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International cooperation in tax matters

Strengthening of institutional arrangements to promote international cooperation in tax matters, including the Committee of Experts on International Cooperation in Tax Matters

Report of the Secretary-General

Summary

Pursuant to Economic and Social Council resolution 2010/33, the present report examines a range of issues related to the strengthening of institutional arrangements to promote international cooperation in tax matters. Against the backdrop of universal consensus on the key role of international tax cooperation for the mobilization of financial resources for development, the report reviews the existing institutional arrangements, including the Committee of Experts on International Cooperation in Tax Matters, and the work done on tax matters in other international forums. It also summarizes the views provided by Member States and presents options, for consideration by the Council, on the strengthening of institutional arrangements within the United Nations to enhance international tax cooperation.

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I. Introduction

1. The Economic and Social Council, in its resolution 2010/33 on the Committee of Experts on International Cooperation in Tax Matters, requested the Secretary-General, taking into account the views of Member States and taking into consideration the work done on tax matters in other international forums, to submit to the Council by March 2011 a report examining the strengthening of institutional arrangements to promote international cooperation in tax matters, including the Committee of Experts on International Cooperation in Tax Matters. In the same resolution, the Council requested the President of the Economic and Social Council to convene a discussion within the Council by spring 2011 on international cooperation in tax matters. The present report has been prepared in response to those requests.

II. The role of international tax cooperation in financing for development

2. Over the past decade, the relationship between the mobilization of financial resources for development and international tax cooperation featured prominently in outcome documents of the major United Nations conferences and summits on economic and social matters. In the 2002 Monterrey Consensus of the International Conference on Financing for Development, it was noted that an effective, efficient, transparent and accountable system for mobilizing public resources and managing their use by Governments was essential. In this context, heads of State and Government recognized the need to secure fiscal sustainability, along with equitable and efficient tax systems and administration, and encouraged strengthening of international tax cooperation, through enhanced dialogue among national tax authorities and greater coordination of the work of the concerned multilateral bodies and relevant regional organizations, giving special attention to the needs of developing countries and countries with economies in transition.[1]

3. In the 2008 Doha Declaration on Financing for Development, Member States committed themselves to continuing to undertake fiscal reform, including tax reform, as a key to enhancing macroeconomic policies and mobilizing domestic public resources, to improving budgetary processes and to enhancing transparency of public financial management and the quality of expenditures. In that regard, they pledged to step up efforts to enhance tax revenues through modernized tax systems, more efficient tax collection, broadening the tax base and effectively combating tax evasion, with an overarching view to make tax systems more pro-poor. In addition, they recognized that bilateral investment treaties, as well as tax treaties and other tax measures to facilitate foreign investments, should take into account regional and multilateral cooperation, and acknowledged the importance of supporting capacity-building in developing countries aimed at improving their abilities to negotiate mutually beneficial investment agreements and to promote good tax practices.[2]

[1] *Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002* (United Nations publication, Sales No. E.02.II.A.7), chap. I, resolution 1, annex, paras. 15 and 64.

[2] See General Assembly resolution 63/239, annex, paras. 16 and 25.

4. The Outcome of the 2009 Conference on the World Financial and Economic Crisis and Its Impact on Development[3] emphasized the need to ensure that all tax jurisdictions and financial centres comply with standards of transparency and regulation and reiterated the need to further promote international cooperation in tax matters, including within the United Nations, by promoting double-taxation agreements. It stated that inclusive and cooperative frameworks should ensure the involvement and equal treatment of all jurisdictions and called for consistent and non-discriminatory implementation of transparency requirements and international standards for exchange of information. The Conference requested the Economic and Social Council to examine the strengthening of institutional arrangements, including the United Nations Committee of Experts on International Cooperation in Tax Matters.[4]

5. The outcome document of the High-level Plenary Meeting of the sixty-fifth session of the General Assembly on the Millennium Development Goals entitled "Keeping the promise: united to achieve the Millennium Development Goals" embodies a strong commitment to accelerating progress on Goal 8, Develop a global partnership for development. In particular, world leaders committed themselves to enhancing and strengthening domestic resource mobilization and fiscal space, including, where appropriate, through modernized tax systems, more efficient tax collection, broadening the tax base and effectively combating tax evasion and capital flight. They stated that, while each country was responsible for its tax system, it was important to support national efforts in these areas by strengthening technical assistance and enhancing international cooperation and participation in addressing international tax matters.[5]

6. In the wake of the global financial and economic crisis, there has been an unprecedented demand from both developing and developed countries for strengthening international cooperation in tax matters. A convergence of several recent developments and prevailing factors has increased the focus on deficiencies in international tax cooperation and the risks posed by these deficiencies to the international community. These include:

(a) Budget deficits. The global recession has depressed government revenues, while creating a need for stimulus packages and recovery measures in many countries. Meanwhile, pressure is mounting to address long-term development objectives, such as the Millennium Development Goals, and new challenges and emerging issues, such as climate change, population ageing, volatility of food and energy prices. Donor Governments have a strong additional interest in helping developing countries to improve their tax revenues, as a way of reducing pressure for delivery of official development assistance and additional financing;

(b) Tax evasion. Several tax scandals, involving prominent banks and high-wealth individuals, have stirred public outrage and fuelled calls for more fair and effective tax systems, including taxation of high-income earners. Moreover, more comprehensive estimates have become available to the public, including through increasingly sophisticated attempts by non-governmental organizations to quantify the amount of tax revenue lost in rich and poor countries as a result of illicit financial transfers;

[3] General Assembly resolution 63/303, annex.

