United Nations E/C.18/2006/6/Add.1

Economic and Social Council

Distr.: General
1 September 2006

Original: English

Committee of Experts on International Cooperation in Tax Matters
Second session
Geneva, 30 October-3 November 2006

Advance copy

Work on exchange of information and conclusion*

Summary

This paper provides a brief presentation of the work done by other international organisations in respect of exchange of information in tax matters and some possible future work for the UN Committee in this field.

*The present paper was prepared by the subcommittee on exchange of information (Coordinator: Mr. José Antonio Bustos Buiza). The views and opinions expressed are those of the author and do not necessarily represent those of the United Nations.

Contents

Introduction

1. In July 2005, Article 26 on exchange of information of the OECD Model Tax Convention on Income and on Capital (OECD model) has been amended with the purpose to widen its scope and coverage. The Committee of Experts on International Cooperation in Tax Matters formed under the auspice of the UN Economic and Social Council appointed in its first meeting in December 2005 a sub-committee of experts with the mission to consider possible revision of Article 26 of the UN Model and its commentary in the light of the changes made to Article 26 of the OECD model. The sub-committee is guided in this task by the work of the ad hoc committee mentioned above, which was based on a paper prepared by Mr. David Spencer.

2. This document presents some conclusions of the work done on exchange of information by other international organisations and possible future work for the UN in that field.

I. THE EXCHANGE OF TAX INFORMATION IN THE INTERNATIONAL ORGANISATIONS

3. In the last 15 years, there has been a dramatic expansion in cross border financial services and financial flows as a result of the opening up of new markets, the development of new financial products and new advances in technologies. One significant challenge for governments is the increased scope for illicit use of the financial system, including for tax evasion.

4. Several international organisations have been working in the exchange of information item, a key item to fight against tax evasion. Therefore, the situation at this moment of the exchange of information, from an international point of view, leaving apart the UN, may be structured in three categories:

- OECD
- EU
- CIAT (Inter-American Center for Tax Administrations)

II. OECD

5. OECD Ministers launched, in 1996, the harmful tax practices initiative aimed at combating international tax evasion by promoting transparency and exchange of information both within and outside the OECD.

6. The harmful tax practices work has been primarily carried out through the Forum on Harmful Tax Practices, a subsidiary body of the Committee on Fiscal Affairs. The work has proceeded on three fronts: 1) identifying and eliminating harmful tax practices of preferential tax regimes in OECD countries, 2) identifying “tax havens” and seeking their commitments to the principles of transparency and effective exchange of information, and 3) encouraging non-OECD economies that are not tax havens to associate themselves with the harmful tax practices work.

7. The first report on this work, "Harmful Tax Competition," was issued in 1998. The report established four key criteria for identifying harmful tax practices:

• No or nominal taxes, in the case of tax havens, and no or low taxation, in the case of member country preferential tax regimes;

• Lack of transparency;

• Lack of effective exchange of information; and

• No substantial activities, in the case of tax havens, and ring-fencing, in the case of member country preferential regimes.

8. With regard to transparency, the harmful tax practices project has been advancing standards that encourage an open and consistent application of tax laws among similarly situated taxpayers and ensuring that information needed by tax authorities to determine a taxpayer's correct tax liability is available (e.g., accounting records and underlying documentation).

9. With regard to exchange of information in tax matters, the OECD has been encouraging countries to adopt information exchange on an "upon request" basis. Under this standard, information is exchanged between tax authorities under bilaterally negotiated income tax treaties or tax information exchange agreements when an exchange partner has made a specific request with respect to a specific taxpayer that is already under examination. An essential element of such information exchange is the implementation of appropriate safeguards to ensure that the information obtained is used only for the purposes for which it was sought.

