

Ms Manal Corwin
Director
Centre for Tax Policy and Administration
Organisation for Economic Cooperation and Development

19 August 2024

Dear Ms Corwin,

We thank you for your letter of 2 July 2024. We are aware of the response issued by your predecessor Pascal Saint-Amans to an earlier joint communication from a group of four United Nations special procedures. In this regard, we would like to draw your attention to the follow-up letter issued by the special procedures, of 4 November 2022,¹ which sought further clarifications due to the fact that Mr Saint-Amans' communication had not meaningfully addressed the concerns raised. There was no response to that request, nor to the subsequent letter issued by a group of eight special procedures on 22 December 2023.²

Disappointingly, it appears that the substantive human rights concerns detailed in both the special procedures' letters and the joint civil society letter of 22 May 2024 have not been meaningfully addressed in your response. In particular, we would be most grateful to receive your response to the evidence presented of the potentially prejudicial impacts of the two pillar proposals on revenue collection in the countries of the Global South.

As detailed in the special procedures' letter of March 2022, the two pillar proposals, if implemented, would mainly benefit a small number of high-income countries while lower income countries stand to lose a significant share of their revenues.³ The allocation of taxing rights under Pillar One is likely to be of little benefit to non-OECD countries, while the potential for continuance of abusive tax practices through profit shifting would be, to a significant extent, maintained due to the failure to more thoroughly address transfer pricing rules. Recent analysis from the South Centre demonstrates that while Amount A could generate a total of €6.9 billion for its members, digital services taxes at 3 percent would yield between €7.7 billion euros and €11.8 billion depending on whether

¹ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27648>

² <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28676>

³ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27165>

hybrid digital service companies were included.⁴ At 5%, the revenues available through imposition of DSTs were estimated to range between €12.9 billion and €19.7 billion.⁵

Under Pillar Two, meanwhile, the 15 percent minimum effective tax rate is likely to undermine revenue collection in many low- and middle-income countries, where the existing corporate tax rate is generally significantly higher. The economic rationale between the determination of 15 percent as the appropriate minimum rate remains unclear.

What we as well as others in civil society have argued is that there is a real danger that the global minimum tax set in Pillar Two is more likely to become a ceiling rather than a floor thus leading to a race to the bottom⁶ which will only erode the fiscal capacity of low- and middle-income countries to resource fundamental rights. Pillar Two, in any event, will raise limited additional revenues (between \$68 and \$105 billion) and will largely benefit richer countries.⁷ Alternative proposals dismissed by the OECD would have generated higher revenues for non-members and for OECD members alike, and with a much fairer distribution.⁸ This is why it has been argued that the OECD's proposal serves to reinforce rather than diminish neocolonial dynamics that entrench power imbalances which privilege the Global North and concomitantly disadvantage the Global South in matters of international taxation.

Moreover, your response fails to address the democratic and participation deficits in the two-pillar process which largely ignored genuine attempts by low- and middle-income countries to advance proposals which would take into account their distinct needs and interests. Proposals by the G24 and Southern-aligned South Centre on unitary taxation and similar proposals to counter the more problematic aspects of the Multilateral Convention on Amount A - such as adopting the approach under Article 12B of the UN Model Tax Convention - are prime examples.⁹

⁴ Starkov & Jin, (10 June 2024), A Toss Up? Comparing Tax Revenues from the Amount A and Digital Service Tax Regimes for Developing Countries, The South Centre. <https://www.southcentre.int/research-paper-199-10-june-2024/>

⁵ Ibidem.

⁶ BEPS Monitoring Group, 2023, 'The BEPS proposals and alternatives', BMG Briefing, <https://www.bepsmonitoringgroup.org/news/2023/7/5/the-beps-proposals-and-alternatives>

⁷ Felix Reitz, 2023, 'Revenue Effects of the OECD Corporate Tax Reform - An Updated Impact Assessment of Pillar Two', IFF-HSG Working Paper 2023-17, <https://ile.unisg.ch/wp-content/uploads/2023/07/17-WP-Reitz.pdf>.

