Transcript: The Corrupting of Tax Justice, The Taxcast, May 2024

Naomi Fowler: Hello and welcome to the Taxcast from the Tax Justice Network. I'm Naomi Fowler. Coming up later on the Taxcast, we'll bring you the latest updates on talks between nations on the UN Tax Convention.

Bob Michel: There is a South cooperation and a South-South pushback against the developed countries. And that is, you know, that is a remarkable moment. And will change the tax world. There is no ignoring this anymore.

Naomi Fowler: Before that, we're going to look at the corrupting of tax justice. You may remember this from a previous Taxcast:

Paul Kiel: Microsoft did a somewhat ridiculous transaction just to save a lot of taxes. the idea of like a company like Microsoft selling it's IP, its most valuable product, particularly to a small company in Puerto Rico is ludicrous!

Naomi Fowler: That's journalist Paul Kiel, who's been following the biggest, longest running tax case of its kind, where the IRS, the U.S. Tax Authority took Microsoft to court over its decision to sell its intellectual property to a small 85 person factory it owned in Puerto Rico, where it enjoyed a tax rate of close to zero percent. The IRS says they owe not far off 30 billion dollars in back taxes, plus penalties and interest. Microsoft disagrees. We covered this long running case a few podcasts back called The People vs. Microsoft. That's episode number 137.

Zorka Milin: Take the people of Puerto Rico, where Microsoft barely paid any taxes, and they didn't even create a meaningful number of jobs. Puerto Rico, one of the poorest parts of the U.S.

Naomi Fowler: This is the FACT Coalition's Zorka Millin.

Zorka Milin: And let's not forget the U.S. Treasury. The U.S. suffered a gigantic, maybe even record breaking revenue loss which they're now trying to, to recover from Microsoft. Really the only ones who benefit here are the big four tax advisors. In this case, that would be the Microsoft tax advisors at KPMG who came up with this plan and managed to convince Microsoft's executives to go along with it. All of that was very lucrative for them. There was no downside, you know, the downside was suffered by everyone else.

Jason Ward: I think it's important to put the Microsoft case in context.

Naomi Fowler: This is Jason Ward of the Centre for International Corporate Tax Accountability and Research, or CICTAR for short.

Jason Ward: As far as I'm aware, this is the largest tax case against any company anywhere in the world ever, right? The IRS is pursuing Microsoft for 30 billion dollars, that's for a limited period. If the IRS is successful, the actual tax bill could be you know, three times or more than that, because it would apply to a longer period than than the case is for.

Naomi Fowler: There's an important part of the Microsoft case that we didn't talk about at the time. The person involved in creating and selling that dubious tax scheme to Microsoft on behalf of KPMG, one of the big four accountancy firms, is Manal Corwin. You might be wondering who she is. Here's Alex Cobham of the Tax Justice Network.

Alex Cobham: The OECD's head of tax has been revealed to have been in the group at KPMG, one of the big four firms, that was among the architects of the Microsoft Puerto Rico tax scheme that is now being very heavily pursued through the courts by the IRS, by the tax authority in the United States. It feels like we might just be approaching a moment where there's some kind of accountability for the professional enablers of corporate tax abuse.

Naomi Fowler: In case you missed it, Manal Corwin is now the OECD's Head of Tax. She's working for an organisation that's been responsible for global tax rule setting for the last half century. So, who are the people who get to the top of the OECD? And what does it say about their motivations? What does it say about the motivations of the organizations they work for? Should an organization like the OECD be so strongly connected to the big four accountancy firms? And should governments? In Australia, we've seen huge conflicts of interest and downright corruption of tax policy making that's rippled out to affect the rest of the world too.

Andrew Leigh: Australia is committed to public country by country reporting to hold large multinationals to account when it comes to their tax affairs.

