

The United Nations' Role in International Tax Policy

A Research and Policy Brief for the Use of the NGO Committee on Financing for Development

Hamrawit Abebe, Ryan Dugan, Michael McShane, Julie Mellin, Tara Patel, and Linda Patentas

Graduate Program in International Affairs, Milano School of International Affairs,
Management, and Urban Policy, The New School

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Executive Summary

The report provides an analytical view on the role of the United Nations in tax policy, highlighting the interventions made by and challenges to key players in attempts to streamline global tax cooperation. The first section of the paper provides a background on the importance of tax related issues, emphasizing its importance within the Monterrey Consensus. Debates are introduced between two key institutional players regarding global tax cooperation, the OECD's Committee on Fiscal Affairs and the UN Tax Committee.

Views from key players the OECD, Group of 77, Group of 20, and European Union are addressed in the areas of international tax cooperation, the inclusion of the developing world, and of the UN Tax Committee work in strengthening both areas (particularly the proposition to upgrade the Committee). Arguments for and against such an upgrade, as well as the interests of those involved, and how those interests couch their perspectives, are also discussed. While supporters suggests the upgrade would bring more authority, legitimacy, and accountability to the Committee, others state it would duplicate already existing work on tax matters, require additional resources, and become too politicized.

Several issues under the umbrella of tax policy, namely tax competition, tax evasion and tax avoidance, are explored to determine impacts on development and to examine the role that the UN and others have had in exploring and collaborating on them. Directly reformatting the nature of tax policy is the best option for increasing financial sovereignty and sustainable growth for developing countries—accordingly, later policy recommendations reflect this.

The adversarial relationship between the OECD and UN Tax Committees, and their pursuits of different interests and development of opposing tax policy are also analyzed, especially as applied to the issues of transfer pricing and the Arm's Length Principle.

In the Policy Recommendations, the NGO Committee is suggested to target the particular states and regional economic communities, and to look to some of those states, and other civil society organizations, for best practices.

Background and Analysis

The Monterrey Consensus¹ addresses many key issues pertaining to global financial matters, with an aim to eradicate poverty, achieve sustained economic growth, and promote sustainable development. Topics relating to international taxation within the Consensus are addressed in an effort to advocate and promote global tax cooperation.²

The Monterrey Consensus is widely valued as a holistic framework on financial development, providing political principles and norms as opposed to clear, concrete commitments.³ The document addresses the importance of effective governance in an attempt to bring coherence in the work of international financial institutions while assigning responsibility to both developed and developing countries.⁴ The Monterrey Consensus is a statement of *agreed* principles; the proposal to upgrade the UN Committee can be seen as an attempt to implement them.

The Monterrey Consensus identifies the importance of global taxation and policy, however, does not go into specific detail on all its related issues. Prior to the International Conference in Monterrey, two important documents were written that focused more on concrete issues relevant to global taxation matters. The two reports, one from the UN Secretary General and the other from the High Level Panel chaired by former Mexican president Ernesto Zedillo (Zedillo Report), elaborated more on the idea of an International Tax Organization, focusing on important topics that help shape the Financing for Development (FfD) framework relating to tax policy. Although the Monterrey Consensus only briefly covers the subject of international taxation, it does advocate for the reinforcement of global tax cooperation.⁵

Specifically, the Monterrey Consensus emphasizes:

1) The importance of efficient and effective tax systems in mobilizing resources for a sustained development and 2) the expansion of participation from developing countries to help formalize international tax approaches they could potentially benefit from.⁶ Tax systems are discussed in the following manner:

“An effective, efficient, transparent and accountable system for mobilizing public resources and managing their use by Governments is essential. We recognize the need to secure fiscal sustainability, along with equitable and efficient tax systems and administration, as well as

¹ United Nations. *Report of the International Conference on Financing for Development: Monterrey, Mexico, 18-22 March 2002*. UN publication (A/CONF.198/11, p. 1-3), 2002.

<http://web.undp.org/execbrd/pdf/Monterreypercent20Consensus.pdf>.

² Ibid.

³ Dries Lesage. “Taxation and the 2008 UN-Follow-up Conference on Financing for Development: Policy Recommendation.” Universiteit Gent. Discussion paper. 2008.

http://www.taxjustice.net/cms/upload/pdf/Doha_and_tax_0806_Dries_Lesage.pdf

⁴ Ibid.

⁵ Ibid.

⁶ ECOSOC. Note by the Secretariat on “Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus: tax matters.” Committee on Experts on International

improvements in public spending that do not crowd out productive private investment. We also recognize the contribution that medium-term fiscal frameworks can make in that respect.”⁷

“We recognize the need to pursue sound macroeconomic policies aimed at sustaining high rates of economic growth, full employment, poverty eradication, price stability and sustainable fiscal and external balances to ensure that the benefits of growth reach all people, especially the poor. Governments should attach priority to avoiding inflationary distortions and abrupt economic fluctuations that negatively affect income distribution and resource allocation. Along with prudent fiscal and monetary policies, an appropriate exchange rate regime is required.”⁸

In regards to the Financing for Development (FfD) framework, the Zedillo and General-Secretary Reports address five themes relevant to tax policy: 1) tax competition, 2) taxation of multinational corporations, 3) transfer pricing, 4) information exchange, and 5) improvement of national tax systems.⁹ The following goals are recommended:

“Strengthen international tax cooperation, through enhanced dialogue among national tax authorities and greater coordination of the work of the concerned multi-lateral bodies and relevant regional organizations, giving special attention to the needs of developing countries and countries with economies in transition.”¹⁰

The following paragraph highlights the importance of efficient and effective tax systems in mobilizing resources for a sustained development. The goal is to create a transparent financial environment, regulated by controlled measures of regulation and policy.

“To attract and enhance inflows of productive capital, countries need to continue their efforts to achieve a transparent, stable and predictable investment climate, with proper contract enforcement and respect for property rights, embedded in sound macroeconomic policies and institutions that allow businesses, both domestic and international, to operate efficiently and profitably and with maximum development impact. Special efforts are required in such priority areas as economic policy and regulatory frameworks for promoting and protecting investments, including the areas of human resource development, avoidance of double taxation, corporate governance, accounting standards, and the promotion of a competitive environment. Other mechanisms, such as public/private partnerships and investment agreements, can be important. We emphasize the need for strengthened, adequately resourced technical assistance and productive capacity-building programmes, as requested by recipients.”¹¹

Tax is one of the most important sources for financial development, and yet, one of the most challenging issues to tackle, particularly on an international level.¹² The Monterrey Consensus addresses the issues of global taxation and the need to bring about equality amongst developed

⁷ UNDESA paragraph 15

⁸ Ibid. paragraph 14

⁹ Lesage

¹⁰ UNDESA 21

¹¹ UNDESA paragraph 21

¹² Tax Justice Network. *Tax Havens Cause Poverty: International Tax Cooperation and Competition*, 2012, http://www.taxjustice.net/cms/front_content.php?idcatart=100

and developing nations. Their effort to bring about a balanced framework on financing to prevent corruption ties in closely with tax related issues, including tax havens, tax evasion, transfer pricing, etc. Below is a statement made within the Monterrey Consensus, giving an overarching view on combating financial corruption:

“Fighting corruption at all levels is a priority. Corruption is a serious barrier to effective resource mobilization and allocation, and diverts resources away from activities that are vital for poverty eradication and economic sustainable development.”¹³

According to a recent collaborative report¹⁴ prepared for the G20 Development Working Group, “taxation provides governments with the funds needed to invest in development, relieve poverty and deliver public services. It offers an antidote to aid dependence in developing countries and provides fiscal reliance and sustainability that is needed to promote growth.” The message, highlighting the salience of taxation to financing for development, is concise, practical and should undoubtedly encourage international cooperation on tax matters.¹⁵

However, when diplomacy and the need for global governance action intersect, the same organizations that worked together to produce the aforementioned report, (i.e., the OECD, United Nations, and prominent regional organizations) – and the governments they represent—often fail to agree on the most pressing international tax issues challenging both developed and developing countries. Those who come out on top often end up undermining the goals set out in the Monterrey Consensus¹⁶. In this age of globalization, international solidarity, and support for human development measures like the Millennium Development Goals, states continue to pursue their own interests—even at the expense of those they claim to help. This paradoxical reality is reflected in the current debate concerning the potential upgrade of the Committee of Experts on International Cooperation in Tax Matters (hereon referred to as UN Tax Committee) to an intergovernmental body, a proposition presenting an unsurprising dichotomy of actors and interests.

Frances Horner aptly describes the adversarial relationship between the OECD’s Committee on Fiscal Affairs (hereon referred to as the OECD Tax Committee) and the UN Tax Committee as a battle for the “throne of global tax governance.”¹⁷ Both committees have a mandate to enhance and promote international tax cooperation; develop effective and sound tax policies; take globalization and other emerging issues into account; and provide technical assistance. However, the UN Tax Committee emphasizes building the capacity of and “give[ing] special attention to developing countries and countries with economies in transition.”¹⁸ The OECD Tax

¹³ UNDESA 4

¹⁴ OECD. “Supporting the Development of More Effective Tax Systems.” 2011. <http://www.oecd.org/dataoecd/54/29/48993634.pdf>.

¹⁵ Ibid. 8

¹⁶ United Nations Department of Economic and Social Affairs. *Monterrey Consensus of the International Conference on Financing for Development*, 2003. <http://www.un.org/esa/ffd/monterrey/MonterreyConsensus.pdf>.

¹⁷ Frances M. Horner, “Do we need an International Tax Organization?” *Tax Notes International*, 2001, p. 28.

¹⁸ UN Financing for Development Office, *Committee of Experts on International Cooperation in Tax Matters: Mandate*, 2011. <http://www.un.org/esa/ffd/tax/mandate.htm>.

Committee, in a tone illustrative of its differing makeup (of 30 wealthy, largely European countries), also aims to “foster growth and allow governments to provide better services to their citizens.... and to reduce tax barriers to international trade and investment.”¹⁹ In short, the OECD represents rich countries, while the UN represents developing countries (although its mixed membership includes a disproportionate number of OECD countries, an issue that will be examined in a later section, “The Relationship Between the OECD Tax Committee and the UN Tax Committee.”

Over the past year, several high-level meetings concerning international tax cooperation and the possible upgrade of the UN Tax Committee to an intergovernmental body have been called. The UN Secretary-General, as requested by ECOSOC Resolution 2010/33²⁰, produced a report²¹ to address:

1) the need to “enhance dialogue amongst national tax authorities;” 2) greater coordination between concerned multilateral bodies and relevant regional organizations; 3) importance of accounting for regional and multilateral cooperation in bilateral agreements; 4) transparency and Regulation for all tax jurisdictions and financial centers; 5) promotion of double-taxation agreements; 6) strengthening technical assistance; 7) the challenges of sovereign budget deficits; 7) combating tax evasion; and 8) the corporate responsibility of Multinational Companies.”²²

The Secretary General’s report also reviewed “existing institutional arrangements, including the Committee of Experts on International Cooperation in Tax Matters, and the work done on matters in other international forums.”²³ The Secretary-General analyzed and presented three options to its member states:

1) “strengthening the existing arrangements within UN while retaining current format of Tax Committee; 2) converting Tax Committee into an intergovernmental commission on international cooperation in tax matters; and 3) creating an intergovernmental commission and retaining the current Tax Committee as a subsidiary body of that commission.”²⁴

As our analysis will show, the G77 and other developing countries are likely to support strengthening and upgrading the Committee; whereas the OECD and EU countries, (i.e., developed countries) tend to oppose such action.

The debates on international tax cooperation and the role of the UN Tax Committee clearly pits developed countries against their developing counterparts, as the rich countries from the EU

¹⁹ OECD, *OECD’s Current Tax Agenda*, 2011, p. 10. <http://www.oecd.org/dataoecd/38/17/1909369.pdf>.

²⁰ ECOSOC, Committee of Experts on International Cooperation in Tax Matters. “Resolution 2010/33.” 23 July 2010. <http://www.un.org/en/ecosoc/docs/2010/res%202010-33.pdf>.

²¹ ECOSOC. Report of the Secretary-General on “Strengthening of institutional arrangements to promote international cooperation in tax matters, including the Committee of Experts on International Cooperation in Tax Matters.” (United Nations publication, Document Number E/2011/76), 2011.

²² Ibid 2-3

²³ Ibid 4

²⁴ Ibid 14

and OECD attempt to prevent a global shift in the balance of power from the North to the South. In the next sections, we will address the major tax policy issues (tax cooperation, tax avoidance, and tax evasion, among others) driving the current state of debate on international taxation; introduce the various concepts and diverging viewpoints underpinning the arguments for and against making the UN Tax Committee an intergovernmental body; and suggest key states for targets of advocacy by the NGO Committee on Financing for Development.

The OECD, Group of 77, Group of 20, and European Union on Upgrading the UN Tax Committee

The 2011 substantive session of the UN Economic and Social Council (referred to above and held in Geneva, 4-29 July 2011) focused on international cooperation in tax matters as a foundationally important issue. The general sentiment at the session was in recognition of the importance of international tax cooperation, the inclusion of the developing world in its discussion, and of the UN Tax Committee work in strengthening both areas (especially in the development of the United Nations Model Tax Convention).

As a result of the session, the Secretary-General asked member states to submit their views to the Financing for Development Office, in writing, on the issue.²⁵ Those views, and those previously expressed by the Group of 77 (a forum for “the countries of the South to articulate and promote their collective economic interests and enhance their joint negotiating capacity on all major international economic issues within the United Nations system, and promote South-South cooperation for development”),²⁶ are summarized in Figure 1 below.

²⁵ ECOSOC 11

²⁶ Ibid.

	<i>Upgrading and strengthening</i>	<i>Strengthening only</i>	<i>Do nothing</i>	<i>Not addressed</i>
<i>OECD member, non-UN Tax Committee member</i>	n/a	Switzerland	Australia; Canada	n/a
<i>Non-OECD, non-UN Tax Committee</i>	All Group of 77 States and China*	Czech Republic; Kyrgyzstan	Liechtenstein; Singapore	Belarus
<i>Non-OECD member, UN Tax Committee member</i>		South Africa		Kazakhstan; Montenegro
<i>Both UN Tax Committee member and OECD member</i>	n/a	Chile; Mexico	Japan; all European Union member states; New Zealand; United States	n/a

Figure 1, Student-designed table, 2012

*As mentioned earlier, the Group of 77 has released a statement in support of upgrading the UN Tax Committee to an intergovernmental body.²⁷ Those countries that are member states of the G77 and not listed individually in this table can therefore be considered in support of upgrading the committee. For a full list of G77 countries, please see the most current Member State List at the G77's website: <http://www.g77.org/doc/members.html>.