⁸ Picciotto, Sol and Faccio, Tommaso and Kadet, Jeffery M. and Jansky, Petr and Cobham, Alex and Garcia-Bernardo, Javier, For a Better GLOBE. METR: A Minimum Effective Tax Rate for Multinationals (March 2, 2021). Available at SSRN: <https://ssrn.com/abstract=3796030> or <http://dx.doi.org/10.2139/ssrn.3796030>

⁹ BEPS Monitoring Group, 2023, 'The BEPS proposals and alternatives', BMG Briefing, <https://www.bepsmonitoringgroup.org/news/2023/7/5/the-beps-proposals-and-alternatives>; South Centre, 2023 'Statement by the South Centre on the Two Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy', <https://www.southcentre.int/sc-statement-two-pillar-solution-28-july-2023/#more-21951>.

It is difficult to reconcile these realities with the human rights norms and standards set out in the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Right to Development, and the Committee on Economic, Social and Cultural Rights' General Comment No. 24 on State obligations in the context of business activities. We are likewise concerned that your response does not provide evidence to counter the arguments made by both the special procedures and civil society that the two pillar proposals would reify patterns of neocolonial extraction of majority non-white nations of the Global South, and in so doing would reinforce racial and gender inequalities both within and between countries.

We are also concerned that the assertion that the OECD's two pillar proposals have been adopted by consensus may not be entirely accurate. Given that the Inclusive Framework mechanism does not have defined rules of procedure on decision making; given that various countries have raised concerns that they had little choice but to sign on to the agreement despite their concerns being ignored; and given that process continues to miss deadlines for progress due to a lack of agreement, with growing speculation that it will fail entirely; it is at best unclear on what basis the OECD secretariat claimed to have obtained consensus.¹⁰ While the aforementioned 'consensus' was marked by your organisation in 2021, the multilateral agreement under Pillar 1 has still not been finalised at the time of writing, and Pillar 2 has only been adopted by EU members and a limited number of other jurisdictions, most of which are widely-recognised as being corporate tax havens. As such, we find it problematic to affirm that a meaningful level of consensus on the proposals has in fact been achieved.

Whilst it is true that states have the sovereign choice to determine whether they will participate in any international tax cooperation processes, particularly whether to sign and ratify any treaties which are the product of such negotiations, this fails to acknowledge the failure of the OECD to establish a genuinely inclusive, democratic and participatory process towards the adoption of the two pillar proposals and subsequent related measures. The African Tax Administrators Forum has highlighted that "although the BEPS policy outputs are not legally binding, a jurisdiction which has not joined the Inclusive Framework may be identified as a 'jurisdiction of relevance', whose adherence to the BEPS minimum standards will still be required by the OECD in order to ensure a level-playing field".¹¹ In the same report, ATAF emphasises that pressure exerted by the

¹⁰ See, for example, ATAF, 2019, The Place of Africa in the Shift Towards Global Tax Governance: Can the Taxation of the Digitalised Economy be an Opportunity for More Inclusiveness, African Tax Administration Forum.

https://events.ataftax.org/index.php?page=documents&func=view&document_id=35

¹¹ African Tax Administration Forum, The place of Africa in the shift towards Global Tax Governance: Can the taxation of the digitalised economy be an opportunity for more inclusiveness, 2019.

https://events.ataftax.org/index.php?page=documents&func=view&document_id=35

OECD cannot be easily ignored when the possibility of blacklisting and defensive measures is ever-present in the background.

Unsurprisingly for this very reason both the United Nations' Secretary General¹² as well as United Nations special procedures have both noted these failures and for this reason have encouraged efforts to shift tax standard setting from the OECD to the United Nations.

In sum, your letter fails to provide an adequate response to these legitimate concerns and the manner in which OECD-led proposals have favored rich nations to the detriment of the predominantly non-white nations of the Global South. In addition, you have not addressed similarly legitimate concerns about the actions of OECD member states who have sought to delegitimize and impede the UN-process, ostensibly because this amounts to "duplication" and that the OECD possesses superior expertise.

