EDITORIAL

The UN Framework Convention: A Once-in-a-Lifetime Opportunity

The International Bureau for Fiscal Documentation (IBFD) prepared a report[1] in June 2023 at the request of the United Nations (UN) Department of Economic and Social Affairs analysing international tax coordination and the role of institutions such as the Organization for Economic Co-operation and Development (OECD). The report states that OECD guidance is adopted much more widely by developed countries than by developing countries for which several factors contribute to this disparity. These include the complexity of the provisions, the limited administrative capacity of developing countries, and missed opportunities in the context of the Base Erosion and Profit Shifting (BEPS) Project to comprehensively address 'the key issues that are regarded as most pressing for developing countries. These include wasteful tax incentives, taxation of cross-border services (especially digital or non-physical services), indirect transfer of assets, and certain transfer pricing issues, such as the lack of comparability data'.[2]

In fact, the two-pillar solution developed by the OECD/G20 (Group of Twenty) Inclusive Framework has created a significant amount of concern among developing countries due to its complexity, limited advantages, and substantial implementation costs.[3] While Pillar One seeks to reallocate taxing rights to market jurisdictions where large multinational enterprises operate, its scope is viewed as too narrow, and the proportion of tax revenue allocated to these jurisdictions is deemed insufficient.[4] In contrast, Pillar Two has the aim of establishing a global minimum tax to curb harmful tax competition and presents a considerable compliance challenge causing concern among many governments about the potential weakening of their fiscal sovereignty.[5]

It is not difficult to understand why the Inclusive Framework, in spite of its 'inclusive' rhetoric, should not be considered as actually representing a consensus.[6] Countries have no actual opportunity to express their views, and decisions do not depend on their acceptance but rather on non-opposition. In such a scenario, dissenting opinions are not transparent unless a country expresses it. It is especially not easy for a developing country to follow the discussions and be able to bring its opposition at the proper time. Its silence does not necessarily mean agreement, but it is most probably merely uninformed on the subject. This phenomenon has been correctly described by Vander Wolk who further notes that details of a proposal are sent to framework Member States without sufficient time for them to actually read and understand what they are being asked to consent to or whether they can disagree to it. The author explains the member countries' silence is not to be construed as requesting more time but instead occurs to avoid slowing down the process since this would cause embarrassment and risk displeasing larger trading partners who would be advocating the proposal's approval.[7] Decisions are thus taken, but there is no guarantee they shall be implemented if they are not compatible with the needs of many countries.

In that context, Nigeria represented the African Group and tabled a draft resolution to the UN General Assembly in October 2023.[8] It was titled 'Promotion of Inclusive and Effective International Tax Cooperation at the United Nations' and proposed creating a framework convention on international tax cooperation. The UN General Assembly took a historic step by December 2023 by deciding to draft a legally binding Framework Convention on international tax

Notes

1 IBFD, *Promotion of Inclusive and Effective Tax Cooperation at the United Nations* (1 Jun. 2023).

2 *Ibid.*, at 12–13.

3 UN Secretary-General, Report, *Report A/78/235 – Promotion of Inclusive and Effective International Tax Cooperation at the United Nations* (26 Jul. 2023), paras 33–34.

4 *Ibid.*, paras 35–37.

5 *Ibid.*, para. 38.

6 *See* e.g., Allison Christians & Laurens vanApeldoorn, *The Inclusive Framework*, 72(4) Bull. Int'l Tax 226–233 (2018), doi: 10.59403/288pdc.

7 Jefferson Vander Wolk, *International Tax Policymaking at the United Nations: How Meaningful Will It Be?*, 114 Tax Notes Int'l 1385, 1385 (2024) apud Sunita Jogarajan & Nikki J. Teo, *The Old UN Ghosts Speak: Quo Vadis, International Tax Regime: From Coordination to Cooperation?*, 53(1) Intertax 23–43 (2025), doi: 10.54648/TAXI2025007.

8 UN General Assembly, Nigeria: draft resolution, *Promotion of Inclusive and Effective International Tax Cooperation at the United Nations* (11 Oct. 2023).

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cooperation[9] that will define the aims and principles of how countries cooperate on tax matters. It will essentially establish a platform for states to discuss and develop further agreements. This type of structure aims at affording countries the flexibility to opt into or out of various protocols based on their own priorities and administrative capabilities.

The 2023 General Assembly disclosed the lack of consensus on this matter. In spite of a vast majority approving the movement to the UN, a minority representing significant participants voted against it, and the number of abstentions is very notable.[10] A more comprehensive analysis shall show that rejections and abstentions represent the core of the OECD. This may indicate that the latter shall insist on its path notwithstanding the frustrations accumulated to date. It seems unlikely that the framework will prevail without the consent of the OECD countries, however, this does not diminish the results already reached. After all, this is the first time that developing countries have the opportunity to opine what they need, and the mere fact that this may no longer be disregarded is to be celebrated.

The UN Framework Convention is under negotiation. The General Assembly is expected to consider the final text of the Framework Convention and early protocols at its eighty-first session in September 2026.[11] Most importantly, this Framework Convention seeks to 'ensure fairness in allocation of taxing rights under the international tax system that contributes to achieving sustainable development'.[12] This means that the UN is reopening an old debate, and it could finally be a chance to rethink the fair allocation of taxing rights. If a consensus is to be reached, it seems prudent for the OECD to consider what shall be done in this forum.[13]

Luís Eduardo Schoueri,
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9 UN General Assembly, *Resolution 78/230 – Promotion of Inclusive and Effective International Tax Cooperation at the United Nations* (22 Dec. 2023).

10 UN, *Concluding Its Session, Second Committee Approves 4 Resolutions, 2 Decisions, Including Texts on Tax Cooperation, Affordable Energy Access*, GA/EF/3614 (27 Nov. 2024).

11 Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation, *Zero Draft Terms of Reference* (7 Jun. 2024).

12 *Ibid.*, para. 9.

13 This is the second special issue on the UN, both of which were initiated by Prof. Dr Cees Peters from Tilburg Law School, to whom we express our gratitude.