Member states generally had three attitudes toward the strengthening and upgrading of the UN Tax Committee: "(a) the Committee should not be converted but its effectiveness should be increased by improving its work methods and by fully utilizing its existing structures; (b) the Committee should not be converted but additional funding should be provided for its operations; and (c) the Committee should be converted [to an intergovernmental body] and provided with adequate resources."²⁸

As mentioned above, the G77 and China had previously expressed its support for upgrading the Committee—some of those countries (The Bahamas, Brazil, China, Ghana, India, and Qatar) also submitted responses that re-confirmed their commitment to upgrading.²⁹ Prior to its official endorsement of upgrading the UN Tax Committee to an intergovernmental body in July, 2010, the G77 and China issued a position paper two months earlier titled "Improved Monitoring and Regulation of Financial Markets and Institutions."³⁰ In the paper's final section, the G77 outlined its motives behind its position on the UN Tax Committee: "The conversion of the

²⁷ G77 Statement

²⁸ ECOSOC 12

²⁹ Replies by Member States to the Report of the Secretary-General on "Strengthening of institutional arrangements to promote international cooperation in tax matters, including the Committee of Experts on International Cooperation in Tax Matters." Financing for Development Office, United Nations. 2011. <http://www.un.org/esa/ffd/tax/2011SGReport/RepliesMS.htm>.

³⁰ "Improved Monitoring and Regulation of Financial Markets and Institutions," G77. <http://www.g77.org/statement/getstatement.php?id=100503>.

Committee into an Intergovernmental Subsidiary body of the ECOSOC would allow for enhanced international cooperation toward reducing skill, information and technological gaps in developing countries; and improving developing countries voice and participation in norm development in tax matters.”³¹

Bangladesh, Chile, Kyrgyzstan, Mexico, South Africa, and Thailand support streamlining and strengthening the Committee’s work through a clearly defined strategy; further support of institutional development and greater cooperation to prevent double taxation; and in increased focus on capacity building and technical expertise and assistance. They tend to support strengthening the mandate, breadth, and funding of the Committee, but not necessarily an upgrade in status. Several of these countries (including Ghana³² and Qatar) specifically expressed a concern for the inclusion of more developing countries in discussion and implementation of international tax policy and cooperation, and “proposing solutions that are appropriate for the realities in developing countries, and which are not merely a replication of the recipes of the Organization for Economic Cooperation and Development (OECD).”³³

Chile and Mexico are the only two OECD members (the third and ninth-most recently joined) to have officially expressed support for strengthening the Committee, and Mexico has tellingly chosen not to respond to the question of upgrading the Committee to an intergovernmental body. Chile, however, as a member of the G77, supports upgrading the Committee, and in particular emphasizes the need for partnership between both developed and developing countries in designing and implementing effective tax policy and cooperation so that: “developing countries can participate actively in its meetings and in the adoption of decisions and agreements.”³⁴ Other supporting arguments for upgrading and strengthening the Committee include: an increase in international cooperation with existing bodies; a strengthening in funding, dialogue, participation, and technical expertise assistance; increased inclusion of developing countries, technical assistance, capacity building, and dialogue; and increased tax cooperation through establishment of a multilateral forum.

Notably, no country that is also a member of the OECD (whether or not it is also a member of the UN Tax Committee) expressed support for upgrading the UN Tax Committee. Correspondingly, not a single non-OECD country that is also a member of the UN Tax Committee was against upgrading (almost all are G77 members). Interestingly, Singapore, a member of the G77 and therefore an automatic party to its prior statement in support of upgrading, contradicted itself by expressing a strong antipathy for upgrading in its individual response to the Financing for Development office.

³¹ Ibid.

³² Effie Simpson Ekuban, Chief Director, Ministry of Finance & Economic Planning, Ghana, to FfD Office, ECOSOC, New York, 8 March 2011. <http://www.un.org/esa/ffd/tax/2011SGReport/Ghana.pdf>.

³³ Permanent Mission of the State of Qatar to the United Nations, to FfD Office, ECOSOC, New York, 16 February 2011. <http://www.un.org/esa/ffd/tax/2011SGReport/Qatar.pdf>.

³⁴ Permanent Mission of Chile to the United Nations, to FfD Office, ECOSOC, New York, 10 January 2011. <http://www.un.org/esa/ffd/tax/2011SGReport/Chile.pdf>.

Australia, Canada, the European Union, Japan, Liechtenstein, New Zealand, Singapore, Switzerland, and the United States (all of which, with the exception of Singapore and Liechtenstein, are OECD countries) oppose upgrading the status of the Committee. Among the objections given to upgrading the Committee were that: an upgrade would distract the Committee from its valuable work on the UN Model Convention; a cost-benefit analysis is needed; there is no guarantee of a representative body; upgrading would duplicate the OECD's work and could "lead to the establishment of multiple and mutually-inconsistent international standards for tax";³⁵ there is a risk of redundancy in work carried out (the OECD has already made sufficient progress in the area of tax cooperation); the Committee must "ensure that the existing Committee function[s] in the most effective way....[through] comprehensive evaluation and prioritization of the work performed under the existing Committee" before an upgrade could be considered;³⁶ and "it is unclear how a change in status would allow the UN Committee to more efficiently meet its mandate."³⁷

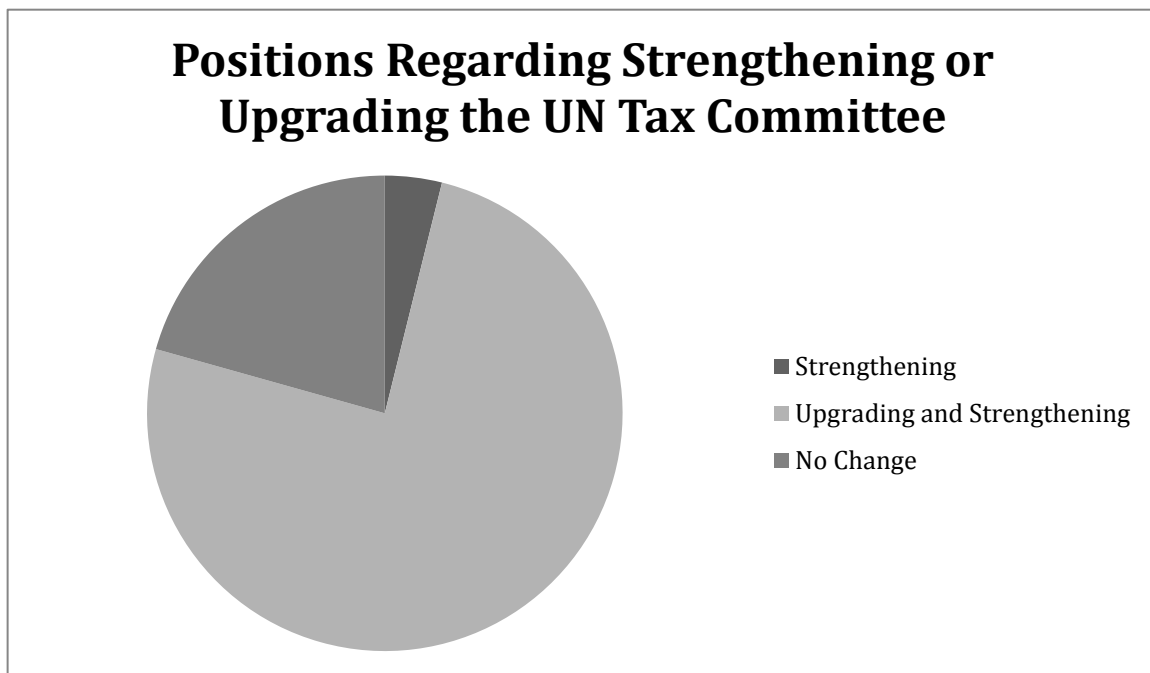


Figure 2, Student-designed chart, 2012

Generally, the responses submitted to the FfD Office consistently represented the positions of the respective countries within the OECD, European Union, and G77. In other words, OECD and EU countries (irrespective of their membership in the UN Committee) tended to oppose strengthening or upgrading of the Committee (believing that to do so would be to duplicate or infringe upon work being carried out by the OECD, and perhaps to develop conflicting policies

³⁵ Akifumi Mizuguchi, First Secretary, Economic Affairs Section, Mission of Japan, to FfD Office, ECOSOC, New York, 2011. <http://www.un.org/esa/ffd/tax/2011SGReport/Japan.pdf>.

³⁶ Delegation of the European Union to the United Nations, to FfD Office, ECOSOC, New York, 24 January 2011. <http://www.un.org/esa/ffd/tax/2011SGReport/EuropeanUnion.pdf>.

³⁷ The Permanent Mission of Canada to the United Nations, to FfD Office, ECOSOC, New York, 31 January 2011. <http://www.un.org/esa/ffd/tax/2011SGReport/Canada.pdf>.

or mandates). At the same time, G77 countries were likely to support strengthening and upgrading the Committee, as they are almost all developing countries whose priorities lie in direct opposition to those of the OECD. As is clear in Figure 2 above, the numerical majority of countries support upgrading the UN Tax Committee—but the balance of power clearly does not lie in those countries' favor. Several of the outlying countries, to whom advocacy efforts might be targeted, are discussed in the final "Policy Recommendations" section.

Key Institutional Players

Diplomatic rhetoric from various intergovernmental resolutions and press releases veil the diverging interests of the key institutional players shaping and influencing the international tax field. As an immensely important geopolitical and economic issue, international taxation involves a multitude of stakeholders. The stakeholder circle below provides a visual indication of the different key institutional players effecting change in tax policy, as well as peripheral players interested in the debates regarding international agreements on taxation. As discussed in the above section, the UN Tax Committee, OECD, and G77, are some of the most important key players—other significant actors are briefly outlined below.

Group of 8

The G8, consisting of Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States collectively comprise 53 percent of global nominal GDP and 42.5 percent of global GDP (PPP).³⁸ The G8 considers itself an "informal club for discussion and co-operation by the leading industrialized countries," noting that it is neither an international institution nor a legal entity and is in no way a threat to other international organizations such as the UN.³⁹

Group of 20

The Group of 20 (G20), a forum bringing together nineteen countries and the European Union, combine "to represent around 90% of global GDP, 80% of global trade and two thirds of the world's population."⁴⁰ There are seven non-OECD country members in the G20 (Brazil, China, India, Indonesia, Russia, Saudi Arabia and South Africa).

The G20 strives to: 1) "coordinate policy between its members in order to achieve global economic stability, sustainable growth; 2) promote financial regulations that reduce risks and prevent future financial crises; and 3) create a new international financial architecture."⁴¹

³⁸ G8. "Sommet Evian Summit 2003 - Questions about the G8." 05 March 2002. http://www.g8.fr/evian/english/navigation/the_g8/questions_about_the_g8.html.

³⁹ Ibid.

⁴⁰ "What is the G-20?" G20 Mexico. <http://g20mexico.org/en/g20/what-is-the-g-20>.

⁴¹ Ibid.

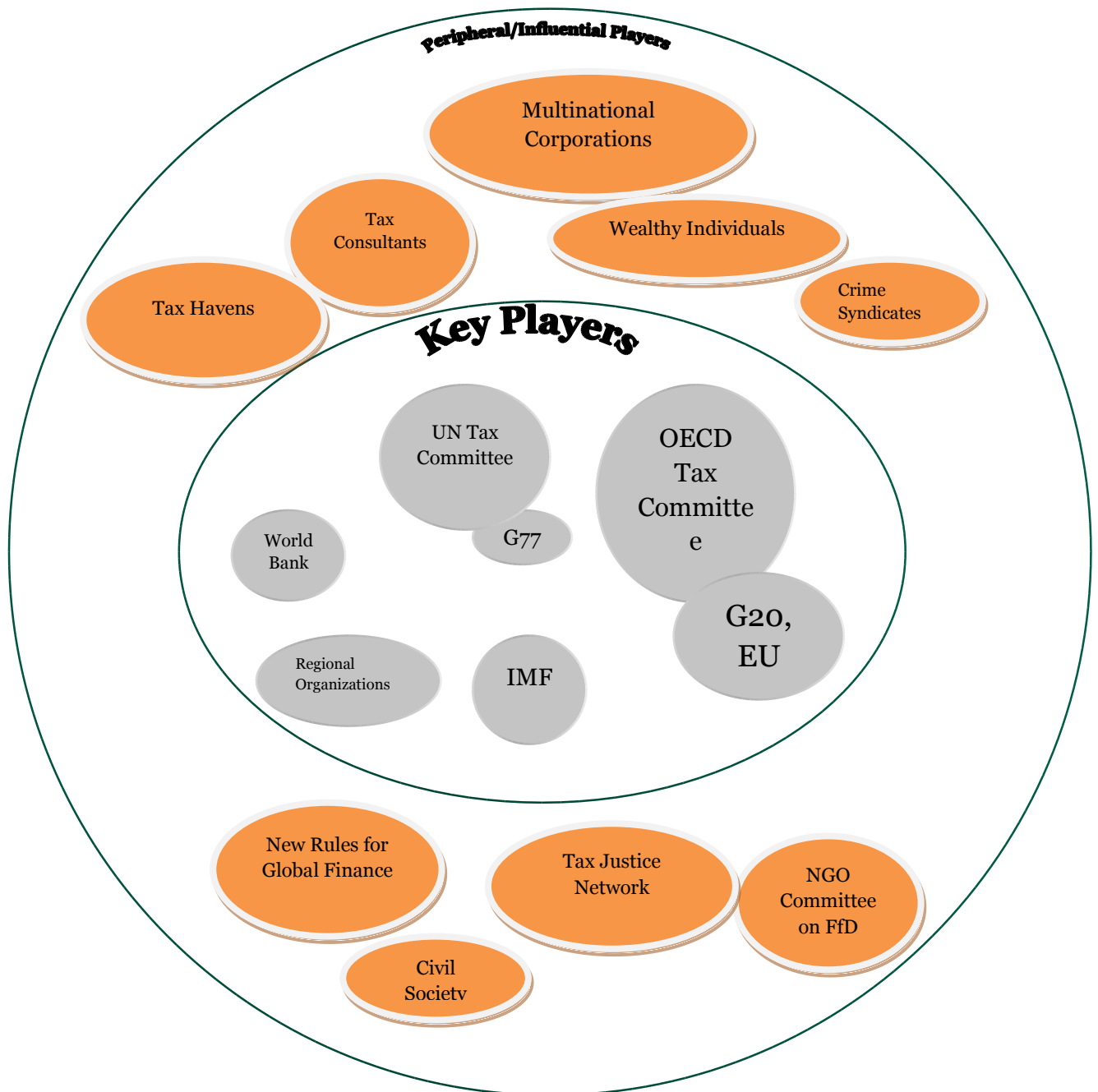


Figure 3, Key Institutional Players, student-produced figure, 2012

The G20 does not have a tax secretariat but recently requested a multi-stakeholder effort to address various tax-related issues and problems in order to identify areas for improvement and international cooperation. In its 2010 Multi-Year Action Plan on Development, perhaps reflecting some of its non-OECD influence, the G20 specifically referenced: tax avoidance and tax evasion; the promotion of South-South cooperation; and taxing multinational corporations located in developing countries.⁴²

