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**UN Capacity Development Programme on
International Tax Cooperation**

**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

In its resolutions 2013/24 and 2014/12, the Economic and Social Council (ECOSOC) reiterated and expanded the mandate given to the Financing for Development Office (FfDO) in the area of capacity development. The Council recognized the progress made by FfDO in its work in developing, within its mandate, a capacity development programme in international tax cooperation aimed at strengthening the capacity of the ministries of finance and 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 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 were 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.

During its 9th session (Geneva, 21-25 October 2014), the Committee decided to set up an Advisory Group on Capacity Development comprising 7 members of the Committee and mandated it to make recommendations on capacity-building and the provision of technical assistance to developing countries in the area of international cooperation in tax matters. To this end, the Advisory Group is to engage with the UN capacity development programme on international tax cooperation. The Group is to ensure that the activities of the above programme adequately reflect the work of the Committee, take into account the needs of developing countries, especially the less developed ones, and do not duplicate but effectively complement existing tools and resources at the disposal of developing countries. The Group will also assess and review progress made in the implementation of the programme on an annual basis, on the occasion of the session of the Committee.

Up to date the Advisory Group held two meetings: in Geneva on 24 October 2014 and in New York on 5 June 2014. On these occasions, FfDO reported to the Group on progress made in the implementation of its capacity development programme and consulted the Group on its new projects and proposed areas of activities.

3. UN Course on Double Tax Treaties

Final technical review of the course modules

The last batch of draft modules to comprise the “UN Course on Double Tax Treaties” based on the 2011 UN Model was reviewed during the final technical review (New York, 11-13 December 2013) with the participation of 2 members of the Committee (Armando Lara Yaffar and Cezary Krysiak), 3 authors of the course materials and 3 representatives of relevant authorities of developing countries in Latin America. Following the meeting, the core modules of the course were finalized.

One session of the meeting was dedicated to planning the first pilot event utilizing the course material, to be delivered for the Latin America and Caribbean region. Specific suggestions were made on how to make sure that the course has the greatest possible impact on this multi-language audience, including securing simultaneous interpretation, translation of the course material to Spanish and preparing glossary of technical terms in both languages. Great demand for this course in the region was reiterated. Accordingly, the course was translated into Spanish and is now available in two languages.

1st delivery of the UN Course on Double Tax Treaties (Panama City, Panama, 10-14 March 2014)

The course was delivered, for the first time, in Panama City, Panama, on 10-14 March, with the participation of 30 treaty negotiators and administrators from 16 developing countries in Latin America and the Caribbean (Argentina, Bolivia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad & Tobago, and Uruguay). The Inter-American Center of Tax Administrations (CIAT) provided assistance in organizing the course.

The course was delivered in a very practical way, emphasizing South-South sharing. It included practical examples and comprehensive case studies, which were discussed by the participants in small groups. In addition to instruction provided by world-renowned experts, namely Prof. Brian Arnold, Senior Adviser, Canadian Tax Foundation; and Prof. Hugh Ault, Professor Emeritus, Boston College Law School, regional experts provided practical insights and relevant examples from their country practices throughout the course. Together with FfDO staff they also led discussion of case studies and facilitated sharing of experiences among course participants. The course was taught in English and Spanish with simultaneous interpretation.

Participants took part in discussions enthusiastically, actively engaged in South-South sharing and repeatedly expressed their gratitude for providing them with the opportunity to participate in the course. In their responses to a written questionnaire, 22 out of 30 participants graded overall value of the course as excellent (on a 5-step scale: excellent, very good, good, satisfactory and not satisfactory) and 8 out of 30 as very good.

Next steps

As the next steps, FfDO is foreseeing delivering the course in Caribbean region and in Asia, developing regional versions of the Course to make sure that it is as relevant to the regions as

possible and carrying out a “train-the-trainer” programme in order to enable regional experts to deliver it.

4. Negotiation of tax treaties

Papers on Selected Topics in Negotiations of Tax Treaties for Developing Countries

FfDO edited and finalized the five practical papers on negotiations of tax treaties, drafts of which were presented to the Committee during its 9th session, namely: (1) Why negotiate tax treaties and (2) Tax Treaty Policy Framework and Country Model by Ariane Pickering; and (3) Preparing for Tax Treaty Negotiation, (4) How to Conduct Tax Treaty Negotiations, and (5) Post-negotiation Activities by Odd Hengsle.

The papers were published as a UN publication, which was launched during the special meeting of ECOSOC on International Tax Cooperation (New York, 5 June, 2014) and is available http://www.un.org/esa/ffd/documents/Papers_TTN.pdf. The summary of the above papers will be included in the new *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries*, as agreed by the Subcommittee on Negotiation of Tax Treaties - Practical Issues.

