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International coordination and cooperation to combat illicit financial flows

Report of the Secretary-General

Summary

The present report, submitted pursuant to General Assembly resolution 77/154, provides an overview of progress made on combating illicit financial flows, as well as recommendations to strengthen international coordination. In the report, the Secretary-General emphasizes the importance of tackling illicit financial flows in achieving the Sustainable Development Goals. He identifies data access and use as key challenges for countries, as information needs to be made more widely available to country authorities while respecting privacy and rights. There is a need for effective coordination across policy spheres at both the national and international levels.

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I. Introduction

1. In General Assembly resolution 77/154, Member States recognized that combating illicit financial flows was an essential development challenge and laid out a set of commitments to combat them and strengthen good practices on assets return to foster sustainable development. These included efforts to stem tax evasion, tax avoidance, tax base erosion and profit shifting; combat corruption and transnational organized crime; and strengthen the recovery and return of stolen assets in support of sustainable development. The Assembly also expressed its commitment to financial integrity for sustainable development. The present report was mandated to provide information on progress made on combating illicit financial flows and the implementation of assets return and recovery based on existing mechanisms and to elaborate steps for strengthening international coordination.

2. In the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda, Member States committed to eliminating illicit financial flows. Goal 16 of the 2030 Agenda includes a target on significantly reducing illicit financial flows. The Addis Ababa Action Agenda, which provides the means of implementation for the 2030 Agenda, includes the commitment to eliminate illicit financial flows in the action area on domestic public resources and lays out domestic and international actions to eliminate them. Countries cannot effectively eliminate illicit financial flows alone; the cross-border nature of these flows necessitates cooperation and coordination.

3. Commitments to combating illicit financial flows range across legal multilateral conventions and international normative frameworks, but there are gaps, overlaps and fragmentation. There are also shortcomings and weaknesses in implementation. There remains a large gap between the current systems and a world characterized by financial integrity. Media around the world continue to expose national corruption, tax abuse scandals and global failings of financial integrity regulations and controls.

4. In December 2022, the General Assembly also adopted a resolution by consensus on the promotion of inclusive and effective international tax cooperation at the United Nations (resolution 77/244). As discussed below, international tax cooperation is essential to combat tax-related illicit financial flows. During the next General Assembly session, intergovernmental discussions on ways to strengthen the inclusiveness and effectiveness of international tax cooperation will be informed by a comprehensive report of the Secretary-General.

5. Progress has been made in combating illicit financial flows. International tax transparency has been improved, the General Assembly held its first special session on combating corruption, and asset recovery and return have accelerated. There has also been significant progress in measuring and estimating the value and volume of illicit financial flows.

6. Despite this progress, more needs to be done to deliver on the commitment by Member States to eliminate illicit financial flows. One of the key challenges is improving data, as well as its access and use. Information allows authorities to better enforce the law and needs to be more widely available, while still appropriately respecting privacy rights. There is a need for better cooperation and coordination across different frameworks for financial integrity and between countries.

II. Combating illicit financial flows related to the proceeds of crime and corruption

7. The United Nations Convention against Corruption is the only legally binding global instrument on all forms of corrupt behaviour in the public and the private

sectors. The 189 parties to the Convention comprise 184 Member States and five other jurisdictions. A further nine jurisdictions are covered by territorial extension as notified by Member States that are parties to the Convention, while two additional Member States have signed but not yet ratified the Convention. The Convention is complemented by a number of regional and cross-regional anti-corruption conventions. The United Nations Convention against Transnational Organized Crime also includes relevant commitments on the transfer of the proceeds of crime. The Convention has 193 parties, including 187 Member States and four other jurisdictions. There are 13 further jurisdictions covered by territorial expansion, while two additional Member States have signed but not yet ratified the Convention.

Combating corruption

8. Member States have recognized that preventing and countering corruption and illicit financial flows and recovering and returning confiscated assets can contribute to effective resource mobilization for poverty eradication, sustainable development and the enjoyment of all human rights. In addition, States have acknowledged that effective and timely communication and cooperation between competent authorities can also contribute to efforts to prevent and counter illicit financial flows derived from corruption.

9. The Convention against Corruption contains requirements for States to address financial integrity and proceeds of crime. Countries' progress in meeting these commitments is assessed within the Convention's peer review mechanism, which provides an entry point for discussions among States and between States and other actors on measures relating to anti-corruption. The first review cycle, which started in 2010, covered chapters III (Criminalization and law enforcement) and IV (International cooperation) of the Convention. In its state of implementation summary, the United Nations Office on Drugs and Crime (UNODC) noted that there were considerable outstanding issues on criminalization in many countries, including concerning the inadequate implementation of measures that are mandatory under the Convention. Significant gaps and challenges were also observed regarding international cooperation, the majority of which are operational in nature.

10. The second review cycle started in 2016 and covers chapters II (Preventive measures) and V (Asset recovery) of the Convention. Of the 72 reviews completed so far, challenges were most frequently encountered in chapter II related to the public sector (article 7), followed closely by those related to codes of conduct for public officials (article 8), where efforts to strengthen integrity and ensure a public service resilient to corruption, including through effective mechanisms to prevent or regulate conflicts of interest, need to be intensified. Preventing the involvement of the private sector in corruption also remains a prevailing challenge (article 12), and gaps continue to be identified in the national regimes for preventing money-laundering (article 14) (see CAC/COSP/IRG/2023/5).

Asset recovery and return

11. Repatriation of the proceeds of corruption through asset recovery can have a significant development impact. First, it can result in significant resource mobilization to finance sustainable development. Second, effective asset recovery can be a useful tool for deterring illicit financial flows.