⁴² ECOSOC 9

In November, 2011 every G20 country signed an updated version of the “Convention on Mutual Administrative Assistance in Tax Matters,”⁴³ a treaty originally drafted in 1988 by the Council of Europe and the OECD. As a multilateral North-South agreement supporting the exchange of tax information (ostensibly including automatic exchange of information), even some skeptics applauded the G20, albeit with a caveat. Martin Hearson, a tax expert at ActionAid and co-author of ActionAid’s tax evasion report⁴⁴ on the UK-based brewing titan, SABMiller, said, “ActionAid welcomes the G20’s commitment to participate in this updated convention, and to help developing countries that wish to do so to join. But it must be a priority to address these three concerns: 1) where are the tax havens; 2) just how effective is this agreement; and 3) where will the convention go in the future] before developing countries are actively encouraged to devote precious time and resources to joining the convention.”⁴⁵

In May 2009, The Tax Justice Network had described the Convention as a precedent and possible template for multilateral automatic exchange of information.⁴⁶

The G20 Summit of leaders has met every year since 2008 to discuss macroeconomic stability and to promote international economic policy cooperation.⁴⁷ Together, G20 economies account for 80 percent of the world’s GNP, contributing to 84.1 percent of the world’s economic growth from the years 2010 to 2016 according to reports by the International Monetary Fund.⁴⁸ In carrying out its work, the G20 draws on the technical expertise of international organizations, chiefly the International Monetary Fund (IMF), the World Bank, the Organization for Economic Cooperation and Development (OECD), the International Labour Organization (ILO), the World Trade Organization (WTO), the United Nations (UN) and the Financial Stability Board (FSB).⁴⁹

At an informal meeting of G20 foreign ministers held in Los Cabos, Mexico in February 2012, Chinese Assistant Foreign Minister Ma Zhaoxu urged the G20 to make itself a more “representative and better-balanced organization by respecting the opinions and concerns of non-members.”⁵⁰ Mexico, holder of the rotating G20 presidency this year has invited non-G20 economies and international organizations to attend the next Summit scheduled for June 2012.⁵¹ Mexico’s Discussion Paper on the Presidency of the G20 for 2012 notes that it will conduct a “broad outreach dialogue” to non-member countries, international organizations,

⁴³ Council of Europe. “Convention on Mutual Administrative Assistance in Tax Matters.”

<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=127&CM=7&DF=3/31/2009&CL=ENG>.

⁴⁴ M. Hearson and R. Brooks. “Calling Time: Why SABMiller Should Stop Dodging Taxes in Africa,” *ActionAid*. http://www.actionaid.org.uk/doc_lib/calling_time_on_tax_avoidance.pdf.

⁴⁵ Tax Justice Network. “The G20’s ‘convention of fighting tax evasion’: three reasons to be skeptical.” <http://taxjustice.blogspot.com/2011/11/g20s-convention-on-fighting-tax-evasion.html>.

⁴⁶ Tax Justice Network. “Tax Justice Briefing: Tax Information Exchange Agreement, p. 5. http://www.taxjustice.net/cms/upload/pdf/Tax_Information_Exchange_Arrangements.pdf.

⁴⁷ G20. “What is the G20?”

⁴⁸ “The Economy of G20.” *Businessvibes*, 2011. <http://www.businessvibes.com/blog/economy-g20>.

⁴⁹ Global Partnership for Financial Inclusion. “About the G20.” <http://www.gpfi.org/about-gpfi/about-the-g20>.

⁵⁰ China Daily. “Chinese Official Urges G20 to Focus on Economic Governance” | *Economy* | chinadaily.com.cn. 02 February 12. http://www.chinadaily.com.cn/usa/business/2012-02/21/content_14661401.htm.

⁵¹ *Ibid*.

and the UN System.⁵² Below is an organizational framework for the next G20 Summit scheduled for this June 2012 in Los Cabos, Mexico:

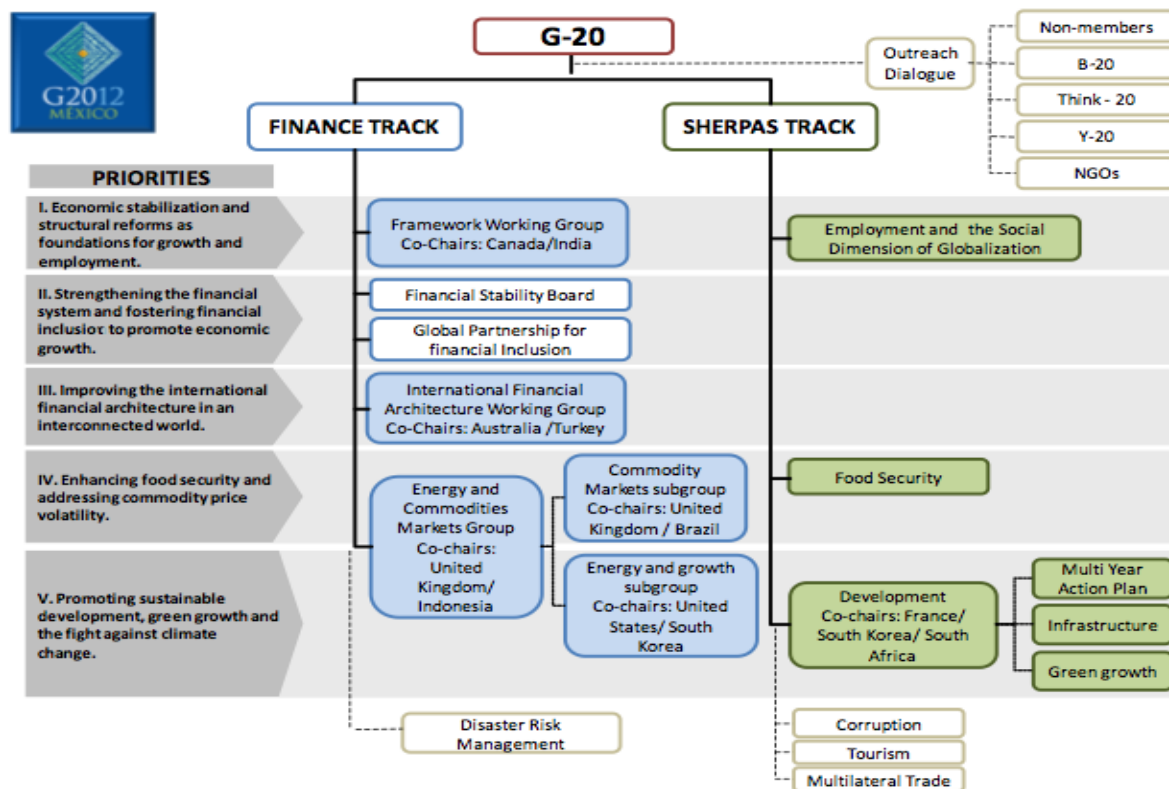


Figure 4⁵³

International Monetary Fund

The International Monetary Fund (IMF) serves its membership, inter alia, on tax matters, providing technical assistance upon request. Additionally, it offers advice on tax policy, revenue administration and legal drafting.⁵⁴

The IMF's technical assistance (TA) is administered via mission visits by IMF employees or through its world-wide Regional Technical Assistance Centers. The funding for its TA has come from twenty-five different countries and international organizations. The government of Japan, since 1990, has financed the IMF's TA coffers with over \$200 million; and starting in May 2011, thanks to a \$30 million "multi-donor tropical trust fund," fifteen to twenty low-income and lower middle-income countries will receive IMF technical assistance to strengthen their tax systems over the next five years.⁵⁵

⁵² G20. "Discussion Paper: Mexico's Presidency of the G20." January 2012, p.3.

⁵³ Ibid. 5

⁵⁴ G. Michielse and V. Thuronyi. "Overview of Cooperation on Capacity Building in Taxation," United Nations. <http://www.un.org/esa/ffd/tax/sixthsession/OverviewCapacityBldg.pdf>, p. 6.

⁵⁵ ECOSOC 7

Pursuant to ECOSOC resolution 2006/48, the Trust Fund for International Cooperation in Tax Matters (TFICTM), requiring “voluntary contributions from Member States,” was established to “supplement regular budget resources” for the underfunded UN Tax Committee and its subcommittees. To this day, the TFICTM has not been funded.⁵⁶

World Bank

The World Bank, via loan financing, “offers technical assistance in taxation to its members typically as part of a broader public sector development programme.”⁵⁷ The World Bank collaborates with other international donor providers and recipient organizations to develop the tax assistance program.

Regional Organizations

In recent years, regional tax organizations, promoting South-South and North-South cooperation in international tax matters, have made their presence felt on the global stage. These organizations facilitate tax administration and capacity-building for its members. Some of the prominent regional blocs include: the African Tax Administration Forum (ATAF); the Inter-American Center of Tax Administrations (CIAT); the Association of Tax Authorities of Islamic Countries (ATAIC); the Intra-European Organization of Tax Administrations (IOTA) and the Pacific Islands Tax Administrators Association (PITAA).⁵⁸

Regional Banks (e.g., African Development Bank, Asian Development Bank and Inter-American Development Bank) also provide various tax services in the forms of technical assistance, project administration and reform programs.⁵⁹

While the G20 Seoul Summit-mandated report on developing more effective tax policy⁶⁰ predominantly associates regional tax organizations with administration rather than policy,⁶¹ in the past six months, ATAF has taken the initiative on the highly publicized SABMiller tax avoidance accusations made in ActionAid’s incisive report.⁶² The report’s co-author, Mark Hearson, lauded ATAF’s efforts to confront transfer mispricing and the organization’s regional unity, “This unprecedented initiative marks a new era in which rampant tax avoidance by multinationals in poor countries will come under much closer scrutiny. Every year, big business dodges billions of dollars in tax to poor nations. These sums would transform healthcare and education services for millions of people. It is fantastic to see African nations working together

⁵⁶ Ibid. 15

⁵⁷ Ibid. 7

⁵⁸ Michielse and Thuronyi 18-20

⁵⁹ Ibid. 8-10

⁶⁰ OECD. “Supporting the Development of More Effective Tax Systems.”
<http://www.oecd.org/dataoecd/54/29/48993634.pdf>.

⁶¹ Ibid. 46

⁶² Hearson and Brooks

to challenge big businesses on unscrupulous tax avoidance. The rest of the world should follow their lead.”⁶³

Arguments for and Against Creating an Intergovernmental Body on Taxation within the United Nations

Many divisions are made among key actors regarding issues on global taxation and cooperation, particularly the arguments for and against making the UN Tax Committee into an Intergovernmental Body. Stances from both sides offer a more clear understanding of the debate, highlighting viewpoints that strive to enhance overall international tax cooperation.

Converting the UN Tax Committee into an intergovernmental body supports the creation of an all-inclusive entity for international tax cooperation, welcoming the assistance and expertise from both developed and developing nations, and economies in transition.⁶⁴ Advocates suggest, due to its universal membership, the United Nations is the most appropriate forum to host such a body, enhancing the Committee’s legitimacy, accountability, and authority.⁶⁵ With governmental status, the body would be able to negotiate policies on behalf of ECOSOC, ultimately enhancing the impact of its work.⁶⁶

The conversion could potentially advance the Committees’ efforts towards strengthening the relationship between taxation and development, having a balanced representation from the North and the South. Global tax related issues would not solely be in the hands of the OECD countries, offering a voice to developing nations and economies in transition, including G77 countries and China.⁶⁷

Some countries feel the current UN Tax Committee, along with its subcommittees and working groups, lack adequate resources, resulting in lower volumes of participation from developing nations. The transformation into a governmental body would enhance the effectiveness of the committee, allowing it to establish a dedicated technical staff of experts on tax related issues.⁶⁸

Michael Lennard, Financing for Development Office, United Nations, feels the UN needs to have an intergovernmental body specialized on tax. The current UN Tax Committee does not set the same effective signals an Intergovernmental Body would be capable of, in terms of influencing the key principles that determine developing countries’ abilities to succeed in taking their fair share of revenue.⁶⁹

⁶³ “Beer Giant Faces Audit in Five African Countries Following \$20 Billion Tax Avoidance,” ActionAid, 6 May 2011. <http://www.actionaid.org/news/beer-giant-faces-audit-five-african-countries-following-20-billion-tax-avoidance>.

⁶⁴ ECOSOC 17

⁶⁵ United Nations. Conference Room Paper on “Follow-up to the International Conference on Financing for Development.” (United Nations publication, Fifty-eight session, Agenda Item 104, p 4-6), 2003.

⁶⁶ ECOSOC 17

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ “ECOSOC: The World Needs an Intergovernmental Commission on Tax Cooperation.” *Tax Justice Network: Why Tax Havens Cause Poverty*, Blog. 28 June 2011. <http://taxjustice.blogspot.com/2011/06/ecosoc-world-needs-intergovernmental.html>.

Creating an intergovernmental body could potentially give more authority to the committee's outputs such as the UN Model Tax Convention, the Manual for Negotiation of Bilateral Tax Treaties and the forthcoming Practical Manual on Transfer Pricing.⁷⁰ The transformation may create more transparency, allowing sessions of the intergovernmental Commission to be open to observers.⁷¹ Multiple stakeholders, including Member States, the business sector, civil society, and international and regional institutions, could be employed to provide input and engagement.⁷² If an upgrade of the UN Tax Committee into an intergovernmental body were to occur, its terms of reference and work methods would most likely change, as its functions would expand. Members would be elected by ECOSOC from among the member states of the UN on the basis of an equitable geographical distribution.⁷³ Key positions would be held by national tax authorities or Ministries of Finance.

Opposition to the conversion of the UN Tax Committee into an intergovernmental body includes: 1) the danger of the duplication of work; 2) additional resource requirements; and 3) becoming too politicized. These three main points underline the basic argument of maintaining the Committee as status quo, preventing the Committee from attaining a governmental aspect.

If the intergovernmental body duplicated the work of other international organizations also tackling issues of international tax cooperation,⁷⁴ a result could be multiple and inconsistent standards of international taxation, leading to ineffective results from many angles.

