Das Verhältnis zwischen OECD und UN

Status Quo OECD und UN

IFA Österreich
24.11.2025

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Bundesministerium für Finanzen, Abt. IV/8 – Internationales Steuerrecht

Institutionelle Struktur der OECD und UN im Steuerbereich

OECD

Centre for Tax Policy and Administration (CTPA)

- CFA
- IF
- Global Forum

UN

- Economic and Social Council (ECOSOC)
  - Expert bodies – personal capacity
    - UN TC
  - …
- General-versammlung
  - Department of Economic and Social Affairs
  - Financing for Development (INC)
- …

Historie der UN-Entwicklungen seit 2022 (I)

- **Grundsatzresolution - UN Resolution zur Förderung einer inklusiven und wirksamen internationalen Zusammenarbeit in Steuerfragen (30. Dezember 2022.) A/77/244**
  - Grundstein der Arbeiten zur internationalen Steuerkooperation bei der UN
  - Zentrale Forderung: internationale Steuerkooperation muss inklusiver und wirksamer werden

- **UN Secretary-General Report (8. August 2023) A/78/235**

Unzulänglichkeiten der bestehenden internationalen Steuerarchitektur:

- Hindernisse für die Beteiligung am OECD-Prozess für die erste und zweite Säule
- Verpflichtung auf die für die Teilnahme erforderlichen Mindeststandards
- Die Arbeit der OECD entspricht nicht den „unmittelbaren Bedürfnissen und Prioritäten“

3 Vorschläge

1. Multilateral convention on tax
2. **Framework convention on international tax cooperation**
3. Framework for international tax cooperation

Historie der UN Entwicklungen seit 2022 (II)

- **UN Resolution zur Förderung einer inklusiven und wirksamen internationalen Zusammenarbeit in Steuerfragen (22. Dezember 2023·) A/78/230**
  - Einsetzung des **Ad-hoc-Ausschusses** zur Verhandlung der "**Terms of Reference**" (rechtliche Rahmenbedingungen zur Verhandlung der Rahmenkonvention)
  - Zeitlich unbegrenzte und organisatorisch der der Generalversammlung untergeordnete Arbeitsgruppe

- **UN Resolution zur Förderung einer inklusiven und wirksamen internationalen Zusammenarbeit in Steuerfragen (24.· Dezember 2024) A/79/235**
  - Einsetzung eines von den Mitgliedsstaaten geführten **Verhandlungsausschusses (INC)** zur Verhandlung der Rahmenkonvention sowie zweier frühzeitiger Protokolle
  - Zeitlich unbegrenzte und organisatorisch der Generalversammlung untergeordnete Arbeitsgruppe
  - Zielsetzung: Vorlage der Rahmenkonvention und der zwei frühzeitigen Protokolle an die GV in der 82. Sitzung (2027)

Vielen Dank für Ihre Aufmerksamkeit!

Dr.^in^ Stefanie Gombotz, LL.M. (WU)
Bundesministerium für Finanzen, Abt. IV/8 – Internationales Steuerrecht
Wien, 24. November 2025

Das Verhältnis zwischen OECD und UN

Quellenbesteuerungsrechte

Art. 12B / Art. 12AA UN und Pillar 1 OECD

24. November 2025

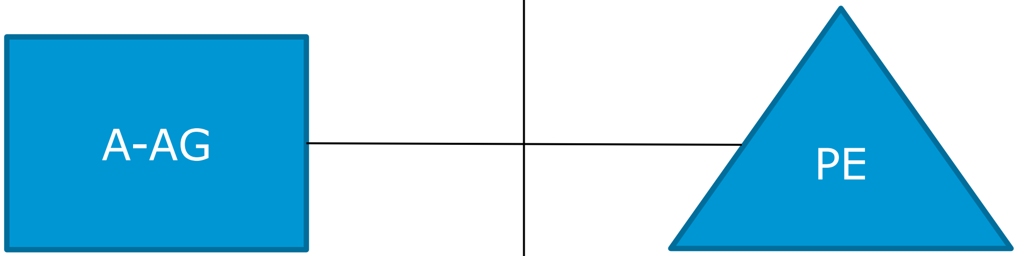
Univ.-Prof. Dr. Alexander Rust, LL.M. (NYU)

