The United Nations: a new framework for international tax cooperation

International Tax



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Discussions are underway to develop a new framework for international tax cooperation at the United Nations.

Key Points

What is the issue?

At the end of April and the beginning of May, discussions took place at the UN Headquarters in New York on the terms of reference for a new United Nations Framework Convention on International Tax Cooperation.

What does it mean for me?

There is general agreement that UN discussions should proceed by seeking a consensus. However, this may prove elusive on many issues. In those

circumstances, the question arises as to how differences of opinion will ultimately be resolved by voting.

What can I take away?

It is interesting to speculate what the UK under a new government may decide to do, as it may not wish to be seen to disengage from a UN process. The next six months may prove crucial in the future development of the international tax regime.

This may not have hit international headlines alongside the UK election and the trials of Donald Trump, but for those interested in the world of international taxation there are some interesting and new developments in connection with the institutional structure of international tax cooperation. At the end of April and the beginning of May, discussions took place at the UN Headquarters in New York on the terms of reference for a new United Nations Framework Convention on International Tax Cooperation. The topic of this UN meeting was the subject of a workshop held in Oxford shortly before the New York meeting, which was sponsored, in part, by the CIOT.

The background

The short-term background to the meeting in New York starts in November 2022. The UN General Assembly voted to pass a resolution on a possible new form for international tax cooperation at the UN. That resolution asked the UN Secretary-General António Guterres to prepare a report setting out options for the UN in this field.

The report outlined three options:

- a legally binding international convention;
- a framework convention; and
- a loose arrangement for international dialogue.

In November 2023, the General Assembly, by a majority, voted for the second option and for the establishment of an Ad Hoc Committee made up of representatives from 20 governments to draft the terms of reference for such a framework convention. This was the subject for the initial discussion in New York in April and May and will

involve the finalisation of the text of the terms of reference at a further meeting to be held in July and August this year.

The historical background can be traced much further back. Most of the current structure of rules of international taxation were developed by government representatives at the League of Nations between the two World Wars. After the Second World War, the League was replaced by the United Nations which, for a short period, continued that work through its Fiscal Commission. However, in a decision which has proved fateful for the subsequent history of international taxation, the UN decided to wind up that Fiscal Commission in 1954.

In the gap that was created, the body that became the OECD (the Organisation for Economic Cooperation and Development) began to undertake work in this field and became, eventually, the leading intergovernmental organisation. The OECD is not the only intergovernmental organisation concerned with international tax: the International Monetary Fund and the World Bank also have activities in this area, as well as the United Nations itself, which set up the UN Committee of Experts on International Cooperation in Tax Matters in the 1960s. However, it is the OECD which dominated much of the work on the development of international tax treaties, transfer pricing and more recently the base erosion and profit shifting (BEPS) projects, including the Pillar 1 and Pillar 2 solutions.

A call for fully inclusive participation

The difficulty with leadership by the OECD has always been that it is a membership organisation, consisting of the richest and most developed economies in the world. It is also essentially a consensus organisation, which means that it can only move forward if there is effective agreement at least involving all its major members.

For some time, there has been a growing concern that the rules of international taxation were being developed by a small group of economically developed countries, and the interests of the rest of the world, particularly developing nations, were not fully represented. In part to address this, in 2015 the OECD itself established the Inclusive Framework on the BEPS project. However, participation in that project has not attracted all countries, and those that have agreed to participate in the Inclusive Framework have often felt – it is reported – that their voices are still not adequately heard in a body that is still dominated by the

traditional OECD member countries.

This has led to a growing call for the establishment of a fully inclusive structure for dialogue and international cooperation at the United Nations level. The General Assembly resolutions in 2022 and 2023 reflected the fact that calls for such a new institutional structure were now supported by a substantial majority of countries.

The framework convention

The legal format that has been selected, it would appear, to be used as a basis for establishing the new cooperation at the UN is that of a framework convention. The nearest equivalent appears to be that of the UN Framework Convention on Climate Change.

The decision to use a framework convention – supported by some non-governmental organisations, in particular – has both advantages and disadvantages.

The advantages

The structure of the framework convention offers a very simple pattern which can be adjusted to operate in the tax field. Thus, the framework convention would contain:

- a preamble;
- a statement of objectives;
- some principles;
- some high level commitments;
- provisions for the organisational structure of the UN work (including any subsidiary bodies);
- the establishment of a secretariat and a Conference of Parties (CoP) as the main institution; and
- other standard provisions expected in a multilateral convention.

Detailed rules relating to particular areas of international taxation would then be negotiated and agreed through this structure and appended to the framework convention in the form of protocols.

The disadvantages

The problematical aspects of using the format of a framework convention are, however, that exactly these issues – objective, principles, commitments, etc. – will have to be negotiated between the UN member countries. Those countries will then have to decide whether or not they wish to sign up to this multilateral convention.

At that point in time, the whole project might collapse if, for example, a substantial number of countries decide that they do not wish to join the multilateral convention. The United States, for example, has a history of not participating in multilateral conventions, and any ratification by the United States requires support of two thirds of the Senate, which has proved a major problem for other multilateral conventions in the international tax field.

