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United Nations Capacity Development Programme
on International Tax Cooperation
Progress Report

Summary

This note provides an update on progress in development and implementation of the United Nations capacity development programme on international tax cooperation under the responsibility of the Financing for Development Office of the United Nations Department of Economic and Social Affairs.

1. Mandate

The United Nations Economic and Social Council (ECOSOC), in its resolution 2012/33, recognized “the work of the Financing for Development Office in developing, within its mandate, a capacity development programme in international tax cooperation aimed at strengthening the capacity of the ministries of finance and the national tax authorities in developing countries to develop more effective and efficient tax systems, which support the desired levels of public and private investment, and to combat tax evasion, and requested the Office, in partnership with other stakeholders, to continue its work in this area.” In 2013, this mandate was reiterated and expanded. Specifically, ECOSOC recognized the progress made by the Financing for Development Office (FfDO) in its work and requested “the Office, in partnership with other stakeholders, to continue its work in this area and to further develop its activities.”

2. Relationship with the Committee

Owing to the fact that FfDO provides secretariat support to the Committee of Experts on International Cooperation in Tax Matters (the Committee), its programme of capacity development on international tax cooperation draws, to a large extent, on the outputs of the Committee with a view to disseminating and operationalizing them as capacity development tools for the benefit of developing countries.

In practice, it means developing training materials/courses and conducting capacity development events based on major outputs of the Committee, such as the 2011 update of the United Nations Model Double Taxation Convention between Developed and Developing Countries (the UN Model) and the 2012 United Nations Practical Manual on Transfer Pricing for Developing Countries (the UN Transfer Pricing Manual).

In addition, FfDO’s capacity development program produces inputs to work of the Committee at the request of the Committee. An example could be the five practical papers on negotiation of tax treaties, which were developed in context of FfDO’s capacity development activities and which will be presented as input to *the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries* during the 9th session of the Committee.

In devising its capacity development programme FfDO also takes full advantage of the unique expertise and networks of the Committee members, who have been providing support to this programme on pro-bono basis. Several Committee members have been involved, in advisory role, in almost every activity up to date and: 1) Contributed to determining the demand in developing countries for relevant capacity development tools; 2) Assisted in assessing what are already available tools and resources; 3) Proposed tools, which needed to be developed in order to address the needs of developing countries; 4) Advised on selection of experts to be contracted for development of the tools; 5) Undertook technical review of the produced materials to ensure that the materials adequately reflect the work of the Committee and take into

account the needs of developing countries; 6) Assisted in identifying participants from developing countries for capacity development events. In the future the Committee members will also be asked to serve as instructors and mentors for FfDO's capacity development events, in their respective regions.

3. Application and negotiation of double tax treaties drawing on the UN Model

The first area of focus of the programme is on strengthening capacity of the ministries of finance and national tax authorities in developing countries to negotiate, administer and interpret tax treaties, drawing on the 2011 version of the UN Model.

Many developing countries lack adequate understanding of the provisions of the UN Model, especially of its new, 2011 version. Moreover, many developing countries 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 or application of tax treaties. To address these knowledge and skills gaps, FfDO is developing a comprehensive set of training materials, including:

- UN Course on Double Tax Treaties;
- UN Capacity Development Programme on Double Tax Treaty Negotiation; and
- UN Capacity Development Programme on Administration of Double Tax Treaties.

a. UN Course on Double Tax Treaties

The *UN Course on Double Tax Treaties* is the most basic capacity development tool of the series, which introduces the fundamentals of tax treaties and provides participants with a good understanding of the UN Model. It covers the recent updates to the UN Model, as well as the similarities with and differences from the OECD Model Convention on Income and on Capital (the "OECD Model"). In addition to analyzing the treaty rules for the allocation of taxing rights between countries over cross-border income, the course deals with treaty provisions for the elimination of international double taxation and administrative provisions aimed at ensuring effective application of tax treaties. The course includes practical examples and case studies to enable participants to gain confidence in applying the knowledge and skills acquired during the course. The course targets officials in the ministries of finance and national tax authorities at various skill levels.

The work on developing the *UN Course on Double Tax Treaties* is in its final stage and the course is expected to be finalized in 2013. A selected group of renowned experts, both from developed and developing countries and representing all the regions of the world, has been contracted to develop power point slides and accompanying text for respective modules of the course. Produced materials have been undergoing technical review by the Committee members in order to ensure that they adequately reflect the needs of developing countries. To date, two technical

reviews were held: (1) on 12-13 October 2012 in Geneva; and (2) on 26-27 January 2013 in Rome. The final technical review will be held on 11-13 December 2013 in New York, after which the course will be finalized. It is expected that full version of the course can be delivered in 4-5 days. The first training event is planned for the first half of 2014. At the later stage, regional plug-ins for the course will be developed to make sure that the course is relevant to the regions and “train-the-trainer” programme will be carried out in order to enable regional experts to teach the course. An on-line version of the course will also be developed and made available to developing countries.

