

# UN Resolution & Proposal for a UN Convention on Tax

Einführungsvortrag

Madeleine Kockrow, PwC

ifst - Veranstaltung  
30. Mai 2023



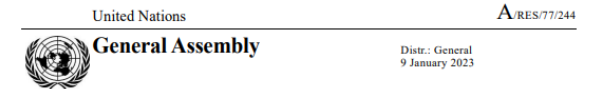
# UN Resolution 77/244

## Promotion of inclusive and effective international tax cooperation



2. Decides to begin *intergovernmental discussions* in New York at United Nations Headquarters on ways to strengthen the inclusiveness and effectiveness of international tax cooperation through the evaluation of additional options, including the *possibility of developing an international tax cooperation framework* or instrument that is developed and agreed upon through a United Nations intergovernmental process, taking into full consideration existing international and multilateral arrangements;

3. Requests the Secretary-General to prepare a *report analysing all relevant international legal instruments, other documents and recommendations that address international tax cooperation, considering, inter alia, avoidance of double taxation model agreements and treaties, tax transparency and exchange of information agreements, mutual administrative assistance conventions, multilateral legal instruments, the work of the Committee of Experts on International Cooperation in Tax Matters, the work of the OECD/G20 Inclusive Framework on BEPS and other forms of international cooperation, as well as outlining potential next steps, such as the establishment of a Member State-led, open-ended ad hoc intergovernmental committee to recommend actions on the options for strengthening the inclusiveness and effectiveness of international tax cooperation;*”



Seventy-seventh session  
Agenda item 16  
Macroeconomic policy questions

### Resolution adopted by the General Assembly on 30 December 2022

[on the report of the Second Committee (A/77/441, para. 16)]

#### 77/244. Promotion of inclusive and effective international tax cooperation at the United Nations

The General Assembly,

Guided by the purposes and principles enshrined in the Charter of the United Nations,

Recognizing that combating illicit financial flows is an essential development challenge, noting that developing countries are particularly susceptible to the negative impact of illicit financial flows, emphasizing that illicit financial flows reduce fiscal space along with the availability of valuable resources for financing for development, and recognizing the importance of cooperation at the national, regional and international levels in combating illicit financial flows and promoting financial transparency,

Noting the corrosive effect that aggressive tax avoidance and tax evasion have on trust, the social compact, financial integrity, the rule of law and sustainable development, affecting the poorest and most vulnerable,

Reaffirming its resolution 69/313 of 27 July 2015 on the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, in which Member States committed to scaling up international tax cooperation, encouraged countries, in accordance with their national capacities and circumstances, to work together to strengthen transparency and adopt appropriate policies, including multinational enterprises reporting country-by-country to tax authorities where they operate, access to beneficial ownership information for competent authorities, and progressively advancing towards automatic exchange of tax information among tax authorities as appropriate, with assistance to developing countries, especially the least developed, as needed, and stressed that efforts in international tax cooperation should be universal in approach and scope and should fully take into account the different needs and capacities of all countries, in particular countries in special situations,

23-00134 (E) 120123

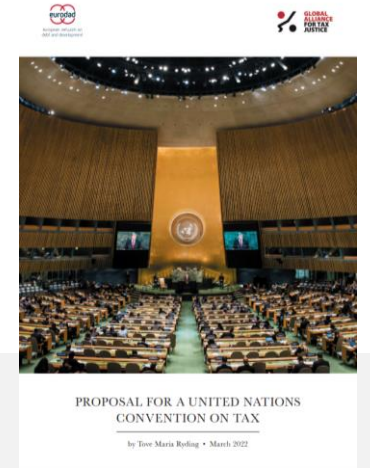


Die UN Resolution A/RES/77/244 vom 30. Dezember 2022 ist abrufbar unter:

<https://www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2023-02/A%20RES%2077-244%20English.pdf>

# Proposal for a UN Convention on Tax

## der NGO-Netzwerke Eurodad & GATJ



Der Entwurf wurde am 10. März 2022 veröffentlicht und ist abrufbar unter:

<https://globaltaxjustice.org/wp-content/uploads/2022/08/2022-03-10-Ground-breaking-Civil-Society-Proposal-for-a-UN-EN-PDF.pdf>

# 1

## UN Transparency Standard

- Public CbCR der **Unternehmen**
- Austausch der Informationen zum *beneficial owner*
- Transparenz der **Staaten** ggü UN zu *Tax Policies and Practices*, e.g. *statutory and effective tax rates, incentives*

# 2

## UN Tax Standard

- Abstimmung der Staaten bei der Ausgestaltung ihrer Steuersystem und der Besteuerung von multinationalen Unternehmen, d.h. Änderungen am materiellen Steuerrecht

# 3

## Relationship between tax policy and international goals

- Verbindung des Steuersystems mit internationalen Zielen, wie bspw. die Erreichung der UN SDGS, Schutz der Menschenrechte, Umweltschutz und Gleichheit

# 4

## UN Public Registries

- UN Public Registry for Corporate Transparency
- UN Global Asset Registry
- UN Public Registry for Tax and Fiscal Policies

# Hypothetische Umsetzung des Proposals

## Beabsichtigte Änderungen am Weltsteuersystem



*The specific proposal for a UN Convention on Tax, which is outlined in Annex 1, would entail a **fundamental reform** of international tax cooperation. This includes introducing transparent and inclusive decision-making where all countries can negotiate as equals. Furthermore, it is deliberately designed to **replace major elements of the existing international tax system** [...].” – Proposal for a UN CoT, p. 5.*

1.

