

# Taxpayers' Rights and the UN Tax Convention:

Addressing the Weaponisation of Privacy and Confidentiality to Reinstall Tax Transparency in Favour of Tax Justice

EXECUTIVE SUMMARY

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On 16 August 2024, the Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation adopted its Draft Terms of Reference. This milestone marks a rare opportunity to shift global tax governance to the United Nations (UN), with significant implications for tax transparency, human rights, and international economic justice.

A UN Tax Convention could redefine global taxation by addressing how revenues are collected and distributed. The inclusion of Principle 9(c), which aligns tax cooperation with human rights obligations, was a victory for civil society. This recognises that securing resources for human rights fulfilment is inextricable from tax policy. However, certain countries—mainly from the Global North—seek to limit transparency by emphasising privacy protections for taxpayers, including corporate entities.

The problem with that position is that restricting tax transparency would undermine the fight against tax evasion, tax avoidance, and other illicit financial flows. In such a case, regardless of the UN Tax Convention's decision on how to distribute taxing rights among countries, there may be little collection of tax revenues to begin with. **This paper aims to re-establish the case for tax transparency.**

## The Evolution of Tax Transparency

If the world were simple, there would be no need for a robust tax transparency framework. Authorities could quickly get all the information they needed to enforce laws if individuals owned their assets and ran businesses under their name, all within one country's territory.

However, the current global economy is highly complex, and information is no longer readily available or accessible. Many individuals run their businesses not directly under their name but through companies and other entities offering limited liability. Availability of information is reduced further in the context of globalisation. Businesses have expanded cross-border and become multinational corporations. They can produce goods in one place, obtain services elsewhere, and sell them in another location. This usually requires incorporating new companies in each country where they operate. Additionally, wealthy individuals can create companies to 'passively' hold their assets, including shares corresponding to other businesses, real estate, or diverse wealth.

In the current context, 'sophisticated taxpayers' such as high-net-worth individuals and multinational companies can engage enablers such as lawyers, law firms, corporate and trust service providers (CTSPs), accountants, big accounting firms, and tax advisors for their regular operations. These enablers will likely advise them on different strategies: how to structure their operations, where to incorporate their entities,

which assets (like crypto assets or real estate) to hold, how to submit tax returns, how to obtain favourable tax rulings, or how to oppose decisions by the tax administration.

All of this creates a situation where the challenges for authorities to access information readily are so vital that it is safe to say that secrecy is the rule, either because of the deliberate creation of rules of confidentiality or as a consequence of the complex environment in which stakeholders operate.

Different provisions affect transparency: most companies have the right to keep their sensitive commercial information secret, and individual taxpayers will likely have a right to privacy and data protection over their personal data. Enablers will likely enjoy professional confidentiality (such as attorney-client privilege), and banks traditionally enjoy banking secrecy. Companies can incorporate in tax havens where they don't need to register their ownership. Information held by tax authorities will likely be subject to fiscal secrecy.

In the case of corporate secrecy, for example, the mere act of operating a business through an entity rather than under one's name creates a barrier to transparency. Unlike the case of individuals running a business under their name or establishing a general partnership, where the name of the partner is relevant because they have entire liability, most businesses are currently organised as companies with limited liability which are often called 'limited' or 'anonymous companies' (e.g. société anonyme / sociedad anónima) not because we don't know who owns them, but because the names of the shareholders, who act only as investors (and don't make managerial decisions) is no longer relevant for liability purposes.

To tackle illicit financial flows effectively, authorities require tax transparency to break structural secrecy and deliberate confidentiality. That is why several advances were made in the field of global tax transparency, including:

- **International exchange of information to tackle structural secrecy of globalisation:** Agreements like the OECD Convention on Mutual Administrative Assistance in Tax Matters have curtailed the use of tax havens by facilitating information sharing.
- **Automatic exchange of information (AEOI) and other limits to banking secrecy:** Initiatives such as FATCA and the OECD's Common Reporting Standard require financial institutions to exchange tax-related information across jurisdictions automatically.
- **Beneficial Ownership (BO) transparency to limit corporate secrecy:** Centralised registries of the actual individuals who own and control companies and trusts enhance accountability and prevent abuse of corporate anonymity.
- **Country-by-country reports (CBCR) to limit commercial secrecy:** Multinational corporations must disclose key financial data to tax authorities to curb tax base erosion and profit shifting.
- **Limits to professional confidentiality:** Anti-money laundering regulations require lawyers, accountants, and corporate service providers to report suspicious transactions, limiting the misuse of legal privilege.

