



United Nations

# **Committee of Experts on International Cooperation in Tax Matters**

**Report on the eleventh session  
(19-23 October 2015)**

**Economic and Social Council  
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## **Chapter I**

### **Introduction**

1. Pursuant to Economic and Social Council (ECOSOC) resolution 2004/69 and decision 2015/214, the eleventh session of the Committee of Experts on International Cooperation in Tax Matters (the Committee) was held in Geneva from 19 to 23 October 2015.

2. The eleventh session of the Committee was attended by 24 Committee Members and 169 observers. The following Committee Members attended the session (listing also the country nominating them to the Committee, although they serve in their personal capacity): Noor Azian Abdul Hamid (Malaysia); Mohammed Amine Baina (Morocco); Bernadette May Evelyn Butler (Bahamas); Andrew Dawson (United Kingdom); Johan Cornelius de la Rey (South Africa); El Hadji Ibrahima Diop (Senegal); Kim Jacinto-Henares (Philippines); Liselott Kana (Chile); Toshiyuki Kemmochi (Japan); Cezary Krysiak (Poland); Armando Lara Yaffar (Mexico); Wolfgang Lasars (Germany); Henry John Louie (United States of America); Enrico Martino (Italy); Eric Nii Yarboi Mensah (Ghana); Ignatius Kawaza Mvula (Zambia); Carmel Peters (New Zealand); Jorge Antonio Deher Rachid (Brazil); Pragya S. Saksena (India); Christoph Schelling (Switzerland); Stig Sollund (Norway); Xiaoyue Wang (China); Ingela Willfors (Sweden) and Ulvi Yusifov (Azerbaijan).

3. The session was attended by observers for: Angola, Argentina, Austria, Belgium, Brazil, China, Germany, Kuwait, Luxembourg, Malaysia Mexico, Netherlands, Norway, Philippines, Russian Federation, Saudi Arabia, Singapore, Slovak Republic, South Africa, Spain, Switzerland, Trinidad and Tobago, and Turkey.

4. Observers from the following intergovernmental organizations were present: European Commission; International Monetary Fund (IMF); Organisation for Economic Co-operation and Development (OECD); and UN Conference on Trade and Development (UNCTAD). Other observers represented civil society, businesses or participated in a personal capacity.

5. The provisional agenda and documentation for the eleventh session as considered by the Committee (E/C.18/2015/1) was as follows:

1. Opening of the session by the Chairperson of the Committee.
2. Adoption of the agenda and organization of work.
3. Discussion of substantive issues related to international cooperation in tax matters:
  - (a) Issues related to the updating of the United Nations Model Tax Convention:

- (i) Article 1 (Persons Covered): application of treaty rules to hybrid entities;
- (ii) Article 5 (Permanent Establishment): the meaning of “connected projects”;
- (iii) Article 8 (Shipping, Inland Waterways Transport and Air Transport):
  - a. The meaning and coverage of the term “auxiliary activities”;
  - b. The application of the article to cruise shipping;
  - c. Other Commentary issues.
- (iv) Base erosion and profit shifting;
- (v) Article 12 (Royalties): Secretariat paper on (1) the meaning of “industrial, commercial and scientific equipment” and (2) software payment related issues;
- (vi) Article 26 (Exchange of Information): proposed Code of Conduct;
- (vii) Taxation of services:
  - a. Article on technical services;
  - b. Other issues.

(b) Other issues:

- (i) Issues for the next update of the United Nations Practical Manual on Transfer Pricing for Developing Countries;
- (ii) Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries;
- (iii) Taxation of the extractive industries;
- (iv) Taxation of development projects;
- (v) Capacity-building;
- (vi) Dispute settlement: Secretariat paper on arbitration issues for developing countries and possible ways forward;
- (vii) International trade in goods – tax issues.

- 4. Dates and provisional agenda for the twelfth session of the Committee.
- 5. Adoption of the report of the Committee on its eleventh session.



## **Chapter II**

### **Organization of the session**

#### **Opening of the session and adoption of the agenda.**

6. The eleventh session of the Committee was opened on 19 October 2015 by the Committee Chairperson, Armando Lara Yaffar. He then invited Alexander Trepelkov, Director of the Financing for Development Office of the Department of Economic and Social Affairs, to speak on behalf of the Secretary-General of the United Nations.

7. Mr. Trepelkov briefed Committee Members and Observers on the major developments in the area of sustainable development and its financing that took place in July and September 2015. He noted that, in September 2015, during a UN Summit in New York, Member States of the United Nations (UN) adopted the 2030 Agenda for Sustainable Development, as a universal and transformative vision of a world free from poverty, hunger, disease and want, while protecting the environment.

8. The implementation of the 2030 Agenda would be supported by the Addis Ababa Action Agenda (AAAA), which had been adopted by UN Member States in July 2015. The AAAA provides a new global framework for financing sustainable

development by aligning all financing flows and policies with economic, social and environmental priorities.

9. Mr. Trepelkov noted that domestic resources mobilization is central to sustainable development and that the growing recognition of the importance of taxation as a means of domestic resource mobilization towards achieving sustainable development was underscored by the AAAA. He drew attention to the AAAA commitments made by Member States in several areas of tax policy aimed at raising domestic resources and fighting tax avoidance and evasion and illicit financial flows. Country efforts will focus on key areas, including in the area of tax administration, tax policy, tax incentives as well as for increased capacity building and strengthened international cooperation on tax issues. Member states and the international community committed to assisting developing countries in those areas.

10. Mr. Trepelkov also pointed out that, with a view to strengthening the UN Committee of Experts on International Cooperation in Tax Matters, Member States had decided to increase the engagement of the UN Tax Committee with ECOSOC through the Special Meeting of the Council on International Cooperation in Tax Matters. Moreover, starting in 2016, the Committee will meet twice a year. Mr. Trepelkov also informed the Committee that its future membership will be appointed by the Secretary-General in consultation with Member States.

11. Mr. Lara then put the provisional agenda, contained in document E/C.18/2015/1, to the Committee and it was adopted, except that in view of a full

agenda and no current developments to report, Item 3(b)(iv) on taxation of development projects would not be addressed at the eleventh session and would instead be carried over until the next session.

12. The summary in the following chapter of this report reflects discussions on all agenda items, not necessarily in the order of discussion.

