



General Assembly

Distr.: General

XX August 2023

Original: English

Advance unedited version**8 August 2023**

Seventy-eighth session

Agenda Item 16

Macroeconomic policy questions

Promotion of inclusive and effective international tax cooperation at the United Nations

Report of the Secretary-General

Summary

Informed by written submissions and consultations with Member States and other stakeholders, the present report is submitted in response to General Assembly resolution [77/244](#) on the “Promotion of inclusive and effective international tax cooperation at the United Nations.” The report analyses existing arrangements in international tax cooperation, identifies additional options to make such cooperation fully inclusive and more effective, and outlines potential next steps. It utilizes a definition, derived from the inputs and analysis, of inclusiveness and effectiveness of international tax cooperation in substantive and procedural terms. It finds that enhancing the UN role in tax-norm shaping and rule setting, fully taking into account existing multilateral and international arrangements, appears the most viable path for making international tax cooperation fully inclusive and more effective. In this regard, the report identifies for consideration three options, each of which would need to be developed and agreed upon through a United Nations, Member State-led process: i) a multilateral convention on tax; ii) a framework convention on international tax cooperation; or iii) a framework for international tax cooperation. It then outlines the next steps associated with each option.

* [A/77/150](#).



I. Introduction

1. A country's domestic tax system reflects its values and national priorities and is a fundamental aspect of its exercise of national sovereignty. This includes substantive and procedural choices regarding the scope of taxation, identification of taxpayers, tax bases and rates, ways of levying taxes, and setting incentives for social, environmental, and economic behaviours, and spurring trade and investment.

2. Similarly, the international tax system should reflect universal values, including the principle of the sovereign equality of all Member States, enshrined in Article 2(1) of the Charter of the United Nations. The Addis Ababa Action Agenda on Financing for Development accordingly stressed that efforts in international tax cooperation should be universal in approach and scope and should fully consider the different needs, priorities, and capacities of all countries, in particular countries in special situations.¹

3. For the last century, international tax cooperation principally focused on mitigating possible negative effects that countries' individual tax policy choices might otherwise have on productive cross-border trade and investment. The main approach has been to modify the operation of domestic tax rules otherwise applicable to cross-border income flows through bilateral tax treaties (for the purposes of that treaty relationship). Such treaties seek to mesh the tax systems of the contracting states to prevent double taxation of income and capital, without inadvertently leaving income and capital untaxed.

4. Bilateral tax treaties are widely used globally. Many countries, however, have not concluded such treaties or have done so only with their most important trade and investment partners. Where there is no treaty in place, countries retain unconstrained taxing rights over most income earned in their jurisdictions, although full exercise of such rights may have effects, such as double taxation, that should at least be considered. A country's decision whether to restrict its taxing rights by concluding a tax treaty is an exercise of tax sovereignty.

5. In recent years, there has been increasing recognition that the existing treaty-based rules for allocating rights to taxing income and capital among jurisdictions allow for base erosion and profit shifting and need updating to reflect new ways that business may be done in an increasingly digitalized and globalized economy. A key forum for discussing responses to those concerns has been the Organisation for Economic Cooperation and Development (OECD), with the support of the Group of 20 (G20). The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) has developed a "two-pillar solution" which intends to mostly change the applicable rules for large multinational enterprises.² However, the changes being developed through that process would not address fully a broader discontent rooted in the long-standing conviction held by many countries and stakeholders that the existing tax treaty rules do not reserve sufficient taxing rights to countries hosting multinational enterprises and constituting markets for their products. The current call for fully inclusive and more effective international tax cooperation shows agreement on the need to address tax evasion, aggressive tax

¹ [A/RES/69/313](#).

² See OECD/IF, [Outcome Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy](#).

avoidance, money laundering and illicit financial flows, and to improve and build confidence in tax systems.³ It further shows recognition of the need to put international tax cooperation in a more holistic, sustainable development, context, including in relation to not only trade and investment but also inequality, the environment, health, gender, and inter-generational aspects.⁴

6. Against this multi-layered backdrop, the General Assembly has taken, by consensus, a potentially pathbreaking decision: to begin intergovernmental discussions at the United Nations on ways to strengthen the inclusiveness and effectiveness of international tax cooperation, through the evaluation of additional options, including the possibility of a framework or instrument developed and agreed upon through a UN intergovernmental process, fully considering existing international and multilateral arrangements. To this end, the Assembly requested the Secretary-General, consulting with Member States and others, to prepare a report analysing the existing arrangements, identifying additional options, and outlining potential next steps.⁵

7. Accordingly, the Secretariat invited Member States and other stakeholders to provide written input. Over 80 diverse and thoughtful written submissions were received. All submissions were made publicly available before the 2023 Economic and Social Council (ECOSOC) meetings on financing for development, in order to facilitate multi-stakeholder discussions on the weaknesses and gaps in existing arrangements for international tax cooperation, as well as additional options for making such cooperation fully inclusive and more effective.⁶

8. As the resolution requested, the Secretariat then analysed relevant international legal instruments, other documents, and recommendations addressing international tax cooperation. The work benefitted from extensive data collection and analysis by in-house experts and well qualified research institutions. Informal exchanges were organized to share updates on the report preparations and seek feedback and further input from Member States and other stakeholders on the analytical approach, initial findings, and emerging options.⁷ These inputs provide a valuable resource for international tax cooperation efforts moving forward.