1st UN-OECD Practical Workshop on Negotiation of Tax Treaties

Following the recommendation by Committee members not to develop a separate UN course on negotiation of double tax treaties but rather to join forces with the Organisation for Economic Co-operation and Development (OECD) in delivering their well-established event on this topic, the 1st UN-OECD Practical Workshop on Negotiation of Tax Treaties was held in Vienna, Austria on 19-23 May 2014.

The comprehensive training course for tax treaty negotiators was based on both the UN Model and the OECD Model and conducted in the form of simulated tax treaty negotiation between developed and developing country in six teams led by experienced treaty negotiators. The instructors included: David Partington, OECD Secretariat; Ron van der Merwe, South Africa; Carmel Peters, New Zealand; Odd Hengsle, Norway; Daniel Lüthi, Switzerland; and René Monfrooij, the Netherlands. The workshop was attended by 26 treaty negotiators from 22 developing countries (Bangladesh, Bahamas, Bolivia, Cambodia, Cameroon, Costa Rica, Dominican Republic, Ethiopia, Ghana, Honduras, Kenya, Lesotho, Nicaragua, Pakistan, Panama, Paraguay, Peru, Philippines, Rwanda, Samoa, Sri Lanka and Zambia).

Participants took part in discussions enthusiastically, actively engaged in South-South sharing and repeatedly expressed their gratitude for providing them with the opportunity to participate in the workshop. In their responses to a written questionnaire, 79% of the respondents graded overall value of the course as excellent (on a 5-step scale: excellent, very good, good, satisfactory and not satisfactory) and 21% as very good.

The Netherlands provided travel support for 8 participants.

UN Manual on Negotiation of Double Tax Treaties between Developed and Developing Countries

FfDO is providing support to the Subcommittee on Negotiation of Tax Treaties - Practical Issues, which is mandated to develop a practical manual on negotiation of bilateral tax treaties and present it for adoption to the Committee at its 11th session in 2015. A separate report on the work of that Subcommittee is included in E/C.18/2014/CRP.6

5. Administration of tax treaties

Last year, FfDO concluded its joint project with the International Tax Compact (ITC), which resulted in the *UN Handbook on Selected Issues in Administration of Double Tax Treaties for Developing Countries*, which is available at http://www.un.org/esa/ffd/documents/UN_Handbook_DTT_Admin.pdf.

The Handbook was launched on 25 September 2013 in Paris, during the OECD Meeting with non-OECD Economies and International Organizations preceding the 18th Annual Tax Treaty Meeting. In follow up to the above project, FfDO and ITC will organize a 3-day capacity-development workshop, which will be held in Berlin, Germany, during the last quarter of 2015, with the participation of up to 30 national officials from developing countries in charge of administration of tax treaties. The first day of the workshop will provide participants with an overview of the issues covered by the UN Handbook. Days 2 and 3 will focus on selected chapters of the UN Handbook, which lend themselves to more in-depth hands-on analysis and which are subject of particular interest among developing countries.

In separate but related development, CIAT translated the UN Handbook into Spanish, which will be published following the editorial work.

6. Protecting tax base of developing countries

FfDO is carrying out a project on “Tax Base Protection for Developing Countries”, which focuses on strengthening the capacity of developing countries to increase their potential for domestic revenue mobilization through enhancing their ability to effectively protect and broaden their tax base. The work of the project covers a number of topics of particular interest and relevance to developing countries, at their stage of capacity development, with a view to supporting them in: (1) Engaging and effectively participating in relevant decision-making processes; (2) Assessing relevance and workability of options to protect and broaden their tax base; and (3) Successfully implementing the most suitable options, thus fully benefiting from them.

The project draws upon and contributes to the work of the Committee and its relevant Subcommittees, including the Subcommittee on Base Erosion and Profit Shifting (BEPS), as well as the work of the OECD project on BEPS, as appropriate, with a view to complementing that work from a capacity development angle. The final outcome of the project will be a UN handbook, comprising a collection of papers developed in a novel demand-driven manner taking into account inputs from developing countries.