## **Chapter III**

### **Discussion and conclusions on substantive issues related to international cooperation in tax matters**

#### **A. Article 1 (Persons Covered): Application of treaty rules to hybrid entities**

13. At the ninth session, Henry Louie had reported on the application of tax treaties to payments through so-called “hybrid entities” (entities characterized differently by treaty partners as to their transparency or opacity for tax purposes). Paper E/C.18/2014/CRP.14, which Mr. Louie prepared subsequently, had proposed certain modifications to Article 1 of the Model and its Commentary and following a discussion of the issue at the tenth session, Mr. Louie was asked to prepare an updated paper on the issue (E/C.18/2015/3), taking into account that discussion, for consideration at the eleventh session.

14. In presenting that paper for consideration, Mr. Louie noted that the question raised is how a bilateral tax treaty functions in the case of a payment executed through an entity that is viewed differently by the two Contracting States to the treaty. In this case the State from which the payment is initiated (the source country) may view the receiving entity as a fiscally opaque entity, meaning that it considers taxation should occur at the level of that entity, not those who participate in it. The Contracting State in which the receiving entity resides may, however, view it as fiscally transparent,

meaning that the income received is taxed not at the level on the entity, but at the level of the partners or the owners of the entity, even without a distribution.

15. In that context, Henry Louie presented the unintended consequences that may arise when applying a tax treaty to such a payment, that is: (a) double taxation because of denial of treaty benefits; (b) non-taxation because of granting treaty benefits in unintended cases such as to a third-country resident; or (c) the granting of treaty benefits at an inappropriate level.

16. In the provision proposed by paper E/C.18/2015/3 for inclusion in the UN Model, the treaty benefits would apply to the shareholders in the third state as long as there is a mechanism of exchanging information between the source state and the third state. The idea is to ensure that the source state can request information regarding the owners of the entity so as to ensure that they are given the appropriate treaty benefits.

17. During discussion of this issue, several participants expressed concerns regarding the application of the treaty to the third state. One observer noted that if the proposition applies to a third country, there is a possibility that two income treaties could apply. The assertion is that if the third state views the entity as opaque, then the third state entity should be able to claim the treaty benefit. At the same time, if the shareholders view the entity as fiscally transparent then they should be able to claim the treaty benefit on the shared income. In this case the observer expressed the view

that the exchange of information is not enough to address the issue of conflict of qualification.

18. One Member noted that the treaty benefit should be limited to the fiscally transparent entity and participants in that entity residing in the same country. The Member did not think the treaty should apply in relation to a third state. An example was given of new legislation in a country, where a business trust is deemed transparent if its unit shareholders are from different countries. In such a case it was not clear how the provision would apply to multiple owners in multiple countries. Moreover, the same Member indicated that the proposed approach should only be applicable if provided for in the relevant treaty.

19. Mr. Louie explained that if a country with such legislation, in the case given, views the business trust as fiscally transparent, then the source country would apply the treaty to the level of shareholders after applying the criterion of beneficial ownership. In the event that one of the shareholders is a resident of a third country with no tax treaty with the source country, then there will be no tax treaty benefit on the portion of the income allocated to the resident of the third state. In case of a treaty between the source state and the third state, the application of that treaty will depend on how the third state views the entity in the resident state. If it views the business trust as a company, then the shareholder resident of the third state is not taking the source income into account, and therefore there is no need to apply the treaty. But if the third state views the business trust as fiscally transparent, which means it will take into account the source country income on a current basis when taxing, then the

benefits of the tax treaty between the third state and the source country will be granted.

20. Mr. Louie agreed that the aspect should be mentioned in the treaty to ensure its application.

21. On the issue of applying the treaty benefits to the shareholders in the third state even when there is to treaty between the third state and the source country, views were mixed. Some observers were of the view that as long as all three states view the entity in the resident state as fiscally transparent, the shareholder residing in the third state should be able to claim the treaty benefits as a natural consequence of that approach. Members took the view that since there is no treaty between the third state and the source state, there is no treaty to be applied.

22. Some Committee members expressed the view that for the UN Model Convention, which is supposed to primarily help tax officials in developing countries, to go to such a level of detail in respect of countries other than the contracting states to a treaty may be more confusing than of assistance.

23. To such concerns, Mr. Louie responded that the purpose of this clarification is to give greater guidance to developing countries and its purpose is firstly, to ensure both that the benefit under the treaty is provided when the investor is taxed; and

secondly, making sure that benefits are not given when the investor is not taxed in the third state.

24. Another issue that could arise is when the entity in the state is not viewed as transparent by the source country and in fact is opaque and pays tax in the third state. In this case the source state may be required to give up its taxing rights in order to avoid the double taxation otherwise created by the classification by the resident state. In this case some country observers thought there was a need to look at the issue closely and perhaps require the resident state to solve that issue instead of “exporting” it to the country of source. On this point Mr. Louie indicated that, in any case, the source country would be expected to give treaty benefits only once, not twice, on the same income.

25. In cases where there may be two treaties that would be applicable, since a state party to two treaties is expected to respect both, it was clarified that the response would be to apply the treaty with the lower withholding tax so as to satisfy both treaties.

26. In conclusion, and in light of the discussions, Mr. Louie offered to revise the proposed wording of the Commentary to Article 1 before the next meeting by addressing the following key points:



- (1) In case two treaties may apply, the new language will clarify that the provision respects both, and the need to comply with both. This means in effect applying the treaty with the lower withholding tax rate;
- (2) The source country will give relief to the income taxed by the other contracting state and not to all income. This will avoid cases of double non-taxation;
- (3) Provision should be made for the competent authorities to agree on how the rule should work in practice; and
- (4) Clarify that the source country will provide relief once (and once only) in relation to the same income.

27. The Committee agreed to this and thanked Mr. Louie for his work on this issue and his presentation.

**B. Article 5 (Permanent Establishment): Meaning of “connected projects”**

28. Viktoria Wöhrer (who assisted on this issue during her time as an intern with the Secretariat) presented Secretariat paper (E/C.18/2015/CRP.9) on the meaning of “the same or a connected project” in Article 5(3)(b), being an updated version of papers presented to the ninth and tenth sessions of the Committee.

29. In previous sessions the Committee had agreed that physical presence was required to support taxation under Article 5(3)(b) of the UN Model. The Committee

discussed the proposals contained in paper E/C.18/2015/CRP.9 and, after making further changes to them, agreed to include in the Commentary on Article 5(3) a new paragraph (paragraph 12.1) providing that the traditional interpretation of subparagraph (b) would require the physical presence in the source State of individuals, being an employee or personnel of the enterprise furnishing services, in order for a permanent establishment to exist in that State, while recognizing that some Committee Members disagreed. The Commentary would provide as follows to recognize the view of those Members:

“A minority view was that the requirement of physical presence is no longer relevant for Article 5(3)(b) as the business cycle may be completed without that physical presence. While some of those concerns may be addressed by adopting the Article on Fees for Technical Services, such an Article does not cover all services covered under Article 5(3)(b).”