In becoming an intergovernmental body, the UN Tax Committee would require additional resources, which would add to the already limited list of resources governments use to allocate matters affiliated with tax matters. The conversion could also interfere with the existing work set forth by the UN Tax Committee, particularly with the revisions being made on the UN Tax Model Convention.⁷⁵

The International Chamber of Commerce (ICC) considers itself the voice of international business, and also the main business partner of the UN, as it regularly provides ECOSOC with advice on tax issues from a business perspective.⁷⁶ The current Permanent Representative of the ICC to the UN, Ms. Louise Kantrow, noted that the ICC would be "cautious on new intergovernmental bodies,"⁷⁷ and would require good rationale for their creation when asked about her thoughts on a potential UN Tax Committee. Ms. Kantrow suggested "the whole area of international financial architecture is not exactly the UN's greatest strengths, and that are there are other international bodies that have more expertise in this area."⁷⁸ She was unsure who would act as the Secretariat, or where that expertise exists right now for a new committee.

⁷⁰ ECOSOC

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ ICC. "ICC - The World Business Organization." <http://www.iccwbo.org/id93/index.html>.

⁷⁷ Louise. Kantrow. Personal interview. 22 Feb 2012.

⁷⁸ Ibid.

Instead, the ICC would support strengthening better representation of the G193 in those institutions that already have this as its existing mandate.⁷⁹

One of the strongest arguments made against the UN Tax Committee becoming an intergovernmental body is that it would become too politicized. The new members would represent their governments and consequently, promote their views and beliefs, pushing certain policy agendas that would benefit their respective countries. This, according to the opposing view, would deter those involved in tax issues from the larger goal: balancing the role of developed and developing nations in the effort to strengthen international tax cooperation.⁸⁰

If the UN Tax Committee were to remain as status quo, it would be able to continue its on-going work, including the finalization of its 2011 update of the UN Model Tax Convention. The current working groups and subcommittees would not be affected, maintaining their current status while continuing their original work plan. If an intergovernmental body were not created, it would continue to offer developing countries technical assistance, but would be significantly more limited in its reach.⁸¹

Figure 5 below summarizes the basic pros/cons of converting the current UN Tax Committee into an Intergovernmental Body on Taxation within the United Nations, based on the information previously stated.

Pros	Cons
Improving developing countries voice and participation in norm development in tax matters, not sole participation from OECD countries	Duplication/redundancy of the work of other international organizations
Governmental status, particularly within the UN, offers more authority, accountability, and legitimacy	Need for additional resources that could be unattainable (e.g., expertise, budget, etc.)
Strengthen relationship between taxation and development	Become too politicized; countries looking out for their own self-interest in areas of taxation
Create more transparency	interfere with the existing work set forth by the UN Tax Committee

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

Gain more resources	
Members would be able to negotiate policies on behalf of ECOSOC and their respective countries	
Enhanced international cooperation toward reducing skill, information and technological gaps in developing countries	

Figure 5, Student-produced figure, 2012

It is worth noting here that, even if the Committee wasn't upgraded to an intergovernmental body, it could be called upon to make specific recommendations to ECOSOC if it were strengthened in other ways. ECOSOC would then have the opportunity to take its recommendations into account and potentially make policy decisions based upon pro-poor, representative expertise.

Blockages to Unified Action

The intricacies associated with an increasingly globalized tax system present a number of challenges. In the developing world especially, obstacles to implementing and monitoring a global framework include: the limited capacity of a tax administration as a result of low literacy and low human capital; inefficient economic structure making tax collection difficult; and of poor data compilation for useful quantitative analysis.⁸² In addition to internal blockages, several external blockages prevent unified action on tax matters as a formal global standard that will be discussed later in this report.

The Relationship Between the OECD Tax Committee and the UN Tax Committee

UN Tax Committee

The UN Secretariat delegates the large majority of the UN's tax work to The Committee of Experts on International Cooperation in Tax Matters (hereon referred to as the UN Tax Committee), which was originally established as The Ad Hoc Group of Experts on Tax Treaties between Developed and Developing Countries in 1968.⁸³ Additionally, the United Nations Development Program (UNDP) "provides advice on taxation within the framework of its program on democratic governance."⁸⁴ UNDP's Special Unit on South-South Cooperation has teamed with the Department of Economic and Social Affairs and two NGOs on the Sharing of Successful Tax Practices project.⁸⁵

⁸² Vito Tanzi, and Howell Zee. "Tax Policy for Emerging Markets: Developing Countries." *National Tax Journal* LIII.2 (2000): 299-322.

⁸³ United Nations Financing for Development Office. "Overview of the Committee of Experts on International Cooperation in Tax Matters." <http://www.un.org/esa/ffd/tax/overview.htm>.

⁸⁴ Michielse and Thuronyi 3

⁸⁵ Ibid. 3

The UN Tax Committee, consisting of twenty-five tax experts nominated by their Governments and appointed to four-year terms by the Secretary General, is mandated to: 1) “keep under review and update as necessary the United Nations Model Double Taxation Convention between Developed and Developing Countries and the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries; 2) provide a framework for dialogue with a view to enhancing and promoting international tax cooperation among national tax authorities; 3) consider how new and emerging issues could affect international cooperation in tax matters and develop assessments, commentaries and appropriate recommendations; 4) make recommendations on capacity-building and the provision of technical assistance to developing countries and countries with economies in transition; and 5) give special attention to developing countries and countries with economies in transition in dealing with all the above issues.”⁸⁶

Secretariat of the UN Tax Committee

The Secretariat of the UN Tax Committee can be found in the Financing for Development Office of the UN Department of Economic and Social Affairs (UNDESA). The Acting Secretary, Michael Lennard, is supported by a staff of two junior experts.⁸⁷ The Secretary⁸⁸ believes, regardless of whether the UN Tax Committee is upgraded or not, his office needs more resources and funding to better serve its mandate.

OECD

The Organization for Economic Cooperation and Development (OECD), a 34-member group of developed and emerging economy countries, is a proponent of “democratic government and the market economy” and claims to “promote policies that will improve the economic and social well-being of people around the world.”⁸⁹ The OECD prides itself on “making life harder for the terrorists, tax dodgers, corrupt businessmen and others whose actions undermine a fair and open society.”⁹⁰

Its 34 members each send one representative to the OECD’s Council, where decisions are made by consensus. Additional government representatives work together in 250 committees, working groups and expert groups (a stark contrast to the UN Tax Committee).⁹¹

Perhaps the most useful way to begin the discussion on the OECD’s approach to international tax cooperation is to quote its 2002 paper on developing the international tax dialogue, written as a direct response to the signing of the Monterrey Consensus: “Although it has extensive contacts with non-OECD countries and considerable awareness of developing country issues through its non-member programs, *the OECD does not represent the views of developing*

⁸⁶ UN FfD

⁸⁷ Michielse and Thuronyi 4-5

⁸⁸ Information, facts and opinions attributed to Michael Lennard, unless otherwise noted, were obtained during a February 21st, 2012 interview with Mr. Lennard conducted by New School students.

⁸⁹ “OECD’s Current Tax Agenda” 4

⁹⁰ Ibid.

⁹¹ Ibid, p. 5.

countries” [emphasis added].⁹² Rather, the OECD represents its wealthy member states—and its dominance of the UN Tax Committee often helps it block those of member states from the developing world.

The OECD at a Glance
OECD share of world GNI (current USD): 69.4%
OECD share of world trade: 60.4%
OECD share of world population: 18%
OECD share of bilateral world official development assistance: 95.8%

Figure 6, *OECD’s Current Tax Agenda* (April 2011) © OECD 2011

The Committee on Fiscal Affairs

The Committee on Fiscal Affairs (CFA) conducts the OECD’s tax work, concentrating on both domestic and international tax issues. As the counterpart to the UN Tax Committee, the CFA advances its own standards, guidelines and best practices for governments (developed and developing), to implement, i.e., the OECD Model Tax convention and the OECD’s Transfer Pricing Guidelines⁹³.

The CFA’s mandate requires it to: 1) “facilitate the negotiation of bilateral tax treaties and the design and administration of related domestic legislation; 2) promote communication between countries and the adoption of appropriate policies to prevent international double taxation and to counteract tax avoidance and evasion; 3) encourage the elimination of tax measures which distort international trade and investment flows; 4) promote a climate that encourages mutual assistance between countries and establish procedures whereby potentially conflicting tax policies and administrative practices can be discussed and resolved; 5) support domestic tax policy design through the development of high quality economic analysis of tax policy issues, comparative statistics and comparisons of country experiences in the design of tax systems; 6) improve the efficiency and effectiveness of tax administrations, both in terms of taxpayer services and enforcement; 7) support the integration of non-OECD economies into the international economy by strengthening policy dialogue with them to increase their awareness of and contribution to the Committee’s standards, guidelines and best practices.”⁹⁴

⁹² *Developing the International Dialogue on Taxation: A Joint Proposal by the Staffs of the IMF, OECD, and World Bank*. 13 March 2002. <http://www.oecd.org/dataoecd/47/18/2074194.pdf>.

⁹³ Ibid. 7

⁹⁴ Ibid. 10

OECD Governments convene senior tax officials, and various non-OECD countries (e.g., Argentina, China, Russia and South Africa) send observers on a regular basis. Groups of national experts, determined by the CFA, gather in Working Parties to exchange ideas concerning tax policy and administration. The CFA, in addition to the work of its officials, consults with the private sector, trade unions and NGOs; and collaborates with the IMF, World Bank, WTO and various regional tax organizations (e.g., CATA, CIAT, etc.).⁹⁵

An important distinction to make between the UN Tax Committee and the OECD's Committee on Fiscal Affairs is the intergovernmental makeup/nature of the OECD's CFA. One of the main arguments against upgrading the UN Tax Committee to an intergovernmental body is that its work may become politicized. This potential problem has not hindered the work of the CFA, an intergovernmental body. David Spencer,⁹⁶ a renowned tax lawyer and senior adviser to the Tax Justice Network, an organization "dedicated to high-level research, analysis and advocacy in the field of tax and regulation,"⁹⁷ notes instead that politicization is not the concern of those opposed to the upgrade, but rather a possible shift in power from the OECD to the peripheral countries.

Although the OECD does not represent the interests of developing countries, it has ostensibly taken steps to incorporate non-OECD input into its tax work. In 2010, the Informal Task Force on Tax and Development was established, bringing together "OECD countries, some developing countries, as well as civil society and business sector organizations."⁹⁸ Its goals are to provide developing countries with more tax resources and the technical assistance needed to "improve tax revenue collection and to strengthen governance."⁹⁹

The Centre for Tax Policy and Administration

The Centre for Tax Policy and Administration (CTPA) supports the OECD's Committee on Fiscal Affairs. The CTPA offers technical expertise, focusing on domestic and international tax issues, tax policy and tax administration. It also manages the OECD Tax Database, a resource containing "the main parameters" of the tax systems of each OECD country. Besides the support it provides the CFA, the CTPA serves as the technical support system for the Global Forum on Transparency and Exchange Of Information for Tax Purposes, the Task Force on Tax and Development and the International Tax Dialogue.¹⁰⁰ Tellingly, this Global Forum is made up of the OECD, IMF, and World Bank, but not the UN—illustrating that the OECD is not universal at best and purposefully exclusive at worst.

⁹⁵ Ibid. 7-8

⁹⁶ Information, facts and opinions attributed to David Spencer, unless otherwise noted, were obtained during a February 24th, 2012 interview with Mr. Spencer conducted by New School students.

⁹⁷ Tax Justice Network. "About Tax Justice Network."

http://www.taxjustice.net/cms/front_content.php?idcatart=103&lang=1.

⁹⁸ Ibid. 9

⁹⁹ Ibid.

¹⁰⁰ Ibid. 13

Unlike the Secretariat of the UN Tax Committee, the CTPA is well-resourced and funded. It has a staff of approximately 100 people¹⁰¹ and the finances necessary to “carry out an extensive global programme of dialogue between OECD and non-OECD tax officials through 80 events held annually on the full range of OECD work, bringing together almost 100 non-OECD economies;”¹⁰² so its influence is wide-ranging. In sharp contrast, the UN Tax Committee meets for only five working days in a year; and its subcommittees have only conducted ten face-to-face meeting since 2003.¹⁰³

The OECD and UN Tax Committees share several of the same broad goals, but not surprisingly, the OECD pursues policies that aim to benefit its member countries (which are generally rich and developed). This pursuit shows itself most clearly in the OECD’s Transfer Pricing Guidelines, which advocate for the usage of the Arm’s Length Principle as a method of establishing fair pricing.¹⁰⁴ However, the Arm’s Length Principle, which is meant to guarantee that internal trade (“transfer”) prices between companies of multinational enterprises are determined on a market value basis, has been criticized extensively for being overly complex, outdated, based upon faulty assumptions, and generally impossible to administer.¹⁰⁵ Most importantly, its ineffectiveness means that multinational corporations can continue to manipulate their transfer prices in a way that allows them to shift profits and avoid paying taxes to developing world governments. A more detailed analysis of the Arm’s Length Principle and double taxation, and how it disadvantages developing countries, will follow in the next section. Although both the OECD and the UN Tax Committee formally support the adoption of the Arm’s Length Principle, it is important to reiterate here that the UN Tax Committee is dominated by OECD countries—its adoption of the Principle is seen by many as an example of that stronghold.

Another major point of contention between the two Committees lies in the question of “source country” vs. “residence country” taxation. The “residence” principle, under which a taxpayer’s country of residence can impose its taxes on business income of a resident regardless of the source of the income, is the current norm guiding the coordination of international taxation of business income among the OECD countries. The source country receives no direct tax revenue for access to its market unless the selling company establishes a permanent base of operations. The residence principle, spearheaded by the United States, generally favors the countries from which transnational businesses operate or are based (i.e., in OECD and other developed countries) and disadvantages the (almost always developing) “source” countries.¹⁰⁶ In order to encourage and foster investment, states seek to come to terms on agreements, Double Tax Agreements (there are currently over 2500 bilateral income tax treaties),¹⁰⁷ which prevent

¹⁰¹ ECOSOC 8

¹⁰² “OECD’s Current Tax Agenda” 13

¹⁰³ ECOSOC 6

¹⁰⁴ OECD. *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*. 18 August 2010. <http://www.oecd.org/ctp/tp/guidelines.pdf>.

¹⁰⁵ Michael C. Durst. “It’s not just academic: the OECD should reevaluate transfer pricing laws.” *Tax Notes International*, 2010. 57 (3), p. 247-256.

