BRICS 2016: WHY THE UN INTERGOVERNMENTAL TAX COMMISSION SHOULD BE A PRIORITY

The annual BRICS Summit – of the five major emerging national economies: Brazil, Russia, India, China and South Africa – has consistently reiterated the central role of the UN as the only truly inclusive, multilateral institution to address global challenges[1]. BRICS countries have also been committed to strengthening international financial architecture to ensure it is more representative, especially in the context of Bretton Woods Institutions. Though the BRICS bloc has, for years, been united along with other developing countries[2] in demanding a more inclusive global tax institution, this has not yet been reflected in BRICS Summits or political deliberations in G20. The BRICS 2016 Summit in Delhi, following on the Third Financing for Development conference last year, would be a crucial forum to take the proposal forward.

Third Financing for Development (FfD) Conference and the UN Intergovernmental Tax Body

The Third Financing for Development negotiations saw the G77 (a grouping of 134 developing countries) push strongly to upgrade the current UN Tax Committee to an intergovernmental body under ECOSOC, which was finally blocked by a small handful of countries that are part of the Organisation for Economic Co-operation and Development (OECD), a grouping dominated by high income countries. As the only outstanding negotiating point at the Conference, it received widespread media coverage and the outcome was criticised for not agreeing to create a global tax body[3].

Through the negotiations, BRICS countries, particularly India, Brazil, and South Africa were critical to keeping the issue alive and noted their disappointment at the outcome:

<u>India</u>

Jayant Sinha, Minister of State for Finance, Government of India, 3rd International Conference on Financing for Development, Plenary Meeting, 15 July 2015[4]:

> *In today's interconnected world, tax policy is a global public interest, having ramifications far beyond national borders. Greater information exchange is good, but not a substitute for genuine and equitable multilateralism in deciding global norms and standards on taxation. If this is truly a universal agenda, then all of us must have an equal seat at the table to legislate on global issues.*
>
> *The lack of an ambitious decision on upgrading the UN Committee of Experts on international cooperation on tax matters into an intergovernmental body, in our view, is a historic missed opportunity.*

---

[1] http://www.brics.utoronto.ca/docs/090616-leaders.html; http://www.brics.utoronto.ca/docs/100415-leaders.html; http://www.brics.utoronto.ca/docs/110414-leaders.html; http://brics.itamaraty.gov.br/media2/press-releases/214-sixth-brics-summit-fortaleza-declaration; http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1282066.shtml
[2] Russia's position on the issue is unclear. There are no public statements supporting or rejecting upgrading the UNTC
[3] http://www.theguardian.com/global-development/2015/jul/16/outcome-document-addis-ababa-ffd3-financing-for-development; http://thewire.in/2015/07/17/addis-agreement-shows-rich-countries-still-call-the-shots-6613/; http://www.theguardian.com/global-development-professionals-network/2015/jul/15/addis-ababa-talks-risk-deadlock-over-un-agency-for-tax-ffd3-financing-for-development; http://qz.com/455059/rich-countries-rejected-an-international-plan-to-let-the-un-help-fight-tax-evasion/
[4] http://www.un.org/esa/ffd/wp-content/uploads/sites/2/2015/07/India.pdf

Brazil

The following is a statement by the Special Envoy of the President of the Republic of Brazil, Plenary Session of the Third International Conference on FfD.

> *Brazil has been highly engaged in the Global Forum on Exchange of Information for Tax Purposes, as well as in the G20/OECD exercise on Base Erosion and Profit Shifting. Those are important mechanisms of cooperation and represent a change in attitude towards tax evasion and aggressive tax planning. But they are limited in composition and take only in a very limited manner into account the very different realities of developing countries.*
>
> *A genuine global tax body would, therefore, make tremendous sense in a transformative post-2015 development agenda. It is high time to further strengthen and revamp our work on tax matters at the UN, including through the upgrading of the existing committee to an Intergovernmental Committee of Experts in Tax Matters. In a context where it is clear that tax policies and capacities are essential do domestic resource mobilization, it is difficult to understand the logic of those that oppose truly multilateral discussions on tax cooperation*[5][sic].

