Recent Developments at the United Nations on International Tax Cooperation

TOWARDS FAIRER AND MORE TRANSPARENT GLOBAL TAX POLICIES?

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Introduction and Context

WHO SHOULD WRITE THE RULES ON INTERNATIONAL TAX COOPERATION?

OECD VS. UN

Recent Developments at the United Nations on International Tax Cooperation

Developing Countries' Concerns

Developing countries emphasize the need to address inequities in taxing rights, advocate for souce-based taxation, and to increase participation in tax agenda-setting.

Shift in Global Tax Governance

African Group leads the shift from OECD-led norms to a UN framework that reflects changing geopolitical and economic dynamics.

UN Role

The UN Tax Committee and Intergovernmental Negotiating Committee are the drivers of the framework for a new ‘fairer’ and ‘more transparent’ way of international tax cooperation.

UN Framework Negotiations

Negotiations focus on creating a UN Framework Convention for international tax cooperation promoting inclusivity.

Belgium and EU Role

Belgium and the EU emphasize balancing inclusivity with legal certainty in international tax rules.

Recent Developments at the United Nations on International Tax Cooperation

Loss of domestic resources

Developing countries are losing tax revenues

Problems to achieve the sustainable development goals

Challenges of the digitalized and globalized economy

The way business is conducted has changed radically in the last two decades

Shift in global governance power

Role of the ‘major emerging economies’

Dissatisfaction with the “Two-Pillar-solution”

Why UN Tax Cooperation Matters

- Global Tax Architecture Challenges
    - Clear demand for inclusivity from the Global South
    - Perceived imbalance in OECD processes
- Political legitimacy of the UN
- Legal uncertainty is increasing
  - Reforming tax rules could reshape international norms governing multinational enterprises and cross-border activities.

Committee of Experts on International Cooperation in Tax matters

AKA UN TAX COMMITTEE

UN Tax Committee Overview

Committee Composition and Role

Composed of 25 independent experts, serving in their personal capacity, the Committee shapes international tax policies that advance countries in their social, environmental, and economic development objectives and helps to successfully implement them

Mandate and Outputs

Develops guidance, standards, and tools like the UN Model Double Taxation Convention to support tax cooperation and developing countries. Supports countries in navigating complex policy trade-offs

