Developing Countries' Role in International Tax Cooperation

Working Paper commissioned by the G-24 as part of its work program on how developing countries can effectively tap into international tax cooperation

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Introductory note

International tax cooperation has become a high-profile and controversial area in recent years, the product of media scandals about corporate tax avoidance, and disagreements between countries about how best (and perhaps how much) to tackle it. This document sets out brief background on a number of these international tax areas of interest to developing countries, where the G-24 may have a role to play in ensuring that these views are represented in global discussions. It is intended as a scoping document to aid consultations with G-24 members and other stakeholders.

Section 1 will give some background explaining the importance of taxation to G-24 members, and their success at raising revenue up to now. It also explains the general nature of international tax cooperation. The following four sections outline the strengths and weaknesses of international tax cooperation from a developing country perspective, in three different areas. Section 2 covers tax planning, avoidance and evasion, where the OECD and G-20 have led considerable progress in recent years, but there are some questions about the relevance of the steps they have taken to developing countries. In section 3, the paper considers concerns about the distribution of the tax base from multinational companies and other cross-border economic activity, which are not included in some of the initiatives considered by section 2. Section 4 focuses on tax competition, where progress has arguably been less successful. In section 5, attention turns to the institutional arrangements for international tax cooperation, where developing countries could more effectively engage on an equal footing to influence international tax rule reforms. Finally, section 6 offers some thoughts on the potential role that the G-24 could play in advocating reforms to international taxation.

1. Background

1.1. Importance of tax revenues for developing countries

As is typical across developing countries, the extent of tax mobilization varies considerably between G-24 members, from around ten percent of gross domestic product (GDP) in the Democratic Republic of Congo to more than 30 percent in Algeria and South Africa, using the most recent data compiled by the International Centre for Tax and Development (table 1).[2] But the average G-24 value of 21 percent is much lower than the average across OECD member states, which was 31 percent,[3] so there is work to do to improve public revenues across developing countries. Taxes on companies constitute around 15 percent of G-24 countries' tax revenues. While this figure does not sound huge, it is higher than the average for OECD countries, which is closer to ten percent.[4] UNCTAD estimates that, across all developing countries, foreign affiliates of multinational companies contributed ten percent of government revenues, of which corporate tax payments amount to around a third, US$215 billion in 2012.[5]

[2] Prichard W, Cobham A and Goodall A (2014) The ICTD Government Revenue Dataset. ICTD Working Paper 19, Brighton: International Centre for Tax and Development.
[3] *ibid*
[4] *ibid*
[5] UNCTAD (2015) World investment report 2015. New York: United Nations. Page 185

In some countries multinational companies contribute a much larger share of tax revenue, especially where the extractive industry is large. It is common for oil-rich countries to raise the majority of revenue from the oil industry, while for mining countries this amount may often be over 20 percent.[6] This revenue comes from a combination of royalties, taxes, and the revenue from any state participation in the industry. While the extractive industries have their own specific characteristics and challenges, many of the pertinent international tax issues discussed in this paper – transfer pricing, tax treaty shopping and tax transparency – are highly relevant to the extractive industries.[7]

Aside from the taxation of multinational companies, the other main aspect of international tax cooperation is illicit financial flows resulting from tax evasion by domestic firms and high net worth individuals. Beyond the direct revenue cost, these practices have indirect implications because they may be associated with corrupt practices such as bribery of tax officials, and they may damage tax morale, reducing other citizens' willingness to comply with tax laws and their support for higher taxes.[8]

Table 1: tax statistics of G-24 members

Average values between 2003-2012	Tax as a share of GDP (%)	Taxes on companies as a share of total tax (%)
Algeria	39.6	
Argentina		
Brazil	28.3	11.8
Colombia	26.5	
DR Congo	9.6	12.6
Cote d'Ivoire	16.2	6.4
Egypt	21.8	23.4
Ethiopia	13.8	14.0
Gabon	27.7	6.9
Ghana	14.6	14.6
Guatemala	11.5	22.5
India	19.4	14.2
Iran	23.6	8.6
Lebanon	21.0	
Mexico	16.2	10.9
Nigeria	19.3	6.0
Pakistan	12.9	17.0
Peru	17.9	24.2
Philippines	14.4	21.8
South Africa	33.4	19.0
Sri Lanka	14.8	8.4
Syria	24.7	29.8
Trinidad and Tobago	29.9	
Venezuela	24.3	
G-24 average	**20.9**	**15.1**

Source: ICTD Government Revenue Dataset, 2015

1.2. How international tax cooperation works

International tax cooperation helps states to reduce the negative economic impact of incompatibilities between their tax systems, and to prevent tax avoidance and evasion activities that work by moving money across borders, whether legally or illegally. There are no binding global tax rules that all countries must follow, but rather a toolbox of different components of the international tax regime:

- A collection of **non-binding international instruments**. This includes the model bilateral tax treaties (in particular those of the OECD and UN) that provide a template for bilateral tax treaties that state how cross-border economic activity between two countries will be taxed. It also incorporates the OECD's transfer pricing guidelines, which guide many countries' approaches to determining their share of multinational companies' taxable profits. These instruments form the

[6] IMF (2012). Fiscal Regimes for Extractive Industries: Design and Implementation. Washington, DC: IMF
[7] *Ibid*
[8] Fjeldstad O-H, Schulz-herzenberg C and Sjursen IH (2012) People's Views of Taxation in Africa: A Review of Research on Determinants of Tax Compliance. ICTD working paper 8. Brighton: Institute of Development Studies

basis of most binding international tax agreements, and parts of many countries' domestic laws as well.