Ausgangslage

Art. 7 OECD / UN MA:

Ansässigkeitsstaat

Quellenstaat



Dienstleistungsbetriebstätte

Art. 5 Abs. 3 lit. b UN MA: The term "**permanent establishment**" also encompasses:
(a)…
(b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue within a Contracting State for a period or periods aggregating more than 183 days in any 12-month period commencing or ending in the fiscal year concerned.

=> **Physische Präsenz, gewisse Dauer.**

Dienstleistungsbetriebstätte

Ähnliche Vorschrift in Ziff. 144 OECD MA Kommentar:

…where an individual performs services in the other Contracting State **a)** through an individual who is **present** in that other State for a period or periods **exceeding in the aggregate 183 days** in any twelve month period, and more than 50% of the gross revenues attributable to active business activities of the enterprise during this period…are derived from the services performed in that other State through that individual

b) …

=> **Services performed in the source state, minimum level of presence, net taxation.**

Ausdehnung Besteuerungsrechte des Quellenstaats

- **2013 OECD** Action Plan on Base Erosion and Profit Shifting **Action 1 Address the tax challenges of the digital economy**
- **2017 UN MA: Art. 12A Fees for technical services**:
  - Quelle dort, wo der Dienstleistungsempfänger ansässig ist (bzw. wo die Betriebstätte liegt);
  - Nettobesteuerung nur bei Anwendung des Betriebstättenvorbehalts.
- **2021 UN MA: Art. 12B Income from automated digital services**
  - Quelle: Ansässigkeit des Zahlenden
  - Option zur Nettobesteuerung

UN MA 2021: Art. 12B

New Article 12B – INCOME FROM AUTOMATED DIGITAL SERVICES

(1) Income from automated digital services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, income from automated digital services arising in a Contracting State may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the income is a resident of the other Contracting State, the tax so charged shall not exceed percent *(the percentage is to be established through bilateral negotiations)* of the gross amount of the income.

UN MA 2021: Art. 12B

(3) …. (Option for net taxation)

(4) The term “income from automated digital services” as used in this Article means any payment in consideration for any service provided on the internet or an electronic network requiring minimal human involvement from the service provider. The term “income from automated digital services” does not, however, include payments qualifying as ‘fees for technical services’ under Article 12A.

UN MA 2021: Art. 12B

(Sourcing rule)

(5) For the purposes of this Article, subject to paragraph 7, income from automated digital services **shall be deemed to arise in a Contracting State if the payer is a resident of that State** or if the person paying the income, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to make the payment was incurred, and such payments are borne by the permanent establishment or fixed base.

UN MA 2021: Art. 12B

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(Option for net taxation)

(3) Notwithstanding the provisions of paragraph 2, the beneficial owner of the income from automated digital services referred to in that paragraph may require the Contracting State where the income from automated digital services arises, to **subject its qualified profits** from automated digital services for the fiscal year concerned **to taxation at the tax rate provided for in the domestic laws** of that State. For the purpose of this paragraph, the **qualified profits shall be 30 percent of the amount resulting from applying the beneficial owner's profitability ratio** or the profitability ratio of its automated digital business segment, if available, **to the gross annual revenue from automated digital services derived from the Contracting State** where such income arises. Where the beneficial owner belongs to a multinational group, the profitability ratio to be applied shall be that of the group or, if available, of the business segment of the group relating to income covered by this Article.