12. Regarding the implementation of chapter V on asset recovery, of the 72 reviews completed to date, article 52 on the prevention and detection of transfers of proceeds of crime remains the provision with the highest number of recommendations, with 58 countries receiving recommendations for improvement (see CAC/COSP/IRG/2022/8). Challenges were also prevalent regarding the return and disposal of assets, showing the

trend of weak domestic implementation of the relevant return mechanisms outlined in article 57, with 49 countries receiving recommendations (see CAC/COSP/IRG/2022/7). Many recommendations also pertained to insufficient frameworks for the recovery of property through direct enforcement of conviction and non-conviction-based confiscations as well as insufficient mechanisms for preservation of property for confiscation (articles 54 and 55), with 41 countries receiving recommendations. In contrast, very few countries received recognition for having adopted good practices on article 57: only five States had good practices on the return and disposal of confiscated assets (such as the use of a victims' compensation fund) and only four States had good practices on bilateral and multilateral agreements for asset recovery (see CAC/COSP/IRG/2022/CRP.6).

13. Pursuant to requests from Member States,[1] a data collection process was carried out by UNODC with the aim of expanding knowledge on volumes of assets frozen, seized, confiscated and returned in relation to corruption offences beyond the data released in 2021. Results covering 44 States and spanning 140 cases, which are not comprehensive, challenge several commonly held assumptions. The data suggest that there is an increase in the overall number of countries involved in international asset recovery and that efforts to trace and restrain stolen assets across borders have become significantly more common, with a marked increase in examples of completed returns of corruption proceeds between 2017 and 2021; more than $2.3 billion was reported returned in the period compared with less than $1.4 billion in the period from 2010 to 2016 (see CAC/COSP/WG.2/2022/3). Moreover, the findings indicate a diversification in the destination countries for proceeds of corruption, including 28 different destination countries or jurisdictions engaged in international cooperation on restraining and returning proceeds of corruption.

14. States identified two prevailing major barriers to successful international asset recovery under the Convention: (a) the non-responsive or overly broad mutual legal assistance refusals by the country of asset location; and (b) difficulties in identifying and verifying beneficial ownership of suspected corruption proceeds. There remains a strong need to improve the efficiency of the mutual legal assistance process and increase the effectiveness of informal cooperation before any mutual legal assistance process begins. The second barrier confirms that lack of beneficial ownership transparency is a major impediment to asset recovery (see below for details on beneficial ownership transparency). Some jurisdictions do not allow non-conviction-based confiscation of assets. For such jurisdictions, this is the most frequently reported barrier to asset recovery. The growing use of and interest in non-conviction-based confiscation in cross-border asset recovery cases shows the importance of States adopting this tool.

15. UNODC will persist in collecting information on cases of asset return related to corruption offences and make the information publicly accessible, for example through the Asset Recovery Watch database on the Stolen Asset Recovery (StAR) Initiative website. The comprehensiveness and accuracy of the collected data and analysis rely primarily on the information shared by Member States. Several States have highlighted the absence of centralized databases containing asset recovery information, leading to manual data collection. This underscores the importance of implementing more efficient centralized data collection systems at the country level. These information technology systems and databases should register frozen, seized, confiscated and returned assets, in line with guideline 13 of the revised draft non-binding guidelines on the management of frozen, seized and confiscated assets (CAC/COSP/2019/16). A stronger expectation of yearly data provision will incentivize Governments to meet their obligations and help build trust among countries.

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[1] Conference of the States Parties to the United Nations Convention against Corruption resolution 9/2 and General Assembly resolution 77/154, para. 20.

16. While the Convention provides for return of the proceeds of corruption, there is a gap in the international legal framework regarding asset recovery for other types of illicit financial flows. A 2022 United Nations-wide technical paper coordinated by the Economic Commission for Africa proposed the establishment of a holistic and coordinated global framework on asset recovery aimed at addressing the recovery of assets lost through the widest spectrum of illicit financial flows. The technical paper provides a mapping of global and regional instruments and frameworks and takes stock of new developments and initiatives.

17. Based on a request contained in Human Rights Council resolution 46/11, in December 2022, the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights submitted a set of practical guidelines for efficient asset recovery to the Council comprising 13 draft non-binding and practical guidelines on human rights and the repatriation of State assets (see A/HRC/52/45). The guidelines include the importance of a human rights approach to State assets, fiscal legitimacy, transparency and access to informed participation, and robust national and international governance. The Office of the United Nations High Commissioner for Human Rights continues to promote its Recommended Principles on Human Rights and Asset Recovery, published in March 2022.

18. Since its official launch on 3 June 2021, the UNODC Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE Network) has grown rapidly. As of May 2023, it included 149 authorities from 84 States parties to the Convention. During the third plenary meeting of the GlobE Network, which was held in Madrid from 15 to 17 November 2022, the StAR Initiative coordinated bilateral meetings between requesting and requested States and organized a side event in which participants discussed the merits and challenges of equivalent-value based confiscation in the recovery of proceeds of corruption.

III. Tax cooperation, tax evasion and countering base erosion and profit shifting

19. Ongoing changes to the global economy are creating pressures on tax systems amid a rise in expectations for provision of public goods and services to deliver the Sustainable Development Goals. Concerns have been growing for many years that the globalization of economic activity has opened up opportunities for tax-related illicit financial flows, including tax base erosion and profit shifting by large multinational enterprises and hiding of untaxed income and assets by wealthy individuals. This can result in unfair tax burdens, reduced incentive for other taxpayers to pay their taxes, lower investment and reduced progress on reducing poverty and inequality. It also lowers tax morale, namely, the willingness of others to pay their taxes. Strengthening international tax cooperation and national tax administration and enforcement are complementary actions that can contribute to domestic resource mobilization and the achievement of other goals and targets in the 2030 Agenda.