10. In 2000 the OECD issued a report entitled "Progress in Identifying and Eliminating Harmful Tax Practices". That report identified 35 jurisdictions that were found to meet the tax haven criteria. (Six other jurisdictions – Bermuda, Cayman Islands, Cyprus, Malta, Mauritius and San Marino – were not included in the 2000 Report because they committed to eliminate their harmful tax practices prior to the release of that report.) It also identified 47 potentially harmful preferential tax regimes in OECD countries. The 2000 Report, following the OECD Council Recommendation of 16 June 2000, also proposed a process whereby the identified tax havens could commit to eliminate harmful tax practices and mandated that a list of uncooperative tax havens be produced listing those tax havens that were not willing to make such commitments. Thus, the key distinction for OECD countries became whether a tax haven was co-operative or unco-operative.

11. Another report was issued in 2001, "The 2001 Progress Report," which made certain modifications to the tax haven work and updated the progress made in the harmful tax practices work. There was a principle modification: a tax haven that committed to eliminating lack of transparency and lack of effective exchange of information would be considered co-operative and therefore would not be included on the OECD's list of unco-operative tax havens.

12. In April 2002, the OECD issued the list of uncooperative tax havens called for by the report and the Council Recommendation. The list initially had 7 jurisdictions, but two jurisdictions – Nauru and Vanuatu – made commitments in 2003 and the list now contains only 5 jurisdictions: Andorra, Liberia, Liechtenstein, the Marshall Islands and Monaco.

13. In March 2004, the OECD's "2004 Progress Report" provided updated information on the harmful tax practices work. Of the 47 regimes listed as potentially harmful in 2000:

• 18 regimes had been abolished or were in the process of being abolished;

• 14 regimes had been amended so that any potentially harmful features have been removed; and

• 13 had been found not to be harmful.

14. It is important to emphasise that the OECD project recognises that preferential tax regimes can serve legitimate commercial and policy objectives (e.g., holding company regimes allow repatriation of profits without multiple layers of tax). It is not the preferential nature of the regimes that is of concern; it is only the characteristics of ring-fencing, lack of transparency, or lack of information exchange that can create potential harm.

15. Part III of the 2004 Report updates the work with the jurisdictions that made commitments to transparency and effective exchange of information. These jurisdictions were referred to as "committed jurisdictions" in the 2001 Report, but given the involvement of these jurisdictions in elaborating the standards of transparency and effective exchange of information, they are now referred to, together with OECD countries, as Participating Partners. To date, there are 33 Non-OECD Participating Partners ("NOPPs") co-operating in the elimination of harmful tax practices. Three jurisdictions -- Barbados, Maldives, and Tonga -- that were identified as tax havens in the 2000 Report are not Participating Partners nor are they listed as Unco-operative Tax Havens. Barbados has been found to have longstanding information exchange arrangements with other countries that were found by its treaty partners to operate in an effective manner. Barbados is willing to enter into tax information exchange arrangements with those OECD countries with which it currently does not have such arrangements. It also has in place established procedures with respect to transparency. In addition, the Committee determined after careful review that the Maldives and Tonga no longer met the tax haven criteria.

16. Non-OECD Participating Partners

Anguilla Antigua and Barbuda Aruba	Cook Islands Cyprus Dominica Gibraltar	Malta Mauritius Montserrat	San Marino Seychelles St. Lucia St. Kitts & Nevis St. Vincent Turks &
Bahamas Bahrain	Grenada Guernsey	Nauru Netherlands	Caicos Islands US Virgin Islands
Bermuda Belize	Isle of Man	Antilles Niue Panama	Vanuatu
British Virgin Islands	Jersey	Samoa	
Cayman Islands			

Model Agreement on Exchange of Information on Tax Matters.

17. The NOPPs, together with OECD countries, work as Participating Partners under the auspices of the OECD's Global Forum on Taxation in developing the international standards for transparency and effective exchange of information in tax matters. A specially created working group developed the Model Agreement on Exchange of Information on Tax Matters.