Naomi Fowler: This is Andrew Leigh from the Australian Treasury speaking last year. Australia was trying to pass legislation that aimed to blow the whole abusive system apart where multinationals like Microsoft in Puerto Rico shift things around from one country to another to minimize their taxes, and don't need to tell us much about it. The legislation as it was would have meant major multinationals wanting to do business in Australia would have to report publicly on all their economic activities in all jurisdictions, including profits declared and taxes paid. That would have helped lots of other countries, because it would have shed light on those multinationals activities in their countries too, helping them tax them more fairly.

Andrew Leigh: Country by country reporting is intended to shift behaviour in the way large multinationals disclose their tax information. It puts the onus on multinationals to be upfront about where they pay tax. Australia plans to start our public country by country reporting regime on the 1st of July, 2024, we want Australia's transparency commitments to be measured and targeted. It's about encouraging a race to the top in business productivity, not a race to the bottom in tax compliance.

Naomi Fowler: Well, as we've reported before on the Taxcast, Australia was absolutely bombarded by lobbyists, by nations like the United States, by the Big Four, and by the OECD. And after a delay, they passed their legislation into law. It's still good legislation, but they did water it down. As with previous occasions, there were some very well informed lobbyists. This is Mark Zirnsak from Tax Justice Network Australia.

Mark Zirnsak: A PwC tax partner had signed a number of confidentiality agreements with the Australian Treasury and then he proceeded to use information that was supplied as part of the consultation process in Australia around the Base Erosion Profit Shifting OECD program. He was, he was sharing that with other partners inside PwC and they on-shared it to people in PwC globally, and that was being used to help market to clients, about allowing them to beat the reforms that the Australian government was going to introduce to try and curb multinational tax avoidance and tax dodging. PwC was trying to effectively steal information from the government and use it to cheat the Australian people of tax revenue, you know, it doesn't get worse than that, you sort of would think. And it really just confirms the Big Con about the big consulting firms and really just, you know, demonstrating the tactics about land and expand, so you get a contract inside a department or inside a part of government and then you sort of ingratiate yourself in there and then expand your operations and soak up more and more contracts, and undermine the public service as you try and absorb more and more consulting contracts in that space.

Naomi Fowler: The big four accountancy firms have made at least 10 billion Australian dollars in government contracts in the last 10 years, the big four being PwC, Deloitte, EY and KPMG. There are other firms, but those are the biggest. Alex Cobham again:

Alex Cobham: It now turns out from the professional standards boards investigation, it actually looks like the main thing PwC was doing was trying to influence, or actually influencing the OECD reform of corporate tax rules internationally, so you appear to have one of the Big Four using its privileged access, effectively having, I think it's not too strong a word to say, corrupted the policy process in Australia, with a view to potentially corrupting the tax policy process internationally. And remember, that's the OECD, which as the Financial Times has exposed, was heavily involved in lobbying the Australian government not to put through even this tax transparency measure of public country by country reporting last year. So, increasingly, you have this picture, whether there was actual corruption, whether there was actual criminal behavior or not, it looks like the international tax rule setter of the OECD, and at least one of the major accounting firms, and one OECD government, appear to have been involved in a process designed to try to find ways for the clients of PwC, major multinational companies, not to be affected into having to pay more tax. Now, we don't know how successful they were, and we don't yet know the details of really what was involved in this, but with three inquiries running, and at least one whistleblower at the heart of PwC Australia, we can probably feel confident we're going to find out significantly more over the coming months.

Naomi Fowler: That'll be interesting, especially because the Australian Federal Police investigation into the PwC tax leaks scandal has now extended overseas. Here's an excerpt from a Senate inquiry hearing in Australia's Parliament. You can hear first the CEO of PwC apologising, and then the Senate Inquiry Chair, Richard Colbeck.

PwC CEO: The failures identified should never have been allowed to take place. What happened is totally unacceptable. For this, I am sorry, and PwC Australia is sorry to our people, our clients, our stakeholders, to the government, and to the Australian people. We cannot apologise strongly enough for breaching the trust placed in us, and we accept the justifiable questions this matter has raised about our trustworthiness and integrity, just as we commit to do better in the future.