Key Areas of Focus

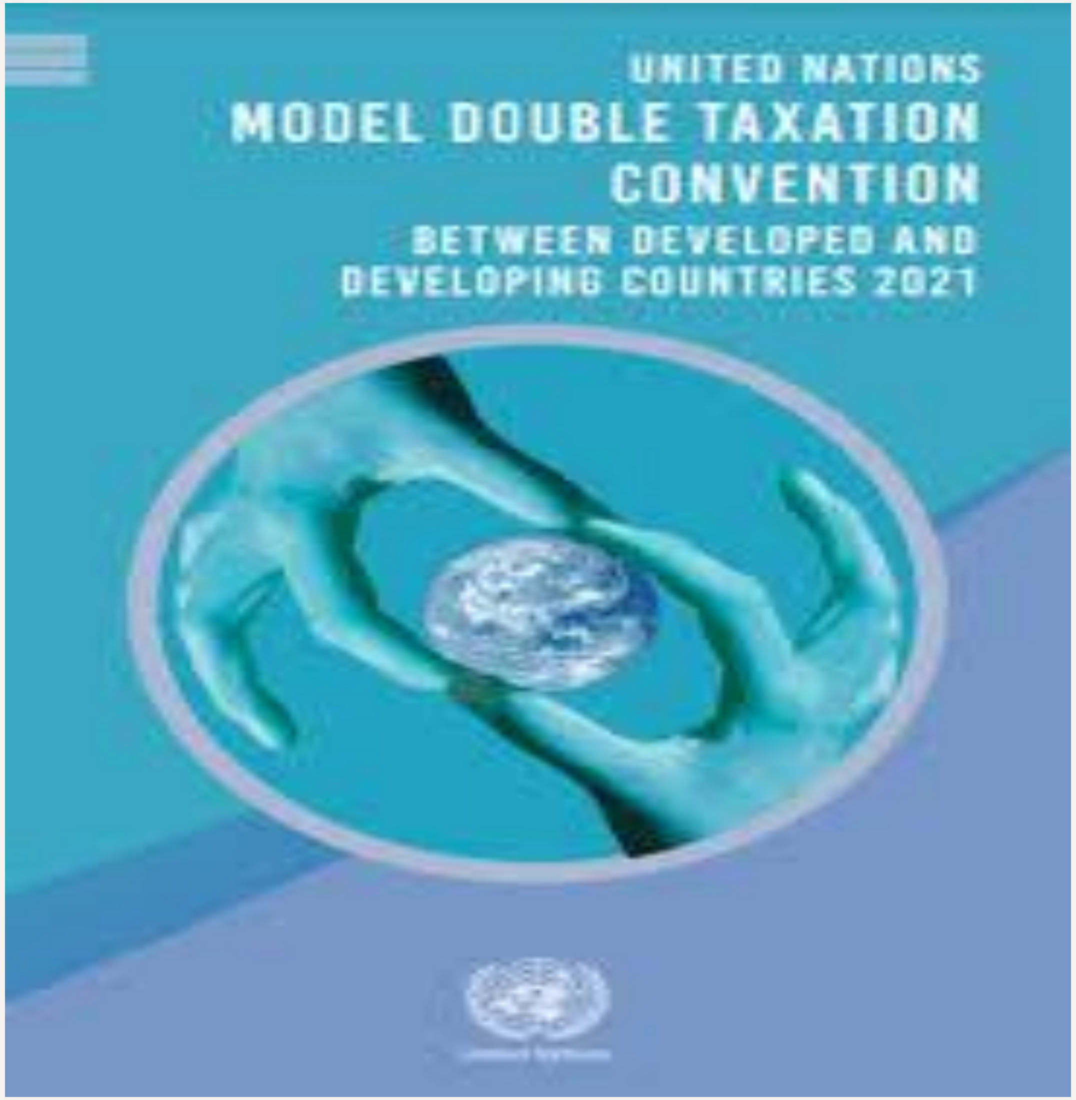
Addresses transfer pricing, digital economy taxation, environmental taxes, and dispute resolution to adapt to modern challenges.

Challenges and Influence

Though non-binding, the Committee's inclusive approach and practical solutions increase its influence in global tax governance.

Emphasis on developing countries is evolving

Development of the UN Model Double Taxation Convention



- Idea of promoting greater inflows of foreign investment
- Protection of taxpayers against double taxation
- Element of legal and fiscal certainty
- Counterpoint to the OECD model
- Latest Update 2025:
  - evolving objectives
  - link with the INC

2025 update of the UN Model Double Taxation Convention

- Subject-to-tax rule (article 1)
  - A Source State is not required to limit the tax it levies on income arising in its jurisdiction under the tax treaty if the Residence State only subjects that same income to a low level of taxation
- Fees for services (article 12AA)
  - New article on services replaces article 12A (fees for technical services) and article 14 (independent personal services). Applies to PAYMENTS for ANY service and allows the Source State to subject the payment to a GROSS withholding tax if the payments arise in the State.
  - Influence on trade and investment?

2025 update of the UN Model Double Taxation Convention

- International shipping (Article 8 – Alternative A)
  - Alternative A now incorporates the old Alternative B with the source taxation alternative, and source country taxing rights have been significantly expanded, also towards air transport. The old alternative A, in line with the OECD's Model's Rule of exclusive residence taxation in article 8, has become alternative B in the new update.
- Extractive industries (article 5A)
  - Provision on income from the exploration for, or exploitation of, natural resources. If such activities are carried out in the Source State for at least 30 days, they give rise to a deemed PE and the profits attributable to the PE can be taxed in the Source State.
- Payments for the use of software (article 12):
  - The definition of royalties has been expanded to include payments for software, including payments that do not relate to the use of copyright in the software.

2025 update of the UN Model Double Taxation Convention

- Insurance premiums (Article 12C)
  - Under new article 12 C insurance premiums arising in a source State and paid to a resident of another State may be subject to a withholding tax on the gross amount of the premiums at a rate to be determined through bilateral negotiations. Insurance premiums arise in the source State if the payer is a resident of the State.
- Dispute resolution
  - New extended provision of article 25 provides that taxation measures in line with the tax treaty are considered not to breach any other treaty, and that disputes regarding taxation measures shall not be settled using dispute resolution in such treaties, unless both tax treaty countries agree otherwise.

