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Your ref GWJ/al

UN Secretary-General
c/o: taxreport2023@un.org

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Dear UN Secretary-General

Thank you for the opportunity to provide input into a report to be drafted on the resolution adopted by the General Assembly on 30 December 2022 on the *Promotion of inclusive and effective tax cooperation at the United Nations*.

As the resolution notes in one of the reaffirmations, the approach and scope should take into account the different needs and capacities of all jurisdictions. We believe this is an essential feature of the project.

The request for comment is broad and covers multiple disciplines which include anti-money laundering, corruption and detailed international tax rules amongst others. Some of these intersect and others do not. The focus of our comments is largely on tax matters consistent with the title of the Resolution but acknowledging the scope of the review is wider than tax.

Eight domains

We have divided the broad scope into eight domains. These are broad descriptions, they may overlap and are not intended to be terms of art. They are:

- (1) Illicit financial flows
- (2) Tax-related corruption
- (3) Informal economy
- (4) Tax evasion – sophisticated
- (5) International tax avoidance
- (6) Reducing harmful tax competition (eg. GloBE)
- (7) Transfer pricing issues
- (8) General co-ordination of different tax rules (eg. double taxation and double non-taxation)

As set out below we believe that there are good reasons for dividing the primary forum for these domains into different institutions.

Jurisdiction impacts based on income classification

All jurisdictions, from low income to high income, can be impacted by all of these domains. But priorities and challenges of each of the domains are different for different jurisdictions.

For example illicit financial flows, tax-related corruption and the informal economy may be a higher priority for some low income jurisdictions than for many high income jurisdictions, but this will not be the case for all low income jurisdictions.

We believe that any approach adopted by the United Nations should take into account the different needs and priorities of jurisdictions.

Different existing institutions

The Resolution of 30 December 2022 refers to a number of existing forums for international tax cooperation. These include the Platform for Collaboration on Tax designed to intensify collaboration between the UN, the IMF, the World Bank and the OECD. It also includes the G20, the Addis Tax Initiative, the Global Forum on Transparency and Exchange of Information and other fora.

The OECD/G20 Inclusive Framework on BEPS (Inclusive Framework or IF) has been developing out of the OECD-G20 BEPS Project over the last 10 years to become a forum of significant importance. This has a special role in tax matters and seeks to allow members to participate on an equal footing to develop standards on BEPS-matters, and to review and monitor jurisdictions implementations of agreed measures.

Inclusive Framework (IF)

This is an important institution with significant potential global benefits. The Inclusive Framework grew out of an expanding circle of consultation arising from the need to deal with BEPS. When the BEPS Project was initially launched in 2013 the jurisdictions involved were members of the OECD and G20 with a small number of additional jurisdictions that had Observer Status for both organizations. The number of jurisdictions involved grew over time such that at time of finalization of the BEPS 1.0 reports in October 2015 approximately 60 jurisdictions were directly involved, with others indirectly involved through organizations such as African Taxation Administration Forum. A short time later the Inclusive Framework was formally convened and as at December 2022 contained 142 jurisdictions as members.

The stated intention the IF is that all members work together on an *equal footing* in a search for *consensus* on a number of matters, including importantly setting international tax standards as they relate to BEPS. This is not easy to achieve and involves significant negotiation as is evidenced by the GloBE rules. Whilst the processes involved may not be ‘perfect’, we believe the Inclusive Framework is the strongest international tax institution that we have for at least the last four of the eight domains outlined above and should form the basis of seeking consensus on most of the technical tax issues. Below we suggest some potential improvements for the manner in which the IF operates.

The consensus approach of the Inclusive Framework is important for five main reasons:

1. **Legitimacy.** Having a widely subscribed open institution of 142 jurisdictions provides validity to its conclusions.
2. **Stability.** Decisions of the Inclusive Framework have been widely considered and, given the number of jurisdictions involved, provide a solidity and firmness to the outcomes.
3. **Understanding.** The processes adopted by the Inclusive Framework including involvement of the OECD Secretariat with jurisdictions individually and on Working and Steering Groups. This leads to a deeper understanding of the issues and circumstances of individual jurisdictions which helps inform the outcomes.
4. **Outcomes.** While some would not agree, most would consider that the outcomes for developing jurisdictions have generally been positive, although it is to be recognized that the arrangements are of necessity a compromise. An example of this concerns the differential market allocation rules for Amount A under Pillar 1 which are based on the level of a jurisdictions GDP.
5. **Precedent.** The Inclusive Framework is an institution which can be adopted, adapted and improved based on experience as a framework for other global issues. The Inclusive Forum on Climate Mitigation Approaches is an example. While each issue may have different dimensions, a common feature and foundational point is that many jurisdictions can participate openly on an equal footing in a search for an agreed consensus.

