

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

Presented by  
Members of Subcommittee

## **List of Documents Comprising the Revision of the Manual for Negotiation of Bilateral Tax Treaties Between Developed and Developing Countries**

- E/c.18/2011/CRP.11/Add.1: International Tax Evasion and Avoidance**
- E/c.18/2011/CRP.11/Add.2: Procedural Aspects of Tax Treaty  
Negotiations**
- E/c.18/2011/CRP.11/Add.3: Basic Approaches to Tax Treaty Negotiation**
- E/c.18/2011/CRP.11/Add.4: Dispute Resolution and Mutual Agreement  
Procedure**
- E/c.18/2011/CRP.11/Add.5: Appendix for Special Consideration Items**

# **PROCEDURAL ASPECTS OF TAX TREATY NEGOTIATIONS**

Presented by

**Ben Arrindell**

Chair of Subcommittee

## **PROCEDURAL ASPECTS OF TAX TREATY NEGOTIATIONS**

- **Identification of the Need for a Treaty**

Factors to be considered include:

- The nature and extent of the existing economic relationship between the two countries.
- The potential and desire for growth in the relationship between the countries.
- The nature of the future economic relationship.
- Consultation with stakeholders, such as other government agencies and the local business community.
- Prioritisation of acceptance of requests for negotiations.

# **PROCEDURAL ASPECTS OF TAX TREATY NEGOTIATIONS**

- **Initial Contacts**
- **Appointment of A Negotiating Team**
- **Arrangements for Conducting Negotiations**
- **Conduct of the Negotiations**
- **Preparation for Signature**
- **Ratification of the Treaty**

# **II. INTERNATIONAL TAX EVASION AND AVOIDANCE**

Presented by  
JUDr. Tomas Balco, LL.M., ACCA  
KIMEP University  
Central Asian Tax Research Center

# Overview

- A – Concepts and Issues
- B - Legislative and Judicial Anti-Avoidance Measures
- C – Mutual Administrative Assistance

# A - Concepts and Issues

- 1 - Explains the concepts and distinguishes between Evasion, Avoidance, and Tax Planning
  - A) International Cooperation (2 pages)
  - B) Tax Planning and Treaty Shopping (1 page)
  - C) Tax avoidance through low-tax jurisdictions (
    - (i) Practices resorted to in order to reduce taxes imposed on international income
      - Practices resorted to in order to reduce taxes imposed by the country of residence or citizenship
      - Practices resorted to in order to evade or avoid taxes imposed by the country of source
      - Institutional devices and arrangements that facilitate evasion
      - Use of related tax-haven entities to reduce taxes



# B - Legislative and Judicial Anti-Avoidance Measures

- 2 pages
  - Brief introduction of the concept
  - Overview of some judicial doctrines
    - 8 judicial from Civil and Common Law countries mentioned
- Suggestions
  - Extend this section to
    - Introduce special sub-section to outline the treaty based anti-abuse provisions, place in the treaty, reference to provisions in the commentary dealing with this issue
    - Mention also other legislative domestic law measures
    - Discuss interaction between the domestic law anti-avoidance measures and tax treaties

## **C. Mutual administrative assistance**

- Assistance with collection of Taxes
  - Relevance of domestic legislation and capability
  - Mentions such article does not exist in UN MTC
- Reference to Multilateral instruments
  - Council of Europe - Multilateral Convention on Mutual Administrative Assistance in Tax Matters
- Suggestions
  - Requires update – based on updated of the UN MTC
  - References to other Multilateral instruments available

