

# **INTERNATIONAL CO-OPERATION IN TAX MATTERS**

**Report of the *Ad Hoc* Group of Experts  
on International Co-operation in Tax Matters  
on the Work of its Second Meeting**

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**UNITED NATIONS**

Department of International Economic and Social Affairs

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**UNITED NATIONS**  
**New York, 1984**

5. The meeting was attended by observers for States Members of the United Nations: Gilbert L. F. Daumerie and Omer Scheerlinck (Belgium); Mohammad Taginetad Omran (Islamic Republic of Iran), accompanied by Mostafa Mashayekhi; M. Erol Karsan (Turkey); and for non-Member States: Jung Ki Han (Republic of Korea), accompanied by Mok Sang Lee and Yong Sup Lee.

6. The meeting was also attended by observers for international and regional organizations and other institutions: Olay Snelling (International Monetary Fund), Mrs. J. M. W. Boraas (International Chamber of Commerce), Pietro Crescenzi (Commission of the European Communities); Jean-Louis Liénard and Rintaro Tamaki (Organisation for Economic Co-operation and Development).

### C. Documentation

7. To facilitate the work of the Ad Hoc Group of Experts, the following documents were submitted to the Group:

(a) Draft guidelines for international co-operation to combat international tax evasion and avoidance (ST/SG/AC.8/L.39);

(b) Avoidance and evasion of tax: the problems and modes of international co-operation seen from the viewpoint of the United Kingdom of Great Britain and Northern Ireland (ST/SG/AC.8/L.40);

(c) Tax havens and the French tax legislation (ST/SG/AC.8/L.41);

(d) Background material for the formulation of guidelines for international co-operation to combat tax evasion and avoidance and commentaries thereon (ST/SG/AC.8/L.42);

(e) Monitoring the impact of the United Nations Model Double Taxation Convention between Developed and Developing Countries (ST/SG/AC.8/L.43);

(f) Synthesis of measures to combat fraud and international tax evasion contained in Spanish legislation (ST/SG/AC.8/L.44).

### D. Opening of the meeting

8. The second meeting of the Ad Hoc Group of Experts was opened on 5 December 1983 by the Assistant Secretary-General for Development Research and Policy Analysis, Department of International Economic and Social Affairs, United Nations Secretariat. After welcoming the members of the Group on behalf of the Secretary-General, he informed them of the sad news of the death last August of Mr. Abdul Waheed, member from Pakistan, and invited the Group to observe a minute of silence in tribute to the memory of Mr. Waheed. He then requested the new member from Pakistan to convey to Mr. Waheed's family the sympathy and condolences of the Group and the Group's profound appreciation for the invaluable contribution Mr. Waheed had made to its work.

9. The Assistant Secretary-General recalled that since the Group had met in December 1981, the Economic and Social Council had once more emphasized the importance of international co-operation, on a broad basis, for combating

international tax avoidance and evasion. He observed that international tax evasion and avoidance, which had reached unprecedented levels in both developing and developed countries, violate the principle of fiscal equity and undermine the concept of voluntary compliance with tax laws. As a result, Governments had to levy new taxes and increase tax rates in order to offset the revenue losses incurred, thereby imposing an unfair burden on taxpayers who cannot shift their tax liabilities. Through international co-operation, Governments could ensure greater compliance with the tax laws and thus avoid unnecessary and inequitable increases in tax liabilities while at the same time mobilizing additional resources for development.

10. The Assistant Secretary-General stressed that the task of the Ad Hoc Group of Experts had assumed even greater importance and urgency in the light of the current financial predicament of the developing countries, whose Governments are seeking to improve the levels of living of their peoples while struggling to meet their debt-servicing obligations. In so far as the work of the Group would lead to more efficient tax collection, it would make more financial resources available for economic and social development.

#### E. Election of officers

11. The Ad Hoc Group of Experts unanimously re-elected M. H. Collins (United Kingdom of Great Britain and Northern Ireland) as Chairman, Francisco O. N. Dornelles (Brazil) and R. R. Khosla (India) as Vice-Chairmen and I. O. Oni (Nigeria) as Rapporteur.

12. J. Pierre V. Benoit and Andrew Ezenkwele of the United Nations Secretariat served respectively as Secretary and Deputy Secretary of the Group. They were assisted by S. Khan, also of the United Nations Secretariat.

