Financing COVID-19 recovery: Time to negotiate a UN convention to address tax havens and international tax dodging.

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"the Covid-19 pandemic brought into sharp focus what government expenditures would have been possible and how many lives been saved, had the international community advanced further in tackling illicit financial flows in general and tax-motivated illicit financial flows in particular, including the closing of tax havens, beginning with those in the advanced countries." – UNCTAD Trade and Development Report 2020

"A global consensus to end tax havens is essential" – UN Secretary General, António Guterres[i]

As the world reels under the COVID19-induced crises, threatening half a billion people with poverty, the super-rich continue to increase their fortunes[ii]. Meanwhile, latest revelations from journalists have once again exposed how transnational corporations and wealthy individuals use tax havens for secrecy and dodging taxes. This investigation has unearthed how 55,000 offshore companies in one tax haven is managing assets worth at least 6 trillion euros. [iii] As the world stares at a long recovery ahead, the key question for governments is – Who pays the bill?

Considering both developing and developed countries around the world lose hundreds of billions of dollars in public revenue annually to such illicit flows, it would seem like a low hanging fruit for UN member states to prioritise addressing this issue. Especially with important processes such as the climate negotiations and SDGs struggling from lack of funding. In fact, G77 and China have been calling for such a negotiation process for over a decade now. Yet, the richest countries in the world have been obstinate blockers, even at the cost of their own citizens' interests, just to ensure they keep developing countries out of agenda-setting and decision-making on this issue.

The current broken international tax system contributes not just towards inequality within countries but inequality between countries as well. The system was built on top of the tax practices within imperial trading blocs of the 1920s and has historically been against developing country interests. It is now more urgent than ever for UN member states to confront the failures of this international tax system. It has the potential of being the rare UN process that will actually generate much-needed resources for all countries.

UN's history on international tax

The United Nations has a long history of working on issues of international tax, starting in 1921 by then League of Nations (predecessor to UN). Drafting of bilateral model tax conventions began in 1927, which evolved into the Model Conventions of Mexico (1943) and London (1946), with provisions on allocation of the right to tax transnational income between countries.

Although both the London and Mexico Convention still needed work, there was already in the early days an important difference between the two. When allocating of taxing rights to income from multinational corporations between countries, the London model favored the country where the company is headquartered (the residence country) at the expense of the country where the company is doing its actual business (the source country). Keeping in mind that most of the residence countries are developed countries, whereas developing countries primarily fall into the category of source countries, this was in reality a discussion about allocation of taxing rights between developed and developing countries.

The UN, after it took over the League, was invited to review both models in a balanced forum with expertise from developed and developing countries. The work stopped in mid-1950s in the UN and the predecessor to OECD, Organisation for European Economic Commission (OEEC), began work in this area. The first OECD Model Tax Convention was adopted in 1963, closer to the London model, as it provided for more residence-based taxation.

In 1967, the Economic and Social Council (ECOSOC) adopted a resolution that re-established the role of UN in 'facilitating the conclusion of tax treaties between developed and developing countries' by requesting the Secretary General to set up an ad hoc working group consisting of experts acting in personal capacity nominated by governments. This group then worked on both a Manual for Negotiation of Bilateral Tax Treaties published in 1979, and a UN Model Double Tax Convention which was published in 1980. The group was later renamed Ad Hoc Group of Experts on International Cooperation in Tax Matters. In 2005, it was upgraded to a Committee which directly reports to ECOSOC but remained an expert committee rather than an intergovernmental commission.

The three Financing for Development (FfD) processes have been critical to the conversation around further strengthening the work of international tax cooperation in UN. The Monterrey Consensus (2002) called for giving special attention to developing countries, and the Doha Declaration (2008) acknowledged the need to further promote international cooperation on tax and requested ECOSOC to 'examine strengthening of institutional arrangements, including the United Nations Committee of Experts on International Cooperation in Tax Matters (or the UN Tax Committee)'.

