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**Committee of Experts on International
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Agenda Item 3 (b) (ii) *

**Manual for the Negotiation of Bilateral Tax Treaties
Between Developed and Developing Countries**

**Progress report on the work of the Subcommittee on
Negotiation of Tax Treaties - Practical Issues**

At its 9th session, the Committee of Experts on International Cooperation in Tax Matters (the Committee) decided to establish a Subcommittee on Negotiation of Tax Treaties - Practical Issues (the Subcommittee), coordinated by Mr. Wolfgang Lasars. The Subcommittee was mandated to develop a practical manual on negotiation of bilateral tax treaties (the Manual), based on the following principles:

- (i) The Manual is a compact practical training tool for beginners or tax officials with limited experience, which reflects the realities for developing countries at their relevant stages of capacity development;
- (ii) The Manual reflects the current version of the UN Model Double Taxation Convention between Developed and Developing Countries and the relevant UN Commentaries as well as ongoing decisions of the Committee leading to changes in them; and
- (iii) The drafting draws upon the previous work done by the Committee and any further relevant inputs, as well as work being done in other fora.

The aim of the Subcommittee was to present a complete draft Manual for adoption to the 2015 annual session. An intermediate report showing the progress reached was to be provided to the Committee in 2014. Accordingly, such report is included in the present note.

Following the 9th session of the Committee, the Coordinator of the Subcommittee, Mr. Lasars prepared a proposed outline of the Manual and circulated it among the members of the Subcommittee. The outline was then finalized taking into account the comments and revisions received from the members. The final outline is included in Annex 1 of this note.

* E/C.18/2014/1

Subsequently, in accordance with its mandate, the Subcommittee requested the Capacity Development Unit, Financing for Development Office, Department of Economic and Social Affairs to recruit consultants with a view to preparing a first draft of the Manual on the basis of the agreed outline.

Accordingly, Mr. Ron van der Merwe, former Senior Manager of International Treaties Division at the South African Revenue Service and former member of the Committee; and Ms. Ariane Pickering, former Chief Tax Treaty Negotiator, Australian Department of the Treasury were contracted to prepare the first draft of the Manual.

The experts agreed to utilize, to the extent possible, the work of the former Subcommittee on Review and Adoption of the Revised Draft Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries. They were also asked to summarize the five practical papers¹ on the negotiation of tax treaties, which were presented at the 9th session of the Committee as input to the Manual (E/C.18/2013/CRP.7). The papers were developed as a result of a capacity development project undertaken jointly by the Financing for Development Office and the International Tax Compact, which aimed at strengthening the capacities of ministries of finance and tax administrations in developing countries in the area of tax treaty negotiation and administration. In addition, at the suggestion of some participants at the 9th session of the Committee, the draft Manual was to draw on the results of the recent research project carried out by the International Bureau for Fiscal Documentation on the practical implementation of the UN Model (E/C.18/2013/CRP.18).

The Subcommittee met on 27 September in Paris to discuss the first draft of the Manual prepared by the experts. Mr. Ron van der Merwe delivered a brief presentation providing an overview of the draft, which was followed by intense discussions among members of the Subcommittee. The members agreed that the draft provided a very good basis for discussion.

The Subcommittee decided on the following next steps:

- 1) The Coordinator of the Subcommittee will present a progress report on the work on the Manual to the 10th session of the Committee (Geneva, 27-31 October 2014);
- 2) The Subcommittee members will send detailed comments on the draft Manual to the Coordinator by 14 November 2014;
- 3) The Coordinator will consolidate all the comments and deliver them to the drafters by the end of November 2014;
- 4) The drafters will present their second draft, taking into account the comments received from the Subcommittee during the Paris meeting, as well as in writing, by 31 January 2015;
- 5) The new draft will be circulated in the Subcommittee for the second round of comments due by 31 March 2015;

¹ The final version of the papers is published as the "Papers on Selected Topics on Negotiation of Tax Treaties for Developing Countries" available at http://www.un.org/esa/ffd/documents/Papers_TTN.pdf.

- 6) Based on these comments, and with the assistance from the Capacity Development Unit, the Coordinator will finalize the draft of the Subcommittee and circulate it for comments to all members of the Committee;
- 7) The Committee members may provide their written comments on the draft Manual by 30 June 2015;
- 8) The draft will then be finalized and presented to the Committee for adoption during its 11th session in October 2015.

Annex 1

Outline
UN Manual for the Negotiation of Double Tax Treaties between Developed and Developing Countries

Three main aspects of treaty negotiations should be highlighted in the Manual:

1. The allocation of taxing rights between the source and residence countries is generally the most controversial part of tax treaty negotiations. Therefore, this subject deserves the largest part of the Manual.
2. Already the name of our Subcommittee highlights the most important characteristic and challenge (!) of tax treaty law – namely, that a treaty negotiator has to convince colleagues of a foreign state, a foreign state has to agree to the content of a new treaty. This means that the preparation and negotiation of treaties is the second most important part of the Manual, here it can add new value in comparison with other introductions into treaty law.
3. Finally, a cautionary remark: It is important for every (developing) country to strike the right balance between protecting revenue (by maintaining source taxing rights) and encouraging inbound investment (by reducing tax barriers). Proper analysis of the individual situation of a country and clarification of one's political aims are very important. A clarification should be made in the Manual that it should not and cannot take the place of an own factual analysis of the situation of an individual country and accordingly appropriate policy decisions by that government! – But the Manual should be a helpful tool to develop and to negotiate an own treaty position.