#### F. Adoption of the agenda

13. The Ad Hoc Group of Experts then adopted the following substantive agenda for the second meeting:

(a) Formulation of guidelines for international co-operation to combat international tax evasion and avoidance;

(b) Future work of the Group:

- (i) The methodology for reviewing "the experiences of countries in bilateral applications" of the United Nations Model Double Taxation Convention between Developed and Developing Countries and monitoring the impact of the Convention;
- (ii) The question of the possibilities of reducing potential conflicts among the tax laws of various countries and the formulation of appropriate policy and methodology suggestions; and
- (iii) The question of the possibilities of enhancing the efficiency of tax administrations and formulation of appropriate policy and methodology suggestions.

I. FORMULATION OF GUIDELINES FOR INTERNATIONAL CO-OPERATION  
TO COMBAT TAX EVASION AND AVOIDANCE

14. The Ad Hoc Group of Experts had before it a set of draft guidelines (ST/SG/AC.8/L.39) and background material relating to those guidelines (ST/SG/AC.8/L.42). The guidelines and commentaries thereon, as amended or redrafted and finalized, are contained in document ST/ESA/142 (to be issued as a United Nations sales publication).

15. The guidelines are the following:

(a) Introductory guideline on general aspects of exchange of information and on co-operation in general;

(b) Guidelines on specific aspects of exchange of information:

(i) Guideline relating to devices used by residents and non-residents in general;

(ii) Guideline relating to allocation of head office or parent company expenses;

(iii) Guideline relating to the remuneration of employees of non-resident employers;

(iv) Guideline relating to the use of artificial transfer prices in general;

(v) Guideline relating to corresponding adjustment in artificial transfer pricing cases;

(vi) Guideline relating to other aspects of exchange of information;

(c) Guidelines on co-operation concerning tax havens, bank secrecy and "treaty shopping";

(i) Guideline relating to the use of low-tax countries regarded as tax havens;

(ii) Guideline relating to bank secrecy;

(iii) Guideline relating to the abuse of tax treaties (treaty shopping);

(d) Guideline relating to mutual assistance between tax authorities in the implementation of tax laws and the recovery of tax.

A. Introductory guideline on general aspects of exchange of information and on co-operation in general

16. International co-operation against the evasion and avoidance of taxes on income, profits, capital and capital gains would most satisfactorily take place under the terms of, or in connection with, treaties for the avoidance of double taxation; however such co-operation could be governed by provisions in a bilateral or multilateral agreement on general mutual assistance by tax authorities, or in other bilateral or multilateral agreements providing for exchange of tax

information, or in other instruments. The co-operation should include exchanges of information along the lines described in article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries, (although co-operating tax authorities may, if their domestic laws or mutual assistance arrangements permit, agree to provide information to each other on a wider basis) and the exchanges should be governed, in order to give adequate protection to the taxpayers concerned, by the rules concerning the confidentiality of information and the other provisions of that article. Tax authorities making such arrangements should make the maximum possible use of the facilities provided in them for exchanging information and should consult each other as frequently as necessary on the general methods of operating the arrangements and on important individual exchanges of information. Meetings of the competent authorities concerned would be advisable from time to time. Subject to the above, the provisions adopted by the co-operating authorities for the exchange of information should enable each tax authority to provide to the other any information which is necessary to ensure the correct assessment and payment of the tax due from individuals, corporations and other persons, so that such tax is not evaded, and so that the facts in relation to any avoidance arrangements operated by or on behalf of such persons are fully disclosed. The arrangements for exchange of information should facilitate the provision of information in such manner as is agreeable to the countries concerned, and, where possible and appropriate, in a form which would be admissible as evidence in the courts of the requesting State, but, to be most effective, should facilitate the provision of information not only on request but also on a routine basis where that is convenient, or in any other manner and in particular, where appropriate, spontaneously. The arrangements should also enable the competent tax authorities to develop appropriate methods of making the exchanges within the limits laid down in the arrangements.

B. Guidelines on specific aspects of exchange of information

1. Avoidance and evasion by residents and non-residents

(a) Guideline relating to devices used by residents and non-residents in general

17. The arrangements for exchange of information should facilitate the provision of information of the following types, among others, by one State to another where this is possible and where the information is available (it is recognized that it may not be easily available or available at all). The types of information viewed for this purpose from the perspective of the requesting State may include:

(a) Details of income, such as interest, dividends, royalties, commissions and kickbacks, etc., paid or received in the other State;

(b) Details of relevant cross-border transactions available in the other State (for example, the price paid in one country for goods or services originating in another and the costs of the goods or services in the country of origin);

(c) Details of bank accounts held in the other State (for example, sources and movements of funds, details of transactions);

(d) Details of property owned in the other State;

(e) Details of relevant property transactions in the other State.

