



Discussion Paper

TAXATION AND THE 2008 UN FOLLOW-UP CONFERENCE ON FINANCING FOR DEVELOPMENT: POLICY RECOMMENDATIONS

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1. INTRODUCTION

This paper addresses the taxation dimension of the “Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus” in Doha, Qatar, from 29 November to 2 December 2008. The Doha conference is meant as a stock-taking and updating exercise with regard to the Financing for Development (FfD) process that started with the 2002 UN Financing for Development Conference in Monterrey, Mexico. Tax policy is obviously an important aspect of financing for development, although it received relatively little attention in Monterrey. Some recent studies have highlighted the devastating effects on development of ill-conceived tax policies and lack of international tax cooperation in an era of globalisation. In a 2005 report Oxford professor Alex Cobham estimated the loss of tax revenues for developing countries as a result of asset-holding in offshore financial centres (OFCs) by rich individuals at \$50 billion annually. A similar amount of public revenues is lost each year due to corporate profit shifting abroad, including to OFCs.¹ In a May 2008 report, Christian Aid pointed at the dramatic consequences of problematic tax policies and weak enforcement in developing countries.² Many observers agree that the taxation dimension of FfD is at least as important as official development assistance (about \$104 billion in 2006). In this context we have to bear in mind that also developed countries are still heavily struggling with issues such as tax-inspired capital flows to OFCs and taxing multinational corporations properly without being played-off one against another. Within the frameworks of the European Union (EU) and the Organisation for Economic Cooperation and Development (OECD) developed countries have already undertaken coordinated action to deal with some of these issues, whereas such initiatives largely remain absent at the universal level.

The paper departs from the following premises. First, the tax dimension of the FfD process deserves more attention than it has been given up till now. Especially globalisation-related issues such as the taxation of multinational enterprises, fraudulent capital flight to OFCs, the developing world’s weak capabilities to tackle these problems, and the way multilateral cooperation can partly remedy things, merit more detailed language in the final document of Doha. Secondly, a strengthening of the development-related tax agenda, as nowadays put forward – although with various accents – by the UN Secretary-General, a few UN member states and a number of NGOs, perfectly fits within the internationally agreed upon basic contours for Doha, namely a review of what has been achieved since 2002 and an update of the Monterrey Consensus. Third, the 2008 Follow-up Conference is a rare occasion of international political momentum, not to say the only occasion in the foreseeable future, to make substantive progress with regard to this agenda at the multilateral level. After having outlined the policy context of the tax dimension of FfD, the paper will put forward a number of concrete policy recommendations.

¹ A COBHAM, *Tax Evasion, Tax Avoidance and Development Finance. Working Paper Number 129, QEH Working Paper Series*, September 2005.

² CHRISTIAN AID, *Death and Taxes: the True Toll of Tax Dodging*, May 2008.

2. GLOBAL TAXATION GOVERNANCE: OECD AND UN

In a globalising economy international tax cooperation becomes every day more important. For decades the OECD and – to a lesser extent – the United Nations (UN) have been fostering international coordination on cross-border issues, mostly related to the allocation of taxing rights between the residence and source state of income, which includes avoidance of under- and double taxation. For most part this work is intellectual and guiding, not binding. Except in the EU, there is no strong multilateral framework based on hard law. Hard law is present in the complex web of bilateral tax treaties. Since the 1990s global taxation governance obtained a higher profile, and the debate got more political. The OECD welfare states began to worry about the erosion of public revenues as a result of tax competition and tax-driven capital flight towards offshore financial centres (OFCs). In the second half of the 1990s both the OECD and the EU launched action plans against these phenomena. Since the beginning of this decade global tax issues have also been explicitly linked to financing for development. The ‘Monterrey Consensus’, the final document of the 2002 Monterrey conference, and to a larger extent its preparatory documents, contain several references to international tax issues. One of the most well-known examples of this new linkage is the revival of the idea of ‘global taxes’, such as taxes on currency transactions (cf. Tobin tax) or taxes on flight tickets, strongly propagated by governments like the French (Chirac) and Brazilian (Lula).

