The Taxcast, Three Big Wins, October 2024

Naomi Fowler: Hello and welcome to the Taxcast from the Tax Justice Network. I'm Naomi Fowler. On the Taxcast this month I'm really happy to be talking about three big tax justice wins - well, maybe two and a half, one of them we don't know yet how that's going to go. But it's looking good. It's unusual that three positives come together in this way, so it's really nice to be talking about them with you - huge global ramifications.

First, I'm going to talk about the draft UN Tax Convention. It's out and it's good. It's showing why the United Nations is so much better and more democratic a place for the world to truly reform international tax rules.

Second, we're going to talk about how the Financial Action Task Force has just announced big changes in how they assess and greylist countries that they see as a risk to the global financial system. It's good news for lower and middle income countries and it's a big shift away from the colonial mindset that established a system that's not really working because it doesn't hold the big player nations to account.

And third that we're going to talk about, this is the one we're hoping will be a big tax justice win, but we're not absolutely sure yet. We've been talking for a while on the Taxcast about the Australian government's intention to implement world leading country by country reporting for multinationals. They'd be using a country by country reporting system that's superior to the one the European Union uses. It'd cast light on the genuine activities of multinationals for other nations as well, so they can tax them more fairly too. The Australian government's been lobbied hard, not just by private companies, but by the OECD itself, as we've reported before on the Taxcast.

Let's kick off first with Alex Cobham of the Tax Justice Network. Alex, we've got a United Nations draft convention on tax. What are the positives in the draft, how's it looking to you?

Alex Cobham: I don't want to overdo it, but it's everything, it's, it's just, you know, every now and then I kind of stop and pinch myself because it's almost everything that you could have asked for, both the kind of the, the framing of it, what this, what this negotiation is now going to commit to deliver and even to the extent it gets into specifics, the specifics too.

So, I mean, the objectives, the kind of central objectives really are to create a fully inclusive and effective mechanism or framework for international tax cooperation. That's exactly what everyone on the planet needs to give our governments the chance of doing, you know, good, direct, progressive taxation so we can all live better lives. And it sits that within the objective of having a system of governance that supports that right, so it recognizes this is not a one off. It's not about fixing a couple of things now. It's specific about looking to future tax problems as well as today's, so it's creating the system for the future.

And then in terms of the kind of the principles it relies on, you know, it's very clear that these need to be universal. These need to reflect the different needs of different types of countries. At the same time, fundamental is respecting the sovereignty - and so often tax negotiations get bogged down because jurisdictions insist on protecting their sovereignty, even if that damages everyone else's, well, it's already embedded that that's not something that's, that's going to fly in this framework. The respect for others' sovereignty is established on the same level. And similarly, and different from pretty much any other framework, certainly the OECD, a key principle is for the international tax system to be aligned with state's obligations under international human rights law. So we're kind of locking in from the beginning that what this is going to deliver has to be consistent with everything that you'd want states to do for humans, you know, so we're kind of, before we get into any of the detail, you know, it's really clear where this is going. Similarly, there's kind of reasonable language about keeping this aligned with sustainable development, thinking about environmental questions in particular, about fairness, it's explicit about the need for fairness in the allocation of taxing rights between countries. And you know, a fundamental problem today is that the global inequalities in taxing rights that lower income countries face are large and getting worse under the OECD. And that's kind of why we're, why we're here really.

So having that aim of fairness in the allocation embedded from the beginning just gives you all sorts of optimism about where this goes. And then specific commitments include not just that fair allocation with respect to multinational companies, but also directly a commitment to address the tax abuse of high net worth individuals and make sure they're effectively taxed across the world. So, you know, what we've got in here really, along with a lot of detail, is the commitments, the objectives, the principles for a framework that really delivers.

Naomi Fowler: Well, that's more positive than I was expecting! So that's good. My next question was going to be what are the problems in the draft? What needs improvement? Where do you see that could be better in an ideal world?

Alex Cobham: So, you know, nothing's perfect, but this is about as good as we could have hoped for. I now feel like we're, we're at such a high level at the beginning of this process, you start to worry that about everything that can go wrong. And there's a lot that can go wrong here, right? And that's kind of what the next two and a half years really are about.

We know there's this small group of countries that seem committed to oppose and that might lead to them just being sidelined and the rest of the world goes ahead and delivers something ambitious, but it might mean that we see countries spend a lot of time fighting with each other as the blockers try to, to prevent the rest of the world making progress.

