



UNITED NATIONS

ECLAC



## XXXVI REGIONAL SEMINAR ON FISCAL POLICY

Strengthening fiscal revenues to finance sustainable development:  
*Options for LAC in the International Tax Negotiations*

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## Key Negotiations and What LAC Countries Can Do

1. UN Framework Convention on International Tax Cooperation (UN FCITC) Negotiated in the UN General Assembly
2. International Tax Standards Negotiated in the UN Tax Committee
3. OECD Two Pillar Solution

## The South Centre and Latin America and the Caribbean

- **Membership:**
- 15 out of the 55 Member States of the South Centre are from LAC

| South America                    | Central America | Caribbean          |
|----------------------------------|-----------------|--------------------|
| Argentina                        | Honduras        | Barbados           |
| Bolivia (Plurinational State of) | Nicaragua       | Cuba               |
| Brazil                           | Panama          | Dominican Republic |
| Colombia                         |                 | Jamaica            |
| Ecuador                          |                 |                    |
| Guyana                           |                 |                    |
| Suriname                         |                 |                    |
| Venezuela (Bolivarian Republic)  |                 |                    |

## The South Centre and the PTLAC

- South Centre Actively Supported Member State Colombia in Formation of Platform for Taxation in Latin America and the Caribbean (PTLAC)
- South Centre Committed to Supporting PTLAC Objectives:
  1. Exchange of experiences and best practices between LAC countries and across regions
  2. Strengthen countries' capacities and expertise
  3. **Keep countries informed about the latest developments in international taxation**
  4. **Build unified positions at the international stage on the issues prioritized by the region**

## The South Centre and the PTLAC

- Multiple Joint Activities by the South Centre and PTLAC:



**PTLAC**  
Platform for Taxation in Latin  
America and the Caribbean



**CLOSED TECHNICAL BRIEFING:**

**SUBJECT TO TAX RULE IN THE UN AND OECD**

**21 September '23 (1500 – 1700 CET)**

Material on UN ECLAC Website:

<https://www.cepal.org/es/eventos/ptlac-south-centre-sesion-informativa-tecnica-sttr>



## The South Centre and the PTLAC

- Multiple Joint Activities by the South Centre and PTLAC:



**PTLAC-SOUTH CENTRE CLOSED TECHNICAL BRIEFING:  
REFORMING TAXATION OF INTERNATIONAL SHIPPING AND AIR TRANSPORT IN THE  
UN MODEL TAX CONVENTION**

**8 February 2024 (1500 – 1700 CET)**

## The South Centre and the PTLAC

- Multiple Joint Activities by the South Centre and PTLAC:



**PTLAC and South Centre Webinar: Recommendations of the African Union/UNECA High-Level Panel on Illicit Financial Flows and its relevance in the context of the UN Framework Convention on International Tax Cooperation**

**Date:** March 7, 2024

Material on UN ECLAC Website:

<https://www.cepal.org/es/eventos/ptlac-south-centre>



## The South Centre and the PTLAC

- Multiple Joint Activities by the South Centre and PTLAC:



### **CONCEPT NOTE and AGENDA**

**AUC/PTLAC/South Centre Coordination Meeting of Global South Bureau Members on UN Tax Convention Terms of Reference**



## Capacity Building

# Workshop for PTLAC Members on Basics of International Taxation



November 2023: Bogota, Colombia

Ta

## The PTLAC: A Powerful Forum for LAC Countries

A United Voice of LAC to Influence the International Tax Agenda

- **LAC Countries Encouraged to Actively Participate in PTLAC Meetings:**
  - ✓ Better informed decisions on adopting international tax standards
  - ✓ Larger Range of Policy Options Available
  - ✓ Coordinate with like minded countries to promote shared interests
- ✓ **South Centre Committed to Supporting its LAC Member States and Strengthening PTLAC**

## PTLAC Already Influencing Global Agenda-Setting

- Four PTLAC Priorities:
  1. Progressive Taxation
  2. Environmental Tax
  3. Digital Taxation
  4. Tax Incentives

