



September 21, 2021

VIA E-MAIL

UN Tax Committee Secretariat
taxcommittee@un.org

Re: Comments on the draft agenda for 23rd Session of the Committee of Experts on International Cooperation in Tax Matters

Dear Ladies and Gentlemen,

On behalf of the United States Council for International Business (USCIB)¹ we are pleased to respond herewith to the September 14, 2021, UN request to provide comments on the draft agenda for the 23rd Session of the United Nations Committee of Experts on International Cooperation in Tax Matters (“CoE”), starting on October 19, 2021 (the “draft tax agenda”).

USCIB actively follows the work of the CoE and is interested in regularly participating in the development of that work through consultation letters such as this one.

For convenience, we have recreated here the list of issues in item 5 of the draft tax agenda and include our comments where relevant. No inferences should be drawn with respect to those items where USCIB comments have not been offered at this time.

Comments:

5. Discussion of issues related to international cooperation in tax matters:

(a) Procedural issues for the Committee, including options for Committee consultations;

It is important for the development of sound international tax policy for the CoE to solicit in timely fashion and consider the views of taxpayers and other stakeholders on specific issues and to have clear and transparent discussion and decision making.

(b) Taxation and the Sustainable Development Goals;

¹ USCIB is a multi-industry US trade association that promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and prudent regulation. Its members include leading U.S.-based global companies and professional advisory firms from every sector of the US economy, and which typically have operations in every region of the world. With a unique global network encompassing leading international business organizations, the USCIB tax committee provides business views and consultation on multilateral tax issues to policy makers and regulatory authorities worldwide.

Critical to advancing sustainable development is the facilitation of cross-border trade and investment with principle-based rules that maximize tax certainty and minimize the risk of disputes and double taxation. These goals should be part of a fundamental set of principles for the CoE's work.

(c) Issues related to the United Nations Model Double Taxation Convention between Developed and Developing Countries, including:

(i) Article 12 (Royalties): possible amendments in relation to payments related to software and digital products;

We urge the CoE to consider its further work on this in the context of overlapping objectives of the ongoing OECD Inclusive Framework deliberations on Pillars One and Two to stabilize the international tax framework and to avoid creating direct conflicts between CoE work and those OECD Inclusive Framework objectives. For reference, we include a copy of our March 15, 2021 letter to the Secretariat that includes our most recent comments on CoE deliberations related to the family of Article 12 provisions in the UN Model Income Tax Treaty and its Commentary.

(ii) List of matters suggested by the previous membership for possible further work;

No comments at this time.

(d) Review and possible update of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries;

USCIB and its members are in favor of the regular review and possible update of the Manual and are ready to offer experience-based guidance, advice, and drafting suggestions as needed.

(e) Transfer pricing;

Tax authorities and multilateral organizations continue to focus properly on transfer pricing trends and improving tax certainty to address various issues, including intangible property, digitalization, etc. Any further CoE analysis should be consistent and coordinated with the ongoing efforts of its peer multilateral organizations to avoid the promulgation of conflicting guidance for tax authorities and taxpayers.

(f) Taxation of the extractive industries;

No comments at this time.

(g) Environmental and environmentally related taxation;

It is important that CoE initiatives are consistent with proposals from the greater group of UN member Competent Authorities and the multilateral organizations that are developing and designing positions for international standards.

(h) Dispute avoidance and resolution;

Effective dispute avoidance (or prevention) and resolution mechanisms are important components for facilitating cross-border trade and investment and a stable international tax order. Given the proliferation of transfer pricing disputes around the world, CoE should endeavor to develop practical mechanisms to avoid and resolve transfer pricing disputes consistent with the arm's length standard and with continued access to procedures to eliminate double taxation. We support CoE devoting work toward finding acceptable approaches to achieving mandatory, binding dispute resolution mechanisms, particularly (but not only) to effectuate consistently any agreements reached by the OECD Inclusive Framework on Pillars One and Two.

(i) Taxation issues related to the digitalized and globalized economy;

The digitalization of the global economy drives cross-border trade, innovation, and access to knowledge and know-how, and provides other benefits that contribute to the growth, sustainability, and competitiveness of local economies. The complexities of taxation issues related to the digitalized economy are well demonstrated by the significant resources governments and multilateral organizations must commit to develop tailored solutions and adjust international standards, if and when needed. CoE efforts should align with the efforts of other multilateral organizations' work on these issues. A significant number of UN members are also members of these other multilateral organizations, increasing the likelihood of efficient alignment on taxation principles and rules in these areas.

(j) Digitalization and other opportunities to improve tax administration;

Similar to the above agenda item on dispute avoidance and resolution, the development of digitalization in tax administration and other mechanisms to improve efficient tax administration for both tax authorities and taxpayers is strongly encouraged.

(k) Increasing tax transparency;

While increasing tax transparency among tax authorities that have legitimate interests in taxpayer information can facilitate tax compliance and dispute resolution, it is important that the rules for the processing and sharing of such information are specific enough to eliminate the improper use of such information by tax authorities beyond the very narrow purpose of tax compliance and dispute resolution.

(l) Taxation and coronavirus disease (COVID-19): pandemic and post-pandemic issues;

Various multilateral organizations and most governments have devoted resources to setting forth guidance to addressing tax and transfer pricing issues arising from the COVID-19 pandemic and post-pandemic periods. To the extent it is necessary to update this guidance to reflect more recent experience, such updates should be focused on providing clear rules that are consistent with the arm's length principle.

(m) Wealth and solidarity taxes;

No comments at this time.

(n) Indirect taxes, including health taxes;

Any initiatives in this area should be consistent with ongoing multilateral efforts to establish uniform rules for cross-border trade, focus on ease of administrability (for both tax administrations and taxpayers), and include reasonable implementation lead times.

(o) Relationship of tax, trade and investment agreements;

No comments at this time.

(p) Capacity-building;

USCIB encourages the CoE to further its work on capacity building and assist UN members to ensure that their tax authorities have sufficiently trained staff to enable audits and disputes to be undertaken and resolved in a timely manner. This is particularly important in respect to UN member transfer pricing and Competent Authority resources.

(q) Other matters for consideration.

No comments at this time.

We appreciate the opportunity to submit comments on the draft agenda and are available to discuss with you at your convenience the issues described in this letter in further detail.

Sincerely,

Rick Minor
Vice President & International Tax Counsel
United States Council for International Business
(USCIB)

Timothy McDonald
Chair, Taxation Committee
United States Council for International Business
(USCIB)

Washington Office

1400 K Street, N.W., Suite 525
Washington, DC 20005
202.371.1316 tel
202.371.8249 fax
www.uscib.org

Global Business Leadership as the U.S. Affiliate of:
International Chamber of Commerce (ICC)
International Organization of Employers (IOE)
Business and Industry Advisory Committee (BIAC) to the OECD
ATA Carnet System