Following consultation with members of the Committee, representatives of developing countries and other experts, which resulted in the preliminary selection of topics, FfDO recruited 10 consultants to develop draft papers as follows:

- (1) Protecting the tax base of developing countries: An overview, by Mr. Hugh J. Ault, Professor Emeritus of Tax Law, Boston College Law School; and Mr. Brian J. Arnold, Senior Adviser, Canadian Tax Foundation;
- (2) The taxation of income from services, by Mr. Brian J. Arnold, Senior Adviser, Canadian Tax Foundation;
- (3) Tax incentives and tax base protection issues, by Mr. Eric M. Zolt, Professor of Law, UCLA School of Law;
- (4) Taxation of capital gains, by Mr. Wei Cui, Associate Professor, University of British Columbia Faculty of Law;
- (5) Preventing tax treaty abuse, by Mr. Graeme Cooper, Professor of Tax Law, University of Sydney;
- (6) Neutralizing effects of hybrid mismatch arrangements, by Mr. Peter Harris, Professor, Academic Division, University of Cambridge;
- (7) Limiting interest deductions, by Mr. Peter Barnes, Senior Lecturing Fellow, Duke University School of Law;
- (8) Preventing the artificial avoidance of PE status, by Mr. Adolfo Martín Jiménez, Professor of Tax Law, University of Cádiz;
- (9) Protecting the tax base in the digital economy, Jinyan Li, Professor of Tax Law, Osgoode Hall Law School, York University;
- (10) Transparency and disclosure, by Ms. Diane Ring, Professor of Tax Law, Boston College Law School.

These papers systematize and summarize relevant information and materials, including those developed and being developed by the Committee and its relevant Subcommittees, as well as within the OECD project on BEPS. They aim at simplifying those materials, with a view to providing information geared towards the needs of developing countries, including through the provision of practical examples tailored to the realities of these countries.

To this end, special efforts are made, throughout the project to seek inputs and feedback from developing countries and other relevant stakeholders, including international and regional organizations. Up to date, two workshops were held with the participation of representatives of developing countries with a view to reviewing and discussing the draft papers.

The 1st workshop on “Tax Base Protection for Developing Countries” was held in New York on 4 June 2014 with the participation of tax officials from 15 developing countries (Azerbaijan, Bahamas, Brazil, Chile, Costa Rica, Ecuador, Ghana, Morocco, Nigeria, Senegal, Serbia, Thailand, Uruguay, Zambia and Zimbabwe). The workshop was also attended by 11 members of the Committee, 2 representatives of CIAT, 3 representatives of OECD and 2 representatives of UN-ECLAC.

This workshop provided a broad overview and update on the UN and OECD work in this area and then focused on the following topics: (1) Preventing tax treaty abuse; (2) Taxation of services (including taxation of fees for technical services); (3) Protecting the tax base in the digital economy; and (4) Tax incentives and tax base protection issues. It featured intense,

interactive discussions of major concerns for developing countries with a view of ensuring that these are taken into account by the draft papers.

2nd workshop on the same topic was organized by FfDO, in cooperation with the OECD Center for Tax Policy and Administration, on 23 September 2014 at the OECD Headquarters in Paris, France. The workshop was attended by 15 tax officials from 12 developing countries (Argentina, Bangladesh, Dominican Republic, Ecuador, Indonesia, Lesotho, Malaysia, Philippines, Viet Nam, Uganda, Uruguay and Zimbabwe). The workshop was also attended by 3 members of the Committee, 3 representatives of the African Tax Administration Forum (ATAF), representative of ITC and 5 representatives of the OECD.

The Paris workshop focused on the following topics: (1) Preventing the artificial avoidance of PE status; (2) Neutralizing effects of hybrid mismatch arrangements; (3) Limiting interest deductions; (4) Taxation of capital gains; (5) Preventing tax treaty abuse; and (6) Transparency and disclosure. Nine experts from academia presented their draft papers on these topics, followed by parallel discussions in small groups comprising representatives of developing countries, international and regional organizations and other experts, with a view of ensuring that the papers fully take into account the challenges faced by developing countries in these areas. Participants took part in discussions enthusiastically and actively engaged in South-South sharing.

Participants of the workshop were also invited to attend the OECD meeting with non-OECD Economies and International Organizations, which was held on 24 September 2014 at the OECD Headquarters in Paris. During that meeting, the UN consultants, who drafted papers for the UN workshop, reported on the discussions at the workshop and other relevant UN work in the areas of: (a) wasteful tax incentives designed to attract investment; (b) indirect transfers of assets; and (c) excessive payments to foreign affiliated companies in respect of interest, service charges, management and technical fees and royalties. On 25-26 September 2014, during the OECD Global Forum on Tax Treaties, the UN consultants reported on UN work in the areas of: (a) preventing treaty abuse; (b) preventing the artificial avoidance of PE status; and (c) making dispute resolution mechanisms more effective. These UN inputs to the OECD meetings served the purpose of providing the perspective of developing countries and inputting into the OECD project on BEPS.