20. Tax evasion is an illegal action that is, in most countries, characterized as a crime; tax avoidance is a legal practice, which frequently involves tax planning and arbitrage across borders. Under the agreed statistical methodology, both can give rise to illicit financial flows when the resulting resources flow across borders. Given that secrecy allows perpetrators of illicit financial flows to avoid accountability for their actions, boosting tax transparency is a vital component of the responses needed to eliminate such flows. Aside from directly exposing illicit financial flows and allowing enforcement of violations of tax laws, government can incentivize taxpayers to voluntarily declare previously undeclared assets and deter future efforts at tax

avoidance and evasion. More inclusive information-sharing systems should be combined with effective use of information for enforcement. Political will is needed to invest in the capacity and follow-through on enforcement, including of taxpayers with political connections.

Tax transparency and information exchange

21. Tax transparency refers to the disclosure of relevant information by taxpayers, tax authorities and other stakeholders to ensure accountability, combat tax evasion and promote fair tax practices. International cooperation is essential to exchange information necessary to reveal tax evasion and enable enforcement. The Organisation for Economic Co-operation and Development (OECD)-housed Global Forum on Transparency and Exchange of Information for Tax Purposes supports the implementation of legal instruments that enable information exchange, such as the Convention on Mutual Administrative Assistance in Tax Matters and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information. As of May 2023, the membership of the Global Forum included 149 United Nations Member States and 19 other jurisdictions. This includes 18 least developed countries, 34 African countries and 37 small island developing States.

22. Information exchange for tax purposes can take place either on request, spontaneously or automatically. Automatic exchange of financial account information has been greatly expanded since the adoption of the Common Reporting Standard in 2014. Under this framework, tax authorities receive information on the financial accounts held by their taxpayers in other jurisdictions, which helps the authorities to detect undeclared wealth or assets. To receive information, as a practical matter, countries must join the Global Forum, meet the confidentiality and threshold requirements and bilaterally match with other countries for the exchange of information. As of December 2022, there were over 4,981 bilateral exchange relationships for automatic exchange of information for tax purposes; however, developing countries are relatively underrepresented among the recipients of information given their greater numbers. Of the 4,981 relationships, 2,175 involve a middle-income country receiving information, 950 involve a small island developing State receiving information, 487 involve an African country receiving information, and no least developed countries receive information. According to data published by the Global Forum, information on more than 111 million financial accounts, with a total value of 11 trillion euros, was exchanged in 2021. This represents an increase of 32 per cent in the number of accounts and of 10 per cent in the total value of assets covered compared with 2019.

23. The Global Forum peer review is aimed at ensuring effective implementation of the standards. Full reviews have been completed on 99 jurisdictions committed to automatic exchange of information, with a further 7 jurisdictions having only partially completed reviews, covering the confidentiality requirements and legal frameworks. Of the 106 jurisdictions in total, 7 were rated as not having the needed legal frameworks in place and 30 were rated as having the legal frameworks but needing improvement. Of the 99 fully reviewed jurisdictions, 19 were found to be non-compliant and 15 were found to be partially compliant.

24. All members of the Global Forum are obligated to implement the body's agreed standards on transparency and exchange of information, including both exchange of information on request and automatic exchange of information. However, there are exceptions. Developing countries that are not part of the Group of 20 (G20) and are not considered investment hubs have not yet been asked to commit to automatic exchange, although nine have voluntarily done so and already started exchanges and a further seven have committed to doing so in the near future. In addition, the United States of America has not committed to automatic exchange through the Global

Forum. The Global Forum indicates that with respect to the commitment to automatic exchange of information (Common Reporting Standard):

> The United States has indicated that it is undertaking automatic information exchanges pursuant to [the Foreign Account Tax Compliance Act] from 2015 and has entered into intergovernmental agreements (IGAs) with other jurisdictions to do so. The Model 1A IGAs entered into by the United States acknowledge the need for the United States to achieve equivalent levels of reciprocal automatic information exchange with partner jurisdictions. They also include a political commitment to pursue the adoption of regulations and to advocate and support relevant legislation to achieve such equivalent levels of reciprocal automatic exchange.[2]

The United States receives information under the Foreign Account Tax Compliance Act from 99 Member States and 15 other jurisdictions.[3] The United States provides financial account information under the Act to countries with which it has intergovernmental agreements and also sends information on interest earned in the United States from deposits in certain types of financial accounts to 47 Member States (2 in Africa, no least developed countries) and four other jurisdictions.[4] It does not provide as much information with respect to entity ownership as is required by the Common Reporting Standard or as much as anticipated by the intergovernmental agreements owing to the lack of authorizing legislation related to certain entity types.

Transparency on corporate income and taxation

25. Another common international tax planning strategy related to multinational enterprises is to shift profits to low- or no-tax jurisdictions. Multinational enterprises are usually supposed to allocate profits based on the arm's length principle, according to which the price used for transactions between two related entities (e.g. a company's headquarters and its local subsidiary) should be the same as if the two parties were unrelated. Multinational enterprises can shift profits by manipulating transfer prices. In 2015, as part of the OECD/G20 Base Erosion and Profit Shifting Action Plan, many jurisdictions set a minimum standard that would enhance the reporting by multinational enterprises of data on the global allocation of their income, profit, taxes paid and economic activity. These country-by-country reports, prepared by multinational enterprises with revenues above a 750-million-euro threshold, are typically submitted to the authorities in the jurisdiction where they are headquartered and are supposed to enable high-level risk assessments of multinational enterprise transfer pricing that can help prioritize further investigation. The OECD-hosted Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports facilitates the exchange of the reports, so that the headquarters jurisdiction, which receives the master file, shares the country reports with the relevant tax authorities in the jurisdictions where the multinational enterprises have operations.