(b) Guideline relating to allocation of head office or parent company expenses

18. The arrangements for exchange of information should enable the co-operating tax authorities to provide each other with information relevant to the proper assessment of expenses which are to be treated for tax purposes as charged out to, or paid out by, the various entities of a transnational enterprise, in particular, expenses incurred by a head office and charged out to a branch, or other permanent establishment, or incurred by a parent company and charged out to a subsidiary. Such information might include details of research and development costs, the costs of providing administrative, legal and technical assistance services and the actual expenses incurred by the head office or parent company payable to third parties in respect of loan interest, royalties, fees, commissions etc. Where it is convenient for the co-operating tax authorities, the information may usefully be exchanged in the course of a mutually arranged independent but simultaneous examination of the affairs of the head office and the permanent establishment (or the affairs of the parent company and the subsidiary or the affairs of other related companies). Where the co-operating tax authorities are able to make arrangements with each other to co-operate in the audit of a taxpayer's accounts, or in the examination in some other way of his tax affairs, then it may be useful in some cases to exchange the relevant information in this way.

(c) Guideline relating to the remuneration of employees of non-resident employers

19. The arrangements should enable information to be provided about the remuneration paid by an enterprise in one country to an employee working in the other in so far as such exchanges are necessary in order to prevent the concealment of the true amount for the purposes of tax evasion.

2. Avoidance and evasion involving transfer pricing (including avoidance and evasion by the use of third countries)

(a) Guideline relating to the use of artificial transfer prices in general

20. The arrangements should facilitate the provision of information which is relevant to the proper assessment, for tax purposes, of transfer prices for goods, services, technology etc., provided by one entity of a transnational enterprise to another. Such information might, for example, include information where it is necessary and available (and it is recognized that it may not be easily available, or available at all, in some cases), about:

- (a) Comparable open market prices;
- (b) The cost of comparable goods or services;
- (c) The costs of producing, processing, distributing and advertising the relevant goods or services etc.;
- (d) The nature and extent of the control exercised over affiliates;
- (e) The ownership and function of subsidiaries and other affiliated companies;
- (f) The nature of the trade relationship between affiliates;

(g) The relevance of particular services or of central research and development activity to specific entities within a transnational enterprise, and the effective use made of them by those entities;

(h) The extent of benefits derived by particular entities from central research and development;

(i) The selling price of goods to the ultimate consumer (where they pass through more than one entity of the transnational enterprise on their way to him);

(j) The general pricing policy of the relevant transnational enterprise; and

(k) The general background of practices and prices in the relevant industry (much of which may, in any case, be non-confidential information).

(b) Guideline relating to corresponding adjustment in artificial transfer pricing cases

21. The arrangements should facilitate the provision of information which is necessary to allow the proper consideration of the question whether, following an adjustment to a transfer price made by one tax authority in assessing the taxable income or profits of an entity in a transnational enterprise, it is appropriate for the other tax authority to make a corresponding adjustment to the taxable income or profits of that entity or another entity of the transnational enterprise which is within its taxing jurisdiction. (It is to be noted that unless it is possible to exchange this kind of information there is some danger that adjustments to transfer prices may give rise to either juridical or economic double taxation of transnational enterprises.)

(c) Guideline relating to other aspects of exchange of information

22. The arrangements should, where appropriate, enable information to be provided, for the purposes of countering evasion or avoidance of tax, relating to:

(a) Transactions taking place in or through third countries (including countries with no taxes or low taxes on income, profits, capital or capital gains);

(b) Income or profits etc. arising in third countries to persons taxable in either of the co-operating countries (or to affiliates of such persons); or

(c) Assets situated in third countries and belonging to such taxable persons or their affiliates or associates.

C. Guidelines on co-operation concerning tax havens, bank secrecy and "treaty shopping"

1. Guideline relating to the use of low-tax countries regarded as tax havens

23. The Ad Hoc Group agreed on the following guideline:

Countries affected by tax evasion or avoidance through the use of low-tax countries and those low-tax countries,



Recognizing that any country in exercise of its sovereignty is entitled to adopt a tax system which reflects its economic preferences to charge taxes at low rates or to refrain, if it so desires, from imposing taxes at all,

Recognizing that the tax and regulatory structures adopted by any country in exercise of its sovereignty may result in tax advantages for foreigners which may have a serious impact on the tax revenue of other countries,

Recognizing that such other countries are entitled to take their own measures to ensure that tax which should properly be paid to them is not avoided or evaded, and

Recognizing, on the other hand, that decisions taken in countries seeking to counter tax evasion and avoidance through the use of low-tax countries commonly regarded as tax havens may have adverse effects on the economic and financial situation of the latter countries,

Should endeavour to resolve the issues at stake in bilateral or multilateral negotiations.