18. The Agreement was released in April 2002. It contains a bilateral and a multilateral model for exchange of information agreements concluded in the light of the commitments made by the OECD and a number of jurisdictions to the elimination of harmful tax practices**.** The Agreement has already been used as the basis for the negotiation of several bilateral agreements**.**

Fourth Meeting of the OECD Global Forum on Taxation

19. Recently, on 15-16 November 2005, Australia hosted the fourth meeting of the OECD Global Forum on Taxation[1] to discuss the importance of achieving a global level playing field[2] in respect of improving transparency and effective exchange of information in the tax area. Over 130 representatives from 55 governments met in Melbourne to review progress towards a level playing field in these areas.

20. The purpose of the Melbourne meeting was to review implementation of the process agreed at the Global Forum meeting held in Berlin in June 2004 for working towards a global level playing field based on high standards of transparency and effective exchange of information in tax matters. Two key aspects of this process were to invite other significant financial centres to participate in the dialogue and to carry out a review of countries' (which included the Invitees)[3] legal and administrative frameworks in the areas of transparency and exchange of information in tax matters.

21. Eighty-one countries were included in the review of their legal and administrative frameworks initiated at the 2004 Berlin Global Forum meeting and the discussions at the Melbourne meeting reveal that progress is being made towards a level playing field in the areas of transparency and effective exchange of information in tax matters.

22. The review undertaken suggests that both OECD and non-OECD countries have implemented or made considerable progress towards implementing many of the transparency and effective exchange of information standards that the Global Forum wishes to see achieved. There is no longer any OECD country where a domestic tax interest, of itself, is an impediment to exchange of information. A growing number of non-OECD economies

---

[1] The OECD carries out its dialogue on tax issues with non-OECD economies under the multilateral framework known as the "Global Forum on Taxation". The composition of the Global Forum generally varies depending on the topics covered by the meeting.

[2] The global level playing field concept, features and role is defined in paragraph 6 of the Berlin Report as follows:

A) CONCEPT:
The level playing field is fundamentally about fairness to which all parties in the Global Forum are committed.
In the context of exchange of information achieving a level playing field means the convergence of existing practices to the same high standards for effective exchange of information on both criminal and civil taxation matters within an acceptable timeline for implementation with the aim of achieving equity and fair competition.

B) FEATURES:
Will provide for –
i) inclusive process
ii) mutual benefits through bilateral implementation
iii) a consistent and rigorous approach to any failure to implement
iv) review and verification mechanisms
v) the standard and the timeline.

C) ROLE:
The level playing field serves as a goal.
Achieving a level playing field in respect of exchange of information requires that all jurisdictions, OECD and non-OECD members, should act in a manner consistent with the concept in their bilateral relationships and more broadly.

[3] References in this document to "countries" should be taken to apply equally to "territories", "dependent territories" or "jurisdictions".

are negotiating agreements that provide for exchange of information [4] many countries have improved transparency by implementing the FATF customer due diligence requirements and several countries have recently required bearer shares to be immobilised or held by an approved custodian (e.g., the British Virgin Islands, the Cook Islands, Saint Kitts & Nevis).

Next Steps

23. The process endorsed at the Berlin Global Forum meeting recognised that integrated individual, bilateral and collective actions would be needed both to achieve and to maintain the goal of a level playing field.

(i) Individual actions

24. In terms of *individual actions*, the Berlin Report referred to the fact that some countries may need to modify some existing laws and practices to fully implement the principles of transparency and effective exchange of information in tax matters. Despite the progress referred to in the previous section, further actions at the individual country level remain necessary.

25. The Global Forum recognised that countries will not be able to move simultaneously to make the necessary changes due to differences in legal systems and in the issues – political, economic and institutional -- that different countries would need to address. Nevertheless, all countries are strongly encouraged to take the necessary steps towards a level playing field. In particular:

(i) Further progress is required in some countries to address the constraints placed on international co-operation to counter criminal tax abuses.

(ii) Further progress is required to address those instances where countries require a domestic tax interest to obtain and provide information in response to a specific request for information related to a tax matter.
.

