TAX JUSTICE NETWORK AFRICA

UN Tax Convention

Factsheet 1

Why international tax Cooperation matters

The power to tax is a deeply political issue and a matter of sovereignty, political considerations and economic objectives that transcends national borders to regional groupings and the international fora that countries belong to and use for purposes of advancing their interests.

Due to the increasing cross-border movement of goods and services, tax has become not only a domestic matter but also an international matter. This is because, with increased globalisation, multiple countries claim the right to tax the same income or entity from the cross-border movement of goods and services.

This, coupled with the increasing presence of multinational companies who engage in aggressive tax planning by misusing the differences in tax rules between different jurisdictions, the presence of tax havens, the increased sophistication of the financial system as well as the evolution of how business is conducted due to the digitalization of the economy, has necessitated international tax cooperation.

What is wrong with the current system?

- An ineffective international tax system limits the sovereign taxing rights of the African states and reduces their ability to raise resources for achieving their development goals.
- The current system does not reflect changes in the global economy due to globalisation and digitalisation.
- With multinational enterprises' aggressive tax planning increasing, countries must cooperate to address this.
- Effective domestic resource mobilisation requires effective international tax cooperation.

Current problems of international tax governance

International tax governance currently faces various problems and other broader issues that inhibit its effectiveness.

Legitimacy

The current system, largely led by the Organisation for Economic Co-operation and Development (OECD), received its political mandate from the G20, which represents a group of rich countries and emerging economies. Africa's minimal representation in the G20 illustrates the little bargaining power that African countries have in shaping the international tax architecture.

Developed Vs Developing countries

International tax governance has also been greatly affected by an emphasis on developed and OECD country interests. The OECD-led reforms of global tax processes have seen a focus on the interests of developed countries at the expense of developing countries including Africa.

Misuse of Economic Power

Current global tax rulemaking processes have also shown that developed countries can misuse their economic power to force African countries to agree to tax rules that may not be beneficial to them.

Limited involvement of the United Nations

The UN's current role in global tax governance is limited to an expert committee nominated by states yet participating in their personal capacity. The committee's ability to act as a counterweight to the OECD is restricted by the lack of governmental endorsement for its outputs.

Non-binding rules

Another challenge to current global tax rulemaking processes is the negotiation of rules that are not binding and that have limited or ineffective peer review mechanisms that are characterised by lack of consequences in their implementation.

Why the UN Tax Convention?

Addressing specific needs for countries

The UN Tax Convention would provide a platform for African countries to articulate and pursue their specific needs and concerns, ensuring that the global tax framework is inclusive and responsive to their unique circumstances.

Ending overreliance on the OECD for global tax rulemaking

The OECD has traditionally played a dominant role in shaping global tax rules, often without adequate representation from African countries.

Democratic voting at the UN

The UN operates on the transparent principle of one country, one vote that would foster a sense of ownership and legitimacy among African countries, encouraging their active participation in international tax cooperation.

Legitimacy

The UN enjoys widespread recognition and legitimacy as a global body representing the interests of all nations despite their economic realities. A UN Tax Convention would carry the weight of this legitimacy, making it more likely to be accepted and implemented globally.

Ability to enforce

The UN enjoys the ability to enforce internationally agreed rules. This enforcement capability provides an added incentive for African countries to participate in the discussions for international tax rules and to implement the agreed-upon rules.

Participation of CSOs and other stakeholders

Tax Justice Network Africa (TJNA) and other tax justice movements have been advocating for moving the global tax rule-making process to the UN and the participation of different actors in the negotiation and adoption of tax rules. This broader stakeholder engagement ensures that international tax rules are developed with a comprehensive understanding of their social, environmental, and economic implications.

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Factsheet 2

International context of tax policy

National-level tax policies are heavily influenced by international tax rules. These determine how taxing rights are governed and allocated between countries. International tax rules play a key role in determining how much tax is payable and where it will be paid. This in turn affects the level of tax revenue different countries receive.

Foundations of international tax governance

Global tax rule-making processes can be traced back to the League of Nations who developed a model treaty on income taxation in 1928. Later on, the League of Nations developed further models in 1943 and 1946. The first OECD Model came out in 1963. This was however in draft form. The next model was released in 1977. Since then, the OECD has exercised dominance in this area. At the time, most African countries were colonies, and most global south countries did not participate in these processes. Since then, there have been several efforts to reform international tax governance. There is consensus that the current global tax system is no longer fit for purpose.

Institutions Involved in International Tax Policy

Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum)

The Global Forumworks on the implementation of global tax transparency and exchange of information standards. 32 African countries have joined the Global Forum. Despite this, due to the fact that the transparency standards therein are not consistent with the realities of many African countries, little progress in the continent. For instance, only 4 countries accounted for 84% of all exchange of information requests sent in 2023. In 2023, only 5 African countries as of 2023 benefit from automatic exchange of information. 10 African countries have signed the Multilateral Competent Authority Agreement (MCAA). 4 African countries have passed the laws under Common Reporting Standards to enable them receive information.