9. The present report's analytical approach is based on a working definition of inclusiveness and effectiveness in international tax cooperation, derived from the resolution, written submissions, and discussions. The report lays out this definition in Section II and then applies it in Section III to analyse the existing arrangements. Based on that analysis, the report then identifies additional options in Section IV and outlines potential next steps in Sections V and VI.

³ See, for example, [A/RES/77/154](#).

⁴ See, for example, recent outcomes of [ECOSOC's FfD Forum](#) and its [Special Meeting on International Cooperation in Tax Matters](#), as well as [G20 High-level Symposia on Tax](#).

⁵ [A/RES/77/244](#).

⁶ See [here](#).

⁷ See [here](#).

II. Defining inclusive and effective international tax cooperation

10. In assessing the written submissions and further inputs from Member States and other stakeholders and carrying out analysis of international tax cooperation in accordance with resolution 77/244, some common themes emerged. The input and analysis showed the necessity to consider both the substantive and procedural criteria of fully inclusive and more effective international tax cooperation.

11. Substantively, the resolution and subsequent inputs focus on a pressing, practical problem that has to be addressed in seeking to strengthen international tax cooperation: how to support countries in exercising their taxing rights, mobilizing resources to invest in the Sustainable Development Goals (SDGs) and climate action, and promoting SDG-aligned fiscal policies. As set out in the Addis Agenda, the mobilization and effective use of domestic resources by a country is central to financing sustainable development. Achieving these goals also requires a recognition of the many stakeholders in tax systems and of the importance of perceptions of legitimacy, as well as the likely responses of other governments and stakeholders to country policy choices. However, those perceptions or likely responses should not necessarily drive policy decisions.

12. The international tax system therefore must include policy options and arrangements that can be effectively implemented by all jurisdictions – taking into account their different needs, priorities, and capacities – to help ensure that taxes are paid where economic activity occurs, including through relevant market participation. International tax rules need to be as simple and as easy to administer as the subject allows. Sufficient stability is required, such that businesses can reasonably plan for the long term. At the same time, the system needs to be sufficiently flexible and resilient to continuously ensure equitable results as technology and business models and the international tax cooperation landscape evolve.

13. Many inputs and the consultations emphasized that inclusiveness and effectiveness in international tax cooperation must also be evaluated in terms of the processes by which international tax norms are developed and followed through. The key aspects to emerge were participation, agenda-setting, decision-making, and implementation, including monitoring and avoidance and resolution of tax disputes.

14. In the spirit of the Addis Agenda, inclusive and effective international tax cooperation requires that all countries are able to effectively participate in developing the rules that affect them, by right and without pre-conditions. This implies that procedures must take into account the different needs, priorities, and capacities of all countries to meaningfully contribute to the norm-setting processes without undue restrictions – and support them in doing so. They should all have an opportunity to participate in agenda-setting, debates, and decision-making, either directly or through country groupings, as they prefer. Tax sovereignty also implies that countries have the right not to participate in a given process and to choose not to be bound by its results. Only such participation in international tax cooperation efforts, freely chosen, can ensure input to, and ownership of, substantive outcomes, thereby confirming their legitimacy and enabling a fully inclusive and more effective system for all stakeholders.

15. Agenda-setting is a crucially important procedural aspect because the way in which tax challenges requiring collective action are identified and framed often pre-determines the scope and nature of the responses to these challenges, as well as the order of priority for dealing with them. Different countries are in very different economic circumstances, have very different tax systems, and may face very different tax challenges. Thus, in setting the agenda of international tax cooperation, all countries must have real opportunities, supported by the process and institutions, to be involved so that their different needs, priorities, and capacities are considered in deciding which topics will be discussed, options considered, and direction of action chosen.

16. Inclusive and effective international tax cooperation requires legally established and transparent decision-making structures, such that the rules are clear and not varied to suit the interests of those on one side of the debate or another. Such transparent rules help to ensure that all participants are on an equal footing procedurally and have an equal ability to engage meaningfully in decision-making, whether by consensus- or voting-based processes or some combination. For instance, even a consensus-based process should require affirmative action by a country before it is bound by a decision. The relevant governance structure, including such formal aspects as the composition of any bureau or steering group, would have to be carefully negotiated and agreed to ensure that it fully represents all those participating in the discussions. In addition, procedures must provide sufficient time for all countries to consider their positions, including consultation within governments and with other stakeholders, before being pressed to make decisions.

17. Even 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 (such as by ratification of a treaty). Monitoring, including through peer-to-peer reviews, may be appropriate, such as when the actions of one or more jurisdictions can undermine the overall framework. Any such monitoring should be conducted pursuant to clear standards against which a country's performance will be measured and applied equally to all, bearing in mind that such equality must take into account the differing capacities of countries, especially the weakest capacities. All countries should have input into the development of those standards and be satisfied of their appropriateness before being subject to them.

18. Inevitably, disputes will arise (between governments and/or between taxpayers and governments) regarding the ways in which countries implement and interpret international tax rules resulting from any intergovernmental process. Although some countries' domestic legal systems may provide the necessary objective forum to resolve such disputes, not all will do so. Therefore, a fully inclusive and more effective tax cooperation system procedurally requires robust processes for avoiding and resolving tax disputes in a principled and effective manner in accordance with domestic law and international commitments of the relevant jurisdiction when domestic processes are not sufficient. Such dispute resolution procedures should themselves be agreed through an inclusive process to help ensure that they enjoy the confidence of all participating jurisdictions and will retain that confidence by outcomes that reflect the agreement reached following well accepted canons of treaty interpretation. To this end, special consideration to developing countries, especially the least developed, and support in cases where they have an interest, would need to be integrated into the system.

