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Promotion of Inclusive and Effective Tax Cooperation at the United Nations

The WU GTPC welcomes the initiative of the Secretary General in spearheading the preparation of the report that will be presented to Member States. We commend the overall recognition of the need to strengthen the inclusiveness and effectiveness of international tax cooperation by evaluating the need for a United Nations intergovernmental process. The WU GTPC holds a special interest in and support for the prioritization of the needs of developing countries navigating the international tax and transparency landscape. In the last eight years, our team has worked closely with officials from tax authorities, financial intelligence units (FIUs) and other law enforcement agencies (LEAs) as well as policymakers, business, CSOs and academia from a variety of Sub Saharan African, Asian, and Latin American countries. This has provided us with an opportunity to understand the practical implementation challenges being faced across a number of developing contexts with regards to international tax and broader financial transparency standards.

Below, we provide our input and comments based on ongoing research and engagement with several developing, emerging, and developed countries facilitated by our projects in diverse areas including tax and good governance; cooperative compliance; international tax competition and cooperation; the interface between taxation, investment, and trade; and the role of new technologies in supporting tax policymakers and tax administration. As an academic institution that has continued to provide input, share our research, and consult with members of the Tax Committee, we hope our comments will provide insights into the emerging issues affecting countries that require more guidance and technical support. In this regard, alongside our inputs contained in this note, we also enclose a number of publications for your reference. Should you require more information regarding our project work so far or our engagement with countries, please do not hesitate to contact us.

International standards implementation – practical challenges for developing countries' authorities.

Throughout the development of the international tax and transparency standards, a persistent concern has been the exclusion of developing nations from the process at least up until the full establishment of the OECD Inclusive Framework on BEPS (Inclusive Framework). The outcome of this exclusionary process has been the design of tools and policies that primarily respond to and resolve the needs and challenges of developed countries and yet, the pressure to comply and implement has had an impact on all countries. Where, in some contexts, the tax system is still in the formative stages and governments are addressing the foundational challenges such as informality, low taxpayer registration, overall low tax compliance, or a

narrow tax base; the pressure to immediately introduce advanced standards may not always be a priority for the governments of these countries. This is especially important where the relevant capacity, systems, or skills still need to be developed. It is often in stark contrast to OECD country contexts which have decades of experience in dealing with complex international issues and where the resources to engage in the debate exist. One immediate example is the framework for exchange of information (EOI), particularly automatic exchange of information (AEOI).

Based on the most recent publication of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum), *Tax Transparency in Africa 2022*, although intensive technical support has been provided to countries, progress towards full implementation across the continent remains slow. As it stands, only 33 jurisdictions are members of the Africa Initiative (out of 54 overall nations). Whilst continuing to build political buy-in, nine countries are committed to AEOI and out of these four have engaged in reciprocal exchange.¹ Countries are also still developing EOI infrastructure although noted progress has been made in the use of requests for information to collect additional tax revenue.² The progress report recognizes that important challenges remain including: uneven use of tax transparency and EOI across Africa; and some countries are at an advanced stage of standards implementation whilst others are still putting in place the basic framework for tax transparency, especially by non-members of the Global Forum.³

To enjoy the full benefits of the tax transparency framework, it needs to be fully implemented with a capable and fully capacitated tax authority that can make use of the data provided. There are many obstacles to this objective that need to be adequately understood and addressed. The above should not be an indication that the current EOI standards are not appropriate or should not be applied to developing countries. Instead, there is a need to reflect on the methodology used to achieve effectiveness for these countries with the objective of establishing how to meet the contextual needs within a realistic timeline.

