



Group Meeting on “Capacity Building on Tax Treaty Administration”
Rome, Italy, 28-29 January 2013
 (IFAD Headquarters)

TENTATIVE ANNOTATED PROGRAMME

Day 1

<p>9:30 - 10:20 am (joint session with the parallel meeting on “Capacity Building on Tax Treaty Negotiation”)</p>	<p>Opening session (Oval Room, S120, (-1) Floor)</p> <p>Welcoming remarks</p> <p>Mr. Alexander Trepelkov, Director, Financing for Development Office, Department of Economic and Social Affairs, United Nations</p> <p>Mr. Roland von Frankenhurst, Head of Sector Project, International Tax Compact (ITC)</p> <p>Mr. Wolfgang Lasars, Director, International Tax Section, Federal Ministry of Finance, Germany; Member of the UN Committee of Experts on International Cooperation in Tax Matters</p> <p>Overview of the UN Capacity Development Programme in International Tax Cooperation and the Joint UN-ITC Project</p> <p>Ms. Dominika Halka and Mr. Harry Tonino, Economic Affairs Officers, Financing for Development Office, Department of Economic and Social Affairs, United Nations</p>
<p>10:20 - 11:35 am</p>	<p>Overview of Major Issues (Room C500, 5th Floor)</p> <p>Chair: Mr. Alexander Trepelkov, Director, Financing for Development Office, Department of Economic and Social Affairs, United Nations</p> <p>Lead Discussant: Prof. Hugh Ault, Professor Emeritus, Boston College Law School</p> <p><i>Round-table discussion with interventions by participants</i></p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Main points for discussion:</p> <ul style="list-style-type: none"> ▪ <i>Giving effect to the provisions of tax treaties</i> <ul style="list-style-type: none"> • Interaction between tax treaties and domestic law - general aspects • Provisions of bilateral treaties concerning implementation issues <ul style="list-style-type: none"> ○ Articles 9(2), 10(2), 11(2), 24 (connected requirements), 25, 26, 27 <ul style="list-style-type: none"> - Do your tax treaties contain rules of application similar to/different from the above provisions? - Has your country entered into competent-authority agreements concerning the application of a treaty? • Implementation by general rules - legislative or administrative <ul style="list-style-type: none"> ○ What are the rules in your county for the application of tax treaties? <ul style="list-style-type: none"> - Are the rules legislative or administrative? - Are the rules part of the tax law or administrative law? - Are the rules the same for all tax treaties and all types of income? • Relationship to methods of assessment and collection: self assessment, assessment by the tax authorities, withholding <ul style="list-style-type: none"> ○ What method of assessment does your country use to establish a taxpayers’ liability and what are the rules for claiming treaty benefits? ○ Who has the burden of proof with respect to claims for treaty benefits? ○ Does your country have time limits on claims for treaty benefits? ▪ <i>Organizational aspects of allocating responsibility to government officials for tax treaty benefits</i> <ul style="list-style-type: none"> • Which government officials have responsibility for applying the provisions of tax treaties (e.g., local or head office)? </div>

	<ul style="list-style-type: none"> • Are these officials also responsible for negotiating tax treaties and international tax issues generally? • What are their qualifications and do they receive ongoing training? ▪ <i>Certifications from foreign tax authorities</i> <ul style="list-style-type: none"> • Does your country require certifications from the tax authority of the other state as a condition for treaty benefits? • What are the relevant requirements/formalities? ▪ <i>Publication of guidance concerning the application of tax treaties and the use of forms</i> <ul style="list-style-type: none"> • To what extent do your country's tax authorities provide public guidance concerning the operation of tax treaties? <ul style="list-style-type: none"> ○ In what format is the guidance provided? ○ To what extent are forms used for claiming treaty benefits? ○ To what extent do taxpayers have access to the tax authorities for information on the application of tax treaties? ○ Are advance rulings available?
11:35 - 11:50 am	<i>Coffee Break</i>
11:50 - 1:15 pm	<p>Taxation of Non-residents (Room C500, 5th Floor)</p> <p>Chair: Mr. Mansor Hassan (Malaysia), Member of the UN Committee of Experts on International Cooperation in Tax Matters</p> <p>Lead Discussant: Mr. Michael Lennard, Chief, International Tax Cooperation Section, Financing for Development Office, Department of Economic and Social Affairs, United Nations</p> <p><i>Round-table discussion with interventions by participants</i></p> <div style="border: 1px solid black; padding: 5px;"> <p>Main points for discussion:</p> <ul style="list-style-type: none"> ▪ <i>Ensuring compliance with domestic law by non-residents</i> <ul style="list-style-type: none"> • Taxpayer identification numbers <ul style="list-style-type: none"> ○ Does your country use taxpayer identification numbers (TINs) for residents/non-residents? ○ If yes, what are the relevant requirements/formalities? • Registration requirements for non-residents <ul style="list-style-type: none"> ○ Are non-residents required to register if they carry on business or earn income in your country? ○ If yes, what are the relevant requirements/formalities? • Appointment of local representatives or agents <ul style="list-style-type: none"> ○ Are non-residents required to appoint a domestic agent or representative for domestic tax purposes? ○ If yes, what are the relevant requirements/formalities? ▪ <i>Impact of tax treaties</i> <ul style="list-style-type: none"> • Procedures for claiming treaty benefits under various methods of assessment and collection • Information gathering <ul style="list-style-type: none"> ○ Does your country have the necessary powers to gather information and investigate claims for treaty benefits? ○ To what extent does your country use the exchange-of-information provision in its treaties? • Assistance in collection <ul style="list-style-type: none"> ○ Does your country have assistance-in-collection articles in its treaties? ○ Does your country have any experience with the use of such articles? • Non-discrimination <ul style="list-style-type: none"> ○ How does your country deal with claims of discrimination under Art. 24(1) or (3)? • Anti-avoidance rules • Time limits • Burden of proof </div>
1:15 - 2:45 pm	<i>Lunch</i>