## 2. Guideline relating to bank secrecy

24. Countries should recognize that, while bank secrecy is a traditional feature of banking practice and affords a proper protection for the client with respect to third parties in general, the tax authorities have a legitimate interest in seeking information necessary to ensure the correct determination of tax liabilities, and consequently should co-operate with each other in seeking to minimize the ways in which the protection afforded under bank secrecy rules or practices can be abused so as to facilitate the evasion or avoidance of taxes (such as, for example, to conceal taxable income).

## 3. Guideline relating to the abuse of tax treaties (treaty shopping)

25. Countries negotiating bilateral treaties for the avoidance of double taxation might consider including, in the proposed tax treaties, provisions designed to prevent the benefits of the treaties from being enjoyed by persons in third countries contrary to the intentions of the negotiating parties. Such provisions would need to be constructed in the light of the potentialities for abuse provided by the particular treaty concerned, other treaties to which the treaty partners were signatories, their domestic laws etc. Care would need to be exercised to ensure that taxpayers carrying on bona fide activities were not deprived of the benefits which the treaty was intended to provide to them. Subject to those considerations the provisions might include restrictions on the reliefs provided by one signatory country so that they were given only:

(a) To persons subject to tax in the other country, or

(b) To persons subject to tax in the other country at a minimum statutory or effective rate, or

(c) To the beneficial owners of the income concerned, or

(d) (In appropriate cases where the beneficiary is, in the first instance, a corporation) to companies the shares in which are quoted on a recognized stock exchange or companies the major shareholding in which is not in the hands of persons resident in another country.

26. Arrangements for the exchange of information should, where appropriate, enable information to be provided which may be needed to operate such provisions.

D. Guideline relating to mutual assistance between tax authorities in the implementation of tax laws and the recovery of tax

27. Countries which are not prevented by constitutional or other legal obstacles might consider making arrangements with each other for mutual assistance in the recovery of each others' taxes. Such an agreement might include provisions dealing, inter alia, with:

(a) The service of documents in one country relating to the taxes of the other;

(b) Measures of conservancy (that is, measures designed to ensure that tax potentially due does not become uncollectable by evasive action on the part of the taxpayer before legal liability can be finally established);

(c) The stage at which proceedings can be started in the other country to recover tax or enforce the tax rules;

(d) The documentation necessary;

(e) The rules concerning relevant exchanges of information;

(f) The priority status, if any, of the other country's tax;

(g) The limitations necessarily placed on the obligation to provide assistance;

(h) Other administrative matters etc.

## II. FUTURE WORK OF THE AD HOC GROUP

### A. The methodology for reviewing the experiences of countries in bilateral application of the United Nations Model Double Taxation Convention between Developed and Developing Countries and monitoring the impact of the Convention

28. The Economic and Social Council, in paragraph of its resolution 1982/45, urged the Ad Hoc Group "to continue its work by appropriate proposals in the field of taxation, including its examination of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its consideration of the experiences of countries in bilateral applications of that Model Convention". In accordance with that request, the Group sought to work out a methodology for reviewing such experiences and monitoring the impact of the Model Convention.

29. It was pointed out that there were a number of questions which might be considered in that context. One would be whether the production of the Model has, as it had been hoped, stimulated the negotiation of an increased number of bilateral agreements. Another would be to what extent the drafting of the Model had in fact influenced the way in which bilateral treaties were drafted. A third would be to consider, from the experience of those concerned with the negotiation and operation of such treaties, how useful the Model was in those processes and, more specifically, how it could be made more useful.

30. It was observed that the first of those questions could not, on the face of it, be answered with any precision since a great variety of factors, many of which were imponderable, were involved in determining the willingness of States to seek to negotiate such agreements. The number of double taxation agreements between developed and developing countries had indeed been growing but how far the production of the Model had been responsible for any of that growth had to be, it would seem, largely a matter of guesswork. In any case, the Model had in fact been produced and nothing practical hinged on what answer ought properly to be given to this question. Thus, although it might be interesting to discuss the question, the interest would be academic only and the Ad Hoc Group of Experts might feel in consequence that little purpose would be served in spending much time in considering it.