Senate Inquiry Chair, Richard Colbeck: Your acknowledgement of a breach of trust is more than appropriate. Because that's what we called our report, ‘a calculated breach of trust.’ And then when I read through the document presented it was almost depressing every time I started a new section of the report because it basically reinforced at each level how crap things were inside your business. I mean, it was just terrible. I find it hard in polite terms to describe how offended I am as a member of the then government that was introducing significant tax changes in the interests of the Australian people, and your company, your business, was deliberately using confidential information to flout that process and to assist major corporations to avoid tax and to use that information to market it internationally. I just find that outrageously offensive to the Australian people.

Mark Zirnsak: One of the consequences for, for PwC was that they were actually forced to divest their consulting arm, they had to sell that business for 1 dollar.

Naomi Fowler: Mark Zirnsak again:

Mark Zirnsak: There's been a whole lot of partners who were dismissed, a whole lot have now left PwC. Um, the big four have taken a massive hit on consulting jobs, so governments across Australia, both at the state and the Commonwealth level, suddenly were no longer using the big four consulting firms for a whole lot of things they would have. So it's, that's probably been the bigger penalty for them, as actually being the loss of business. The Commonwealth government has just announced they're going to start giving contracts back to PwC, but they're now in the latest budget that was just handed down this week they've basically said they will still be using less consultancy and they're going to increase the public service, which has been good news.

Naomi Fowler: It is good news. Public servants, not private actors. Here's Jason Ward again of CICTAR, who's based in Australia.

Jason Ward: You know, these guys have been winning, in Australia and globally, huge consulting firms winning massive public sector contracts in Australia and around the world and delivering, I mean, refraining from foul language, but delivering not very much for, for the taxpayer. I mean, you pay a firm like Accenture, McKinsey, or the big four big money for to produce a report and they hire a recent graduate to kind of do a google and write something up and that's you know, 10 million dollars later you've got a weak report that basically says what the official wanted them to say at the beginning, so a huge waste of taxpayer money. And it is very positive that in Australia, we’ve seen the new government understanding that there’s a colossal waste of public money there, and that there’s a need to rebuild capacity in the public sector.

Mark Zirnsak: The senators are pretty determined, they're not just going to accept a few tweaks here and there, I think they're pretty keen to hand down a couple of reports that will make some pretty significant suggestions. And certainly one of them has been restricting the number of partners that can exist in the big four. So that would actually force them to downsize because part of the part of the defense from the big four was, oh, you can't punish us all, you know, if a partner went off and did some bad stuff and other people in management knew about it, there's a whole lot of partners who don't know anything about it. So the response has been, well, if you don't know anything about it, then you're undermining the whole concept of a partnership, so maybe you just need to be smaller, so you do know what's going on, um, in that space has been some of the argument that's taken place.

I think the other myth that got busted in all of this was, you know, the big four are really good at sort of claiming, oh, well, our, our individual country operations are all separate from each other. And you know what PwC UK does, what PwC Luxembourg does is completely separate from, you know, PwC here in Australia, you know, we are completely separate entities. And this whole scandal just revealed how much they actually do work as a global network and share intel and, you know, plot and scheme together in the pursuit of their profits. So, I kind of think, you know, ha, that all got blown out of the water, the notion that these are separate entities, they're only separate entities when it suits them to make that argument, I think is the conclusion one might reasonably draw.

Naomi Fowler: Back to that pioneering country by country reporting tax legislation Australia did finally introduce for multinationals. Yes, it could have been better, but it could have been a lot worse. Here's Jason Ward again.

Jason Ward: Yeah, there was intense pressure on the Australian government to do otherwise. In fact the government introduced the world class legislation right, basically it had everything that we wanted to do, full public country by country reporting. But then opposition, you know, driven by and through the OECD with support from some member nations of the OECD and you know, last minute intense opposition from our friends at the big four and from your usual, you know, the sort of the groupings of the world's largest tax dodgers made them hesitate and hold back, and I think that they were faced with some quite legitimate threats in moving forward with what they had initially proposed. So I think what we have now is the best that we can get under current circumstances and it will still be world class and the best in the world and moving the ball forward, it's significantly better than what the European Union sadly ended up with after intense corporate lobbying there.