UN MA 2021: Art. 12B

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(Profitability Ratio)

Commentary para 27: The profitability ratio of the beneficial owner or the multinational group to which the beneficial owner belongs, is understood to be the total annual profits divided by the total annual revenue, as revealed by the consolidated financial statements…

UN MA 2025: Art. 12AA

Art. 12AA UN MA 2025 Fees for services

1) Fees for services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2) However, subject to the provisions of Articles 8, 12B, 12C, 16, 17, 18 and 19, fees for **services arising in a Contracting State may also be taxed in that Contracting State** and according to the laws of that State, but if the beneficial owner of the fees is a resident of the other Contracting State, the tax so charged shall not exceed ___ per cent [the percentage is to be established through bilateral negotiations] of the gross amount of the fees.
3) The term **"fees for services"** as used in this Article means any payment in consideration for any service.

UN MC Art. 12AA

Art. 12AA UN MA 2025 Fees for services

4) The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of fees for services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for services arise **through a permanent establishment** situated in that other State, and the fees for services are effectively connected with: (a) such permanent establishment, or (b) business activities referred to in (c) of paragraph 1 of Article 7 . In such cases the provisions of Article 7 shall apply.
5) For the purposes of this Article,… fees for services **shall be deemed to arise in a Contracting State if the payer is a resident** of that State or if the person paying the fees, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the fees was incurred, and such fees are borne by the permanent establishment.

UN MA 2025

Unterscheidung zwischen

Waren: **Betriebstättenprinzip** (eingeschränkte Attraktivität)

Dienstleistungen:

- Keine Tätigkeit im Quellenstaat notwendig
- Keine Schwellenwerte (weder für das Unternehmen noch für die Tätigkeit)
- grds. Bruttobesteuerung (Ausnahme Art. 12B und Betriebstättenvorbehalte - 183 Tage-Regelung)

BEPS: Pillar 1 MLC Okt. 2023

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Blueprint (2020):

Personal Scope:
Groups with a gross revenue of at least 750 million €
(higher thresholds are discussed as well).
=> 8,000 MNE covered world-wide
Material Scope: (in-scope revenues)
ADS (Automated Digital Services)
CFB (Consumer Facing Businesses)
=> 2,300 MNE which are covered by both thresholds

BEPS: Pillar 1 MLC Okt. 2023

Persönlicher Anwendungbereich:

- Konzernumsatz > 20 Milliarden € und
- Umsatzrendite > 10 %

Sachlicher Anwendungsbereich

- ADS und CFB ist aufgegeben
- Findet auf alle Einkünfte Anwendung

BEPS: Pillar 1 MLC Okt. 2023

Schritt 1:

Ermittlung des Übergewinns: Adjusted profit – 10% of the adjusted revenues

Schritt 2:

Zu verteilender Übergewinn (Amount A profit): 25%

Schritt 3:

Aufteilung des zu verteilenden Übergewinns auf die Marktstaaten:

$$\frac{\text{Amount A profit of the Covered Group * Adjusted Revenues}}{\text{Adjusted Revenues of the Covered Group}}$$

BEPS: Pillar 1 MLC Okt. 2023

Art. 7 MLC: Adjusted Revenues arising in a Jurisdiction:

- **Waren**: Lieferungsort an Letztverbraucher
- **Dienstleistungen:**
    - Für materielle Wirtschaftsgüter: Belegenheitsort
    - Für Onlinewerbung: Ort, an dem die Werbung angesehen wird
    - Sonstige Dienstleistungen: Ausführungsort

BEPS: Pillar 1 MLC Okt. 2023

Adjusted Revenues arising in a Jurisdiction:

Art. 8 MLC Nexus

- Revenue in market jurisdiction of at least 1 million €
- For smaller jurisdiction with GDP lower than 40 billion €, the nexus is: revenue of at least 250,000 €

BEPS: Pillar 1 MLC Okt. 2023

Zusammenfassung:

1) Es bleibt bei Nettobesteuerung (Verteilung eines Übergewinns)
2) Besteuerung im Marktstaat nur bei Überschreitung von hohen Schwellenwerten
3) Bei Dienstleistungen wird häufig nach wie vor eine Ausübung im Marktstaat gefordert (nicht allerdings bei Werbedienstleistungen und Waren)

VERGLEICH

UN:

1) Vergleichsweise einfache Regelungen
2) Integration in das bestehende Musterabkommen
3) Bruttobesteuerung
4) Keine Schwellenwerte
5) Keine Tätigkeit im Quellenstaat notwendig (Zahlung ausreichend)

VERGLEICH

OECD:

1) Hochkomplexe Regelungen
2) Regelungen außerhalb des Musterabkommens
3) Nettobesteuerung
4) Hohe Schwellenwerte
5) Teilweise Tätigkeit im Quellenstaat notwendig.