Most African countries that have joined the Global Forum are not benefitting from it.

The United Nations Committee of Experts on International Cooperation in Tax Matters (UN Tax Committee)

The Committee provides guidance and recommendations with regard to international tax norms with particular attention to the needs of developing countries. They are responsible for reviewing and updating the UN Model Double Taxation Convention between Developed and Developing Countries. This model is more favourable to developing countries than the OECD Model.

It is composed of a distinguished group of 25 tax experts with 4-year terms and who are selected to ensure equitable geographical representation. The tax experts participate in their own personal capacity and their respective Member States are not allowed to participate through them.

Attempts to upgrade the role of the UN Tax Committee so that it can play a stronger role in international tax norm setting have been thwarted. This has led to most of the committee's work remaining as non-binding recommendations.

Inclusive Framework on Base Erosion and Profit Shifting (Inclusive Framework)

The Inclusive Framework was one of the key outcomes of the OECD/G20 led Base Erosion and Profit Shifting project. The Base Erosion and Profit Shifting (BEPS) package is a series of 15 Actions aimed at tackling base erosion and profit shifting aimed at addressing harmful tax practices by multinational enterprises. The conceptualisation and agenda setting within this project was carried out by the OECD and approved by the G20. African countries were not part of this process. Subsequently, the Inclusive Framework was formed to allow non-OECD countries to participate in the implementation of the BEPS project. 27 African countries are members of the Inclusive Framework. Notably, African countries such as Nigeria, Zambia, Senegal and South Africa have been members of the Steering Group of the Inclusive Framework. However, despite their active participation, some of these African countries have expressed great displeasure with the tax proposals arising through the Inclusive Framework. In 2021, Kenya and Nigeria rejected the two-pillar solution to address tax challenges arising from the digitalisation of the economy.

A key concern is that the profit allocation rules were skewed primarily in favour of high-income countries and would thus be detrimental the interests of developing countries. Therefore, many African and developing countries believed that they were not participating on an equal footing in this process and that it was no

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UN Tax Convention

Factsheet 3

History of the UN Tax Convention Process

The current international tax treaty system as we know it was established in the 1920s and 1930s in the league of nations before many global south countries were in existence. Since the 1960s, The Organisation For Economic Co-operation and Development (OECD) has led the development of the international tax system without the effective participation of global south states african and the global south countries have been pushing for reform of the international tax architecture and this push did not receive support from the countries that had established it.

1960's
Establishment of the International Financial Architecture

Before 2015
Reform Demands by Africa and the Global South countries with no success

2015 - 2021
Bigger Clamour for reforms

2022 - 2024
Momentum

2024 - 2025
UN Tax Convention Process

2022: YEAR OF MOMENTUM

In May 2022, the African Ministers of Finance, Planning, and Economic Development adopted a resolution calling on the United Nations (UN) to start negotiations towards an international convention on tax matters under the auspices of the UN with the participation of all member states. This initiative gained momentum in November 2022, when the African Group, led by Nigeria, proffered a revised resolution at the United Nations focusing on the "Promotion of inclusive and effective international tax cooperation at the United Nations."

March 2022
Letter from a group of UN independent experts and special rapporteur

April 2022
African Union convened its first-ever STC Sub-Committee Meeting on Tax and Illicit Financial Flows, where they discussed Issues of the Specialized Technical Committee on Finance Monetary Affain, Economic Planning And integration

May 2022
54th session of the UNECA Conference of African Ministers of Finance, Planning and Economic Development held on 16 and 17 May 2022 in Dakar, the ministers endorsed the resolutions that had been approved by the Committee of Experts prior to their meeting

July 2022
Tax Strategy For Africa-A Future Of Financial Independence and Strategy for Curbing lot Financial Flows (IFFs) in Africa

October 2022
The G77 and China, a group of 134 developing countries, tabled a resolution at the UN calling for an intergovernmental tax body

The African Group also tabled a resolution calling for negotiations on a UN Convention on International Tax Cooperation