26. OECD prepares and publishes data from anonymized and aggregated country-by-country reports. The data publication of November 2022 covered data from 47 jurisdictions for almost 7,000 multinational enterprise groups for their fiscal years ending in 2018.[5] The United States and Japan host the most multinational enterprise headquarters in the 2018 data, with 24 per cent and 13 per cent of the multinational

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[2] OECD, *Peer Review of the Automatic Exchange of Financial Account Information 2022* (OECD Publishing, Paris, 2022). Available at https://doi.org/10.1787/36e7cded-en.

[3] See https://home.treasury.gov/policy-issues/tax-policy/foreign-account-tax-compliance-act.

[4] Internal Revenue Service Revenue Procedure 2022-35.

[5] Organisation for Economic Co-operation and Development (OECD), *Corporate Tax Statistics: Fourth Edition*, Fourth Edition (Paris, OECD, 2022), available at https://www.oecd.org/tax/tax-policy/corporate-tax-statistics-fourth-edition.pdf.

enterprises, respectively. The data show evidence of misalignment between the location where profits are reported and taxes are paid and the location where economic activities occur. The median value of reported revenue per employee was six to eight times higher in jurisdictions with no corporate income tax, which is a strong indicator of profit shifting. In investment hubs, on average, multinational enterprises report a relatively high share of profits (29 per cent) compared with their share of employees (4 per cent) and tangible assets (15 per cent).

27. As of June 2023, 85 Member States and 13 other jurisdictions were party to the multilateral agreement for exchanging reports. Both countries must bilaterally activate a relationship to begin exchanging reports. However, some countries prefer to make arrangements for exchange of reports through a bilateral competent authority agreement, which requires an active choice by both parties to the agreement to exchange with the other party. As of December 2022, there were 3,489 activated exchange relationships for country-by-country reporting information provided by multinational enterprises. However, developing countries lag behind in gaining access to that information. Although some least developed countries and African countries have signed onto the multilateral agreement for exchanging reports, no least developed countries currently receive the reports, and only four African countries are receiving any information through just 331 activated bilateral relationships. Middle-income countries are the receiving party in 1,406 of the bilateral relationships, while small island developing States are the recipients in only 384 relationships. The United States is unique among G20 countries in not having signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports, making it more difficult to receive the country-level reports of a large number of multinational enterprises that are headquartered in the country. The United States does have bilateral agreements in place with 49 Member States and six other jurisdictions, including two African countries but no least developed countries.[6]

28. Public transparency of country-by-country reports could be a solution to the lack of information flows to developing countries. Multinational enterprises above a threshold could be required to publish the reports or submit them to a central repository accessible to all. Some countries and regions have already moved towards publication of a limited form of country-by-country reporting. June 2023 was the deadline for European Union members to pass domestic legislation requiring publication of limited country-by-country reports for multinational enterprises headquartered in their territory and for operations of multinational enterprises with headquarters outside the European Union. The laws will require publication by June 2024, although many multinational enterprises have already begun publishing their reports. The public country-by-country reporting rules will be based on the experience of more than 30 countries that required extractive industry multinational enterprises, including in both the logging and mining industries, to publish additional corporate information in country-by-country format. While the publication of country-by-country reports is being considered, countries that are hosts to multinational enterprise operations can create requirements for multinationals operating locally to file the local reports with the local tax administration, especially when there is no activated bilateral information exchange relationship with the multinational's headquarters jurisdiction. This would give the authorities access to useful information for both risk assessment and enforcement purposes.

29. The United Nations Committee of Experts on International Cooperation in Tax Matters (United Nations Tax Committee) agreed in 2009 to a code of conduct on cooperation in combating international tax evasion that sets minimum standards of conduct required of Member States regarding the exchange of information (see

[6] See https://www.irs.gov/businesses/country-by-country-reporting-jurisdiction-status-table.

E/2009/45 (Supp)/E/C.18/2009/6 (Supp)). It is currently engaged in developing a guide to increasing tax transparency. Participants in the United Nations work gave feedback on the challenges they faced in the implementation of international standards in exchange of information and the gaps existing in the available guidance. The Committee established a subcommittee mandated to propose solutions to the identified gaps and challenges and advise on ways to provide technical support to developing countries to address those challenges.

30. Tax transparency was discussed at the special meeting of the Economic and Social Council on international cooperation in tax matters held in March 2023, with some participants noting that developing countries had not fully shared in the benefits from improved tax transparency standards.[7]

Addressing digitalization and globalization

31. Challenges posed by digitalization of the economy are at the centre of discussions on the future of international corporate taxation and efforts to prevent base erosion and profit sharing. The increasing use of digital technologies and the emergence of new business models increase the possibilities for companies to be highly profitable yet pay relatively little tax anywhere. Multinational enterprises may not need a physical presence to do business, and it is increasingly unclear where value addition occurs, especially for digital services. Work to address the challenges resulting from globalization and digitalization is ongoing at the United Nations Tax Committee and at the OECD/G20 Inclusive Framework on Base Erosion and Profit Sharing, with its proposed two-pillar solution to address the tax challenges arising from the digitalization of the economy.

32. The United Nations Tax Committee has a Subcommittee on Taxation Issues related to the Digitalized and Globalized Economy, with three workstreams: (a) multilateralized implementation of specific provisions of the United Nations Model Tax Convention; (b) addressing the function and relevance of physical presence tests; and (c) addressing cross-border taxation issues involving remote workers. Through workstream A, the Committee is developing a so-called fast-track instrument that would allow more rapid pickup of United Nations Model Tax Convention provisions, for example on taxation of fees for technical services (article 12A) and automated digital services (article 12B). It aims to give like-minded countries opportunities to modify existing bilateral tax treaties more easily than by undertaking a series of unrelated bilateral negotiations. The Committee is working towards completing a draft instrument in the first half of 2025, with a view to enabling Member States to transform it into a treaty. The workstreams could modernize taxation of the digitalized and globalized economy, in particular by providing greater recognition of the taxation rights of market States. This could address tax avoidance and evasion as well as advantages that current systems can provide to digital businesses over traditional “brick and mortar” businesses.