**Abschaffen der DBA** zugunsten multilateraler Übereinkommen:

„creation of a multilateral structure that would, to a large extent, replace the complicated network of bilateral tax treaties”

2.

**Abschaffen** des bestehenden **Transfer Pricing** Systems und insb. des **Fremdvergleichsgrundsatzes**:

„abolishment of the transfer pricing system and its arm’s length principle, along with the approach of taxing multinational corporations as independent entities. Instead, the proposal is that multinational corporations should be taxed on the basis of their global consolidated profits, with taxing rights being allocated between governments based on an agreed formula in a system that is supplemented by a minimum effective corporate tax rate.”

3.

**Verbindliche Vorschläge** der Conference of the Parties (CoP) zur **Ausgestaltung der nationalen Steuersysteme** mit Bezug zu:

- *Methods for the elimination of tax-related illicit financial flows, including tax abuse, tax avoidance and evasion by both corporate and individual actors;*
- **Taxation of income;**
- **Taxation of capital;**
- *Methods to eliminate double taxation while avoiding double non-taxation or reduced taxation through tax abuse, including **tax avoidance and evasion***
- *Non-discrimination;*
- *Assistance in the collection of taxes; and*
- *Entitlement to benefits.*
- *The need to ensure effective taxation of extractive industries; and*
- *The need to ensure effective **taxation of capital gains** in the country from which the economic gain is derived, including by combating tax avoidance through offshore indirect transfers.” – Proposal for a UN CoT, p. 24.*



# Hypothetische Umsetzung des Proposals

## Völker- und verfassungsrechtliche Ebene

Auf Ebene  
der UN

Die Abschluss der CoT würde als Convention iSd. Art. 38 Abs. 1 lit. a IGH-Statut erfolgen.

Die Berichte gem. Art. 6, 7, 8 und 13 werden durch das nach Art. 15 einzurichtenden Secretariat veröffentlicht in UN Public Registries (Art. 17 und 18)

Die aus Regierungsvertretern gebildete CoP soll gem. Art. 10 und 11 CoT Vorgaben zur Ausgestaltung der nationalen Steuersysteme wie Besteuerung multinationaler Unternehmen entwickeln.

Diplomatische Streitbeilegung nach Art. 22 CoT und Möglichkeit von Sanktionen gegen nicht-unterzeichnende Staaten, Art. 10.5 CoT.

Abschluss der  
Convention on Tax  
(CoT) durch die UN

Innerstaatliche  
Transformation

Veröffentlichung  
der Berichte von  
Unternehmen und  
Staaten

Vorschläge der  
Conference of the  
Parties (CoP)

Innerstaatliche  
Transformation?

Streitbeilegung &  
Sanktionen

Umsetzung  
durch die  
Bundes-  
republik  
Deutschland

Die CoT wäre als völkerrechtlicher Vertrag durch ein Bundesgesetz iSd Art. 59 Abs. 2 S. 1 GG innerstaatlich umzusetzen.

- Beschlüsse der CoP wären als *soft law* nach Art. 59 GG innerstaatlich umzusetzen, aber nicht als *abgeleitetes Vertragsrecht*

# Hypothetische Umsetzung des Proposals

## Problemfelder



### Verfassungsrecht

- Zuständigkeit für Verhandlung?
- Demokratische Legitimation der CoP?
- De-Parlamentarisierung und Verletzung des Gewaltenteilungsgrds.?

### Völkerrecht

- Veränderungen im materiellen Recht: Vereinbarkeit mit Selbstgestaltungsrecht, Territorialitätsprinzip und Interventionsverbot?
- Vorgeschlagene Sanktionen: Vereinbarkeit mit völkerrechtlichem Sanktionsrecht?

### Verhältnismäßigkeit

- Entwicklungshilfe als legitimes Ziel, aber vorgeschlagene Maßnahmen geeignet, erforderlich und angemessen?
- Oder besser: Anpassen des Inclusive Frameworks, stärkere Berücksichtigung der Belange von Entwicklungsländern in OECD-Verhandlungen?

### Datenschutz

- Weltweiter Informationsaustausch zu den beneficial owner und Sichtbarkeit in den UN Public Registries: Schutz von Menschenrechten politisch verfolgter Personen?

Vielen Dank  
für Ihre  
Aufmerksamkeit.



**Madeleine Kockrow**  
PwC Berlin

Tel. +49 30 2636-1613

Mobil +49 175 6899320

[madeleine.kockrow@pwc.com](mailto:madeleine.kockrow@pwc.com)