- Some international standards backed by the threat of countermeasures from powerful countries. In particular, countries' compliance with exchange of tax information standards that were originally formulated by the OECD is assessed through the peer review process of the Global Forum on Transparency and Exchange of Information. Inadequate compliance carries the threat of countermeasures, including sanctions imposed by G-20 countries.[9] The OECD's Base Erosion and Profit-Shifting (BEPS) project, discussed below, created a number of international standards on corporate taxation to which a peer review approach will now also be applied.
- Thousands of binding international tax treaties, mostly between pairs of countries, but also among larger groupings, such as the European Union and ECOWAS. These agreements have the force of law in treaty parties.
- Each country's own laws relating to international taxation, which apply to foreign investors, but can also have implications beyond its own borders.

2. Tax planning, avoidance and evasion

Over the past eight years, there has been a proliferation in ambitious new global tax initiatives, led primarily by the G20 and OECD. Most of them have been designed to help countries enforce international tax rules and their own domestic tax laws, which are undermined by tax planning, avoidance and evasion. Tax planning and tax avoidance refer to strategies to minimise a tax liability within the letter of the law. While there is no widely accepted distinction between the two, the term 'tax avoidance' tends to be used to refer to strategies that contravene the intention of tax legislation, while tax planning is a much broader category that incorporates practices that are not in any way abusive, as well as those that take advantage of loopholes in the law. Tax evasion, in contrast, is the deliberate concealment of a tax liability from the tax authority, and is illegal.

Aside from tax havens (discussed in section 4.2 below), which have attempted to profit by making these practices possible, there should in principle be some common ground between developed and developing countries, which all stand to lose out from tax planning, avoidance and evasion. The difficulty for developing countries is that solutions arrived at by developed countries may not always be relevant to them, because of the different nature of economic activity, tax legislation, and administrative capacity. Nonetheless, as Table 2 shows, all but five of the G-24 have become formal members of at least one of the various frameworks, conventions and groups created by the G-20 and OECD as part of these initiatives. These are discussed further below.

[9] The communiqué of the April 2009 London summit stated that "we stand ready to deploy sanctions to protect our public finances and financial systems." In July 2016, G20 Finance Ministers and Central Bank governors reiterated in the communiqué of their summit in Chengdu that, "defensive measures will be considered" against jurisdictions identified by the OECD as noncompliant at the time of the July 2017 G-20 Heads of State summit.

Table 2: G-24 participation in international tax initiatives, May 2017

	Organisations			BEPS		Information exchange		
	G20	OECD	UN tax c'ttee	Inclusive framework	Multilateral instrument ad hoc group	Global Forum	Multilateral convention (ratified)	CRS Auto-matic
Algeria								
Argentina	X			X	X	X	X	X
Brazil	X		X	X	X	X	X	X
Colombia		A*		X	X	X	X	X
DR Congo				X				
Cote d'Ivoire				X	X	X		
Egypt				X	X	X		
Ethiopia								
Gabon				X	X	X	(Signed)	
Ghana			X			X	X	X
Guatemala					X	X	(Signed)	
India	X		X	X	X	X	X	X
Iran								
Lebanon					X	X	X	X
Mexico	X	X	X	X	X	X	X	X
Nigeria				X	X	X	X	
Pakistan				X	X	X	X	
Peru				X		X		
Philippines			X		X	X	(Signed)	
South Africa	X		X	X	X	X	X	X
Sri Lanka				X	X			
Syria								
Trinidad & Tobago						X		X
Venezuela								
	5	**1**	**6**	**14**	**15**	**17**	**10**	**9**

* Colombia is an OECD accession state
** Please note that Haiti and Morocco have recently joined the G-24, after the completion of this paper's analysis

2.1. The OECD's Base Erosion and Profit Shifting project

From 2012 to 2015, the OECD and G-20 undertook a high-profile review of the OECD's international corporate tax instruments in the light of concerns that it was too easy for multinational companies to reduce their tax liabilities by moving their pre-tax profits around the world. The OECD coined the term 'Base Erosion and Profit-Shifting' (BEPS) for this project, to refer to "tax planning strategies that exploit loopholes in tax rules to make profits disappear for tax purposes or to shift profits to locations where there is little or no real activity but where they are lightly taxed, resulting in little or no overall corporate tax being paid."[10] In practice, the term is closely associated with the project itself, as well as the practices it tackled, and is perhaps better understood as referring to the list of issues included within its 15 actions (Table 3). These include, for example, reducing the abusive use of bilateral tax treaties (Action 6),

[10] OECD (n.d.) BEPS - Frequently Asked Questions. Available from: http://www.oecd.org/ctp/beps-frequentlyaskedquestions.htm

strengthening transfer pricing documentation that companies must provide to tax authorities (Action 13), and preventing harmful tax competition between states (Action 5).