Around 2020, when some of the transparency advances consolidated, it became clear that there were still loopholes to be exploited by those interested in escaping tax transparency. They could avoid exchanges altogether by investing in bitcoins, real estate, and precious metals or in countries that fail to join the system. Other loopholes included the ability to hide the identity behind trusts and different types of entities exempted from beneficial ownership registration. To address these issues, new transparency frameworks were meant to close loopholes and upgrade the system.

## The Weaponisation of Privacy and Confidentiality

As tax transparency measures have expanded, sophisticated taxpayers and their enablers have strategically reframed the debate around privacy rights through the 'taxpayers' rights' concept. By positioning tax transparency as a threat to privacy, they aim to dismantle vital safeguards against financial misconduct.

One of the narratives against the collection of information is that the State is, at its best, inefficient and, at its worst, dangerous. Privacy is, therefore, needed to protect the individual's freedom and autonomy from being persecuted for their religion, sexual orientation, or political views or to protect their wealth from arbitrary confiscation.

Advocates of this view also focused on stopping three levels of access to information:

1. **Public access:** Advocating against public disclosure of tax-relevant information by invoking concerns over personal data protection.
2. **Exchange of information among authorities:** claiming that other authorities do not need the information or could abuse it.
3. **Collection of information by authorities:** arguing that tax authorities' data collection imposes unnecessary burdens on taxpayers and violates civil liberties.

This legal and rhetorical strategy has had tangible effects. In 2022, the European Court of Justice ruled against public access to beneficial ownership registries, citing privacy concerns, thereby reversing a significant transparency achievement. Similar arguments have been used to limit access to professional enabler data and prevent the establishment of registries in key jurisdictions.

## Countering the Narrative That Weaponises Privacy and Confidentiality

Reaffirming its necessity for economic justice and human rights is essential to counter the growing resistance to tax transparency. The main problem faced by societies is not the State -or not exclusively-; instead, it is the ability of sophisticated taxpayers, such as high-net-worth individuals and multinational companies, to use enablers (e.g., lawyers, accountants, tax advisors) to engage in tax avoidance, tax evasion, and other illicit financial flows without consequence. These actors often possess higher financial and legal resources than tax administrations, allowing them to exploit loopholes and secrecy jurisdictions to avoid paying their fair share. This creates a system where those with significant wealth and influence can sidestep tax obligations and other rules while ordinary citizens remain fully accountable to tax laws.

This disparity results in an inherently unfair system. Ordinary taxpayers, including small and medium-sized enterprises and individuals who earn their income primarily from salaries, have significantly fewer means to avoid taxation. They lack the financial and technical resources to engage in sophisticated tax planning strategies and have little political leverage to resist tax increases. Moreover, their taxes are often deducted at the source—by their employer or financial institution—ensuring compliance before income is even received.

The impact of this imbalance extends beyond unfair taxation and threatens the broader social contract. When powerful taxpayers fail to contribute fairly, the burden shifts to those with no choice but to comply. This results in two significant consequences: first, lower-income groups pay a larger proportion of their earnings in taxes than corporations and wealthy individuals, exacerbating economic inequality. Second, governments face reduced revenues, limiting their ability to invest in essential public services such as

healthcare and education, and infrastructure.

