



**UN-ATAF Workshop on Transfer Pricing
Administrative Aspects and Recent Developments
Ezulwini, Swaziland
4-8 December 2017**



BACKGROUND NOTE

Introduction

The United Nations has transitioned from the Millennium Development Goals (MDGs) framework to a transformative, people-centered 2030 Agenda for Sustainable Development, with a view to eradicating poverty and hunger, promoting sustained and inclusive economic growth and social progress, and protecting the environment. This agenda, adopted at a UN Summit in September 2015¹, is based on a new set of Sustainable Development Goals (SDGs), which are action-oriented, global in nature, and universally applicable to all countries while taking into account different national realities, capacities and levels of development.

To meet the ambitions of the 2030 Agenda for Sustainable Development, adequate means of implementation are required. There is a need for a significant mobilization of financial resources to promote sustainable development in all its dimensions. To this end, the outcome document of the third International Conference on Financing for Development - the Addis Ababa Action Agenda (Addis Agenda)² - provides a comprehensive financing framework with policy commitments and concrete deliverables on the mobilization and effective use of domestic resources.

Taxation is one of the most important ways in which developing countries can mobilize resources for investment in sustainable development; however, substantial gaps in raising tax revenues persist between developed and developing countries and public revenues are still largely insufficient to meet sustainable development goals in developing countries, especially in the least developed ones. A critical role is to be played by development-oriented tax policies, modernized tax systems, efficient tax collection procedures, as well as the broadening of the tax base and the effective combating of tax evasion and capital flight.

Advances in technology, transportation and communication have given rise to a large number of multinational enterprises (MNEs), which have the flexibility to place their enterprises and activities anywhere in the world. Nowadays, a significant and steadily increasing volume of global trade consists of international transfers of goods and services, capital and intangibles (such as intellectual property) within an MNE group. Such “intra-group transactions” arguably account for more than 30 per cent of all international

¹ See <https://sustainabledevelopment.un.org/post2015/summit>.

² The Addis Ababa Action Agenda (Addis Agenda) is available at http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf.

transactions. The structure of transactions within an MNE group is determined by a combination of the market and group-driven forces, which can differ from the open market conditions operating between independent entities. A large and growing number of international transactions are therefore no longer governed entirely by market forces, but are driven by the common interests of the entities of a group.

Transfer pricing refers to the mechanism by which cross-border intra-group commercial and financial conditions (including the price of goods and services) are established. Transfer pricing in itself is a normal aspect of the operations of an MNE, as it allows the enterprise to determine a price for the internal transactions occurring between different entities of the group, in order to individuate profit- and loss-making operations and entities of the group. However, if the method used to determine the price of such transactions, for whatever reason, does not reflect their true value, profits might effectively be shifted to low-tax or no-tax jurisdictions and losses and deductions to high-tax jurisdictions. This unfairly deprives a country of tax revenue, reducing the amount of resources available for funding its development objectives. Apart from tax base erosion, it can also lead to double taxation, which might undermine the investment climate, which is a critical factor for the promotion of foreign direct investment.

Both the *United Nations Model Double Taxation Convention between Developed and Developing Countries* (the UN Model) and the *OECD Model Tax Convention on Income and on Capital* (the OECD Model) have essentially followed the same test of whether transfer pricing has occurred at a proper price or range of prices, namely whether it has occurred at an “arm’s length price”, the price that would be paid in a market with each participant acting independently in its own interest. The theory of the “arm’s length price” is well accepted, and is embodied in Article 9 (Associated Enterprises) of both the UN Model and the OECD Model and in bilateral tax treaties based on them.

Transfer pricing is particularly important for developing countries as MNEs often operate in their economies and engage in cross-border intra-group transactions which may lead to profit being shifted from developing to developed economies. Applying the arm’s length principle in practice can be burdensome, however, especially when no equivalent transaction exists in the relevant market, or when the goods and services exchanged are unique or specific to an MNE (for example, in the case of intangible assets). Addressing these practical complexities relies heavily on the availability of data and expert skills, which can give rise to additional difficulties for developing countries.

UN Practical Manual on Transfer Pricing for Developing Countries

In response to the above-mentioned challenges faced by developing countries, the United Nations Committee of Experts on International Cooperation in Tax Matters (Committee of Experts) included practical issues in transfer pricing as one of its main areas of work. This resulted in the *United Nations Practical Manual on Transfer Pricing for Developing Countries*

(the UN TP Manual)³, which was updated in 2017 to take into account relevant recent developments, including the outputs of the G20/OECD BEPS Project.

This hands-on tool addresses the difficulties faced by developing countries in applying the arm's length principle and some of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, as well as the need for clear and practical guidance for those countries on the policy and administrative aspects of applying transfer pricing analysis to MNEs transactions.