¹⁰⁶ Horner 29

¹⁰⁷ “Tax Justice Briefing: Source and Residence Taxation,” Tax Justice Network, p. 2, <http://www.taxjustice.net/cms/upload/pdf/Sourceresidence.pdf>.

double taxation on individuals and corporations conducting business in a foreign country. Since both the country of origin (resident country) of the person/corporation conducting business abroad and the country hosting (source country) the business activity of the foreign person/corporation have the legal right to tax earned profits, an agreement needs to be reached between the resident and host country so the person/corporation is not taxed twice. The question is: which state collects the tax revenue? In broad terms, source countries retain the right to tax longer-term, active (business) income while residence countries tax shorter-term passive (investment) income.¹⁰⁸ The OECD, in its model income tax treaty and throughout numerous revisions, has pressed for the primacy of residence-country taxation.¹⁰⁹ On the other hand, developing countries and the UN Tax Committee have backed the UN Model Income Tax Treaty, an alternative that proposes source-country taxation, and would help developing countries finance development through more equitable taxation.¹¹⁰

Like goods, developing countries believe they should also be entitled to more taxing rights for services. The OECD Model treats services the same way it treats goods. The same threshold for permanent establishment for the provision of goods applies to the provision of services. In other words, a significant amount of time needs to elapse before services, like goods, are subject to source taxation. The UN Tax Committee's Secretariat, however, believes services are a "different kind of animal" and need to be treated as such. Significant profits from services can be made in a short amount of time and without a permanent establishment, and so the source country should be granted taxation rights. The OECD Model makes exemptions for certain services (e.g., sportsmen and musicians), but the UN believes all services should be treated in the same fashion.

Unsurprisingly, the OECD Model is the dominant model and preferred by developed countries since it better serves the interests of their multinational corporations. Obviously, developing countries favor the UN Model, which better protects their interests.

Transfer (Mis)Pricing

Multinational corporations and the trade that occurs between its subsidiaries, or related companies, are at the heart of transfer pricing. The significance of this kind of trade lies in its frequency. Transactions between related companies have been estimated to constitute anywhere between 30 percent¹¹¹ and 70 percent¹¹² of all international trade.

¹⁰⁸ Ibid.

¹⁰⁹ OECD. *2010 Condensed version of the OECD Model Tax Convention*. http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/model-tax-convention-on-income-and-on-capital-condensed-version-2010_mtc_cond-2010-en.

¹¹⁰ *Outcome of the 7th session of the Committee of Experts on International Cooperation in Tax Matters* (Geneva, 24-28 October 2011). <http://www.un.org/esa/ffd/tax/seventhsession/ExecutiveSummary.pdf>.

¹¹¹ United Nations Financing for Development Office. "An Introduction to Transfer Pricing," *Practical Manual on Transfer Pricing for Developing Countries*, p. 2. http://www.un.org/esa/ffd/tax/2011_TP/Oct2011_TP_Chapter1.pdf.

When two related companies conduct a business transaction (e.g. a U.S.-based Apple subsidiary purchases a product from a China-based Apple subsidiary), a price must be established for the product being exchanged. Applying the global standard, referred to as the Arm's Length Principle, the price is supposed to be determined by market forces. This method of price determination is endorsed by *both the UN Tax Committee and the OECD*.

Admitting the UN Tax Committee and civil society are not on the same page with respect to transfer pricing, Michael Lennard, Secretary of the UN Tax Committee's Secretariat, says his office will continue to support the Arm's Length Principle for developing countries, warning that potential investors may shy away from developing countries that do not employ an "arms-length" standard. He contends the Arm's Length Principle is conceptually accepted by developing countries.

Transfer mispricing hurts both developing and developed countries. However, under the current "arms-length" standard, multinational corporations are much more inclined to take advantage of developing countries due to their far less sophisticated tax administrations. As the Tax Justice Network wryly noted in its intervention at the UN transfer pricing meeting, "The OECD Transfer Pricing Guidelines are so complex that even the tax administrations of many developed countries cannot adequately administer those rules. Therefore, how can developing countries—especially the least developed countries—be expected to administer adequately those rules?"¹¹³

Among other work supporting of developing countries, The UN Tax Committee is currently drafting a *Practical Transfer Pricing Manual for Developing Countries*, which is being billed "not as an alternative to the OECD Transfer Pricing Guidelines, but as a novel and needs-based approach to explaining what those guidelines mean for developing countries, and how they can be applied in a way that responds to their priorities and realities."¹¹⁴ The manual will be published this year, and ideally will present a more evenhanded and pro-poor approach to transfer pricing that will allow developing countries to benefit. Recently, in fact, developing countries managed to secure a diplomatic victory in South Africa during the UN Tax Committee's Subcommittee meeting on transfer pricing. The Brazilian transfer pricing model, a model intensely challenged by the OECD as being noncompliant with its own transfer pricing guidelines, was adopted and will be included in the UN transfer pricing manual. However, the OECD has been quick to respond to the threat of a manual that might undermine their support for the Arm's Length Principle. Its Global Forum on Tax Treaties and Transfer Pricing, for example, is just one of many conferences held and papers published to solidify the allegiance of OECD countries in keeping its pro-rich tax policy dominant. The OECD proudly proclaims that at the last such conference "participants overwhelmingly voted the adoption of the OECD's

¹¹² Tax Research UK. "70% of World Trade is Between Multinational Corporations – New OECD Report." <http://www.taxresearch.org.uk/Blog/2010/01/28/70-of-world-trade-is-between-multinational-corporations-new-oecd-estimate/>.

¹¹³ Tax Justice Network. "Presentation by the Tax Justice Network to the Meeting on Transfer Pricing at the United Nations, June 8, 2011."

http://www.taxjustice.net/cms/upload/pdf/Spencer_110608_UN_Tax_Committee_speech.pdf.

¹¹⁴ ECOSOC 11

Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations in 1995 as the most important tax treaty development (besides the OECD Model Tax Convention itself) of the past 50 years.”¹¹⁵ This constant back-and-forth between the two Committees, and competition over dominant policies, weakens the ability of the developing countries involved—countries that have far less financial and “expert” resources than their rich counterparts—to pursue their goals. Observers are beginning to agree that “the OECD’s proposed Global Forum on transfer pricing, which will institutionalize the involvement of developing countries, may detract from the UN’s tax committee and the work it is doing for developing countries.”¹¹⁶

OECD member states numerically dominate the UN Tax Committee, making it difficult for non-OECD members of the Committee to effect change in favor of the pro-poor policies. David Spencer challenges the UN Tax Committee’s dedication to its mandate to pay special interest to the needs of developing countries and economies in transition. He also believes the commonality between the UN Tax Committee and the OECD on transfer pricing is a product of the OECD’s influence (48 percent representation) within the UN Tax Committee. At an October 2011 meeting of the UN Tax Committee in Geneva, Spencer says the issue of the OECD’s influence on the UN Tax Committee came to a head regarding transfer pricing. After a group of OECD countries reiterated the UN Tax Committee’s preference to the Arm’s Length Principle, China, India and Brazil challenged this assertion, attributing it to prior UN Tax Committee members, and argued the Arm’s Length Principle should no longer be the UN Tax Committee’s standard.

Spencer points to the Committee’s representation and its lack of relative “equitable geographical distribution.” He provides a breakdown of the 2008 nominating process and selections for the 25-member Committee, demonstrating how OECD countries are able to maintain power and influence over the Committee’s work. According to Spencer, the OECD submitted 18 nominations (60 percent of the then 30-member OECD) for the Committee in 2008. Non-OECD countries, or the remaining 160 countries in the UN, also submitted 18 nominations (11 percent of non-OECD countries). Twelve of the members chosen for the UN Tax Committee in 2008 represented OECD countries (OECD countries then represented 18 percent of the UN), and 13 members were chosen from non-OECD countries (82 percent of the UN). In relative terms, the UN Tax Committee, although it is tasked with promoting the interests of developing countries, is heavily dominated by countries from the OECD, an organization that, again, has explicitly said it does not represent the views of developing countries.

Developing countries, of course, have more allegiance to and faith in the UN, as the OECD is rightly seen as an organization working with and for the benefit of developed countries. The OECD, competing with the UN for time and resources, is also developing parallel policy papers and guidelines aimed at benefiting the developed, rather than the developing, world. The OECD

¹¹⁵ OECD, *OECD Global Forum on Tax Treaties and Transfer Pricing: Pricing and Treaties in a Changing World*, 2009. http://www.oecd.org/site/0,3407,en_21571361_42209831_1_1_1_1_1,00.html.

¹¹⁶ Sophie Ashley, “OECD may detract from UN TP work,” *International Tax Review* (17 May 2011). <http://www.tpweek.com/Article/2828973/OECD-may-detract-from-UN-TP-work.html>.

has generally come out on top, using its policies to give shape to the international tax design in a way that consistently benefits rich countries and penalizes poor ones. In addition to its ineffective, harmful transfer pricing policy, the OECD encourages and protects international financial secrecy (protecting rich tax haven countries and allowing immense illicit funds to flow South-North (or from developing nations to developed ones). The OECD's tax treaty system and principles (which allocate taxing rights between countries) are also advantageous to rich countries and detrimental to developing countries.¹¹⁷ The UN Tax Committee has far fewer achievements in the areas of international tax policy—it is underfunded, understaffed, and dominated by OECD country membership. Essentially, the OECD has had a much greater impact on effecting policy design and implementation. Small and developing countries and their advocates have expressed growing dissatisfaction with the non-representative way the UN Tax Committee operates—hence the proposition from the Group of 77 and China for upgrading the Committee to an intergovernmental body under the UN's Economic and Social Council.¹¹⁸ Despite the number of countries (the G77 and China) in support of upgrading and strengthening the UN Tax Committee, the most powerful countries (those in the OECD and EU) have consistently opposed, and prevented, the upgrades. If the UN Tax Committee gained additional resources (especially through an upgrade in status), it would also earn greater importance in the world discussion of international tax matters. In addition, its mandate to support the interests of developing countries and countries in transition could genuinely be realized—presenting a grave threat to the OECD. A further question might be asked: is, or will, the OECD still be needed if this trajectory continues? The OECD is *not* the Secretariat of the G20. Viewed through this lens, the cycle of competition between the two makes perfect sense.

Global Tax Policies

Tax matters in today's global economy relate to many different issues. The primary and overarching issue is that inconsistent, illegal and invasive tax policies have further widened the gap between developed and developing economies and has created a glass ceiling for developing countries attempting to raise revenue for social and public development. The resulting gap from tax revenue between the developed and developing world alone is alarming.

In 2005, the average tax revenue to GDP ratio in the developed world was approximately 35 percent. In the developing countries, it was equal to 15 percent, and in the poorest of these countries, the group of low-income countries, tax revenue was just 12 percent of GDP.¹¹⁹

This statistic offers a descriptive view of the current tax situation. Tax revenue is an important source of financing for global economies, yet it remains an untapped source of revenue for

¹¹⁷ Tax Justice Network, *UK, US, OECD oppose developing country interests on tax*, 7 March 2011. <http://taxjustice.blogspot.com/2011/03/uk-opposes-developing-country-interests.html>.

¹¹⁸ *Statement on behalf of the Group of 77 and China by Mr. Waheed Al-Shami, Second Secretary, Permanent Mission of Yemen to the United Nations, following the adoption of the Resolution on The Committee of Experts on International Cooperation in Tax Matters, at the 2010 Substantive Session of the Economic and Social Council* (New York, 23 July 2010). <http://www.g77.org/statement/getstatement.php?id=100723>.

¹¹⁹ Clemens Fuest and Nadine Riedel. "Tax evasion, tax avoidance and tax expenditures in developing countries: A review of the literature." Oxford University Center for Business Taxation. June 19, 2009. Pg I.

developing countries. Why is this so? This segment of the paper examines several issues under the umbrella of tax policy, namely tax cooperation, tax competition, tax evasion and tax avoidance, to determine its impact on development.

Tax Cooperation

Taxes are an immensely important and essential source of revenue for governments – revenue needed to fund critical programs (e.g. education, healthcare), infrastructure (e.g., bridges and roads) and services (e.g. law enforcement and public utilities) beneficial to society. In a highly connected and globalized 21st century, free trade, foreign investment and multinational corporations create enormous opportunities for private economic growth; and for states and the public good, taxable profits and income.

Despite the obvious reasons to cooperate on international taxation, different ideologies, diverging interests and power politics often impede negotiations and agreements between states. However, common ground is found in the form of bilateral and multilateral treaties (bilateral agreements are much more common), although by no means are the agreements completely satisfactory or equitable to all parties involved. Certain states, i.e., developing countries, often have to acquiesce to the terms of their more powerful counterparts, i.e., developed countries, due to various reasons. Lack of technical expertise and resources are often cited as reasons, but established institutions and norms and power dynamics tend to drive the terms of tax treaties. Bilateral and multilateral agreements typically address double taxation (previously discussed) and the exchange of information, which will be addressed in the next subsection.

Exchange of Information

According to the OECD, “exchange of information provisions offer [countries] a legal framework for cooperating across borders without violating the sovereignty of other countries or the rights of taxpayers.”¹²⁰ These “provisions” mostly come in the form of bilateral Tax Information Exchange Agreements (TIEA); and Article 26 of the OECD’s Model Tax Convention and the “Agreement on Exchange of Information on Tax Matters”¹²¹ are the preferred bilateral templates for such TIEAs.

The OECD recently amended a 1988 multilateral convention, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters,¹²² “to make it easier for developing countries to secure the benefits of the new cooperative tax environment, including a multilateral

¹²⁰ OECD. “About: Exchange of Information.”

http://www.oecd.org/about/0,3347,en_2649_33767_1_1_1_1_37427,00.html.

¹²¹ OECD. “Agreement on the Exchange of Information.” <http://www.oecd.org/dataoecd/15/43/2082215.pdf>.

¹²² Council of Europe. “Convention on Mutual Administrative Assistance in Tax Matters.”

<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=127&CM=7&DF=3/31/2009&CL=ENG>.

approach for the exchange of information.”¹²³ The original 1988 convention invited only OECD and Council of Europe countries to participate.¹²⁴

Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries (UN Tax Model), revised in 2011, addresses the exchange of information between “contracting states.”¹²⁵

Unfortunately, the concept of countries freely and easily exchanging tax information to stamp out tax avoidance and evasion is riddled with problems and not nearly as effective as it could or should be. Three of the biggest issues are:

1) OECD and UN templates are geared towards bilateral treaties, preventing developing countries from joining forces to prevent OECD-dominated negotiations (though the recent amendment of the OECD’s 1988 multilateral convention opens the door to developing country participation and was mildly applauded by NGOs);

2) Availability of relevant tax information in states with strong domestic banking and tax laws, i.e. protecting financial secrecy. Financial secrecy, via tight domestic laws, is a hallmark of tax havens, allowing such jurisdictions to not only deny requests for tax information but to encourage tax evasion.¹²⁶

3) Exchange of information is upon request and *not automatic*. Developed countries claim this method prevents “fishing expeditions,” or carte blanche in accessing tax information in another state, impinging upon sovereignty. However, this reasoning has been construed as hypocritical, as “many OECD countries already exchange information automatically among themselves.”

