



Submission to the UN Secretary- General: Tax Report 2023

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

March 2023



Introduction

As an organisation dedicated to tax justice as a crucial means to strengthen human rights worldwide, the Tax Justice Network is delighted to participate in this consultation on the Secretary-General's report, requested by the UN General Assembly (UNGA).

Since our establishment twenty years ago, the Tax Justice Network has backed the call for a genuinely inclusive tax body under UN auspices, and with our allies in the wider movement for social justice, including the Global Alliance for Tax Justice and the other members of the Civil Society Group on Financing for Development, we are delighted to see these efforts now yielding fruit.

With the unanimous adoption in 2022 of a UNGA resolution to begin intergovernmental discussions aimed at addressing the exclusionary and ineffective nature of current international tax arrangements, there is finally a clear path forward to deliver on the many commitments made at the UN and elsewhere in recent years. Most evidently, a new institutional framework for tax under UN auspices is vital to any chances of delivering on the global agreement (i) to curb illicit financial flows (Sustainable Development Goals target 16.4), (ii) to require international cooperation domestic in support of tax (SDG 17.1, which recognises tax as *the* primary means of implementation for the entire Agenda 2030) and to achieve greater equality by adopting fiscal, wage, and social protection policies (Sustainable Development Goals target 10.4)

The Secretary-General's report, requested in the same resolution, will be a central input to the discussions at the next UNGA later this year. The report should therefore meet the full terms set out in the resolution and provide the clearest possible basis for a subsequent resolution to begin formal negotiations on a new framework for tax cooperation.

The evidence presented in this submission supports three main points:

1. Scale of abuse. The scale of cross-border tax abuse and other illicit financial flows is large and growing, and results in substantial damage to human rights in countries at all income levels.
2. Ineffective and exclusionary structures. The current structures and processes for cooperation and the setting of rules and standards on international tax and transparency are systematically exclusionary, and also consistently ineffective against the explosion of tax abuse that has occurred since the 1990s.
3. Recommendations for progress. To ensure progress towards an effective and inclusive alternative framework, under UN auspices, we believe that the Secretary-General should back the establishment of a Member State-led, open-ended ad hoc intergovernmental committee to recommend actions and to support formal negotiations – which should begin promptly and with the aim of reaching agreement by the time of the proposed 2025 Financing for Development summit.



Context and structure of submission


The UNGA resolution “Promotion of inclusive and effective tax cooperation at the United Nations” (A/RES/77/244) marks a significant step forward from earlier international commitments to scale up international tax cooperation, fight illicit financial flows and combat aggressive tax avoidance and evasion. As well as beginning intergovernmental discussion at the United Nations Headquarters in New York on ways to strengthen the inclusiveness and effectiveness of international tax cooperation, the resolution also requests that the Secretary-General prepare a report as the basis for further discussions in the next UNGA session.

The report is intended to analyse “all relevant international legal instruments, other documents and recommendations that address international tax cooperation, considering, inter alia, avoidance of double taxation model agreements and treaties, tax transparency and exchange of information agreements, mutual administrative assistance conventions, multilateral legal instruments, the work of the Committee of Experts on International Cooperation in Tax Matters, the work of the Organisation for Economic Co-operation and Development/Group of 20 Inclusive Framework on Base Erosion and Profit Shifting and other forms of international cooperation, as well as outlining potential next steps, such as 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.”

The unanimous adoption of the resolution marks a significant shift. While the G77 group has long called for the creation of an inclusive and effective UN tax body, the core OECD (Organisation for Economic Cooperation and Development) members have consistently blocked such moves – including even attempts to upgrade the Committee of Experts on International Cooperation on Tax Matters (the ‘UN tax committee’). Consensus on the resolution may reflect OECD member countries having developed greater concern for the inclusion of G77 members in tax rule-setting. Equally, it may reflect a concern with effectiveness, due to the growing recognition that after ten years of the OECD-led Base Erosion and Profit Shifting (BEPS) process, the failures of the international tax system remain as damaging as ever – perhaps more so.

This submission will, first, summarise the extent of cross-border tax abuse facilitated by the current failures, and the impacts for human rights that extend to countries at all levels of per capita income. The primary responsibility of a small group of OECD members and their dependent territories for that tax abuse, and wider illicit financial flows, will be highlighted.

Second, this submission will set out evidence concerning the effectiveness and the inclusiveness of each of the areas identified in the resolution, in turn: avoidance of double taxation model agreements and treaties; tax transparency and exchange of information agreements; mutual



administrative assistance conventions; other multilateral legal instruments; the UN tax committee; and the work of the OECD on BEPS. With the exception of the UN tax committee, each is shown to be deeply problematic from the perspectives both of inclusion and effectiveness.

Third, and finally, this submission summarises key contributions to the discussion on alternative frameworks for tax cooperation and identifies the characteristics of an appropriate response to meet the existing global commitments on tax cooperation and the fight against illicit financial flows, and to support the progressive achievement of human rights worldwide. We strongly support the establishment of a Member State-led, open-ended ad hoc intergovernmental committee to recommend actions and to support formal negotiations. We believe the Secretary General's report should firmly recommend that the 78th UNGA pass a resolution to this effect, with the full budgetary support necessary, and with the aim of completing negotiations by the time of the proposed 2025 Financing for Development summit.

