



**Workshop on Double Tax Treaties and
Base-Eroding Payments for Developing Countries
Nairobi, Kenya, 21-24 March 2017**

BACKGROUND NOTE

1. Domestic Resource Mobilization and Taxation

Taxation is one of the most important ways in which developing countries can mobilize domestic resources for investment in sustainable development. However, substantial gaps in raising tax revenues persist between developed and developing countries, where public revenues are still largely insufficient to meet the Sustainable Development Goals (SDGs).

The Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Agenda)¹ contains a commitment to “[...] *work to improve the fairness, transparency, efficiency and effectiveness of [the] tax systems, including by broadening the tax base and continuing efforts to integrate the informal sector into the formal economy in line with country circumstances*”², and recognizes the critical role to be played by development-oriented tax policies, modernized tax systems and efficient tax collection procedures. In order to establish and maintain a sustainable source of revenues, it is essential that countries protect and broaden their tax base and prevent the shifting of profits outside the country through international tax evasion and avoidance schemes.

Over the years, the United Nations Committee of Experts on International Cooperation in Tax Matters (UN Tax Committee) has been addressing issues in international tax cooperation, giving special attention to developing countries. These included issues relevant to protecting and broadening the tax base of developing countries, as well as the effective combating of tax evasion and tax avoidance.

Recent years have witnessed a strong political momentum also among developed countries to curtail tax base erosion and profit shifting (BEPS) by multinational enterprises engaged in a wide range of cross-border tax planning techniques, which allow them to pay very little or no tax anywhere in the world.

¹ The Addis Ababa Action Agenda (Addis Agenda) is available at http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf.

² Addis Agenda, para 22.

Major work in this area has been undertaken by the Organisation for Economic Co-operation and Development (OECD)³. Its focus, however, has naturally been mainly on the priorities of Member States of the OECD. Yet, BEPS negatively affects domestic resource mobilization in developing countries more significantly than in developed countries, due to lack of specialized skills and resources, and results in substantial forgone tax revenue and higher costs of tax collection. Strengthening the capacity of developing countries to protect and broaden their tax base is therefore critical to meet the challenges posed by the 2030 Agenda for Sustainable Development.

2. UN Capacity Development Programme on International Tax Cooperation

Against this background, the Financing for Development Office (FfDO) of the United Nations Department of Economic and Social Affairs (UN/DESA) launched a project on international tax cooperation aimed to strengthen the capacity of developing countries to increase their potential for domestic revenue mobilization through the effective protection and broadening of their tax base.

This project drew upon and contributed to the work done in this area by the UN Tax Committee, as well as by the OECD on BEPS, with a view to complementing it from a capacity development perspective for the benefit of developing countries.

The project addressed a number of topics that developing countries had reported to be of particular interest and relevance to them, while focusing the capacity development dimension on three important areas: 1) the engagement and effective participation of developing countries in relevant international decision-making processes; 2) the assessment of relevance and viability of potential options to protect and broaden their tax base; and 3) the effective and sustained implementation of suitable options from which they would benefit the most.

3. UN Handbook on Selected Issues in Protecting the Tax Base of Developing Countries

The first tangible output of the above-mentioned project was the *United Nations Handbook on Selected Issues in Protecting the Tax Base of Developing Countries* (Handbook)⁴, which was presented at the Third International Conference on Financing for Development (Addis Ababa, Ethiopia, 13-16 July 2015) as a tangible deliverable towards the objectives of the Conference.

³ See OECD, *Addressing Base Erosion and Profit Shifting* (Paris: OECD, 2013), available at <http://www.oecd.org/tax/addressing-base-erosion-and-profit-shifting-9789264192744-en.htm>; OECD, *Action Plan on Base Erosion and Profit Shifting* (Paris: OECD, 2013), available at <https://www.oecd.org/ctp/BEPSActionPlan.pdf>. See also, <http://www.oecd.org/tax/beps-2015-final-reports.htm>.

⁴ Available at <http://www.un.org/esa/ffd/wp-content/uploads/2015/07/handbook-tb.pdf>.

This publication was developed through a collaborative engagement with government representatives from more than 30 developing countries, members of the UN Tax Committee, and relevant international and regional organizations. These stakeholders participated in two workshops, which were organized by FfDO in cooperation with the OECD and held in New York (4 June 2014)⁵ and Paris (23 September 2014)⁶, to discuss about the guidelines contained in a first draft of the Handbook and provide their contribution toward the final draft of this publication.

The Handbook addresses several issues of particular relevance to developing countries that aim at protecting and broadening their tax base. In addition, the Handbook examines a first set of reports and recommendations on how to tackle base erosion and profit shifting released in the context of the OECD work on BEPS. It outlines the most suitable options, along with easy-to-implement approaches, which can be adopted by developing countries to protect their tax base, taking into account their specific needs and levels of development. The Handbook also addresses a number of relevant issues not covered by the OECD work on BEPS, which developing countries reported to be of particular importance to them.

4. Further international initiatives and regional demand

The OECD work on BEPS, as well as the work of the UN Tax Committee on issues relevant to protecting and broadening the tax base of developing countries, has then marked a further significant step forward in the efforts to curtail tax base erosion and counter international tax evasion and avoidance. The OECD released a second set of reports and recommendations addressing BEPS⁷. Moreover, the UN Tax Committee has been discussing BEPS concerns of developing countries and related issues in international tax cooperation. These include issues related to the prevention of tax treaty abuse, the taxation of cross-border services, the exchange of information for tax purposes, which will all be reflected and addressed in the next revision of the *United Nations Model Double Taxation Convention between Developed and Developing Countries* (UN Model Convention).