Why is the global policy level relevant for taxation, traditionally seen as one of the cornerstones of national sovereignty? Internationalisation and globalisation entail a multitude of tax issues. Their very technical nature often conceals distribution issues that are socially highly relevant. While taxing revenues of multinational corporations or migrants, a trade-off has to be made between the interests of the residence state of the taxpayer and the source state of the income. Developments such as e-commerce render this all the more complex. Secondly, the enhanced mobility of products and production factors in the context of globalisation spurs tax competition between jurisdictions in order to attract and keep as much economic activity as possible. This process gives rise to important distribution issues between social groups within countries, as capital is more competition-sensitive than labour and consumption. OFCs, often pejoratively referred to as “tax havens”, are said to drive tax competition to the extreme, making use of zero rates and strict banking secrecy. This context engenders a lot of incentives for more international cooperation, including with regard to information exchange. Thirdly, to the global tax agenda can also be added intellectual cooperation between tax administrations, for example through the exchange of best practices and dissemination of statistics, and assistance to developing and transition countries to improve their national tax administrations through multilateral and bilateral programmes.

Finally, the idea of “global taxes” has been raised from time to time. These taxes would have a financing and/or regulatory function. With regard to the financing function, global taxes are believed to be a more stable source of financing than contributions out of national budgets, especially if they are based on international agreements. To date there are no global taxes. However, due to the new momentum some limited initiatives have recently seen the light, although there is no binding international agreement on the concerned taxes. The intergovernmental fund UNITAID, launched in 2006, makes drugs against AIDS, malaria

and tuberculosis cheaper and more accessible. It has 27 member states from the North and South. UNITAID is for more than 80% financed by small levies on air tickets. This tax is already implemented in 8 countries, such as France. For 2009 a budget of \$500 million is expected.³ The Global Digital Solidarity Fund, founded in 2005, collects money from public and private actors contributing a tiny percentage (normally 1%) from their IT-related transactions. The fund is run by 16 governments from the North and South, other public authorities (such as cities) and one private company. The resources are used to combat the digital divide.⁴ A marked trend among advocates of global taxes is a shift away from taxes that are both financing and regulatory to purely financing levies. The idea of a very low “currency transaction development levy” is gaining ground at the expense of the higher Tobin tax variants that are also aimed at combating international financial speculation. The levy on air tickets for UNITAID is set very low so that there is no effect on consumer behaviour and no contribution to the fight against climate change.

With regard to the institutional dimension of global taxation governance, we focus here on global frameworks. The OECD and the UN are the most relevant players. The OECD has the actual lead. The OECD’s tax department has the most resources and is assisted by the ministries of finance of the industrialised countries. It is also important to note that the OECD in general and for tax matters in particular attempts to exert global influence. The OECD’s policy recommendations on international tax problems are read and (partly) implemented by many non-member countries. The work of the OECD often serves as a point of reference for the UN. The OECD has developed an influential *Model Tax Convention on Income and on Capital* which allocates taxing rights between residence and source states. To adequately tax international transactions between entities of the same multinational group the OECD has published authoritative *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*. The OECD also promotes exchange of information between states by means of its *Model Agreement on Exchange of Information on Tax Matters*, among other instruments. In addition, the OECD runs programmes to train tax officials in developing and transition countries.⁵

One of the best known OECD tax initiatives is its crackdown on “harmful tax practices”. The initiative has two components: 1) a policy against discriminating special tax schemes for firms within the OECD, and 2) a policy against harmful practices of OFCs. The first part, which ran parallel to the EU’s non-binding Code of Conduct against special corporate tax regimes and the binding, tougher policy against these schemes in the framework of the EU’s anti-state aid rules, was quite successful and led to a phasing out of the targeted schemes. The second underwent considerable turbulence. At the outset in 1998, the OECD applied a broad definition of “tax havens” and envisaged a coordinated mechanism of sanctions against non-cooperative OFCs. This provoked a lot of protest from the OFCs themselves. They considered the OECD initiative as a neo-colonial assault on their national sovereignty. The Bush administration, which came into power in 2001, urged for a considerable adjustment under strong domestic conservative pressure. Tax competition as such, it argued, should not be

³ <http://www.unitaid.eu>.

⁴ http://www.dsf-fsn.org/cms/component/option,com_magazine/func,show_magazine/id,11/Itemid,194/lang,fr.

⁵ OECD Centre for Tax Policy and Administration, http://www.oecd.org/department/0,3355,en_2649_34897_1_1_1_1_1,00.html.

