



Task Force 03

**REFORMING THE INTERNATIONAL FINANCIAL ARCHITECTURE**

## A Fairer Global Tax Architecture

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**TF03**



## Abstract

The G20 has taken a leading role in orchestrating action by the OECD and other international organisations to maintain the coherence of global tax governance. In spite of this, discontent about international tax standards and the process through which they are set has increased in the global South. It has found its expression most recently in the UN General Assembly’s decision to begin talks on a UN Framework Convention on International Tax Cooperation (“UN convention”). This brief will build on its authors’ recent research to argue that strengthening perceived fairness and inclusivity are now essential criteria for the sustainability of multilateralism in taxation. The G20 can play a pivotal role in achieving this.

Lower-income countries (LICs) have benefited little from negotiations led by the OECD under a G20 mandate since 2008, even though they have more opportunities to influence than before. The result is a growing number of tools and standards that offers them few benefits while creating considerable administrative costs. Yet, our research has shown that they have invested in this existing work and do not wish to abandon it. In 2024, the G20 can strengthen its legacy by focusing on changes to these instruments that increase the benefits while minimising the obstacles to those benefits. This includes easier access to multinational enterprises’ country-by-country reports, non-reciprocal exchange of tax information, and an approach to the taxation of the digital economy that enables lower-income countries to secure more tax revenue necessary for financing the SDGs.

The G20 has taken on a unique role as political orchestrator in recent years, which is needed now more than ever. Yet, this role must be recalibrated. Historically, the G20 has focused primarily on the OECD and its associated bodies as the vehicles to deliver its political agreements, but this is no longer sustainable. With global North and South currently at loggerheads over the UN convention, the G20 – created to straddle North and

South – should aim to broker a political agreement among its members over the role of the UN Convention and its relationship to existing G20-mandated institutions.

**Keywords:** taxation, OECD, United Nations, exchange of information, digital economy, equity.

## Diagnosis of the Issue



Lower income countries (LICs) have been excluded from the processes through which countries agree on international tax standards, such as model tax conventions, transfer pricing guidelines, and recommendations, which are highly influential on bilateral and domestic policies and constrain countries' policy space. However, the global tax architecture has undergone profound changes in the last decade. International tax cooperation has become increasingly politicized and the G20 has become an important space for agenda-setting, brokering high-level political agreements and setting mandates for technical bodies such as the OECD's Global Forum on Transparency and Exchange of Information in Tax Matters ("Global Forum") and the G20/OECD Inclusive Framework on BEPS ("Inclusive Framework").

Through these forums, LICs have become more systematically involved in international tax cooperation. However, these changes to the global tax architecture have not been able to deal with LICs' discontent with the current institutions, which has resulted in repeated calls for a shift from the OECD to the UN as the centre of tax standard-setting. These calls have culminated in the adoption of UN General Assembly resolution 78/230 in December 2023, which set in motion a process for developing a Framework Convention on International Tax Cooperation at the UN.

We identify four essential challenges that lower income countries are facing in the current global tax architecture. First, the agenda and output of existing technical bodies such as the Inclusive Framework are often perceived as different to the priorities of LICs. This may be because their implementation requires too many administrative resources, or because they do not allocate sufficient taxing rights to LICs (Hearson et al. 2020). Current institutions have not dealt well with strong, diverging preferences between global North

and South. Second, many LICs encounter difficulties negotiating effectively in these technical forums. These challenges arise from the limited resources that they can devote to negotiations, and from the modalities of negotiations, such as the pace, frequency, lack of timely translation of drafts, and lack of clear rules of procedure (Christensen et al 2020; Cadzow et al. 2023; Magwape 2024). Third, there is insufficient coordination between technical experts and the political decision-makers in many LICs. This results in challenges in forming coalitions, political decisions that do not sufficiently reflect technical experts' opinions, lack of political backing for positions adopted by technicians, and lacklustre implementation of commitments (Cadzow et al. 2023). Finally, an inclusive *political* body on tax matters is currently absent from the international tax regime complex. While technical bodies such as the UN Committee of Experts on International Cooperation in Tax Matters, Inclusive Framework and Global Forum are part of a more inclusive technical landscape, there is no inclusive political body to complement them (Cadzow et al. 2023; Chowdhary and Picciotto 2021). This risks reinforcing the historical exclusion of countries from the global South.

## Recommendations

The G20 plays a central political role in international tax cooperation, as a space to broker political agreement among its members on contentious issues. The body has the convening ability to intermediate discussions for a coordinated approach between other bodies where the technical work of standard-setting and monitoring of implementation takes place. This may require addressing the coherence between mandates and objectives in order to limit duplication. Our specific recommendations concern both the policy outputs as well as the institutional aspects of the global tax architecture.

