

United Nations Capacity Development Programme on International Tax Cooperation



Progress Report

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Mandate

In its resolution 2012/33, ECOSOC recognized the work of the Financing for Development Office (FfDO) in developing, within its mandate, a capacity development programme in international tax cooperation aimed at strengthening the capacity of the Ministries of Finance (MoFs) and the National Tax Authorities (NTAs) in developing countries to develop more effective and efficient tax systems, which support the desired levels of public and private investment, and to combat tax evasion, and requested the Office, in partnership with other stakeholders, to continue its work in this area.

Overview

In 2012, the Financing for Development Office (FfDO) began developing its Capacity Development Programme on International Tax Cooperation. ECOSOC, in its resolution 2012/33, recognized FfDO's work in this area and mandated it to continue, in partnership with other stakeholders.

Owing to the fact that FfDO provides secretariat support to the Committee of Experts on International Cooperation in Tax Matters (the "Committee"), its capacity development programme draws, to a large extent, on the products of the Committee with a view to disseminating and operationalizing them as capacity development tools for the benefit of developing countries.

In October 2011, the Committee adopted an updated version of the United Nations Model Double Taxation Convention between Developed and Developing Countries (the "UN Model"). Accordingly, the first area of focus of the capacity development programme has been on strengthening capacity of Ministries of Finance (the "MoFs") and National Tax Authorities (the "NTAs") in developing countries to negotiate, administer and interpret tax treaties, drawing on the 2011 version of the UN Model.

More recently, in October 2012, the Committee adopted its United Nations Practical Manual on Trans-



fer Pricing for Developing Countries (the “UN Manual”). Taking this into account, a new focus of the capacity development programme in the near future will be on strengthening the capacity of developing countries to apply the transfer pricing analysis and, in particular, the arm’s length principle to transactions between associated enterprises of multinational groups. FfDO will shortly commence activities aiming at development of a comprehensive set of training tools based on the UN Manual.

The third area of focus of the capacity development programme is on tax administration. To advance work in this area, FfDO, jointly with the Inter-American Center of Tax Administrations (CIAT) is implementing a project with a view to strengthening capacity of NTAs of developing countries in Latin America to reduce tax transaction costs and thereby maximize their tax revenues.

During the past year, further progress has been made in developing the above-mentioned capacity development programme as reported below.

Relationship with the Committee

Owing to the fact that FfDO provides secretariat support to the Committee, its programme of capacity development draws, to a large extent, on the products of the Committee with a view to disseminating and operationalizing them as capacity development tools for the benefit of developing countries. In devising its capacity development programme, FfDO also takes full advantage of the unique expertise and networks of the Committee members, who have been providing support to this programme in a generous way on pro-bono basis. Several Committee members have been involved in almost every activity up to date.

Application and negotiation of double tax treaties drawing on the UN Model

The first area of focus of the programme is on strengthening capacity to negotiate, administer and interpret tax treaties, drawing on the 2011 version of the UN Model. Many developing countries lack adequate understanding of the provisions of the UN Model, especially of its new, 2011 version. Moreover, many developing countries lack adequate skills and experience to efficiently negotiate, interpret and administer tax treaties. This may result in difficult, time-consuming and, in the worst case scenario, unsuccessful negotiation or application of

tax treaties. To address these knowledge and skills gaps, FfDO is developing a comprehensive set of training materials, including:

- UN Course on Double Tax Treaties;
- UN Capacity Development Programme on Double Tax Treaty Negotiation; and
- UN Capacity Development Programme on Administration of Double Tax Treaties.