So that's one thing that is worth worrying about, but the bigger issues really, the more substantive ones are in terms of whether or not the negotiations deliver the detail in each area that we need to really make this work. There's going to be a balance between how much can be delivered in the convention over the next two and a half years and how much we're creating this, this framework body for the future to address issues then.

And I think you know, I'd like there to be a great deal in the convention, not so much that it makes us go slower, not so much that it stops countries signing up because they're not quite sure, so there's going to be a balance, right? We need, we need ambition, we need clarity, and we need some early wins. We need this to deliver things like allowing countries outside the OECD fully to get the benefits of the automatic exchange of information about financial accounts, for example, ideally, we'd see public country by country reporting by multinationals delivered in this first stage in the convention itself.

But a lot of things can be left for the framework body to discuss later, and we'll have to see where that balance comes. So, the first couple of meetings that we're expecting in February and April 2025 will really set the schedule for the negotiations, including some of the content, you know, are we going to have an early protocol on taxing the super-rich, or are we going to have an early protocol on fighting illicit financial flows?

To the extent that those two things actually require the same kind of detailed mechanisms and cooperation, maybe we can have a fudge and do both. But probably it's one or the other, and then which is it, and how far does it go, and how much is left for later? So we're going to really start seeing the detail, and if you want to worry about stuff, you know, you worry that it gets watered down at this stage, and almost everything good gets pushed back for later.

Naomi Fowler: Always, always. And what is the next steps now, how's the process going to work?

Alex Cobham: We're expecting the next stage to be relatively uncontroversial. We're in the second committee, the Economic and Financial Committee of the UN General Assembly. We now have the draft resolution put forward by Nigeria on behalf of the Africa Group which is effectively just bringing forward the agreed terms of reference for negotiation along with detail about when and how the process will, will go. Now that's in the stage of being discussed at the committee, it could be voted as early as the 20th of November, but it might get pushed back, the following week takes you up to thanksgiving in the United States, so probably in that week. And then in December, there'll be a budget vote to make sure the process actually has UN funds to allow it to go forward.

So we don't think there's a great deal of jeopardy in this process, you know, countries have already voted overwhelmingly in favour of the terms of reference. There are these eight countries that voted against. They *might* push this to a vote again which we'd expect to look quite similar, or possibly they'll join the consensus, they won't insist on a vote, and they'll allow it to go through, which would be, you know, to the extent that it matters, that would be a stronger signal of support, so you'd kind of like to see that happen. But ultimately, you know, this *is* going ahead. So in February, probably we'll have the first organisational meeting. So all the countries of the world will send their delegations to New York, and together they'll agree the schedule for the two and a half years to mid-2027, when this needs to be delivered, a full draft convention and early protocols. And then, you know, then they'll get into it. So something like three meetings a year, mainly in New York, but I think the idea is there'll be one meeting a year in Nairobi and we'll see the progress building up over that period.

And I hope we'll see civil society from all around the world keeping an eye on their governments, making demands, pushing them to be more ambitious throughout that process so what we get to isn't just an agreement between governments, it's an agreement that reflects civil society demands all around the world, just as the fact that we've got here reflects the very strong civil society support for the process so far.

Naomi Fowler: Alright, because there's eight countries at the moment opposing a UN tax convention. The UK is one of them, might be a change with the new government, we've hoped for that, so that leaves seven others. I guess it all depends whether or not it's going to go through by consensus and that they're not going to fight at this point or whether they're going to force it into votes and a more contentious process early on. I mean, these blocker countries are in such a minority so, yeah, they can make it contentious early on but they're still going to be massively outvoted.

Alex Cobham: Yeah, so it's, it's an interesting one, you know, the UK voted in that block of eight, you know, eight countries out of 190, whatever it is, you know, voted against the terms of reference. And the UK did that in August *after* the election. So that was in some way quite disappointing -

Naomi Fowler: This is 2024, yeah.

Alex Cobham: And, you know, some, some people in the UK had hoped that we'd see a quick change with the change of government. That hasn't happened, but we do know that this is being discussed at a higher level than previously, and so there is some optimism that they'd move. But if you look at those eight countries, what you see, and we'll be publishing some research on this soon, what you see is they have a completely disproportionate role in international tax abuse, and that includes the UK. So if before the vote you were going to pick, you know, a single digit number of countries that would vote against what the rest of the world clearly wants collectively, which is to make progress against tax abuse, these are among the countries that you would have wondered about, the UK and the United States in particular, perhaps, who are kind of, seem to have been the two main actors in this bloc.