33. At the OECD-housed Inclusive Framework, political agreement was reached on the general two-pillar approach in October 2021. As of June 2023, 122 Member States and 17 other jurisdictions had agreed to the statement, while 4 Member States that are part of the OECD-housed Inclusive Framework had not joined the statement. Pillar one addresses digitalization and globalization by making a limited departure from the arm’s length principle for allocating taxing rights on corporate profits on a share of profits of the largest and most profitable multinational enterprises globally; it would allocate a small share of profits to a market jurisdiction, regardless of whether the

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[7] Official summary by the President of the Economic and Social Council, available at https://financing.desa.un.org/sites/default/files/2023-04/2023%20ECOSOC%20Special%20Meeting%20on%20International%20Tax%20Cooperation_summary%20%281%29.pdf.

multinational enterprise has a physical presence in the market. Pillar two includes global minimum corporate tax rules allowing countries to top up the tax paid on profit by a multinational enterprise to 15 per cent, either at the source through a minimum tax or in the jurisdiction of the enterprise's headquarters. Work is ongoing on both pillars and an Inclusive Framework statement issued in July 2023 provided a package of deliverables; the statement was signed by 121 United Nations Member States and 17 other jurisdictions, while 3 Member States that participate in the Inclusive Framework did not agree and 2 Member States that had participated in the Inclusive Framework have been suspended.

34. A multilateral convention is required for implementation of pillar one. Together with the July 2023 statement, OECD published a draft text of the multilateral convention but indicated that concerns remained over certain specific items. The temporary moratorium on digital services taxes that was included in the two-pillar statement of October 2021 was extended until the end of 2024. The statement indicated that the multilateral convention would open for signature before the end of 2023.

35. The model rules for the global minimum tax under pillar two were agreed in 2021. An implementation package was released in December 2022, and agreed administrative guidance was published in February 2023. Public consultations on information return and tax certainty were held in early 2023. A few countries have already adopted laws to implement a global minimum tax, while others are beginning the process of bringing pillar two into domestic legislation. The largest jurisdiction, the United States, adopted a corporate alternative minimum tax in 2022, which imposes a 15 per cent minimum tax, based on adjusted financial statement income, but which differs from the pillar two rules in threshold, tax base, tax credits and other areas. It is unclear how the United States corporate alternative minimum tax will be treated by countries implementing the pillar two rules.

36. The pillar two proposals also included a subject-to-tax rule, which was designed to allow source jurisdictions to tax the gross amount of multinational enterprise interest, royalties and a defined list of other payments received by another member of the same multinational enterprise group. These payments can be used to erode the corporate income tax base, especially in developing countries. Under pillar two, the subject-to-tax rule would apply when covered payments between connected entities are not taxed either in the source country or the residence country at the agreed rate of 9 per cent. Because many bilateral tax treaties prevent taxation based on gross income or payments, implementing the rule would require a treaty-based solution. The July 2023 statement was accompanied by a draft multilateral instrument for implementation of the subject-to-tax rule, which will be opened for signature in October 2023. Implementing the rule will require both parties to an existing treaty to sign and ratify the new convention or a bilateral agreement. Inclusive Framework members made a political commitment to make such arrangements for any low- or middle-income country that requests it.

37. At its twenty-sixth session, held in March 2023, the United Nations Tax Committee gave final approval to including a general subject-to-tax rule in the next version of the United Nations Model Tax Convention. In cases where the new rule is agreed in a bilateral treaty and applies, the source jurisdiction will retain the right to impose tax on specified income under its domestic law if the jurisdiction that has the primary taxing right does not exercise that right to impose a minimum level of tax on the relevant income. It will therefore play a limited but important role in countering some illicit financial flows. This version of the subject-to-tax rule is broader than the subject-to-tax rule being developed under OECD and has been identified by members of the United Nations Tax Committee as one of the elements that could be included in the fast-track instrument being developed by the Committee.

38. Beyond the work on addressing digitalization and country-by-country reporting, the OECD/G20 Action Plan on Base Erosion and Profit Shifting included three additional minimum standards. In November 2016, countries concluded negotiations under the auspices of OECD on a multilateral legal instrument to facilitate relevant modifications to tax treaties (e.g. introduction of anti-abuse provisions). As of June 2023, the multilateral legal instrument had been ratified by 78 Member States and five other jurisdictions, including 7 African Member States and 1 least developed country.

Other aspects of international tax cooperation

39. As identified by Member States, the growth of digital assets provides opportunities and risks for countries' tax systems. Cryptoassets can be transferred and held without interacting with traditional financial intermediaries and without any public body having visibility on the transactions or the location of cryptoasset holdings, giving rise to risks that they could be used to facilitate illicit financial flows. Cryptoassets have particularly broad implications for tax policy because of their potential to be used both as speculative investments and a means of transferring resources, including across borders. The United Nations Tax Committee has identified three sources of risks to tax systems: (a) the pseudonymity of the assets, which makes it difficult to identify the ultimate beneficial owners; (b) volatility of the cryptomarket, which can lead to significant losses; and (c) the possibility that cryptoassets acting as functional substitutes receive a more favourable tax treatment. Countries without appropriate legislation regarding the taxation of cryptoassets and the ringfencing of losses risk tax base erosion. Accordingly, the Committee is exploring options whereby it can make a value-added contribution in this area without unnecessarily duplicating work done in other forums. A workplan and mandate will be discussed at the twenty-seventh session of the Committee, to be held in October 2023.