UN Course on Double Tax Treaties



The *UN Course on Double Tax Treaties* is the most basic capacity development tool of the series, which introduces the fundamentals of tax treaties and provides participants with a good understanding of the UN Model. It covers the recent updates to the UN Model, as well as the similarities with and differences from the OECD Model Convention on Income and on Capital (the “OECD Model”). In addition to analyzing the treaty rules for the allocation of taxing rights between countries over cross-border income, the course deals with treaty provisions for the elimination of international double taxation and administrative provisions aimed at ensuring effective application of tax treaties. The course includes practical examples and case studies to enable participants to gain confidence in applying the knowledge and skills acquired during the course. The course targets officials in the MoFs and NTAs at various skill levels and it is expected that full version can be delivered in 4-5 days. The respective programmes on negotiation and administration of tax treaties will be more advanced and target more specialized officials in the MoFs and NTAs respectively.

The work on developing the *UN Course on Double Tax Treaties* is advanced and is expected to be finalized in 2013. A selected group of renowned experts, both from developed and developing countries and represent-

ing all the regions of the world, has been contracted to develop power point slides and accompanying text for respective modules of the course. Due to the novelty of this initiative in the context of a truly global organization like the United Nations, the above-mentioned experts embarked on this project with extraordinary enthusiasm and, notwithstanding the limited funding, committed to deliver extensive top-notch materials, the production of which would normally require much more substantial resources.



Produced materials have been undergoing technical review in order to ensure that they adequately reflect positions, priorities and interests of developing countries. The most suitable choices for technical reviewers are members of the Committee as custodians of the UN Model and authors of its 2011 update, who generously agreed to undertake this function on pro-bono basis. To date, two technical reviews were held: (1) on 12-13 October 2012 in Geneva; and (2) on 26-27 January 2013 in Rome. The final technical review will be held in the fall of 2013, after which the course will be finalized. The first training event is planned for the first quarter of 2014. At the later stage, regional plug-ins for the course will be



developed to make sure that the course is relevant to the regions and “train-the-trainer” programme will be carried out in order to enable regional experts to teach the course. An on-line version of the course will also be developed and made available to developing countries.

Other activities



In addition, in order to disseminate the 2011 version of the UN Model, as well as to prepare developing countries for the forthcoming *UN Course on Double Tax Treaties*, FfDO, in cooperation with the Italian branch of the International Fiscal Association (IFA), organized a one-day seminar on “International Tax Cooperation for Sustainable Development: the Role of the UN Model Double Taxation Convention” (Rome, Italy, 30 January 2013). Apart from the Italian tax community, the Seminar was attended by tax experts and professionals from developing countries and international and regional organizations of tax administrations.

The seminar was successful in generating a discussion on the role of the UN Model in the context of international tax cooperation for sustainable development. After an introduction on the relationship between international tax cooperation and financing for sustainable development, the main aspects of the UN Model and its recent update were analysed in detail. Moreover, the



most significant similarities and divergences between the UN Model and the OECD Model were discussed, particularly as they related to the issue of to what extent a country should forego, under bilateral tax treaties, certain taxing rights, which would be otherwise available to it under domestic law, with a view to avoiding double taxation and encouraging investments. In addition, the Seminar included a panel discussion on current issues in international taxation and the future of international cooperation in tax matters from a developmental perspective were discussed.



UN Capacity Development Programme on Double Tax Treaty Negotiation



On 13-14 December 2012, an Expert Group Meeting on “Tax Treaty Negotiation and Capacity Development” was held in New York. The experts, including mostly members of the Committee, shared their experiences in the area of double tax treaty negotiation, with a focus on the needs of developing countries at different levels of development and with diverse macroeconomic conditions and goals. They also reviewed the existing knowledge on the subject, as well as available materials and capacity development tools, including those developed by the Committee. Then, they determined how and to what extent these resources could be effectively used and needed to be improved or complemented for the purposes of delivering capacity development initiatives in the area. They also put forward proposals on content and implementation of such capacity development activities. Specifically, it was decided that instead of developing its own course on tax treaty negotiation, the United Nations should join forces with the OECD, which already has a very comprehensive training programme in this area. The role of the United Nations

will be to ensure that the programme is offered to wide spectrum of developing countries, as well as to provide inputs to the materials, which relate to the UN Model. The two organizations have already made concrete plans for the first joint event.