Through our engagement with countries, we have identified that a majority of the standards, tools and systems introduced at the global level often require a graduated approach strategy for practical implementation at the national level. A graduated approach entails assessing the contextual needs, planning, and trialing different forms of support as well as learning from what works and revising what does not. This approach recognizes that although tools or standards exist, they cannot be adopted whole-meal within a common timeline by all countries which differ in their cultural, political and economic environment. Instead, a phased implementation is crucial to ensuring that legal frameworks, policymakers and implementing authorities are able to adjust to and benefit from reform. In addition, there must be some evaluation as to whether countries that have not fully implemented or operationalized transparency frameworks can benefit from the functional systems of information sharing on an

¹ Global Forum, *Tax Transparency in Africa 2022: Africa Initiative Progress Report*, AU, ATAF & OECD, 2022. Available online at:

<https://www.oecd.org/tax/transparency/documents/tax-transparency-in-africa-2022.pdf>

² Ibid

³ Ibid, p.13

interim basis. This is especially important in combatting IFFs since the need to collect evidence and investigate remains an overarching necessity especially where adequate financing to improve or build capacity is to be identified and justified before policymakers.

The needs based, graduated approach should identify the minimum features that a country should have in place to be able to, at least, engage with other countries on a meaningful basis. Without this, the value of the tax transparency framework will not be recognized by politicians and the countries that have yet to join the process. This logic should be applied to all the tools, rules, systems, and frameworks that have been developed to resolve global tax and IFF issues. Overall, in developing the report to Member States, the Secretary General should engage in identifying what effectiveness means in standards implementation amongst developing countries and consider how to build a methodology that is responsive (rather than penalizing) to the varying capabilities and needs of countries.

In summary, the end goals are the same, it is the path towards them that may be different. The UN should play a role in providing the different pathways.

Illicit financial flows

The overall discourse regarding IFFs has focused, largely, on measurement and the development of standards to reform weak legal frameworks. As a result, there remains a great need for a single global effort that engages with mapping the tools required by law enforcement agencies (in all forms); their effectiveness in achieving the objectives of detection, investigation, prosecution, and recovery of assets; and the main barriers to their successful implementation and use. This would entail involvement not with the political or regulatory level alone, but with the implementors and their capacity, skills and needs. Overall, such an effort would push countries to evaluate the effectiveness of standards rather than whether or not they have been adopted. The FATF recognizes this which is why they established the regional groupings.

Beneficial ownership (BO) transparency

Although the international standards, FATF Recommendations 24 and 25, on beneficial ownership transparency have recently been subjected to reform, challenges in the implementation of the old standards persist. For instance, the widely accepted definition has not been included in every aspect of the national legal frameworks we have interacted with. In one country, the tax regulations did not hold the same definition of a beneficial owner as the anti-money laundering rules. Although there is global alignment between the Global Forum and FATF BO standards, the national frameworks now need to be addressed. There is also a need to evaluate how the updated standards will impact on tax administrations as a potential source of BO information.

We have had the opportunity to collect case studies from officials working in over 25 African countries regarding the challenges, lessons learned, and solutions developed in the implementation of BO. Later this year we will be publishing a guidance manual containing best practices, we enclose a short article providing an overview of our findings, titled *Understanding the Implementation of Beneficial Ownership Regulations*.

Inter-agency cooperation

Broadly, inter-agency cooperation is a fundamental feature of combatting IFFs. We not only recognize its importance in ensuring that the data access, mandate, capacity, skills, tools, and systems of each law enforcement agency can be effectively utilized to ensure that a potential crime is detected; it is also important in supporting a robust framework for the verification of BO data. Together with the World Bank Stolen Asset Recovery Initiative, we have prepared a guidance manual on best practices concerning inter-agency cooperation, titled, [*Taxing Crime: A Whole of Government Approach to Fighting Corruption, Money Laundering and Tax Crimes*](#).⁴

The future of tax competition

Tax competition has been a pervasive global issue for the last five decades and, in order to adequately address and regulate it, the Secretary General must understand the historic aspects that have influenced the current situation. We enclose our publication, *Tax Competition: Understanding History's Influence on the New Normal*, which provides an overview of the developments in the last four decades and the expectations for the future of tax competition. In addition, the way in which the use of tax incentives has impacted other aspects of international economic law (such as trade and investment) should be critically evaluated, in this regard we enclose a draft research paper titled *The Future of Investment Incentive Design Under a Reformed International Tax System – In Search of Coherence in the Interface between International Trade, Investment and Taxation*.