1. Extent and impact of current failures

The delivery of *tax justice* requires an approach that identifies the multiple roles of tax. The 5 Rs of tax justice – revenue, redistribution, repricing, representation, and reparation – provides a normative conceptual model to rethink how economic and social rights are determined. Understood in this way, and underpinned by core human rights principles, tax is pivotal to determining outcomes of human rights and equality.¹

Foregone tax **revenue** threatens the realisation of the already fragile Sustainable Development Goals (SDGs). Cross-border tax abuse by multinational companies and wealthy elites has a disproportionate impact on lower income countries. [The State of Tax Justice 2021](#), co-published with the Global Alliance for Tax Justice, Public Services International and FES, provides a conservative estimate of the overall tax losses at US\$483 billion annually. The worst offenders in enabling the tax abuse are shown to be OECD countries and their dependent jurisdictions. These impacts – loss of livelihoods, threats to health and to education are especially felt at times of crisis such as in the Covid 19 pandemic.

Tax Justice Network's 2021 [collaborative analysis](#) with the Government Revenue and Development Estimations model (GRADE), hosted at the University of St Andrews found that the revenues lost to cross-border tax abuse would translate into large numbers of additional people accessing fundamental human rights. Projected over a ten year period, this would include: sanitation for 34 million people, drinking water for 17 million

¹ Liz Nelson, *Tax Justice & Human Rights: The 4 Rs and the Realisation of Rights* (7 June 2021) <<https://taxjustice.net/reports/tax-justice-human-rights-the-4-rs-and-the-realisation-of-rights/>> [accessed 8 September 2021]. See also, Gurminder K. Bhambra (ed), *Imperial Inequalities: The Politics of Economic Governance across European Empires*, Manchester University Press, 2022. <https://manchesteruniversitypress.co.uk/9781526166142/imperial-inequalities/>

people, an additional year at school for 3 million children, and a reduction in mortality of some 600,000 children and 73,000 mothers.²

Similar [analysis](#) was brought to bear on the impact of tax abuse on the right to education. This analysis produced as part of the Tax Ed Alliance examined how US\$30 billion lost to tax abuse from 63 LIC (Low Income Countries) and LIMC's (Low and Middle Income Countries) could otherwise provide 41 million primary school children who would be out of school (OOSP) with education. Spending just 20 per cent of the tax revenue each country loses annually to global tax abuse would enable 20,800,000 children who don't have access to education to attend primary school.³

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The loss of revenue has a profound impact on the ability of states to effectively support the **redistribution** of wealth and to address both vertical and horizontal inequalities. Orthodox policy approaches continue to be the default, driven, often at the behest of International Financial Institutions, towards the delivery of austerity as the best alternative, or to implement regressive indirect taxes such as VAT (Value Added Tax). Austerity creates a sometimes-febrile environment by which private actors are then attracted to opportunities, and extract from the supply of public services. In often unregulated environments this creep from public to private puts the quality and probity of essential public provision at risk. In scenarios where consumption taxes are favoured or are made conditional, often in debt-constrained states where the tax burden is placed upon daily necessities and where social protection measures are restricted, low- or no-income households are disproportionately impacted by revenue losses.⁵

Structural inequalities mean that those lower income households are also disproportionately likely to be headed by women, to include people living with disabilities, and to be concentrated among marginalised racial and ethnolinguistic groups. A tax system that exacerbates or fails to mitigate vertical inequalities will therefore also fail to mitigate horizontal and intersectional inequalities – with inevitable damage to human rights.


Repricing through taxes can incentivise or disincentivise behaviours to limit the damage of public 'bads', ranging from the public health cost of

² Nelson, *Tax Justice & Human Rights*.

³ Nelson, *Tax Justice & Human Rights*.

⁴ Tax Justice Network, 'To Protect Children's Right to Education, Governments Must Fight Tax Abuse', *Tax Justice Network*, 2022 <<https://taxjustice.net/2022/09/28/to-protect-childrens-right-to-education-governments-must-fight-tax-abuse/>> [accessed 3 March 2023].

⁵ Cobham, Alex, *The Tax Consensus Has Failed: Recommendation to Policymakers and Donors, Researchers and Civil Society*, OCGG Economy Section (1 January 2007) <https://www.taxjustice.net/cms/upload/pdf/Cobham_Tax_Consensus_Failed_08.pdf> [accessed 12 March 2023].



tobacco consumption to the planetary and social costs of carbon emissions and other factors that underpin the climate crisis – most egregiously, through the tax subsidies that are commonly in place for fossil fuel extraction. Taxes alone cannot solve the climate crisis and the damage to rights that it has already imposed, but an ineffective tax system is a substantial obstacle to progress.

The role of just taxes in strengthening political **representation** is also too often overlooked. Tax provides an important element, the ‘glue’, in the social contract between citizen and state. Research shows a positive relationship between tax reliance (the share of public spending that is funded by tax) and the strengthening over time of democracy and accountable governance. The relationship appears strongest for direct taxation – most likely because these are more salient for people than indirect taxes such as VAT. Other taxes can therefore be levied to curb economic elites compounding their wealth at the expense of the many and determining the direction of economic policy – here a range of wealth taxes, capital gains, land value and inheritance taxes are critical for adhering to principles of social justice and transparency.⁶

The 5th R of tax is **reparations** where progressive tax policy can mitigate damage and act as reparation for both historic injustice and continued extractive economic activity. This economic model of continued extraction is driven as much by the financial secrecy architecture as it is by the complicity of a range of actors – states, MNEs (Multinational Enterprises), economic elites and professional enablers.⁷ Just as tax was the means for much of the extraction from colonies, its progressive form should be the source of funds to make good on the damage inflicted. Support to small financial centres to build out alternative economic models will ensure that they do not bear the brunt of ending the age of cross-border tax abuse, while recovering foregone revenues through that process will generate substantial funds.