40. In August 2022, the OECD Committee on Fiscal Affairs, a body for OECD members and invited guests, approved a Crypto-Asset Reporting Framework, which specifies standardized frameworks for reporting of tax information on transactions in cryptoassets. Accompanying the Framework, the OECD Committee also agreed to a revision of the existing Common Reporting Standard for automatic exchange of information on financial account information to bring new financial assets, products and intermediaries, such as e-money, within its scope. The full revised standards were published in June 2023.[8] In November 2022, the Global Forum agreed to ensure widespread implementation of the amended Common Reporting Standard and the Crypto-Asset Reporting Framework.

41. The General Assembly has called for additional capacity-building and technical assistance for the purpose of combating illicit financial flows. While donor-funded capacity-building related to domestic public revenue mobilization has increased dramatically since 2015, it fell in 2021 compared with 2020. Disbursements of official development assistance (ODA) by OECD donor countries for the purpose of domestic revenue mobilization declined significantly, to $284 million in 2021, or 0.23 per cent of total ODA, from $411 million in 2020. This drop was driven primarily by an unusually large volume ($171 million) of loans in 2020 during the first year of the coronavirus disease (COVID-19) pandemic. Grants rose to $258 million in 2021, from $240 million in 2020. The long-term picture may be better, given that commitments reached a record $387 million in 2021, the highest volume of commitments since measurement started in 2015.

[8] See https://www.oecd.org/tax/international-standards-for-automatic-exchange-of-information-in-tax-matters-896d79d1-en.htm.

42. Regionally, Member States are strengthening their dialogues on tax cooperation and preparing common positions to bring to international forums. The Second Subcommittee on Tax and Illicit Financial Flows of the African Union Specialized Technical Committee on Finance, Monetary Affairs, Economic Planning and Integration held a meeting in May 2023, which was focused on practical discussions to promote the interests of African countries in global discussions on taxation. Recommendations shaping a coherent Common African Position will be published in a technical paper, with support from the Economic Commission for Africa, the African Union Commission and the Africa Tax Administration Forum. In Latin America, the Colombian Ministry of Finance and Public Credit and the Chilean Ministry of Finance are leading a new Latin American and Caribbean initiative on inclusive, sustainable and equitable global taxation. A technical meeting held in May 2023 informed the first-ever ministerial-level tax summit in the region, hosted by Colombia in collaboration with the Economic Commission for Latin America and the Caribbean in Cartagena, Colombia in late July 2023.

IV. Anti-money-laundering and beneficial ownership transparency

43. The necessity to control money-laundering has been established in numerous international legal instruments, including the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and, extensively, in article 14 of the United Nations Convention against Corruption. The Financial Action Task Force, a limited-membership independent body based in Paris, sets international standards to tackle money-laundering and terrorist and proliferation financing. Its members include 36 United Nations Member States and three other jurisdictions, two of which are regional bodies. The Financial Action Task Force global network also includes Financial Action Task Force-style regional bodies, whose members have committed to implement Financial Action Task Force standards. The global network includes over 200 countries and jurisdictions, with the regional bodies sitting in Financial Action Task Force plenary meetings and able to influence the agenda of the Task Force on priority issues such as beneficial ownership transparency and implementation of the risk-based approach.

44. Beneficiaries of illicit financial flows commonly rely on secrecy to disguise or hide their activities and often use opaque legal structures to that end. In many cases, only the "legal owners" of an asset or legal vehicle (e.g. a company) are known. Shell companies, which are corporate entities that have no independent activities, are set up only to be the legal owner of assets and other corporate entities, with transactions spread across multiple jurisdictions. A basic tool for addressing these secrecy risks is to identify the "beneficial owners" of legal vehicles – the natural persons who ultimately own, control or benefit from the legal vehicle. Beneficial ownership transparency can reveal the true ownership and allow fair taxation and enforcement of the law. For anti-money-laundering purposes, the beneficial owner is the person ("natural person" in legal terms) who ultimately owns, controls or benefits from legal vehicles such as companies, partnerships and trusts. Information about beneficial owners is required under international anti-money-laundering standards, the international standards for exchange of information for tax purposes and the United Nations Convention against Corruption.

45. International norms and standards are being strengthened to add the requirement that public authorities maintain records, such as through appropriate registries, of beneficial ownership information for some types of legal vehicles. In March 2022, the Financial Action Task Force amended its recommendation on beneficial ownership information of legal persons (e.g. companies, firms and partnerships) to

require a public authority to hold the information, usually through a registry. In February 2023, the Task Force concluded revisions to its standards on the way beneficial ownership information for legal arrangements (e.g. trusts) must be maintained. While the changes were aimed at aligning the new standards with the standards for trusts, the changes were not as extensive and do not require a registry approach for legal vehicle ownership information.

46. Recent research based on the experience of 38 countries revealed that many countries still lack sufficient legal, regulatory and institutional frameworks and systems, as well as practical experience, to effectively use beneficial ownership transparency to enhance recovery and return of proceeds of crime. The establishment of registries of beneficial ownership information for both legal persons and legal arrangements to ensure the timely availability of information to competent authorities, and the verification of submitted beneficial ownership data through both automated verification and spot checks, were highlighted as good practices. Many international bodies are providing countries with assistance in implementing beneficial ownership transparency systems.