31. The second question was also somewhat academic. However, it might be useful to give it a little more than a cursory examination. In theory, it might be possible to draw some conclusions as to the usefulness of producing a model of that sort by examining the bilateral treaties which had been produced in recent years and seeking to ascertain how far they resembled the Model. However, the picture that would emerge would seem likely to be a complicated one, from which only very general conclusions could be drawn.

32. If one took a general look at the bilateral conventions that had been concluded in recent years between developed and developing countries, it would seem clear that many such conventions had followed quite closely the broad pattern and even the specific wording of the Model. It would be wrong, however, to assume that that had followed directly from the publication of the Model or, on the other hand, that any differences between a bilateral treaty and the Model indicated that the Model had not been of importance in the negotiation of the treaty.

33. There was a consensus within the Group that the United Nations Model Double Taxation Convention between Developed and Developing Countries had been very useful and had proved to be very valuable for international tax specialists: it had served as reference, rendering the discussion of basic principles unnecessary, thus making the negotiation of bilateral tax treaties much easier. Although it had coincided with the emergence of interest in bilateral tax treaties, it had nevertheless helped to promote such interest.

34. It was generally recognized that there was a need to help solve a number of issues which in the United Nations Model Convention were left to bilateral negotiations. It was desirable to consider how mutual consultations and exchange of information could be made more effective. The Ad Hoc Group of Experts should examine the definition of the permanent establishment, the question of the treatment of interest, dividends and royalties in both the source and the residence country, the definition of royalties and the question of tax sparing.

35. There was consensus that, early in 1984, the United Nations Secretariat should send out to the tax authorities of States Members of the United Nations a questionnaire inquiring about their experience with the application of the United Nations Model, the ways they had dealt with the issues left to bilateral negotiations and such other issues as shipping profits, non-governmental pensions and independent personal services. The questionnaire would be drafted with the assistance of the Chairman of the Ad Hoc Group. It was the wish of the Ad Hoc Group that the Economic and Social Council would appeal to all Member States to provide the information requested in the questionnaire. On the basis of such information, the United Nations Secretariat, in consultation with the Chairman of the Ad Hoc Group, would prepare a document providing details of the experiences of countries having entered into bilateral tax treaties on the basis of the United Nations Model Double Taxation Convention and indicating the articles and/or commentaries thereon which might need to be revised. There would also be an assessment of whether the time had come for the Ad Hoc Group to endeavour to solve the issues (or some of them) left to bilateral negotiations.

B. The question of the possibilities of reducing potential conflicts among the tax laws of various countries and the formulation of appropriate policy and methodology suggestions

36. It was recalled that, at its first meeting, the Ad Hoc Group had listed a number of steps which might help reduce potential conflicts among the tax systems of various countries. Those steps would include:

- (a) Continuous updating of taxation norms, definitions, classifications, rules, recommendations and guidelines;
- (b) Formulation of a common agreed classification and definition of taxes and similar levies and their base;
- (c) Formulation of a model tax code to regulate the substantive and procedural aspects of the relationship between taxpayers and tax authorities;
- (d) Study of the variations in tax policies and establishment of a basis for their eventual harmonization;

(e) Examination of the technical aspects of direct taxation systems with a view to proposing practical means of attaining the highest possible degree of harmonization.

37. The questionnaire to be sent out to Member States should also inquire about what specific issues tax officials would like to be studied, with a view to reducing possible incompatibilities in the tax systems. The United Nations Secretariat should also in its consultations with tax officials seek to learn what specific issues would be of particular relevance in that regard.

C. The question of the possibilities of enhancing the efficiency of tax administrations and formulation of appropriate policy and methodology suggestions

38. It was recalled that, at its first meeting, the Ad Hoc Group had considered that the efficiency of tax administrations could be enhanced through various possible initiatives which could include:

(a) Dissemination of information regarding tax procedures and provision of technical advice to tax administrations;

(b) Organization of training programmes;

(c) The setting up of systems for the registration and identification of taxpayers for tax purposes;

(d) The sharing of experiences regarding the use of computers for tax purposes; and

(e) The organization of meetings of tax administrators to enable them to exchange views and experience on the technical and other problems they encounter in detecting tax offences and abuses or making correct tax assessments.

39. It was pointed out that it would be highly desirable to organize regional seminars on the United Nations Model Double Taxation Convention between Developed and Developing Countries and the hope was expressed that it might be possible for the United Nations Secretariat, or the various United Nations regional commissions, to mobilize voluntary financial resources to finance those seminars.

40. It was also pointed out that it would be useful for the Secretariat to collect as detailed information as possible about existing training programmes at both the bilateral and the multilateral level and about other similar activities and to disseminate that information to Member States.

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