



OFFICE OF TAX POLICY

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

To: The United Nations Secretary-General
March 17, 2023

Re: Solicitation for Comments on the Secretary-General's Report in Response to General Assembly resolution 77/244

The United States Government appreciates the UN Secretary-General's solicitation of written input in connection with his report on international tax cooperation. The resolution requesting the report specifies that the report should consider existing instruments and ongoing initiatives on international tax cooperation. We agree that full consideration of existing initiatives is essential to identify recommendations that will be most effective and will avoid causing harmful effects on cooperation by duplicating and fragmenting ongoing efforts.

With that goal in mind, we highlight three examples of ongoing initiatives to strengthen international tax cooperation, which we view as being particularly significant:

- **The G20/OECD Inclusive Framework on Base Erosion and Profit Shifting (the Inclusive Framework)**: The Inclusive Framework was established in 2016 and brings together 142 jurisdictions (and growing) that collectively represent about 95% of global GDP to collaborate on the implementation of a package of measures to tackle tax avoidance, improve the coherence of international tax rules, and ensure a more transparent tax environment.

The Inclusive Framework's BEPS package has led to greater international cooperation on tax policies that have significantly reduced base erosion and profit shifting. The Inclusive Framework also recently released the Global Anti-Base Erosion (GloBE) rules to ensure large multinational organizations pay a minimum effective rate of tax on the income arising in each of the jurisdictions in which they operate. Implementation of the GloBE rules will further reduce tax incentives for profit shifting and tax avoidance as well as unhealthy tax competition and will help ensure the long-term viability of the corporate income tax. In a related project that evolved from the work on the GloBE rules, the Inclusive Framework is also developing the "Subject to Tax Rule," which would allow developing countries to reclaim certain taxing rights previously ceded under income tax treaties.

In addition to the BEPS package, the GloBE rules, and Subject to Tax Rule, the Inclusive Framework is working on other notable initiatives. For example, it is negotiating a reallocation of taxing rights (commonly known as Pillar 1), which would reallocate certain taxing rights over income earned by the largest and most profitable multinational corporations to market jurisdictions worldwide. The Inclusive Framework is also developing a simplified and streamlined transfer pricing approach consistent with the arm's length principle for certain common marketing and distribution activities. This approach will reduce transfer pricing enforcement costs and minimize disputes,

especially for developing countries that have limited resources and limited access to comparables. If successful, this simplification measure could serve as a model for future transfer pricing simplifications that are consistent with the arm's length principle.

Importantly, all members of the Inclusive Framework participate on an equal footing in the decision-making process, which operates by consensus. The consensus approach to decision-making can pose practical challenges in such a large and diverse group of economies. But this approach also establishes the stable foundation on which real and lasting progress can be (and has been) made within the Inclusive Framework, because it means that decisions are only taken when there is real agreement. The consensus approach is also inextricably linked with the Inclusive Framework's focus on inclusiveness – not only by virtue of the sheer number and variety of Inclusive Framework members, but also by affording every member a real voice in negotiations and decision-making. Thus, this approach may take longer than other approaches such as majority rule, but it ensures that every member is a meaningful participant and stakeholder. The Inclusive Framework's commitment to the consensus approach reflects a strongly held belief that difficult and sometimes lengthy negotiations that eventually result in broad consensus have a better chance of standing the test of time than swiftly agreed-upon solutions that lack support across all coalitions.

To further leverage the benefits of consensus and inclusive participation, the Inclusive Framework includes as members not only sovereign states but also non-sovereign economic polities. Regional organizations routinely and actively participate in meetings. Additionally, the Inclusive Framework regularly publishes drafts and other documents seeking input from the public and holds public consultations in which civil society is both well-represented and highly active. Consistent with the consensus approach, the commitment by all members of the Inclusive Framework to embrace the minimum standards of the BEPS project output reflects both the intention and the ability of the members to achieve lasting results that have an actual impact.

Each of the Inclusive Framework's initiatives requires intensive international negotiation and cooperation, with all participants on an equal footing. The Inclusive Framework's experience in bringing together jurisdictions within an inclusive forum, its expertise on international tax matters, and its demonstrated record of success in strengthening international tax cooperation should be recognized in the Secretary-General's report.

- **The Platform for Collaboration on Tax**: The Platform for Collaboration on Tax (PCT) is a joint effort by the International Monetary Fund (“IMF”), the OECD, the UN and the World Bank Group. The PCT is designed to intensify the cooperation between these international organizations (IOs) on tax issues. It formalizes regular discussions between the four IOs on the design and implementation of standards for international tax matters, strengthens their ability to provide capacity-building support to developing countries, and helps them deliver jointly developed guidance. It also increases their ability to share information on operational and knowledge activities around the world. In other words, the PCT allows the different IOs to leverage their unique strengths and resources to

develop common guidance and enhance international tax cooperation, rather than creating competing processes and standards.

We note a few of the PCT's key contributions during the COVID-19 pandemic. The PCT updated COVID-19 resources for developing country tax policy and administration responses to the pandemic and released valuable toolkits to developing countries on transfer pricing and tax treaty negotiations. Further, the PCT held workshops on resource mobilization and information exchange and interfaced with groups such as the African Tax Administration Forum (ATAF) and the Asian Development Bank (ADB).

- **The Global Forum on Transparency and Exchange of Information for Tax Purposes**: Over 160 countries have agreed to information exchange protocols (CRS) developed by the OECD and G20. These countries have entered into thousands of bilateral exchange relationships committed to the CRS. This has resulted, according to some studies, in significant reductions in cross-border deposits parked in tax havens. Work is similarly being done on an inclusive basis to set information exchange standards for crypto-assets. The Global Forum has also engaged with developing countries through bilateral, regional, and working-group level technical assistance programs to help build capacity to exchange information and to use such information appropriately and effectively.