The authors will now revise their papers taking into account the feedback received from developing countries. Following that the papers will be edited and finalized to comprise a coherent publication, which will be issued in March/April 2015 and subsequently used to deliver technical cooperation activities at the country level. It will also serve as concrete input to the preparatory process of the 3rd Conference on Financing for Development (Addis Ababa, Ethiopia, 13-16 July 2015) and thus to the financing framework for the post-2015 development agenda, in the area of domestic resource mobilization.

7. Transfer Pricing

UN Course on Practical Issues in Transfer Pricing for Developing Countries

The first technical review by the Steering Group of the sample modules to comprise the “UN Course on Practical Issues in Transfer Pricing for Developing Countries”, based on the UN

Transfer Pricing Manual was held in New York, on 16-18 December 2013. The Steering Group's mandate is to ensure that the materials adequately reflect content of the Manual and the needs of developing countries. The participants in the meeting included 4 authors, 4 members of the Steering Group (Stig Sollund, T.P. Ostwal, Nishana Gosai and Jose Madariaga Montes), 6 representatives of relevant authorities from developing countries and a representative of the OECD. During the meeting, two sample modules of the course, namely: "Introduction to Transfer Pricing" and "Comparability Analysis" were presented by respective authors. Following their presentations designated country representatives served as "Discussants" and gave short presentations providing comments with a view to ensuring that the proposed materials adequately reflected needs and priorities of their countries. The remaining authors, who were just beginning their work on the respective modules provided overview of their proposed modules and raised some issues for discussion.

The meeting featured very interactive and vibrant discussion among all participants. Many practical suggestions were made on how to improve the materials and make them more relevant to the realities of developing countries. South-South sharing aspect emerged very prominently at the meeting. All participants expressed their great interest in further work on the course and reconfirmed demand in their regions for the UN capacity development activities in the area of transfer pricing.

The second ½-day technical meeting was held in New York on 11 April, 2014 during which the course module on "Transfer pricing methods" was reviewed.

The last technical meeting to review the remaining modules of the course will take place on 10-12 December in Panama City, Panama with the participation of the members of the Steering Group, all authors of the course modules and 12 representatives of developing countries. CIAT will provide assistance in organizing the meeting. Following this meeting, all modules of the course will be finalized and used to deliver capacity development initiatives.

In addition, in response to demand from developing countries, an additional 1-day introductory module on transfer pricing is being developed by a consultant to address the needs of officials with no experience in transfer pricing. This module might be delivered as a prerequisite to the UN Course in order to bring the participants up to speed and enable them to fully benefit from the UN Course. However, it could also serve as a self-standing general introduction to transfer pricing. A pilot event utilizing this introductory module will be delivered back-to-back with the technical meeting in Panama City, Panama on 13 December 2014.

8. Tax administration

Project on "Measuring Tax Transaction Costs in Small and Medium Enterprises"

FfDO completed all the activities of the project aimed at strengthening the capacity of national tax authorities of developing countries in Latin America to measure tax transaction costs (TTCs) in small and medium enterprises. This project, which was implemented in cooperation with CIAT, focused on the development and pilot testing of an empirical methodology based on a set

of key indicators of TTCs, which could be applied by tax authorities on an ongoing basis to measure and assess such costs with a view to targeting reforms to reduce them.

On 20-21 November 2013, a workshop was held in Panama City, Panama, to discuss and review the above-mentioned methodology, as well as the results of its pilot implementation in two countries (Costa Rica and Uruguay), with representatives from national tax authorities of 13 Latin American countries. In follow up to this meeting, the methodology was revised and fine-tuned to take into account the feedback and comments provided by the participants.

This project raised significant interest in Latin America. In addition to the pilot countries, other countries in the region committed to implement initiatives aimed at measuring and assessing TTCs with a view to reducing them. Brazil joined the project on a self-funded basis and is currently testing the application of the proposed methodology to measure TTCs in its own system. Moreover, Ecuador, Dominican Republic, Guatemala and Panama expressed their interest in undertaking work on TTCs in the near future as part of their action plans.

In order to further disseminate the results of the project, a final publication entitled “*Measuring Tax Transaction Costs in Small and Medium Enterprises*” was issued and is available in English at http://www.un.org/esa/ffd/documents/TTC_Eng.pdf and in Spanish at http://www.un.org/esa/ffd/documents/TTC_Sp.pdf. It provides national tax administrations in developing countries with a methodology that allows them to identify and measure TTCs for taxpayers and tax institutions, thereby assisting in identifying possible reforms aimed at reducing these costs with a view to fostering greater tax compliance. This could lead to more effective and efficient tax systems supporting the desired level of investment, and result in sustainable increase in government revenues available to fund countries’ development goals.