The scale of tax injustice

In 2020 the Tax Justice Network used OECD aggregated country by country reporting data to estimate the scale of annual revenue tax loss due to tax abuse. The State of Tax Justice Report 2020 estimates that the world is losing over \$427 billion (USD) in tax each year to international tax abuse. Of the \$427 billion, nearly \$245 billion is lost to multinational corporations shifting profit into tax havens in order to underreport how much profit they made in the countries where they do business and consequently pay

⁶ Cobham, Alex, Fariya Mohiuddin and Liz Nelson, ‘Global Tax Justice and Human Rights’, in *Human Rights and Economic Inequalities*, First (Cambridge, 2021), 169–162.

⁷ Tendayi Achiume, *Global Extractivism and Racial Equality. Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance* (Geneva and New York, 14 May 2019) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/137/81/PDF/G1913781.pdf?OpenElement>> [accessed 5 March 2023]. Part II. Para. 6-7

less tax than they should.⁸ The remaining \$182 billion is lost to wealthy individuals hiding undeclared assets and incomes offshore where it remains beyond the reach of the law.

In 2021, using available data from the OECD from 38 countries, the State of Tax Justice Report estimated that \$483 billion a year is lost to countries across the globe from MNE (Multinational Enterprises) profit shifting and evasion by economic elites.⁹ In absolute terms, higher income countries lose far more tax revenue to offshore tax evasion (over US\$168 billion lost a year) than lower income countries (over US\$2 billion lost a year). But higher income countries are almost entirely responsible for both. Lower income countries are responsible for less than 1 per cent.

Our estimates of profit shifting are calculated using profit misalignment¹⁰. These are the direct losses due to the misalignment between the location of profits and the location of productive economic activity. It is important to note that these losses refer to direct losses. Indirect losses, or spillover costs, arise where governments reduce statutory and effective corporate tax rates to counter the direct losses of corporate tax abuse, with the mistaken belief that this will attract investment. Further analysis of the *Lowest Available Corporate Income Tax* (LACIT) is provided by the Corporate Tax Haven Index.¹¹ Researchers at the International Monetary Fund have also estimated that, at a global level, indirect losses from global corporate tax abuse are at least three times larger than direct losses. Using a similar adjustment would imply overall losses well beyond US\$1 trillion a year.

The State of Tax Justice builds on existing approaches and develops a methodology which uses recent data to provide estimates of tax revenue losses that arise from wealth hidden in secrecy jurisdictions, and provide these estimates across all asset classes, and for as many countries as possible. The Tax Justice Network's State of Tax Justice Report 2021 estimate of offshore wealth, US\$171 billion each year, mirrors similar analysis undertaken by work by Alstadsæter, Johannesen, Zucman¹² and subsequent studies by other researchers¹³, and provides an estimate of the distribution of offshore wealth.

⁸ Tax Justice Network, Global Alliance for Tax Justice, and Public Services International, *The State of Tax Justice 2020: Tax Justice in the Time of COVID-19*, 20 November 2020 <https://www.taxjustice.net/wp-content/uploads/2020/11/The_State_of_Tax_Justice_2020_ENGLISH.pdf> [accessed 4 December 2020].


⁹ Global Alliance for Tax Justice, Public Services International, and Tax Justice Network, *The State of Tax Justice: 2021* (16 November 2021) <https://taxjustice.net/wp-content/uploads/2021/11/State_of_Tax_Justice_Report_2021_ENGLISH.pdf> [accessed 7 May 2022].

¹⁰ Global Alliance for Tax Justice, Public Services International, and Tax Justice Network, *The State of Tax Justice: 2021*.P.34.

¹¹ Tax Justice Network, *Corporate Tax Haven Index (CTHI) 2021 Methodology*, 2021 <<http://cthi.taxjustice.net/cthi2021/methodology.pdf>> [accessed 17 March 2020].

¹² Thomas Tørsløv, Ludvig Wier and Gabriel Zucman, *The Missing Profits of Nations* (June 2018) <<https://www.nber.org/papers/w24701>> [accessed 9 December 2022].

¹³ Charles Vellutini and others, *Estimating International Tax Evasion by Individuals*, Taxation Papers (2019) <<https://op.europa.eu/en/publication-detail/-/publication/10854d45-f549-11e9-8c1f-01aa75ed71a1/language-en/format-PDF/source-120453070>>.



Every state has a duty to raise revenue sustainably in accordance with the International Covenant on Economic, Social and Cultural Rights.¹⁴ This requires the development and/or reform of tax policy and law to curtail persistent tax abuse in its many forms.

Tax abuse culpability is far from equally shared across countries. When it comes to financial secrecy, the Tax Justice Network's Financial Secrecy Index 2020, a ranking of countries' complicity in global financial secrecy, assessed OECD countries and their dependencies to be responsible for enabling 49 per cent of the world's financial secrecy risks. But the State of Tax Justice 2021 reports that OECD countries and their dependencies are responsible for an overwhelming 92 per cent of the US\$171 billion the world loses to offshore wealth tax evasion every year – just over US\$157 billion a year. As with corporate tax abuse, many OECD members also lose out. The UK, Netherlands, Luxembourg and Switzerland are again collectively responsible for the bulk of the harm here. And as with corporate tax abuse, the gains are not well shared by their citizens and therefore almost everyone could be made better off by eliminating offshore evasion. Despite some progressive measures in data transparency, there is too little political will to curb the gross excesses of wealth accumulation through tax abuse.¹⁵

2. Ineffective and exclusionary structures


The world is experiencing a period in which cross-border tax abuse is unprecedentedly organised. That this is known and has continued and worsened over a period of decades represents a major global policy failure. The resulting revenue losses are just one of the most obvious effects of a process that undermines the ability of all states to deliver on their obligations to support the progressive achievement of human rights. Those effects fall disproportionately upon lower-income countries; but the key actors have been shown to be a combination of OECD member states, major multinational corporations and professional enablers including international law firms, banks, and accounting firms, which are overwhelmingly based in those same states.