III. Assessing the inclusiveness and effectiveness of current international tax cooperation

19. This section analyses the extent to which the relevant international legal instruments, and other documents and recommendations that address international tax cooperation are inclusive and effective. To this end, it assesses the extent to which the international tax cooperation instruments and arrangements developed by the United Nations and the OECD, two international organisations that have had important roles in multilateral norm-shaping on international tax cooperation, are consistent with the substantive and procedural criteria set out in Section II. Consistent with the present report as a whole, the analysis draws on the written submissions received, independent evidence-based academic research and extensive analysis by in-house experts of the issues addressed in resolution 77/244.

A. The United Nations

20. The United Nations is an international organisation based on the principle of sovereign equality of all its 193 Member States. The UN's international tax cooperation functions are primarily performed by the General Assembly and ECOSOC, supported by the Committee of Experts on International Cooperation in Tax Matters (UN Tax Committee or UNTC).⁸

21. The Addis Agenda, within its seven areas of action, includes the commitment to reduce harmful tax practices, strengthen the role of tax in financing development, and increase development aid to support fair and effective tax systems. As referenced above, the Addis Agenda called for international tax cooperation that is universal in approach and scope, and that fully takes into account the different needs, priorities, and capacities of all countries, in particular countries in special situations.

22. The ECOSOC Forum on Financing for Development (FfD) allows all Member States and other stakeholders to freely participate in reviewing progress and making recommendations to support ongoing implementation of these commitments. Tax issues routinely are included in the FfD Forum's agenda. However, the Forum's role does not include detailed norm-shaping with respect to international tax cooperation issues.

23. The UN's norm-shaping in international tax cooperation is fulfilled through the UNTC, which grew out of long-standing concerns that existing paradigms for international tax cooperation were not serving the needs of all countries. In particular, in 1967, ECOSOC saw a 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 OECD Model Tax Convention. Those rules, while providing roughly equivalent benefits in case of treaties between countries with balanced capital flows, would tend to allocate taxing rights primarily to the developed country in treaties between developed and developing countries. Therefore, the Ad Hoc Group of Experts in International Tax Cooperation, and now the UNTC as its successor, were charged with developing and keeping up-to-date a model tax convention that balances the objectives of better preserving the taxing rights of developing countries with creating an attractive investment environment.

⁸ With regard to other UN bodies and the Bretton Woods institutions' role in tax matters, see [E/2011/76](#).

24. In accordance with its mandate,⁹ the UNTC shapes international tax norms and produces guidance and recommendations on tax policy and administration, with particular attention to the needs of developing countries. In the context of the UN Model Double Taxation Convention,¹⁰ this has resulted in a steady expansion of source country taxing rights over what would be provided for under bilateral treaties following the provisions of the OECD Model. This has included, in particular, provisions allowing taxes to be imposed on providers of certain remote services that do not meet traditional “physical presence” tests, an issue of great importance to developing countries. These rules help to protect source countries’ tax bases and are a first step towards addressing an inequity that arises when local brick-and-mortar companies are required to pay tax on their profits (because they meet physical presence tests), while remote services providers are not so taxed. Expanded rules regarding the taxation of gains, including with respect to “offshore indirect transfers,” help to ensure that developing countries will be able to tax the gains derived by non-residents yet inextricably linked to their territories.

25. Adoption in bilateral tax treaties of the UN Model provisions is supported by the regular updating of the UN Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries: a practical guide to all aspects of tax treaty negotiations, including the purpose and operation of UN Model rules.¹¹ By describing a wide range of viewpoints and providing a variety of options from which countries can choose, according to their realities and priorities, both the UN Model and the Negotiation Manual (supported by capacity building) assist countries in developing and articulating their own treaty policies in negotiations.

26. Substantively, the United Nations’ work on international tax cooperation has been found to be inclusive and effective. The International Centre for Tax and Development, which tracks the incidence in bilateral tax treaties of provisions that appear in the UN Model, but not in the OECD Model, finds that they are becoming more common.¹² The achievement of this level of influence can be attributed to the ways in which the guidance addresses the needs, and takes into account the capacities, of developing countries (e.g., in emphasizing administrable solutions), which are intrinsically connected to the ways in which such guidance is produced.¹³ The United Nations’ work on international tax cooperation is expanding into new subject areas from a tax and sustainable development perspective, such as environmental, health, and wealth taxes.¹⁴

27. Procedurally, the UNTC does not meet the criterion of universal participation by right, and without preconditions. The UNTC is an expert group in which the members serve in their personal capacities. The 25 members are selected to reflect an equitable geographical distribution, with the composition changing

⁹ [ECOSOC resolution 2004/69](#).

¹⁰ See [here](#).

¹¹ See [here](#).

¹² [ICTD Report](#).

¹³ Developing countries frequently note their preference for tax rules that are simple to administer, such as withholding taxes. [IBFD Report](#), page 64 et seq.