[4] See General Assembly resolution 63/303, annex, paras. 38 and 56 (c).

[5] See General Assembly resolution 65/1, para. 78 (i).

(c) Webs of illegality. It has been increasingly recognized that tax evasion has linkages to other illegal activities of grave international concern, such as terrorism, organized crime, drugs and arms trafficking, all of which thrive on inadequate international cooperation;

(d) Business interests. Unwarranted differences in national tax requirements create investment uncertainty and high compliance costs for businesses, thus discouraging international investment flows. Moreover, an intensified focus on corporate social responsibility, including among shareholders, provides for greater accountability of businesses for their activities in host countries and the impact of those activities on development.

III. Existing institutional arrangements for international cooperation in tax matters

A. United Nations

1. Committee of Experts on International Cooperation in Tax Matters

Terms of reference

7. In its resolution 2004/69, the Economic and Social Council decided that the Ad Hoc Group of Experts on International Cooperation in Tax Matters would be renamed the Committee of Experts on International Cooperation in Tax Matters with a mandate to:

(a) Keep under review and update as necessary the United Nations Model Double Taxation Convention between Developed and Developing Countries and the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries;

(b) Provide a framework for dialogue with a view to enhancing and promoting international tax cooperation among national tax authorities;

(c) Consider how new and emerging issues could affect international cooperation in tax matters and develop assessments, commentaries and appropriate recommendations;

(d) Make recommendations on capacity-building and the provision of technical assistance to developing countries and countries with economies in transition;

(e) Give special attention to developing countries and countries with economies in transition in dealing with all the above issues.

Membership, composition and term of office

8. The Committee comprises 25 members nominated by Governments and acting in their expert capacity. The members, which are appointed by the Secretary-General, after notification is given to the Economic and Social Council, for a four-year term, are drawn from the fields of tax policy and tax administration and are selected to reflect an adequate equitable geographical distribution, representing different tax systems.

Frequency of meetings and reporting procedure

9. The Committee meets annually for five working days in Geneva and submits its report to the Economic and Social Council at its substantive session.

Methods of work

10. In its resolution 2006/48, the Economic and Social Council recognized that the Committee had agreed to create, as necessary, ad hoc subcommittees composed of experts and observers who would work throughout the year to prepare and determine the supporting documentation for the agenda items under consideration at the Committee's regular sessions. It recommended that subcommittees use electronic communications where possible, but recognized that the efficient operation of those subcommittees may in future require some face-to-face meetings. In the same resolution, the Council requested the Secretary-General to establish a trust fund to receive voluntary contributions from Member States and other institutions interested in providing financing for the Committee's activities in support of international cooperation in tax matters, including the participation of experts from developing countries.

11. In its resolution 2008/16, the Economic and Social Council noted the importance of adequate representation from developing countries in the meetings of the subcommittees and working groups, invited the Secretary-General to intensify efforts to seek appropriate resources and urged Member States and relevant organizations to contribute generously to the trust fund. However, to date, no contributions have been received.

12. The Committee has relied heavily on its subcommittees and the similarly constituted working groups, especially in relation to updating the United Nations Model Tax Convention. The subcommittees have also been instrumental in taking forward the Committee's work on revision of the Manual for the Negotiation of Bilateral Tax Treaties, on drafting a Practical Transfer Pricing Manual for Developing Countries and on capacity-building. The subcommittees and working groups are dissolved upon fulfilment of their mandates.

13. Currently, there are seven subcommittees and one working group, as follows:[6]

(a) Subcommittee on the United Nations Model Tax Convention Update;

(b) Subcommittee on Dispute Resolution;

(c) Subcommittee on Capital Gains;

(d) Subcommittee on Tax Treatment of Services;

(e) Working Group on the Concept of Beneficial Ownership;

(f) Subcommittee on Revision of the Manual for Negotiation of Tax Treaties;

(g) Subcommittee on Capacity Building;

(h) Subcommittee on Transfer Pricing — Practical Issues.

[6] Terms of reference of these bodies are available at www.un.org/esa/ffd/tax/fifthsession/subcommitteesmandates.pdf.

14. While the subcommittees and working groups have extensively utilized electronic communication in their work, some have found that face-to-face meetings are essential to properly address more intricate technical issues and legal and policy concepts. There have been 10 such meetings since 2003. At its 2010 session, the Committee almost halved the number of its subsidiary bodies, as some had concluded their work.

Secretariat support

15. The Committee is serviced by a small secretariat located in the Financing for Development Office of the Department of Economic and Social Affairs. It consists of one senior economic affairs officer (P-5), who serves as Acting Secretary of the Committee, one economic affairs officer (P-3) and one General Service staff member, who provides secretarial and administrative services. In addition, Norway has funded, since September 2010, temporary assistance in the form of two associate experts (junior professional officer) for a period of up to two years. The secretariat is responsible for providing substantive support to the work programme of the Committee, including the preparation for and follow-up to its annual sessions and intersessional meetings of its subcommittees and working groups. It also provides inputs to relevant reports for United Nations intergovernmental and inter-agency bodies and organizes expert group meetings, panel discussions, seminars and briefings on tax and development matters.