targeted. In the British Commonwealth discomfort grew about the harsh treatment of poor jurisdictions. With reference to the development dimension, states such as the UK, Australia and New Zealand, joined by the Congressional Black Caucus in the US (a progressive Democrat bulwark), jammed on the brakes. The fact that OECD countries with strict banking secrecy, such as Switzerland and Luxembourg, would be exempt seriously compromised the whole initiative. The OECD had to change course. The OECD opted to use no longer the term “harmful tax competition” but “harmful tax practices”. Subsequently, tax competition as such by means of zero rates was no longer considered a problem. From then on, only practices against transparency and information exchange upon request would be considered as “harmful”. The idea of orchestrated OECD sanctions was actually left. Instead, a dialogue between the OECD and OFCs was started within the newly created “Global Forum on Taxation”, based on the equality among partners and the ambition to create a “level playing field”, with norms applying alike to all states. Under OECD pressure most OFCs have complied with the two requirements, so that they could be removed from the black list. It must be said that these requirements are not that burdensome for OFCs and contribute to their reputation, which is an important asset in the financial sector. These norms also appear more regularly in bilateral tax treaties between OECD countries and OFCs. A global agreement on automatic information exchange or on withholding taxes at source, which would be much more powerful instruments against fraudulent capital flight, are not at all on the agenda.⁶

The UN record on taxation is rather limited thus far. In the 1960s the UN began to show interest in the allocation of taxing rights between developed and developing countries. A consensus grew that interests of source countries of income should be taken more into account, and that common practices among industrialised countries were not very instructive with regard to this North-South issue. In 1980 the UN published its *United Nations Model Double Taxation Convention between Developed and Developing Countries*. In 1979, it had already published its *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries*.⁷ The development and updating of the UN Model (and Manual) has been the task of the UN Tax Committee, which — since 2004 — is officially called “Committee of Experts on International Cooperation in Tax Matters”. It consists of 25 experts nominated by their national governments, appointed by the UN Secretary-General, and acting in their “personal capacity” (although most of them are high-ranking officials of the ministry of finance). In the aftermath of the 2002 Monterrey Conference, the UN Tax Committee was administratively categorised under the FfD process (see FfD website⁸) and is supported by the FfD Office (established in 2003). Although the current mandate of the Committee is broad enough to discuss all relevant global tax issues, most of its work has so far been dedicated to the updating of the UN Model. This way, the UN Tax Committee does not really function as the centre of global taxation governance.

⁶ J C SHARMAN, *Havens in a Storm. The Struggle for Global Tax Regulation* (Ithaca and London, Cornell University Press, 2006).

⁷ Introductions to Manual and Model, <http://www.un.org/esa/ffd/tax/index.htm>.

⁸ <http://www.un.org/esa/ffd>.

3. FINANCING FOR DEVELOPMENT AND DOHA 2008

3.1. The Monterrey Consensus

A UN conference on financing for development was already envisaged in 1997. The 2000-2001 Millennium Declaration and Millennium Development Goals gave the 2002 Monterrey Conference an extra high profile. In two important preparatory reports — from the UN Secretary-General and the High-Level Panel chaired by former Mexican President Ernesto Zedillo⁹ — tax policy was extensively addressed. Themes such as tax competition, taxation of multinational corporations (more precisely the transfer pricing issue), information exchange and the improvement of national (progressive) tax systems were considered as important topics in the FfD framework. Both reports also advocated an institutional reinforcement of global tax cooperation. The Zedillo report elaborated the idea of an International Tax Organisation (ITO). Finally the reports pleaded for more study on innovative financing mechanisms, including global taxes.

The final document of the 2002 FfD Conference is referred to as the “Monterrey Consensus”. This text contains six chapters: 1) Mobilising domestic financial resources for development, 2) Mobilising international resources for development: foreign direct investment and other private flows, 3) International trade as an engine for development, 4) Increasing international financial and technical cooperation for development (this is mainly development assistance), 5) External debt, and 6) Addressing systemic issues: enhancing the coherence and consistency of the international monetary, financial and trading systems in support of development (this is mainly global governance innovation). Although poorer countries and NGOs deplore a lack of commitment on a number of issues, the Monterrey Consensus is widely praised as a holistic and balanced cognitive framework on development financing. It is an effort at the UN level to bring some intellectual coherence in the work of various international institutions and regimes, and the activities of states and non-state actors. It is more about political principles and norms than about concrete commitments or targets. It assigns responsibilities to both developed and developing countries. It addresses a broad range of relevant dimensions, such as official development assistance (ODA), but also the importance of good governance and sound business climates. Its outlook is quite market-oriented, but it also stresses the major role the state has to play in the economy.