# **Basic Approaches to Tax Treaty Negotiation**

Presented by

**Professor Jon Bischel**

St. Thomas University

# **Mutual Agreement Procedures**

Presented by

**Professor Jon Bischel**

St. Thomas University

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

PRESENTED BY

Professor **Steve Crow**

## **E/sc.18/2011/CRP.11/Add.5**

# **“United Nations Manual for the Negotiation of Bilateral Tax Treaties Between Developed and Developing Countries”**

- TABLE OF CONTENTS**

- PREAMBLE**

- INTRODUCTION**

- COMMENTS**

- IMPROPER USE OF TAX TREATIES**

- TREATMENT OF ISLAMIC FINANCIAL INSTRUMENTS UNDER THE UNITED NATIONS MODEL DOUBLE TAXATION**

- CONVENTION BETWEEN DEVELOPED AND DEVELOPING COUNTRIES**

- PROPOSED TOPICS**

- PREAMBLE**

- A proposed new section to the revised Manual
- To provide an identifiable location for discussion items discussed during the periodic review of the Model that might not have a place in either the Model provisions or Model commentaries.

- INTRODUCTION**

Illuminates the need for a place where items that are not includible in the Model or the Commentaries; but are useful in the treaty process can be presented for review and discussion

One goal of the Special Appendix is to gather and disseminate such information on a timely basis.

A second goal of the Special Appendix is provide a medium that can be enhanced with new information more quickly than can a change be made to either the Model or Commentaries.

- COMMENTS**

- Important to note the examples and discussions presented in the Special Appendix are exemplary in nature only
- Inclusion is based on support from the Committee and observers to include discussions in the Appendix
- Call for suggestion of topics and for suggestions to establish protocols for review and editing of submissions

## •IMPROPER USE OF TREATIES

- History of discussion of topic
- Suggested at the Third meeting of the Committee that the topic is one which can be presented in the Special Appendix
- While collateral issues were discussed in Paragraph 21 of E.c18/2007/CRP 2, the discussion in the Appendix focuses strictly on improper use.
- A definition of improper use of treaties
- Implies the improper application of treaty terms in a manner to obtain unintended benefits or results
- Value in discussion was considered by the Committee to be the help that would be provided in examining various abuse approaches or strategies, and approaches identified as being in current use to deal with improper use

- Approaches Currently In Use to Deal With Improper Use
  - specific legislative anti-abuse rules found in domestic law
  - general legislative anti-abuse rules found in domestic law
  - judicial doctrines that are part of domestic law
  - specific anti-abuse rules found in tax treaties
  - general anti-abuse rules found in tax treaties
  - the interpretation of tax treaty provisions
- Examples of Treaty Abuse Situations
  - UN document E/c.18/2007/CRP2
  - Paragraphs 40 through 104
- Scenarios
  - Dual residence and transfer of residence
  - Treaty Shopping
- Discussion of conflicts



- TREATMENT OF ISLAMIC FINANCIAL INSTRUMENTS UNDER THE UNITED NATIONS MODEL DOUBLE TAXATION CONVENTION BETWEEN DEVELOPED AND DEVELOPING COUNTRIES
- Definition of certain Islamic financial instruments, listed below
- At the Third session of the Committee, a discussion item was taxation of income from Islamic financial instruments
- Working Group stated that “... some language could be included in commentary to provide that the definition of interest...” would include income from different types of Islamic financial interests
- It was suggested during the discussion that while perhaps not appropriate for presentation in the Commentaries, it would be appropriate to present the topical discussion in the Special Appendix
- Information for this discussion item is based on presentation and discussion of document E/c.18/2007/9

- Definition and descriptions of specific documents
  - Musharaka
  - Mudaraba
  - Murabaha
  - Ljara
  - Salam
  - Istisna'a
  - Sukuk
    - Salam sukuk
    - Istisna'a sukuk
    - Musharaka and Mudaraba sukuk
- Not intended to provide either comprehensive discussion of all issues, rather to provide a basic point of reference from which to base the discussion
- Reviewers should consider whether the discussion should include references to economic or legal theory which facilitates interpretation of financial realities
- Reviewers should also consider whether examples such as those in E/c.18/2007/9, paragraphs 69 through 71 should be included here.

## •**PROPOSED TOPICS**

- Schemes for percentage sales and time period determination for sales of real property corporations
- Examine scenarios in which states choose to refuse to furnish information
  - how to handle
  - factors that affect different resolution strategies.