Following this, ECOSOC Resolution 2010/33, requested the UN Secretary-General to review the institutional arrangements and submit a report. The UN Secretary-General's report, on the basis of inputs provided by member states, recommended 3 options:

a) Strengthening the existing arrangements within the United Nations while retaining the current format of the Committee of Experts;
b) Converting the Committee of Experts into an intergovernmental commission serving as a subsidiary body of the Economic and Social Council;
c) Creating an intergovernmental commission and retaining the current Committee of Experts as a subsidiary body of that commission.

For many years, G77 and China have been united in calling for upgrading the Committee to a universal, intergovernmental commission under ECOSOC. The statements have reiterated the importance of ensuring that an inclusive UN body sets global tax standards that would allow interests of all countries, including developing countries, to be represented as equal partners. OECD countries, on the other hand, have recommended retaining the current UN Tax Committee and resisted any efforts to upgrade to an intergovernmental body. They argue that it would lead to duplication of work already ongoing at OECD, a body established to represent OECD interests.

The Financing for Development negotiations in 2015 saw this long fight play out again. The last one-and-a-half days of negotiations in Addis Ababa revolved around this issue, which was finally successfully blocked by a handful of developed countries. The final statement by G77 and China at the plenary noted this to be one of the issues that was fully endorsed by the group but not 'adequately accommodated' in the text.

This remains an unfulfilled commitment with the 3rd Financing for Development outcome document, Addis Ababa Action Agenda (AAAA), unequivocal in stressing "*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*" (para 28). Fulfilling this call in AAAA would require the establishment of a UN Tax Commission, a universal subsidiary body of ECOSOC, where political negotiations on the proposals developed by the various technical bodies can take place on equal footing. These technical proposals could be from the range of bodies such as UN Tax Committee, OECD, World Bank, IMF, African Tax Administrators Forum (ATAF), Inter-American Center of Tax Administrations (CIAT) and UN Regional Economic Commissions.

The controversial OECD tax negotiation process

The OECD tax negotiation process, currently taking place in the OECD Inclusive Framework hosted by the OECD Secretariat, has been a controversial process from the start. The agenda and outcome of the 2015 negotiations on Base Erosion and Profit Shifting (BEPS) was set by the OECD and G20, excluding most developing countries from the process. Membership to the OECD Inclusive Framework, established in 2016, was on the condition that countries had to commit to implementing the outcome of the 2015 BEPS negotiations despite being excluded from the process. Additionally, they have to pay an annual membership fee of EUR 20,800. [iv]

Developing countries have repeatedly complained about the process, led by the OECD Secretariat, being biased towards rich countries' interests. Logan Wort, CEO of African Tax Administration Forum (ATAF), expressed concerns about the OECD standard-setting process where developing countries' issues and African countries' issues in particular have not been considered and they feel like 'collateral damage' in the negotiations. [v] The report on 'Tackling Illicit Financial Flows for Sustainable Development in Africa' from September 2020, which notes that:

"At the global level, it could be argued that only the United Nations, with its near universal membership and democratic structure, can provide a truly global tax body. Reflecting these concerns, as of March 2020, OECD proposals did not fully address the priorities of African countries."

The Group of 24 (G24) introduced a comprehensive proposal 'Addressing Tax Challenges Arising from Digitalisation' that has been endorsed by civil society and academics such as José Antonio Ocampo, Thomas Piketty, Joseph Stiglitz, Irene Ovonji-Odida, Gabriel Zucman, Léonce Ndikumana, Jayati Ghosh amongst others from the Independent Commission for the Reform of International Corporate Taxation (ICRICT), as the best way forward for a new international tax system, particularly one that works for developing countries as well. Unfortunately, this proposal was removed from the OECD negotiations and instead OECD is pushing through an approach that would retain the existing flawed transfer pricing system as the basis for taxing most corporate profits. A system that is clearly unfit for purpose, including for most OECD countries.

Finally, the OECD negotiations are held in secret with no transparency or accountability of member states' positions. In the process of trying to keep out developing countries from agenda-setting and decision-making on international tax, rich countries have upheld an opaque, biased negotiation process that has now led to a complete failure of addressing the problem at hand.

There is no other alternative: it is time for progressive OECD countries to work with G77 on initiating an intergovernmental negotiation process at the UN to comprehensively address tax havens and international tax dodging.