(From “Declaración de Cartagena de Indias”)

## UN Framework Convention on International Tax Cooperation

- **UNGA Resolution 78/230**
  - Created Ad Hoc Committee to Prepare Terms of Reference for a UN Framework Convention on International Tax Cooperation
  - ToR being negotiated in ongoing Substantive Session till 8 May 2024
  - Second Substantive Session from 29 July to 16 August

## UN Framework Convention on International Tax Cooperation (UN FCITC)

- **PTLAC Priorities being Actively Discussed in UN FCITC**
  - Potential High Level Commitments:
    - effective taxation of high-net worth individuals, including wealth tax
    - Ensuring that tax measures contribute to environmental challenges
    - Equitable taxation of Multinational Enterprises
  - Potential Early Protocol:
    - Taxation of Cross Border Services in a Digitalized Economy

# UN Framework Convention on International Tax Cooperation (UN FCITC)

Proposed Outline of Draft Terms of Reference for  
a UN Framework Convention on International Tax Cooperation  
26 March 2024

| No.      | POSSIBLE STRUCTURAL ELEMENTS OF THE TERMS OF REFERENCE   |
|----------|--|
| <b>1</b> | <b>Introductory Elements</b>   |
| 1.1      | Preamble   |
| 1.2      | Objectives   |
| 1.3      | Principles   |
| <b>2</b> | <b>Operative Provisions</b>  |
| 2.1      | Substantive elements   |
| 2.2      | High level commitment to Capacity building   |
| <b>3</b> | <b>Possible Specific Priority Areas That Should Be Addressed in Simultaneous Early Protocols</b> |
| 3.1      | e.g.Tax-related illicit financial flows  |
| 3.2      | e.g.Cross-border services  |
| 3.3      | etc.....   |
| <b>4</b> | <b>Time Frame for Negotiation</b>  |
| 4.1      | The time to complete the convention  |
| 4.2      | Approaches to develop protocols and timeframe  |
| <b>5</b> | <b>Resources To Support The Work Of The Negotiating Body</b>                                     |
| 5.1      | Request to the Secretary-General to make resources available                                     |
| 5.2      | Request to Member States to support developing country participation                             |
| <b>6</b> | <b>ANNEX 1: Structure of the framework convention</b>  |

# UN Framework Convention on International Tax Cooperation (UN FCITC)

| Annex 1: POSSIBLE STRUCTURAL ELEMENTS OF THE CONVENTION           |
|---|
| <b>Introductory Elements</b>                                      |
| Preamble  |
| Definitions   |
| Purpose   |
| Relationship with other agreements, instruments, and domestic law |
| <i>other items to be added as relevant</i>                        |
| <b>Operative Provisions</b>                                       |
| Substantive Commitments (specifics to come)                       |
| Review and verification   |
| Exchange of information (for implementation of the Convention)    |
| Data collection and analysis                                      |
| Capacity building   |
| Financial resources and mechanisms                                |
| <i>other items to be added as relevant</i>                        |
| <b>Institutional Arrangements</b>                                 |
| Conference of the Parties (CoP)                                   |
| Secretariat   |
| Subsidiary bodies   |
| Dispute settlement mechanisms                                     |
| <i>other items to be added as relevant</i>                        |
| <b>Procedural Arrangements</b>                                    |
| Voting procedures [Decision making]                               |
| Process for amendments  |
| Formal matters (signature, ratification, etc.)                    |
| <i>other items to be added as relevant</i>                        |
| <b>Annexes and Protocols</b>                                      |
| Tax-related illicit financial flows                               |
| Cross-border services   |
| etc....   |

