

Draft not for circulation

Submission of the International Chamber of Commerce to the High Level Panel on International Finance Accountability, Transparency and Integrity for Achieving the 2030 Agenda

1. The International Chamber of Commerce (**ICC**), as the institutional representative of over 45 million businesses in more than 100 countries and in its capacity as Permanent Observer to the United Nations (**UN**) General Assembly, appreciates the opportunity to provide input on the background paper of the Financial Accountability, Transparency and Integrity (**FACTI**) Panel.
2. ICC recognises the expectations of the FACTI Panel to: (1) review current challenges and trends related to financial accountability, transparency and integrity; (2) review existing international institutional and legal frameworks; and (3) make relevant evidence-based recommendations.¹
3. The foregoing submission is divided into two of the three clusters agreed by the Panel Members in their first video conference, held on 31 March 2020: (a) improving cooperation in tax matters; and (b) accountability, public reporting and anti-corruption measures. As the FACTI Panel explores what further action is needed by governments and financial institutions in the identified areas, ICC respectfully submits its comments on the background paper as outlined below:

Improving cooperation in tax matters

4. ICC advocates for a consistent global tax system, founded on the premise that stability, certainty and consistency in global tax principles are essential for business and will foster cross-border trade and investment.

Fostering universal participation in international legal instruments on tax matters: international co-operation and inclusivity

5. ICC recognises the importance of international tax cooperation as emphasized in the Addis Ababa Action Agenda, which should “be universal in approach and scope and should fully take into account the different needs and capacities of all countries”.²
6. In this respect ICC encourages the close cooperation of all stakeholders, including partners in the Platform for Collaboration on Tax (namely the Organisation for Economic Cooperation and Development (**OECD**), the UN Committee of Tax Experts, International Monetary Fund and World Bank Group), in dialogue with business to ensure synergy and a sense of joint ownership.

¹ UN President of the General Assembly, UN President of the Economic and Social Council, [Terms of Reference](#), High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (27 February 2020).

² United Nations, [Addis Ababa Action Agenda of the Third International Conference on Financing for Development](#), [28].

ICC welcomes the work of the Platform for Collaboration on Tax to strengthen collaboration on domestic resource mobilization and foster collective action for stronger tax systems in developing and emerging countries.

7. ICC underscores the need for international tax rules to be implemented in a coherent and coordinated manner. To that end, ICC supports and encourages the continued collaboration of the OECD/G20 Inclusive Framework, which currently brings together 137 countries, to participate on an equal footing in the monitoring and implementation of the OECD/G20 Base Erosion and Profit Shifting (**BEPS**) plan, as well as the development of standards on other BEPS-related issues, including the tax challenges of digitalisation.
8. ICC also encourages increased synergy between the UN Committee of Experts in Tax Matters and the work currently conducted by the OECD on addressing the tax challenges of digitalisation. ICC believes it is important that the work of the UN Committee continues to be technical rather than political in nature.
9. International consistency is an important prerequisite to avoid double taxation: steps to reach alignment at a global level are always welcome. ICC emphasizes the importance of inclusive cooperation and dialogue among national tax authorities on international tax matters. All countries should work closely together to prevent inconsistencies between national tax legislations and to avoid double taxation and unilateral disparate tax rules.

Tax avoidance and tax evasion

10. ICC strongly opposes tax fraud and tax evasion and emphasizes the need to distinguish these illegal activities from the use of lawful methods of tax planning and tax management. Governments should agree on acceptable forms of tax competition and avoid labelling businesses as aggressive tax planners or tax avoiders when using legislated tax incentives. In return, businesses should adhere to rules and principles agreed upon by and between countries. Creating trust and efficient co-operation between governments and business is essential to achieve a balanced and effective tax system. Each party has a key role to play in fulfilling their mutual responsibilities, which is instrumental in building a relationship of trust and co-operation.
11. ICC supports the recognition in the background document that trust in government can lead to voluntary tax compliance which, combined with effective public service delivery, can further enhance trust. This concept may also be applied to international tax cooperation.
12. Although tax avoidance (unlike tax evasion) is within the law, ICC recognises that tax authorities are entitled to curtail deliberate tax avoidance and to take the measures they consider appropriate within the applicable legal systems. However, the enforcement of these specific and/or general rules with respect to abuse of law or its equivalent must be reasonable and equitable. Such rules should also respect, at all times, the fundamental dogma of legal certainty essential for businesses.

