

Civil Society FfD Group Response to the FACTI Panel Interim Report

This input is submitted by the [Civil Society FfD Group](#), including the Women's Working Group on FfD, and has been facilitated by the Global Alliance for Tax Justice. The Civil Society FfD Group is an open network of more than 800 organisations, federations and networks from diverse regions and constituencies around the world.

Background

This input is made against the background of previous [submissions](#), where we highlighted the following expectations and concerns:

- The measure of success of the FACTI Panel will be precisely in its clarity of recommendation in support of the long-standing call by a majority of UN Member States for a universal, intergovernmental tax body at the UN, and how it provides impetus to move Member States in this direction. **Such a call should be clearly noted as a structural reform needed immediately, not long-term.**
- **This has been an urgent issue that especially developing countries have been calling for years.** The consequences of unfair tax rules have been devastating for developing countries, struggling with limited fiscal and policy space, the impact of which is playing out in the context of the current pandemic.
- Our expectation about the work of expert panels such as the FACTI Panel, is that they aspire to generate willingness, not to assume it. We strongly believe that the FACTI Panel should clearly express what intergovernmental cooperation, policy change and institutional reforms are needed to curtail illicit financial flows. **It should not self-censor its work in response to individual or a minority of Member States.**
- **The work of the Panel should be grounded in principles of human rights and gender equality.** Illicit financial flows, including corporate tax abuse, obstruct redistribution and drain resources that are crucial to challenging inequalities, particularly gender inequality.
- The FACTI Panel will not be the first high-level initiative to discuss and address issues related to illicit financial flows (IFFs). Other high-level processes, including the High Level Panel on Illicit Financial Flows from Africa and the 2019 UN High-level Meeting on IFFs, have provided thorough analyses and important recommendations for action. **The FACTI Panel should endorse and build on the work of previous high-level initiatives, rather than duplicate it.**

Overall assessment

Against the backdrop outlined above, we are deeply disappointed in the Interim Report. In particular, we have concerns about the approach taken on the central issue of international cooperation and global standard-setting on tax. As described in detail under point 1 below, we find that, rather than proposing recommendations and solutions on this central issue, the report simply notes the *“lack of consensus in this area”* and states that the *“Panel will discuss this issue with all stakeholders (...) with the aim of reaching a common understanding”*. As stated in our [first submission](#) to the Panel in February 2020, we believe that the value of high-level panels lies in their ability to remain above narrow political agendas and assess how to resolve the global problems we face. On the other hand, there is a risk that such panels can get bogged down by an overly technical focus or become captive to selective or narrow

political interests. We would like to reiterate that the outcomes of the FACTI Panel should not be a political compromise, but should enable the Panel to serve the process of correcting gaps and imbalances in the international system, and promote progress towards fair, inclusive and accountable institutions and systems, as well as accelerate the abilities of countries to achieve the Sustainable Development Goals (SDGs) and deliver on human rights and gender equality obligations. The Panel must aim to build momentum and urgency, which is particularly important in the context of the global crisis caused by the Covid-19 pandemic.

Specific points

1. International cooperation and standard setting on tax

Political versus technical aspects

The extent of resource loss and the mechanisms making illicit financial flows possible are widely known, and the policy options have already been widely discussed. It is the political dimension of the solution that has remained elusive. In particular, the institutional arrangement for negotiating new international standards and the ultimate international governance required to implement them has been the major unresolved issue. In this context, simply reproducing technical analysis already provided by other reports will not contribute to progress.

As we have seen over the past decade, developing countries are on one side trying to advance a UN-based solution on the basis of principles of universality and the right to participate on an equal footing, but powerful Organisation for Economic Co-operation and Development (OECD) members continue to block these efforts. In this situation, statements such as *“each side makes convincing arguments”* (the Panel’s Interim Report, page 22) will only serve to justify the status quo.

We note that the Interim Report implicitly appears self-contradictory in the section on Cooperation on Tax Matters, when it seems to describe the situation as a conflict between two equally justifiable perspectives (page 22), whereas in other sections, it seems to acknowledge the problems that come with maintaining the current decision-making structures. For example, under the section *“Coordination to address challenges”*, the report states that *“All concerned states should be involved in setting the norms, underscoring the importance of universal and inclusive forums”* and that *“The Panel agrees that lack of universality in norm setting is a major shortcoming, and one that will need to be addressed”* (page 14). In the section on *“Tax treaties and transfer pricing”*, the report also highlights the current *“triple disadvantage”* faced by lower-income countries that agree to participate in the existing international forums where global tax norms are currently being set, including that *“the starting point for any discussion is a set of tax norms developed largely without their input”*.