Table 3: OECD BEPS action areas

No.	Area
1	The digital economy
2	Hybrid mismatch arrangements
3	Controlled foreign companies (CFC) regimes
4	Financial payments
5	Harmful tax practices
6	Treaty abuse
7	Permanent establishment (PE) status
8	Transfer pricing and intangibles
9	Transfer pricing and risks/capital
10	Transfer pricing and other high risk transactions
11	Data and methodologies
12	Disclosure of aggressive tax planning
13	Transfer pricing documentation
14	Dispute resolution mechanisms
15	A multilateral instrument

Source: OECD, 2015

For the first time, the BEPS project saw G-20 and OECD member states working together on an equal footing to develop international tax standards, giving five G-24 members a seat at the table. In the late stages of the standard-setting process, 14 more developing countries, including three more G-24 members (Nigeria, the Philippines, and Peru) were invited to attend meetings as observers. The OECD identified a number of BEPS actions in which it would be important to take into account the specific needs of developing countries, and now points to a number of amendments made in response to requests from developing countries.[11] The main such change is in transfer pricing rules (Actions 8 to 10), which have been amended to permit developing countries to use a simpler technique based on that developed by Argentina for combating tax avoidance by mining companies.[12] A broader strand of work on BEPS and developing countries, undertaken by international organisations in cooperation with the G-20 development working group and the OECD's task force on tax and development, is in its early stages.[13]

As the BEPS process moved from standard-setting to implementation in early 2016, it was announced that an 'inclusive framework' would be created, allowing developing countries to participate in implementation on an equal footing if they are "interested and committed", meaning that they must agree to implement four 'minimum standards' that the G-20 and OECD have already agreed on.[14] So far 96 countries have become members of the BEPS inclusive framework, including 14 G-24 members.[15] Separately, a multilateral agreement has been concluded to quickly apply some of the agreed BEPS changes to the existing network of thousands of bilateral tax treaties (Action 15). This agreement was negotiated by an ad hoc group of 107 countries (including 15 G-24 members) coordinated by the OECD.[16]

How much impact the BEPS reforms will have is still being debated, but it is probably fair to say that they will tackle some, but not all, of the tax planning strategies originally identified by the OECD. Some critics

[11] OECD, 2015, "Progress report on the OECD tax and development programme supporting the engagement of developing countries in the OECD/G20 base erosion and profit shifting project 2015-16."
[12] This simplified transfer pricing method determines the price of a commodity export by reference to the market price on the day of delivery, reducing companies' ability to manipulate the price.
[13] Work so far, as well as a future work plan, is available at: http://www.oecd.org/tax/platform-for-collaboration-on-tax.htm
[14] OECD (2016). All interested countries and jurisdictions to be invited to join global efforts led by the OECD and G20 to close international tax loopholes. Press release, 23 February. The minimum standards concern country-by-country reporting of corporate financial information, preventing tax treaty abuse, curbing harmful tax competition, and resolving disputes between states that create double taxation
[15] The list of members is available at: https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf
[16] The list of members is available at: http://www.oecd.org/tax/treaties/multilateral-instrument-for-beps-tax-treaty-measures-the-ad-hoc-group.htm

suggest that this is because BEPS did not reform international tax at a more fundamental level,[17] while others are concerned that the lowest common denominator approach will not satisfy many participating states.[18] Civil society organisations have also raised concerns regarding the design of the BEPS standards and their impact on developing countries. For example, under BEPS Action 13, multinational firms must file a country-by-country breakdown of some of their financial data with the tax authority of their home state. There is no guarantee that the tax authorities of developing countries in which those multinationals invest will be able to access this information, unless they have an exchange of information agreement with a firm's home state.[19]

2.2. International tax planning issues affecting developing countries and not covered by BEPS

The issues faced by OECD and G-20 countries are different to those faced by other developing countries, where tax laws are much less detailed and administrative capacity much weaker. For this reason, not all of the BEPS project reforms will be relevant to developing countries, while some of the major issues they face will fall outside of the scope of the BEPS project. During the BEPS process, developing countries raised the following areas of concern:

- At the beginning of the process, developing countries asked for distributional issues (see section 3) to be included within the debate, but the BEPS project's remit was restricted to tax avoidance and tax planning, specifically excluding any explicit discussion of distributional questions.[20] In practice, some BEPS work, especially Action 1, implicitly touches on this matter.
- The OECD reported three areas outside of the BEPS remit that developing countries had raised during consultations:[21]
    - wasteful tax incentives in developing countries (see section 4);
    - the lack of 'comparability' data needed to administer transfer pricing in developing countries, without which it is hard for tax authorities to challenge multinational companies' self-assessed tax declarations; and
    - avoidance of capital gains tax on the sale of valuable assets in developing countries, through the use of 'indirect transfers' in which what changes hands is a holding company located offshore. This latter concern has led to a growing number of high-profile cases in which hundreds of dollars of tax revenue were at stake, especially in the extractive and telecommunications industries.[22] Guidance on this issue is under preparation by the UN tax committee's subcommittee on extractive industries, as well as by the IMF and OECD.[23]

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[17] Durst MC (2015) Limitations of the BEPS Reforms: Looking Beyond Corporate Taxation for Revenue Gains. ICTD working paper 40. Brighton: Institute of Development Studies. Available from: http://www.ictd.ac/ju-download/2-working-papers/88-limitations-of-the-beps-reforms-looking-beyond-corporate-taxation-for-revenue-gains.

[18] International Chamber of Commerce (2016). ICC urges consideration of broader trade implications of tax policies in response to BEPS recommendations. Press release, 30 May.