## Key Proposals of Developing Countries on UN FCITC

- **African Union / African Group / ATAF / WATAF :**
- [https://financing.desa.un.org/sites/default/files/2024-03/African%20Union Input AHC%20Tax.pdf](https://financing.desa.un.org/sites/default/files/2024-03/African%20Union%20Input%20AHC%20Tax.pdf)
- **G-24:**
- [https://financing.desa.un.org/sites/default/files/2024-03/Group%20of%2024 Input AHC%20Tax.pdf](https://financing.desa.un.org/sites/default/files/2024-03/Group%20of%2024%20Input%20AHC%20Tax.pdf)
- **South Centre:**
- [https://financing.desa.un.org/sites/default/files/2024-03/South%20Centre Input AHC%20Tax.pdf](https://financing.desa.un.org/sites/default/files/2024-03/South%20Centre%20Input%20AHC%20Tax.pdf)



## UN Framework Convention on International Tax Cooperation (UN FCITC)

- **What LAC Countries Can Do:**
  - ✓ **Build Strong Links Between UN NY Diplomats and Finance Ministries or Tax Administrations**
  - ✓ **Ensure that Diplomats work with tax experts & get regular briefing from home institutions to finalise the work**
  - ✓ **Ensure that delegates attend sessions (online participation possible) and speak up even if repeating what others have said (very important)**
  - ✓ **Focus on securing the broadest possible mandate for the Framework**
  - ✓ **Ensure that voting at all times is by simple majority or the UNGA rules**

## 28<sup>th</sup> Session of UN Tax Committee

- **Two Key Outcomes:**

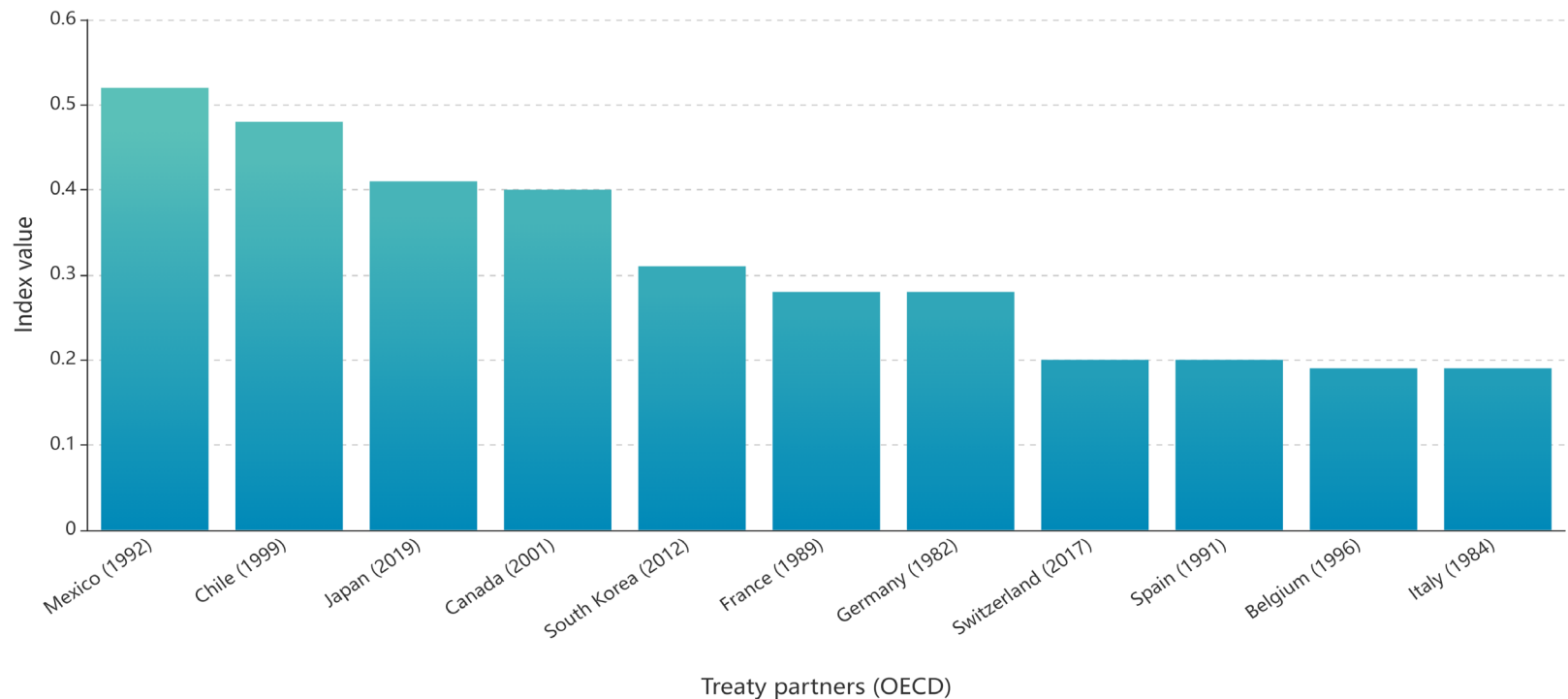
1. UN Fast Track Instrument (Available [here](#))
2. UN Wealth Tax Guidelines (Available [here](#))