30. The Committee also decided to include a new paragraph 12.2 clarifying that only the profits attributable to the services performed within the source State could be taxable in that State.

31. In addition, at the tenth session the Committee had requested revisions to the proposed Commentary on Article 5(3), including some examples, with a view to clarifying that reference should be made to the perspective of both the service provider and the customer in determining what constitutes “the same or a connected project”. There was agreement to have such a clarification. With this explicit

recognition of the significance of the perspective of the customer, the Commentary will include some relevant factors for consideration such as whether the projects are provided at the same location, whether they would usually be provided under a single contract, whether the services are provided consecutively, whether the projects resulted from the same bidding or negotiation process, whether each project is capable of separate delivery or acceptance and whether a reasonable person would not have entered into the contract as a separate project.

32. In proposed paragraph 12.5 of the Commentary, the reference to “associated companies” would also be changed to “closely related companies” to distinguish it from the concept of “associated enterprises” for the purposes of Article 9. A definition corresponding to that in OECD/G20 BEPS Action 7 would be used.

### **C. Article 8 (Shipping, Inland Waterways Transport and Air Transport)**

33. The Coordinator of the Subcommittee on Article 8, Cezary Kyrsiak, reported on its work, which was to examine Article 8 and its Commentary and to propose any necessary changes to the Commentary. In line with its mandate, the subcommittee’s work mainly focused on two issues: (1) the coverage of the concept of “auxiliary activities”; and (2) the issue of the application of Article 8 to cruise shipping.

#### **The coverage of the concept of auxiliary activities**

34. Mr. Krysiak noted that despite using the same language “profits from the operation of ships or aircraft in international traffic” in the Article, the Commentaries to the UN and OECD Models describe the scope of the application of Article using different terms. They both describe the coverage of Article 8 to include profits obtained by the enterprise from the carriage of passengers or cargo in international traffic. However, the difference is that the UN Model Commentary includes, in its concept of what this entails, profits from “auxiliary” activities while the OECD Model Commentary includes profits from “ancillary” activities. The OECD Model term was changed at least in part to differentiate the term from the term “preparatory or auxiliary” used in Article 5(4), as noted in the Secretariat paper from the tenth session (E/C.18/2014/CRP.1). The difference in the usages found in the two Commentaries arises from the quoting in the UN Model Commentary of the OECD Commentary from before that change was made – in the 2005 OECD Model.

35. The Subcommittee met during the week of the eleventh session and, as reported by Mr. Krysiak, could not find a clear-cut difference between the “auxiliary activities” in the UN Model and that of “ancillary activities” in the OECD Model. In view of this and to avoid the possibility of confusion because of the different usages, when no clear difference in meaning was intended, the Subcommittee favored adopting the term “ancillary”. The Subcommittee found the OECD Model Commentary on Article 8 (paragraphs 4-14.1) to be clearer on the issue of ancillary activities and recommended the UN Model adopt the same text.

36. The discussions that ensued demonstrated some disagreement among participants on this issue. Some supported the Subcommittee proposal but others considered the term “ancillary” to be broader in operation than the term “auxiliary” - to the point it could create a larger “carve-out” for profits from taxation under the normal principles of Articles 5 and 7 and could lead to unjustified loss of revenue for states where such profit-making activities occur.

37. Others pointed out the fact that even among OECD countries there were some reservations on the application of the Article. Some participants in the discussion noted the confusing nature of the two terms “auxiliary” and “ancillary” activities and recommended a more detailed explanation of the meanings of the two terms based on clear examples.

38. In conclusion the Committee requested that the Subcommittee provide proposed redrafted Commentary on Article 8, with an emphasis on the various and clear examples as to when the Article should be applicable, and as necessary noting the concerns raised in the discussion.

### **The application of Article 8 to cruise shipping activities**

39. In order to determine if the Article 8 applies to cruise shipping, the Subcommittee examined the commentary to Article 8 relating to its coverage. It noted that, as recorded in the 2014 Secretariat paper on the issue (E/C.18/2014/CRP.2)

Article 8 applies to profits “from the carriage of passengers” in international traffic (paragraph 10 of the UN Model Commentary incorporated the pre-2005 OECD Model Commentary paragraph 4). It then concluded that cruise shipping was included within the meaning of the term “international traffic” as a transport of passengers, as clarified in the OECD Model. Moreover, the subcommittee recommended that the UN Model Commentary follow the updated OECD Model Commentary on Article 3’s definition of “international traffic”, by specifically including an example covering a cruise as an example of international transport.

40. The Committee accepted in principle the recommendations made by the subcommittee on the inclusion of cruise shipping activities within the coverage of the Article 8 and requested it to propose Commentary updates accordingly. A minority view, to the effect that cruise activities are not within the scope of Article 8, would also be noted.

41. The Subcommittee was thanked for its work.

**D. Article 9 (Associated Enterprises): Issues for the next update of the United Nations Practical Manual on Transfer Pricing for Developing Countries**

42. The Coordinator of the Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing, Stig Sollund, presented a note detailing the recent work of the Subcommittee as well as the way forward (E/C.18/2015/CRP.1). He reminded the

Committee of the mandate of the Subcommittee and specified that the first part of the mandate, i.e. the update of the Commentary to Article 9, had been adopted at the last session for inclusion in the next update of the UN Model. Since that time, the Subcommittee has been working on the second part of the mandate, proposing an updated version of the UN Practical Manual on Transfer Pricing for Developing Countries for adoption by the Committee, in particular proposing new chapters on intra-group services and intangibles and guidance on cost contribution arrangements and business restructuring.

43. Mr. Sollund underlined that the mandate of the Subcommittee specified that the outcome of the OECD/G20 BEPS Action Plan should be taken into account and stressed that updates to the Transfer Pricing Manual will, as far as possible, be consistent with consensus decisions under the BEPS project. He indicated that an updated Manual would be presented to the Committee at their session in October 2016.

44. Mr. Sollund noted that there was much interest in the work of the Subcommittee, which assembles a broad range of members acting in their personal capacity. Two new members were welcomed to the Subcommittee; namely, Melinda Brown (OECD) and Ruslan Radzhabov (Federal Taxation Service, Russian Federation). Given the current membership of the Subcommittee, he noted that the Subcommittee was at its maximum size.

