



UN MEMBERS AGREE TO A FRAMEWORK CONVENTION ON INTERNATIONAL TAX MATTERS!

Here is why it matters for Public Services in Africa

(Nov 2023)

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INTRODUCTION

As countries need increasing resources to meet the demands of public services, climate change, recovery from Covid 19 and to meet the sustainable development goals, the international financial architecture and international tax system have not sufficiently enabled developing countries to be able to mobilize the resources they need. For example challenges posed by illicit financial flows, wherein Multi National Corporations (MNCs) exploit tax havens and transfer pricing to minimize tax liabilities, resulting in significant revenue losses for governments that urgently need these resources.

Addressing these complex issues demands international cooperation and a unified approach. There is increasing consensus on the need to strengthen international tax cooperation to combat tax 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.

However, there has been a lack of effective participation of the global south and measures undertaken have not been effective. While the Organization for Economic Co-operation and Development (OECD) with the support of the G20 has been a primary determinant of tax matters, the significant lack of representation at the OECD where over 2/3 of the world lacks a voice and which was formed before many countries existed has raised questions about whether it is “fit for purpose.” None of the OECD members are least developed countries, landlocked developing countries or small island states. The 38 members are all upper middle income or high-income economy as defined by the World Bank. None are from Africa.

Historically, the rules have always been skewed with those rules when applied to treaties between developing and developed country often allocating taxing rights primarily to the developed country. Developing countries especially those in the global south have been asking for reforms for a long time. For example as early as 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.

INTRODUCTION

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 established to develop and keep 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.¹

This struggle continues to date. Countries hosting multinational enterprises and constituting markets for their products are not served by existing tax treaty rules which fail to reserve sufficient taxing rights for these countries. The OECD base erosion and profit shifting project does not comprehensively address wasteful tax incentives, taxation of services provided across borders like digital services, indirect transfer of services. For developing countries this is key.

A UN tax convention as proposed by the Africa Group will play a pivotal role in curbing illicit financial flows, establishing fair and transparent taxation rules, and enable developing countries to harness the benefits of foreign investments through equitable tax revenues to finance public services like health, education etc. As stipulated by the Addis Ababa Action Agenda, financing sustainable development requires the mobilization and effective use of domestic resources by countries and international taxation cooperation is central to that.

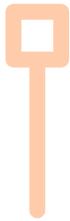
The inclusivity at the United Nations (UN) is key because it would enable the participation of all countries in a transparent manner and shared and common ownership of the outcome. It is a chance for global south countries to secure just taxing rights. A UN tax convention would not duplicate existing processes but actually strengthen international tax cooperation efforts and if leveraged can help ensure multinationals and the wealthy pay their fair share of tax.



BACKGROUND

There have been repeated calls over the years but here are key moments that led us here.

Timeline of Events



In 2015, the Addis Ababa Action Agenda of the Third International Conference on Financing for Development 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.²



In 2019, the African UN group issued a compelling call for the adoption of a United Nations tax convention to address the pressing challenges of illicit financial flows and foster equitable taxation of multinational corporations.³ This built on the earlier call from the G77 on the need for a UN Intergovernmental tax body.



In 2022, UN resolution A/RES/77/244 decided to begin intergovernmental discussions at the UN headquarters to strengthen intergovernmental tax cooperation.⁴ This included the possibility of developing an international taxation cooperation framework or agreement developed and agreed upon in an intergovernmental UN process. It notes “the corrosive effect that aggressive tax avoidance and tax evasion have on trust, the social compact, financial integrity, the rule of law and sustainable development, affecting the poorest and most vulnerable.”⁵



In September 2023, the U.N Secretary General presented his report A/78/235 examining existing arrangements, and called for an enhanced role for the UN in tax norm shaping and rule making.⁶



In October 2023, Nigeria tabled a draft resolution at the UN calling on member states to agree to a proposal to negotiate a comprehensive convention on international tax.⁷



From mid October to November 21, 2023, countries embarked on negotiations on this resolution with the aim of establishing a consensus. Noticing that developing countries were aiming to undermine this resolution by pushing for non-binding options rather. The Africa group strategically pivoted and introduced a compromise resolution calling for the negotiation of a framework convention



On 22 November, the Committee of the General Assembly adopted the compromise resolution effectively endorsing option 2 of Secretary General's Report on Promotion of Inclusive and effective international tax cooperation.

Here is why it is important that countries support a UN Tax Convention

It presents a comprehensive and forward-thinking framework to address the pressing challenges of global taxation, by advocating for an inclusive global tax body, emphasizing fairness towards developing countries, and seeking to bridge the gap in wealth distribution.

Developing countries most affected by global tax abuse are left out of global tax rules decision-making.

The proposal also aims to bring global coherence and simplicity to the taxation landscape, and address the inadequate current transfer pricing system. This outdated international tax system has enabled the loss of billions of dollars of revenue that could finance public services and climate change. Illicit financial flows deprive countries, particularly developing countries of resources needed to finance public services like health, education. IMF data reveals poor countries disproportionately affected by this tax avoidance with low income countries losing the most revenue given that tax revenues amount to higher percentage of GDP for these countries especially in sub Saharan Africa, Latin America.⁸ Lower income countries are losing about half of their health budgets due to aggressive profit shifting by multi-national companies to tax havens. The equivalent of 50% of Uganda's health budget in 2020/21 was lost to IFFs yet the country's health sector struggles with persistent drug stock outs, limited health workers.⁹

Women in particular are disproportionately affected by IFFs. They struggle to access health, education (girls often drop out of school at higher rates when public education is not free) when public services are inadequately financed. When taxable funds are hidden, there is less money for public services like health, education and an ultimate narrowing of the tax base with more regressive taxes often imposed to meet this gap, further burdening women.

