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**Committee of Experts on International Cooperation
in Tax Matters**

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Item 6 (f) of the provisional agenda

**The Proposed UN Code of Conduct on Cooperation in
Combating International Tax Evasion and Avoidance**

**Note by the Secretariat: Proposed Code of Conduct on
Cooperation in Combating**

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I. Introduction

1. At the Third Annual Session of the Committee of Experts on International Cooperation in Tax Matters in 2007, it was agreed to develop a Code of Conduct on cooperation in combating international tax evasion.
2. The objective of the Code of Conduct would be that Member States of the United Nations would adopt a political commitment to fight international tax evasion. The term “tax evasion” could be understood as a wide concept, comprehensive of tax evasion, tax avoidance and tax abusive practices (aggressive tax planning), but not including normal tax planning. It might be understood by “aggressive tax planning” tax planning that goes beyond the policy intent of the law and involves purposeful and deliberate approaches to avoid any type of tax.
3. As a political commitment, it would not affect the respective spheres of competence of Member States of the United Nations and their freedom to design their own tax

(b) In the same section of the draft Code, there was no reason for confining the operation of paragraph (e) to new “ring-fencing” measures only, otherwise it would advantage countries having such measures already in place;

(c) It was important that the Code should not create a climate unfavourable to legitimate business transactions and that this should be borne in mind when

Model Tax Convention was noted. The Committee should aim to encourage as many countries as possible to use current standards, where those standards are appropriate, especially in taking into account developing country priorities and concerns.

12. To this end, we all must be aware that the Code will be voluntary. For that reason, I understand that the tougher the Code might be, the less likely it is that countries will be willing to adopt it. Moreover, the goal of encouraging countries to eliminate ring fenced regimes or regimes that provide advantages to activities that lack substance is one that is likely to be problematic. In particular it might affect the design of a country's tax system which is a much more controversial topic and one on which it is difficult to reach consensus. It could take a lot of time, diverting attention from more important and more achievable goals. The last Annual Session showed that some experts raised this view.

13. To conclude, it might be worthwhile for the Committee and subcommittee to focus on what it can achieve in the short to medium term. As for the procedural aspects, the options for adoption of the Code will need further consideration, in the light of UN modalities. A secretariat or consultant's paper on that could be requested for consideration by the Committee.

III. A Differing View within the Subcommittee

14. The approach taken by the Coordinator in this note is not fully supported by all members of the subcommittee. One of them considers the Coordinator's draft a major step backwards as being limited to constituting a mere affirmation of the new Article 26 of the Model, which, in his opinion, is not very effective in combating international tax evasion or avoidance. That member believes that the Code should move beyond this Article 26 and be more ambitious. In particular, he considers that the proposed Code shows excessive dependency on the OECD's body of work.

15. These are issues that will need to be discussed at Committee level, to determine what approach should be followed in taking this work forward.

Annex 1:

Exchange of Information Subcommittee Coordinator's Discussion Draft

U.N. CODE OF CONDUCT ON COOPERATION IN COMBATING INTERNATIONAL TAX EVASION

Preface

ACKNOWLEDGING tax systems are a key issue to enhancing macroeconomic policies and mobilizing domestic public resources, and the need to step up efforts to enhance tax revenues through modernized tax systems, more efficient tax collection, broadening the tax base and effectively combating tax evasion,

ACKNOWLEDGING to the importance of supporting national efforts in these areas by strengthening technical assistance and enhancing international cooperation

ACKNOWLEDGING the positive effects of fair competition and the need to consolidate competitiveness at international level, whilst noting that tax competition may also lead to tax measures with harmful effects,

ACKNOWLEDGING that international tax evasion has become increasingly costly to developing countries as globalization has extended to all parts of the world,

ACKNOWLEDGING that the tools of tax evasion have accompanied globalization and they are undermining the ability of developing countries to mobilize domestic resources for development

ACKNOWLEDGING, therefore, the need for a Code of Conduct in combating international tax evasion,

EMPHASIZING that the Code of Conduct is a political commitment and does not affect the States' rights and obligations or the respective spheres of competence,

WE HEREBY ADOPT THE FOLLOWING CODE OF CONDUCT:

I. Scope

The Code of Conduct would apply to Governments and their agencies, and therefore would extend to the tax measures covered by their laws, regulations and administrative practices.