45. Since the last session of the Committee, the Subcommittee met once in New York. During that meeting, most time was spent on discussing the new chapter on intra-group services. Mr. Sollund noted that a draft of the chapter had been posted on the eleventh session website for transparency.

46. The chapter covers two main elements; to first distinguish whether a service has been rendered and then to address how such a service should be remunerated. The guidance provided takes into account the perspective of the business, the country where the services are furnished and the country in which the business rendering the services is located. Allocation keys, indirect charges as well as safe harbours are also discussed. Mr. Sollund particularly thanked Michael Kobetsky, the lead drafter of this chapter, for his work.

47. Going forward, the Subcommittee will focus on their work on intangibles, documentation and business restructuring. The lead drafter for the work on intangibles and business restructuring is Giammarco Cottani. The revisions of the chapter on documentation are undertaken by Joe Andrus. Mr. Sollund stressed that changes to the documentation chapter would be consistent with the outcomes of the BEPS project.

48. Mr. Sollund suggested that the next version of the Manual would be re-organized into three parts. The first part should include substantive issues as they relate to transfer pricing. In the second part, the Manual would contain guidance on administrative issues. The third part of the Manual would contain country practices, and other country positions would be welcomed. This new structure would make



editing of the Manual easier, according to Mr. Sollund. The new structure was welcomed by the Committee.

49. The next meeting of the Subcommittee will take place in Santiago, Chile from 16 to 18 November 2015. The intention is that drafts of new and updated guidance would be published on the Committee's website soon thereafter. Mr. Sollund noted that a further meeting of the Subcommittee would likely take place in April 2016 and, if needed, an additional meeting could be scheduled.

50. During the discussion, one Member of the Committee noted that transfer pricing issues relating to intangibles were severely undermining the ability of developing countries such as the Member's country to collect taxes and needed further study. It was stressed that the Subcommittee should critically analyze the outcomes of the BEPS project before incorporating them into the Manual. Especially, the Member indicated that the high turnover threshold of 750 Million Euro for country-by-country reporting may be too high for the interests of developing countries. Mr. Sollund explained that it would be difficult for the Manual to prescribe a lower threshold, given the need for consistent domestic legislation on this issue. He noted that this issue would be reviewed by the OECD in 2020.

51. The Subcommittee Coordinator and participants agreed that it would be of utmost importance to translate the Manual into other UN languages as soon as possible in order to reach a wider audience and effective guidance.

52. The Subcommittee was thanked for its work.

**E. Article 12 (Royalties):**

**(1) the meaning of industrial, commercial and scientific equipment; and**

**(2) software payment related issues;**

53. At the tenth session in 2014, the Committee asked the Secretariat to prepare a note with proposed text aimed at clarifying the meaning of the term “industrial, commercial or scientific equipment” in the Commentary on Article 12, as well as dealing with the issue of coverage or otherwise of software-related payments under this Article. One paper, on broader issues (E/C.18/2015/CRP.6), was presented by Scott Wilkie, the author. The other paper (E/C.18/2015/CRP.7) was prepared by the Secretariat, with Michael Lennard presenting it along with Anna Binder (who worked on the issue during her time as an intern with the Secretariat).

54. In his presentation, Mr. Wilkie noted that it is important to consider whether Article 12 of the UN Model is meant to have a residence or source state orientation – that is, whether it is intended to operate within the typical parameters of Articles 5 and 7 or effectively to extend them as either: (a) a proxy for taxing business profits regardless of whether a PE exists or (b) a proxy for a (constructive) PE to which business profits (royalties for the use of business property) would naturally be associated.

55. In Mr. Wilkie's view the question relevant to a broader consideration of Article 12 could be restated as being: whether business profits earned by a non-resident by making its business property (other than financial property) available for use by or at the direction of another in a source state should be treated as equivalent to the property owner carrying on its business and earning profits "through" the medium of the property and vicariously its use? He saw some possible options for consideration by the Committee as being:

- limiting the scope of Article 12 to profit participations
- casting Article 12 (possibly by means of a clarification in the Commentary as preserving tax rights for a modified "net basis" measure of income)

56. Mr. Lennard and Ms. Binder then addressed some specific issues related to industrial, commercial and scientific equipment as well as software-related payments. In relation to the former, it was noted that the reference to such equipment was retained in the UN Model despite removal from the OECD Model many years ago, but that there nevertheless remained little guidance on the meaning of the term in the UN Model Commentary. Some possible clarifications, as outlined in paper E/C.18/2015/CRP.7, were presented, relating to the definition of the term, the difference in this context between a lease and a sale of equipment, the treatment of transmission capacity and the relationship between Articles 12 and 8.

57. As to the issue of software-related parties, it was noted that while the OECD Model Commentary paragraphs addressing this issue were incorporated in the UN Model at paragraph 12 of its Commentary, the Commentary also briefly (and with

little detail) recorded the disagreement of some Committee members with the OECD view that payments mentioned in some of the OECD paragraphs were *not* royalties. It was agreed that there was some uncertainty in guidance on these issues, which a better articulation of the issues might assist with.

58. The presenters were thanked for their contributions and presentations. In view of the issues raised for consideration in this and previous sessions, a Subcommittee on Article 12 (Royalties) was formed, to be coordinated by Pragya Saksena and with the following mandate:

**Subcommittee on Article 12 (Royalties)**

The Subcommittee is to consider and report on possible improvements to the Commentary on Article 12 (Royalties) of the Model, and if required, the text of that Article. It is mandated to initially report to the Committee at the October session of the Committee in 2016, addressing as its initial priority such improvements to the Commentary discussion on industrial, commercial and scientific equipment and software-related payments as are most likely to be accepted by the Committee for inclusion in the next version of the UN Model.

**F. Article 26 (Exchange of Information)**

59. The discussions on exchange of information were introduced by Mr. Lara, in his capacity as Coordinator of the Exchange of Information Subcommittee.

He introduced document E/C.18/2015/CRP.4 on a proposed revised United Nations Code of Conduct on Cooperation in Combatting International Tax Evasion (the “Code”). He explained that in its fifth session, the Committee adopted for consideration by ECOSOC a proposed Code. At the time, ECOSOC acknowledged the Code but did not take additional action. Given recent developments, the Subcommittee on Exchange of Information had considered that there was an opportunity to update the Code to take on board recent developments and to make a united statement in support of automatic exchange of information. A proposal had been put forward for discussion at the tenth session in 2014 and the current version took into account points raised at that time and since then.

