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Ad Hoc Group of Experts on International Cooperation in Tax Matters

Eleventh meeting

Geneva, 15-19 December 2003

Item 2 of the provisional agenda

Adoption of the agenda and organization of work

Provisional agenda and organization of work

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12. Revision and update of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries.

Annotations

3. Mutual assistance in collection of debts and protocol for the mutual assistance procedure

The fact that jurisdiction to deal with both the substantive and procedural aspects of tax collection may involve different arrangements regarding the status of private parties vis-à-vis the faculties, powers, duties and privileges of the tax administration in each State, suggests the need for individual responses tailored to the structure and administration of the particular State in question. The eleventh meeting should address the issue of mutual assistance in tax collection, which is not dealt with in article 26 of the United Nations Model Double Taxation Convention concerning exchange of information. The subject of a new international instrument for promoting international assistance in tax collection in the form of a multilateral convention on mutual administrative assistance in tax matters should be explored during the eleventh meeting.

Documentation

Mutual assistance in collection of tax debts and protocol for the mutual assistance procedure (ST/SG/AC.8/2003/L.2)

4. Treaty shopping and treaty abuses

Treaty shopping exists when a resident person of a particular State takes steps or actions to establish a link for himself or his activities to another State with the intention of obtaining entitlement to benefits or relief under the law and treaties that the other country is party to. Tax authorities may challenge treaty shopping situations if an entity or transaction is deemed to lack sufficient economic substance. The eleventh meeting should explore guidelines that might include restrictions on the reliefs provided by a contracting State so that they should be 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.

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

Documentation

Abuse of tax treaties and treaty shopping (ST/SG/AC.8/2003/L.3)

5. Interaction of tax, trade and investment

Recent developments in the World Trade Organization, including the adoption of the General Agreement on Trade in Services, the Agreement on Trade-related Aspects

of Intellectual Property Rights and the Subsidies Code in the Uruguay Round of multilateral trade negotiations, and the Foreign Sales Corporation/Extraterritorial Income Exclusion litigation, have highlighted the interaction among tax, trade and investment rules. The World Trade Organization is no longer solely concerned with tariff reduction at the border, but is engaged with issues related to foreign direct investment (for example, the General Agreement on Trade in Services) and to direct taxation (for example, the Subsidies Code as applied to direct tax export subsidies and the border adjustability rules). The meeting will discuss the theoretical relationship among tax, trade and investment rules, including the bilateral tax and investment treaties and the multilateral framework for addressing these issues.

Documentation

The interaction of tax, trade and investment (ST/SG/AC.8/2003/L.4)

6. Financial taxation and equity market development

The Monterrey Consensus of the International Conference on Financing for Development addressed the need to sustain stable private financial flows to developing countries and economies in transition by encouraging the orderly development of capital markets through debt and equity markets that encourage and channel savings and foster productive investments. Derivative instruments play an important role in hedging investments in capital markets as well as providing transactional efficiency in financial markets. Owing to their rapid development, prevailing tax rules have not adjusted to the tax problems presented by derivatives. During the tenth meeting there was no consensus on the question of appropriate jurisdiction, entailing the issue of whether to use the residence basis and that of the practicability of withholding taxes at source on payments under derivatives. Derivative transactions often exploit thin margins between prices available in different markets. The eleventh meeting should ensure that derivative transactions do not inappropriately avoid withholdings and other taxes.

Documentation

Financial taxation and equity market development: optimal financial market tax policies for developing countries (ST/SG/AC.8/2003/L.5)

7. Transfer pricing

(a) Simplified safe harbour procedures

During the tenth meeting, the Group of Experts recognized that the developing countries and economies in transition should improve their ability to develop and implement transfer pricing rules. The Focus Group appointed in regard to this has made recommendations specifically on policy advice, technical assistance and international cooperation on transfer pricing issues; and on avoiding and resolving transfer pricing disputes. The eleventh meeting should develop relevant systems and procedures to deal with transfer pricing. In this connection the experience of the European Union (EU) and a comparative analysis with Organisation for Economic Cooperation and Development (OECD) procedures will be of particular relevance.

