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## UN Secretary-General's Report on the promotion of inclusive and effective international tax cooperation at the United Nations

A recent Current Note in this *Review*<sup>1</sup> discussed the resolution passed by the United Nations (UN) General Assembly at the end of December 2022 on “the promotion of inclusive and effective international tax cooperation at the United Nations”.<sup>2</sup> One of the operative provisions of that resolution was that the Secretary-General of the UN was “to prepare a report analysing all relevant international legal instruments...” and to discuss “options for strengthening the inclusiveness and effectiveness of international tax cooperation”.<sup>3</sup> The draft report of the Secretary-General in compliance with this resolution was made available on 7 August 2023.<sup>4</sup> The report will be debated at the meeting of the General Assembly later this year.

The Secretary-General's report proceeds in a structured fashion by initially discussing what is meant by “inclusive and effective international tax cooperation”.<sup>5</sup> There are various key aspects to this co-operation: participation; agenda-setting; decision-making and implementation, including monitoring; and avoiding and resolving tax disputes. Inclusive and effective international tax

<sup>1</sup> Philip Baker, “United Nations General Assembly Resolution on the ‘promotion of inclusive and effective international tax cooperation at the United Nations’” [2023] B.T.R. 20.

<sup>2</sup> United Nations (UN), *General Assembly Resolution on Promotion of Inclusive and Effective Tax Cooperation at the United Nations* (A/RES/77/244) (30 December 2022), Seventy-seventh session, Agenda item 16.

<sup>3</sup> UN, *General Assembly Resolution on Promotion of Inclusive and Effective Tax Cooperation at the United Nations* (2022).

<sup>4</sup> The report is still in draft to allow it to be conformed to UN style guidance and for the translation of the report into other official languages of the UN to be completed. The draft report is available at: UN, *Promotion of inclusive and effective international tax cooperation at the United Nations* (8 August 2023), advanced unedited version, [https://financing.desa.un.org/sites/default/files/2023-08/A-78-235\\_advance%20unedited%20version\\_0.pdf](https://financing.desa.un.org/sites/default/files/2023-08/A-78-235_advance%20unedited%20version_0.pdf) [Accessed 26 September 2023].

<sup>5</sup> United Nations, *Promotion of inclusive and effective international tax cooperation at the United Nations* (2023).

co-operation requires that all countries are able to participate effectively, by right and without pre-conditions, in developing the rules that affect them. All countries must have a real opportunity to participate in the agenda-setting. There must be legally-established and transparent decision-making structures. There must be monitoring of the implementation of tax co-operation decisions.

On the basis of this definition of inclusive and effective international tax co-operation, the report then proceeds to examine the extent to which two of the major institutions involved in international taxation meet these criteria. In a balanced approach, the report examines both the UN Committee of Experts on International Cooperation in Tax Matters, and the OECD (including the Inclusive Framework on Base Erosion and Profit Shifting, and the Global Forum on Transparency and Exchange of Information for Tax Purposes).

It is perhaps a little surprising that the Secretary-General submits the UN's own Committee of Experts to scrutiny on grounds of inclusive and effective international co-operation given that the Committee of Experts was never established as an inter-governmental body. Nevertheless, the report concludes that the UN Tax Committee does not meet the criterion of universal participation by right without preconditions. Frankly, it was never intended to meet those conditions.

Far more significant, however, is the report's assessment of the OECD, the Global Forum and the Inclusive Framework. On this, the report is quite rightly scathing. Some of the most relevant conclusions of the report are found at paragraph 42ff:

- “42. The limited effectiveness of the substantive rules produced by the Global Forum and the IF in addressing the needs of developing countries can be traced to procedural issues that prevent developing countries from full participation in the agenda-setting and decision-making process. In addition, countries joining the Global Forum must commit to implementing the Information on Request standard as well as the Common Reporting Standard on automatic exchange of information. Similarly, countries wishing to join the IF must commit to the ‘minimum standards’ of the BEPS Actions. In each case, they must also pay an annual fee. The requirements that jurisdictions pay to participate in discussions, and that they accept the existing standards before being allowed to participate, run counter to the principle of universal participation, by right, without pre-conditions.”<sup>6</sup>

This is a devastating assessment. There is no way that the OECD itself, or the institutions that it has established—including the Global Forum and the Inclusive Framework—can ever meet the UN's criteria for inclusive and effective international tax co-operation. The prerequisite of accepting certain previously-agreed standards as a pre-condition for joining these bodies, plus the need to contribute to the financial costs of running these bodies, ensures that they can never meet the Secretary-General's criteria. This is effectively a nail in the coffin of the OECD (and bodies it has established) as a form of inclusive and effective international tax co-operation.

The overall conclusion of the report is at paragraph 47:

<sup>6</sup> UN, *Promotion of inclusive and effective international tax cooperation at the United Nations* (2023), para.42.

“47. The foregoing analysis of existing international and multilateral arrangements indicates that they do not satisfy the main elements for fully inclusive and more effective international tax cooperation. The OECD has introduced several initiatives to engage and associate non-OECD members with its work, but many of those countries find that there are significant barriers to meaningful engagement in agenda-setting and decision making. As a result, the substantive rules developed through these OECD initiatives often do not adequately address the needs and priorities of developing countries and/or are beyond their capacities to implement.”<sup>7</sup>

The Secretary-General’s report then goes on to point a way towards the future. The leading role in developing inclusive and effective international tax co-operation must be taken by the UN itself:

“49. The preceding analysis in Sections II and III finds that enhancing the UN’s role in tax-norm shaping and rule setting, fully taking into account existing multilateral and international arrangements, appears the most viable path for making international tax cooperation fully inclusive and more effective. Rather than duplicating existing processes, a UN intergovernmental process would leverage existing strengths and address gaps and weaknesses in current international tax cooperation efforts. It would draw and build on the longstanding and multi-layered cooperation between the United Nations and the OECD in the international tax area, as in many other areas.”<sup>8</sup>

The report then outlines three options for future work within the UN.

Option 1 would be a legally binding treaty which would be regulatory in nature and contain specific rules potentially placing limits on exercising taxing rights. This would be a multilateral convention with some provisions similar to those in bilateral tax treaties.

The second option would be a framework convention that would outline the core tenets of future international co-operation and may include institutional provisions, including the creation of a plenary forum for discussion amongst states. This framework convention might lead to protocols with regulatory aspects which would contain detailed commitments on particular topics.

Finally, the third option is a non-binding multilateral agenda for a framework for international co-operation through co-ordinated action. It would not involve legal commitments but rather a non-binding agenda for co-ordinated action.

Of these three options, the smart money is on the second option. A multilateral convention would be difficult to draft and even more difficult to persuade countries to commit to. The third option offers too little. Given the coalition of countries that supported the General Assembly resolution at the end of 2022, it would be surprising if a similar wave of support did not develop behind option 2.

The Secretary-General’s report will be debated at the General Assembly in the autumn of 2023. The focus will then move on to which of the three options is taken forward. However, even before that discussion takes place, the report is a conclusive determination by the UN

<sup>7</sup> UN, *Promotion of inclusive and effective international tax cooperation at the United Nations* (2023), para.47.

<sup>8</sup> UN, *Promotion of inclusive and effective international tax cooperation at the United Nations* (2023), para.49.

Secretary-General of what is already well-known: that the OECD, and the structures that it has established, do not meet basic conditions for inclusive and effective international tax co-operation.

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