At the same time, tax transparency is a mechanism to democratise power and hold sophisticated taxpayers accountable. Recent tax transparency advances specifically target these actors rather than ordinary citizens. For example:

- **Automatic Exchange of Information (AEOI)** primarily affects wealthy individuals with foreign bank accounts, not those whose financial activities are confined within their home country.
- **Beneficial Ownership Transparency** impacts individuals who establish complex legal structures—such as trusts and shell companies—to obscure asset ownership. By contrast, most ordinary citizens either do not own or operate through companies or, if they do, their structures are straightforward and already available in commercial registers.
- **Public Access to Ownership Data** prevents collusion between government authorities and powerful taxpayers. While certain sensitive personal data held by authorities, such as religious beliefs or home addresses, should remain protected, information that could reveal cases of corruption, conflict of interest, unfair tax benefits, or inequality should be made available—at least in anonymised or statistical form—to ensure transparency and accountability.

Ultimately, tax transparency is a necessary tool to level the playing field. It ensures that high-net-worth individuals and multinational corporations are subject to the same standards as ordinary taxpayers, requiring them to comply with the rule of law and contribute their fair share to society.

Without strong transparency measures, financial secrecy will continue undermining tax justice, increasing inequality, and depriving governments of the resources needed to fulfil human rights obligations.

## Tax Transparency to Protect Human Rights

Tax transparency is essential for protecting vulnerable populations and ensuring fair resource distribution. It exposes financial misconduct and ensures that individuals and corporations contributing to the economy fulfil their tax obligations.

Under international law, privacy is not an absolute right. It can be lawfully restricted when it conflicts with broader economic and social rights, such as healthcare, education, and housing access.

Governments rely on tax revenue to uphold these rights, making tax transparency critical in addressing illicit financial flows and mobilising resources. Furthermore, tax transparency is a matter of equality before the law. Secrecy allows specific individuals to evade their responsibilities, engaging in financial crimes such as corruption or money laundering, which undermine the rule of law.

Secrecy also undermines the right to information, enshrined in Article 19 of the Universal Declaration of Human Rights, which is vital to democratic governance. According to UNESCO, access to information is essential to societal functioning and individual well-being. Transparency ensures that financial misconduct is exposed and tax contributions are fairly distributed, reinforcing trust in public institutions.

Progressive fiscal policies are also critical for the materialisation of human rights, as they ensure governments generate sufficient revenue to provide quality public services. Article 2 of the International Covenant on Economic, Social, and Cultural Rights mandates that States mobilise the maximum available resources, including taxation, to fulfil these rights. This extends to international cooperation, requiring governments to prevent tax

evasion and illicit financial flows that undermine economic justice.

Various UN human rights mechanisms have emphasised the critical relationship between international assistance obligations and fiscal policy. They argue that ‘a contemporary interpretation of existing obligations of international cooperation and assistance should recast or redefine the outdated emphasis on tax sovereignty to a more modern conception of international tax cooperation in a globalised and interdependent world economy.’ States are also obliged to take coordinated global measures to combat tax avoidance as part of their national and extraterritorial human rights obligations. Additionally, States must safeguard individuals from human rights violations by third parties, including transnational corporations.

To fully enable international human rights principles to promote tax justice, these principles should also be interpreted as supporting tax transparency. After all, tax transparency is a precondition for tax justice since, without information, it is not possible to enforce tax laws. Rejecting tax transparency on privacy grounds ignores the broader injustices that transparency seeks to prevent.

## Conclusion

The UN Tax Convention presents a crucial opportunity to institutionalise tax transparency at the global level. However, the challenge lies in resisting attempts to undermine transparency through claims of privacy and confidentiality. Tax transparency is essential for rebalancing power, ensuring economic and social rights, and fulfilling international human rights obligations.

Without robust transparency measures, wealthy individuals and corporations will continue to exploit secrecy to evade taxes, shifting the burden onto ordinary citizens and depriving governments of vital revenue. Stronger transparency measures are needed to close loopholes, strengthen enforcement, and uphold fairness in the tax system. Ultimately, tax transparency is not just a technical issue—it is a matter of social justice, ensuring that all taxpayers contribute equitably to public resources and that governments have the means to protect and promote human rights.