- **UN Fast Track Instrument: What Does it Do?**
  1. Functions like BEPS MLI
  2. Can update multiple bilateral tax treaties at the same time
  3. Countries can negotiate together as “blocs”

## 28<sup>th</sup> Session of UN Tax Committee

- **Fast Track Instrument: What Does it Do?**
- Eg – Ecuador has imbalanced tax treaties with Spain and France

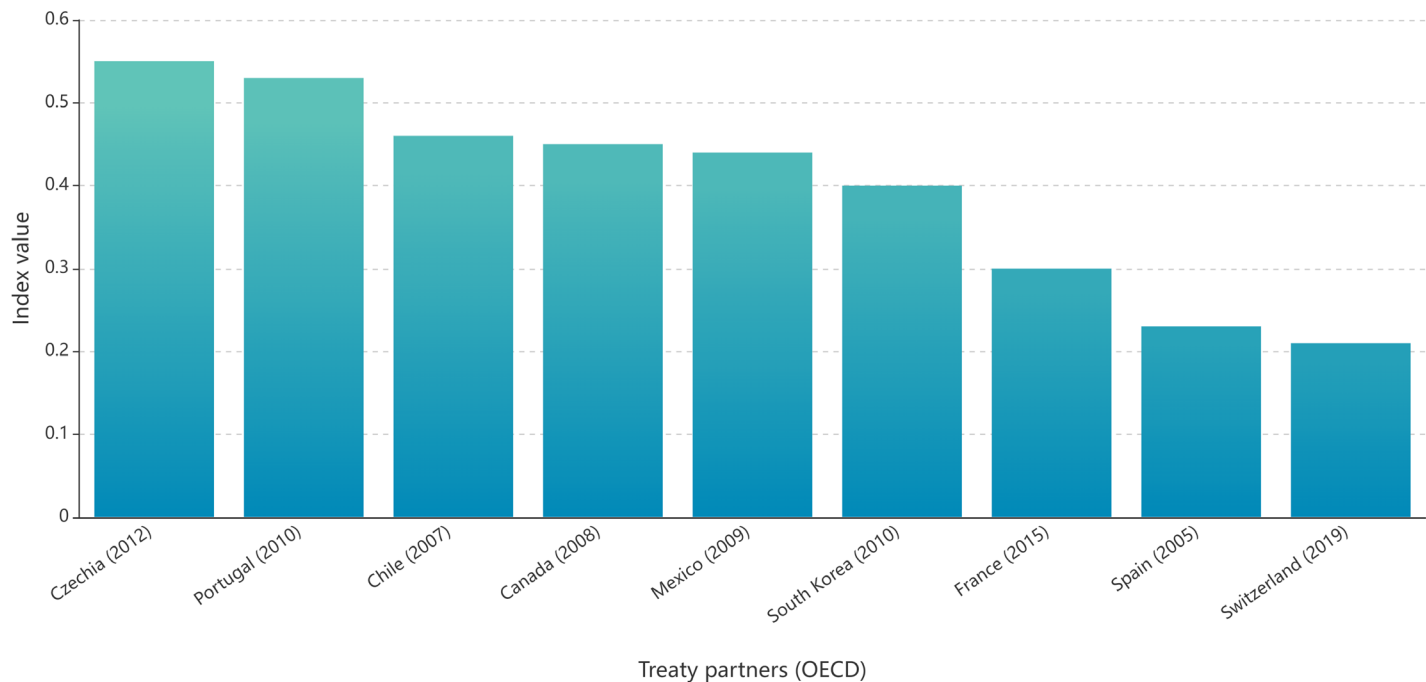
Index of overall source taxing rights: treaties signed by Ecuador