[19] Tax Justice Network (2017). Developing countries' access to CbCR: Guess who's (not) coming to OECD dinner. Blog post, 5 May. Available at: http://www.taxjustice.net/2017/05/05/developing-countries-access-to-cbcr-guess-whos-not-coming-oecd-dinner/

[20] OECD (2013) Action Plan on Base Erosion and Profit Shifting. Paris: OECD Publishing.

[21] OECD (2014) Report to G20 Development Working Group on the Impact of BEPS in Low Income Countries (Parts 1 and 2). Paris.

[22] IMF (2012). Fiscal Regimes for Extractive Industries: Design and Implementation. Washington, DC: International Monetary Fund; Hearson M and Kangave J (2016) A Review of Uganda's Tax Treaties and Recommendations for Action. International Centre for Tax and Development Working Papers, Brighton.

[23] A draft of the UN guidance is available at http://www.un.org/esa/ffd/wp-content/uploads/2014/10/10STM_CRP3_AttachmentB_CapitalGains.pdf

- The BEPS project did not consider the role of withholding taxes, described by one member of the UN tax committee as "a blunt but important and administrable anti- BEPS measure."[24] There is a general downward pressure on withholding taxes in both domestic legislation and tax treaties.[25]
- The OECD also proposed in a report on BEPS and developing countries that G-20 countries assess the impact of their tax systems, and any changes to them, on developing countries (a recommendation also championed by the IMF).[26] For example, developed countries increasingly exempt any profits made abroad by their own multinational companies from further tax at home. This means that multinational companies can increasingly keep the gains from any tax reductions they secure in the countries where they operate, which adds to their incentive to seek out lower-tax operating countries, intensifying tax competition among countries that want to attract inward investment. The OECD's BEPS work noted that anti-tax avoidance rules called controlled foreign company rules (CFCs) in the headquarters countries of multinational firms "also have positive spillover effects" because they reduce the incentives for those firms to avoid tax overseas.[27] The proposal to assess the 'spillover' effects of such policies was not taken forward as part of the BEPS initiative,[28] but two OECD members, Ireland and the Netherlands, have commissioned 'spillover' analyses in recent years, mostly focused on their networks of bilateral tax treaties.[29]

2.3. Information exchange, mutual assistance, and assistance with tax collection

When one country's tax authority is investigating international tax avoidance or evasion, it will need to trace transactions with a second country, for example transfer pricing payments within a multinational company. It may also need to investigate its own taxpayers' affairs there: for instance, when it suspects that a citizen is hiding part of their wealth in a tax haven. Sometimes, tax authorities may want to work together on an investigation, and in other cases, one tax authority may need the other to collect taxes on its behalf, because the company or individual concerned no longer has any assets or income in the first country.

To do this, countries need a legal framework to establish cooperation between tax authorities. Beginning in 2008, OECD and G-20 members sought to enhance information exchange about taxpayers who have income in multiple jurisdictions, particularly 'tax haven' jurisdictions. This takes place through the Global Forum on Transparency and Exchange of Information, which conducts peer reviews of countries' compliance with OECD information exchange standards, and is backed by the threat of "defensive measures" from the G-20. It has 142 members, including 17 from the G-24.[30] By joining, countries agree to be peer reviewed, but they also have more leverage if they seek access to tax information from another Global Forum member.

[24] Mensah, E (2017). Mobilizing Domestic Resources for Development & International cooperation: Ghana's Perspective. G24 technical group meeting, Addis Ababa.
[25] IMF (2014) Spillovers in International Corporate Taxation. Washington, DC; Hearson, M. (2016). Measuring Tax Treaty Outcomes, *op cit.*
[26] IMF (2014) Spillovers in International Corporate Taxation, *op cit*; OECD (2014) Report to G20 Development Working Group on the Impact of BEPS in Low Income Countries (Parts 1 and 2). Paris.
[27] OECD (2013). Action Plan on Base Erosion and Profit Shifting. OECD Publishing. p16
[28] G-20, 2014, "G20 response to 2014 reports on base erosion and profit shifting and automatic exchange of tax information for developing economies"
[29] Netherlands Ministry of Finance (2013) Government's response to the report from SEO Economics Amsterdam on Other Financial Institutions and the IBFD report on developing countries; IBFD (2015) Possible Effects of the Irish Tax System on Developing Economies. Irish Ministry of Finance.
[30] A list of members is available at: http://www.oecd.org/tax/transparency/about-the-global-forum/members/

Until recently, the main legal instruments of international cooperation were bilateral agreements covering information exchange and assistance in tax collection, either as articles within comprehensive bilateral tax treaties, or, for information exchange, as standalone bilateral Tax Information Exchange Agreements. Since 2008, a Multilateral Convention on Mutual Assistance, previously limited to OECD and Council of Europe members, has been opened up to all interested countries. By joining this agreement, developing countries can obtain the right to request information on their taxpayers' affairs from all other signatories, and the legal framework through which to cooperate when investigating multinational taxpayers, without the need to negotiate dozens of bilateral deals. So far, ten G-24 members have ratified the convention, and three more have signed but are yet to ratify (the OECD website lists 111 participating jurisdictions, although not all have ratified the convention).[31] There are also numerous regional multilateral conventions that serve a similar purpose, including UEMOA, SAARC and CARICOM, as well as a new treaty concluded by members of the African Tax Administration Forum, an organisation for cooperation between tax authorities across the continent. This latter treaty was partly to create a legal framework through which tax authorities could collectively investigate allegations of tax avoidance by multinational companies operating across the continent.[32]