Taxation mainly appears in the first and sixth chapters. The Monterrey Consensus is much less concrete on taxation than the Zedillo and Annan reports. Further developing global taxation governance had proved to be too difficult for a number of delegations. The section “Mobilising domestic financial resources for development” only mentions the following:

An effective, efficient, transparent and accountable system for mobilizing public resources and managing their use by Governments is essential. We recognize the need to secure fiscal sustainability, along with equitable and efficient tax systems and administration, as well as improvements in public spending that do not crowd out

⁹ UN, *Report of the Secretary-General to the Preparatory Committee for the High-level International Intergovernmental Event on Financing for Development*, 18 December 2000. A/AC.257/12; UN, *Report of the High-level Panel on Financing for Development*. A/55/1000. 26 June 2001.

productive private investment. We also recognize the contribution that medium-term fiscal frameworks can make in that respect. (§15)

As regards the institutional framework, nothing is left from the ITO idea. The Monterrey Consensus only puts forward the following action:

Strengthen international tax cooperation, through enhanced dialogue among national tax authorities and greater coordination of the work of the concerned multilateral bodies and relevant regional organizations, giving special attention to the needs of developing countries and countries with economies in transition. (§64)

In respect of innovative financing mechanisms, ambitions were equally low. For some governments, such as the American, global taxes are unacceptable. Global taxes are only one category among innovative financing mechanisms. Only the idea of “special drawing rights” for development was explicitly mentioned:

We recognize the value of exploring innovative sources of finance provided that those sources do not unduly burden developing countries. In that regard, we agree to study, in the appropriate forums, the results of the analysis requested from the Secretary-General on possible innovative sources of finance, noting the proposal to use special drawing rights allocations for development purposes. (§44)

The most noteworthy reforms following directly or indirectly from the FfD process are the creation of the International Tax Dialogue (ITD) (2002) and the slight upgrading of the UN Tax Committee (2004). The ITD is a network consisting of the OECD, the IMF, the World Bank and the Inter-American Development Bank (IADB) to exchange insights and best practices from all over the world. It is not a political body where negotiations on international agreements are held. Its website and conferences are its most important instruments.¹⁰ The ITD stands far from an ITO, reflecting the preference of many governments for a very light multilateral institutionalisation and for networking among existing institutions rather than the creation of new bureaucracies. The timing of the creation of the ITD suggests that it was partly meant to neutralise the case for an ITO. The upgrading of the UN Tax Committee comprised a new name (not longer “Ad Hoc Group of Experts on International Cooperation in Tax Matters”), the confirmation of a broad mandate allowing the Committee to address all relevant global tax issues, the possibility to have an annual meeting of maximum 5 days in Geneva¹¹ and the desired integration of the Committee’s work into the FfD process.¹²

¹⁰ <http://www.itdweb.org/Pages/Home.aspx>.

¹¹ ECOSOC Resolution 2004/69, 11 November 2004.

¹² As already mentioned, the UN Tax Committee is administratively linked to the FfD Office, and in the 2004 ECOSOC Resolution explicit reference is made to the FfD process.

3.2. Monterrey+6 or Doha 2008

The 2002 Monterrey Consensus foresaw a follow-up conference. In December 2007 the General Assembly¹³ fixed the date for the Doha conference and reiterated

[...] that the Review Conference should assess progress made, reaffirm goals and commitments, share best practices and lessons learned and identify obstacles and constraints encountered, actions and initiatives to overcome them and important measures for further implementation, as well as new challenges and emerging issues.

The concrete agenda is still open. Most UN member states continue to support the original Monterrey Consensus, and do not want to open-up the entire debate in the preparation of Doha. Yet, some topical issues, such as financial aspects of climate change, are now likely to receive more attention. The current food and energy crises, the strong discontent in the South about the policies and internal power-relations of the IMF and World Bank, the poor fulfilment of ODA promises, as well as the Western concern about the rise of new donor countries with different views on conditionality and good governance, also mark the political context of Doha. Concerning tax policy, in principle everything can be discussed. The vague wording in the Monterrey Consensus reflects the strict limits of the politically possible, but also means that the UN has not pegged itself to detailed constraints. This opens perspectives for a relevant tax agenda in Doha.

Although the work of the UN Tax Committee is now considered a part of the FfD process, to date not many impulses have come from this body. The Committee continues to work in the old fashion and spends most of its time on technical discussions about the UN Model Convention. Most members of the Committee as well as delegates from member states who actively participate in the meetings, are officials from their respective ministries of finance charged with double tax treaties. Most of them have little affinity with the broader international tax agenda, including the tax dimension of the FfD process. Only a few Committee members and delegates, the UN secretariat and interested NGOs such as Tax Justice Network (TJN) plead for a real integration into the FfD process. So, for Doha at this moment not much interesting input is to be expected from the UN Tax Committee. The only FfD-relevant initiative the Committee is presently developing is a code of conduct for international cooperation in the fight against international tax evasion (see below).