Naomi Fowler: As well as Manal Corwin, who co-created Microsoft's Puerto Rico tax minimization scheme and is now head of tax at the OECD, there's another person who catapulted to the very top of the OECD. Australia's former finance minister, free market conservative, Mathias Cormann.

Mathias Cormann: It is, you know, clearly in our interest for the world economy to operate, uh, to its best potential and, uh, you know, I will take, uh, the experiences and knowledge and, and, and background that I've, uh, gained, uh, you know, during my time in Australia as finance minister and before that as a senator, uh, you know, into this new job and so as, uh, policy considerations are, uh, you know, taking place of course, I mean, you know, I will be able to bring the Australian and the Asia Pacific perspective to the table.

Naomi Fowler: Throughout his political career, Mathias Cormann fought for lower taxes and smaller government. Not such a big surprise then, I suppose, that the majority of the OECD rich country club of nations, voted him in as their Secretary General. It came as an unpleasant surprise to Jason Ward.

Jason Ward: It's an absolute shocker that he is in the position of head of the OECD. He should have never, never, never been put in that position. This guy was a climate denial, corporate tax break-loving finance minister in Australia and never, never, never wanted to raise any corporate income tax, and was in fact always seeking to create loopholes and lower the tax rate itself. And we've done some research which has suggested that he was the minister responsible for some projects which the government's own national audit office found to be suspect and potentially corrupt sort of enriching large donors to the Liberal national party.

Naomi Fowler: Interestingly too, when he was a senator in Australia, he appears to have consistently voted against an independent anti-corruption commission. He also seems to have benefited personally from ownership opacity. And he's in a critical position, really, on global rulemaking on beneficial ownership and multinational tax transparency measures.

Jason Ward: It has come out now and I, I don't, um, I feel like it's hard for him to hold his position in the OECD when the scandal gets fully exposed around his business relationships with the former CEO of PwC Australia. They had a direct financial relationship, he was a shareholder in the guy's company while he was the minister of finance and enhancing PwC and this new company's access to federal government contracts. It's just, it's, it's pretty foul!

Naomi Fowler: When it comes to people like that getting to such important positions globally, who could have been, uh, you know, the head of the OECD, who would have had the same kind of, you know, experience that they were looking for, I mean other people that they could have looked at who would have served the public interest more in our view?

Jason Ward: I mean surely they could have picked public servants who had been working for major tax authorities around the world and had experience on that front. Um, you know, I, I will say though that I, I mean, there are people that we work with that are former big four accounting people who are doing fantastic work by using their skills to expose, you know, they have the inside knowledge and capacity to understand and, you know, to be honest, I think that's true of some of the senior people inside the Australian taxation office, right? They come from that background and therefore have participated and they know what the other side looks like and how the other side thinks. Um, I think that probably gives them a little bit more sympathy than one might hope for how those people operate but, I mean, there is a skill set there that is valuable and can be used for public good.

Naomi Fowler: Yeah, yeah, for sure. I want to ask you about what attempts have been made in Australia to try to deal with this massive problem, um, conflict of interest, corrupt behavior, which we've been seeing for so many years all over the world with the big accountancy firms being too close to government, having too much, um, information, and using that information in their privileged position. Could you take me through what has been happening to try to deal with that in Australia and then we can talk about globally, but can we start with Australia first?

Mark Zirnsak: So we are seeing a real push towards not outsourcing and to now in-source, um, various government functions and to see an increase in the size of the public service. Government should seek to actually do things and increase its capacity and, you know, not flick everything off to private consultants, so that's been a quite a shift off the back of the PwC scandal, really has hit the consultancy businesses, and, you know, so that's been a really positive thing that's taken place.

Then we are seeing a number of reforms that have both being consulted on and some of them are now actually in Parliament in a bill that's currently being considered by Parliament, so these include increased penalties, promoter penalties, so for those who promote tax avoidance schemes, increasing the penalties there, and particularly the government has already introduced much, much larger penalties for very large multinational corporations, uh, will suffer very, very high penalties if caught out engaging in these sort of tax avoidance schemes.