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Here is why it is important that countries support a UN Tax Convention

The chair of the African Union high level panel on IFFs, H.E Thabo Mbeki has called for a UN Tax Convention to halt IFFs noting Africa loses billions of dollars and a U.N Convention on International Tax Cooperation if enacted could prevent \$5tn global estimated loss to tax havens over the next decade.

*While the Organization for Economic Cooperation and Development (OECD) has played an important role in these areas, it is clear after ten years of attempts to reform international tax rules that there is no substitute for the globally inclusive and transparent forum provided by the United Nations. I urge countries to remain committed to the development of a UN tax convention and encourage the OECD to play a supportive role in this regard.*¹¹

A UN Tax Convention could establish strong connections with development, human rights, equality, and environmental protection, underlining the significance of holistic sustainability. For example France and Kenya are seeking in partnership with other countries to launch Cop28 coalition for global taxes to fund climate action and such proposals could be encapsulated within UN Tax Convention. Following the 2022 global financial summit in Paris, countries identified taxation is one of the more sustainable ways to fund climate mitigation and it also emerged at the African Climate summit calling for inclusive tax cooperation at the U.N to curb illicit flows and pushing for a global carbon taxation regime.¹² To ensure the burden is not placed on developing countries, these discussions should be held in a more inclusive arena like the U.N.¹³

It also provides for enhanced government accountability and public participation, ensuring high standards of transparency while considering the interests, concerns, and needs of developing nations given that the U.N is a more inclusive forum.

What could a UN Tax Framework Convention look like?

The report by the UN Secretary General following Resolution 77/24 set out three options for states to consider: a multilateral convention on tax, a framework convention on international tax cooperation, and a framework for international tax cooperation.¹⁴ Both the multilateral convention on tax, a framework convention on international tax cooperation would be binding although there are some differences between them.¹⁵

A Standard United Nations tax convention would be better suited to address the root causes of the issues and ensure a level playing field for all nations. As the UN Secretary General report noted, “[e]ven 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.”

A binding option would provide a high degree of certainty regarding international tax rules, which is necessary for tax authorities, taxpayers and other stakeholders.

A UN tax convention would also enable monitoring by peer to peer review applied to all countries to assess if a member states/jurisdiction’s actions undermine the overall framework. The monitoring standards would be developed in a process where all countries have a say.



What could a UN Tax Framework Convention look like?

The second option U.N Secretary General report proposed, a framework convention, is a type of international treaty or agreement that establishes a general structure or framework for addressing a particular issue or problem. It sets out the overall objectives, principles, and guidelines for member countries to follow while leaving the specific details and implementation to be determined through subsequent protocols or agreements.¹⁶ In some ways it is less binding.

The convention adopts a stepwise approach, facilitating the gradual implementation of more detailed intergovernmental agreements. Often, a framework convention is followed by additional protocols or agreements that provide more detailed measures and commitments. These subsidiary agreements are negotiated and adopted by the parties to the convention to address specific aspects of the issue in question.¹⁷

One well-known example of a framework convention is the United Nations Framework Convention on Climate Change (UNFCCC). It was established in 1992 to stabilize greenhouse gas concentrations in the atmosphere and prevent dangerous human interference with the climate system.¹⁸ The UNFCCC provides the overall framework for global action on climate change and has led to the adoption of subsequent protocols, such as the Kyoto Protocol and the Paris Agreement, which contain more specific emission reduction targets and implementation measures.

The third option given; a framework for international tax cooperation given its non binding nature, may lack the necessary teeth to effectively tackle the complexities of tax evasion and other international illicit financial behavior.

The Africa group initially proposed a resolution calling for a comprehensive convention on international tax during the negotiations at the second committee. However, some developed countries, including the United Kingdom, USA, and EU nations, showed a preference for non-binding options. In response to this divergence, the Africa group strategically pivoted, introducing a compromise resolution calling for the negotiation of a framework convention. This proposal garnered widespread support, with a majority of UN member states voting in favor, On November 22, 2023, ultimately leading to its successful adoption.



A Photo Showing the voting results on the revised resolution

Next Steps

In terms of next steps:

- The UN secretariat has now drafted a budget to fund the work stipulated in the resolution. This will need to secure approval within the UN's fifth committee by end of 2023.
- Next will be the UN establishing a member State-led, open-ended ad hoc intergovernmental committee to agree on the terms of reference for the framework convention. These will be concluded by August 2024.
- The Intergovernmental committee will have to submit a report to the General Assembly at its seventy-ninth session (next year) containing the draft terms of reference for the UN framework convention.
- The final terms of reference will then inform the negotiations of the framework convention on tax moving forward.

Conclusion

The discussions on multinational corporations' taxation and the challenges of illicit financial flows underscore the pressing need for streamlining global tax policies. The agreed proposal to negotiate a framework convention on tax marks a critical step towards achieving this goal. This will see developing countries better able to combat tax evasion, ensure fairness, and more sustainably finance public services and climate change by progressive taxation.

About ISER

The Initiative for Social and Economic Rights (ISER) is a not-for-profit human right non-governmental organization (NGO). ISER was founded and registered in 2012 to ensure full recognition, accountability and realization of social and economic rights (SERs) primarily in Uganda but also within the African region.

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