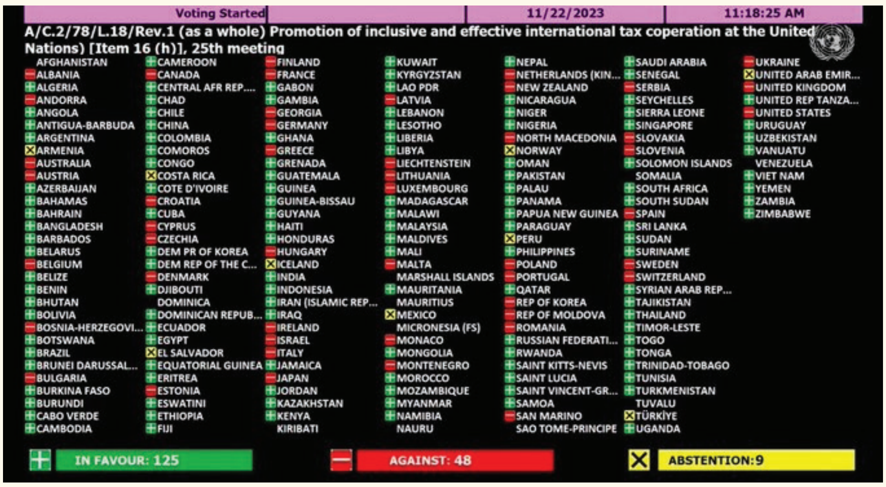
November 2022
African Group, led by Nigeria, then tabled a revised resolution at the UNGA on the "Promotion of inclusive and effective international tax cooperation at the United Nations

2022: Victory at Last

In December 2022, during the 77th session of the United Nations General Assembly Committee, Member States adopted a resolution via consensus for the promotion of inclusive and effective international tax cooperation at the United Nations. This resolution that was spearheaded by the African Group kickstarted UN intergovernmental discussions on ways to strengthen the inclusiveness and effectiveness of international tax cooperation including through the development of an international framework or instrument.

As a result of this resolution, in September 2023, the UN Secretary-General submitted a report highlighting actions for strengthening the inclusiveness and effectiveness of international tax cooperation including Option 1: A multilateral convention on tax; Option 2: A framework convention on international tax cooperation and Option 3: A framework for international tax cooperation

In November 2023, during the United Nations General Assembly Second Committee, 125 countries resoundingly endorsed a resolution on the commencement of the process towards a UN framework convention on international tax cooperation. The resolution was tabled by Nigeria on behalf of the Africa Group. 48 countries voted against it, and 9 countries abstained. Notably, all African countries, supported by members of the G77 plus China, voted in favour, showcasing strong regional cooperation and unity of purpose.



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UN Tax Convention
Factsheet 4

TAX JUSTICE NETWORK AFRICA

Towards the Un Tax Convention

In December 2023, the UN General Assembly adopted Resolution 78/230 on 'Promotion of inclusive and effective international cooperation at the United Nations (UN)'. This unprecedented resolution was approved by a majority vote largely driven by the African group and the Global South countries.

The adopted resolution 78/230 in favour of a framework convention outlined the following subsequent procedural steps.

- The establishment of an ad-hoc intergovernmental committee to negotiate terms of reference for a UN framework convention on international tax cooperation.
- Proposed timelines for the meetings of the ad-hoc intergovernmental committee to convene in New York and finalise its work by August 2024
- The inclusion of the participation of international organisations and civil society in the negotiation process.
- The submission of the ad-hoc intergovernmental committee's report to the General Assembly at the 79th session

Bureau of the ad-hoc Intergovernmental Committee

Nominated African countries include:

- Egypt
- Kenya
- Morocco
- Ghana

Other countries that are in the Bureau include:

- Bahamas
- Belarus
- Brazil
- China
- Estonia
- Germany
- India
- Italy
- Mexico
- Norway
- Poland
- Republic of Korea
- Russian Federation
- Singapore
- Spain

Key Timelines

February 2024

Organisational Session

- Election of the Chair, rapporteur, and vice chairs of the Ad hoc committee
- Agreement on dates of the substantive sessions
- Discussion on the working modalities of the committee

April-May 2024

First Substantive Session, New York.

July August 2024

Second Substantive Session, New York.

September 2024

Submission of the Ad Hoc Committee's Report to the United Nations General Assembly

2025

Negotiation of the UN Framework Convention

- Negotiations for the text of the convention
- Framework Convention will establish a system of international tax cooperation
- Specific issues will then be covered in the Implementing protocols that cover different aspects of tax

African interests in the UN Framework Convention

The inputs from various African stakeholders outlined the following main interests:

Institutional arrangements

African stakeholders desire the establishment of a Conference of Parties that will be the key decision-making body established under the Convention with a Secretariat, and with the UN Tax committee taking up a special/expert advisory role.

Commitments

Commitments that address the imbalance of taxing rights, tax-related Illicit Financial Flows (IFFs), taxation of cross-border services in a digitalised economy, promotion of tax transparency and effective exchange of information, amongst others.

Principles/ Objectives

Principles/Objectives that are grounded on sustainable development goals (SDGs) and that embody the consideration of the different capacities and needs of developing countries.

Procedural issues

Decision making and voting and agenda setting that is democratic.

Early protocols

Early protocols on tax-related illicit financial flows, taxation of cross-border services in a digitalised economy, tax transparency and exchange of information for tax purposes, addressing harmful tax regimes, amongst others.

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