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**Committee of Experts on International
Cooperation in Tax Matters
Twelfth Session**

Geneva, 11-14 October 2016

Agenda item 3 (a) (v)

Article 26 (Exchange of Information): proposed Code of Conduct

**Exchange of Information: Proposed Code of Conduct -
Secretariat Note**

1. Background

In its Fifth Annual Session the Committee adopted for consideration by the Economic and Social Council (ECOSOC) a proposed United Nations Code of Conduct on Cooperation in Combating International Tax Evasion (Code of Conduct). The original text was annexed to the Committee's report of that session¹. ECOSOC was not in a position to adopt the Code in that form, however.

In 2015 the Committee reconsidered the issue. The report of the 11th Annual Session relevantly notes that:

61. The Committee and other participants agreed that there was a need for such a statement from the Economic and Social Council, given that it would make it clear that the United Nations, as a global body, supported automatic exchange of information to combat tax avoidance and tax evasion. Some participants recommended, however, that the language of

¹ E/2009/45 (SUPP)

the text be revised to produce a text that was not made to appear legally binding for countries, given that this would unnecessarily hinder the wide support for such a document.

62. After further discussion, and with the input of the Secretariat as to the appropriate format to be presented to the Economic and Social Council, the Committee agreed in principle that the Code should take the form of a Council resolution, with a draft to be included in the report of the Committee, in the section on action required by the Economic and Social Council. The Committee recommended that the Subcommittee redraft the text for the next meeting of the Committee. The Secretariat was requested to make initial suggestions with regard to the format and wording of the text.

The attached secretariat redraft draws upon those discussions and makes changes to (i) address that the Code of Conduct should be in the form of an ECOSOC Resolution; (ii) make it clear that the adherence to the Code of Conduct is totally voluntary; and (iii) not specifically refer to “global standards”. The Subcommittee on Exchange of Information has not been in a position to consider this text in any detail and so it at this stage it is intended only as a Secretariat suggestion..

The proposed text is annexed as Attachment A to this note in marked-up form showing the differences from the 2015 clean version. A clean copy is at Attachment B.

ATTACHMENT A (MARKED-UP COPY)

PROPOSED CODE OF CONDUCT (201*)

DRAFT RESOLUTION

**UNITED NATIONS CODE OF CONDUCT ON COOPERATION IN COMBATING
INTERNATIONAL TAX EVASION**

PREAMBLE

The Economic and Social Council,

RECOGNIZING that tax evasion, including tax fraud, is a global problem affecting developed and developing countries,

CONSIDERING that during the past years, the United Nations Committee of Experts on International Cooperation in Tax Matters (the Committee of Experts) has devoted substantive substantial time and efforts to update effort towards updating the provisions related with to exchange of information of in the United Nations Model Double Taxation Convention between Developed and Developing Countries, in order to adjust to current conditions.

CONSIDERING also that during its 5th Session the Committee of Experts approved the Code of Conduct on Cooperation in Combating International Tax Evasion, setting minimum standards of conduct required in member ~~countries~~ States regarding the exchange of information,

~~VALUING~~ WELCOMING the important role that the G20 has played in the international sphere by supporting ~~and encouraging the development of new initiatives on~~ automatic exchange of information ~~and to tackle tax evasion, including tax fraud,~~

ACKNOWLEDGING the important role that the ~~multilateral~~ Multilateral Convention on Mutual Administrative Assistance in Tax Matters can play in facilitating the implementation of automatic exchange of information and ~~TAKING ADVANTAGE~~ taking advantage of the fact that ~~an~~ important a number of countries have already signed the Convention, including a growing number of developing countries, and several jurisdictions that are covered by way of territorial extension,

NOTING that to tackle tax evasion, including tax fraud ~~a new single global standard on~~, automatic exchange of information has been developed to ~~alert~~ exchange information about financial accounts held by certain tax residents of a foreign jurisdiction with that jurisdiction's tax authorities on the financial transactions that are being carried out by their residents in order to detect if the appropriate amount of taxes is being paid,

CONSIDERING that ~~an important~~ a number of countries and jurisdictions are committed to an early adoption of ~~the new single global standard~~ automatic exchange of information,

~~CONSCIOUS that the new single global standard should not impose undue administrative costs and~~

ACKNOWLEDGING that ~~appropriate~~ all information exchanged is subject to the confidentiality rules and other safeguards ~~including certain confidentiality requirements shall be met in order to ensure the requirement that information may be used only~~ provided for the purposes foreseen by in the legal instrument pursuant to which it is exchanged, including the purposes for which the information may be used and limiting to whom the information may be disclosed,

