

**Comments on the Agenda for the
23rd Session of the Committee of Experts on International Cooperation in Tax Matters**

TO: United Nations Committee of Experts on International Taxation

FROM: Sol Picciotto

Emeritus Professor, Lancaster University

Senior Fellow, International Centre for Tax and Development

Coordinator, BEPS Monitoring Group

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I have followed the work of the Committee over a long period, and have attended most of its sessions since 2006. I have done so as an independent academic and researcher, and not as an adviser for private clients. I hope the following brief comments may be helpful to the members of the Committee in deciding the priorities for their important work.

1. General Comment

The choice of priorities needs to take account of the nature of the Committee and particularly the limited resources available to it. Several of the proposed topics on the provisional agenda are very important, but would entail embarking on new areas and require significant resources to produce any useful outcomes. These include in particular items (l) Taxation and coronavirus disease (COVID-19): pandemic and post-pandemic issues; (m) Wealth and solidarity taxes; and (n) Indirect taxes, including health taxes. Another new topic would be (o) Relationship of tax, trade and investment agreements. However, this is narrower in scope, and more clearly falls within the Committee's mandate to work on 'new and emerging international tax issues'. Insufficient attention has been paid to this issue by international tax bodies, so in my view it would be worthy of attention.

2. Item (e) Transfer pricing

This has long been a staple for the Committee. However, work on it has concentrated on updating the UN Practical Manual. It now seems time to begin a reconsideration of this topic, which should more accurately be described as the Allocation of Income of Multinational Enterprises (MNEs). The narrow focus on 'transfer pricing' was introduced only relatively recently in the history of international tax, particularly with the introduction of the OECD Transfer Pricing Guidelines in 1995. There has been frequent and continued criticism of the approach adopted in the Guidelines, which requires a 'functional analysis' of the facts and circumstances of each individual affiliate of an MNE. This creates an enormous burden for all tax administrations, particularly those from lower-income countries. The recent work in the Inclusive Framework on BEPS has now opened up new perspectives which I suggest are very important for the UN Committee.

One is the use of fractional apportionment. A methodology for this has now been developed under Pillar One of the proposals for dealing with tax challenges of the digitalised economy in the OECD/G20 BEPS project. Fractional apportionment has a long history in international tax rules, and still remains a method accepted in the UN model convention (article 7(4)), although this provision was dropped from the OECD model in 2010. The recently adopted article 12B of the UN model also includes an option for fractional apportionment. There is clearly a strong case for the UN Committee to examine this issue, particularly in relation to the needs of developing countries, and the provisions of the UN model.

The second is the possibility of simplified methods, which has been identified as an important need for developing countries. Again, work has also been done on this under Pillar One, in particular the so-called Amount B. This is being considered in detail by the Inclusive Framework, so there seems less need for separate work on this specific idea by the UN Committee. However, as with other work in the Inclusive Framework, it does seem important for the UN Committee to undertake an independent evaluation of these proposals, particularly from the perspective of developing countries, many of which are not members of the Inclusive Framework. Alternative approaches to simplified methods could also be explored, building on the experience of developing country members, such as Brazil.

I suggest that these issues should be the focus of this area of work, and the topic should be renamed Allocation of MNE Income.

3. Item (i) Taxation issues related to the digitalized and globalized economy.

This is another important topic. Although attention has recently focused on digitalisation, in fact the effects of globalization of the economy on international tax became evident much earlier, in particular with the shift to the services economy. It was this that led the UN Committee to develop first article 12A and then 12B of the UN model. These provide for withholding taxes on the gross amounts of payments, although as mentioned above article 12B also includes an option for net income taxation based on a fractional apportionment methodology. The work in the BEPS project has focused on taxation of net income. However, its starting point has been the provisions of the OECD model convention, which has some significant differences from the UN model. In particular, the UN model includes a provision for a ‘services permanent establishment’ (article 5.3.b), as well as for fractional apportionment (article 7.4).

I suggest that the work in this area by the Committee should examine options for taxation of income from services, particularly (but not confined to) digitalized services, focusing on the UN model convention. Outputs could include revisions to the UN model and/or its commentary relating particularly to articles 5 and 7, and their interaction with articles 12A, 12B and other articles. There would of course be some overlap with the work on Item (e) so work on the two should be coordinated.