An intergovernmental UN tax body – why we need it and how we can get it

The Group of 77, representing more than 130 developing countries, have repeatedly proposed the establishment of an intergovernmental body under the United Nations (UN), to fix the broken global tax system. Here’s why this proposal would benefit everyone – and how it can be done.

Why do we need it?

1. **A coherent global system.** Despite the fact that tax dodging by multinational corporations and wealthy individuals is a global problem, we do not yet have a coherent global solution. The international tax system consists of a diverse set of approaches, guidelines and standards, which have resulted in a complicated web of thousands of bilateral tax treaties and different national and regional regulations. Negotiation of a globally agreed system is the only way to remove the complexity, confusion, inconsistency and mismatches that exist today. An intergovernmental UN tax body is a crucial first step towards this goal.

2. **Stronger cooperation between tax administrations.** In order to stop transboundary tax dodging, tax administrations need access to information about shell companies, hidden bank accounts and economic activities of their citizens and the multinational corporations operating in their country. A coherent global system will make it easier for tax administrations to communicate and cooperate.

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. This has resulted in special rules and loopholes that allow the richest and most powerful multinational corporations and individuals to dodge taxes, while national companies, small and medium enterprises and ordinary citizens, who are not taking advantage of these transboundary mechanisms, have to pay their taxes. 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 that were 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 only 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. A global approach can also ensure that those governments which refuse to cooperate and, for example, insist on being tax havens, are faced with global pressure to comply.
9. More financing for development. 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. If the world’s poorest countries get a seat at the table, they will be able to ensure that the global tax rules also work for their countries. However, while the impacts of tax dodging are felt hardest in the world’s poorest countries, rich nations are losing billions of dollars too. A global solution to the problem could generate large amounts of new financial resources in both developed and developing countries, and thereby help to achieve global development and environmental protection.

10. Fair and consistent global action against tax havens. Many governments are currently trying to protect their tax base through national or regional ‘blacklists’ based on criteria that are often both unclear and inconsistently applied. For example, the European Union Member States are exempted from the EU blacklist, despite the fact that several member states have a multitude of harmful tax practices and others have very high levels of financial secrecy which can be abused to conceal transboundary tax dodging by corporations and wealthy individuals.

However, in today’s globalised economy, financial assets can quickly be moved from one tax haven to another. Therefore, 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.

What’s wrong with the current system?

A club of rich countries as ‘rule makers’...

The first problem with the current system is that there is no truly global decision-making body on tax and transparency issues. For the last 50 years, the Organisation for Economic Co-operation and Development (OECD) – also known as the ‘rich countries’ club’ – has been making decisions on what it calls ‘global’ tax and transparency standards. These decisions have happened 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 (even developed countries have great difficulties preventing multinational corporations (MNCs) from avoiding taxes when using this model).

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

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.”

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2. The EU blacklist will only include ‘third countries’, i.e. not EU Member States. Furthermore, countries that are found to be cooperative with the EU will be exempted, despite the fact that these countries might still be acting as tax havens towards, for example, developing countries. (European Commission, (2016). Communication from the Commission to the European Parliament and the Council on an External Strategy for Effective Taxation. http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1454056581340&uri=COM:2016:24:FIN)


...while developing countries are ‘rule takers’

While more than 100 developing countries are excluded from the decision making, they are still expected to follow the OECD’s rules ‘on an equal footing’. To ensure that this happens, the OECD has dedicated forums called the ‘Inclusive Framework’ and the ‘Global Forum’. These forums are not the same as a global negotiating forum on tax and transparency matters, but rather ‘implementation forums’.

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 taxation of multinational corporations (known as ‘base erosion and profit shifting’ – BEPS).

Since the Framework will also be tasked 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, the 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 ultimately accountable to the OECD’s Secretary General, and are bound to defend the interests of the OECD. The OECD’s aims, as specified in its convention, clearly states 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 in 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.

So what do we need?

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

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.”

The new UN tax body should:

• Be intergovernmental: It should consist of representatives negotiating on behalf of governments, as opposed to, for example, an expert body, where members speak in their personal capacity, and where the outcomes are not intergovernmental decisions.

• 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.

• 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 is 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.

The way ahead
The proposal to establish an intergovernmental UN tax body has already gained the support of more than 130 countries worldwide, but until now the proposal has been blocked by OECD countries.

However, global tax scandals such as LuxLeaks, Swissleaks and the Panama Papers have repeatedly exposed the fact that all countries are losing billions of dollars due to the incoherent global system.

It is time to break the deadlock. In the case that a smaller group of OECD countries insist on blocking progress, the rest of the world’s governments must form a coalition of the willing, which moves forward and starts cooperating on tax and transparency matters under the auspices of the UN.

This is the crucial first step towards solving the global tax crisis, putting an end to international tax dodging, and reclaiming the billions of lost tax income to support global development and the protection of our environment.

For more information: Please contact Tove Maria Ryding, Policy and Advocacy Manager, Tax Justice at the European Network on Debt and Development.

Email: tryding@eurodad.org