South Africa on behalf of G77 and China

On behalf of G77 and China, Amb. Kingsley Mamabolo, Permanent Representative of the Republic of South Africa to the United Nations, Plenary meeting in consideration of Addis Ababa Action Agenda for the Third International Conference on FfD[6]:

> *'the position of the Group is also on record that there remain a number of issues of principle that are important to, and fully endorsed by the Group that have not been adequately accommodated in the current text, including, but not limited to…. The need to fully upgrade the Tax Committee into an intergovernmental body..'*

BRICS 2016 is an opportunity for these countries to re-group on the issue and ensure it stays on the global agenda, building on the momentum from last year.

Before FfD: Long-standing Demand for a UN Intergovernmental Tax Body from Developing Countries

The demand for a global tax body pre-dates the FfD Conference in Addis Ababa in 2015. In fact, the demand for an intergovernmental tax body at the UN also featured in discussions at the Second Financing for Development Conference at Doha. Since then there have been several annual statements issued by G77 and China pushing for this. In 2011, Brazil, China and India (among others) even made individual submissions to the UN supporting the upgrading of the committee to an intergovernmental body[7].

[5] http://www.un.org/esa/ffd/ffd3/wp-content/uploads/sites/2/2015/07/Brazil.pdf
[6] http://www.g77.org/statement/getstatement.php?id=150727
[7] China: http://www.un.org/esa/ffd/wp-content/uploads/2011/04/20110426_China.pdf; Brazil: http://www.un.org/esa/ffd/wp-content/uploads/2011/04/20110426_Brazil.pdf; India: http://www.un.org/esa/ffd/wp-content/uploads/2011/04/20110426_India.pdf

Submission by People's Republic of China to United Nations in 2011[8]:

> *"Given the institutional deficiencies of the Committee, China agrees to reforming the institutional arrangement of the Committee, and upgrading it into an intergovernmental organization subordinate to ECOSOC to improve its authority and effectiveness in handling and coordinating international tax matters".*

The G77 and China annual statements on this issue can be accessed here:

2010: http://www.g77.org/statement/getstatement.php?id=100723
2011: http://www.g77.org/statement/getstatement.php?id=110727C
2012: http://www.g77.org/statement/getstatement.php?id=120727
2013: http://www.g77.org/statement/getstatement.php?id=130529
2014:http://www.un.org/esa/ffd/wp-content/uploads/2014/09/ICTM2014_StatementG77China.pdf
2015: http://www.un.org/esa/ffd/wp-content/uploads/2015/04/2015esm-SouthAfrica.pdf

The statements reiterate the disappointment of developing countries on the slow progress on the issue globally, and note the importance of ensuring that an inclusive UN body sets global tax standards that would allow interests of all developing countries to be represented as equal partners. BRICS countries can play the leadership role in ensuring that this is prioritised, especially as they continue to enjoy greater leverage in global political and economic deliberations.

Source-based Taxation a Priority for BRICS and other Developing Countries

There are key differences between BRICS and OECD countries around taxation. Brooks (2015) notes that each of the BRICS countries prioritise taxation at source and despite being increasingly capital exporting nations, are more likely to continue to preserve source-based taxation than higher income countries that follow the OECD model tax treaty strictly[9]. BRICS countries have been vocal in challenging the dominance of OECD standards, especially in areas such as tax treaties and transfer pricing. Dagan (2014) sees the BRICS as the 'necessary counter-force' to the OECD's tax policies, further noting that in today's international tax world it makes little sense to promote cooperation on matters that are important for OECD countries, following "their" compatible standards, without opening up the floor for options that serve non-OECD interests[10].

Perhaps due to the emerging dominance of BRICS, the OECD BEPS process tellingly only saw G20 developing countries being able to participate on equal footing. In addition to the problematic exclusion of the rest of the developing world, the OECD BEPS initiative also does not address the core issue of balance between source and residence taxation, despite developing countries indicating this was a significant issue for them in the regional BEPS consultations in 2014[11].

---

[8] http://www.un.org/esa/ffd/tax/2011SGReport/China.pdf
[9] Source: Brooks, Kim, International Tax Policy: The Counter-Story Presented by the BRICS (January 5, 2015). "International Tax Policy: The Counter-Story Presented by the BRICS" in BRICS and the Emergence of International Tax Coordination, Yariv Brauner and Pasquale Pistone, eds. (Amsterdam: IBFD, 2015), chapter 17 (447-467). Available at SSRN: http://ssrn.com/abstract=2711300
[10] II. Dagan, Tsilly, BRICS -- The Potential of Cooperation (December 14, 2014). Forthcoming in BRICs and the Emergence of International Tax Coordination (Yariv Brauner and Pasquale Pistone, eds). Available at SSRN: http://ssrn.com/abstract=2538105
[11] http://www.oecd.org/ctp/Co-chairs-summary-Seoul-2014.pdf and http://www.oecd.org/ctp/co-chair-summary-LACregional-consultation-BEPS.pdf

