



Economic and Social Council
Special meeting on international tax cooperation
(New York, 22 April 2015)

Pursuant to its resolution 2014/12, ECOSOC will hold on 22 April 2015, a one-day meeting to consider international cooperation in tax matters including, as appropriate, its contribution to mobilizing domestic financial resources for development and the institutional arrangements to promote such cooperation, with the participation of representatives of national tax authorities. In accordance with General Assembly resolution 68/279, this meeting will also provide input to the preparatory process of the third International Conference on Financing for Development (Addis Ababa, Ethiopia, 13-16 July 2015).

A short opening plenary will feature a presentation by the Chair of the UN Committee of Experts on International Cooperation in Tax Matters on the outcome of the 10th session of the Committee (Geneva, 27-31 October 2014). Subsequently, there will be a panel discussion on “*International tax cooperation: Current issues on the agenda of international organizations*”, with the participation of major international organizations active in the tax area, such as the International Monetary Fund (IMF), the World Bank, the Organization for Economic Co-operation and Development (OECD), the Inter-American Centre of Tax Administrations (CIAT) and the African Tax Administration Forum (ATAF). This will be followed by a general discussion.

The afternoon session of the special meeting of ECOSOC on international tax cooperation has traditionally focused on selected key issues of concern to developing countries and bringing them to the forefront in the context of financing for sustainable development. During the 2014 special meeting, one of the panel discussions was dedicated to discussion of the base erosion and profit shifting (BEPS) issues for developing countries. ECOSOC was briefed on the on-going project of the G20/OECD on BEPS,¹ which aims to better align taxing rights with economic activity and value creation, as well as on the relevant work of the UN Subcommittee on Base Erosion and Profit Shifting Issues for Developing Countries (UN Subcommittee on BEPS), and of other international organizations.

During the discussions, it became apparent that while the efforts by the OECD to curtail tax evasion and avoidance are important, some relevant issues of particular importance to developing countries are not currently addressed by this initiative. Moreover, some of the solutions and instruments proposed by the OECD Project on BEPS do not sufficiently take into account the realities of developing countries with regard to information asymmetries and a lack of resources.

Further consultations with developing countries by the UN Subcommittee on BEPS and during UN workshops held as part of its Capacity Development Programme on International Tax Cooperation, as well as by the OECD at the request of the G20 Development Working Group (DWG), helped identify some of special priority areas in terms of impact on the tax base of developing countries. Two of them will be addressed by the present meeting of ECOSOC.

Accordingly, the afternoon session will feature two interactive panel discussions as follows:

Interactive Discussion: “Tax incentives and base protection issues for developing countries”

¹ For more information, please refer to http://www.un.org/esa/ffd/wp-content/uploads/2014/08/2014_4BEPS_Newsletter.pdf or <http://www.oecd.org/ctp/beeps.htm>.

In the context of the above-mentioned consultations with developing countries on BEPS, wasteful tax incentives – an issue not on the OECD/G20 BEPS Action Plan², emerged as one of the priority areas for these countries. In their responses to a questionnaire circulated by the UN Subcommittee on BEPS, developing countries agreed that BEPS impacts on their domestic resource mobilization, resulting in foregone tax revenue and higher cost of tax collection. In this context, loss of revenues through wasteful tax incentives was identified as one of the key issues³.

In parallel, the OECD, at the request of the G20/DWG drafted a two part report⁴ on the main sources of BEPS in developing countries and how these relate to the OECD/G20 BEPS Action Plan on this issue. Part one of the OECD report recognised that “developing countries often face acute pressure to attract investment through offering tax incentives, which may erode the country’s tax base with little demonstrable benefit” in terms of increased investment. Part two of the report, recommended that international organisations (IMF, World Bank, OECD, and the United Nations) produce a report, using case studies, in 2015 to better guide developing countries in the transparency and governance of tax incentives. The first draft of this report is to be prepared by March 2015 and consulted with developing countries during March-April 2015.

Tax incentives are used by governments in developed and developing countries to attract new investment. In some cases, tax incentives have clearly played an important role in attracting new investment that contributed to substantial increases in growth and development. In other cases, however, tax incentive regimes have resulted in little new investment, with substantial tax base erosion. The effectiveness of tax incentives largely depends on their design and implementation, as well as their interaction with other non-tax related incentives. Tax incentives rules need to be focused and interface properly with general tax rules. A lack of targeting and coordination can create uncertainty, allow for abuses and pose significant challenges in the administration of tax incentives.