One frequently cited reason for the absence of automatic exchange of information (in a North-South context) is the purported inability of developing countries to handle the influx of tax information disseminated in such circumstances.¹²⁷ However, the Tax Justice Network challenges this assertion with two contradictions: 1) the OECD has already developed and implemented an updated platform for the electronic exchange of information on an automatic basis, the Standard Transmission Format (STF); and 2) to combat international terrorism, developing countries have already proven they can “swiftly and ably implement an instant information exchange system with regard to border passport controls.” This system, utilized

¹²³OECD, “Convention on Mutual Administrative Assistance in Tax Matters.”

http://www.oecd.org/document/14/0,3746,en_2649_33767_2489998_1_1_1_1,00.html.

¹²⁴Tax Justice Network. “Tax Justice Briefing: Tax Information Exchange Agreement,” p. 5.

http://www.taxjustice.net/cms/upload/pdf/Tax_Information_Exchange_Arrangements.pdf.

¹²⁵United Nations Financing for Development Office. “Revised Article 26 (Exchange of Information) and Revised (2008) Commentary on Article 26.”

http://www.un.org/esa/ffd/tax/Article%2026_Exchange%20of%20Information%20_revised_.pdf.

¹²⁶Tax Justice Network. “Tax Justice Briefing: Tax Information Exchange Agreement,” p. 2-6.

http://www.taxjustice.net/cms/upload/pdf/Tax_Information_Exchange_Arrangements.pdf.

¹²⁷Ibid. 6

world-wide, allows customs officials to instantaneously access foreign police records upon scanning a passport.¹²⁸

Tax Revenue and Development

As mentioned in previous sections, revenue produced from taxes is critical to financing for development, specifically for transitioning economies. Lost revenue, otherwise known as *shadow economies*, refers to “the unreported income from the production of legal goods and services, either from monetary or barter transactions, hence all economic activities that would generally be taxable, were they reported to the tax authorities.”¹²⁹ Generally speaking, shadow economies are substantially larger in the developing world and are most prevalent in countries vulnerable to tax evasion, tax havens and capital flight. Such economies are informal and thus, revenue produced is unproductive to countries’ social and development needs. Roger and Li measure the widening gap between these economies in developing and developed countries.

Tax Competition

Tax competition spurs the prevalence of tax havens and capital flight. It utilizes fiscal incentives to manipulate and attract investment.¹³⁰ Likewise, competition—“competing investment locations, wealthy individuals and corporations, international pressures”¹³¹—exerts a downward pressure to reduce effective tax rates. Tax competition has a negative impact on developing countries for several reasons. First, it undermines the financial sovereignty of governments as it impedes the creation of one’s own tax policy. Secondly, as the tax policy shifts “from corporate taxation to other forms of tax, i.e. labor, the tax burden falls disproportionately on the poor.”¹³² Lastly, and perhaps most importantly, active tax competition puts a great deal of pressure on weak states, “resulting in a lower revenue base, greater inequality, greater dependence on foreign aid, and weaker accountability of government.”¹³³

Tax Evasion and Tax Avoidance

States cooperate on cross-border tax matters to confront individual and corporate tax avoidance, tax evasion, tax fraud and capital flight. These problematic issues breed corruption in both the public and private sectors. In addition to the moral and legal realms surrounding international taxation, the economic and social ramifications of tax misconduct are staggering. According to a 2008 Christian Aid report, “Death and Taxes,”¹³⁴ \$160 billion in annual corporate taxes for the developing world are lost due to transfer mispricing and false invoicing. The report estimates that annual revenues of that magnitude, if allocated for healthcare programs

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Tax Justice Network. *Tax Wars: International Tax Cooperation and Competition*.

¹³¹ Cobham 9

¹³² TJN

¹³³ Cobham 9

¹³⁴ Hogg et al., “Death and Taxes,” *Christian Aid*, May 2008.

at current public expenditure rates since 2000, may have saved 350,000 children under the age of five.¹³⁵

It is universally accepted that transfer pricing must occur when two related companies trade with each other. It establishes where profits are made. As Michael Lennard notes, “transfer pricing, itself, is not bad. It’s mispricing...the illegal shifting of profits to either gain tax advantages or avoid paying taxes [that is bad.]”

The global initiative to overcome illegal tax behavior and redirect revenues back to developing and transitional economies focuses largely on the issue of tax evasion and tax avoidance. Tax evasion and avoidance are main sources for revenue leakage in shadow economies and its resulting negative impact on “the volume and nature of government finances.”¹³⁶ Tackling tax evasion and avoidance is critical to overcoming illegal financial cash flows and closing channels of corruption and crime, as stated by the United Nations’ *Follow up and implementation of the outcome of the International Conference on Financing for Development* report.¹³⁷

In their simplest form, tax evasion and tax avoidance involve using deliberate methods to avoid or lower an individual or corporation’s tax responsibility. The former typically involves illegal activity, whereas the latter could be legal (although distinctions between the two can be unclear).¹³⁸ Jane Gravelle uses the following example to describe tax evasion and avoidance in her Congressional report, *Tax Havens: International Tax Avoidance and Evasion*.

A multinational firm that constructs a factory in Ireland rather than the United States to take advantage of low Irish corporate tax rates is engaged in avoidance, while a U.S. citizen who sets up a secret bank account in the Caribbean and does not report the interest income is engaged in evasion. There are, however, many activities, particularly by corporations, that are often referred to as avoidance but could be classified as evasion.¹³⁹

Thus, the practice of tax evasion and avoidance is incredibly lucrative for those forgoing payment and devastating for the economies that cannot enforce or collect on due taxes. Collectively, tax evasion and avoidance result in approximately US \$100 billion of lost revenue per year.¹⁴⁰

Tax Havens, Capital Flight, and Tax Competition

The overarching descriptions of tax evasion and avoidance do not account for the specific methods used to deflect tax responsibilities. Tax havens, capital flight, and tax competition are

¹³⁵ Ibid. 2

¹³⁶ Alex Cobham. “Tax evasion, tax avoidance and development finance.” *Finance and Trade Policy Research Center*. Working Paper No. 129, September 2005, p. 11.

¹³⁷ United Nations. *Follow up to and implementation of the outcome of the International Conference on Financing for Development*. A/62/217, 10 August 2007, No 125, p. 30.

¹³⁸ Jean Gravelle. “Tax Havens: International Tax Avoidance and Evasion.” *Report for Congress, Congressional Research Service*, 9 July 2009, p. 1.

¹³⁹ Ibid.

¹⁴⁰ Cobham 10

critical to the study of tax policy and its impact on financing for revenue in developing and transitional economies.

Tax Havens

The OECD uses four factors to define tax havens: no or only nominal taxes; lack of transparency; lack of effective exchange of information with other governing bodies; and no requirement of substantial activity.¹⁴¹ The presence of these factors confirm that the country is indeed a tax haven—an economic abyss where individuals or corporations can burrow their assets to avoid financial regulation.

Tax havens are detrimental to the development process. TJN “estimates that the amount of funds held offshore by individuals [approximately] US \$11.4 trillion...a third of total global assets...[resulting in] an annual revenue loss of [approximately] US \$250 billion” on the income of these assets.¹⁴²

Funds are reinvested domestically for stronger organization of economic and social structures that provide essential development efforts. A proper tax system also demands government accountability.¹⁴³ More than \$1 trillion of potential revenue is uncollected by developing economies and instead secured in tax havens, which is around ten times the aid they receive¹⁴⁴ Tax havens allow for a shift of the tax burden away from capital and onto labor.¹⁴⁵ Harboring funds in tax havens allows this shift to exclude corporate taxation and places the tax burden particularly on the working classes, often disproportionately affecting the middle and lower classes. The presence of tax havens also distorts the perception of where debt and risk lie, which adds to the vulnerability of an already fragile economic state.¹⁴⁶

Thus, deconstructing tax havens and preemptively counteracting their creation is important to restoring tax revenues and fostering financing for development. Though more attention has been paid to tax havens in recent years, current scandals have shown that the struggle to promote proper tax policy and behavior is not over.

“According to UNCTAD, more than 30 percent of FDI involves tax havens and the trend is increasing, distorting statistics on investment and capital flows. For instance, some tax havens like Bermuda receive more U.S. investment than countries such as China.”¹⁴⁷

This mechanism allows even more tax evasion when it is applied to intangibles like logos, brands, consultancies or property rights. The corporation assigns ownership of its brand to a shell company created in a low tax territory. All the productive parts of the company, wherever

¹⁴¹ OECD. *Tax Haven Criteria*. Center for Tax Policy and Administration.

¹⁴² Tax Justice Network. “Tax Havens Cause Poverty.”

¹⁴³ Tax Justice Network. “Aid, Tax and Finance for Development.”
http://www.taxjustice.net/cms/front_content.php?idcat=104.

¹⁴⁴ Ibid.

¹⁴⁵ Tax Justice Network. “Tax Havens Cause Poverty.” http://www.taxjustice.net/cms/front_content.php?idcat=2.

¹⁴⁶ The Economist. “Tax Havens: Trouble Island.” 15 October 2011.

¹⁴⁷ Ibid.

in the world, then pay royalties and other fees to this shell company. This guarantees a continuous shift of money to tax havens. Microsoft saved US \$1.8 billion in taxes between 2001 and 2004 by registering its intellectual property rights in a subsidiary company in Ireland, taxed at a 12.5 percent rate instead of the U.S. rate of 35 percent.¹⁴⁸

Many western financial centers understand tax havens as an “essential part of their business model,” centered on the belief that banking secrecy is a human right, and should not be regulated by the government.¹⁴⁹ While there is alleged international pressure on countries that act as tax havens, action (or lack thereof) at the most recent 2011 G20 Summit in Cannes remains questionable. French President and former G20 President Nicholas Sarkozy identified 11 tax haven countries that were not contributing to eliminating bank secrecy,¹⁵⁰ stating, “We don’t want any more tax havens. Our message is clear.”¹⁵¹ However, these 11 countries—Antigua and Barbuda, Barbados and Trinidad and Tobago, Botswana, Brunei, Panama, Seychelles, Uruguay, Vanuatu, Switzerland and Liechtenstein—are all relatively small or developing economies—not members of the G20 or OECD (with the exception of Switzerland).¹⁵² Former Caribbean diplomat Sir Ronald Sanders sees the OECD’s actions as “unilateral, bullying, and without authority in international law,” and points out that the largest tax havens in the world in fact operate in the richest nations, including the United States and EU and OECD member states.¹⁵³ “The instrument for beating-up and booting out jurisdictions with offshore banking sectors is the Organisation for Economic Cooperation and Development (OECD) in which the EU countries predominate,” Sanders said.¹⁵⁴

Please see the Appendix for the following relevant figures:

Table 1¹⁵⁵ is a list of tax havens as defined by the OECD.

Table 2¹⁵⁶ is a comprehensive list of tax havens and offshore financial centers (OFCs)¹⁵⁷, as defined by the OECD, Financial Stability Forum (FSF) and TJN.

Table 3¹⁵⁸ is a user’s guide to the most prominent tax havens.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ “No More Tax Havens, Says Sarkozy as G20 Wraps up.” *RFI*. 04 Nov. 2011. Web. 05 Mar. 2012. <<http://www.english.rfi.fr/economy/20111104-no-more-tax-havens-says-sarkozy-g20-wraps>>.

¹⁵¹ Ibid.

¹⁵² “Former Diplomat Says French President Got It Wrong | Antigua Observer Newspaper.” *Antigua Observer Newspaper*. 17 Nov. 2011. Web. 06 Mar. 2012. <<http://www.antiguaobserver.com/?p=67441>>.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ Gravelle 5

¹⁵⁶ Lauren Booijink and Francis Weyzig. “Identifying tax havens and offshore financial centers.” *Tax Justice Network*, July 2007, p. 8-9.

¹⁵⁷ Like tax havens, OFCs attract non-resident activity and are associated with flexible tax and business regulations.

¹⁵⁸ *Trouble Island*

Case Study: European Tax Havens

As the world's largest tax haven, Switzerland has become the financial hideout for the crème de la crème. Wealthy individuals and corporations discreetly flock to the European country to conceal their assets, which are protected by bank secrecy laws. Though "Switzerland has a corporate income tax, [the country] doesn't levy it on profits earned by subsidiaries overseas, making it possible for companies to avoid taxes."¹⁵⁹ Unfortunately for those attempting to evade economic regulations, the blanket of anonymity was ripped away as investigations were launched into the financial happenings of several European banks.

International pressure and legal action from the United States and other countries forced institutions in Switzerland, Austria, and Luxembourg to reconsider their bank secrecy policies. Credit Suisse, UBS AG, and Liechtenstein Global Trust Group (LGT) were among several financial institutions found guilty of tax evasion and are responsible for corrective action (i.e. paying billions of dollars in fines and disclosing the information of individuals and corporations with secret accounts).¹⁶⁰ It was reported "the world's largest wealth manager [UBS] hid as much as US \$17.9 billion for 19,000 Americans who didn't declare assets to the Internal Revenue Service."¹⁶¹ The financial institution paid out "US \$780 million, admit[ed] to fostering tax evasion and hand[ed] over details on 250 secret accounts...later disclos[ing] another 4,450 accounts."¹⁶² These huge tax revenue losses not only negatively affected U.S. multinationals, but likely led to significant losses in the developing world as well—a lose-lose for everyone.

This case study represents the importance of effective legal action and international pressure in decomposing existing tax havens. "The scandals surrounding the Swiss bank UBS AG, [Credit Suisse], and Liechtenstein Global Trust Group (LGT)...[show the need for] greater attention on international tax issues, primarily information reporting and individual evasion."¹⁶³ As depicted in the graphic below, the amount of money protected through regional tax havens is significant. What is perhaps more significant, however, is the amount of tax revenue being lost on these hidden assets and ultimately, unproductive for development.

¹⁵⁹ David Crawford and Jesse Drucker. "Swiss to Relax Bank Secrecy Laws." *Wall Street Journal*. 14 March 2009.

¹⁶⁰ David Voreacos, Klaus Willie, and Giles Broom. "Swiss banks said ready to pay billions, disclose customer names." *Bloomberg*. 24 October 2011.

¹⁶¹ David Voreacos and Carlyn Kolker. "UBS, LGT helped hide assets, evade taxes, Senate says (Update 2)." *Bloomberg*. 17 July 2008.

¹⁶² Ibid. Voreacos et al.