(b) Intermediation and arbitration: European Union experience

The eleventh meeting should examine the feasibility of arbitration as a means of resolving international tax disputes. Most conventions provide for a mutual procedure as a means of resolving disputes concerning the application of the convention to taxpayers. It entails discussions between the competent authorities of the signatory States. The European model and a comparative analysis with the OECD model should be of particular relevance. The recommendation should be based on the Monterrey Consensus of the International Conference on Financing for Development.

Documentation

Transfer pricing: simplified safe harbour procedures (ST/SG/AC.8/2003/L.7)

Intermediation and arbitration: the Arbitration Convention of the European Union for the resolution of transfer pricing disputes (ST/SG/AC.8/2003/L.8)

8. Tax treatment of cross-border interest income and capital flights: recent developments

The tax treatment of cross-border interest income continues to be a major issue in international taxation and in international finance. Recent developments will result in more extensive taxation of cross-border interest income, and consequently less capital flight and tax evasion. With the growing attention to capital flight, the EU Directive on the Taxation of Savings and the OECD proposals will presumably lead to greater scrutiny by third countries of the even-handedness of the policies of EU and OECD. Both the EU Savings Directive and the OECD proposals in effect do not confront the issue of capital flight from third countries into EU and OECD countries. Given that EU and OECD have emphasized the importance of the taxation of capital flight, the reaction of third countries needs to be analysed.

Documentation

Tax treatment of cross-border interest income and capital flights: recent developments (ST/SG/AC.8/2003/L.10)

9. Electronic commerce and developing countries

During the discussion in the tenth meeting, it was suggested that the United Nations might undertake research and new initiatives for determining the principles for taxation of electronic commerce and, specifically, concepts of permanent establishment, which may be useful to developing countries and economies in transition. The eleventh meeting should develop guidelines for legislation promoting direct and indirect tax requirements based on the strengthening of the tax base so as to avoid preferential treatment of any specific use of electronic commerce, as well as on principles of transparency, certainty, effectiveness, efficiency and non-discrimination.

Documentation

Impact of electronic commerce on allocation of tax revenue between developed and developing countries (ST/SG/AC.8/2003/L.9)

10. Institutional framework for strengthening international tax cooperation

During the preparatory phase of the International Conference on Financing for Development, the High-level Panel on Financing for Development headed by former Mexican President Ernesto Zedillo formulated recommendations aimed at the establishment of an institutional framework for an international organization or forum for international cooperation in tax matters. The Zedillo Panel specifically endorsed the creation of an international tax organization to cover such issues related to taxation as developing procedures for arbitration, sharing information on tax evasion, compiling statistics, and engaging in surveillance.

In the same context, in his report to the General Assembly at its fifty-eighth session on the implementation of and follow-up to commitments and agreements made at the International Conference on Financing for Development (A/58/216), the Secretary-General recommended that the Ad Hoc Group of Experts on International Cooperation in Tax Matters be upgraded to an intergovernmental commission or committee, reporting directly to the Economic and Social Council (para. 167).

Documentation

Institutional framework for international tax cooperation (ST/SG/AC.8/2003/L.6)

Report of the Secretary-General on the implementation of and follow-up to commitments and agreements made at the International Conference on Financing for Development (A/58/216)

Do we need an international tax organization? (ST/SG/AC.8/2003/CRP.6)

Report on a conference held at Pocantico on feasible additional sources of finance for development (ST/SG/AC.8/2003/CRP.6/Add.1)

11. Revision and update of the United Nations Model Double Taxation Convention between Developed and Developing Countries

During its ninth and tenth meetings, the Group had agreed to proceed with periodic revisions and updates of the United Nations Model Double Taxation Convention every year. Furthermore, at its tenth meeting, the Group appointed two Focus Groups to make recommendations on transfer pricing and taxation of electronic commerce. The Group recognized the need for developing and transitional economy countries to improve their ability to develop, implement and administer transfer pricing and taxation on electronic commerce.

12. Revision and update of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries

During its ninth and tenth meetings, the Group agreed to proceed with periodic revisions and updates of the Manual every year.