60. Mr. Lara recalled the work done in this area by the BEPS project in which a growing number of countries have committed to the automatic exchange of information with the aim to curb tax avoidance and tax evasion. He asked the Committee to discuss the proper procedure for the ECOSOC, and by extension the UN, to make a clear statement in support of automatic exchange of information among countries. After discussion of the procedure and only if such a text is deemed necessary, the Committee would discuss its content.

61. The Committee and other participants agreed to the need for such a statement from ECOSOC as it would make it clear that the UN as a global body is in support of the automatic exchange of information to tackle tax avoidance and tax evasion. However, some participants recommended that the language of the text be revised to

produce a text that is not made to appear legally binding for countries as this would unnecessarily hinder the wide support for such a document.

62. After further discussion, and with the input of the Secretariat as to the appropriate format to be presented to ECOSOC, the Committee agreed in principle that the Code should take the form of an ECOSOC resolution, with a draft to be included in the report of the Committee meeting in the section “Action required by ECOSOC”. In the end the Committee recommended that the Subcommittee redraft the text to be presented to the next meeting of the Committee. The Secretariat was requested to initially make suggestions on format and wording in support of these aims.

#### **G. Taxation of Technical Services**

63. During the ninth session in 2013 the Committee confirmed its decision to introduce a new article dealing with taxation of technical services. The drafting of the Article and its Commentary is part of a broader mandate for the Subcommittee on the Tax Treatment of Services. This item was presented by Liselott Kana, Coordinator of the Subcommittee and Brian Arnold, a consultant.

64. Presenting his paper on a proposed new article on fees for technical services and its commentary (E/C.18/2015/CRP.5), Mr. Arnold noted that the paper sought to draw upon: comments made at the tenth session of the Committee; discussions at a

meeting of the Subcommittee in April in New York and comments made on a draft circulated to the Subcommittee after that meeting.

65. Mr. Arnold noted that the main changes made to the text since the last session as a result of the discussions and comments were:

- The reference to “payments” had been changed to “fees”;
- A reference to the “beneficial owner” was added;
- The reference to reimbursement of expenses was deleted from the definition of “fees for technical services”;
- New exclusions from the definition of “fees for technical services” had been added; and
- Article XX(7), which deals with excessive fees because of a special relationship, was added.

66. Some changes had also been made to the draft Commentary, including initial drafting to reflect the minority position on the Article (which it was agreed at the tenth session would be reflected in the Commentary). Those taking the minority position had taken the lead in such drafting.

67. Discussions mainly focused on the text of the Article itself and the expression of the minority position in the Commentary. There was initially some discussion of the relationship, in terms of priority or otherwise, with other Articles in the UN Model and as a result of the discussions it was decided that paragraph 2 of the new Article

did not need to address the relationship with Article 20, since there was no overlap between the two Articles in practice. It was decided that it should be made clear in the wording that Article 17 should be given priority over the new Article.

68. There was considerable discussion on the proposed “carve-out” from the operation of the Article for “teaching in or by educational institutions [as part of a degree granting program]”. The reference to a degree granting program was removed in order to accommodate different approaches that countries may take and to broaden the scope of the exclusion in the Article. A number of Members expressed a preference for removing the exclusion, because of issues that may arise of what constituted teaching as well as well as possibilities of abuse. It was agreed that removal of the carve-out would be addressed as an option in the Commentary.

69. In relation to the proposed carve-out for certain payments to directors or top-level managerial officials of a company, as provided for in the proposed paragraph 3 (b), it was agreed to rather make the new Article subject to Article 16.

70. It was decided not to include in the text of the Article a proposed carve-out for services “that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property” but to address that as a possible option in the Commentary instead.

71. There was some discussion on how to present the minority view on the Article in a way that respected the divergent views of both the majority and the minority, recognizing the majority view in favor of such a provision (and accompanying



guidance) for countries wishing to use it in their treaty negotiations and reflects the role of the UN Model in assisting developing country treaty policy and practice, while preserving a fair balance between how the views are reflected in the Commentary. The wording of the Article and the minority view for the Commentary on the new Article were discussed in detail and agreed on by the Committee. Committee members were invited to raise aspects in the wording of the draft Commentary not yet discussed with the Subcommittee.

72. It was also agreed that a minority approach of addressing fees for technical services by adding proposed wording to Article 12 (Royalties), as an alternative, would be addressed in relevant Commentaries. It was further decided that the Subcommittee should draft, for possible inclusion in the Commentary, an alternative, originally proposed as a possible compromise solution in the Subcommittee, which avoided reference to specific types of services and instead addressed taxation by a State of all services performed in that State, as well as services performed outside that State by related parties. In this context it was noted that the relationship with Article 5(3)(b) would need to be considered.

73. The Committee and Mr. Arnold were thanked for their work.

#### **H. Base Erosion and Profit Shifting (various articles of the UN Model)**

74. Carmel Peters, the Coordinator of the Subcommittee on Base Erosion and Profit Shifting for Developing Countries, provided an update on the work of that

Subcommittee (E/C.18/2015/CRP.11). She reported that in the first phase of the Subcommittee's work, its primary function was to facilitate a dialogue with officials in developing countries with a view to ensuring that their views were fed into the G20/OECD project on BEPS, as well as the ongoing work of the Committee. In fulfilment of this mandate, the Subcommittee circulated a paper on the BEPS project, including a questionnaire requesting developing countries' views on how they prioritize the BEPS-project issues, as well as seeking information on other base erosion concerns. The responses were summarized and presented at the tenth session of the Committee. An updated summary, including several responses received after the tenth session was published by the IBFD and made available for the current session of the Committee. Ms. Peters briefly reiterated the summary of the responses to the questionnaire.

75. The mandate of the Subcommittee was expanded during the tenth session of the Committee, requiring it, *inter alia*, to report to the Committee on proposed updates to the UN Model, relating to matters addressed as part of the Action Plan on Base Erosion and Profit Shifting, with a particular emphasis on the next update. In this connection, Ms. Peters proposed to focus on the OECD work undertaken in the context of its Action Plan, which would be useful for the next update of the UN Model, including measures included in the reports on Actions 2, 6, 7 and 15. More specifically, she suggested that the Subcommittee should report to the Committee on whether proposals in the reports on Actions 6 and 7 should be adopted for the next update of the UN Model and, if the answer was yes, how to prioritize them. Alternative proposals could also be considered. The Subcommittee should also report to the Committee on the OECD work on the development of the multilateral

instrument. The Subcommittee may also consider whether there are other changes to the treaty that should be considered to address BEPS issues. These proposals by Ms. Peters for the Subcommittee's work plan were agreed by the Committee as being within its mandate.

