

# Practices and Working Methods for the Committee of Experts on International Cooperation in Tax Matters



**UN Tax Committee**



United Nations

# PRACTICES AND WORKING METHODS FOR THE COMMITTEE OF EXPERTS ON INTERNATIONAL COOPERATION IN TAX MATTERS

## I Preliminary

1. These Practices and Working Methods are intended to facilitate the work of the United Nations Committee of Experts on International Cooperation in Tax Matters in Meeting its mandate. The Working Methods are designed to be read in conjunction with the Rules of Procedure of the Economic and Social Council (ECOSOC) as amended from time to time and, to the extent of any inconsistency, those Rules of Procedure shall prevail.

2. For example, elections of Chairperson(s)<sup>1</sup> and Bureau<sup>2</sup> Members of the Committee are made in accordance with Chapter XI of the ECOSOC Rules of Procedure where applicable and paragraph 30 below, which accords with those Rules of Procedure.

## II Agenda

### (a) *The provisional agenda*

3. The provisional agenda for a regular session will be drawn up, with the assistance of the Secretariat, by the Chairperson(s) in consultation with the Bureau, and approved (in its provisional form) by the Committee at the end of the regular session immediately preceding the session in question. To facilitate discussion of the provisional agenda, a draft of the provisional agenda will be circulated to all Members the day before it is scheduled to be discussed and approved.

4. Discussion of the provisional agenda will take place in a closed consultation with only Members in attendance, unless members decide otherwise.

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<sup>1</sup> On the role of Chairperson(s), see paragraph 25.

<sup>2</sup> On the role and creation of a Bureau, see paragraphs 27-29.

5. In general, the provisional agenda will allow for periods of time when the session is held as a closed consultation to consider agenda items of a sensitive nature.

6. The approved provisional agenda is to be included in the Report on the session and provided to ECOSOC for its approval.

7. The Secretariat, in consultation with the Chairperson(s)/Bureau, will propose revisions, if necessary, to the provisional agenda at least one month prior to the opening of a session and the redrafted provisional agenda will be circulated to all Members two weeks prior to the opening of a session.

8. Whether or not revisions are being proposed to that agenda according to paragraph 9 below, two weeks prior to the opening of the session the Secretariat will circulate to all Members a provisional agenda that sets out clearly whether each agenda item is for information, for discussion, or for approval, when the item will be presented and who will be presenting it.

#### ***(b) Modifications***

9. Any proposed modifications to the provisional agenda, including additions and topics to be considered under “Other items”, should be proposed by Members or the Secretariat in writing, and circulated to all Members, at least one week prior to the opening of the session.

10. Modifications to the provisional agenda, including additions, may be made if a Member or the Secretariat has so proposed, justifying their importance and urgency, and such modifications are agreed to by a majority of the Members present and voting at the beginning of the session. The provisional agenda, with any agreed modifications, will be approved by Members at the beginning of the session. At that point it ceases to be provisional.

### **III Sessions**

#### ***(a) Sessions***

11. Sessions shall be convened in accordance with ECOSOC decisions.

***(b) Conduct of closed consultations at sessions***

12. Closed consultations, with only Members in attendance, will be scheduled to discuss items of a sensitive nature or where a closed consultation will facilitate the efficiency and effectiveness of the functioning of the Committee.<sup>3</sup>

13. Closed consultations should not, however, impede obtaining relevant input from Observers.

14. A closed consultation may be proposed by a Member or the Secretariat. As a best practice, closed consultations should be scheduled in advance of the session and be reflected in the agenda.

15. If a closed consultation is proposed in advance of the session, and has not already been agreed to in the prior session, a decision will be taken by Members in accordance with the Committee's working methods (see paragraph 31).

16. If a closed consultation is proposed at any time during the session, the proposal must be discussed in a closed consultation called by the Chairperson(s) and decided by a majority of the Members present and voting. If a proposal for a closed consultation is made during an open session, the Chairperson(s) will consider (i) when the closed consultation to discuss that proposal will take place and (ii) in case the Committee decides to have a closed consultation to discuss the substantive issue, when that closed consultation will take place.

