

**UN Tax Committee Mandates for Subcommittee and Working Groups,
and Related Matters as Agreed at the 5th Annual Session of the
Committee, 19-23 October 2009.**

1. It was agreed by the Committee that the mandates for each of these Subcommittees would be as follows:

1. **Subcommittee on the United Nations Model Tax Convention Update**

The Subcommittee is mandated to collate all the work on the Model update that has been completed by the Committee, drawing upon the work of relevant Working Groups. It will also review the existing Commentary and identify desirable amendments to the Commentary. It will report back to the next annual session of the Committee with a report on work-in-progress on the update. It will report back to the 2011 annual session with a proposed final draft of the Model update.

2. **Subcommittee on Tax Treatment of Services**

The Subcommittee is mandated to address the issue of the taxation treatment of services in general in a broad way including related aspects and issues. The issue of taxation of fees for technical services should also be addressed. This is the initiation of this extensive work and the Subcommittee should present at the next annual session of the Committee an initial evaluation, some possible building blocks and potential ways to go forward.

3. **Subcommittee on Exchange of Information**

The Subcommittee is mandated to:

- a) Provide any further input required to Article 26 and its Commentary to enable those to be incorporated into the next United Nations Model Convention update.

- b) Finalise the proposed draft U.N. Code of Conduct on Cooperation in Combating International Tax Evasion for consideration by the Committee and submission to ECOSOC as soon as possible.

- c) Monitor international developments in the area of exchange of information (including meetings of the Global Forum on Tax Transparency and Exchange of Information) with a report to the next annual session of the Committee containing recommendations on any further work the Committee should undertake in this area.

4. **Subcommittee on Dispute Resolution**

The Subcommittee is mandated to consider:

- a) Different possible ways to improve the mutual agreement procedure (including advance pricing agreements, mediation, conciliation, recommended administrative regulations and prescribed obligations for the taxpayer applying for mutual agreement procedure).
- b) The possibilities to provide for arbitration (either in the United Nations Model Convention Articles or as an alternative in the Commentaries); in this respect both mandatory and voluntary arbitration shall be considered as well as streamlined arbitration.
- c) Possible specific problems and needs with respect to transfer pricing dispute resolution.

In doing so, the Subcommittee shall primarily focus on the specific needs and concerns of developing countries and countries in transition. The Subcommittee shall present a report, with draft provisions and Commentaries annexed, during the next annual session of the Committee for consideration and further guidance.

5. Subcommittee on Transfer Pricing - Practical Issues

The Subcommittee is mandated to develop a practical manual on transfer pricing, based on the following principles:

- a) That it reflects the operation of Article 9 of the United Nations Model Convention, and the Arms Length Principle embodied in it, and is consistent with relevant Commentaries of the U.N. Model.
- b) That it reflects the realities for developing countries, at their relevant stages of capacity development.
- c) That special attention should be paid to the experience of other developing countries.

That it draws upon the work being done in other fora.

The aim of the Subcommittee shall be to present a complete draft manual for adoption to the 2011 annual session. An intermediate report showing substantial progress should be provided to the Committee in 2010.

6. Subcommittee on Revision of the Manual for Negotiation of Tax Treaties

The Subcommittee is mandated to make proposals for the revision of the Manual, taking into account changes in the United Nations Model Convention, including its Commentaries, with a view to providing tax treaty

negotiators, particularly those from developing, including least developed, countries with a practical guide to the negotiation and application of double taxation treaties. The Subcommittee will present a report on its progress at the next annual session of the Committee.

7. Subcommittee on Article 14 of the Model

The Subcommittee is mandated to propose updates and improvements to Article 14 especially for those countries that would like to maintain this Article. In particular the problems with regard to scope, coverage and diverging interpretations should be addressed either by a new text for Article 14, providing different options for solutions, or by drafting in the Commentaries. The Subcommittee will present its conclusions at the next annual session.

8. Subcommittee on Capacity Building

The Subcommittee is mandated to trigger and help address areas for capacity building in accordance with the Committee's mandate in relation to developing countries, including least developed countries. In doing so, it shall address capacity from the following perspectives:

- a) Research/ Needs Analysis
- b) Structure
- c) Skills
- d) Legislation
- e) Processes, procedures and systems
- f) Level of investment in people, institutions and practices
- g) Funding support/ Technical assistance
- h) Impact Assessment

and with the following focal groups:

- i. Committee Members
- ii. Committee Secretariat
- iii. Observers
- iv. Member States of the United Nations generally

9. Subcommittee on Capital Gains

The Subcommittee will analyse and make proposals for consideration by the Committee on:

- a) Rewriting the Commentary on the new paragraph 5 of Article 13;
- b) Addressing the abuse issues relating to paragraph 5 and the policy issues allowing reasonable restructuring; and
- c) Addressing the compliance issues of paragraph 4 and the possibility of rewriting this paragraph.

The Subcommittee will present a report on its progress at the next annual session of the Committee.

2. Contributions and active support by representatives and observers in the Subcommittees were encouraged and welcomed by the Committee. However Members of the Committee recognised that, in the case of divergent views emerging during the work of the Subcommittees, the views of Members of the Committee within a Subcommittee have precedence as compared with contrary views of other participants in Subcommittees where decisions were necessary to take the work of the Subcommittee forward. It was noted that Subcommittee conclusions would be circulated appropriately among Members of the Committee for comment.

Working Groups

3. The Chairperson of the Committee noted that a series of Working Groups had been formed – these were termed “Working Groups” rather than “Subcommittees”. It was clarified that a Working Group is formed whenever the issue has already been dealt with previously, and a document has already been produced and approved by the Committee. Most of the decisions had been taken by the Committee in these cases and the work would simply involve ensuring that that work would properly integrate into the 2011 version of the Model. Some would nevertheless involve some more work, such as finalising the Commentaries for Article 5 in the case of the working group on permanent establishments. The Working Groups were convened on the following topics:

(i) **Definition of Permanent Establishment:** coordinated by Mr. Van der Merwe and mandated to finalise the current work on the definition of permanent establishment, involving work related to finalising the Commentary to Article 5 including revising the Commentary for greater coherence with Article 14 (for those who wish to retain that Article). It was recognised that, in the longer term, revisions to the Commentary to Article 5 might be required to maximise coherence and consistency with Article 14, including any changes made to that Article and its Commentaries;

(ii) **Assistance in Collection:** coordinated by Mr. Bensouda and mandated to prepare the finalised work on assistance in collection for incorporation in the revised Model, to the extent any further work is required;

(iii) **Islamic Financial Instruments:** coordinated by Ms. Amjad and mandated to preparing the finalised work on treatment of Islamic financial instruments for incorporation in the revised Model, to the extent any further work is required;

(iv) **Improper Use of Treaties:** coordinated by Mr. Liao and mandated to finalise the work begun by the former Subcommittee on the Improper Use of Treaties, subject to the work on beneficial ownership noted below; and

(v) **Concept of Beneficial Ownership:** coordinated by Mr. Louie and mandated to follow up on the beneficial ownership concept, this work begun by the former Subcommittee on the Improper Use of Treaties, and to finalise a short addition to the Commentaries required on some practical aspects of applying the concept.