In drafting a Manual on treaty negotiation we have to avoid to be bogged down in too many details. Therefore it should be clear that the Manual should not be a handbook about difficult detailed questions on international taxation. As with other teaching material e. g. on mathematics or foreign languages there are general introductions and editions for advanced learners. The Manual should be compared with a practical general introduction with an emphasis on negotiation of treaties. It should be written in a simple language to facilitate easy understanding.

Based on these main aspects the following objectives of the new Manual may be outlined:

Objectives of the new Manual on Negotiations	
Target group:	Officials of Ministries of Finance and National Tax Administrations in Developing Countries with no or only limited experiences in treaty drafting and negotiation

Purpose / Aim:	<p>Introduction into drafting an own country model convention as well as preparing and conducting tax treaty negotiations based on the UN Standard</p> <p>Understanding of the UN Model Convention and knowledge of the international treaty practice of rules of the UN Model Convention</p> <p>Being prepared for proposals based on the OECD Model Convention by the other negotiation party during treaty negotiations</p>
Scope:	<p>UN Model Convention (main focus)</p> <p>OECD Model Convention</p>
Methodology:	<p>Comparing and explaining the pros and cons of each distributive rule and the methods for the elimination of double taxation in the UN Model Convention and (as may be relevant) with reference to the UN Commentaries</p> <p>Highlighting differences in the OECD Model Convention and explaining the effects of, and reasons for, these differences to enable the tax official to understand and evaluate the differences with respect to the UN Model (and his own country model), possibly with tables of the differences and the pros and cons</p> <p>Referring to the IBFD research “The UN Model in Practice 1997 – 2013” and pointing to the international treaty practice of rules of the UN Model Convention (and the OECD Model Convention) to understand which rules are part of the international standard practice and which are not. (A negotiator will know in advance that he has to prepare more detailed arguments when he intends to propose a rule which is not part of the international standard practice)</p> <p>Where appropriate providing</p> <ul style="list-style-type: none"> • examples, computations (e. g. in the case of the elimination of double taxation, approaches in tax treaties to prevent its improper use) and • to-do-lists (e. g. concerning the preparation and the conduct of negotiations, post-negotiation activities, mutual agreement procedures, exchange of information)

Structure of the Manual		
Chapter	Subject (including some remarks)	Pages approximately.*)
1	<p>General introduction into the problem of international double taxation and its elimination</p> <p><i>Including as background information the relevance and characteristics of modern international trade and investment and the relationship (and challenges) to tax principles</i></p>	5 pages
2	<p>Tax treaty policy and domestic model, preparing and conducting treaty negotiations and post-negotiation activities</p> <p><i>Condensed version of the five papers:</i></p> <ol style="list-style-type: none"> <i>1. Why Negotiate Tax Treaties</i> <i>2. Tax Treaty Policy Framework and Country Model</i> <i>3. Preparing for Tax Treaty Negotiation</i> <i>4. How to Conduct Tax Treaty Negotiations</i> <i>5. Post-negotiation Activities</i> 	25 pages
3	<p>Presentation of the definitions (and their important relevance for other treaty provisions)</p> <p>Explaining the pros and cons of each distributive rule (including e. g. the definition of permanent establishment)</p> <p><i>Suggestion: The subjects of Article 9 and of the taxation of fees for technical services (and services in general) should be left untouched until the</i></p>	95 pages

	<i>Committee has made decisions, which are expected in October 2014.</i>	
4	Methods for the elimination of double taxation <i>Relationship to domestic tax law</i>	5 pages
5	Special provisions (= Chapter VI of the UN Model Convention)	
5.1	Non-discrimination	3 pages
5.2	Mutual agreement procedure <i>Awareness to prepare personal resources and internal procedures for mutual agreement procedures</i>	5 pages
5.3	Exchange of information and assistance in collection <i>Awareness to prepare personal resources and internal procedures for exchange of information and assistance in collection procedures</i>	5 pages
6.	Final provisions: Entry into force and termination	2 pages
7.	Approaches in tax treaties to prevent its improper use <i>Issues and concepts of tax evasion and tax avoidance (“aggressive tax planning”) special reference to the UN Commentary on Article 1</i>	5 pages
8.	Annex: List of international (official) tax websites <i>Sources of further information in preparing treaty</i>	

	<i>negotiations</i>	
	<i>*) The numbers for the pages are only rough suggestions and not strict specifications. The overall size of the Manual should be around 150 printed pages.</i>	