We appreciate the distinction that the Interim Report makes between, on the one hand, the countries that are part of setting the agenda and formulating global norms, and on the other hand those that are invited or coerced into following norms set by others. However, as part of this distinction, we believe the Panel should also challenge the view that existing international frameworks have *“embraced the need for inclusiveness”* (page 22).

The FACTI Panel's recommendations must be based on the notion of justice and a rights-based approach. If the Panel is to play a significant role to bring about progress, it should consistently and clearly call out the politics and injustices of the current situation, as well as the strong negative implications this is having on the fairness, coherence and effectiveness on the international tax system. Furthermore, it should come up with progressive recommendations that will contribute to building political will to overcome this blockage, rather than limiting itself to what is currently considered "*politically viable*" (a term that is also strongly dependent on the political perspective taken).

Short-term versus long-term measures

As we understand that the FACTI Panel's suggested approach includes "short-term and long-term objectives", we would also caution against promoting the view that consideration of systemic issues, and in particular international decision-making on tax, is not urgent and can continue to be delayed. This would only help those blocking progress, and we urge the Panel to keep in mind that this issue has already been subject to decades of procrastination. For example, the issue of international decision-making on tax, and specifically the need for an international tax organisation, was a central part of the recommendations of the High-Level Panel on Financing for Development – the so-called Zedillo Panel – which delivered its [recommendations](#) already in 2001.

We also urge the Panel to keep in mind that the pandemic-induced global crisis calls for more urgent and ambitious measures than ever before. As we have seen in other contexts, times of crisis can significantly speed up political decision-making processes and fundamentally redefine the limits of political viability.

Lastly, we would highlight that there are no technical or practical obstacles to progress on this issue. Intergovernmental negotiations are a core competence of the UN, and Article One of the UN Charter states that a key purpose of the organisation is "*To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character*". Furthermore, through Article 27 of the Addis Ababa Action Agenda, governments have specifically made a commitment to scaling up international tax cooperation. Calling on governments to initiate effective cooperation on tax matters under the auspices of the UN is in essence a call for them to live up to the commitments they have already made.

A critical assessment of OECD proposals for new global tax standards

In the analysis of the ongoing OECD-led negotiations referred to as "BEPS2", the Interim Report states that "*The current negotiations on the two pillars reflect a broader discussion on tax and development*". It is not clear to us how the Panel considers that development aspects are reflected in the ongoing process. We would furthermore like to highlight that a growing number of actors are raising strong concerns about the fact that developing country interests have not been included in the proposals on the table. As mentioned below, this includes the UN Conference on Trade and Development (UNCTAD) and the Independent Commission for the Reform of International Corporate Taxation. Furthermore, a number of specific concerns have been raised in relation to the two pillars of the negotiations.

For example, as regards Pillar 1, Alex Cobham, Tommaso Faccio and Valpy FitzGerald have highlighted that the fundamental objective of [reallocating taxing rights to “market jurisdictions”](#) is at best of little benefit to non-OECD countries, and might even be outright harmful to some lower-income countries. Furthermore, many actors, including civil society organisations, have raised strong concerns about the [escalating complexity](#) of the system and the decision to maintain and build on the existing transfer pricing system, as opposed to considering more fundamental reforms.

As regards Pillar 2 and the proposal to develop a global minimum tax, civil society organisations have previously raised the importance of giving [priority to source country rules](#) as a keyway to include the interests of developing countries. However, the blueprints released by the OECD in October 2020 indicate that priority will not be given to source countries, but rather to residence countries. Thus, there is a clear risk of introducing yet another system that is biased against the interests of developing countries. We also note that the blueprints do not address the risk of creating a “race to the minimum”, which is particularly problematic if the effective minimum tax rate is set at a low level.

Specific proposals for next steps at the UN level

In the Interim Report, we are missing a consideration of specific proposals for next steps, which have been put forward by both civil society organisations and other actors. In particular, we urge the Panel to consider the following:

- The proposal of organising a UN Summit on Financing for Development. Such a summit could play a central role in boosting the political momentum and providing a platform for Heads of State to address the need for action at the highest level of government (including, potentially, some of the recommendations of the Panel). In the context of the global crisis, this could be in the form of an International Economic Reconstruction and Systemic Reform Summit, as proposed by the Civil Society FfD Group.
- Specific proposals for how an intergovernmental UN tax commission could be designed and anchored in the broader UN architecture. This includes the civil society proposal to establish an intergovernmental UN tax body as a functional commission of the Economic and Social Council (ECOSOC) with universal membership and with the existing UN expert group on international cooperation in tax matters functioning as a subsidiary expert body of the commission.
- The proposal of developing a UN Tax Convention as the framework for strengthening international tax cooperation, transparency and reforming the international tax system. This issue has been raised by civil society organisations as well as repeatedly by governments, including the Africa Group. Furthermore, it was specifically included in the “Menu of Options” that was produced as part of the process on Financing for Development in the Era of COVID-19 and Beyond (see page 123 in the [Menu of Options](#)).