(iii) Further progress is required in the area of access to bank information for tax purposes. Although most countries reported being able to obtain such information for criminal tax matters, a number of countries continue to have strict limits on access to bank information which excessively constrain their ability to respond to specific requests for information in civil and criminal tax cases. Those countries are encouraged to review their current policies on this issue and to report the outcome of their review at the next Global Forum meeting.

(iv) Further progress is required in some countries to ensure that competent authorities have appropriate powers to obtain information for civil and criminal tax purposes.

(v) Most countries have access to legal ownership information of companies, trusts, partnerships, foundations and other organisational structures. Beneficial ownership information is available in a far fewer, but an increasing, number of countries. Further improvement is necessary. A large number of countries still allow bearer shares. In some countries the availability of ownership information is further complicated by the fact that responsibility for corporate law is in the hands of political sub-divisions.

[4] For example, Aruba, Bahrain, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Jersey, Isle of Man, Mauritius, the Netherlands Antilles and the Seychelles.

(vi) Most countries reviewed reported requiring the keeping of accounts by companies and partnerships. However, certain exceptions to this requirement exist, notably in the context of some international company regimes. Those countries that do not require the keeping of accounting records for international company regimes are encouraged to review their current policies and to report the outcome of their review at the next Global Forum meeting.

26. The Berlin Report also referred to the important role that individual countries can play in encouraging other countries to implement the principles, including through the use of "other organisations to which they belong, fora in which they participate, and communications with their business communities to encourage the adoption of these practices". Over the last year, several countries did use their participation in other organisations and groups to promote the implementation of the principles of transparency and effective exchange of information. In July 2005, the G-8 Heads of Government endorsed at the Gleneagles Summit the work on transparency and exchange of information and encouraged all countries to implement those principles. The G-20 Finance Ministers and Central Bank Governors issued a statement on 21 November 2004 committing themselves "to the high standards of transparency and exchange of information for tax purposes that have been reflected in the Model Agreement on Exchange of Information on Tax Matters" and "call[ed] on all countries to adopt these standards."

27. The Berlin Report also suggested that countries should develop and implement communications strategies aimed at promoting the principles of transparency and exchange of information for tax purposes to their business communities. Members of the Global Forum have participated in numerous events organised by the financial community and this has helped to promote a better understanding of the objectives of the Global Forum. Ensuring that business understands the objectives of the Global Forum's work and the importance of transparency and effective exchange of information in an increasingly globalised world will make the implementation of these principles more politically acceptable.

28. Public awareness campaigns are also important in efforts to improve taxpayer compliance. Voluntary compliance with the tax laws is often influenced by the public's perceptions of overall compliance. Until all countries adopt and implement the high standards of transparency and effective exchange of information, there will continue to be a risk that the public will perceive that secure tax evasion opportunities exist abroad. Individual countries can counter such perceptions by publicising their efforts to pursue taxpayers that fail to comply with their tax obligations in their countries of residence by abusing the anonymity offered by some countries. Countries should also publicise that they are entering into bilateral agreements to be able to obtain the information necessary to ensure compliance with the tax laws by all taxpayers.

29. Individual countries can also pursue acceptance of the principles of transparency and exchange of information by not marketing themselves as places where anonymity from foreign tax authorities is assured and by countering attempts at such marketing or the promotion of structures or arrangements that rely upon anonymity to avoid tax obligations and by encouraging any political subdivisions that do so market themselves to desist from doing so.

(ii) Bilateral actions

30. In terms of *bilateral actions*, the Berlin Report highlighted that the principle of effective exchange of information for civil and criminal tax matters will generally be implemented through a process of bilateral negotiations. The Berlin Report acknowledged that "it would be ideal if all significant financial centres would agree to and implement high standards of information exchange at the same time and manner" but recognised that because exchange of information is generally implemented on a bilateral basis, there would be some timing differences in implementation. The global level playing field concept as defined in the Berlin Report does, however, incorporate the expectation that bilateral implementation of those standards should be achieved within an acceptable timeframe and not be open-ended so as to ensure fairness and equity of the process.