UN Tax Committee – new membership

- Expanding Focus Areas
  - The Committee focuses on digital taxation, AI in tax administration, wealth and environmental taxation, and capacity building.
- Inclusive Membership Cycle
  - The 2025–2029 membership cycle emphasizes regional and gender balance to enhance inclusivity in the Committee.
- Role of Subcommittees
  - Subcommittees advance technical work on e.g. transfer pricing, digital economy taxation, dispute avoidance and resolution, wealth and solidarity taxes, extractive industries, environmental taxation

Subcommittee on taxation of the digitalized and globalized economy

- 3 Co-coordinators
- Preparing 2 important outcomes:
    - A focused evaluation report addressing the following issues in relation to 2025 United Nations Model Tax Convention (“the Model”):The treatment of services permanent establishments in the Model; and whether services related to emerging technologies (including but not limited to artificial intelligence, machine learning and the internet of things) are adequately addressed by the Model, including Articles 12AA and 12B.
    - .
    - A practical implementation guide designed to assist countries in applying the services-related provisions of the 2025 Model effectively, including, but not limited to, coverage of treaty negotiation of relevant provisions, domestic law implementation, and administrative aspects.

Intergovernmental negotiating committee for UN Framework Convention on international tax cooperation

UN Resolutions and Roadmap to a Framework Convention

- Initiation of Discussions
  - Resolution 77/244 (2022) began intergovernmental talks to strengthen inclusive and effective international tax cooperation.
- Formation of Negotiating Committees
  - Resolution 78/230 (2023) established an 'ad hoc' committee to draft terms of reference for the tax framework convention.
- Adoption and Mandate
  - Resolution 79/235 (2024) adopted ToR and created the Intergovernmental Negotiating Committee to draft the Framework Convention.
- Global Tax Governance Principles
  - Key principles include tax sovereignty, 'fair' taxing rights, and aligning tax policy with sustainable development goals.

Intergovernmental Negotiating Committee (INC)

- Mandate and Purpose
    - INC drafts the UN Framework Convention and on international tax cooperation and two early protocols.
    - First protocol on "taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy"
    - Second protocol on "prevention and resolution of tax disputes"
- Organizational Structure
    - INC is Member State-led with three workstreams focusing on framework, services protocol, and dispute resolution.
- Meeting Locations and Frequency
    - INC meets multiple times yearly in New York and in Nairobi for substantive sessions.
- Challenges and Participation
    - Time pressure and consensus-building are key challenges; participation includes governments, organizations, and academia.

Negotiation Dynamics and Key Issues

Key Themes in INC Negotiations

Fair Tax Allocation (article 5)

Negotiations focus on allocating taxing rights fairly between source and residence countries to support developing economies.

All jurisdictions in which value is created, markets are located, revenues are generated or economic activities take place have a right to tax a portion of the income generated from such activities

Obligation to renegotiate existing bilateral tax treaties?

Relation to article 15 (Relation with other agreements, instruments and domestic law)

Capacity Building Support

Emphasis on technical assistance to help developing countries implement effective tax policies.

Taxation of Digital Services (protocol 1)

Addressing challenges of taxing cross-border and digital services beyond traditional physical presence rules.

Dispute Resolution Mechanisms

Focus on mutual agreement procedures and arbitration frameworks to prevent and resolve tax disputes.

Geopolitical Shifts in Tax Governance: a look into the future

UN Tax Governance Dynamics

Coalitions like BRICS, G77, and African Group advocate for tax sovereignty, inclusivity, and equity in UN frameworks.

UN role will continue to grow on international tax cooperation but no immediate replacement of OECD

Hybrid system likely

Complex Global Bargaining

Internal differences among coalitions showcase the complexity of global tax negotiations and treaty stances.

Business Implications

Understanding geopolitical tax shifts is essential for businesses navigating evolving international tax rules.

Major structural changes possible

Strategic monitoring remains essential