### **Institutional aspects**

#### *a) Support the Development of an Inclusive Political Tax Body*

G20 Members have adopted polarised positions on the proposal to develop a new UN Tax Convention. In order to develop a robust international tax body, a compromise will be required. To this end, the first recommendation is for the G20 to act as a space for dialogue as negotiations at the UN progress during 2024. The G20 has been playing an orchestrating role in the international tax regime complex since 2008, calling primarily on the OECD and its associated bodies to deliver on its agreed priorities. During 2024 its role should be recalibrated, to establish a new relationship with the UN, one that empowers the work to establish a Framework Convention.

At the UN, the aim should be to establish a political body focused on mainstreaming issues of interest to developing countries, particularly lower-income countries. Specifically, we recommend that this body should be complementary to existing technical spaces in the sense that it would focus on finding political agreements and “orchestrating” the work of technical forums, whether new or existing. The G20 and OECD will continue

to be important institutions within a landscape of regional and plurilateral cooperation based on common priorities, and an overarching Framework Convention with the potential for universal membership. The G20 has a critical role as pragmatic space in which agreement can be brokered between the leaders of large economies – and regional blocs including the African Union. Identifying priorities for the UN Convention, and specifying its relationship to the OECD bodies, should be a focus of G20 discussions. This would enable both institutions to operate simultaneously and attenuate concerns about duplicating existing work – a concern that, due to a scarcity of time and resources available for multilateral negotiations, is also shared by negotiators from LICs (Cadzow et al. 2023).

Establishing the UN as “orchestrator” may come with its own challenges, and the UN Convention’s procedural rules, including financing mechanisms, dispute resolution provisions and voting rules, must be robust enough to allow it to fulfil this function and not simply be ignored or bypassed. We also envisage that such a body would incorporate the principle of *Special & Differential Treatment*, which provides for preferential rights in favour of developing countries in order to remedy the asymmetrical economic, technical and political relationship between countries of the global North and South (Magwape 2024).

*b) Alternative Plurilateral Agreements*

As stated above, LICs have benefited little from negotiations led by the OECD under a G20 mandate since 2008. To deliver meaningful results aligned with LICs’ agenda, alternative approaches to global tax governance are required. One such approach is open plurilateral agreements, which enable Member States to develop specific rules (such as

an agreement on Illicit Financial Flows) which may be implemented by developed and developing countries alike, but would not be binding on the wider membership.

Plurilateral cooperation is already practiced in tax matters, for example through the European Union Directives, the Council of Europe/OECD Mutual Assistance Convention, and the Multilateral Instrument from the BEPS Project – as well as the OECD itself. When it calls on other bodies to implement its political agreements, the G20 should therefore embrace plurilateralism in its choice of partner organisation, where universalism is unnecessary or not feasible. Relaxing the objective of agreeing on universal solutions ensures outcomes that cater to different groups of countries and facilitates progress where there would otherwise be gridlock. The issue of spillover effects on non-supporting countries does, however, require careful handling. The UN Framework Convention on Tax therefore has an important role to establish universally shared principles for tax cooperation to which plurilateral solutions would be bound.

### **Policy outputs**

#### *a) Ensuring LICs benefit from existing agreements*

With respect to substantive policies, there are several G20 legacy instruments on which support for comparatively modest reforms could be reached from a broad majority of countries in 2024. These reforms are focused on ensuring greater transparency and effective exchange of information, which is a concern for the majority of lower and higher income countries alike. There is currently a huge gap between the data for tax enforcement that LICs can, in principle, obtain from other jurisdictions, and their ability to access and utilise that data. Existing initiatives, such as the exchange of country-by-country reports (CbCR) and the automatic exchange of information (AEOI) of taxpayers' financial account data, can be made more accessible for developing countries, for



instance, by enabling non-reciprocal exchange of data. Of course, making CbCR data publicly accessible would be the easiest way to ensure widespread access, followed by relaxing restrictions on local filing requirements in the OECD/G20 BEPS Project's minimum standard. The reporting framework on crypto assets is a work in progress at the Global Forum and can help promote transparency. It is likely that such a model reporting framework will receive wide support, as was indicated by the Indian G20 presidency asking for swift implementation and amendments to the Common Reporting Standard (G20 2023).

*b) Mainstreaming UN Model provisions*

When countries negotiate tax treaties, they start from models. While some countries have their own models, these are closely aligned to the model tax conventions developed by the UN and OECD. While the OECD Model Convention shifts more taxing rights to exporters of capital and services, the UN Model Convention allocates comparatively more taxing rights to importers of capital and services and is therefore considered as better reflecting the fiscal interests of developing countries. Most treaties concluded by countries are a mix between both models.