31. The Berlin Report pointed out that the bilateral "process permits the contracting parties to take account of the totality of their bilateral relations, their respective legal systems and practices, and their mutual economic interests." The Berlin Report encouraged all countries to strive to achieve effective exchange of information and transparency by 2006 but recognised that countries could adapt their bilateral arrangements to suit their specific needs and mutual interests.

32. The review of countries' legal and administrative frameworks suggests that the vast majority of countries are already in a position to exchange information in cases of tax crimes. It is important for all countries to participate in the fight against all financial crimes, including tax crimes, and those countries that are not yet able to do so are encouraged to enter into bilateral arrangements for exchanging information with other countries to combat tax crimes.

33. An indicator of the developing co-operation between OECD and non-OECD countries is the increase in tax information exchange agreements and double taxation agreements [5] .Countries that are currently in negotiations are encouraged to complete them and those countries which have not initiated such negotiations are encouraged to do so. .

(iii) Collective actions

34. In terms of *collective actions*, the Berlin Report called for a review of countries' legal and administrative frameworks in the areas of transparency and information exchange, an assessment of the convergence of existing practices and the involvement of significant financial centres that are not currently Participating Partners. The initial analysis of the data received is now well advanced and most of the significant financial centres invited to the Global Forum attended the meeting.

35. Eighty-one countries were included in the review, which was carried out using a detailed template/questionnaire developed by the Global Forum. As foreseen in the Berlin Report, all of the countries included in the review were invited to complete the template/questionnaire.

36. The information gathered through the template/questionnaire has been summarised in the Report which was finalised in 2006. This report ("Tax Co-operation: Towards a Level Playing Field") describes the key principles for transparency and information exchange with regards to taxation and provides information on the current status of the legal and administrative frameworks in over 80 economies. The report will help to provide public recognition to those countries that have implemented the high standards of transparency and effective exchange of information and ensure that current information on countries' legal and administrative frameworks is widely available.

37. The Global Forum will provide periodic progress reports on developments after this report. Countries will be encouraged to regularly provide updates on developments in their legal and administrative frameworks with respect to transparency and effective exchange of information and that information will be made available to all participants. The Report and its updates are expected to play an important role as an ongoing reference tool and as a tool to assess transparency and the effective exchange of information in tax matters.

---

[5] As stated in paragraph 6 of the introduction to the Model Agreement on Exchange of Information on Tax Matters, "[T]he Agreement is intended to establish the standard of what constitutes effective exchange of information for the purposes of the OECDs initiative on harmful tax practices. However, the purpose of the agreement is not to prescribe a specific format for how this standard should be achieved. Thus, the Agreement in either of its forms is only one of several ways in which the standard can be implemented. Other instruments, including double taxation agreements may also be used provided both parties agree to do so, given that other instruments are usually wider in scope."

38. The Global Forum welcomed the endorsement by Argentina; China; Hong Kong, China; Macao, China; the Russian Federation and South Africa of the principles of transparency and effective exchange of information in tax matters and their willingness to work towards a level playing field in these areas.

Article 26 of the OECD Model Tax Convention

39. Article 26 of the OECD Model Tax Convention on Income and on Capital provides the most widely accepted legal basis for bilateral exchange of information for tax purposes. More than 2000 bilateral treaties are based on the Model Convention.

40. Article 26 creates on obligation to exchange information that is foreseeably relevant to the correct application of a tax convention as well as for purposes of the administration and enforcement of domestic tax laws.

41. Article 26 consists of five paragraphs. Paragraph 1 clarifies that the Article applies to taxes of every kind and description including both direct and indirect taxes and sets out the main rule concerning the exchange of information. It also clarifies that Article 26 may be used to obtain information about non-residents and that information exchange is not restricted to taxes covered by the convention. Paragraph 2 contains rules that ensure the confidentiality of information exchanged. It limits the persons to whom such information can be disclosed and specifies the purposes for which such persons may use the information.