47. Public transparency of beneficial ownership information can enhance the usefulness of the data, although there have been some concerns about privacy. A growing number of countries across regions are creating systems to publish their beneficial ownership registries for public access. Such enhanced transparency is beneficial for speeding up national and international information-sharing. It can also assist due diligence by the private sector. Better access can empower journalists to investigate and report on corruption allegations, allowing for more effective accountability. Public transparency can also boost trust more broadly and contribute to strengthening the social contract. Ensuring the availability of the beneficial ownership information to the general public free of charge and in open data format was identified as a good practice in a paper presented at a United Nations Convention against Corruption working group. However, a regional European court limited the publication of information in beneficial ownership registries owing to privacy considerations.

48. UNODC consolidated the good practices in promoting beneficial ownership information transparency to facilitate the recovery and return of proceeds of crime and developed a catalogue with the online links to commercial and beneficial ownership registers, competent authorities and their contact information (see CAC/COSP/WG.2/2022/CRP.1). The Stolen Asset Recovery (StAR) Initiative, as part of its efforts to develop and update tools to assist asset recovery practitioners in tracing illicit funds located abroad, continued to update and expand country-specific beneficial ownership guides, which are intended for public authorities or other relevant stakeholders searching for information on legal entities created under the laws of another country.

V. Cross-cutting approaches

49. Renewing the social contract between Governments and their people, anchored in human rights, is an essential component of delivering on the 2030 Agenda for Sustainable Development. Trust can be built through all taxpayers making fair contributions to pay for the delivery of quality public goods and services. Fair and even-handed enforcement will help to rebuild trust between citizens and the State, as all should see that everyone is paying their fair share. Strengthening the social contract and the global partnership to combat illicit financial flows will contribute to efforts to mobilize and protect resources for the delivery of the broader sustainable development agenda.

Business regulatory policies

50. A wide variety of individuals and entities are involved in creating and executing the many complex transactions that comprise an illicit financial flow and result in hidden or disguised assets. Those who are not direct beneficiaries of the flow but profit from providing professional services to the beneficiaries are enablers of the illicit activity. This can include lawyers, accountants, corporate service providers, real estate agents, bankers, investment advisers and persons in many other types of professions. The Financial Action Task Force standards include the expectation that some designated non-financial businesses and professions have obligations related to anti-money-laundering enforcement. However, the inadequate understanding of risk for most of those professions and the lack of national frameworks for regulation often lead to a patchwork of arrangements, ranging from highly regulated systems to self-regulation by industry bodies and unregulated operations.

51. Because of their role in facilitating secrecy and setting up legal vehicles that enable illicit financial flows, more attention needs to be paid to non-financial businesses and professions. For example, in 2023, accountants who were advising the Government of Australia were accused of sharing confidential government tax policy information with their corporate clients. The large accountancy firm admitted that it did not have adequate processes and governance in place. In its resolution 77/154, the General Assembly invited United Nations departments and offices to jointly prepare a global mapping of existing business regulatory policies, standards and guidelines, in consultation with stakeholders. Dedicated resources to support the mapping have yet to be identified.

52. The financial sector has a special role to play in combating illicit financial flows, given that financial institutions are the conduits of finance as it crosses borders. At the same time, the specificities of the private sector's implementation of policies and frameworks designed to combat illicit financial flows can have unintended consequences. For example, the way the financial sector attempts to implement a risk-based approach could lead to some financial institutions in developing countries being excluded from correspondent banking networks, owing to the cost of controlling risks outweighing the potential profit to be made. To better address unintended consequences and improve the effectiveness of policies and their implementation, the public sector should be engaging regularly with the private sector and other stakeholders at both the national and international levels.

Illicit financial flow measurement framework and estimates

53. Measuring and tracking illicit financial flows is extremely challenging because of the clandestine nature of the underlying activities. Governments stand to gain substantially from the increased availability of estimates of illicit financial flows, given that detailed and disaggregated estimates can be valuable tools to improve the capacity of country authorities to detect and curb the flows and shape more effective evidence-based policies. The establishment of estimation processes strengthens inter-agency cooperation and promotes data-sharing, while simultaneously improving the quality and availability of baseline estimates on predicate crimes and of key macroeconomic statistics, such as gross domestic product, by enhancing their coverage and exhaustiveness. Aggregation of illicit financial flow estimates and comparisons across channels and components need to take into account the potential for double counting and questions of comparability of the different estimation procedures. Together with the members of their Task Force for the statistical measurement of illicit financial flows, the United Nations Conference on Trade and Development and UNODC continue to develop and consolidate globally valid and agreed methods to measure illicit financial flows. The two agencies also support

countries in producing transparent, robust and globally comparable statistics on illicit financial flows.[9]

54. In cooperation with relevant United Nations regional commissions, pilots have been conducted in 22 countries across three regions (Asia, Africa and Latin America) to test the methodologies and produce preliminary country-level estimates on selected illicit financial flows. The first official estimates for Sustainable Development Goal indicator 16.4.1 are now available, highlighting the feasibility of the methods despite the myriad challenges involved. The first estimates covering selected crime-related illicit financial flows from nine countries were published in the Global SDG Indicators Database in May 2023, while tax and commercial illicit financial flow estimates are expected to be released by the end of 2023. These estimates show high levels of illicit financial flows. Estimates from Burkina Faso highlight illicit financial flows related to gold exports to Uganda and Switzerland. In Namibia, preliminary estimates from trade mis-invoicing revealed $19.6 billion in inward illicit financial flows and $4.7 billion in outward illicit financial flows between 2018 and 2020. A four-year global capacity-enhancing project, coordinated by the Economic Commission for Africa with support from the United Nations Conference on Trade and Development, UNODC and all other regional commissions, is currently under way with the aim of having additional countries report statistics on illicit financial flows and formulate policy recommendations based on those official statistics.