## 28<sup>th</sup> Session of UN Tax Committee

- **Fast Track Instrument: What Does it Do?**
- Eg – Colombia also has imbalanced tax treaties with Spain and France

Index of overall source taxing rights: treaties signed by Colombia



- **Through the UN Fast Track Instrument:**
  1. Ecuador can update both treaties with Spain and France *at the same time* (Updating One Country's treaties with multiple partners)
  2. Colombia **and** Ecuador can renegotiate their treaties with France (and/or Spain) *at the same time* (update of multiple treaties);
- **Key Takeaway:** UN FTI makes Bloc Treaty Negotiations Possible; Potential Game-Changer for Developing Countries

## 28<sup>th</sup> Session of UN Tax Committee

- **UN Fast Track Instrument: Next Steps**

- UN FTI Text Finalized by UN Tax Committee; Needs to be Converted into Treaty
- FTI Text To be Sent to ECOSOC for Intergovernmental Consideration
- Two Options: Stand alone Treaty or Absorbed into UN FCITC
  
- **What LAC Countries Can Do:**
  - ✓ Support Conversion of UN FTI Into Treaty
  - ✓ Inform Country Delegates to ECOSOC to Support Starting UN negotiations on UN FTI
  - ✓ Use PTLAC As a Forum for Coordinating Support for FTI

## 28<sup>th</sup> Session of UN Tax Committee

- **UN Wealth Tax Guidelines:**

- ✓ Detailed Guidelines for designing net wealth taxes
- ✓ Contains Outline of Legislative Elements
- ✓ South Centre contributed to development of Guidelines
- ✓ UN Subcommittee on Wealth Taxes Preparing UN Model Wealth Tax Law

- **What LAC Countries Can Do:**

- ✓ Interested Countries Can Use UN Guidelines to Introduce Wealth Taxes
- ✓ Attend 29<sup>th</sup> Session of UN Tax Committee (in person or online) and support UN's work on Model Wealth Tax Law (only Brazil and Colombia supported so far)



## Ongoing Negotiations: Next Session of UN Tax Committee

- **Issues of Importance for Developing Countries:**

- Taxation of Services; New Article XX on Fees for Services**

- Developing Countries Want To Tax Services at Source Even if No Physical Presence
- Eg – If Colombian Company Pays Netherlands Company Fees for Service, Colombia should tax the income

- Shipping and Air Transport**

- Developing Countries Want to Strengthen Source Taxation of this Income
- Eg – If US resident Shipping company earns income from carrying passengers from Chile to US, Chile should tax the income.

- Exploration and Exploitation of Natural Resources**

- Related Activities to be taxable in source State if carried on for more than 30 days

- Insurance Premiums**

- Developing Countries Want Source Taxation of Payments
- Eg – If Bolivian Company Pays Italian Insurance Company the Premium, Bolivia should tax the income

## Ongoing Negotiations: Next Session of UN Tax Committee

- **What LAC Countries Can Do:**

- ✓ Appoint Delegate(s) from Ministry of Finance or Tax Administration to attend Next Session of UN Tax Committee in October 2024 in Geneva, Switzerland (in person or virtual)
- ✓ Connect Delegate with relevant country Diplomats in UN Geneva and UN New York
- ✓ Delegate requested to **speak** in favor of developing countries' demands during negotiations
- ✓ PTLAC can be forum for further discussion and building Joint LAC Position
- ✓ South Centre LAC Member States requested to attend South Centre Technical Briefings to Gain Updates on Negotiations

