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I. Work of the Ad Hoc Group of Experts on International Cooperation in Tax Matters

1. The matter of assistance in the collection of taxes was discussed at the 11th meeting of the Ad Hoc Group of Experts on International Cooperation in Tax Matters (held on 15-19 December 2003) on the basis of note ST/SG/AC.8/2003/CRP.2 ("*L'assistance internationale au recouvrement des creances fiscales*") prepared by M. Nouredine Bensouda, Director General of Taxation, Morocco.

2. According to the note by Mr. Bensouda:

[TRANSLATION] "It is generally agreed that State fiscal sovereignties, when not conflicting, have no contacts and that enforceable claims issued by one fiscal sovereignty for the recovery of unpaid taxes have no legal force outside its fiscal tax territory.

This constitutes a strict limitation to the taxing power of each State as regards its own borders, which facilitates international tax avoidance and evasion. These have become more important over the last two decades and have taken various and variable forms, in particular through the arrangement of bankruptcy as regards tax claims.

This is why the fight against international tax avoidance and evasion now constitutes an essential priority for tax administrations and international organizations that deal with international tax issues. Since unilateral measures in this area may be unsuccessful, it is essential that bilateral or multilateral tax cooperation be implemented between tax administrations."

3. The note also provided an historical background on how assistance in collection has been dealt with in bilateral treaties, in previous work of the League of Nations, the OECD and the United Nations. Concerning the latter, it was noted that:

[TRANSLATION] "At the eighth meeting of the Ad Hoc Group of Experts on International Cooperation in Tax Matters (hereinafter "Group of Experts") held in December 1987, it was agreed, at the request of many experts, to include in the commentary on Article 26 of the Model Convention of the United Nations (MC-UN) a provision on assistance in collection, leaving it to Contracting States the decide whether or not to include it during the negotiations of bilateral treaties."

4. The note finally analyzed the various aspects that would need to be addressed in an Article on assistance in collection of taxes and made recommendations on these, in particular

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Commentary on

ANNEX 1 : Excerpt from note E/2004/51 (report of the Secretary-General on the Eleventh meeting of the Ad Hoc Group of Experts on International Cooperation in Tax Matters

"II. Mutual assistance in the collection of tax debts and protocol for mutual assistance procedures

9. The Group of Experts reviewed the existing United Nations, OECD and European Union agreements and mechanisms for mutual assistance in tax matters. The central question raised was whether a provision similar to article 27 of the OECD Model Convention, dealing with assistance in collection, should be included in the United Nations Model Tax Convention.

10. The Group of Experts noted that, traditionally, mutual assistance in tax matters has been provided for in the exchange of information article (article 26) in income tax treaties. The fundamental issue in any tax system is the collection of taxes. It is natural, therefore, to consider cooperation on collection.

11. During the discussion, a question arose as to whether mutual assistance should be limited only to taxes covered by the convention or should extend to all taxes of the contracting states, including local taxes and social security. One approach would be to postpone requests for collection assistance until all internal remedies have been exhausted. In any event, requests for collection must be accompanied by the proper paperwork. Precautionary measures, such as seizures, must not interfere with normal business conduct. It might be desirable to allow assistance in collection on a voluntary basis before a full exhaustion of remedies, when the administrative costs of assistance are small and the costs of exhausting remedies are large.

12. It was suggested that assistance in the collection of taxes might be limited solely to taxes covered by a tax convention or might be extended to other taxes. Whether a country should agree to a broad assistance-in-collection provision would depend in part on its capacity to provide assistance.

13. It was noted that some countries may have serious constitutional problems in collecting foreign tax debts. Therefore, the proposed addition of article 27 to the United Nations Model Convention must clearly establish what sorts of debts can be collected. In many cases, domestic laws must be changed to permit the collection of foreign tax debts. Other members suggested that constitutional issues generally be covered during the treaty negotiations.

14. The Group of Experts established a focus group (Belgium, Chile, France and Morocco) at the meeting to prepare a recommendation with respect to the adoption of an assistance-in-collection article. The focus group prepared some draft language for the Model Convention and for the Commentary. It was decided that the members of the Group of Experts should exchange views on the draft, with the expectation that the matter would be taken up at the next meeting of the Group of Experts."