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Report on the Panel Discussion on International Cooperation in Tax Matters

held at United Nations Headquarters, New York, on 22 October 2003
Chaired by H.E. Mr. Julian R. Hunte, President of the General Assembly
Co-Chaired by Mr. José Antonio Ocampo, Under-Secretary-General, DESA

The topics addressed by the panel were as follows:

- Globalization, investment, trade and tax competition.
- The tax treatment of cross border interest income, capital flight, money laundering and tax evasion.
- Improved intergovernmental institutional framework for international cooperation in tax matters with view to enhancing domestic and external resource mobilization for development.

The panel, in addition to the Chairman and Co-chairman, consisted of the following: Ms. Lynette Eastmond, Minister for Commerce, Consumer Affairs and Business Development of Barbados; Mr. Antonio Hugo Figueroa, Chairman of the Ad Hoc Group of Experts on International Cooperation in Tax Matters; Professor Reuven S. Avi-Yonah, Professor of Law at the University of Michigan; Mr. David E. Spencer, attorney; and Professor Michael McIntyre, Wayne State University. Other experts who took part in the panel discussion included Mr. Sheldon Cohen, senior counsel, Morgan Lewis and Bockius, LLP; Mr. Marcos Caramuru de Paiva, Ministry of Finance, Brazil; Professor David Rosenbloom, Director of the International Tax Program, New York University; and Mr. Abdel Hamid Bouab, Secretary of the Ad Hoc Group of Experts on International Cooperation in Tax Matters.

Summary of the presentations and discussions

Before panel members began their presentations there were several opening remarks.

1. H. E. Mr. Julian R. Hunte, President of the General Assembly, briefly outlined the recent history of the United Nations efforts in cooperation in international tax matters.

The President pointed out the importance of the Monterey Consensus and noted that taxation is a major instrument in fulfilling internationally agreed development goals and mobilizing revenues. He stressed that there was a need to develop universal standards, principles and norms in respect of internal and external financial resource mobilization through tax policy, tax administration and international taxation and tax cooperation. A key point made was the need for an institutional framework through which developed and developing countries can cooperate and participate equally.

2. Under-Secretary-General José Antonio Ocampo observed that as a natural outcome of the Monterrey Consensus, the Ad Hoc Group of Experts on International Cooperation in Tax Matters should be transformed into an intergovernmental commission or committee, as recommended in the report of the Secretary-General. In doing so, international issues such as tax competition, tax administration and capital flight could be addressed within this body at a deeper level.

3. Mr. Abdel Hamid Bouab reviewed some of the underpinnings of international taxation (the Source Principle and the Residence Principle) and stated that the activity of the Ad hoc Group of Experts to date has been center around the drafting and publishing of the *UN Model Double Taxation Convention between Developed* and *Developing Countries and the Manual for the Negotiation of Bilateral Tax Treaties between developed and developing countries.* He observed that tax systems have evolved in a way where governments wish to exercise their rights to tax within their territory as well as in a country that is not the investor's country or residence. As the USG had said, all this pointed to the need for setting up an appropriate frameworks for international cooperation in tax matters, such as has been done by the League of Nations, the UN and the OECD.

4. Mr. Figuerora's opening remarks stressed that taxes levied by all countries create conflict and stress. The business activity of multinational corporations creates a clash of two or more tax regimes hence the need for international tax cooperation. He further remarked that double taxation inflicts damage on capital, trade, etc. and needs to be eliminated. Again recounting the Monterrey Consensus, Mr. Figuerora called for a stronger institutional framework for both developed developing countries and transitional economy countries, especially in light of the challenges presented by e-commerce and new financial instruments. The proper forum for action can only be the United Nations. At the United Nations candid discussion on globalization of taxation of trade, investments and tax competition can be dealt with.

Globalization, investments, trade and tax competition

5. Professor Reuven S. Avi-Yonah identified several problems which need attention. In the area of trade, Prof. Avi-Yonah said that the World Trade Organization (WTO) has had great success. Trade agreements achieve success because they are multilateral in nature. The drawback however is that they are limited to trade in goods.

