



Note No. 014/11

The Permanent Mission of the Republic of South Africa to the United Nations presents its compliments to the Secretariat of the United Nations and has the honour to transmit the following information, subsequent to the request contained in the note (Ref. DESA-10/3508) dated 1 December 2010.

The Permanent Mission of the Republic of South Africa to the United Nations wishes to forward the attached document, containing our response to the note on strengthening the institutional arrangements to promote international co-operation in tax matters, including the Committee of Experts on International Co-operation in Tax Matters in compliance with the Economic and Social Council resolution 2010/3 of 23 July 2010

The Permanent Mission of the Republic of South Africa to the United Nations avails itself of this opportunity to renew to the Secretariat of the United Nations the assurances of its high consideration.

New York  
01 February 2011



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## **SOUTH AFRICAN RESPONSE ON THE COMMITTEE OF EXPERTS ON INTERNATIONAL COOPERATION IN TAX MATTERS, IN CONFORMITY WITH ECOSOC RESOLUTION 2010/33**

The main focus of the Committee's current work is on updating the UN Model Double Taxation Convention between Developed and Developing Countries (UN Model), Transfer Pricing, Capacity Building and guidance for developing countries on the negotiation of double taxation agreements.

Considerable progress has been made in all these areas due to the enormous input from active members of the Committee:

1. It is anticipated that the UN Model and its Commentary will be ready for update after the 2011 meeting of the Committee
2. A Transfer Pricing Manual aimed at assisting developing countries is due for completion in 2012.
3. A comprehensive strategy for capacity building for developing countries has been drawn up and is being implemented with the help of donor agencies. A key question is resourcing of this project.

The Committee's great progress is largely due to the excellent direction from the current Chairperson and excellent assistance from the technical expert in the UN Secretariat, Michael Lennard.

### **STRENGTHENING THE WORK OF THE COMMITTEE**

The question is how to strengthen the work of the Committee. There seem to be two possibilities.

1. Strengthen the Committee in its current form

The greatest problem facing the current Committee is the lack of adequate resources. The Secretariat has laboured under a lack of sufficient technical staff to drive the work and provide relevant inputs. This situation is only now being alleviated to a degree with the secondment of two officials from a member country (Norway) to assist in the work of the Secretariat.

In addition, the only funding from the UN for committee members is for the attendance of the annual meeting in Geneva. This hampered the work of the various Working Groups/ Subcommittees of the Committee engaged in various technical projects to achieve its goals.

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On occasions when these Groups or Subcommittees were obliged to meet funding had to be obtained from their own countries and this often resulted in members from developing countries not being able to attend.

Despite this lack of resource, great progress is now being made due to the dedication of the small Secretariat and various active members.

It is suggested that the current Committee could continue on the current basis and achieve success if adequate resources were made available. In particular the following areas would benefit:

- Additional technical experts in the Secretariat to assist in driving the projects
- Funding of Working Group/Subcommittee meetings to ensure attendance by all Group/Subcommittee members, in particular from developing countries
- Ability to engage independent consultants to assist in specialised projects

The majority of the members of the current Committee are not bound by narrow country interests but approach their work on the basis of creating a better situation for developing countries while still trying to maintain an equitable balance with developed countries. This is mainly due to their serving in a personal capacity.

Should countries wish to participate in the work of the Committee, meetings are open to all countries to attend as observers, as well as to NGOs and other international bodies.

## 2 Changing the status of the Committee to an Inter-Governmental Committee

It is understood that a more radical proposal to strengthen the Committee is to change its status to that of an Inter-Governmental Committee.

It is difficult to provide adequate comment in this regard as there is no proposal setting out the composition and powers of a new Committee. However, the following issues would arise:

### (a) Number of members and regional/economic representation.

Clearly a new Committee would still need representation across the board. However, increasing membership drastically may result in more difficulty arising in an attempt to achieve consensus on issues. Clearly it would not be possible for all countries to be represented.

### (b) Delegates' positions

As delegates/members would now be representing their respective countries, it is conceivable that they would be required to promote narrower country positions rather than trying to achieve the larger goal of an approach which is equitable to both developing and developed countries. If such a balance is not achieved, the work of the new Committee runs the risk of becoming irrelevant. This is particularly the case in relation to income tax and the issues of sovereignty surrounding the imposition of tax by individual countries.

### (c) Status of the UN Model

Currently the UN Model is the product of the existing Committee. It provides valuable guidance to developing countries and is accepted by the majority of developed countries in the negotiation of double taxation agreements.

It is not clear what the status of the UN Model would be under a new Committee. For example, if UN Member States were required to recognise it as an official UN approach, there would be a necessity to allow member countries to enter reservations and observations to areas of the Model and Commentary with which they did not agree. This would be a minimum requirement in view of the sovereignty of nations in relation to taxation.

It is considered that even a new Committee with inter-governmental status would not have the power to require Governments to accept the UN Model and Commentary and any other tax policy approaches which a new Committee may consider. It is unclear how the position would be improved in comparison with the current situation.

Therefore, taking into account the number of member countries of the UN, there would be a great many reservations/observations raised by countries which would ultimately detract from its relevance. As it is merely a guidance document at this stage, there is currently no need for reservations/observations.

The UN Model and Commentary is a critical tool in achieving global consensus in tax across borders and its current status should not be put at risk.

## **CONCLUSION**

1. The current format of the Committee is starting to work well.
  2. Any changes to the current Committee should be planned for carefully, cater for the issues raised above, and ideally be deferred to allow the conclusion of critical work currently under way.
  3. As a middle way between the status quo and a radical change, the current Committee would do even better with increased resourcing at the Secretariat and Committee level. Improved resourcing and its funding falls squarely within items 1. and 3. of resolution 2010/33.
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