High-Level Panel on International Financial Accountability, Transparency and Integrity: Response Switzerland to the Background Paper on Existing International Institutional and Legal Frameworks and to the Thematic Clusters

Financial accountability, transparency and integrity remain key priorities for Switzerland and issues of particular relevance for the international community as a whole in achieving the SDGs. Switzerland engages in a number of international fora within and outside of the UN (UNCAC, UNCTOC, OECD and FATF) dealing with questions of corruption, money laundering, bribery and other aspects of illicit financial flows. Having restituted almost 2.5 billion USD, Switzerland has wide experience in asset recovery and return and is dedicated to the process of gathering good practices on this issue. The following comments and suggestions constitute Switzerland’s response to the call for written inputs by the FACTI panel from April 30, based on the Background Paper and partly on the summaries of the virtual consultations conducted so far on the three clusters created:

1) General remark and suggestion

As a general remark, we like to reiterate that the full implementation of existing international law, instruments and standards within and outside of the UN should stay at the centre of the work of the panel. They are far from having exhausted their potential. In this context, there are global peer-review mechanisms for issues like corruption, money-laundering, terrorism financing, and for various aspects of taxation that are already in place and under implementation. These implementation review mechanisms are producing ample evidence of the practical gaps, obstacles and challenges of implementation, as well as good practices. Designing new instruments while neglecting existing obligations will not bring us any closer to achieving the sustainable development goals. In our view, the panel’s value added consists of raising awareness of the benefit of existing instruments and mechanisms, of lessons learnt and potentials to improve their full and universal implementation. The more the work of the panel is based on avoiding duplication of existing and ongoing work and on consensus as reflected by existing international standards, the more useful and actionable its recommendations will be.

As we have stated previously, there remain unsolved questions regarding governance and decision-making powers of the Panel. It might be helpful if it is stated that any findings represent the views of individual panelists and are not binding for Member States.

2) Specific comments and suggestions

- Regarding international tax cooperation, Switzerland takes note of the initiative of some countries to upgrade the UN Committee of Experts on International Cooperation in Tax Matters to an UN intergovernmental body, what would not be in line with the consensus of the Addis Ababa Action Agenda. Such an upgrade bears the risk of duplicating not only international standards in the field of taxation but also multiplying the work of the international organizations with the effect of weakening the standards and cooperation among international organizations. Moreover, existing fora, especially the OECD-housed Global Forum and the Inclusive Framework on BEPS, have been mandated to carry out work on many pressing international taxation issues, have embraced the need for inclusiveness and have opened up participation to include developed countries, emerging economies and developing countries in this process – the later with growing influence. Switzerland strongly believes that this potential has to be further pursued, resources efficiently allocated in a focused manner and duplication of the work avoided, to ensure maximum impact.

- On the issue of transparency and beneficial ownership, we consider transparency in public administration as a key factor for effectiveness and accountability. However, we would guard against some of the statements made in the background paper on the perceived limitations of certain measures. Ultimately, the effectiveness of the measures to prevent the abuse of legal persons and arrangements taken by a country will be assessed...
by the mutual evaluations of FATF or FSRBs, based on a range of factors, including national context and risks.

- FATF is also currently examining a revision of R. 24 and R. 25 on the **transparency of legal persons and arrangements**, which includes participation of FATF observers (including international organizations). A separate analysis and work stream by the UN in this area would hamper effective advancing on these issues.

- The Background Paper mentions (page 9) the possibility of an **universal instrument for mutual administrative assistance in tax matters**, going beyond the current Convention on Mutual Administrative Assistance in Tax Matters, which already covers 136 jurisdictions, including an increasing number of developing countries. We have difficulties to imagine how such instrument would work without undermining the ongoing and future agenda of the OECD and the UN Tax Committee. We consider it unrealistic that it could achieve a superior result based on consensus.

- As mentioned on page 31, proposed topic 3, **digitalization** is changing the economy and business models. In this context, value creation remains a key parameter of taxation. Profits are to be taxed where value is created. In this way, incentives are created and locations are compensated for offering good framework conditions and enabling companies to produce efficiently. Functions performed, risks borne and assets employed must be sufficiently taken into consideration. Any potential new taxation rules must not impede innovation and growth. Furthermore, a solid dispute resolution mechanism should form an integral part of any solution to be developed. Given the ongoing in-depth work within the Inclusive Framework on this issue, we believe that additional work streams outside the existing ones would not add value and rather undermine the search for international consensus-based solutions.

- In the field of **asset recovery** (proposed topic 6, page 31) Switzerland considers the UNCAC to be the central regulatory tool with great potential regarding its effective implementation. If the Panel follows through with a deeper dive in this field, the focus should therefore remain on making the best practical use of the UNCAC as the existing and widely ratified instrument to fight corruption. Indeed, the UNCAC offers mechanisms, which still have potential to be better understood. Further, best practices should be developed. One example of an ongoing process to develop best practices on asset return is the expert-lead “Addis Process”, an initiative of Ethiopia and Switzerland. This experience has shown the importance of building trust amongst member states and developing an understanding of complicated legal frameworks. We are convinced that dialogue and sharing of experiences between member states, rather than additional reports, represent the most fruitful way to move towards more efficient and successful asset return cases, which ultimately will benefit the implementation of the 2030 Agenda. Future endeavours should focus on ensuring broader ratification and effective implementation of the UNCAC rather than looking to develop new norms.

- Switzerland recommends giving priority consideration to the proposed topic 8 (page 32) **“Examining options to strengthen peer review processes”**. Emphasis should be on comparative analysis and lessons from existing peer reviews. While the peer review process established by the FATF is comprehensive enough to cover the issues under discussion, the proposed cross-cutting look at best practices could prove useful for the UNCAC implementation review mechanism and in particular for enhancing its follow-up procedures. The proposed analysis could build upon chapters 3.4 and 3.6 of the Background Paper.

- **Capacity building** (topic 9, page 32) is a prerequisite for international standards to be implemented effectively and on a global scale. Therefore, Switzerland is involved in a number of global and regional initiatives and provides several partner countries with technical support, advisory services and training on a bilateral basis. Switzerland ranks amongst the five biggest donors on tax capacity building. It is important that any work by the Panel regarding capacity building is coordinated with the IMF, OECD, World Bank, and UN Platform for Collaboration on Tax.