Politically speaking more can be expected from the “Leading Group on Solidarity Levies to Fund Development”. This group stems from the 2004-2005 initiative of the former French President Chirac and the Brazilian President Lula to put innovative financing mechanisms for development, including global taxes, high on the international agenda.¹⁴ The group started in 2006 and is a forum for study and advocacy of innovative financing mechanisms. There are 54 member states, with different degrees of participation intensity.¹⁵ Every six months

¹³ A/C.2/62/L.59 (<http://daccessdds.un.org/doc/UNDOC/LTD/N07/630/06/PDF/N0763006.pdf?OpenElement>) en A/RES/62/187.

¹⁴ See: http://www.diplomatie.gouv.fr/fr/actions-france_830/financements-innovants-du-developpement_14483/index.html.

¹⁵ List by 5 August 2007: Algeria, Austria, Bangladesh, Benin, Belgium, Brazil, Burundi, Cambodia, Cameroon, Central African Republic, Chile, Congo, Cyprus, Djibouti, Ethiopia, Finland, France, Gabon, Germany, Guatemala, Guinea, Guinea-Bissau, Haiti, India, Italy, Côte d’Ivoire, Jordan, Cape Verde, Lebanon, Liberia, Luxembourg,

there is a new chair. France launched the group, and subsequently Brazil, Norway and South Korea acted as chairs. From October 2007 to April 2008 Senegal is chair. Thereafter Guinea will take over. The work of the Leading Group is predominantly intellectual. The meetings in Oslo in February 2007 and Seoul in September 2007 were filled with presentations and discussions on a wide array of topics, such as air ticket taxes, the “currency transaction development levy”, new financing mechanisms for drugs against tropical diseases, the issues of capital flight and tax havens, and migrant remittances. Within the group Norway is one of the most active players. Norway also happens to be facilitator to the UN Doha process (together with Egypt) so that a bridge can be made between both processes. The focus of the Leading Group has become broader than “solidarity levies”, and includes other FfD-relevant tax issues as well.¹⁶ Within the framework of the Leading Group, Norway is also the convenor of the “Task Force on Illicit Financial Flows”, which includes work on tax-inspired capital flight to OFC’s. During the preparatory “Review Sessions” leading to Doha, Norway was among the most fervent advocates of language that explicitly recognises development-relevant tax issues related to globalisation and requiring more international tax cooperation. According to the chairs’ summary of the review session on Chapter 6, a rising number of UN member states endorses this approach¹⁷:

Many countries expressed concern about capital flight, illicit financial activities and transfers, tax evasion and corruption, and called on sustained international cooperation to fight those ills. They emphasized that international oversight institutions should continue strengthening existing mechanisms such as the United Nations Convention Against Corruption. They stated that the ratification by all countries and full observance of the Convention should be further promoted.

Many speakers called for upgrading the present United Nations Committee of Experts on International Cooperation on Tax Matters to an intergovernmental commission with appropriate representation to reflect all interests. They stressed in this regard the special importance of addressing the concerns of small, vulnerable developing countries. They pointed out that the agenda of existing institutions, which address international tax matters outside the UN, was still largely lacking a development dimension, besides not being universally representative.

In his written contribution to the “Special high-level meeting of the Economic and Social Council with the Bretton Woods institutions, the World Trade Organisation and the United Nations Conference on Trade and Development” on 14 April 2008, the UN Secretary-General paid extensive attention to innovative forms of development financing, including new internationally agreed taxes on currency transactions, carbon emissions or arms purchases, as well as the issue of capital flight and tax evasion. He explicitly mentioned the work of the Leading Group and Norway. In February 2008 he appointed Mr. Philippe Douste-Blazy as his “Special Adviser on Innovative Financing for Development”, from whom input to the process

Madagascar, Mali, Morocco, Mauritius, Mauritania, Mexico, Mozambique, Namibia, Nicaragua, Niger, Nigeria, Norway, Poland, Saudi-Arabia, Sao Tome and Principe, Senegal, Spain, Togo, UK, Uruguay, South Africa, South Korea (http://www.diplomatie.gouv.fr/fr/IMG/pdf/groupe_pilote.pdf).

¹⁶ See: <http://www.innovativefinance-oslo.no>, and <http://www.innovativefinance.go.kr>.

¹⁷ See: http://www.un.org/esa/ffd/doha/chapter6/ReviewSessionChapterVI_summary.pdf (§66 and 67).

is expected during the coming months.¹⁸ It remains to be seen how all these tax-related ideas and sensitivities will be formulated in the Doha draft that the chairs will submit by the end of July, and how the policy entrepreneurship of the Leading Group and Norway, the UN Secretary-General and many NGOs will be rewarded. At this very moment, a lot of developed and developing UN member states, including the EU that speaks with one voice, have still to come up with more detailed views and proposals on this issue.¹⁹ Anyway, it is not too late to seriously consider some of these proposals.