International action has also recently progressed from a focus on exchange of tax information on request towards an emphasis on the bulk exchange of basic tax information on an automatic basis. This means that tax authorities have access to basic information on their citizens' affairs overseas without the need to justify making a request from another country. The multilateral agreements mentioned above provide a legal framework for automatic exchange of information, but only where signatories consent to it. So far 90 countries have done so by committing to the Common Reporting Standard (CRS) for automatic exchange of information, including nine G-24 members.[33]

The 'Panama papers' scandal of 2016, in which documents from the Panamanian law firm Mossack Fonseca were released to journalists, revealed the strengths and weaknesses of existing tax co-operation initiatives.[34] In the wake of the scandal, the OECD pointed to "Panama's consistent failure to fully adhere to and comply with international standards monitored by the Global Forum on Transparency and Exchange of Information for Tax Purposes."[35] Panama was among a small number of tax haven jurisdictions who had not agreed to participate fully in international initiatives to tackle tax avoidance and evasion. The jurisdictions used by Mossack Fonseca to help clients hide their wealth were, however, predominantly those who are now regarded by the Global Forum as 'largely compliant', in particular the British Virgin Islands, Bahamas and Seychelles.[36] The Panama Papers data indicate that the number of tax structures being set up by Mossack Fonseca had declined in recent years, suggesting that international initiatives may be having an effect, and all of the main jurisdictions implicated – including Panama – have now committed to the automatic exchange of tax information CRS.[37] But campaigners have pointed out

[31] A list of members is available at: http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf
[32] Hearson M and Brooks R (2010) Calling Time: Why SABMiller should stop dodging taxes in Africa. London: ActionAid UK.
[33] A list of members is available at: https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/MCAA-Signatories.pdf
[34] International Consortium of Journalists (2016). The 'Panama papers' website is: http://panamapapers.icij.org/
[35] OECD (n.d.). Q&A on the "Panama Papers." Web page: http://www.oecd.org/tax/questions-and-answers-on-panama-papers.htm
[36] Panama papers statistics available at https://panamapapers.icij.org/graphs/, Global Forum ratings at http://www.oecd.org/tax/transparency/GFratings.pdf
[37] A list of members is available at: http://www.oecd.org/tax/transparency/AEOI-commitments.pdf

that the lack of registers of 'beneficial ownership' in these jurisdictions continues to allow tax evaders to hide anonymously behind shell companies.[38]

Developing countries face a number of obstacles preventing them from benefitting fully from cooperation in this area. First, some countries from which they want information may not be willing to sign these agreements, or may insist that they be concluded through a comprehensive tax treaty, which has tax costs for the developing country (see section 3). This can be mitigated by participation in the Global Forum mentioned above, whose peer review mechanism puts pressure on jurisdictions to sign information exchange agreements. Second, developing countries may struggle to meet the prerequisites for information exchange, which include guaranteeing the confidentiality of information received, being able to collect and supply information, and having the capacity to make use of their information exchange powers. Participation in the Global Forum, for example, means that developing countries will themselves be subject to peer review. These difficulties can be mitigated to some extent by capacity-building, and by developed countries offering non-reciprocal information supply until more capacity is in place. Third, especially in the case of automatic exchange of information, developing countries will need to invest significant resources to put in place systems allowing them to make use of the information they receive.

3. Distributional issues

While the previous section focused on efforts to improve the enforcement of international tax rules, this section discusses the impact of the rules themselves, and in particular the way they divide the tax base of international taxpayers between countries. Since this is, to some extent, a zero sum game, there are much sharper dividing lines between countries, typically between net capital exporters and net capital importers, but also for example between service exporters and goods exporters. While the developed/developing country boundary is a good proxy for many of these dividing lines, there may also be common cause between some developed and developing countries.

3.1. Tax treaties

There are around 1500 bilateral tax treaties with at least one developing country signatory. These treaties place limits on the extent to which signatories can tax cross-border economic activity, in particular foreign direct investment. In practice, the majority of these limits are imposed on the capital-importing country, but the extent to which this is the case depends on the precise terms of the treaty.[39] For example, tax treaties set maximum withholding tax rates that developing countries can impose on payments such as dividends and interest going to the treaty partner; they prevent developing countries from taxing the profits made by overseas companies from unincorporated operations such as construction sites, insurance provision and distribution warehouses, unless specifically included within the treaty; they may prevent developing countries from taxing certain other types of income earned by foreign taxpayers from sources inside their borders, such as pensions, capital gains, and income from shipping and airlines.

This means that tax treaty negotiations are political settlements between signatories. In practice, there is a tension between the interests of developed and developing countries at two stages of the process:

[38] Global Witness (2016). Anti-corruption summit sees bold moves in key areas, but a glaring blind spot in the tax havens. Press release, 12 May.
[39] Hearson M (2016) Measuring Tax Treaty Outcomes: The ActionAid Tax Treaties Dataset. International Centre for Tax and Development working paper 47. Brighton: University of Sussex.