Other activities

In addition, in order to disseminate the 2011 version of the UN Model, as well as to prepare developing countries for the forthcoming *UN Course on Double Tax Treaties*, FfDO, in cooperation with the Italian branch of the International Fiscal Association (IFA), organized a one-day seminar on “International Tax Cooperation for Sustainable Development: the Role of the UN Model Double Taxation Convention” (Rome, Italy, 30 January 2013). Apart from the Italian tax community, the Seminar was attended by tax experts and professionals from developing countries and international and regional organizations of tax administrations.

The seminar was successful in generating a discussion on the role of the UN Model in the context of international tax cooperation for sustainable development. After an introduction on the relationship between international tax cooperation and financing for sustainable development, the main aspects of the UN Model and its recent update were analysed in detail. Moreover, the most significant similarities and divergences between the UN Model and the OECD Model were discussed, particularly as they related to the issue of to what extent a country should forego, under bilateral tax treaties, certain taxing rights, which would be otherwise available to it under domestic law, with a view to avoiding double taxation and encouraging investments. In addition, the Seminar included a panel discussion on current issues in international taxation and the future of international cooperation in tax matters from a developmental perspective.

b. Tax treaty negotiation

On 13-14 December 2012, an expert group meeting on “Tax Treaty Negotiation and Capacity Development” was held in New York. The experts, including mostly members of the Committee, shared their experiences in the area of double tax treaty negotiation, with a focus on the needs of developing countries at different levels of development and with diverse macroeconomic conditions and goals. They also reviewed the existing knowledge on the subject, as well as available materials and capacity development tools, including those developed by the Committee. Then, they determined how and to what extent these resources could be effectively used and needed to be improved or complemented for the purposes of delivering capacity development initiatives in the area.

In addition, the experts put forward proposals on content and implementation of such capacity development activities. Specifically, it was decided that instead of

developing its own course on tax treaty negotiation, the United Nations should join forces with the OECD, which already has a very comprehensive training programme in this area. The role of the UN will be to ensure that the programme is offered to a wide spectrum of developing countries, and to provide inputs to the materials, which relate to the UN Model. The first UN-OECD practical workshop on negotiation of double tax treaties is already under preparation and will be held on 19-23 May 2014 in Vienna. FfDO will be seeking nominations from developing countries to attend this event.

It was also decided that a number of practical papers needed to be developed on selected topics in negotiation of tax treaties, namely: 1) Why negotiate tax treaties; 2) Tax Treaty Policy Framework and Country Model; 3) Preparing for Tax Treaty Negotiation; 4) How to Conduct Tax Treaty Negotiations; and 5) Post-negotiation Activities. Accordingly, FfDO contracted two consultants, namely Ms. Ariane Pickering, Former Chief Tax Treaty Negotiator, Australian Tax Office and Treasury, Australia; and Mr. Odd Hengsle, Former Director-General, Tax Treaties and International Tax Affairs, Ministry of Finance, Norway who drafted the above-mentioned papers. These papers were discussed and revised during the Rome and New York meetings held as part of the project undertaken jointly by FfDO and the International Tax Compact (ITC), which is described below. These papers are being presented to the Committee during its 9th session in Geneva as possible input to the *UN Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries* (see E/C.18/2013/CRP.7). They will also be available on FfDO website as capacity development tools

c. Administration of double tax treaties

In parallel, FfDO and ITC launched a joint project, entitled “Strengthening the capacity of ministries of finance and national tax authorities in developing countries to effectively negotiate, interpret and administer tax treaties”. The financial contribution for the project has been provided by the German Federal Ministry for Economic Development and Cooperation (BMZ). The ultimate goal of this project was to support the development of a comprehensive set of capacity building tools to be used in developing countries, which are demand driven, reflect adequately the needs and level of development of these countries, and are not a duplication of any existing and available tools, but rather a useful complement to them.

As the first step, two simultaneous technical meetings were held in Rome, Italy, on 28-29 January 2013, with the participation of 25 representatives of the national tax authorities and ministries of finance from developing countries, namely: Bangladesh, Barbados, Cambodia, Costa Rica, Dominican Republic, Ecuador, Georgia, Ghana, Kazakhstan, Lao People’s Democratic Republic, Lesotho, Malawi, Morocco, Myanmar, Namibia, Panama, Peru, Republic of Moldova, Senegal, Thailand, United Republic of Tanzania, Uruguay and Zimbabwe.

The discussion on the administration and negotiation of tax treaties, held within several thematic sessions, was facilitated by selected members of the Committee and representatives of several international and regional organizations. National experts

were frank in sharing their countries' experiences and concerns. The discussion contributed to: (i) identifying the needs of developing countries in the area of tax treaty administration and negotiation and taking stock of the available capacity development tools at their disposal; and (ii) determining the actual skills gaps and challenges faced by developing countries in administering and negotiating 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>.

One practical outcome of the Rome meeting were the “terms of reference” for a series of technical papers, which would address the specific issues in the administration of tax treaties of interest and concern to developing countries. These terms of reference were identified and agreed upon by the national participants in the meeting.