Um, then in addition, there's a move to have a register of tax advisors who have breached their obligations and that'll be a public register and the tax practitioners board will put people on that register and decide how long to keep them there, so the idea is to obviously deter, um, unethical behavior. So that's a worthwhile reform.

Um, there is also increased protection for whistleblowers who come forward, so the government is looking to, to do that in the tax space. There has been a bit of a debate around whether those reforms to protect whistleblowers should be broader and I'm sympathetic to that, but I think you take what you can get, so if we can get some further protection for whistleblowers in the tax area, great, and let's build on that to others rather than holding back those reforms.

The Tax Practitioners Board will also get additional time now to mount an investigation, so they'll have 2 years to initiate an investigation and given the complexity of some of the matters this is really welcome because it'll allow them to look into, you know, tax practitioners who are promoting tax avoidance or even tax evasion, it'll give them longer to do that preliminary investigation, and to get into that space.

There's also increased ability for tax for information to be shared between the Australian Taxation Office, the Tax Practitioners Board, our Treasury, our Ministry for Finance, and our regulator that oversees charities as well, so it'll make it harder for people at the Australian Tax Office to hide behind secrecy as a reason why they're not helping other law enforcement agencies. I think what's still lacking in there is a positive duty to actually share information. So simply because the law will now make it more…it won't overcome if there's a cultural barrier that's there that sort of says, well, we're used to being secretive, that may not shift, so we'll need to wait and see how that plays out. It would have probably been good to see the government make that a positive duty to actually share information.

Um, and the Tax Practitioners Board will be given a whole range of tools to increase their ability to level penalties on tax advisors, which has been positive because at the moment really, they've only had the tools to sort of give someone a warning or suspend them from being a tax practitioner and pretty much nothing in between, so they've been able to issue some fines, but what they'll be able to do now is issue a greater range of fines and the government is consulting on giving them powers to have enforceable undertakings as well, so the ability to get an agreement on someone to change their behavior, so now they have the ability to sort of suspend someone for a period of time rather than just cutting them off altogether. And I always think that, you know, a regulator having more tools is always a good thing because it means they can graduate their response.

Another thing that has created a lot of pushback from the tax practitioners sector, from tax advisors has been the government is now saying there'll be an obligation on tax advisors to have to report other tax advisors they know are engaging in breaches and illegal or unethical behavior that breaches the code. Um, and that's getting a lot of pushback from tax advisors saying, you know, this is outrageous that we'll have to report on others. Um, but to be honest, it's something that's very common in a whole range of areas in Australian law. So there's a lot of positive obligations for people to have to report suspicions on child abuse or child neglect, so, you know, it's not unusual to have a profession having to actually report suspicions where there's strong evidence that someone is engaging in illegal or harmful behavior and tax avoidance, tax evasion is harmful behavior, it does hurt people at the end of the day, so I see no reason why, um, you shouldn't be allowed to hide behind, you know, can be able to look the other way when you know someone's actually engaged in illegal activity. So as you can see, there's quite a bit of a package there of reforms that the government is looking to introduce in response to the PwC scandal and we are hopeful the two parliamentary inquiries that we've got going on at the moment in our Senate might also come up with a whole bunch of other things that they'll be recommending as well.

Naomi Fowler: so what about globally? How do we deal with this globally?

Mark Zirnsak: Look, I do think we need to see global cooperation from, you know, governments in this space to address some of this. I mean, clearly these tax advisor firms are operating across borders, they collaborate so I think we need to see tax authorities and governments doing similar and you know, the positive thing happening here in Australia is these two Senate inquiries are currently looking at what might be a better regulatory framework. What are other jurisdictions doing? And can we better align? So, you know, they're having a look at how does the U.S. authority work that oversights tax practitioners in the US and you know, that's a body that does issue more penalties so, I think that greater collaboration and cooperation is ultimately one of the things that's needed, and trying to align some of the ways we're dealing with these tax advisors and the consultancy firms I think is important in this space.