OECD as Secretariat to the Inclusive Framework

Fundamentally, the Inclusive Framework relies on the technical skills and experience of the OECD. Whilst this may have occurred for historical reasons, the reality is that the OECD has the tax technical skills to understand the complexity of the subject matter. They have the experience of looking out for unintended consequences and incorporating multiple solutions. While other

institutions have similar skills in other areas, the domain of taxation is a very specific and specialized one where the culture and organizational experience is highly important.

There is considerable benefit in maintaining this cultural and technical infrastructure. Moreover, there would potentially be a significant loss in seeking to move that 'infrastructure' to another organization.

Duplication of effort/Unconstructive "competition" between international bodies

While the previous section comments on the prospect of transferring primary responsibility for the development and coordination of intergovernmental tax initiatives to a UN tax body, we submit that the more likely outcome is that OECD member countries would not simply "dissolve" the role of the OECD (nor seek to disband the IF) in relation to taxation matters. It seems unreasonable to expect countries to simply walk away from this body on the uncertain prospect that the UN may be able to fulfil the same role.

Instead, we consider it highly likely that the OECD would continue in its current role while the new body would also take up many or all of the the same functions that the OECD/IF performs. It also seems to us likely that there will emerge a group of countries that continues to conduct its international tax dialogue primarily through the OECD/IF, and another that seeks to concentrate its efforts on work conducted by the UN.

On this view, it seems apparent that this state of affairs would give rise to at least two practical concerns:

Duplication of resource demands:

- The commitment involved in actively participating in international tax policy discussions, both in terms of diverting the expertise of government officials from domestic policy and revenue administration issues and the travel and accommodations expense, is significant, for all countries but especially in relation to smaller states. An obvious implication of creating a formal UN body to cover much of the same work as that undertaken by the OECD/IF is that the resource burden, particularly for small countries, will intensify (with debatable returns).
- It also bears mentioning that the tax and business community, as well as civil society, invests a good deal of resources in following, and commenting on, OECD/IF publications; their efforts would also presumably be duplicated with another body developing and issuing tax papers and proposals.

Promoting consensus or division?

- There is, of course, no guarantee that having a single forum for all countries to engage in a dialogue relating to tax issues will lead to agreement on such issues.
- However, the establishment of two fora with the same objective seems less likely to produce agreement – and more likely to lead to the development of factions that, convinced of their cause, are unwilling to compromise.
 - In effect, the separate bodies could foster division and dissent, and effectively suppress constructive dialogue rather than promote it.
- Perhaps this “competition” between coordinating bodies would ultimately be resolved; perhaps not. But for as long as it remains unresolved (and one can conceive of a lack of resolution persisting for decades), the collective capacity of governments to advance mutually-beneficial international tax initiatives will be impeded.

Informed by these considerations, we believe that the superior approach – for all countries – is to endorse the structure that has already been established for collective tax dialogue, that has the resources and expertise to advance that dialogue and support countries in reaching agreement on substantive policy decisions, and that has the demonstrated capacity to launch and coordinate the implementation of those decisions. While we see the Inclusive Framework as the body that should continue to serve as the primary forum for international tax dialogue and collective action, we also offer some suggestions on ways in which its operation might be enhanced.

Potential improvements for the operation of the Inclusive Framework

There are a number of areas where the processes of the Inclusive Framework may be improved for the benefit of developing jurisdictions. This is not to deny that considerable efforts take place now in the OECD assisting developing jurisdictions and in some cases the points below are on expanding existing efforts.

These include:

1. **Ensure adequate time for ‘turn around’ of comments.** This is especially the case where English is not the first language of the jurisdiction involved and where the jurisdiction has not been closely involved in the negotiations to date.
2. **Transparency of the negotiation process.** The negotiation process should be visible to all members of the Inclusive Framework.