Accordingly, the draft papers were prepared by several international tax experts and underwent a peer review. These papers were then presented by the authors for discussion during the technical meeting, held in New York, on 30-31 May 2013, with the participation of 32 representatives of the national tax authorities and ministries of finance of developing countries, namely: Azerbaijan, Bangladesh, Barbados, Cambodia, Cameroon, Colombia, Costa Rica, Ecuador, Egypt, Georgia, Ghana, Indonesia, Malawi, Morocco, Myanmar, Nepal, Nigeria, Papua New Guinea, Philippines, Republic of Moldova, Rwanda, Senegal, Thailand, Uganda, Ukraine, Uruguay, Viet Nam, Zambia, and Zimbabwe.

Each paper was discussed in a separate session, which was chaired by a member of the Committee or by a representative of the relevant international or regional organization. Following a presentation by the author, a designated lead discussant representing a developing country was invited to comment on the paper, focusing on the specific experience of their country. This was followed by an open exchange of views among all the participants. During the discussion, there were many practical suggestions on how the papers would better meet the realities of developing countries' tax administrations. The South-South sharing aspect emerged very prominently. The participants from the developing countries engaged in an intense discussion among themselves, offering advice and sharing best practices to countries with less experience 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.

Following the meeting, the authors revised their papers taking into account feedback received from other experts. The papers were then finalized and edited to comprise this *UN Handbook on Selected Issues in Administration of Double Tax Treaties for Developing Countries*. The *UN Handbook* was officially launched and distributed at the OECD Meeting with non-OECD Economies and International Organizations preceding the 18th Annual Tax Treaty Meeting, which was held in Paris, on 25 September 2013.

The UN Handbook is available at http://www.un.org/esa/ffd/documents/UN_Handbook_DTT_Admin.pdf. Printed copies will also be available to developing countries at the 9th session of the Committee.

4. Practical issues in transfer pricing for developing countries

The second area of focus of the capacity development programme is on strengthening the capacity of developing countries to apply the transfer pricing analysis and, in particular, the arm's length principle to transactions between associated enterprises of multinational groups. Many developing countries are vulnerable to abuse and revenue loss from tax evasion in the complex area of transfer pricing, because their capacities and resources in this area are often limited and insufficient.

The trigger for launching a capacity development project in this area was the adoption and launch of the UN Transfer Practical Manual in October 2012 and May 2013 respectively.

The capacity development project aims at developing a basic *UN Course on Practical Issues in Transfer Pricing for Developing Countries* based on the UN Transfer Practical Manual.

The Course will follow the structure of the Manual as its modules will correspond to its chapters of the Manual. Modules will be authored by several experts, most of whom have already been identified.

The produced materials will undergo technical review to ensure that they adequately reflect the content of the UN Transfer Pricing Manual and take into account the needs of developing countries. The review function will be performed by a small steering group headed by Mr. Stig Sollund, the Coordinator of the Committee's Subcommittee on Transfer Pricing, which carried out the work on the Manual. In addition to Mr. Sollund, it will comprise 3 other active members of the Subcommittee representing different regions of the world.

A technical meeting will be held in December 2013 in New York to review and discuss sample modules of the course, which will be prepared by authors. This meeting will be held with participation of several tax officials from developing countries involved in the transfer pricing area as the potential recipients of the course, in order to make it truly demand-driven.

It is expected that all modules of the course be developed, reviewed and finalized into a coherent course during 2014.

5. Tax administration

In addition, FfDO is implementing a joint project with the Inter-American Center of Tax Administrations (CIAT), entitled "Strengthening capacity of national tax administrations of developing countries in Latin America to reduce Tax Transaction

Costs and thereby maximize their tax revenues”. Tax Transaction Costs (TTCs) comprise the administrative costs incurred by the Government in collecting tax revenues (so called, collection costs), and the burden to taxpayers in complying with tax laws (so called, compliance costs). As such, these costs impact on the ability of countries to attract investment and on the amount of tax revenues available for development funding.

The project focuses on the development of an empirical methodology aimed at measuring and assessing TTCs, with a view to reducing them and, as a result, increasing tax revenues. A first draft of this methodology has been presented and reviewed during a workshop (Panama City, Panama, 27-28 February and 1 March 2013), which was attended by representatives of national tax authorities from ten Latin American countries, namely Brazil, Chile, Costa Rica, Dominican Republic, Ecuador, Guatemala, Panama, Paraguay, Peru and Uruguay.

The methodology was then tested in two pilot countries (Costa Rica and Uruguay) in accordance with the project work plan. In addition, Brazil is currently testing the methodology in its own system and at its own expense. Moreover, other CIAT member countries expressed interest in this methodology and it is foreseeable that, after the conclusion of the current project, there will be a demand for follow-up activities/projects aimed at implementing the methodology in other countries in Latin America and, eventually, in other regions. A final event to discuss results of the project on the ground will take place on 20-21 November 2013 in Panama.