II. Goals

The Code of Conduct has the following goals:

- A. All countries, in an effort to combat international tax evasion, shall ensure that high standards of transparency and exchange of information in tax matters are adhered to by endorsing and undertaking to implement the principles and standards included in article 26 and the accompanying Commentary of the United Nations Model Tax Convention.
- B. To assist in the development of international norms and practical steps that Governments should follow to prevent, and cooperate to fight and avoid, facilitating international tax evasion.
- C. To encourage Governments to approve norms on transparency and effective exchange of information, in particular norms that allow them to supply bank information and information about the beneficial owner.

III. Content

The Code of Conduct sets minimum standards that countries should meet with respect to cooperation on measures to combat international tax evasion.

The content of the Code of Conduct includes the following commitments: 1.8()-5..1(o)-.1.8()ry

Annex 2:

Version of the Code of Conduct released for Doha Conference as a Technical Working Document

PROPOSED U.N. CODE OF CONDUCT ON COOPERATION IN COMBATING INTERNATIONAL TAX EVASION

1. At the third session of the Committee of Experts on International Cooperation in Tax Matters (29 October-2 November 2007), it was agreed to develop a Code of Conduct on Cooperation in Combating International Tax Evasion.
2. The objective of the Code of Conduct would be that Member States of the United Nations would adopt a political commitment to fight international tax evasion. The term “tax evasion” could be understood as a wide concept, comprehensive of tax evasion, tax avoidance and abusive practices (aggressive tax planning), but not including normal tax planning². It might be understood by “aggressive tax planning” tax planning that goes beyond the policy intent of the law and involves purposeful and deliberate approaches to avoid any type of tax.
3. As a political commitment, it would not affect the respective spheres of competence of Member States of the United Nations and their freedom to design their own tax systems, but the goal would be that, in doing so, they would abide by internationally accepted standards established in this Code of Conduct.
4. International tax evasion and avoidance have become increasingly important to developing and emerging countries, as globalization has extended to all parts of the world. The tools of tax evasion (as broadly understood) 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. The time has come for countries to act collectively to fight back against these abusive practices. The Committee of Experts, at its 2007 (third) and 2008 (fourth) sessions, expressed its willingness to play a major role in

² [Original] Coordinator’s note: Here and in other parts of this text, perhaps including the title of the document, there is a need for further consideration of how to deal with matters that do not constitute “tax evasion” as commonly understood, but are classed as “tax avoidance” or are referred to in some similar fashion, such as the term “aggressive tax planning” used here. The application of the draft code in such instances will have to be evaluated on a case by case basis, bearing in mind the different ways in which such terminology may be used internationally, and yet seeking consistency of approach within the draft code itself. This discussion may also impact on whether the title should refer only to tax evasion or to tax avoidance as well, for example.

implementing the Monterrey Consensus by developing a sensible code of conduct that would bring moral pressure to bear on Governments not to facilitate international tax evasion and aggressive tax avoidance.

A. Scope

5. The Code of Conduct would apply to Governments and their agencies, being the tax measures covered by their laws, regulations and administrative practices.

B. Goals

6. The code of conduct might have the following goals:

(a) To assist in the development of international norms and practical steps that Governments should follow to prevent, and cooperate to fight and avoid, facilitating international tax evasion;

(b) To encourage Governments to approve norms on transparency and effective exchange of information, in particular

- (a) Endorsing the following principles of transparency and effective exchange of information:
- (i) the availability of reliable information, in particular bank, ownership, identity and accounting information, and powers to obtain and provide such information in response to a specific request;
 - (ii) no restrictions on information exchange caused by application of the dual criminality principle, domestic tax interest requirements or bank secrecy;
 - (iii) the existence of mechanisms for exchange of information upon request;
 - (iv) the existence of confidentiality rules for information

conduct within the United Nations and other international organizations.

E. Monitoring and reviewing

11. The possibility of a monitoring and review process regarding the implementation of the code could be considered. In that regard, States willing to comply with the code could voluntarily submit themselves to annual appraisal of their conduct and in turn be reviewed by the Committee of Experts on International Cooperation in Tax Matters.