to setting the agenda and agreeing the modalities for the work of the group.
- The new Inclusive Framework is still under the OECD, and therefore the OECD members will at the end of the day have the power to decide whether the forum should continue to exist and how the forum should work.

- The OECD secretariat are at the end of the day accountable to the OECD's Secretary General, and are bound to defend the interests of the OECD. The OECD's aims, as specified in the [OECD's Convention](#), clearly specifies that the OECD aims to promote the interests of its members, including to "*achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy;*"

At best, the new Inclusive Framework provides a restricted influence of developing countries on a predetermined and very limited agenda.

A [similar process](#) played out around the negotiations about information exchange, where the 'global standard' was adopted by the G20 and the OECD in an exclusive forum. After the adoption, the so-called 'Global Forum' was established by the OECD, and all countries were invited to join and implement the standard and fill out the gaps.

This kind of process is highly undemocratic, and it is unfortunate that it seems to have become the standard approach of the OECD and G20.

7. 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) have led 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 majority of developing countries will most likely not be able to access the information they need to collect taxes.

As regards BEPS, some of the most important decisions, including country by country reporting, will be based on information exchange between governments, and therefore the benefits to most developing countries will again be limited. Another problem with BEPS is that issues of key importance for developing countries, including alternatives to the arm's length principle and the division of taxing rights between countries, were never up for negotiation. Lastly, some of the BEPS outcomes seem to increase the number of loopholes in the international tax system. The new BEPS standard on the so-called 'patent boxes' (special tax deductions linked to intellectual property rights), seems to have led to more OECD countries introducing patent boxes in their legislation. This despite the fact that patent boxes have proven to lead to international tax dodging, since multinational corporations use them as a mechanism to avoid taxes. (See more detail in the answer to the previous question).

8. 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, which means they have status of recommendations.

9. 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.

10. 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 noticing 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.

11. Isn't the OECD much more efficient than the UN?

It's true that including the developing countries at the table, and including their concerns and interests in the development of global tax standards, will make the 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 about global tax standards. The objective should be to make balanced and sustainable decisions that will actually be implemented. The OECD has been setting the international tax standards for the last 50 years, and despite a very large amount of decisions, rules and guidelines, the global tax system has remained deeply dysfunctional, and despite recognizing that the system is not working, the OECD has shown surprisingly little will to consider fundamental reforms.

As regards the implementation of the OECD's decisions, 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 system.

The OECD BEPS outcomes were finalized in less than three 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. While the process was fast, it did not 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.

12. Exactly what should the intergovernmental UN tax body work on?

The overall purpose of the intergovernmental UN tax body should be to stop international tax dodging by ensuring that governments commit to not eroding each other's tax bases, and create an international tax system that 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.

13. 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.

The role of the global tax standards would not be to replace or interfere with national taxation, but rather to establish the international basis that makes sure countries are able to decide how to tax without having to fear that wealthy individuals and multinational corporations will use loopholes in the international tax system to circumvent the national tax laws and dodge taxes.

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

MNCs have an interest in avoiding that 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 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.

15. 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, both because it will strengthen the ability of tax administrations to work together, reduce the occurrence of tax avoidance and evasion, as well as 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. Some OECD member states are also likely to keep trying to maintain the current system in the belief that it will be possible for them to decide the international tax rules without having to involve developing countries, and then pressure all countries to follow the rules they have decided. However, this approach is not only immoral and undemocratic. It's also very unlikely to work in practice, since developing countries will not feel obliged to follow rules that have been adopted in forums where they were not welcome.

16. 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 on 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.

17. 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.

18. 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.

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?

Currently, the developing countries insist on having an intergovernmental UN body and most of the developed countries insist on not having it. So the situation can appear to be in a deadlock.

However, international decisions of this type often take a few years of negotiations before countries start changing positions and cooperating, and it's a good start that more than half the world's countries are already supporting the proposal. In the end, if a few countries insist on blocking the proposal it might have to be moved forward by a 'coalition of the willing', which can establish the body and start cooperating even if the blockers decide to boycott the negotiations. This would still be a much more democratic option than the current situation because:

- The blockers would always be welcome to come and join the negotiations;
- The negotiations would still include many more countries than the current OECD and G20 processes, where more than 100 countries are excluded from the decision making.

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. An 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*](#)", at which point the US decided to stop blocking the negotiations. 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?

In 2010, an official estimate of the resource requirements for establishing an intergovernmental tax body with 47 members was carried out by the United Nations. The conclusion was that in total, a new body meeting twice a year in New York would cost US\$ 1.860.400 per year, including conference service requirements, travel costs, expert group meetings, staff, etc. Although a body with universal membership would be more expensive, the costs are still clearly limited.

The costs can also be compared to the price the OECD currently charges for inviting developing countries to meetings in the new Inclusive Framework on BEPS. The OECD has announced that the poorest countries will be charged around €20.000 each (around US\$ 22.500) per year, and other

developing countries will be paid more (up to € 50.000). This would not include travel expenses, which developing countries would also have to finance themselves.

The cost can also be compared to the cost of carrying 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.

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. What happened during the Financing for Development Summit in Addis Ababa?

In 2015, civil society organizations across the world campaigned intensely to get a Global Tax Body established during the Addis Ababa Summit on Financing for Development in July.

The demand was strongly supported by the Group of 77 (G77) – a negotiating group representing more than 130 developing countries – which made it one of the Group's highest priorities in the lead up to the Summit. The call was also supported by international opinion makers such as Joseph Stiglitz and José Antonio Ocampo, and well as the [UN Secretary General Ban Ki Moon](#).

Thanks to the civil society campaign and the strong pressure from the developing countries, the issue of the Global Tax Body ended up at the top of the agenda in Addis Ababa and became the last outstanding issue in the negotiations, at one point causing so much conflicts that many were fearing a [collapse](#) in the negotiations.

At the end of the conference, a group of OECD countries, including the EU countries France and UK, managed to force the developing countries to give up their demand.

At the end of the conference, campaigners and the Global Tax Body (costume) went back to the corridors with signs saying “I’ll be back!” and “See you in New York”, and the developing countries – through G77 – gave a closing statement underlining that:

“[T]here remain a number of issues of principle that are important to, and fully endorsed by, the Group that have not been adequately accommodated in the current text, including, but not limited to: (...) The need to fully update the Tax Committee into an intergovernmental body”.

The civil society campaign has continued since Addis Ababa, supported by a broad coalition of organizations all over the world.

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