42. Paragraph 3 contains certain exceptions to the obligation to provide information. Paragraphs 4 and 5 provide that, notwithstanding the exceptions in paragraph 3, a domestic tax interest requirement or domestic bank secrecy rules do not limit the obligation to exchange information. The current version of Article 26 was approved by the OECD's Committee on Fiscal Affairs on June 1, 2004.

OECD Manual on Information Exchange

43. The Committee on Fiscal Affairs has approved a new Manual on Information Exchange. The Manual provides practical assistance to officials dealing with exchange of information for tax purposes and may also be useful in designing or revising national manuals. It has been developed with the input of both member and non-member countries.

44. The new Manual follows a modular approach. It first discusses general and legal aspects of exchange of information and then covers the following specific subject matters: (1) Exchange of Information on Request, (2) Spontaneous Information Exchange, (3) Automatic (or Routine) Exchange of Information, (4) Industry-wide Exchange of Information, (5) Simultaneous Tax Examinations, (6) Tax Examinations Abroad, (7) Country Profiles Regarding Information Exchange, and (8) Information Exchange Instruments and Models.

45. The modular approach allows countries to tailor the design of their own manuals by incorporating only the modules that are relevant to their specific exchange of information programmes.

III. EU

46. To combat international tax evasion and avoidance the European Union is strengthening collaboration between the Member States' tax administrations and facilitate the exchange of information which appears relevant for the correct assessment of taxes on income and on capital.

47. Under Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums, Member States' competent authorities are required to exchange any information which appears relevant for the correct assessment of taxes on income and on capital and the assessment of indirect taxes:

- value added tax;
- excise duty on alcohol and alcoholic beverages:
- excise duty on manufactured tobacco.

48. Taxes on income and on capital are deemed to include all taxes, irrespective of the manner in which they are levied, imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the disposal of movable or immovable property, taxes on the amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

49. The competent authority of a Member State may request the competent authority of another Member State to forward the information referred previously.

50. All information made known to a Member State under the directives must be kept secret in that state in the same manner as information received under its domestic legislation.

51. These directives impose no obligation to have enquiries carried out or to provide information if the Member State which should furnish the information would be prevented by its laws or administrative practices from carrying out these enquiries or from collecting or using this information for its own purposes.

52. Directive **79/1070/EEC** makes some changes to the wording of Directive **77/799/EEC**.

53. Directive **92/12/EEC** amends Directive **77/799/EEC** to extend its scope to cover excise duties.
Directive **2003/93/EC** extends the scope of mutual assistance provided for in Directive **77/799/EEC** to cover the taxes on insurance premiums referred to in Directive **76/308/EEC** so as to better protect the financial interests of the Member States and the neutrality of the internal market.

54. Directive **2004/56/EC** is designed to speed up the flow of information between Member States' tax authorities. On direct taxation (income tax, company tax and capital gains tax), in conjunction with taxes on insurance premiums, it permits the Member States to coordinate their investigative action against cross-border tax fraud and to carry out more procedures on behalf of each other. It thus updates Directive **77/799/EEC** on mutual assistance and rectifies its weaknesses.

55. Council Directive **2004/106/EC** amends the original title and the content of Directive **77/799/EEC**. As provisions covering **administrative cooperation in the field of excise duties** are included in Council Regulation 2073/2004, Directive **77/799/EEC** will henceforth focus only on mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums.

56. Regarding Value Added Tax, the most important regulation is Council Regulation (EC) 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax.

57. This Regulation lays down the conditions under which the administrative authorities in the Member States responsible for the application of the laws on VAT on supplies of goods and services, intra-Community acquisition of goods and importation of goods are to cooperate with each other and with the Commission to ensure compliance with those laws.