Jason Ward: Yeah, I'll just add, the big four like to talk about transparency when it suits them and when it's a product that they can sell to their clients but I think it's time that the big four should be required at both a national level and a global level to publish basic financial reporting, right? Like let's have an annual financial statement from your partnership or whatever legal structure you using in country X, and let's have a, you know, a comprehensive, global report on how that partnership relates to its parts in different countries. And look, that's a pretty low level, basic ask, dramatically increasing transparency. So if you're going to sell your services to multinational clients to ask them to be more transparent, or to give a pretense of being more transparent in some cases, then it's about time that you put forward some basic, basic financial information and corporate structure information about how you operate on both the national and the global level.

Naomi Fowler: We know in the world of lobbying that the voices of private interests are louder. They're very well financed. They have disproportionate influence, and they gain access to the corridors and rooms of power where things get decided.

In Australia, we know PwC was prepared to use its access to government to corrupt democratic processes. And we know the OECD put lots of pressure on the Australian government while two of its top people are compromised, really, on matters of tax and the public interest. So, how did negotiations go on efforts to make the United Nations the place for tax rule setting, rather than the OECD?

Bob Michel: So today is the first day of the negotiations in the ad hoc committee on the terms of reference for a future framework convention on international tax cooperation at the United Nations.

Naomi Fowler: This is Bob Michel of the Tax Justice Network. I caught up with him on this historic day that negotiations began at the United Nations headquarters in New York. Delegations from member states meeting to discuss the parameters that'll guide the negotiation of the United Nations Convention on International Tax Cooperation. He's been observing the whole thing. I caught up with him on the day it all kicked off, 26th of April, 2024.

Bob Michel: So the end goal, or what we think is the end goal, is to have a international intergovernmental body at the UN that can make binding multilateral decisions on certain tax matters. At the moment, we have little institutions that can issue multilateral, you know, rules that bind all countries. What we do have is the OECD in Paris setting the standards very much based on what the developed countries, the OECD members kind of want to see enforced everywhere in the world.

And the terms of reference is kind of the guide rails of the real negotiations by all the countries of the conventions that will take next year. So the terms of reference will dictate the limits of the future negotiations. So it's very important because there are certain aspects that are, you know, we are not sure how they will be decided eventually. Will there be substantive rules and protocols that bind all countries on certain tax matters, illicit financial flows or the taxation of cross border services?

The NGOs you know, the tax justice organizations and the others, we want progress. We want binding rules, new rules under this convention, but other countries and mostly the developed countries say, we don't like binding commitments, so let's not talk about that too much. Today's the first day and yeah, we'll see how it goes.

Naomi Fowler: So, the first day of the first session, after a long process to kind of upgrade the United Nations with the aim of ending the way global tax rules have been decided behind closed doors at the OECD for the last 60 years.

Bob Michel: So there has been a long push of making the UN committee of experts, which is a UN body, but it's not an internet intergovernmental body, it's just the body of experts acting in their own name. And they create a UN model, which is a model treaty for negotiations of tax treaties between developed and developing countries. They issue all kinds of other soft law, but they are not a proper intergovernmental body, so they cannot institute binding rules. And there has been since 10 years, a serious push to upgrade the current UN tax infrastructure into an intergovernment level, especially the African countries, they have joined together to push for this to change, they want a tax governance body that is centered at the UN and that is better at taking into consideration all interests, all countries around the world.

And I think whether this day in itself is already, you know, it's a victory or not I think even if the results of the negotiations will be disappointing for some of us, I think the fact that the African countries are having pushed this and are leading this, and also the fact that we hear many, for instance, South American countries say that we share the agenda of the African countries because we think, we believe that their interests are worth defending also by us, means that there is a South cooperation and a South-South pushback against against the developed countries. that is a remarkable moment. And even if this, you know, even if this process fails to deliver, I think this motion of South cooperation is new and will change the tax world. Anyway, you know this there is no ignoring this anymore by the OECD countries.

Naomi Fowler: Bob's main hope for the first session was all about trying to get the infrastructure right for the future.

