

To: Taxreport2023@un.or

Haarlem, Netherlands

13 March 2023

Dear Secretary General,

Dear secretariat,

Thank you for the opportunity to submit views on the Report to be written after adoption of the General Assembly resolution on "Promotion of inclusive and effective tax cooperation at the United Nations" (A/RES/77/244).

I suggest the Report follows the line of three questions

- 1) What are the reasons, the concerns and the discontent behind the proposed resolution?
- 2) Which measures and instruments could be helpful in addressing these concerns?
- 3) Is the UN the proper institution to develop these measures and instruments and, if so, through which body?

In answering these three questions attention should be given to the following consideration.

Ad 1) What are the reasons, concerns and discontent behind the proposed resolution?

- The Resolution calls to strengthen international tax cooperation to make it fully *inclusive* and more *effective*.
- The question rises whether it is fair to conclude that international tax cooperation currently is indeed not inclusive nor effective.
- International cooperation could be divided into two main aspects.
 - The first being cooperation between states to assist each other in enforcing their domestic tax laws and counter tax avoidance and evasion.
 - The second consists of agreements between states to avoid international double taxation, mainly with the aim of facilitating mutual investment.
- The main instrument for the first aspect is transparency and exchange of information. No one can deny the progress that has been made in this respect. With the existence of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, the development of the Global Forum on Tax Transparency (GFTT) and the Multilateral Competent Authorities Agreements (MCCA) on Common Reporting Standards and on Country by Country Reporting, it is impossible to conclude that international cooperation has been ineffective. Neither would a complain about inclusiveness be justified in this respect. Membership of the GFTT and signature of the MCAA's are open to any interested State. Moreover the issue of inclusiveness seems less relevant in this workstream as administrations of all countries have a common interest in maximizing transparency.
- Things might be different in the context of avoidance of double taxation and the attribution of taxing rights. Here too international cooperation has proven effective and produced the two standard setting models for the attribution of taxing rights by the OECD and the UN. Admittedly, questions have been raised on the inclusivity of this workstream. Many countries are not members of the OECD and the UN Model is developed by a committee of tax experts appointed in their personal capacity.
- However, the OECD, aware of the cry for inclusivity and of the success of the GFTT, has created the Inclusive Framework, open to all interested parties to participate on equal footing in the discussions on the BEPS process and the follow-up project on Pillars 1 and 2.
- Here too I would note that the result from the BEPS projects to fight tax avoidance through artificial profit shifting has been a success and comes to the benefit of all administrations, irrespective of whether they have been able to participate actively in the process.
- It is certainly true that things might be different in the ongoing process of Pillar 1 and Pillar2. As in this process there probably are conflicting interests, participation in the process on an equal footing is more relevant.

- It cannot be denied that participation on equal footing is easier said than done and that in practice not every state can apply equal influence on the outcome of the discussions. However the distinction in influence countries have in this process seems to be more dependent on their economic and geopolitical position and power than on whether they are developing vs developed countries or OECD vs non-OECD members.
- Taking into account the considerations above, the Reporters might conclude that worries on inclusivity and certainly on effectiveness are not the true reasons for the proposal of the Resolution.
- Based on the current discussions and the lack of consensus in the Inclusive Framework and following the recent issues raised in the UN Committee of Tax Experts my conclusion would be that the real concern and discontent behind the Resolution is about the attribution of taxing rights and that the aim of the Resolution is that developing countries should have more taxing rights, especially on the profits of large globally operating enterprises.
- In no way would I want to suggest that this concern is unjust. It all depends on each individual's personal interpretation of fairness. But it will be important to ascertain this true discomfort behind the resolution before the Report moves over to next steps: it is about taxing rights, not about inclusivity of the process and much less about effectiveness.

Ad 2) Which measures and instruments could be helpful in addressing these concerns?

- The Report will then have to answer the question how measures can be developed and implemented that satisfy the concerns described above.
- There seem to be two basic means through which these new measures can be developed.
 - A multilateral treaty open for signature to all states and binding on all signatories (e.g. containing rules for attribution of taxing rights on international income).
 - Or a Model, encouraging countries to use it bilaterally.
- Practice has shown that the first option is too ambitious and not realistic.
- The UN Model already exists and the Report might raise points where the existing UN Model could be amended, hoping that this will also influence the provisions in the OECD Model.
- In doing so the Report should be aware that the success of a Model depends on the agreement by all, or at least by a critical mass of countries.
- It should therefore give attention to the process to amend the Model and recognize that a process based on majority of votes will not necessarily lead to that result and certainly not if larger economies are not part of the majority. Recent amendments and additions to the UN Model developed by the UN Committee of Tax Experts might be illustrative in this respect.
- I also suggest that the Report considers whether a dichotomy between developing and developed countries is effective and correct. Are these really the two homogeneous groups into which the world is divided? Do all developing countries on one side and all developed countries on the other have the same interest? And if new principles are designed to attribute taxing rights between developed and developing countries, will that work out fairly if applied between two developing countries?

Ad 3) Is the UN the proper institution to develop these measures and instruments and, if so, through which body?

- Finally, I believe the Report should give some thoughts on whether the UN is the best suited organization to develop measures coping with the concerns described under (1).
- Here too, the two criteria mentioned in the Resolution should be tested: inclusivity and efficiency.

- *Inclusivity*
 - Obviously there is no organization that formally is more inclusive than the UN. However practice is more nuanced. As raised above, inclusivity in my opinion has two aspects :
 - Input and participation in the process
 - Interest in and benefit from the outcome of the process.
 - On input and participation I doubt whether the creation of a governmental body including all countries in the world would solve the currently experienced problem that many countries lack the budget, time and staff to properly prepare for and actively participate in meetings. It could possibly worsen the situation as meetings in other bodies continue and the amount of work would only increase.
 - On the outcome, based on considerations expressed under (2) I also doubt whether the creation of a UN intergovernmental body will be able to develop measures that better satisfy the interest of all countries or to develop measures that better satisfy a group of countries that are currently unhappy and would be acceptable for other countries.
 - At this point I reiterate the importance of the decision making process.
 - Decision by majority runs the risk of a minority not implementing the measures,
 - decision by consensus would probably lead to the same results as are now reached under the Inclusive Framework and to the same sense of unhappiness with representatives from states with a weaker geopolitical and economic position.
 - I also reiterate my doubts on whether the suggested dichotomy between developed vs developing countries is correct or would be helpful in creating a consensus.
- *Efficiency*
 - As mentioned above the creation of an extra governmental body would in any instance lead to more work for administrations already overloaded.
 - For the efficiency of bilateral negotiations it is also counterproductive to start a process in which probably the UN and the OECD Model Tax Conventions would move further apart.
 - It might be more effective to
 - Continue and possibly expand current cooperation with other international organizations in the Platform for Cooperation on Tax;
 - Enforce the UN work on capacity building;
 - Consider developing a system of multilateral financial and administrative support for countries that find difficulty in preparing for and participating in existing bodies;
 - Maintain the independent position of the Committee of Tax Experts as it exists.

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This opinion is submitted in my personal capacity and is not intended to, nor necessarily needs to reflect the opinions or positions of the mentioned bodies and organizations.