



**Comments**  
**in response to the request for public input on**  
**UN Resolution A/RES/77/244**

The International Tax and Investment Center (ITIC) is pleased to submit comments to the United Nations Secretary-General, in response to the invitation to provide input on the General Assembly Resolution “Promotion of Inclusive and effective tax cooperation at the United Nations” of 30 December 2022.

ITIC is an independent, non-profit research and education organization founded in 1993 to promote tax reform and public-private initiatives to improve the investment climate in transition and developing economies. ITIC serves as a clearinghouse for information on best practices in taxation and facilitates mutual understanding between business and government through the ITIC “neutral table,” where stakeholders convene to discuss academic analyses, policy studies and international best practices.

Thank you for the opportunity to contribute to this very important debate on the strengthening of inclusiveness and effectiveness in international tax cooperation. This submission will touch on two primary issues raised in the GA Resolution.

**Illicit Financial Flows and Tax Evasion**

ITIC stands strong in the fight against illicit financial flows, corruption practices, tax evasion, money laundering, and other illicit flows. In the interest of obtaining maximum commitment and alignment on these condemned practices from all stakeholders (here included, intergovernmental organizations, member states, civil society, and private actors), we find it imperative to have a clear delineation of the terminology employed to define illicit flows.

The issue is not new. There has been substantial debate surrounding the definition of illicit financial flows, with wide involvement from a large array of stakeholders in the interest of finding a consensus definition of the term. The debate gained momentum with the approval of the Addis Agenda, and the delineation of a range of actions aiming to reduce IFFs by 2030. Despite those efforts, the international community has failed to achieve a definition for IFFs.

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One of the only points of consensus relates to the element of illicitness associated with the practice. In other words, the uncontested characteristic of the definitions put forward by intergovernmental organizations is the illegality associated with the flow. To meet the definition, either the act must be illegal, or the funds must have resulted from the pursuit of illegal or criminal activity.

For example, in 2016 the United Nations qualified IFFs as having three different sources: revenues from criminal activity, public corruption and tax evasion.<sup>1</sup> Likewise, in 2015 the OECD<sup>2</sup> produced a thematic module on illicit financial flows that proposed the following definition:

“Illicit financial flows (IFFs) means all cross-border financial transfers which contravene national or international laws. This is a wide category which encompasses several different types of financial transfers, made for different of reasons. It can include:

- Funds with criminal origin, such as the proceeds of crime (including corruption);
- Funds with a criminal destination, such as bribery, terrorist financing or conflict financing;
- Funds associated with tax evasion;
- Transfers to, by, or for, entities subject to financial sanctions; and
- Transfers which seek to evade anti-money laundering/counter-terrorist financing measures or other legal requirements (such as transparency or capital controls).” (OECD, 2015)

Given the state of the discussions, it is important to distinguish between licit and illicit activities, or in other words, tax avoidance from tax evasion. Tax evasion is indeed one aspect of illicit financial flows. According to one United Nations working paper,<sup>3</sup> the examples most commonly associated with illicit financial flows are: tax evasion, money laundering, corruption, bribery, trade mispricing, and terrorist financing. The least cited examples are: fraud, conflict financing, counter-terrorist financing, smuggling, trafficking drugs, people or wildlife, financing of organized crime, and counterfeiting.

In our view, tax avoidance would be outside the scope of the definition, because it does not concern the practice of an illegal activity. It merely translates into the use of legitimate corporate practices authorized by law to reduce one’s tax liability, like corporate tax planning

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<sup>1</sup> United Nations, *World Economic Situation and Prospects 2016*, (UN 2016), footnote 19, pg. 103.

<sup>2</sup> OECD, *Policy Coherence for Sustainable Development (PCSD)*, Thematic Module on Illicit Financial Flows, Workshop, 2015, pg. 3.