The Secretary-General made clear last year that the current arrangements around tax and financial transparency are consistently and unacceptably exclusionary. Not a single one of the structures or processes supports the full inclusion of non-OECD members. Worse, there is little, or no material progress each year. As detailed in his report International coordination and cooperation to combat illicit financial flows¹⁶: “In General Assembly resolution 75/1, Member States expressed that there was no other global

¹⁴ ICESCR, (Part II Article 2, para 1.

¹⁵ Oxfam International, ‘Richest 1% Bag Nearly Twice as Much Wealth as the Rest of the World Put Together over the Past Two Years’, *Oxfam International*, 2023 <<https://www.oxfam.org/en/press-releases/richest-1-bag-nearly-twice-much-wealth-rest-world-put-together-over-past-two-years>> [accessed 3 March 2023].

¹⁶ International coordination and cooperation to combat illicit financial flows: Report of the Secretary-General, August 2022, A/77/304: <https://digitallibrary.un.org/record/3988481?ln=en>



organization with the legitimacy, convening power and normative impact of the United Nations... For other policy frameworks [than the UN Convention Against Corruption] related to combating illicit financial flows, inclusion has been growing, but ***universalism is far from being achieved*** at the end of 2022. While more than 200 jurisdictions are committed to implementing the Financial Action Task Force standards through their membership in Financial Action Task Force-style regional bodies, the Financial Action Task Force itself currently comprises 36 Member States, one additional jurisdiction and two regional organizations. The OECD-housed Inclusive Framework on Base Erosion and Profit Shifting provides a forum for 124 Member States and 17 other jurisdictions. The Global Forum on Transparency and Exchange of Information for Tax Purposes includes 145 Member States and 19 other jurisdictions. So far, 102 Member States and 19 other jurisdictions are automatically exchanging financial account information using the Standard for Automatic Exchange of Financial Account Information in Tax Matters or are committed to doing so in the near future. The OECD-housed Convention on Mutual Administrative Assistance in Tax Matters has been signed and/or entered into force in 125 Member States and 19 other jurisdictions. Even the most inclusive of these frameworks encompass only 75 per cent of Member States.” (*emphasis added*).¹⁷

The Financing Sustainable Development Report is published by the Inter Agency Task Force on Financing for Development (IATF). The IATF’s members include a range of UN agencies, the IMF (International Monetary Fund), World Bank and the OECD itself. Each year, the report uses OECD data to detail the extent of exclusion, in the report’s *Table III.A 2* (reproduced here from the advanced draft of the 2023 report for reference). The 2023 report confirms, once again the pattern of broad exclusion and minimal progress.

¹⁷ International coordination and cooperation to combat illicit financial flows: Report of the Secretary-General, August 2022, A/77/304: <https://digitallibrary.un.org/record/3988481?ln=en>

Table III.A. 2

Participation in international tax cooperation instruments, 2022

(Number of jurisdictions)

Legal instrument/ Intergovernmental body	Background	Purpose	Total membership/ parties	Middle- income countries	Least developed countries	Small island developing states	Africa
Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC)	Developed jointly by OECD and Council of Europe in 1988 and amended in 2010	Multilateral instrument for administrative cooperation	146 (+2)	62 (-3)	9 (+1)	33 (+1)	23 (+1)
MCAA Common Reporting Standard	Agreement requested by G20 and approved by OECD in 2014	Specifies details of exchange of financial account information for tax purposes	119 (+7)	40 (+3)	2 (+1)	31 (+2)	9 (+1)
Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum)	OECD-housed intergovernmental body restructured by G20 in 2009	Reviews implementation of transparency and exchange of information standards, both on request and automatic	165 (+2)	75 (-2)	18	37 (+1)	33
Automatic Exchange of Information Standard (AEOI)	Standard developed in 2014 under Global Forum	Automated exchange of financial account information for tax purposes	122 (+2)	42 (-2)	2	31 (+2)	10 (+1)
Inclusive Framework on BEPS (IF)	OECD-housed intergovernmental body originating from the 2013 OECD/G20 BEPS Project	Implementation of the 2015 BEPS Action Plan and the follow-up work to combat tax avoidance by MNEs	142 (+1)	62 (-3)	12	30 (+1)	26
Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI)	Negotiated within the framework of the OECD/G20 BEPS Project, adopted in 2016	Implements the minimum standards of 2015 BEPS Action Plan on tax treaty abuse, dispute resolution, hybrid mismatch arrangements and permanent establishment status	100 (+4)	41 (+1)	3 (+1)	10	14
MCAA on the exchange of country-by-country (CbC) reports	Agreement based on BEPS Action Plan 13, first exchanges began in 2018	Sets out the terms for the exchange among jurisdictions of CbC reports prepared by MNEs to facilitate transfer pricing risk assessments and audits	93 (+1)	28 (-1)	2	16 (+2)	9 (+1)

Source: OECD.