76. Alex Trepelkov, Director, Financing for Development Office, launched the United Nations Handbook on Selected Issues in Protecting the Tax Base of Developing Countries, which was published as a result of a recent collaborative project undertaken by the Financing for Development Office, with a view to complementing the OECD work on BEPS from a capacity development perspective for the benefit of developing countries. The Handbook aims to assist developing countries in: (a) engagement and effective participation in relevant international norm-setting and decision-making processes, including in the OECD fora; (b) assessment of relevance and viability of potential options to protect and broaden their tax bases, including those proposed in the context of the OECD Action Plan on BEPS; and (c) effective and sustained implementation of the most suitable options from which they would benefit.

77. Subsequently, the two main authors of the content of the Handbook, Brian Arnold and Hugh Ault, provided an overview of the material included in the ten chapters of the Handbook.

78. Kim Jacinto-Henares presented a Philippines' perspective on BEPS issues. She was of the view that BEPS issues constitute a long-standing problem from the

point of view of developing countries and the recent attention to these issues by developed countries would benefit all. She emphasized that an inclusive approach, taking into account developing countries' perspective, was needed in order to arrive at an acceptable solution, given the developing countries' role in the global economy. She expressed the view that the OECD work on BEPS did not put developing countries on equal footing with developed countries, since the former were able to participate but were not part of the consensus and as a result the agreed norms did not sufficiently reflect their inputs. She also pointed out the limitations of the OECD multilateral instrument, which is being designed to deal only with selected issues under several actions. In this regard, she emphasized the important role of the UN, and in particular the UN Model, which reflects the views of developing countries. She also suggested that the UN organize a conference to help clarify the positions of developing countries on BEPS-related issues.

79. During the ensuing discussion, it was acknowledged that developing countries faced specific issues, which required specific solutions. In this regard, many welcomed with appreciation the publication of the Handbook. The importance of Action 5 on harmful tax competition for developing countries was mentioned, given that the BEPS report may have unintended consequences of intensifying tax competition for real activities. A suggestion was also made to, over the longer term, complement the BEPS project, which is concerned with fixing existing treaty rules, with consideration of underlying issues such as digitalization and de-materialization of the economy. This could be facilitated by a conference organized by the United Nations.

80. The Subcommittee was thanked by the Committee for its work.

**I. Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries**

81. In accordance with the mandate of the Subcommittee on Negotiation of Tax Treaties - Practical Manual, the Coordinator of the Subcommittee, Wolfgang Lasars, presented, for adoption by the Committee, a draft of the Practical Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries. He began by reviewing the mandate of the Subcommittee and reporting on its work, including the engagement of experts, namely Ariane Pickering and Ron van der Merwe, which culminated in the production of the final draft. Mr. Lasars then presented the outline of the draft Manual and briefly described the content of each section.

82. The draft Manual was adopted by the Committee following minor revisions, including updating the references to the OECD project on BEPS, in the footnotes. The draft will now undergo the usual production process, including editing, translation into other official UN languages and printing. During the ensuing discussion, appreciation was expressed for the efficient work of the Subcommittee and for succeeding in keeping the Manual at a basic level in order to provide a useful tool for negotiators with little or no experience in the negotiation of treaties. Calls were also made for dissemination of the new Manual to developing countries, including through an official launch, direct transmission of copies of the Manual to Governments and

sub-regional organizations, as well as through organizing training activities utilizing the Manual.

83. Mr. Lasars and the Subcommittee were thanked for bringing a long-standing project to conclusion and with the Subcommittee's work completed, it was disbanded. It was recognized by the Committee that the next membership of the Committee would probably need to again form such a Subcommittee to update the Manual.

#### **J. Taxation of the Extractive Industries**

84. Eric Mensah, Coordinator of the Subcommittee on Extractive Industries Taxation Issues for Developing Countries, presented the work of the Subcommittee. Based on his progress report (E/C.18/2015/CRP.2), he explained that the Subcommittee is submitting (1) an Overview Note on Extractive Industries Taxation Issues, (2) a Guidance Note on Selected Tax Treaty Issues in Relation to the Extractive Industries and (3) a Guidance Note on Capital Gains Taxation and Taxation of Indirect Asset Transfers for approval. In addition, the Subcommittee was submitting a draft Guidance Note on the Tax Treatment of Decommissioning for the Extractive Industries for comments and was seeking approval for its work plan on defined aspects.

85. Mr. Mensah mentioned that the Subcommittee had held two meetings since the last session of the Committee; namely, at the UN Headquarters in New York and in Bratislava, hosted by the Finance Ministry of Slovakia. He also updated the

Committee on the membership of the Subcommittee, which has a wide and varied participation drawing on Committee members, observer countries, industry, advisors and NGOs.

86. In introducing the issue, Mr. Mensah reminded the Committee of the Subcommittee's mandate and stressed that the Subcommittee was conscious of the need to provide guidance on how to tax the extractive industries in a manner that strikes a fine balance between attracting investment and allowing governments to collect revenue. He then introduced the first guidance note for approval, i.e. the Overview Note on Extractive Industries Taxation Issues that summarizes the issues at hand and binds the guidance notes together. The Overview Note was adopted by the Committee.

87. Tomas Balco presented the Guidance Note on Selected Tax Treaty Issues in Relation to the Extractive Industries. The guidance note is aimed at giving a comprehensive overview of treaty issues in extractive industries taxation, which would for example assist treaty negotiators who are not specialized in this field but need to be aware of how a double taxation treaty can affect a country's ability to tax the extractive industries.

88. The guidance note was adopted after a revision to the text regarding the territorial scope of double taxation treaties, following discussion that revealed different views on the significance or otherwise for taxing rights of the non-inclusion of an area such as the Continental Shelf in the geographical coverage of the treaty.

89. Michael Lennard presented the Guidance Note on Capital Gains Taxation and Taxation of Indirect Asset Transfers. The guidance note discusses whether capital gains should be taxed, and if so, how this should be done. He then outlined the policy and administration issues of capital gains taxation in the extractive industries and the indirect transfer of assets. The Guidance Note was adopted by the Committee.