55. There are ongoing efforts outside the official statistical work to estimate different components of illicit financial flows based on a variety of methodologies. While these are not approved for use as statistical estimates, they may contribute to the understanding of challenges at the national, regional and global levels and help to inform authorities as they enhance enforcement efforts. One methodology that has now been published in a peer-reviewed academic journal examines the differential profitability of the affiliates of foreign multinational enterprises compared with local firms in certain jurisdictions and draws inferences about profit shifting globally.[10] In a separate new working paper, the authors have extended that methodology and estimate that in 2019, 37 per cent of multinational enterprise profits were artificially shifted to 41 low-tax jurisdictions, which represents a loss of 10 per cent of corporate income tax revenue globally, or $969 billion.[11]

56. Given that data and information relevant to the creation of official statistical estimates are spread across multiple national agencies, they need to be brought to a common and coordinated statistical environment to ensure both confidentiality and the data quality required of official statistics. National technical working groups comprising relevant national stakeholders address the issue of access to data for statistical purposes from regulatory, technical, logistical and resource perspectives to enable an effective collaboration among stakeholders. Illicit financial flows, by definition crossing country borders, increasingly open up the considerations of cross-border exchange of data for statistical purposes, including bilateral country customs records, tax records of multinational enterprises, and transactions exploiting the availability of beneficiary ownership records. Discussions on external access to confidential data need to be addressed within existing legal and technical boundaries of national statistical systems, where national statistical offices play a central role.

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[9] Work by custodians is also presented in more detail in the 2023 edition of SDG Pulse, available at https://sdgpulse.unctad.org/illicit-financial-flows/.

[10] Thomas Tørsløv, Ludvig Wier and Gabriel Zucman, "The Missing Profits of Nations", *The Review of Economic Studies*, vol. 90, No. 3 (May 2023). Available at https://doi.org/10.1093/restud/rdac049.

[11] Ludvig Wier, Gabriel Zucman and World Institute for Development Economics Research of the United Nations University, "Global Profit Shifting, 1975–2019", UNU-WIDER working paper (UNU-WIDER, November 2022). Available at https://doi.org/10.35188/UNU-WIDER/2022/254-6.

VI. Cooperation and coordination

57. Domestic-level coordination on illicit financial flows is important to boost information-sharing, cooperation and enforcement. The multidimensional nature of illicit financial flows requires a coordinated, whole-of-government approach. Member States recognized this in General Assembly resolution 77/154 and requested the Inter-Agency Task Force on Financing for Development to explore recommendations to assist Member States in incorporating financial integrity actions into their integrated national financing frameworks. Using existing extrabudgetary funds, the Secretariat has begun to develop a technical guidance note on combating illicit financial flows, which will be available for countries developing integrated national financing frameworks. The guidance will focus on how combating illicit financial flows can be mainstreamed into national planning processes and examine the potential implications of other finance policies on instigating or combating illicit financial flows.

58. In combating illicit financial flows, weaknesses in one country can undermine the ability of all countries to ensure integrity through regulatory arbitrage. Mismatches in laws and policies frequently occur within a particular area – for example between the tax laws of two States – but can also occur across different policy areas, for example between tax laws and anti-money-laundering rules. Operating in silos undermines the international community's ability to identify and address gaps. Yet, there remains no venue for dialogue among institutions and States on illicit financial flows that cuts across normative frameworks for corruption, financial crime and tax. Lack of political will also remains a constraint on action. Intergovernmental discussion in relevant specific policymaking forums should continue, but high-level international political coordination, involving policy areas currently discussed in silos, can help close gaps between policy frameworks and enhance synergies. It is recommended that Member States address this coordination gap using the existing multilateral architecture. The Economic and Social Council can serve as an effective host for coordination among Member States, international institutions (including United Nations system and non-United Nations entities) and external stakeholders with an annual dedicated meeting on illicit financial flows. A Council-based coordination mechanism could review progress on financial integrity issues, provide data and other information and foster intergovernmental agreements to address illicit financial flows and promote financial integrity. The coordination could be designed in multiple ways, based on the existing calendar of Council meetings and events.[12]

VII. Summary and conclusions

59. Despite much action over the previous decades, and a noticeable push to strengthen international frameworks after agreement on the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda in 2015, many challenges remain. In the area of anti-corruption work, there are weaknesses in implementation. In the area of tax-related illicit financial flows and money-laundering, implementation problems are compounded by shortcomings in the international frameworks. An absence of political coordination across areas undercuts effectiveness. The result is a weakening of trust, an undermined social contract and insufficient public resources available for investment in sustainable development.

[12] Jose Antonio Ocampo, "A Global Coordination Mechanism on Illicit Financial Flows: Implementation Note on FACTI Panel Recommendation 14A" (New York, 2021).

60. Across the policy areas covered in the present report, a recurring theme is the need for more information and greater transparency. To build trust, both national authorities and the public need more and better information. Efforts should continue to develop estimates and data using the agreed methodology. Developing countries should not remain outside of information-sharing mechanisms on tax. Better beneficial ownership information is needed on all legal vehicles, and benefits can be derived from broader sharing and publication of that information.

61. Information must be put to better use. Strong investment in enforcement and capacities to use information is essential. Donors should strengthen efforts to provide resources for this type of capacity-building, while political leaders need to invest political will in building enforcement capacity in ways that decrease inequality and strengthen sustainable development.

62. With only seven years to go until the deadline for achieving the Sustainable Development Goals, Member States must redouble their efforts to combat illicit financial flows and their predicates such as tax avoidance and evasion, corruption, money-laundering and other crimes. The links between sustainable development and financial integrity are well documented. To achieve our global goals, strengthened attention and focus on these issues through enhanced international coordination at the Economic and Social Council remains recommended.