

# South-South Cooperation in International Tax Matters

Technical Session I: Taxation of the Digital Economy

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# International Tax Cooperation - Timeline



- 1921: League of Nations (predecessor to UN) started working on issues of international tax
- 1927: Drafting of bilateral model tax conventions began
  - Model Conventions of Mexico (1943) and London (1946), with provisions on allocation of the right to tax transnational income between countries.
- The UN, after it took over the League, invited to review both models. The work stopped in mid-1950s in the UN
- first OECD Model Tax Convention was adopted in 1963, closer to the London model, as it provided for more residence based taxation.



- 1967: ECOSOC resolution re-established role of UN
  - Ad hoc working group established with experts in personal capacity
- UN Model Double Tax Convention was published in 1980
- In 2005, it was upgraded to a Committee which directly reports to ECOSOC, but remained an expert committee rather than an intergovernmental commission
- Three Financing for Development (FfD) conferences in 2002 (Monterrey), 2008 (Doha), 2015 (Addis Ababa) central to demands by G77 and China to upgrade UNTC to an intergovernmental commission

# OECD BEPS PROJECT - TIMELINE



# Agenda Setting

- BEPS Project launched in 2012
  - Response to international tax system not working for many OECD countries and tax dodging scandals in Europe
- BEPS Action Plan drafted by OECD and endorsed by G20 in 2013
- Over 100 developing countries excluded

# Consultation Stage

- The move to correct this was only initiated *after* the adoption of the BEPS Action Plan, and was limited to regional consultations with developing countries.
- At the [BEPS regional consultations](#), developing countries raised the issue that the balance between source and residence taxation is significant for them, but were told by OECD that is beyond the scope of the BEPS agenda

- *“A further issue for developing countries, which was raised during the regional consultations, is the balance between source and residence taxation embodied in bilateral tax treaties modelled on the OECD and UN Model Tax Conventions. This is an issue of allocating taxing rights between two treaty partners. It is not a tax planning/avoidance issue and does not give rise to BEPS. It is thus outside the scope of the OECD/G20 BEPS Project and this report”*

- Source: Report to G20 on Impact of BEPS in Low Income Countries

<http://www.oecd.org/tax/tax-global/report-to-g20-dwg-on-the-impact-of-beps-in-low-income-countries.pdf>





# Decision-making and Implementation

- September 2015 - the OECD adopted the BEPS outcomes, later endorsed by the G20
- February 2016 - OECD announced the launch of an ‘Inclusive Framework’
- Developing countries can now participate in further discussions about the BEPS framework on the condition that they commit to comply with and implement the agreed BEPS outcomes
- EU Blacklisting – conditionality imposed to join Inclusive Framework



# BEPS 2.0: Taxation of Digital Economy

- “while digitalisation could exacerbate BEPS issues, it also raises a series of broader tax challenges, identified as “nexus, data and characterisation”.
- “The latter challenges, however, were acknowledged as going beyond BEPS, and were described as chiefly relating to the question of how taxing rights on income generated from cross-border activities in the digital age should be allocated among jurisdictions.”

Source: <http://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>



# Inclusive Framework and (Un)equal footing

- “According to Saint-Amans, any Inclusive Framework member country may block consensus on updated international tax rules and, thus, from a legal standpoint, all Inclusive Framework member countries are on an equal footing. The OECD director added, though, that ***being on an equal footing does not mean that unanimity is required*** for the new international tax rules to move forward or imply that the power wielded by each country in the process is equal.” (emphasis mine)
- “Now, we are pragmatic. If you have all the big guys and a significant chunk of the small guys saying ‘yes we [should] do it,’ then the thing happens. Everyone must be involved, though,” the OECD director said.
- Source: <https://mnetax.com/unanimity-not-required-to-update-rules-for-taxing-multinational-groups-oecds-saint-amans-says-36188>

# Current Context

- Orientation of OECD BEPS work is residence taxation and exception when rules don't work for OECD countries.
- G24 proposal now completely ignored in the 'Unified Approach' proposal
- US- France trade/tax war
- How should developing countries respond? What is the leverage?

# The Way Forward

- G77 and China could introduce G24 proposal via UN General Assembly resolution
- G77 and China is a political negotiating grouping of over 130 developing countries in the UN
- [FfD 2019 outcome document](#) (adopted by consensus by all UN member states):

*"We further acknowledge that any consideration of tax measures in response to the digitalization of the economy should include a thorough analysis of the implications for developing countries, with a special focus on their unique needs and capacities."*

- Needs coordination between Finance Ministries and Foreign Ministries
- Issue needs to be central to South-South cooperation agenda
- Leadership needed from G20 developing countries

# THANK YOU

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For more information on Civil Society FfD group: <https://csoforffd.org/>