

POSSIBLE UN ROLES IN TAXATION AND DEVELOPMENT

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on International Cooperation in Tax Matters

Ladies and Gentlemen,

I am honoured to join you in this meeting today. Especially that this year we are celebrating the 40th anniversary of the Economic and Social Council resolution, adopted on 4 August 1967, that led to the creation of the Ad Hoc Group of Experts on Double Taxation Conventions between Developed and Developing Countries. The Ad Hoc Group was renamed, by resolution of 28 April 1980, the Ad Hoc Group of Experts on International Cooperation in Tax Matters.

During its eleventh meeting, held in Geneva 2003, it has been decided, following the recommendations of the Monterrey Conference, that the statute of the Ad Hoc Group should be shifted from an expert body to an intergovernmental committee within the United Nations, with improved financial means, in order to meet its expanded missions.

By its resolution 2004/69 of 11 November 2004, a new Committee of experts on international cooperation in tax matters replaced the Ad Hoc Group with the following extended mandate:

- (i) keep under review and update as necessary the United Nations Model Double Taxation Convention between Developed and Developing Countries and the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries;

- (ii) provide a framework for dialogue with a view to enhancing and promoting international tax cooperation among national tax authorities;
- (iii) consider how new and emerging issues could affect international cooperation in tax matters and develop assessments, commentaries and appropriate recommendations;
- (iv) make recommendations on capacity-building and the provision of technical assistance to developing countries and countries with economies in transition; and
- (v) give special attention to developing countries and countries with economies in transition in dealing with all the above issues.

As you may already know, the aim of this meeting is to draw up the lessons of the last 40 years and especially, try to find out, in the spirit of the Monterrey Consensus and its recommendations, the ways that may help the Committee to enhance international cooperation in tax matters.

My presentation will first give a brief overview of what has been done by the Committee and then try to come up with some suggestions on what should be done in the future.

It may be recalled that during the 1990s, there was an urgent need to update the UN Model Convention to take account of the development in the globalization of trade and investment and in the international tax policies of both developed and developing countries.

Therefore, the former Group of Experts prepared the new version of the UN Model Convention using at that time the OECD Model as the main reference text, without presumption that the decisions of the Group were in no way required to be governed by the OECD.

However, it is useful to mention that the UN Model Convention differs from the OECD Model in several aspects. These differences are limited in number but very significant. In general, it can be said that the UN Model grants more taxation right to the source State or capital importing country than does the OECD Model.

The UN Model differs especially in that it:

- expands the scope of the permanent establishment's definition;
- incorporates the force of attraction principle as against the attribution principle for the taxation of business profits;
- empowers the source country to share part of the taxation of income from international shipping traffic (Alternative B of Article 8);
- denies the principle of secondary adjustment of profits in case of fraudulent associated enterprises;
- entitles the source country to levy withholding tax on royalties and know-how fees;
- maintains the Article related to Independent Personal Services in which it gives an extended tax right to source country for the taxation of remuneration of personal services (183 days test);
- entitles the source State to charge tax on other income arising from that State.

The aim behind such differences is to safeguard the developing countries' rights taxation of income and capital. The added value of the UN Model Convention is therefore to offer source countries a conventional framework that ensures their right to share tax revenues with residence countries.

The outcome of the UN Conference on Financing for Development stressed the importance of strengthening the revenue-raising capacity of developing countries, and the crucial role of international organizations in supporting these efforts.

Developing countries must be able to raise the revenues required to finance the services demanded by their citizens and the infrastructure (physical and social) that will enable them to move out of poverty. Taxation can, then, play the key role in this revenue mobilization in that it provides governments with the necessary finance to effectively implement development policies.

It is of course important to recognize that tax remains national in nature and that, even within a new framework for international dialogue, all countries will insist on maintaining their fiscal sovereignty.

However, achieving this goal requires well-designed tax policies that can be translated into clear and administratively feasible legislation. Perhaps the greatest challenge facing developing countries is to improve the effectiveness of their tax administrations.

There is no doubt that strong domestic institutional capacity is a precondition for economic and social development and for effective public policy making.

During its last two sessions, the Committee, due to lack of sufficient funding and of a real input from developing countries in the way programs are constructed and international tax issues debated, could not go beyond focusing on the UN Model update, which constitutes only one mission among others.

The Committee's effort in capacity building initiative may include a program of training activities and regional training events in the following areas. As you may know the establishment of global rules and policies to govern taxation policies is an emerging topical issue.

Capital flight, lost tax revenues, tax competition, transfer pricing and the development of various forms of financial instruments are some of the issues of relevance to developing countries that the Committee may focus on in an intensive and

practical training sessions in order to enable tax policy making authorities to learn about other countries experiences and thus provide capacity building assistance in order to develop and add to the level of domestic know-how.

The Committee was requested during the second session to continue to organize training workshops for developing countries and countries with economies in transition as part of the work required to carry out its mandate, which includes making recommendations on capacity-building and providing technical assistance.

The delegates from Vietnam and Pakistan proposed to host training workshops to be organized by the UN and these respective countries.

Unfortunately, the Committee was initially created with disabling limited means. According to the terms of the 2004 ECOSOC resolution, the Committee will conduct its work “within the existing resources” and will be serviced “by a small technical staff”. Even the member countries did not contribute to the trust fund set-up for enhancing the capacity for tax administration in developing countries.

For all these reasons, the UN Committee could not achieve its whole mandate. To catch up with this delay, the following recommendations could be addressed:

- (a) The juridical statute should be reconsidered to give it more powers and permanency in the international tax scene; this could be achieved through a permanent intergovernmental structure within the UN, composed of permanent technical experts working on behalf of the UN Committee, and especially representing it in all the international tax events;
- (b) Following this, the UN Model Convention should be more than a simple guide; rather it should be endorsed by the UN as a UN official document bearing all the positions, observations and reservations of the UN members;

- (c) The funding issue is a crucial one which should be taken seriously into consideration by all member countries; to express their involvement in achieving the UN Committee's missions, member countries should find ways to raise the necessary funds, either through direct contributions to the trust fund or by financing some of the Committee's activities, such as training workshops or the subcommittees works.

Ladies and Gentlemen,

To conclude, it is very important for me to emphasize that my motivation is to improve the role of the UN Committee in:

- (i) providing an effective institutional framework for international tax dialogue and cooperation among both developed and developing countries;
- (ii) transferring knowledge and experience that may help build local capacity of the developing countries; and
- (iii) maintaining its role as a defender of equity and equilibrium in the taxation revenues sharing; so as to meet the Monterrey Consensus regarding the mobilization of domestic resources for development.

Thank you for your attention.