4. GENERAL POLICY RECOMMENDATIONS FOR DOHA 2008

In this section two political-tactic, three substance-related and one institutional recommendation are presented. Given their interests, values, earlier statements and policies, most OECD governments can adopt them without too much political controversy. They are fully in line with processes that are already under way. This list mostly deals with general topics/frameworks that will enable progress on more detailed issues. Of course in the Doha process member states can put forward other and more detailed proposals than the ones detailed here. Other proposals have been formulated by the Tax Justice Network (TJN), the NGO network specialised in global tax issues.²⁰ In this respect, it is also recommendable that member states put forward far-reaching proposals, concerning for example exchange of information practices or financing and regulatory international taxes (e.g. in relation to financial stabilisation or climate change) — even if the odds for approval are unfavourable at the moment — just for the sake of gaining intellectual ground for these ideas. Here the focus lays upon general tax policy (which mostly fits within the Chapters 1 and 2 of the Monterrey Consensus) and the need for more international tax cooperation (Chapter 6), and not internationally agreed taxes to finance development (Chapter 4). This focus is consistent with the view of many OECD governments that FfD is not only about official development assistance (i.e. Chapter 4), but that healthy economies and good governance will also raise gigantesque amounts of money for development. Yet, responsible domestic economic policies cannot go without efficient and equitable tax systems that are adapted to globalisation and prevent the ultra-rich few from taking advantage of “fiscal floodgates”²¹ to the detriment of the many. What is more, both the OECD and EU have already engaged in extensive international tax cooperation in various forms: pooling of expertise; providing forums to exchange ideas and best practices; setting up regimes for information exchange on tax payers in order to bolster national enforcement of tax law; implementing codes of conduct, collective “disarmament” and tough state aid rules to curb excessive tax competition among states to attract foreign investment; and fostering international principles against all too strict banking secrecy rules. This indicates that states cannot cope with the problem individually. It is strange that almost nothing of all this, and

¹⁸ See: <http://daccessdds.un.org/doc/UNDOC/GEN/N08/273/13/PDF/N0827313.pdf?OpenElement> (document E/2008/7).

¹⁹ See: http://www.un.org/esa/ffd/doha/substantive_inputs.htm.

²⁰ See e.g. 18 recommendations in *Presentation by the Tax Justice Network to the Meeting of the Group of Experts in Rome, September 4-5, 2007 on the Tax Aspects of Domestic Resource Mobilization. Enduring and Emerging Tax Issues: The Rule for International Cooperation in Helping Address Those Tax Issues over the Coming Years*; and recommendations in the TJN report *Closing the Floodgates. Collecting Tax to pay for Development. Commissioned by the Norwegian Ministry of Foreign Affairs. 2007* (<http://www.taxjustice.net>).

²¹ See TJN report in previous note.

other possibly interesting approaches, exist at the universal UN level, and that, by consequence, developing countries are excluded from the existing frameworks – unless they engage in “outreach” activities of the OECD and other Northern actors, processes in which developing countries will never have an equal voice.

4.1. Better Coordination between the Ministry of Foreign Affairs/Development Cooperation and the Ministry of Finance

In most countries the FfD process is followed by the ministry of foreign affairs/development cooperation, while international tax cooperation is the *domaine réservé* of the ministry of finance. The question should be asked whether both processes are adequately connected in most countries. In the UN Tax Committee, which is dominated by finance people, it is clear that this is not the case. At the 2007 meeting, the response from the room to the FfD Office’s question how the Committee could contribute to Doha, was rather poor.²² A better coordination is desirable. Foreign affairs and development cooperation can involve finance more actively by strongly advocating the Doha agenda vis-à-vis finance, and inviting finance to provide expertise and input that is really geared to the development dimension. The latter point is not self-evident as it is not the core of the international tax work of finance ministries and their tax administrations, although the existing cooperation between developed and developing countries in bilateral and other contexts can provide interesting material. It would be very helpful if the July 2008 co-facilitators’ Doha-draft contains relatively detailed language on these issues, so that member states have concrete food for thought that is already framed in an FfD-relevant way. The structural disconnection between development and tax policy in most governments is a major argument in favour of upgrading and reorganising the UN Tax Committee (see below), which is well placed to do a lot of the preparatory thinking on behalf of the international community with regard to this interdisciplinary and highly specialised topic.