It was also decided that a number of practical papers needed to be developed on the negotiation of tax treaties and offered to developing countries free of charge. Work on these papers was advanced in the context of the project undertaken jointly by the United Nations and the International Tax Compact, which is described below. The papers are currently undergoing revision and editing and will be available shortly.

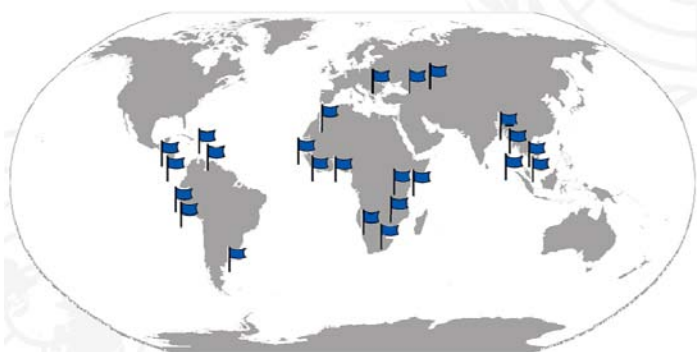
Papers on Selected Topics in Negotiation of Tax Treaties for Developing Countries

- 1) Why negotiate tax treaties?
by Ariane Pickering
- 2) Developing a Tax Treaty Policy Framework and a Model Tax Convention
by Ariane Pickering
- 3) Preparing for Tax Treaty Negotiations
by Odd Hengsle
- 4) How to Conduct Tax Treaty Negotiations
by Odd Hengsle
- 5) Post-negotiation Activities
by Odd Hengsle

UN Capacity Development Programme on Administration of Double Tax Treaties

In parallel, FfDO and the International Tax Compact (ITC) launched a joint project, entitled “Strengthening the capacity of Ministries of Finance (MoFs) and National Tax Authorities (NTAs) in developing countries to effectively negotiate, interpret and administer tax treaties”. The financial contribution for the project has been provided by the German Federal Ministry for Economic Development and Cooperation (BMZ) and implemented by ITC. The ultimate goal of this project is to support the development of a comprehensive set of capacity building tools to be used in developing countries, which are demand driven, reflect adequately the needs and level of development of these countries, and are not a duplication of any existing and available tools, but rather a useful complement to them. As the first step, two parallel meetings on “Capacity Building on Tax Treaty Negotiation and Administration” were held on 28-29 January 2013 at IFAD Headquarters in Rome, Italy. Twenty-five representatives from relevant authori-

ties of developing countries participated in the meetings, representing the following countries: Bangladesh, Barbados, Cambodia, Costa Rica, Dominican Republic, Ecuador, Georgia, Ghana, Kazakhstan, Lao People's Democratic Republic, Lesotho, Malawi, Morocco, Myanmar, Namibia, Panama, Peru, Republic of Moldova, Senegal, Thailand, United Republic of Tanzania, Uruguay and Zimbabwe.



The meetings contributed to: (1) identifying the needs of developing countries in the area of tax treaty negotiation and administration; (2) taking stock of the available capacity development tools at the disposal of developing countries; and (3) determining the actual skills gaps and challenges faced by developing countries in negotiating and administering their tax treaties.



In follow-up to the Rome meetings, a number of papers focusing on the area of administration of tax treaties, were drafted by selected experts. The draft papers will then be presented by the authors during a 2-day meeting to be held in New York on 30-31 May 2013, with the participation of 35 representatives of the NTAs and MoFs from developing countries, with a view to further revising them to comprise the *UN Handbook on Selected Issues in Administration of Tax Treaties for Developing Countries*.