## OECD Two Pillar Solution

- **Pillar One:**

1. Amount A (“Taxation of the Digital Economy”)
2. Amount B (“Simplified and Streamlined Approach” to Application of the arm’s length principle to in-country baseline marketing and distribution activities)

- **Pillar Two:**

1. Global Anti Base Erosion (GLOBE) Rules
2. Subject to Tax Rule

## OECD Two Pillar Solution

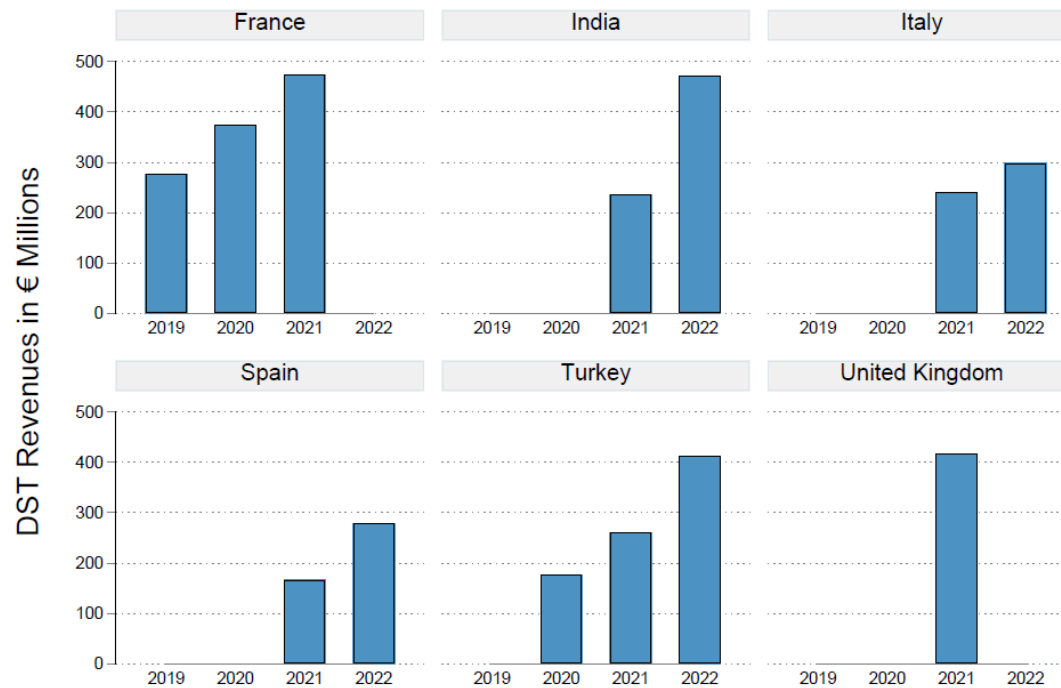
- **Amount A:**

- Solution re-allocations 25% of excess profits of around 100 MNEs to market jurisdictions; limited benefits for Developing Countries including in LAC
- Highly complex to administer with problematic dispute resolution system that resembles infamous ISDS
- Negotiation Endlessly Extended; March 31st 2024 Deadline Missed
- Amount A Multilateral Convention most unlikely to come into force owing to US opposition
- **What LAC Countries Can Do: Immediately introduce national measures like Digital Services Taxes or Significant Economic Presence**

## OECD Two Pillar Solution

- Amount A:
- What LAC Countries Can Do:
- Many Developed and Developing Countries Have Introduced National Measures: UK, France, Tanzania, Kenya, Uganda, Nigeria, India, Pakistan, Nepal, etc **and have started collecting taxes**