4.2. Building an International Political Coalition around a Feasible Agenda

Without an effective coalition among UN delegations nothing will move with regard to the tax dimension of FfD. First, the Leading Group on Solidarity Levies to Fund Development appears to be a forum willing to address the complete development-related tax agenda. In principle all states can join the group. Some governments could consider this with a view to Doha and the longer term, others could choose to activate their current membership that is rather passive. In the short term it is important that the Leading Group reflects on a common, limited and feasible agenda for Doha. The Leading Group can be a forum to discuss concrete proposals and find common ground. In general the Leading Group has to take care not to become another talking shop. Doha is an opportunity to work towards concrete achievements. In the longer term the Leading Group could work on an inventory of international tax reform proposals in order to keep oversight and be a centre capable to inform interested actors. This could require establishing a small secretariat.

For Doha the most important work has to take place among UN delegations in New York. Some delegations will have to take the lead to propose clear, attractive and feasible

²² Author’s observations during the 2007 meeting in Geneva. Some delegates of important countries frankly admitted not to have anything sensible to say about that question.

proposals, out of a multitude of international tax reform proposals that have been circulating over the past years. Leading Group countries will undoubtedly play an important role in this process but it might be useful not to act as Leading Group as such, as not all governments agree with the Leading Group's multifaceted agenda. It is particularly important that committed governments work on ad hoc coalitions that are as broad as possible around concrete proposals.

4.3. Specific Language on the Development Relevance of Globalisation-Related Tax Issues

Especially in Chapter 1 (domestic resource mobilisation) and 2 (international private investment) development-relevant and globalisation-related tax issues deserve specific mentioning, more than is the case in the existing Consensus. The Monterrey Consensus is in the first place an intellectual framework about sensible FfD policies; in this text the major contemporary tax issues should at least be defined, so that governments and international institutions are invited to take them into account. The general and vague wording of the existing text fails to do so. According to the design of the Monterrey Consensus, it is perfectly legitimate that not only issues that require international cooperation are addressed, but also issues of purely domestic responsibility. Besides the general need for efficient and just tax systems (which is already mentioned in the Monterrey text), Chapter 1 could call for greater awareness of methods rich elites apply to take advantage of globalisation in inequitable and often illegal ways, for example by investing millions of dollars abroad without complying with their country's tax rules. In this context, OFCs bear an important part of the responsibility, notably as regards information exchange and transparency (see 4.4). Chapter 2 can address problems such as excessive tax competition among countries to attract foreign capital in a way the multinational corporations are the only winners, and abusive transfer pricing methods by which multinationals shift profits to low-tax jurisdictions. Whenever relevant, the Doha text can recommend regional cooperation among countries (e.g. agreements against tax competition as they already exist within the EU). Admittedly, very detailed language on all relevant tax issues and how to deal with them, cannot be completed before Doha. Maybe, this is also not the function of the Consensus text. Yet, the Doha conference could decide to defer the study of these issues to a strengthened UN Tax Committee and FfD Office. It is their task to come up with concrete problem definitions, detailed analysis and concrete solutions (see 4.6.).

4.4. Code of Conduct on Cooperation in Combating International Tax Evasion

This point is mentioned here because it is a very concrete proposal that is currently being prepared, and has received broad support within the UN Tax Committee. A subcommittee is working on a "Code of Conduct on Cooperation in Combating International Tax Evasion". At the 2007 meeting it was explicitly linked to the Doha process. The Code would be a non-binding document but would help to set a moral standard against strict banking secrecy rules that prevail over international cooperation against tax evasion. Together with the OECD initiative against harmful tax practices, the recent OECD and UN decisions to make information exchange upon request prevail over banking secrecy in their model bilateral conventions (Article 26, paragraph 5 in both texts), and the European savings directive, this Code of Conduct would further isolate non-cooperative OFCs.

4.5. Assistance to National Tax Administrations

Although this does not constitute international tax coordination in the strict sense, the multilateral level can make a valuable contribution to assistance of national tax administrations of developing countries with regard to managing a (progressive) national tax system or coping at the national level with complex international tax issues (e.g. transfer pricing of multinational corporations, capital flight to tax havens). This could be a matter for Chapter 6. Several international institutions, such as the IMF, World Bank, OECD, the International Tax Dialogue and regional technical tax organisations (e.g. the Commonwealth Association of Tax Administrators (CATA) and the French-speaking Centre de Rencontres et d'Études des Dirigeants des Administrations Fiscales (CREDAF)) already engage in advice and assistance in various forms. There is also bilateral activity in this field. Yet, the question may be asked whether these efforts are sufficient, and to what extent they adequately address contemporary tax issues that developing countries face in the globalising economy (as for instance mentioned in the Annan and Zedillo reports preparatory to the 2002 Monterrey conference). A first step could be an evaluative study by the UN or another body in consultation with the FfD Office. Such a study could give insight into best practices, thematic and geographical gaps, duplication of work, etc. In a next phase the FfD Office could continue to keep oversight and signal opportunities or gaps to the international community, and foster coordination of efforts. It is conceivable that an upgraded FfD Office (see 4.3) undertakes this effort within the framework of the International Tax Dialogue in which the most important institutions are represented. Thus far, because of a lack of resources the UN hardly participates in the ITD.