The *United Nations Handbook on Selected Issues in Protecting the Tax Base of Developing Countries* (Handbook) was introduced to more than 40 tax officials from 25 developing countries in Africa during the UN Course on Double Tax Treaties, which was held in cooperation with the African Tax Administration Forum (ATAF) in Dakar, Senegal, on 9-13 November 2015⁸. Strong interest was expressed on BEPS-related issues, such as taxation of

⁵ Description of the event available at <http://www.un.org/esa/ffd/events/event/workshop-on-tax-base-protection-for-developing-countries.html>.

⁶ Description of the event available at <http://www.un.org/esa/ffd/events/event/second-workshop-on-tax-base-protection-for-developing-countries.html>.

⁷ Available at <http://www.oecd.org/ctp/beps-2015-final-reports.htm>.

⁸ Description of the event available at <http://www.un.org/esa/ffd/events/event/un-course-on-double-tax-treaties.html>.

services, base eroding payments of interest, royalties and other rents, as well as general anti-abuse provisions. Participants showed particular attention not only to the relevant OECD work, but especially to the UN standing on these issues, with a large majority indicating the need for capacity building assistance and technical support on tax base protection.

These issues were also discussed during the Workshop on Administration of Tax Treaties and Addressing Base-Eroding Payments, which was jointly organized by FfDO and the International Tax Compact (ITC) in Berlin, Germany, on 1-3 December 2015⁹, with the participation of several representatives of National Tax Authorities and Ministries of Finance, including from developing countries in Africa. This meeting featured the presentation of draft capacity development materials aimed to operationalize the Handbook guidance on selected issues in protecting the tax base of developing countries. These documents were shared with the intent to seek participants' feedback and inputs. As a result of this exercise, several participants stressed the importance of expanding these materials, as well as developing additional guidance dealing with other related issues.

Latest developments have been the launch of the OECD Inclusive Framework and the unveiling of the inter-agency Platform for Collaboration on Tax¹⁰ (Platform). The first initiative aims to enable all interested countries and jurisdictions, including developing countries, to participate in the norm setting and implementation of measures to address BEPS issues. The Platform, which comprises the UN, the OECD, International Monetary Fund (IMF) and the World Bank Group (WBG), aims to provide capacity-building support to developing countries for the purposes of implementing measures to address BEPS and other relevant international tax issues of particular relevance and concern to them, as well as enabling them to achieve greater influence in designing international tax rules.

5. Follow-up capacity development project funded by the Government of Italy

It is within this context, and in light of ongoing international efforts, that FfDO is following up to provide continuity to and build upon the capacity-building work already carried out and, at the same time, respond to the specific demand of developing countries for support in addressing BEPS issues.

Thanks to a contribution by the Government of Italy, FfDO launched a new project in order to prepare a revised and expanded edition of the Handbook, as well as further develop practical materials aimed at operationalizing the guidance contained in the Handbook, which will take into account the latest international developments in this area.

⁹ Description of the event available at <http://www.un.org/esa/ffd/events/event/2015-att-workshop.html>.

¹⁰ Press statement available at <http://www.un.org/esa/ffd/wp-content/uploads/2016/04/Press-statement-global-cooperation-tax-matters.pdf>; Platform concept note available at <http://www.un.org/esa/ffd/wp-content/uploads/2016/04/concept-note-platform-for-collaboration-on-tax.pdf>.

To ensure country ownership of the process, FfDO will use modalities similar to those adopted for the original development of the Handbook, including the organization of ad hoc capacity development workshops to raise awareness on and discuss technical matters with tax officials from developing countries, members of the UN Tax Committee, and international and regional organizations, with the aim of seeking their views and inputs so that the perspective of developing countries may be coherently and comprehensively captured in the final draft of the above-mentioned materials.

6. UN-ATAF Workshop on Double Tax Treaties and Base-Eroding Payments for Developing Countries (Nairobi, Kenya, 21-24 March 2017)

As a first step, FfDO is organising, in cooperation with its long-lasting regional partner, the African Tax Administration Forum (ATAF), a Workshop on Double Tax Treaties and Base-Eroding Payments for Developing Countries. This event will be held in Nairobi, Kenya, with the participation of representatives of National Tax Administrations and Ministries of Finance from a number of countries in the region.

The workshop will aim to: (i) strengthen the technical capacity of participants in dealing with tax treaties and in addressing relevant BEPS-related issues, drawing upon the practical guidelines contained in the Handbook; (ii) raise awareness on, discuss and analyse the latest developments in this area; and (iii) receive feedback and inputs from participants for the revision and expansion of the Handbook, as well as the further development of supplementary materials, called Practical Portfolios, providing a more in-depth analysis of selected topics.

Discussions will focus on two issues that developing countries reported to be of particular relevance to them in protecting their tax base, namely: 1) the taxation of cross-border services; and 2) the treatment of base-eroding payments of interest. To this end, draft Practical Portfolios addressing the aforesaid issues will be circulated among participants in advance of the meeting for their perusal and will form the basis of the discussions.

The workshop will be facilitated by internationally renowned experts. Participants will be expected to actively participate in the meeting, including by engaging in the discussion of practical case studies and sharing information about their respective country's domestic tax laws and tax treaties. In view of that, participants will also be asked to fill in ad hoc questionnaires in advance of the meeting, in order to provide some basic relevant information.