Summary record of the International Tax Conference "Pay your taxes where you add the value", The Hague, 2 July 2015

Summary and outcome:

The Ministry of Foreign Affairs of the Netherlands organized a conference under the title "Pay your taxes where you add the value" on 2 July in The Hague, the Netherlands. The conference brought more than 100 representatives together to discuss effective ways to support developing countries' tax policy and revenue collection. The outcome of the conference can be summarized as follows:

1. The BEPS project is of great importance for the developing countries' fight against tax avoidance by multinational enterprises.
2. There is a need to work towards a more inclusive framework for the international tax agenda.
3. Further research is recommended on possible fundamental changes in the current international tax architecture.
4. Developing countries with a limited capacity for tax collection could look for simple forms of taxation.
5. Creation of a tax unit to tackle transfer mispricing can be beneficial but often demands intensive technical assistance to developing countries.
6. Reduction of competition for foreign investment between developing countries could save substantial domestic revenues.
7. Developing countries should use smart tax incentives based on cost-benefit analyses.
8. Transparency on tax control frameworks could be useful to foster cooperation with tax authorities in developing countries.
9. Anti-avoidance clauses should be a standard element of tax treaties with developing countries.
10. Developing countries need a secure system and the right technological equipment to implement the new international standard on automatic exchange of information.
11. There is an obvious need of more funds for capacity building in the tax area to assist developing countries in reaching a Tax/GDP ratio of at least 20%.
12. A well-developed multi-stakeholder dialogue could be very helpful to improve responsible corporate behaviour in tax matters.

Unilever is the winner of the Tax Transparency Benchmark of which the results were presented during the conference.

Comment:

The conference offered representatives with a very diverse background an opportunity to discuss in depth the contentious issue of tax avoidance by multinationals. The discussions were very constructive and fruitful. It is expected that the outcome will inspire to additional policy and research initiatives to the benefit of the domestic revenue mobilization of developing countries.

Summary record of the conference:

The Ministry of Foreign Affairs of the Netherlands organized a conference under the title "Pay your taxes where you add the value" on 2 July in The Hague, in cooperation with the University of Groningen, Tilburg University and the Dutch Association of Investors for Sustainable Development.

The conference brought more than 100 representatives together to discuss effective ways to support developing countries' tax policy and revenue collection. There was a mixed audience existing of academics, tax lawyers, government officials, representatives of international institutions and members of civil society. The conference stood under the chairmanship of Mr. Marnix van Rij, Senior Tax Partner, Ernst & Young Belastingadviseurs LLP. There were introductions of various experts on international fiscal rule-making and tax cooperation, and a presentation of the Tax Transparency Benchmark 2015. Each speaker defended two statements on which the audience could vote.

Minister Lilianne Ploumen, Dutch Minister for Foreign Trade and Development Cooperation, made a speech during the plenary opening session. She addressed the big challenge to achieve effective, comprehensive and fair tax systems in developing countries. In her view this should be a top priority for all above-mentioned sectors of societies.
Eric Wiebes, Dutch State Secretary for Finance, spoke during the plenary closing session. He addressed the Dutch position on several international tax issues, based on his letter to parliament of June 2nd 2015.

The following issues played a key role in the discussions during the various sessions:

1. **The BEPS project is of great importance for the developing countries' fight against tax avoidance by multinational enterprises.**

The dependency of developing countries on corporate income taxes is larger than in developed countries. For Rwanda the taxation of multinational enterprises amounts to 70% of the country's direct tax base and for Nigeria the percentage is even 88%. This makes the OECD/G20 project on Base Erosion and Profit Shifting (BEPS) highly relevant for developing countries.

Developed and developing countries share a similar interest in a successful outcome of the BEPS project according to Mr. Aart Roelofsen, International Tax Policy Advisor, at the Ministry of Finance of the Netherlands. Ruud de Mooij of IMF's Fiscal Affairs Department estimated that implementation of expected BEPS outcomes by developing countries could produce a 15% to 30% increase in their corporate income tax revenues.