¹⁴ The UNTC produces many other guidance products relating to tax policy and administration, listed [here](#). These are not discussed because it is more difficult to analyze the influence of such guidance products without the kind of evidence provided by reviewing the results of tax treaty negotiations, which themselves have a time lag before any “influenced” treaties are negotiated and made public.

each four years, representing different tax systems. This, combined with its ways of working and multi-stakeholder engagement, ensures that a wide range of views is reflected in the UN guidance products. Nevertheless, while the nomination process is open to all countries, countries do not have the right to participate directly in the UNTC's norm-shaping process.

28. Other procedural criteria are not met solely because of this lack of universal participation in the UNTC. Within these confines, the UNTC's agenda-setting process is open. Each new membership decides, within the UNTC mandate, on its program of work and an appropriate structure of subcommittees at its first meeting; Member State and other observers are free to make suggestions regarding the Committee's work program.

29. Similarly, the UNTC's decision-making processes are transparent, as they are described in its Practices and Working Methods,¹⁵ which are informed by and subject to the ECOSOC Rules of Procedure. Most proposals are adopted by consensus; votes are relatively rare but can occur to confirm whether a majority is in favour of a proposal, which can then lead to a consensus decision as to how to reflect the majority and minority views in the guidance products. Such reflection of differing perspectives means countries can adopt those policies most appropriate in light of their particular circumstances. Many of the UNTC's subcommittees are multi-stakeholder, engaging participants from the International Monetary Fund (IMF), OECD, World Bank and regional organisations, as well as civil society, academia, and the business sector, to help shape the guidance products throughout the drafting process.

30. The situation with respect to dispute resolution is mixed. As noted above, the UNTC-specific guidance regarding tax treaties is widely, and increasingly, adopted in treaties concluded by developing countries. The simplicity of many of these rules, often based on withholding taxes, may reduce the number of disputes as compared to alternatives. When disputes arise, they are to be resolved through the mutual agreement procedure set out in the relevant treaty. Although the UN Model includes the option for countries to provide for binding arbitration of disputes,¹⁶ relatively few tax treaties concluded by developing countries so provide.

B. The OECD

31. The OECD currently consists of 38 member countries, each with a per capita gross national income placing them in the World Bank's categories of upper-middle income or high-income economies. None is a least developed country, landlocked developing country, or small island developing state. Becoming an OECD member is the result of a rigorous review process, including technical reviews to evaluate a candidate country's willingness and ability to implement relevant OECD legal instruments. Most OECD member states are from Europe and the Americas, with none from Africa.¹⁷ Accession Roadmaps for Brazil, Bulgaria, Croatia, Peru and Romania were adopted by the OECD in 2022.

¹⁵ [UN Tax Committee Practices and Working Methods](#).

¹⁶ The UNTC published [The United Nations Handbook on the Avoidance and Resolution of Tax Disputes](#) in 2021.

¹⁷ South Africa is a [key partner to the OECD](#).

32. With respect to international tax cooperation, the OECD's Committee on Fiscal Affairs (CFA) generally sets the agenda and approves the technical work products developed in its Working Parties. The CFA's work is supported by the Centre for Tax Policy and Administration. Through the G20, the CFA's tax agenda is also influenced by large developing country economies (Argentina, Brazil, China, India, Indonesia, and South Africa) that are not members of the OECD. Moreover, important work is currently carried out through the OECD/G20 Inclusive Framework on BEPS (IF).¹⁸

33. The OECD produces a wide range of guidance documents regarding tax policy and administration that are recognized as having a high technical quality. This is, for instance, reflected in the input paper to the present report prepared by the International Bureau for Fiscal Documentation (IBFD).¹⁹ Nonetheless, the IBFD report demonstrates that, in general and across topic areas, the OECD guidance is adopted much more widely in developed countries than by developing countries.²⁰ The IBFD report identifies several reasons for this, such as the complexity of the provisions and administration, lack of capacity in developing countries, and some missed opportunities in the context of the BEPS project "to address comprehensively the key issues that are regarded as most pressing for developing countries. These include wasteful tax incentives, taxation of cross-border services (especially digital or non-physical services), indirect transfer of assets, and certain transfer pricing issues, such as the lack of comparability data."²¹

34. These shortcomings have contributed to the perception among developing countries that "the expected benefit from the proposed reforms will be minimal, especially when compared to the cost of implementation."²² This perception, supported by extensive data, is consistent with the inputs received from many country groups and civil society, in written form and at the ECOSOC Special Meeting. There was particular concern about the two-pillar solution being developed through the OECD/G20 IF process, which aims to address problems of taxing the digitalized and globalized economy and to limit harmful tax competition. The IF currently has 143 member jurisdictions.²³ Of those, 126 are UN Member States and that leaves out 67 countries.

35. Pillar One focuses on taxation in the market jurisdictions in which multinational enterprises sell their products and services. It consists of two components, Amount A and Amount B.

36. Under Amount A, Pillar One proposes a formulary approach to allocate a fraction of the residual profits of the largest and most profitable multinational enterprises to market jurisdictions, using a revenue-based allocation key. Many countries that have long argued for an allocation of profits to market jurisdictions initially welcomed this approach as a first step towards ensuring that international

¹⁸ There is no dedicated IF Secretariat; the work is serviced by the OECD Secretariat.

¹⁹ [IBFD Report](#).

²⁰ [IBFD Report](#), page 26 et seq. and page 31 et seq. For example, various "linking rules" regarding hybrid entities and instruments require countries to have information on the treatment of a transaction in other countries and have been adopted by over 30 developed countries but only one or two developing ones. [IBFD Report](#), page 24 et seq.

²¹ [IBFD Report](#), page 8.