Note: Figures as of 31 December 2022. Parenthesis denotes change in the number of countries or jurisdictions in 2022 compared to the 2022 *Financing for Sustainable Development Report*, which may reflect something other than participation in the instrument, i.e., movement of countries into or out of designated status, changes in data availability, or changes in implementation of classification criteria. MCAA: Multilateral Competent Authority Agreement. MNEs: multinational enterprises.

The UN High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (the FACTI panel) studied this issue in great detail and confirmed the consistent nature of exclusion across all non-UN forums and processes.¹⁸ The roots go back to the origins of the OECD itself (and before that, of course, to the imperial violence that determined the patterns of extraction and enslavement, and of relative wealth and poverty, that in turn led to the organisation's original membership).

Following its establishment in 1961 by 17 European nations along with the United States, Canada and Turkey, the OECD took on leadership of global tax negotiations and maintained the pre-eminence of the 'arms-length principle', which had been agreed by the then-imperial powers as the basis for international taxation at the League of Nations in the 1920s and 1930s.¹⁹ The approach requires that different entities within a multinational group should be taxed as wholly separate entities, based on the view that as long as prices for intra-group transactions did not diverge from market prices between independent traders operating at arm's length, the taxable profits

¹⁸ FACTI Panel, 2021, *Financial Integrity for Sustainable Development*:

https://factipanel.org/docpdfs/FACTI_Panel_Report.pdf.

¹⁹ Sol Picciotto, 1992, *International Business Taxation: A study in the internationalization of business regulation*, Cambridge: Cambridge University Press. Now available in open access:

<https://www.taxjustice.net/cms/upload/pdf/Picciotto%201992%20International%20Business%20Taxation.pdf>.

would be located in the correct entities. The arm's length principle was adopted in preference to the alternative of unitary taxation with formulary apportionment, under which profits are assessed at the unit of the multinational group as a whole, and then apportioned according to the level of economic activity (determined, for example, by sales and employment) in each jurisdiction of the group's operation.

Unlike unitary taxation, which requires profits to be taxed where the underlying real activity arises on the ground, the use of the arm's length principle makes profit shifting relatively straightforward. With the growth of complexity and scale of multinationals from the 1950s in particular, the arm's length approach became increasingly unfit for purpose. But the real explosion of abuse only began in the 1990s. At the dawn of this decade, the data show that US-headquartered multinationals were shifting only around 5 per cent of their global profits away from the location of the underlying real activity – financially sizeable for those countries losing out, but not yet a global phenomenon of concern. By the end of the decade, the problem had roughly doubled in size, to account for around 10 per cent of the companies' global profits. By the early 2010s, it had reached 25 -30 per cent and continued to grow.²⁰

It wasn't until 2013, when growing concern over exploding levels of cross-border tax abuse by multinational corporations met grave fiscal pressures in many OECD countries following the 2008 financial crisis, that the Base Erosion and Profit Shifting (BEPS) initiative was established. Though some weak provisions were brought forward to formalise country-by-country reporting – which obliges multinationals to report on their profits and costs in each jurisdiction – the BEPS Action Plan failed to deliver any meaningful reforms of the tax rules themselves. Lower income countries were then invited to participate in the BEPS process through a newly established 'Inclusive Framework' mechanism, but under the condition that they must implement in its entirety an Action Plan which they played no part in designing.

Following the recognition of failure of the original BEPS process, BEPS 2.0 got underway in January 2019 with a mandate to go beyond the century-old arms-length approach. Initially the Inclusive Framework countries were to be empowered to set the workplan for the new negotiations.²¹ The participating Global South nations presented a proposal designed by the G24 comprising the evaluation of three alternatives,²² including a comprehensive shift to unitary taxation, but this was blocked by G7 nations in favour of a final agreement that followed from bilateral negotiations between the United States (the OECD's largest member) and France (which

²⁰ Cobham, A., & Janský, P., 2019, 'Measuring misalignment: The location of US multinationals' economic activity versus the location of their profits', *Development Policy Review* 37(1), pp. 91–110.

²¹ OECD, Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy, 2019. Available at: <https://www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.pdf>

²² OECD, Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy, 2019. Available at: <https://www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.pdf>

hosts the OECD).²³ It is increasingly uncertain at this stage whether this 'Pillar 1' proposal will be implemented. The scheduled delivery date of 2020 is long past, and the US (United States) has signalled it is unable to implement any multilateral agreement that the OECD might bring forward. But even if 'Pillar 1' were to be implemented, the ambition has long since collapsed. As it stands, it would introduce a formulary approach for only a small fraction of the profits of a handful of the largest multinationals, retaining the arms-length approach for all others.²⁴

Although the OECD's Inclusive Framework members were informed their proposal would be properly evaluated, there is no indication that any such evaluation actually took place. Instead, the US-France deal was presented as a 'unified proposal' notwithstanding the fact that the content of the G24 proposal was ignored in its entirety. A response to the proposal issued by the South Centre confirmed that the G24's input did not appear to have been considered in the final proposal.²⁵

Lastly, Pillar 2 – the global minimum tax – is likely to be adopted by a number of OECD countries and some profit shifting conduit jurisdictions, although again, not by the US. With an effective rate much lower than the 21 – 25 per cent once discussed likely to be set as the minimum, and multiple carveouts introduced at the call of conduits such as Ireland, this limited adoption may have some benefits at the margin. However, the assessment of the independent BEPS Monitoring Group and others is that it will, as with the US 'GILTI' measure,²⁶ create a competitive tension between conduits and headquarter countries, with little or no benefit for other countries – including, overwhelmingly, those outside the OECD.²⁷