17. Scheduling of closed consultations should take into account the impact on the flow of work and the attendance of Observers.

**IV Committee Report**

***(a) Preparation of reports on sessions***

18. The Committee reports its activities to the UN ECOSOC twice each year, following each regularly scheduled session.

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<sup>3</sup> Where it would facilitate an open discussion of all issues, the Committee may decide to invite Observer States to join the closed consultations.

19. The Secretariat will prepare a first draft of the Report, which sets out the course of the discussions, and decisions taken or reported in open sessions.

20. The Report should capture differing views and clearly identify when a decision was made by vote.

21. The Report will only record decisions taken during closed consultations as are reported in open sessions; it will not provide any further information in respect of a closed consultation.

22. Unless otherwise agreed, Members will have a minimum of two weeks to review and provide comments on the draft Report. The Secretariat, in consultation with the Chairperson(s), will consider the comments received and finalize the Report. A final version of the Report will then be circulated to all Members and published on the website.

***(b) Summary of closed consultations***

23. A separate draft summary of the discussions that took place in closed consultations will be prepared by the Secretariat and circulated to Members within the same timeframes as provided for the Report. This draft summary will only be distributed and made available to Members.

24. Members will have a minimum of two weeks to review and provide comments on the draft summary. The Secretariat, in consultation with the Chairperson(s), will consider the comments received and finalize the summary. A final version of the Summary will then be circulated to all Members and will be treated by them as a confidential document.

**V Conduct of Business**

***(a) Role of Chairperson(s)***

25. In addition to the powers of the Chairperson(s) provided for in Chapter X of the ECOSOC Rules, the Chairperson(s) will be responsible for:

- Deciding, based on urgency, to reduce the normal three-week period for items to be approved under a written procedure, to a period not less than one week;

- Deciding, in the case of an extended out-of-office e-mail notification, to extend the three-week period for items to be approved under a written procedure;
- Summarizing the conclusions reached by the Committee.

26. As a general rule, Chairperson(s) should give Members priority to speak or intervene before the floor is given to Observer States and other Observers, in that order, while recognizing that comments from particular Observers(s) may help focus the discussion or bring it to an appropriate conclusion.

***(b) Role of the Bureau***

27. The Committee may create a Bureau consisting of the Chairperson(s) and a number of other Members as Vice-Chairpersons to assist in the conduct of business.

28. The Bureau shall be created with due regard in its composition to sufficient regional diversity, gender balance, as well as developing country representation.

29. The Bureau is responsible for assisting the Chairperson(s), for example in:

- Framing the provisional agenda and program of work for Committee sessions, before its distribution among Members; and
- Conducting business in an efficient manner.

***(c) Committee decision-making***

30. In accordance with the rules of decision-making set out in Chapter XI of the ECOSOC Rules:

- It is desirable for the Committee to strive to achieve consensus for all decisions. However, decisions can also be taken by majority.
- Any Member may, in advance of the session or at any time during the session, request a vote.
- Only Members are entitled to vote. Each Member will have one vote.

- Members are entitled to vote if they are present at that particular session.<sup>4</sup>

31. To ensure the efficiency and effectiveness of the work of the Committee it may be necessary, in exceptional cases, to seek decisions when the Committee is not in session. In such cases the written procedure set out below may be used.

- The Secretariat would send an e-mail to all Members<sup>5</sup> with the proposal or document, in electronic format, for approval within a specified time period.
- Unless otherwise decided by the Chairperson(s), and conveyed to the Members, a minimum of three weeks would be allowed for Members to agree, disagree and/or provide comment. Any comments should be forwarded to all Members by the Secretariat.
- If no Member indicates disagreement and no Member conveys comments on the document seeking modification within the timeframe provided, the proposal or document would be considered approved. If a Member indicates disagreement, or objects to the use of the written procedure, the document or proposal will be discussed at the next regular session of the Committee.
- Where there are comments on a proposal or document by one or more Members, the Secretariat, in consultation with the Chairperson(s), the Member having made the comments and the Subcommittee Coordinator(s) concerned, as necessary, will prepare and circulate a revised draft or proposal within one week of the end of the three-week period. Members will have a further week to comment on the revised draft or proposal.
- If no Member indicates disagreement with the revised draft or proposal, the revised document or proposal will be considered approved. If any Member indicates disagreement, the draft or proposal would be discussed at the next regular session of the Committee.