- Tax treaties are negotiated on the basis of international model agreements. The pre-eminent model, that of the OECD, is also the version that imposes most restrictions on capital-importing countries.[40] Some developing countries, including seven G-24 members, have formally expressed "observations" on the OECD model to indicate that they prefer to retain more taxing rights over inward investment than the model specifies.[41] There is also a United Nations model, which modifies the OECD model by preserving more taxing rights in capital-importing countries. Some groups of developing countries, including COMESA, SADC, EAC and ASEAN, also have their own model agreements, which tend to be a mixture of provisions from the UN and OECD models. Critics suggest that both the UN model and these regional models agreed among developing countries still deprive developing countries of too many taxing rights, and argue for a more fundamental re-examination of the way in which tax treaties work.[42] There is also a growing movement critical of the wisdom of signing certain tax treaties at all, including notably the IMF, which declared in 2014 that "developing countries would be well-advised to sign treaties only with considerable caution."[43]
- The options available in these international models vary in the extent to which they curtail developing countries' taxing rights, but even within this range of options, bilateral agreements concluded by developing countries are often at the more restrictive end from the perspective of developing countries' ability to tax multinational companies.[44] For example, both the UN and OECD model treaties include a provision that protects developing countries against tax avoidance through indirect transfers of real property (see section 2.2 above). Despite this, a large number of tax treaties signed by developing countries omit this provision, leaving them vulnerable to the avoidance of capital gains tax.[45] As part of the BEPS process, developing countries have also expressed a desire for support to improve their negotiating capacity,[46] and the UN committee produces a manual to support negotiations.[47]

3.2. Allocating the multinational tax base

The taxable profits of multinational companies are allocated between the countries in which they operated using transfer pricing, a system that treats the constituent parts of a multinational firm as if they were independent, and regulates the pricing of transactions between them. Most countries use the OECD's transfer pricing guidelines, either in whole or in modified form, to underpin their transfer pricing

[40] Lennard M (2009) The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments. Asia-Pacific Tax Bulletin, (1).
[41] Argentina, Brazil, DR Congo, Cote d'Ivoire, India, Philippines, South Africa. See OECD (2014) Model Tax Convention on Income and on Capital. Paris: OECD.
[42] For example: Pistone P (2010) Tax Treaties with Developing Countries: A Plea for New Allocation Rules and a Combined Legal and Economic Approach. In: Lang M, Pistone P, Schuch J, et al. (eds), Tax treaties: building bridges between law and economics, Amsterdam: IBFD, pp. 413–440; Brooks K (2009) Global Distributive Justice: The Potential for a Feminist Analysis of International Tax Revenue Allocation. Canadian Journal of Women and the Law/Revue Femmes et Droit, 21(2), 267–297; Thuronyi V (2010) Tax Treaties and Developing Countries. In: Lang M, Pistone P, Schuch J, et al. (eds), Tax treaties: building bridges between law and economics, Amsterdam: IBFD, pp. 441–458.
[43] IMF (2014) Spillovers in International Corporate Taxation. Washington, DC.
[44] Wijnen W and de Goede J (2013) The UN Model in Practice 1997-2013. International Bureau of Fiscal Documentation; Hearson M (2016) Measuring Tax Treaty Negotiation Outcomes : the ActionAid Tax Treaties Dataset. ictd WORKIGN PAPER 47, Brighton: Institute of Development Studies.
[45] *ibid*
[46] OECD, 2015, "Progress report on the OECD tax and development programme supporting the engagement of developing countries in the OECD/G20 base erosion and profit shifting project 2015-16."
[47] United Nations (2013) Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries, 1st edition. New York: United Nations.

rules, but some countries believe that the OECD guidelines do not distribute multinationals' tax base fairly, or are too difficult to administer. The UN tax committee's Practical Manual on Transfer Pricing, originally published in 2013, incorporates an annex in which some developing countries explain how they take different approaches, including by adapting rules to allocate a greater share of the tax base to them (China and India) or greatly simplifying administration (Brazil).[48] Argentina has its own 'sixth method' for transfer pricing that allows it to police mining companies' tax affairs more easily, which has been adopted by several other Latin American countries.[49] This tool, which should make it easier for developing countries to tax multinational mining firms, has been adopted in a modified form within the OECD guidelines as part of the BEPS project, and is discussed in the 2017 edition of the UN practical manual on transfer pricing.

4. Tax competition

This section considers the strategic interaction between the elements of countries' domestic tax systems that relate to international taxation. As noted earlier, there is some coordination, and some enforcement, between countries in areas where tax laws in one country may have an effect on tax revenue in others.

4.1. 'Race to the bottom' among developing countries

Evidence suggests that investors are less sensitive to taxation in developing countries than developed countries (because there are bigger differences in areas such as market size, education and infrastructure across developing countries).[50] But there is evidence that some developing countries are nonetheless engaged in a 'race to the bottom' over corporate taxation.[51] This tends to incorporate the 'headline' tax treatment of all companies, and a range of incentives offered to investors meeting certain criteria, for example fixed-term 'tax holidays' and lower rates for firms located in special economic zones. Tax incentives have proliferated across the African continent in recent years. By one measure, the revenue foregone by developing countries through tax incentives amounts to US$138 billion.[52]

Coordination between states is the way they have tried to resolve this problem. At the less ambitious end of the scale, countries can agree to codes of conduct that rule out certain forms of tax competition. Both the European Union and the East African Community have such codes of conduct, although in the EU case it is limited to 'harmful' tax competition (see below), and the East African code has not been ratified.[53] The OECD has also produced a code of conduct on the governance of tax incentives.[54] A more ambitious approach would be to harmonise tax rules, for example by agreeing on common minimum tax rates.