Bob Michel: Even if there is no substantial progress at the moment or under the framework convention in the first phase, I think for me more important would be to have this body at the UN that can start looking at, I think to negotiate both infrastructure and substantive issues at once is very big ask. I think we should try to do it but if it doesn't happen, we shouldn't, you know, we shouldn't be too disappointed about this kind of failure, as long as we can have the infrastructure to work on it for the future.

Naomi Fowler: I caught up with Bob again last week after the dust had settled on the first round of discussions and I asked him how it went.

Bob Michel: So after the first marathon session of negotiations I think it was very messy in a sense. The debates were not restricted at all to the brief that this ad hoc committee asked, which is to develop the terms of reference. It was much wider. It was much more focusing already on substance, much to the dislike of the developed countries who kept on hammering that, you know, the brief is the terms of reference. Let's not focus now on the substance. Let's do the brief first, the technical parts first, and then much, much, much later in the process, we'll talk about substance. But the developing countries would not have that. They made clear that they are here for the change of the frame for the framework convention, but also for new substantive tax rules. And these two come together and the debates will venture into substance whether some countries like it or not. So that, that, but that also made that whole negotiation process very kind of, it was like an overview of the whole field of the whole battlefield with all the obstacles there. So in that way it was a good exercise.

I think that the reason why the developed countries want to not focus on substance is because they want to maybe separate the decisions that they will have to make and their parliaments will have to make to join this framework convention and to join the protocol because these are separate things. I think they, they have the idea that if if the two are negotiated together, it will be much more difficult to join the framework and not the protocol if it's not in their interest. If these two can be separated out, they can say, ah, we support the framework for fair international taxation, but then two years later they can say, but this particular protocol, we, it's not really in our revenue interest so let's, you know, we will sit this one out. And I think the developing countries realize that you know, this might happen, so it's better to have a package deal with substance so that it's much more difficult for countries to say, we support fair taxation, but not the substance rules. And I think that's kind of what is going on here.

Naomi Fowler: This sounds not great, but it but it wasn't all bad.

Bob Michel: I think the positives are that there is territory where there is much more kind of consensus for progress in substance than anticipated. That's one of the missions of this of this ad hoc committee too, because the brief it's got from the general assembly says terms of reference for the framework convention, but also to consider the topics for the early protocols. The countries that don't like the protocols, they are in bad luck because the general assembly has clearly said there need to be protocols. And the suggestion in the General Assembly was protocol on illicit financial flows and the protocol on the taxation of services, so the taxing rights allocation on the taxation of services. they have been named by the General Assembly, but they remain very controversial, you know, the United States made it clear that it's not interested in a protocol on services and it does not really see the problem with illicit financial flows. So that's, you know, that's already a big setback in a way, but there are lots of other domains where countries were much more finding common ground, like taxation of high net worth individuals, wealth tax, environmental taxation, surprisingly, there was lots of support from all sides of the aisle, for more, you know, international coordination on environmental taxation, which is very important. And that's probably because these are topics kind of, they are not zero sum topics, you know, a new common solution for environmental tax benefits every country in a way, so it's not like one country is taking something away from another country. With illicit financial flows and taxing services, that is clearly about Global South wanting something that now the Global North has, that's, you know, that's for negotiations.

I think the United States challenging, kind of denying the problem of illicit financial flows is disappointing and is worrying. I think maybe there is also some rethinking that needs to be done in this particular area because it's the term illicit financial flows is just not sitting well with everyone in the room there. And so it's actually a container term that takes, you know, as multiple specific aspects that need to be taken care of. So the term in itself, since it triggers so much opposition I think maybe it's better to focus on the components of illicit financial flows rather than on the term itself. And one of the components is for instance, aggressive transfer pricing, aggressive tax avoidance and just name it as it is, name it. It's called illicit because it's so much, you know, it's pushing the law so far that it's deemed unacceptable by a large part of the global population, but it's within the scope of the law. And that is a fact. And so it's, I think, maybe we should learn from the sensitivity that there should be more focus on the components of illicit financial flows and deal with these components without naming what we really want to fix here.