The question really is - well, two questions. One, whether those countries really want to keep spending their political capital objecting to what the rest of the world has now said repeatedly they are going to go ahead and do anyway.

And then secondly, perhaps at a more tactical level, even if those countries really don't like the direction of things, do they want to say in the vote that's coming up, effectively, we are against this. And by implication, although we're going to be in the negotiations later, you can pretty much ignore what we say. Or, just purely tactically, do they want to say actually, we'll keep our mouths shut now and let this go through by consensus and give ourselves some chance of being taken seriously when we're raising objections later. So I think we might see a move to consensus for some combination of those better and worse reasons. But, you know, is it the time that those countries for their own reasons decide what they really want to do is emphasise just how isolated and marginalised they are in these discussions.

Naomi Fowler: Yeah, they're in a tiny minority and among the biggest offenders causing some of the problems in the first place. OECD member countries and their dependent territories are consistently responsible, let's remember, for about 70 percent of global cross border corporate profit shifting and tax evasion, and about 90 percent of all taxes lost due to offshore evasion by high net worth individuals. So, that's important.

Let's talk now about the Financial Action Task Force. It was created by the G7 back in 1989 in response to growing concern about money laundering. The Financial Action Task Force has announced that it's changing its criteria for countries it assesses and considers a threat to the global financial system. At the Tax Justice Network, we've always had a big problem with the way greylisting and blacklisting works, whoever's doing it, because they never seem to single out the really significant big players such as the US, the UK, some of the EU countries. These grey and blacklists also hold poorer, less politically and economically powerful nations to standards its own member countries aren't maintaining, that's important too. And poorer nations don't have the resources sometimes for complex compliance systems, and they're small players in any case globally, so it's not a fair test. I'm speaking with Florencia Lorenzo at the Tax Justice Network.

So you've got the Financial Action Task Force saying that they're not going to assess some of the least developed countries from now on in the next assessments, as defined by the United Nations, the least developed country unless they pose a particular risk. This whole announcement seems to be a lot about shifting focus to the big players, it's all about the global scale weighting it seems to me. What actually happens to a country if it is greylisted by the Financial Action Task Force?

Florencia Lorenzo: So there are actually not a lot of evidences that we have like significant shifts in terms of Foreign Direct Investment or in profit shifted in general. But that's mostly because the countries that are usually listed on this list do not have even a significant economic presence in terms of their financial activities and so the evidence is quite mixed in the sense that we can't talk about an evidence of countries improving significantly their behaviour or very big changes in terms of economic impact.

Naomi Fowler: It's kind of more reputational damage?

Florencia Lorenzo: Yeah, yeah, it can create a reputational damage. And low and some middle income countries are very aware of this and they are for a very long time calling out the hypocrisy of this list, right? So for instance, now, if we look at the UN process, Bahamas, which was one of the countries really well represented there, they were calling out repeatedly the hypocrisy of blacklists. And in particular cases, they could generate economic impacts. And this is quite worrisome from the point of view of development concerns and so on, right?

This is not a concern which is new, the history of the hypocrisy of blacklists is, it has like at least 20 years, right? If we go back to the harmful tax competition initiative of the OECD in the end of the 90s, that initiative which ended up producing a black list, it was widely criticised because of its hypocrisy, because in, in effect it ended up not including OECD members in that list, which were countries that had significant impacts in terms of tax abuse.

Naomi Fowler: Hmm. And with the Financial Action Task Force not now assessing so called least developed countries, unless the task force decides they pose significant money laundering risks, they're also recognising that those countries need support to build capacity and compliance, not alienation and finger pointing. They're saying, the task force, they want to better target the countries that pose the greatest risk to the international financial system and they want to give, and I'm quoting, more adequate support to low capacity countries. The way, if you look at the way Liberia got treated by the OECD in their listing process, it shows how important this shift in thinking really is, doesn't it?

Florencia Lorenzo: Yeah, during the process of producing this blacklist the OECD ended up including Liberia, which was a country that then was undergoing like a huge civil war and they, they were even threatened in terms of sanctions if they didn't change their behaviour, they were labelled gangsters. And obviously, their concern at that moment was a very different one. And we have seen this repeatedly, right, in, in history, these blacklists which are produced by important organisations such as the OECD that then end up not actually tackling what we call the main offenders, the main enablers of money laundering or tax abuse and instead focus on really small countries that actually don't have a lot of power to lobby their positions.