Confronting the global race to the bottom

The current lack of cooperation on international tax matters is not only leading to billion-dollar losses in public finance in countries around the world. The "competition" to attract multinational corporations and wealthy individuals is also leading to unhelpful tax haven blacklisting exercises that has turned into a political exercise that protects rich and powerful countries. For instance, the EU blacklisting exercise has been criticized for excluding EU member states from being blacklisted as well as other powerful countries such as Switzerland and the USA. Developing countries also found themselves pressured to agree to OECD BEPS minimum standards, that they were not part of negotiating, and join the OECD Inclusive Framework to avoid being blacklisted.[vi]

There are limits to national and regional action on this issue. As the then UK Prime Minister David Cameron noted in 2013:

"*Acting alone has its limits. Clamp down in one country and the travelling caravan of lawyers, accountants and financial gurus just moves on elsewhere*."

The only winners in this scenario are wealthy corporations benefiting from the competition leading to the introduction of new harmful tax practices and drastic cuts in corporate tax rates in countries around the world.

Time to establish a UN Tax Commission and negotiate a UN Tax Convention

On 16 May 2019, the President of UNGA organised a High-Level Meeting on International Cooperation to Combat Illicit Financial Flows and Strengthen Good Practices on Assets Return to Foster Sustainable Development. The summary of the meeting provided important recommendations, including the need for a UN instrument to tackle tax avoidance and tax evasion, which are currently not covered under the UN Convention Against Corruption (UNCAC), and the UN convention against Transnational Organised Crime (UNTOC). In fact, the Africa Group has called for the UN to establish an intergovernmental tax body and negotiate a UN Tax Convention.[vii]

In addition, there have now been several technical reports providing analysis and recommendations. What is missing is the political process that ensure follow-up on all the technical proposals.

The groundbreaking work of the High-Level Panel on Illicit Financial Flows from Africa (or the 'Mbeki panel' after the chair Thabo Mbeki former South African President) established this agenda globally, including within the SDGs, as a global systemic issue that needs to be addressed. Former World Bank President, Jim Yong Kim, had noted corporate tax dodging as a 'form of corruption that hurts the poor'. The UNCTAD's trade and development report from September 2020 noted that:

"*Regrettably, multilateral efforts towards reforming international corporate taxation under the OECD Base Erosion and Profit Shifting (BEPS) initiative, … are unlikely to lead to meaningful reform in the near future. However, there is a strong case to be made for broader reform of international corporate taxation that deals with profit shifting and addresses the global inequalities in taxing rights between countries under the auspices of the United Nations as a genuine global forum.*"

The High-Level Panel on Financial Accountability, Transparency and Integrity (FACTI), established by the President of ECOSOC and President of UNGA in 2020, is also due to publish their final report on 25 February 2021. While this chapter is being written before the report is published, it is high time to shift the focus back to member states. It is now more urgent than ever for political leadership and momentum to ensure we have a principled UN negotiation process that is universal, transparent, and headed by a neutral Secretariat[viii].

To go back to the question posed at the start, as we stare at a long recovery ahead, the key question for governments is – who pays the bill?

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[i] Secretary General's Nelson Mandela Lecture: "Tackling the Inequality Pandemic: A New Social Contract for a New Era", 18 July 2020

[ii] The Guardian, Billionaires' wealth rises to $10.2 trillion amid Covid crisis, 7 Oct 2020

[iii] Le Monde in partnership with the Suddeutsche Zeitung and the OCCRP Consortium of investigative journalists, OpenLux : the secrets of Luxembourg, a tax haven at the heart of Europe, 8 Feb 2021

[iv] https://www.oecd.org/tax/beps/flyer-inclusive-framework-on-beps.pdf

[v] FACTI panel virtual consultation on improving cooperation in tax matters, 5 May 2020. Video link: https://www.youtube.com/watch?t=2102&v=Dab-hAG91kA&feature=youtu.be (min 35:00 onwards)

[vi] Eurodad, The false EU promise of listing tax havens, 27 May 2016

[vii] Statement on the Launch of the Interim Report of the Financial Accountability, Transparency, and Integrity Panel (FACTI Panel) on the behalf of the African Group (24 September 2020)

[viii] Eurodad, An intergovernmental UN tax body – why we need it and how we can get it