<p>2:45 - 3:45 pm</p>	<p><i>Persons Qualifying for the Benefits of Tax Treaties</i> (Room C500, 5th Floor) Chair: Prof. Hugh Ault, Professor Emeritus, Boston College Law School Lead Discussant: Ms. Joanna Wheeler, Senior Principal, International Bureau of Fiscal Documentation (IBFD) <i>Round-table discussion with interventions by participants</i></p> <div style="border: 1px solid black; padding: 5px;"> <p>Main points for discussion:</p> <ul style="list-style-type: none"> ▪ <i>Persons qualifying for treaty benefits</i> <ul style="list-style-type: none"> • Types of persons (companies, individuals, associations, etc.) • Identification numbers and registration requirements ▪ <i>Residence</i> <ul style="list-style-type: none"> • Liability to tax • Criteria for liability • Tiebreaker provisions • Individuals • Other persons • LOB articles • Treaty articles for which no residence is required ▪ <i>The income for which treaty protection is claimed</i> <ul style="list-style-type: none"> • Derived by, paid to, etc. • Beneficial ownership • Relationship with “derived by”, etc. • Meaning of the term • Purpose of the term and relationship with domestic anti-avoidance law • Conduit structures ▪ <i>Special cases</i> <ul style="list-style-type: none"> • Exempt entities (pension funds) • Partnerships • Transparent/hybrid entities • Trusts and trustees • CIVs • Permanent establishments (triangular cases) </div>
<p>3:45 - 4:00 pm</p>	<p><i>Coffee Break</i></p>
<p>4:00 - 5:00 pm</p>	<p><i>Taxation of Residents on Foreign Source Income</i> (Room C500, 5th Floor) Chair: Mr. Mansor Hassan (Malaysia), Member of the UN Committee of Experts on International Cooperation in Tax Matters Lead Discussant: Prof. Hugh Ault, Professor Emeritus, Boston College Law School <i>Round-table discussion with interventions by participants</i></p> <div style="border: 1px solid black; padding: 5px;"> <p>Main points for discussion:</p> <ul style="list-style-type: none"> ▪ <i>Impact of tax treaties</i> <ul style="list-style-type: none"> • How does your country determine residence for purposes of a treaty, especially where the tie-breaker rules apply? ▪ <i>Elimination of double taxation</i> <ul style="list-style-type: none"> • What is the relationship between the relief provided under your domestic law for international double taxation and the relief provided under your tax treaties? • Is relief under the treaty subject to the procedural requirements of domestic law? ▪ <i>Exemption method</i> <ul style="list-style-type: none"> • If your country uses the exemption method, what are the procedural requirements, if any, for claiming exemption? Does exemption under a treaty eliminate the need to file a tax return? • Is the exempt income taken into account to establish the rate of tax (exemption with progression)? If so, how is the necessary information obtained and verified? ▪ <i>Credit method</i> <ul style="list-style-type: none"> • If your country uses the credit method, what type of proof does your country require that the foreign tax has been paid? ▪ <i>Information gathering</i> </div>