Some observers think that it was a major mistake to assume that the pattern that had been used for climate change could also be used for international tax cooperation, and that an alternative approach might have been easier and more effective. For example, the UN previously had a Fiscal Commission between 1946 and 1954. Reestablishing such a Commission would simply involve the support of a majority of members of the UN Economic and Social Council, and its work on developing new rules of international taxation could have begun already. By contrast, it seems likely to be 2025 or later before a framework convention is capable of being signed, ratified and enter into force.

Negotiating the terms of reference

The discussions at the UN in April and May (and even the preceding workshop at Oxford University) gave some indication of the difficulties that lie ahead in agreeing even just the terms of reference for the framework convention.

On virtually every issue that was discussed at the meetings in New York, the world was split into two camps. Broadly, the Global South expect a major role for the new UN institutions in rewriting international tax rules, particularly with a view to giving greater taxing rights to the developing world. On the other hand, a block of countries that includes the main OECD and EU countries (and the UK as an OECD member country) are more cautious and wish to ensure that any new developments take into account the existing framework of international tax rules and the work that is currently going on at the OECD (including the work of the Inclusive Framework).

On virtually every issue that was discussed at the New York meeting, country delegates that spoke fell into one of these two camps. It will clearly be a very difficult process – if it can be achieved at all – to get agreement on even the terms of reference given these different viewpoints. A couple of examples are set out below.

Capacity building and domestic resource mobilisation

One might have thought that on the issues of capacity building and domestic resource mobilisation there would be universal agreement. However, even on topics such as these, some spokesmen for the Global South emphasised that an inequitable international tax system which gave them insufficient taxing rights could not form the basis for adequate domestic resource mobilisation. They claimed that missions from developed countries to assist in capacity building have sometimes become a demand for the adoption of international tax rules that do not respect the sovereignty or the needs of developing countries.

The sequence of negotiations

Even on the question of the sequence between the negotiation of the main framework convention and the negotiation of the substantive protocols there are strong differences.

Some of the delegates with experience at the OECD took the view that the logical sequence was to agree the framework convention first (perhaps partly so the countries could see what they were signing up to) and then for research to be carried out and solutions developed which could be encapsulated in protocols. On the other hand, spokesmen from the Global South emphasised that they could not wait any longer for the development of rules in the protocols. They also felt that a number of initial protocols – intended to deal with particularly urgent problems (such as tax-related illicit financial flows and the taxation of cross-border services in the globalised and digitalised economy) – could not wait and should be developed at the same time as the main framework convention.

Voting

One of the critical issues on which strongly differing views were expressed concerns voting in the UN process. As clarified by one delegate, voting relates to three

separate issues:

- First, there will be voting, if necessary, on the terms of reference.
- Second, there will be voting, again if necessary, on the terms of the framework convention.
- Finally, when it comes to the adoption of particular substantive rules in protocols, there will be voting, if necessary, in the Conference of Parties or other institutional structures that are created for the development of substantive rules.

The words ‘if necessary’ are included because there is general agreement that, ideally, the UN discussions should proceed by seeking a consensus – that is a solution on which all countries are agreed. However, a consensus may prove elusive on many issues. In those circumstances, the question arises as to how differences of opinion will ultimately be resolved by voting.

The fallback position, emphasised by delegates from the Global South, is the normal rule of the UN by which a simple majority is required. Given the current positions being adopted by countries, voting by simple majority would ensure that the Global South triumphed in virtually every matter on which there was disagreement. Not surprisingly, therefore, the OECD/EU countries prefer a departure from simple majority, possibly by proceeding only through consensus (as is the position ultimately in the OECD) or by some form of special majority required for certain decisions.

This is, of course, a critical issue. By having adopted the format of a framework convention, which countries will have to decide whether or not sign and ratify, this choice of format creates a possibility that a large group of countries will not join the framework convention if they consider it is not in their interests to do so.

The prospect that they will continuously be outvoted by the Global South countries may well lead to a position where the rest of the world decides that they cannot sign up to a convention where they will be continuously outvoted. If the vast majority of countries is to buy in to this framework convention, then some form of compromise will be necessary, particularly on this issue of decision taking.

Looking forwards

A further round of discussions is to take place at the UN Headquarters in New York in July and August. That meeting is tasked with drafting the terms of reference for the framework convention. Whether or not agreement can be reached on the terms of reference will be a good indicator as to whether this project has realistic chances of success or whether some alternative, Plan B, is required.

If consensus cannot be found on the terms of reference, and voting becomes necessary on key points of difference, and the Global South outvotes the Global North, this will no doubt be followed by a battle and further votes at the General Assembly over the terms of reference. If the Global North is again outvoted, the issue will arise as to whether those countries continue to participate in the drafting of the framework convention itself on the basis of terms of reference against which they have voted.

It would be a major step to refuse to participate further in discussions on international cooperation at the UN. However, is there any point in remaining engaged in discussions that will require substantial resources of personnel when there is strong disagreement with the whole direction this project is taking? Some countries – including some northern European countries – may wish to remain engaged in any event; other countries, such as the US, may become disengaged.

It is interesting to speculate what the UK under a new government may decide to do in these circumstances (if they arise). The UK has traditionally been a strong supporter of the OECD process, but a new government may not wish to be seen to disengage from a UN process.

The next six months may prove crucial in the future development of the international tax regime. There are potentially monumental changes underway in the structure of international tax cooperation, but it is far from certain exactly how successful the UN process will prove to be and exactly what that structure will look like in a few years' time.

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