Naomi Fowler: Yeah. And that's all part of this sort of colonial mindset that is embedded in the whole architecture of the financial system which is what we're trying to change. So, just one thing to clarify, you're talking about blacklists and then greylists, what's the difference?

Florencia Lorenzo: Yeah, this, the blacklist and greylist is like a, a tier process some organisations have introduced, so in the case of the FATF, they have a grey list, which is a sort of intermediate list where countries commit to changing some behaviour and then if they don't, they can end up falling into the black list and the black list is like the worst case scenario, right, where there isn't actually a commitment and so on. After the global financial crisis, the OECD also operated with this tiered listing process.

In these listing processes, they create a set of criteria. So for instance, in the Global Forum of Tax Transparency, you have terms of references that the countries commit to, or in the case of the FATF, you have like the FATF recommendations. These are 40 recommendations, which are then assessed usually by a committee that includes other countries, special representatives of other countries, to see whether the country's abiding or not by those criteria and those standards. It has more of a component of a legal assessment. They also look at implementation in practice for some elements. When we talk about peer review, we're talking about processes when one country or one committee assesses other countries to create some, in theory, fair characterisation of how the country is doing in terms of compliance with international standards of transparency and so on.

I think that the main issue of concern is unbalanced characterisation of some countries as being the responsibles or as being the ones that do have to change their behaviour. When, if you look at, for instance, the indices that we produce at the Tax Justice Network, which combine the legal analysis with the actual impact of those countries, so looking at the scale of financial activity of multinationals that go through the country or the scale of financial services that the country exports, we get a completely different picture, right?

Naomi Fowler: Yeah, a completely different picture. Our Financial Secrecy Index, or the FSI, tells a very different story.

Florencia Lorenzo: Yeah. So in the top of the FSI, you can find Switzerland, you can find the U.S. And these are countries that have never been listed in these initiatives.

Naomi Fowler: No. And we're not saying that lower and middle income countries don't need to make improvements when it comes to financial transparency. I mean, all countries do. But when you look at size and impact, they're very small players in terms of the global financial system, the ones that tend to get singled out. In your view, then, these changes the Financial Action Task Force has announced are really significant?

Florencia Lorenzo: Yeah, I think on the one side, this is an important improvement of the process because it, it, sounds as if they are recognising that their previous behaviour was rooted in colonial practices and was really not effective, but we still need to see if this will actually translate in them focusing on the biggest players, right? Because in the end, that should be the objective of these processes, focusing on those that actually do produce the most harm and have the biggest spillovers in other countries.

Naomi Fowler: Yeah, exactly. Why do you think the Financial Action Task Force is doing this? Are they doing this because it is clearly, as the Tax Justice Network has been pointing out for a long time, it's not effective to have this type of listing when you're not going to take on the big players, which are the ones that in the end represent the biggest damage and threat to the global system?

Florencia Lorenzo: Yeah, the Tax Justice Network has been working on this issue for a very long time. And we have been pointing out the hypocrisy of this list and trying to show that they are an incorrect characterisation of what's actually going on. This has been also a collective enterprise in the sense that there have been several people working on the topic and showing and building evidence and also advocating to show that this is an unfair process, beyond unfair and rooted in colonial practices, it is also not effective. This listing, evidence shows that they have a very limited impact precisely because they focus on countries that have a very limited impact in general.

And also as we always like to point out during the current process of the UN tax negotiations, the negotiations over a framework convention, you have multiple developing countries, some small island developing countries which are particularly vulnerable to climate change and they have been dealing with all of this sort of adaptation and reshifting of their economies. And then they also have to deal with this process of listing that is riddled with hypocrisy and which in practice does not help them develop their economy or shift to a more sustainable way of structuring their economy.

I think it is important to acknowledge that this shows a change in direction in international tax governance. We see that some practices that were accepted 20 years ago, now, whenever a new tax haven list comes out, people are pointing out that it's really not a realistic characterisation of what tax havenry is, or of which countries are enabling tax abuse.

Naomi Fowler: It does seem to signal a potentially a stricter and fairer regime of assessment and what are the consequences? Let's think about what the consequences could be, because if they actually carry out what they're saying, then potentially we could see some of the big players actually get listed, the type of big players that we highlight on our assessments with the financial secrecy index and the corporate tax haven index, for example. Could that actually happen?