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<sup>4</sup> Members are considered to be present at a session in accordance with ECOSOC decisions and rules.

<sup>5</sup> It is the responsibility of each Member to provide the Secretariat with any change of e-mail address.

- In respect of the written procedure, silence on the part of a Member, with one exception, will be regarded as acceptance. Silence will not be regarded as acceptance if the Member has an “out of office” reply to emails and that reply covers the entire three-week period or substantially the whole period. In such a case the Chairperson(s) may, at his or her discretion, extend the period for comment in the case of such Member.

**(d) *Information provided to the Committee by Observers***<sup>6</sup>

32. Input or information from Observers or other stakeholders should be given appropriate consideration in the work of the Committee, especially where comments have been requested by the Committee.

33. Where comments have not been requested, information from Observers and other stakeholders will be reviewed and analyzed, with the assistance of the Secretariat, by the Chairperson(s) in consultation with the Bureau, to determine the relevance of the material in furthering the agenda and priorities of the Committee. Materials will only be circulated to Members where it is determined by the Chairperson(s), in consultation with the Bureau, to be of significant relevance and usefulness to the work of the Committee.

34. The Secretariat may nevertheless circulate to individual Members materials (other than materials intended for the Committee as a whole) that they understand are likely to be of particular interest to those Members.

35. Unless otherwise agreed by the Chairperson(s) in consultation with the Bureau, materials received from Observers and other stakeholders should only be circulated to Members by the Secretariat, the Chairperson(s) or the Coordinator(s) of a relevant Subcommittee.

**(e) *Restriction on reporting on work of the Committee***

36. There shall be no live reporting of a session.<sup>7</sup>

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<sup>6</sup> This section is not intended to apply to papers prepared by the Secretariat.

<sup>7</sup> This means, for example, live updating of social networks during the course of the sessions is not permitted.



37. Any report on the work of the Committee, Subcommittees and Ad Hoc Groups, including academic articles, should be done in a way that protects the identity of speakers or discussants.
38. Members act in their personal capacity and their views should not be taken to be expressed on behalf of the State that nominated them.
39. The registration form for each session will include a notice on the restrictions on reporting on the work of the Committee.

## **VI Organization of Work**

### ***(a) Provisional organization of work***

40. The provisional organization of work (i.e. timed agenda) will be drawn up, with the assistance of the Secretariat, by the Chairperson(s) in consultation with the Bureau and, if required, taking advice from the Subcommittee Coordinator(s) concerned.
41. The provisional organization of work will identify the documents that will be discussed for each agenda item.
42. The provisional organization of work will clearly identify closed consultations, and indicate whether or not Observer States are invited to the closed consultation. To the extent possible, closed consultations should be planned in advance and communicated to Observers. As a general rule, one closed consultation will be scheduled on the first day to facilitate planning for the session.
43. The provisional organization of work will be circulated to Members with the provisional agenda, no later than one month prior to the opening of the session.

### ***(b) Proposed modifications and changes***

44. Any proposed modifications to the provisional organization of work, should be proposed, in writing, by Members or the Secretariat, and circulated to all Members, at least one week prior to the opening of the session.
45. The provisional organization of work, with any proposed modifications agreed by the Members, will be approved by Members at the beginning of the session. At that point it ceases to be provisional.

46. The organization of work is to be respected, including following the order and basic timing. The Chairperson(s), in consultation with the Bureau, may propose changes during the course of the session with a view to improving the efficiency and effectiveness of the session. Members should be given as much advance notice as possible of such a proposal. If the proposal is objected to by one or more Members, the change will only be made if agreed by a majority of the Members present and voting.