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[48] United Nations (2012) Country practices. In: Practical Manual on Transfer Pricing in Developing Countries, New York: United Nations.
[49] Esteban IGA, Godoy J, García A, et al. (2012) El control de la manipulacion de los precios de transferencia en America Latina y el Caribe. Centro Interamericano de Administraciones Tributarias.
[50] For example, Klemm A (2010) Causes, benefits, and risks of business tax incentives. International Tax and Public Finance, 17(3), 315–336.
[51] Klemm A and Abass SMA (2012) A Partial Race to the Bottom: Corporate Tax Developments in Emerging and Developing Economies. IMF Working Papers, Washington, DC.
[52] ActionAid (2013) Give us a break : How big companies are getting tax-free deals . Johannesburg.
[53] European Council (1997). Code of Conduct on Business Taxation. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/coc_en.pdf
[54] OECD (n.d.). Principles to Enhance the Transparency and Governance of Tax Incentives for Investment in Developing Countries. Available at: http://www.oecd.org/tax/tax-global/transparency-and-governance-principles.pdf

4.2. Harmful tax competition and tax havens

The secrecy aspect of tax havens was discussed earlier under information exchange, but the other part of the concern is aspects of countries' tax systems that attract companies unfairly for the sole purpose of obtaining a tax advantage. An OECD report in *1998, Harmful Tax Competition: An Emerging Global Issue,* distinguished between tax havens, which it defined as "countries that are able to finance their public services with no or nominal income taxes and that offer themselves as places to be used by non-residents to escape tax in their country of residence," and harmful preferential tax regimes, which had similar characteristics but were found in countries that were not themselves tax havens.[55] The OECD subsequently identified some 60 harmful regimes in OECD countries themselves, and OECD members changed their laws to eliminate them. The European Commission similarly identified, through its Code of Conduct for Business Taxation, 66 tax measures in European Union (EU) members or their dependencies that it regarded as "harmful tax measures." More recently, the United Nations tax committee has developed its own code of conduct on harmful tax competition, although this has not so far been adopted by the United Nations Economic and Social Council (ECOSOC). Some commentators have expressed fears that work on harmful tax practices within the BEPS process (see section 2) may consolidate, rather than eliminate, certain types of harmful tax competition, especially through the use of preferential tax regimes for revenue from intellectual property.[56]

5. International cooperation on tax issues

This section looks at the international processes and structures through which countries cooperate on the areas discussed above. In general, coordination is much stronger among OECD countries than other groups, which makes the OECD the central coordination organisation in international taxation. Between the OECD's efforts to involve developing countries, and other mechanisms in particular the UN, there are opportunities for developing countries to reform international tax rules to their benefit, if they coordinate among themselves better first.

The OECD remains the pre-eminent global body for international tax coordination. Its tax standards are set through the Committee on Fiscal Affairs, in which OECD members and a small number of developing countries are currently able to participate. Increasingly, as section 2 illustrated, the OECD is reaching out beyond its own membership. Aside from information exchange and BEPS, on which these inclusive OECD initiatives focus, most developing countries do not have the right to participate in the OECD's core tax standard-setting. There are other means discussed below, which, if strengthened, could provide developing countries with an additional forum through which to work on international tax cooperation and influence issues such as the distributional concerns discussed in section 3 that do not currently form part of the OECD agenda.

5.1. Developing countries in the UN

A United Nations committee, reporting to ECOSOC, provides another opportunity for developing countries to engage in global tax cooperation on an equal footing. The UN tax committee develops international instruments that are designed to be more beneficial to developing countries than those of the OECD. It has 25 members, nominated by states, but serving in a personal capacity, of whom six are

[55] OECD (2008): Harmful Tax Competition: An Emerging Global Issue. Paris

[56] Naumann, M. International Tax Competition and Patent Boxes. Kluwer International Tax Blog, 18 March. Available at: http://kluwertaxblog.com/2015/03/18/international-tax-competition-and-patent-boxes/; BEPS Monitoring Group (2016): Submission to APPG on Responsible Tax. Available at: http://www.appgresponsibletax.org.uk/beps-monitoring-group/

currently from G-24 members. It meets annually in Geneva, but much of its work is conducted through subgroups of members. The committee's main focus has been on updating its model bilateral tax convention, which is used by many developing countries in their tax treaty negotiations. In addition, since being reconstituted in 2002, the UN tax committee has developed a new practical manual on transfer pricing for developing countries, a code of conduct on exchange of tax information, and has begun a new strand of work on taxation of the extractives sector. As its current term comes to an end in mid-2017, the UN tax committee has updated its model bilateral tax treaty and its practical manual on transfer pricing in developing countries, as well as developing a new handbook on taxation of the extractive industries.

In 2015, as part of the third Financing for Development conference in Addis Ababa, the G-77 plus China called for "upgrading the UN Tax Committee into a standing intergovernmental committee."[57] The proposal did not gain traction in the Addis Ababa Agenda for Action, and only minor changes to the committee's ways of working within its existing institutional status were agreed.[58]

Nonetheless, the UN tax committee could be a potential forum for developing countries to seek greater reform of international tax rules, but three limitations prevent it from fully playing this role. First, members participate in a personal capacity, an issue that was not changed in the Addis Ababa discussions despite being the centrepiece of the G77 proposal. Second, the committee lacks funds to be able to scale up its work and facilitate more dialogue and consensus-building among developed and developing countries on a set of critical issues. Third, there is considerable scope for developing country members to work collectively to advocate more substantial reforms to UN tax instruments, or new international tax instruments altogether: even in its current form, developing countries have not fully explored the potential for the UN committee to act as a vehicle through which to take forward such proposals. Thus, there is much that could be achieved within the existing UN committee framework regardless of the decision not to upgrade the committee's status. Much will depend on the composition of the new committee that will be announced in July (box 1), as well as future discussions in UN forums about the committee's status.

