AN INTERGOVERNMENTAL TAX BODY AT THE UNITED NATIONS

IMPLEMENTATION NOTE ON FACTI PANEL ON RECOMMENDATION 14B

BY JOSE ANTONIO OCAMPO & HEIDEMARIE WIECZOREK-ZEUL

__José Antonio Ocampo__ is Professor at the School of International and Public Affairs at Columbia University and Chair of the United Nations Committee for Development Policy, He is former United Nations Under-Secretary-General for Economic and Social Affairs, and former Finance Minister of Colombia. He has occupied other positions at the United Nations and in his native Colombia, including Executive Secretary of the UN Economic Commission for Latin America and the Caribbean (ECLAC), Minister of Agriculture, Director of the National Planning Office of Colombia, and member of the board of Banco de la República (Colombia's central bank).

__Heidemarie Wieczorek-Zeul__ is Vice-President of Friends of the Global Fund Europe and a member of the German Council for Sustainable Development (RNE). Ms. Wieczorek-Zeul was Germany's Minister for Economic Cooperation and Development and Governor of the World Bank from 1998 to 2009. She has also been a member of the National Parliament and a member of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System.

THE FACTI PANEL PUBLISHED ITS REPORT IN FEBRUARY 2021

Members of the FACTI Panel are producing implementation notes on how they see the FACTI Panel Recommendations being implemented in practice. The notes are meant as supplementary to the FACTI Panel report and recommendations, and seek to provide more detail on how all actors can take actions on the FACTI Panel blueprint for financial integrity for sustainable development. The notes, however, represent the views of their authors, and not of the whole FACTI Panel.

WWW.FACTIPANEL.ORG

FINANCIAL ACCOUNTABILITY TRANSPARENCY & INTEGRITY

RECOMMENDATION 14B: BUILDING ON EXISTING STRUCTURES, CREATE AN INCLUSIVE INTERGOVERNMENTAL BODY ON TAX MATTERS, UNDER THE UNITED NATIONS.

INTRODUCTION

The existing institutional architecture governing international tax matters clearly needs reform. The institutional environment of international tax cooperation remains dominated by voluntary forums, bilateral tax treaties and, only more recently, multilateral instruments. Despite a surge in international tax cooperation in the wake of the 2008 global financial crisis, there is still no single globally inclusive intergovernmental forum for setting norms in tax matters.

Important technical and practical work is done by the International Monetary Fund, the World Bank, and the United Nations. However, the process of setting international tax norms and standards is largely led by the OECD and the G20.

The United Nations Committee of Experts on International Cooperation in Tax Matters has a role through its model treaty and innovative approaches, and operates under the auspices of a universal membership institution. However, it remains as an expert group, rather than an intergovernmental body. This creates both some logistical and financial constraints, and means that its guidance – while authoritative and influential – is not binding on Member States.

In turn, although the OECD has a limited membership, it hosts more inclusive initiatives, notably the Global Forum on Transparency and Exchange of Information in Tax Matters, and the Inclusive Framework on Base Erosion and Profit Shifting (BEPS). It also serves as the Secretariat to several conventions and multilateral instruments for tax cooperation. However, these bodies lack an appropriate structure for a global membership and global political accountability. They focus in a piecemeal way on different aspects of international tax cooperation and lack universality.

In the Addis Ababa Action Agenda, agreed by consensus in 2015, Member States called for international tax cooperation that is "universal in approach and scope and should fully take into account the different needs and capacities of all countries". The FACTI Panel pointed out that "establishing a legitimate global ecosystem of laws, norms, standards and institutions would enhance the consistency of instruments with United Nations principles and standards as set out in the 2030 Agenda for Sustainable Development and foundational human rights instruments." The lack of universality in tax norm setting is a major shortcoming that undermines legitimacy.

PROPOSED SOLUTION

Tax cooperation should be brought together in a more coherent institutional and normative framework. All voices ought to be heard and engaged when making international decisions. Voices from developing countries, which are affected the most due to their greater reliance on taxation of multinational enterprises, need particular attention. All countries should have a say in the setting of international norms, to ensure these norms reflect their varying needs and contexts.

The existing UN Tax Committee provides a good basis to quickly create an inclusive intergovernmental body on tax matters under the auspices of a universal membership institution. It makes sense that this body capitalize on the rules, procedures, networks and expertise already developed at both the United Nations and other forums. The creation of this intergovernmental body should be accompanied by the creation of a UN Tax Convention (subject of a separate FACTI Panel Recommendation, as well as its own Implementation Note).

In considering this upgrade, stakeholders should address: the institutional set-up, implications of a change in status to membership of the committee, mandate for the body's work, funding for secretariat support, procedures for transparency and inclusivity, and transitional arrangements.

IMPLEMENTATION

Institutional setup: A UN Tax Convention can create a legal foundation for the new intergovernmental body on tax matters. This could take the form of a Conference of the Parties (COP) with rules of procedure, a standing Secretariat, and appropriate technical and policy-making bodies.

Another approach could be to upgrade the existing UN Committee of Experts into an intergovernmental subsidiary body of the ECOSOC, as originally proposed by Secretary-General Kofi Annan in 2004 and as long demanded by the G77 and China, including in the negotiations before the Third International Conference on Financing for Development held in Addis Ababa in 2015. A 2010 draft resolution in this regard (E/2010/L.10) contains relevant details.