UN Handbook on Selected Issues in Administration of Tax Treaties for Developing Countries

Outline

- 1) Overview of Major Issues in the Application of Tax Treaties
by Brian Arnold
- 2) Persons Qualifying for the Benefits of Tax Treaties
by Joanna Wheeler
- 3) Taxation of Residents on Foreign Source Income
by Peter Harris
- 4) Taxation of Non-residents
by Colin Campbell
- 5) Taxation of Non-residents on Business Profits
by Jinyan Li
- 6) Taxation of Non-resident Service Providers
by Ariane Pickering
- 7) Taxation of Investment Income and Capital Gains
by Jan de Goede
- 8) Dispute Resolution and Mutual Agreement Procedure
by Hugh Ault
- 9) Improper Use of Tax Treaties, Tax Avoidance and Tax Evasion
by Philip Baker

The *UN Handbook* will be launched at the OECD Meeting with non-OECD Economies and International Organizations preceding the 18th Annual Tax Treaty Meeting (Paris, 25-27 September 2013), which is attended by treaty experts from over 100 countries.

At a later stage, going beyond the current project, FfDO, together with partners, will organize an Annual Forum on Administration of Tax Treaties based on the Handbook, with a view to discussing the current issues in administration of tax treaties amongst developing countries.





Practical issues in Transfer Pricing for Developing Countries

A new focus of the capacity development programme in the near future will be on strengthening the capacity of developing countries to apply the transfer pricing analysis and, in particular, the arm's length principle to transactions between associated enterprises of multinational groups. Many developing countries are vulnerable to abuse and revenue loss from tax evasion in the complex area of transfer pricing, because their capacities and resources in this area are often limited and insufficient. To address this need, the Committee authored the UN Practical Manual on Transfer Pricing for Developing Countries (the "UN Manual"), which was adopted at its last annual session in October 2012. This useful tool provides assistance to developing countries in practical application, within applicable resources and other constraints, of the arm's length principle, which is embodied in Article 9 of both the UN and the OECD Model Tax Conventions.

The UN Manual will be launched in e-version during the Special Meeting of ECOSOC on International Tax Cooperation (New York, 29 May 2013) and will be published in paper version shortly after. Following the launch, FfDO will commence activities aiming at developing a comprehensive set of training tools based on the UN Manual. As a first step, a technical meeting is envisioned to determine content and scope of the training materials to be developed based on actual demand in developing countries.

Tax administration

In addition, FfDO is implementing a Development Account Project, entitled "Strengthening capacity of National Tax Administrations (NTAs) of developing countries in Latin America to reduce Tax Transaction Costs and thereby maximize their tax revenues". Tax

Transaction Costs (TTCs) comprise the administrative costs incurred by the Government in collecting tax revenues (so called, collection costs), and the burden to taxpayers in complying with tax laws (so called, compliance costs). As such, these costs impact on the ability of countries to attract investment and on the amount of tax revenues available for development funding.

The above-mentioned project is being carried out in cooperation with CIAT. The project focuses on the development of an empirical methodology aimed at measuring and assessing TTCs, with a view to reducing them and, as a result, increasing tax revenues. A first draft of this methodology has been presented and reviewed during a workshop (Panama City, Panama, 27-28 February and 1 March 2013), which was attended by representatives of NTAs from ten Latin American countries, namely Brazil, Chile, Costa Rica, Dominican Republic, Ecuador, Guatemala, Panama, Paraguay, Peru and Uruguay.



Currently, the methodology is being tested in two pilot countries (Costa Rica and Uruguay) in accordance with the project work plan. In addition, Brazil is planning to test the methodology during the forthcoming months, in its own system and at its own expense. Moreover, other CIAT member countries expressed interest in this methodology and it is foreseeable that, after the conclusion of the current project, there will be a demand for follow-up activities/projects aimed at implementing the methodology in other countries in Latin America and, eventually, in other regions. A final event to discuss results of the project on the ground is planned for November 2013.

In order to further advance the work in the area of capacity development on international tax cooperation FfDO is currently seeking assistance of all the interested parties to secure the required financial support. Please contact TaxffdCapDev@un.org.