6. Tax treaties are bilateral and as such do not do a good job of addressing issues such as tax competition. Tax competition erodes the tax base at its source. As a result both residence and source based taxation has been eroding. A new framework is therefore needed. Prof. Avi-Yonah suggested that it would be necessary to reach a multilateral agreement that will address services and investment issues, as well as goods.

7. Prof. Avi-Yonah remarked WTO is not an appropriate forum for resolving international tax matters because WTO focuses on trade, its dispute settlement mechanism is not efficient ways of solving problems, and countries are not willing to give up sovereignty.

8. Since World War II the United Nations has been the forum for the resolution of disputes and in the area of international taxation should play a leading role.

9. Mr. Sheldon Cohen remarked that Prof. Avi-Yonah had "hit the nail on the head". "We (the international community) made the problem, we made the [tax laws] not work". In order to have tax cooperation each nation needs to "give up a little bit". Mr. Cohen noted that world wide income is a product of trade, yet we have no world wide rules. "We need to do better" and the United Nations forum is the appropriate framework.

10. Mr. de Paiva remarked that the tax competition has caused distortions in the world economy. He also said that taxation needs to be seen in a broad prospective and cannot be discussed only in the context of trade issues. He pointed out that the United Nations as a forum to discuss important tax issues could help to correct the distortions of tax competition.

11. Prof. Avi-Yonah stated further that the WTO has no jurisdiction over services and their enforcement ability is limited. He stated that the United Nations is more suited to regulate international tax cooperation.

The tax treatment of cross border interest income, capital flight, money laundering and tax evasion

12. Mr. David Spencer opened his discussion by pointing out the damage to tax revenue caused by capital flight. According to his data the total amount of capital flight is in the trillions of US dollars. The consequence of capital flight is damaging the economies of developing countries and transitional economy countries.

13. Some countries, including developing countries and transitional economy countries, have used exchange controls to stop capital flight, but they have not proven effective. Recently more emphasis has been placed on tax cooperation and the exchange of tax information. These developments go hand in hand with improving tax

administration in developing countries and transitional economy countries in order to mobilize tax resources.

14. Mr. Spencer noted two important recent developments. The United Nations Report of the High-Level Panel on Financing for Development (the "Zedillo Report", A/55/1000) which recommended the sharing of tax information between countries in order to combat capital flight and the setting up of an International Tax Organization.

15. The second development was the Monterrey Consensus which encouraged strengthening tax cooperation through enhanced dialogue among national tax authorities and greater coordination of the work of the concerned multilateral bodies and relevant regional international tax organizations and countries with economies in transition.

16. Mr. Spencer added that capital flight results from bank secrecy and tax free treatment in major financial centers. If one financial center were to reject capital flight, the capital would merely go to another financial center. He pointed out the EU Directive on the Taxation of Savings established the important principle that cross border interest payments within the EU should be subject to taxation, either by exchange of tax information or withholding tax, but the EU Directive does not apply to capital flight from Third Countries into the EU and EU financial centers. Mr. Spencer also mentioned the OECD Directive against tax havens and harmful preferential tax regimes does not constitute a level playing field as the Directive does not apply to capital flight from Third Countries.

17. The message of the Zedillo Report and the Monterrey Consensus is clear: the exchange of tax information to help curb capital flight, and enhance international tax cooperation is a priority for domestic and external financial resource mobilization.

18. Ms. Lynette Eastmond had significant comments regarding the issue of capital flight and tax havens. She pointed out that some tax jurisdictions are emerging financial center. She remarked that they provide financial services and they provide tourist trade. From her point of view, there needs to be an incentive to these tax jurisdictions not to engage in such financial activity.

19. Ms. Eastmond pointed that for some tax jurisdictions the future is in services. She observed that there seemed to be an imbalance between the global treatment of such services, particularly by the OECD.

Improved intergovernmental institutional framework for international cooperation in tax matters with view to enhancing domestic and external resource mobilization for development.