²² [IBFD Report](#), page 8.

²³ Seventeen of the "jurisdictions" are not sovereign states but bear various relationships, such as overseas territories, to OECD member states.

tax rules recognize the right of market jurisdictions to share in residual profits of businesses. However, many countries have come to view the quantitative scope of Amount A as too narrow and the quantum allocated to the market jurisdiction as too low.²⁴ Moreover, many view the rules as too complex and not well-adapted to their particular circumstances. Amount A by design needs to be implemented through a multilateral convention, so that it will only come into force upon receiving sufficient ratifications under the convention's terms. Another concern is that, while countries will be able to collect tax on Amount A from only a small number of multinational enterprises, they are giving up the right to impose digital services taxes (DSTs) on all enterprises, including the smaller enterprises that are not subject to Amount A, but which might nevertheless have a significant market presence and may be highly profitable.

37. Under Amount B, Pillar One proposes an internationally coordinated application of the existing arm's length standard, with a view to allocating predetermined fixed returns to certain baseline marketing and distribution functions performed by subsidiaries or branches in market countries. Amount B aims to enhance tax certainty and reduce resource-intensive disputes between taxpayers and tax administrations. Amount B is intended to benefit countries with lower capacity tax administrations. However, no agreement on the scope and mechanics of Amount B has been reached as yet and its adoption has been made dependent upon the implementation of the multilateral convention on Amount A.

38. Pillar Two seeks to establish a global minimum effective tax on "excess profits" on a jurisdiction-by-jurisdiction basis to limit tax competition between countries, whether through the general structure of a country's tax system, or through granting tax incentives.²⁵ While such tax incentives are often used to attract investment, they can also be sources of inefficiencies and harmful tax competition between countries. Under Pillar Two, if a country imposes an effective tax rate on an enterprise's local operations that is less than the agreed minimum rate, other countries can impose top-up taxes to make up the difference. The compliance burden for taxpayers and administrations will be considerable, especially since implementing legislation is likely to differ between countries.²⁶ Many countries seem to be adopting a wait-and-see approach to Pillar Two implementation at present.²⁷ Many countries are also concerned that the implementation of Pillar Two by other countries will impinge on their tax sovereignty and ability to attract and incentivize investment through tax credits.

39. The Global Forum on Transparency and Exchange of Information for Tax Purposes, which currently has 168 member jurisdictions, continues to develop guidance to expand and improve exchange of information for tax purposes.²⁸ Exchange of information can help countries identify tax evasion and aggressive tax planning. Those developing countries that have been able to meet the requirements to participate in the Common Reporting Standard on Automatic Exchange of Information (CRS) report positive results in some cases involving higher-income residents. Nevertheless, it can be difficult for many developing countries to comply

²⁴ See, for example, the [G-24 comments](#).

²⁵ Pillar Two also contains a subject-to-tax-rule with a narrow scope applicable to certain intra-group payments triggering a top-up to a 9% nominal tax rate.

²⁶ Tax Inspectors Without Borders have decided to assist countries in the implementation of Pillar Two where there is clear demand.

²⁷ See, for example, the [PwC's country tracker](#).

²⁸ The Forum has had a dedicated secretariat since 2009.

with the reciprocity requirements or meet the high confidentiality standards necessary for them to participate in exchanges under the CRS. The CRS was developed to allow seamless use of exchanged information in countries' electronic matching systems; many developing countries are still in the process of developing such matching systems and, in practice, CRS confidentiality requirements may require developing countries to keep information received completely sequestered from their domestic tax records.

40. According to the IBFD, these problems reflect the reality that “official participation and commitment does not necessarily imply effective application or implementation by all participating jurisdictions.²⁹” Its report notes in particular that developing countries may not see sufficient benefits from the system to justify the resources required, which could be used for more urgent priorities relating to economic development.

41. As indicated in the above analysis, there is significant evidence that the substantive guidance produced through these processes, while generally of high technical quality, often is not implemented by developing countries because it is not seen by them as responding to their more immediate needs and priorities (rather, it draws resources away from such issues) and/or is not capable of being implemented by them in light of their tax administration capacities. Thus, the substantive aspect of inclusive and effective international tax cooperation does not appear to be adequately met.

42. The limited effectiveness of the substantive rules produced by the Global Forum and the IF in addressing the needs of developing countries can be traced to procedural issues that prevent developing countries from full participation in the agenda-setting and decision-making process.³⁰ In addition, countries joining the Global Forum must commit to implementing the Information on Request standard as well as the Common Reporting Standard on automatic exchange of information. Similarly, countries wishing to join the IF must commit to the “minimum standards” of the BEPS Actions.³¹ In each case, they must also pay an annual fee.³² The requirements that jurisdictions pay to participate in discussions, and that they accept the existing standards before being allowed to participate, run counter to the principle of universal participation, by right, without pre-conditions.

43. The obligation that non-OECD countries must commit to applying rules that were developed before they became members of the norm-shaping body – the standards on exchange on request and the CRS as well as the BEPS minimum standards – is inconsistent with the procedural criteria that all countries should be involved in agenda-setting.

44. Publications produced by the Global Forum and the IF consistently state that all members participate on “an equal footing” in decision-making processes “by consensus.” Non-OECD members are referred to as “BEPS Associates.” As a practical matter, it can be difficult for a country with a small international tax staff to influence the decision-making process in these forums. In the IF, a country is

²⁹ [IBFD Report](#), page 9.