Pillar Two

The development of the Global Minimum Tax proposal has taken place within a very short time period with little room for developing countries to understand and identify the aspects of their tax systems that will require reform. This means that there is a gap for technical support in this area, and a need to build political will for the reform of tax incentives generally, although the OECD, IMF, World Bank, UN, and various regional bodies such as ATAF and CIAT have been engaging with countries. The UN has a unique opportunity to provide this support to developing countries. We enclose our most recent publication identifying the implications of Pillar Two titled, *The Treatment of Tax Incentives under Pillar Two*.

Taxation, investment, and trade

The regulation of subsidies in the multilateral trading systems impacts the design of tax incentives by countries. A series of disputes have arisen at the World Trade Organization concerning whether or not certain tax incentives constitute prohibited subsidies. Recently, the OECD, WTO, World Bank, and IMF have recognized that: the determination of whether a subsidy is good or bad is highly political; countervailing measures are often not sufficient in deterring the use of harmful subsidies; and international cooperation to improve subsidy

⁴ Available online at: <https://openknowledge.worldbank.org/handle/10986/37608> . See also: Professor Jeffrey Owens, Joy W. Ndubai & Siddhesh Rao, *Chapter 10 - Exchange and Collaboration with Tax Administrations* in Bernard Myers & Rajni Bajpai, [*Enhancing Government Effectiveness and Transparency: The Fight Against Corruption*](#), World Bank Group (September 2020).

disciplines and business certainty is now necessary.⁵ The UN needs to be represented in this emerging discussion and is dependent upon the will of its sub-group on this topic.

The frequency of tax-related disputes in investor-state arbitration has become a major challenge, particularly for developing countries. UNCTAD, in consultation with WU GTPC, has identified over 165 tax-related cases – we enclose the note titled *Facts on Investor-State Arbitration in 2021: with a Special Focus on Tax-Related ISDS Cases*. These have had financial implications for countries and, in some instances, resulted in governments opting to eliminate their bilateral investment treaties in order to prevent future investor-state dispute settlement. In collaboration with UNCTAD, the WU GTPC has developed a guide on the implications of international investment agreements and the measures that policymakers can take to limit their impact on tax measures.⁶

Tax certainty - Cooperative compliance and dispute resolution

In many emerging and developing countries the relationship between tax administrations and multinational enterprises (MNEs) is characterized by a lack of openness and trust, which hinders the development of inclusive sustainable investment and growth policies. Our work on Cooperative Compliance project explores the legal, administrative, and political constraints in getting more countries to adopt a relationship between tax administrations and MNEs, which is based on trust, openness, and constructive dialogue. It examines why this is the case and how some countries have managed to overcome these constraints and what can be learned from their experience. Particular attention is being paid to developing countries and how they could benefit from a Cooperative Compliance approach, including how to deal with BEPS-related issues.

In 2022 our multi-stakeholder group issued a Handbook⁷ which can guide countries and MNEs that wished to implement such programs. We also enclose our most recent publication on the issue titled, *Covid-19 and the Future of Taxation – What Role for Cooperative Compliance*. The project work is now focused on three main issues: developing a global assurance standard for the Tax Control Framework; exploring the feasibility of multilateral cooperative compliance programs and developing better measures of the cost and benefits of this approach. The WU GTPC is currently working with 15 emerging and developing economies to implement this approach. Up to now this is an area that the UN has overlooked. This is an

⁵ IMF, OECD, World Bank and WTO, *Subsidies, Trade and International Cooperation*, IMF, OECD, World Bank and WTO, 2022. Available online at:

<https://thedocs.worldbank.org/en/doc/0534eca53121c137d3766a02320d0310-0430012022/original/Subsidies-Trade-and-International-Cooperation-April-19-ci.pdf>

⁶ UNCTAD, *International Investment Agreements and their Implications for Tax Measures: What Tax Policymakers Need to Know*, UNCTAD, 2021. Available online at: https://unctad.org/system/files/official-document/diaepcbinf2021d3_en.pdf

⁷ Jeffrey Owens and Jonathan Leigh Pemberton (eds.), *Cooperative Compliance – A Multi-stakeholder and Sustainable Approach to Taxation*, Wolters Kluwer, 2021. Available online at: <https://rus.wolterskluwer.com/store/product/cooperative-compliance-a-multi-stakeholder-and-sustainable-approach-to-taxation/>

opportunity to expand the mandate into this area of work with the main objective of establishing trust and transparency between tax authorities and taxpayers.

