



Bringing Universality and Stability to the International Tax System through a UN Tax Convention

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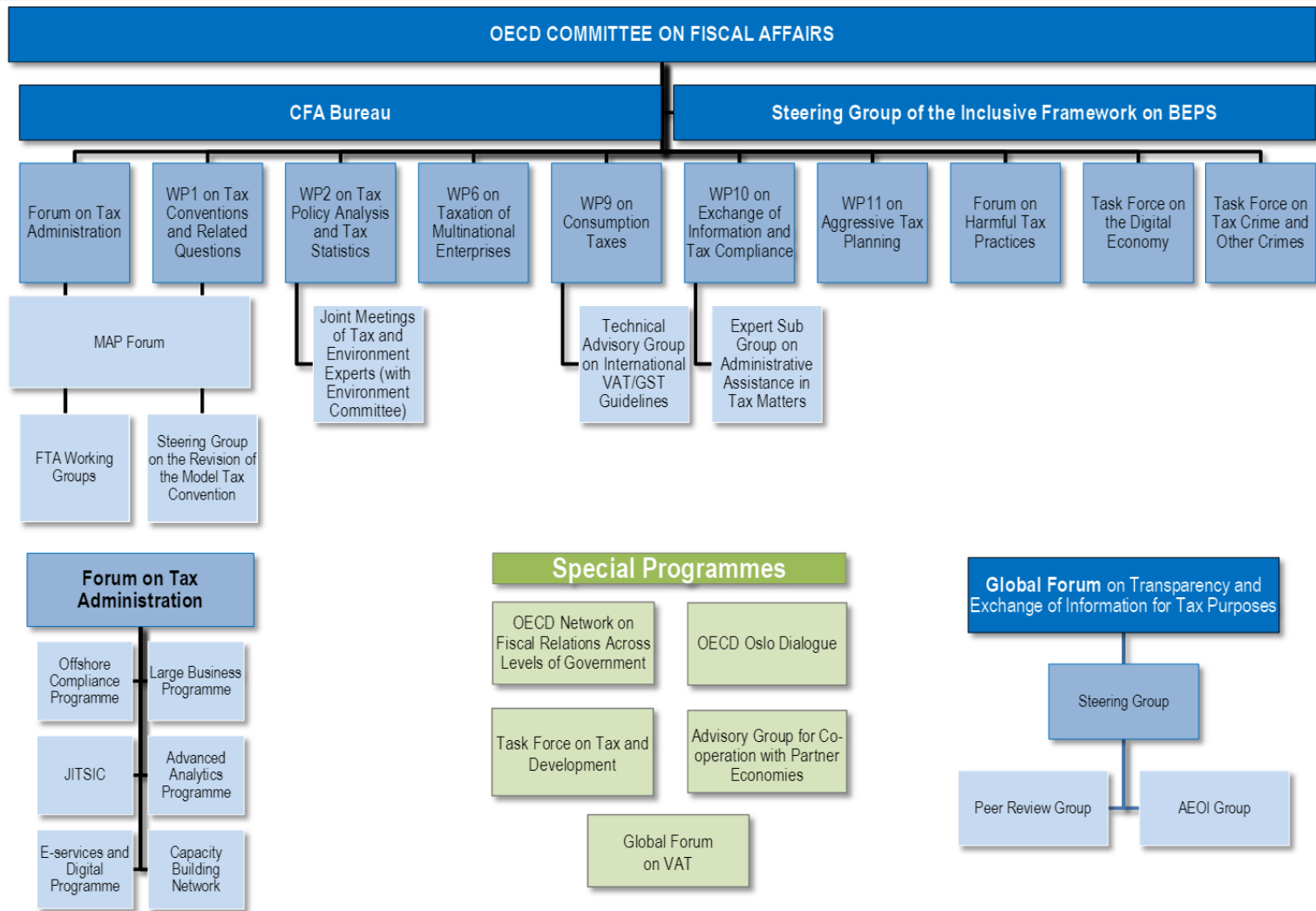
The Problems

The Solutions

The Problems

- Basic principles:
 - A. Solutions must address the problems so clearly identifying the problems is very important
 - B. Organizational outputs depend in large part on process so *process* is of key importance

The Problems – Structure of Existing OECD-led System



The Problems

- Key problems:
 1. Legal Basis
 2. Rules of Procedure
 3. Membership
 4. Decision-Making
 5. Transparency
 6. Accountability
 7. Agenda-Setting

The Problems – Legal Basis

- OECD Inclusive Framework
- Has no statutory basis
- **Not an inter-governmental body**
- Intergovernmental = Countries sign and ratify a treaty to join
- Countries have not ratified any treaty to join IF
- Arbitrary creation of bodies
- Forum on X, Working Group on Y, Expert Sub Group on Z **with no clear procedure**
- Latest example: “Inclusive Forum on Carbon Mitigation Approaches”
- Often meant to push OECD Members’ agenda – EU CBAM

The Problems – Legal Basis

- **Contrast:** UN Tax Committee
- **Clear Statutory Basis:** Subsidiary body of ECOSOC created through [ECOSOC Resolution 2004/69](#)
- Not inter-governmental either but has clear legal basis

The Problems – Rules of Procedure

- No rules to govern on what basis the Inclusive Framework functions
- *How are bodies such as the Steering Group created?*
- *How is it decided who gets to be on them?*
- *How do negotiations take place in the Working Parties?*
- *How is their mandate decided?*
- *How are the heads of the Working Parties chosen?*
- *How is the mandate of the Co-Chairs decided?*
- *How are the Co-Chairs selected?*
- *Etc...*
- ***No answers to any of these questions publicly exist in written form***
- ***Result: Arbitrary functioning to the detriment of developing countries***
- ***Reflected in the outputs such as Two Pillar solution***