2. Technical cooperation

16. Some important work has been undertaken through the South-South sharing of successful tax practices project, a partnership of the Special Unit on South-South Cooperation of the United Nations Development Programme (UNDP), the Department of Economic and Social Affairs, and two non-governmental organizations, namely, the New Rules for Global Finance coalition and the Tax Justice Network. The objective of the project is to facilitate knowledge-sharing and cooperation in tax administration and tax policy among developing countries without prejudice to North-South cooperation. The work also aims to facilitate developing country input into the work of the Committee of Experts, including its subcommittee on capacity-building, and to ensure greater access to online and face-to-face courses by developing country participants. The Governments of Germany and Norway have provided some funding for the project.

17. In addition, the Department of Economic and Social Affairs has developed a broader strategy on capacity development in the tax area. The objective is to strengthen the capacity of the ministries of finance and the national tax authorities in developing countries to develop more effective and efficient tax systems, which support the desired levels of private investment, and to combat tax avoidance and evasion. The work will be carried out through the organization of training seminars providing technical advice related to implementing and interpreting United Nations Model Tax Convention-based treaties, as well as in the area of transfer pricing. It is provisional on the allocation of funds under the United Nations regular programme of technical cooperation, including one post of interregional adviser. Another vehicle for implementation will be a United Nations Development Account project, entitled “Strengthening capacity of national tax administrations of developing countries in Latin America to reduce tax transaction costs and thereby maximize

their tax revenues", intended to be carried out in cooperation with the Inter-American Center of Tax Administrations and others.

3. Other United Nations bodies

18. In a broader context, UNDP provides assistance on taxation within the framework of its programme on democratic governance, including in such areas as modernization of tax administration and in budgeting. It also addresses some gender and taxation issues. UNDP country offices work upon the request of local authorities with government partners at all levels. The work programme of the United Nations Conference on Trade and Development (UNCTAD) touches on tax issues, especially in relation to the effects of granting tax incentives on investment. The United Nations regional commissions are also increasingly working with partners, especially donor countries, on tax-related issues.

B. Bretton Woods institutions[7]

1. International Monetary Fund

19. The International Monetary Fund (IMF) conducts technical assistance as one of its core activities, in addition to surveillance and lending. It provides advice to its membership on tax policy, revenue administration and legal drafting. The assistance takes different forms, according to various needs. In addition to technical assistance missions from IMF headquarters, advice is provided through regional technical assistance centres operating in different parts of the world.

20. IMF has recently launched a new multi-donor topical trust fund supporting technical assistance to members in the areas of tax policy and tax administration to start operations in May 2011. It will provide about $30 million over five years to finance technical assistance for strengthening tax systems in 15 to 20 low-income and lower middle-income countries. A topical trust fund on managing natural resource wealth will also address some tax-related issues. Most of the IMF technical assistance is provided on a bilateral basis, although IMF also holds occasional focused training and outreach events, both at its regional training institutes and elsewhere.

2. World Bank Group

21. The World Bank Group offers technical assistance in taxation to its members typically as part of a broader public sector development programme. Occasionally, exclusive assistance is offered to strengthen the tax administration (e.g. in South-East Asia). Technical assistance is usually delivered by means of loan financing. The programme is drafted in cooperation with the recipient organization and other international donor providers (e.g. European Union and IMF). The project is normally carried out by external contractors who are chosen based on a public tender system by the recipient organization and after final approval by the local office of the International Bank for Reconstruction and Development and the International Development Association.

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[7] Based on the "Overview of Cooperation on Capacity-Building in Taxation", prepared by Geerten Michielse and Victor Thuronyi for the Subcommittee on Capacity Building, which is available at http://www.un.org/esa/ffd/tax/sixthsession/index.htm.

22. The International Finance Corporation (IFC) of the World Bank Group offers advisory services in taxation usually as part of the Group’s cross-cutting Investment Climate Advisory Services Program. IFC projects provide specialized advice aimed at promoting effective, fair and inclusive tax systems that foster investment, economic growth and political stability in developing countries. Much of the IFC technical assistance is conducted through facilities managed by the Corporation, but funded through partnerships with donor Governments and other multilateral institutions. As in the case of IMF, most of the technical assistance provided by the World Bank Group is on a bilateral basis.

C. Organization for Economic Cooperation and Development[8]

23. The Organization for Economic Cooperation and Development (OECD), comprising 34 member countries, aims at promoting policies that will improve economic and social well-being. Its Committee on Fiscal Affairs sets the OECD work programme in the tax area and provides a forum for members and observers from non-member countries and international organizations to meet and exchange views on tax policy and administrative issues. The Committee’s work is intended to enable OECD and non-OECD Governments to improve the design and operation of their national tax systems, to promote cooperation and coordination among Governments in the area of taxation and to reduce tax barriers to international trade and investment. The work programme of the Committee on Fiscal Affairs covers a wide range of domestic and international tax issues, resulting in standards, guidelines and models. These include the OECD Model Tax Convention and the OECD Transfer Pricing Guidelines. The Committee’s work is carried out by intergovernmental groups of experts from member countries and some experts from non-member economies, usually participating as observers.

24. The Centre for Tax Policy and Administration in the OECD secretariat is the centre of activity for OECD work on taxation and comprises a staff of approximately 100. The Centre provides technical expertise and support to the Committee on Fiscal Affairs and examines all aspects of taxation other than macro-fiscal policy, which is dealt with by the Economic Policy Committee. The work of the Centre covers international and domestic tax issues, direct and indirect taxes, tax policy and tax administration. The Centre further provides a secretariat for various bodies of work, such as the Global Forum on Transparency and Exchange of Information for Tax Purposes, the Informal Task Force on Tax and Development and the International Tax Dialogue.

