



SOUTH CENTRE TAX INITIATIVE

Comments to the FACTI Panel on improving cooperation in tax matters

Background

The South Centre, an intergovernmental organisation of, by and for the Global South in 2016 launched the South Centre Tax Initiative (SCTI) (<https://taxinitiative.southcentre.int>). This is the organisation's flagship program for promoting cooperation among developing countries on international tax matters. The program aims at the important need to increase collaboration among developing countries on international tax issues and reform processes.

With a focus on network building, the SCTI is centered on the convening of an Annual Forum of developing country officials working in tax policy and administration, and to promote and support intensified, better coordinated, and more institutionalized approaches to South-South cooperation in tax matters, so as to enable developing countries to become full participants for substantive norm-setting in international taxation matters.

Governance

Need to upgrade the UN Tax Committee into an intergovernmental body

Improving developing country participation in international tax matters requires upgrading the UN Committee of Experts on International Cooperation in Tax Matters into an intergovernmental body. The legal procedure for doing this is as follows: a resolution must be passed by ECOSOC under Article 67 (2) of the UN Charter deciding to convert the Committee into an intergovernmental subsidiary body of the Economic and Social Council. The resolution must state the size, composition, mandate and operation of the body. Such a draft resolution (E/2010/L.10¹) has already been introduced in 2010 by Yemen on behalf of the G77 in ECOSOC. Under Article 67 (2) of the UN Charter only majority voting is required and no member state can 'veto' the proposal.

The proposal must also be accompanied by a programme budget which will estimate the cost of establishing and running the body. Hence, this means it also needs to be cleared by the UN General Assembly's Fifth Committee. Under rule 102.4 of the Financial Regulations and Rules of the UN, in case the resolution is already passed by the ECOSOC, then the Programme Budget Implication (PBI) is presented as a revised estimate. The Fifth Committee makes recommendations on the PBI and forwards it to the General Assembly for approval. Once UNGA approval is received,

¹ <https://digitallibrary.un.org/record/685632?ln=en#record-files-collapse-header>

the process is complete and the intergovernmental body is ready. Member States which support upgrading the UN Tax Committee may accordingly refer to this procedure.

Unilateral Measures on Taxing the Digital Economy

Even Inclusive Framework Members have the right to take unilateral measures

All countries have a right to undertake unilateral measures on taxing the digital economy. This applies both to members of the Inclusive Framework and those outside of it. Those outside of it are obviously not bound by its rules, and IF members, especially developing countries, have a hard-earned right to undertake unilateral measures on the digital economy under Chapter 7 of the Action 1 report under the Base Erosion and Profit Shifting (BEPS) Plan.

Pillar One

On the two-Pillar solution on taxing the digital economy, Pillar 1 is highly complex and its current design is detrimental to developing countries. It has excessive thresholds which will leave most companies out of the scope of Amount A and even those within scope can easily find ways to evade coverage. There must be a single threshold commensurate with the size of the economy. Amount A itself must be at least 33% of Profit Before Tax which is then distributed to market jurisdictions on the basis of sales. If it is significantly below this figure then developing countries should question whether they want to give up their right to undertake unilateral measures in exchange for such low returns. Profit Before Tax itself is not an ideal determinant of the tax base and Operating Profit or EBITDA (without the interest component) provide a larger tax base which is more beneficial to both developed and developing countries.

Pillar Two

On Pillar 2, the Undertaxed Payments and Subject to Tax rules must come first in the rule order, before the Income Inclusion and Switch-Over rules. This will give priority to developing countries, which are the most affected by tax avoidance, to be able to undertake measures to 'stop the bleeding'.

Dispute Resolution

In general, dispute prevention is preferred over dispute resolution and this requires clear rules which can be easily implemented. Fractional apportionment as suggested by the G24 is a simple and easy to implement profit allocation measure that can be undertaken under existing tax treaties based on the UN Model or on the pre-2010 OECD model. For dispute resolution itself, multilateral Mutual Agreement Procedure (MAP) and Advanced Price Agreements (APAs) are preferable to mandatory and binding arbitration but it must be accepted that compared to small domestic firms big multinational firms have much better capacity to negotiate terms in APAs and this may lead to an uneven playing field.
