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A new beginning for international taxation?

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The Trump administration has blown up the OECD's negotiations on tax. That leaves the reform process in tatters, along with the OECD's credibility. But countries of the Global South have real options now, to raise immediate revenues and to set a path towards inclusive international rule-setting.

Treasury Secretary Steve Mnuchin has written to four European finance ministers to say that the US is 'unable to agree even on an interim basis changes to global taxation law that would affect leading US digital companies.' The Europeans insisted they had listened respectfully to US concerns. OECD Secretary-General Angel Gurría warned the withdrawal could lead to a trade war.

But in truth, the process was already in disarray. The non-OECD members of the Inclusive Framework – that is, the lower-income countries that have typically been rule-takers as far as the OECD is concerned – have openly called out the institution's failure to take meaningful account of their views. And the OECD had already abandoned – at the behest of the US – most of the original ambition, including the excellent proposal from the G24 group of countries. Instead, the secretariat had tried to impose a US-French deal that introduced complexity but offered little progress.

Tax avoidance by multinational companies costs around USD 500bn a year, hitting lower-income countries harder as a share of current tax revenues. Our research with the Independent Commission for the Reform of International Corporate Taxation (ICRICT) showed that the OECD proposal would have moved few of the profits declared in tax havens back to the countries where the real economic activity takes place. Worse, it would have primarily benefited a few OECD members, including the US, over all others.

The refusal of the US to proceed, even on this biased basis, shows the power of its lobbyists. But it also opens the door for much better alternatives. That is, for better policy options for countries to pursue unilaterally, and for better arrangements to explore multilateral decision-making.

Digital services taxes? No thanks!

The obvious outcome is that a whole slew of countries will now introduce their own digital services taxes (DSTs), to claim some revenues from these major, tax-avoiding multinationals. No bad thing, you might think, and perhaps a small step to reduce tax injustice. But: Digital services taxes are bad taxes.

They don't deal with profit shifting. They don't ensure a level playing field between businesses (quite the opposite). They don't address the global inequalities in taxing rights between countries. They don't address the issue of unearned rents in the pandemic. And they don't build towards the broader reforms of corporate tax that are now urgently needed (again, quite the opposite).

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What do digital services taxes do? They may raise some – typically small – amounts of additional revenue, at a time when it is much needed. They may reduce the effective policy bias to a sector that has been particularly aggressive in its tax dodging. But mainly, digital services taxes may allow governments to respond to public pressure to do *something* about tax dodging – without actually doing very much.

Unilateral options

The ideas that drove the original optimism around the OECD reforms have not gone away. And nor, despite the pandemic, has the systemic tax abuse of multinational companies or the role of their advisers at the big four accounting firms. There is an urgent need for reform – and revenue. If countries are to take unilateral action, here are three options – all ultimately consistent with the broader reforms needed:

First, countries should introduce excess profits taxes. These will allow states to capture a share of the large unearned profits of those companies

that are benefiting from the massive state intervention of lockdowns, while all others suffer. But these must be based not on the declared local profits of multinationals, but on a fair share of their global profits. Take the global profits above, say, a 5 per cent return; then apportion to the country a share in line with their share of the multinational's global sales and staff. The country can then tax these exceptional, unearned, locally generated profits, at a rate of say 75 per cent to 95 per cent.

If all countries do this, there is no double taxation and the multinationals even get to keep a bit of their unearned profits. Not bad for a pandemic when so many are losing so much, so let's not take any complaints too seriously.

Second, countries can introduce formulary alternative minimum taxes. Leave the OECD's failed rules in place for now, awaiting some global negotiation, but draw a line on the extent to which profits can be shifted. If the declared profits after transfer pricing, thin capitalisation and all the other manipulations end up being less than, say, 80 per cent of the country's fair share of the global profits under a unitary tax approach, the tax authority should simply draw a line there and claim that as the minimum tax base.

Again, this approach will not lead to double taxation unless other countries are taxing far more than their share – in which case multinationals should be encouraged to address any complaints there instead.

Third, countries could move unilaterally to a full unitary and formulary approach. There's no reason, in fact, not to just go the whole way. There's no need for global agreement, and no reason for this to cause double taxation unless, again, other states are taxing more than their fair share.

Whichever path countries or regional blocs like the EU choose, they should ensure that multinationals are required to publish their country by country reporting. This will confirm to the world that the country is not taxing more than its fair share; and reveal if other countries are continuing to procure profit shifting. And of course, country by country reporting shows the public which multinationals – and which tax advisers – are most aggressively flaunting their social responsibilities to pay tax fairly, like the rest of us.

Multilateral processes

The OECD seems set on continuing its process, despite little US involvement and little credibility outside its own membership (and perhaps even within). But it should be painfully clear to all that the negotiation of international tax rules is political, not technical; and the OECD's legitimacy, such as it is, is technical and not political. This is not the right forum.

It is not coincidental, of course, that OECD members are primarily countries that have had empires and/or are 'settler nations' – while those in the 'Inclusive Framework' are primarily the colonised, the 'settled'. If ever there was a time to leave this behind, it's now.

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Three options stand out.

First, the possibility of meaningful, regionally-led reforms. A combination of the technical group and the political (the African Tax Administration Forum working with the African Union, say); or a technical group working with a regional power (CIAT, the Inter-American Center of Tax Administrations, with Argentina, perhaps).

Second, the UN might finally take on its role as the *global* forum for the global negotiations over global taxing rights that must, eventually, come to pass. A critical decision facing the high-level UN Panel on Financial Accountability, Transparency and Integrity (FACTI), when it reports in January 2021, is whether to put its full backing to the proposal for a UN tax convention. Such an instrument is intended to deliver fully multilateral commitments to tax transparency measures, and at the same time to establish the forum for such negotiations.

OECD members have already indicated their opposition, following their longstanding blocking of a meaningful role on tax for the UN. If the OECD is a busted flush, even this could perhaps shift; but for now, the third option may be the best bet:

This would be process-led by the G24 or G77 groups. The idea would not be to move immediately to a formal, global negotiation. Instead, the

groups could convene an open discussion among states, with strong technical support, to allow exploration of the options and likely revenue and broader economic impacts. In effect, the idea would be to convene the sort of process that the Inclusive Framework had set out in its work plan, but with genuinely open participation.

This would allow the potential for consensus to emerge over time, but also provide technical support for countries taking more immediate measures – of the sort described above, for example – in the face of the pandemic and other revenue pressures. The Tax Justice Network stands ready to assist with technical support to any such process, as undoubtedly would the wider global tax justice movement.

There is a progressive future to reimagine for international corporate tax. Let's get started.



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