Participation: The current UN Tax Committee usually includes experts employed by their governments but acting in their personal expert capacity. A key shortcoming of the current participation is that when the committee experts change employment, including moving to the private sector, they are able to retain their membership of the Committee. An intergovernmental Committee would allow participants to represent their governments in the discussions and allow Member States to adjust their representation over time. It would also remove institutional constraints that exist in some countries for other national officials being able to provide technical support to the participants in the committee.

The 2010 proposal suggests a Committee composed of 47 States to be elected by ECOSOC from among UN Member States with four-year terms, with due regard to equitable geographical distribution. The proposed regional allocation was: 13 from African States; 13 from Asian States; 8 from Latin American and Caribbean States; 6 from Eastern European States; and 7 from Western European and other States. However, it would be possible to retain the Committee's current size of 25 members, noting the below proposal for full participation.

Mandate: Under the 2010 proposal, the Committee would still be mandated to make recommendations to ECOSOC on issues concerning international tax cooperation. The Committee would also retain responsibility for updating UN model tax conventions, commentaries, and producing guidance and manuals on tax issues. However, as an intergovernmental body, the Committee could also develop multilateral instruments and agreements, building on the experience in other bodies and with the United Nations code of conduct on cooperation in combating international tax evasion adopted by ECOSOC in 2017 (E/RES/2017/3).

Funding: An essential requirement for an intergovernmental body on tax matters is funding. While there are some core secretariat staff in the UN's programme budget, much of the support to the operations of the current expert Committee is financed by voluntary contributions. ECOSOC Resolution E/2010/L.28 contains details of the cost implications of upgrading the UN Tax Committee at that time. However, the Committee has already moved from one meeting a year to two meetings a year, so an upgrade would imply a smaller increase in budget. While the extra-budgetary contributions to date have not been used to influence the agenda, an intergovernmental Committee's operation and secretariat should have sufficient regular budget to ensure neutrality.

Integration with other bodies: The Secretariat of the intergovernmental body on tax matters could be expanded to include the Global Forum, which has a very broad membership. The Global Forum could undergo a process similar to that taken by the International Organisation for Migration in becoming a "related organization" to the United Nations. Its professional staff, along with the existing staff dedicated to the UN Tax Committee, could form the core of the secretariat in the UN on tax matters.

Transparency and inclusivity: Adjustments made during the COVID-19 pandemic have provided fertile testing grounds for the logistics of holding even more open and transparent meetings. An upgraded UN Tax Committee should retain the practices of hosting open and virtual meetings, enabling all Member States to observe and participate in discussions, and inviting the input and participation of external stakeholders at both plenaries and subcommittee meetings.

Transitional arrangements: By the time Member States can take action on this proposal, a new membership of the Committee will have begun to serve their 4-year terms. Member States can choose to offer to convert those committee members to participate in their governmental capacity rather than personal capacity. Individuals or Governments that do not want to participate in their governmental capacity can be replaced with new Committee members, while retaining geographic and gender balance.

LOOKING FORWARD

The FACTI Panel has suggested that the negotiation of a UN Tax Convention could provide a basis for the reform of the institutional architecture for international tax cooperation. A UN Framework Convention on Tax Cooperation could create the institutional umbrella. However, this would take some time to negotiate, and Member States can begin more immediately.

Interested Member States can initiate the process for upgrading the UN Tax Committee through two possible avenues. ECOSOC resolutions can be passed during "substantive sessions", with the most relevant being the ECOSOC Forum on Financing for Development follow-up and the ECOSOC Special Meeting on International Cooperation in Tax Matters, both usually organized in April. The ECOSOC Forum on Financing for Development follow-up includes an intergovernmentally negotiated outcome, while the special meeting on tax does not. A resolution could mandate a change in status of the committee.

Alternatively, the General Assembly can take action to call on ECOSOC to adjust the status of the committee, as was done in 2003 when it called on ECOSOC to give consideration to the institutional framework for international cooperation in tax matters. The General Assembly can take action through its second committee.

ANNEX: POSSIBLE RESOLUTION LANGUAGE

Below is possible language for use in an ECOSOC resolution:

We decide to change the United Nations Committee of Experts on International Cooperation in Tax Matters into an intergovernmental expert body under ECOSOC.

Below is possible language for use in a General Assembly resolution:

We call upon the Economic and Social Council to consider changing the United Nations Committee of Experts on International Cooperation in Tax Matters into an intergovernmental expert body under ECOSOC.

ANNEX: FURTHER READING

Dietsch, Peter, and Thomas Rixen. 2016. *Global Tax Governance: What Is Wrong With It And How To Fix It.* Colhcester: ECPR Press.

Hurd, Ian. 1999. “Legitimacy And Authority In International Politics”. *International Organization* 53 (2): 379-408. doi:10.1162/002081899550913.

Ryding, Tove. 2019. “An Intergovernmental UN Tax Commission – Why We Need It And How We Can Get It”. Eurodad/Financial Transparency Coalition. https://www.eurodad.org/globaltaxbody.

United Nations. 2010. “Committee Of Experts On International Cooperation In Tax Matters : Draft Resolution”, 2 July, E/2010/L.10.

United Nations. 2010. “Committee of Experts on International Cooperation in Tax Matters: Programme budget implications of draft resolution E/2010/L.10”, 20 July, E/2010/L.28.