

**NIGERIA'S INPUT TO THE SECRETARY-GENERAL'S REPORT ON PROMOTION OF
INCLUSIVE AND EFFECTIVE INTERNATIONAL TAX COOPERATION
AT THE UNITED NATIONS**

Nigeria aligns with the inputs submitted on behalf of the African Group and would like to reiterate as follows:

- ❖ The need for a fully inclusive and effective international tax cooperation architecture based on the United Nations as the most legitimate international institution with the largest global membership.
- ❖ A binding multilateral convention is the most effective way to deliver international tax norms that meet the needs and capacities of developing countries. This can only be brought about through a legitimate forum where all countries are truly on equal footing.
- ❖ A UN tax convention can do two things: (1) bring universalism, and (2) go further, building on the progress already made.
- ❖ The essence of universalism was highlighted at the 75th anniversary of the UN where all member states joined consensus by acknowledging that the United Nations is the global organization with the most legitimacy, convening power and normative impact.
- ❖ In relation to illicit financial flows – the UN brings that universal power through the UN Convention Against Corruption and the UN Convention on Transnational Organized Crime. These are universal and effective instruments. And we should replicate their successes, and learn from their challenges, so that we can bring forward a universal instrument on tax matters.
- ❖ Furthermore, the General Assembly and ECOSOC have repeatedly emphasized the need for international tax cooperation to focus on the unique needs and capacities of developing countries. While much good work has been done and progress in international tax cooperation has been substantial, it has not sufficiently addressed the needs and capacity of developing countries. We should therefore build on this work as much remains to be desired.

- ❖ We therefore reiterate this call that the United Nations which has the legitimacy, convening power and the normative impact to lead an inclusive and wholistic tax cooperation process

Substantively there are a number of gaps in the international architecture which create challenges for developing countries:

- ❖ First, the definition of permanent establishment is not well adapted to the digital era.
- ❖ Second, developing countries tax systems have lower capacity thus, easily administered taxes such as withholding taxes need to be easier to use and more effective. This could be accomplished with international cooperation. In addition, given digitalization of business and transactions, it is important to consider the revenue potential from taxing automated digital services. The UN Model Treaty now has a provision to protect such domestic taxes. The report should give clear indication about the usage and potential of such provisions and how to enable more countries to avail themselves of these types of taxes, which are effective in raising the much-needed revenue.
- ❖ Third, the tax cooperation architecture should address mutual accountability measures through a fair process. Currently developing countries are being punished by unilateral declarations and black listing by forums and bodies in which they have no voice. This is neither fair nor acceptable, especially when standards are not applied equivalently on all countries. Peer review mechanisms that respect countries' sovereignty are essential.
- ❖ Fourth, there are proposals for mandatory arbitration on tax dispute settlement. This issue should be firmly addressed, because developing countries' experience with binding arbitration under international investment agreements has been negative. The arbitral panels are open to conflicts of interest, the lack of precedence is a challenge, and the regulatory chill effects are especially unwelcome. We should learn from this experience and not replicate flawed international dispute settlement mechanisms in the tax arena. Agreement on a set of principles or a recommendation

of procedures could provide guidance while respecting the tax sovereignty of developing countries.

- ❖ Fifth, the Secretary General's report should look at the complexity of implementing international tax rules, including the arm's-length principle for transfer pricing and the new allocation rules proposed as part of Pillar 1 in the inclusive framework, and assess the adaptability of these rules to the needs and capacities of developing countries. Developing countries tax information often lack information to assess the validity transfer prices. The report should provide some guidance on how countries could use international tax cooperation at the UN to make transfer pricing rules easier to administer for developing countries, or to propose alternative rules that will be more effective in securing the tax base.
- ❖ Sixth, in the current environment, non-taxation of income is a much bigger problem than double taxation. Yet most international cooperation instruments focus on double taxation. The Report should look at proposals for mechanisms to eliminate non-taxation of income, including an assessment of international minimum taxes being proposed and their potential implications for developing countries. In particular it is important for the international tax architecture to enable States to use fiscal policy and tax incentives to achieve sustainable development aims, while not creating negative spillovers onto other countries.
- ❖ Seventh, tax transparency instruments and their high confidentiality demands, are effectively excluding most developing countries from benefiting. We need arrangements that reflect the reality of most developing countries being drained of resources, but not being a destination for illicit financial flows. They should also address the thresholds in the existing agreements, to make sure they are relevant to developing country context.
- ❖ Eighth, the report should address the limitations on usage of information that has been exchanged between jurisdictions. Information shared through legitimate channels should be readily available for legitimate regulatory, tax and law enforcement purposes. It should not be restricted, for example, for high-level risk

assessments, when it can be put to broader use. This may include use as evidence in prosecutions for criminality.

- ❖ Ninth, there is currently no international framework for addressing those that enable tax evasion and aggressive tax avoidance. It is particularly important to address the lawyers and accountants that create unlawful and egregious tax planning schemes as their unique selling point for their clients. There are no norms, guidance, or standards, let alone effective sanctions for these individuals and firms. Even in cases where their clients have been convicted of tax evasion and are paying penalties, there may be no sanction for the enablers. The report should address this gap in the architecture and propose solutions.
- ❖ Tenth, there is an identified problem with trade mis-invoicing which creates challenges for both tax administration and customs authorities in ensuring tax and customs declarations reflect realities. The report should review potential solutions to this challenge.