³⁰ See, for example, [ICTD publication](#).

³¹ BEPS Action Items 5, 6, 13 and 14.

³² In 2022 the annual fee to join the IF was €21,500 (about \$24,000). In 2016, the minimum annual fee for the Global Forum was €15,300 (just under \$17,000 at the time).

considered to agree to a proposal unless it raises an objection; it is not required to affirmatively “opt-in” to be included in the “consensus.” Therefore, a country that cannot keep up with the pace of work, and never expresses a view on a proposal, is viewed as agreeing to it.

45. For the “minimum standards” developed as part of the BEPS Project, a peer review mechanism was developed based on an agreed upon methodology for measuring a country’s performance and, over time, integrated into the work of the IF. Likewise, the Global Forum has a system of peer reviews to analyse the legal framework and practical implementation of information exchange requirements. Accordingly, the procedural aspect of inclusive and effective international tax cooperation pertaining to reviewing the implementation of standards appears to be met.

46. BEPS Action 14 seeks to improve the resolution of tax-related disputes between jurisdictions through mutual agreement procedures (MAP). Initial findings from the peer review mechanism show that countries have re-structured their competent authorities to resolve MAP cases in a timelier manner, and the number of closed cases has increased substantially. It should be noted, however, in considering these positive trends that many developing countries have deferred their peer review.³³ To that effect, the situation with respect to dispute resolution appears mixed.

IV. Considering options for making international tax cooperation fully inclusive and more effective

47. The foregoing analysis of existing international and multilateral arrangements indicates that they do not satisfy the main elements for fully inclusive and more effective international tax cooperation. The OECD has introduced several initiatives to engage and associate non-OECD members with its work, but many of those countries find that there are significant barriers to meaningful engagement in agenda-setting and decision making. As a result, the substantive rules developed through these OECD initiatives often do not adequately address the needs and priorities of developing countries and/or are beyond their capacities to implement.

48. The United Nations is attuned to the need to provide guidance that provides different options that are appropriate for countries at varied levels of development. Such guidance is widely used by developing countries. However, it is produced by the UNTC consisting of a small expert group with members serving in their personal capacities. Even with broad engagement of Member States and other observers in the UNTC’s work, its guidance does not have the same status as guidance produced and agreed through an intergovernmental process. While other intergovernmental organisations, such as the IMF and the World Bank, do advise their members on tax issues, these organisations do not undertake collective norm-shaping in the international tax cooperation area.

49. The preceding analysis in Sections II and III finds that enhancing the UN’s role in tax-norm shaping and rule setting, fully taking into account existing multilateral and international arrangements, appears the most viable path for making international tax cooperation fully inclusive and more effective. Rather than duplicating existing processes, a UN intergovernmental process would

³³ [IBFD Report](#), page 18 et seq.

leverage existing strengths and address gaps and weaknesses in current international tax cooperation efforts. It would draw and build on the longstanding and multi-layered cooperation between the United Nations and the OECD in the international tax area, as in many other areas.

50. The United Nations has vast experience with reaching and implementing multilateral agreements addressing the needs of all parties, on both politically sensitive and technically complex issues. Some of those multilateral agreements, began in other institutions but only became global standards after being re-opened for negotiation through a UN process which led to them being concluded and agreed.³⁴

51. General Assembly resolution 77/244 pointed to possible options for such an enhanced role, such as an international tax cooperation framework or instrument that is developed and agreed upon through a UN intergovernmental process. Those general descriptions could, of course, cover a range of possible formats. Any of those formats could be structured in such a way that they contain the necessary procedural elements described in Section II regarding inclusive and effective international tax cooperation, resulting in substantive rules that support countries' in appropriately exercising their taxing rights and mobilizing resources to invest in the SDGs and climate action.

52. Because the concepts of “framework or instrument” are potentially wide, this section narrows the possibilities to three general approaches for purposes of the next stage of intergovernmental discussions at the United Nations on this topic. Given that a high degree of certainty regarding international tax rules is necessary for tax authorities, taxpayers and other stakeholders, two of the options would provide for legally binding commitments with respect to some aspects. The main differences between those two options relate to scope and process. However, recognizing that not all Member States may be equally supportive of an increased norm-setting role for the United Nations in the tax area, a third option is identified, which presents a coordination function. While this option does not require a legally binding instrument, it provides less of the certainty necessary for creating a sufficiently stable international tax system.

Option 1: Multilateral convention on tax

53. A first option would be a legally binding treaty, sometimes also described as a “standard multilateral convention,” that would potentially cover a wide range of tax issues. It would be “regulatory” in nature, as it would set out specific rules creating obligations, including rules that potentially place limits on exercising taxing rights. Many provisions of such a convention might be similar to those in bilateral tax treaties. It would include a statement of the convention's objectives and definitions of key terms. It would then set out the mandatory, preferably enforceable, obligations deemed essential for appropriate domestic resource mobilization, including rules regarding information reporting and exchange for tax purposes, and for strengthening the domestic enabling environments. It would also establish a monitoring mechanism to ensure adherence to the information reporting and exchange rules, as well as dispute resolution procedures to address failures by

³⁴ See, for example, [UNCTAD's work on consumer protection](#).

parties to adhere to their commitments, such as any rules for allocation of income across jurisdictions.³⁵

54. The viability of a potentially comprehensive multilateral tax convention would depend on there being: first, a political agreement on the need to address – on a global level and in a legally binding manner – the tax issues to be subject of the convention; and, second, the ability to find consensus on approaches. If there is agreement on some, but not all, issues to be addressed, a comprehensive agreement might not be viable, but a legally binding convention could still be used to make rapid progress on the most pressing issues through more targeted agreements (e.g., a UN multilateral convention on tax-related illicit financial flows).