5.2. Cooperation among developing countries

While many of the greatest gains from international cooperation rest on reaching global agreements that standardise across all countries, there are other aspects where cooperation among smaller groups with common interests, where it is easier to reach agreement, may be more effective. Such agreements can also create a starting point through which smaller groupings can influence the outcome of global negotiations, as in the case of the OECD model bilateral tax treaty, which is negotiated within an organisation of 35 countries, but used by many more. Several regional blocs of developing countries have also developed their own model bilateral tax treaties (this includes COMESA, EAC, SADC, ASEAN). To date, these models stick closely to the compromise agreements reached between individuals from developed and developing countries at the UN.[59] An alternative approach would be for groups of developing countries to formulate models that are not compromises, but rather set out their ideal

Box 1: timetable for UN tax committee appointment

April 2017: UN Secretary General invites nominations from member states

May 2017: nominations close, and Secretary General selects 25 members from amongst them

July 2017: ECOSOC informed of new membership

[57] G77 statement, 28 January 2015. Available at: http://www.g77.org/statement/getstatement.php?id=150128
[58] Anyangwe, E (2015). Glee, relief and regret: Addis Ababa outcome receives mixed reception. The Guardian, 16 July.
[59] Hearson, M (2015). Tax treaties in sub-Saharan Africa: a critical review. Nairobi: Tax Justice Network Africa

outcome from a negotiation. This was the approach taken by the Community of Andean Nations, whose model bilateral tax treaty of 1971 was a more radical departure from the OECD approach that gave almost unlimited taxing rights to the country of source, rather than setting thresholds below which there is no source taxing right. The Andean model did not gain traction, in part because it was difficult to persuade other countries to accept it as the basis of negotiations.[60]

One of the main difficulties for developing countries is that regional coordination takes place largely through tax administration officials, for example in the African Tax Administration Forum and the Inter-American Centre for Tax Administration. Many of the questions examined in this paper require support at the political level, where cooperation among developing countries on international tax matters is much less developed. One exception is the High Level Panel on Illicit Financial Flows from Africa, whose report was endorsed by the African Union.[61] There is scope for intergovernmental bodies to play a role to provide the political support for potentially more ambitious positions on international tax coordination.

6. Potential G-24 initiatives

The G-24 has highlighted the importance of effective international tax cooperation to support developing countries' efforts to mobilise domestic resources, so that they can achieve their development goals. It could build on this recognition by setting out to develop a pro-active agenda for international tax rule reform that meets the needs of developing countries, and identify different international forums through which to achieve it. G-24 members could work together within existing forums such as the UN tax committee and OECD to put their issues of concern on the agenda. The UN tax committee's potential has yet to be fully realised by developing countries, and there may also be new opportunities created by enhanced participation in OECD initiatives. G-24 members could strengthen their engagement by enhancing national political oversight of UN and OECD tax work, as well as advocating a stronger, upgraded UN tax committee when the opportunity next arises.

On tax avoidance and evasion, G-24 members could consolidate their participation in multilateral conventions on information exchange and mutual assistance, and could share their knowledge and experiences in this area to build each other's capacity to benefit from their participation, as well as to identify reforms to international tax standards that might reduce the administrative hurdles to benefit. Where necessary, this could lead to alternative, but compatible, standards in areas such as transfer pricing and tax treaties that give a greater share of the tax base to developing countries.

As some G-24 countries are capital-exporters to other developing countries, they could take up the IMF and OECD's recommendation to perform 'spillover analyses' of the main aspects of their tax systems that have the potential to adversely affect other developing countries' tax revenues, whether by encouraging tax competition or increasing incentives for tax avoidance. Also with regard to tax avoidance, G-24 members could share experiences across regional economic groupings such as ASEAN and MERCOSUR to advocate codes of conduct on tax competition, as well as working through ECOSOC for the adoption of the UN tax committee's proposed code of conduct on exchange of tax information.

[60] Baistrocchi E (2008) The use and interpretation of tax treaties in the emerging world: theory and implications. British Tax Review, 28(4), 352; Quinones Cruz N (2012) Colombia. In: Lang M, Pistone P, and Schuch J (eds), The impact of the OECD and UN model conventions on bilateral tax treaties, Cambridge: Cambridge University Press, pp. 284–307.

[61] High-Level Panel on Illicit Financial Flows from Africa (2015) Illicit Financial Flows. United Nations Economic Commission for Africa.

Above all, the G-24 provides a political platform for forging common views on international development issues among developing countries, in which tax coordination is a main concern. It is able to work with the OECD within its inclusive framework, and a number of G-24 members are now participating in many of its initiatives. It can also support the efforts of the UN and other forums in which developing countries can more actively engage so that they can benefit more effectively from international tax rule reforms and cooperation. A sustainable approach to international tax cooperation in the long term requires international institutions that reflect the increasingly diverse needs of countries with an interest in international tax standards.