We welcome your stated commitment to constructive collaboration with the United Nations on tax matters, but there have been serious concerns over incidents of the OECD lobbying member states to impede the process to establish an inclusive Multilateral Framework Convention on Tax Cooperation under the auspices of the UN, most notably the issuing of letters to various OECD ambassadors questioning the UN's capacity and legitimacy in this regard. With the above issues in mind, we would like to request clarification on the following concerns:

1. Being mindful of your commitment to respect the sovereign decisions of both the jurisdictions participating in the Inclusive Framework and the sovereign decisions of all United Nations member states, will the OECD make an unequivocal and public statement in support of negotiations on a UN Framework Convention on International Tax Cooperation and commit to avoid any lobbying activities or other interventions that might undermine the integrity of the process?
2. In light of your commitment to the advancement of international human rights standards, could you please confirm whether the OECD plans to commission an independent human rights impact assessment of the two pillar proposals, in line with the Guiding Principles on human rights impact assessment of economic reform policies, with a focus on both racial and gender impacts, and whether this assessment will be made publicly available?

Lastly, we wish to alert you that given our commitment to human rights, transparency and accountability we intend to make our correspondence with the OECD public so that all major players in international taxation including the OECD can be held accountable for

¹² UN General Assembly, Promotion of inclusive and effective international tax cooperation at the United Nations Report of the Secretary-General, 28 August 2023. https://financing.desa.un.org/sites/default/files/2023-08/A-78-235_advance%20unedited%20version_0.pdf.

their significant role in curbing international tax abuse. Since the OECD has stated that it is fully committed to international human rights standards and fighting against all forms of discrimination, we presume that this should be acceptable to you.

In closing we would like to reiterate that the current juncture represents a once-in-a-lifetime opportunity to transform the international financial architecture so that it is fit for purpose in responding to the polycrisis of our times of which the crises of poverty and inequality and the climate emergency are most salient.

It is our hope, therefore, that the OECD will make a full and unequivocal public commitment to supporting the UN tax convention process and desist from any actions that might undermine the integrity of that process.

Signatories

1. Amnesty International - United Kingdom
2. Asia Indigenous Peoples Network on Extractive Industries and Energy (AIPNEE)
3. Asociación Civil por la Igualdad y la Justicia (ACIJ) - Argentina.
4. Cátedra UNESCO de Desarrollo Humano Sostenible- Spain
5. Center for Economic and Social Rights - Global
6. Centre for Human Rights and Development - Rwanda
7. Centro de Estudios Legales y Sociales - Argentina
8. Community Empowerment and Social Justice Network (CEMSOJ) - Nepal
9. Dejusticia - Centro de Estudios de Derecho, Justicia y Sociedad - Colombia
10. Democracy and Workers' Rights Center in Palestine - Palestine
11. Dhirendra Panda - India
12. Dibeem for Environmental Development - Jordan
13. Economic Justice for Women Project (EJWP) - Zimbabwe
14. ESCR-Net (Economic Policy Working Group) - Global
15. Fundación Étnica Integral - Dominican Republic
16. Fundeps (Fundación para el Desarrollo de Políticas Sustentables) - Argentina
17. Global Network of Movement Lawyers - Global
18. Health Poverty Action - Global
19. Initiative for Social and Economic Rights - Uganda
20. International Women's Rights Action Watch - Asia Pacific region
21. Jamaa Resource Initiatives - Kenya
22. MenaFem Movement for Economic Development and Ecological Justice – MENA region
23. Mesa Nacional para las Migraciones y Refugiados en RD (MENAMIRD) – Dominican Republic
24. Minerva Business and Human Rights Association - Turkey
25. Minority Rights Group International - Global

26. Miridiya organization - Sri Lanka
27. Movement Law Lab - Global
28. National Fisheries Solidarity Organization (NAFSO) - Sri Lanka
29. Observatori DESCA - Spain
30. OECD Watch - Netherlands
31. Oyu Tolgoi Watch - Mongolia
32. Pakistan Fisherfolk Forum - Pakistan
33. Phenix Center - Jordan
34. Polski Instytut Praw Człowieka i Biznesu - Poland
35. Red de Justicia Fiscal de América Latina y el Caribe - Argentina
36. Right to Education Initiative - Global
37. SEATINI - Uganda
38. SINACTRAHO - Mexico
39. SOMO (Center for Research on Multinational Corporations) - Netherlands
40. Steven Dean, Professor of Law at Boston University (signed in his personal capacity)
41. Tax Justice Network - Global
42. Tax Justice NL - Netherlands
43. Temblores ONG - Colombia
44. The Government Revenue and Development Estimations (GRADE) initiative, the Universities of St Andrew's and Leicester – United Kingdom
45. Wemos - Netherlands
46. Zimbabwe People's Land Rights Movement - Zimbabwe