**(c) Documents**

47. All documents referred to in the organization of work will be circulated to Members at least two weeks prior to the opening of a session and each document should include a summary and a clear outline of the action expected from the Committee.

48. A document circulated within two weeks before the opening of a session may only be presented for approval in exceptional circumstances with no Member objecting. Such document may, however, be presented for information or discussion unless a Member calls for a vote, and the majority present and voting oppose the document being presented to the session.

49. As a best practice, the Committee should not be invited to approve a document that is presented (or circulated under written procedure) for the first time. In this context, a document that was previously presented (or circulated), and has been revised, is not considered to be presented (or circulated) for the first time. If approval is sought, it should (as best practice) be circulated to Members at least one month prior to the opening of the session.

**VII Subcommittees<sup>8</sup>**

**(a) Purpose of Subcommittees**

50. Subcommittees assist the Committee in fulfilling its mandate by working both at and between plenary sessions to prepare and deter-

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<sup>8</sup> All references to a Subcommittee should be understood to include Ad Hoc Groups.

mine supporting documentation for the agenda items to be considered at the Committee's plenary sessions.

51. Subcommittees make recommendations to the Committee, but it is the Committee itself that takes final decisions and approves documents.

**(b) *Creation and Termination***

52. Any Member may propose work to be undertaken for the consideration of the Committee and may propose the creation of a Subcommittee.

53. If there is sufficient support (at least one third of Members present and voting) to approve the creation of a Subcommittee, a discussion should follow to determine the scope and any necessary timing of work to be undertaken by the Subcommittee, as manifested in a mandate. Where there is not sufficient support to approve the creation of a Subcommittee, an *Ad Hoc* Group may be created if at least three Members support the creation of such a Group, and express their interest in participating in its work. Where proposed work fails to secure the required support for the creation of a Subcommittee or *Ad Hoc* Group, a Member will be entitled to continue to promote the merits of that work to the Committee and to seek to secure sufficient support for it in subsequent sessions.

54. A Subcommittee will cease to exist upon the fulfilment of its mandate or, prior to the fulfilment of its mandate, by a decision of the Committee. The Committee may terminate a Subcommittee if there are less than three Members participating.

55. Subcommittees may be reconfigured during the course of their life to maximize their ability to meet their mandate, in the same manner in which they were originally formed.

**(c) *Election of Coordinator(s)***

56. Once a Subcommittee has been created, and the Mandate agreed, a Coordinator of the Subcommittee should be elected by the Committee. It is desirable that the Committee elects the Coordinator at the session at which the Subcommittee is created. Until a Coordinator is elected, the Secretariat will coordinate the Subcommittee work.

57. A Coordinator must be a Member. Where the Subcommittee has Co-coordinators, at least one of the Co-coordinators shall be a Member and, on an exceptional basis, another Co-coordinator may be a non-Member.

***(d) Composition of Subcommittees***

58. Subcommittees shall be composed of Members and may include Observers to the work of the Committee. Observers will be considered for participation in a Subcommittee to the extent that they have relevant experience and expertise in the particular subject matter.<sup>9</sup> The Committee may decide to limit participation in a Subcommittee to only Members or to Members and Observer States.

59. All Members, as of right, may become a participant of any Subcommittee.

60. A Member may join a Subcommittee at any time during the existence of the Subcommittee but, for joining after the Subcommittee has commenced its work, the Coordinator(s) must be informed in advance.

61. As a best practice, Members should limit their participation in Subcommittees in a way that ensures their active engagement (e.g.: up to four or five Subcommittees at any given point in time).

62. A Member may withdraw from a Subcommittee at any time, but should advise the Coordinator(s) and the Secretariat immediately of such decision.

63. The composition of Subcommittees should include a majority of Members and Observer States unless, on a recommendation from the Coordinator(s) of a particular Subcommittee, the Committee agrees to a different composition of the particular Subcommittee.