25. The Global Forum on Transparency and Exchange of Information for Tax Purposes[9] was established in 2000, and has been restructured since 2009 to expand its membership and mandate. The Forum now includes 97 member jurisdictions. Membership is open to all countries that commit to implementing the standards on transparency and exchange of information for tax purposes, agree to be reviewed by the Global Forum and contribute to its funding. The stated goal of the Forum is to ensure that international standards of transparency and exchange of information for

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[8] Based on the information available on the OECD website at www.oecd.org including the OECD publication, *OECD’s Current Tax Agenda* (Paris, France, June 2010).

[9] See OECD, *The Global Forum on Transparency and Exchange of Information for Tax Purposes: A Background Information Brief* (18 February 2011).

tax purposes are not only put in place, but that they operate effectively. In this regard, the Forum carries out country reviews, known as peer review reports.

26. The Informal Task Force on Tax and Development was set up in 2010 to advise OECD on its tax and development programme. It aims to benefit developing countries through putting more resources into the tax area and by assisting them in accessing the information necessary to improve their tax revenue collection and to strengthen governance. The Task Force involves OECD countries, some developing countries, as well as civil society and business sector organizations. It has established subgroups on statebuilding, accountability and effective capacity development, transfer pricing, exchange of information, and country-by-country reporting.

27. In recent years, OECD has sponsored various capacity-building programmes on tax matters for the benefit of some developing countries, as part of an outreach programme now referred to as the "global relations programme". For example, the OECD organizes training courses through its multilateral tax centres (in Austria, Hungary, Mexico, the Republic of Korea and Turkey) and in partnership with developing and emerging economies.

28. OECD also hosts the secretariat for the International Tax Dialogue, a collaborative arrangement involving the European Commission, the Inter-American Development Bank, IMF, OECD, the Department for International Development of the United Kingdom of Great Britain and Northern Ireland and the World Bank Group. The International Tax Dialogue aims to encourage and facilitate discussion of tax matters among national tax officials, international organizations, regional development banks and other relevant parties.

D. Group of 20

29. The Group of 20, at its 2010 Seoul Summit, adopted a Multi-Year Action Plan on Development,[10] which included a taxation component in its section on domestic resource mobilization. Under action 1, "Support the development of more effective tax systems", Group of 20 leaders requested OECD, the United Nations, IMF, the World Bank, as well as regional and other relevant organizations, to:

(a) Identify key capacity constraints faced by developing countries in their tax systems and make recommendations on capacity-building to (i) improve efficiency and transparency of tax administrations and (ii) strengthen tax policies to broaden the tax base and combat tax avoidance and evasion (by June 2011);

(b) Develop a knowledge management platform and promote South-South cooperation to support the capacity of developing countries in tax policy and administration systems (in the medium term);

(c) Survey and disseminate all Group of 20 and international organizations' actions on supporting tax systems in developing countries (by June 2011);

(d) Set up objective measures to track progress in the capacity improvement of lower-income countries' tax administration systems (by June 2011);

[10] Available at http://www.canadainternational.gc.ca/g20/summit-sommet/2010/G20_seoul_annex-annexes%202.aspx.

(e) Identify ways to help developing countries tax multinational enterprises through effective transfer pricing (by June 2011).

30. The Group of 20 does not itself have a tax secretariat, so it must rely on existing institutional resources. The results are to be reported at the Group of 20 Summit to be held in France in November 2011.

E. Regional organizations

31. There are several regional groupings of tax administrators that have been playing an increasingly important role in tax administration capacity-building. These include: the African Tax Administration Forum, the Association of Tax Authorities of Islamic Countries, the Commonwealth Association of Tax Administrators, the Inter-American Center of Tax Administrations, the Centre de Rencontres et d'Études des Dirigeants des Administrations Fiscales, the Intra-European Organization of Tax Administrations, the Pacific Islands Tax Administrators Association, and the Study Group on Asian Taxation Administration and Research. The African Development Bank, the Asian Development Bank and the Asian Development Bank Institute, as well as the Inter-American Development Bank have also been involved in tax capacity-building. Among broader regional groupings, the European Union, the Southern African Development Community and the Caribbean Community have also been active on tax issues.

F. Complementarities between work of the Committee and other organizations

32. While there is no question with regard to overlap of the work programme of the Committee with those of IMF and the World Bank, the role of which is not essentially one of multilateral tax cooperation, the question is often raised about possible duplication between the work done at the United Nations and OECD.

33. The United Nations Model Tax Convention draws upon the OECD Model (which itself draws upon the League of Nations work) but the two remain different in key respects. Both models seek to prevent double taxation, but the United Nations Model, in so doing, preserves a greater share of tax revenue to the country where investment or other activity takes place, while the OECD Model preserves a greater share to the country of the investor, trader, etc. Such distinct differences validly reflect the different memberships and priorities of the two organizations when considering the issues of where the balance of taxation should rest when eliminating double taxation, rather than representing any unnecessary duplication of effort.

34. The United Nations Model is heavily relied upon by developing countries in tax treaty negotiations, and is expected to be even more widely used upon completion of its 2011 update. By drawing upon OECD work where it is relevant to developing countries, the United Nations Model Tax Convention gives greater profile and significance to that work, but by explaining possible alternatives, it helps countries to decide which approach better suits their circumstances and priorities in negotiating bilateral treaties.