One essential aspect of tax certainty that should be highlighted and more strongly addressed with countries is taxpayer rights, particularly the right to privacy and overall data protection. In particular, given the growing use of technology and the expansion of exchange of information programs the guarantee of taxpayer rights needs to be acknowledged and a minimum standard established between countries. There is a need for mechanisms of legal protection in both countries engaging in information exchange, and the measures undertaken by tax administrations should be proportional. For further discussion on this issue we enclose a publication titled, *The Rule of Law and the Effective Protection of Taxpayers' Rights in Developing Countries*.

In addition, in the context of providing greater tax certainty for both tax administrations and taxpayers, the Secretary General needs to revisit the work, carried out with support from WU GTPC, on dispute avoidance and resolution⁸ and extend that debate to cross border VAT/GST disputes. On the latter we enclose our most recent publication titled, *Cross-border VAT/GST Disputes Need Stronger Dispute Resolution*.

Exploring the Transformational Potential of New Technologies

Artificial Intelligence, Machine Learning, Data Warehousing and Process Mining, Block chain and other emerging technologies have the capacity to transform our tax systems. Emerging and developing countries are well placed to exploit these technologies since they have minimal legacy issues compared to larger developed countries and a rapidly growing digital savvy population. In 2017, the WU GTPC established the Digital Economy Taxation Network⁹ which brings together tax policymakers and administrators, business, international and regional organizations, and academics from over 50 developing and developed countries. We enclose our most recent publication on the growing use of technology titled, *Developments in the Use of Technologies in African Tax Administrations*.

The existing UN Tax Sub-Committee on digital tax administrations has been able to draw from this work, but a new push is now needed to put digital transformation at the centre of any expanded UN Tax Program. The UN is uniquely placed to provide for South - South learning where countries as diverse as India and Brazil can share the successes they have in this area. Our December 2022 DET conference¹⁰ demonstrated that news technologies can change the way that tax administrations interact with taxpayers and open up new tax policy options to deal with informality, growing inequalities in the distribution of income and wealth, the restructuring of labor markets, detecting corruption and other financial crimes, and opening up new tax bases.

⁸ UN Handbook on Dispute Avoidance and Resolution: <https://desapublications.un.org/publications/united-nations-handbook-dispute-avoidance-and-resolution>

⁹https://www.wu.ac.at/fileadmin/wu/d/i/taxlaw/institute/WU_Global_Tax_Policy_Center/Tax_Technology/DET_Brochure.pdf

¹⁰https://www.wu.ac.at/fileadmin/wu/d/i/taxlaw/Veranstaltungen_Events/GTPC/Annotated_Agenda_DET_December_Conference_2022.pdf

The future of tax cooperation

In evaluating the nature of the role that the UN will play in the global tax debate, the development of a new framework on international tax cooperation will need to be considered. The WU GTPC, in collaboration with partners, has been involved in developing a proposal titled – *General Agreement on International Tax Cooperation, Trade and Global Tax Governance: A Proposal.*¹¹

The current environment offers a unique opportunity for the UN to provide a truly inclusive forum for the ongoing discourse on international taxation. Any proposals have to be ambitious; they must recognize that an enhanced role for the UN will require that all countries, including developing countries, commit to provide the resources needed for such a program to succeed and the responsible body will need to critically review its work methods to ensure that these resources are effectively utilized. As this dialogue progresses, there is a need to emphasize that the UN will need to strongly collaborate with regional tax bodies, the Bretton woods family, the OECD, and other organizations, drawing upon the comparative advantage to best serve Member States. The WU GTPC is prepared to contribute to this debate.

¹¹ Available online at: <https://www.rieeel.com/index.php/rieeel/article/view/28/23>