UN Capacity Development Programme on International Tax Cooperation

In order to disseminate and operationalize the UN TP Manual as a practical tool to support developing countries in dealing with transfer pricing issues, the United Nations capacity development work in the area of international tax cooperation focuses on implementing activities aimed at strengthening the capacity of national tax authorities in these countries to apply the arm's length principle, which is reflected in both the UN and OECD Model Conventions, drawing on the Manual. This includes the organization of training workshop and the provision of technical assistance and support to Member States on the basis of the Manual. This contributes also to a broader objective, which is to strengthen the capacity of these countries to develop more effective and efficient tax systems, which support the desired levels of public and private investment, and to combat tax evasion.

The set of capacity development tools used with regard to the objectives mentioned above includes the *UN Course on Transfer Pricing* (the UN Course) – a comprehensive course which aims at providing an overview of transfer pricing principles and methodologies and deals with the main practical issues faced by developing countries in this respect - and the *UN Primer on Transfer Pricing* (the Primer) - which serves both as an introduction to the UN Course and as a self-standing introduction to transfer pricing.

In several resolutions, ECOSOC has recognized the work and progress made by the Financing for Development Office (FfDO) in developing, within its mandate, a capacity development programme on international tax cooperation. Lately, in its resolution 2014/12, ECOSOC requested FfDO, in partnership with other stakeholders, to continue its work in this area and further develop its activities.

To this end, FfDO focuses on cooperation with regional organisations of tax administrations, such as the African Tax Administration Forum (ATAF) for capacity development work in Africa. Due to their network and knowledge of tax systems and tax administrations in their respective regions, they are uniquely positioned to best identify the demand for capacity development activities, with a view to making them as relevant and effective as possible for the beneficiaries. Moreover, their engagement in providing

³ The electronic version of this publication can be found at <http://www.un.org/esa/ffd/wp-content/uploads/2017/04/Manual-TP-2017.pdf>

ongoing assistance to countries in their regions to steadily increase these countries' capacity to achieve their revenue objectives ensures a sustainable impact of common efforts aimed at delivering such activities.

UN-ATAF Workshops on Transfer Pricing

The UN Primer on Transfer Pricing was delivered in Lusaka, Zambia on 17-18 June 2015⁴. This workshop, attended by 23 tax officials from 15 countries in the African region, provided a comprehensive introduction to the fundamentals of transfer pricing.

Building on the success of the Primer, and as its natural continuation, FfDO partnered again with ATAF in organising a 4-day UN Workshop on Transfer Pricing in Antananarivo, Madagascar, from 14 to 17 November 2016⁵, focusing on the fundamentals of transfer pricing, including comparability analysis and transfer pricing methods, and with an update on recent developments in the UN and OECD work on the topic.

The third Workshop, focusing on Administrative Aspects of Transfer Pricing and Recent Developments, will be held in Ezulwini, Swaziland, on 4-8 December 2017. The Workshop is particularly suited for those tax officials who have already attended the Primer and the Workshop in Madagascar, as well as tax officials from relevant authorities in a number of African countries, who are responsible for and/or are involved in transfer pricing audits or technical advice and who have a basic understanding of transfer pricing issues. Tax officials in large taxpayers' offices as well as in offices responsible for special sectors, who normally deal with transfer pricing, might also participate in and benefit from this Workshop.

The aim of the Workshop is to provide participants with an overview on the administrative aspects of transfer pricing, as well as on the new chapters of the UN TP Manual related to intra-group services, intangibles and cost-contribution arrangements. The Workshop will also provide practical guidance on how to establish transfer pricing capability in developing countries, and a presentation of the *Toolkit for Addressing Difficulties in Accessing Comparables Data for Transfer Pricing Analyses* developed by the Platform for Collaboration on Tax⁶. The course comprises several examples and extensive case studies to enable participants to gain confidence in applying the skills acquired.

The Workshop will be facilitated by experienced instructors and regional experts will provide practical insights and share country practices and experiences. Simultaneous interpretation from/into French will be provided during all the sessions. Training and resource materials will be made available to participants in English and French. In

⁴ A brief description of the event can be found at <http://www.un.org/esa/ffd/events/event/cd-2015-tp-primer.html>.

⁵ A brief description of the event can be found at <http://www.un.org/esa/ffd/events/event/cd-2016-tp-course-madagascar.html>

⁶ The Platform for Collaboration on Tax is a joint effort launched in April 2016 by the International Monetary Fund (IMF), the OECD, the UN and the World Bank Group (WBG). More information can be found at <http://www.worldbank.org/en/programs/platform-for-tax-collaboration>

addition, each participant will receive a copy of the 2017 *United Nations Practical Manual on Transfer Pricing for Developing Countries* (available in English only).