	<ul style="list-style-type: none"> ▪ <i>Anti-avoidance rules</i> ▪ <i>Non-discrimination</i> <ul style="list-style-type: none"> • How does your country deal with claims of discrimination under Art. 24(4) or (5)? • Do the rules for claiming relief from double taxation differ from treaty to treaty? ▪ <i>Time limits</i>
<p>5:00 - 5:30 pm (joint session with the parallel meeting on “Capacity Building on Tax Treaty Negotiation”)</p>	<p><i>Sharing Regional Experiences and Perspectives</i> (Oval Room, S120, (-1) Floor) Chair: Mr. Alexander Trepelkov, Director, Financing for Development Office, Department of Economic and Social Affairs, United Nations Speaker 1: Mr. Miguel Pecho, Director of Tax Studies and Research, Inter-American Center of Tax Administrations (CIAT) Speaker 2: Ms. Elizabeth Storbeck, Coordinator of the Working Group on Exchange of Information and Tax Treaties, African Tax Administration Forum (ATAF) Speaker 3: Mr. Mansor Hassan, The Commonwealth Association of Tax Administrators, Member of the UN Committee of Experts on International Cooperation in Tax Matters <i>Questions & Answers</i></p>

Day 2

<p>9:30 - 10:45 am</p>	<p><i>Taxation of Non-residents on Business Profits</i> (Room C500, 5th Floor) Chair: Mr. Mansor Hassan (Malaysia), Member of the UN Committee of Experts on International Cooperation in Tax Matters Lead Discussant: Prof. Jinyan Li, Professor of Tax Law, Osgoode Hall Law School, York University, Canada <i>Round-table discussion with interventions by participants</i></p> <div style="border: 1px solid black; padding: 5px;"> <p>Main points for discussion:</p> <ul style="list-style-type: none"> ▪ <i>Permanent establishment and fixed base determinations</i> <ul style="list-style-type: none"> • How does your country determine if a non-resident has therein: <ul style="list-style-type: none"> ○ A fixed place of business? ○ A fixed base? ○ An Agent? ○ A construction site? • Other special deeming rules <ul style="list-style-type: none"> ○ Insurance, services PEs, other • How does your country determine whether a non-resident carries on business, furnishes services, or stays in your country for the required time? • What, if any, obligations to withhold tax, etc., are imposed on non-residents with a PE or fixed base in your country? ▪ <i>Domestic rules for taxing net profits attributable to a PE</i> <ul style="list-style-type: none"> • How does your country determine the profits attributable to a PE or fixed base? <ul style="list-style-type: none"> ○ Transfer pricing ○ Deductibility of expenses, base erosion ○ Thin capitalization ○ Source rules ○ Non-discrimination <ul style="list-style-type: none"> - Are the rules for non-residents the same as for residents? If not, how do they differ? E.g. does your country deny any expenses incurred by non-residents? • What types of information (books and records) are non-residents required to maintain? • Time limits • Burden of proof </div>
<p>10:45 - 11:00 am</p>	<p><i>Coffee Break</i></p>

<p>11:00 - 12:00 pm</p>	<p><i>Taxation of Non-resident Service Providers</i> (Room C500, 5th Floor) Chair: Prof. Hugh Ault, Professor Emeritus, Boston College Law School Lead Discussant: Ms. Ariane Pickering, Former Chief Tax Treaty Negotiator, Australian Department of the Treasury <i>Round-table discussion with interventions by participants</i></p> <div style="border: 1px solid black; padding: 5px;"> <p>Main points for discussion:</p> <ul style="list-style-type: none"> ▪ <i>Independent services</i> <ul style="list-style-type: none"> • Taxable by assessment or withholding? • Identification of non-resident service providers? • Administering Articles 5(3)(b) and 14 of the UN Model <ul style="list-style-type: none"> ○ Claims for exemption ○ Final withholding • Use of interim withholding and refund mechanism • Clearance procedures ▪ <i>Technical fees</i> <ul style="list-style-type: none"> • Do your treaties contain special provisions concerning technical fees? • Withholding obligation on resident payers? Non-resident payers with PE or fixed base? Rate? • Definition of amounts subject to withholding? ▪ <i>Employment</i> <ul style="list-style-type: none"> • Use of withholding at source for residents and non-residents with PEs and fixed base (rate of withholding?) • Enforcement of tax on non-resident employees of non-resident employers without any PE; Identification of such employees ▪ <i>Other services</i> <ul style="list-style-type: none"> • Entertainers and sportspersons <ul style="list-style-type: none"> ○ Monitoring activities of entertainers and sportspersons ○ Any threshold? ○ How is tax collected? Any obligations on promoter? • Directors' fees and top-level managerial officials <ul style="list-style-type: none"> ○ Obligation to withhold on resident company? • Government service, students • International shipping and air transport </div>
<p>12:00 – 1:00 pm</p>	<p><i>Investment Income and Capital Gains</i> (Room C500, 5th Floor) Chair: Mr. Mansor Hassan (Malaysia), Member of the UN Committee of Experts on International Cooperation in Tax Matters Lead Discussant: Prof. Jan de Goede, Senior Principal, International Bureau of Fiscal Documentation (IBFD) <i>Round-table discussion with interventions by participants</i></p> <div style="border: 1px solid black; padding: 5px;"> <p>Main points for discussion:</p> <ul style="list-style-type: none"> ▪ <i>Use of withholding for dividends, interest, royalties, and income from immovable property</i> <ul style="list-style-type: none"> • Qualification for treaty benefits <ul style="list-style-type: none"> ○ Residence ○ Beneficial ownership ○ Competent authority agreements under Art. 10, 11, and 12? • Information • Enforcement issues: penalties, liability for tax imposed on withholding agent • Exceptions ▪ <i>Enforcement of domestic tax on capital gains realized by non-residents</i> <ul style="list-style-type: none"> • Qualification for treaty benefits <ul style="list-style-type: none"> ○ Enforcement of tax on non-residents disposing of immovable property (shares of land-rich companies, substantial participations) </div>
<p>1:00 - 2:30 pm</p>	<p><i>Lunch</i></p>