35. Likewise, the United Nations work in the area of practical guidance in transfer pricing has garnered great interest, not as an alternative to the OECD Transfer

Pricing Guidelines, but as a novel and needs-based approach to explaining what those guidelines mean for developing countries, and how they can be applied in a way that responds to their priorities and realities. This United Nations work has, in fact, helped to spur further work by others along similar but complementary lines.

36. The 192-country United Nations membership and the various perspectives, realities and priorities reflected in such a broad membership, as compared with forums having smaller memberships, is widely recognized as an important complement to, and input into, the work of other forums. There is also increasing recognition in many such forums, and among civil society and the business community, of the United Nations work on tax matters. For those reasons, the United Nations Secretariat is often asked to participate in the work of other forums, such as the Group of 20, the OECD Global Forum on Exchange of Information for Tax Purposes, the OECD Informal Task Force on Tax and Development, the International Tax Dialogue, the German Government's International Tax Compact, the Asian Development Bank Institute, and others. For example, the United Nations Secretariat has contributed actively to the taxation aspects of the Group of 20 Multi-Year Action Plan on Development, alongside the World Bank, IMF, OECD and others.

37. In this cooperative work, the United Nations Secretariat seeks to provide constructive contributions, consistent with its legislative mandate and to the extent possible within its limited resources. This inter-institutional collaboration at the staff level helps to improve mutual understanding of each other's work and perspectives and to avoid unwarranted duplication and overlap in meeting the needs of United Nations Member States.

IV. Views provided by Member States

38. Pursuant to Economic and Social Council resolution 2010/33, the Secretariat circulated a note verbale to all Member States, seeking their views on the issue of the strengthening of institutional arrangements to promote international cooperation in tax matters, including the Committee of Experts on International Cooperation in Tax Matters. As at 18 March 2011, 32 replies were received, from Australia, Bahamas, Bangladesh, Belarus, Bolivia (Plurinational State of), Brazil, Canada, Chile, China, the Czech Republic, Egypt, Ghana, India, Japan, Jordan, Kazakhstan, Kyrgyzstan, Liechtenstein, Mexico, Montenegro, New Zealand, the Niger, Oman, Panama, Qatar, Singapore, South Africa, Switzerland, Thailand, the United Kingdom of Great Britain and Northern Ireland, the United States of America, and the European Union. Main substantive features of these replies are summarized below.[11]

39. All countries agreed on the need to strengthen international cooperation in tax matters and several emphasized its role in the context of domestic resource mobilization as a means to achieve the internationally agreed development goals, including the Millennium Development Goals.

[11] Full texts of the replies received are available on the Financing for Development website at www.un.org/esa/ffd/tax. Further views of Member States are welcome and will be reflected on the same website.

40. While discussing ways of strengthening international tax cooperation, many countries stressed the need to enhance collaboration and cooperation among existing institutions active in this area, including between the Committee and the OECD initiatives that actively promote participation of developed and developing countries, such as the Global Forum on Transparency and Exchange of Information for Tax Purposes and the Informal Task Force on Tax and Development, and others, such as the International Tax Dialogue and the International Tax Compact. In addition, some countries called for enhanced involvement and participation of developing countries in relevant forums on international tax cooperation and for enhanced regional dialogue, which would assist countries to better understand regional challenges and develop appropriate policies. Increased cooperation with regional forums such as the African Tax Administration Forum, the Inter-American Center of Tax Administrations and IMF regional technical centres was recommended.

41. One country emphasized that, in addition to multilateral cooperation, including intergovernmental conferences and regional workshops, it was important to encourage bilateral cooperation by mutual visits and exchange of lessons learned between Member States which utilized varying tax regimes. That country also suggested examining the possibility of establishing a mechanism to settle disputes between Member States on the application of double taxation agreements. Another country was of the view that the best way of increasing bilateral cooperation was through technical assistance, especially in the area of double taxation agreements.

42. Most countries acknowledged the importance of the work done by the Committee, especially in relation to the United Nations Model Tax Convention and its contribution to enhancing international cooperation in tax matters, in particular between developing and developed countries. One country, however, felt that the work undertaken by the Committee on the revision of the United Nations Model Tax Convention was in many ways redundant in view of work that had been undertaken by the OECD Working Party that examined issues related to the OECD Model Tax Convention, for example, on issues of dispute resolution, exchange of information, treatment of income from services and the concept of beneficial ownership.

43. There was an agreement that the Committee’s effectiveness should be improved, but views differed as to whether or not the Committee should be converted to an intergovernmental body. The following three broad views were expressed: (a) the Committee should not be converted but its effectiveness should be increased by improving its work methods and by fully utilizing its existing structures; (b) the Committee should not be converted but additional funding should be provided for its operations; and (c) the Committee should be converted and provided with adequate resources.

44. Countries that objected to the conversion of the Committee to an intergovernmental body commonly cited the following two reasons: (a) the danger of duplication of work of other international organizations active in the area of international tax cooperation and the resulting danger of establishment of multiple and inconsistent international standards in the area of international taxation; and (b) additional resource requirements with the risk of fragmenting the already limited resources currently allocated by Governments to international tax issues.

45. Some countries pointed to the lack of a cost-benefit analysis of a conversion as well as to the need for clarification as to which specific element of the Committee’s

mandate could not be met, owing to deficiencies in its current structure. Among other factors mentioned were the possibility of interfering with the ongoing work of the current Committee, especially on the revision of the United Nations Model Tax Convention and preventing its successful conclusion.

