



May 2, 2017

VIA EMAIL

Michael Lennard
Chief, International Tax Cooperation Section
Financing for Development Office
UN Dept. of Economic and Social Affairs
2 UN Plaza, Room DC2-2172
United Nations
New York, NY 10017

Re: Comments on Secretariat note concerning procedural issues

Dear Mr. Lennard,

USCIB¹ is writing to comment on a recent note by the UN Secretariat on certain procedural issues relating to the functioning of the Committee of Experts on International Cooperation in Tax Matters (hereinafter “the Committee”). Our comments are limited to the section of the note dealing with information provided to the Committee by non-Members and Composition of Subcommittees.

Information provided to the Committee by non-Members

USCIB believes that it is extremely important for the Committee to have timely input from the business community and other stakeholders before providing tax policy guidance that may have a significant impact on persons affected by the guidance. In the past, USCIB has attempted to keep track of UN documents as they are released, review those documents in an expeditious manner, and provide useful written comments to the Committee as soon as possible. We understand that the UN does not have the resources to have a full notice, comment and public consultation process. It should be possible, however, to have a more open process that will likely improve the end-product and increase the perceived legitimacy of the guidance published by the UN. Some modest improvements that should not be too costly might include: permitting interested persons to sign-up for email notices when documents have been released publicly; and having a minimum period-of-time between public release and adoption of any decision by the Committee.

Composition of Subcommittees

USCIB believes that in many – if not most – cases guidance is improved by including stakeholders in the development of that guidance. Therefore, Subcommittees should include outside expertise. This is

¹ USCIB promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and prudent regulation. Its members include top U.S.-based global companies and professional services firms from every sector of our economy, with operations in every region of the world. With a unique global network encompassing leading international business organizations, USCIB provides business views to policy makers and regulatory authorities worldwide, and works to facilitate international trade and investment.

especially important because the opportunities for non-Member comment on Subcommittee proposals is often limited. There may be rare cases where outside stakeholders do not have a valuable contribution to make, but those cases should be exceptional and the presumption should be that Subcommittees should include some representatives of business and potentially other stakeholders in order to achieve the most helpful guidance.

Business participation on Subcommittees concerning transfer pricing, extractive industries, and royalties has been helpful to the work of the subcommittees dealing with those topics. USCIB notes that the agenda for the next membership of the committee includes topics where input from persons with expertise will be essential to developing guidance. These topics include: taxation of the digital economy (including the on-going work on taxation of software payments), taxation of the reinsurance industry, qualification of CIVs for treaty benefits, taxation of carbon, and possibly other topics. Reaching good decisions on these topics will require understanding of how business operates in some very specialized industries.

Even in cases where specialized industry knowledge is less important, business can provide valuable insight into the potential impact on investment of different approaches to taxation and possibly point out interactions with other laws or practices that effect an industry that tax authorities may be unaware of.

Conclusion

USCIB understands that countries are sovereign and can choose their own tax policies. USCIB believes that the Committee and Subcommittees providing guidance on the exercise of that sovereign authority will reach better decisions if they understand in advance how those decisions may affect investment. Thus, an open process that includes as much input as possible from business and other stakeholders should be followed because it is likely to produce the best outcomes for both countries and investors.

Sincerely,



William J. Sample
Chair, Taxation Committee
United States Council for International Business (USCIB)