Rao and Sengupta (2013), in analysing the implications of OECD BEPS Action Plan for India, noted that while welcoming the initiative, it is important to keep in perspective that the OECD is a forum for rich countries who will not come to the 'rescue of the developing world'. They further suggested that '*India in conjunction with other BRICs should make it amply clear that these countries should continue to oppose this basic philosophy of the OECD model which gives the taxing rights of the important sources of income to the capital exporting countries while the source countries get only the rights to tax routine income*[12]'. The Indian tax administration has also highlighted their disappointment with the discussions at OECD where their impression was that real issues were being swept under the carpet in favor of superficial ones[13].

BRICS and Illicit Financial Flows (IFFs) or "Black Money"

BRICS feature in the top 10 developing countries with the highest average illicit financial flows in the decade 2004-2013 (China ranks 1st, Russia 2nd, India 4th, Brazil 6th and South Africa 7th)[14]. Developing countries collectively lost approximately US $ 7.8 trillion in the same decade. The Mbeki High Level Panel Report on Illicit Financial Flows from Africa highlights 'financial secrecy jurisdictions and/or tax havens' as a major enabler of IFFs[15]. It is perhaps pertinent to note that the largest foreign investment sources into BRICS countries are also tax havens or secrecy jurisdictions. The British Virgin Islands are the biggest FDI source for China, Mauritius for India, Cyprus for Russia and the Netherlands for Brazil[16]. In addition to the obvious global coordination role that an inclusive UN tax body can play in the long-term to address these issues, BRICS countries could work to curtail such outflows more immediately by implementing the following policies:

1. Automatic Exchange of Information (AEoI): Collect, collate and publish aggregate statistics of non-residents, i.e., totals by country of residence, regardless of whether or not the resident is in a participating jurisdiction for AEoI. Such data would not breach confidentiality standards but would enable a much better understanding of the size and composition of offshore finance and how it changes over time, thereby revealing avoidance schemes and other strategies to avoid reporting of information while encouraging developing countries to join AEoI.
2. Public Country-by-Country Reporting: OECD's country-by-country reporting template, though a step in the right direction, stopped short of recommending that these reports be published. Making country-by-country reporting information publicly available is the most cost effective and efficient way of ensuring that developing countries have timely and low-cost access to information that they need in order to determine the risk of a given multinational company engaging in aggressive profit-shifting activities. The BRICS could show leadership by requiring these reports to be published and urging OECD countries to follow.
3. Public Beneficial Ownership Registries: Corruption, crime, and tax evasion are facilitated by people's ability to hide their identity through secretive shell companies and other legal structures. BRICS should implement public registries of beneficial ownership through national legislation, which would help create a more transparent corporate structure and prevent illicit activity.

---

[12] Sengupta and Rao, Action Plan on Base Erosion and Profit Shifting, An Indian Perspective. National Institute of Public Finance and Policy (NIPFP). http://www.nipfp.org.in/media/medialibrary/2014/03/WP_2014_133.pdf
[13] http://www.un.org/esa/ffd/tax/Beps/CommentsIndia_BEPS.pdf
[14] Global Financial Integrity, Illicit Financial Flows from Developing Countries, 2004-2013. http://www.gfintegrity.org/report/illicit-financial-flows-from-developing-countries-2004-2013/
[15] http://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf
[16] http://data.imf.org/?sk=40313609-F037-48C1-84B1-E1F1CE54D6D5&sId=1390030109571

The last meeting in Delhi of BRICS Finance Ministers in 2013 resulted in a strong statement focused on the important role of BRICS countries in international tax cooperation[17]. Past leadership on both the primacy of the United Nations and the need to reform international financial architecture place the BRICS nations in a unique position to advocate for the UN Intergovernmental Tax Commission at the BRICS Summit 2016. The Summit could serve as a moment to unite the ongoing efforts of member nations, and for BRICS to play a leadership role in forging a more equitable global financial system for all countries.

For more information, please contact Pooja Rangaprasad: pooja@financialtransparency.org

[17] http://pib.nic.in/newsite/PrintRelease.aspx?relid=91684