

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

August 5, 2008 DRAFT

Resolution

THE COMMITTEE OF EXPERTS ON INTERNATIONAL COOPERATION IN TAX MATTERS,

Recognizing that international tax evasion and abusive forms of tax avoidance can undermine the ability of countries to effectively enforce their tax laws,

Recognizing also that some major financial institutions and accounting firms have been implicated in schemes to allow wealthy taxpayers to evade taxes through cross-border activities,

Concerned that the forces of globalization have increased substantially the opportunities for tax evasion and abusive tax avoidance and have reduced the transactional costs of evasion and avoidance to taxpayers,

Concerned also that many developing and emerging countries have found that the capital needed for domestic investment has fled to offshore tax havens and to various developed countries that offer tax-free investment opportunities for foreign capital,

Recalling that the Monterrey Consensus found that “an enabling domestic environment is vital for mobilizing domestic resources, increasing productivity, reducing capital flight, encouraging the private sector, and attracting and making effective use of international investment and assistance,”

Recalling also that the Heads of States of the United Nations have pledged through the Monterrey Consensus to help foster development in developing and transitional economies by helping those countries create and maintain the “enabling domestic environment” that is deemed essential for sustained economic development and poverty eradication,

Convinced that reduction of international tax evasion and abusive tax avoidance is a necessary step in fostering the “enabling domestic environment” contemplated by the Monterrey Consensus,

Convinced also that the Member States of the United Nations cannot be successful in controlling the rising tide of tax evasion and abusive tax avoidance unless they cooperate extensively on tax matters and work together to promote an international consensus that tax evasion and abusive tax avoidance are moral wrongs,

1. *Adopts* the United Nations Code of Conduct on Cooperation in Combating International Tax Evasion annexed to the present resolution, and recommends it to Member States of the United Nations as a tool to guide their efforts against international tax evasion and abusive tax avoidance;
2. *Requests* that the Economic and Social Council of the United Nations endorse this Code of Conduct and take appropriate action to promulgate it and obtain the support of Member States in implementing it;
3. *Further requests* the Economic and Social Council, in consultation with States, relevant intergovernmental and non-governmental organizations, as well as this Committee of Experts on International Cooperation in Tax Matters, to develop a broad implementation plan;
4. *Urges* Member States carefully to consider the problems posed by the international aspects of tax evasion and abusive tax avoidance, especially as regards international economic activities carried out by corporate entities, financial institutions, international accounting firms, and cross-border law firms, and to study appropriate domestic legislative and regulatory measures to ensure the transparency and integrity of cross-border financial transactions;
5. *Calls upon* Member States, relevant international organizations, relevant non-governmental organizations, and relevant private institutions engaged in cross-border financial activities to extend to the instrumentalities of the United Nations their full support and assistance in the implementation of the present resolution.

Annex

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

I. General Principles and Definitions

1. Member States of the United Nations shall make a political commitment to oppose and work to defeat international tax evasion and abusive tax avoidance. This political commitment shall not abridge the freedom of the Member States to design their own tax systems to achieve legitimate national goals. In pursuing those national goals, however, the Member States have committed themselves to abide by the internationally accepted standards settled in this Code of Conduct.
2. The term “tax evasion” should be understood as a wide concept that includes all activities that are illegal under the laws of the taxing state and that are intended to illegally reduce a taxpayer’s lawful tax burdens or to assist others in illegally reducing their lawful tax burdens.
3. The term “abusive tax avoidance” should be understood to include activities that are intended to defeat a tax otherwise due or to assist others in avoiding such a tax and that are not undertaken to advance a legitimate business or investment purpose (aside from avoiding taxes) or that lack economic substance, that the taxpayer attempts to keep secret from the tax authorities, that are marketed by promoters as devices for reducing taxes, or that are reported in an inconsistent manner to the tax authorities of two or more countries. The term does not include “normal tax planning.” The term “normal tax planning” should be understood to mean the structuring of legitimate and lawful business or investment activities in the hope of minimizing taxes, as long as the activities are transparent to all relevant taxing authorities, have economic substance, are intended to advance a significant business purpose, and could plausibly have been undertaken even if the reduction of taxes had not been an issue.

II. Scope

4. This Code of Conduct, although formally applicable only to Member States, is intended, nevertheless, to guide the conduct of the following states, individuals and entities:
 - A. Governments and their agencies;
 - B. Taxpayers, whether individuals, corporate bodies, or otherwise;

- C. Tax advisors, legal advisors, accountants, financial planners, financial intermediaries, and persons acting in an agency or a fiduciary capacity, whether they are undertaking tax planning or are assisting with tax compliance.

III. Goals

- 5. The Code of Conduct shall assist Member States and the international tax community in the development and adoption of international norms that governments should follow to control international tax evasion and abusive tax avoidance.
- 6. In addition, the Code of Conduct shall encourage governments to approve accounting norms regarding transparency and to adopt rules requiring the public availability of certain records. In particular, it shall promote the establishment of an obligation to record publicly the structure and the accounts of all taxable entities or any other entities that might be used by taxpayers to avoid or evade their taxes.
- 7. Furthermore, this Code of Conduct shall discourage Member States from providing a competitive advantage to domestic taxpayers or taxpayers from the same economic block, by, for example, cracking down only on the proscribed conduct of residents of selected countries, in the guise of controlling international tax evasion and abusive tax avoidance.

IV. Standards of Conduct

- 8. Member States shall require transparency in financial matters, restricting, for example, formal and informal bank secrecy rules when those rule would interfere with an effective enforcement of taxes.
- 9. Member States shall commit themselves not to introduce or maintain measures that provide tax benefits solely or almost exclusively to nonresidents or that grant tax benefits with respect to essentially formal transactions that lack economic substance.
- 10. Member States shall enter into agreements with other governments that promote an effective exchange of information on tax matters, including the routine and spontaneous exchange of information helpful in combating tax evasion and abusive tax avoidance.
- 11. Member States shall commit themselves to avoid the establishment of legal instruments that are intended to confound tax enforcement, such as trusts with undisclosed terms.
- 12. Member States shall conform their laws and administrative practices with emerging standards that require financial intermediaries, attorneys, accountants, and

corporate service providers to know and disclose to the tax authorities the true identity of persons they serve and to know and disclose to the tax authorities the true beneficial owners of assets they manage.

13. Member States shall conform their laws and administrative practices to emerging standards that require corporations, partnerships, limited liability companies, trusts, and other legal entities to know and disclose to the tax authorities the beneficial owners of their stock or other instruments of ownership.

14. Member States shall adopt and enforce reporting rules intended to control tax evasion and avoidance and money laundering, such as rules requiring the reporting of large cash transfers.

V. Monitoring and Reviewing

15. The Committee of Experts on International Cooperation in Tax Matters shall maintain and promulgate a list of States that have agreed to conform their conduct to the requirements of this Code of Conduct.

16. Member States shall 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 for their level of compliance with this Code of Conduct.

17. The various instrumentalities of the United Nations shall consider other measures to monitor compliance, including public reports on noncompliance by States and on the level of cooperation received from banks and other financial intermediaries and from international accounting firms, law firms, and other bodies acting in a fiduciary capacity.