CONCEPT NOTE

Conference on South-South Cooperation in International Tax Matters:

Don't Cede Your Taxing Rights By Signing A Blank Cheque

27-28 November 2023
Geneva, Switzerland

A. Overview

The OECD Two Pillar solution for the taxation of the digitalized economy and global minimum taxation has been under criticism for its failure to reform global tax rules, curb profit shifting and tax induced Illicit Financial Flows and generate additional revenue for developing countries, particularly during times of severe economic and climate crises that disproportionately affect the Global South.

Despite growing criticism and lack of unanimity even among countries in the Inclusive Framework, the OECD is moving ahead to promote the adoption of a highly complex solution for taxing the digital economy, namely through the Amount A Multilateral Convention (MLC). This will apply to only around 70 Multinational Enterprises (MNEs), redistribute a tiny portion of their profits (only 25% of residual profits) to the developing world, and according to the OECD itself, is expected to generate minimal revenues. These rules, which are far from being a global solution, were developed in the context of the OECD 'Inclusive' Framework, which -contrary to its name does not include most African, Asian and Latin American countries- has no statutory basis, no transparency, no democratic rules of procedure to govern its functioning.[1]

It is expected that by late 2023 the Amount A Multilateral Convention will be opened for signature, with actual signing to take place in December. Further, the developed countries who are promoting it are giving no indication whether they will sign it themselves. The ratification of such countries, especially the USA, is essential for Amount A to work. Only if they agree will there be profits to be redistributed, which would be less than 10% of the global profits of fewer than 100 companies. The latest estimates show that the USA accounts for 46% of the companies covered under Amount A and 58% of redistributed profits.[2] By contrast, the European Union as a

[1] https://www.southcentre.int/contributions-on-taxation-iffs-and-human-rights-to-ie-report-to-unga-77-30-may-2022/

[2] https://www.taxobservatory.eu/wp-content/uploads/2023/07/EUTO_Note_The-Long-Road-to-Pillar-One-Implementation_20230712.pdf

whole accounts for 15% of the covered groups and only 7% of redistributed profits. This has been recognized in the July 2023 Outcome Statement through the so-called "30-60 rule" which requires that at least 30 jurisdictions accounting for 60% of the in-scope Multinational Enterprises (MNEs) sign the Amount A MLC by end 2023 as a precondition for the ban on national measures to be applicable. In effect, the OECD Inclusive Framework members have agreed to pause planned national measures only if the USA and other major jurisdictions sign the Amount A Multilateral Convention (MLC).

As yet, there are no indications from either the USA or the EU that they will sign the Amount A MLC. There is thus a high-risk possible scenario for developing countries: that they sign the Amount A MLC and in effect give up their taxing rights, while the largest developed countries do not sign and retain their ultimate objective: prevent developing countries to tax the MNEs, notably, the tech giants headquartered in the Global North. In addition, the ban on national tax measures has been extended till end 2024, with the possibility of it being extended till even end 2025.

This will have dire consequences for developing countries. It will lock them into an agreement which deprives them of their taxing rights; it will hand-tie them, preventing them from using sovereign rights in introducing unilateral measures to enhance their domestic revenue, especially at a time of historic poly-crisis; and it will force them to continue playing a subaltern role in global rule making and standard setting.

For developing countries who decide to proceed with unilateral or national measures, such as Digital Services Taxes, there is the risk of pressure and arm-twisting from the Global North. This risk will be faced both by developing countries within the Inclusive Framework who reject the Amount A MLC as well as those who are non-members of the Inclusive Framework, for whom national measures are the sole option. South-South Cooperation and solidarity between developing countries becomes essential to resisting those pressures and upholding national sovereignty.

Developing countries should not be deterred by OECD led manoeuvres to force them into a deal that does not reflect their interests. Nor should they allow these efforts to undermine the intergovernmental process towards a UN Tax Convention agreed consensually at the UN in November 2022 that actually stands to deliver more for the Global South.

There is thus an urgent need for developing countries to understand the full range of implications of the Amount A MLC and the OECD Two Pillar solution in general, and to compare it to what they stand to gain from the changes in governance of the international tax architecture that will come about through the implementation of the UN resolution[3] on "Promotion of inclusive and effective international tax cooperation

[3] https://financing.desa.un.org/document/general-assembly-resolution-promotion-inclusive-and-effective-tax-cooperation-united-0

at the United Nations" tabled by the Africa Group at the UN and unanimously adopted in October 2022, to enable well-informed decision-making.

The report[4] of the UN Secretary General on strengthening international tax cooperation has provided concrete options for promoting effective and inclusive international tax cooperation at the United Nations; these options now need to be reflected by developing countries into a UN Tax Convention.

A UN Tax Convention has the possibility to fulfil the long-standing demand of the developing world: the creation of a legitimate, and truly inclusive and global intergovernmental tax body at the United Nations. This is what can bring fairness, equity, genuine inclusion and stability to the international tax system. A set of rules that are multilaterally negotiated by all countries on an equal footing in a transparent, democratic and rules-based process under the aegis of the United Nations, is what can provide genuinely global solutions which will be balanced and long-lasting.

Revenue estimates by the South Centre and the Coalition for Dialogue on Africa have shown that the United Nations solution for taxing the digital economy, Article 12B of the UN Model Tax Convention, can generate up to three times higher revenues than Amount A for developing countries.[5] Evidence therefore clearly indicates that developing countries stand to gain much more from a UN Tax Convention rather than the current OECD package deal.

Given this historic backdrop, the South Centre and the Global Alliance for Tax Justice (GATJ) are organising a two day in-person event as a space of reflection and stocktaking to consolidate the Global South's way forward. The event seeks to bring together major stakeholders from the Global South to discuss:

1. The pitfalls and risks of the OECD-led multilateral convention and its implications for developing countries;
2. Alternative Domestic Options for developing countries to enhance their tax revenue; for example, Digital Services Taxes, Significant Economic Presence or the application of Article 12B of the UN Model Tax Convention proposed by the UN Tax Committee for digital taxation;
3. Avenues forward for Global South countries to come together and resist the pressure that may follow if they opt for alternatives to the OECD Two Pillar solution, including the referred to article 12B and national measures;
4. The way forward for the Global South to continue their support for the UN tax Resolution and ensure that its implementation leads to the adoption of a UN Tax Convention and the creation of a truly inclusive and democratic global tax governance within the framework of the United Nations.

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[4] https://financing.desa.un.org/document/promotion-inclusive-and-effective-international-tax-cooperation-united-nations-a78235

[5] https://www.southcentre.int/research-paper-156-1-june-2022/

B. **Time and Place:**

The two day in-person event will be jointly organized by the South Centre and the Global Alliance for Tax Justice on 27-28 November in Geneva, Switzerland.

C. **Invitees**

The conference is aimed at officials from developing countries, particularly from the Member States of the South Centre, as well as from Global South members of the Global Alliance for Tax Justice:

1) Senior policy makers from Ministries of Finance responsible for advising the Minister of Finance on whether or not to sign the Amount A Multilateral Convention.
2) Delegates to the United Nations from the G77+China in Geneva.
3) Global South members of the Global Alliance for Tax Justice campaigning for a UN based intergovernmental process to reform international tax rules and governance and a UN tax convention.
4) International organizations relevant to the negotiations.

D. **Funding**

The event is completely funded by the Open Society Foundations.