Option 2: Framework convention on international tax cooperation

55. A second option, a framework convention, would also be a legally binding multilateral instrument, but one that is “constitutive” in nature, in that it would establish an overall system of international tax governance. A framework convention therefore would outline the core tenets of future international tax cooperation, including the objectives of international tax cooperation, key principles governing the cooperation, and the governance structure of the cooperation framework. Framework conventions may also include institutional provisions creating a plenary forum for discussion among States that is endowed with the authority to adopt further normative instruments that States could then become a party to.

56. Protocols to the framework convention could provide additional, “regulatory” aspects, with more detailed commitments on particular topics, giving countries the ability to opt-in and opt-out in accordance with their priorities and capacities. If there is sufficient agreement on certain action items, some of these protocols could be negotiated at the same time as the framework convention. This might include, for example, a protocol on measures to address the problem of illicit financial flows.

57. Because of their flexibility,³⁶ framework conventions have been negotiated to address several different problems, including protecting the environment,³⁷ improving public health,³⁸ and securing human rights.³⁹ They allow parties to address a problem incrementally, by agreeing to begin discussions although there is no strong political consensus in favour of specific solutions. If the framework convention includes reporting requirements, it can help parties reach agreement on relevant facts, facilitating future agreements. There is a risk, however, that adopting a framework convention will end up deferring the detailed and practical legal and technical work necessary to implement effective change.

Option 3: Framework for international tax cooperation

³⁵ Description adapted to the tax context from Koen De Feyter, [Type and Structure of a legally binding Instrument on the Right to Development](#), 2019.

³⁶ Daniel Bodansky and WHO Tobacco Free Initiative, [The Framework Convention/Protocol Approach](#), 1999.

³⁷ See, for example, the [United Nations Framework Convention on Climate Change](#).

³⁸ See, for example, the [WHO Framework Convention on Tobacco Control](#).

³⁹ See, for example, the [Framework Convention for the Protection of National Minorities](#).

58. A third option would be the development of a non-binding multilateral agenda for coordinated actions, at the international, national, regional, and bilateral levels, on improving tax norms and capacity. Some problems, such as eliminating illicit financial flows, require global action because a handful of jurisdictions can undermine the efforts of the majority. There is no need to have a single approach with respect to some other questions, such as the appropriate withholding tax rates that should apply to cross-border payments in a bilateral situation. Improvements to tax administration naturally take place at the national level, but they can, and frequently are, supported by multilateral and regional processes. Member States, operating through the framework, would analyse tax problems to determine the level or levels at which coordinated actions would be most effective.

59. Substantively, this framework would resemble Option 2, in that it would establish principles or modalities of international tax cooperation, but such principles or modalities would not be the subject of legal commitments. Frameworks frequently emerge from the conclusions of subject-matter intergovernmental conferences.⁴⁰

60. Where the political consensus is that a particular problem required not only coordinated actions but binding legal commitments on a global level, the General Assembly could decide to approve the negotiation of an instrument along the lines of Options 1 or 2. Accordingly, the three options identified here are not mutually exclusive, as a framework that made recommendations regarding domestic tax rules could co-exist with a standard multilateral convention or framework convention focused on international tax rules.

61. To assist Member States and other stakeholders in considering the options, the following table sets out the salient features of each.

Options Features ⁴¹	UN Multilateral Convention on Tax	UN Framework Convention on International Tax Cooperation	UN Framework for International Tax Cooperation
What it is	Binding legal agreement that establishes enforceable obligations regarding international tax cooperation, such as information exchange, potentially modifying parties' taxing rights; primarily "regulatory" in nature	Binding legal agreement that establishes a general system of governance in the area of international tax cooperation; primarily "constitutive" in nature, with "regulatory" aspects adopted through protocols	Non-binding agenda for coordinated actions, at the international, national, regional and bilateral level, on improving tax norms and capacity

⁴⁰ The [Sendai Framework](#), for example, was initiated through stakeholder consultations, followed by intergovernmental negotiations, approved at the Third UN World Conference on Disaster Risk Reduction, and adopted by the General Assembly in resolution [69/283](#).

⁴¹ Refer to Section II for a description of the elements of inclusive and effective international tax cooperation referenced in the table.

Most likely to be effective when:	There is political agreement on need to address an issue on a global level and there is consensus on a solution; if a consensus exists with respect only to specific issues, possibility of less comprehensive agreements (e.g., UN Multilateral Convention on Tax-Related Illicit Financial Flows)	There is no immediate political consensus on binding substantive measures and/or the problem itself is changing as this option allows incremental progress	There is no political consensus on substantive measures or some aspects of a problem require a multi-level approach or are best approached at a national, regional or bilateral level rather than at a global level, although such approaches remain guided by the framework
Participation	Universal	Universal	Universal
Agenda-setting	Universal	Universal	Universal
Decision-making	Negotiation: General Assembly rules ⁴² On-going: Terms of Convention supplemented by Conference of Parties	Negotiation: General Assembly rules On-going: Terms of Convention supplemented by Conference of Parties	Negotiation: General Assembly rules
Implementation	Set out in convention	Set out in framework convention	Voluntary participation by States in international, national, regional, or bilateral actions, as established in framework
Dispute resolution	Set out in convention	Set out in framework convention	Not applicable because no binding obligations

⁴² General Assembly rules of procedure can be found [here](#).

