

Technical Meeting on "Tax Treaty Administration and Negotiation"



Outcome

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Background

Tax treaties play a key role in the context of international cooperation in tax matters. On the one hand, they encourage international investment and, consequently, global economic growth, by reducing or eliminating international double taxation over cross-border income. On the other hand, they enhance cooperation among tax administrations, especially in tackling international tax evasion.

Developing countries, especially the least developed ones, generally still lack adequate skills and experience to efficiently negotiate, interpret and administer tax treaties. This may result in difficult, time-consuming and, in the worst case scenario, unsuccessful negotiation and/or application of tax treaties. Moreover, existing skills gaps may jeopardize developing countries' capacity to be effective treaty partners, especially as it relates to cooperation in combating international tax evasion.

Capacity building initiatives targeting strengthening skills of developing countries in the above area will contribute to further developing their role in supporting the global efforts aimed at improving the investment climate and effectively curbing international tax evasion.

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Introduction

On 30-31 May 2013, the Financing for Development Office (FfDO) of UN-DESA and the International Tax Compact (ITC) jointly organized a technical meeting on "Tax treaty administration and negotiation" in New York. The meeting was part of a joint project undertaken by the two organizations, aimed at strengthening the capacity of Ministries of Finance and National Tax Authorities in developing countries to effectively identify and assess their needs in the area of tax treaty negotiation and administration (see box in this newsletter for more information about the project).





Participation in the meeting

A total of 32 representatives from relevant authorities of developing countries participated in the meeting, representing 29 countries, namely: in all the regions of the world: Mr. Ulvi Yusifov (Azerbaijan), Mr. Syed Mohammad Abu Daud (Bangladesh), Ms. Sabina Theresa Walcott-Denny (Barbados), Ms. Pen Sopakphea (Cambodia), Mr. Adrien Terence Tocke (Cameroon), Ms. Natalia Aristizábal (Colombia), Mr. Mario Ricardo Osorio Hernandez (Colombia), Ms. Ana Yesenia Rodríguez (Costa Rica), Mr. Galo Antonio Maldonado (Ecuador), Mr. Mamdouh Sayed Omar (Egypt), Mr. Hesham Ismail Abdelmonem Khodair (Egypt), Mr. Ruslan Akhalaia (Georgia), Mr. Samuel McLord Chekpeche (Ghana), Mr. Eric NII Yarboi Mensah (Ghana), Mr. Gunawan Pribadi (Indonesia), Mr. Crispin Clemence Kulemeka (Malawi), Ms. Najia Bargui (Morocco), Ms. Mya Mya Oo (Myanmar), Mr. Tanka Mani Sharma (Nepal), Mr. Adesoji Bodunde Omoyele (Nigeria), Ms. Leka Nama Nablu (Papua New Guinea), Ms. Anastasia Certan (Republic of Moldova), Ms. Kim S. Jacinto-Henares (Philippines), Mr. Kayigi Habiyambere Aimable (Rwanda), Mr. Baye Moussa Ndoye (Senegal), Ms. Phensuk Sangasubana (Thailand), Ms. Patience Emily Rubagumya (Uganda), Ms. Tetiana Skupova (Ukraine), Mr. Alvaro Romano (Uruguay), Ms. Tran Thi Phuong Nhung (Viet Nam), Mr. Berlin Msiska (Zambia), and Mr. Max Mugari (Zimbabwe).

The meeting was also attended by several members of the United Nations Committee of Experts on International Cooperation in Tax Matters (the UN Committee), namely: Ms. Lise-Lott Kana (Chile), Mr. Wolfgang Lasars (Germany), also on behalf of the German Government, Mr. Mansor Hassan (Malaysia), Mr. Armando Lara Yaffar (Mexico), and Mr. Stig Sollund (Norway).

Representatives of international and regional organizations were also present, namely: Mr. Robert Maate,

East African Community (EAC), Mr. Lincoln Marais, African Tax Administration Forum (ATAF), Mr. Socorro Velazquez and Mr. Miguel Pecho, Inter-American Center of Tax Administrations (CIAT), and Ms. Marlies de Ruiter and Mr. Jacques Sasseville, Organization for Economic Co-operation and Development (OECD).

The following experts also participated in the meeting: Prof. Brian Arnold, Canadian Tax Foundation, Prof. Hugh Ault, Boston College of Law School, Prof. Philip Baker, Grays Inn Tax Chambers, Prof. Jan de Goede, International Bureau of Fiscal Documentation (IBFD), Prof. Peter Harris, University of Cambridge, Mr. Odd Hengsle, Former Director General, Tax Treaties and International Tax Affairs, Norway, Mr. Klaus Klotz, International Tax Section, Federal Ministry of Finance, Germany, Ms. Ariane Pickering, Former Chief Tax Treaty Negotiator, Department of the Treasury, Australia, and Ms. Joanna Wheeler, IBFD.

ITC and Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH were represented by Mr. Matthias Witt, Mr. Harald Kueppers, Ms. Katharina Gunselmann and Ms. Yanina Oleksiyenko.



Objective and modalities of the meeting

The practical purpose of the meeting was to discuss and revise a series of draft papers on selected issues in administration and negotiation of tax treaties, commissioned from several renowned experts with a view to ensuring that these papers adequately address the actual skills gaps and challenges faced by developing countries, which were identified during the Rome meetings.

Eight authors presented their drafts for discussion at the meeting. Each paper had a designated lead discussant, representing relevant authority in developing country, who commented on relevance of the given paper in view of the experience of his/her country and proposed

specific revisions/additions to the paper. The comments by the lead discussant were followed by an interactive discussion among participants, chaired by a member of the UN Committee or a representative of an international organization.