20. Prof. McIntyre presented his remarks on improved intergovernmental institutional framework for international cooperation in tax matters with a view to enhancing domestic and external resource mobilization for development. It was clear from his remarks that

there is an urgent need to implement the Monterrey consensus. In doing so, there is a need to improve the ability of developing nations and transitional economy countries to mobilize their domestic resources, and moreover to improve the institutional framework for international cooperation in tax matters.

21. Prof. McIntyre made the following proposals:

(a) First, he recommended the creation of a United Nations fiscal commission or committee on international cooperation in tax matters. He pointed out that the United Nations is the appropriate forum for such role. It has long traditions in sharing information and resolving disputes.

(b) Second, he recommended that this fiscal commission or committee have a small capable staff to administer, implement and develop capacity building for developing countries and transitional economy countries.

22. Prof. McIntyre pointed out that there are two important elements of international taxation as previously discussed by the panel; that is taxation at its source and taxation at a residence. He pointed out that both of these are being eroded by today's commercial activities especially in the area of electronic commerce and the development of highly sophisticated financial instruments.. Prof. McIntyre recommended a fair and uniform way for dealing with these new issues while at the same time protecting national sovereignty.

23. Prof. McIntyre noted that while the Ad Hoc Group of Experts on International Cooperation in Tax Matters has been highly successful in its work, it will gain in efficiency and effectiveness when converted into a permanent body of the United Nations as a fiscal commission or committee. It will also constitute the appropriate vehicle for international cooperation in tax matters between developed, developing and transitional economy countries. He reiterated that the fiscal commission or committee with a competent staff would assist developing and transitional economy countries with respect to difficult tax issues. He recommended that the proposed fiscal commission or committee act as a clearing house to share tax information and tax experience.

24. There were comments regarding the scope of the fiscal commission or committee's charge, whether it should be broad or narrow. Nevertheless, there was a consensus among the experts that a fiscal commission or committee was long overdue and was necessary in order to deal with the ever growing tax issues now confronting governments.

25. Prof. David Rosenbloom remarked that worldwide there are very few professionals with the necessary expertise in international taxation. He concluded that the United Nations is in a unique position to be the forum for international tax cooperation since it is the only universal and relevant forum for international tax cooperation.

26. Mr. de Paiva emphasized that money laundering combat has involved a direct participation of the private sector. He said that sharing of information among countries is essential to the combat of financial crimes. His comments echoed those of other participants that a well developed mechanism of exchange of information is needed to combat tax evasion and other abuses.

Conclusions of the panelists and experts

27. There is an urgent need to develop an institutional tax framework in which developed, developing countries, and transitional economy countries can participate. Under this framework the capability of developing countries and transitional economy countries will be enhanced for domestic and external resource mobilization. By focusing on taxation from the point of view of development, developing countries and transitional economy countries can better achieve sustainable development.

28. New approaches are needed to combat capital flight, tax evasion, tax avoidance, tax competition and erosion of the tax base. A comprehensive, holistic approach at a multilateral level will be better suited to deal with the financial problems which plague developing countries and transitional economy countries.

29. The most appropriate forum for cooperation in international tax matters and exchange of tax information will be achieved through an United Nations intergovernmental commission or committee. As recommended by the Secretary-General in his report to the General Assembly on the implementation of and follow-up to the Monterrey Conference, the Ad Hoc Group of Experts on International Cooperation in Tax Matters should be strengthened through its conversion into such a body. It should be provided with appropriate secretariat support structures.

30. A new UN Committee or Commission on International Cooperation on Tax Matters, assisted by a competent secretariat, should help in identifying fiscal trends and standards, provide a forum for the exchange of ideas and experience, develop norms for tax policy, tax administration and international tax cooperation, direct provision of policy advice and technical cooperation to member states, compile statistics and monitor macroeconomic policies affecting tax policy and international taxation. It could also contribute to the restraining of tax competition to attract foreign direct investment, develop a mechanism for multilateral sharing of tax information with a view to curbing tax avoidance, tax evasion and capital flight, as well as engaging in tax arbitration procedures.