In considering the background of the Secretary-General's report, we note that the resolution requesting the report calls for intergovernmental discussion on "the possibility of developing an international tax cooperation framework or instrument that is developed and agreed upon through a United Nations intergovernmental process". As discussed above, over 140 jurisdictions are currently engaged in intensive negotiations in the Inclusive Framework to strengthen international tax cooperation and to make the international tax system fit for purpose in the 21st century. In particular, the Inclusive Framework's negotiations on Pillar 1 and the Subject to Tax Rule are in a critical phase. We are deeply concerned that creating a parallel process at the UN would fragment these efforts to strengthen international tax cooperation by effectively requiring jurisdictions with limited resources to choose between competing processes. Such a parallel process would make it impossible for one party to rely on the commitments of the other parties or feel bound by its own commitments and would, in particular, make it impossible to progress the Inclusive Framework's ongoing negotiations on Pillar 1 and the Subject to Tax Rule.

Derailing the Inclusive Framework's negotiations on Pillar 1 and the Subject to Tax Rule would at best delay (and likely deny entirely) concrete benefits to developing countries. The Subject to Tax Rule is specifically designed to benefit developing countries by making it easier for them to reclaim certain taxing rights. Pillar 1 is designed to increase the taxing rights of market jurisdictions, including developing countries. If the progress of the Inclusive Framework is derailed at this late stage, developing countries would be disadvantaged, because those benefits to developing countries under Pillar 1 and the Subject to Tax Rule would be delayed. At best, a parallel United Nations process would repeat the years of work already completed by the Inclusive Framework. Even worse, developing countries may never get these benefits or other corporate income tax benefits under an alternate UN process that historically has not been able to deliver consensus on and commitment to changes to international corporate tax rules. In other

words, the proposal of starting a similar project under the auspices of the United Nations threatens to not merely delay those benefits but deny them altogether.

We are aware that some United Nations delegates have suggested that the proposed tax convention under the auspices of the United Nations enjoys the consensus of Member States, but that narrative is not correct. Countries agreed during the 2022 Second Committee to consider strengthening international tax cooperation, but 55 countries whose support would be essential to the success of a United Nations tax convention voted against consideration of such a convention, in part because of the likelihood of interference with the already ongoing efforts at international tax cooperation through the Inclusive Framework's Pillar 1 negotiations and the Subject to Tax Rule. This relevant context should be taken into account in the Secretary-General's report.

Rather than engaging in parallel processes, the key to success for the Secretary-General's efforts to strengthen international tax cooperation will be for the UN and the Inclusive Framework to leverage their respective strengths in the most efficient and effective way possible without impeding or duplicating each other's work. The UN Sustainable Development Goals ("SDGs") can provide a framework for thinking about the UN's role in strengthening international tax cooperation. Achieving the SDGs will require significant increases in revenue, and it has long been recognized that capacity building and domestic resource mobilization have outsized impacts on achieving the SDGs. The Addis Ababa Action Agenda acknowledges that "significant additional domestic public resources, supplemented by international assistance as appropriate, will be critical to realizing sustainable development and achieving the sustainable development goals."¹ On that basis, the Addis Ababa Action Agenda calls for strengthening international cooperation to support efforts to build capacity in developing countries. Similarly, the IMF's February 2023 report on international corporate tax reform states that while international corporate tax reform efforts are important steps to building revenues needed by developing countries, they cannot be expected to provide the "bulk of the additional revenues" needed by developing countries to achieve the SDGs, instead suggesting that the focus should be on enhancing the capabilities of tax administration (e.g., providing enhanced administration functions and/or digitization) and implementing or reforming domestic taxes (e.g., VAT, property, or certain excise taxes).² Significant progress could be made in achieving the SDGs through international tax cooperation to build capacity by strengthening domestic tax administration (including through digitization) and enacting targeted tax reforms. Prior initiatives in those areas have produced concrete results, and there is considerable scope to expand those efforts.

Based on the UN's long and distinguished track record, we believe that the UN can play an important role in enhancing tax cooperation among Member States to further the SDGs, in particular, by (i) promoting capacity building through equipping countries with necessary skill sets and sharing relevant expertise, and (ii) promoting domestic resource mobilization through marshalling resources, assisting in the development of medium-term and long-term revenue

¹ Addis Ababa Action Agenda, para. 22, available at https://sustainabledevelopment.un.org/documents/2051AAAA_Outcome.pdf.

² IMF, International Corporate Tax Reform (Feb. 2023) at 31 – 33, available at <https://www.imf.org/en/Publications/Policy-Papers/Issues/2023/02/06/International-Corporate-Tax-Reform-529240>.

strategies, and providing support for automating tax systems. Such a focus would provide a clear basis for the UN to work together with other organizations, each leveraging their unique strengths and competences.

Tax Inspectors Without Borders is an excellent example of a program that draws on the strengths and abilities of both the UN and the OECD in the international tax area in a coordinated and collaborative manner that strengthens international tax cooperation and produces concrete results for developing countries and their citizens. The UN and the OECD should proactively identify other areas where such cooperation could multiply the efficacy and positive impact of both organizations.

Lastly, we request, in an effort to maximize cooperation, that the Secretary-General thoroughly consult and obtain input from the Member States throughout the process of preparing his report. In other words, while the opportunity to comment at the beginning of the process is useful, Member States should also be given the opportunity to provide comments on initial drafts of the report to ensure that the report considers all international instruments and initiatives as provided by the resolution and that the discussion of next steps includes input from all Member States.