United Nations Secretariat

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Topic: **Protecting government subsidies and tax incentives meeting sustainable development goals from international anti-tax base erosion measures**

Dear Secretary-General,

Thank you for publishing a call for public input on the General Assembly's December 2022 Resolution on the "Promotion of inclusive and effective tax cooperation at the United Nations".

This resolution is an important step towards the UN taking center-stage in the international tax debate, and to make that debate really inclusive. As the Resolution recalls, there is "the need for all countries to work together to eliminate tax evasion, tax base erosion and profit shifting and to ensure that all taxpayers, including multinational companies, pay taxes to the Governments of countries where economic activity occurs and value is created".

I would like to use this opportunity not to address the various means with which tax evasion and tax base erosion could be dealt with through international cooperation, but to focus on **the necessity of carve-outs for sustainable development policy measures**. One could think of developing countries that try to stimulate employment and attract investment within their jurisdictions via subsidies or tax incentives, or countries that offer such financial assistance to stimulate the actual greening of the global economy.

In the run-up to the October 2021 OECD/G20 Agreement to introduce a global minimum corporate tax, the debate about whether and how to honour 'useful' government subsidies and tax incentives did lead to some concessions, but they were not excluded from its scope as such. A 2020 blueprint did announce that parties were still looking into a carve-out for emergency government assistance, but no such explicit carve-out made it to the end. The end-result poses particular challenges.

Allow me to give three short (and simplified) examples:

1. A country that offers a cash subsidy to stimulate local investment in its territory, may decide to exclude such subsidy from taxable income for reasons of administrative efficiency and to enforce its investment policy. That government subsidy, however, could be considered part of the income on which an effective 15% tax should be ensured above certain thresholds. This may result in another country levying additional taxes on income consciously provided by the first country if the recipient entity is part of a multinational group.

2. A country may grant tax incentives to stimulate investment or reduce wage costs to deal with massive unemployment. Again, such benefits may lead to taxation abroad above certain thresholds, if the effective tax at group level would get below 15% or if the resulting benefit (in terms of reduced wage tax cost) is included in world-wide corporate income abroad.

3. A country grants corporate tax incentives to stimulate investment in machinery that is greener than environmental standards require. Such benefits might again be compensated by taxation abroad if the taxpayer is part of a multinational group, above certain thresholds.

In order to offer relief for the situations above, the OECD/G20 Global Minimum Tax does offer a (gradually diminishing) substance carve-out and a *de minimis* exemption, but these only exclude incentives up to a certain amount (and relative to domestic activity/substance). These measures contribute to **a global minimum tax system that raises to a level of complexity that even countries with the most sophisticated tax collection infrastructure will find hard to handle** due to major challenges in implementation.

While the OECD/G20 Project received and deserved a lot of political and social support, the implementation will be a disproportionate burden to developing countries in particular. More **targeted carve-outs upfront would make implementation less complex**, although it would require international political consensus to set standards on 'allowable' greening incentives and regional development incentives. The latter, of course, is a major challenge in and of itself that the UN could take up. (A consensus on 'allowable' incentives could also provide a blueprint for other domains as well, such as anti-subsidy rules in international trade.)

I would like to recommend to explore opportunities in the process of dealing with international tax base erosion, to make sure that the needs of developing countries and environmental concerns can be recognized. Also, now is the time to grasp the opportunity to reconsider how government subsidies are to be dealt with in the future international tax arena as to ensure that the granting jurisdiction is the exclusive beneficiary therefrom, which is not taken care of under current Model Tax Conventions.

In a nutshell, I would like to suggest two opportunities to include in your deliberations:

A. In any future Model Tax Convention or Multilateral Agreement consider assigning exclusive taxing rights over government-issued subsidies to the granting jurisdiction, such as subsidies targeted at reaching environmental objectives or at the regional development of low-income and/or high-unemployment jurisdictions.

B. **Consider not to apply minimum taxation rules or switch-over rules to situations where there is no tax base erosion but a legislative intention to lower the tax burden to serve a sustainable development purpose, i.e. when income and expenses that are rightly allocated to a particular jurisdiction are subject to 'allowable' special tax treatment in order to reach environmental objectives or to stimulate local investment in low-income and/or high-unemployment jurisdictions.**

This way inclusive and effective international tax cooperation would not only focus on addressing real tax base erosion and really harmful tax competition, but also provide for a less burdensome protection of subsidies and tax incentives that were meant to **meet sustainable development goals**.

It should be noted that quite a number of tax incentives aimed at reaching sustainable development goals are ill-structured and ill-advised. The OECD is rightly concerned about this, as voiced in an October 2022 report dealing with the impact of the global minimum corporate tax on tax incentives.

But a global minimum tax, as an anti-base erosion measure, was originally not meant to address these issues.

The question that should be answered at UN level is whether putting a bottom of 15% (?) in corporate taxation for large multinational enterprises should also affect sustainable development incentives, a question that was answered affirmatively by the G20/OECD in the context of the adopted proposal of the global minimum tax. By design the latter is neutral towards policy goals, which may indeed be the preferable way to go forward as it also brings an end to some ill-designed measures. But this is a decision that should be taken at UN level, given its global impact on national autonomy.

The UN would be the best forum to assess the necessary balance between reaching sustainable development goals by allowing for effective government support (either by subsidies, tax incentives, or otherwise) and preventing tax base erosion at a global level in the least complex manner. Agreeing on a list of 'allowable' subsidies and tax incentives should be part of such effort.

Should you have any further questions on this input statement, I am at your disposal.

Yours sincerely,

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