After more than four years of 'BEPS 2.0' and ten years of BEPS in total, there is not only no evidence of any reduction in corporate tax abuse, there is clear evidence that unilateral measures to curb abuse have stalled. There are strong suggestions that non-OECD members have been excluded in practice from having an effective voice in the 'Inclusive Framework'. And

²³ The Financial Times, US and France agree deal on digital tax, 20 February 2022. See: <https://www.ft.com/content/76cf4008-3db1-11ea-b232-000f4477fbca>

²⁴ The South Center, Comments on the OECD Secretariat Proposal for a "Unified Approach" under Pillar One, July 2020. Available at: <https://taxinitiative.southcentre.int/wp-content/uploads/2020/07/OECD-Tax-Pillar-One-Comments-South-Centre-Tax-Initiative-v4.pdf>

²⁵ The South Center, Comments on the OECD Secretariat Proposal for a "Unified Approach" under Pillar One, July 2020. Available at: <https://taxinitiative.southcentre.int/wp-content/uploads/2020/07/OECD-Tax-Pillar-One-Comments-South-Centre-Tax-Initiative-v4.pdf>

²⁶ Global Intangible Low-Taxed Income is a provision of the US tax code designed to address income that is earned abroad by U.S.-controlled foreign corporations. See: <https://www.irs.gov/newsroom/treasury-irs-issue-final-and-proposed-regulations-on-income-subject-to-a-high-rate-of-foreign-tax>

²⁷ BEPS Monitoring Group, 2022, 'The Implementation Framework for of the Global Minimum Tax', <https://www.bepsmonitoringgroup.org/news/2022/4/11/the-implementation-framework-for-the-global-minimum-tax>; see also Cobham, A., Faccio, T., Garcia-Bernardo, J., ...Kadet, J., Picciotto, S., 2022, 'A Practical Proposal to end Corporate Tax Abuse: METR, a Minimum Effective Tax Rate for Multinationals', *Global Policy* 13(1), pp. 18–33.

there is little, if any chance that the outcomes will meaningfully curb tax abuse, to the benefit of non-members or indeed of most members.

The OECD is responsible for two other critical global public goods in the sphere of tax transparency. The OECD Common Reporting Standard is the multilateral instrument for automatic exchange of information about financial accounts held by tax residents of other countries – a key tool in combatting offshore tax evasion. To date, only two least developed countries participate in the reporting measure, however, and only nine African countries.²⁸ Moreover, under the CRS (Common Reporting Standard) the information exchanged can only be used for tax compliance purposes, with other illicit financial flows related to corruption and money laundering excluded, and the world's largest economy, the United States, does not participate.

The OECD standard for country by country reporting, meanwhile, is an important plank of tax transparency for multinational companies. But in this case as well the OECD has limited the flow of information so that the benefits accrue predominantly to member countries, while many former colonies remain excluded. Again, only nine African nations and two least developed nations currently participate in the country by country measure.²⁹ As of October 2021, despite the existence of 3,000 exchange relationships for country-by-country reporting, no least developed country was actually receiving country-by-country report information.³⁰

Historically, the negotiation of double tax agreements (DTAs), through which countries negotiate bilaterally to agree the allocation of taxing rights and thereby prevent revenue streams being taxed twice, has been the main means of governing taxation at the international level. As the global standard-setting body on international taxation issues, the OECD has likewise had a major influence on this area, with the provision as a 'model' treaty that has served as a template for many such agreements. By privileging the state of company residence, however, the OECD model treaty³¹ ensures that almost all resulting revenue flows to a handful of its members, where the headquarters of most major multinational companies are based, rather than the 'source' countries where resources are extracted.³² There are, by the OECD's own estimation, more than 3,500

²⁸ Inter-Agency Task Force, 2023, *Financing for Sustainable Development Report 2023* (Advanced Unedited Version), 'Table III.A.2 Participation in international tax cooperation instruments, 2023', p.64. See: <https://developmentfinance.un.org/2023-FSDR-preparatory-materials>

²⁹ Inter-Agency Task Force, 2023, *Financing for Sustainable Development Report 2022* (Advanced Unedited Version), 'Table III.A.2 Participation in international tax cooperation instruments, 2022', p.64. See: <https://developmentfinance.un.org/2023-FSDR-preparatory-materials>

³⁰ United Nations Secretary General, *Our Common Agenda*, 2021. See: <https://www.un.org/en/content/common-agenda-report/>

³¹ Organisation for Economic Co-operation and Development, 'Model Tax Convention on Income and on Capital: Condensed Version September 1992' See: https://www.oecdilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-condensedversion-september-1992_mtc_cond-1992-en
<https://cthi.taxjustice.net/cthi2019/20-Double-Tax-Treaties.pdf>

³² Tax Justice Network, *Key Corporate Tax Haven Indicators: Haven Indicator 20: Double Tax Treaty Aggressiveness*, 2019. See: <https://cthi.taxjustice.net/cthi2019/20-Double-Tax-Treaties.pdf>

such agreements now in existence which are informed by its model.³³ This proliferation in bilateral treaties in turn fuels 'treaty shopping', through which multinational enterprises exploit loopholes in DTA (double tax agreements) provisions to lower their tax contributions.