90. Olav Fjellsaa and Chris Sanger presented the draft Guidance Note on the Tax Treatment of Decommissioning for the Extractive Industries for comment. The aim of the guidance note is to provide governments with insights to enable them to design their tax regime for decommissioning in such a way as to avoid undermining the effective decommissioning of facilities. The note gives an overview about the tax treatment of decommissioning and the principles involved. It also speaks to the quantification of costs, tax policy issues and their application. The paper will be revised to include information on decommissioning in the mining sector, policy scenarios and dispute resolution. The revised paper is expected to be finalised in April 2016 and will be presented to the Committee for approval at the session in October 2016.

91. Mr. Mensah then outlined the Subcommittee work plan for the following year. In addition to the abovementioned guidance note on the tax treatment of decommissioning, the Subcommittee will work on producing guidance notes on: (1) value added tax in relation to the extractive industry; (2) tax aspects of negotiation and re-negotiation of extractive industry contracts; (3) permanent establishment issues in the extractive industries; and (4) kinds of “government take”. The Subcommittee



will also undertake exploratory work on the effective review of invoicing and costs. The work plan of the Subcommittee was adopted by the Committee.

92. The Subcommittee is expected to meet again in March 2016 in Livingstone, Zambia. Mr. Mensah thanked the Ministry of Finance of Slovakia for hosting a Subcommittee Meeting.

93. The very important contribution, to this and other work in the Secretariat, of Ilka Ritter, supported by the German government for three years, was recognized.

94. The Committee thanked the Subcommittee for its work in this matter, as well as all the presenters, who provided valuable insights.

#### **K. Dispute Resolution**

95. The Secretariat introduced its paper on dispute resolution and avoidance ([E/C.18/2015/CRP.8](#)). Juliane Gröper, who had worked on this issue as an intern, joined the Secretariat for this presentation. In explaining the paper, the secretariat noted that it had been mandated at the previous session to provide a balanced paper on arbitration issues for developing countries in the context of international tax disputes. The secretariat indicated that, as indicated in the paper, its intention was not to promote or discourage arbitration but to analyze relevant issues and how they may be addressed.

96. The presentation noted in particular that:

- Although data on the Mutual Agreement Procedure (MAP) is very limited, especially from developing countries, available data suggests increasing inventories of unresolved cases. This trend is widely expected to increase.
- As a response to this, many countries are proposing arbitration, within the MAP, to ensure resolution of cases unresolved for many years.
- There is likely to be increasing discussion of the arbitration issue in tax treaty negotiations (especially due to the recent commitment of 20 OECD Members to include mandatory binding arbitration in their tax treaties) and countries need to be in a position to understand and discuss the issues that arbitration raises, whatever the view they ultimately take on the question.
- The secretariat had found it impossible to do a proper consideration of arbitration issues for developing countries without also addressing non-binding means of dispute settlement such as conciliation and mediation, as well as other binding means such as expert determination.
- The paper examined some commonly expressed concerns such as “loss of sovereignty” cost and the issue of independence of arbitrators, to consider what might be the most real practical issues for developing countries, and then went on to consider how those issues may be addressed, including through clauses in agreements to arbitrate, through procedural provisions, and through institutional developments.
- Certainty for taxpayers was an important part of consideration of dispute avoidance and resolution in tax matters, but certainty for the Revenue Administration that the source taxation rights preserved in a treaty would be

upheld, and certainty of the wider citizenry that multinational enterprises and others would pay their appropriate taxes were also important;

- The UN and the Committee could play an important role in building understanding on the issue of dispute avoidance and resolution and the paper recommended a well-balanced multi-stakeholder Subcommittee be set up to examine these issues further.

97. The paper was welcomed for dealing with an important issue in depth. In the ensuing discussions, points made included that:

- the lack of experience in this area is not just in arbitration, which few governments, developed or developing, have had practical experience of, but of MAP itself, and addressing the lack of experience and the improvement of the efficiency and effectiveness of MAP should be an important part of future initiatives.
- consideration should be given to the avoidance of disputes including through advance pricing arrangements (APAs), and the benefits of updating the Chapter on Dispute Avoidance and Resolution which includes a part on APAs in the Transfer Pricing Manual, rather than by independent work, was also noted.
- arbitration will only work where there are agreed norms, and until there was greater agreement on relevant norms, mandatory arbitration would be difficult to achieve – other mechanisms such as safe harbour rules and advance rulings should also be considered.

- it should be made clear that even where arbitration is provided for it will be in the context of MAP rather than as an alternative to it, and that it will always be an exceptional way of settling disputes.
- the importance of confidentiality of taxpayer information, its impact on dispute resolution and the protection of taxpayers' rights were noted.
- The work of other bodies such as the OECD and the IBFD in this area, and the need to take into account that work, but also the importance of the UN giving guidance in this area were noted, as well as drawing upon the experiences from other areas of dispute avoidance and resolution, such as in the World Trade Organization and investment and commercial arbitration.
- The paucity of statistics as to MAP, especially in the non-OECD context, was noted, as were the potential benefits of joint work between the OECD and UN on these issues.

98. A subcommittee was set up to be coordinated by Kim Jacinto-Henares with the following mandate:

**Subcommittee on the Mutual Agreement Procedure – Dispute Avoidance and Resolution**

The Subcommittee is to consider and report back to the Committee on dispute avoidance and resolution aspects relating to the Mutual Agreement Procedure, with a view to reviewing, reporting on and, as appropriate, considering

possible text for the UN Model and its Commentaries, as well as related guidance, on issues such as, in particular:

- Options for ensuring the MAP procedure under Article 25 (in either of its alternatives in the UN Model) functions as effectively and efficiently as possible;
- Other possible options for improving or supplementing the MAP procedure, including through the use of binding or non-binding forms of dispute resolution;
- Explore issues associated with agreeing to arbitration clauses between developed and developing countries;
- Means of dispute avoidance, such as Advance Pricing Agreements (APAs), while recognizing the primary role of the Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing and the UN Practical Manual on Transfer Pricing for Developing Countries in addressing APAs; and
- The need or otherwise for any updates or improvements to the Guide to the Mutual Agreement Procedure under Tax Treaties, approved by the Committee at its Annual Session in 2012.

The Subcommittee will focus especially on issues for developing countries, possible means of addressing them in a practical manner, and possibilities for improving guidance and building confidence in dealing with the issues in this area. It is mandated to initially report to the Committee at its October session in 2016, particularly addressing, as its major priority, such improvements, if

any, as are most likely to be accepted by the Committee for inclusion in the next version of the UN Model.