Therefore, Mr. Pascal Saint-Amans, Director, OECD Centre for Tax Policy and Administration, called it a good thing that several developing countries are directly involved in the BEPS negotiations, whereby these countries are assisted by experts in presenting their views on the issues at stake. Other developing countries are indirectly involved through regional consultation meetings. Dr. Nara Monkam, Director Research of the African Tax Administration Forum (ATAF) explained the significant input that ATAF had delivered on key topics for developing countries in the BEPS discussions, such as the artificial avoidance of Permanent Establishment status, Interest deductibility and Commodity pricing in cross-border transactions.

Mr. Pascal Saint-Amans expects that the negotiating parties will be able to conclude the BEPS project with substantial results on the 8th of October. These results will close the opportunities for aggressive transfer pricing which erode the tax bases of both developed and developing countries. Multinationals will have to pay taxes where these companies add the value to economies.

2. **There is a need to work towards a more inclusive framework for the international tax agenda.**

While it was appreciated that the OECD/G20 negotiations were partly opened up to developing countries, there was a general feeling that future fiscal rule-making demands a participation of developing countries on equal footing with other counties. Present negotiations are dominated by developed countries which are important foreign direct investors, and by emerging economies such as China and India which are also becoming important capital exporting countries.

Views differed strongly on the future institutional shape of the international cooperation. Some argued that only the United Nations (UN) could offer the necessary universality. Therefore, the UN Committee of Experts on International Cooperation in Tax Matters should be upgraded to an intergovernmental Committee and replace the OECD as the center stage for the tax negotiations as quickly as possible. In their view the G77 rightly attaches high importance to international acceptance of the intended upgrading of the UN Committee during the Financing for Development Conference in Addis Ababa, 13-16 July 2015.

In a reaction on this proposal Minister Ploumen recommended a more cautious approach. We should now seize the momentum of the readiness of G20 and OECD countries to agree on effective measures to curb tax avoidance by multinational companies. In fact, such global agreement is long overdue and could be jeopardized if the focus of the international community would now shift to an institutional debate.

Others also feared that aforesaid proposal could undermine the conclusion of the BEPS project. Nevertheless, they recommended an implementation and monitoring process of the BEPS outcomes in which the developing countries should take part on a more equal footing than in the negotiations.

In this respect, the Global Forum on Transparency and Exchange of Information for Tax Purposes, in which more than 120 countries cooperate, was seen as a basic model to these ends.
Reference was also made to the open character of the forthcoming negotiations on a Multilateral Instrument to implement the tax treaty related results of the BEPS-project. Up to now 87 countries have declared to participate in these negotiations which have to reach an agreement on minimum standards to curb treaty shopping.

At the same time, the UN Committee of Experts could be provided with more funds, in particular to enable the Committee to strengthen its support to least-developed countries.

3. Further research is recommended on possible fundamental changes in the current international tax architecture.

Some speakers spoke in favour of possible more fundamental changes (than envisaged in the BEPS project) in the current basic concepts of the division of taxing rights between capital importing countries (‘source countries’) and capital exporting countries (‘residence countries’). Such changes could, in particular, improve the tax revenue collection in developing countries. For instance, by shifting the taxation right on interest payments from the residence country of the creditor to the country where the debtor is the source of the interest income on the basis of his entrepreneurial activities. This proposal of Professor Eric Kemmeren of Tilburg University was well received by a large part of the audience.

4. Developing countries with a limited capacity for tax collection could look for simple forms of taxation.

Dr. Châu Le Thi Nguyet, Dean, Law School, Can Tho University, Vietnam, explained that Vietnam has a very complex tax system that not only hurts the investment climate, but also makes tax revenue collection quite difficult.