Topics discussed at the meeting

During the meeting, several topics were discussed, both in the area of negotiation and administration of tax treaties, drawing upon the papers prepared by experts in the respective fields.

The discussion on tax treaty negotiation started with an analysis of some relevant policy issues, including the reasons why countries may wish to negotiate tax treaties and the benefits and costs that arise from having tax treaties. Then, the benefits of developing a tax treaty policy framework and a model treaty before entering into negotiations were discussed. Finally, several practical issues in negotiating tax treaties were dealt with, including how to prepare for and conduct tax treaty negotiations and how to handle post-negotiation activities.

The discussion on tax treaty administration started with a general overview of the major issues involved in the application of tax treaties, followed by sessions dealing with the identification of persons qualifying for treaty benefits and with the practical aspects of taxation of resident taxpayers on foreign source income respectively. Then, several sessions dealt with issues related to the taxation of non-resident taxpayers, both in general terms and with respect to specific items of income, namely business profits, income from services activities, income from investment and capital gains. Also, some current and increasingly important issues were discussed, including the operation of the mutual agreement procedure in settling disputes about the application of tax treaties and how to effectively prevent tax treaties from being used improperly for tax avoidance purposes.

Last session was devoted to sharing experiences on bilateral and multilateral cooperation in the area of taxation.



Outcome

Participants praised the quality of the papers and expressed their gratitude to the experts and the organizers of this initiative for providing them with this useful material. One participant said that “the only problem with these papers was that they were not available several years ago” (when she was beginning her career). Many practical suggestions were made on how to improve the papers and make them more relevant to the realities of developing countries’ tax administrations.

South-South sharing aspect emerged very prominently at the meeting. Participants from developing countries engaged in an intense discussion among themselves offering advice and sharing best practices with countries, which were less experienced in negotiating and administering double tax treaties. A view was expressed that experts from developing countries were often in a better position to assist other developing countries than experts from developed countries, as they followed a similar path often not so long ago. In this connection, a representative of Azerbaijan offered to host similar future initiatives in his country.



The participants also expressed demand for additional capacity development initiatives in various areas of international tax cooperation, including interpretation, negotiation and administration of tax treaties, as well as transfer pricing.

Next steps

The authors are now revising and finalizing their papers taking into account the feedback received during the meeting. The papers on administration of tax treaties will then be edited and will comprise a *UN Handbook on Selected Issues in Administration of Double Tax Treaties for Developing Countries*, which will be available in e-version by the end of June and in print version later this summer. The *UN Handbook* will be officially launched at the OECD Meeting with non-OECD Economies and International Organizations preceding the 18th Annual Tax Treaty Meeting, which will be held in Paris, on 25-27 September 2013. In the future, FfDO intends to organize together with partners, an annual Forum on Administration of Tax Treaties based on the *UN Handbook*, with a view to discussing the current issues in administration of tax treaties amongst developing countries.



The papers on negotiation of tax treaties will be finalized and made available on the FfD website. They will also be presented to the UN Committee during its next session (Geneva, 21-25 October, 2013) for inclusion in the *United Nations Manual for the Negotiation of Bilateral Tax Treaties*. ■

For more detailed information, please consult the web page of the meeting at: <http://www.un.org/esa/ffd/tax/2013TMTTAN/index.htm>

Joint Project of FfDO/UN-DESA and ITC

FfDO and ITC are working on a joint project aimed at strengthening the capacity of Ministries of Finance and National Tax Authorities in developing countries to effectively identify and assess their needs in the area of tax treaty negotiation and administration. The financial contribution for the project has been provided by GIZ and implemented by ITC. The ultimate goal of this project is to support the development of a comprehensive set of capacity building tools to be used in developing countries, which are demand driven, reflect adequately needs of these countries, and are not a duplication of any existing and available tools, but rather a useful complement to them.

To this end, FfDO and ITC jointly organized two simultaneous group meetings (Rome, Italy, 28-29 January 2013) with a view to launching and advancing the relevant work programme for the purposes of the above-mentioned project. The meetings, which were attended by 25 national participants, contributed to: (1) identifying the needs of developing countries in the area of tax treaty negotiation and administration and taking stock of the available capacity development tools at the disposal of developing countries; and (2) determining the actual skills gaps and challenges faced by developing countries in negotiating and administering their tax treaties. A report of the meeting, which summarizes the main findings and details priority areas for the purposes of developing relevant capacity building activities and tools to address these issues, is available at <http://www.un.org/esa/ffd/tax/2013CBTTNA/Summary.pdf>.

In follow-up to the Rome meetings, a series of practical papers were prepared, addressing the specific issues in administration and negotiation of tax treaties identified during those meetings. The draft papers were then presented by the authors and discussed during the technical meeting on "Tax treaty administration and negotiation" (New York, 30-31 May, 2013) with the participation of 32 representatives of developing countries. During the discussion at that meeting, revisions to the papers were proposed with a view to ensuring that they adequately address the actual skills gaps and challenges faced by developing countries.

The authors are now revising and finalizing their papers taking into account feedback received during the meeting. The final papers on administration of tax treaties will comprise the *UN Handbook on Selected Issues in Administration of Double Tax Treaties for Developing Countries*, which will be available in e-version by the end of June and in print version later this summer. The final papers on negotiation of tax treaties will be made available on the FfD website. They will also be presented to the UN Committee during its next session (Geneva, 21-25 October, 2013) for inclusion in the *United Nations Manual for the Negotiation of Bilateral Tax Treaties*.