Florencia Lorenzo: I mean, I would love to see that happen. I think it would really, it would signal that they actually mean change and they actually mean it in a significant matter. I would not hold my breath. I think that there is a structural issue about which organisations are leading those processes right? And this is something that in fact we are working to change when we are talking about creating a new framework of international tax governance.

Naomi Fowler: You're talking about moving tax rule making from the OECD to the United Nations because it's a forum where poorer and less politically powerful countries can have greater say. They can form blocs, which is what they're doing, to push for change that currently lots of richer, more powerful countries, often some of the biggest tax abuse enabling countries, are holding back through the OECD's processes.

Florencia Lorenzo: Yeah. The current structures that we have to conduct peer reviews, to provide a framework for cooperations, they more often than not have been controlled by a small number of powerful countries that effectively mean that there are different regimes depending on the type of country you are. So the objective of building a new framework to discuss cooperation in tax matters, which should think about financial transparency as well, is in fact to create also a fairer way of collectively tackling some of these issues and providing a fairer ground to conduct peer reviews as well, because we know that if these lists were actually committed to capturing the biggest players, the ones that have the biggest impacts, they would be really different from what they are now. It would be amazing really if they change that direction putting more emphasis at those jurisdictions that have a bigger financial impact.

Naomi Fowler: So to sum up then, it looks like this is some kind of recognition that the system is not working and that it needs change.

Florencia Lorenzo: Yes, definitely. I think we can say that this is evidence that even those organisations that had created the processes are now recognising that they had significant issues and that they need changing. How and to which extent we are going to commit to change I think that this depends on several processes that are ongoing, but I think that the idea that the status quo was fair or that it was okay, I don't think that this is tenable anymore.

Naomi Fowler: My thanks to Florencia Lorenzo of the Tax Justice Network. And finally, the big hope in Australia. Will the government there really go ahead with its world changing country by country reporting? They've been lobbied really hard by the OECD, by the United States, by the big four accountancy firms. It's not been easy, as you would expect when you're trying to pass something that's really worth passing. I caught up with Mark Zirnzak of Tax Justice Network Australia for an update:

Mark Zirnsak: The Australian Government has proceeded with developing a bill that would introduce public country by country reporting for large multinational corporations that have revenues of over a billion dollars globally. The Australian legislation is world leading. It would set up a comprehensive country by country reporting for a list, a broader list of jurisdictions, particularly secrecy jurisdictions than are currently set by the European Union list.

Effectively the legislation would allow us to see for those jurisdictions the revenue that's been generated, claimed to be generated in those jurisdictions, profits being claimed in those jurisdictions and any taxes paid. So it gives us a, it would give us a much better idea of where the companies are actually paying their taxes and reporting their profits in the places they're really doing business. And it would set a precedent globally for other countries to follow in setting public country by country reporting.

Naomi Fowler: That kind of transparency would help lots of other countries because it would shed light on those multinational activities in their countries too, helping them tax more fairly. It opens up pretty much everything. Attempts to water down this legislation included trying to allow companies to decide for themselves which information they withhold because of supposed commercial sensitivity. That's out.

Mark Zirnsak: The Australian legislation doesn't have a carve out for companies to claim that there is commercially sensitive information. Instead, the tax commissioner can consider applications if they think there was a legitimate reason for not requiring a company to publish its, its financial details on a country by country basis.

Currently, the bill has passed through our House of Representatives, so that's our lower house within our parliament, but it still needs to pass through the Senate. We have lobbied senators in the Senate and our understanding is the government would now have the numbers to see the bill pass through the Senate without having to water it down or give ground to our conservative opposition that are seeking to do the bidding of the multinational corporations and weaken the legislation.

So the biggest threat we now face is we have a national election approaching within the next nine months, and we are keen to see this legislation pass rather than being held over and risking it not proceeding should there be a change in government at the next election. Our parliament next sits starting the 18th of November so we are currently encouraging our government to make getting this legislation through our Senate a priority before the end of the year so that

Australia can be leading the way on public country by country reporting for large multinational corporations.

Naomi Fowler: Let's hope. It's easy to think that nothing changes but listening to this, you can feel the hope, along with us, that things *are* changing. Campaigning can feel like banging your head against a brick wall, but it is worth it. Change is coming. That's it for this month. Thanks for listening. We'll be back with you next month. Bye for now.