RECOGNIZING however, that ~~such a new single global standard~~ automatic exchange of information presents ~~different~~ challenges to ~~Developed~~ developed and ~~Developing Countries~~ developing countries that should be adequately addressed by developing the appropriate legal framework, having the necessary ~~information technology~~ information technology and human resources in place, as well as capacity building, ~~in order to achieve an~~ effective and efficient implementation,

~~RECOGNISING, however that developing countries may face capacity constraints when implementing automatic exchange of information under the new single global standard,~~

CONSCIOUS of the need to provide technical assistance and capacity building to developing countries so that they may be able to reap the benefits of ~~the standard~~ automatic exchange of information,

EMPHASIZING that the ~~code of conduct does not affect~~ nothing in this resolution affects the rights and obligations of States or their respective spheres of competence,

~~{The Committee of Experts on International Cooperation in Tax Matters hereby adopts
1. DECIDES to adopt the following code of conduct:} *Pending on the determination of the document by which the Code of Conduct will be adopted*~~

I. Scope

This code of conduct applies to States ~~agreeing~~ expressing the intention to ~~be bound by~~ follow it, including their Government agencies, ~~and extends to tax laws, regulations and administrative practices.~~

II. Goals

The code of conduct has the following goals:

- (a) To ensure that all States following this code of conduct, in an effort to combat international tax evasion, and to protect their tax bases from non-compliance with their tax laws, provide that high levels of transparency and exchange of information in tax matters are adhered to, in particular, ~~to the new global standard of~~ automatic exchange of information;
 - (b) To assist in the development of international norms, practical steps and building capacity programs those ~~Governments should~~ States may follow with a view to ~~avoiding~~ preventing and combating international tax evasion and protecting their tax bases from non-compliance with their tax laws.
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III. ~~Commitments~~ Substantive Actions

~~{Under States following this code of conduct States agreeing intend to be bound by it, commit to:}~~

- (a) Effectively exchange information in both criminal and civil tax matters;
- (b) Ensure there are no restrictions on information exchange caused by application of the dual criminality principle or a domestic tax interest requirement;
- (c) Have appropriate confidentiality rules for information exchanged and safeguards and limitations that apply to taxpayer information;
- ~~(a) Ensure that reliable information is available, in particular, bank account, ownership, identity and relevant accounting information, with powers in place to obtain and provide such information in response to a specific request.~~
- ~~(b) Acknowledge automatic exchange of information as the new global standard, which comprises also the fulfilment of strict confidentiality rules with respect to the information exchanged;~~
- (d) Endorse the work carried out on automatic exchange of financial ~~accounts~~ account information, including the Standard for Automatic Exchange of Financial Account Information in Tax Matters, the so called *Common Reporting Standard*;
- (e) Encourage all countries that have not already done so to ~~sign and ratify~~ consider becoming a party to the ~~multilateral~~ Multilateral *Convention on Mutual Administrative Assistance in Tax Matters*;
- (f) ~~Commit~~ Affirm the need to work within the UN, as well as with the ~~UN, the~~ OECD, the Global Forum on Transparency and Exchange of Information for Tax Purposes, the G20 and other concerned multilateral bodies and relevant international organizations in order to help developing countries and countries with economies in transition to identify their needs for capacity building and technical assistance on automatic exchange of information (including addressing confidentiality issues);
- (g) ~~Commit~~ Affirm the need also to conduct technical meetings, seminars and other capacity-building or technical assistance events on automatic exchange of information (including confidentiality) for developing countries and countries with economies in transition, with the involvement of concerned multilateral bodies and relevant international organizations.

These ~~commitments~~ substantive actions are intended to be ~~implemented~~ taken by ~~the following actions~~ means of two broad types:

- (a) Unilateral ~~actions~~ means: the national implementation of ~~these standards~~ automatic exchange of information may ~~require~~ necessitate that countries amend their domestic legislation, ~~and~~ practices and develop necessary administrative resources and ~~information technology~~ infrastructure;

- (b) Bilateral, or as appropriate multilateral means, including regional approaches~~actions~~: the principles of transparency and effective exchange of information will generally be implemented through international cooperation (capacity building), bilateral or multilateral agreements in order to exchange information automatically~~under the common reporting standard~~, ~~or including~~ implementing the substance of article 26 and the accompanying commentary ~~on of~~ the United Nations Model Double Taxation Convention between Developed and Developing Countries, as finalized by the United Nations Committee of Experts on International Cooperation in Tax Matters.
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ATTACHMENT B (CLEAN COPY)

DRAFT RESOLUTION

**UNITED NATIONS CODE OF CONDUCT ON COOPERATION IN COMBATING
INTERNATIONAL TAX EVASION**

The Economic and Social Council,

RECOGNIZING that tax evasion, including tax fraud, is a global problem affecting developed and developing countries,

CONSIDERING that during the past years, the United Nations Committee of Experts on International Cooperation in Tax Matters (the Committee of Experts) has devoted substantial time and effort towards updating the provisions related to exchange of information in the United Nations Model Double Taxation Convention between Developed and Developing Countries, in order to adjust to current conditions.