<sup>3</sup> Falcão and Chowla, *Illicit Financial Flows: Concepts and Scope*, Inter-Agency Task Force on Financing for Development Working Paper Series, UN publications, 5 December 2016, available at: [http://www.un.org/esa/ffd/wp-content/uploads/2017/02/Illicit-financial-flows-conceptual-paper\\_FfDO-working-paper.pdf](http://www.un.org/esa/ffd/wp-content/uploads/2017/02/Illicit-financial-flows-conceptual-paper_FfDO-working-paper.pdf).

and optimization of the payment of taxes.<sup>4</sup> Our view is aligned with that of the United Nations Task Force on Illicit Financial Flows, the OECD and the World Bank, in which “cross-border movement of financial assets are considered illicit only when they are associated with activities that are deemed to be illegal in the local jurisdiction.”<sup>5</sup>

For that reason, the General Assembly Resolution should stay away from citing tax avoidance, and even aggressive tax avoidance, as being synonymous to tax evasion, and belonging to the group of illegal activities covered by illicit financial flows. Doing so would greatly impact legal certainty in the corporate world and would have detrimental effects on foreign investment in low- and middle-income countries, where juridical systems are less robust, the legislation is at times more complex and less transparent, and therefore certain provisions would be more open to one’s individual interpretation and, as a consequence, tax planning.

### **International Cooperation Issues**

ITIC is a strong supporter of the United Nations work and a frequent contributor to the work of the UN Committee of Experts on International Cooperation in Tax Matters. As such, we consider the strengthening of international cooperation on tax matters an important aspect of assisting countries in closing the gaps in development finance, and we note the importance of domestic resource mobilization that results from application of national taxes.

However, ITIC also recognizes that there are several ongoing processes that aim to both question and requalify transactions in light of base erosion and profit shifting concerns. Some of these processes are cited in the Resolution and include, among others, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting, the Global Forum on Exchange of Information for Tax Purposes, and the Platform on Collaboration on Tax.

In the interest of avoiding repetition and re-discussion of the many issues that have been examined in these fora, ITIC would request clarification on how a more inclusive intergovernmental forum on international cooperation might relate to these other established venues for re-discussion of international tax issues. Likewise, it will be important for all stakeholders to understand the value that establishing a new organization could bring to the simplification and better coordination of international tax practices in a way that facilitates trade and international investment and spurs global growth in a sustainable manner.

In case this forum decides to go forward in the establishment of a new intergovernmental process to discuss the international tax structure, we would ask for clarity on the issues this

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<sup>4</sup> World Bank, *The World Bank Group’s Response to Illicit Financial Flows: A Stocktaking*, pg. 2, para. 7, March 22, 2016

<sup>5</sup> World Bank, *The World Bank Group’s Response to Illicit Financial Flows: A Stocktaking*, pg. 2, para. 8, March 22, 2016

forum intends to consider, emphasizing whether there would be any re-analysis of issues that have already been considered at the OECD level. We appreciate that the growing complexity in business and, as a result, tax relations, puts pressure on governments; therefore, optimization of human and financial resources is critical for achieving centralized, coordinated approaches to the pressing issues of our times like the digitalization of business practices. ITIC is mindful that the introduction of competing intergovernmental tax policy forums and regimes might exacerbate tax uncertainty and further destabilize the international tax system, to the detriment of both tax administrations and taxpayers.

With that in mind, we would appreciate some indication of the new approach and agenda that this forum intends to consider, the scope of its mandate, and the process envisioned to obtain legitimacy in the decision-making process. Finally, we would strongly support an ample consultation process with all the institutional partners and stakeholders involved.

## **Conclusion**

Related to the issues above, we respectfully request consideration of the following points:

1. That the Resolution and any subsequent documents be more accurate in the terminology used to reference illicit or criminal activity that should be punished. By contrast, we would request the exclusion of any reference to tax avoidance.
2. We would request greater clarity with respect to the interaction between the existing fora for discussion of international tax coordination, and the intergovernmental forum the Resolution envisages creating.
3. Should the role of the intergovernmental forum still be subject to formal framing and negotiation, we would appreciate being involved in that process, through an ample and transparent consultation procedure where all interested stakeholders can contribute on equal footing.

We thank you once again for the opportunity to provide input on this important intergovernmental process.

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