We also note that the Interim Report does include a specific proposal for establishing “*a neutral and authoritative body with responsibility for collating and analysing tax-related data (including gender-disaggregated data)*”. We find this to be an interesting proposal, but would urge the Panel to clarify that data collection should not be an end in itself, but rather should be linked to specific policy objectives. We do believe that collection of tax-related gender-disaggregated data is highly relevant for monitoring the implementation of the Addis Ababa

Action Agenda and the Sustainable Development Goals, including Goal 5 (on gender equality), Goal 10 (on inequality), Goal 16 (including the target on illicit financial flows) and Goal 17 (on means of implementation). We would welcome recommendations from the Panel reflecting this.

In terms of establishing a new body, we encourage the Panel to provide more details, including on the potential institutional setup of such a body. We note that such a body could, for example, be considered as an element of a larger UN Convention on Tax, where data collection should be a key element of monitoring the impacts of tax systems and the implementation of international commitments. However, in this context of collection of gender-disaggregated data, we would also urge the panel to stress that such a body should reinforce and support, rather than replace, the work of other key UN institutions that specialise in gender-related issues, including UN Women.

Recent assessments and recommendations of other bodies

In contrast to the Panel's Interim Report, we note that UNCTAD has recently published several reports that include a critical assessment and clear recommendations on international tax cooperation and standard setting. The [report](#) on 'Tackling Illicit Financial Flows for Sustainable Development in Africa' from September 2020, for example, notes that *"At the global level, it could be argued that only the United Nations, with its near universal membership and democratic structure, can provide a truly global tax body. Reflecting these concerns, as of March 2020, OECD proposals did not fully address the priorities of African countries."*

In addition, UNCTAD's [trade and development report](#) published in September 2020 notes that, *"the Covid-19 pandemic brought into sharp focus what government expenditures would have been possible and how many lives been saved, had the international community advanced further in tackling IFFs in general and tax-motivated IFFs in particular, including the closing of tax havens, beginning with those in the advanced countries."*

"Regrettably, multilateral efforts towards reforming international corporate taxation under the OECD Base Erosion and Profit Shifting (BEPS) initiative, insufficient as they were, have suffered a setback by the recent withdrawal of the United States and are unlikely to lead to meaningful reform in the near future. However, there is a strong case to be made for broader reform of international corporate taxation that deals with profit shifting and addresses the global inequalities in taxing rights between countries under the auspices of the United Nations as a genuine global forum."

We would also draw the Panel's attention to this [statement](#) by the Independent Commission for the Reform of International Corporate Taxation (ICRICT), in response to the most recent documents from the OECD-led negotiation on reforming the international tax standards:

"The current proposals have not obtained agreement, despite having sacrificed all ambition and simplicity in the search for support of the dominant OECD member countries. And the process is unlikely to succeed as long as it continues to promote only marginal reform and excludes most countries from real equal participation, while allowing a few to protect 'their' multinationals at the expense of public services and economic recovery everywhere. What is needed is an inclusive process, global leadership and proposals for fundamental reform in the public – rather than corporate – interest."

2. Gender equality and human rights-related aspects of illicit financial flows

The Interim Report recognises the links between illicit financial flows and gender equality and human rights. We believe it is crucial for the FACTI Panel to maintain this, but would also like to stress the importance of reflecting this recognition across all of its work, including its recommendations more broadly. In this context, we would like to stress that the existing approach to international decision-making on tax is fundamentally incompatible with a rights-based approach, since it denies developing countries the right to participate on a truly equal footing. As noted also under point 1 above, we find it very problematic that the Interim Report states that “*each side makes convincing arguments*” (the Panel’s Interim Report, page 22) in the discussion about international decision-making. If the Panel takes a rights-based approach to its work, it must acknowledge that those governments that insist on the current undemocratic, opaque and unequal process of negotiations do not make ‘convincing’ arguments.

In terms of the impacts of regressive tax systems on human rights and gender equality, we would also like to highlight that the Covid-19 crisis poses a very high risk that the situation will worsen. Experiences from previous crises have clearly illustrated the substantial risks of proliferation and increased use of regressive taxes, such as value added taxes, as a government response to budget deficits. As noted in the Interim Report, the impact of such taxes falls more heavily on women and girls. Therefore, unless concrete measures are taken to counteract this risk, including the promotion of progressive, gender-responsive and human rights-based tax systems and ambitious action to combat illicit financial flows, the potential impacts on gender equality and human rights are very substantial.