The Problems – Rules of Procedure

- **Contrast:** UN Tax Committee
- **Clear Rules of Procedure:** Functions on the basis of publicly available [Practices and Working Methods](#) supplemented by publicly available intergovernmentally negotiated [ECOSOC Rules of Procedure](#)

The Problems – Membership

- Inclusive Framework Membership hierarchical – no equality between the Members

COMPOSITION OF THE STEERING GROUP OF THE OECD/G20 INCLUSIVE FRAMEWORK ON BEPS

(as at January 2023)

| Co-Chairs | | |
|--------------------|---------------------------|--------------|
| G  l | PERRAUD | France |
| Marlene | NEMBARD-PARKER | Jamaica |
| Deputy Chairs | | |
| Rong'e | JIA | China |
| Mathew Olusanya | GBONJUBOLA | Nigeria |
| BEPS Associates | | |
| Carlos Eduardo | PROTTO | Argentina |
| Claudia | PIMENTEL MARTINS DA SILVA | Brazil |
| Rasmi | DAS | India |
| Mekar Satria | UTAMA | Indonesia |
| Cora | O'BRIEN | Jersey |
| Vladimir | GOLISHEVSKIY* | Russia |
| Alpha | NGOM | Senegal |
| Huey Min | CHIA-TERN | Singapore |
| Yanga | MPUTA | South Africa |
| Joseph | NONDE | Zambia |
| CFA Bureau Members | | |
| Shawn | PORTER | Canada |
| Claudia | VARGAS CIFUENTES | Colombia |
| Terhi | J  RVIKARE | Finland |

The Problems – Membership

- Inclusive Framework Membership gives developed countries additional voices through separate membership of territories (usually tax havens)
- Eg – Isle of Man, Jersey, Guernsey, British Virgin Islands, Cayman Islands and other tax havens are all UK Overseas Territories and Crown Dependencies, not sovereign countries, but have separate membership in the IF
- Faroe Islands – Denmark
- Aruba – Netherlands
- Etc

The Problems – Membership

- **Contrast: UN system**
- **Equality of all UN Member States**
- **Membership for sovereign countries only, no unfair advantage to colonial powers**

The Problems – Decision-Making

- Inclusive Framework principle of “Consensus” in reality means “no voting” and is fundamentally undemocratic
- Democracy in decision-making vehemently opposed by same countries who illegally bomb and invade countries in the name of democracy
- Further inappropriate for international taxation where certain standards like allocation of taxing rights are zero-sum games and conflict cannot be avoided

The Problems – Decision-Making

- Consensus combined with no rules of procedure means the following all-too-often:
- *“the other day we received a document after 10 in the evening with a deadline for the next morning...You can sign away your taxing rights in your sleep if you receive a deadline like this. If this process is not careful about the pace, the number of meetings, deadlines, and the short notice to comment, it could lead to a de facto exclusion.” – Logan Wort, Executive Secretary, ATAF*

The Problems – Decision-Making

- *The consensus based approach means that countries are deemed to have opted in unless they specifically opt out. For example, in respect of the 2021 October Statement of Inclusive Framework, countries/jurisdictions were asked to say NO, if they so desire, by a deadline. A lack of response was deemed to be 'Yes'.*
- *Such process can create challenge for many, particularly for small developing countries, who may not have the time or resources to analyse a proposal to take a final view there on in a short time frame. So, the result is a default yes with such countries joining the package even if they are not fully convinced of the benefit.*
- *The problem with any such derived consensus where countries do not join wholeheartedly is that it makes such consensus unsustainable even in the short term.*
- - Rasmi Ranjan Das, Steering Group IF (India)

The Problems – Decision-Making

- **Contrast:** UN Tax Committee
- **Decision-Making by democratic voting**
- Helped UN Tax Committee create critical standards like Articles 12A and 12B in the teeth of opposition by developed countries

The Problems – Transparency

- **OECD**
- Minimal transparency in IF's functioning
- No reports on what was discussed in Steering Group, Working Parties, etc
- IF Plenary shown publicly widely believed to be “stage-managed to show all is well”
- **UN Tax Committee**
- Session reports written to ECOSOC (representative of all countries)
- General public can easily apply to become an observer to watch UNTC Sessions

The Problems – Accountability

- **OECD IF**
- Reports only to OECD and G20 countries
- IF Plenary has no known formally defined powers and functions; toothless body perceived as a ‘rubber stamp’

The Problems – Agenda Setting

- **OECD IF**
- Agenda-setting almost always priorities of G7 countries
- Agenda set through an opaque process and then imposed on the world
- “G7’s problems are the world’s problems”
- Examples:
 - BEPS Began Post 2008 crisis which originated in banking sector of developed countries
 - Banking Secrecy Looted Developing World for Decades; made a “Global” issue only after it began to hit developed countries
 - Pillar One Started After DSTs began hitting US Corporations
 - Pillar Two Started by Trump Administration to Punish US Companies offshoring to Developing Countries
 - Carbon Taxation Being Bleated About To Legitimize EU CBAM
 - Etc

The Problems – Agenda Setting

- **Contrast:** UN Tax Committee sets 4 year work plan through clear process and with specific mandate to work to give special attention to developing countries

The Solutions

- **UN Framework Convention on International Tax Cooperation must:**
 - ✓ Have clear legal basis
 - ✓ Function on the basis of well-defined Rules of Procedure
 - ✓ Have universal Membership
 - ✓ Have Democratic Decision-Making
 - ✓ Be transparent in its proceedings
 - ✓ Be Accountable to all UN Members
 - ✓ Incorporate Agenda-Setting through a clear, transparent and inclusive process

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