But for environmental taxation, there is much more hope, I think. But here there is also a side note because the delegate from Senegal mentioned that if there is a global idea for a carbon tax or whatever based on polluter pays, that's, you know, the general principle - in Senegal, there are not a lot of polluters. Polluters are in the global north. So from a revenue perspective, from a domestic resource mobilization perspective for sustainable development, environmental taxes does not help Senegal. So even there, you know, finding common ground remains more difficult.

Naomi Fowler: There were some surprises too.

Bob Michel: One positive is the government of Mauritius kind of changing its whole attitude towards international tax cooperation for years, being the offshore hub, kind of taking away or kind of channelling tax base erosion from the whole African continent via it's very aggressive tax treaties and not only Africa, also India’s struggled a lot with Mauritius. Now they have been starting to change their, not only with their tax treaty, but also their negotiation practices, but also in the negotiations, they were much more forward to the idea of tax cooperation and to international tax solidarity. So seems to be a country that has kind of changed its attitude. That's nice to see. It has a bad reputation, but you know, everybody deserves to change their opinions, you know? I think they realized that this game of kind of beggar thy neighbor, you know, it's simply not sustainable in the long run so you know, why not now change now this momentum, try to be a good pupil in the class than still trying to sabotage, it becomes also more and more risky, you know, because India and the African union, everybody gets fed up with Mauritius and then, you know, they are all by themselves. So isolation is never good.

Naomi Fowler: As I said, the Tax Justice Network was there at the United Nations in person. Bob was one of them, along with other civil society groups or campaigners with expertise and other stakeholders. They were able to speak publicly during these inter-state negotiations, unlike at the OECD. And by the way, the application process for us to become observers was simple, public and it was open to all groups, including private sector lobby groups. It means they're on a level playing field with all other civil society organisations, instead of having a special channel with preferential access as they do at the OECD. But, some states at the United Nations weren't happy about it.

Bob Michel: There was there was some time dedicated for approving participation by non-state observers, like civil society organizations and companies. Countries can object to that. So there were some objections filed to certain observers, civil society observers participating or being in attendance. It was a bit of a weird session because normally I think according to the general assembly rules, it's not for the chair to disclose the country that made the objection. It happened, so there was a bit of consternation but then all the objections were retracted in the end. But in general, I think it's important to have civil society in the room and we have to be consistent, it's also important to have business representatives in the room. All stakeholders should be welcome. But in the end, it's very much state-led negotiation. So it's important to have ears and eyes present, but it's the states, it's the countries that need to negotiate, that remains the most important. So I think it went quite well. There was time allocated to stakeholders, but it did not interfere too much with, you know, with the debates between the countries. And I think it should be like that.

Naomi Fowler: And so, we've got to the end of the first session negotiations. Bob explains what's next.

Bob Michel: So after this the first big session, there is only one session left, which is the July, August session, which is also multiple days. What will happen in between is hopefully that the chair and the bureau, which is a kind of a select number of countries that has more meetings with the chair, that they prepare a zero draft for the terms of reference based on the negotiations that took place in May. This draft will be released and then the next session, in the last day of that one, there should be a vote and there should hopefully be a unanimous vote on accepting the terms of reference as decided by the ad hoc committee. So these will be, still be very tense days because as there was no zero draft developed during the previous, during the May session, everything is now focused on this last session. A lot has to happen. It's expected that this new draft that will be made will still have points of controversy that will still be discussed, and the discussion should also lead to a revised draft that then is hopefully leading to consensus in the end. So it's still quite a big work to be achieved.

Naomi Fowler: That second session will run from the 29th of July to the 16th of August 2024. We'll bring you more on that when it happens. You can also follow our rolling blog with updates on negotiations on our website, I'll put the link in the show notes along with some other resources. Don't forget you can find the Taxcast on your podcast app and all our podcasts are on our website podcasts.taxjustice.net You can subscribe there too. That's it for now, thanks for listening. We'll be back with you next month. Bye for now.