Memo
Wayne State University Law School

To: Committee of Experts on International Cooperation in Tax Matters
From: Michael J. McIntyre, Member, Information Exchange Subcommittee
Subject: Proposed UN Model TIEA
Date: September 30, 2009

In 2002, the OECD produced a model tax information exchange agreement (TIEA). The TIEA was intended to guide countries that wanted to have a treaty with certain countries that had no income tax and, as a result, had no strong reason to negotiate a general income tax treaty. The focus of the OECD initiative was on certain off-shore financial centers that were thought to facilitate international tax evasion and aggressive forms of tax avoidance. At the time, the OECD TIEA represented a major step forward because it signaled a commitment of the majority of the OECD countries to place limits on the bank secrecy rules of off-shore financial centers.

In the view of most academics of my acquaintance, treaties based on the OECD TIEA have been largely ineffective. In addition, the OECD TIEA does not reflect the emerging consensus on transparency and information exchange that has formed in response to the banking crisis of 2008 — a crisis that has hit the developing countries particularly hard, despite the fact that the crisis resulted from actions taken (or not taken) by the major OECD countries. The OECD TIEA only provides for information exchange on specific request, when the suspected tax evader has already been targeted by the country requesting the information. As recognized in the Commentary to Article 26 of the UN Model Treaty, an effective exchange of information requires not only information on specific request but also automatic and spontaneous exchanges.

I believe the time has come for the UN Committee to take a leadership role in promoting an effective exchange of information. It has been encouraged to do so by ECOSOC, its parent body and the ultimate controller of its budget. One step in that direction would be to adopt the Code of Conduct that I prepared for the Committee at its request in 2007 and that I later modified to accommodate the requests of various members. My version of the Code of Conduct reflects the emerging international standard and not the antiquated standard embodied in the OECD TIEA of 2002. If the UN Committee wishes to be relevant in framing the debate over the obligations of countries to assist other countries in combating tax evasion, it need to adopt a Code of Conduct that reflects its high aspirations and encourages conduct that actually would advance an effective exchange of information.

In addition, I believe that the UN Committee needs to promulgate its own TIEA — a TIEA that reflects the widespread view of developing countries that an effective exchange of information is essential for them to control money laundering and to mitigate international tax evasion and aggressive avoidance. To assist the UN Committee in that endeavor, I have attached a draft TIEA that I prepared as a member of the subcommittee on information exchange. That draft includes a report that compares the proposed UN TIEA to the OECD’s 2002 TIEA. I hope that the committee finds this draft and report useful.