3. **Special developing jurisdiction briefings and feedback sessions.** Where appropriate there should be special and focus briefings and feedback sessions for developing jurisdictions. This may occur at the present time but could be extended in order to address complaints that developing countries voicing their concerns are not heard at the OECD.
4. **Greater cognizance of longer-term impacts.** Regard should be had to not only the immediate impacts for developing jurisdictions, but for the longer-term impacts given the likely changes to the economic and demographic environment, so that developing jurisdiction officials can make a deeper evaluation of the measures.
5. **Greater cognizance of the manner and shape of developing jurisdiction revenue collection.** Consideration should be given to the fact that developing jurisdictions may be more reliant on some revenues rather than others. This will vary from jurisdiction to jurisdiction.
6. **Assistance in the implementation and application of agreed rules.** This is significant. The lack of strong support in the implementation of new rules for developing countries gives rise to:
 - Fear of change in the negotiation phase given the perceived future lack of human and technological resources to implement the change;
 - Lack of consistency and coherence in the implementation of the new rules;
 - Preference for simplified solutions which may not always deal with potential problems.

Suitability of different organizations to take a primary role in different domains

The most suitable institution for one domain is not necessarily the most suitable institution for all domains.

Thus the Inclusive Framework may be the most suitable institution to deal with domains where changing the international tax shared by jurisdictions is at stake. Where the issues are significant in these domains the reality is that there will be no success without major jurisdiction buy-in and no buy-in if the solution is ultimately detrimental to those major jurisdictions. Success will largely be based on the recognition that all will be better off with compromise.

The domains most suited for the Inclusive Framework include items (5) international tax avoidance, (6) reducing harmful tax competition; (7) transfer pricing issues and (8) co-ordination of tax rules (double taxation and double non-taxation). It should be emphasized that this is not a

matter of leaving it up to the OECD to solve these issues, but for the OECD as a Secretariat to help facilitate negotiations with the Inclusive Framework members to find consensus solutions.

By way of contrast, (4) sophisticated tax evasion may be best dealt with by the Forum of Tax Administration (FTA) and its Joint International Taskforce on Shared Intelligence and Co-operation (JITSIC). This is also 'sponsored by the OECD' but has a separate infrastructure which is focused on detection rather than policy.

Consideration should also be given to other umbrella bodies that have a large global network including a significant member network. Thus (1) illicit financial flows may best be dealt with an expanded and better financed organization such as the Financial Action Task Force (FATF), although this may involve not only grey and blacklisting jurisdictions, but also providing significant assistance to jurisdictions to build capacity. In this the UN may be able to take a greater role in support of FATF, as well as other international institutions.

Items (2) tax-related corruption and (3) the informal economy raise monitoring and capacity assistance. Tax Inspectors Without Borders (TIWB) which is a joint venture arrangement between the OECD and the UNDP may be a primary forum for these efforts. This may involve an extension of its current purview and the assistance of policy prescriptions developed jointly by the OECD and the UN for the informal economy.

It should be borne in mind that in the spirit of collaboration all institutions should be able to contribute to the consultations of the primary forum involved. Thus UN and IMF contributions should be able to be made on any major initiatives of the Inclusive Framework as an example.

Primary forums for each domain with Jurisdiction Income Focus

The above comments may be represented in a tabular form as follows:

	Domain	Primary Forum	Jurisdiction Income Level Focus
1	Illicit financial flows	FAFT / UN	Low, Lower Middle
2	Tax-related corruption	Extended TIWB	Low, Lower Middle
3	Informal economy	Extended TIWB-OECD/UN	Low to Upper Middle
4	Sophisticated tax evasion	FTA-JITSIC	Lower Middle to High
5	International tax avoidance	IF	Lower Middle to High
6	Reducing harmful tax competition	IF	Lower Middle to High
7	Transfer pricing issues	IF	Lower Middle to High
8	Coordination tax rules	IF	Lower Middle to High

Funding and support

While all areas would benefit from additional funding and support, items (1) to (4) would benefit most from additional funding. This assistance is akin to aid. It may come from the individual jurisdictions or international bodies such as the UN.

Yours sincerely

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On behalf of the KPMG Global Tax Policy Leadership Group