Universität St.Gallen

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Die neue Rolle der UN

Peter Hongler

From insight to impact.

The OECD hat an Bedeutung verloren seit 1961

Exhibit 4: Our Projections Imply that China, the United States, India, Indonesia, and Germany Will be the World's Five Largest Economies in 2050

World's largest economies (measured in USD)

Ranking	1980	2000	2022	2050	2075
1	United States	United States	United States	China	China
2	Japan	Japan	China	United States	India
3	Germany	Germany	Japan	India	United States
4	France	United Kingdom	Germany	Indonesia	Indonesia
5	United Kingdom	France	India	Germany	Nigeria
6	Italy	China	United Kingdom	Japan	Pakistan
7	China	Italy	France	United Kingdom	Egypt
8	Canada	Canada	Canada	Brazil	Brazil
9	Argentina	Mexico	Russia	France	Germany
10	Spain	Brazil	Italy	Russia	United Kingdom
11	Mexico	Spain	Brazil	Mexico	Mexico
12	Netherlands	Korea	Korea	Egypt	Japan
13	India	India	Australia	Saudi Arabia	Russia
14	Saudi Arabia	Netherlands	Mexico	Canada	Philippines
15	Australia	Australia	Spain	Nigeria	France

Source: Goldman Sachs Global Investment Research

UN Framework Convention on International Tax Cooperation

Was hat die Verhandlungen ausgelöst?

Die UNFCCC als Vorlage

Wo stehen wir?

- Resolution, die am 24. Dezember 2024 von der UN Generalversammlung angenommen wurde (Mandat/Terms of Reference)
- Drei Verhandlungsrunden über das UNFCITC
- Die Verhandlungen sollen bis Ende 2027 abgeschlossen sein