¹⁶³ Gravelle 4-5

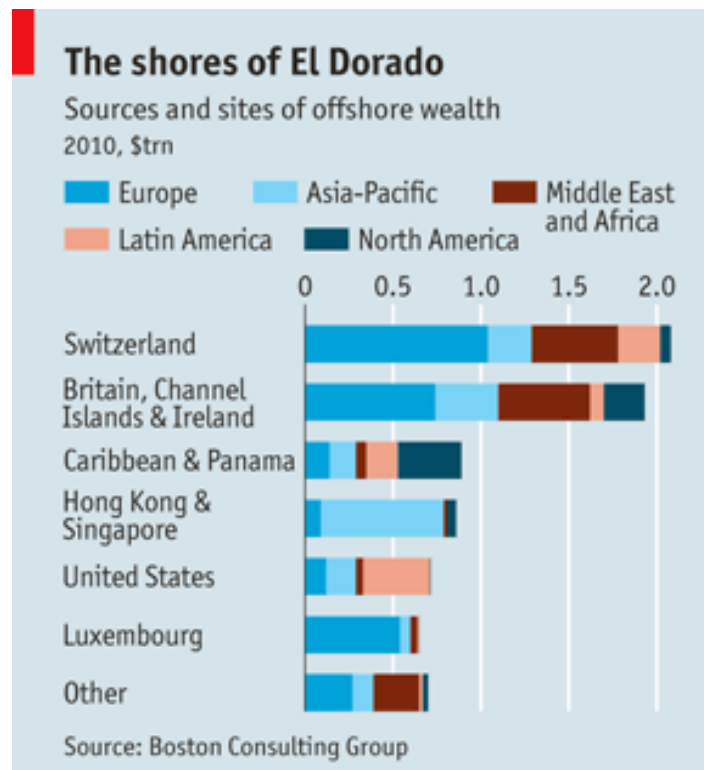


Figure 7, Sources and sites of offshore wealth¹⁶⁴

To overcome lost revenue and effectively breakdown tax havens, the Foreign Account Tax Compliance Act (FATCA) will redirect “burden on foreign financial institutions to look for and report American account-holders or face a 30 percent withholding tax on American investments.”¹⁶⁵ Though this will be a costly initiative for financial institutions, it is important to promote the exchange of information between governments. “This would spell the end of Swiss banking secrecy and be a fatal blow to other tax havens.”¹⁶⁶

Capital Flight

Capital flight, another important phenomenon related to tax evasion and avoidance, refers to the outflow of productive resources from developing countries. While there are several reasons for participating in capital flight, “the most common motivation appears to be a desire for the hidden accumulation of wealth.” Thus, capital flight is a catalyst for tax evasion and vice versa. It is estimated that between US \$500-800 billion is lost yearly as a result of capital flight, with tax havens playing an important role in the housing of funds. Capital flight most impacts the “six regions of developing countries—East Asia and the Pacific, Europe and Central Asia, Latin

¹⁶⁴ “Swiss banking secrecy: Don’t ask, won’t tell.” *The Economist*. 11 February 2012.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

America and the Caribbean, North Africa and the Middle East, South Asia, and Sub-Saharan Africa.”¹⁶⁷

Sun and shadows			
Tax havens: A user's guide			
Location	Population, 2010, '000	Known for	Critics say
Cayman Islands	56	World's leading domicile for hedge funds. Also popular with big banks	Lax regulation, essentially written by its clients. Crops up in most big financial scandals
Mauritius	1,299	Close links to India. Poaching business from more-pressured European havens	Allows Indians to disguise investment in their own country as tax-advantaged foreign capital
Jersey	93	Close links to the City of London. Impenetrable offshore trusts. No corporate/capital-gains tax	Claims that it is cleaning up its act. But Isle of Man is doing more
Luxembourg	507	Doggedly resisting European efforts to promote transparency. Second-largest mutual-fund market after US	The "Death Star" of financial secrecy at the heart of the EU
Switzerland	7,664	Defending tax evasion as a legitimate response to "excessive" tax elsewhere. Managing a third of the world's cross-border invested wealth	Concessions offered under international pressure to end bank secrecy are mostly window-dressing
Singapore	5,086	Aggressively marketing itself as a regional hub. Like Mauritius, snatching business from Western havens	Information-sharing agreements with other countries constrained by legally enforced safeguards

Sources: Tax Justice Network; UN Population; *The Economist*

Figure 6¹⁶⁸

The nature of capital flight devalues investments in the country itself. "Capital flight escapes governments' taxation thus depriving nations of revenues capable of contributing to fiscal deficits and constraining expenditures on social welfare programs, defense and infrastructure development." Capital flight is similar to the other policies discussed as it diverts money away from development, instead encouraging investment abroad. As a form of tax evasion, this is particularly devastating to home countries as "capital flight by the highest income class (an opportunity inaccessible to middle [and low income classes]) accelerates income disparities and aggravates social instability."

Case Study: FDI and Tax Havens

Foreign direct investment (FDI) is an interesting element of tax competition. Theoretically, FDI is supposed to encourage foreign investment as means of promoting social development and economic opportunities for low-income countries. The longer term and greater the investment, the more benefit it will bring to developing countries. However, in conjunction with tax competition, FDI has become less focused on long-term development and more focused on short-term gains or immediate action (like building infrastructure). Despite the volatile nature of these investments, low-income countries are desperate to attract an inflow of FDI to

¹⁶⁷ *Trouble Island*

¹⁶⁸ *Ibid.*

augment their development needs. To become more marketable, “countries are offering very favorable conditions to attract any investment.” As the practice of tax incentives became more universal, countries found themselves having to initiate further discounts resulting drastically in a race to the bottom. This level of competition is counterintuitive to financing for development—instead of competing for fair, market value prices, competition has driven countries to offer excessive tax incentives to attract FDI.¹⁶⁹

Opportunities for Change

This segment has provided an overview of several tax policies—namely tax evasion, avoidance and competition and the methods associated with them. The presence of these policies represents the necessity for tax reform to produce benchmarks and advocate for greater transparency and information exchange. Directly changing the nature of tax policy is the best option for increasing financial sovereignty of developing countries and promoting “greater revenue independence, lower income inequality and clearer channels of political representation.”¹⁷⁰ Reallocating tax revenues back to developing countries will effectively remove some of the economic power from the world’s wealthiest individuals and corporations and have “enormous implications for development in poorer countries. If used effectively, these funds could be used to finance health and education and improve the lives of the 1.2 billion people around the world who live in extreme poverty.”¹⁷¹

Thus, duty falls to the global watchdogs—governing bodies and organizations—to actively combat tax policy through legislation such as FATCA and Stop Haven Abuse Act, advocacy efforts on behalf of UN groups such as the NGO Committee on Financing for Development and the Financing for Development Office, as well as individual and corporate actors who support legal and fair economic activities.

Policy Recommendations

Upgrading the UN Tax Committee to the status of Intergovernmental Body will help ensure fair representation and accountability, and may allow for much of the billions of dollars lost each year in faulty tax policy to be recouped.

With the high level ECOSOC meeting being held on March 14, 2012, the NGO Committee on Financing for Development should target key states in its advocacy for an intergovernmental body. Having repeatedly expressed its commitment to upgrading the UN Tax Committee, the NGO Committee should mainly target the following states to most efficiently advance its advocacy, and should advocate on a sub-regional, regional, and international level to be most effective. Several additional policy recommendations are detailed below.

¹⁶⁹ Ruiz and Baranes

¹⁷⁰ Cobham 7

¹⁷¹ Oxfam. “Tax havens: Releasing the hidden billions for poverty eradication.” 2000, p. 6.

Key States

Based upon the data in the “The OECD, Group of 77, Group of 20, and European Union on Upgrading the UN Tax Committee” section, 16 key countries have been identified for potential intervention in this area: Belarus; Brazil; Chile; China; India; Indonesia; Kazakhstan; Liechtenstein; Mexico; Montenegro; Russia; Saudi Arabia; Singapore; South Africa; South Korea; and Switzerland.

Chile, the only country to be a member of both the OECD and the G77, has expressed support for strengthening and upgrading through both the G77 statement and its response to the FfD office.

Mexico and Switzerland, similarly, are the only two OECD member states to support strengthening the Committee (although they have not made statements regarding upgrading the Committee).

Singapore, as mentioned above, is a member of the G77, and therefore has expressed support for strengthening and upgrading the Committee through the G77’s statement. However, its written response to the FfD office vehemently opposes upgrading the Committee. Further analysis of this change of heart, as well as strategically targeted interventions, might be useful for the NGO Committee on Financing for Development.

Belarus, Kazakhstan, and Montenegro all submitted responses to the FfD documenting their international tax cooperation activities, but did not address the issue of strengthening and upgrading the UN Tax Committee. None of the three are OECD, EU, or G77 members, and therefore may be excellent targets of advocacy efforts. Liechtenstein, also lacking membership in the three main interest groups, expressed opposition to both strengthening and upgrading the UN Tax Committee.

South Africa and China, both members of the G20 and UN Tax Committee, expressed support for upgrading or strengthening the UN Tax Committee. Their positions within the G20 as powerful world economies place them advantageously as advocates for the UN Tax Committee’s mandate—both are non-members of the OECD as well, making them even more useful allies. Owning the second largest economy in the world, China has expressed its strong support for the upgrade of a the UN Tax committee upgrade by stating “Given the institutional deficiencies of the Committee, China agrees to reforming the institutional arrangement of the Committee, and upgrading it into an intergovernmental organization subordinate to ECOSOC to improve its authority and effectiveness in handling and coordinating international tax matters.”¹⁷² As Glenn DeSouza of Baker & McKenzie in China has said, “The OECD bus is driven by the wealthy nations. . . . China and India are passengers.”¹⁷³ Perhaps it is time to change that.

¹⁷² FfD, “Replies by Member States”

¹⁷³ Ashley

Along the same lines of reasoning, relationships with India, Indonesia, Saudi Arabia, and Brazil (all members of the G20 and G77 and non-OECD members) could be extremely advantageous to furthering the goals of the UN Tax Committee and gaining support for its upgrade. Russia and South Korea, although not members of the G77, are part of the G20 and not the OECD—making them equally strategic partners.

Regional Economic Communities

With eight Regional Economic Communities currently working and recognized by the African Union, the NGO Committee should establish strategic relationships with each regional economic community (especially those that include states mentioned above) to garner support for upgrading the UN Tax Committee. Specifically, the NGO Committee might establish relationships with the following growing communities: the Arab Maghreb Union (UMA), the Common Market for Eastern and Southern Africa (COMESA), The East African Community (EAC), The Economic Community of West African States (ECOWAS), the Economic and Monetary Community of Central Africa (ECCAS), and the Southern African Development Community (SADC).

Likewise, the Community of Latin American and Caribbean States (CELAC) is a promising regional bloc, free of hegemonic Western powers, and of increasing global importance. The Committee should work to establish contact and partnership with representatives of CELAC member states, with the aim of attending the next CELAC meeting, which will be held in January 2013 in Chile. The Committee should especially focus on targeting key states such as Chile, Venezuela, and Cuba who will be heading the next CELAC meeting, as well as Mexico. Please see Figure 8 on the next page for a visual summary of how the committee might like to best coordinate their efforts and to whom.

UNITED NATIONS INTERGOVERNMENTAL BODY ON TAXATION

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graph TD; A[UNITED NATIONS INTERGOVERNMENTAL BODY ON TAXATION] --- B[Bretton Woods Institutions]; A --- C[African Union]; A --- D[India]; A --- E[China]; A --- F[Community of Latin American & Caribbean States]; B --- B1[Transfer Pricing]; B --- B2[Arguments against politicization]; B --- B3[Information exchange]; C --- C1[UMA]; C --- C2[COMESA]; C --- C3[EAC]; C --- C4[ECCAS]; C --- C5[ECOWAS]; C --- C6[SADC South Africa]; D --- D1[Demand of automatic information exchange]; E --- E1[Second largest economy and strongly supports the creation of a UN Tax Body]; F --- F1[Brazil]; F --- F2[Chile]; F --- F3[Venezuela]; F --- F4[Cuba]; F --- F5[Mexico];
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Bretton Woods Institutions

- Transfer Pricing
- Arguments against politicization
- Information exchange

African Union

- UMA
- COMESA
- EAC
- ECCAS
- ECOWAS
- SADC (South Africa)

India

- Demand of automatic information exchange

China

- Second largest economy and strongly supports the creation of a UN Tax Body

Community of Latin American & Caribbean States

- Brazil
- Chile
- Venezuela
- Cuba
- Mexico

NGO Best Practices – Christian Aid and India

David Spencer optimistically believes that the “Tax Justice Network and other NGOs have provided the studies, and an important impetus for transparency in cross border financial transactions and automatic exchange of information.”¹⁷⁴ In an applicable, real-life example, the work done by Christian Aid to expose SABMiller’s tax evasion schemes has not only triggered cohesive (regional) government action (i.e., African Tax Administration Forum’s audit) but demonstrates tangible (activist) results which should instill confidence in others (i.e., civil society) striving to effect positive change around the world.

Furthermore, in the past few months, there have been strong indications that the geopolitical landscape may be slowly shifting from the OECD towards growing, influential developing countries - States more and more willing to challenge Western norms and institutions. Spencer cited the recent victory for developing countries at the UN Tax Committee’s Subcommittee meeting on transfer pricing in South Africa, where Brazil’s transfer pricing model defeated OECD opposition and was adopted into the UN Practical Manual on Transfer Pricing for Developing Countries; and in October 2011, at the meeting of the UN Tax Committee in Geneva, the OECD-favored Arm’s Length Principle came under strong fire from the likes of China, India and Brazil.

But perhaps most indicative of a changing tide in global influence, India openly called for the automatic exchange of information, a critical form of international tax cooperation that has only existed in a North-North context, late last year. In November 2011, Indian Prime Minister Manmohan Singh opined, “Tax evasion and illicit flows have seen the migration of tax bases in developing countries abroad and are serious problems.... the G20 countries should take the lead in agreeing to automatic exchange of tax related information with each other, irrespective of artificial distinctions such as past or present, for tax evasion or tax fraud, in the spirit of our London Summit that ‘the era of bank secrecy is over.’”¹⁷⁵

According to TJN, this is only the second time¹⁷⁶ a developing country has publicly clamored for automatic exchange of information on a global scale. TJN also suggests the Indian government may have been inspired to act by a TJN policy paper submitted to the Indians a month prior to Prime Minister’s Singh’s comments¹⁷⁷ (another example of successful NGO advocacy). More importantly, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, once an exclusive North-North agreement on exchange of information, was amended in December of last year, extending an invitation to all countries “to secure the benefits of the

¹⁷⁴ David Spencer. “Forecasting the Future,” *International Financial Law Review* (London).