Better aligning taxation with the location of real economic activity: Digital taxation (allocation of taxing rights, minimum tax rate)

13. The FACTI Panel notes existing proposals for shifting multi-national corporation taxation to the unitary principal with all profits allocated according to formulas. ICC fully supports a harmonised approach to ensure that international tax rules remain relevant and applicable in an increasingly digitalised global economy. As digitalisation continues to be an important driver for global economic growth, policies related to taxation of the digitalised economy should seek to promote, and not hinder, economic growth and cross-border trade and investment.

Taxation of the digitalised economy remains a leading topic on the global tax agenda as policymakers seek to address the implications and opportunities presented by digitalisation. Political pressure is evident as governments around the world explore solutions to ensure that income generated from cross-border activities in the digital age is taxed appropriately. ICC believes that any change of international rules or principles should be done through a comprehensive, coherent and co-ordinated approach between jurisdictions and recognises the multilateral approach taken by the OECD, including the global engagement of countries in the context of the OECD Inclusive Framework. As part of this process, ICC has contributed [business perspectives](#) to the OECD public consultations to help frame and develop on-going work in this area.

14. ICC reiterates that the OECD's continued work in this area should build on internationally established tax principles to help define the contours of a suitable tax framework for the digitalised economy that encourages business activities, job creation and economic growth. Strengthening the application of internationally established tax principles in any proposed solution would contribute to building a coherent international regulatory framework for world business whilst also providing a foundation to accommodate continued rapid evolution in digitalised business models. ICC believes that the application of internationally established tax principles, as outlined in the [ICC Policy Statement on Taxation Policy for the Digitalised Economy](#), should underpin the work developed in both Pillar One and Pillar Two proposals, as discussions evolve within the Inclusive Framework to address issues related to the allocation of taxing rights and proposals for minimum taxation.

Dispute avoidance and dispute resolution

15. As fundamental changes to the international tax framework are considered, ICC stresses the importance of continuing to improve dispute avoidance and dispute resolution procedures. New concepts of taxing companies and allocating profits to countries may be subject to different interpretations and business risks being confronted with increasing instances of double taxation. The risk of double taxation in such circumstances would discourage cross-border trade and investment – which would be harmful for both countries and for businesses of all sizes. It is therefore imperative that robust dispute resolution procedures are in place to reduce double taxation disputes.
16. As the OECD seeks to garner support and agreement from 137 countries for changes to the international tax framework in the context of addressing the tax challenges arising from digitalisation, ICC believes that the inclusion of mandatory dispute resolution mechanisms (eg. mandatory binding arbitration), would help significantly in mitigating new risks of double taxation and provide for much needed legal certainty and predictability for companies.

Preparing consistent and reliable global data on taxation: Public CBC reporting

17. The FACTI Panel background document notes existing proposals for country-by-country (**CBC**) reporting to uniformly be made public so that citizens and tax authorities all have access to relevant information. Furthermore, there are proposals to remove restrictions on the sharing of information in the context of the global automatic exchange of information among competent national authorities, which can promote a whole-of-government approach.
18. ICC urges policymakers not to lose sight of the great strides already taken to establish global standards to protect the integrity of the international tax system – including tax transparency measures related to the automatic exchange of financial account information between national tax offices. In this context, ICC recognizes the role of CBC reporting as a high-level risk assessment tool to ensure businesses pay the correct amount of tax – in line with the international guidelines set out in the OECD BEPS project. The disclosure of company data to competent tax authorities, as set out in BEPS Action Item 13, is recognised as an important instrument to help tax authorities improve their ability to fulfil their task in assessing the tax liabilities of their taxpayers – with the explicit provision that this information remains confidential.
19. To this end, ICC urges all national governments not to go beyond the scope of international guidelines, in favour of legal certainty and confidentiality of commercially sensitive information. Particularly with smaller subsidiaries or project-related “Permanent Establishments”, public disclosure of information could place them at a competitive disadvantage.