Lower income countries face a variety of barriers to equal participation in international tax negotiations, all of which have been particularly pronounced in OECD-led processes. While the Inclusive Framework, for example, ostensibly provides space for all participants to negotiate on an equal footing, the reality has been characterised by exclusionary dynamics. Elections to the Steering Group, where most intensive negotiations take place, are heavily steered by the OECD Secretariat.³⁴ The financial cost of sending delegates to the talks in Paris represents a significant obstacle for many poorer nations, while high levels of technical expertise required, together with the rapid pace of the negotiations, makes it impossible for many Global South delegates to meaningfully engage.³⁵ The failure to provide interpretation at Steering Group meetings, which are conducted in English, along with document translations that arrive too late to be effectively considered, also contribute to the problem.³⁶

Efforts to establish a genuinely inclusive body for global governance of taxation under the auspices of the UN date back over 20 years. In 2001, the report of the UN High-level Panel on Financing for Development (the Zedillo report) called on the international community to "consider the potential benefits of an International Tax Organization".³⁷ Successive attempts by the G77 group, along with the consistent demand from international civil society, were successfully frustrated by OECD members until 2022.³⁸ These efforts have generally involved initiatives to upgrade the UN Tax Committee as a precursor to the creation of new United Nations body and ultimately the negotiation of a genuinely fair United Nations Tax Convention.

In contrast to the OECD structures, the United Nations Tax Committee is expressly mandated to give particular attention to the voice and needs of developing countries. Notably, its 2021 UN Model Tax Convention between Developed and Developing Countries was more favourable to the needs and interests of developing countries, as compared to the OECD Model Treaty,

³³ OECD, Coordination of Bilateral Tax Treaties / the OECD Model Tax Convention, 2013. <https://www.oecd.org/gov/regulatory-policy/taxtreaties-modeltaxconvention.htm>

³⁴ Rasmus Corlin Christensen, Martin Hearson, Tovony Randriamanalina, At the Table, Off the Menu? Assessing the Participation of Lower-Income Countries in Global Tax Negotiations, International Centre for Tax and Development, 2020. https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15853/ICTD_WP115.pdf?sequence=9

³⁵ Ibidem.

³⁶ Ibidem.

³⁷ United Nations, Report of the High-level Panel on Financing for Development (2001). See: https://www.un.org/en/events/pastevents/financing_for_development_report.shtml.

³⁸ Abdul Muheet Chowdhary and Sol Picciotto, Streamlining the Architecture of International Tax through a UN Framework Convention on Tax Cooperation, The South Centre, 2021. See: https://www.southcentre.int/wp-content/uploads/2021/11/TCPB21_Streamlining-the-Architecture-of-International-Tax-through-a-UN-Framework-Convention-on-Tax-Cooperation_EN.pdf

thanks in part to the inclusion of Article 12A which allows for countries to tax income at source.³⁹

Historically, the work of the UN Tax Committee has been significantly constrained by a lack of resources and it has only a handful of expert staff.⁴⁰ Although capacity has been expanded in recent years, largely thanks to additional contributions from India made in light of commitments in the Addis Ababa Action Agenda, the Committee's funding remains a fraction of that of corresponding OECD bodies. These facts notwithstanding, the UN Tax Committee has already demonstrated itself more agile and more capable of delivering proposals appropriate for developing countries than the OECD⁴¹ and there have been repeated calls from the G77 for it to be upgraded to become an intergovernmental body.⁴²

Indeed, the call for reforms that would ensure multinational enterprises can be taxed where their actual economic activities take place reflects the demands of both the G20⁴³ and the Addis Ababa Action Agenda.⁴⁴ The call for a UN Tax Convention, along with a global body for coordination and negotiation on tax matters with universal membership and genuine political accountability, was reiterated by the UN High-Level Panel on Financial Accountability, Transparency and Integrity in 2021.⁴⁵ The UN Secretary General likewise affirmed support for a UN Convention that would meet the needs and capacities of developing countries in his 2022 report to the General Assembly.⁴⁶

³⁹ Sol Picciotto, *The Contested Shaping of International Tax Rules: The Growth of Services and the Revival of Fractional Apportionment*, Working Paper, No. 124, ICTD, 2021. See: <https://www.ictd.ac/publication/contestedshaping-international-tax-rules-growth-services-revivalfractional-apportionment/>. 24 Russia G20, Tax Annex to the S

⁴⁰ Rasmus Corlin Christensen, Martin Hearson, Tovony Randriamanalina, *At the Table, Off the Menu? Assessing the Participation of Lower-Income Countries in Global Tax Negotiations*, International Center for Tax and Development, 2020. https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15853/ICTD_WP115.pdf

⁴¹ Sol Picciotto, *The Contested Shaping of International Tax Rules: The Growth of Services and the Revival of Fractional Apportionment*, ICTD, 2021. See: https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/16728/ICTD_WP124.pdf?sequence=1&isAllowed=y

⁴² G77, Ministerial Declaration (2020). See: <https://www.g77.org/doc/Declaration2020.htm>.

⁴³ G20, Tax Annex to the St. Petersburg G20 Leaders' Declaration, See: <https://www.oecd.org/g20/summits/saintpetersburg/Tax-Annex-St-Petersburg-G20-LeadersDeclaration.pdf>.