#### **L. Capacity building**

99. Dominika Halka and Harry Tonino of the Secretariat reported on progress made in developing and implementing the United Nations capacity development programme on international tax cooperation (E/C.18/2015/CRP.10). Following a brief overview of the institutional background, intergovernmental mandate, history and main features of the programme, they reported on activities in each of the main focus areas. The first stage of the programme, which focused on dissemination of the Committee's outputs, namely the UN Model and the UN Transfer Pricing Manual, had been completed and the programme now offered a full set of courses and other materials in the area of double tax treaty and transfer pricing, which were already tested and had been delivered on the ground.

100. The second stage of the programme focused on the development of practical tools, which could be used as reference material but also serve as tools to deliver country-level work. These included several UN Handbooks, as well as UN Practical Portfolios on Protecting the Tax Base of Developing Countries. Brian Arnold presented an overview of the UN Practical Portfolios, which were intended to assist tax officials in developing countries to: (i) better understand causes of BEPS in their countries; (ii) identify the risks of BEPS in the context of their domestic tax law and network of tax treaties; and (iii) identify and assess various options available to them

to deal with BEPS issues. These Portfolios comprise case studies, examples, flow charts, check lists and sample legislation. The first set of UN Practical Portfolios focuses on: (1) Taxation of income from services; (2) Base-eroding payments of interest; and (3) Tax incentives. The programme is gradually entering its third stage, which focuses on country-level work utilizing the abovementioned Practical Portfolios. Work is to commence in several pilot countries on several topics during 2016.

101. Hugh Ault then presented two introductory papers on tax incentives, which were drafted by Eric Zolt (E/C.18/2015/4 and E/C.18/2015/5) at the request of the Financing for Development Office as input into several activities of the abovementioned capacity development programme, focused on strengthening the capacity of developing countries to increase the potential for domestic revenue mobilization through enhancing their ability to effectively protect and broaden their tax bases. Wasteful tax incentives have been identified by developing countries as major contributor to tax base erosion. The papers aim to provide developing countries with an overview of key concepts and issues regarding tax incentives, their use to attract investment and their revenue and other costs.

102. During the ensuing discussion, several participants expressed their appreciation and support for the activities carried out. Particular attention was paid to the extension of the activities to Africa, including to the francophone countries, *inter alia*, through the translation of relevant materials into French. Several points were made regarding the work on tax incentives, including the need for a coordinated

approach to deal with harmful tax incentives, as well as the challenge of securing the support of various ministries for the technical cost-benefit evaluation of tax incentives for a particular country.

**M. International trade in goods - tax issues**

103. Enrico Martino introduced this agenda item by recalling the background to this issue. He noted that significant issues might arise with respect to the valuation of goods in international commerce, as transactions between related parties could be subject to both customs and fiscal examinations (including for transfer pricing purposes) and may thereby be affected by rules that differed considerably.

104. Mr. Martino noted that his proposal at the tenth session had been to discuss the interrelationship of such issues in the Committee. However, the World Customs Organization (WCO) had worked with the OECD and others and had since released a Manual addressing these issues. The WCO was not changing the rule but was recognizing challenges and also the importance of transfer pricing documentation being looked at in customs cases.

105. He noted that for the Committee only a monitoring role was now required, with Mr. Martino forwarding relevant materials to Members, and possibly presenting a paper. He indicated that the agenda item could be dealt with briefly, but a presentation from the WCO may be useful. One possible outcome would be for changes to the Transfer Pricing Manual paragraphs dealing with the interplay of the



customs and tax issues. That would of course be a matter for the Transfer Pricing Subcommittee to consider. Mr. Martino was thanked.

**N Article 23 A (Methods for Elimination of Double Taxation): exemption method**

106. At its tenth session in 2014 the Committee agreed to include in the next version of the UN Model a new paragraph 4 to Article 23 A corresponding to that in the OECD Model. Wording reflecting the minority view opposing such a paragraph was, as agreed at the tenth session, to be included in the Commentary on Article 23 A in the next version of the UN Model. The text reflecting the minority view could not be agreed at the eleventh session and could, if required, again be discussed at the next session of the Committee after reflection on the minority view.

**O Other Matters**

107. At its tenth session in 2014, the Committee noted the great importance of ensuring that key products of the Committee's work, such as the Model and the Transfer Pricing Manual, are translated into all official UN languages to maximize effectiveness, and urged efforts, including by potential funders, to ensure this is done as quickly as possible with the required quality.

108. The Committee recognized with thanks the imminent retirement of Marilyn Elblein after many years of support to the Committee and approximately 35 years working for the United Nations.

## **Chapter IV**

### **Dates and agenda for the twelfth session of the Committee**

109. The Committee decided to hold its 2016 session in Geneva from 11 to 14 October 2016.

110. It was agreed by the Committee that in setting the agenda some items would not be ready for substantive discussion in May of 2016, but in those cases, such as in relation to the finalization of the update of the UN Transfer Pricing Manual, reports on progress would be appropriate. The order of proceedings will be provisionally set by the Committee prior to the next session. The provisional agenda for the twelfth session will be as follows:

1. Opening of the session by the Chair of the Committee.
2. Adoption of the agenda and organization of work.
3. Discussion of substantive issues related to international cooperation in tax matters:

*(a) Issues related to the updating of the United Nations Model Tax Convention:*

(i) Article 1 (Persons covered): application of treaty rules to hybrid entities;

(ii) Article 8 (Shipping, inland waterways transport and air transport): The meaning and coverage of the term “profits from the operation of ships or aircraft in international traffic”.

(iii) Article 12 (Royalties): Possible amendments to the Commentary on Article 12 in relation to:

(a) industrial commercial or scientific equipment;

(b) software-related payments;

(iv) Article 23 A: Minority view on inclusion of paragraph (4);

(v) Article 26 (Exchange of information): proposed Code of Conduct;

(vi) Taxation of services:

(a) Commentary on Article on technical services;

(b) Proposed Article 12 alternative;

(vii) Base erosion and profit-shifting.

*(b) Other issues:*

(i) Update of the United Nations Practical Manual on Transfer Pricing for Developing Countries;

(ii) Taxation of the extractive industries;

(iii) Taxation of development projects;

(iv) Capacity-building;

(v) Mutual Agreement Procedure - dispute avoidance and resolution;

(vi) International trade in goods - tax issues;

(vii) Tax Incentives - presentation by IMF delegate.

4. Dates and provisional agenda for the thirteenth session of the Committee.

5. Adoption of the report of the Committee on its twelfth session.

## **Chapter V**

### **Adoption of the report of the Committee on its eleventh session**

111. The Committee approved and adopted the present report for submission to ECOSOC, the text being settled after the session.