Our empirical research has shown that there is significant potential to expand the role of the UN model by upgrading existing treaties to be consistent with it in certain clauses (Hearson, Heitmüller, and Arel-Bundock 2023). As we show, relatively few partner countries exhibit 'red lines' against most UN model-type provisions, and for some countries there is significant potential to renegotiate. At the 28th session of the UN Tax Committee in March 2024, a fast-track-instrument to implement new and recent additions into countries' tax treaty networks was adopted. We believe that such an instrument would be useful to ensure more equitable treaties against a backdrop of an increasing number of

treaty terminations by countries in the global South. By supporting the adoption of the fast-track instrument, the G20 could play a crucial role in creating a critical mass of adopters among countries of the global North that have wide treaty networks extending across the global South.

Furthermore, we recommend including not only recent or future clauses of the UN Model, but also earlier provisions. Their absence from some countries' treaties may be due to the fact that older treaties were negotiated by less experienced teams or under different political circumstances. Our research shows that some provisions that have been part of the UN Model for a long time, and a few that have now been accepted by the OECD, have become more popular in recent years, which suggests greater acceptance by partner countries (Hearson, Heitmüller, and Arel-Bundock 2023).<sup>1</sup>

### *c) Digital Services Tax Agreement for the Global South*

While we believe the first two sets of issues are quite consensual, the G20 is also a space in which progress can be made on more contentious issues. One example is the approach to taxing digital business models. Currently, there is a lack of alignment on the design, and it is expected that the Inclusive Framework's Pillar One solution will not be adopted by many LICs, which will prefer other approaches including digital services taxes ("DSTs").

Many countries, including OECD members, have adopted DSTs, though they are quite diverse in their design. Notably, some have been designed as covered taxes under tax treaties, whereas others have been designed to fall outside of tax treaties so that they can

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<sup>1</sup> In particular, the unique aspects of the permanent establishment provision (articles 5(3)(a), 5(3)(b), 5(4)(a), 5(4)(b) and 5(7))

even be applied to transactions with countries that are governed by a tax treaty. Too wide of a patchwork of rules may create additional complexity for businesses and administrations alike. Therefore, considering that a widespread agreement on Pillar One may not materialize, and acknowledging the heterogeneity of approaches taken by countries, the G20 should support discussions aimed at identifying a range of measures that could be recommended, as was the approach of the OECD in 2015. A recent policy brief by ATAF identified five design options, which could serve as basis for the discussion (ATAF 2024).

## Scenario of Outcomes



There are different ways in which the global tax architecture could take shape in the coming years. The G20 can play a pivotal role in all of them. In the long term, a better representation of developing countries' interests on the international agenda is a route to increasing tax revenue, which is necessary to fund the achievement of the SDGs. The creation of an inclusive international tax body is also likely to bridge the gap between political decision-makers and technical negotiators that exists in many lower income countries. Of course, there are risks that the initiative at the UN could further alienate lower income countries from higher income countries and stifle progress in international standard setting processes. However, it is evident that LICs have their reservations with the current system. Groups of countries such as the ATAF and the Platform for Taxation in Latin America and the Caribbean have strongly articulated their position on matters such as the taxation of the digital economy, and many have expressed their reservations about the OECD process. The UN General Assembly vote to create a UN tax convention is a progressive step in the direction of change as the institution will provide an alternative to Global North-dominated standard-setting. Hence, implementing the recommendations outlined above could restore trust between LICs and OECD members, and thereby contribute to greater stability of the international tax regime.

Many see the process towards a UN Framework Convention on Tax as a paradigm shift in the way international tax law functions, but a pluralistic framework is far from novel, the UN model itself dating to 1980. The countries supporting the initiative would like to balance the consensus-based approach with flexibility to adopt practices that differ from OECD standards but are more administratively and economically practical. This fine balance can be achieved in different ways, as outlined in the preceding sections.

Significant technical work has been undertaken at the OECD and the UN Tax Committee and the G20 can support work to build upon this, through short term policy measures and long-term institutional reform.

The OECD's central role in the last half century of tax cooperation stemmed from political commitment by the most powerful states, and its institutional capacity. To ensure that LICs' interests are adequately represented, it is important that the G20 put its weight behind the OECD for the Global Forum and the Inclusive Framework now does so in the case of the UN. Conversely, a failure to broker equitable outcomes for all countries may result in fragmentation of the institutions and principles that govern taxation. Proposals for early UN Convention protocols lay emphasis on issues such as illicit financial flows and wealth tax, thus far under-emphasized at the OECD. The G20 Leaders' 2023 declaration refers to the deficit in flows of climate finance, a gap that tax can help bridge. Supporting the place of the UN in international tax cooperation is a means to support domestic and international resource mobilisation for the energy transition.

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