⁴⁴ United Nations, *Addis Ababa Action Agenda of the Third International Conference on Financing for Development*, 2015. See: https://sustainabledevelopment.un.org/content/documents/2051AAAA_Outcome.pdf

⁴⁵ UN FACTI Panel, *Final Report of the UN High-Level Panel on Financial Accountability, Transparency and Integrity*, 2021. See: <https://factipanel.org/>

⁴⁶ UN Secretary General, *International coordination and cooperation to combat illicit financial flows*, 2022. See: <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/77/304&Lang=E>

3. Options and recommendations

“The Conference of Ministers, [...]

Calls upon the United Nations to begin negotiations under its auspices on an international convention on tax matters, with the participation of all States members and relevant stakeholders, aimed at eliminating base erosion, profit shifting, tax evasion, including of capital gains tax, and other tax abuses.”

– Conference of African Ministers of Finance, Planning and Economic Development, 2022.⁴⁷

Article 28 of the Universal Declaration of Human Rights states that everyone is entitled to a social and international order in which human rights can be fully realised. However, as this submission has shown the current structures and processes for cooperation and the setting of rules and standards on international tax and transparency are systematically exclusionary, and consistently ineffective to deliver on this promise. According to Article 59 of the UN Charter, the UN shall, where appropriate, initiate negotiations among the states concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55

As with the work of the African Union/ECA High Level Panel on Illicit Financial Flows out of Africa, which led to global agreement on Sustainable Development Goals target 16.4 to curb illicit financial flows, the May 2022 declaration of African finance ministers was the pivotal moment that led to the UN General Assembly’s adoption by consensus of the resolution, initiating intergovernmental discussions on a new international framework for tax cooperation.⁴⁸

Amidst growing concern over the shortcomings of the OECD process, the South Centre published a proposal for a framework UN convention on tax in 2021,⁴⁹ and the European Network on Debt and Development (Eurodad), with the support of the Global Alliance for Tax Justice, subsequently published a full draft convention including a comprehensive set of articles the following year.⁵⁰

At the heart of both these proposals lies the recognition that only a fully democratic and transparent process through which all countries can

⁴⁷ Report of the Conference of African Ministers of Finance, Planning and Economic Development on its work during the fifty-fourth session of the Economic Commission for Africa (E/ECA/CM/54/6), May 2022; http://www.uneca.org/sites/default/files/com/2022/E_ECA_CM_54_6_E.pdf.

⁴⁸ Nigeria On behalf of the States Members of the United Nations that are members of the Group of and African States, Promotion of Inclusive and Effective International Tax Cooperation at the United Nations (New York, 16 November 2022) <<https://abouttax.com/50/>> [accessed 12 March 2023].

⁴⁹ Abdul Muheet Chowdhary and Sol Picciotto, *Streamlining the Architecture of International Tax through a UN Framework Convention on Tax Cooperation*, Tax Cooperation Policy Brief, 1 November 2021, <https://www.southcentre.int/tax-cooperation-policy-brief-21-november-2021/>

⁵⁰ Eurodad, Proposal for a United Nations Convention on Tax, 10 March 2022. See: https://www.eurodad.org/un_tax_convention

participate on an equal footing can deliver the necessary reforms to the global financial architecture that will ensure just and sustainable development, in compliance with universal human rights standards, for all countries. These proposals are in line with an extensive literature showing that, to be effective, multilateral regimes need to get three things right: 1) participation, 2) action, and 3) compliance.⁵¹

Building on the existing work of the UN Tax Committee and the Africa Group's Resolution to begin intergovernmental cooperation on tax matters at the UN,⁵² a **new intergovernmental tax body** should therefore be established within the United Nations and provided with the necessary resources for its effective functioning. This new process should take as one of its core objectives the development of a genuinely inclusive and just United Nations global tax convention setting out globally inclusive standards on, and provisions for the implementation of:

- i. Automatic exchange of information on financial accounts between countries, removing barriers of reciprocity that currently impede lower income countries' access to this crucial public good.
- ii. Beneficial ownership transparency of the 'flesh and blood' owners of assets, trusts, foundations and other forms of wealth that is accessible to all countries. This should include a framework of commitments enabling the development of public BO (Beneficial Owners) registers in all countries and building towards a single interconnected global system.
- iii. Comprehensive and publicly available country by country reporting for all multinational companies.
- iv. The creation of a minimum effective corporate tax rate, based on the global profits of each multinational group and allocated according to a formulary apportionment model that ensures taxes are paid in the jurisdictions of actual economic activity.

Crucial to this effort – and therefore to the recommendations that the Secretary-General may make in the 2023 report – is the need to move beyond the existing arrangements for the setting of tax rules and standards, which have shown themselves to be irredeemably exclusionary as well as largely ineffectual.

The Secretary-General's report can set the basis for a resolution to begin formal negotiations on a new international framework for tax cooperation under UN auspices, with the potential to create genuinely inclusive arrangements – in which each UN member country can be heard equally and vote, and where the transparency and openness to civil society of those processes ensures the accountability of states to each other and to their citizens.

⁵¹ Liverani, A, "Success and failure in international regimes", World Bank, at <https://blogs.worldbank.org/climatechange/success-and-failure-international-regimes>

⁵² UNGA, Promotion of inclusive and effective international tax cooperation at the United Nations, November 2022. <https://undocs.org/A/C.2/77/L.11/REV.1>



The continuing industrial-scale corporate tax abuse, and the grave human rights damage that is the result, represents a global failure of public policy. It is deeply disappointing that in 2023 there are still some who would seek to justify the deliberately exclusionary nature of the arrangements that are responsible for that failure. The Secretary-General has the opportunity now to call for a comprehensive end to this situation, and to support the necessary reforms.