46. A view was expressed that an intergovernmental Committee would be more “politicized”, as its members would represent Governments and thus promote the narrow views of their respective countries. This would detract from the larger goal of finding an approach, which was equitable to both developing and developed countries. Some countries expressed a concern that a decision of an intergovernmental Committee would be legally binding and could potentially affect the tax sovereignty of countries.

47. Several of the opponents of a conversion to an intergovernmental body were of the view that, before considering the creation of a new body, every effort should be made to ensure that the existing Committee and its subcommittees functioned in the most effective way. It was suggested that greater efforts be made to fully utilize the subcommittees and revise work methods of the Committee to allow for full participation of all interested States at all levels of its work, which would lead to wider acceptance of the results produced by the Committee, to abstain from engaging in norm and standard-setting to avoid duplication and conflict with other internationally recognized norm and standard-setting bodies and to strengthen the Committee’s focus on building capacities and providing technical assistance in the areas of tax administration. One country felt that the current arrangement of the Committee had the great advantage of encouraging broad participation, going beyond the Committee’s members, in particular by allowing the observers to attend the Committee’s annual sessions and to have their views reflected in its report.

48. Several countries were of the view that, while the conversion of the Committee would not necessarily result in enhancing its effectiveness, increasing the resources dedicated to its work would be essential. Some countries felt that inadequate post and non-post resources of the Secretariat, as well as lack of funding for the work of the subcommittees and working groups, which often resulted in non-participation of members from developing countries, were the most serious limitations on the Committee’s work. A recommendation was made that resources be provided for additional technical experts and consultants at the Secretariat to provide support to the Committee, as well as for coordination with other international bodies dealing with international tax matters. Some countries also acknowledged the need to provide additional funds for more active participation by developing countries in the work of the Committee, as well as its subcommittees and working groups.

49. Some countries were of the view that an intergovernmental body should be established with dedicated technical staff and an expanded budget. As the only international tax cooperation body with membership comprising a balanced representation of both developing and developed countries and with the benefit derived from the legitimacy and convening power of the United Nations, it could play a crucial role in fostering dialogue and cooperation between national tax authorities and in promoting South-South cooperation. According to the proponents of a conversion, it would provide the Committee with more authority, consolidate its achievements and further advance its work towards effective treatment of the relationship between tax and development. According to some countries, effective cooperation on some of the emerging challenges in tax matters, such as the

international fight against tax avoidance and evasion, the promotion of transparency and the international exchange of information on tax matters, required institutional arrangements of an intergovernmental body, which would allow for a more effective sharing of best practices between Member States. An intergovernmental body would also be able to better contribute to objectives established by the Group of 20 Summit in Seoul, namely, supporting the development of more effective national tax systems.

50. One country made specific proposals on how the intergovernmental body should operate. It could follow the practice of the OECD Committee on Fiscal Affairs and recruit resident experts and staff to conduct specific studies on the issues raised by the Committee and to fulfil its mandate in the area of technical cooperation.

51. Five countries described in detail their respective national activities and their involvement in international tax cooperation on the bilateral and multilateral basis.

52. In addition, one civil society organization volunteered its view on the issue of strengthening institutional arrangements to promote international tax cooperation, including the Committee of Experts on International Cooperation in Tax Matters. It stated that the Committee, as the most appropriate forum for the consideration of the international tax cooperation issue, should be converted to an intergovernmental commission with more budgetary resources in order to carry out its important functions. The same organization was also of the view that the method of selecting members of the Committee should be revised in order to allow for participation of more experts from developing countries and countries with economies in transition.

V. Possible options for the strengthening of institutional arrangements to promote international cooperation in tax matters

53. The following three options have been identified for the purpose of strengthening institutional arrangements to promote international cooperation in tax matters, including the Committee of Experts on International Cooperation in Tax Matters:

(a) Strengthening the existing arrangements within the United Nations while retaining the current format of the Committee of Experts;

(b) Converting the Committee of Experts into an intergovernmental commission serving as a subsidiary body of the Economic and Social Council;

(c) Creating an intergovernmental commission and retaining the current Committee of Experts as a subsidiary body of that commission.

Each of these above-mentioned options is analysed below, drawing upon the comments provided by Member States and other relevant material.

A. Option 1. Strengthening the existing arrangements within the United Nations while retaining the current format of the Committee of Experts

54. Under this option, the Committee's current terms of reference, membership, composition, term of office and methods of work would remain unchanged.[12] As a result, no new entity would be created, but rather, the attempt would be made to fully utilize and enhance the effectiveness of the existing arrangements, including the Committee's methods of work.

55. The main advantage of this option is that it would allow for the continuation of the ongoing work of the Committee. With no adjustments and transitional provisions needed, the Committee could finalize its 2011 update of the United Nations Model Tax Convention and other important work. The workplan and status of the subcommittees and working groups would also be unaffected. However, this option does not address the profound need for a truly global all-inclusive norm-setting body for international tax cooperation at the intergovernmental level, which would offer developing countries a full "seat at the table".

56. Additional resources would need to be allocated in order to fully utilize the existing arrangements, specifically to support: (a) the Committee's working methods, namely, the work of its subcommittees and working groups; (b) capacity-building activities referred to in the Committee's current mandate; and (c) enhanced coherence, coordination and cooperation between the United Nations and other institutions and initiatives in the area of international tax cooperation.

