

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.

The Tax Justice Network (TJN) appreciates the opportunity to be represented at this important meeting. TJN is presenting today 18 specific recommendations for the UN Tax Committee. These eighteen Recommendations have been carefully prepared by TJN and represent TJN's official position — and obviously can be attributed to the Tax Justice Network.

Before summarizing the TJN recommendations, I would like to emphasize two things.

First: The 2005 World Summit stated explicitly that in order to help domestic resource mobilization, the UN resolved “to support efforts to reduce capital flight and [to support] measures to curb the illicit transfer of funds.”

The ECOSOC resolution of November 11, 2004, which strengthened the UN Tax Committee, stated specifically that the Committee “give special attention to developing countries and economies in transition.....”

Therefore, the Tax Justice Network believes that the UN Tax Committee should focus on the issue of developing countries mobilizing domestic resources. And TJN believes that the UN Tax Committee should suggest measures to reduce capital flight, and that the UN Tax Committee should support measures to reduce capital flight.

The second point to emphasize is that the guidelines for this seminar are, and I quote, “that we should consider a deliberately broad and forward looking, even provocative, agenda.”

In considering TJN’s recommendations for future developments in international tax cooperation, we are talking about change. And we must understand and be guided by at least three main factors about change and the future:

First, change is constant. We may not see it day-to-day, but if we look at longer time periods, such as ten year time periods, we see that change is constant and also significant. In 1997 we could not have easily perceived the changes in international tax and financial law that would take place during the ten year period from 1997 to 2007. Similarly at this time we may not easily perceive what changes will take place during the next ten years. We can assume that the degree of change will be at least as substantial as during the last ten years, and that the pace of change will be at least as rapid as during the last ten years. Therefore, you should have an open mind when you review TJN's eighteen recommendations.

Second, if we look at other areas of international financial law during the past ten years, we see a broad range, a broad scope, of substantial developments. These developments are in effect redesigning the international financial architecture: in standardized risk-based bank capital rules, in consolidated international bank supervision, in developments towards harmonized financial reporting rules, in coordination of regulation of securities markets, in efforts to develop internationally recognized standards of corporate governance, corporate accountability, and governance indicators, in proposals for a coordinated tax base in the European Union, in coordinated global clearing and settlement procedures for the financial markets, in coordination of insurance regulation, in efforts toward coordinated money laundering, anti-bribery and anti-corruption rules, and efforts by the public and private sectors to develop standardized rules in various areas of private international law, and similar efforts toward international cooperation in other areas. All of these issues represent the same problem: in an

increasingly globalized world, how do national regulators, and also the private sector, coordinate and implement policies and programs internationally? Some of these issues are at different stages of development and coordination, but the international community continues to work on all of them, and various others, in order to redesign the international financial architecture. In summary, international cooperation in financial law matters has become more intensive. Therefore, it is likely that international cooperation in tax matters will also become more intensive. In view of this, TJN's recommendations may seem more plausible.

Third, change in international financial regulation normally takes place over time, in a naturally lengthy, step-by-step process. This is because the international financial law issues are complex, with many different governmental and private sector interests involved. And it takes time to develop consensus and implement multilateral solutions. Therefore, we should look at the TJN Recommendations as a long term effort.

If we understand these three factors about change in the historical perspective, we can understand better what changes in international tax law should take place over the next few years, and continue the process of redesigning the international financial architecture including international taxation.

TJN presents eighteen recommendations, which are detailed in the handout material. These forward looking recommendations by the Tax Justice Network are broad and bold, but also reasonable and realistic. TJN is interested in working with the UN Tax Committee in order to help research and implement these recommendations.

What are these 18 recommendations of the Tax Justice Network?

Recommendation (1): TJN recommends that the UN Tax Committee support a resolution drafted by Professor Michael McIntyre, to be approved by ECOSOC: a Code of Conduct on Cooperation in Combating Capital Flight and International Tax Evasion and Avoidance. (copy is attached).

Recommendation (2): TJN recommends that the UN Tax Committee prepare a report about what constitutes “effective exchange of information” for purposes of Article 26 of the UN Model Income Tax Treaty.

Recommendation (3): As the International Monetary Fund (IMF) has the responsibilities of the monitoring and surveillance of financial centers and the international financial architecture, TJN recommends that the UN Tax Committee request the IMF to include in its Reports on the Observance of Standards and Codes (ROSCs) whether a jurisdiction that is financial center: (i) overrides bank secrecy in tax matters, (ii) requires the automatic reporting of tax related information and has available tax information to be exchanged, and (iii) engages in effective exchange of information.

Recommendation (4): TJN recommends that the UN Tax Committee consider whether capital flight and the resulting tax evasion should constitute acts of corruption within the scope of the United Nations Convention Against Corruption.

TJN's position is that capital flight and the resulting tax evasion represents various forms of corruption:

- (a) Private sector corruption by the person (individual or company) that transfers funds to another jurisdiction and evades taxes. That person is illegally diverting for his/her/its private use, tax revenue, that belong to the public sector.
- (b) Private sector corruption by financial intermediaries that knowingly encourage and facilitate capital flight and the resulting tax evasion in other jurisdictions.
- (c) Public sector corruption by the governments in the onshore and offshore financial centers that provide bank secrecy and other confidential treatment in tax matters. Such treatment facilitates and encourages capital flight from other jurisdictions, and tax evasion in those other jurisdictions. Thus, governments in onshore and offshore financial centers, that is, OECD financial centers and non-OECD financial centers, knowingly aid and abet corruption.