It was recommended that developing countries, which have difficulties in ensuring sufficient compliance of multinationals with the local tax laws, look for simple forms of taxation. For instance, they could use a minimum corporate income tax. As a result, companies cannot escape their obligation to pay a fair share of tax. A minimum tax can, for example, be calculated by applying a flat rate on the gross corporate income. This would cap deductions and therefore limit base erosion.

In order to reduce opportunities for profit shifting developing countries could also set limits on the amounts of management or engineering fees that subsidiaries could be allowed to transfer to headquarters abroad.

5. Creation of a tax unit to tackle transfer mispricing can be beneficial but often demands intensive technical assistance to developing countries.

Mr. Jan Loeprick of the Investment Climate Department of the World Bank Group highlighted the large benefits which developing countries could derive from the introduction of transfer pricing provisions in their tax laws. With such legislation developing countries could challenge the misuse of transfer pricing by multinationals. The annual amount of tax revenues lost by developing countries by this form

of tax avoidance/evasion is estimated at approximately $100 billion (based on a study over the years 2002 to 2006).
However, the establishment of an operational Transfer Pricing Unit within the tax administration demands a lot of efforts. Among others, the World Bank can provide technical assistance.

6. **Reduction of competition for foreign investment between developing countries could save substantial domestic revenues.**

Ms. Jane Nalunga, Country Director, Southern and Eastern Africa Trade Information and Negotiations Institute (SEATINI - Uganda), stated that the tax administration in her country is not very consistent with the granting of tax incentives to attract foreign investments. A clear regulation seems not to exist. The responsible minister only informs parliament about the total amount involved with tax incentives, but there is no discussion about the policy.

Several other speakers expressed serious doubts about the usefulness of tax incentives to attract foreign investments. There are a number of indications that tax incentives have hardly any effect on the level of foreign investment. Tax holidays seem to have no effect at all and are therefore often a waste of domestic revenues. However, 80% of the Sub-Saharan countries offer them as a means to compete for foreign investments.

7. **Developing countries should use smart tax incentives based on cost-benefit analyses.**

Dr. Châu Le Thi Nguyet noted that studies show that tax incentives do not have any effect on the level of foreign investments in Vietnam. Indeed, the Vietnamese government acknowledges that there are many wasteful tax incentives, but fears to discourage foreign investment if these incentives would be abolished.

It was recommended that tax incentives are clearly linked with specific foreign investments whereby cost-benefit analyses have to demonstrate that the offered incentives are essential to receive the investments. So we need less but smarter incentives with proven results.

8. **Transparency on tax control frameworks could be useful to foster cooperation with tax authorities in developing countries.**

Many multinationals experience a lack of predictability of tax assessments in developing countries and have often to deal with a very assertive attitude of the tax authorities. Companies could take the lead in trying to reach a more cooperative atmosphere. Paul Beks, Director Corporate Tax Department, KPN, recommended transparency about the internal tax control framework of companies as an instrument to build trust among the tax authorities and to improve the cooperation.

9. **Anti-avoidance clauses should be a standard element of tax treaties with developing countries.**

There was general agreement that every tax treaty with developing countries should include anti-abuse clauses. It was appreciated that the Netherlands is working on the inclusion of such clauses in tax treaties with developing countries. However, there is no "one-size-fits-all" solution available in this regard.

For low or low middle income countries a main purpose test is often preferable over a limitation on benefits (LOB) clause, in view of the complexity of latter anti-abuse provision. For instance, Richard Tusabe, Commissioner General at Rwanda Revenue Authority, said that he preferred the main purpose test because it brings more flexibility.

Professor Irene Burgers of the University of Groningen remarked that developing countries should take care that their domestic anti-abuse rules remain applicable if they agree on a tax treaty with a main purpose test. Otherwise, a loophole may arise in cases where the main purpose test is too vague to be applied. To her mind a rather concise LOB clause, such as recently added to the treaty of the Netherlands with Ethiopia, could be an appropriate instrument.

10. Developing countries need a secure system and the right technological equipment to implement the new international standard on automatic exchange of information.