CONSIDERING also that during its 5th Session the Committee of Experts approved the Code of Conduct on Cooperation in Combating International Tax Evasion, setting minimum standards of conduct required in member States regarding the exchange of information,

WELCOMING the important role that the G20 has played in the international sphere by supporting automatic exchange of information,

ACKNOWLEDGING the important role that the Multilateral Convention on Mutual Administrative Assistance in Tax Matters can play in facilitating the implementation of automatic exchange of information and taking advantage of the fact that a number of countries have already signed the Convention, including a growing number of developing countries, and several jurisdictions that are covered by way of territorial extension,

NOTING that to tackle tax evasion, including tax fraud, automatic exchange of information has been developed to exchange information about financial accounts held by certain tax residents of a foreign jurisdiction with that jurisdiction's tax authorities ,

CONSIDERING that a number of countries and jurisdictions are committed to an early adoption of automatic exchange of information,

ACKNOWLEDGING that all information exchanged is subject to the confidentiality rules and other safeguards provided for in the legal instrument pursuant to which it is exchanged, including the purposes for which the information may be used and limiting to whom the information may be disclosed,

RECOGNIZING however, that automatic exchange of information presents challenges to developed and developing countries that should be adequately addressed by developing the

appropriate legal framework, having the necessary information technology and human resources in place, as well as capacity building, in order to achieve effective and efficient implementation,

CONSCIOUS of the need to provide technical assistance and capacity building to developing countries so that they may be able to reap the benefits of automatic exchange of information,

EMPHASIZING that the nothing in this resolution affects the rights and obligations of States or their respective spheres of competence,

1. DECIDES to adopt the following code of conduct

I. Scope

This code of conduct applies to States expressing the intention to follow it, including their Government agencies.

II. Goals

The code of conduct has the following goals:

- (a) To ensure that all States following this code of conduct, in an effort to combat international tax evasion, and to protect their tax bases from non-compliance with their tax laws, provide that high levels of transparency and exchange of information in tax matters are adhered to, in particular, automatic exchange of information;
- (b) To assist in the development of international norms, practical steps and building capacity programs those States may follow with a view to preventing and combating international tax evasion and protecting their tax bases from non-compliance with their tax laws.

III. Substantive Actions

States following this code of conduct intend to:

- (a) Effectively exchange information in both criminal and civil tax matters;
- (b) Ensure there are no restrictions on information exchange caused by application of the dual criminality principle or a domestic tax interest requirement;
- (c) Have appropriate confidentiality rules for information exchanged and safeguards and limitations that apply to taxpayer information;
- (d) Endorse the work carried out on automatic exchange of financial account information, including the Standard for Automatic Exchange of Financial Account Information in Tax Matters, the so called *Common Reporting Standard*;
- (e) Encourage all countries that have not already done so to consider becoming a party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters*;

- (f) Affirm the need to work within the UN, as well as with the OECD, the Global Forum on Transparency and Exchange of Information for Tax Purposes, the G20 and other concerned multilateral bodies and relevant international organizations in order to help developing countries and countries with economies in transition to identify their needs for capacity building and technical assistance on automatic exchange of information (including addressing confidentiality issues);
- (g) Affirm the need also to conduct technical meetings, seminars and other capacity-building or technical assistance events on automatic exchange of information (including confidentiality) for developing countries and countries with economies in transition, with the involvement of concerned multilateral bodies and relevant international organizations.

These substantive actions are intended to be taken by means of two broad types:

- (a) Unilateral means: the national implementation of automatic exchange of information may necessitate that countries amend their domestic legislation and practices and develop necessary administrative resources and information technology infrastructure
- (b) Bilateral, or as appropriate multilateral means, including regional approaches: the principles of transparency and effective exchange of information will generally be implemented through international cooperation (capacity building), bilateral or multilateral agreements in order to exchange information automatically, including implementing the substance of article 26 and the accompanying commentary of the United Nations Model Double Taxation Convention between Developed and Developing Countries, as finalized by the United Nations Committee of Experts on International Cooperation in Tax Matters.