57. Subcommittees and working groups have been essential in taking the Committee's work forward.[13] In accordance with Economic and Social Council resolution 2006/48, the subcommittees should work throughout the year using electronic communications where possible and should they decide that their efficient operation require face-to-face meetings, such meetings should be funded from the Trust Fund for International Cooperation in Tax Matters called for in the same resolution. Despite frequent calls for contributions, to date no funds have been contributed to the trust fund. On average, each subcommittee and working group should meet at least once a year for two working days. However, due to lack of budgetary and extrabudgetary resources, subcommittee members have had to fund their own participation or rely on their employers' financial support. This has resulted in only a fraction of the required meetings being held and in frequent non-participation of experts from developing countries, which negatively affects the pace of progress in the Committee's work.

58. Subcommittees and working groups comprise Committee members and observers from Governments, academia, the business sector, civil society and intergovernmental organizations with special expertise in the relevant area. Their expertise and willingness to work pro bono are one of the most valuable resources currently available to the Committee. However, in order to fully utilize this

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[12] A description of the current terms of reference, membership, composition, term of office and methods of work of the Committee is contained in section II.A of the present report.

[13] Information on the work of the subcommittees and working groups is contained in section III.A of the present report.

resource, and to ensure sufficient diversity of inputs, additional funding is needed to facilitate their work.

59. In its resolution 2006/48, the Economic and Social Council invited the Committee to organize training workshops for developing countries and countries with economies in transition as part of the work required to carry out its mandate, which included making recommendations on capacity-building and providing technical assistance. These activities were to be funded from the Trust Fund for International Cooperation in Tax Matters. In view of the fact that, as mentioned above, the trust fund remains empty, the Department of Economic and Social Affairs strategy on capacity development in the tax area has to rely on limited funds applied for from the regular Programme of Technical Cooperation and the Development Account. This could be considered as seed funding but more resources are needed to support fulfilment of the Committee's mandate in the area of capacity-building. The Council may wish to further encourage Member States to make contributions to the trust fund.

60. Capacity-building work is critical in order to enable developing countries to take advantage of the Committee's outputs such as the United Nations Model Tax Convention, the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries, as well as the forthcoming Practical Manual on Transfer Pricing. For instance, once the 2011 update of the United Nations Model Tax Convention is completed, there will be a need to conduct training seminars in developing countries in order to enable their tax administrators to take full advantage of this new resource. The Committee is uniquely positioned to play an important role in such capacity development activities, due to its knowledge and "ownership" of the above-mentioned United Nations outputs, but also owing to its members' expertise and networks. The Committee is also well placed to help countries address other emerging challenges, such as those related to ecological taxes, in a pro-poor way.

61. The need for enhanced coherence, coordination and cooperation between the United Nations and other institutions and initiatives in the area of international tax cooperation is growing exponentially due to increased interest in tax and development and emergence of new institutions and initiatives such as the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, the OECD Informal Task Force on Tax and Development, and the Group of 20 Multi-year Action Plan on Development. The United Nations participation in these and other forums is often sought after, as its distinct perspectives and priorities in tax work are recognized as an important complement to, and input into, the work of these forums. The United Nations engagement, thanks to its universal membership, also lends a special legitimacy and broader relevance to this work.

62. Enhanced involvement and participation of developing countries in relevant forums on international tax cooperation is desired for similar reasons. In addition, with the emergence of numerous regional institutions, such as the new African Tax Administration Forum, there is more interest in enhancing regional dialogue and assisting cooperation between regional bodies. Additional resources are required by the Secretariat and the Committee in order to respond to these growing needs.

B. Option 2. Converting the Committee of Experts into an intergovernmental commission on international cooperation in tax matters serving as a subsidiary body of the Economic and Social Council

63. Should the Committee be converted into an intergovernmental commission, its terms of reference and work methods would likely change with the expansion of its functions. The members would no longer be appointed by the Secretary-General or act in their expert capacity, but would be elected by the Economic and Social Council from among the Member States of the United Nations or members of the specialized agencies on the basis of equitable geographical distribution. The States elected to the Commission would most likely be represented by persons holding key positions in the national tax authorities or ministries of finance. The term of office and reporting procedures could remain the same.[14]

64. This option supports creation of a global, all-inclusive body for international tax cooperation, which would further this cooperation in a fair and balanced way by offering the developing countries a full "seat at the table", and working with others active in this area. Because of its universal membership and legitimacy, the United Nations is the most appropriate forum to host this body. Models and other recommendations developed by this body would have universal legitimacy and authority.

65. The conversion of the Committee could pose risk of possible disruption to its ongoing work, especially on the revision of the United Nations Model Tax Convention and the Manual for the Negotiation of Bilateral Tax Treaties. To prevent that, if a conversion were agreed, transitional provisions would need to be put in place, especially with a view to ensuring the successful completion of the 2011 update of the United Nations Model Tax Convention. The status of subcommittees with a workplan extending beyond 2011 would also need to be considered, notably in the case of the Subcommittee on Transfer Pricing — Practical Issues, which is to complete its work in 2012.