Tax incentives have been the focus of work by international organisations for many years, which have gained extensive experience and insights into the issue. The interactive discussion on this topic will serve to inform ECOSOC and the representatives of national tax authorities about the current views of these organizations on options for developing countries’ efficient and effective use of tax incentives for investment. ECOSOC will also hear country perspectives on designing, implementing and monitoring tax incentives.

Interactive Discussion: “Taxation of intellectual property rights and other intangibles: Issues for developing countries”

Another issue of special concern to developing countries is the taxation of intellectual property rights and other intangibles. Intellectual property (IP) refers to creations of the mind and is protected in law by, for example, patents, copyright and trademarks, which enable people to earn recognition or financial benefit from what they invent or create. Intangibles encompass all IP and additionally other intangible assets, such as goodwill and know-how.

Current rules governing the taxation of value derived from intangibles haven’t been developed with global taxpayers in mind. Moreover, intangibles are increasingly seen as one of the main value drivers of

² Available at <http://www.oecd.org/ctp/BEPSActionPlan.pdf>.

³ Available at http://www.un.org/esa/ffd/wp-content/uploads/2015/01/10STM_CRP12_BEPS.pdf.

⁴ Part 1 available at <http://www.oecd.org/tax/part-1-of-report-to-g20-dwg-on-the-impact-of-beps-in-low-income-countries.pdf>; Part 2 available at <http://www.oecd.org/g20/topics/taxation/part-2-of-report-to-g20-dwg-on-the-impact-of-beps-in-low-income-countries.pdf>.

many companies, in part, due to advances in information and communication technologies. Developing countries are increasingly concerned that they do not receive adequate compensation for intangibles, which were developed and received its value from economic activity and value-creating activities in their jurisdictions. One concern is that legal ownership of intangibles and risks involved can easily be contractually transferred abroad, resulting in base erosion, for example through royalty payments.

Tax administrations are also struggling with mixed contracts, i.e., contracts covering intangibles and other elements, between domestic companies and their counterparts abroad, which make it hard to ascertain the true nature of the transactions. Difficulties in administering transfer pricing⁵ of intangibles include the unique nature of many transactions and the intangibles involved therein making it hard or impossible to find comparable transactions, especially for developing countries with low administrative capacity and limited access to databases. The increasing focus on the “profit-split method⁶”, while an important way of responding to the lack of comparables, can put an additional strain on developing countries’ tax administrations, depending on the split factors to be used. There is a need for more guidance on how to conduct profit splits that adequately reflect value creation and do not lead to double taxation of profits.

The interactive discussion on this topic will serve to inform ECOSOC and the representatives of national tax authorities about the current work undertaken by the UN Subcommittee on Transfer Pricing and in other fora. The debate will focus on assessing current international reform processes from the point of view of developing countries and aim to demonstrate practical and feasible solutions on both the national and international level to address this issue.

Workshop on Tax Incentives and Base Protection (New York, 23-24 April 2015)

Following the ECOSOC meeting, FfDO is organizing a two-day workshop, with the participation of 20-25 representatives of national tax authorities, Ministries of Finance and Ministries of Investment or Trade in developing countries, intended to provide these government officials with the information and tools, which will allow them to decide whether to use tax incentives to attract investment and how to best design and administer these incentives with a view to increasing their effectiveness. The participants will receive guidance in developing methodologies for estimating the costs and benefits of tax incentives, with the view to assessing the effectiveness of past, current and proposed tax incentive regimes.

The workshop will draw from the experiences of representatives of developing countries which deal with tax incentives and from regional contributions by regional organizations of national tax administrations, such as ATAF and CIAT. Case studies will provide an opportunity for country representatives to share their experiences in designing and implementing tax incentives and to identify the areas of greatest challenge. The participants will be asked to take specific roles in designing and negotiating a tax incentive project for a potential investor. The discussions will be guided by the world’s renowned experts in the area of tax incentives, drafting relevant legislation and cost-benefit analysis.

The practical materials utilized in delivery of the workshop will be revised using feedback received from developing countries and will be used to deliver technical cooperation activities at the country level.

⁵ Transfer pricing refers to the mechanism by which cross-border intra-group transactions are priced. In itself, it is a normal incident of multi-national enterprise (MNE) operations – for example, it allows MNE to determine which parts of the group are profit- or loss-making. However, if the method used to determine the price of such transactions, for whatever reason, does not reflect their true value, profits might effectively be shifted to low-tax or no-tax jurisdictions and losses and deductions to high-tax jurisdictions. This unfairly deprives a country of tax revenue, reducing the amount of resources available for funding its development objectives.

⁶ The profit split method is used to analyse related parties transactions to determine if the allocation of profits and losses between them were conducted at arm's length based on the relative value of their contributions to the profits or losses.