Recommendation (5): TJN recommends that the UN Tax Committee request that the international financial institutions — the IMF, the World Bank and the regional development banks — include the three above items as “corruption” in their Uniform Framework for Preventing and Combating Fraud and Corruption.

Recommendation (6): TJN recommends that the UN Tax Committee suggest that facilitating the evasion or avoidance of domestic or foreign taxes be included as a money laundering offense under money laundering laws. That is, if a Tax Advisor, Corporate Service Provider or Financial Intermediary assists a person to avoid or evade domestic or foreign taxes, that would be a money laundering offense under money laundering laws. Also, TJN recommends that the UN Tax Committee suggest that the evasion or avoidance of domestic and/or foreign taxes be considered a suspicious activity that would be covered by suspicious activity reporting requirements.

Recommendation (7): TJN recommends that the UN Tax Committee urge the Financial Action Task Force (FATF) to include tax evasion and tax avoidance (both domestic and foreign) in the FATF definition of corruption and money laundering.

Recommendation (8): TJN recommends that the UN Tax Committee prepare a report on the legal measures (including pursuant to Chapter V, Asset Recovery, of the United Nations Convention Against Corruption, and also Article 27 of the UN Model Income Tax Treaty) reasonable and necessary for jurisdictions to recover and repatriate

assets, and the income thereon, which have been illegally transferred from that jurisdiction to other jurisdictions, and accumulated in other jurisdictions.

Recommendation (9): TJN recommends that the UN Tax Committee study what measures, in addition to Article 27 of the UN Model Income Tax Treaty, Assistance in the Collection of Taxes, would be appropriate and reasonable in order to strengthen procedures for international tax collection and international tax enforcement.

Recommendation (10): With regard to the March 2002 Joint Proposal of the IMF, World Bank and OECD, TJN recommends that the UN Tax Committee present to the IMF, OECD and World Bank specific recommendations, as detailed in this memorandum, for those institutions (including the Committee on Fiscal Affairs of the OECD and the Fiscal Affairs Department of the IMF) to assist developing countries to mobilize domestic resources. This would include (a) strengthening the national tax systems of developing countries, including by assisting them to better confront the loss of government tax revenues resulting from capital flight to OECD financial centers and to non-OECD financial centers and the consequential tax evasion, and (b) working with financial centers in order that those financial centers discontinue facilitating capital flight from developing countries and the resulting tax evasion in developing countries.

Recommendation (11): TJN recommends that the UN Tax Committee prepare a report on (a) the economic impact [the quantification] of transfer mispricing, in particular the economic impact (loss of tax revenues) on developing countries of transfer

mispricing and (b) the most appropriate measures to combat transfer mispricing. TJN recommends that the UN Tax Committee prepare a report on whether the arm's length method or a method of combined reporting with formulary apportionment is the most appropriate method to combat transfer mispricing. Also, TJN recommends that the UN Tax Committee liaise with the International Accounting Standards Board (IASB) about transparency in financial statements and country-by-country reporting of tax payments by multinational corporations. TJN has submitted proposals about this to the IASB and the European Community.

Recommendation (12): TJN recommends that the UN Tax Committee consider the harmful aspects of tax competition: TJN recommends that the UN Tax Committee be asked to determine whether tax competition involving developing countries is undermining their ability to mobilize domestic resources for development and to create the “enabling domestic environment” called for in the Monterrey Consensus.

Recommendation (13): TJN recommends that the UN Tax Committee request that the OECD Tax Intermediaries Project include in the definition of “intermediaries” all of the following: attorneys, accountants, and other tax advisers (“Tax Advisers”), corporate service providers, promoters, corporate administrators, and trust administrators (“Services Providers”), and financial intermediaries such as banks, trust companies, brokerage firms and other financial institutions (“Financial Intermediaries”).

The Tax Justice Network believes that tax advisers, including tax attorneys, accountants, and other tax advisers, should have the responsibility of advising their clients to comply with all applicable laws, both domestic and foreign.

Recommendation (14): TJN recommends that the UN Tax Committee prepare a report on the tax aspects of the misuse of corporate vehicles, including (a) shell companies and (b) fiscally transparent entities.

Recommendation (15): TJN recommends that the UN Tax Committee liaise with the OECD's Fiscal Committee about the technical work being done by the OECD on the mechanics of exchange of information including the OECD's Manual on the Implementation of Exchange of Information Provisions for Tax Purposes.

Recommendation (16): TJN recommends that the UN Tax Committee consider measures for jurisdictions which are substantially reliant economically on the "offshore sector" to diversify their economies and become less reliant economically on the offshore sector.

Recommendation (17). TJN recommends that the UN Tax Committee work with international entities and organizations specialized in tax administration, in order to implement these TJN recommendations.

Recommendation (18): TJN recommends that the UN Tax Committee create a subcommittee to coordinate the work of the UN Tax Committee, in accordance with the 2005 UN World Summit, in supporting efforts to reduce capital flight and the resulting tax evasion and to help developing countries mobilize domestic resources. And TJN also recommends that the UN Tax Committee submit to ECOSOC annually a report detailing specifically the work of the UN Tax Committee to support efforts to reduce capital flight and the resulting tax evasion, and the loss of government revenue, and in order to help developing countries mobilize domestic resources.

Conclusion

The United Nations has spoken clearly: developing countries have to mobilize domestic resources for development. And the United Nations has spoken clearly: in order to help domestic resource mobilization, the UN resolved “to support efforts to reduce capital flight and [to support] measures to curb the illicit transfer of funds.”

But the problem of capital flight from developing countries and the resulting tax evasion and loss of government revenues in developing countries has not yet been adequately confronted.

TJN’s eighteen recommendations to the UN Tax Committee are intended to confront and resolve this problem.