V. Next steps

62. This section outlines next steps that each option would entail.

63. If Option 1, the development of a standard multilateral convention is chosen, the next step would be, for example, the establishment of a Member State-led, intergovernmental ad hoc advisory expert group to prepare draft terms of reference for the negotiation of such an instrument. The expert group could examine the issues that might be covered by such an agreement and the need for them to be addressed by such a treaty in order to make a recommendation regarding the scope of such an agreement – either a comprehensive multilateral tax convention or a convention focused on specific international tax cooperation issues. The expert group normally would be asked to present the terms of reference at the next session of the General Assembly. Subsequently, if the General Assembly agreed with the recommendations, a Member State-led, intergovernmental ad hoc negotiating group could be established to negotiate the convention.

64. If Option 2, a framework convention, is chosen, the next steps would be similar. Because a framework convention is drafted in more general terms, it might be possible to start with a Member State-led, intergovernmental ad hoc negotiating group charged with drafting the terms of reference. However, a Member State-led, intergovernmental ad hoc advisory expert group could be in a better position to determine whether it would be possible to negotiate any substantive protocols at the same time as the framework convention, such that following the same two-step procedure as in Option 1 for the “standard” convention might be advisable.

65. As noted above, frameworks for coordinated action frequently emerge from subject-matter conferences. If Option 3 is chosen, therefore, a Member-State led, intergovernmental ad hoc expert group could be established and charged to serve as the preparatory committee to undertake the substantive and organisational preparation of the conference, including negotiating input papers and a draft outcome document on the most pressing international tax cooperation issues.

66. The next steps may appear more time-consuming for Options 1 and 2 than for Option 3, but a deliberate approach is appropriate when the goal is to create binding legal commitments. Inclusive and effective preparatory processes for high-level conferences, however, take time, so that the speed at which the next steps can be taken may not be significantly different among the three options.

67. Finally, the resolution mentions, as a possible next step, the establishment of a Member State-led, open-ended ad hoc intergovernmental committee to recommend actions on the options for strengthening the inclusiveness and effectiveness of international tax cooperation. This step would be appropriate if the General Assembly is not able, at its seventy-eighth session, to reach agreement on a way forward.

VI. Supporting an enhanced role for the United Nations in making international tax cooperation fully inclusive and more effective

68. Exercising any of the options for making international tax cooperation fully inclusive and more effective will require greater engagement from all Member States in the UN intergovernmental discussions on tax matters. This depends on the governments of each country deciding to make international tax negotiations at the United Nations a priority and devoting sufficient resources to those negotiations to ensure that the needs, priorities, and capacities of their country are voiced and taken fully into account. It is also likely to require increased support for capacity building, both in terms of financial and human resources, by international organisations, civil society and other stakeholders engaged in such support to capacity building, as well as continued coordination and collaboration among the secretariats of such organisations, including through the Platform for Collaboration on Tax, and with inter-regional, regional, and sub-regional organisations.

69. Current capacity-building activities by international organisations, regional tax organisations, government development agencies, civil society organisations, and academia⁴³ are often focused on assisting developing countries in implementing existing tax rules and improving tax administration related to those tax rules. However, as pointed out by developing countries during the 2023 ECOSOC Special Meeting, if those rules do not respond adequately to their circumstances, technical assistance to implement those rules would not address their most immediate concerns and needs for capacity building in tax policy and administration.⁴⁴

70. Moreover, many inputs to this report requested that international organisations, civil society organisations and, perhaps most importantly, regional tax organisations provide capacity building to assist developing countries in participating more effectively in multilateral discussions. These organisations are crucial to assisting in this process. Additional coordination of their activities will help to ensure optimal use of resources to meet the high demand for support for capacity building in tax policy and administration that is aligned with countries' different needs and priorities, including in terms of their effective participation in multilateral processes.

VII. Summary and conclusion

71. This report comes amidst increasingly urgent concern that the international financial architecture, and with it the international tax system, have not sufficiently supported post-pandemic economic recovery, the financing of the SDGs and climate action. Global discussions are underway on the possibilities for a major overhaul of the international financial architecture. Meanwhile, as reflected in the General Assembly's decision to begin intergovernmental discussions on tax matters at the United Nations, consensus has already emerged on the need to: strengthen international tax cooperation to combat tax avoidance and evasion and illicit financial flows, which drain much needed resources especially from developing countries; and build more fair, inclusive, and effective tax systems, which are essential to

⁴³ An indicative list can be found [here](#).

⁴⁴ [Summary of ECOSOC Special Meeting](#), para. 14.

building the trust and spurring the transformation envisaged in the global sustainable development agenda.

72. We must not miss this opportunity to advance meaningful progress on this front. As requested by the resolution, this report has analysed existing arrangements, identified additional options, and outlined potential next steps. Member States must weigh the options and take a timely decision this session on the most suitable option and next step toward fully inclusive and more effective international tax cooperation for sustainable development. This decision should take account of the opportunities provided by a potential Fourth International Conference on FFD in 2025. I express deep appreciation to all stakeholders for your valuable inputs and count on your engagement in the months ahead.

* * * * *