

Tax Foundation Response to UN Request for Public Input on a Framework Convention on International Tax Cooperation

By Daniel Bunn and Cristina Enache

The Tax Foundation appreciates the opportunity to provide public input on the report being prepared by the ad hoc intergovernmental committee in connection to the resolution adopted by the General Assembly on 22 December 2023 on the “Promotion of inclusive and effective tax cooperation at the United Nations.”¹

We want to point out four key aspects of cross-border tax policy that policymakers should consider.

First, sound tax policy, as we see it, should be based on the principles of simplicity, stability, transparency, and neutrality.

Successful international tax coordination requires shared principles and a shared vision of outcomes. One failure of the tax coordination process at the Organisation for Economic Co-operation and Development (OECD) during its two-pillar approach has been the lack of consistent economic and policy principles. One academic frequently remarks that the OECD project works on Marxist principles, just not Karl Marx's. It was Groucho Marx who said, “those are my principles, and, if you don't like them, I have others.”²

Inconsistency of principles is not a sound approach.

Second, tax cooperation efforts should recognize the importance of maintaining open lanes for cross-border trade and investment, especially given the frailty of cross-border supply chains witnessed in recent years.

Tax policy decisions can either enhance or suppress economic growth created by cross-border investment. As the 2023 World Investment Report clearly identifies, the outlook for global foreign direct investment (FDI) is weak; global FDI fell by 12 percent in 2022.³ The decline was felt mostly in the developed and the least developed economies. Among developing countries, the rebound in FDI following the pandemic stalled out in 2022. The report also finds that developing countries are attracting less than one-third of the investment they need in the renewable energy sector. Additionally, the 2022 report analyzed the potential impact of the global minimum tax rules on FDI and found, “a potential downward effect on global FDI at about -2 percent.”⁴

1 United Nations, “General Assembly Resolution on ‘Promotion of Inclusive and Effective Tax Cooperation at the United Nations,’” Dec. 22, 2023, <https://financing.desa.un.org/document/promotion-inclusive-and-effective-international-tax-cooperation-united-nations-ares78230>.

2 Michael Devereux, at the International Tax Policy Forum and Institute of International Economic Law Conference at Georgetown University Law Center, January 12, 2023.

3 UNCTAD, *World Investment Report 2023*, July 5, 2023, <https://unctad.org/publication/world-investment-report-2023>.

4 UNCTAD, “Chapter 3 – The Impact of a Global Minimum Tax on FDI,” *World Investment Report 2022*, June 9, 2022, <https://worldinvestmentreport.unctad.org/world-investment-report-2022/chapter-3-the-impact-of-a-global-minimum-tax-on-fdi/>.

In fact, corporate income tax is particularly distortive because business investments are mobile across borders, especially in the long term.⁵ The harms of corporate taxation can be mitigated by ensuring that capital investments are fully deductible and business losses can be used to offset profits without limit. Despite this, it is still an inferior source of tax revenue from an economic efficiency perspective.⁶

Third, policymakers should not ignore the fundamental challenge of coordinating policies among countries with very different tax systems.

Countries vary widely in the extent to which they use corporate income taxes to raise revenue. Some rely on them a lot, others only a little (opting instead for more economically efficient methods of taxation). For example, in 2019 (prior to the pandemic), Nigeria raised 45.9 percent of its total tax revenue from corporate income taxes while Brazil raised just 8.8 percent.⁷

Any international tax cooperation effort needs to respect the diverse and divergent policy paths that countries take and avoid designing blanket proposals that undermine sound systems of taxation.

A consensus-based approach is necessary to address the concerns of more than a simple majority of jurisdictions. The chaotic nature of corporate tax rules needs consensus to move toward stability.

Finally, the UN's efforts to coordinate corporate tax policy should reduce tax uncertainty, not add to it.

The current state of cross-border tax and multilateral negotiations is borderline chaos. A decade ago, the OECD launched the Base Erosion and Profit Shifting Project at the behest of the G20. Since then, dozens of countries have changed their tax rules for multinationals by adding various anti-abuse rules. Rather than evaluating the performance of those new rules, countries recently began to invest in new tools to tax multinationals in the cross-border arena including equalization levies, digital services taxes, digital permanent establishment rules, and the policies envisaged by the two-pillar project.

New UN efforts for effective tax cooperation should avoid duplicating ongoing efforts at the OECD or putting forward contrary proposals that will create additional uncertainty for taxpayers. Otherwise, there will be an increased risk of double taxation driven by contradictory standards for taxing the profits of multinationals.

Therefore, the UN should only engage in international tax policy coordination if it can effectively reduce tax uncertainties. Additionally, the one-country-one-vote approach typical at the UN could lead to more fragmentation and a difficult-to-predict cross-border tax policy landscape. The UN should focus on consensus-based solutions while respecting the principles outlined above and supporting cross-border trade and investment.

5 Åsa Johansson, Christopher Heady, Jens Matthias Arnold, Bert Brys, and Laura Vartia, "Taxation and Economic Growth," OECD Economics Department Working Papers, July 3, 2008, https://www.oecd-ilibrary.org/economics/taxation-and-economic-growth_241216205486.

6 Cristina Enache, "Capital Cost Recovery across the OECD 2023," Tax Foundation, Apr. 4, 2023, <https://taxfoundation.org/data/all/global/capital-allowances-cost-recovery-2023/>; and Elke Asen, "Net Operating Loss Policies in the OECD," Tax Foundation, Jun. 23, 2021, <https://taxfoundation.org/data/all/global/net-operating-loss-policies-oecd/#Design>.

7 OECD, Corporate Tax Revenues, last updated Jul. 26, 2023, https://stats.oecd.org/Index.aspx?DataSetCode=CTS_REV.

This should not be read as an endorsement of the approach the OECD has taken with its proposals. Rather, we see the outcomes at the OECD as clearly violating the principles that we follow as an organization when evaluating tax policies. But adding yet another layer of international taxation on top of the work at the OECD and in national capitals would make the system even more complex.

The global economy needs policymakers who are invested in seeing growth recover and avoiding unnecessary barriers to cross-border trade and investment. The challenges countries face will become even more difficult to solve in a stagnant global economy. We strongly encourage leaders at the UN to promote principled, pro-growth policies in the context of future multilateral efforts.