¹⁷⁵ “We at G20 Must Tackle Tax Evasion: Manmohan Singh,” *The Economic Times*, 3 November 2011. http://articles.economictimes.indiatimes.com/2011-11-03/news/30355063_1_tax-havens-tax-evasion-evasion-and-illicit-flows.

¹⁷⁶ Tax Justice Network. “India Demands Automatic Exchange of Information,” 4 November 2011. <http://taxjustice.blogspot.com/2011/11/india-demands-automatic-information.html>.

¹⁷⁷ *Ibid.*

new cooperative tax environment, including a multilateral approach for the exchange of information.” India and developing countries are now being heard.

Exchange of Information Priorities

As discussed in the earlier section on exchange of information, developing countries might be best served by multilateral (as opposed to the currently dominant bilateral) treaties, which would allow them to unify to prevent OECD-dominated negotiations.

Exchange of information should be automatic, *not* upon request. Many OECD countries already exchange information automatically among themselves, but paradoxically claim that to do so with the developing world would impinge upon sovereignty. Requiring automatic exchange of information would allow developing countries into the secret club that OECD countries are already a part of.

Lastly, financial secrecy must be addressed. As discussed in the European case study in an earlier section on tax havens, domestic laws within tax haven countries enable banks to deny requests for tax information and encourage tax evasion.

An Alternative: Global Formulary Apportionment

As an alternative to the Arm’s Length Principle, global formulary apportionment (GFA) is advocated by NGOs¹⁷⁸ as a global solution to transfer mispricing. Put simply, GFA would take transfer pricing determination out of the hands of multinational corporations. It would allow countries to apply an agreed upon global standard, using “a method where a predetermined formula, including factors such as the value of all assets employed in the business, payroll paid, number of employees, turnover or expenses is used to apportion income between jurisdictions.”¹⁷⁹

Formulary apportionment is currently utilized by “states, provinces or dominions of a country to allocate profits for the purpose of their sub-national corporation taxes.”¹⁸⁰ Michael Lennard, much to the chagrin of GAF’s supporters, describes it as (currently) impractical, lacking consensus and more of a longer-term possibility.”

¹⁷⁸ Tax Justice Network. *Transfer Pricing*. http://www.taxjustice.net/cms/front_content.php?idcat=139.

¹⁷⁹ T.P. Ostwal. “Transfer Pricing in Developing Countries,” Tax Justice Network, p. 38. http://www.taxjustice.net/cms/upload/pdf/TP_in_developing_countries.pdf.

¹⁸⁰ *Ibid.* 40

Appendix

Table 1. Countries Listed on Various Tax Haven Lists

Caribbean/West Indies	Anguilla, Antigua and Barbuda, Aruba, Bahamas, Barbados, ^{d,e} British Virgin Islands, Cayman Islands, Dominica, Grenada, Montserrat, ^f Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines, Turks and Caicos, U.S. Virgin Islands ^{a,g}
Central America	Belize, ^e Costa Rica, ^{b,c} Panama ^e
Coast of East Asia	Hong Kong, ^{a,b,g} Macau, ^{a,b,g} Singapore ^{b,g}
Europe/Mediterranean	Andorra, ^g Channel Islands (Guernsey and Jersey), ^e Cyprus, ^e Gibraltar, Isle of Man, ^g Ireland, ^{a,b,g} Liechtenstein, Luxembourg, ^{a,b,g} Malta, ^f Monaco, ^f San Marino, ^{a,g} Switzerland ^{a,b}
Indian Ocean	Maldives, ^{a,d,g} Mauritius, ^{a,c,g} Seychelles ^{a,g}
Middle East	Bahrain, Jordan, ^{a,b,g} Lebanon ^{a,b,g}
North Atlantic	Bermuda ^e
Pacific, South Pacific	Cook Islands, Marshall Islands, ^a Samoa, Nauru, ^c Niue, ^{a,c} Tonga, ^{a,c,d,g} Vanuatu
West Africa	Liberia

Table 1. Source: Jean Gravelle. "Tax Havens: International Tax Avoidance and Evasion." *Report for Congress, Congressional Research Service*. 9 July 2009, p. 3.

Jurisdiction	COUNT RY CODE	OECD	FSF-IMF 2000	TJN 2005
1. Andorra	AD	■	■	■
2. Anguilla	AI	■	■	■
3. Antigua & Barbuda	AG	■	■	■
4. Aruba	AW	■	■	■
5. Australia	AU	□		
6. Austria	AT	□		
7. Bahamas	BS	■	■	■
8. Bahrain	BH	■	■	■
9. Barbados	BB	■	■	■
10. Belgium	BE	□		■
11. Belize	BZ	■	■	■
12. Bermuda	BM	■	■	■
13. British Virgin Islands	VG	■	■	■
14. Canada	CA	□		
15. Cayman Islands	KY	■	■	■
16. Cook Islands	CK	■	■	■
17. Costa Rica	CR		■	■
18. Cyprus	CY	■	■	■
19. Dominica	DM	■	■	■
20. Dubai	AE			■
21. Finland (Åland)	FI	□		
22. France	FR	□		
23. Germany (Frankfurt)	DE	□		■
24. Gibraltar	GI	■	■	■
25. Greece	GR	□		
26. Grenada	GD	■	■	■
27. Guernsey, Sark & Alderney	GG	■	■	■
28. Hong Kong	HK		■	■
29. Hungary	HU	□		■
30. Iceland	IS	□		■
31. Ireland	IE	□	■	■
32. Isle of Man	IM	■	■	■
33. Israel (Tel Aviv)	IL			■
34. Italy (Campione d'Italia & Trieste)	IT	□		■
35. Jersey	JE	■	■	■
36. Korea	KR	□		
37. Latvia	LV			
38. Lebanon	LB		■	■
39. Liberia	LR	■		■
40. Liechtenstein	LI	■	■	■
41. Luxembourg	LU	□	■	■
42. Macao	MO		■	■
43. Malaysia (Labuan)	MY		■	■
44. Maldives	MV	■		■
45. Malta	MT	■	■	■
46. Marshall Islands	MH	■	■	■

Jurisdiction	COUNTRY CODE	OECD	FSF-IMF 2000	TJN 2005
47. Mauritius	MU	■	■	■
48. Monaco	MC	■	■	■
49. Montserrat	MS	■	■	■
50. Nauru	NR	■	■	■
51. Netherlands	NL	□		■
52. Netherlands Antilles	AN	■	■	■
53. Niue	NU	■	■	■
54. Northern Mariana Islands	MP			■
55. Palau			■	
56. Panama	PA	■	■	■
57. Portugal (Madeira)	PT	□		■
58. Russia (Ingushetia)	RU			■
59. Saint Kitts & Nevis	KN	■	■	■
60. Saint Lucia	LC	■	■	■
61. Saint Vincent & the Grenadines	VC	■	■	■
62. Samoa	WS	■	■	■
63. San Marino	SM	■		
64. São Tomé e Príncipe	ST			■
65. Seychelles	SC	■	■	■
66. Singapore	SG		■	■
67. Somalia	SO			■
68. South Africa	ZA			■
69. Spain (Melilla)	ES	□		■
70. Sweden	SE	□		
71. Switzerland	CH	□	■	■
72. Taiwan (Taipei)	TW			■
73. Tonga	TO	■		■
74. Turkey (Istanbul)	TR	□		
75. Turkish Rep. of Northern Cyprus				■
76. Turks & Caicos Islands	TC	■	■	■
77. United Kingdom (City of London)	UK			■
78. Uruguay	UY			■
79. US Virgin Islands	VI	■		■
80. USA (New York)	US	□		■
81. Vanuatu	VU	■	■	■
■	Tax Haven OECD, TJN 2007 /Offshore Financial Centre FSF/IMF 2000			
□	OECD member country with potentially harmful preferential tax regime as distinguished by OECD 2000			
■	No longer regarded a tax haven according to the OECD 2006			

Table 2, The world's tax havens and offshore financial centers

Source: Lauren Booijink & Franciz Weyzig. "Identifying tax havens and offshore financial centers." *Tax Justice Network*, July 2007, p. 8-9.

POLICY	DEFINITION	RELEVANCE	COUNTRIES	IMPROVEMENTS
<i>Tax evasion</i>	Illegal and deliberate method to avoid individual or corporation's tax responsibility	In conjunction with tax avoidance, totals US \$100 billion in lost revenue	Global; even developed countries act as hubs for tax evasion (namely, the UK and USA)	Stricter regulations; improved transparency; substantive activity requirements
<i>Tax avoidance</i>	Legal and deliberate method to lower individual or corporation's tax responsibility	In conjunction with tax evasion, totals US \$100 billion in lost revenue	Global; even developed countries act as hubs for tax avoidance (namely, the UK and USA)	Stricter regulations; improved transparency; substantive activity requirements
<i>Tax havens</i>	Jurisdiction with: 1. No or nominal taxes 2. Lack of info exchange 3. Lack of transparency 4. No activity requirement	Presence of tax havens results in almost US \$250 billion lost revenue annually	See Tables 1-3, Graph 1	FATCA; Stop Haven Abuse Act; greater exchange of information across governing bodies and organizations
<i>Capital Flight</i>	Outflow of productive resources from developing to developed countries	Results in US \$500-800 billion lost in tax revenues; impacts developing countries exclusively	Impacts developing regions the most, particularly Latin America and Africa	Exchange and tax rate benchmarks, currency rate standards
<i>Tax Competition</i>	1. Utilization of fiscal incentives to attract investment (FDI) 2. Downward pressure from external parties to incentivize taxes	Tax incentives and downward pressure are changing the nature of FDI and negatively impacting financing for development. Leads to capital flight and promotes use of tax havens.	Impacts low-income countries the most, prevalent in Africa	Standardized corporate tax rates to avoid tax incentives

Table 3, Tax Policies at a Glance, student-generated table

Glossary

2010 Multi-Year Action Plan on Development: G20 plan referencing tax policies and recommendations

“Agreement on Exchange of Information on Tax Matters”: Promote international co-operation in tax matters through exchange of information.

Bretton Woods Institutions: International financial institutions (i.e., the World Bank and International Monetary Fund)

Center for Tax Policy and Administration (CTPA): Supports the OECD’s CFA

Committee on Fiscal Affairs (CFA): Conducts OECD’s tax work

Convention on Mutual Administrative Assistance in Tax Matters: Signed by every G20 country in November 2011

Economic and Social Council (ECOSOC): Serves as the central forum for discussing international economic and social issues, and for formulating policy recommendations addressed to Member States and the United Nations system.

ECOSOC Resolution 2010/33: Resolution recognizing need for financing for development

Foreign Direct Investment: The net inflows of investment to acquire a lasting management interest (10 percent or more of voting stock) in an enterprise operating in an economy other than that of the investor

Global Formulary Apportionment (GFA): Global standard to overcome transfer mispricing

Global Forum on Transparency and Exchange of Information for Tax Purposes: Multilateral framework within the OECD

Group of 8 (G8): Group of 8 countries (Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States)

Group of 20 (G20): Forum that brings together nineteen countries and the EU

Group of 77 (G77): Formed in 1964; 77 developing countries signed the “Joint Declaration of the Seventy-Seven Countries” at the UNCTAD

Informal Task Force on Tax and Development: Established in 2012; brings together OECD countries, developing countries, civil society and business organizations to provide developing countries with more tax resources and the technical assistance needed to improve tax collection and strengthen governance.

International Financial Institutions (IFIs): (see Bretton Woods Institutions)

International Monetary Fund (IMF): Offers advice on tax policy, revenue administration and legal drafting

Intergovernmental Body on Taxation: Proposed upgrade for the Committee

Intergovernmental Subsidiary Body of the ECOSOC: Conversion of the Committee to this would allow for enhanced international cooperation toward reducing skill, information and technological gaps in development countries and improving their participation

Joint Declaration of the Seventy-Seven Countries: Signed by the G77

Monterrey Consensus: Outcome of the 2002 Monterrey Conference, the United Nations International Conference on Financing for Development in Monterrey, Mexico

Monterrey Consensus: Highlights issues of global taxation and the need to bring about equality amongst developed and developing nations

Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Developed jointly by the Council of Europe and the OECD and opened for signature by the member states of both organizations on 25 January 1988.

Official Development Assistance (ODA): Term compiled by the Development Assistance Committee the Organization for Co-operation and Development to measure aid

OECD Transfer Pricing Guidelines: Provides guidance on transfer pricing application

Organization for Economic Cooperation and Development (OECD): 34-member group of developed countries

OECD Tax Database: Resource that outlines parameters of tax systems of each OECD country

SABMiller: UK-based brewing titan

Stop Haven Abuse Act: Bill in Congress to stop offshore havens

Tax Information Exchange Agreements (TIEA): Model agreement on exchange of information on tax matters, developed by the OECD Global Forum Working Group on Effective Exchange of Information

The Ad Hoc Group of Experts on Tax Treaties between Developed and Developing Countries: Established in 1968, now considered the UN Tax Committee

Task Force on Tax and Development: Established by OECD during 2010 Global Forum on Development

Transfer Pricing Manual: Details policy and administrative aspects of transfer pricing

Trust Fund for International Cooperation in Tax Matters (IFICTM): Established to supplement regular budget resources for the underfunded UN Tax Committee and its subcommittees

United Nations Conference on Trade and Development (UNCTAD): Promotes integration of developing countries into world economy

United Nations Department of Economic and Social Affairs (DESA): UN Department that promotes development for all

United Nations Development Program (UNDP): Provides advice on taxation within the framework of its program on democratic governance

United Nations Economic and Social Council (ECOSOC): UN Charter body established in 1946

United Nations Manual for Negotiation of Bilateral Tax Treaties: Training material explaining the process and purpose of negotiation of bilateral tax treaties

United Nations Tax Committee: Committee of Experts on International Cooperation in Tax Matters

World Bank: Offers technical assistance in taxation to its members

Acronyms

CATA Commonwealth Association of Tax Administrators

CFA Committee on Fiscal Affairs

CIAT Inter-American Center of Tax Administrators

CTPA Center for Tax Policy and Administration

ECOSOC United Nations Economic and Social Council

EU European Union

FACTA Foreign Account Tax Compliance

FfD Financing for Development

FDI Foreign Direct Investment

G20 Group of 20

G77 Group of 77

GFA Global Formulary Apportionment

IMF International Monetary Fund

ICC International Chamber of Commerce

OECD Model OECD Model Tax Convention

OECD Organization for Economic Cooperation and Development

TIEA Tax Information Exchange Agreements

TFICTM Trust Fund for International Cooperation in Tax Matters

TJN Tax Justice Network

UNDP United Nations Development Program

UNDESA United Nations Department of Economic and Social Affairs

UN Tax Model United Nations Model Double Taxation Convention between Development and Developing Countries

WB World Bank

WTO World Trade Organization

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