Improving tracking of asset ownership and use of this information: Beneficial ownership

20. The FACTI Panel outlines proposals to strengthen requirements on adopting a uniform data standard for beneficial ownership information, including the creation of a global asset registry, which would be a combined, global beneficial ownership registry that takes into account not just entity ownership, but also ownership of land, financial assets and financial accounts, and other items of value.
21. ICC supports the Standard for Automatic Exchange of Financial Account Information in Tax Matters (Common Reporting Standard or **CRS**). The CRS’ administrable procedures and detailed guidance make it a key tool for addressing the important and valid public policy concerns regarding tax evasion and money laundering.
22. ICC recognises that transparency of ownership information can play an important role in preventing tax evasion, corruption and other related activities. International standards require minimum levels of transparency concerning the beneficial owners of companies, trusts and other legal arrangements for tax as well as anti-money laundering purposes.
23. ICC supports efficient and targeted mechanisms for addressing CRS avoidance arrangements, where these are shown to be necessary. Such mechanisms will ensure a fair and transparent financial system, and will benefit compliant firms. ICC suggests that the scope covers only scenarios where there is evidence of abuse. Rules targeted to actual abuses will prevent tax administrations from being overwhelmed with information, only some of which will be useful; a significant volume of irrelevant information would inhibit enforcement efforts by making it harder to find abusive behaviour.

Accountability, public reporting and anti-corruption measures

Building on the United Nations Convention against Corruption

24. ICC has pioneered the business drive for anti-corruption in commercial transactions as it believes that only a corruption-free system will enable all participants to compete on a level-playing field, upholding integrity worldwide.
25. The United Nations Convention against Corruption (**UNCAC**), if regularly monitored and genuinely applied, holds the potential of a level playing field in which all market participants in the global economy have a fair and equal chance to compete in open and transparent conditions. It is an essential instrument in the fight against corruption because it: (a) covers countries all over the world, emerging as well as developed; (b) addresses all types of corrupt practices, in both the public and the private sector; and (c) contains preventive measures, as well as law enforcement provisions.
26. UNCAC has a very ambitious scope, wider than the OECD Convention, covering both the demand side (the act of bribery) and the supply side (solicitation) of corruption. It covers the criminalisation not only of domestic and foreign corruption, but also of embezzlement in the public sector, laundering the proceeds of crime and obstruction of justice. It further covers, at the discretion of the States Parties, illicit enrichment of public officials, abuse of functions, trading in influence, concealment as well as active and passive bribery and embezzlement in the private sector.
27. UNCAC is also innovative in its coverage of preventive measures including mutual legal assistance, extradition and joint investigations. Its main innovations are, however, its provisions on asset recovery, technical assistance and information exchange.
28. As a complex legal instrument, UNCAC requires careful follow-up of its implementation to achieve its objectives. Political will and determined action by governments are necessary to put into place effective prevention and enforcement measures, as well as new processes for international cooperation. Hoping that the Convention's provisions will work, without follow-up reviews, would be a dangerous mistake.
29. This is especially the case during the COVID-19 crisis. Massive economic stimulus is needed to safeguard economies from the effects of necessary public health measures to contain the virus. Unfortunately, this provides new opportunities for corruption and the erosion of ethical standards. For this reason, an effective implementation review mechanism is essential.
30. UNCAC must be at the centre of the international community's efforts to combat corruption and business stands ready to support all efforts to strengthen its enforcement. A central point of focus in this regard should be the implementation of improved monitoring and peer review processes.

Multi-jurisdictional cooperation and harmonisation

31. ICC supports in principle the FACTI panel's exploration of mechanisms to improving cooperation on bribery investigation. This should contribute to more coordination of multi-jurisdictional enforcement, guided by the UN Office on Drugs and Crime. Nothing in the articles of the OECD, UNCAC (or the Legislative or Technical Guides to UNCAC) addresses the situation where multiple enforcement agencies in multiple states have jurisdiction and are seeking to take action – international principles would be helpful in these cases.

32. The FACTI panel should promote public-private cooperation in advancing the aims of anti-corruption and transparency that are shared and advanced by both business and governments. ICC looks forward to supporting the FACTI Panel's work in this regard and to contributing to the Panel's progress throughout its mandate.