Dr. Irma Mosquera, Post-doctoral research fellow at the International Bureau of Fiscal Documentation (IBFD), stated that developing countries should aim to adhere to international standards in the tax area, including the new standard on automatic exchange of information. However, even a country like Colombia is in her view not ready to implement this standard. At this stage Colombia lacks both the technical knowhow and the IT capacity to join the group of countries which will start with automatic exchange of information from 2017.

It was recommended that developing countries should also take part in automatic exchange of information. However, many developing countries are not yet ready for implementation. Developing countries should first build a system which guarantees confidentiality of the information and privacy of the taxpayers. Moreover, developed countries should deal with the need of investment in technological equipment and training to enable developing countries to put the automatic exchange of information in practice.

11. There is an obvious need of more funds for capacity building in the tax area to assist developing countries in reaching a Tax/GDP ratio of at least 20%.

In general, the lack of capacity was seen as a serious bottleneck for many developing countries to realize the necessary increase of domestic revenues. As Minister Ploumen remarked, developing countries will have to increase the amount of tax they collect to about 20% of GDP to finance their share of the Sustainable Development Goals, to be adopted in New York in September 2015. For most developing countries that figure is currently between 10% and 15%. This is low compared with the average tax rate of 35% for developed countries.

Therefore, the Tax Initiative which is expected to be launched during the Financing for Development Conference in Addis Ababa next week was well received. The Initiative highlights the importance of tackling tax evasion and avoidance. Technical cooperation will be provided for broad based capacity building as well as issues on the international tax agenda. South-south cooperation will be welcomed and supported.

The Addis Tax Initiative commits providers of technical cooperation in taxation/domestic revenue mobilisation, which join the Initiative, to considerably increase their spending on technical cooperation in the field of domestic revenue mobilisation and taxation. As a matter of fact the aim is that donor countries and organisations will collectively double their technical cooperation in this area.

The Initiative is proposed as a partnership between both providers of technical cooperation and partner countries. Partner countries, who will join, will commit to step up domestic resource mobilisation in order to increase the means of implementation for attaining the Sustainable Development Goals and inclusive development.

12. A well-developed multi-stakeholder dialogue could be very helpful to improve responsible corporate behaviour in tax matters.

The overall awareness among Dutch listed companies to pay attention to their tax behaviour as an issue of Corporate Social Responsibility (CSR) is rather low, but slowly growing. According to Giuseppe van der Helm, Executive Director of the Dutch Association of Investors for Sustainable Development (VBDO), it is important that companies not only observe the letter of the tax laws but also take the spirit of the law into account.

There was discussion on what the spirit of the law implies. Some representatives stressed that only the letter of the law could be the basis for companies to determine their tax behaviour. If artificial tax planning structures to reduce tax payments were no longer acceptable, the law should in their view be modified accordingly.

Others were of the opinion that responsible behaviour implies that companies are well aware of the intentions of the laws. Discussions with internal stakeholders among which tax, legal, compliance and CSR officers, as well as external stakeholders, including governments, tax authorities, civil society organisations and investors, could be very helpful to clarify these intentions.

13. Unilever is the winner of the tax transparency benchmark of 2015.

Supported by the Ministry of Foreign Affairs the VBDO executed a Tax Transparency Benchmark. The study ranks 64 listed Dutch multinational companies on the transparency that they provide into their responsible tax policy and its implementation.

Unilever is the winner of the benchmark. On behalf of the Jury Mr. Victor van Kommer, Director Tax Services at the International Bureau of Fiscal Documentation, applauded that Unilever has published a set of clearly formulated global tax principles, which it seems to effectively embed into the organisation through an online training course for employees and new compliance procedures. Additionally, Unilever made a good start in disclosing more information on its corporate income taxes paid by region. These numbers can be matched to the tax base by region in terms of revenues, profits, assets and FTEs in its Annual Report. Finally, Unilever also reports its consolidated total tax payments by type.

The Hague, 8 July 2015