4.6. Upgrading and Reorganising the UN Tax Committee and Strengthening the FfD Office

Chapter 6 could do something about the fact that the international tax work does not yet possess a proper institutional home.²³ In a lecture during the 2007 meeting of the UN Tax Committee professor Vito Tanzi, former Director of the IMF Fiscal Affairs Department, stressed the importance of a universal knowledge centre for tax affairs, which is still non-existent. Such a centre could, analogous to what the OECD does for developed countries, analyse global tax trends in a systematic and comparable way. At present there is astonishingly little aggregate material on tax trends in the developing world and global tax issues (e.g. fraudulent capital flight to OFCs). The publication of useful data would in its turn engender interesting political dynamics. A first step could be the strengthening of the FfD Office. In Doha, governments could decide to give it significantly more resources and staff. This would also allow the FfD Office to better support the work of the UN Tax Committee and its various subcommittees. In addition, in consultation with the FfD Office and the UN Tax Committee, individual countries can take initiatives to finance and/or commission research on certain international tax issues. For efficiency reasons, the FfD Office should work closely together with other international institutions such as the OECD, IMF and World Bank in order to pool resources and expertise.

While the logistic and technical support can come from the FfD Office, most part of the intellectual exchange and political work has to be done in the UN Tax Committee. Three

²³ At the UN FfD Office two full-time staff members work on tax, while the OECD tax department has at least 20 regular staff (data obtained from the institutions themselves).

years after the ECOSOC resolution on the renewed UN Tax Committee, time has come that the Committee works according to its new mandate, and is enabled to do so. As the Committee is an integral part of the FfD work, this topic has to be addressed in Doha. Most important are new working methods. The annual five day plenary should not be almost completely lost in technical discussions on the UN Model Convention. This work is already prepared in subcommittees, but apparently a lot of issues still need to be debated in the plenary session. If a technical issue cannot be decided, it is simply moved to the next plenary meeting. In a new form, the subcommittees should prepare the plenary much more thoroughly and try to build a consensus in advance. This will probably require more resources to be able to have more meetings and engage more ad hoc experts in the subcommittees. This way the plenary session could be a forum for political discussion on the broader orientations. As a first step, UN member states could work with the FfD Office and the UN Tax Committee to make the 2008 session as relevant for Doha as possible. In Doha decisions could be made on a reform of the Committee's working methods. A fundamental point is that UN member states make sure that their officials participating in the UN Tax Committee are well informed and instructed concerning the FfD process and the broader development-relevant tax agenda. In the past, proposals have been made to upgrade the group from an expert group to an intergovernmental commission with official national delegates. This move could give the Committee a higher profile. In that scenario it is important that the Committee continues its culture of intensively engaging the countries that have delegates in the room, but are officially not represented in the Committee.

Generally speaking, the FfD Office and UN Tax Committee can work not only on issues that require international cooperation, but also issues that are mostly domestic responsibility. As is the case within the OECD, an international forum certainly has value-added in respect of the latter kind of issues, in the form of exchange of expertise and best practices. These recommendations stand far from the idea of an International Tax Organisation, which is unacceptable to a number of states, such as the US. For pragmatic and ideological reasons they want to keep the institutionalisation of global tax governance as light as possible. These recommendations are consistent with this view, so that a breakthrough in Doha must be possible.

5. CONCLUSION

The taxation dimension of the FfD process deserves more attention than it has received until now. It should be possible to achieve a breakthrough on a number of topics at the occasion of the "Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus", to be held in Doha from 29 November to 2 December 2008. In the recent past all OECD countries showed interest in tax problems arising from the context of globalisation that are very costly to their budgets and jeopardise the fairness of the tax system. Developing countries are hit much more heavily. In the meantime the global taxation regime remains underdeveloped. The general recommendations presented here are quite minimalist and should not meet much controversy. Possibly, some UN member states will come up with more specific and more far-reaching proposals. The most important thing is that UN member states take the tax dimension of the FfD process seriously, bring together the ministries of foreign

affairs/development cooperation and finance to consider sensible proposals, and allow further dynamic in this field at the UN level through an upgrading of the UN Tax Committee.

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