Collected Revenue Amounts for Countries With a Full DST



Source: EU Tax Observatory, Digital Services Taxes (2023)

## OECD Two Pillar Solution

- **Amount A:**

- No LAC Country Except Colombia Introduced National Measures;
- LAC Countries Losing out on Precious and Much Needed Revenues While Tech Giants like Google Uber Amazon etc Continue Deriving Revenues from LAC While Not Paying Taxes
- Developed Countries Happy to Endlessly Negotiate; Goal to Prevent Taxation of their Tech Giants
- LAC Countries Can Immediately Introduce DSTs and decide on Amount A after ratified by Developed Countries

## OECD Two Pillar Solution

- **Amount B:**

- “Simplified and Streamlined Approach” to Application of the arm’s length principle to in-country baseline marketing and distribution activities
- Legal form: Update to OECD Transfer Pricing Guidelines
- Has arguably further complicated transfer pricing and unlikely to deliver goal of tax certainty and reduced disputes
- Optional and non-binding; transfer pricing adjustments can continue to be contested by Developed Countries
- No consensus on Amount B; final report delayed

## OECD Two Pillar Solution

- **Amount B:**

- **What LAC Countries Can Do:**

- Carefully assess suitability of Amount B before introducing into domestic law
- UN Tax Convention Opens New Opportunities to Explore Profit Allocation Solutions Beyond Transfer Pricing and Arms Length Principle
- Eg – Formulary Apportionment



## OECD Two Pillar Solution

- **Global Minimum Tax (GLOBE Rules):**
  - Cannot Stop Tax Avoidance and Profit Shifting; Only Work if Profits Already Declared in the Country
  - MNEs can continue to pay 0 in tax under OECD Global Minimum Tax
  - Extremely Complex to Administer (Total Rules almost 1,000 pages)
  - Cost of Administration likely greater than tax collection
  - Preliminary Revenue Estimates by OECD Show Developed Countries and Tax Havens Main Beneficiaries
  - Arguably meant to Reduce Offshoring of Jobs to Developing Countries by Eliminating Tax Incentives

## OECD Two Pillar Solution

- **Global Minimum Tax (GLOBE Rules):**
  - **What LAC Countries Can Do:**
    - Alternative Minimum Taxes based on turnover or assets easier to implement
    - Tried and tested method
    - Reform of tax incentives
    - Denial of Deduction for Payments Made to Tax Havens
    - More details in South Centre Policy Brief: [The GloBE Rules: Challenges for Developing Countries and Smart Policy Options to Protect Their Tax Base, South Centre 2023](#)

## OECD Two Pillar Solution

- **Subject to Tax Rule:**

- UN and OECD Versions of Subject to Tax Rule Complete and Ready for Adoption
- Countries have to decide which version to choose

## OECD Two Pillar Solution

- **Considerations for LAC Countries:**

| OECD STTR                          | UN STTR                        |
|------------------------------------|--------------------------------|
| Has tax rate restriction of 9%     | No Rate Restriction            |
| Mark Up Restriction                | No Restriction                 |
| Materiality Threshold              | No Threshold                   |
| Restricted to Intra Group Payments | Applies to Any Party or Person |
| Scope Restricted                   | Applies to all Payments        |

## OECD Two Pillar Solution

- **Considerations for LAC Countries:**
  - UN Version More Beneficial for Developing Countries than OECD Version
  - No Guarantee Developed Countries will agree to including OECD Version Into Treaty; non binding “political commitment” made in OECD
  - LAC Countries Can Check Whether Developed Countries Will Sign OECD STTR MLI

## Conclusion

- **Historic Period of Reform in International Tax System**
- Latin America and Caribbean Should Make its Voice Heard and Ensure Its Interests Taken into Account
- PTLAC Great Initiative to Unite the Region; LAC Countries Encouraged to Strongly Participate in PTLAC Meetings
- The South Centre Remains Available to Support its LAC Member States in International Tax Negotiations and Providing Capacity Building

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# Gracias

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