64. As a best practice, Subcommittees should be representative of a wide cross-section of stakeholders but should be small enough to allow work to progress (in the range of 10-20 people). Sufficient region-

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<sup>9</sup> In addition, Observers may include representatives from International Organizations. Those participating in a Subcommittee need not have participated as Observers in Committee Sessions.

al diversity, gender balance, and developing country representation should be ensured.

65. The Secretariat will circulate a list of the participants of Subcommittees to all Members. This list should be updated, and re-circulated, as changes are agreed to the composition of a Subcommittee.

**(e) Role of Coordinator(s)**

66. The Coordinator(s) will be responsible for coordinating and directing the work of the Subcommittee with a view to fulfilling the Subcommittee's mandate.

67. The Coordinator(s) will be responsible for determining the Observers who are participants in the Subcommittee in consultation with the Chairperson(s), Members who are participating in the Subcommittee and the Secretariat. The initial list of participants in a Subcommittee must be presented to the Committee for approval. Subsequent changes to the list of participants do not have to be approved by the Committee unless the proposed addition or removal of an Observer is opposed by a Member who is participating in the Subcommittee.

68. The Coordinator(s) will be responsible for informing the Secretariat of any changes to the participants of a Subcommittee as soon as possible.

69. The Coordinator(s) will be responsible for identifying significant issues, and particularly those that are contentious, that arise during Subcommittee discussions and for bringing those issues to the attention of the Committee for guidance and/or approval.

70. The agenda for a Subcommittee meeting will be prepared by the Coordinator(s) of the Subcommittee, with the assistance of the Secretariat, and after consultation with the participants of the Subcommittee, as necessary.<sup>10</sup>

71. Participation of *ad hoc* observers in a meeting will be approved in advance by the Coordinator(s), in consultation with the Secretariat, and Members participating in the Subcommittee. Participants should be advised of such decision in advance of the meeting.

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<sup>10</sup> Representatives of the government hosting the session should be consulted regarding practical arrangements.

72. The Coordinator(s) will ensure that the agenda and the documents are circulated to participants of the Subcommittee and *ad hoc* observers, if any, in advance of the meeting.

**(f) Operation of Subcommittees**

73. Where possible Subcommittees will advance work through the use of conference calls and e-mails or other electronic means to ensure the participation of as many participants of the Subcommittee as possible. It is recognized, however, that face-to-face meetings may also be necessary for the efficient operation of the Subcommittee.

74. Meetings and conference calls should be organized at times and locations so as to have the participation of the maximum number of Subcommittee participants and, in particular, participants from developing countries. Where possible, Subcommittees should also plan meetings on the margins of Committee sessions.

75. A comment from a Subcommittee participant, provided for discussion by the Subcommittee, should not be included in a Subcommittee document provided to the Committee and made public, except with the agreement of the participant who made the comment, and in the terms of such agreement.

**(g) Duties of Subcommittee participants**

76. Subcommittee participants are expected to actively participate in, and support, the work of the Subcommittee in fulfilling its mandate.

**VIII Role of Observers<sup>11</sup>**

77. Observers are invited to participate in the work of the Committee and its Subcommittees without the right to vote.

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<sup>11</sup> Observer States refer to delegates sent by a government to officially represent a particular State. “Other Observers” refer to those not officially representing the government of a particular State. These other Observers may include: academics and representatives from International Organizations, civil society or the business sector. When the term “Observers” is used it is intended to refer to Observer States and other Observers.

78. Observers are subject to the rule on reporting on the work of the Committee (see section V(e)).

## **IX Role of UN Secretariat**

79. In addition to the particular tasks otherwise set out in the Rules of Procedure and Practices and Working Methods, the role of the UN Secretariat is to support the work of the Committee and Subcommittees. For example, the Secretariat shall (i) receive and circulate documents (ii) publish and circulate the records of the sessions of the Committee (iii) have custody of the documents in archives (iv) be responsible for all arrangements that may be necessary for the sessions of the Committee and meetings of its Subcommittees.

