

Chicago, 15th of March 2024

Following the letter of the Resolution 78/230, adopted by the General Assembly on 22 December 2023, Promotion of inclusive and effective international cooperation in tax matters at the United Nations, we would like to make this brief comment.

The ambition to achieve cooperation with a universal approach and scope, which, at the same time, fully takes into account the different needs and capacities of countries, necessarily leads to having to desist from any haste in the recently opened process. The present moment is so unusual that we cannot risk missing the precious opportunity to redesign the structures that will guarantee a minimum coherence in the global tax framework with a common agenda on the horizon. Safeguarding this objective is fundamental.

In the search for the new global legal basis to expand international cooperation in tax matters "in substantive and procedural terms", a delicate balance must indeed be considered: "that international tax rules be coherent and uniform, while respecting the tax sovereignty of each Member State". It is important to sensibly open sufficient avenues for each of them to go as far as, how and when they can or want to. It requires finding reasonable answers to urgent common problems, agreeing on solid minimum bases and possibilities of progressing at different paces in case of need (enabling a kind of enhanced cooperation, where applicable).

Therefore, we believe that one of the first points to be addressed, as difficult as it may be to do so, should be to find a way to achieve an adequate integration of the existing international and multilateral cooperation mechanisms, not only in tax matters, but in all those areas in which the substantive aspect drags the fiscal aspect along with it¹.

This is in accordance with the mandate to "(b) Adopt a holistic sustainable development perspective that takes into account interactions with other relevant

¹ As noted at the second round-table of the AudIT-S International Seminar "Financing for Sustainable Development and International Tax Cooperation", held in Madrid at the Institute for Fiscal Studies on February 28, 2024. Available at the following link: https://zoom.us/rec/share/pskk0_hjd3-0-mUMZMVXVMjzYBxUsxowX6gyhcXXlj9D9XVv7eRCAj9-vJgvDUdW.yyy2zLWAZfo5K247?startTime=1709114354000 [last access: 15 March 2024].

economic, social and environmental policy areas". The way in which other terms of reference in related (framework or otherwise) conventions (on climate change or corruption, for example) address this issue should therefore be carefully reviewed. To this end, we believe that an analysis of their respective preparatory work could be useful². In any case, it seems important to us to advise against the simultaneous drafting of protocols in the current circumstances, given that by their nature in public international law they are called upon to play another more limited role³, and this could lead to confusion of levels, slowing down the necessary prior progress on a larger scale, with the consequent negative repercussions at a later date. This does not mean that "specific priority issues such as measures against illicit financial flows related to taxation and taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy" will be ignored at this stage. They can certainly be kept in mind, but we understand that they should not interfere with the "aseptic" debate in this first phase of establishing directive criteria. It is now a matter of forging fair and efficient channels for composing interests, which will ensure that subsequent discussions on particular topics also share such attributes.

The terms of reference, to ensure future operability, could perhaps include aspects such as agenda setting, discussions and decision making. It seems quite

² See, for example, *Oficina de las Naciones Unidas contra la droga y el delito: Travaux préparatoires de las negociaciones para la elaboración de la Convención de las Naciones Unidas contra la Corrupción*, Vienna, 2012. Report of the Meeting of the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption, 8 August 2001, A/AC.260/2.

³ "c) Un protocolo basado en un tratado marco es un instrumento que contempla obligaciones sustantivas concretas para alcanzar los objetivos generales de una convención marco o convención general anterior. Estos protocolos permiten simplificar y agilizar el proceso de elaboración de tratados y se han empleado en particular en el ámbito del derecho ambiental internacional. Puede señalarse como ejemplo el [Protocolo de Montreal](#) de 1987 relativo a las sustancias que agotan la capa de ozono, cuya aprobación se basó en los artículos 2 y 8 del [Convenio de Viena](#) de 1985 para la Protección de la Capa de Ozono" [A protocol based on a framework convention is an instrument that provides for specific substantive obligations to achieve the general objectives of an earlier framework or comprehensive convention. Such protocols simplify and streamline the treaty-making process and have been used in particular in the field of international environmental law. An example is the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, the adoption of which was based on Articles 2 and 8 of the 1985 Vienna Convention for the Protection of the Ozone Layer]. "Definiciones de términos para la base de datos sobre declaraciones y convenciones". Fuente: *Treaty Reference Guide* (<http://legal.un.org/ola/>) Disponible en el enlace <https://www.un.org/spanish/documents/instruments/terminology.html> [last access: 15 March 2024].

efficient that the organization for the purpose of identifying priority challenges requiring collective action, as well as the scope and nature of responses, should continue to be done through country groupings and in a gender-balanced manner, as the bureau of the intergovernmental committee itself has been configured. Maybe including, where possible, a potential rotation, ensuring transparency and having some form of advisory group of external experts depending on the subject matter to be addressed. In the framework of regional groupings, it might make sense to replicate a similar structure, unless there are justified exceptions. It would be appropriate to have some formula that would allow the participation of representatives of other geographical groupings in the work of any other region, to provide complementary views and ultimately facilitate better understanding between the different groupings.

We wish to insist on the importance of "clear and coherent multilateral rules to help countries and enterprises" for all of them, taking advantage of the current situation to foster a truly international ecosystem favorable to the growth of all social and solidarity economy enterprises that encounter numerous difficulties in undertaking transnational operations and whose potential is hindered when it comes to boosting contributions in terms of sustainability, which are often critical in developing countries because they do not have sufficient welfare state coverage. Moreover, in other developed countries, they also come to meet social needs in cases of inequality.

The "important role of taxation in closing the financing gap for sustainable development, which requires measures at all levels -international, regional and national- and on many fronts" must address not only collection and the negative effects of the interaction of tax systems, focused on the mobilization of domestic resources and the fight against fraud and tax evasion, but also the positive effects that can be generated through coordinated actions of fiscal stimulus to small agents, in the concept we have called "bottom-up"⁴. It is time to not only respond to

⁴ María Amparo Grau Ruiz & Giulia Boletto, "A New Bottom-Up Perspective in International Tax Cooperation for Sustainable Development", *Revue Européenne et Internationale de Droit Fiscal*, No.4, 2023, 473. https://www.stradalex.eu/en/se_rev/toc/riedf_2023_4-en/doc/riedf2023_4p473

"pathologies" in a reactive way, but to think about "physiology" in a proactive way, considering the role that this new "being" is called to play.

Ideally, the cooperation we undertake should lead us to achieve a fair, sustainable and modern international tax system at the global level and adequate to the needs of the 21st century, which will probably require improving the equity, transparency, efficiency and effectiveness of national tax systems. It is worth stressing that this dual demand for changes at both levels has justice and equity as its primary purpose, taking into account the evolution of technology and business models, without confusing the means with the goals.

María Amparo Grau Ruiz
Full Professor of Financial and Tax Law
Universidad Complutense de Madrid
Visiting Professor Transnational Taxation
Northwestern University