

**Outcome of the  
7<sup>th</sup> session of the Committee of Experts on International Cooperation in Tax Matters  
(Geneva, 24-28 October 2011)**

**Executive Summary**

Following 5 days of intense negotiations, the Committee of Experts on International Cooperation in Tax Matters adopted the **2011 Update of the United Nations Model Double Taxation Convention between Developed and Developing Countries**. This new revision of the UN Model has been long-awaited by the international community, especially by developing countries which seek assistance in the negotiation of modern bilateral double-tax treaties reflecting their current circumstances and policy priorities.

The annual session of the Committee was attended by 23 out of 25 members of the Committee, appointed by the Secretary-General in their personal expert capacity, as well as 105 observers, including 50 delegates representing 30 Governments. Other observers were from four intergovernmental organizations, 23 civil society organizations and 12 business sector entities.

The UN Model Tax Convention, as well as the OECD Model Tax Convention have had a profound influence on international treaty practice. These Models form the basis for most of the several thousand bilateral tax treaties between countries, which aim at protecting taxpayers against double taxation, with a view to improving the flow of international trade and investment as well as the transfer of technology, while retaining appropriate taxing rights to Governments. The particular aim of the UN Model is to facilitate entering of bilateral tax treaties by developing countries, which would contribute to the furtherance of their development goals.

The similarities between the UN Model and the OECD Model reflect the importance of achieving consistency, where possible, while the important areas of divergence vividly reflect the different memberships and priorities of the two organizations. Such differences relate, in particular, to the issue of to what extent a country should forego, under a bilateral tax treaty, taxing rights which would be available to it under domestic law, with a view to avoiding double taxation and encouraging investment. The UN Model generally preserves a greater share of tax revenue to the “source State”, i.e. country where investment or other activity takes place. While the OECD Model preserves a greater share to the “residence State”, i.e. country of the investor, trader, etc. Thus, the UN Model would normally allow developing countries more taxing rights on income generated by foreign investments in these countries.

The adoption of the 2011 update culminated the work of the Committee over the past 10 years, since the last update of the UN Model in 2001, towards bringing it in line with current realities and, as much as possible, with the 2010 version of the OECD Model Tax Convention, where it was consistent with the priorities of developing countries.

The discussion at the annual session spanned all 30 Articles of the UN Model and Commentaries thereto. The main subject was Commentary to Article 9 dealing with the “arm’s length principle”, which underlay transfer pricing approach of both the UN and the OECD Models. The discussion revealed a divergence of views between experts from developing and developed

countries. The 2001 version of the Commentary had recommended that countries should follow the OECD Transfer Pricing Guidelines in applying the arm's length principle. Several experts from developing countries expressed the view that while there was no disagreement that the arm's length principle underlay the transfer pricing approach of the UN Model and that the OECD Guidelines were often referred to, the 2001 recommendation was too broadly stated. They insisted that the 2011 Update clarify that the Guidelines were only for guidance in applying the arm's length principle.

On the other hand, participants from developed countries felt that any departure from existing language would send signals that the UN might have different interpretation of Article 9 than the OECD, which would result in disagreements between parties to existing and future treaties and proliferation of double-taxation. There was also concern that it could undermine the ongoing work on the *United Nations Practical Manual on Transfer Pricing for Developing Countries*, which was based on the mandate referring specifically to the Commentary on Article 9. After many hours of negotiations, consensus was reached to keep the existing language but put it in the historical context, record the views of members from developing countries in the report of the session and prioritize future work on the Committee's position vis-à-vis the OECD Transfer Pricing Guidelines immediately after the UN Manual on Transfer Pricing is finalized and adopted during the 2012 session of the Committee.

Overall, the main differences between the 2011 update of the UN Model and its 2001 version are as follows:

- (1) Alternative version of Article 25 providing for mandatory binding arbitration (for countries wishing so) when a dispute, arising under a treaty, cannot be resolved under the usual Mutual Agreement Procedure (MAP);
- (2) New version of Article 26, which confirms and clarifies the importance of exchange of information under the UN Model;
- (3) New Article 27 concerning assistance in the collection of taxes, which provides the rules under which States may agree to assist each other in tax collection, along the lines of the corresponding provision in the OECD Model Tax Convention;
- (4) Modified Article 13, dealing with taxation of capital gains, which now addresses possible tax evasion; and
- (5) Updated Commentary to Article 5, addressing cases where countries wish to delete Article 14 on independent personal services and deal with income, formerly dealt with by Article 14, in Articles 5 and 7 (thus bringing it in line with the OECD Model, in which Article 14 was deleted already in 2000).

All changes agreed to in the Articles of the UN Model have been accompanied by corresponding changes in Commentaries to those Articles, which along with the Articles themselves, are considered an integral part of the Model. In addition, some other updates have been made to other Commentaries to modernize them and to further assist countries in interpreting and applying the UN Model.

While discussing the practicalities related to issuing the 2011 Update of the UN Model, the Committee stressed the importance of keeping the UN Model freely available on-line and making it available in the published form as soon as possible. It also expressed its wish to invite

country comments on the revised Model as a way of giving voice to non-OECD members, who were not able to comment on the OECD Model. The Committee decided to express these wishes in a draft resolution of ECOSOC, to be included in the report of the session.

Another important issue was the **Practical Manual on Transfer Pricing for Developing Countries**. Several draft chapters were presented and discussed. The complete draft Manual is expected to be adopted at the 2012 session of the Committee. This useful tool will provide much needed assistance to developing countries in practical application of the arm's length principle reflected in both the UN Model Tax Convention and the OECD Model Tax Convention. Other issues included: (1) tax treatment of services; (2) taxation of development projects; (3) tax cooperation related to major environmental issues, particularly climate change; (4) revision of the *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries*; and (5) capacity development.

The Committee also discussed the future direction of its work with the focus on its 2012 session. It will devote substantial attention to the *Practical Manual on Transfer Pricing for Developing Countries* as well as the *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries*. In addition, substantial work is expected to be done in the area of tax treatment of services, as well as several other Articles of the UN Model. Analytical papers will be prepared on: (1) Classification of hybrid entities; (2) Article 8 – treatment of “auxiliary/ancillary activities” in the Commentary; (3) Value-Added Tax – cross-border issues related to Permanent Establishment; (4) Location specific country rents – the future of company tax; and (5) Taxation by electronic means.

The Committee also decided to establish a Working Group on Tax-treaty Issues relating to Climate Change mechanisms, including Emissions Permits and Clean Development Mechanism credit.

Finally, the Committee agreed to hold its next annual session on 15-19 October 2012 in Geneva and adopted a provisional agenda for that session.