<p>2:30 - 3:45 pm (joint session with the parallel meeting on “Capacity Building on Tax Treaty Negotiation”)</p>	<p><i>Sharing Experiences on the Relationship between Domestic Tax Legislation and Tax Treaties</i> (Oval Room, S120, (-1) Floor)</p> <p>Chair: Mr. Armando Lara Yaffar (Mexico), Chairperson, UN Committee of Experts on International Cooperation in Tax Matters</p> <p>Lead Discussant: Prof. Hugh Ault, Professor Emeritus, Boston College Law School</p> <p><i>Round-table discussion with interventions by experts and participants, including questions & answers</i></p> <div style="border: 1px solid black; padding: 5px;"> <p>Main points for discussion:</p> <ul style="list-style-type: none"> ▪ <i>How does a treaty become part of national law?</i> <ul style="list-style-type: none"> • Do any special steps have to be taken legislatively or administratively? • Are there regulations or administrative materials giving information on how to apply treaties? • Can treaty rules be made subject to domestic procedural requirements? ▪ <i>How is substantive treaty law connected to domestic law?</i> <ul style="list-style-type: none"> • Treaty terms are specially defined, but rely in part on domestic law concepts • Effect of Article 3(2) and context • If recourse to domestic law, the law of which State? ▪ <i>How do treaty administrative provisions and domestic administrative and judicial rules interact?</i> <ul style="list-style-type: none"> • When can MAP proceedings be opened? • Can the taxpayer follow both MAP procedures and domestic judicial procedures at the same time? • Can the Taxpayer have MAP relief when there has already been a judicial decision in his case? In a case similar to his case? • Does the taxpayer have to terminate all domestic litigation in order to be able to take advantage of a MAP? • What is the effect of a domestic statute of limitations on MAP relief? </div>
<p>3:45 - 4:00 pm</p>	<p><i>Coffee Break</i></p>
<p>4:00 - 5:15 pm (joint session with the parallel meeting on “Capacity Building on Tax Treaty Negotiation”)</p>	<p><i>Sharing Experiences on Improper Use of Tax Treaties, Tax Avoidance and Tax Evasion</i> (Oval Room, S120, (-1) Floor)</p> <p>Chair: Mr. Armando Lara Yaffar (Mexico), Chairperson, UN Committee of Experts on International Cooperation in Tax Matters</p> <p>Lead Discussant: Prof. Hugh Ault, Professor Emeritus, Boston College Law School</p> <p><i>Round-table discussion with interventions by experts and participants, including questions & answers</i></p> <div style="border: 1px solid black; padding: 5px;"> <p>Main points for discussion:</p> <ul style="list-style-type: none"> ▪ <i>Improper use of tax treaties and anti-avoidance rules</i> <ul style="list-style-type: none"> • The relationship between domestic anti-avoidance rules and tax treaties • Anti-avoidance rules in tax treaties ▪ <i>Detecting and combating aggressive tax avoidance schemes involving tax treaties</i> <ul style="list-style-type: none"> • Information gathering • Disclosure requirements • Penalties ▪ <i>Common examples of transactions involving potential abuse of tax treaties</i> <ul style="list-style-type: none"> • Treaty shopping and the use of conduit companies • Income shifting • International hiring out of labour • Circumventing treaty threshold requirements • Changing the character of income • Tax sparing abuses </div>
<p>5:15 pm</p>	<p><i>Closing Remarks</i> (Oval Room, S120, (-1) Floor)</p> <p>Mr. Alexander Trepelkov, Director, Financing for Development Office, Department of Economic and Social Affairs, United Nations</p>