66. It is not possible to estimate resource requirements of the conversion without specifying the Commission's membership, working methods, frequency of meetings and other relevant details. Should a draft proposal in this regard be submitted to the Economic and Social Council for action, the Secretariat would respond with a statement on programme budget implications, in accordance with rule 31 of the rules of procedure of the Economic and Social Council.[15]

67. With regard to the need for the additional resources specified under option 1, the needs related to capacity-building activities and cooperation with other institutions and initiatives in the tax area would apply in the same way under option 2. The need related to the work of subcommittees and working groups would evolve depending on the working methods of the new Commission and would be covered by the statement on programme budget implications mentioned above.

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[14] For comprehensive description of subsidiary bodies of the Economic and Social Council, see E/2008/INF/3.

[15] For example, see E/2010/L.28 on the programme budget implications of draft resolution E/2010/L.10.

68. As a result of its intergovernmental status, the Commission would be able to prepare draft resolutions and decisions on policy issues on behalf of the Economic and Social Council and include them in its report submitted to the Council for action, which would enhance the impact of its work. This modality is not explicit in the terms of reference of the Committee of Experts. Its report can contain recommendation to the Economic and Social Council but normally not in the form of draft resolutions. For example, in its resolution 2010/33, the Council took note with appreciation of the proposed Code of Conduct on Combating International Tax Evasion adopted by the Committee and encouraged Member States to further discuss the issue within the United Nations, as a practical means of enhancing international tax cooperation.

69. Intergovernmental status would also give more authority to the Committee's outputs, such as the United Nations Model Tax Convention, the Manual for the Negotiation of Bilateral Tax Treaties and the forthcoming Practical Manual on Transfer Pricing. Another result of the conversion could be expanding expertise of the body. Currently, experts participate in the work of the Committee in their personal capacity and the format of the Committee assumes that individuals are "experts" on all aspects of international tax cooperation. When deciding on the composition of their delegations, the States elected to the Commission would be able to nominate a number of experts and thus draw on a broader range of expertise.

70. When formulating its methods of work, the Commission would be able to decide on how much "expert" input to seek and through what modality. For instance, it could decide to use working groups of experts to carry out the technical aspects of its work programme, as in the case of the OECD Committee on Fiscal Affairs. It could also separate a more political debate from a more technical one by holding a high-level segment during its session on broader tax policy or tax administration issues, as is currently done, for example, by the Commission on Sustainable Development and by the OECD Annual Ministerial Forum.

71. The sessions of the intergovernmental commission would be open to observers. This openness and inclusiveness would be in conformity with the rules of procedure of the functional commissions of the Economic and Social Council and could be embedded in the terms of reference of the new body. In addition, the commission could decide to employ multi-stakeholder modalities to ensure input and engagement of the Member States, the business sector, civil society, international and regional institutions and networks, local communities and the relevant United Nations agencies funds and programmes. In practice, the current Committee has opened its sessions to observers, in its pursuit of transparency and willingness to seek inputs and perspectives from beyond its membership.

C. Option 3. Creating an intergovernmental commission and retaining the current Committee of Experts as a subsidiary body of that commission

72. This option combines options 1 and 2. The Committee's current terms of reference, membership, composition, term of office and methods of work would remain unchanged, as under option 1, and the intergovernmental commission would be created as described under option 2. The Committee of Experts would serve as a subsidiary body to the intergovernmental commission and would be mandated to provide expert advice to it. Additional resources, as specified under options 1 and 2

related to capacity-building activities and enhanced cooperation with other institutions and initiatives in the area of international tax cooperation, would also be required under option 3.

73. This option would be the most comprehensive in terms of meeting the key objective of providing developing countries with the opportunity for an effective voice when issues of cooperation on tax matters are being decided by the international community, while ensuring that the important work of the Committee is not disturbed. It would afford the most flexibility in responding to the need for enhanced international tax cooperation at the intergovernmental level. This option would therefore combine advantages of both option 1 and option 2. For example, as the Committee would continue its expert work and provide expert advice to the commission, there would be no need to create working groups of experts to carry out the technical part of the work programme of the commission.

74. On the other hand, this option is likely to be the most resource intensive, combining most of the resource demands of both option 1 and option 2. As mentioned under option 1, in order to estimate resource requirements, however, a specific draft proposal needs to be submitted to the Economic and Social Council, in order to enable the Secretariat to prepare a statement on programme budget implications.

VI. Conclusions

75. **There currently exists no single entity with the global legitimacy, resources and expertise to serve as a single coordinating body for international tax cooperation. The possibility of establishing such a single norm-setting body has found little support in practice. In the absence of such an entity, organizations active in this area must work together with a view to meeting common tax and development goals in the most efficient, responsive and participatory ways.**

76. **While each country is responsible for its own tax system, the United Nations universal membership and legitimacy can be a catalyst for increased international cooperation in tax matters to the benefit of developed and developing countries alike. Since the great majority of United Nations Member States are neither members of OECD nor the Group of 20, the United Nations has a key role to play, working with these and other relevant forums, such as the Bretton Woods institutions and regional associations of tax administrations, towards ensuring the active participation of developing countries, especially the least developed ones, in relevant activities.**

77. **The Economic and Social Council may wish to consider the three options analysed above or any other modalities for the strengthening of institutional arrangements within the United Nations to promote international cooperation in tax matters, including the Committee of Experts. Ensuring that the United Nations plays its proper role in international tax cooperation in terms of its institutional capacity would be a significant contribution by the Economic and Social Council to enhancing domestic resource mobilization for development. It would respond to a real opportunity, and an urgent need, for greater international cooperation in tax matters for the benefit of both developed and developing countries in their common pursuit of sustainable development, including the attainment of the Millennium Development Goals by 2015.**