To counteract these risks, it is important that the international and national work on the links between illicit financial flows, human rights and gender equality is scaled up. We urge the Panel to emphasise this, while also stressing the importance of ensuring that governments fulfil their commitments under key existing agreements, including the Beijing Platform for Action and the Committee on the Elimination of Discrimination against Women.

Furthermore, it is important to scale up the work to prevent regressive taxation and to promote progressive gender-responsive tax systems. In the Addis Ababa Action Agenda, governments made a commitment to “*enhancing revenue administration through modernized, progressive tax systems*”, but little has been done to follow up on this. We urge the Panel to consider this issue, including the aspect of wealth taxes, which is currently emerging as a key topic in a number of countries across the world. We also encourage the Panel to consider the issue of regressive taxation linked to the tax rates on income from work and consumption versus passive income.

3. Transparency

Country by country reporting

The Interim Report addresses the issue of country by country reporting, but fails to consider the important proposal of public access to such information. Experiences from the European Union, where public country by country reporting has been introduced for the banking sector, have [highlighted](#) the important role that this measure plays as a disincentive for corporate tax avoidance. Furthermore, we would stress the following points as strong arguments for why country by country reports should be public:

- On the issue of corporate tax avoidance, tax administrations often face strong restrictions in terms of the action they can take. This relates to the fact that corporate tax avoidance is often technically speaking legal, although it may be bending the law and circumventing its spirit. Addressing tax avoidance therefore often requires measures that go beyond the scope of tax administration and include the need to consider fundamental changes to the law. In this context, it is vital that parliamentarians, journalists, civil society organisations and citizens in general have access to information showing where corporations do business and how much tax they pay in each country where they operate. Public country by country reporting is the tool that can provide this information;
- Public information will always be the most effective way to resolve problems related to unequal access to information between countries, and will open up new possibilities for international cooperation between tax administrations.

Public beneficial ownership registers

We welcome the Panel's assessment and recommendations in relation to public registers of beneficial owners, as expressed in the Interim Report. In particular, we find it important that the Panel raises the concern about the need to expand the transparency of beneficial owners to include trusts and private foundations, as well as to build on the existing positive examples of effective public registers.

4. Capacity building versus leadership of developing countries

Some of the biggest scandals of tax avoidance by corporations have been in Europe, and it has repeatedly become clear that, while tax avoidance impacts developing countries disproportionately, it is a problem that countries in all parts of the world struggle with. On the issue of international taxation, there are some fundamental flaws in the global system, which mean that even in the world's wealthiest countries, tax administrations are not able to use the existing rules to ensure that multinational corporations pay their share of tax. These problems cannot be resolved through capacity building, and in some cases, capacity building can present the risk that tax administrations are being trained in applying complex and burdensome rules that have proven not to work.

In the section on anti-corruption, the Interim Report flags that "*There are always challenges in ensuring that capacity building is demand driven*". We believe that this important point should also be raised in the context of capacity building on international tax matters. We would furthermore flag that, on the issue of international taxation, where developing countries are in some cases being pressured to follow rules that do not necessarily reflect their concerns or interests, capacity building can become part of a broader spectrum of coercive measures.

Lastly, we would like to stress that developing countries also have important insights, proposals and approaches to share with developed countries. In fact, the most sensible proposals for reform of the system, as well the process for how to do that, have actually come from developing countries. For instance, G24's [proposal](#) on addressing the tax challenges arising from digitalisation, Africa Group's [proposal](#) for a UN tax convention, G77 and China's proposal for a UN intergovernmental tax body and the recent proposal within UN tax committee on drafting a new Article to address tax challenges of digitalised economies was led by a [drafting group](#) of developing country members.

We urge the FACTI Panel to address the political economy of these issues, and to avoid the simplistic arguments that revert to capacity building as the standard solution for all concerns and challenges of developing countries.

In conclusion

We hope that these contributions will be helpful for the Panel's work going forward and we would once again stress the need for the Panel to deliver recommendations that can help build momentum and political urgency for action. We reiterate that the measure of success of the Panel will be precisely in its clarity of recommendation in support of the long-standing call by a majority of UN Member States for a universal, intergovernmental tax body at the UN, and how it provides impetus to move Member States in this direction. Such an intergovernmental body will be vital for ensuring political accountability for taking action to combat illicit financial flows, including in response to the future recommendations of the FACTI Panel.