58. To that end, it lays down rules and procedures to enable the competent authorities of the Member States to cooperate and to exchange with each other any information that may help them to effect a correct assessment of VAT.

59. This Regulation also lays down rules and procedures for the exchange of certain information by electronic means, in particular as regards VAT on intra-Community transactions.

60. For the period provided for in Article 4 of Directive 2002/38/EC(9), it also lays down rules and procedures for the exchange by electronic means of value added tax information on services supplied electronically in accordance with the special scheme provided for in Article 26c of Directive 77/388/EEC, and also for any subsequent exchange of information and, as far as services covered by that special scheme are concerned, for the transfer of money between Member States' competent authorities.

IV. CIAT

61. At his meeting on January 2005, the Working Group of the CIAT in tax information exchange agreed to elaborate a Manual for the implementation of the exchange of tax information, on the basis, with the adequate amendments, of the Manual of the Exchange of Information of the OECD.

62. The aim of this Manual is to provide State members of the CIAT with a general view of how the exchange of information provisions should be applied, specially with reference to the CIAT Model Agreement on Exchange of Tax Information.

63. The Manual´s structure is divided into modules. In them exchange of tax information is approached regarding CIAT Model Agreement, but, as far as is compatible, references to article 26 of OECD Model Tax Convention on Income and on Capital are made as well.

64. Article 1 of the CIAT Model Agreement on Exchange of Tax Information extends the scope of the exchange of information to the collection of taxes.

65. Article 4 of the CIAT Model Agreement on Exchange of Tax Information allows exchange of information in cases of tax crime.

66. In the CIAT Model there are three types of exchange of information:

- On request
- Automatic
- Spontaneous

67. The scope of the exchange of information includes the taxes agreed by the Contracting States in the Agreement, so it is open to them from the beginning.

68. Regarding costs, article 8 of the CIAT Model distinguishes between ordinary and extraordinary. First ones shall be borne by the Requested Contracting Party, while the second ones shall be borne by the Requesting Contracting Party. Both Contracting Parties shall determine, by mutual agreement, which costs are considered ordinary and which extraordinary.

69. As a conclusion, the general structure and content of the CIAT Model is similar to the OECD Model.

V. CONCLUSION

70. The exchange of information is a key element to fight against tax evasion. Such is the importance of this issue that international organisations as relevant as OECD, EU and CIAT have been working in it since long time ago and have plenty of work ahead.

The most active international organisation regarding this item has been the OECD. Two types of regulations face exchange of information:

- Article 26 of the Model Tax Convention on Income and on Capital, which current version was approved by the OECD's Committee on Fiscal Affairs on June 1, 2004.

- Model Agreement on Exchange of Information on Tax Matters.

71. UN is one step behind these international organisations in the working made about exchange of information. It is not only that there is no an UN Model Agreement on Exchange of Information on Tax Matters, but also a need of updating article 26 of his Model Double Taxation Convention, which in his nowadays wording does not face problems so important in exchange of information as bank secrecy or domestic tax interest.

72. In updating article 26, there is a good chance not only to improve the wording of it considering the work made by the OECD but, above all, going far beyond it regulating important items for developing countries, which will take frequently the role of the “Requested State”, like costs, procedures or the like.

73. Another issue that would permit UN to make a step forward is to implement a Code of Conduct to be followed by the Contracting States. This Code of Conduct would rule the way tax information should be exchanged between Contracting States and would deal with a crucial issue for the exchange of information, that is to be effective. Items like automatic exchange of information and *de facto* bank secrecy or, in other words, practical barriers to information exchange, would be ones of the most important to rule.

74. So, as a general conclusion, there is a need for the UN to update about exchange of tax information issue and, at the same time, an opportunity to head important improvements related to the effectiveness of this exchange.

DEVELOPING OF A CODE OF CONDUCT

75. Find attached a document presented by Prof. McIntyre at the December 2005 meeting and addressed by the sub-committee as an Annex to this document.