2025

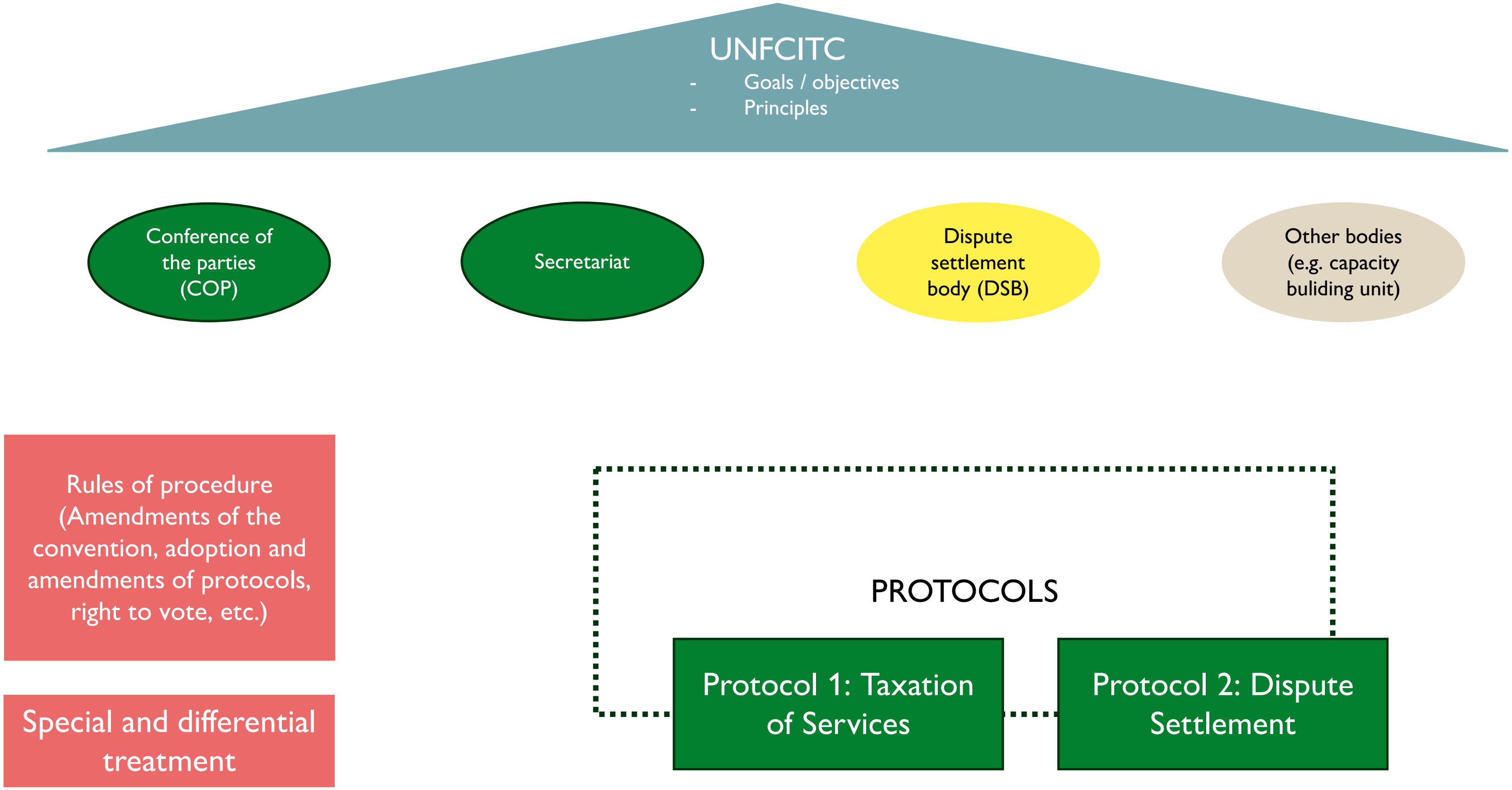
- **4 - 8 Aug | New York**
  Intergovernmental Negotiating Committee (INC)
  First Session
- **11 - 15 Aug | New York**
  Intergovernmental Negotiating Committee (INC)
  Second Session
- **10 - 19 Nov | Nairobi**
  Intergovernmental Negotiating Committee (INC)
  Third Session

2026

- **2 - 3 and 6 - 13 Feb | New York**
  Intergovernmental Negotiating Committee (INC)
  Fourth Session
- **3 - 14 Aug | New York**
  Intergovernmental Negotiating Committee (INC)
  Fifth Session
- **30 Nov - 11 Dec | Nairobi**
  Intergovernmental Negotiating Committee (INC)
  Sixth Session

2027

- **Dates TBC**
  - Three substantive sessions
  - Submission of the final text of the framework convention and of the two early protocols
- **Sep 2027**
  Consideration of the framework convention and of the two early protocols by the General Assembly



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INC Tax Workstream I *– Order in which issues will be taken up*

Provisions to be addressed early	Provisions whose drafting depends at least in part on drafting of commitments	Provisions that are not subject-matter dependent that can be drafted at any time
Commitments: • Fair allocation of taxing rights • Effective prevention and resolution of tax disputes • Sustainable development • High net worth individuals • Effective mutual administrative assistance • Illicit financial flows, tax avoidance and tax evasion • Harmful tax practices	• Conference of the parties • Secretariat • Definitions • Data collection and analysis • Exchange of information for implementation of the convention • Review and verification • Subsidiary bodies • Capacity building and technical assistance	• Amendments to the convention • Adoption of protocols • Formal matters – depositary, entry into force, etc. • Financial resources