

Distr.: Restricted
26 October 2007

ENGLISH ONLY

Economic and Social Council
Committee of Experts on International Cooperation
in Tax Matters
Third session
Geneva, 29 October-2 November 2007

Comment [Start1]: <<ODS JOB
NO>>N0748750E<<ODS JOB NO>>
<<ODS DOC
SYMBOL1>>E/C.18/2007/10<<ODS
DOC SYMBOL1>>
<<ODS DOC SYMBOL2>><<ODS
DOC SYMBOL2>>

**United Nations Code of Conduct on Cooperation
in Combating International Tax Evasion and Avoidance***

**Note by the Interim Coordinator of the Subcommittee on
Exchange of Information***

* The views and opinions expressed in the present note are those of the author and do not necessarily represent those of the United Nations.

Contents

| | <i>Paragraphs</i> | <i>Page</i> |
|---|-------------------|-------------|
| I. Introduction | 1 | 3 |
| II. Objectives of the Code of Conduct | 2-3 | 3 |
| III. Other Codes of Conduct | 4-5 | 3 |
| IV. Content of the Code of Conduct | 6 | 4 |
| V. Avoiding Conflict with Other Initiatives | 7 | 4 |
| VI. Procedural Aspects | 8-9 | 5 |
| VII. Conclusion | 10-11 | 5 |

I. Introduction

1. At the second session of the Committee of Experts on International Cooperation in Tax Matters Report (30 October-3 November 2006), I presented a report on the possible development of a code of conduct dealing with cooperation on controlling capital flight and international tax evasion and avoidance. According to the report (p. 10, para. 43) of that session, “the principle of such a code was generally agreed as being a useful tool to encourage a higher level of compliance by taxpayers and tax cooperation.” The committee requested that I prepare a brief report for the third session that dealt with some procedural matters and gave some better idea of the scope of the proposed code of conduct and its relationship to other such codes. I present this paper in response to that request.

II. Objectives of the Code of Conduct

2. Codes of conduct are sometimes referred to as “soft law” because they do not provide for any explicit methods of enforcement. These codes are aspirational rather than operational. They seek to mobilize public opinion, or at least the opinion of relevant government officials and private actors.

3. A code of conduct dealing with international tax evasion might have the following goals:

- (1) To assist in the development of international norms that governments should follow to prevent international tax evasion and to avoid facilitating such evasion.
- (2) To encourage governments to take practical steps to combat such evasion.
- (3) To isolate politically and economically those governments that refuse to meet the emerging international standard of conduct.
- (4) To give guidance to members of the private sector, such as banks and accounting firms, that wish to conform to an emerging international standard of conduct.
- (5) To give moral support to civil society organizations seeking to prevent international tax avoidance and evasion.

III. Other Codes of Conduct

4. The United Nations has promoted a large number of codes of conduct, in a variety of fields. It has also developed various framework documents that operate similar to a code of conduct. Here are a few examples of UN codes of conduct and framework documents that seek to establish international norms of conduct:

- (1) UN International Code of Conduct for Public Officials, GA Res. 51/59 Annex (12 December 1996).
- (2) Code of Conduct for Law Enforcement Officials, G.A. Res. 169, at 186, art. 5, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/46 (Dec. 17, 1979).
- (3) Agenda 21, adopted by, United Nations Conference on Environment and Development, June 3-14, 1992, U.N. Dept. Econ. & Soc. Affairs (framework document).
- (4) Code of Conduct for Responsible Fisheries, Food and Agricultural Association, Oct. 31, 1999.

(5) United Nations Global Compact (framework document for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, the environment and anti-corruption).

5. Codes of conduct and framework documents have been adopted by many organizations other than the United Nations and by governments. Here is a very short list of such efforts:

(1) A Code of Conduct for Taxation, October 2007, sponsored by the Association for Accountancy and Business Affairs, the Tax Justice Network, and Tax Research LLP (guiding taxpayers, tax agents, and governments).

(2) The MacBride Principles, December 1997 (providing a corporate code of conduct for doing business in Northern Ireland for multinationals to ensure nondiscrimination on the basis of religion).

(3) European Commission's Green Paper, 8 March 2006 (framework document aimed at developing a common, coherent European Energy Policy).

IV. Content of the Code of Conduct

6. The proposed United Nations Code of Conduct on Cooperation in Combating International Tax Evasion and Avoidance would set minimum standards the countries should meet with respect to cooperation on measures to combat capital flight and international tax evasion and avoidance. The detailed content of that code would be set by the Committee of Experts after due discussion and debate. Such a code might include the following elements:

(1) A requirement of transparency in financial matters that would, for example, limit bank secrecy rules.

(2) An agreement to exchange information on tax matters with other governments.

(3) A commitment to avoid the establishment of legal instruments that are intended to confound tax enforcement, such as trusts with undisclosed terms.

(4) Conformity with emerging standards with respect to "know your customer" rules for banks and other financial intermediaries and "know your shareholder" rules for corporations and other legal entities.

(5) A commitment to adopt and enforce reporting rules, such as rules on large cash transfers.

V. Avoiding Conflict with Other Initiatives

7. The proposed code of conduct does not conflict with other initiatives of the international community. That code would focus on tax evasion and fiscal fraud. It would seek to reduce capital flight from developing countries to the extent that such capital flight is accomplished through tax evasion or avoidance. Similarly, it would assist in combating money laundering when that practice is part of a scheme to avoid or evade taxes. In all of these areas, it would seek to influence government conduct and taxpayer attitudes. It would not be involved in enforcement activities. As a result, its agenda would not overlap the agendas of agencies, including United Nations agencies, involved in combating terrorism through various means, including the control of money laundering.

VI. Procedural Aspects

8. To have maximum impact, a code of conduct dealing with international tax evasion should be adopted by the General Assembly of the United Nations. For that adoption to occur, the Expert Group might draft its code and present it to its parent body, the United Nations Economic and Social Council (ECOSOC). That body might adopt the code, with whatever revisions it might wish to make, and send it to the General Assembly for consideration by that body.

9. Although approval and support by the United Nations General Assembly would maximize the impact of the code of conduct, it is not a necessary step for the promulgation of a useful code. The Committee of Experts could promulgate the code on its own authority. Alternatively, it could develop the code and send it to ECOSOC, which might decide to issue it under its own authority.

VII. Conclusion

10. The Committee of Experts contributes significantly to the avoidance of double taxation and the mitigation of international tax evasion through its work on the United National Model Tax Convention. Its charter, however, envisions a broader role for the committee. A useful step in exercising that broader role would be to develop a code of conduct for member states of the United Nations to follow in curtailing international tax evasion and avoidance. International tax evasion and avoidance have become increasingly important to developing and emerging countries as globalization has extended to all parts of the world.

11. The tools of tax evasion and avoidance that have accompanied globalization are undermining the ability of developing and emerging countries to mobilize domestic resources for development and to create the “enabling domestic environment” called for in the Monterrey Consensus. Perhaps the time has come for the Expert Group to play a major role in implementing the Monterrey Consensus by developing a sensible code of conduct that would bring moral pressure on government not to facilitate international tax evasion and avoidance.
